

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Green v. Nova Scotia Department of Community Services*,  
2023 NSSC 156

**Date:** 20230606

**Docket:** Hfx. 508867

**Registry:** Halifax

**Between:**

Kelsey Daniel Forbes Green

Plaintiff

and

Nova Scotia Department of Community Services, Kelly Regan, Sandy Graves, Executive Director, Service Delivery, Shauna Clark-Foran, Acting Executive Director, Services, Tracy Embrett, Acting Executive Director, Child, Youth & Family Supports, Kelly Besler, RSW, Director of CYFS, David MacLennan (Former RSW), Megan Turetzek-Windsor, Social Worker Candidate, Kimberley Hankin, RSW, Denise Crowell, MSW, RSW, Nicole Warren, RSW, Kelsie Maloney, Social Worker Candidate, Heather-Ann Ross, Social Worker Candidate, Colleen Maloney-Greenfield, RSW, Kathryn Giacomantonio, Social Work Candidate, Nova Scotia Department of Justice, Theresa Forgeron, Tanya McCarthy

Defendants

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**DECISION ON MOTION FOR ORDER  
DECLARING VEXATIOUS LITIGANT**

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**Revised Decision:** The text of the original decision has been corrected according to the attached erratum, dated June 6, 2023

**Judge:** The Honourable Justice Ann E. Smith

**Heard:** October 27, 2022, in Halifax, Nova Scotia

**Counsel:** Kelsey Daniel Forbes Green, Self-Represented Plaintiff  
Drew Hampden and Myles Thompson, for the Defendants

**By the Court:**

**Introduction**

[1] This case is about whether the Plaintiff, Kelsey Daniel Green (“Mr. Green”), should be declared to be a vexatious litigant. In order to answer that question, this Court needs to review the history of Mr. Green’s interactions with the Court. Mr. Green is a self-represented litigant. That fact, as will be seen in this decision, is irrelevant to a court’s assessment of whether a litigant’s action has crossed the threshold from being merely litigious to being vexatious.

[2] Vexatious litigants are not a unified group. They may be corporate; they may be individual. They may be represented by counsel or may represent themselves. Despite their many differences they all share a common attribute which makes them a hindrance to the administration of justice. And that is their wasteful, selfish behaviour. Vexatious litigants waste court time and the time and money of those they sue. If they are not stopped, they will continue their wasteful conduct unabated until a court says, in effect, “No more”.

[3] In September 2021, Mr. Green commenced an Action against a host of individuals, including Supreme Court, Family Division, Justice Theresa Forgeron

and her judicial assistant. Justice Forgeron heard divorce proceedings involving Mr. Green and his ex-spouse, Heidi Green. Justice Forgeron has issued a series of decisions concerning divorce and child custody issues arising from the breakdown of the Greens' marriage. Mr. Green disagrees with those decisions and has appealed all of them unsuccessfully, including one decision to the Supreme Court of Canada (*Kelsey Green v. Heidi Green*, 2022 CanLII 35159 (SCC)), where he was denied leave to appeal. Costs have been awarded against Mr. Green throughout. Mr. Green has not paid most of these costs.

[4] In a separate decision (2023 NSSC 155), this Court struck Mr. Green's Action (the "Struck Action") because he failed to give proper notice to the Attorney General of Nova Scotia ("AGNS") pursuant to the Nova Scotia *Proceedings Against the Crown Act*, RSNS, 1089, c. 360 (the "PACA").

[5] The 14 individually named Defendants in the Struck Action with the exception of Tanya McCarthy, who is Justice Forgeron's judicial assistant, are all employees of the Department of Community Services ("DCS"), including social workers. These individuals were each involved in child protection investigations involving the Green family. The Defendant Kelly Regan is the former Minister of DCS.

[6] Although the Court struck the Action, the question remains whether Mr. Green should be prohibited from starting up again and suing the same people and entities he named in the Struck Action, without leave to do so. This Court notes that Justice Forgeron has prohibited Mr. Green from bringing further motions or applications without leave of the Supreme Court, Family Division.

[7] This Court previously struck Mr. Green's claim against Justice Forgeron, with costs, on the basis of judicial immunity.

[8] The AGNS on behalf of the remaining Defendants (the "AGNS Defendants") says that Mr. Green should be restrained from initiating further proceedings against the Defendants, their counsel and the participants in this proceeding, or any other employee of DCS without leave of the Court pursuant to s. 45B of the *Judicature Act*, RS, c. 240, and *Civil Procedure Rule* 88.02.

### **Evidence on the Motion**

[9] Filed in support of this motion is the solicitor's Affidavit of Myles H. Thompson, affirmed on March 25, 2022 (the "Thompson Affidavit").

[10] The AGNS also filed the following Affidavits:

- The Affidavit of Jennifer Moore, Coordinator, Child Welfare Program Audits for DCS, affirmed March 22, 2022;
- The Affidavit of Tanya McCarthy, Judicial Assistant, Court Services, Nova Scotia Department of Justice, affirmed March 22, 2022;
- The Affidavit of Heidi Green, ex-spouse of the Plaintiff, Kelsey Green, affirmed March 23, 2022;
- The Affidavit of David MacLennan, Regional Service Delivery Manager with DCS, affirmed March 24, 2022; and
- The Affidavit of Kelsie Maloney, Children in Care Social Worker with DCS, affirmed on March 25, 2022.

[11] Mr. Green filed a letter addressed, “To Whom it May Concern” on October 24, 2022. The Court accepted this document as a submission on Mr. Green’s behalf. However, this document is not evidence and does not contain evidence, because it is unsworn and not in the form of an affidavit, compliant with the *Civil Procedure Rules*. Mr. Green also provided the Court with a written copy of certain of his oral submissions.

[12] The Court also has an affidavit sworn by Mr. Green on November 25, 2021 and filed with the Court on November 25, 2021. This Affidavit is titled, “Affidavit of Kelsey Green Supporting the Motion for Contempt” (the “Green Affidavit”). Mr. Green’s allegation in the Notice of Motion for Contempt Order (the “Contempt Motion”) is that the Department of Justice had not filed a Statement of Defence in the within matter as of the date of the Contempt Motion. Justice Gregory Warner granted an Order of the Court dated May 30, 2022 staying the Contempt Motion. This Court dismissed the Contempt Motion (2023 NSSC 155).

## **Background**

[13] The evidence disclosed by the AGNS in this matter outlines the history of interactions between Mr. Green and the various AGNS Defendants, including social workers and other individuals employed by DCS and the Department of Justice.

[14] In December 2018, Mr. Green initiated divorce proceedings against his former spouse. DCS was involved in four child protection investigations of Mr. Green’s family at various points throughout the divorce and child custody proceedings.

[15] DCS completed four child protection investigations since 2018 in relation to Mr. Green and his family. As part of those investigations, DCS social workers

interviewed the children of the marriage on four separate occasions between December 2018 and November 2021.

[16] The first of these investigations began on November 13, 2018 and concluded on January 3, 2019. Throughout that first investigation, Kelsie Maloney (Defendant) was a Child Protection worker assigned to the matter of Mr. Green's children.

[17] On August 11, 2020, Mr. Green made a complaint to the Nova Scotia College of Social Workers regarding Ms. Maloney's conduct during the first investigation. Mr. Green alleged in his complaint that during the investigation Ms. Maloney failed to act in the best interest of the family, traumatized the family, did not have proper knowledge and failed to report child abuse.

[18] The Complaints Committee of the Nova Scotia College of Social Workers investigated Mr. Green's August 11, 2020 complaint concerning Ms. Maloney. On October 30, 2021, the Complaints Committee dismissed Mr. Green's complaint in full and found no wrongdoing on the part of Ms. Maloney.

[19] The second, third and fourth DCS investigations took place in 2021.

[20] On or about September 13, 2021, Mr. Green filed the now Struck Action. DCS and the Nova Scotia Department of Justice are named as Defendants, as are a number of individuals. One of those individuals was Justice Theresa Forgeron, a

Justice of Supreme Court of Nova Scotia, Family Division. By way of a separate motion heard on the same day as the within motion, i.e., October 27, 2022, this Court issued an oral decision dismissing the Action and all claims brought by Mr. Green against Justice Forgeron.

[21] In the Struck Action, Mr. Green's allegations include the following (with quotation marks around Mr. Green's wording):

- That registered social workers and/or social work candidates acting on behalf of DCS conducted child protection investigations into his family, “these do not follow the Child Welfare Policy Manual. The Child Welfare Policy Manual does not align with best practice for child protection investigation.”
- “Child protection policies and procedures are discriminatory and create an environment rife with inequality.”
- “Sandy K. Graves (Defendant), Executive Director, acting on behalf of Kelly Regan (Defendant), the former Minister responsible for Child Protection, attempted to cover up the child protection issues identified to the child protection as simply “custody and access issues”.”



- In September 2020, Mr. Green registered his concerns under s. 1.7 – “Dispute Resolution Process” of the Child Welfare Policy Manual. An investigation was carried out by David MacLennan (Defendant) on behalf of DCS and social work specialist Denise Crowell (Defendant). Mr. MacLennan and Ms. Crowell allegedly identified a “program issue”, i.e. where policies and procedures followed by child protection workers are deficient in some way. However, “[T]he Dispute Resolution Policy was not followed.”
- Ms. Crowell allegedly identified a “Service Delivery Issue”, i.e., “when staff do not adhere to current policy and procedures.” Ms. Crowell “identified that Kelsey Maloney, Social Work Candidate, under the supervision of Colleen Maloney-Greenfield (Defendant), RSW, failed to adhere to standard procedures during the first child protection investigation into our family in Dec 2018.”
- “As a result of Ms. Crowell’s investigation into the Service Delivery Issue, she recommended that a further investigation into our family to address the service delivery issues she identified. She provided no findings on how the identified program issue, would be addressed.”

- “Having forward [*sic*] a psychological report to the Department of Community Services, Ms. Crowell and a Mr. MacLennan agreed that the report demonstrated the presence of trauma impacting the children and that it appeared to be consistent with child psychological abuse/emotional abuse.”
- “A new child protection investigation was opened January 2021. Ms. Turetzek-Windsor (Defendant) was the investigator for this file and Ms. Hankin (Defendant), RSW, was the social work supervisor. It was closed in June 2021. It did not follow standard policies and procedures.”
- “DCS, Ms. Crowell, Ms. Besler (Defendant), and Mr. MacLennan failed to provide Ms. Turetzek-Windsor with the findings of the Dispute Resolution Process. Ms. Besler failed to provide Ms. Crowell’s report to this plaintiff at the outcome of the investigation in accordance with policy.”
- “Ms. Clark-Foran (Defendant) and Ms. Embrett (Defendant), executive directors at the Department of Community Services, have denied the existence of the report developed by Ms. Crowell identifying the deficiencies.”
- “The Department of Community Services received a letter from Ms. Forgeron a judge with the NS Supreme Court Family Division. As a result

of this letter, child protection staff spoke with Ms. Forgeron's assistant Ms. McCarthy (Defendant). Ms. McCarthy shared information from the family court matter with child protection.”

- “Ms. Forgeron is neither a social worker, nor a psychologist. Ms. Forgeron was acting beyond her judicial responsibilities and using her power and authority as a judge and knowledge of the judicial process to interfere with an independent child protection investigation. Her letter to child protection was done with intent and influenced an independent child protection investigation.”
- “The Department of Community Services and social workers acted together with Ms. McCarthy and Ms. Forgeron, with common intent to denied [*sic*] my parental rights.”
- “The actions of the Department of Community Services and each registered social worker or candidate social workers themselves were negligent having failed to meet their duty of care to our family – the basic unit of society. My parental rights have, without due process, been interfered with, frustrated, and ultimately denied.”

[22] Mr. Green seeks “special damages” in the amount of \$146,000; “general pecuniary damages” in the amount of \$87,000 and “non-pecuniary damages” of \$200,000. He also seeks punitive damages.

[23] The Court will now determine whether Mr. Green should be declared to be a vexatious litigant.

### **The Law and Analysis**

#### **Issue: Should Mr. Green be declared a vexatious litigant?**

[24] Section 45B(1) of the *Judicature Act* grants the Court authority to restrain a person from commencing further litigation or continuing to conduct a proceeding without leave of the Court:

#### **Order against proceeding without leave**

**45B (1)** Where a court is satisfied that a person has habitually, persistently and without reasonable ground, started a vexatious proceeding or conducted a proceeding in a vexatious manner in the court, the court may make an order restraining the person from

- (a) starting a further proceeding on the person’s own behalf or on behalf of another person;
- (b) continuing to conduct a proceeding, without leave of the court.

[Emphasis added]

[25] Nova Scotia *Civil Procedure Rule 88*, which pertains to abuse of process, and more specifically *Rule 88.02*, also authorizes judges to take steps to remedy abuse of process, including orders for dismissal and anti-suit injunctions:

**88.02 Remedies for abuse**

- (1) A judge who is satisfied that a process of the court is abused may provide a remedy that is likely to control the abuse, including any of the following:
- (a) an order for dismissal or judgment;
  - (b) a permanent stay of a proceeding, or of the prosecution of a claim in a proceeding;
  - (c) a conditional stay of a proceeding, or of the prosecution of a claim in a proceeding;
  - (d) an order to indemnify each other party for losses resulting from the abuse;
  - (e) an order striking or amending a pleading;
  - (f) an order expunging an affidavit or other court document or requiring it to be sealed;
  - (g) an injunction preventing a party from taking a step in a proceeding, such as making a motion for a stated kind of order, without permission of a judge;
  - (h) any other injunction that tends to prevent further abuse

**Relevant Factors – Vexatious Litigants**

[26] In *Green v University of Winnipeg et al*, 2018 MBCA 137 (CanLII), the Manitoba Court of Appeal reviewed factors the courts consider in a vexatious litigant motion. In contemplating this question, the court noted that in determining whether a proceeding is vexatious, objective rather than subjective standards must be employed in a holistic manner taking into consideration a variety of factors (para. 27). When examining the variety of factors that may be part of this holistic determination, the Court of Appeal stated:

29 A leading case in this area is *Re Lang Michener and Fabian* (1987), 1987 CanLII 172 (ON SC), 37 DLR (4th) 685 (Ont SC (H Ct J)). In that case, Henry J

identified the following non-exhaustive factors to assist the Court in ascertaining whether a matter was vexatious (at p 691):

- (a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding;
- (b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;
- (c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
- (d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;
- (e) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action;
- (f) the failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to be considered in determining whether proceedings are vexatious;
- (g) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings.

30 Over 30 appellate decisions across Canada have cited the *Lang Michener* decision, along with over 250 lower court decisions. A recent appellate example is *Van Sluytman v Muskoka (District Municipality)*, 2018 ONCA 32, leave to appeal to SCC refused, 38057 (1 November 2018). The Court states (at paras 23-24):

Many of the salient characteristics of vexatious proceedings are usefully described in *Re Lang Michener et al. v. Fabian et al.* (1987) 1987 CanLII 172 (ON SC), 59 O.R. (2d) 353 (H.C.). The application judge considered *Lang Michener* and these characteristics and evaluated the appellant's actions accordingly. He concluded at para. 13 that the various actions commenced by the appellant "are a classic reflection of many of the characteristics outlined in *Lang Michener*", noting, among other matters:

- the appellant has commenced multiple actions involving the same issue or issues and threatened to commence 154 more actions in the face of dismissals of his previous ones;

- in most of his actions, the appellant sought the acknowledgement and correction of perceived government shortcomings, as distinct from asserting a right recognized at law;
- the damages claims advanced by the appellant in many of his actions were grandiose – often ranging in quantum from \$5 to \$15 million – and bore no relation to the wrongs alleged;
- the appellant’s asserted claims were repetitious, with many rolling over from one action to the next, in only slightly modified form;
- the appellant’s written submissions on the *CJA* [*Courts of Justice Act*, RSO 1990, c C43] s. 140 application continued this same pattern and attempted, as the application judge put it at para. 15 of his reasons, to “lay the blame for his deficient pleadings at the door of the government and the courts for not providing adequate training or allowing sufficient leeway to self-represented litigants. The government of Canada and the Premier of Ontario are blamed for these deficiencies”; and
- the appellant has appealed 7 of the 14 rulings made on his actions and failed to pay several outstanding adverse costs awards.
- We agree with the application judge that these are hallmarks of vexatious proceedings, and a vexatious litigant.

31 For an example from this Court, see the decision in *Benson v Workers’ Compensation Board (Man) et al*, 2008 MBCA 32. Justice Chartier (as he then was) agreed with the respondent (CNR) that Benson had instituted vexatious proceedings. In the course of doing so, he repeated the following description, as described by CNR, that Benson’s actions (at para 39):

- (3) are without foundation or groundless;
- (4) have been multiple and successive; and
- (5) serve no useful purpose and have no possible chance of success.

32 In short, “[t]he essential vice of habitual and persistent litigation is keeping on and on litigating when earlier litigation has been unsuccessful and when on any rational and objective assessment the time has come to stop” (*Attorney General v Barker*, [2000] EWHC 453 (BAILII) at para 22 (Admin); see also *PAFL v OL*, 2002 MBQB 44 at para 16).

33 One of the *Lang Michener* factors indicates that the court should look to the whole history of the matter. Does that mean the whole history of the matter in the Court of Appeal or all courts? Section 31.1(1) of the Act speaks of a litigant who institutes a vexatious proceeding in “the court”, as opposed to “a court” and court is defined in the Act as the Court of Appeal.

34 Other courts who have considered this question have held that while the central focus must always remain on the proceedings before the Court of Appeal, the lower court proceedings may certainly inform the Court of Appeal’s decision

(see *Dawson v Dawson*, 2014 BCCA 44; and *RD Backhoe Services Inc v Graham Construction and Engineering Inc*, 2017 BCCA 91 at para 30). As MacDonald CJNS commented in *Tupper v Nova Scotia (Attorney General)*, 2015 NSCA 92 (at paras 31-32):

Mr. Tupper's various vexatious proceedings in this Court alone are enough to justify the order requested. However, my analysis need not be confined to proceedings before this Court. Instead, in my view, Nova Scotia courts considering such motions must be at liberty to consider an impugned litigant's entire civil court record, whether within the Trial Court or the Court of Appeal. I say this because these provisions do more than prevent abuse in the subject court. They serve the broader purpose of protecting the integrity of the entire justice system. In my view, therefore, harm to one court is harm to all courts.

As well, vexatious litigants display a fundamental disrespect for the entire court process. They do not distinguish between levels of court. How they act in one court is a strong indicator of how they will act in another.

35 As part of the whole history, some courts have also indicated a willingness to explore extra-judicial conduct as part of that history.

36 For example, in *Bishop v Bishop*, 2011 ONCA 211, leave to appeal to SCC refused, 34271 (20 October 2011), the lower court judge, in issuing a vexatious litigant order, considered numerous non-judicial proceedings including complaints to various professional bodies against individuals who had opposed him. In affirming that a consideration of such evidence was informative, the Court states (at paras 8-9):

[W]e agree with the principle enunciated by Dawson J. in *Canada Post Corp. v. Varma*, 2000 CanLII 15754 (FC), [2000] F.C.J. No. 851 (Fed. T.D.) at para. 23:

A respondent's behaviour both in and out of the court has been held to be relevant. In *Canada v. Warriner* (1993), 70 F.T.R. 8 (T.D.), McGillis J. noted that frivolous and unsubstantiated allegations of impropriety had been levelled against lawyers who had acted for or against the respondent. In *Vojic, supra [Vojic (A) v Canada*, 1992 CarswellNat 343 (FCTD)], McGillis J. took into account the fact that the respondent had failed to appear on several occasions and had shown disregard for the court. In *Yorke v. Canada* (1995), 102 F.T.R. 189 (T.D.), Rouleau J. considered a number of factors, including that the respondent's proceedings in the Federal Court were replete with extreme and unsubstantiated allegations.

We would simply add to that statement by noting that in our view, the institution of non-judicial proceedings can, depending on the circumstances, constitute evidence from which a court may infer that court proceedings commenced by the litigant are not bona



*fide* but the product of someone who is unreasonably obsessed with a cause and likely to pursue vexatious court proceedings on an indefinite basis unless stopped.

[Emphasis added]

### Ulterior Purposes

[27] The AGNS argues that Mr. Green filed the Struck Action against Justice Forgeron (and by extension Tanya McCarthy, her judicial assistant, and the Department of Justice) as an attempt to have Justice Forgeron recused from his family law proceedings in the Nova Scotia Supreme Court (Family Division). Counsel notes that in her decision in *Green v. Green*, 2022 NSSC 30, Justice Forgeron dismissed Mr. Green’s claim that she must recuse herself.

[28] Mr. Green had argued that since he filed two complaints against Justice Forgeron with the Canadian Judicial Council and named her as a Defendant in a legal action, that she was biased. Justice Forgeron found that “a fully informed reasonable person would not conclude that either a reasonable apprehension of bias or bias arises from Mr. Green having named me as a defendant in an action based on allegations that have no factual basis.” (para. 50).

[29] The AGNS also argues that, when viewed as a whole, in addition to attempting to have Justice Forgeron recuse herself from the family law proceedings involving the Green family, it appears Mr. Green is also motivated, at least in part, by a desire

to intimidate and punish Justice Forgeron due to his dissatisfaction with her decisions.

[30] The AGNS argues that another ulterior purpose of the Struck Action is to intimidate and punish those employees of DCS who took part in child protection investigations of the Green family between 2018 and 2021. The AGNS notes that Mr. Green filed several complaints against the DCS employees named in the Struck Action, both with supervisors and managers as well as with the Nova Scotia College of Social Workers. Counsel says that these claims were all investigated and either quickly rectified or dismissed completely after a thorough investigation by senior managers at DCS or the Nova Scotia College of Social Workers. The AGNS submits that the Struck Action is merely a collateral attack on these social workers despite findings there was no wrongdoing.

[31] In *Fiander v Mills*, 2015 NLCA 31, (NLCA), at para. 35, the Newfoundland and Labrador Court of Appeal found that the filing of a baseless claim for an ulterior purpose is an abuse of process:

35 The filing of an obviously baseless claim for an ulterior purpose, i.e. for a purpose other than for the legitimate vindication of legal rights, such as to delay or disrupt proper legal proceedings or to inflict unnecessary cost on other parties, can constitute abuse of process. As this Court said in *Anstey v. St. John's (City)*, 2014 NLCA 35 at paragraph 65, it generally involves “the requirement that the legal process be involved for a collateral and improper purpose and involve an overt act or threat in furtherance of an illegitimate purpose.”

[Emphasis added]

Claims Against Judges and Judicial Participants

[32] The AGNS argues that where actions are brought against judges and participants of the judicial system for carrying out their duties in court, these are also *indicia* of a vexatious litigant. For example, in the matter of *Cormier v. Nova Scotia*, 2015 NSSC 352, at para. 35, the plaintiff filed an action against several persons involved in his criminal cases, specifically three Honourable Provincial Court Judges, three RCMP officers, a Federal Crown Prosecutor, two Provincial Crown Attorneys, two defence lawyers and a Probation Officer. Mr. Cormier also named the Attorney General of Nova Scotia, the Crown and Nova Scotia Legal Aid as defendants. All of Mr. Cormier's claims against the various defendants were eventually struck as an abuse of process. Mr. Cormier was declared a vexatious litigant and an anti-suit injunction was ordered prohibiting him from filing a new action against the defendants and their counsel.

[33] The AGNS also submits that while this is not a motion for summary judgment, a review of the pleadings in this matter in conjunction with the evidence presented on this motion illustrates that the Struck Action has no merit and is destined to fail.

[34] Mr. Green's claim against Justice Forgeron was based, in part, on the false allegation that she sent a letter to DCS as well as two of her decisions concerning the Green family.

[35] Tanya McCarthy and Trish Thompson are the only employees of the Department of Justice named by Mr. Green in the Struck Action. Tanya McCarthy is Justice Forgeron's judicial assistant and Trish Thompson is Associate Chief Justice Lawrence O'Neil's judicial assistant.

[36] In *Green v. Green*, 2022 NSSC 30, Justice Forgeron stated that Tanya McCarthy did not participate in sending a letter to DCS and did not speak with a DCS employee via telephone:

16 On June 3, 2021, the Associate Chief emailed a letter to child protection authorities at the Department of Community Services. A child protection worker then contacted the Associate Chief's judicial assistant, who emailed my decisions to DCS. Regrettably, when entering her notes into the DCS running file, the worker, Kathryn Giacomantonio, incorrectly typed that the letter was written by me and that she had spoken with my assistant. The worker confirmed her errors when she testified during the contested recusal motion. Further, both the court file and the DCS file confirm that the letter was emailed from the Associate Chief's office, under his signature, and that subsequent communication was with his judicial assistant.

[37] In *KG v. HG*, 2021 NSSC 335, Justice Keith determined that there was no evidence that Trish Thompson and Tanya McCarthy were acting in any way other than in the ordinary course of their employment in matters related to Mr. Green's

file. Despite these judicial findings, Mr. Green continued with his claim against Tanya McCarthy and Trish Thompson.

[38] Further, Justice Keith's comments in *KG v. HG* effectively eliminate any possible chance of the Department of Justice being vicariously liable for Ms. McCarthy's actions, even though Mr. Green has not plead vicarious liability. Nowhere in his claim does Mr. Green plead that DCS or the Province of Nova Scotia is vicariously liable for acts or omissions of Kelly Regan or the 14 DCS employees he named as Defendants. Further, the pleadings contain no material facts, nor do they make any casual link between the alleged acts or omissions of the DCS employees and Kelly Regan, as the former minister of Community Services, and Mr. Green's allegations of "intentional infliction" of mental suffering and his claim of civil conspiracy.

[39] The Court also notes that s. 98 of the *Children and Family Services Act, 1990*, c. 5, provides statutory immunity for the former Minister (Kelly Regan) and DCS staff in relation to the exercise or performance of their duties under the *Act*, provided they were done in good faith and without negligence. While s. 98 might be interpreted to allow for claims in negligence against DCS employees, the section clearly bars the other claims listed in Mr. Green's Struck Action: civil conspiracy, abuse of process and intentional infliction of mental suffering.

[40] In addition, even if Mr. Green were to proceed with an action in negligence on the part of the DCS employees as his sole cause of action, Nova Scotia Courts have been clear that the relationship between DCS, or Children in Care Social Workers, and the parents of the children is not a relationship which gives rise to a duty of care. Child protection workers and their duties and mandates under the *Children and Family Services Act* are to the children, not the parents or family members (See *D.C. v. Children's Aid Society of Cape Breton Victoria*, 2009 NSCA 73 at para. 27).

[41] Accordingly, the Struck Action as against both Ms. McCarthy and the Department of Justice was destined to fail, even before the Court struck it, on other grounds. The Action against DCS and Kelly Regan was also doomed to fail, because Mr. Green failed to plead vicarious liability on the part of DCS or Ms. Regan for the acts or omissions of the named DCS employees.

#### Persistent Litigation and Appeals

[42] Another *indicia* of a vexatious litigant is that the person engages in habitual, persistent litigation.

[43] Counsel for the AGNS has set forth in its written submissions an account of Mr. Green's various proceedings following Justice Forgeron's decision, released on

February 16, 2021, granting Mr. Green and his former spouse a divorce, giving his former spouse primary care of their children and providing Mr. Green with certain parenting time. Mr. Green was ordered to pay retroactive and ongoing child support, and family members were ordered to undergo therapy (*KG v. HG*, 2021 335, at para. 31). Since that decision, Mr. Green has initiated the following proceedings:

- An unsuccessful motion to stay Justice Forgeron’s interim variation order (*Green v. Green*, 2021 NSCA 15);
- An unsuccessful motion heard by Bourgeois, J.A. of the Nova Scotia Court of Appeal, on July 21, 2021, to extend the time for Mr. Green to appeal Justice Forgeron’s divorce decision (*Green v. Green*, 2021 NSCA 61);
- Two unsuccessful “emergency” motions before Associate Chief Justice O’Neil of the Nova Scotia Supreme Court (Family Division) on May 26 2021 and September 15, 2021 (*Green v. Green*, 2022 NSSC 30, at paras. 15 and 19);
- An unsuccessful attempt to subpoena Associate Chief Justice O’Neil, Associate Chief Justice O’Neil’s judicial assistant, Trish Thompson, and Justice Forgeron’s judicial assistant, Tanya McCarthy, for the purpose of

testifying at a recusal hearing of Justice Forgeron (*KG v. HG*, 2021 NSSC 335);

- An unsuccessful motion to have Justice Forgeron recused from Mr. Green's family court matter (*Green v. Green*, 2022 NSSC 30);
- An appeal from Justice Forgeron's June 10, 2022 decision, including a motion to adduce new or fresh evidence. This appeal and Mr. Green's motion to adduce fresh evidence were dismissed by the Court of Appeal after the within motion was heard (*Green v. Green*, 2023 NSCA 38).  
Farrar, J.A., stated that "Although the respondent was self-represented, the conduct of the appellant on this appeal requires a cost award against him."  
Costs against Mr. Green in the amount of \$5,000.00 were awarded. Justice Farrar stated that Mr. Green's appeal was without merit and was primarily an attempt to relitigate the issues before Justice Forgeron in 2021 NSSC 43;
- Mr. Green also filed for leave to appeal to the Supreme Court of Canada (Supreme Court file number 39991) from the decision of Bourgeois, J.A. to not extend the time for Mr. Green to file a Notice of Appeal from Justice Forgeron's divorce decision. This leave to appeal decision was dismissed by the Supreme Court of Canada on May 5, 2022;



- Mr. Green unsuccessfully defended a motion to have his claim against Justice Forgeron dismissed, on the basis of judicial immunity;
- Mr. Green unsuccessfully argued, without having filed a motion, to have the within motion heard in another jurisdiction; and
- Mr. Green unsuccessfully defended a motion to have his Action struck because he did not comply with the notice requirements of the *PACA* (2023 NSSC 155).

[44] Mr. Green refers to an Alberta Court of Appeal decision, *Jonsson v Lymer*, 2020 ABCA 167, which says that a court should not use its inherent jurisdiction to declare a litigant to be a vexatious litigant to deny him access to justice, except in extreme circumstances. In Ontario, s. 140 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, provides for an application to declare someone to be a vexatious litigant if they repeatedly abuse the court system. In that case, the court concluded that a vexatious litigant order ought not to have been granted.

#### Extra-Judicial Conduct

[45] Mr. Green has also engaged in extra-judicial conduct involving complaints, including professional regulatory complaints, against individuals who dealt with him

and his family throughout the process of his divorce and child custody legal proceedings. These include:

- Complaints to the College of Social Workers against various DCS social workers who are individually named Defendants in the within Action;
- Complaints to the managers and supervisors of various DCS social workers named in this Action. All of these were investigated, reported on, and found to have no merit;
- Complaints against psychologist Dr. Susan Potter, who provided services to the Green family;
- Complaints against Halifax Regional Police Constable Peter Webber, who had certain interactions with the Green family; and
- Two complaints to the Canadian Judicial Council, dated December 31, 2020 and September 13, 2021 against Justice Forgeron, both of which were summarily dismissed.

Failure to Pay Costs

[46] Another indicator of vexatious behaviour is a litigant's failure to pay costs for various unsuccessful proceedings. In Mr. Green's case, such costs include (as of the date the within motion was heard):

- Initially, the \$40,882.00 from his divorce proceeding (see below);
- \$750.00 from his unsuccessful motion for a stay of execution of Justice Forgeron's December 17, 2020 interim variation order;
- \$250.00 as a result of Mr. Green's unsuccessful motion for an extension of time to file an appeal of the divorce decision; and
- \$750.00 as a result of Mr. Green's application for leave to appeal the variation order of December 17, 202, which was dismissed.

[47] The evidence on this motion was that as of the date of the motion, Mr. Green had not paid the costs ordered against him in any of these proceedings, with the exception of the costs for the divorce proceeding which had to be taken from his bank account by Sheriff services after an execution order was issued.

[48] The evidence before the Court shows that even with the court-ordered child support, Mr. Green's child support arrears have been paid by way of garnished wages through Maintenance Enforcement.

[49] In a decision reported at 2022 NSSC 164, Justice Forgeron rendered her rulings on review and variation decisions and determined that Mr. Green required leave before the Court would consider any future application or motion he might file.

[50] Justice Forgeron also released a decision on August 26, 2022 (*Green v. Green*, 2022 NSSC 247), in which she ordered costs against Mr. Green. Her reasons for awarding lump sum costs against Mr. Green in the amount of \$10,000 include reference to Mr. Green's conduct throughout the proceedings before her (para. 13):

13 I have determined that a lump sum costs award of \$10,000, inclusive of disbursements, will do justice between the parties for the following reasons:

- A lump sum is necessary because I cannot calculate an amount involved as the applications and motions concerned non-financial issues.
- The parenting issues were important to the parties and the children.
- Ms. Green was entirely successful.
- Mr. Green was entirely unsuccessful. Mr. Green litigated matters that had no chance of success because Mr. Green did not accept my divorce decision and CRO. For example, he asked me to appoint state-funded counsel without filing financial disclosure and then failed to appear to argue his position. He also asked me to vacate the divorce decision and CRO and to order a new trial in the general division. I have no jurisdiction to do so. Mr. Green also asked to relitigate issues previously decided by filing copious amounts of materials, all because he disagreed with the outcome of the divorce proceeding.

- The matter was made unnecessarily complex and lengthy because of Mr. Green's poor litigation conduct. Mr. Green filed motions and a variation application which were devoid of merit. For example, Mr. Green, an engineer earning at least \$125,000 per annum, would not qualify for state-funded counsel. Further, a trial court has no jurisdiction to vacate a divorce decision, order a new trial, or relitigate issues previously decided.
- Mr. Green sought to delay and prolong the proceeding. He requested adjournments and failed to file relevant materials in a timely manner. For example, Mr. Green refused to file financial disclosure to support his application for state-funded counsel. He also focused on filing copious materials and submissions about matters previously decided and thus no longer relevant – such as his proposed expert reports. Mr. Green's failures arose because he refused to accept the divorce decision, not because of any mental health disorder.
- Contrary to what I ordered in the divorce decision and CRO, Mr. Green did not successfully complete the court-ordered therapy. Instead, he replaced the court's therapeutic objectives with his own. As a result, the relationship between Mr. Green and his children deteriorated. Mr. Green is solely responsible for the consequences of his decision. Ms. Green bears no responsibility. Despite my findings, Mr. Green continues to fixate on false allegations of alienation and coercive and controlling violence.

[Emphasis added]

[51] Mr. Green also filed a motion for contempt against the Defendants on the basis that they failed to provide a defence within the time-limit dictated by the Rules. This Court dismissed that motion in a separate decision (2023 NSSC 155) where it found that Mr. Green's Notice of Action and Statement of Claim were nullities as a result of failure to comply with the provisions of the *Proceedings Against the Crown Act*, RSNS, 1989, c. 360.

## **Analysis and Findings**

[52] Litigants in Canada must have access to the courts. The courts in Nova Scotia exist to serve everyone. However, like many rights, the right of a litigant to access the Supreme Court of Nova Scotia is not without limits. In most cases, the Nova Scotia *Civil Procedure Rules* operate to restrain litigants from conducting meritless and vexatious proceedings. There are exceptions. Sometimes a court is called upon, as it is in the case of Mr. Green, to create and put in place a layer of monitoring to prevent a litigant from engaging in duplicitous proceedings, meritless litigation and pointless attacks against other litigants. This kind of monitoring recognizes that such matters can waste limited judicial resources and impose costs and other burdens on other parties.

[53] This Court has reviewed the legal test applicable to vexatious litigant declarations. The Court notes that there is not a one-size fits all example of a vexatious litigant. Accordingly, each case must be considered on its own merits, and the entire history of the matter taken into account.

[54] I am satisfied on my review of the evidence that the AGNS has established a number of *indicia* of vexatiousness arising from Mr. Green's behaviour. I am convinced, as submitted by counsel for the AGNS, that Mr. Green has made repeated

and unsubstantiated allegations of impropriety against individuals, including court officials, who do not agree with him.

[55] Further, Mr. Green has repeatedly disregarded court orders to pay costs.

[56] Mr. Green has unsuccessfully appealed unfavourable decisions as a matter of course. He has sought, unsuccessfully, to appeal the decision of Bourgeois, J.A. (2021 NSCA 61) to the Supreme Court of Canada.

[57] Mr. Green continues to make exaggerated and meritless claims against Justice Forgeron. On the within motion, Mr. Green claimed that Justice Forgeron “knowingly accepted fabricated evidence into the court records” which he suggests “may well be criminal breach of the trust by public officer, offences relating to public of peace officers [*sic*], or other offences.” He submits that “the actions of Justice Forgeron and DCS staff have been criminal in nature.” Mr. Green advised this Court in his oral submissions that he had made a “human rights complaint” against Justice Forgeron, along with his previous Action against her, and two complaints to the Canadian Judicial Council (both summarily dismissed).

[58] Mr. Green has been prohibited from filing motions or applications in the Supreme Court, Family Division, without leave.

[59] This Court finds that it is highly likely that if Mr. Green is not stopped, he will continue to file and attempt to pursue baseless proceedings against individuals involved in any way in his unsuccessful court proceedings.

[60] This Court finds that the Struck Action is a collateral attack against decisions of Justice Forgeron which Mr. Green obviously disagrees with. It is an abuse of the processes of the Court for any similar action or proceeding to be commenced again, without judicial oversight.

[61] There is a time for the Court to say enough is enough. This is that time.

[62] This Court finds that Mr. Green is a vexatious litigant within the meaning of s. 45B(1) of the *Judicature Act*. Mr. Green has conducted proceedings in the Supreme Court, Family Division in a vexatious manner. The Struck Action is a persistent attempt to relitigate and collaterally attack any individuals and entities Mr. Green blames for his judicial losses before Justice Forgeron.

[63] The Court orders as follows, pursuant to *Rule* 88.02:

- Mr. Green is declared to be a vexatious litigant; and
- Mr. Green is prohibited from initiating an action or any other originating proceeding in the Supreme Court of Nova Scotia (General or Family



Divisions) against any of the individuals or entities named in his Struck Action or involved in any way in his Family Court proceedings, without leave of the Court.

## **Conclusion**

[64] The fact that Mr. Green is a self-represented litigant has no bearing on this Court's decision to declare that he is a vexatious litigant. Judges have a responsibility to ensure that self-represented persons are provided with fair access and equal treatment. Many self-represented litigants negotiate court processes and interact with other judicial participants, including judges, in a respectful, conscientious and appropriate manner.

[65] Mr. Green is declared to be vexatious because he chooses to engage in wasteful, self-centred litigious conduct, without regard to the burdens, including time, energy and costs, he places at the feet of others.

[66] Mr. Green may not initiate further proceedings against the individuals and entities noted above or others involved in any way with his Family Court proceedings, without leave of the Court.

[67] Costs of this motion are to the AGNS. If counsel for the AGNS and Mr. Green cannot agree on costs, the Court will receive short submissions from the parties within 20 calendar days of this decision, following which the Court will set costs.

Smith, J.

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Green v. Nova Scotia Department of Community Services*,  
2023 NSSC 156

**Date:** 20230526

**Docket:** Hfx No. 508867

**Registry:** Halifax

**Between:**

Kelsey Daniel Forbes Green

Plaintiff

and

Nova Scotia Department of Community Services, Kelly Regan, Sandy Graves, Executive Director, Service Delivery, Shauna Clark-Foran, Acting Executive Director, Services, Tracy Embrett, Acting Executive Director, Child, Youth & Family Supports, Kelly Besler, RSW, Director of CYFS, David MacLennan (Former RSW), Megan Turetzek-Windsor, Social Worker Candidate, Kimberley Hankin, RSW, Denise Crowell, MSW, RSW, Nicole Warren, RSW, Kelsie Maloney, Social Worker Candidate, Heather-Ann Ross, Social Worker Candidate, Colleen Maloney-Greenfield, RSW, Kathryn Giacomantonio, Social Work Candidate, Nova Scotia Department of Justice, Theresa Forgeron, Tanya McCarthy

Defendants

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**REVISED DECISION ON MOTION FOR ORDER  
DECLARING VEXATIOUS LITIGANT**

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**Judge:** The Honourable Justice Ann E. Smith

**Heard:** October 27, 2022, in Halifax, Nova Scotia

**Counsel:** Kelsey Daniel Forbes Green, Self-Represented Plaintiff  
Drew Hampden and Myles Thompson, for the Defendants

**Erratum:** Page 20, paragraph 35 reads “Tanya McCarthy is the only employee of the Department of Justice named by Mr. Green in the Struck Action. Tanya McCarthy is Assistant Chief Justice Lawrence

O'Neil's judicial assistant.", it should read "Tanya McCarthy and Trish Thompson are the only employees of the Department of Justice named by Mr. Green in the Struck Action. Tanya McCarthy is Justice Forgeron's judicial assistant and Trish Thompson is Associate Chief Justice Lawrence O'Neil's judicial assistant."