

In the Court of Appeal of Alberta

Citation: Feeney v Her Majesty the Queen in the Right of Alberta, 2021 ABCA 255

Date: 20210712

Docket: 2101-0075-AC

Registry: Calgary

Between:

Keenan A. Feeney

Applicant

- and -

Her Majesty the Queen in the Right of Alberta

Respondent

**Reasons for Decision of
The Honourable Justice Ritu Khullar**

Application for Vexatious Litigant Order

**Reasons for Decision of
The Honourable Justice Ritu Khullar**

[1] Alberta and Mr ter Kuile apply for a declaration that Mr Feeney is conducting litigation in a vexatious manner and an order that he shall not institute further proceedings in either the Court of Appeal or the Court of Queen’s Bench without the permission of the relevant court.

I. Preliminary Issue

[2] A preliminary issue is Mr Feeney’s application for an order requiring “HMQ Alberta” and Mr ter Kuile to attend for questioning before the vexatious litigant application is heard. Questioning would necessitate an adjournment of the application.

[3] Neither Alberta nor Mr ter Kuile has filed an affidavit in support of their vexatious litigant application. Rather, they rely on the Court record: previous judicial decisions and Mr Feeney’s filings and correspondence with the Court. Therefore, Mr Feeney does not have a right to question them under r 6.7 of the *Rules of Court*. However, he relies on the more general r 6.8 which states: “A person may be questioned under oath as a witness for the purpose of obtaining a transcript of the person’s evidence for use at the hearing of the applications ...”.

[4] To order a witness to submit to questioning under r 6.8, the Court needs to have some sense of the questions that would be asked and whether the witnesses have relevant information to offer: *Dechant v Law Society of Alberta*, 2000 ABCA 265 at para 16; *AP v SP*, 2017 ABQB 672 at para 15. Mr Feeney explained that he wants to question the witnesses because the decisions under appeal do not accurately reflect what has happened in these proceedings and that is why they are under appeal. He also claims it is necessary to conduct questioning before deciding whether to file his own affidavit in the vexatious litigant application. He has not indicated why the questioning is expected to yield evidence, relevant to *this* application.

[5] Mr Feeney’s application to question is denied, as is his adjournment request. He has not convinced me that any proposed line of questioning is material or relevant to the vexatious litigant application. Alberta and Mr ter Kuile are relying on the Court record, including Mr Feeney’s correspondence with the Court. I am not satisfied that questioning a witness from Alberta Justice or Mr ter Kuile will add anything relevant to the record that already exists.

[6] Further, any evidence Mr Feeney might include in an affidavit would be directed to disputing the findings in the decisions under appeal. There are three appeals of decisions from the Court of Queen’s Bench before this Court. Alberta and Mr ter Kuile submit that their vexatious litigant application does not rely on any statements of fact in the decisions currently under appeal. However, they do rely on the statement of facts in one appeal that has already been dismissed (to be discussed further below). Deciding the vexatious litigant application does not require me to

address the merits of the appeals, nor would it be appropriate to do so. It follows that evidence Mr Feeney hopes to get from questioning is not relevant to the application.

II. Application for a Vexatious Litigant Order

[7] Alberta and Mr ter Kuile have applied for a declaration that Mr Feeney has been instituting vexatious proceedings or conducting proceedings in a vexatious manner contrary to s 23.1 of *Judicature Act*, RSA 2000, c J-2. They also ask for an order that Mr Feeney shall not institute further proceedings on his own behalf or any other person, in the Court of Appeal of Alberta or the Court of Queen's Bench, without the permission of the relevant court. The order sought would not affect proceedings that Mr Feeney has already started.

[8] Both this Court and the Court of Queen's Bench have the authority to prohibit someone from instituting legal proceedings without permission under s 23.1 of the *Judicature Act*. Further, this Court has the authority to prohibit proceedings without permission in the Court of Queen's Bench and the Provincial Court: s 23(1)(b) and 23.1(6). It is appropriate for this Court to hear a vexatious litigant application if it arises in the context of an appeal, as it does here: *Wong v Giannacopoulos*, 2011 ABCA 206 at para 7.

[9] Mr Feeney's litigation history is complicated and is set out in detail in section C and the Appendix to these reasons. An overview of the proceedings is necessary to assess this application.

A. The Emergency Protection Order, perjury charge and the civil contempt order

[10] The starting point is Mr Feeney's attempt in 2014 to set aside an Emergency Protection Order made against him. In that proceeding, he filed an affidavit making assertions about his former employment with the Canadian military and the need for his continued access to firearms. Those assertions were false.

[11] Mr Feeney was subsequently charged with perjury for swearing a false affidavit. In October 2017, he resolved those charges by agreeing to be found in civil contempt and ordered to pay a \$1000 fine. The Crown and Mr Feeney's lawyer made a joint submission and Justice Anderson granted the consent civil contempt order. The perjury charges were withdrawn. At the hearing, Mr Feeney apologized for his conduct. He did not appeal the contempt order although, as noted in Section C below, he later sought to have it set aside.

B. Overview of Feeney's litigation since the contempt finding

[12] Between May 2018 and now, Mr Feeney has commenced three actions in the Court of Queen's Bench, four appeals in this Court and two actions in the Federal Court of Canada. In September 2020 Rooke, ACJ was appointed case manager for Mr Feeney's various actions in the Court of Queen's Bench.

[13] The proceedings just listed are the bare bones. Mr Feeney has filed numerous applications related to these actions, well as related complaints to the Law Society and the Canadian Judicial Council. The proceedings are all related to the original contempt finding in some way.

[14] The three actions in the Court of Queen's Bench were (1) to set aside the contempt order and find Crown prosecutors in contempt, (2) to find a Crown prosecutor, Calgary Police and Mr ter Kuile liable for malicious prosecution and (3) to find Alberta and three Crown prosecutors liable in tort in relation to a document "Prosecution Service Practice Protocol: Triage" (the triage protocol). Mr Feeney also tried to apply for judicial review of a decision of Rooke ACJ but the Court refused to file the application. Mr Feeney has no currently outstanding actions or applications in the Court of Queen's Bench against these parties or concerning these issues. He has some unrelated civil litigation with respect to a motor vehicle accident and insurance issues.

[15] Mr Feeney has made four appeals to this Court. Three are currently outstanding:

1. Appeal No 2001-0205AC. An appeal from a decision of the case management judge, Rooke ACJ, striking Mr Feeney's constitutional challenge to the Calgary Police Service triage protocol. The appeal also alleges procedural unfairness.
2. Appeal No 2001-0223AC. An appeal from a decision of the case management judge striking out Mr Feeney's statement of claim alleging tortious conduct by Alberta and three Crown prosecutors in charging him. This claim also invoked the triage protocol.
3. Appeal No 2001-0075AC. An appeal from a decision of the case management judge to refuse the filing of an application for judicial review of that judge's decision on various procedural topics and striking Mr Feeney's Notice of Questions of Constitutional Law.

One of Mr Feeney's appeals to this Court (Appeal 2001-0069-AC) has already been dismissed. That was an appeal from the summary dismissal of a malicious prosecution action against Alberta, a Crown prosecutor and Mr ter Kuile. The reasons for dismissing the appeal are reported as 2021 ABCA 154.

[16] Mr Feeney also has also brought two actions against Alberta and other parties in the Federal Court. The first alleged various kinds of misconduct by Alberta Crown prosecutors and was dismissed in September 2020. The second, which alleges misconduct by Crown prosecutors and levels various accusations against Alberta judges, is still outstanding.

C. Detail of Mr Feeney's litigation since the contempt finding

[17] I have chosen not to set out Mr Feeney's litigation history since the contempt finding chronologically, because a chronological presentation is hard to follow. Instead, I have set out the major actions or applications and then group-related proceedings and events together. This seems the best way to try to show the relationship between the proceedings. As indicated, a chart which

sets out more detail about the proceedings by action and appeal numbers is included in the Appendix to these reasons.

1. Mr Feeney brought two applications before two different judges in May and August 2019 to set aside the contempt finding (QB 1701-13254). The second application also asked the Court to find Crown prosecutors in contempt for making baseless allegations against him.
 - a. The applications to set aside were dismissed. One judge pointed out that Mr Feeney admitted he swore a false affidavit when consenting to contempt finding. Neither decision was appealed.
 - b. The applications to find Crown prosecutors in contempt were struck as an abuse of process in December 2020: 2020 ABQB 759 at para 13-17.
2. A statement of claim alleging malicious prosecution against a Crown prosecutor, the Calgary Police and Mr ter Kuile, issued May 2018 (QB 1801-6777).
 - a. A Master summarily dismissed the action in September 2018, finding the Crown had reasonable and probable grounds for proceeding on a charge of perjury: 2019 ABQB 751 (Prowse Decision).
 - b. An appeal of this decision to a justice of the Court of Queen's Bench was dismissed in February 2020.
 - c. An appeal of the chambers judge's decision to this Court was dismissed on April 30, 2021: 2021 ABCA 154 (appeal no. 2001-0069AC)
 - d. Mr Feeney applied to re-open the appeal and his argument accused the panel of colluding to circumvent the justice system and similar allegations. The panel denied his application.
 - e. Mr Feeney wrote to the Canadian Judicial Council, this Court and politicians alleging that the panel members had violated their oaths, were biased and grossly negligent.
 - f. Mr Feeney tried to file another application, criticizing the panel in similar terms and seeking a judicial review of the panel's decision. That filing was rejected.
 - g. Mr Feeney emailed the Court alleging that the panel's refusal to re-hear his appeal was negligent and obstructive of justice and wrote a letter to the Chief Justice of Alberta making similar complaints.

3. Mr Feeney filed two Notices of Question of Constitutional Law (one in his application to have Crown prosecutors found in contempt, and one in his malicious prosecution action after it had been appealed and dismissed by the Court of Queen's Bench) claiming that the Alberta Prosecution Service's triage protocol violated his *Charter* rights: 2020 ABQB 641 at para 75.
 - a. Rooke ACJ became the case management judge in September 2020. He struck out the constitutional notices on October 22, 2020: 2020 ABQB 641 at paras 81-83.
4. In September 2020, Mr Feeney filed a statement of claim against Alberta and Crown prosecutors alleging that the triage protocol and the consent order are tortious or otherwise entitle him to relief (QB 2001-10045).
 - a. Rooke ACJ decided that the claim had features that engaged QB Civil Practice Note 7 and asked Mr Feeney to respond to its defects: 2020 ABQB 572.
 - b. Mr Feeney did not respond on time and the action was struck as an abuse of process and hopeless on October 20, 2020: 2020 ABQB 633 at para 5. Around this time, Mr Feeney sent a letter to a number of Justices and elected officials complaining about Rooke ACJ: 2020 ABQB 633 at para 5.
 - c. Mr Feeney has appealed the decision to this Court (appeal 2001-0223AC). This appeal has not been heard
5. On September 30, 2020, Mr Feeney made various applications in QB 1701-13254 and 1801-06777, including asking Rooke ACJ to recuse himself from matters involving Mr Feeney and to quash the contempt finding: 2020 ABQB 641 at paras 3, 5 and 38-40.
 - a. Before the applications were heard, Mr Feeney sent correspondence to Rooke ACJ alleging corruption, bias, disregard for the law, indicating that he considered the Court's orders illegitimate, asking for Rooke ACJ's resignation and notifying Rooke ACJ that he had made a complaint to the Canadian Judicial Council: 2020 ABQB 641 at paras 7-11.
 - b. Rooke ACJ also received emails from someone claiming to be a representative of Mr Feeney alleging that an "associate of Mr Rooke" and a lawyer tampered with Mr Feeney's vehicle causing a "horrible accident": 2020 ABQB 641 at paras 88-89.
 - c. On October 22, 2020, Rooke ACJ dismissed the applications and found that Mr Feeney was engaging in various kinds of litigation misconduct: 2020 ABQB 641. As noted, Rooke ACJ also struck Mr Feeney's Notices of Questions of Constitutional Law on that date (see above).

- d. Mr Feeney has appealed the decisions dismissing his applications and striking the Notices of Questions of Constitutional Law in relation to the Calgary Police Service triage protocol (2001-0205AC). This appeal is outstanding.
6. Having appealed Rooke ACJ's October 22, 2020 decision, Mr Feeney filed an application for judicial review. Rooke ACJ ordered that it not be filed: 2021 ABQB 169. Among the reasons were that Mr Feeney was "judge shopping" and the application was hopeless: 2021 ABQB 169 at paras 9, 17.
 - a. Mr Feeney has appealed Rooke ACJ's decision (appeal no. 2101-0075AC). That appeal has not yet been heard.
7. There are three remaining appeals to this Court (appeal nos. 2101-0075AC, 2001-0223AC and 2001-0204AC) which will be heard together.
 - a. Mr Feeney has asked for various matters to be heard with them, including the appeal already decided. He sought a case conference with the Chief Justice of Alberta asking for the entire Court to be declared "functus".
 - b. He has brought interlocutory applications in these appeals:
 - (i) An application decided by Rowbotham, J. on February 3, 2021 (2021 ABCA 71) which addresses the following matters: (1) a stay of costs pending his appeals; (2) denying an order compelling the Minister of Justice to conduct a complete review of all matters of all accused persons resolved after the institution of the triage protocol; (3) an order compelling his former domestic partner to give evidence about how and why certain representations were made to court; (4) an order removing his former domestic partner from the style of cause; (5) an order allowing "any party to partake in the appeals, in any way, shape or form"; (6) a writ of mandamus or quo warranto directing Rooke, ACJ to deliver more reasons and; (7) filing an extension of time in two of the outstanding appeals. The application to stay costs was granted on consent and to make some changes to the style of cause was granted but the rest of the applications were denied.
 - (ii) An application before Strekaf J on May 12, 2021 (2021 ABCA 185) in Appeal No 2101-0075AC to correct a typo in the style of cause, to add the Calgary Police Service as a party and direct that the three appeals be heard in a certain order. The style of cause was corrected but the rest of the applications were dismissed.

- (iii) An application before Strekaf, J on June 8, 2021 to add parties to the outstanding appeals and for a case conference with the Chief Justice. The decision on that application has been reserved.

8. Mr Feeney sued Alberta in Federal Court in February 2020. This was struck for lack of jurisdiction in September 2020. In May 2021, he filed a new claim in Federal Court alleging malice and obstruction of justice by Alberta Crown prosecutors and levelling several allegations against “Alberta Superior Court Justices”, including ignorance of the law, gross negligence and a suggestion that judges ought to be held criminally liable.

D. The test for making a vexatious litigant order

[18] Under 23.1(1) of the *Judicature Act*, if a Court is satisfied that a person is instituting vexatious proceedings in the Court or is conducting a proceeding in a vexatious manner, the Court may order that:

- (a) the person shall not institute a further proceeding or institute proceedings on behalf of any other person, or
- (b) a proceeding instituted by the person may not be continued, without the permission of the Court.

[19] Section 23(2) gives a partial definition of “instituting vexatious proceedings or conducting a proceeding in a vexatious manner” as including one or more of:

- (a) persistently bringing proceedings to determine an issue that has already been determined by a court of competent jurisdiction;
- (b) persistently bringing proceedings that cannot succeed or that have no reasonable expectation of providing relief;
- (c) persistently bringing proceedings for improper purposes;
- (d) persistently using previously raised grounds and issues in subsequent proceedings inappropriately;
- (e) persistently failing to pay the costs of unsuccessful proceedings on the part of the person who commenced those proceedings;
- (f) persistently taking unsuccessful appeals from judicial decisions; or
- (g) persistently engaging in inappropriate courtroom behaviour.

Alberta and Mr ter Kuile do not rely on s 23(2)(e) or (f).

[20] If the Court finds that the litigant has persistently engaged in one or more of the types of behaviour listed in s 23(2), it may issue a vexatious litigant order (as set out in s 23.1) but it does not have to. Vexatious litigant orders should only be made when other procedural techniques would be inadequate and the offensive conduct is persistent: *Lymer v Johnson*, 2020 ABCA 167 at para 85.

[21] If vexatious litigant orders are to be made, the restrictions should be focussed on the particular litigant, proportional to the problematic conduct and no wider than is necessary: *Lymer v Johnson* at para 85. The Court should consider whether case management orders can resolve the issues.

E. The positions of the parties

[22] Alberta and Mr ter Kuile argue that the litigation history set out above shows the following reprehensible litigation conduct:

1. Starting multiple actions or appeals attempting in some way to attack the contempt finding.
2. Refusing to accept the legitimacy of unfavourable decisions, including by (a) making unsubstantiated allegations of conspiracy, bias or criminal conduct and (b) relitigating issues and collaterally attacking earlier decisions.
3. Making hopeless and abusive applications and often resorting to claims against other parties when unsuccessful.
4. Engaging in “judge shopping”, seeking relief before one judge that has already been denied by another and refusing to take responsibility for that conduct.
5. Misrepresenting facts and past decisions to obtain the relief he wants.
6. A pattern of meritless complaints about judges to the Canadian Judicial Council.
7. Demonstrating a clear unwillingness to accept decisions that are not in his favour and end to his pattern of litigation misconduct.

[23] One general lesson the applicants want this Court to draw from Mr Feeney’s litigation history is that he has been engaging in persistent litigation misconduct for a long time. To support that, they refer to remarks of Rooke ACJ in 2020 ABQB 641 at para 94 and 2021 ABQB 169 at para 17.

[24] Mr Feeney argues that he is self-represented and a passionate advocate for his rights. While he may have made some missteps or taken an inappropriate tone in his communication with the

Court because of certain medical conditions (which is not substantiated by evidence in this application), that does not make him a vexatious litigant.

III. Analysis

[25] The key questions are whether Mr Feeney has engaged in any of the types of conduct set out in s 23(2) of the *Judicature Act* and whether that conduct has been persistent.

[26] As noted, Alberta and Mr ter Kuile are not alleging that Mr Feeney is persistently bringing unsuccessful appeals. Indeed, I am not analyzing the merits of any appeals that remain before this Court.

[27] Alberta and Mr ter Kuile have asked this Court to make a vexatious litigant order restricting Mr Feeney's access to both the Court of Queen's Bench and the Court of Appeal.

[28] I decline to make any order with respect to the Court of Queen's Bench, for two reasons. First, there does not appear to be any extant litigation with these parties or these issues in the Court of Queen's Bench. Having reviewed the record in these matters, I am concerned some of Mr Feeney's litigation conduct in the Court of Queen's Bench would potentially fall under the definition of conducting proceedings in a vexatious manner in s 23(2) of the *Judicature Act*. However, given there are currently no related outstanding matters, I am not persuaded Mr Feeney will continue to conduct litigation in a vexatious manner in the future in the Court of Queen's Bench.

[29] Second, and perhaps more importantly, the Court of Queen's Bench is in the best place to determine how to manage the litigants before it. I note that Rooke ACJ has commented on Mr Feeney's litigation conduct on two occasions. In a 2020 decision he made it clear that the court would not evaluate whether Mr Feeney's conduct was vexatious, in the absence of an application from one of the parties: 2020 ABQB 641 at para 94. Then, earlier this year he observed:

Mr Feeney is continuing his pattern of persistent litigation misconduct documented in *Feeney v Alberta*, 2020 ABQB 572, action was struck as abusive 2020 ABQB 633, *Simon v Feeney* (1) and *Feeney v Simon*, 2020 ABQB 759. Mr Feeney is ignoring the Court's case management orders. Mr Feeney has attempted to circumvent the Case Management procedure. Factually, Case Management has failed with Mr Feeney. His most recent filings demonstrate that, despite the Court putting in place an apparatus to better manage Mr Feeney's persistent abusive litigation, Mr Feeney has continued to cause purposeless futile litigation that wastes the Court's resources from the clerks through to the Chief Justice herself.

Feeney v Simon, 2021 ABQB 169 at para 17.

[30] Neither the applicants nor anyone else has asked Rooke ACJ or any other Justice of the Court of Queen's Bench to make a vexatious litigant order against Mr Feeney. That Court is in the best position to assess what remedial tools are available and would be proportionate and effective. To forestall any misunderstanding, my refusal to grant a vexatious litigant order against Mr Feeney in relation to Court of Queen's Bench proceedings should not be taken as a comment on the merits of such an order if one is sought in that Court in the future.

[31] I am satisfied that the record establishes that Mr Feeney has been conducting proceedings in this Court in a vexatious manner.

[32] Section 23(2)(g) of the *Judicature Act* refers to persistently engaging in inappropriate courtroom behaviour as an example of conducting proceedings in a vexatious manner. The list in s 23(2) is not exhaustive and by analogy the Court can also consider the conduct of a litigant out of the courtroom but still engaged with the Court.

[33] There are instances of persistent inappropriate out-of-court conduct on this record:

- Mr Feeney has refused to accept the decision of the panel of this Court dismissing his malicious prosecution appeal. After the decision was issued, he wrote a letter and an email insisting the panel made mistakes and demanding they be corrected. He also wrote an email requesting judicial review of the panel's decision. The case management officer replied by letter and email on May 4, 2021, that the panel would not engage in a point by point discussion of the correctness of the decision and "judicial review" of the panel's decision was not available.
- On May 4, 2021, Mr Feeney brought an application to re-argue and re-open the malicious prosecution appeal on grounds of "factual areas in judgment, failure to address *Charter* violations and errors of the panel in relation to what the appeal was actually about". On May 6, 2021, he wrote to ask for a different panel to hear his application to re-open the appeal. Then, on May 12, 2021, the original panel dismissed the application to re-open and the case management officer informed Mr Feeney of that decision in a letter. The letter informed Mr Feeney that the matter was closed and that any further applications should be made to the Supreme Court of Canada.
- Nevertheless, Mr Feeney continued to write to the case management officer over the next few days including to advise that he was making an application to the Lieutenant Governor in Alberta to refer the matter to the Supreme Court of Canada.
- Mr Feeney's interactions with the Court's case management officer have been particularly problematic. As one example, on May 14, 2021, Mr Feeney emailed the case management officer alleging that she had denied his application to re-open the appeal without authority and stated that there were ongoing RCMP investigations into her conduct. He also accused the case management officer of "obstructing justice" and

“perverting the justice system”, called her a “rogue Crown actor” and noted that she lacked judicial immunity (which was a thinly veiled threat to sue her or try to have her found criminally liable). All of that was clearly inappropriate. The case management officer and other Court staff were simply acting on the panel’s direction that the malicious prosecution appeal was complete and that any further applications must be made to the Supreme Court of Canada.

- On May 27, 2021, the Registrar of the Court of Appeal had to impose a communications protocol with Mr Feeney to restrict the abuse and harassment of Court staff.

[34] In addition, much of the conduct just described falls within s 23(2)(a) of the *Judicature Act* – persistently bringing proceedings to determine an issue that has already been decided.

[35] Both of these conclusions are bolstered by Mr Feeney’s litigation conduct since May 2018 in the Court of Queen’s Bench as set out in Section C and the Appendix to these reasons.

[36] As such, a declaration is issued that Mr Feeney has been conducting the proceedings in this Court in a vexatious manner, contrary to s 23.1 of the *Judicature Act*. The question then arises whether an order restricting his access to this Court is appropriate. Based on this record, there is no expectation that Mr Feeney will voluntarily change his litigation behaviour in this Court. There is no indication he recognizes there is anything wrong with it. Rather, he believes he is just being a vocal advocate for his rights.

[37] The problems caused by Mr Feeney’s litigation misconduct are various. He has taken up a huge amount of time and resources of the Court and the parties. He has intimidated or attempted to intimidate Court staff in carrying out their duties and judges who have ruled against him.

[38] As explained, at this stage, I am not prepared to impose any restrictions on Mr Feeney’s access to the Court of Queen’s Bench. However, I direct that Mr Feeney shall not institute further proceedings on his own behalf, or any other person in the Court of Appeal without the permission of a judge of this Court. While this order will not affect the hearing of any of the appeals outstanding in this Court, it does affect any interlocutory applications he may seek to bring in relation to those appeals.

Application heard on June 23, 2021

Reasons filed at Calgary, Alberta
this 12th day of July, 2021

Khullar J.A.

Appearances:

C.R. Hykaway

T. Dooley (no appearance)

for the Respondent, Her Majesty the Queen in the Right of Alberta

C.N. Sinclair

for the City of Calgary, Law Department

Applicant, In Person

Appendix

Queen's Bench	Court of Appeal
Civil Contempt Action – 1701-13254	Civil Contempt Action – 2001-0205AC
<u>Parties:</u> Feeney v Kristina Simon, Her Majesty the Queen in the Right of Alberta (Third Party Applicant) & the Law Society of Alberta (Intervenor) Feeney v Calgary Police Service, Mike ter Kuile, Her Majesty the Queen in the Right of Alberta (Third Party Applicant) & the Law Society of Alberta (Intervenor)	<u>Parties:</u> Feeney v Alberta Justice and Solicitor General for Her Majesty the Queen in the Right of Alberta Feeney v Her Majesty the Queen in the Right of Alberta, Joe Mercier, Gianna Argento and Collin Schulhauser Feeney v The Honourable Associate Chief Justice Rooke, The Honourable Kaycee Madu, Minister of Justice and Solicitor General of Alberta and The Honourable David Lametti, Minister of Justice and Attorney General of Canada
<u>Decisions:</u> • October 4, 2017: Mr. Feeney swore a false affidavit in an EPO proceeding and was charged with Perjury; however, resolved that charge by way of consent order for civil contempt (the “Contempt Order”) ○ The Contempt Order was not appealed	<u>Appealing:</u> 1701-13254 • Simon v Feeney, 2020 ABQB 641 • Notice of Appeal filed on October 30, 2020
	<u>Status:</u> outstanding, unscheduled

• On two subsequent occasions Mr. Feeney applied to set aside the Contempt Order in May and August of 2019 ○ June 12, 2019: set aside application 1 was dismissed by Justice Sullivan ○ October 18, 2019: set aside application 2 was dismissed by Justice Anderson ○ Neither dismissal was appealed • August 1, 2019: Mr. Feeney’s set aside application 2 included an application to hold two Crown prosecutors in contempt, Justice Anderson stayed this application • Mr. Feeney filed a Law Society of Alberta complaint against at least one Crown prosecutor, the Crown prosecutor was directed to provide a response (“LSA document”), the complaint was dismissed • February 21, 2020: Mr. Feeney filed an affidavit attaching the LSA document • February 27, 2020: Mr. Feeney filed a Notice of Question of Constitutional Law challenging the “Triage Protocol” • March 2020: HMQ and LSA filed an application to limit access to the LSA document, granted interim relief	<u>Grounds:</u> • Improper finding of contempt against Mr. Feeney, which violates Section 11(g) of the <i>Charter</i> • Rooke ACJ’s decision to strike Mr. Feeney’s constitutional challenges and other applications • Rooke ACJ’s conduct, such as making unilateral decisions in favor of HMQ and ignoring Rules of Court <u>Applications:</u> • January 4, 2021: Mr. Feeney made an application in this appeal and 2001-0223AC for: ○ (1) a stay of enforcement on all costs; ○ (2) an order compelling the Minister of Justice to conduct a full and complete review of all matters (of all accused persons) resolved after the institution of the Triage Protocol; ○ (3) An order compelling his former domestic partner to give evidence about how and why HMQ made certain representations to the court;
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• August 17, 2020: HMQ applied for case management, Rooke ACJ was assigned as the case management justice • September 10, 2020: Rooke ACJ confirmed in a Case Management Order that the Court of Queen's Bench had no further jurisdiction to deal with the Contempt Order • September 30, 2020: Mr. Feeney applied for a number of things including the recusal of Rooke ACJ, quashing of the Contempt Order, schedule a hearing for Charter relief • October 22, 2020: Rooke ACJ dealt with all the outstanding applications in Mr. Feeney's Queen's Bench actions: (1) recusal application, (2) quashing of Contempt Order, (3) Charter relief, (4) outstanding contempt allegations against two Crown prosecutors, (5) HMQ application to remove LSA document, and (6) the Notice of Question of Constitutional Law in this action and 1801-06777 ○ Rooke ACJ held: (1) dismissed for lack of grounds and judge shopping, (2) dismissed as Queen's Bench was <i>functus</i> and this was a collateral attack, (3) dismissed as no <i>Charter</i> breach alleged, (4) order for contempt application to proceed on a	○ (4) an order removing his former domestic partner from the style of cause; ○ (5) an order allowing "any party to partake in the appeals, in any way, shape or form"; ○ (6) a writ of mandamus or <i>quo warranto</i> directing Rooke ACJ to deliver more reasons; and ○ (7) an extension of the times lines in 2001-0205AC and 2001-0223AC • February 22, 2021: Rowbotham J held: ○ (1) HMQ consented to the stay for the Contempt Action and Triage Protocol Action, stay of costs granted; ○ (2) dismissed for lack of jurisdiction; ○ (3) dismissed; ○ (4) allowed; ○ (5) dismissed; ○ (6) dismissed due to judicial immunity and for being a collateral attack; and
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document-only basis, (5) granted remove of LSA document, and (6) dismissed as no <i>Charter</i> breach was alleged and this was a defective and abusive pleading ○ Simon v Feeney, 2020 ABQB 641 • December 4, 2020: Rooke ACJ decided the application to hold two civil prosecutors in contempt, Mr. Feeney failed to submit any written materials, and the application was dismissed ○ Feeney v Simon, 2020 ABQB 759 • February 26, 2021: Mr. Feeney attempted to file a judicial review of 2020 ABQB 759 by way of Originating Application • March 3, 2021: Mr. Feeney's attempted filing of Originating application was denied ○ Rooke ACJ found that this filing breached the Case Management Order, and that Mr. Feeney was engaging in Judge shopping, attempting to avoid the case management, and abusing the court's process ○ Feeney v Simon, 2021 ABQB 169	○ (7) did not grant additional time, and held all outstanding appeals would be heard together, and removed CPS and Mr. ter Kuile from 2001-0205AC ○ Feeney v Alberta, 2021 ABCA 71
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<u>Other:</u> - September 2020: Mr. Feeney sent various correspondence to Rooke ACJ and his judicial assistant alleging bias and improper conduct - October 5, 2020: Mr. Feeney sent correspondence to Fraser CJA and political leaders complaining of Rooke ACJ's conduct - October 13, 2020: Mr. Feeney filed a complaint against Rooke ACJ to the CJC - October 20, 2020: someone purporting to be an associate of Mr. Feeney sent an email to Rooke ACJ alleging that Rooke ACJ had instructed individuals to tamper with Mr. Feeney's vehicle resulting in a car accident	<u>Other:</u> - May 18, 2021: Mr. Feeney emailed the Court of Appeal CMO to have errors corrected in 2021 ABCA 71, was advised to file an application pursuant to Rule 9.12, no application made - May 18, 2021: Mr. Feeney requested case conference with Fraser CJA under Rule 4.12 with regard to all appeals (including 2001-0069AC which is closed), was advised that Rule 4.12 does not allow litigants to request case conferences; request was denied - May 27, 2021: After continued correspondence with the Court, Mr. Feeney was placed on a communication protocol
Malicious Prosecution Action – 1801-06777	Malicious Prosecution Action – 2001-0069AC
<u>Parties:</u> Feeney v Calgary Police Service, Mike ter Kuile, Mac Vomberg	<u>Parties:</u> Feeney v Calgary Police Service and Mike ter Kuile Feeney v Mac Vomberg Feeney v Her Majesty the Queen Feeney v The Law Society of Alberta
<u>Decisions:</u> May 11, 2018: Mr. Feeney initiated the action	

- September 26, 2019: Master Prowse summarily dismissed the action against CPS and Mr. ter Kuile - The action against Mr. Vomberg was previously discontinued - Mr. Feeney applied to amend his statement of claim to expressly plead malicious prosecution; allowed - CPS and Mr. ter Kuile applied to strike or summarily dismiss the claim; summary dismissal allowed - Summary dismissal was granted as there was a lack of reasonable grounds to Mr. Feeney's claim, and other claims asserted were barred by the <i>Limitations Act</i> Feeney v Calgary Police Service, 2019 ABQB 751 - October 18, 2019: Mr. Feeney filed an appeal of Master Prowse's summary dismissal - February 18, 2020: Justice Jeffrey dismissed Mr. Feeney's appeal of Master Prowse's decision - February 21, 2020: Mr. Feeney filed an affidavit attaching the LSA document - February 27, 2020: Mr. Feeney filed a Notice of Question of Constitutional Law challenging the "Triage Protocol"	<u>Appealing:</u> 1801-06777 Feeney v Calgary Police Service, 2019 ABQB 751 - Notice of Appeal filed March 13, 2020 <u>Status:</u> dismissed (April 30, 2021) Feeney v Calgary Police Service, 2021 ABCA 154 <u>Grounds:</u> - Appealing Master Prowse's summary dismissal of the Malicious Prosecution Action <u>Applications:</u> - July 6, 2020: Mr. Feeney applied to include the LSA document in the appeal - July 10, 2020: HMQ applied to intervene with regard to the LSA Document - July 13, 2020: the LSA applied to intervene with regard to the LSA Document - Hughes J held the LSA Document could be submit as fresh evidence; however, a fresh evidence application would need to be considered by the
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• March 2020: HMQ and the LSA filed an application to limit access to the LSA document, granted interim relief • August 17, 2020: HMQ applied for case management, Rooke ACJ was assigned as the case management justice • September 30, 2020: Mr. Feeney applied for a number of things including the recusal of Rooke ACJ • October 22, 2020: Rooke ACJ dealt with all the outstanding applications in Mr. Feeney's Queen's Bench actions: ○ See above ○ Simon v Feeney, 2020 ABQB 641 • February 26, 2021: Mr. Feeney attempted to file a judicial review of 2020 ABQB 759 by way of Originating Application • March 3, 2021: Mr. Feeney's attempted filing of Originating application was denied ○ See above ○ Feeney v Simon, 2021 ABQB 169	panel, and allowed intervenor status on the fresh evidence application ○ <i>Feeney v Calgary Police Services</i>, 2020 ABCA 288 • May 5, 2021: Mr. Feeney applied to have the appeal reopened and reargued, this was dismissed
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<u>Other:</u> • September 2020: Mr. Feeney sent various correspondence to Rooke ACJ and his judicial assistant alleging bias and improper conduct (2020 ABQB 641) • October 5, 2020: Mr. Feeney sent correspondence to Fraser CJA and political leaders complaining about Rooke ACJ's conduct (2020 ABQB 641) • October 13, 2020: Mr. Feeney filed a complaint against Rooke ACJ to the CJC (2020 ABQB 641) • October 20, 2020: someone purporting to be an associate of Mr. Feeney sent an email to Rooke ACJ's judicial assistant alleging that Rooke ACJ had instructed individuals to tamper with Mr. Feeney's vehicle resulting in a car accident (2020 ABQB 641)	<u>Other:</u> • July 14, 2020: Mr. Feeney wrote to the Ministers of Justice for Canada and Alberta informing them of the application to include LSA materials and applications to intervene • August 5, 2020: Mr. Feeney emailed the Court of Appeal CMO to have errors corrected in 2020 ABCA 288, was denied • October 6, 2020: Mr. Feeney wrote to Fraser CJA, other justices and political leaders complaining of Rooke ACJ's conduct • May 6, 2021: Mr. Feeney wrote to this Court, Fraser CJA and the Minister of Justice requesting the appeal be re-opened • May 18, 2021: Mr. Feeney requested case conference with Fraser CJA under Rule 4.12 with regard to all appeals (including 2001-0069AC), was advised that Rule 4.12 does not allow litigants to request case conferences, request was denied
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Triage Protocol Action – 2002-10045	Triage Protocol Action – 2001-0223AC
<u>Parties:</u> Feeney v Her Majesty the Queen in the Right of Alberta, Joe Mercier, Gianna Argento and Collin Schulhauser	<u>Parties:</u> Feeney v Alberta Justice and Solicitor General for Her Majesty the Queen in the Right of Alberta, Calgary Police Service and Mike ter Kuile
<u>Decisions:</u> - September 14, 2020, Mr. Feeney initiated this action - Rooke ACJ became case management justice for this action - September 30, 2020: action was stayed by Rooke ACJ, and became subject to the Civil Practice Note 7 process - Mr. Feeney’s statement of claim did not provide particulars of alleged negligence, <i>Charter</i> breaches or nuisance, and the claims for damages were characteristic of a hopeless action and abuse of process - Mr. Feeney was given 14-days to respond to the questions posed under Civil Practice Note 7 Feeney v Alberta, 2020 ABQB 572 - October 20, 2020: Rooke ACJ struck the claim as hopeless and an abuse of the Court’s process	Feeney v Her Majesty the Queen in the Right of Alberta, Joe Mercier, Gianna Argento and Collin Schulhauser Feeney v The Honourable Associate Chief Justice Rooke, The Honourable Kaycee Madu, Minister of Justice and Solicitor General of Alberta and The Honourable David Lametti, Minister of Justice and Attorney General of Canada
	<u>Appealing:</u> 2002-10045 Feeney v Alberta, 2020 ABQB 633 - Notice of Appeal filed on November 19, 2020
	<u>Status:</u> outstanding, unscheduled
	<u>Grounds:</u> Rooke ACJ’s decision to strike statement of claim

○ Mr. Feeney did not respond to the Civil Practice Note 7 questions by the deadline proscribed ○ Feeney v Alberta, 2020 ABQB 633	• Address Rooke ACJ's conduct in managing the litigation <u>Applications:</u> • January 4, 2021: Mr. Feeney made an application in this appeal and 2001-0205AC ○ See above ○ Feeney v Alberta, 2021 ABCA 71
<u>Other:</u> • October 5, 2020: Mr. Feeney sent a letter to a number of Justices and elected officials complaining of improper conduct by Rooke ACJ	<u>Other:</u> • May 18, 2021: Mr. Feeney emailed the Court of Appeal CMO to have errors corrected in 2021 ABCA 71, was advised to file an application pursuant to Rule 9.12, no application made • May 18, 2021: Mr. Feeney requested case conference with Fraser CJA under Rule 4.12 with regard to all appeals (including 2001-0069AC which is closed), was advised that Rule 4.12 does not allow litigants to request case conferences; request was denied • May 27, 2021: After continued correspondence with this Court, Mr. Feeney was placed on a communication protocol

	Judicial Review – 2101-0075AC
	<u>Parties:</u> Feeney v Her Majesty the Queen in Right of Alberta
	<u>Appealing:</u> 1701-13254 & 1801-06777 • Feeney v Simon, 2021 ABQB 169 • Notice of Appeal filed March 29, 2021
	<u>Status:</u> outstanding, unscheduled
	<u>Grounds:</u> • Filing of Originating Application for judicial review was improperly denied by Rooke ACJ • The unfiled application was “inappropriately” separated into the two QB actions which were already concluded • Rooke ACJ acted autonomously and above the law
	<u>Applications:</u> • April 14, 2021: Mr. Feeney applied for a number of things including: (1) correct a spelling error in style of cause, (2) direct this appeal to be heard before 2001-0205AC and 2001-0223AC, and (3) amend Notice of Appeal to add CPS

	• May 17, 2021: Strekaf J held: ○ (1) allowed spelling correction, (2) all appeals directed to be heard together, (3) dismissed application to include CPS and Mr. ter Kuile ○ <i>Feeney v Her Majesty the Queen in Right of Alberta</i>, 2021 ABCA 185 • June 7, 2021: HMQ applied for a Vexatious Litigant Order • June 9, 2021: Mr. Feeney applied to (1) add CPS and Mr. ter Kuile as parties, (2) refer all appeals for case conference with Fraser CJA, and (3) order parties to attend questioning ○ June 8, 2021: The application to add parties and refer appeals to case conference was heard by Strekaf J, the decision remains on reserve ○ June 23, 2021: The applications for a Vexatious Litigant Order and questioning were heard by Khullar J (this decision)
	<u>Other:</u> • May 17, 2021: Mr. Feeney emailed the Court of Appeal CMO to have errors corrected in 2021 ABCA 185, was advised to file an application under to Rule 9.12, no application was made

	• May 18, 2021: Mr. Feeney requested case conference with Fraser CJA with regard to all appeals (including 2001-0069AC), was advised that Rule 4.12 does not allow litigants to request case conferences; request was denied • May 27, 2021: After continued correspondence with this Court, Mr. Feeney was placed on a communication protocol
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