

**In the Court of Appeal of Alberta**

**Citation: Del Bianco v. Lequier, 2008 ABCA 124**

**Date:** 20080331  
**Docket:** 0601-0216-AC  
**Registry:** Calgary

**Between:**

**David Del Bianco, Euro-AM Pacific Enterprises Ltd.,  
Wind Sailing Industries (Canada) Inc., Kaleeda Enterprises Inc.**

Applicants  
(Appellants)/(Plaintiffs)

- and -

**Rolland C. Lequier, Judy D. Burke, Joanne Butz**

Respondents  
(Respondents)/(Defendants)

- and -

**935074 Alberta Ltd., Ashlyn M. D'Aoust,  
Judith Noreen Measor a.k.a. Judith Prentner, Peter Boulter,  
Business Investors Group (Alberta),  
Business Investors Group (Ontario), Bruce A. Macovichuck,  
Norma Tritscher, Peter Labant, C. Warren Hunt, Grahame Measor,  
Geoffrey Dobbs, Neil Baisi, Mel Dias**

(Defendants)  
Not Parties to the Appeal

**Corrected judgment:** A corrigendum was issued on May 6, 2008; the corrections have been made to the text and the corrigendum is appended to this judgment.

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**Reasons for Decision of  
The Honourable Mr. Justice Peter Martin  
(In Chambers)**

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## Re: Application for Advice and Direction

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### Reasons for Decision of The Honourable Mr. Justice Peter Martin (In Chambers)

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[1] The applicant seeks this court's advice and direction relative to two outstanding matters that he wishes to appeal. The history of this matter, as well as a number of related actions, is eloquently reviewed by Justice Romaine in her Reasons For Judgment that are the subject of this appeal: *Del Bianco v. 935074 Alberta Ltd.*, 2007 ABQB 150.

[2] For these purposes, it will be sufficient to note that over the past decade, the applicant has initiated numerous, often alternative, actions against these and other defendants alleging that the various defendants in some way participated in a conspiracy to defraud him and Kaleeda Enterprises Inc., a company for which he was a director. All actions were eventually dismissed for various deficiencies.

[3] The applicant then initiated what I will describe as the current action against these seventeen defendants, claiming damages of more than \$100 million. The defendants applied to strike the pleadings pursuant to Rule 129, alleging that they disclosed no cause of action, were an abuse of the court's process and were barred by the *Limitations Act*, R. S. A. 2000, c. L-12. One of the defendants also applied to have the applicant declared a vexatious litigant pursuant to s. 23 of the *Judicature Act*, R.S.A. 2000, c. J-2. Following a hearing on March 24, 2006 in regard to the Rule 129 application, Justice Romaine granted the application, struck the pleadings, and adjourned the vexatious litigant motion. She advised that written reasons would be provided in due course. The Order was entered on October 4, 2006, though the applicant filed a Notice of Appeal relative to that disposition on July 28, 2006. The vexatious litigant application was heard by Justice Romaine on July 31, 2006. It was successful, and the applicant was declared a vexatious litigant.

[4] Written reasons for both applications were released on March 7, 2007. They provided that as a vexatious litigant, neither the applicant nor any person or corporation under his direction, or which he purports to represent, shall institute any further proceeding in any court, nor continue any proceedings previously instituted in any court against the respondents without leave. The vexatious litigant order was entered on May 25, 2007.

[5] The applicant appealed this order by amending his original Notice of Appeal. That was consented to by a single judge of this court on November 6, 2007. Subsequently, the case management officer of the Court of Appeal raised a concern whether leave was required to continue with either part of this appeal. Her concerns prompted this application for advice and directions.

### The Law

[6] At the time of the application, s. 23 of the *Judicature Act* provided:

23(1) When, on an application made by way of originating notice with the consent in writing of the Minister of Justice and Attorney General of Alberta, the court is satisfied that a person has habitually and persistently and without any reasonable ground instituted vexatious legal proceeding in the court or in any other court against the same person or against different persons, the court may order that no legal proceedings shall, without leave of the court be instituted in any court by the person taking those vexatious legal proceedings.

(2) Leave shall not be given under subsection (1) unless the court is satisfied that the proceedings are not an abuse of the process of the court and that there is on its face ground for the proceedings.

[7] On June 19, 2007, these provisions were repealed and replaced. The following provisions are of relevance to this application:

23.1(1) Where on application or on its own motion, with notice to the Minister of Justice and Attorney General, a court is satisfied that a person is instituting vexatious proceedings in the court or is conducting a proceeding in a vexatious manner, the court may order that

(a) the person shall not institute a further proceeding or institute proceedings on behalf of any other person, or

(b) a proceeding instituted by the person may not be continued, without leave of the court.

...

(6) Subject to the right to appeal an order made under subsection (1) or (4), the Court of Appeal or the Court of Queen's Bench may make an order made under subsection (1) or (4) binding on any one or more of the other courts referred to in section 12(1)(b), but an order under subsection (1) or (4) made by the Provincial Court is binding only on that court.

### **Analysis**

[8] In Alberta, leave to appeal is not required absent a specific provision to the contrary: Rule 505(1). The vexatious litigant provisions of the *Judicature Act*, either as they existed at the time the order was granted or the current provisions, do not impose a requirement for an appellant to obtain leave to appeal. In this case, it is the Order itself, and not any statutory provision, that imposes the

obligation to seek leave. Furthermore, the type of leave required is not leave to appeal, but leave to continue any proceeding.

[9] The applicant has focussed on whether leave is required to appeal the vexatious litigant order itself, and argues strongly that leave is not required as such an Order cannot preclude an appeal. The respondents argue that leave is required to maintain the appeal for both the summary dismissal order and the vexatious litigant order.

[10] The Ontario Court of Appeal in *Kallaba v. Bylykbashi* (2006), 207 O.A.C. 60, 265 D.L.R. (4th) 320, leave to appeal to S.C.C. refused, [2006] S.C.R. ix determined that the scope of a vexatious litigant order does not preclude the right of the named person from appealing that order as of right. The court reasoned that a vexatious litigant order is “an extraordinary remedy that alters a person’s right to access the courts,” and the denial of a right to appeal such an order “could result in fundamental unfairness”: para. 31.

[11] I agree with that statement. I find that the appellant is entitled to proceed with his appeal of the vexatious litigant order without further leave. I also think that it would be most expeditious if that appeal proceeded alone. If it is successful, the applicant may then pursue his summary dismissal appeal without leave. On the other hand, if the vexatious litigant order is upheld, the applicant will require leave of the court to prosecute that appeal. I understand that the parties are now in agreement with that direction, so I need not comment further.

Application heard on March 26<sup>th</sup>, 2008

Reasons filed at Calgary, Alberta  
this 31<sup>st</sup> day of March, 2008

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Martin J.A.

**Appearances:**

A.A. Fares  
for the Applicant

H.M. Silver  
for the Respondents/Rolland C. Lequier and Judy D. Burke

A.L. Friend, Q.C.  
for the Respondent/Joanne Butz

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**Corrigendum of the Reasons for Decision of  
The Honourable Mr. Justice Peter Martin  
(In Chambers)**

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Under appearances, H.M. Silver for the Respondent, has been corrected to read  
“Respondents/Rolland C. Lequier and Judy D. Burke”.

Under appearances, A.L. Friend, Q.C. for the Respondents, has been corrected to read  
“Respondent/Joanne Butz”.