

August 24, 2026

WHAT MAKES A VEXATIOUS LITIGANT? OS CJ HIGHLIGHTS BOTH DETERMINATIVE AND NON-DETERMINATIVE FACTORS

By [Max Libman](#) and Julie Reiken (Student)

In [*Wang vs. Banton 2026 ONSC 1553*](#), a defendant moved for an order to restrain the plaintiff from initiating or pursuing further interlocutory proceedings within the main action. The Court granted the order and, in doing so, provided helpful insights into the kinds of conduct that the Court will (and will not) consider to be vexatious in determining motions of this nature.

The plaintiff sued the defendant in for damages stemming from a motor vehicle accident. In 2022, the plaintiff attended a psychiatry assessment scheduled by the defendant. The defendant also hired an interpreter to help the plaintiff communicate with the psychiatrist. After the assessment, the plaintiff demanded that the defendant disclose the interpreter's name, contact information and photo I.D. The defendant provided the name, but did not provide the other requested information.

In 2023, the plaintiff brought a motion to compel the defendant to produce the interpreter's contact information and photo I.D. During this time, the plaintiff also began blind copying non-parties on all his correspondence with the defendant's counsel, including several law firms that had nothing to do with the action. The plaintiff also served various motion materials on defendant's counsel multiple times from multiple different email addresses.

The motion was dismissed by Associate Justice McAfee in 2024 with costs ordered against the plaintiff. The plaintiff did not pay this costs award and had failed to pay other costs awards stemming from prior interlocutory motions. The plaintiff's appeal of Justice McAfee's order to Justice Shore of the Ontario Superior Court of Justice was dismissed. The plaintiff then sought leave to appeal Justice Shore's decision, at which point the defendant moved for an order preventing the plaintiff from taking any further interlocutory steps in the action without leave of the court, pursuant to Section 140 of the *Courts of Justice Act*.

The defendant argued that the order was justified based on four categories of allegedly vexatious conduct: 1) the plaintiff having been declared a vexatious litigant in prior, unrelated proceedings; 2) the plaintiff's failure to pay costs awards from his unsuccessful appeals; 3) the plaintiff's frequent unsuccessful appeals of prior interlocutory decisions; and 4) the plaintiff's blind copying of outside parties on his correspondence and frequent, repetitive service of documents.

The Court granted the order, but did so based only on the third and fourth categories. The Court held that any prior declarations that the plaintiff was vexatious in unrelated proceedings were not determinative of whether the plaintiff was vexatious in this case. The Court also held that the plaintiff's failure to pay costs awards was not vexatious, as the plaintiff was on social assistance.

On the other hand, the Court found that the plaintiff's attempts to appeal Justice McAfee's decision were vexatious, as his demands for the private interpreter's contact information were not relevant to the underlying action. The Court also held that the plaintiff's blind copying of numerous unrelated parties on correspondence to defendant's counsel and general flooding of defendant's counsel's inbox with motion materials constituted vexatious behaviour. This conduct on its own was sufficient to order that the plaintiff not institute any new motions or appeals in the action without leave.

The Court's decision in this case shows that some forms of conduct that may seem vexatious on their face (such as prior declarations of vexatiousness or failure to pay costs awards) will not necessarily be sufficient to restrain a plaintiff's ability to seek interlocutory relief within an action. When seeking such an order, counsel should focus on demonstrating that the opposing party engaged in conduct within the action that had the specific goal of inconveniencing, disrupting, harming or aggrieving their client.