

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Tupper v. Nova Scotia (Attorney General)*, 2014 NSCA 115

**Date:** 20141211

**Docket:** CA 430117

**Registry:** Halifax

**Between:**

Thomas Percy Tupper

Appellant

v.

The Attorney General of Nova Scotia Representing  
Her Majesty the Queen in right of Nova Scotia,  
Judgment Recovery (N.S.) Ltd., Harold F. Jackson, Q.C.,  
Paul L. Walter, Q.C., Rob Stewart, Q.C., and John Kulik, Q.C.

Respondents

**Judge:** The Honourable Chief Justice J. Michael MacDonald

**Motion Heard:** December 11, 2014, in Halifax, Nova Scotia, in Chambers

**Written Decision:** December 23, 2014

**Held:**

1. The vexatious litigant motion is referred to a panel of the Court; to be heard in conjunction with the appeal;
2. The motions for security for costs are denied.

**Counsel:** Thomas Tupper, Appellant in Person  
Duane Eddy, for the respondent Attorney General of Nova Scotia  
Michael Brooker Q.C, for the respondent Judgment Recovery (N.S.) Ltd.  
Jason T. Cooke for the respondents Harold F. Jackson, Q.C., Paul L. Walter, Q.C., Rob Stewart, Q.C. and John Kulik, Q.C.

## Decision:

[1] I recently dealt with a series of motions relating to this appeal, brought by Mr. Thomas Tupper, a longstanding and frequent litigator here in Nova Scotia. Here is a summary of what I ordered and why.

## BACKGROUND

[2] Mr. Tupper's lengthy history with the Nova Scotia courts is rooted in a car accident that occurred over thirty years ago. This incident, he firmly believes, has triggered a conspiracy against him, involving all sectors of the justice system. His response has been to unleash a multitude of actions against a list of conspirators that continues to expand. Justice Glen McDougall of the Supreme Court, in one of Mr. Tupper's many cases (2013 NSSC 290), recently explained:

[4] **The Accident:** The alleged conspiracy began on the night of June 4, 1983 when Mr. Tupper struck a pedestrian while driving his motorcycle on the highway in Kentville, Nova Scotia. The pedestrian brought an action in negligence against Mr. Tupper. Mr. Tupper was uninsured and did not defend the claim. The claim against him was defended by Judgment Recovery (N.S.) Ltd. The pedestrian was represented by Paul Walter, Q.C. Judgment Recovery was represented by Harold Jackson, Q.C.

[5] At trial, Justice Grant found that both Mr. Tupper and the pedestrian had been negligent. Liability was apportioned 75 percent to Mr. Tupper for driving his motorcycle without headlights on and 25 percent to the pedestrian whose inebriated state limited his ability to avoid the collision. Damages were awarded to the pedestrian and paid by Judgment Recovery. Judgment Recovery then pursued Mr. Tupper for repayment.

[6] Mr. Tupper sought advice from lawyer Robert Stewart, Q.C. on whether or not to appeal the trial decision. Mr. Stewart recommended against an appeal.

[7] At some point after his discussions with Mr. Stewart, Mr. Tupper became convinced that the pedestrian's claim against him had been fraudulent. In Mr. Tupper's view, the pedestrian had intentionally placed himself in the path of the oncoming motorcycle in order to sue for damages. To support this theory, Mr. Tupper cites several portions of the trial decision including reference by the judge to the pedestrian's statement that "it was not up to him to move" when he heard the motor bike approaching.

[8] In Mr. Tupper's mind, each of the lawyers who participated in his trial and Mr. Stewart were aware, by virtue of their legal training, that damages should be awarded only to victims of genuine accidents. Accordingly, Mr. Tupper asserts that these lawyers became party to the insurance fraud by allowing him to be victimized by the pedestrian.

[9] **The 2007 Action:** As a result of Mr. Tupper's inability to make payments to Judgment Recovery, his driver's licence has been suspended since August of 1985. In 2007, Mr. Tupper filed an action against the Province, Judgment Recovery and Judgment Recovery's lawyers, Mr. Jackson and John Kulik, Q.C., for damages flowing from the suspension of his license. The Nova Scotia Supreme Court dismissed the action against all parties except the Attorney General. The Nova Scotia Court of Appeal upheld the dismissal. By defending the parties sued by Mr. Tupper in this action, lawyers Catherine Lunn, Michael Brooker, Q.C., and Michael Wood, Q.C. (as he then was) were added by Mr. Tupper to the list of those knowingly involved in the conspiracy against him.

[10] **The Complaint to NSBS:** On October 31, 2011, Mr. Tupper filed a complaint against these 7 lawyers with NSBS. On November 16, 2011, Victoria Rees, Director of Professional Responsibility for NSBS, informed Mr. Tupper that his complaint was being dismissed because it revealed no evidence of misconduct on the part of the lawyers. Ms. Rees advised Mr. Tupper of his right under the regulations of the *Legal Profession Act*, SNS 2004, c 28 to request a review of the dismissal by a Review Subcommittee. Mr. Tupper requested this review on December 16, 2011. In the materials he submitted to the Review Subcommittee, Mr. Tupper accused Ms. Rees of bias and fraud and requested her disbarment.

[11] On February 21, 2012, the Review Subcommittee upheld the dismissal of Mr. Tupper's complaint. Mr. Tupper proceeded to appeal the decision to the Nova Scotia Court of Appeal. On March 27, 2012, Mr. Tupper was informed by Stephen McGrath, counsel for the Attorney General of Nova Scotia that the *Legal Profession Act* does not grant a right of appeal from decisions made by the Review Subcommittee and suggested that he may be able to file an application for judicial review under Rule 7 of the Civil Procedure Rules. Two days later, counsel for the respondent, Raymond Larkin, Q.C., sent Mr. Tupper an e-mail informing him that a complainant has no right of appeal under the Act and that his only option would be an application to this Court for judicial review.

[12] Despite the comments of Mr. McGrath and Mr. Larkin, Mr. Tupper was determined to proceed with the appeal. On April 10, 2012, the respondent filed notice of its intention to participate in the appeal and again noted the absence of a right of appeal under the legislation. When Mr. Tupper came before the Court of Appeal on January 23, 2013, he acknowledged that he had no right of appeal but argued that the absence of such an appeal was unconstitutional. The Court of

Appeal concluded that the constitutional argument was entirely without merit and dismissed the appeal for lack of jurisdiction.

[13] Mr. Tupper filed an application for leave to appeal the Court of Appeal's decision to the Supreme Court of Canada. His application was denied on June 27, 2013.

[3] The present appeal stems from a decision (2014 NSSC 213) of Justice N.M. Scaravelli also of the Supreme Court, dismissing Mr. Tupper's most recent action as an abuse of process. In essence he found it to be an improper backdoor attempt to secure the same relief that he has continuously been denied. Justice Scaravelli also declared Mr. Tupper to be a vexatious litigant; thereby preventing him from taking any further proceedings related to this ongoing odyssey. He explained:

[7] Dismissing an action for abuse of process is an exceptional remedy used only in the clearest cases of abuse of the court process. In these instances the court exercises its inherent power to prevent vexatious and other litigants from bringing the administration of justice into disrepute.

[8] The present action stems from the 1983 motor vehicle accident as is the case in all legal proceedings to date. The essence of the action is set out in paragraph 7 of the Amended Statement of Claim:

This is a lawsuit on how Larry Hake and four lawyers conspired to commit insurance fraud, extortion, etc., had me pay back their stolen money to the insurance company they robbed and when I couldn't pay, my driver's license was suspended January 19, 1987 to the present / future. And it's about charter rights violation.

[9] The claim goes on to recount Mr. Tupper's versions of the events surrounding the accident and subsequent proceedings. The issues raised in the current proceeding have ostensibly been dealt with in the previous proceedings. The allegations contained in the previous proceedings are often repeated and supplemented with different wording. Attempts to re-litigate a claim which the court has already determined is an abuse of process.

[10] Mr. Tupper is a vexatious litigant. As indicated he has brought a number of actions to determine issues that already have been dealt with. He has been persistent in taking unsuccessful appeals from judicial decisions. He has failed to pay costs of unsuccessful proceedings. He has made scurrilous and unsubstantiated accusations against all defendants charging malice, bad faith, gross negligence, extortion, and intimidation. This repeated litigation is a misuse of the courts process and resources. It requires the defendants to dedicate time and resources to respond.

[11] I would also grant summary judgment on the pleadings pursuant to Civil Procedure Rule 13.03. Although some of the allegations in the current proceeding use different language, the allegations are essentially the same as the 2005 proceeding where the claim was dismissed. The additional allegations of fraud / conspiracy and abuse of process do not have a factual basis. In summary the claim fails to disclose a reasonable cause of action against any of the defendants. The claim does not set out any material facts to support the allegations made and as such, the allegations are unsustainable.

[12] The action is dismissed.

[13] Subject to an appeal of this decision, I order that Mr. Tupper shall not take any further steps in these proceedings nor commence any further proceedings against the defendants relating to Mr. Tupper's involvement in the 1983 motor vehicle accident with Mr. Hake, without leave of the court. I award costs in the amount of \$750.00 to the Attorney General, \$750.00 to Judgment Recovery and \$750.00 to solicitor defendants.

## **THE MOTIONS**

[4] All parties presented me with motions. Mr. Tupper simply asked me to set the appeal of Justice Scaravelli's decision down for hearing. The respondent Attorney General seeks security for costs on appeal. She also wants to have Mr. Tupper declared a vexatious litigant in this present appeal. The respondent Judgment Recovery and the respondent lawyers also seek security for costs.

[5] At the hearing, my first step was to refer the Attorney General's vexatious litigant motion to a panel of this Court. I then denied all security for costs motions and set the appeal down for hearing, with appropriate filing deadlines. I further directed that the appeal and the Attorney General's vexatious litigant motion would be heard together by the same panel. The hearing date is April 9, 2015.

[6] This is my reasoning.

[7] Had I granted the Attorney General's vexatious litigant motion, Mr. Tupper would have had an appeal as of right to a panel of this Court. [*Judicature Act*, R.S.N.S. 1989, c. 240, s. 45C]. Given the history of these proceedings, it is a virtual certainty that Mr. Tupper would have appealed accordingly. Indeed, during his oral submissions to me, Mr. Tupper acknowledged that he would appeal. Efficiency therefore dictates that I send the vexatious litigant motion to the panel directly, as is my prerogative pursuant to Civil Procedure Rule 90.37(12)(d):

(12) A judge of the Court of Appeal hearing a motion, in addition to any other powers, may order any of the following:

...

(d) the motion be referred to the Court of Appeal for hearing and disposition;

[8] This initial decision informed my analysis on the security for costs motions. Here, under the *Rules*, my discretion is very broad. I am mandated to do whatever I deem just.

**90.42** (1) A judge of the Court of Appeal may, on motion of a party to an appeal, at any time order security for the costs of the appeal to be given as the judge considers just.

(2) A judge of the Court of Appeal may, on motion of a party to an appeal, dismiss or allow the appeal if an appellant or a respondent fails to give security for costs when ordered.

[9] The respondents make a highly compelling case for this relief. Among other things, they highlight the numerous costs awards already outstanding against Mr. Tupper. They also rightly suggest that, if they are successful on appeal and receive a costs award, their chances of recovery would be essentially nil. They also challenge any potential merit to this appeal and urge me to award security for costs as a small measure of control over an otherwise vexatious litigant. In fact, this was the approach taken by my colleague Justice Scanlan in one of Mr. Tupper's related appeals. (2014 NSCA 60).

[10] However, despite these compelling submissions, I decline to grant this relief. I do so for only one reason. It involves Justice Scaravelli's vexatious litigant order. Specifically, if I were to grant security for costs, it would no doubt go unpaid and, as a likely consequence, the appeal would be dismissed without any consideration of Justice Scaravelli's analysis. Yet we will still be left with the Attorney General's vexatious litigant motion. Furthermore, it will be this Court's first opportunity to consider this relatively new form of relief. Therefore, in my view, it would be preferable to consider the entire regime, from both a trial judge's perspective and from an appeal court perspective. To achieve this, Justice Scaravelli's order should be considered on its merits. It is for this reason only that I denied the security for costs motions and set both matters down for hearing at the earliest reasonable date. In an effort to minimize the costs, I have indicated that the filing of facta by Judgment Recovery and the respondent lawyers would be optional.

**DISPOSITION**

[11] The Attorney General's motion to have Mr. Tupper declared a vexatious litigant in this appeal is referred to a panel of the Court and will be considered in conjunction with the main appeal. April 9, 2015 is set for the hearing of both matters and appropriate filing dates have been set. The respondents' motions for security for costs are denied without costs.

MacDonald, C.J.N.S.