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Vexatious litigants: Protecting the justice system

By **Stephen A. Thiele**

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Law360 Canada (March 17, 2025, 2:46 PM EDT) -- The justice system is an important democratic institution that is designed to uphold the rule of law, protects rights and promotes social stability. A well-run and independent justice system also enhances public confidence in government by ensuring that state power is not abused. The justice system's role in preventing abuse also extends to litigants who can be restricted from access to the courts as a result of commencing multiple vexatious proceedings. Under legislation such as s. 140 of the *Courts of Justice Act*, in Ontario, courts have the authority to grant orders declaring a person to be a "vexatious litigant" where a person has persistently and without reasonable grounds instituted vexatious proceedings in any court or conducted a proceeding in any court in a vexatious manner.

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In *Ottawa Police Services Board v. M.(D.),* 2025 ONSC 537, this court power was reviewed in connection with an application brought by the Ottawa Police Services Board to have M successfully declared a vexatious litigant as a result of having commenced 13 proceedings over a 10-year period of time. Some of those proceedings were against the board and some of them included acrimonious family law proceedings.

M's involvement in the civil litigation process was rooted to a decline in mental health, which began in 2013. By 2015, M separated from their spouse, and family law proceedings followed. In 2020, M's spouse obtained custody of the couple's two children and obtained a restraining order against M under s. 137 of the *Child and Youth Family Services Act*.

Thereafter, M commenced 10 different civil actions against multiple defendants, which were all related to the family law proceedings. These actions were commenced against the board, lawyers involved in the family law proceedings, medical professionals, the Attorney General of Ontario and a judge. M alleged that these defendants conspired as a "crime syndicate" to cover up abusive behaviour of M's spouse and to terminate M's relationship with M's children.

With respect to the board, M commenced two actions against it. In the first action, M alleged that the board conspired with M's former landlord, a real estate agent, a paralegal and M's spouse to

perpetrate eviction fraud, and that the board's police officers failed to adequately investigate. This was struck on the grounds that it disclosed no reasonable cause of action.

A month after the dismissal of the first action against the board, M commenced a second action against it seeking over $8 million in damages for negligence, negligent investigation, defamation, complicity to arbitrary detention, torture, false imprisonment, assault, battery, accessory to mischief, conspiracy to prosecute, accessory to fraud, knowing assistance of breach in fiduciary duty, deliberate ignorance, malice, intentional infliction of emotional suffering, negligent infliction of emotional suffering and abuse of public service. M also alleged that the board's officers assisted M's spouse in "illegal child apprehension."

The second action against the board was not intended to be M's last action against it. In an email sent to the board after starting the second action, M stated that this action was "good practice" for future claims against other entities and that M was intended to bring a third claim against the board if police officers failed to investigate a third criminal report M planned to file in connection with "multiple crimes committed by the white-collar, blue-collar, thug-collar crime ring that eliminated me, a devoted mum, from the lives of my children in the wickedest of ways."

With respect to other actions, M sued M's former family lawyer five times. The first two actions were discontinued, while the third and fourth actions were dismissed under r. 2.1.01 of the *Rules of Civil Procedure* because they were devoid of merit on their face. The fifth action was dismissed for disclosing no reasonable cause of action.

The history of the proceedings showed that M had discontinued other proceedings and had demonstrated a propensity to accuse members of the judiciary of bias and professional misconduct, demanding that judges recuse themselves from some of the proceedings.

The board also argued M's conduct outside the court was vexatious. M was shown to have posted on their personal website that, among other things, lawyers for the board participated in "organized crime" and "extortion," that a certain named judge was engaged in "court-enabled cover-up", and that Crown Attorney lawyers, the Ontario Court of Justice and the Ontario Superior Court of Justice participated in an "Ottawa-based crime syndicate." M further accused one judge of being "ruthless," another judge of being "crooked," and a third judge of being "fraudulent" and "incompetent."

The hallmarks of a vexatious proceeding and a vexatious litigant have been found to include bringing one or more actions to determine an issue which has already been determined by a court of competent jurisdiction, bringing actions that obviously cannot succeed or that are brought for improper purposes, and bringing actions where issues are rolled into subsequent actions, repeated and supplemented.

In determining whether proceedings are vexatious, the court is obligated to review the whole history of the matter and to take into account the purported vexatious litigant's conduct in taking unsuccessful appeals and conduct outside the courtroom.

On an application to declare a person a vexatious litigant, the applicant is not required to satisfy each of the hallmarks: see *Carleton Condominium Corporation No. 166 v. Sennek*, 2017 ONSC 5016 at paragraph 30. However, courts have also noted that the power to declare a person a vexatious litigant is to be used sparingly and with the greatest of care.

Here, the court concluded that M was a vexatious litigant because M had persistently and without reasonable grounds instituted vexatious court proceedings and conducted those proceedings in a vexatious manner. M's conduct outside of the courtroom was found to be vexatious, scandalous and inflammatory.

As a result, M was prohibited from instituting any proceeding or, with the exception of the family law proceedings in which M was involved, continuing any proceedings previously instituted by M until such time as leave by a judge was granted to permit any of those actions to proceed or continue. If M attempted to continue or commence any proceedings without seeking leave of a judge, those proceedings were to be stayed upon any person filing a copy of the court's order declaring M to be a vexatious litigant with that court.

The key takeaway from this case is that access to justice is not absolute. The justice system can protect honest citizens and litigants, and the overall integrity of the justice system from vexatious litigants by significantly restricting access to those persons who seek to continually abuse it by engaging in frivolous and vexatious litigation and conducting themselves outside of the courtroom in a manner that undermines the justice system.

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