COURT OF APPEAL OF YUKON

Citation: *Wood (Re)*,
2023 YKCA 9

Date: 20231012
Docket: 22-YU898

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

And

Juanita Wood

Applicant (Appellant)

Before: The Honourable Chief Justice Bauman
The Honourable Madam Justice Smallwood
The Honourable Madam Justice DeWitt-Van Oosten

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 October 12, 2023

Written Reasons by:
The Honourable Madam Justice Smallwood

Concurred in by:
The Honourable Chief Justice Bauman
The Honourable Madam Justice DeWitt-Van Oosten

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 was considered by a single judge of the Court of Appeal and referred to a division for consideration. Held: the application for leave to file an appeal is denied.

Reasons for Judgment of the Honourable Madam Justice Smallwood:

Introduction

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

[2] Ms. Wood is the subject of a vexatious litigant order made on March 5, 2019 which prohibits Ms. Wood from instituting a proceeding in the Court of Appeal without leave. The reasons for granting the vexatious litigant order are indexed at 2019 YKCA 4. Paragraphs 5–17 of that decision outline the background which led to the order.

[3] More recently, Justice Skolrood declined to rescind the vexatious litigant order in a decision indexed at 2023 YKCA 6.

[4] Pursuant to s. 12.1(2)(b) of the *Act*, Ms. Wood can apply for “leave to institute or continue a proceeding”. Leave may be granted if the Court is satisfied that the proceeding is “not an abuse of process” and “there are reasonable grounds for the proceeding”: at s. 12.1(3)(b).

[5] Ms. Wood’s application for leave was referred to a single justice of the Court of Appeal. Justice DeWitt-Van Oosten considered the application in Chambers and after receiving written submissions from Ms. Wood and the Crown, referred the application for leave to file an appeal to a division of the Court for consideration.

[6] In referring the matters to a division, Justice DeWitt-Van Oosten in a decision indexed at 2023 YKCA 1, raised possible questions for consideration which were:

> 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?

[7] Justice DeWitt-Van Oosten left it to the division to determine whether additional materials might be required from the parties or whether this matter should be continued as an application in writing or proceed to an oral hearing. The division has reviewed the materials provided and determined that the matter can be addressed without the need for additional materials from the parties and the matter should continue as a written application.

Application for Leave

[8] Ms. Wood seeks to appeal a decision by Chief Justice Duncan of the Supreme Court of Yukon rendered on December 28, 2022 denying Ms. Wood 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*].

[9] 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. In the Territorial Court, Ms. Wood sought to have process issued for 11 separately sworn Informations containing 59 counts brought against the Government of Yukon, the Yukon Worker's Compensation Health and Safety Board, and 11 of its employees and/or directors.

[10] The Crown participated in the hearing and entered a stay of proceedings on all but two of the sworn Informations. For the remaining two Informations, a *pre-enquête* hearing was held before Judge Gill.

[11] The Territorial Court judge found that the core of Ms. Wood's allegations lay in her "… perceived mistreatment by the named entities and individuals and is connected to the termination of her probationary employment with the Government of Yukon Department of Highways and Public Works in the year 2014 …": 2022 YKTC 27 at para. 3.

[12] Ms. Wood's application for process was denied. The Territorial Court judge concluded at paras. 38–41:

> [38] Ms. Wood's complaints can at best be regarded as disagreements over managerial decisions affecting her employment… which have… largely been addressed in prior civil proceedings…
>
> [39] Whether the conduct of the Government of Yukon and the Yukon Worker's Compensation Health and Safety Board managers and employees as described by Ms. Wood at this hearing fell below acceptable managerial standards is a matter that she is entitled to hold her own opinion on. However, by any reasonable and objective standard, they do not belong in the criminal arena.
>
> [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…
>
> [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 proceedings, are comprised entirely of Ms. Wood's 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…

[13] Following this decision, Ms. Wood attempted to have the Territorial Court decision reviewed in the Supreme Court pursuant to s. 774 of the *Code.* In her application for *certiorari*, Ms. Wood sought an order quashing the denial of process and remitting the matter to the Territorial Court for a new hearing.

[14] As there is also an order in the Supreme Court declaring Ms. Wood a vexatious litigant, she was told that she could not institute proceedings without leave. Ms. Wood sought leave to bring the application in the Supreme Court and on December 28, 2022, Chief Justice Duncan denied Ms. Wood's application for leave.

This was done in the form of an "endorsement": Docket S.C. No. 22-08584, Whitehorse Registry.

[15] In denying Ms. Wood's application, Chief Justice Duncan concluded at para. 15:

> … Given [the application's] 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, 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.

[16] In reviewing the reasons of Chief Justice Duncan, I agree with Justice DeWitt-Van Oosten's preliminary view, expressed at para. 22:

> … 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

[17] One of the issues considered by Justice DeWitt-Van Oosten was whether vexatious litigant orders made in civil proceedings under provincial legislation apply to criminal matters, following the reasoning in *Holland v. British Columbia (Attorney General)*, 2020 BCCA 304 [*Holland*].

[18] In *Holland,* the Court of Appeal for British Columbia concluded 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.

[19] The vexatious litigant order made against Ms. Wood in the Supreme Court of Yukon was made by Justice Miller pursuant to s. 7.1 of the *Supreme Court Act,* RSY 2002 c. 211; SY 2013, c. 15, in *Wood v. Yukon (Government of),* 2018 YKSC 34. Similarly, the vexatious litigant order made against Ms. Wood in the Court of Appeal was also made pursuant to statute: s. 12.1 of the *Court of Appeal Act*.

[20] Whether the order that Ms. Wood seeks to appeal is properly characterized as a civil or criminal order determines what path her appeal should take and whether the provisions requiring individuals who are subject to a vexatious litigant order to obtain leave are applicable. Applying the reasoning in *Holland,* if the order Ms. Wood seeks to appeal is criminal in nature, the vexatious litigant order made against her would not be applicable and leave would not be required.

[21] In *R. v. Brassington*, 2018 SCC 37, the Supreme Court of Canada held that "… in determining whether an order is civil or criminal in nature, what is relevant is not the formal title or styling of the order, but its substance and purpose": at para. 19, citing *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 at 879. Where the relief sought is traditionally a civil remedy, if it is sought in the context of a criminal proceeding, it becomes criminal in nature.

[22] Considering the nature of the proceeding, Ms. Wood seeks to appeal the decision of Chief Justice Duncan denying her leave to bring an application for *certiorari* pursuant to s. 774 of the *Code.* The application for *certiorari* was brought following the decision of a Territorial Court judge to deny Ms. Wood's application for process at a *pre-enquête* hearing held pursuant to s. 507.1 of the *Code.* Ms. Wood sought process to be issued in the context of the private prosecution she wished to pursue in relation to 11 separately sworn Informations containing 59 counts brought against the Government of Yukon and others alleging a number of criminal offences had been committed.

[23] The proceedings that Ms. Wood instituted, the swearing of private Informations and the seeking of the issuance of process, are ones that are authorized by the *Code* and are criminal in nature. An application brought pursuant to s. 774 of the *Code* for an extraordinary remedy following the process hearing would normally have been heard and adjudicated on its merits. Following a decision on the extraordinary remedy application, an appeal of that decision pursuant to s. 784(1) could have been pursued. Viewed in this context, the application before the

Supreme Court was criminal in nature and thus, the order that Ms. Wood seeks to appeal would be also criminal in nature.

[24] In that situation, as noted by Justice DeWitt-Van Oosten, *Holland* would be persuasive authority for the proposition that this Court's vexatious litigant order imposed pursuant to a territorial statute cannot impose a leave requirement on appeal proceedings that are criminal in nature.

[25] Ms. Wood's application in the Supreme Court, however, was not heard pursuant to s. 774 and adjudicated on its merits. Chief Justice Duncan instead determined in advance of a hearing, and in an exercise of the Court's inherent jurisdiction, that the proposed application for an extraordinary remedy amounted to an abuse of process.

[26] In her endorsement, Chief Justice Duncan stated, at para. 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.

[27] In coming to this decision, Chief Justice Duncan reviewed the history of the previous legal proceedings that Ms. Wood has instituted and noted that Ms. Wood had been declared a vexatious litigant in the Supreme Court and Court of Appeal. She noted the Territorial Court judge's conclusion that Ms. Wood was attempting to litigate through the criminal justice system the same issues surrounding her termination of employment with the Government of Yukon and that this issue had been litigated on seven occasions in the Supreme Court and Court of Appeal.

[28] In addition to the authority conferred by statute, superior courts have the inherent jurisdiction to control their own process, to declare a person a vexatious litigant in order to maintain the court's authority, and to prevent an abuse of its process.

[29] In *Bea v. The Owners, Strata Plan LMS 2138,* 2015 BCCA 31, Justice Garson discussed the inherent jurisdiction of superior courts, citing I.H. Jacob's "The Inherent Jurisdiction of the Court" (1970), 23 Current Legal Problems 23, at para. 31:

> Historically, inherent jurisdiction can trace its roots to a way of punishing an individual for contempt of court and "by way of regulating the practice of the court and preventing the abuse of its process": at 25. Jacob notes further that "the essential character of a superior court of law necessarily involves that it should be invested with a power to maintain its authority and to prevent its process being obstructed and abused": at 27. This power to maintain its authority includes that power to "prevent a litigant from taking multiple or successive proceedings which are frivolous or vexatious or oppressive" as is the case here: at 43 …

[30] The order which Ms. Wood seeks to appeal is not a decision made under s. 774 of the *Code*, which would permit an appeal as of right pursuant to s. 784(1). In my view, it is not a decision that refused relief sought by way of *certiorari*. The principles applicable to *certiorari* were not engaged in dismissing the application. As such, there is no statutory right of appeal pursuant to s. 784(1) and there is no criminal appeal path to this Court.

[31] The effect of Chief Justice Duncan's exercise of inherent jurisdiction resulted in a final order and there is no clear path of appeal. It is not necessary to decide the issue of what Ms. Wood's path to appeal might be because even if ss. 2(a) or (b) of the *Act* were available to her on the basis that the order is properly characterized as civil, rather than criminal in nature, this proceeding is an abuse of the Court's process and I would deny leave to appeal in any event.

[32] As has been expressed by Judge Gill and Chief Justice Duncan and other Supreme Court and Court of Appeal judges in other matters, the proceedings that Ms. Wood has brought in all three levels of court in Yukon have all ultimately sought to re-examine the termination of her employment with the Government of Yukon. As stated by Justice Fisher in *Wood v. Yukon,* 2018 YKCA 15 at para. 26:

> … While she may have used different vehicles, her destination was always the same: to determine the validity of the termination of her employment with the Department of Highways and Public Works …

[33] I share the concerns expressed by Judge Gill that Ms. Wood's complaints have already been addressed in civil proceedings and that she is now attempting to convert this same conduct into a criminal matter and engage the *Criminal Code* process. To allow Ms. Wood to continue this matter, under the guise of a criminal proceeding, would be an abuse of the Court's process and it cannot be sanctioned.

Disposition

[34] For all of these reasons, I would dismiss Ms. Wood's application.

"The Honourable Madam Justice Smallwood"

I AGREE:

"The Honourable Chief Justice Bauman"

I AGREE:

"The Honourable Madam Justice DeWitt-Van Oosten"