COURT OF APPEAL OF YUKON

Citation: *Wood (Re)*,
2023 YKCA 1

Date: 20230331
Docket: 22-YU898

In the Matter of an Application under the *Court of Appeal Act*

And

Juanita Wood

Appellant

Before: The Honourable Madam Justice DeWitt-Van Oosten
(In Chambers)

On appeal from: An order denying leave to file under s. 774 of the *Criminal Code*, dated December 28, 2022 (*Wood (Re)*, Whitehorse Docket 22-08584).

The Appellant, acting on her own behalf:	J. Wood
Counsel for the Public Prosecution Service of Canada:	N. Sinclair
Written Submissions Received:	February 3, March 3, 10, and 15, 2023
Place and Date of Judgment:	Vancouver, British Columbia March 31, 2023

Summary:

The applicant appellant seeks to file an appeal that challenges a Supreme Court of Yukon order denying her leave to bring an application pursuant to s. 774 of the Criminal Code. Leave was denied because the Supreme Court found that the application amounted to an abuse of process. The Supreme Court relied on its inherent jurisdiction to deny leave. The applicant is subject to a vexatious litigant order in the Court of Appeal of Yukon. The application for leave to file an appeal raises the question of whether the proposed appeal is subject to the vexatious litigant order. Held: the questions raised by this application are ones that should be decided by a division of the Court of Appeal. Accordingly, the application for leave (in writing), is referred to a division for consideration.

Reasons for Judgment of the Honourable Madam Justice DeWitt-Van Oosten:

[1] On January 27, 2023, Juanita Wood applied in writing for leave to file an appeal under s. 2(b)(i) of the *Court of Appeal Act*, RSY 2002, c.47; SY 2013, c.15 [*Act*].

[2] She made the application because on March 5, 2019, a division of this Court granted the Government of Yukon a vexatious litigant order under s. 12.1(1) of the *Act*, prohibiting Ms. Wood from instituting a proceeding in the Court of Appeal without leave.

[3] Section 12.1(2)(b) allows Ms. Wood to apply "for leave to institute or continue a proceeding". Leave may be granted if the proceeding is not an abuse of process and is supported by reasonable grounds: s. 12.1(3)(b)(i)-(ii). The decision to grant or deny leave may be made by a single judge of the Court: s. 12.1(5).

[4] The basis for the vexatious litigant order is detailed by Justice Smallwood in reasons indexed as 2019 YKCA 4. There is no need to canvass the whole of the background that led to the order (see paras. 5–17 of that decision). Suffice it to say that the prohibition on filings resulted from a conclusion that:

> [26] Since the termination of her probationary employment [with the Government of Yukon's Department of Highways and Public Works], Ms. Wood has instituted several proceedings in various venues, each with the ultimate aim, as she acknowledged, of regaining her employment with the Government of Yukon. There have been previous findings that proceedings brought by Ms. Wood were vexatious.

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> [37] … Ms. Wood's litigation history, as well as her conduct in [the Court of Appeal], meets the standard of having persistently instituted vexatious proceedings. This includes bringing numerous proceedings to determine an issue that had already been decided, persistently bringing unsuccessful appeals and reviews before various tribunals and courts, instituting proceedings that were bound to fail, and seeking to re-litigate the same issues in different forms in subsequent proceedings while seeking superficially different remedies.

[5] The application for leave was referred to me as a judge sitting in Chambers. After reviewing the materials, I asked registry staff to ensure that the Crown received notice of the application and had an opportunity to make submissions in response. The Crown did so, filing a written response, to which Ms. Wood then replied.

[6] I subsequently requested supplemental submissions on the possible applicability of *Holland v. British Columbia (Attorney General)*, 2020 BCCA 304 [*Holland*], to the circumstances of the case. The parties responded and I received the last of those submissions on March 15, 2023.

Application for Leave

[7] The application for leave is in relation to a January 27, 2023 notice of appeal prepared by Ms. Wood that seeks to appeal a decision by Chief Justice Duncan of the Supreme Court of Yukon (rendered on December 28, 2022), denying her leave to file an application for an extraordinary remedy (*certiorari*) under s. 774 of the *Criminal Code*, R.S.C. 1985, c. C-46 [*Code*].

[8] In her requisition seeking leave, Ms. Wood states:

- An order pursuant to s.12.1 of the *Court of Appeal Act* was made against the appellant in 2019 YKCA 4 thereby restricting her access to the courts.
- The appeal is brought pursuant to s.2(b)(i) of the *Court of Appeal Act*.
- The appeal raises a *bona fide* issue: a private prosecutor's right to file an application under s. 774 of the *Criminal Code* and the Supreme Court's inherent authority to control its own processes.
- The appeal raises a Constitutional Question: Can the Supreme Court rely on its inherent authority to refuse leave to file a criminal law application?

- The appeal is neither frivolous nor vexatious.

[9] In the proposed notice of appeal, Ms. Wood describes the order under appeal as “Constitutional/Administrative”. She then states:

> The hearing of this proceeding occupied 0 days/hours. Leave to file the s. 774 *Criminal Code* application was required due to a vexatious litigant order made against the appellant in 2018 YKSC 34. The application was decided *ex-parte*; leave to file the s. 774 application was declined.

[10] The Crown is opposed to leave. It says the proposed appeal constitutes an abuse of process. It “does not raise any important unsettled questions of law … has no prospect of success, and … there are no grounds whatsoever to justify any further expenditure of judicial and Crown resources …”.

[11] In response to the Crown’s submission, Ms. Wood provided additional information about the proposed appeal:

> 1. The *Court of Appeal Act* provides a right of appeal in matters concerning “certiorari”; that right should not be refused.
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> 2. The matter concerns the accused, and not the victim/applicant, as is the case in all criminal proceedings. Direct evidence has been submitted for ALL alleged offences. This is not about the applicant; it is not about vexatious behavior (which is denied); this is about the proper division of powers under the Constitution.
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> 3. The appeal raises an important unsettled question of law concerning the division of powers under the *Constitution Act, 1867* and the inherent right of the Supreme Court to control its own processes. Indeed, just the fact the matter raises a Constitutional Question, raises it to the level of an “unsettled important questions of law”.
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> 4. The judge, by stepping into the arena, has exceeded her jurisdiction. *Under s. 91(27) of the* British North America Act, *1867, the Parliament of Canada has exclusive jurisdiction over the criminal law, including the procedure in criminal matters. Under s. 92(14) the Legislature of Ontario has exclusive jurisdiction over the administration of justice in the Province, including the constitution of Courts, civil and criminal, and including procedure in civil matters in those Courts. There is a presumption that a legislative body does not exceed its powers under the constitution: Driedger, The Construction of Statutes (1974), at p. 1671*
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> 5. The appeal has a good chance of success based on the clear division of powers in the *Constitution Act.*
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> 6. The applicant's dismissal under the *Public Service Act* has not been adjudicated upon to this day. The challenge to her dismissal was

discontinued on consent and without costs (17-AP021). Only 2016 YKSC 68 was brought as a challenge to her dismissal and that proceeding was struck, leaving the dismissal still unresolved. The other proceeding was an allegation of prohibited conduct by the employer—quasi-criminal allegations. As noted in para 2, those proceedings concerned the accused and not the victim/applicant.

7. Of the seven proceedings the PPSC point to in suggesting the applicant is vexatious, three of those proceedings were NOT initiated by the applicant; they were initiated by the Government of Yukon. In bringing those applications, the Government also made dishonest statements to the courts to win. See an accompanying application for leave to appeal the vexatious litigant orders currently before the COA that lay out how both the Government and WCB lied to the courts to win.

8. That leaves a total of 2 Supreme Court actions (one of which the applicant has shown the respondent lied to the courts to win - see the applicant's application for leave to appeal the vexatious litigant orders currently before the COA and undecided as of yet).

9. That leaves a total of 2 Court of Appeal proceedings (which should actually be counted together with the Supreme Court proceeding as one proceeding and not two). Even counted as two, the applicant has shown (as noted in para 8) that the respondent lied to the Court to win.

10. Ultimately, there has been only one proceeding that can actually be considered vexatious. In the appeal of that proceeding, the COA did not find the proceeding vexatious; they found it misguided.

11. The vexatious litigant orders are being used as a weapon, here by the PPSC, to discredit the applicant in order to protect the accused. The orders are being used a shield to protect the government.

12. The Attorney General of Canada has applied for a vexatious litigant order against the applicant now in Territorial Court (criminal court). The applicant brought an application for judicial review in Federal Court alleging an abuse of process on behalf of the AGC. The applicant says the purpose of the application was actually to have the pre-enquete hearing discontinued - but not stayed or withdrawn - so that the AGC could then continue the prosecution citing no evidence (despite the direct evidence that was submitted on each element of each alleged offence) for the purpose of ACQUITTING the accused for want of prosecution. That proceeding was struck on the grounds the PPSC, in staying the proceedings, was not a federal board, commission or tribunal despite the style of cause naming the AGC and not the PPSC. An appeal of that matter will be filed today.

[13]. The matter concerns public officials allegedly committing Criminal Code offences. The public interest demands a prosecution; the direct evidence suggests a conviction is likely.

[14]. The Court is not bound by the Alberta precedent provided by the PPSC and should instead rely on its own procedures to determine if leave to appeal should be granted.

> [15]. The proper administration of justice in the Yukon has been put into question.
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> [16]. This Court is asked to do the right thing and allow the appeal.
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> [Internal references omitted; italics in the original.]

Proceedings Under Appeal

[12] The application for *certiorari* filed in the Supreme Court sought to challenge the outcome of a s. 507.1 process hearing held in the Territorial Court of Yukon.

[13] Ms. Wood was denied process for two Informations sworn by her alleging offences against the Government of Yukon and one or more of its employees. The Crown stayed nine other Informations also sworn by Ms. Wood.

[14] The Territorial Court judge found that at the "core" of the offence allegations lay Ms. Wood's "perceived mistreatment by the named entities and individuals and [it is] connected to the termination of her probationary employment with the Government of Yukon Department of Highways and Public Works …": 2022 YKTC 27 at para. 3. Process was denied because:

> [40] Having exhausted all of her civil remedies in a variety of civil tribunals, all apparently without success, Ms. Wood now resorts to attempting to convert the same conduct lying at the heart of her long-standing dispute with the Government of Yukon, its agencies and employees, into criminal proceedings against those same, or affiliated parties …
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> [41] … Ms. Wood has failed to make out a case for issuing process. The elements of the offences, even as minimally required to be established at this stage of the proceedings, are comprised entirely of Ms. Woods' personal beliefs and subjective interpretations around why she was fired. Viewed reasonably, and in the larger context, they come nowhere near even the relatively low threshold for the laying of a criminal Information. There is no evidence on the essential elements of any of the offences alleged. Putting the named individuals through the criminal process would be an abuse of process and therefore cannot be allowed to continue.

[15] Ms. Wood attempted to have the Territorial Court decision reviewed by the Supreme Court under s. 774 of the *Code* (Part XXVI, "Extraordinary Remedies"). In her application, Ms. Wood sought an order quashing the denial of process and returning the matter to the Territorial Court for a new hearing.

[16] Ms. Wood was told by Supreme Court registry staff that she required leave to bring her application because as of July 17, 2020, there has also been an order in the Supreme Court declaring Ms. Wood a vexatious litigant and prohibiting her from instituting proceedings without leave.

[17] Ms. Wood requested leave.

[18] On December 28, 2022, Chief Justice Duncan of the Supreme Court reviewed Ms. Wood's application and denied leave. She did so in the form of an "endorsement": Docket S.C. No. 22-08584, Whitehorse Registry.

Reasons for Denying Leave

[19] At the start of her reasons, Chief Justice Duncan identified the primary issue for consideration as (at para. 1):

> … whether the Supreme Court of Yukon should grant leave to hear Juanita Wood's current application for *certiorari* and *mandamus* under s. 774 of the *Criminal Code* of the order of the Territorial Court of Yukon not to issue process of the Informations after the s. 507.1 hearing.

[20] The Chief Justice then reviewed various administrative and court-based proceedings that have been initiated by Ms. Wood: at paras. 2–3. She took note of the vexatious litigant orders and the reasons for them: at paras. 5–6. She next turned her attention to the Territorial Court proceedings that Ms. Wood sought to have reviewed:

> [7] The current application sought to be heard by Juanita Wood in this Court is a judicial review under the *Criminal Code* of an order issued by the Territorial Court of Yukon. There has been no finding by the Territorial Court of Yukon that Juanita Wood had persistently instituted vexatious proceedings…

[21] The Chief Justice reviewed the proceedings in the Territorial Court, noting the findings made there about the nature of the claims underlying the Informations. Ultimately, she denied leave to challenge the Territorial Court's ruling:

> [13] Courts have an inherent jurisdiction to prevent abuse of their process. Courts have a responsibility to conserve scarce judicial resources and to protect other parties from needless litigation expenditures. A litigant is not

> entitled to return to court over and over, using different mechanisms to achieve the same desired remedy. This is the essence of abuse of process and forms the basis for a finding of persistently instituting vexatious proceedings.
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> [14] The clearly stated conclusion of Territorial Court Judge Gill was that Juanita Wood is attempting now to litigate through the criminal justice system the same issue of her release from employment with the Department of Highways and Public Works during her probationary period. This is the same conclusion as the Supreme Court of Yukon and the Court of Appeal of Yukon found on seven occasions … all of which contributed to the determination of persistently instituted vexatious proceedings and conducting proceedings in a vexatious manner.
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> [15] This ongoing misuse of the litigation process by Juanita Wood, now in the criminal context, cannot be sanctioned. I have reviewed the history of the many proceedings initiated by Juanita Wood and dismissed by the courts or on consent, including this most recent one commenced in the criminal context. Given its basis in the same underlying facts as all of the other proceedings, I find that a pursuit of a judicial review in the Supreme Court of Yukon would be an abuse of process. In coming to this conclusion, I have considered all of the circumstances, including the earlier finding by the Supreme Court of Yukon, upheld by the Court of Appeal of Yukon, under s. 7.1 of the *Supreme Court Act*, as well as the obligation and inherent jurisdiction of this Court at common law to prevent abuse of its processes.
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> [16] For these reasons, I decline to grant leave to Juanita Wood to file her application under s. 774 of the *Criminal Code*.
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> [Emphasis added.]

[22] As I read these reasons, my preliminary view is that Chief Justice Duncan did not deny Ms. Wood leave to bring an application under s. 774 of the *Code* on the basis of the vexatious litigant order made in the Supreme Court. Rather, she invoked the Court's inherent jurisdiction to prevent an abuse of process. The vexatious litigant order appears to have informed the exercise of her discretion, but was not the grounding authority.

Discussion

[23] Consistent with my preliminary reading, both parties accept that Chief Justice Duncan denied leave on the basis of inherent jurisdiction.

[24] In her supplemental submissions in support of leave, Ms. Wood states: "[At] para. 15, [Chief Justice Duncan] relies on the inherent authority of the Court to deny leave to file the criminal law application" (emphasis added).

[25] The Crown's supplemental submissions contain the following paragraph:

> Regardless of the decision in *Holland* … the Chief Justice's refusal to grant leave was a decision within the Supreme Court's inherent jurisdiction to prevent abuse of its processes and it would be exceedingly wasteful to prolong any further litigation of Ms. Wood's wrongful dismissal complaint in this Court.
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> [Emphasis added.]

[26] In *Holland*, the Court of Appeal for British Columbia considered whether vexatious litigant orders made in civil proceedings under provincial legislation apply to a petition that seeks to challenge a stay of proceedings entered by the Crown pursuant to s. 579 of the *Code*: at para. 1. The Court answered that question in the negative, holding that "vexatious litigant orders pronounced under the authority of provincial statutes do not apply to criminal matters proceeding properly as applications for *certiorari* under the *Criminal Rules*": at para. 5.

[27] It is unclear to me whether the order sought to be appealed by Ms. Wood in this case falls within the scope of the *Holland* ruling.

[28] On the one hand, the order denying leave was made in the context of a criminal review application that was brought pursuant to s. 774 of the *Code*. Had that application been heard and adjudicated on the merits, s. 784(1) of the *Code* would likely provide for an appeal. The latter provision applies to "a decision granting or refusing the relief sought in proceedings by way of *mandamus, certiorari* or prohibition". Where s. 784(1) is properly engaged, an argument can be made that *Holland* applies and although that decision is not binding on this Court, it is persuasive authority for the proposition that this Court's vexatious litigant order involving Ms. Wood cannot impose a leave requirement on appeal proceedings in the Court that are criminal in nature.

[29] On the other hand, Ms. Wood's application for *certiorari* in the Supreme Court did not actually come to fruition. It did not advance to a hearing under s. 774 of the *Code* and there was no adjudication as to whether she is able to establish jurisdictional error in the Territorial Court ruling that would warrant an extraordinary

remedy. Instead, Chief Justice Duncan determined, in advance, on a stand-alone basis, and apparently in exercise of the Court's inherent jurisdiction, that the proposed application for an extraordinary remedy amounted to an abuse of process. In these circumstances, it is arguable there was no "decision granting or refusing the relief sought in proceedings by way of *mandamus*, *certiorari* or prohibition", which would then trigger the application of s. 784(1) (emphasis added). The order sought to be appealed by Ms. Wood appears to be an order made independent of extraordinary remedy principles; rather, it is grounded in the law governing the Court's inherent jurisdiction to prevent an abuse of process.

[30] Without the availability of s. 784(1) of the *Code*, there would be no "criminal appeal" path for Ms. Wood into this Court.

[31] That would leave only ss. 2(a) or (b)(i) of the *Act* open to Ms. Wood and these are non-criminal appellate routes. If the order made by Chief Justice Duncan is properly characterized as a civil (as opposed to criminal) order, such that ss. 2(a) or (b)(i) of the *Act* apply, the vexatious litigant order arguably takes hold and leave is required. Ms. Wood has invoked s. 2(b)(i) of the *Act* as the statutory basis for her proposed appeal.

[32] Given the nature of the questions to be answered, here, I am of the view that Ms. Wood's application for leave to file an appeal is a matter that a division of the Court should properly decide. The Court's registry staff, litigants and the Court itself would benefit from clarity on the proper characterization of the order at issue and the processes to be followed in these circumstances.

Disposition

[33] For the reasons provided, I exercise my discretion to refer this application for leave to appeal in writing to a division of the Court for consideration: s. 12, *Court of Appeal Act*, R.S.B.C. 1960, c. 82.

[34] Fully appreciating that it will be up to the division to decide how best to frame the matters raised by the application, possible questions for consideration include:

a) Whether the order sought to be appealed is properly characterized as a civil or criminal order;

b) If criminal, does the vexatious litigant order made against Ms. Wood under the *Court of Appeal Act* apply, such that she requires leave to proceed with her proposed appeal; and,

c) If the vexatious litigant order does apply, has Ms. Wood met the test for leave?

[35] I leave it to the division to decide whether additional materials may be required from the parties to resolve the application for leave to file; whether this matter should continue as an application in writing; or whether it should proceed to an oral hearing.

"The Honourable Madam Justice DeWitt-Van Oosten"