Court File No. 15-1798

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

TERRACORP, CRICH HOLDINGS & KLEIMAN

Applicants

- and -

JOHN SHANE BECKY, MARY ILENE BECKY
AND THE ESTATE OF MARY ILENE BECKY

Respondents

P R O C E E D I N G S   O N   A P P L I C A T I O N

BEFORE THE HONOURABLE MR. JUSTICE I.F. LEACH
on January 25, 2016, at LONDON, Ontario

APPEARANCES:

D. Sanders — Counsel for the Applicants

J. Becky — in Person

MONDAY, JANUARY 25, 2016:

R E A S O N S   F O R   D E C I S I O N

LEACH J. (Orally):

I'll just confirm for the record Mr. Becky has now left the courtroom.

As I indicated to the parties at the close of submissions earlier today, it was and is my intention to deal with the application before me today as best I can, in the time available, by way of oral reasons. I say that, and that is my intention, because I think the circumstances described hereafter put a premium on the parties being advised as soon as possible whether or not additional restrictions will be placed on the respondent's ability to continue with existing proceedings or commence new ones.

Just a moment ago, I did indicate by way of a broad description to Mr. Becky that I would be granting such relief, but I will detail my reasons and my decision now.

Of necessity, these reasons accordingly will not be as detailed or as fulsome as they otherwise might have been after more extended reservation, consideration and writing time.

I also note for the record that, as will be apparent from a full transcript of today's proceedings, but

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as I'll summarize now, that when I adjourned the matter temporarily, shortly after 1:00 p.m. today, I indicated to the parties it was my intention to return at 4:00 p.m. today to deliver an oral decision, the full details of which could then be confirmed, as desired, by either party ordering a transcript from Madam Reporter. At that time, Mr. Becky indicated that he likely would not be returning at 4:00 p.m. as he had other matters to attend to because of his pending eviction.

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He nevertheless did appear briefly before me at 4:00 p.m. He then indicated, and I accept, that he intended no disrespect by his intended brief attendance and departure, and I accept that to be so in the circumstances. However, as I indicated to him when we adjourned earlier today, and again just now, it was my intention and is my intention to proceed with oral delivery of my decision whether or not he attended or remained to hear it. And again, I have explained to him how he might then go about obtaining a transcript of those reasons, if he so desires, by approaching the court staff for direction.

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By way of overall context, before me is an application brought pursuant to s. 140 of the *Courts of Justice Act,* and specifically, for relief sought by the applicants as set forth in detail in their notice of application dated September 1st, 2015, and served on the respondent shortly thereafter.

However, in broad terms, the applicants seek relief that includes: a finding that the respondents are vexatious litigants; an order staying all current proceedings initiated by the respondents; an order preventing the institution of any additional court proceedings by the respondents without leave of the court; and substantial costs.

In passing, I note, as I did to the parties, that Justice Templeton already has made an order, in her endorsement released on December 22nd, 2015, indicating Mr. Becky was not to commence any further proceedings in the Superior or Divisional Court without leave of the court. However, counsel for the applicants quite fairly indicated, and I agree, based on my review of our Court of Appeal's decision in *Lukezic, v. Royal Bank of Canada*, [2012] O.J. No. 2344 (C.A.), that such vexatious litigant relief, at least on a widespread and long-term as opposed to interim basis, must be granted only on application properly brought pursuant to the mandated vehicle of s. 140, rather than by way of any motion brought in an ongoing proceeding.

Returning to the present application, which the applicants now have brought pursuant to s. 140 of the *Courts of Justice Act*, the application was to be heard today on a peremptory basis as against both parties, pursuant to formal directions made by Justice Templeton during a hearing before her on September 15th, 2015, which were later repeated and confirmed

in paragraph 37 of her formal endorsement released on December 22nd, 2015.

Moreover, pursuant to those same directions, four hours were reserved for today's hearing. Both parties were to serve and file a factum no less than seven days prior to today's hearing, which to me carries an implicit indication that all evidence was to be filed with the court before that date. The respondent, Mr. Becky, also was to provide the applicants' counsel with written confirmation of Mr. Becky's status *vis-à-vis* his deceased mother's estate within three weeks of September 15th, 2015.

The applicants have been diligent in their pursuit of their application, having served and filed their original application record, dated September 10th, 2015, supplementary application record, dated January 14th, 2015, a factum dated January 14th, 2015, delivered in compliance with Justice Templeton's aforesaid directions, and a case book or book of authorities, also dated January 14th, 2015.

Because that material was delivered and filed in a timely way, I have had the benefit of reviewing and considering it in detail over the course of the past weekend. I've also now had the benefit of oral submissions from counsel for the applicants and submissions from Mr. Becky, which I'll return to in a moment.

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But in contrast to the conduct of the applicants in preparing for today's hearing, the respondents have done little or nothing, I think, to respond to the application. In particular, despite formal service of the application, none of the respondents has filed a notice of appearance, as required by Rule 38.07 of the *Rules of Civil Procedure*, and as I indicated to Mr. Becky, who appeared today on the return of the application, the failure to file such a notice of appearance means that, pursuant to rule 38.07(2), the respondents therefore are not entitled to receive any further notice of this proceeding; are not entitled to receive any further document in relation to the application apart from an amended notice of application unless the court orders otherwise; and they're not permitted to file any material in relation to the application or participate in any related examinations, which in my view precluded Mr. Becky's request to perhaps call evidence today, which I did not think and do not think would have been fair to the applicants. Although the defaulting respondents also generally are prohibited from being heard at the return of the hearing of the application except with leave of the presiding judge, I nevertheless expressly granted such leave in this case, so that I could hear from Mr. Becky.

Nor have the respondents served or attempted to file any material with the court, including a factum, despite Justice Templeton's directions noted above.

This sadly is consistent, I think, with their general practice in relation to almost all of the numerous proceedings brought to my attention by the applicants in support of the relief now being requested. In particular, throughout the many proceedings brought to my attention, which the respondents have initiated either by way of appeal or the filing of a notice of action or statement of claim, the respondents, or at least those involved in those particular proceedings, have been content to initiate the proceeding through the preparation, service and filing of initial court process, and sometimes very detailed court process, while thereafter filing no material in support of their position, or in opposition to efforts made by respondents or defendants to address the proceedings which the respondents have initiated.

There was also some doubt as to whether Mr. Becky had complied with Justice Templeton's direction requiring him to provide the applicants' counsel with written confirmation of Mr. Becky's status vis-à-vis his mother's estate. In that regard, nothing was filed, in terms of documentation in the evidence before me, to suggest compliance with that obligation. Mr. Becky initially indicated by way of informal comments and submissions to me that he had complied, by indicating to counsel for the applicants that he had "no idea" what the status of his mother's estate was, or who was formally entitled to represent her estate, as she had died intestate and impoverished. However, later

in today's hearing, Mr. Becky revealed that he had in fact taken steps to probate his mother's estate, and he was indeed his mother's estate trustee.

In the result, as I noted and emphasized repeatedly during the course of the hearing before me, the fulsome and detailed evidence properly tendered by the applicants in support of this vexatious litigant application really stands entirely uncontradicted. Although Mr. Becky repeatedly attempted to make reference to matters not formally in evidence, and counsel for the applicants occasionally did the same, I made it clear to all concerned that I was obliged to have regard only to matters that were formally in evidence, and disregard factual assertions in respect of which there was no properly tendered evidence supported or introduced by way of sworn affidavit.

I'll have more to say during the course of this decision about certain aspects of the factual background outlined in the applicants' evidence, parts of which already have been outlined in further detail in the numerous decisions and endorsements of the Landlord and Tenant Board and other judges of this court, which form part of the applicants' filings.

However, by way of initial summary and overview, the applicants are property owners and managers who have had the apparent misfortune of renting residential accommodation to the respondent, Mary Ilene Becky, now deceased, or her son and estate representative, John Shane Becky.

I say “apparent misfortune” because the uncontradicted evidence indicates that such rental arrangements have brought the applicants little in the way of rental income, but have mired them in costly, prolonged and repetitive litigation and other proceedings.

But that is not the only litigation which has been brought to my attention, in the course of this application, insofar as the applicants also rely on other proceedings in which they were not directly involved. In his oral submissions, Mr. Becky also candidly indicated that, in addition to the past and ongoing proceedings already identified and brought to my attention by the applicants, he frankly has unspecified other legal proceedings ongoing “helter skelter all over the city”, (to use his words not mine), and that he already specifically has in mind two other matters in respect of which he intends to commence new formal proceedings if his complaints are not settled to his satisfaction.

At the heart of such intended litigation, and the proceedings referenced by the applicants in their materials, has been Mr. Becky, who for the past four to five years has either initiated or been the subject of legal proceedings in relation to each of his successive places of residence over that time period.

Details of those proceedings, including court file numbers, nature of the proceedings, participating parties and substantive outcomes have been usefully

summarized in tabular form in the applicants' filings, including the most recent updated list found at tab "E" of the applicants supplementary application record.

I will not repeat that information in complete detail here. However, by way of a broad summary, over the past four to five-year period, Mr. Becky, either for himself or as the erstwhile agent or other representative of his mother or mother's estate, has been involved in no less than 16 legal proceedings that are known.

The first three of those proceedings related to a residential property owned and apparently occupied by Mr. Becky as his home at 93 Adelaide Street, here in the City of London. When Mr. Becky allowed the property to reach what was described as "a profound and dangerous state of decrepitude" the City took steps to seek and obtain a demolition order. In successive appellate proceedings in this court and the Divisional Court, Mr. Becky tried to block the City's efforts in that regard. He failed. Two of the three proceedings he commenced in that regard were formally dismissed. The third formally still exists and is ongoing, at least on paper, but effectively has been rendered moot and unsuccessful given that the house at 93 Adelaide Street has been demolished, leaving nothing apparently, but a vacant lot.

According to the evidence tendered by the applicants, in part to address repeated claims by Mr. Becky of impecuniosity, (which were repeated to me by Mr. Becky

today, but in respect of which Mr. Becky has never tendered any supporting evidence, despite judicial invitations and directions from a number of my colleagues that he do so, and the provision of time for him to do that), Mr. Becky still owns that property. However, in his informal and unsworn comments to me, Mr. Becky disputes such ownership and suggests that the property was either somehow caught up in his mother's estate arrangements or heavily encumbered, (for example, by way of tax claims by the City of London).

In any event, from living in that now demolished home at 93 Adelaide Street, Mr. Becky seems to have moved on to shared accommodation with his mother, the late Mary Ilene Becky, in a residential unit at 298 Fairview Avenue in the City of London which, according to the findings by the Landlord and Tenant Board, and despite assertions to the contrary by Mr. Becky, his mother alone formally rented from one of the applicants, Terracorp Management Inc.

Those accommodation arrangements, unfortunately, also ended unhappily. In particular, while Mr. Becky was living in the unit with his mother, there were concerns about cleanliness and safety, with substantial hoarding activity confirmed by photographs, as well as concerns that Mr. Becky had tampered with fire detection devices in the unit, thereby endangering the property as a whole, and Mr. Becky's refusal to grant the landlord access to the unit after the proper

giving of notice, all of which led in turn to a dramatic incident in which the police were obliged to break down a door physically barricaded by Mr. Becky.

All of these problems were aggravated and/or accompanied by non-payment of rent, formal eviction proceedings, two successful proceedings before the Landlord and Tenant Tribunal by the landlord in relation to the door incident and eviction proceedings for non-payment of rent, and two corresponding unsuccessful and formally dismissed appeals nominally brought in the Divisional Court by Mr. Becky's mother, albeit with Mr. Becky actively acting as his mother's agent throughout all four proceedings.

However, that did not end the formal litigation stemming from occupation of the Fairview Avenue residential unit. In particular, Mr. Becky then commenced an action in this court suing a host of defendants that included the City of London, the London Police, individual police officers, the landlord, numerous individual employees and legal representatives of the landlord, the Attorney General, the Landlord and Tenant Tribunal, and employees of a government call centre.

In my view, the applicants correctly characterize that litigation, (as my colleague Justice Garson has done), as an attempt to re-litigate many of the issues already addressed and decided in the earlier proceedings before the Landlord and Tenant Board, or which should have been raised in those proceedings,

while also raising a good number of additional and entirely spurious claims.

In particular, there already have been a number of orders summarily striking or dismissing Mr. Becky's claims against the Attorney General, the Landlord and Tenant Board and its employees, the City of London, the landlord and four of the landlord's employees and representatives. For the time being, at least, Mr. Becky's claims against the London Police and individual police officers remain outstanding. Mr. Becky says those defendants are happily proceeding with defence of that claim, (for example, by filing defence pleadings and proceeding to discovery examinations), but again, there is no evidence before me to support or confirm such informal indications and submissions.

In any event, despite dismissal of many of his appeals and claims relating to the Fairview Avenue unit, Mr. Becky certainly has not tired in his efforts to litigate in relation to matters stemming from occupation of that residence. To the contrary, he now has commenced no less than three separate but almost entirely duplicative actions, (as the ostensible representative of his deceased mother's estate and on his own behalf), against the same owner and manager of the Fairview Avenue unit.

Although Mr. Becky denied having brought such claims on behalf of his mother's estate as opposed to himself alone, that submission frankly is belied by the pleadings

filed in evidence. In essence, the three further claims I've just mentioned allege that the defendants are responsible for the wrongful death of Mr. Becky's mother in that she allegedly died from the prolonged consequences of a fall caused by her tripping on a misaligned ceramic floor tile in the kitchen of the Fairview Avenue rental unit.

As demonstrated by the detailed comparison of pleadings set forth in the applicants' materials, the wrongful death actions commenced by Mr. Becky on successive dates are largely identical or paraphrased versions of each other, with the principal substantive difference being that Mr. Becky alleges that the relevant underlying fall occurred on three completely different dates; that is, on February 21st, 2013, on May 17th, 2013, and on July 31st, 2013. In oral submissions before me today, Mr. Becky sought to clarify or indicate that he actually commenced three separate actions because there were, in his view, three separate falls, all of which caused the wrongful death of his mother. He nevertheless also candidly acknowledged that perhaps he should have "bundled", (I think that was his term), all such claims into one proceeding rather than three separate proceedings.

However, I find that submission somewhat difficult to comprehend, insofar as there was, on the face of the pleadings, absolutely no reference whatsoever to other falls which may have occurred in relation

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to the same alleged defective or misaligned ceramic tile in the kitchen floor. That is one of the many indications to me that make me doubt Mr. Becky’s credibility and candor to the court, in the making of his submissions.

I accept and agree with the submission of the applicants and their counsel that, in fact, Mr. Becky’s commencement of these three additional proceedings was not only duplicative and inherently oppressive, but also effectively concealed from the court, and I think the conclusion must be deliberately so, during earlier appearances by Mr. Becky before my judicial colleagues.

In that regard, there was some doubt as to whether that was the case when Mr. Becky appeared before Justice Carey, when the applicants were suggesting that Mr. Becky had deliberately refrained from mentioning or otherwise disclosing the first of the three wrongful death actions to Justice Garson when Justice Garson was dealing with a request for final dismissal of the then known claims arising from occupation of the Fairview Avenue unit.

At the time, Justice Carey did not accept that submission. However, I sit in a somewhat different position from Justice Carey, insofar as I have the benefit of both additional information and hindsight. Having particular regard to Mr. Becky’s obvious failure to mention or otherwise disclose his two

further existing wrongful death claims to Justice Carey, when allegations of Mr. Becky's alleged deliberate non-disclosure of such litigation were expressly before the court, I find it difficult, frankly, to reach any other objective conclusion than one that Mr. Becky simply did not want the existence of those other proceedings drawn to the court's attention.

I also agree with the applicants that there is good reason to doubt whether any of the wrongful death proceedings are meritorious, or brought in good faith. That would be, I think, consistent with earlier findings and outcomes indicating that the appeals brought to the Landlord and Tenant Board were not commenced in good faith, but were done for the purposes of extending effective rent-free occupation. It also would be consistent with the dismissals, which I've already described, of numerous other claims brought by Mr. Becky against other defendants.

But returning to the question of whether the wrongful death proceedings are meritorious or brought in good faith, I note considerations which include the following:

During the entire course of the previous acrimonious and extensive legal proceedings between the parties, there was no mention whatsoever of any alleged problem with ceramic tiles in the Fairview Avenue unit's kitchen floor, any complaints made to the

landlord to have the landlord address any such alleged defects, or any mention of any alleged corresponding fall or falls by Mr. Becky's mother.

As confirmed by photographs taken during occupation of the unit by Mr. Becky and his mother, vast amounts of hoarding material in the kitchen effectively covered most of the kitchen's ceramic tile floor, and otherwise created trip hazards completely unrelated to that tile floor.

Moreover, inspection of the unit carried out after eviction of Mr. Becky and his mother revealed no problems with the ceramic tiles in the kitchen. A further inspection of the re-rented unit, carried out after service of the first wrongful death claim, and without any intervening alterations having been done on the unit's kitchen floor, also confirmed that those ceramic floor tiles in the kitchen are indeed "perfectly fine".

Furthermore, I think it worth noting that none of the three wrongful death claims, seeking millions of dollars in alleged damages arising from the alleged wrongful death of Mr. Becky's mother, allegedly caused by the defendants, makes any mention whatsoever of the unavoidable and fundamental realities that Mrs. Becky was quite elderly, in poor health and afflicted with cancer at the time of her death.

In any event, with the eviction from the residential unit on Fairview Avenue, Mr. Becky then seems to have moved on to a new landlord, (the applicant Mr. Kleiman) and a new residential rental unit located at 105 High Street in the City of London. However, that accommodation arrangement also has been characterized by acrimony, non-payment of rent, rent collection and eviction proceedings, and other formal litigation.

In particular, Mr. Kleiman brought a successful proceeding before the Landlord and Tenant Board for non-payment of rent, in respect of which Mr. Becky then brought an appeal in the Divisional Court, which subsequently was quashed. Mr. Kleiman then brought a successful proceeding before the Landlord and Tenant Board for eviction of Mr. Becky owing to further non-payment of rent, in respect of which Mr. Becky once again brought a further appeal in Divisional Court, which also subsequently was quashed.

As before, in relation to the Fairview Avenue occupation, eviction from the High Street residence, (which apparently will be finally effected tomorrow), has failed to dampen Mr. Becky's apparent thirst for further litigation of matters arising from his occupation of that residential unit.

In particular, Mr. Becky now has commenced a further action in this court, suing his former landlord Mr. Kleiman, and including as additional defendants, a number of Mr. Kleiman's employees and

legal representatives. I think the applicants fairly characterize that claim as, once again, an attempt to re-litigate many of the same issues either addressed by the Landlord and Tenant Board proceedings, or which should have been addressed in the context of the Landlord and Tenant proceedings, while adding somewhat vague allegations of personal injury and distress.

These many legal proceedings have yet to generate any success whatsoever from the perspective of Mr. Becky, his mother or his mother's estate, (apart perhaps from a finding that he and his mother may not have been responsible for damage to the door of the Fairview Avenue unit). To the contrary, to date these proceedings generally have ended in failure for Mr. Becky, his mother or estate, or success for their opponents.

Mr. Becky, his mother and his mother's estate also have compiled a rather unenviable record of numerous failings.

There has been failure to advance claims or support allegations by the filing of evidence.

There has been failure to abide by applicable rules of procedure and directions, including requirements to file notices and other materials on a timely basis, and proper and timely responses to demands for particulars and requests to inspect documents.

There has been a failure to advance or pursue appeals – and when I say "advance", I mean "move forward" as opposed to "initiating".

There has been abuse of the process of the court, and proceedings associated with the Landlord and Tenant Board rulings in particular.

In particular, there have been repeated findings that appeals were commenced from Landlord and Tenant Board rulings for the collateral and improper purpose of securing an effective extension of rent-free accommodation.

And there has been failure to abide by orders of the Landlord and Tenant Board and of the court, including failure to pay accumulating judgments and adverse cost awards.

The latter failings are detailed in the applicants' materials, but are also helpfully summarized in an updated list found at tab "F" of the applicants' supplementary application record. As of the date of that filing, the respondents to this application have breached or disobeyed at least 19 orders of the Landlord and Tenant Board, this Court and the Divisional Court; they have failed to voluntarily obey any such orders, (for example, without the involvement of the sheriff); they have failed to pay adverse judgments or awards totalling $24,432; and they have failed to pay adverse cost awards totalling $5,930, while all the

time obliging their various litigation opponents to incur what, on any objective view, seems likely to have been substantial cost and expense.

As noted above, the 16 known legal proceedings which I have described involving Mr. Becky, his mother and/or his mother's estate nevertheless apparently are not the full extent of Mr. Becky's current and contemplated litigious activity. They are merely the proceedings over the past four to five years which the applicants have been able to discover to date, either through their direct involvement in proceedings and/or by attempts to search court files for other information. Again, Mr. Becky himself indicated today, in the course of his submissions, that he does have other litigation ongoing "helter-skelter" around the city, and that he contemplates formal commencement of at least two additional proceedings in the relatively near future, if his opponents do not propose satisfactory resolutions and settlements.

With that rather troubling litigation background in mind, the applicants now seek the vexatious litigant relief outlined above, full details of which are set out in a proposed draft judgment attached to the applicants' factum.

As for the law governing such applications, the applicable legislative framework codifying the court's relevant inherent jurisdiction is now embodied in s. 140 of the *Courts of Justice Act*, s. 140(1) of which reads as follows:

> Where a judge of the Superior Court of Justice is satisfied, on application, that a person has persistently and without reasonable grounds,
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> (a) instituted vexatious proceedings in any court; or
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> (b) conducted a proceeding in any court in a vexatious manner, the judge may order that,
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> (c) no further proceeding be instituted by the person in any court; or
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> (d) a proceeding previously instituted by the person in any court not be continued,
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> except by leave of a judge of the Superior Court of Justice.

Subsections (3) and (4) of s. 140 then specify how someone subject to such an order should seek leave to initiate or continue any particular proceeding, and how such a leave application should be processed. Moreover, neither is my immediate concern, apart perhaps from dealing with the applicants' suggestion, reflected in their draft judgment, that such applications be made to the Regional Senior Justice, at least in the first instance, who then would have the ability to deal with them or have them heard by another designated judge at the request or direction of the Regional Senior Justice, which in my view would be a sensible method of proceeding from the perspective of all concerned, if that stage is reached.

In particular, anyone subject to such an order then would know where he or she would be obliged to direct such an application in the first instance, and the

Regional Senior Justice then would be in a position to ensure awareness of all such applications, and the best way of addressing them in an organized and expeditious way; for example, as opposed to such applications possibly being made randomly to various judges, all over the region, who may or may not have knowledge of other such applications by the affected person.

Again, however, the primary question for resolution by me in the present context is whether the circumstances warrant granting relief pursuant to s. 140(1) of the *Courts of Justice Act*.

The applicants have tendered numerous authorities which have addressed these provisions, and which in turn have highlighted both general principles underlying the vexatious litigant procedure, as well as various hallmarks of a vexatious litigant.

I’ve reviewed and considered all of those authorities in detail and will not devote the limited time available to a recitation of the various case names and citations here. For present purposes suffice it to say that the applicable general principles and considerations include the following:

First, the vexatious litigation process is designed to control and prevent abuses of the court’s process by imposing additional restrictions on the ability of a vexatious litigant to access our courts. As I emphasized to Mr. Becky, it does not deny a vexatious

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litigant access to our courts completely. It instead ensures a measure of additional initial oversight, to help ensure that vexatious and abusive proceedings and behaviour are forestalled while ensuring the ability of such a person to proceed diligently and properly with *bona fide* claims that are plausible and not abusive.

Doing so avoids wasted time, money and effort by all concerned, including the vexatious litigant, his or her intended opponents, and the wider public, which has an interest in seeing that limited and precious court time and resources are not squandered inappropriately on vexatious and abusive proceedings.

In other words, our courts are called upon, in appropriate circumstances, to exercise a heightened "gatekeeper" function that balances access to justice with a need to address such concerns, in cases where there are demonstrable indications of vexatious and abusive litigation.

To determine whether a situation involves such demonstrable concerns, our courts have identified various typical indicators of vexatious proceedings, while at the same time emphasizing that the resulting list of such indicators is neither exhaustive and closed, nor a checklist of prerequisites which all must be present or satisfied before there can be a finding of vexatious litigation, or before such vexatious litigation relief is granted.

Given the time constraints, I intend to raise and address some of those various identified factors and indicators during the course of these further reasons, but for present purposes I incorporate into these reasons by way of reference the description of such factors given in authorities such as *Re Lang Michener v. Fabian,* [1987] O.J. No. 355 (HCJ), at paragraph 19.

Before turning to a more detailed consideration of why such factors may be present in the circumstances before me, I wish to say a specific word about the possible implications of any repeated failure to pay cost awards, especially where that might be related to a litigant's impecuniosity. I do that as somewhat of a threshold or more focused consideration because such concerns were, as I understood it, the central thrust of Mr. Becky's submissions made in opposition to the relief requested by the applicants.

In particular, Mr. Becky indicated once again that he was impecunious, which in turn supposedly has made him unable to retain the assistance of counsel, comply with the various rules of civil procedure, or pay the various outstanding awards and costs which he has been ordered to pay; awards and orders which he says are frankly crushing and impossibly beyond his reach, even if they are relatively modest. For example, he indicated that even an $800 cost award was crushing insofar as it would take

him approximately eight months to a year to pay that, when he currently can only save approximately $100 a month for direction to all of his legal expenses. Again, however, none of that is in formal evidence.

I will say, generally, in relation to allegations of impecuniosity, and similar submissions about related inability to pursue litigation in a timely or proper way, that our courts repeatedly have emphasized and acknowledged in various ways that impecuniosity alone should not deprive those with *bona fide* claims from access to justice. Certainly, a repeated failure to pay costs is only one consideration in a vexatious litigant application; and in isolation, would not justify such relief.

Having said that, such cost considerations cannot be completely ignored either, without raising the spectre of possible injustice to those facing claims by impecunious litigants. As our Court of Appeal has emphasized on a number of occasions, costs normally serve, in part, as an important check or restraint on unmeritorious litigation, and even meritorious litigation, by forcing those contemplating such claims to consider the possible adverse financial consequences of their actions. An impecunious litigant with nothing to lose faces no such restraints, which in turn may very well have the indirect and unfortunate effect of encouraging, or at least not discouraging, the advancement of claims that lack merit or are otherwise repetitive or abusive.

Similarly, our courts are more than cognizant, I think, of the significant challenges faced by self-representing litigants who cannot afford legal counsel. I certainly am aware of that, and I have dealt with such realities across our region in numerous contexts. Considerable allowances and indulgences therefore are granted to those who are unfamiliar with our rules and practices and applicable substantive law.

However, that has to be balanced, I think, with a recognition that retention of counsel should not be a liability that saddles a represented litigant with a playing field unduly slanted to favour an unrepresented opponent. As I emphasized to Mr. Becky, the rules of procedure governing conduct of litigation are designed to ensure fairness to all, and they must be applied fairly and equally to all litigants.

In other words, as emphasized in cases such as *Nowoselky v. Canada,* [2004] F.C.J. No. 2077, (C.A.), the obligation to comply with rules weighs more heavily on those who don't have the benefit of professional advice, but there cannot be any division of litigants into two classes; i.e. those who are bound to follow the rules, and those who are not, because one has legal representation and the other does not. The imperatives of the rules may effectively be mitigated somewhat by those facing an unrepresented litigant agreeing to certain indulgences (by not strictly enforcing their rights) and/or by the court's judicious exercise of discretion to excuse occasional

non-compliance. However, as emphasized in that *Nowoselky* decision and elsewhere, those are simply remedial measures; they are not a licence to the unrepresented litigant for general non-compliance with the rules in a persistent fashion.

In this particular case, moreover, I observe the following:

First, as I emphasized and noted to Mr. Becky, to date he effectively has been permitted the indulgence of continued and repeated litigation without having to pay an accumulating number of cost awards. That indulgence has been granted. He has not been shut out of our courts from the outset because he is impecunious. However, at some point, an accumulation of such unsatisfied costs does, I think, become a legitimate factor and concern when it comes to determining whether or not someone may be engaged in vexatious litigation, or abusive and repetitive litigation in particular.

Next, as noted above, Mr. Becky has never tendered any evidence whatsoever to confirm his professed impecuniosity, although he repeatedly has been invited to do so, and despite his being provided with ample opportunity to do so. As I indicated to him during the course of submissions, I find that failure surprising, as he obviously has the energy and capacity to turn his efforts to the generation of extended court filings when he wishes to do so;

for example, by preparing process, and sometimes quite extended process, in the form of notices of appeals, notices of actions, statements of claim, to initiate proceedings and appeals. His failure to prepare or tender any evidence to confirm his impecuniosity, and substantiate his repeated indications and formal indications to the court in that regard, raises legitimate doubts, I think, about whether or not those claims are indeed accurate.

Lack of information about his apparent ongoing ownership of the property at 93 Adelaide Street is, I think, just one example of something which Mr. Becky easily could and should properly have addressed, had he taken the time to review the materials that have been served upon him before sitting down to address, by way of some kind of sworn responding material, the suggestions and factual allegations put forth by his opponents.

Next, there unfortunately are indications that Mr. Becky has been failing to pay adverse awards and costs for reasons that are entirely unrelated to impecuniosity, including his sentiments towards his litigation opponents. In that regard, I have in mind, for example, his declaration in open court, confirmed in the sworn evidence before me, that he simply has no intention of paying anything to someone whom he considers to be a "slum landlord".

Next, at some point I think protestations of lack of familiarity with rule requirements, the need for

proper and timely court filings, and other general obligations on litigants, begin to wear thin when a person such as Mr. Becky self-evidently now has considerable familiarity and experience with legal proceedings.

The same is true of repeated claims by Mr. Becky that materials were never received by him, and the making of such allegations and claims in the face of sworn affidavits confirming personal service.

Similarly, I think the same is true of claims by Mr. Becky that judicial comments or directions were never made or heard by him, when they are clearly confirmed by judicial endorsement.

Similarly, I find it difficult to reconcile Mr. Becky's repeated protestations that he does not enjoy having to deal with all of this litigation and all of his numerous court appearances, and his tendency to blame his opponents for necessitating such hearings, with his repeatedly demonstrated inclination to commence, voluntarily, proceeding after proceeding.

There unfortunately are other indications, even in the proceedings before me, that frankly make me have serious doubts about Mr. Becky's credibility. I am mindful of the time, so will give but one example of this.

When the hearing began with Mr. Becky repeatedly protesting that he learned only recently of today's

hearing and his need to attend, I pointed out that was completely at odds with Justice Templeton's endorsement confirming that she provided her directions during a hearing before her when Mr. Becky was present.

Mr. Becky then attempted to assert that he did not hear that indication because he walked out on that hearing. I then was able to direct him, once again, to Justice Templeton's confirmation that Mr. Becky walked out during the September *25th* hearing before her, as opposed to the September *15th* hearing when he was present for the duration and during which Justice Templeton made her directions. Mr. Becky then conceded such realities, and his advanced awareness of today's hearing, but only when eventually cornered with the undeniable.

In short, the evidence before me, and such additional considerations, strongly suggest to me that Mr. Becky's reliance on impecuniosity as a shield from suggestions that he is in any way at fault is more questionable, I think, and much more questionable, than it would be in many other cases that come before the court where similar concerns about impecuniosity and access to justice are raised and substantiated.

Returning to the various indicators of a vexatious litigant, I think many, if not most of them, are present and demonstrated to my satisfaction by the applicants in the present case. Full details and

submissions in that regard are set forth at pages seven to twelve of the applicants’ factum and I think the applicants’ submissions in that regard are indeed largely supported by the evidence before me.

However, addressing some of these factors in brief, one is the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction. In that regard, I already have made reference to the fact that Mr. Becky, following his eviction from residential units and his failure to obtain any success in proceedings before the Landlord and Tenant Board, where all concerns either were addressed or should have been addressed, repeatedly has embarked on proceedings in this court in an effective attempt to re-litigate such issues.

The next indication is the commencement of actions which will not succeed, or are unmeritorious in respect of which a reasonable person would not expect to obtain relief. I already have made reference to the numerous claims advanced by Mr. Becky which have been summarily dismissed.

Another indication relates to the bringing of proceedings for an improper purpose, including the harassment and oppression of other parties, and proceedings generally brought for purposes other than the assertion of legitimate rights. I have already made reference to the fact, for example, that colleagues of mine, on more than one occasion, have found that

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Mr. Becky instituted appeal proceedings to the Divisional Court from Landlord and Tenant Board decisions for the collateral and improper purpose of extending his rent-free occupation of rental units.

I also have made reference to the fact that Mr. Becky has escalated disputes and formal litigation by targeting not only those with whom he had legal agreements and residential arrangements, but, in more of a "shotgun" or scattered approach, drawing into the litigation numerous individuals who simply seem to have been performing their roles as legal representatives of the landlords, or employees of the landlords, and other individuals such as the Attorney General, the Landlord and Tenant Board, etcetera, who really had no proper business being sued in relation to those claims, as confirmed by the dismissals that have been granted to date.

I also note Mr. Becky's tendency to turn around and target those who are representing his opponents in litigation, (which in this case that includes paralegals employed by the applicants), as another hallmark of a vexatious litigant.

I already have made reference to the commencement of multiple proceedings by the respondents to this application. Frankly, I think that, on any objective view, the sheer number of proceedings commenced by these respondents within the past four to five years must be regarded as unusual, and a matter of

concern, particularly when there have been so many findings that the litigation is not meritorious.

I think the fact that multiple, clearly duplicative, and therefore inherently oppressive actions have been commenced in relation to the alleged wrongful death of Mr. Becky's mother is also indicative of vexatious litigation.

Moreover, looking globally at the entire picture, I do think there are disturbing parallels between Mr. Becky's actions in relation to the Fairview Avenue residence and his landlord there, and his reactions to his experience at the High Street residence and his conduct in relation to his landlord there. In both cases, following failure to pay rent, forcing the landlord into taking proceedings and repeated proceedings, and his initiation of appeals which were then not pursued, but instead found to be an abuse of process for extending his rent-free occupation, Mr. Becky, not willing to let the matter go, then commenced, as I say, duplicative actions against each landlord. I already have highlighted those tendencies, but the fact that the same overall pattern of litigation, and following up with further litigation, raising the same issues against the same landlord, in respect of which Mr. Becky clearly has deep-seated emotions and resentment, once again is an indication of vexatious litigation.

Certainly, persistently commencing unsuccessful appeals, indiscriminately using appeal rights and exhausting

all possible avenues of appeal, despite the underlying merits, and without then taking any further action to follow them up by the appropriate filing of materials, is, I think, another indication of vexatious litigation.

There is then the additional matter of the accumulating unpaid cost awards. I already have addressed this particular concern and, again, that alone would not, I think, be a sufficient basis on which to grant leave in relation to a vexatious litigation application. However, when combined with the other indications of vexatious litigation to which I am referring, I think they are an additional cause for serious concern.

The reality is that Mr. Becky, I think, unfortunately is being encouraged in his litigious activity by a perception that there effectively are no consequences for his litigation activity. That is unfortunate, because there may be no consequences to him but I think there self-evidently are consequences to those whom he is suing or initiating proceedings against. In particular, I do not think it is an answer to such consequences to suggest, as Mr. Becky does, that such litigants should either then let such proceedings sit without addressing them, or simply get on with defending them. Either prospect, for a defendant facing a significant claim, has consequences.

As addressed during the course of submissions, the mere existence of a substantial claim is something

that a defendant, particularly a defendant business, who has an obligation to his or her insurers, if nothing else, to make disclosure of potentially serious claims with corresponding implications for insurance premiums, is something that cannot be ignored.

Similarly, while Mr. Becky encourages such defendants to simply "get on" with defending such actions on the merits, that inherently entails ongoing compiling of litigation expense and effort on behalf of such defendants, all against a backdrop where Mr. Becky has made it clear that such defendants have nothing to gain except the defeat of such litigation, and much to lose via the prospect of further litigation, as well as ongoing and mounting litigation expense.

Finally, as I said, I think another hallmark of a vexatious litigant, present in this case is the reality that, despite Mr. Becky's repeated protests of being a lay litigant who cannot be expected to be compliant with the rules and processes of the court, and whose ongoing and repeated demonstrations of non-compliance should therefore be overlooked or forgiven, the respondents, through Mr. Becky, are in fact now very familiar with the court's processes. That has been noted by my colleague, Justice Garson in this case, but I think it's an inevitable conclusion just given the extent of litigation in which Mr. Becky has been involved over the past four to five years. If he was not schooled in our processes before he

began those proceedings, he certainly has awareness of them now.

A fundamental point is that Mr. Becky so far has demonstrated a keen awareness of how to start up proceedings, but no inclination to follow through on those proceedings once his opponents have been confronted with the inevitable harassment and expense that it causes. He persists in that activity despite any lack of success to date, and despite the fact that most of his proceedings to date, or at least many of his proceedings, have been formally dismissed for lacking merit or through his own failings in demonstrating no inclination to pursue those proceedings.

Having regard to all of these factors, I find, in accordance with ss. 140(1) (a) and (b) of the *Courts of Justice Act*, that Mr. Becky, on behalf of himself and his mother, and now his mother's estate, has persistently, and without reasonable grounds, instituted vexatious proceedings "in any court". The Landlord and Tenant Tribunal proceedings are not obviously court proceedings but certainly the appeals from those proceedings are as are the additional proceedings, and Mr. Becky, on behalf of himself, his mother, his mother's estate, has conducted those proceedings in a vexatious manner.

I also think relief is warranted pursuant to ss. 140(1) (c) and (d) of the *Courts of Justice Act*, and that, as a practical matter, such relief must

be extended to Mr. Becky both in his personal capacity and as representative of his mother's estate, and therefore to that estate. The history of this matter indicates that Mr. Becky has readily initiated proceedings as his mother's agent and/or on behalf of her estate in the past, and I feel quite certain that he would use his mother's estate as a vehicle for continued and further litigation if vexatious litigant restraints were made applicable to him alone, in his personal capacity.

As to what form such relief should take, I have reviewed and considered the applicants' draft judgment, and I think the relief requested therein is both appropriate and necessary, with the possible exception of the costs requested in paragraph 12 of the draft judgment. As I indicated to Mr. Becky before he left, and as I'll indicate now, the reality is that, because my decision was reserved this morning when Mr. Becky was before me, I have not yet called upon the parties for cost submissions. I did not request cost submissions from either side at the time, before the adjournment earlier today, and I'm loathe to proceed with any form of cost determinations in Mr. Becky's absence.

That reluctance is not mitigated by my firm expectation, reinforced by Mr. Becky's preliminary indications, that he almost certainly will submit, consistent with his earlier positions and submissions to me, that no costs of any amount should be awarded, as

even relatively modest adverse cost awards will be crushing and effectively beyond his ability to pay.

While that may be his position, ultimately Mr. Becky must have an opportunity to be heard on this point. However, I think that hearing can be in writing, and as I indicated to him, and to the applicants' counsel, who was present when I was speaking to Mr. Becky, I intend, in the circumstances, to have costs dealt with by way of written submissions.

For now, I am going to direct that an immediate substantive order go, containing the relief proposed in paragraphs one to 11 and 13 of the applicants' draft judgment, but with provision that costs shall be dealt with by way of written submissions instead of the award contemplated at paragraph 12 of the draft judgment.

In particular, the applicants shall have two weeks from today to serve and file their written cost submissions, limited to five pages, not including any attached bill of costs, offers of settlement, or similar materials. Mr. Becky shall then have two weeks thereafter to file responding written cost submissions, if any, limited to a similar five pages. If any responding cost submissions are filed, the applicants then shall have the further opportunity to file, within one week of receiving Mr. Becky's cost submissions, reply cost submissions, limited to two pages.

I should emphasize that all of that is premised on costs not being something that can be agreed by the parties or something which the applicants seek to pursue. If there are no written cost submissions filed within two weeks of today’s date, there shall be no costs in relation to the application.

Given the history of this matter, the applicants may or may not be willing to pursue costs, or have any desire to pursue costs and incur formal expense in doing so, at this point, when the history of this matter suggests very little to indicate that Mr. Becky will pay such costs, or have the ability to pay such costs. However, that is a decision to be left to the applicants.

So with that, I am going to endorse the application record, and I will read my comments back for the record before inviting further comments from applicant counsel as to whether I have omitted anything or failed to address anything.

... PAUSE WHILE WRITING ENDORSEMENT
All right, my written endorsement reads as follows: “Mr. Sanders for the applicants; the respondent, Mr. Becky, attending in person and as estate trustee of respondent estate of his mother, a Mary Ilene Becky.

For reasons orally delivered, judgment to go granting relief requested in paragraphs 1 to 11 and 13 of the draft judgment appended to the applicant’s factum file.

As indicated in oral reasons, costs to be addressed by written submissions if parties cannot agree, and applicants wish to pursue the matter of costs. In that regard, applicants to deliver written cost submissions within two weeks, limited to five pages, not including any attached bill of costs, offers or similar material. Mr. Becky then to have two weeks to deliver any responding cost submissions, similarly limited to five pages, not including similar attachments of bill of costs or offers, and the applicants shall thereafter have one week to deliver any reply written cost submissions, limited to two pages. If no cost submissions received within two weeks, no costs of the application are ordered." All right? Anything further?

MR. SANDERS: One administrative thing would make it easy for them doing the order at the counter, if you could put an instruction on there, 'Counsel to draft a new paragraph 12 in accordance with these cost provisions'.

THE COURT: All right. And just to make it clear for purposes of the record, I have, in my relief, consciously included paragraph 13 of the draft judgment indicating that the respondent's approval of the draft order may be dispensed with. I can easily foresee, given the history of vexatious litigation and the repeatedly demonstrated non-responsiveness of Mr. Becky, that having the usual requirement of approval of a draft order would no doubt delay that

order being processed and issued, and almost certainly result in the matter being returned before me again for formal settlement of the order.

All right then, anything further now?

MR. SANDERS: Nothing whatsoever, Your Honour. And thank you, on behalf of the applicants and myself.

THE COURT: Mr. Sanders, I'm going to direct that you take the measures necessary to mail a copy of that written endorsement to Mr. Becky. Do you know where Mr. Becky's going to be residing after...?

MR. SANDERS: No, I don't but he maintains a post office box, Your Honour. It's actually his – he starts the litigation with a residential address and then immediately serves a notice of change of address to his post office box, so I'll send it there with Your Honour's permission?

THE COURT: I'll indicate that you're to send a hard copy of that written endorsement to Mr. Becky care of his post office box.

MR. SANDERS: Not a problem, Your Honour. Glad to do so.

... PROCEEDINGS CONCLUDED

Certification

FORM 2

Certificate of Transcript

***Evidence Act*, Subsection 5(2)**

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The Reasons for Decision were judicially edited.

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