

Suspending the Ability to Litigate

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Difficult and tenacious litigants are individuals who are exceedingly dedicated and vindictive in their litigation. They are individuals who often have multiple actions against the same or different individuals or corporate entities, frequent appeals, actions against employees of corporations, actions that are obviously not going to succeed, frequent interlocutory motions and failing to pay costs. These individuals in many cases, are unrepresented or if represented, they may frequently change counsel. This type of litigant will become a source of frustration and for opposing counsel and they will increase the cost of the litigation. It is important for counsel to have a strategy to dispose of this type of claim expeditiously.

One solution when dealing with this type of litigant is to seek, pursuant to section 140 of the *Courts of Justice Act*, an order declaring the individual to be vexatious and order that the individual not be allowed to initiate any further litigation without leave. However, this type of order is rare, because of the severely limiting nature of the relief. Fortunately, there are alternatives to prevent difficult and tenacious litigants from perpetrating an abuse of process

Wong v. Wong

In the case of *Wong v. Wong* [2006] O.J. No. 5479, Justice Granger for the Ontario Superior Court clearly articulated that the court is willing to make an order prohibiting a tenacious and determined litigant from initiating any further proceedings against certain parties without the leave of the court in circumstances where the plaintiff does not meet the criteria of vexatious but the court still has reason to be suspicious of the plaintiff's conduct.

In *Wong v. Wong*, the plaintiff, Billie Wong, had initiated five civil actions against her husband. The actions largely concerned allegations of wrongful imprisonment and allegations with respect to joint debts. The defendant, Dr. Wong, brought an application to have his wife declared vexatious and obtain an order prohibiting her from initiating any further litigation.

Justice Granger noted that notwithstanding suspicions of Ms. Wong's conduct, he was unable to make a finding that Ms. Wong was a vexatious litigant. However, Justice Granger held that further litigation between the parties had to be controlled. In order to achieve this result, Justice Granger ordered that both parties be restrained from instituting any further action against each other and/or taking any interlocutory steps without leave of a judge of the Superior Court of Justice pending the trial of the matter.

Justice Granger held that Mrs. Wong did not meet the criteria of vexatious litigant, but that the Court was suspicious that Mrs. Wong was attempting to continue, as long as possible, her battle with Dr. Wong. In these circumstances, the Court was prepared to step in and control the process between the litigants.

Application of Wong: *Brown v. Radmore and Strone Restorations et al.*

The decision of *Wong v. Wong* has been applied in *Brown v. Radmore and Strone Restorations et al.* (“*Brown*”) (Unreported, court file number 07-4125-SR). In *Brown*, the plaintiff had been retained by an independent contracting firm which in turn had been retained by Strone Restorations. The firm that retained the plaintiff did not pay for the work he had done because its partnership had broken up. The plaintiff sued Strone Restorations and others for unpaid fees. The plaintiff had no contract with Strone Restorations, but insisted that Strone Restorations pay him what they had contracted to pay the now defunct partnership. The plaintiff was self-represented and was very tenacious in his litigation against Strone Restorations and made several attempts to obtain garnishments or put liens on properties that Strone Restorations’ had sold to other parties. Consequently there were several interlocutory motions and Strone Restorations was put to unnecessary expense.

Strone Restorations was also successful in obtaining an order from Justice Ramsay of the Ontario Superior Court that the plaintiff not be allowed to initiate any further actions or interlocutory steps against Strone Restorations without the leave of the court.

Conclusion

Vexatious Proceeding orders pursuant to section 140 are very useful when dealing with difficult litigants, but very hard to obtain. The *Wong v. Wong* decision provides an alternative where the vexatious criteria are not met. This decision clearly provides an option for defendants in the face of difficult and tenacious litigants. These decisions allow these defendants to obtain orders prohibiting further litigation against them by these plaintiffs without leave. As such, these decisions are a very useful tool for litigators and their importance should not be neglected.

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