Windsor Yearbook of Access to Justice
Recueil annuel de Windsor d'accès à la justice

Rule 2.1 of Ontario's Rules of Civil Procedure: Responding to Vexatious Litigation While Advancing Access to Justice?

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Volume 35, 2018

URI: https://id.erudit.org/iderudit/1057074ar
DOI: https://doi.org/10.22329/wyaj.v35i0.5691

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Publisher(s)

Faculty of Law, University of Windsor

ISSN

2561-5017 (digital)

Explore this journal

Cite this article

Kennedy, G. (2018). Rule 2.1 of Ontario's Rules of Civil Procedure: Responding to Vexatious Litigation While Advancing Access to Justice? *Windsor Yearbook of Access to Justice / Recueil annuel de Windsor d'accès à la justice*, *35*, 243–303. https://doi.org/10.22329/wyaj.v35i0.5691

Article abstract

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Rule 2.1 of Ontario's *Rules of Civil Procedure*: Responding to Vexatious Litigation While Advancing Access to Justice?

Gerard J. Kennedy*

This article analyzes the first three years of the operation of Rule 2.1 of Ontario's Rules of Civil Procedure (the "Rule"), which allows a court to very summarily dismiss litigation that is "on its face" frivolous, vexatious, and/or abusive. The author explores the history of and rationale for the Rule, in the context of the access to justice crisis in Ontario, and in light of the perceived inadequacy of alternative mechanisms for addressing the dangers raised by vexatious litigants. He then reviews all 190 Rule 2.1 decisions decided between July 1, 2014 and June 30, 2017, with the goal to provide guidance for future lawyers and judges considering using the Rule. This is followed by an analysis of the effects on access to justice of the Rule, in terms of providing speedy and cost-efficient resolution of actions on their merits. The author concludes by considering how the Rule should be used in the future – doctrinally, institutionally, and ethically. His conclusions are hopeful. The Rule is powerful, and its use should prompt some pause in judges and lawyers. By and large, however, the Rule has been very well employed. It has resulted in immense savings of time and financial expense and many cases model fairness to vulnerable parties. In rare instances where the Rule's (attempted) use has been inappropriate, costs in terms of delay and financial expense are usually minimal. The Rule is ultimately an inspiring example of how civil procedure can be amended to facilitate access to justice.

Cet article analyse les trois premières années sous le régime de la règle 2.1 des Règles de procédure civile *de l'Ontario (la « Règle »), qui permet à un tribunal de rejeter très sommairement une poursuite qui est, « à première vue », frivole, vexatoire ou abusive. L'auteur étudie l'historique et la raison d'être de la Règle dans le contexte de la crise de l'accès à la justice en Ontario et de l'insuffisance perçue des autres mécanismes de lutte contre les dangers créés par les plaideurs quérulents. Il examine ensuite chacune des 190 décisions rendues en vertu de la règle 2.1 entre le 1er juillet 2014 et le 30 juin 2017, dans le but de formuler des conseils pour les avocats et les juges qui envisageront d'invoquer la règle dans l'avenir. Cette étude est suivie d'une analyse des effets de la Règle sur l'accès à la justice pour ce qui est de la résolution rapide et économique des litiges quant au fond. L'auteur conclut en examinant comment la Règle devrait être utilisée dans l'avenir sur le plan de la doctrine, des institutions et de l'éthique. Ses conclusions sont empreintes d'espoir. La Règle est puissante, et son utilisation devrait être un sujet de réflexion pour les juges et les avocats. Dans l'ensemble, toutefois, la Règle a été très bien utilisée. Elle a permis d'énormes économies de temps et d'argent, et bien des cas constituent des modèles d'équité pour les parties vulnérables. Dans les rares cas où les tentatives d'utilisation de la Règle étaient inappropriées, les retards occasionnés et les dépenses d'argent ont*

> *généralement été minimes. La Règle est finalement un exemple encourageant de la manière dont la procédure civile peut être modifiée pour faciliter l'accès à la justice.*

> "[The plaintiff] seeks an order requiring the government to: provide him with a job, fix issues concerning his love life, […], allow him to carry a weapon for personal safety, […], and to provide the plaintiff with a stealth video and audio recording device to record community thugs operating in public in violation of his rights. He also seeks damages in the amount of $151 million."[1]

> "[The plaintiff]'s argument does not deserve respectful treatment. But she does."[2]

Sometimes, the just way to resolve an action is obvious. Enacted in 2014, Rule 2.1 of Ontario's *Rules of Civil Procedure*[3] seeks to combine two potential solutions to Canada's access to justice crisis[4] – civil procedure reform[5] and more active judging[6] – in response to a discrete but real problem in Canadian civil litigation: namely, litigation that is "on its face" frivolous, vexatious, and/or abusive. Cases that fall within Rule 2.1's ambit number in the dozens per year, potentially causing disproportionate expense for responding parties, and wasting significant public resources.[7]

To date, no scholar has investigated Rule 2.1 (the "Rule").[8] In this article, I seek to rectify this gap. In Part I, I explore the history of and rationale for the Rule, in the context of the access to justice crisis in

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1 *Asghar v Ontario*, 2015 ONSC 4071, [2015] OJ No 3326 (SCJ) [*Asghar*] at para 2.

2 *Lin v Rock*, 2015 ONSC 2421, [2015] OJ No 1851 (SCJ) [*Lin*] at para 13.

3 RRO 1990, Reg 194 [the "*Rules*" or the "*Rules of Civil Procedure*" will be used interchangeably].

4 See, e.g. Trevor CW Farrow, "What is Access to Justice?" (2014) 51:3 Osgoode Hall LJ 957 [Farrow, "2014"] at fn 1 for an extensive review of the literature in this area.

5 Ontario extensively amended its civil procedure earlier this decade to facilitate the more timely and inexpensive resolution of civil actions on their merits: O Reg 438/08. This was largely to implement the recommendations of the "Osborne Report": Ontario Ministry of the Attorney General, *Civil Justice Reform Project: Summary of Findings and Recommendations*, by Coulter A Osborne, Nov 2007, at Appendix A (Terms of Reference) & B (Consultation Letter). For a discussion of this, see: Brooke MacKenzie, "Effecting a Culture Shift: An Empirical Review of Ontario's Summary Judgment Reforms" (2017) 54:4 Osgoode Hall LJ 1275 at 1280-1281, fn 18; Janet Walker, "Summary Judgment Has Its Day in Court" (2012) 37 Queen's LJ 697 at 700-701 and 707-708.

6 See e.g. *Hryniak v Mauldin*, 2014 SCC 7, [2014] 1 SCR 87 [*Hryniak*] at paras 74-79.

7 *Raji v Borden Ladner Gervais LLP*, 2015 ONSC 801, [2015] OJ No 307 (SCJ) [*Raji #1*] at para 6.

8 Some law firms have published professional resources on this topic: see, e.g., "WHAT DO I TELL A CLIENT WHO ASKS: What Do I Do When a Debtor files a 'Freeman of the Land' Claim or Motion (Sub Nom: 'Frivolous or Vexatious Claims and Motions – a Rule 2.1 Primer')," online: Papazian | Heisey | Myers <http://www.phmlaw.com/what-do-i-tell-client.pdf>; Kathryn Kirkpatrick & Jeremy Ablaza, "Cautious Use of Rule 2.1 Against Vexatious Claims in Khan v.

Ontario, and in light of the perceived inadequacy of alternative mechanisms provided for in the *Rules* and the *Courts of Justice Act*[9] for addressing the dangers raised by vexatious litigants. In Part II, I analyze all 190 decisions using Rule 2.1 decided between July 1, 2014 and June 30, 2017 to determine how Rule 2.1 has been applied in practice, with the goal to provide guidance for future lawyers and judges considering using the Rule. In Part III, I analyze the effects on access to justice of Rule 2.1, in terms of providing speedy and cost-efficient resolution of civil actions on their merits. In Part IV, I consider how the Rule should be used in the future – doctrinally, institutionally, and ethically.

My conclusions are hopeful. Rule 2.1 is powerful, and its use should prompt some pause in judges and lawyers. By and large, however, the Rule has been very well employed. It has resulted in significant savings of time and financial expense,[10] for both courts and defendants, while almost always being fair to plaintiffs.[11] Despite the Rule's potential to disadvantage self-represented litigants, many cases are the model of fairness to vulnerable parties. In the few instances where the Rule's (attempted) use has arguably been inappropriate, the costs in terms of delay and financial expense are usually minimal. While Rule 2.1 is only applicable to a small minority of cases, they are not a trivial number. The Rule is ultimately an inspiring example of how civil procedure can be amended to facilitate access to justice – and be thoroughly fair to parties in doing so.

I. RULE 2.1's HISTORY

A. Access to Justice

Precisely what the phrase "access to justice" encompasses varies according to the circumstances. At its most holistic, it includes normative questions about what values constitute "justice" and ensuring that substantive law encompasses such values.[12] At the very least, it means that civil litigation should have three characteristics: first, minimal financial costs; second, timeliness; and, third, simplicity.[13] Even those who have argued that access to justice should be interpreted in a much broader manner, such as Trevor Farrow, agree that simple and efficient civil procedure is an important tool for achieving access to justice.[14]

Krylov & Company LLP" (15 Aug 2017), online: Borden Ladner Gervais <http://blg.com/en/News-And-Publications/Publication_5040>.

9 RSO 1990, c C43 [CJA].

10 Quantifying a comparison between Rule 2.1 and Rule 21 with scientific precision would be difficult if not impossible but the discussion in Part I.C should indicate the significantly greater costs of Rule 21.

11 Unless the circumstances require more specificity, the terms "defendants," "respondents," and "responding parties" will be used interchangeably in this article when referring to parties against whom Rule 2.1 ***is not*** (proposed to be) used while "plaintiffs," "applicants," and "moving parties" will be used interchangeably when referring to parties against whom Rule 2.1 ***is*** proposed to be used.

12 Farrow 2014, *supra* note 4 at 970-972.

13 See *ibid* at 978-979; Roderick A Macdonald, "Access to Justice in Canada Today: Scope, Scale and Ambitions" in Julia Bass, WA Bogart & Frederick H Zemans, eds, *Access to Justice for a New Century – The Way Forward* (Toronto: LSUC, 2005) at 68-73. Related to this is the important principle of proportionality: *Hryniak*, *supra* note 6 at paras 29-33; Trevor Farrow, "Proportionality: A Cultural Revolution" (2012) 1 Journal of Civil Litigation and Practice 151 [Farrow, "2012"].

14 Trevor CW Farrow, "A New Wave of Access to Justice Reform in Canada" in Adam Dodek & Alice Woolley, eds, *In Search of the Ethical Lawyer: Stories from the Canadian Legal Profession* (Vancouver: UBC Press, 2016) at 166.

It is within this spirit of ensuring timely and cost-effective resolutions of civil claims that Ontario amended its *Rules of Civil Procedure* effective Jan 1, 2010.[15] These reforms also enshrined the principle of proportionality, which recognizes that steps taken in litigation are to be proportionate to what can realistically be gained from taking said steps.[16] In the seminal 2014 decision *Hyrniak v Mauldin*, Justice Karakatsanis, for a unanimous Supreme Court of Canada, held that these reforms should be interpreted generously to achieve access to justice. She also called for a "culture shift" to ensure that cases are decided on their merits in a manner that is fair, speedy, and minimally expensive.[17]

Hryniak concerned summary judgment. But appellate courts[18] and notable commentators[19] have repeatedly emphasized that *Hryniak*'s spirit applies outside this narrow context. This spirit includes the recognition that a full, traditional trial is frequently not necessary for a court to justly resolve matters, and that more summary procedures that bring swift ends to proceedings can play indispensable roles in this respect.[20] It is against this backdrop, and with these considerations in mind, that Rule 2.1 became part of the *Rules* effective July 1, 2014: to provide an efficient and cost-and-time-effective mechanism to address a particular type of proceeding.

B. Frivolous, Vexatious, and Abusive

Rule 2.1 combines the terms "vexatious," "frivolous," and "abusive" – terms that overlap considerably in the case law.[21] The former two terms are unfortunately not well defined in case law.[22] "Vexatious" is defined by *Black's Law Dictionary* as "without reasonable or probable cause or excuse; harassing; annoying"[23] and by the Ontario Court of Appeal as "broadly synonymous with the concept of abuse of process developed by the Courts in the exercise of their inherent right to control proceedings."[24] *Black's Law* defines "frivolous" as "lacking a legal basis or legal merit; not serious; not reasonably purposeful,"[25] a definition accepted by the Ontario Court of Appeal.[26]

The term "abusive" relates to the doctrine of abuse of process, which the Supreme Court of Canada has noted aims to preserve the integrity of the court process.[27] The Supreme Court has approvingly cited Goudge JA's description of abuse of process:

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15 The *Rules*, *supra* note 3, as amended by O Reg 438/08.

16 See Farrow, "2012," *supra* note 13.

17 *Hryniak*, *supra* note 6 at paras 2, 23.

18 See e.g., *Iannarella v Corbett*, 2015 ONCA 110, 124 OR (3d) 523 at para 53, concerning discovery; *Canadian Natural Resources Limited v ShawCor Ltd*, 2014 ABCA 289, 580 AR 265 at para 5, concerning the intersection between discovery and claims of privilege.

19 See, e.g., Stephen GA Pitel & Matthew Lerner, "Resolving Questions of Law: A Modern Approach to Rule 21" (2014) 43 Adv Q 344 at 344-346.

20 *Hryniak*, *supra* note 6 at para 29; Pitel & Lerner, *ibid*.

21 *Butera v Fragale*, 2010 ONSC 3702, 2010 CarswellOnt 4669 (SCJ) at para 19.

22 *876502 Ontario Ltd v IF Propco Holdings (Ontario) 10 Ltd* (1997), 37 OR (3d) 70 (Gen Div) at 77.

23 *Black's Law Dictionary*, 7th ed [*Black's Law*], *sub verbo* "vexatious."

24 The dissenting opinion of Blair JA in *Foy v Foy* (1979), 26 OR (2d) 220 (CA), accepted in subsequent case law: see *Dale Streiman & Kurz LLP v De Teresi* (2007), 84 OR (3d) 383 (SCJ) at para 7.

25 *Black's Law*, *supra* note 23, *sub verbo* "frivolous."

26 *Currie v Halton Regional Services Police Board* (2003), 179 OAC 67 (CA) at para 17.

27 *Behn v Moulton Contracting Ltd*, 2013 SCC 26, [2013] 2 SCR 227 [*Behn*] at para 40.

> [The doctrine of abuse of process] engages the inherent power of the court *to prevent the misuses of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute.* It is a flexible doctrine unencumbered by the specific requirements of concepts such as issue estoppel. […][28]

These three terms overlap.[29] "Abusive" is the broadest, and frivolous and vexatious litigation is almost certainly also going to be abusive. However, "vexatious" is the commonly used term if referring to persons in case law. "Abusive" tends to refer to litigation itself. As such, I will use "abusive" and "vexatious" synonymously hereafter, unless circumstances call for more specificity. I will generally avoid "frivolous," which truly seems to be a subset of vexatious and abusive.

C. Vexatious Litigants Prior to Rule 2.1

Rule 21.01(b) of Ontario's *Rules of Civil Procedure* allows a party to bring a motion to dismiss a proceeding on the grounds that "it discloses no reasonable cause of action."[30] This is a modern codification of common law courts' historic power to prevent abuses of process; an action that does not disclose a cause of action is an example of an abuse of process.[31] As such, this Rule can be used to strike abusive pleadings. Rule 25.11 of the *Rules*, which allows a court to strike "all or part of a pleading or other document" if it is "scandalous, vexatious, or frivolous"[32] or "is an abuse of process of the court"[33] is another tool in this respect. However, these rules have their limits. First, they require a formal motion, requiring legal argument and notice to the allegedly abusive party. In addition to being expensive and time-consuming, in the words of Myers J, this can lead to "the proposed cure caus[ing] a fresh outbreak of the disease," giving the allegedly vexatious litigant a new opportunity to act vexatiously.[34] Second, if the vexatious party is engaged in a pattern of behaviour, motions will need to be brought repeatedly.

Alternatively, s 140 of the CJA prescribes a procedure to have a litigant declared "vexatious"[35] if he or she has "instituted vexatious proceedings in any court" or "conducted a proceeding in a vexatious manner."[36] The consequences of this are that no further proceedings may be instituted or continued by the vexatious litigant without leave of a Superior Court judge.[37] Once granted, a "vexatious litigant order" allows a responding party to ensure any further proceeding or step therein brought by the vexatious litigant

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28 *Ibid* [emphasis added by LeBel J], citing *Canam Enterprises Inc v Coles* (2000), 51 OR (3d) 481 (CA) [*Canam*] at para 55.

29 *Maheau v IMS Health Canada*, 2002 FCT 558, 20 CPC (4th) 523 (Prothonotary), rev'd on other grounds, 2003 FCT 1, 226 FTR 269, aff'd, 2003 FCA 462, 314 NR 393.

30 *Rules*, *supra* note 3.

31 Pitel & Lerner, *supra* note 19 at 348.

32 *Rules*, *supra* note 3, Rule 25.11(b).

33 *Ibid*, Rule 25.11(c).

34 *Raji #1*, *supra* note 7 at para 8.

35 CJA, *supra* note 9, s 140(1)(a).

36 *Ibid*, s 140(1)(b).

37 *Ibid*, ss 140(1)(c-d).

has at least some *prima facie* merit. It also helps the vexatious litigant by ensuring judicial oversight over all litigation steps, saving all parties – including the vexatious litigant – unnecessary expense.[38]

Though the remedies resulting from s 140 of the CJA are more powerful than those available from Rule 21 or 25.11, they present other difficulties. First, s 140 requires a separate application to be commenced[39] – an expensive and lengthy process.[40] Although Rule 38.13 of the *Rules*, which became effective July 1, 2014, mandates that applications under this section are generally to be heard in writing, and factums are not required, an application record is still necessary.[41] Vexatious litigants still have many opportunities to respond vexatiously, through submitting an affidavit, and cross-examining other parties on their affidavit(s). Second, a vexatious litigant declaration is difficult to obtain. It can only be granted if a person has "persistently *and* without lawful grounds"[42] acted in a vexatious manner. Given that it affects how a person can exercise his or her right to access the courts, it is quite rightly an extraordinary remedy.[43]

The limitations of s 140 of the CJA and Rules 21 and 25.11 of the *Rules* are well-founded. But they still leave parties responding to abusive actions in the unenviable position of bringing expensive motions and/or applications to address vexatious litigants. As Myers J wrote in *Raji*:[44]

> The court has always had difficulty with the Catch-22 nature of dealing with vexatious litigants. Any time that proceedings are brought to try to end a vexatious proceeding, the vexatious litigant is provided with a fresh opportunity to conduct that proceeding in a vexatious, expensive, wasteful, and abusive manner. […] Imposing a quick and limited written process that provides one opportunity to the plaintiff to show why the claim should not be dismissed is an important advance toward meeting the goals of efficiency, affordability, and proportionality in the civil justice system as discussed by the Supreme Court of Canada in *Hryniak*.

It was to address this situation, where it is easy to understand why a defendant would consider paying an unprincipled settlement to have the plaintiff "go away," that Rule 2.1 was enacted.

II. HOW IT WORKS

As noted above, one purpose of this analysis is to provide the first doctrinal analysis of Rule 2.1, assisting future lawyers, judges, and scholars seeking to use and/or analyze this Rule.[45] As such, it was

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38 *Science Applications International Corp v Pagourov*, 2012 ONSC 6514, [2012] OJ No 5696 (SCJ) [*Pagourov*] at para 49, citing *Law Society of Upper Canada v Chavali,* [1998] OJ No 5890 (Gen Div) at para 26.

39 S 140(1).

40 *Raji #1*, *supra* note 7 at para 8.

41 *Rules*, *supra* note 3, Rule 38.13.

42 CJA, *supra* note 9, s 140(1) [emphasis added].

43 *Kallaba v Bylykbashi* (2006), 207 OAC 60 (CA) at para 31.

44 *Raji #1*, *supra* note 7 at para 8.

45 The utility of this endeavour was noted by Justice David Stratas in "The Decline of Legal Doctrine" (Keynote Address Delivered at the Canadian Constitution Foundation Law & Freedom Conference, Hart House, University of Toronto, 8 Jan 2016), online: <https://www.youtube.com/watch?v=UxTqMw5v6rg>; David Stratas, "The Canadian Law of Judicial

necessary to analyze the cases as scientifically as possible to determine "leading" cases.[46] It must be recognized that "objectively" determining how a legal rule works in practice through case law is, to a certain extent, an impossible exercise.[47] But textbooks and articles can still be very useful to practitioners and future scholars.[48] In this respect, I hope that this section of this article not only "sets the stage" for the subsequent analysis of the Rule's utility as an access to justice mechanism, but is also useful in and of itself.

A. The Mechanics

Rule 2.1.01 provides (omitting references to forms and regulations):

1) The court may, on its own initiative, stay or dismiss a proceeding if the proceeding appears on its face to be frivolous or vexatious or otherwise an abuse of the process of the court.

Summary Procedure

2) The court may make a determination under subrule (1) in a summary manner, subject to the procedures set out in this rule.

3) Unless the court orders otherwise, an order under subrule (1) shall be made on the basis of written submissions, if any, in accordance with the following procedures:

1. The court shall direct the registrar to give notice […] to the plaintiff or applicant, as the case may be, that the court is considering making the order.
2. The plaintiff or applicant may, within 15 days after receiving the notice, file with the court a written submission, no more than 10 pages in length, responding to the notice.
3. If the plaintiff or applicant does not file a written submission that complies with paragraph 2, the court may make the order without any further notice to the plaintiff or applicant or to any other party.

[…]

Request for Order

Review: Some Doctrine and Cases," March 26, 2018, online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2924049.

46 See, e.g., Terry Hutchinson & Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research" (2012) 17:1 Deakin L Rev 83 at 110. My methodology appears in more detail in Appendix A.

47 *Ibid* at 84, quoting Oliver Wendell Holmes Jnr, "The Path of Law" (1897) 10:8 Harv L Rev 457 at 465-466. I am bringing my biases, as are the judges who have used and will use the Rule – much of the Critical Legal Studies movement, and related feminist and critical race critiques of law, are based on observations such as these: see e.g. Patricia J Williams, "The Pain of Word Bondage" in *The Alchemy of Pain and Rights* (Cambridge, MA: Harvard University Press, 1991) ch 8.

48 Stratas, *supra* note 45.

4) Any party to the proceeding may file with the registrar a written request for an order under subrule (1).

Notification of Court by Registrar

5) If the registrar becomes aware that a proceeding could be the subject of an order under subrule (1), the registrar shall notify the court.

Rule 2.1.02 prescribes a similar procedure for a frivolous, vexatious, and/or abusive motion.

The Rule's language contemplates that "unless the court orders otherwise," determinations under it are to be made on the basis of written submissions, after notice. In 13 cases, a judge has dispensed with the notice requirement and dismissed the motion or proceeding without notice. I return to these rare instances below in Parts II.B.5 and IV.A.3. In almost all other cases, the judge will either issue notice that he or she is considering using Rule 2.1 or decline to do so. The cases where notice was neither issued nor a decision made declining to do so are three cases where Rule 2.1 was raised by a party in the context of a broader motion.[49]

Generally speaking, upon learning of a potentially abusive proceeding, a judge shall decide whether to order notice to the party that the Court is considering dismissing his or her action. The party is then permitted to respond as to why the action should not be dismissed. After receiving those submissions (or not receiving them[50]), the judge will decide whether to dismiss the action.

Appeals of dismissals of actions under Rule 2.1 proceed to the Divisional Court or Court of Appeal as per normal appellate practice.[51] Decisions *not* to use Rule 2.1 are presumably interlocutory matters where leave to appeal to the Divisional Court would be required.[52] However, I found no decision to *not* use Rule 2.1 that was appealed. The Court of Appeal has prescribed particular procedural steps to be followed if a party wishes to employ the Rule in that court.[53]

B. No Evidence or Legal Argument

No evidence is permitted in Rule 2.1 considerations[54] while formal motions under Rule 20 allow for – very brief, if appropriate – dispositive evidence.[55] Legal submissions are generally forbidden as well.

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49 *Nguyen v Economical Mutual Insurance Co*, 2015 ONSC 2646, 49 CCLI (5th) 144 (SCJ) [*Nguyen v Economical*]; *Fine v Botelho*, 2015 ONSC 6284, [2015] OJ No 5321 (SCJ) [*Fine*]; *Caliciuri v Matthias*, 2017 ONSC 748, [2017] OJ No 547 (SCJ) [*Caliciuri*].

50 This happens not infrequently: see e.g. *Strang v Ontario*, 2017 ONSC 1625, [2017] OJ No 1297 (SCJ); *Reyes v KL*, 2017 ONSC 2304, [2017] OJ No 2195 (SCJ) [*Reyes v KL*].

51 CJA, *supra* note 9, ss 19(1)(a) and 19(1)(c); John Sopinka & Mark A Gelowitz, *The Conduct of an Appeal*, 3d ed (Toronto: LexisNexis, 2012) at §5.1-5.2.

52 CJA, *ibid*, s 19(1)(b); Sopinka & Gelowitz, *ibid* at § 5.46.

53 *Simpson v The Chartered Professional Accountants of Ontario*, 2016 ONCA 806, 5 CPC (8th) 280 [*Simpson*] at paras 45-46.

54 *Ibid* at paras 10-12.

55 Of course, submissions and evidence under Rule 20 are frequently not brief (in *Hryniak* itself, they were extensive) but there is nothing inherent about the *Rules* mandating needless detail, with the principle of proportionality suggesting that brevity can be – and in certain cases, should be – appropriate.

Though the Rule's language contemplates responding submissions in certain circumstances, in practice, judges almost never ask for them.

One exception and one caveat have nonetheless emerged to this general prohibition on legal submissions or evidence when applying Rule 2.1. The exception is when the responding party's reason for submitting that the action is abusive and/or vexatious is because the issues have been finally determined in another proceeding.[56] I return to the soundness of this "attempt to re-litigate" exception in Part IV.A.2, below.

The caveat is when the judge deems it appropriate to ask the responding party for submissions due to concern that there may be a serious issue that warrants attention, albeit in another forum. For example, in one case, the plaintiff alleged that his child had been kidnapped. Myers J noted that the pleading left no doubt about the abusiveness of the proceeding, including racist attacks upon an obstetrician, as well as the inappropriateness of the civil courts to address any legitimate concern. He still sought submissions from the defendant's counsel, as an officer of the court, in case "something horrible was indeed happening"[57] that would require a prompt response, such as from the police or child protection authorities. The defendant's counsel submitted that the child had been taken into protective custody, allowing Myers J to give directions to the plaintiff on how to challenge such a decision. This is appropriate to ensure an injustice does not occur, but should: a) be done only when the plaintiff's claim in any event appears appropriate to dismiss; and b) have no bearing on the decision to use Rule 2.1, but rather simply give guidance to the plaintiff.

C. The Test to Use the Rule

In deciding whether to order notice, two factors have emerged as relevant. First, when read extremely generously, no cause of action should be discernible. Second, there should be something emerging from the pleadings that suggests the extremely attenuated process is appropriate – largely because of a fear that the litigant will act vexatiously. Myers J originally proposed these two criteria,[58] and the Court of Appeal endorsed them in *Scaduto v Law Society of Upper Canada*.[59]

1. "On Its Face" Being Frivolous, Vexatious, and/or Abusive

How can one say that a pleading "on its face" appears abusive? Perhaps the most common phrase is that it is for "the clearest of cases" that cannot possibly succeed,[60] also described as "usually obvious"[61] and "not for close calls."[62] Summarizing this area of law, Trimble J held that a claim must be "so clearly frivolous as to make a motion under another Rule, on evidence and proper formal notice, a waste of time, money, and resources for the parties and the public."[63]

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56 See e.g. *Simpson*, *supra* note 53.
57 *Kadiri v Harikumar*, 2015 ONSC 4894, [2015] OJ No 4103 (SCJ) [*Kadiri*] at para 7.
58 *Raji #1*, *supra* note 7 at para 9.
59 2015 ONCA 733, 343 OAC 87 at para 12, leave to appeal ref'd, [2015] SCCA No 488 [*Scaduto*].
60 *Scaduto*, *ibid* at para 8.
61 *Asghar v Alon*, 2015 ONSC 7823, [2015] OJ No 6573 (SCJ) [*Asghar v Alon*] at para 4.
62 *Gao v Ontario (Workplace Safety & Insurance Board)*, 2014 ONSC 6100, 37 CLR (4th) 1 (SCJ) at para 9.
63 *Beatty v Office of the Children's Lawyer*, 2016 ONSC 3816, [2016] OJ No 3024 (SCJ) [*Beatty*] at para 13.

Upon reading the pleadings and any submissions, a judge must look for any cause of action, even one buried in an otherwise abusive pleading. Myers J wrote the following in *Gao #2*:

> It should be borne in mind however, that even a vexatious litigant can have a legitimate complaint. […] Care should be taken to allow generously for drafting deficiencies and recognizing that there may be a core complaint which is quite properly recognized as legitimate.[64]

The Court of Appeal has asked parties to consider whether summary judgment or pleadings motions are more appropriate than requests to use Rule 2.1.[65] Even so, Rule 2.1 has been enacted for a reason and should be applied "robustly" when appropriate[66] or "to its fullest extent, if applicable."[67] While generous and broad readings of pleadings are called for, this does not warrant "tortured" readings.[68]

2. Hallmarks of Abusiveness

Rules 20, 21, and 25.11 all allow for summary determination of claims that can clearly be shown to have no merit. As such, something more is generally required to employ Rule 2.1. This accords with the Rule being designed to address instances where a "proposed cure" (*i.e*, a dispositive motion) would "cause[] a fresh outbreak of the disease."[69] Essentially, there should be something in the impugned pleading or other document that suggests a party will conduct the litigation vexatiously. Myers J has suggested that the following are helpful indicia that a claim may be (but is not necessarily) likely to be abusively litigated:

- Curious formatting
- Many, many pages
- Odd or irrelevant attachments—*e.g.,* copies of letters from others and legal decisions, UN Charter on Human Rights, all usually, extensively annotated.
- Multiple methods of emphasis including: highlighting (various colours), underlining, capitalization.
- Repeated use of ‘‘ ’’, ???, !!!
- Numerous foot and marginal notes. […]
- Rambling discourse characterized by repetition and a pedantic failure to clarify.
- Rhetorical questions.
- Repeated misuse of legal, medical and other technical terms.
- Referring to self in the third person.
- Inappropriately ingratiating statement.

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64 *Gao v Ontario (Workplace Safety & Insurance Board)*, 2014 ONSC 6497, 31 CPC (7th) 153 (SCJ) [*Gao #2*] at para 18.
65 *Khan v Krylov & Company LLP*, 2017 ONCA 625, 2017 CarswellOnt 16235 [*Khan*] at para 12.
66 *Scaduto*, *supra* note 59 at para 8.
67 *Beatty*, *supra* note 63 at para 15.
68 *Ibid* at para 19.
69 *Raji #1*, *supra* note 7 at para 8.

- Ultimatums.
- Threats of violence to self or others.
- Threats of violence directed at individuals or organizations. [70]

While these are helpful indicia in determining whether it is appropriate to allow a responding party to short-circuit the traditional motions and need for evidence and/or legal argument, as discussed in the next section, they are not strictly necessary.[71] Moreover, as discussed below, they do not indicate, in and of themselves, that the plaintiff does not have a viable cause of action or that resort to Rule 2.1 is appropriate.

3. Two Non-Determinative Criteria?

A claim sufficiently devoid of merit can still be dismissed pursuant to Rule 2.1 even in the absence of indicia that a plaintiff will behave vexatiously.[72] This is understandable. If the action is manifestly devoid of merit – such as a claim based upon the plaintiff's being upset that lifeguards allegedly chastised him for swimming too slowly in the fast lane of a pool[73] – the proportionality principle cautions against further resources being expended. The second criterion is therefore a helpful guide that Rule 2.1 is appropriate, but judges retain discretion to use the Rule regardless.

The reverse does not hold. Two decisions of Myers J illustrate why the second criterion is not a standalone basis to use Rule 2.1. In the first, a statement of claim alleged medical malpractice in a manner that was not obviously implausible. However, it was 400 pages long, and lacked a coherent narrative. When notice was ordered under Rule 2.1, the plaintiff began by explaining himself before insulting Myers J: "what started as a perfectly acceptable explanation quickly became a vexatious rant."[74] Rather than dismiss the claim pursuant to Rule 2.1, Myers J struck it pursuant to Rule 25.11, but permitted the plaintiff to submit a revised pleading. He also advised the plaintiff to obtain legal advice and directed him to a resource on how to draft pleadings.[75]

In the second, Myers J had similarly ordered a revised pleading be submitted. After the plaintiff submitted such a revised pleading, the defendant again sought to use Rule 2.1. Myers J declined to do so, but nonetheless noted that the Court should watch how the case unfolded. In doing so, he explained the difference between the two Rule 2.1 criteria:

> In most Rule 2.1 cases the frivolous nature of the claim is clear and the real question is whether a motion to strike or to dismiss should be heard in court in the usual way or whether the motion should be dealt with under the attenuated process of Rule 2.1. Here, the issues are reversed. There is reason to fear that the plaintiff may have difficulty following the process of the court and his pleading does bear some hallmarks of a querulent litigant.

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70 *Gao #2*, *supra* note 64 at para 15. This is a verbatim quote.
71 *Raji #1*, *supra* note 7 at para 9.
72 *Ibid*.
73 *Asghar v Toronto (City)*, 2015 ONSC 4650, 42 MPLR (5th) 138 (SCJ).
74 *Rallis v Scarborough Hospital*, 2016 ONSC 2263, [2016] OJ No 1773 [*Rallis*] at para 3.
75 *Ibid* at para 5.

> However, in my view, as he may well have a cause of action, [he] should have his day in court.[76]

Although the defendants could quite understandably be concerned by how the plaintiffs in these two cases conducted themselves, given the interest in permitting even vexatious parties to have a day in court if they have a legitimate grievance, it would seem appropriate to not treat signs of abusiveness as a reason to use Rule 2.1, unless there truly is no viable cause of action.

4. Dismissal Without Notice

Rule 2.1's language contemplates that a court may depart from the requirement that notice be given to an affected party. And in thirteen cases, the notice requirement has been dispensed with. These rare instances fall into four categories:

(1) Five proceedings commenced in violation of vexatious litigant orders;[77]
(2) Four cases where the relief sought was not available in the Court where the proceeding was commenced (*i.e.*, the Divisional Court when the Divisional Court could not provide the relief, or the Superior Court when an appeal was necessary);[78]
(3) Three attempts to re-litigate, one of which was brazenly acknowledged as such,[79] with the other two being plaintiffs attempting to re-litigate matters already dismissed pursuant to Rule 2.1;[80] and
(4) A claim based on the allegation "that the military has implanted brainwashing devices in [the plaintiff and] hospital staff threw bugs on him […] so he could be interrogated."[81]

There are obvious natural justice concerns with dismissing a proceeding without giving a party an opportunity to be heard. This is codified in the common law procedural fairness principle *audi alteram*

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76 *Asghar v Alon*, *supra* note 61 at para 5.
77 *Park v Short*, 2015 ONSC 1292, [2015] OJ No 926 (SCJ); *Park v Crossgate Legal Services*, 2016 ONSC 4864, [2016] OJ No 4021 (SCJ); *Reyes v Buhler*, 2016 ONSC 5559, [2016] OJ No 4635 (SCJ) [*Reyes v Buhler*]; *Reyes v Jocelyn*, 2016 ONSC 5568, [2016] OJ No 4642 (SCJ) [*Reyes v Jocelyn*]; *Reyes v Embry*, 2016 ONSC 5558, [2016] OJ No 4636 (SCJ) [*Reyes v Embry*].
78 *Coady v Law Society of Upper Canada*, 2016 ONSC 7543, [2016] OJ No 6194 (Div Ct); *Lin v Fluery*, 2017 ONSC 3601, 2017 CarswellOnt 8926 (Div Ct), aff'd 2017 ONCA 695, 2017 CarswellOnt 13756 [*Lin v Fluery*]; *Khan v 1806700 Ontario Inc*, 2017 ONSC 3726, 2017 CarswellOnt 9122 (Div Ct); *Lin v Rock*, *supra* note 2.
79 *D'Orazio v Ontario (Attorney General)*, 2016 ONSC 4893, [2016] OJ No 4031 (SCJ) [*D'Orazio*].
80 *Lee v Future Bakery Ltd*, 2016 ONSC 1764, [2016] OJ No 1266 (SCJ) [*Lee v Future*]; *Nguyen v Bail*, 2016 ONSC 2365, [2016] OJ No 1840 (SCJ).
81 *Shafirovitch v Scarborough Hospital*, 2015 ONSC 7627, 85 CPC (7th) 149 (SCJ) [*Shafirovitch*].

partem.[82] Hearings are important not only to ensure that justice be seen to be done, but also because it is likely to lead to better decision-making.[83]

Having said that, procedural fairness is a flexible concept. And in the case of Rule 2.1, all but the last case where a claim was dismissed without giving the plaintiff any opportunity to be heard outside his or her pleadings involved litigants who either: a) already had an opportunity to be heard and then proceeded to manifestly abuse the court system; or b) needed to be directed to another forum. As such, the opportunity to be heard was fulfilled. In the last case, Myers J reminded himself of the Court's duty towards self-represented litigants, and also noted that "there is perhaps a salutary effect to allow the litigant an opportunity to be heard."[84] But he then concluded:

> I will not be disrespectful to the plaintiff by treating him with anything less than full candour. If the plaintiff believes that the military has implanted brainwashing devices in him and […] hospital staff threw bugs on him to force itching so he could be interrogated, he needs assistance that a court cannot provide. The plaintiff may wish to consult with the Office of the Public Guardian and Trustee.[85]

I return to this dilemma about dispensing with the notice requirement below in Part IV.A.

The only appellate decision that reviewed the adequacy of notice in the court below is *Van Sluytman v Muskoka*.[86] The Court of Appeal took a substantive rather than formalistic approach to notice, noting that the appellant had clearly received formal notice in many of the eight actions he had commenced. Even if formal notice had not been sent in all, the Court was amply satisfied that no injustice had occurred as the purpose of notice – the right to be heard – was satisfied. The Court of Appeal also considered the notice requirement in *Okel v Misheal*, where it held that the form of notice could be flexible, as long as the party's right to be heard was fulfilled.[87]

5. Types of Cases Dismissed Pursuant to Rule 2.1

It is fair to say that in the vast majority of successful uses of the Rule, the lack of a cause of action is obvious. In *Gao #2*, Myers J suggested seven attributes – six of them recognized as characteristics of vexatious litigants in case law under s 140 of the CJA – that would likely be apparent in cases where Rule

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82 The Hon Louis LeBel, "Notes for an Address: Reflections on Natural Justice and Procedural Fairness in Canadian Administrative Law" (Feb 2013) 26 Can J Admin L & Prac 51 at 53, based upon a presentation to the Continuing Legal Education Society of British Columbia Administrative Law Conference 2012 in Vancouver, British Columbia on Oct 26, 2012. While this specifically concerns administrative law, this principle applies to civil litigation as well: e.g. *Ontario Provincial Police Commissioner v Mosher*, 2015 ONCA 772, 340 OAC 311 at paras 60-63.

83 Jonathan Haidt, "Moral Psychology and the Law: How Intuitions Drive Reasoning, Judgment, and the Search for Evidence" (2013) 64:4 Ala L Rev 867 at 873, building on his work in Jonathan Haidt, *The Righteous Mind: Why Good People Are Divided by Politics and Religion* (New York: Pantheon Books, 2012); Justice Peter Lauwers, "Reflections on *Charter* Values" (Keynote Address Delivered at the Runnymede Society Law & Freedom Conference, Hart House, University of Toronto, 12 Jan 2018), online: <https://www.youtube.com/watch?v=H5WTRCO-u9U> at ~18:00-18:20.

84 Shafirovitch, supra note 81 at para 3.

85 *Ibid* at para 5.

86 *Van Sluytman v Muskoka (District Municipality)*, 2018 ONCA 32, 2018 CarswellOnt 301.

87 2014 ONCA 699, [2014] OJ No 4842 [*Okel*] at para 10.

2.1 is employed.[88] Three years into the Rule's history, many of these anticipated characteristics do describe multiple cases where Rule 2.1 was used to dismiss a claim:

(a) "Bringing multiple proceedings to try to re-determine an issue that has already been determined by a court of competent jurisdiction";[89]
(b) "Rolling forward grounds and issues from prior proceedings to repeat and supplement them in later proceedings including bringing proceedings against counsel who have acted for or against them in earlier proceedings"[90] – this extended to suing Myers J after he dismissed a plaintiff's case;[91]
(c) "Persistent pursuit of unsuccessful appeals";[92]
(d) "OPCA"[93] litigants who frequently assert that neither statutory nor common law applies to them;[94] and
(e) "bringing proceedings where no reasonable person would expect to obtain the relief sought,"[95] with examples of this including:

i. A claim alleging a conspiracy to falsely implicate the plaintiff as a terrorist, conduct human experiments, and take over Africa, with Toronto-chambered judges of the Superior Court being part of this conspiracy;[96]
ii. An attempt to have the United States pay approximately $510 billion American dollars in redemption of "bank bonds" that were obviously fake;[97] and
iii. A request that Ontario provide the plaintiff with a job and fix his love life.[98]
iv. These are cases where Rule 2.1 was used to dismiss an action after notice, giving litigants the opportunity to explain themselves. The Rule indeed seems to be being applied to clear cases.

6. Types of Cases Where Notice is Not Ordered

There are rare cases where a defendant's proposed use of Rule 2.1 has been obviously inappropriate, attempting to bring in the merits through lengthy submissions[99] or simply lacking any facial reason to

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88 *Supra* note 64 at paras 14, 16.
89 *Ibid* at para 14(a), exemplified in, e.g. *Hurontario Travel Centre v Ontario (Attorney General)*, 2015 ONSC 4246, [2015] OJ No 3469 (SCJ).
90 *Gao #2*, *ibid* at para 14(b).
91 *Raji v Myers*, 2015 ONSC 4066, 75 CPC (7th) 115 (SCJ) [*Raji v Myers*].
92 *Gao #2*, *supra* note 64 at para 14(c), exemplified in, e.g. *El Zayat v Hausler*, 2016 ONSC 6099, [2016] OJ No 4984 (Div Ct).
93 "Organized Pseudolegal Commercial Argument": see *Meads v Meads*, 2012 ABQB 571, 74 Alta LR (5th) 1.
94 *Gao #2*, *supra* note 64 at para 16, exemplified in, e.g. *Ali v Ford*, 2014 ONSC 6665, [2014] OJ No 5426 (SCJ).
95 *Gao #2*, *ibid* at para 14(f).
96 *Raji v Myers*, *supra* note 91.
97 *Zeleny v Canada*, 2016 ONSC 7226, [2016] OJ No 6101 (SCJ).
98 *Asghar v Ontario*, *supra* note 1.
99 See e.g. *Covenoho v Ceridian Canada*, 2015 ONSC 2468, [2015] OJ No 1889 (SCJ); *Kyriakopoulos v Lafontaine*, 2015 ONSC 6067, [2015] OJ No 5029 (SCJ) [*Kyriakopoulos*]; *Ramsarran v Assaly Asset Management Corp*, 2017 ONSC

believe the claim or motion is abusive.[100] This has resulted in admonishments from the bench.[101] More frequently, however, notice is not ordered when the claim appears badly drafted,[102] excessively simple,[103] or likely to elicit a very strong defence,[104] but where a plausible cause of action is nonetheless discernible. Another common example where notice is not ordered despite a judge's suspicions is where there is an allegation that the claim is an attempt to re-litigate, but this is not obvious.[105] At other times, a plaintiff's actions appear tactically suspicious, but are not facially illegitimate or incompatible with a cause of action. The best example of this would be a late-breaking attempt by a defendant to bring a third party claim against the plaintiff's lawyer.[106] There are good reasons to be apprehensive of such litigation tactics that may have an improper motive – but they are not necessarily incompatible with a legitimate cause of action, and Rule 2.1 is not the mechanism to address them.

D. Family Law

In *Frick v Frick*,[107] the Court of Appeal cautioned against bringing the Rule into the family law context through Rule 1(8.2) of the *Family Law Rules*, which reads that a "court may strike out all or part of any document that may delay or make it difficult to have a fair trial or that is inflammatory, a waste of time, a nuisance or an abuse of the court process."[108] Though family and civil litigation have much in common regarding the access to justice crisis, there are important distinguishing aspects.[109] Moreover, the *Rules of Civil Procedure* do not generally directly apply in the family law context. In Court of Appeal family law appeals, however, where the *Rules of Civil Procedure* do apply,[110] the Court of Appeal has used Rule 2.1.[111] It has also been used in the Superior Court family law context when the plaintiff was subject to a vexatious litigant order.[112]

2394, [2017] OJ No 1937 (SCJ) [*Ramsarran*]; *Carby-Samuels v Carby-Samuels*, 2017 ONSC 2911, [2017] OJ No 2406 (SCJ).

100 See e.g., *MacLeod v Hanrahan Youth Services*, 2015 ONSC 8018, [2015] OJ No 6771 (SCJ) [*Hanrahan*].

101 *Kyriakopoulos*, *supra* note 99; *Hanrahan*, *ibid*.

102 *Posadas v Khan*, 2015 ONSC 4077, 75 CPC (7th) 118 (SCJ) [*Posadas*]; *Carby-Samuels v Carby-Samuels*, 2016 ONSC 4974, [2016] OJ No 4188 (SCJ); *2222028 Ontario Inc v Adams*, 2017 ONSC 690, [2017] OJ No 565 (SCJ) ["*Adams*"].

103 *Ghasempoor v DSM Leasing Ltd*, 2015 ONSC 7628, [2015] OJ No 6422.

104 *Polanski v Scharfe*, 2016 ONSC 4892, [2016] OJ No 4039 (SCJ).

105 *Bisumbule v Conway*, 2016 ONSC 6138, [2016] OJ No 5209 (SCJ); *Troncanada & Associates v B2Gold Corp*, 2016 ONSC 6271, [2016] OJ No 5190 (SCJ); *Volynansky v Ontario (Attorney General)*, 2017 ONSC 1692, [2017] OJ No 1330 (Div Ct).

106 *Charendoff v McLennan*, 2015 ONSC 6883, [2015] OJ No 6469 (SCJ) [*Charendoff*].

107 2016 ONCA 799, 132 OR (3d) 321 [*Frick*].

108 O Reg 114/99 [*Family Law Rules*].

109 Trevor CW Farrow, *Civil Justice, Privatization, and Democracy* (Toronto: University of Toronto Press, 2014) [Farrow, "Book"] at 71, fn 86; Mary-Jo Maur, Nicholas Bala & Alexandra Terrana "Costs and the Changing Culture of Canadian Family Justice" (Feb 6, 2017) Queen's University Legal Research Paper No 087, online: SSRN <url=https://ssrn.com/abstract=2919492>.

110 *Family Law Rules*, *supra* note 108, Rule 38.

111 *Okel*, *supra* note 87.

112 *Hawkins v Schlosser*, 2015 ONSC 646, [2015] OJ No 372 (SCJ).

III. CHARACTERISTICS OF THE CASE LAW

A. Overall numbers, courts, and success rates

There were 190 reported cases indicating requests to use Rule 2.1 (whether by a judge, registrar, or responding party) between July 1, 2014 and June 30, 2017, an average of 63 per year. This compares to approximately 9,130 reported Superior Court/Divisional Court/Court of Appeal decisions per year.[113] Many of the 190 Rule 2.1 decisions also have reported decisions for notice, disposition, and/or costs. The total numbers per year also include criminal and family cases, as well as cases that have multiple reported decisions per year. As such, it would appear that well over 1% (likely much higher) of decided civil cases per year involve Rule 2.1. While far from the norm, this is not a trivial number. Dozens of cases a year is in any event not a small number, being well over double numbers for other procedural matters such as jurisdictional disputes.[114] In the absence of Rule 2.1, one can only imagine what sort of mischief – ranging from wasted court time to unprincipled settlements – these cases would have caused.

In 162 of these 190 cases, the first use of Rule 2.1 was in the Superior Court, in 21 it was in the Divisional Court, and in 7 it was in the Court of Appeal. The chart below illustrates whether the request to dismiss a proceeding, or step therein, was granted, dismissed, or subject to another remedy, depending on the court in which the use of the Rule originated:

TABLE 1: OVERALL RESULTS OF RULE 2.1 CASES

Disposition		Number of Cases	Superior Court	Divisional Court	Court of Appeal
Granted		136	111	19	6
	After Notice	*121*	*99*	*16*	*6*
	Unclear About Notice	*2*	*2*	*0*	*0*
	Without Notice	*13*	*10*	*3*	*0*
Partially Granted		2	1	0	1
Notice Ordered of Dismissal Being Considered but Final Disposition Not Reported		13	13	0	0
New Pleading Ordered		1	1	0	0
Resolved After Claim Partially Withdrawn		1	1	0	0
Dismissed		37	35	2	0
	No Notice Ordered	*27*	*26*	*1*	*0*

[113] Based on Feb 28, 2018 Westlaw searches, *Sidhu v Knight*, 2016 ONSC 8166, 2016 CarswellOnt 21037 (SCJ) appears to be the 2016 Divisional Court/Superior Court case with the "highest" number in its neutral citation, while *DeMarco v Nicoletti Estate and Daboll*, 2015 ONSC 8155, 2015 CarswellOnt 21018 (SCJ) appears to be the 2015 case with the "highest" number in its neutral citation. Based on a Feb 27, 2018 Westlaw search, *JPB v CB*, 2016 ONCA 996, 2016 CarswellOnt 21847 appears to be the 2016 Court of Appeal decision with the "highest" number in its neutral citation, while *Reischer, Re*, 2015 ONCA 929, 344 OAC 132 appears to be the 2015 Court of Appeal decision with the "highest" number in its neutral citation.

[114] Gerard J Kennedy, "Jurisdiction Motions and Access to Justice: An Ontario Tale" (2018) 55:1 Osgoode Hall LJ 79.

Disposition		Number of Cases	Superior Court	Divisional Court	Court of Appeal
	After Notice	*4*	*3*	*1*	*0*
	In Context of Broader Motion	*3*	*3*	*0*	*0*
	After Amended Pleading Served	*1*	*1*	*0*	*0*
	After Appeal	*2*	*2*	*0*	*0*
Total		190	162	21	7

In 136 of 177 decisions where the result is known – over 75% of cases – Rule 2.1 was used to dismiss the action, or step therein. In four additional cases, the proceeding was partially dismissed,[115] a new pleading was ordered,[116] or the matter was resolved.[117] That leaves 37 of 177 cases – 20.9% – where the attempted use was unsuccessful. This is an approximately four-to-one ratio of successful to unsuccessful uses. It is worth noting that in 27 of the 37 unsuccessful uses, notice was not ordered, and in an additional three, the Rule was only raised in the context of a broader motion, implying that little costs or delay resulted from the use of Rule 2.1 *per se*.

B. Origin: Responding Party, Judge, or Registrar

In 119 of the 190 cases, it appears clear or implicit that the responding party requested the use of Rule 2.1. In 14 cases, a judge appears to have raised the issue on his or her own initiative. In three, the registrar appears to have prompted the use of the Rule. In 54 cases, it was unclear how the matter came before the court. This could be suggestive that registrars and judges are being insufficiently proactive in using Rule 2.1. After all, the Rule's language suggests that a court is to use it "on its own initiative."[118] I return to a suggestion on how the registrars and judges could be more proactive below. However, in every case where the Court (whether by judge or registrar) prompted the use of the Rule, its use was successful. This minimization of inappropriate uses of the Rule is unquestionably positive from an access to justice perspective.

C. Number of Appeals

In 175 of the 190 cases – that is, over 90% – there was no reported appellate decision reviewing the decision whether to use Rule 2.1. Insofar as there were no substantive injustices in these cases, this low rate of appeals appears positive. I hasten to add that in *all* of the other fifteen cases, the appeal arose from a dismissal of the action. In thirteen of those cases, the lower court result was affirmed. Four of these decisions led to unsuccessful leave applications to the Supreme Court of Canada.[119]

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115 *Reyes v Esbin*, 2015 ONSC 254, [2015] OJ No 97 (SCJ) [*Reyes v Esbin*]; *Collins v Ontario*, 2017 ONCA 317, [2017] OJ No 1982.

116 *Rallis*, *supra* note 74.

117 *Clarke v Canada (Human Rights Commission)*, 2015 ONSC 2564, 2015 CarswellOnt 5611 (SCJ).

118 Rule 2.1.01(7).

119 *Lin v Springboard*, 2016 ONCA 787, [2016] OJ No 6072, leave to appeal ref'd, [2016] SCCA No 562; *Lin v ICBC Vancouver Head Office*, 2016 ONSC 3934, [2016] OJ No 3223 (Div Ct), aff'd 2016 ONCA 788, [2016] OJ 6071, leave to appeal ref'd, 2017 CarswellOnt 807 (SCC) [*Lin v ICBC*]; *Ibrahim v Toronto Transit Commission*, 2016 ONCA 234, [2016] OJ No 1631, leave to appeal ref'd, [2016] SCCA No 231; *Scaduto*, *supra* note 59.

Only two cases had successful appeals. One was *Frick*, the case where the trial judge sought to import Rule 2.1 jurisprudence into the family law context.[120] While the case's delay and costs were unfortunate for the parties, the Court of Appeal reached largely the same result as the trial judge, albeit by a different rationale. Moreover, it was valuable to clarify the applicability of Rule 2.1 jurisprudence in the family law context.[121] In the result, the negative access to justice consequences of the use of Rule 2.1 in *Frick* are minimal.

That leaves only one case (less than 1% of the total) where a civil action was dismissed pursuant to Rule 2.1 but this was overturned on appeal. *Khan v Krylov & Company LLP*[122] is a cautionary tale about judges becoming overzealous in using Rule 2.1. The case concerned an allegation that the defendants, the plaintiff's lawyers in a personal injury case, forged his signature on a settlement, misappropriated settlement funds, and did not properly explain the settlement to him. While serious allegations that would likely elicit a strong defence, the appellate judges noted that the facts as pled gave rise to a cause of action, and they also saw no signs that the plaintiff would act vexatiously in the litigation. Though noting that the statement of claim was short, and implying that some sort of summary procedure may be appropriate to resolve it, the Court of Appeal held that: "Once a pleading asserts a cause of action and does not bear the hallmarks of frivolous, vexatious or abusive litigation, resort to rule 2.1 is not appropriate as a means for bringing the action to an early end. The motion judge erred in truncating the normal process."[123]

Though concerning, *Khan* is an outlier in terms of cases where the use of Rule 2.1 was granted. Rather, it bears similarity to cases where Myers J or Beaudoin J did not order notice pursuant to Rule 2.1.[124] It also gave the Court of Appeal an opportunity to remind judges to be careful when using Rule 2.1. I cannot say that this single instance of the Court of Appeal needing to correct an overzealous Superior Court judge detracts, in and of itself, from Rule 2.1's effectiveness.

D. Costs

The ability to accurately calculate the costs incurred as a result of uses of Rule 2.1 is limited. This is because in 134 of the 190 cases, costs are unclear, usually because the decision is silent on the issue,[125] the matter was referred to an assessment officer,[126] or submissions were called for[127] but the matter may have been settled.[128] In some cases, it is clear that costs were to be assessed on a partial,[129] substantial,[130] or even full[131] indemnity basis, but the quantum remains unclear. Moreover, 43 cases had no costs ordered. This is not surprising, given that defendants likely incurred minimal costs, Rule 2.1 is novel law,[132] and

120 *Supra* Part II.C.
121 *Housen v Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235.
122 *Khan*, *supra* note 65.
123 *Ibid* at para 14.
124 See Part II.B.6.
125 See e.g. *Stefanizzi v Ontario (Landlord and Tenant Board)*, 2015 ONSC 859, [2015] OJ No 562 (SCJ).
126 See e.g. *Lee v Future*, *supra* note 80 at para 6.
127 See e.g. *Markowa v Adamson Facial Cosmetic Surgery Inc*, 2014 ONSC 6664, [2014] OJ No 5430 (SCJ).
128 A phenomenon discussed in, e.g. Kennedy, *supra* note 114.
129 See e.g. *D'Orazio*, *supra* note 79.
130 See e.g. *Kadiri*, *supra* note 57.
131 See e.g. *Reyes v Buhler*, *supra* note 77.
132 A classic reason not to order costs: *Pal v Powell* (2009), 247 OAC 205 (Div Ct) [*Pal*] at paras 18-19, 22.

there is good reason to suspect that several plaintiffs against whom the Rule is used are mentally ill and it would be unjust to make a costs order against them.[133] An additional case had no costs ordered against some defendants while the costs against the others are unclear.[134] One case seems inapposite because the costs award was clearly related to issues other than the unsuccessful attempt to invoke Rule 2.1.[135] This comes to a total of 179 out of 190 cases shedding no real light on the costs actually incurred.

However, the eleven cases with reported costs (appearing in Appendix C) are nonetheless interesting. The average size of the nine first instance costs awards is $6,133.79. But *Irmya v Mijovick* is an extreme outlier, nearly four times the quantum of the next highest award. The average excluding that case is $3,127.04, which is still higher than the median of $2,256.39. The average of the three appellate costs awards is $8,561. Again, however, there is an extreme outlier in *Chalupnicek*, which is nearly six times the size of the next award. The average of the other two is $2,500, not far from the median of all three that is $3,000. Accordingly, while the small sample size being drawn from must be acknowledged, the typical costs awards appear in the $3,000 range for a case without an appeal, and about double that for a case with an appeal.

Costs awards typically represent only half of costs actually incurred.[136] Even recognizing that, however, compared to other preliminary motions, the costs of which have been analyzed (*e.g.*, jurisdiction motions), these costs are very low. A recent analysis of jurisdiction motions suggests that "each party in a non-class action can reasonably expect to spend approximately $30,000-$45,000 on a jurisdiction motion, and $60,000-$75,000 if there is an appeal."[137] And unlike jurisdiction motions, Rule 2.1 attempts to resolve a dispute on its merits. The costs to do so appear very reasonable, according with the proportionality principle.

E. Time Delay Caused by Rule 2.1

For the purposes of calculating delay, I did not include instances where the following occurred, as they shed little if any light on delay *caused by Rule 2.1*:

- where Rule 2.1 was raised but not used in the context of a broader motion;
- where notice was ordered but the final disposition is not reported; or
- if the use was granted but it was unclear whether notice was ordered.

Given that cases generally only note when notice was ordered (rather than when the matter was brought to a judge's attention), delay is calculated from the date that notice is ordered. This appears to be very

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133 *Shafirovitch*, *supra* note 81; the unwellness of a party can be a reason not to order costs: *Pal*, *ibid* at paras 21-22.

134 *Goralczyk v Beer Store*, 2016 ONSC 2265, [2016] OJ No 1763 [*Goralczyk #1*] compared to *Goralczyk v Beer Store*, 2016 ONSC 4416, [2016] OJ No 3597 (SCJ).

135 *Fine*, *supra* note 49.

136 See e.g. P Scott Horne, "The Privatization of Justice in Québec's Draft Bill to Enact the New Code of Civil Procedure: A Critical Evaluation" (2013) 18 Appeal 55 at 61, citing *Riddell v Conservative Party of Canada*, 2007 CarswellOnt 4202, [2007] OJ No 2577 (SCJ) at para 90; cited in Kennedy, *supra* note 114, fn 60.

137 Kennedy, *ibid*.

shortly after matters are brought to a judge's attention.[138] If the date where notice was ordered is not clear, I could not calculate delay. In Appendix D, I accordingly amend the above chart on results to include delay.

Of the 121 cases where the motion was granted after notice, delay can be calculated on 102. The average delay is 45 days: 45 in 99 Superior Court decisions, 31 in 8 Divisional Court decisions, and 126 in 2 Court of Appeal decisions.[139] Where appeals occurred, the average delay was 232 days. And when a Supreme Court leave application was made, the average delay was 338 days.

I separate my analysis of delay in cases where the use of Rule 2.1 was granted from delay where it was not for the following two reasons. First, the access to justice consequences of the delay in cases where the Rule's use is successful are very different from those where the use is unsuccessful. The former is the delay required to resolve the action finally, while the latter impedes the plaintiff's ability to bring his or her case promptly. The latter is accordingly much more problematic from an access to justice perspective. Second, the sample size where delay is quantifiable in cases where the proposed use of Rule 2.1 was unsuccessful is very small – only five cases. The measure of the delay in those five cases is lengthy – 126 days at the trial level alone. For these plaintiffs, the Rule was a severe access to justice obstacle. (Admittedly, in one of them an amended pleading was ordered, which was to all parties' benefit.[140]) But it is difficult to draw many normative lessons from this small sample size. In the vast majority of cases where the proposed use of the Rule was unsuccessful, judges have simply elected not to issue notice. Having the opposing party suggest that Rule 2.1 be employed in these circumstances is doubtless annoying for plaintiffs, but it seems to have minimal access to justice consequences, beyond the plaintiff's annoyance and the judge's time. I turn to suggestions on how to mitigate these access to justice impediments in Part IV, below.

F. Self-Represented Litigants?

It was not always clear from the decisions if parties were represented by counsel. At times, I inferred that a litigant was self-represented: for example, if the judge referred to the plaintiff making submissions when normally counsel would be referred to as making submissions.[141] Another example where I assumed a litigant was self-represented would be if the judge referred to submissions as unintelligible;[142] it seemed a fair inference in these circumstances that a lawyer did not draft the claim. However, I erred on the side of agnosticism in this respect.

Of the 190 decisions, all parties had counsel in only nine cases. 144 appear to have been instances where Rule 2.1 was sought to be used against self-represented litigants, though in one of those, the plaintiff

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138 In *Asghar v Toronto (City) Police Services Board*, 2016 ONSC 4844, [2016] OJ No 4028 (SCJ), a rare instance where the judge notes the date of the defendant's letter, the delay between the date of the defendant's letter to the ordering of notice is nine days.

139 It is of course difficult to make conclusions based on the small samples of Court of Appeal and Divisional Court decisions. Proper statistical analysis (which I am not qualified to conduct independently) may be appropriate after more years of use of the Rule.

140 *Rallis*, *supra* note 74.

141 See e.g. *Asghar v Avepoint Toronto*, 2015 ONSC 5544, [2015] OJ No 4611 (SCJ).

142 See e.g. *Brown v Fred Victor Organization*, 2015 ONSC 3516, [2015] OJ No 3428 (SCJ).

was a lawyer himself.[143] At 75%, this is in line with Macfarlane's observation of "some lower level civil courts reporting more than 70% of litigants as self-represented."[144] In an additional three-to-five of these cases, the litigant had a law degree.[145] In one case, someone purported to act as agent for the plaintiff but did not appear to be a licensed lawyer.[146] In the other 38 decisions, it was unclear whether there were self-represented parties.

It is striking that attempts to use Rule 2.1 were unsuccessful in seven of the cases where all sides had counsel.[147] The 22% success rate[148] is much lower than the typical rate of 75-80%. This could indicate that the Rule *is* being used unfairly against self-represented litigants. However, it is also possible – hopefully likelier – that lawyers are less likely to take on frivolous cases. After all, lawyers in Ontario swear an oath or make an affirmation upon being called to the bar that they will not commence claims on frivolous pretences.[149] Ultimately, though the comparatively high success rate of Rule 2.1 against self-represented litigants could be concerning, as long as judges remain cognizant of their duties to assist self-represented litigants, a matter I return to below, there are not necessarily significant access to justice concerns with Rule 2.1 for this reason alone.

G. "Frequent Flyers"

Twenty individuals represent, cumulatively, at least 63 of the 153 proposed uses of Rule 2.1 that were not dismissed – over 40%. Given that most of these individuals commenced their different actions against different defendants, it illustrates the utility of Rule 2.1 in not forcing multiple defendants into bringing motions and/or vexatious litigant applications. And this is merely among those cases that were reported – many additional cases these individuals have commenced appear unreported.[150] I return to a potential way to monitor these individuals below.

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143 *Posadas*, *supra* note 102.

144 Julie Macfarlane, "The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants – Final Report" (Windsor, ON: The National Self-Represented Litigants Project, the University of Windsor, May 2013) [Macfarlane, "Main Report"] at 34.

145 *Reyes v Buhler*, *supra* note 77; *Reyes v KL*, *supra* note 50; *Reyes v Esbin*, *supra* note 115; *Reyes v Jocelyn*, *supra* note 77; *Reyes v Embry*, *supra* note 77.

146 *Adams*, *supra* note 102.

147 *Haidari v Sedeghi-Pour*, 2015 ONSC 2904, 73 CPC (7th) 191 (SCJ); *Craven v Chmura* (2015), unreported, but referred to in *Craven v Chmura*, 2015 ONSC 4843, [2015] OJ No 4088 (SCJ); *Kyriakopoulos*, *supra* note 99; *Charendoff*, *supra* note 106; *Ramsarran*, *supra* note 99; *Caliciuri*, *supra* note 49; *Frick*, *supra* note 107.

148 *Chalupnicek v Children's Aid Society of Ottawa*, 2017 ONSC 1278, 2017 CarswellOnt 272 (Div Ct) [*Chalupnicek*]; *Gates v Humane Society of Canada for the Protection of Animals and the Environment (cob The Humane Society of Canada)*, 2016 ONSC 5345, [2016] OJ No 4424 (Div Ct); *Hoang v Mann Engineering Ltd*, 2015 ONCA 838, [2015] OJ No 6316 [*Hoang*].

149 Law Society of Ontario, By-Law 4, *Licensing*, s 21, online: <http://www.lsuc.on.ca.ezproxy.library.yorku.ca/WorkArea/DownloadAsset.aspx?id=2147485805>.

150 Emily Mathieu & Jesse McLean, "'Vexatious litigant' continues to have her days in court," *The Toronto Star* (26 Nov 2016), online: <url=https://www.thestar.com/news/gta/2016/11/26/vexatious-litigant-continues-to-have-her-days-in-court.html>; *Lin v ICBC Vancouver Head Office*, 2016 ONSC 3934, [2016] OJ No 3223 (Div Ct), aff'd 2016 ONCA 788, [2016] OJ 6071, leave to appeal ref'd, 2017 CarswellOnt 807 (SCC).

IV. WAYS FORWARD

As should be obvious, I view Rule 2.1 to have been fundamentally a positive addition to Ontario's *Rules*, resolving particular types of actions on their merits in a timely and cost-effective matter. Though a party's "opportunity to be heard" may not be as in-depth as is traditional, procedural fairness is a flexible concept. The dismissal of a claim without a trial, much less the dismissal without a hearing, was historically seen as the quintessential example of a procedural injustice.[151] But post-*Hryniak*, and bearing the principle of proportionality in mind, we have recognized that that is not always necessary – other, less formal procedures can fulfill the requirement of procedural fairness.[152] While the use of letters instead of formal motions may be seen to compromise the open court principle, that principle can yield to various other societal concerns[153] and, more importantly, formally reported decisions leave the open court principle largely respected. It should be borne in mind that administrative law – which shares many of the same concerns as civil litigation regarding procedural fairness and *audi alteram partem*[154] – frequently holds informal/written procedures to be sufficient to dismiss claims.[155]

Having said that, lessons should still be critically drawn. I begin this section by suggesting how the Rule should be interpreted going forward in light of successes and failures in its application to date. I argue that the Rule needs to continue to be interpreted restrictively yet applied robustly when appropriate. I also make specific suggestions regarding cases where the plaintiff appears to be attempting to re-litigate a proceeding, where a cause of action appears buried in an otherwise obviously abusive pleading, the possibility of a standard form for requesting parties to use, and the dangers inherent in dispensing with notice. Having established these considerations regarding the interpretation of the Rule from a doctrinal perspective, I then address three specific lessons that could be drawn from the application of Rule 2.1 from an institutional perspective. First, I make suggestions regarding the potential for more proactive policing of the Court's docket by judges and registrars. I then turn to what the experience of Rule 2.1 says regarding the potential of specialized decision-makers to facilitate access to justice. Finally, I make some comments regarding the ethics of using Rule 2.1 given that it is likely to be used disproportionately against self-represented litigants.

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151 Walker, *supra* note 5 at 697, quoting *Irving Ungerman Ltd v Galanis* (1991), 4 OR (3d) 545 at 550–51.

152 Shantona Chaudhary, "*Hryniak v. Mauldin*: The Supreme Court issues a clarion call for civil justice reform" (Winter 2014) 33 Adv J No 3 (praising *Hryniak*); Farrow, "2012," *supra* note 13 (concerning proportionality); MacKenzie, *supra* note 5 (also praising *Hryniak*).

153 See e.g., *R v NS*, 2012 SCC 72, [2012] 3 SCR 726 (admittedly in a different context).

154 LeBel, *supra* note 82 at 53.

155 Noted in the introduction of Freya Kristjanson & Sharon Naipul, "Active Adjudication or Entering the Arena: How Much is Too Much?" (2011) 24 Can J Admin L & Prac 201; L'Heureux-Dubé J contemplated written submissions satisfying procedural fairness in *Baker v Canada (Minister of Citizenship & Immigration)*, [1999] 2 SCR 817 at para 33: it "cannot be said that an oral hearing is always necessary to ensure a fair hearing and consideration of the issues involved."

A. How the Rule Should Be Interpreted Going Forward

1. In Favour of a Restrictive Standard, Robustly Applied

By its words, Rule 2.1 is meant to apply to litigation that is "on its face" frivolous, vexatious, and/or abusive. Courts have been rigorous in enforcing this requirement, even in cases where a small amount of legal argument or evidence could make the "certain to fail" nature of the litigation apparent. This standard is appropriate, partially because it accords with the Rule's words, which are always where an analysis of a statute or regulation's meaning begins,[156] and also because Rule 2.1 is meant to apply very summarily, and evidence and argument would defeat that purpose.

In this sense, Rule 2.1 should not be conflated with Rules 21 or 25.11. These rules have indispensable roles to play in the resolution of actions in certain cases, weeding out hopeless cases and clearing courts' dockets for all members of the public to use.[157] Though strong cases can be made, such as those put forward by Stephen Pitel and Matthew Lerner, that such rules should be more broadly interpreted to permit the resolution of questions of law,[158] this should not bleed into Rule 2.1. The common law is based on the premise that adversarial argument is likely to lead to a better resolution of questions of law – a premise that modern psychology has shown to be well-founded.[159] While the virtues of summary procedures are manifold,[160] Rule 2.1 is the most summary of all, dispensing with evidence, discovery, and legal argument. Restricting its use to the "clearest of cases" is therefore appropriate from a policy perspective. If the law needs to be explained, a factum is necessary and Rule 2.1 is inappropriate. Therefore, judges should be reluctant to order notice if there is even a whiff of a cause of action. The cases where Rule 2.1 has been an obvious access to justice hindrance are instances where notice was ordered and then the judge declined to use the Rule after receiving the plaintiff's submissions. Obviously, if a plaintiff explains, though submissions, that his or her action is not abusive, a judge should not dismiss it – that is the purpose of notice.[161] But no plaintiff should be put in that situation unnecessarily.

Although Rule 2.1 contemplates submissions from responding parties, judges issuing notice should consider whether they are truly necessary. This is not to suggest that a court should never reach out to a responding party for representations if the goal is to help redirect the plaintiff to an appropriate, potentially non-legal, forum for assistance. For instance, the ability to reach out to responding counsel to discern whether "something horrible [i]s indeed happening" that would require intervention, albeit not in the civil courts, seems eminently reasonable.[162] Generally, however, a responding party will have little to add about whether a pleading is "on its face" abusive, making responding submissions a waste of resources.

In this vein, one decision where Rule 2.1 was used to dismiss a claim arguably seemed inappropriate. In *Beatty*,[163] the plaintiff sought to sue, among other parties, the Office of the Children's Lawyer [OCL]

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156 Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Toronto: Butterworths, 2014) at § 23.81, quoting *Re Rizzo & Rizzo Shoes Ltd*, [1998] 1 SCR 27 at para 35.

157 *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42, [2011] 3 SCR 45 at paras 18-19.

158 See e.g. Pitel & Lerner, *supra* note 19; Gerard J Kennedy & Mary Angela Rowe, "*Tanudjaja v. Canada (Attorney General)*: Distinguishing Injusticiability and Deference on Motions to Strike" (2015) 44 Adv Q 391.

159 See e.g. Haidt, *supra* note 83; Lauwers, *supra* note 83.

160 See e.g. Pitel & Lerner, *supra* 19; *Hryniak*, *supra* note 6; MacKenzie, *supra* note 5.

161 See Part III.E, *supra*.

162 *Kadiri*, *supra* note 57 at para 7.

163 *Supra* note 63.

for, among other things, many acts for which the OCL is *prima facie* immune under the CJA.[164] The claim bore many hallmarks of abusive litigation and was also an attempt to re-litigate some matters raised in the pleading.[165] The issue of immunity was the only issue that gave the judge pause in concluding that there was no valid cause of action buried within the claim as the OCL's immunity is not absolute. He engaged in eleven paragraphs of legal analysis to determine that no applicable exceptions applied, concluding that aspects of the pleading that could suggest an exception applied appeared to have been inserted for colour.[166] With respect, this amount of legal analysis leads one to wonder if the claim was actually "on its face" frivolous, vexatious, or abusive; read generously, there appeared to be a (weak) cause of action lurking in the pleading and a pleadings motion may have been more appropriate.

Given that this is the only claim I have read where I felt the employment of Rule 2.1 was inappropriate, and given that no substantive injustice seems to have occurred, this does not detract from the overall effectiveness of the Rule in enhancing access to justice. However, it does appear to be an instance where Rule 2.1 was arguably, albeit understandably, used to "shortcut" proper procedure where adversarial argument would have been helpful.

2. The "Attempt to Re-Litigate" Exception

An exception to the "on its face" requirement is appropriate where a pleading may contain a cause of action, but the proceeding is an obvious attempt to re-litigate issues that have already been finally determined. Traditionally, attempts to re-litigate issues had to be addressed by either a vexatious litigant proceeding under s 140 of the CJA,[167] or a motion under Rule 21 or 25.11.[168] As noted above in Section I.B, these are time-consuming and expensive. It is unjust to force a defendant, having already participated in litigation that determined an issue, to do so again. As such, it would appear appropriate to allow a responding party to direct a one sentence explanation letter to the Court, merely pointing in the direction of the release or past decision. If there is any ambiguity about the binding nature of the release or decision, as there sometimes will be,[169] the Court should decline to use Rule 2.1. But if the pleading, when combined with the precedent or release, leads to the abusiveness of the new pleading being apparent "on its face," Rule 2.1 is appropriate. After all, attempting to re-litigate issues is a hallmark of abusive litigation.[170]

3. Cause of Action Buried in an Abusive Pleading

When a pleading potentially contains a scintilla of a cause of action, but is otherwise obviously abusive,[171] it would appear unfair to force the defendant to respond to obviously inappropriate and/or irrelevant material. It is also not in a plaintiff's best interest to allow him or her to make irrelevant

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164 CJA, *supra* note 9, s 142.
165 *Beatty*, *supra* note 63 at para 28.
166 *Ibid* at paras 36-46.
167 See e.g. *Pagourov*, *supra* note 38.
168 See e.g. *Power Tax Corp v Millar*, 2013 ONSC 135, 113 OR (3d) 502 (SCJ).
169 See s*upra* note 105.
170 *Gao #2*, *supra* note 64 at para 15; *Behn*, *supra* note 27 at para 40, quoting *Canam*, *supra* note 28 at para 56.
171 *Rallis*, *supra* note 74, was, as discussed above, an instance where the plaintiff made a vexatious rant in the context of claiming, without obvious implausibility, medical malpractice.

arguments that are destined to fail.[172] As such, judicial intervention may be warranted as at least parts of the proceeding are "on their face" abusive. However, the appropriate remedy in these circumstances would be to order that a new pleading be delivered.[173] This preserves any legitimate interest of the plaintiff, but makes it clear that he or she cannot proceed in an abusive fashion. The case law has already illustrated that this can be a valuable use of Rule 2.1.[174]

4. A Standard Form?

A primary cause of unsuccessful uses of Rule 2.1 is attempts by responding parties to explain why a proceeding is abusive, whether through obviously inappropriate legal argument and attempts to put unsworn evidence before the Court;[175] or more understandable, but still inappropriate, explanations of the allegedly vexatious party's past behaviour.[176] These concerns could potentially be addressed by a standard form that any request to use Rule 2.1 would have to follow. Such a form could integrate all potential nuances to the "on its face" requirement very simply. An example appears in Appendix E. I express no strong opinion on whether such a form would be desirable. The improper uses of the Rule are rare enough that asking parties to submit such a form may be needless complication to the simple procedure that is Rule 2.1. The civil justice system does not suffer from a lack of paperwork. Having said that, a standard form could also streamline all cases under the Rule, and prevent improper uses of the Rule early on in the process. As such, a pilot project in Toronto – a Superior Court jurisdiction with many practice directions for uses of particular elements of procedural law[177] – may be an experiment worth considering.

5. Dispensing with Notice

Some internal angst seems to be apparent among Rule 2.1 judges about when it is appropriate to dispense with the notice requirement. The common law has always emphasized that *some* type of hearing before a decision is made affecting one's legal interests is an essential part of fairness. Fortescue J famously wrote in *Dr. Bentley's Case* in 1723, that "even God himself did not pass sentence upon Adam before he was called upon to make his defence […] And the same question was put to Eve also."[178] But submissions filed in response to notice ordered pursuant to Rule 2.1 can generally encompass the party's opportunity to be heard.[179]

In thirteen cases, the notice requirement was dispensed with, usually because the proceeding was commenced in violation of a vexatious litigant order, had manifestly been brought in the wrong court, and/or was an obvious attempt to re-litigate. I am inclined to agree that ordering notice in cases such as these is neither necessary nor appropriate. Most importantly, the purpose of notice – the opportunity to be heard by a judge – had already been fulfilled or could be fulfilled in another venue. Moreover, the wording

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172 *Shafirovitch*, *supra* note 81 at paras 3, 5.
173 *Rallis*, *supra* note 74.
174 *Ibid*; *Asghar v Alon*, *supra* note 61.
175 *Ramlall v Jahir Ullah Pharmacy Inc #1333*, 2016 ONSC 2705, [2016] OJ No 2139 (SCJ) at para 3.
176 *Raji #1*, *supra* note 7.
177 Ontario Superior Court of Justice, "Practice Directions and Policies: Toronto," online: Ontario Courts <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/>.
178 *R v Chancellor, Masters and Scholars of the University of Cambridge (Dr Bentley's Case)* (1723) 1 Str 557 at 567.
179 This is most obviously apparent in administrative law: LeBel, *supra* note 82.

of Rule 2.1 prescribes notice "unless the Court orders otherwise." Given that the possibility of dispensing with notice is therefore contemplated, this minimizes the rule of law concerns that come with dispensing with it.[180] Finally, in many situations, it was in the moving party's own best interest that they be redirected to a new procedure as soon as possible – particularly, the instances where the matter had been brought in the wrong Court[181] or time was ticking on an appeal period.[182]

The one case where this was most difficult – and where Myers J appeared to have the greatest struggle – was *Shafirovitch*, where the plaintiff alleged that the military had implanted brainwashing devices in him, and hospital staff threw bugs on him so he could be interrogated. If true, these facts would amount to a cause of action. But it also seems appropriate to take judicial notice that these facts would not have occurred,[183] and the plaintiff was therefore behaving vexatiously deliberately or, more likely, was mentally ill. Myers J held that "realistically, there is nothing" the plaintiff could have said that would have led to his not dismissing the action.[184] He then compassionately referred the plaintiff to the Public Guardian and Trustee.[185] This was understandable, especially as it may have appeared disingenuous to have allowed the plaintiff to have made submissions in these circumstances.[186] However, the "right to be heard" principle is so important in the common law, and the precedent of allowing judges to comment on the merits of a dispute without *any* submissions so potentially dangerous, that I would be inclined to mandate submissions in these circumstances. This would leave the "no submissions" cases confined to instances where the plaintiffs have either already had an opportunity to be head, or are certain to have that opportunity in another venue. That *Shafirovitch* was the only case where notice was dispensed with that did not fall into these categories suggests that the costs of mandating notice in cases such as *Shafirovitch* are not great, while also ensuring that justice is seen to be done.

B. A More Active Role for the Court

Rule 2.1's wording suggests the Court itself is to be the primary gatekeeper on its use. However, the Rule is almost always used as a result of a responding party's request. To some extent, this could indicate understandable risk-averseness from both common law judges trained to be passive listeners, as well as registrars who are not meant to be decision-makers. The registrars are likely the primary reason the Court seldom employs Rule 2.1 without a responding party's request. After all, registrars see the originating

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180 Ignoring a statute or regulation's language is antithetical to the rule of law, though how this principle is applied in marginal cases is of course contestable: see, e.g. Stéphane Beaulac, "Parliamentary Debates in Statutory Interpretation: A Question of Admissibility or Weight" (Aug, 1998) 43 McGill LJ 287 at 322.

181 The access to justice implications of Ontario having multiple appellate venues is an important topic for another day.

182 *Lin v Rock*, *supra* note 2 at para 12.

183 Judicial notice is available when something is "either (1) so notorious or generally accepted as not to be the subject of debate among reasonable persons, or (2) capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy": *R v Spence*, 2005 SCC 71, [2005] 3 SCR 458 at para 53, quoting *R v Find*, 2001 SCC 32, [2001] 1 SCR 863 at para 48. That Canadian hospitals do not throw bugs upon individuals so that they can be interrogated appears to fall within the first branch. Even if the allegation that the military implanting brainwashing devices in persons does not fall within this category (though I am inclined to the view that it does), it is difficult to fathom how the plaintiff would or could have proven such an allegation.

184 *Shafirovitch*, *supra* note 81 at para 3.

185 *Ibid* at para 5.

186 Myers J's concern in *Shafirovitch*, *ibid* at para 3.

documents when they are filed, whereas judges seldom do. This reticence has advantages – Rule 2.1 is an extremely powerful tool and there have been no "false positives" when registrars or judges commenced the Rule 2.1 process unprompted.

While caution is the side on which the registrars should likely err, simple training to look for obviously vexatious actions could be helpful, also assisting registrars in their duties under Rule 2.1.01(7). As Myers J once told a Continuing Professional Development class, he tells registrars that "if you get a claim and it's written in crayon, call me."[187] This comment could be interpreted flippantly but his jurisprudence indicates that he is willing to give the benefit of the doubt to any pleading with even a semblance of a cause of action.

Two practical suggestions may be of assistance. First, registrars could have a list of persons against whom Rule 2.1 orders have been made. Such persons should be able to file pleadings (unless subject to a vexatious litigant order) but these pleadings could be sent to a judge to review. While it is possible that these persons could bring a legitimate proceeding, given that more than 40% of proper uses of Rule 2.1 are the result of "frequent fliers," a simple review of their pleadings by a judge appears prudent. Given the minimal time investment in having a judge review a single originating document, such a review could have minimal costs but substantial savings to all parties.

Second, in order to ensure that such a list is as comprehensive as possible, judges should report their decisions to use Rule 2.1. There are several good reasons to believe that this is not always done. First, I discovered many instances where one, but not all, of an appeal, order of notice, and/or first disposition was reported. Second, the *Toronto Star* uncovered, after an investigation, that one individual has commenced vastly more proceedings than have been reported.[188] Third, Sachs J referred to another individual having commenced fifteen proceedings in the Divisional Court in a period of less than three years, most of which were not reported.[189]

C. Specialized Decision-Makers

Specialized decision-makers can become familiar with the substantive law and procedure related to a particular area of law. In addition to increasing efficiency and leading to a more consistent jurisprudence, this is also likely to minimize errors.[190] This has been particularly discussed in the family law context,[191] but has been considered in the civil context as well. For example, the Toronto Commercial List has been praised as a specialized group of Superior Court judges working in a particular context, and in doing so improving access to justice.[192]

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[187] Made at Ontario Bar Association Young Lawyers Division, Evening Reception with The Honourable Mr. Justice Fred Myers, March 22, 2016; reported in Gerard J Kennedy, "Justice for Some" *The Walrus* (Nov 2017) 47 at 53.

[188] Mathieu & McLean, *supra* note 150, *contra* the five cases reported in Appendix B.

[189] *Lin v ICBC*, *supra* note 119, *contra* the cases actually reported in the Divisional Court, in Appendix B.

[190] Kennedy, *supra* note 114 at 105-106.

[191] See Kennedy, *ibid*; Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, Oct 2013) at 16: Canadian Forum for Civil Justice, online: <http:// www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf>, cited in Kennedy, *ibid* at 106.

[192] See e.g. Warren K Winkler, "The Vanishing Trial" (Autumn 2008) 27:2 Advocates' Soc J 3 at 4, cited in Kennedy, *ibid* at 106.

Myers J, as well as, to a lesser extent, Beaudoin and Nordheimer JJ, have had a disproportionate influence on the development of Rule 2.1. Myers J was designated as the Toronto judge responsible for Rule 2.1 shortly after his appointment to the bench.[193] Of the 162 Superior Court decisions, 96 were decided by Myers J, and 24 were decided by Beaudoin J. This represents nearly 75% of the Superior Court decisions. Nordheimer J decided 13 of the 21 Divisional Court decisions prior to his elevation to the Court of Appeal. This appears to have resulted in a streamlined approach to the use of Rule 2.1, leading to predictability, relatively few improper uses, and very few successful appeals. Although Myers J wrote vastly more reported decisions, the fact that Beaudoin and Nordheimer JJ also wrote a substantial minority of decisions mitigated the risk that the idiosyncratic views of a single judge would have disproportionate influence. Having a limited group of judges – particularly in jurisdictions such as Toronto and Ottawa – review cases such as these therefore appears to be a beneficial idea from the perspective of access to justice. None of Justices Myers, Beaudoin, nor Nordheimer wrote either of the two successfully appealed decisions.[194]

There are disadvantages to specialization. For instance, specialization can lead to a judge's burn-out due to lack of exposure to new issues. Specialization can also lead to a resistance to considering new ideas.[195] However, these risks must be weighed against the benefits of specialization. In any event, they can be mitigated by "rotating" the specialized judges, which occurs in the context of class actions in Toronto.[196] Ultimately, therefore, Rule 2.1 appears to be an instance where specialization has been a success. Not only should this be continued in this context, this could potentially be applied to other areas of civil litigation.

D. Dealing with Self-Represented Litigants and the Mentally Ill

Before giving an unequivocal endorsement to Rule 2.1, it is important to consider the ethical implications of the Rule. It has now become trite law that Rule 2.1 is "not for close cases."[197] It is easy to imagine how Rule 2.1, given its extremely summary nature without in-face court time, can be used against disadvantaged, frequently self-represented, persons. As the National Self-Represented Litigants Project has noted, self-represented litigants frequently do not understand summary procedures and can feel ambushed when responding to them.[198] The above analysis indicates that the Rule is more likely to be

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193 *Brown v Loblaws Companies Limited*, 2015 ONSC 7629, [2015] OJ No 6394 at para 4.

194 *Frick*, *supra* note 107; *Khan*, *supra* note 65.

195 See e.g. Freeda Steel, "The Unified Family Court – Ten Years Later" (1996) 24 Man LJ 381 at 388.

196 Traditionally, three judges serve in this respect, though that was reduced to two after Strathy J was elevated to the Court of Appeal: Drew Hasselback, "The billion-dollar judge: Class action lawsuits about more than frivolous claims" *Financial Post*, online: <http://business.financialpost.com/legal-post/the-billion-dollar-judge-class-action-lawsuits-are-about-more-than-frivolous-claims>. In addition to Strathy J, Perrell J (see e.g. *Spina v Shoppers Drug Mart Inc*, 2012 ONSC 5563, [2012] OJ No 4659 (SCJ)), Conway J (see e.g. *Clark (Litigation Gguardian of) v Ontario*, 2014 ONSC 1283, 2014 CarswellOnt 2725 (SCJ)), Belobaba J (see e.g. *Goldsmith v National Bank of Canada*, 2015 ONSC 2746, 126 OR (3d) 191 (SCJ)), and Horkins J (see e.g. *Sagharian (Litigation Guardian of) v Ontario (Minister of Education)*, 2012 ONSC 3478, 2012 CarswellOnt 8513 (SCJ)) have also served in this respect this decade.

197 *Raji #1*, *supra* note 7 at para 9.

198 Julie Macfarlane, Katrina Trask & Erin Chesney, "The Use of Summary Judgment Procedures Against Self-Represented Litigants: Efficient Case Management or Denial of Access to Justice?" (Windsor, ON: The National Self-Represented Litigants Project, The University of Windsor, Nov 2015) [Macfarlane, Trask & Chesney, "Vexatiousness"].

successfully employed against self-represented litigants. This should create ethical pause before the Rule is employed. There is also good reason for believing that several individuals against whom Rule 2.1 is employed are mentally ill, presenting unique challenges to ensure their rights are respected.[199]

The Law Society of Ontario's *Rules of Professional Conduct*[200] only prescribe basic standards regarding professional obligations.[201] Nonetheless, while they are clearly not a sufficient basis upon which to form an ethical decision, they are still relevant and need to be considered. The *LSO Rules* prescribe particular duties when a party in litigation is self-represented.[202] As one example, counsel have a duty not to conceal a binding authority even if not raised by other parties.[203] Though this duty applies to counsel in all cases, it is likely to be especially germane when a self-represented litigant is on the other side.[204] In summary procedures, it is particularly important that this rule not be ignored,[205] as there is likely less opportunity for counsel and the judge to recognize the omission of an on-point authority. Firm admonishments and costs consequences in the face of improper uses of Rule 2.1, as have been seen to date,[206] appear warranted.

But the real bulwarks against abuse of Rule 2.1 are judges – the individuals assigned to assess whether any particular potential use of the Rule is appropriate. The above cases illustrate that judges are cognizant of their obligation to grant more indulgences to self-represented litigants, particularly on procedural matters.[207] However, Rule 2.1 does not provide for *any* "in court" time for a party to explain his or her case to a judge. This reduces the opportunities that a judge has to ensure that the rights of self-represented litigants are protected.[208] This could illustrate public dispute resolution systems adopting many of the features of private dispute resolution, including a lesser amount of procedural protections. While at times this is desirable, in the name of efficiency and proportionality, it also creates risks, particularly for vulnerable parties. This could in fact illustrate that privatization of civil justice results in some of the

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199 See e.g. *Shafirovitch*, *supra* note 81.

200 Law Society of Upper Canada, *Rules of Professional Conduct*, Toronto: LSUC, 2014 [LSO, *"Rules*"].

201 Adam Dodek & Alice Woolley, "Introduction" in Dodek & Woolley, *supra* note 14 at 5; Gerard J Kennedy, "Searching Through Storytelling: Book Review of *In Search of the Ethical Lawyer: Stories from the Canadian Legal Profession*" (2016) 33:1 Windsor YB Access Just 177.

202 LSO Rules, *supra* note 200, Rule 7.2-9 (Unrepresented persons) and the commentary to Rules 3.2-4 (Encouraging Compromise or Settlement) and 5.1-2 (Advocacy).

203 The contours of this duty, and its appropriateness in all circumstances, are controversial: Stephen GA Pitel & Yu Seon Gadsden-Chung, "Reconsidering a Lawyer's Obligation to Raise Adverse Authority" (2016) 49:2 UBC L Rev 521.

204 See LSUC's "Dealing With Self-Represented Litigants," online: The Law Society of Upper Canada <http://www.lsuc.on.ca/with.aspx?id=2147499412>.

205 Pitel & Gadsden-Chung, *supra* note 203, suggest that this apply not only in cases of intentional misleading, but also when the omission occurred as a result of recklessness or carelessness.

206 *Supra* note 99.

207 *Davids v Davids* (1999), 125 OAC 375 (CA) at para 36.

208 See the discussion in *Sanzone v Schechter*, 2016 ONCA 566, 402 DLR (4th) 135 ["*Sanzone*"]. There is similar concern that the use of the technology in the courtroom could disadvantage marginalized populations: see, e.g., Suzanne Bouclin, Jena McGill & Amy Salyzyn, "Mobile and Web-Based Legal Apps: Opportunities, Risks and Information Gaps" (April 28, 2017). Canadian Journal of Law and Technology, Fall 2017, Forthcoming; Ottawa Faculty of Law Working Paper No. 2017-17. Available at SSRN: <https://ssrn.com/abstract=2960207>.

negative consequences Farrow describes arising even in the public justice system as courts feel obliged to "compete" with more efficient, private alternatives.[209]

Appellate courts have repeatedly held that the *Rules* must be interpreted flexibly to treat self-represented litigants fairly. For instance, in *Sanzone v Schechter*, the Ontario Court of Appeal held that a motions judge held a self-represented litigant to an unrealistic standard of what constituted an expert report while responding to the defendants' summary judgment motion.[210] In *Wouters v Wouters*, the same court held that it was inappropriate to strike a self-represented litigant's pleadings after, among other things, the motion judge failed to turn his mind to whether any of the – admittedly improperly prepared – materials before him could have been of assistance.[211] In *Pintea v Johns*, Karakatsanis J ruled on behalf of a unanimous Supreme Court of Canada that a motion judge gave insufficient consideration to whether it was proven beyond a reasonable doubt that a self-represented litigant had actual knowledge of two orders she was held in contempt for violating.[212] In *Bernard v Canada*, Rothstein J cautioned against overly technical interpretations of court rulings that would prevent a self-represented litigant from raising an argument.[213]

The National Self-Represented Litigants Project [NSRLP] has suggested that Rules 20 and 21 should be applied with particular restraint against self-represented litigants, noting that self-represented litigants frequently feel "ambushed" by summary procedures, and that judicial education and further monitoring of the outcomes of summary procedures may be appropriate.[214] The NSRLP has also suggested that "vexatious" is a term disproportionately levelled against self-represented litigants.[215]

These concerns are real, and there would appear little downside to the NSRLP's encouragement of further judicial training to manage allegedly vexatious litigation.[216] So why I am sanguine that these concerns can be mitigated in the context of Rule 2.1? Largely because Rule 2.1 addresses cases that are so egregious that there is every reason – theoretical and empirical – to believe that robustly enforced substantive and procedural doctrine will constrain the potential for abuse. Rule 2.1 is designed to address matters that are on their face destined to fail because they are manifestly abusive – a much higher standard than Rules 20 and 21. As Lorne Sossin has observed, even when procedural restraint is called for, "it should not permit frivolous and vexatious matters to tie up judicial resources."[217] Procedurally, unlike the NSRLP's concerns regarding Rules 20 and 21, the responding party is not permitted to bamboozle a self-represented litigant through lawyerly tactics because they are not allowed to make submissions at all. An

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209 Farrow, "Book," *supra* note 109 at, e.g., 232-251.

210 *Sanzone*, *supra* note 208.

211 2018 ONCA 26, 6 RFL (8th) 305 [*Wouters*] at paras 36-38. The impropriety was obvious but technical, exemplified in the failure to present evidence under oath.

212 2017 SCC 23, [2017] 1 SCR 470 ["*Pintea*"].

213 2014 SCC 13, [2014] 1 SCR 227 (partially dissenting, though the majority did not address this issue).

214 Macfarlane, Trask & Chesney, "Vexatiousness," *supra* note 198.

215 Sandra Shushani, Lidia Imbrogno & Julie Macfarlane, "Introducing the Self-Represented Litigant Database" (Windsor, ON: The National Self-Represented Litigants Project, the University of Windsor, Dec 2017) [Shushani, Imbrogno & MacFarlane, "NRSLP Database"] at 7-9.

216 Macfarlane, Trask & Chesney, "Vexatiousness," *supra* note 198; see also Macfarlane, "Main Report," *supra* note 144 at 125.

217 Gerard J Kennedy & Lorne Sossin, "Justiciability, Access to Justice & the Development of Constitutional Law in Canada" (2017) 45:4 Fed LR 707 at 713.

extremely generous screening of each case is required, responding to the NSRLP's concerns that vexatiousness and lack of merit will be conflated.[218] Adding further procedural protections would defeat the purpose of the Rule, which is to keep the responding party's costs to an absolute minimum. It is important to remember that Karakatsanis J, the author of the unanimous *Pintea*, was also author of the unanimous *Hryniak*, calling for broader use of summary procedures. And as explained above, having read all 190 reported cases using the Rule from its first three years, none where its use was ultimately upheld seemed to have tenable causes of action. Many of them originate from the same querulant individuals. It appears to be genuine vexatiousness – and not mere inability to properly fill out court forms[219] – that leads to the use of Rule 2.1.

There are, moreover, numerous examples of judges offering procedural assistance to parties before them in Rule 2.1 cases – Di Luca J in *Van Sluytman v Orillia Soliders' Memorial Hospital* is an eloquent example: "In reviewing this claim, I consider the fact that the Plaintiff is self-represented and of low income. I am not holding his statement of claim to the standard regularly expected with material prepared by counsel."[220] This is in line with the Court of Appeal's instruction in *Wouters* that the *Rules* "are not so rigid or inflexible as to preclude the court from examining non-compliant documents submitted by self-represented litigants to ensure that any properly admissible portions are received."[221] As long as judges continue to recognize that even a hint of a tenable cause of action is a reason to decline to use Rule 2.1, the risk of abuse of minimal. Other instances of judges assisting self-represented litigants have included suggesting where to obtain legal advice,[222] noting that the litigant has brought an appeal in the wrong court,[223] and pointing to a resource on drafting pleadings.[224] While this may pose some concerns that judges are no longer strictly neutral,[225] it still appears the best way to achieve efficient access to justice, and respect the rights of self-represented litigants.[226] So long as judges continue to fulfill their duties in

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218 Shushani, Imbrogno & MacFarlane, "NRSLP Database," *supra* note 215 at 9.

219 As noted in *Wouters*, *supra* note 211, these are very different phenomena. See also Ashley Haines, "When Dealing with a Self-Represented Litigant, Judges May Accept Non-Compliant Documents Where Appropriate" *CanLII Connects* (19 March 2018), online: <http://canliiconnects.org/en/commentaries/54989>.

220 *Van Sluytman v Orillia Soldiers' Memorial Hospital*, 2017 ONSC 692, [2017] OJ No 445 (SCJ) at para 12.

221 *Wouters*, *supra* note 211 at para 38.

222 *Lee v Future Bakery Ltd*, 2015 ONSC 3208, 2015 CarswellOnt 7464 (SCJ) at para 5.

223 *Lin v Fluery*, *supra* note 78.

224 *Rallis*, *supra* note 74 at para 5.

225 A concern famously flagged by Lord Denning in *Jones v National Coal Board* (1957), [1957] 2 ALL ER 155 (CA), citing *Yuill v Yuill* (1944), [1945] 1 All ER 183 (CA); Freya Kristjanson (as she then was) and Sharon Naipul also explored this in Kristjanson & Naipul, *supra* note 155.

226 Kristjanson & Naipul, *ibid* at 221-222, explore the tests imposed by appellate courts with respect to limits in this regard. The test for reasonable apprehension of bias remains the final bulwark against a judge who assumes the role of advocate: *Committee for Justice and Liberty et al v National Energy Board et al*, [1978] 1 SCR 369 at 394 (per de Grandpré J, dissenting but widely cited since then for the test for reasonable apprehension of bias: see e.g. *Stuart Budd & Sons Limited v IFS Vehicle Distributors ULC*, 2016 ONCA 60, 129 OR (3d) 37). The theoretical difficulties with the adversarial system of litigation as a mechanism to achieve access to justice – and whether such a system even exists – is a very interesting topic (see e.g. Sasha Lallouz, "A Call for Ethical Accountability: The Necessity for Lawyer-Client Ethical Dialogue in a One-Sided Adversarial System" (2016) Windsor Rev Legal & Soc Issues 37), albeit one far beyond the scope of this article.

this regard, there is every reason to believe that concerns with denying vulnerable parties a hearing in the face of truly vexatious matters will be mitigated.

The need for judges to offer assistance to parties – and read pleadings extremely generously – is heightened when there is a concern that a party is suffering from mental illness. In this vein, giving extensions of time[227] or asking clarifications about the nature of a party's allegations may be appropriate. Such correspondence would not technically be *ex parte*, as responding parties would be copied, but would presumably involve minimal expense for responding parties, thus according with the spirit of Rule 2.1.

Having said that, frivolous claims remain frivolous claims. If an individual is suffering from a mental illness, the response must be compassionate and may have to be societal. But the courts are unlikely to be the appropriate forum for such a response. As noted above, in one case Myers J referred the plaintiff to the Public Guardian and Trustee[228] – this is not something that judges should hesitate to do. Ultimately, this case recognizes that treating a mentally ill litigant with compassion can still be accompanied by the use of Rule 2.1. In many cases it seems essential to remove a person who needs help from a forum – the courts – incapable of providing that help.[229]

Finally, it is also worth remembering that demanding procedural protections of a nature such that there is literally *no* potential of an unjust result would likely be so costly as to defeat the goal of summary procedures.[230] Lest there be any confusion, as I have emphasized throughout this article, not using Rule 2.1 is the side on which judges should err. This is both because the need to ensure just outcomes should not be compromised[231] and because justice must generally trump efficiency if they are in a zero-sum conflict.[232] Moreover, there are enough summary alternatives to Rule 2.1 that electing to *not* use Rule 2.1 in a marginal case is likely to have costs for a defendant that are small when compared to the interest of preserving not only justice, but its appearance. However, the desire to pursue a substantively fair outcome, without consideration of the costs, can be taken to an unhealthy extreme.[233]

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227 Seen in, e.g., *Goralczyk v The Beer Store*, 2016 ONSC 1699, [2016] OJ No 1196 at para 5.

228 *Shafirovitch*, *supra* note 81 at para 5.

229 The institutional difficulty of the courts to address and assess mental illness is noted (admittedly in another context) in Hugh Harradence, "Re-Applying the Standard of Fitness to Stand Trial" (2013) 59 CLQ 511 at 537, summarizing Richard D Schneider, Hy Bloom & Mark Herrema, *Mental Health Courts Decriminalizing the Mentally Ill* (Toronto: Irwin Law, 2007), including quoting p 145.

230 As Karakatsanis J noted in *Hryniak*, *supra* note 6 at para 29: "There is, of course, always some tension between accessibility and the truth-seeking function but, much as one would not expect a jury trial over a contested parking ticket, the procedures used to adjudicate civil disputes must fit the nature of the claim. If the process is disproportionate to the nature of the dispute and the interests involved, then it will not achieve a fair and just result."

231 *Hryniak*, *ibid* at para 23.

232 Farrow, "Book," *supra* note 109 at 271.

233 As an example, the experience of expanded discovery rights is frequently cited as an example of a change to procedural law to minimize substantive injustices that has seemingly had minimal effects in doing so while also greatly increasing costs. Justice Thomas Cromwell noted as much in extrajudicial comments in 2013 while still serving on the Supreme Court: Beverley Spencer, "The Road to Justice Reform: An Interview with Supreme Court of Canada Justice Thomas Cromwell" *The National* (July-Aug 2013), online: National Magazine <http://nationalmagazine.ca/Articles/Recent4/The-road-to-justice-reform.aspx>. This is also a common hypothesis in the United States: see e.g. Judge (as he then was) Neil Gorsuch, "13th Annual Barbara K. Olson Memorial Lecture" (Address Delivered at the Federalist Society for Law and Public Policy's 2013 National Lawyers Convention, The Mayflower Hotel, Washington, DC, 15 Nov 2013), online: <https://www.youtube.com/watch?v=VI_c-5S4S6Y> at ~6:15-10:30. See also *Hryniak*, *supra* note 6 at para 29.

V. CONCLUSION

In 2017, one Ontario judge made headlines when he criticized – in mocking tone – parties for coming before him to deal with a matter he considered frivolous and manifestly a waste of the Court's resources.[234] But after a few days of mostly gleeful media praise,[235] Alice Woolley (prior to her appointment to the bench) wrote a thoughtful article in which she noted that the parties had a legitimate grievance, and regardless of how efficient the judge thought his solution was, it could never have been upheld by an appellate court as it was based on contradictory suppositions.[236] This instance therefore recognizes the dangers of judges using their powers, including their powers to summarily dismiss matters, inappropriately. And as damaging as vexatious litigation can be from the perspective of the court system, well-resourced defendants can at times claim "abusive" when litigation is anything but – demonstrating the danger that the term, like "civility," could be used to attempt to silence those who seek to disrupt the *status quo*.[237] Occasionally, judges even fall into the trap of emphasizing efficiency over justice. This trap must be strenuously avoided, particularly when there is a self-represented litigant or a concern that a person suffering from mental illness is affected.

Simultaneously, litigation that is vexatious can cause significant problems. When a poorly resourced, potentially self-represented party comes before the Court, judges should be inclined to grant the party more indulgences.[238] However, the fact that a party is on the margins of society does not mean that he or she has a legitimate legal grievance. The disproportionate damage that vexatious litigation can do to the civil justice system, as well as societal perceptions of it,[239] is undeniable. Though such litigation is far from the norm, the above analysis explains how there are still dozens of reported examples of it in Ontario alone every year. Inflicting the costs of this upon innocent parties – even well-resourced innocent parties – is manifestly unjust.

In light of these concerns, Rule 2.1 sought to balance the interests of the court system, plaintiffs, and defendants. And, despite minor hiccoughs, it appears to have succeeded. Civil procedure reform is hardly a catch-all solution for ensuring access to justice, but it can surely play a role. Rule 2.1 has allowed judges to address truly frivolous, vexatious, and/or abusive motions and actions in a way that is fair to the affected parties, recognizing that what constitutes a fair hearing varies according to the circumstances. Other jurisdictions should take note if they have not already done so.[240] There are risks created by the Rule –

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234 *Abdulaali v Salih*, 2017 ONSC 1609, 92 RFL (7th) 355 (SCJ).

235 See e.g. Christie Blatchford, "Getting to the root of Ontario's family law mess" *National Post* (21 March 2017), online: <http://nationalpost.com/opinion/christie-blatchford-getting-to-the-root-of-ontarios-family-law-mess>.

236 "Judgmental Judges," *Slaw* (22 March 2017); online: <http://www.slaw.ca/2017/03/22/judgmental-judges/>.

237 See e.g. Constance Backhouse, "Gender and Race in the Construction of 'Legal Professionalism': Historical Perspectives" in Dodek & Woolley, *supra* note 14 at 128.

238 *Supra*, Part IV.A.6.

239 Mathieu & McLean, *supra* note 150.

240 Some jurisdictions already have such rules, such as Prince Edward Island (Rule 2.1 of the *Prince Edward Island Rules of Civil Procedure*, based on the fact that PEI largely uses the same *Rules* as Ontario: see *Doyle v Roberts & PEI Mutual*, 2015 PEISC 2, 361 Nfld & PEIR 127, explaining the link with Ontario, and *Taha v Government of PEI*, 2018 PEICA 18, 2018 CarswellPEI 56, explaining the integration of Rule 2.1) and Alberta: Court of Queen's Bench, Civil Practice Court: Note 7, online: Alberta Courts <https://albertacourts.ca/docs/default-source/qb/civil-practice-note-7---vexatious-application-proceeding-show-cause-procedure.pdf?sfvrsn=cb2fa480_4>, effective Sept 4, 2018. Manitoba and

and potential ways to make its application more streamlined – but these are minimal and/or can be managed. Access to justice has been improved in narrow but very real circumstances. A simple amendment to the *Rules* – which are not merely regulatory but can also have valuable hortatory effects – has achieved this.[241] That is worth celebrating.

APPENDIX A – METHODOLOGY

I attempted to find all reported cases using Rule 2.1 from its coming into force on July 1, 2014 through June 30, 2017. I have done this through searching QuickLaw and Westlaw throughout 2017. There are limitations of such an approach. Notably, though QuickLaw and Westlaw report most decided reported cases in Ontario, they do not necessarily report every single case.[242] Nonetheless, quantitative analyses of case law frequently proceed from their use.[243] Moreover, given the summary nature of Rule 2.1, there is good reason to suspect many decisions that use it are not reported. There are also inherent limitations to a quantitative analysis of case law – notably, it is difficult to draw normative lessons from such an analysis.[244] However, I address the normative values implicated by Rule 2.1 in Parts II, III, and particularly IV, of this article.

While reviewing these cases, I kept track of the following facts:

- What cases have emerged as "leading" to provide guidance to members of the bar and bench on how to apply the Rule.
- How many cases were being resolved pursuant to the Rule and how many attempts to use the Rule are successful: I analyzed whether the Rule is enabling the prompt resolution of claims on their merits, which would be the case if there are a large number of successful uses, and a minimal number of unsuccessful uses.
- The rates of appeals and successful appeals, which suggest something about the clarity of the Rule's meaning and/or whether the judges are misapplying it (accepting that an appellate court overruling a lower court is not necessarily an indictment of the lower court decision[245]).
- Any costs orders involved, as costs orders shed light on financial expense, and are thus relevant to assessing whether the Rule is having a positive effect on access to justice

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Saskatchewan also allow a judge to waive the *Court of Queen's Bench Rules* (potentially *sua sponte*) in response to vexatious actions: *Court of Queen's Bench Rules*, Man Reg 553/88, Rule 2.04; *The Queen's Bench Rules*, Rule 5-3. These are nonetheless distinguishable (e.g. Alberta's procedure gives a different timeframe for response).

241 Allan B Morrison, "The Necessity of Tradeoffs in a Properly Functioning Civil Procedure System" (2012) 90 Or L Rev 991 at 1013.

242 *Brown v Lloyds of London Insurance Market*, 2015 ONCA 235, [2015] OJ No 1739 is an appeal of an unreported trial decision.

243 See e.g. Craig E Jones & Micah B Rankin, "Justice as a Rounding Error? Evidence of Subconscious Bias in Second-Degree Murder Sentences in Canada" (2014) 52 Osgoode Hall LJ 109 at 121, fn 58; Kennedy, *supra* note 114.

244 See e.g. Joshua B Fischman, "Reuniting 'Ought' and 'Is' in Empirical Legal Scholarship" (2013) 162:1 U Pa L Rev 117; Kennedy, *ibid*.

245 Fischman, *ibid* at 142.

(recognizing that costs awards typically reflect only about half of actual costs incurred[246]).

- How long Rule 2.1 is delaying the resolution of actions: in the case of successful uses of the Rule, it is evidence of how promptly cases are being resolved on their merits. In the case of unsuccessful uses, I can assess whether the Rule is in fact a hindrance to access to justice, as this must be weighed against the Rule's ability to help achieve access to justice in other cases.
- The identity of the judge deciding the motion and whether this affects the aforementioned "access to justice"-related variables. This is particularly important to analyze given that Justice Fred Myers has decided a disproportionate number of cases, having been appointed by the Toronto Team Leader-Civil to address the Rule.[247] Justices Robert Beaudoin of the Superior Court in Ottawa and Ian Nordheimer sitting on the Divisional Court in Toronto (prior to his elevation to the Court of Appeal) have also decided a disproportionate number of cases using Rule 2.1.
- Whether the case was prompted by a judge's own initiative, or referred to the judge by a responding party or the registrar, to discover who is employing the Rule.
- The reason why the proceeding was alleged to be vexatious. I include very short descriptions of all in Appendix B, though I highlight certain prominent types of cases in Parts IIC2 and IIC5.
- Whether the party against whom Rule 2.1 was sought to be employed was a self-represented litigant.

All of these details are recorded in Appendix B.

APPENDIX B – ALL CASES BY DATE

	Case Name	Resolution Date	Court	Source	Notice Ordered?	Decision	Result	Appeal	Costs	Delay: Notice to Final Disposition	Judge(s)	Claim Type	Self-Rep?
1	*Gao v Ontario (Workplace Safety and Insurance Board)*	07-Nov-14	SCJ	Responding Party	2014 ONSC 6100, 37 CLR (4th) 1	2014 ONSC 6497, 31 CPC (7th) 153	Granted After Notice	N/A	None	18 Days: Oct 20, 2014 to Nov 7, 2014	Myers	Motion in dismissed claim	Unclear
2	*Markowa v Adamson Cosmetic Facial Surgery Inc*	14-Nov-14	SCJ	Unclear	N/A	2014 ONSC 6664, [2014] OJ No 5430	Granted After Notice	N/A	Unclear	25 Days: Oct 20, 2014 to Nov 14, 2014	Myers	Attempt to re-litigate	Yes

[246] See e.g. Horne, *supra* note 136 at 61.

[247] *Goralczyk #1*, *supra* note 134 at para 6.

3	*Ali v Ford*	14-Nov-14	SCJ	Unclear	N/A	2014 ONSC 6665, [2014] OJ No 5426	Granted After Notice	N/A	Unclear	25 Days: Oct 20, 2014 to Nov 14, 2014	Myers	OPCA	Yes
4	*Crawford v Carey*	05-Dec-14	SCJ	Unclear	N/A	2014 ONSC 7054, [2014] OJ No 5824	Dismissed After Notice	N/A	Unclear	28 Days: Nov 7, 2014 to Dec 5, 2014	Myers	Tortious acts of building owner and developer	Unclear
5	*Nolan v Law Society of Upper Canada*	11-Dec-14	SCJ	Unclear	N/A	2014 ONSC 7196, [2014] OJ No 5989	Granted After Notice	N/A	Unclear	52 Days: Oct 20, 2014 to Dec 11, 2014 (Plaintiff could not be reached)	Myers	Forced resignation from LSUC in 1986	Unclear
6	*Brown v Lloyds of London Insurance Market*	05-Jan-15	SCJ	Unclear	N/A	N/A	Granted After Notice	Affirmed: 2015 ONCA 235, [2015] OJ No 1739	None	Unclear/ About 120 Days: Unclear to Dec 2014 to April 9, 2015 (appeal)	Myers	Not discernible; no cause of action	Yes
7	*Hawkins v Schlosser*	28-Jan-15	SCJ	Unclear	N/A	2015 ONSC 646, [2015] OJ No 372	Granted After Notice	N/A	$1,148.02: 2015 ONSC 1691, [2015] OJ No 1346	13 Days: Jan 15, 2015 to Jan 28, 2015	Ellies	Procedurally flawed family proceeding	Unclear
8	*Stefanizzi v Ontario (Landlord and Tenant Board)*	05-Feb-15	SCJ	Registrar	N/A	2015 ONSC 859, [2015] OJ No 562	Granted After Notice	N/A	Unclear	11 Days: Jan 25, 2015 to Feb 5, 2015	Kurke	Attempt to re-litigate	Unclear
9	*Williams v Law Society of Upper Canada*	09-Feb-15	SCJ	Responding Party	2015 ONSC 913, [2015] OJ No 619	N/A	Notice Ordered; Unclear Result	N/A	Unclear	N/A	Myers	Mental distress due to poor LSUC regulation	Unclear
10	*Park v Short*	26-Feb-15	SCJ	Responding Party	N/A	2015 ONSC 1292, [2015] OJ No 926	Granted Without Notice	N/A	Unclear	0 Days	Myers	Commenced in violation of vexatious litigant order	Yes

11	*Rousay v Rousay*	27-Feb-15	SCJ	Responding Party	N/A	2015 ONSC 1336, [2015] OJ No 930	Granted After Notice	N/A	Unclear	66 Days: Dec 23, 2014 to Feb 27, 2015	McEwen	Attempt to re-litigate; not discernible	Yes
12	*Raji v Borden Ladner and Gervais LLP*	02-Mar-15	SCJ	Responding Party	2015 ONSC 801, [2015] OJ No 307	2015 ONSC 2915, [2015] OJ No 976	Granted After Notice	N/A	Unclear	35 Days: Jan 26, 2015 to March 2, 2015	Myers	Attempt to re-litigate	Unclear
13	*Chowdhury v Bangladeshi-Canadian Community Services*	06-Mar-15	SCJ	Responding Party	2015 ONSC 1534, [2015] OJ No 1081	N/A	Notice Not Ordered	N/A	Unclear	N/A	Myers	Argument Plaintiff's Motion Premature	Unclear
14	*Beatty v Ontario (Attorney General)*	06-Mar-15	SCJ	Unclear	N/A	2015 ONSC 1519, [2015] OJ No 1290	Granted After Notice	N/A	None	28 Days: Feb 6, 2015 to March 6, 2015	Gray	Attempt to force province to alter policies in absence of factual basis	Yes
15	*Lin v Greither*	09-Mar-15	SCJ	Unclear	N/A	2015 ONSC 1541, [2015] OJ No 1086	Granted After Notice	N/A	Unclear	19 days: Feb 18, 2015 to March 9, 2015	Myers	Wrongful dismissal in 2009 in Vancouver; complaints against court for judgments; complaints against police for failing to investigate crime	Yes
16	*Gledhill v Toronto (City) Police Services Board*	18-Mar-15	SCJ	Responding Party	2015 ONSC 1006, [2015] OJ No 733 (second notice)	2015 ONSC 1755, [2015] OJ No 1297	Granted After Notice	N/A	Unclear	33 Days: Feb 13, 2015 to March 18, 2015	Myers	Not discernible and attempt to re-litigate	Yes
17	*Clarke v Canada (Human Rights Commission)*	18-Mar-15	SCJ	Unclear	2015 ONSC 1789, [2015] OJ No 1341	2015 ONSC 2564, 2015 Carswell Ont 5611	Claim Withdrawn Against 1 Defendant on Consent	N/A	None	27 Days: Feb 19, 2015 to March 18, 2015	Myers	Medical malpractice claim against improper defendant	Yes
18	*Husain v Craig*	18-Mar-15	SCJ	Responding Party	2015 ONSC 1754, [2015] OJ No 1300	N/A	Notice Not Ordered	N/A	Unclear	N/A	Myers	Claim Against Criminal Defence Lawyer	Yes

19	*Di Marco v Lattuca*	10-Apr-15	SCJ	Unclear	N/A	2015 ONSC 2341, [2015] OJ No 1845	Granted After Notice	N/A	Unclear	50 Days: Feb 19, 2015 to April 10, 2015	Myers	Attempt to re-litigate	Unclear
20	*Lin v Rock*	14-Apr-15	SCJ	Responding Party	N/A	2015 ONSC 2421, [2015] OJ No 1851	Granted Without Notice	N/A	None	N/A	Myers	Motion brought before wrong decision-maker	Yes
21	*Gledhill v Toronto (City) Police Services Board*	14-Apr-15	SCJ	Unclear	2015 ONSC 2068, 2015 Carswell Ont 5323	2015 ONSC 2418, [2015] OJ No 1847	Granted After Notice	N/A	Unclear	15 Days: March 30, 2015 to April 14, 2015	Myers	Attempt to re-litigate	Yes
22	*Covenoho v Ceridian Canada*	16-Apr-15	SCJ	Responding Party	2015 ONSC 2468, [2015] OJ No 1889	N/A	Notice Not Ordered	N/A	Unclear	N/A	Myers	Defendants attempt to raise merits in 6 page submissions	Yes
23	*Cao v Whirlpool Corp*	20-Apr-15	SCJ	Responding Party	2015 ONSC 1266, [2015] OJ No 884	2015 ONSC 2582, [2015] OJ No 1990	Granted After Notice	N/A	Unclear	54 Days: Feb 25, 2015 to April 20, 2015	Myers	Attempt to bring motion in dismissed action	Yes
24	*Tunney v 51 Toronto (City) Police*	24-Apr-15	SCJ	Unclear	[2015] OJ No 2148	2015 Carswell Ont 6140	Granted After Notice	N/A	Unclear	37 Days: March 18, 2015 to April 24, 2015	Myers	Purporting to sue on behalf of another without standing	Yes
25	*Nguyen v Economical Mutual Insurance Co*	24-Apr-15	SCJ	Responding Party	N/A	2015 ONSC 2646, 49 CCLI (5th) 144	Dismissed in Context of Other Motion	N/A	$2,000 (to Defendant given other success)	N/A	Dow	Insurance claim (procedural error by defendant)	Yes
26	*Salman v Patey*	27-Apr-15	SCJ	Responding Party	2015 ONSC 2727, 72 CPC (7th) 368	N/A	Notice Not Ordered	N/A	Unclear	N/A	Myers	Lawyer's negligence (alleged *res judicata*)	Yes
27	*Haidari v Sedeghi-Pour*	04-May-15	SCJ	Responding Party	2015 ONSC 2904, 73 CPC (7th) 191	N/A	Notice Not Ordered	N/A	Unclear	N/A	Myers	Car accident	No
28	*Scaduto v Law Society of Upper Canada*	05-May-15	SCJ	Responding Party	2015 ONSC 2563, [2015] OJ No 2005	N/A	Granted After Notice	Affirmed: 2015 ONCA 733, 343 OAC 87, leave to	Unclear	15 Days: April 20, 2015 to May 5, 2015 to Nov 2,	Myers	Allegations against LSUC for permitting a lecture	Yes

								appeal ref'd, [2015] SCCA No 488		2015 to April 21, 2016			
29	*Guettler v Royal Bank of Canada*	05-May-15	SCJ	Unclear	N/A	2015 ONSC 2905, 72 CPC (7th) 295	Granted After Notice	N/A	Unclear	176 Days: Nov 10, 2014 to May 5, 2015	Di Tomaso	Wilful interference with right to peaceful life	Yes
30	*Pilieci v Ontario (Attorney General)*	25-May-15	SCJ	Responding Party	2015 ONSC 3298, [2015] OJ No 2616	N/A	Notice Ordered; Unclear Result	N/A	Unclear	N/A	Myers	Attempt to sue court staff for how another proceeding was handled	Yes
31	*Brown v Fred Victor Organization*	28-May-15	SCJ	Responding Party	2015 ONSC 2728, [2015] OJ No 2133	2015 ONSC 3421, [2015] OJ No 2681	Granted After Notice	N/A	Unclear	31 Days: April 27, 2015 to May 28, 2015	Myers	Not discernable; failure to respond to offers to settle	Yes
32	*Keedi v McDonald's Corp Canada*	01-Jun-15	SCJ	Unclear	N/A	2015 ONSC 3516, [2015] OJ No 3428	Granted After Notice	N/A	None	45 Days: April 17, 2015 to June 1, 2015	Beaudoin	Unintelligible	Yes
33	*Becky v Ontario (Attorney General)*	04-Jun-15	SCJ	Responding Party	N/A	[2015] OJ No 4061, 2015 Carswell Ont 12048	Granted After Notice	N/A	Unclear	37 Days: March 30, 2015 to May 6, 2015	Grace	Upset police entered apartment complex and sued the world	Yes
34	*Nemmour v Durdle*	12-Jun-15	SCJ	Responding Party	2015 ONSC 2561, [2015] OJ No 1999	2015 ONSC 3772, [2015] OJ No 3074	Granted After Notice	N/A	Unclear	53 days: April 20, 2015 to June 12, 2015	Myers	Allegations against city re shelter	Yes
35	*Godzicz v McPherson*	12-Jun-15	SCJ	Unclear	N/A	2015 ONSC 3776, [2015] OJ No 3071	Granted After Notice	N/A	Unclear	38 Days: May 5, 2015 to June 12, 2015	Myers	Excessively long and not discernable	Yes
36	*Craven v Chmura*	12-Jun-15	SCJ	Unclear	N/A (referred to in 2015 ONSC 4843, [2015] OJ No 4088)	N/A	Notice Not Ordered	N/A	Unclear	N/A	Broad	Motion within broader case	No

37	*Ibrahim v Toronto Transit Commission*	17-Jun-15	SCJ	Judge	N/A	2015 ONSC 3912, [2015] OJ No 3155	Granted After Notice	Affirmed: 2016 ONCA 234, [2016] OJ No 1631, leave to appeal ref'd, [2016] SCCA No 231	Unclear	20 Days: May 28, 2015 to June 17, 2015 to March 31, 2016 to Oct 6, 2016	Myers	Not something civil action can redress	Yes
38	*Vasiliou v Hallett*	19-Jun-15	SCJ	Responding Party	2015 ONSC 3207, [2015] OJ No 2567	2015 ONSC 3997, [2015] OJ No 3227	Granted After Notice	N/A	Unclear	30 Days: May 20, 2015 to June 19, 2015	Myers	Litigation over will of mother	Yes
39	*Lee v Future Bakery ltd*	19-Jun-15	SCJ	Responding Party	2015 ONSC 3208, [2015] OJ No 2546	2015 ONSC 3996, [2015] OJ No 3217	Granted After Notice	N/A	Unclear	30 Days: May 20, 2015 to June 19, 2015	Myers	Non-comprehensible interlocutory step brought	Yes
40	*Posadas v Khan*	23-Jun-15	SCJ	Responding Party	2015 ONSC 4077, 75 CPC (7th) 118	N/A	Notice Not Ordered	N/A	Unclear	N/A	Myers	Badly phrased counterclaims	Yes (but lawyer)
41	*Asghar v Ontario*	23-Jun-15	SCJ	Responding Party	2015 ONSC 4071, [2015] OJ No 3326	N/A	Notice Ordered; Unclear Result	N/A	Unclear	N/A	Myers	Asks province to provide job, fix romance issues, *etc.*	Yes
42	*Raji v Myers*	23-Jun-15	SCJ	Unclear	N/A	2015 ONSC 4066, 75 CPC (7th) 115	Granted After Notice	N/A	Unclear	N/A	Beaudoin	Sues Myers J	Yes
43	*Clancy v Ontario*	29-Jun-15	SCJ	Unclear	N/A	2015 ONSC 4194, [2015] OJ No 3422	Granted After Notice	N/A	Unclear	116 days: March 5, 2015 to June 29, 2015	Johnston	Attempt to re-litigate	Yes
44	*Hurontario Travel Centre v Ontario (Attorney General)*	30-Jun-15	SCJ	Responding Party	2015 ONSC 3296, [2015] OJ No 2613	2015 ONSC 4246, [2015] OJ No 3469	Granted After Notice	N/A	Unclear	36 Days: May 25, 2015 to June 30, 2015	Myers	Attempt to re-litigate	Yes

45	*Maden v Longstreet*	30-Jun-15	SCJ	Responding Party	2015 ONSC 3425, [2015] OJ No 2691	2015 ONSC 4247, [2015] OJ No 3473	Granted After Notice	N/A	None	34 Days: May 27, 2015 to June 30, 2015	Myers	Not discernable claim against lawyer	Yes
46	*Persaud v Boundry Road Apts Ltd*	02-Jul-15	SCJ	Responding Party	N/A	2015 ONSC 4275, [2015] OJ No 3586	Granted After Notice	N/A	Unclear	N/A	Daley	Unintelligible, attempt to re-litigate, no standing	Yes
47	*Allevio Healthcare Inc v Kirsh*	14-Jul-15	SCJ	Responding Party	2015 ONSC 4539, 77 CPC (7th) 211	N/A	Notice Not Ordered	N/A	Unclear	N/A	Myers	Defamation claim based on privileged communications – requires hearing	Unclear
48	*Asghar v Toronto (City)*	20-Jul-15	SCJ	Responding Party	2015 ONSC 4075, [2015] OJ No 3325	2015 ONSC 4650, 42 MPLR (5th) 138	Granted After Notice	N/A	Unclear	27 Days: June 23, 2015 to July 20, 2015	Myers	Sued city after lifeguard said he was swimming too slowly in fast lane	Yes
49	*Kadiri v Harikumar*	04-Aug-15	SCJ	Responding Party	2015 ONSC 3777, [2015] OJ No 3073	2015 ONSC 4894, [2015] OJ No 4103	Granted After Notice	N/A	Unclear (Substantial)	53 Days: June 12, 2015 to Aug 4, 2015	Myers	Allegation that baby was stolen	Yes
50	*Cheng v Lee*	14-Aug-15	SCJ	Responding Party	2015 ONSC 5148, 77 CPC (7th) 141	N/A	Notice Not Ordered	N/A	Unclear	N/A	Myers	Accusations of sabotaging business ($25M counterclaim on $30K claim)	Yes
51	*Tunney v Crew & Tango*	15-Aug-14	SCJ	Responding Party	2015 ONSC 4537, [2015] OJ No 3875	2015 ONSC 5140, 2015 Carswell Ont 12347	Granted After Notice	N/A	Unclear	31 Days: July 14, 2015 to Aug 14, 2015	Myers	Plaintiff upset police arrested his tenant	Yes
52	*Ebriniss v D'Ovidio*	24-Aug-15	SCJ	Responding Party	2015 ONSC 4649, [2015] OJ No 3842	2015 ONSC 5295, [2015] OJ No 4446	Granted After Notice	N/A	Unclear	35 Days: July 20, 2015 to Aug 24, 2015	Myers	Baseless claim in occupier's liability – on its face cannot succeed (acknowledges self-reps need help)	Yes

53	*Gallion v Ontario Mortgage Corp*	25-Aug-15	SCJ	Responding Party	2015 ONSC 4770, [2015] OJ No 3966	2015 ONSC 5320, [2015] OJ No 4433	Granted After Notice	N/A	None	29 Days: July 27, 2015 to Aug 25, 2015	Myers	Eviction 35 years ago	Yes
54	*Asghar v Avepoint Toronto*	04-Sep-15	SCJ	Responding Party	2015 ONSC 5164, [2015] OJ No 4331	2015 ONSC 5544, [2015] OJ No 4611	Granted After Notice	N/A	None	21 Days: Aug 14, 2015 to Sept 4, 2015	Myers	Defendant offered and then reneged on job interview	Yes
55	*Kyriakopoulos v Lafontaine*	30-Sep-15	SCJ	Responding Party	2015 ONSC 6067, [2015] OJ No 5029	N/A	Notice Not Ordered	N/A	Unclear	N/A	Myers	"Wholly inappropriate use of Rule 2.1"	No
56	*Mesa v TD Direct Investment*	14-Oct-15	SCJ	Responding Party	2015 ONSC 5543, [2015] OJ No 4589	2015 ONSC 6337, [2015] OJ No 5292	Granted After Notice	N/A	Unclear	40 Days: Sept 4, 2015 to Oct 14, 2015	Myers	Alleged failure to pay over investment	Yes
57	*Fine v Botelho*	15-Oct-15	SCJ	Responding Party	N/A	2015 ONSC 6284, [2015] OJ No 5321	Dismissed in Context of Other Motion	N/A	Not Applicable (other issues)	N/A	Graham	Declined to use in context of broader motion	Yes
58	*Raji v Canada (RCMP)*	16-Oct-15	SCJ	Responding Party	2015 ONSC 5414, [2015] OJ No 4515	2015 ONSC 6392, [2015] OJ No 5486	Granted After Notice	N/A	Unclear	53 Days: Aug 24, 2015 to Oct 16, 2015	Beaudoin	Massive attempt to re-litigate terrorist plot against plaintiff	Yes
59	*Raji v Downtown Legal Services*	16-Oct-15	SCJ	Responding Party	2015 ONSC 5770, [2015] OJ No 4812	2015 ONSC 6391, [2015] OJ No 5474	Granted After Notice	N/A	Unclear	29 Days: Sept 17, 2015 to Oct 16, 2015	Beaudoin	Collateral attack on provincial court decision	Yes
60	*Grigorov v Booth*	04-Nov-15	SCJ	Responding Party	2015 ONSC 6066, [2015] OJ No 5025	2015 ONSC 6804, [2015] OJ No 5745	Granted After Notice	N/A	Unclear	35 Days: Sept 30, 2015 to Nov 4, 2015	Myers	Lawyer's Negligence	Yes
61	*Minor v Leonard*	04-Nov-15	SCJ	Responding Party	2015 ONSC 6069, [2015] OJ No 5293	2015 ONSC 6801, [2015] OJ No 5744	Granted After Notice	N/A	Unclear ("with costs")	35 Days: Sept 30, 2015 to Nov 4, 2015	Myers	Damages based on absolutely privileged events from previous cases	Yes

62	*Obermuller v Kenfinch Co-Operative Housing Inc*	04-Nov-15	SCJ	Responding Party	2015 ONSC 6065, [2015] OJ No 5031	2015 ONSC 6800, [2015] OJ No 5743	Granted After Notice	Affirmed: 2016 ONCA 330, [2016] OJ No 2362	Unclear (trial); $2,000 (appeal)	35 Days: Sept 30, 2015 to Nov 4, 2015 to May 3, 2016	Myers	Attempt to re-litigate Landlord-Tenant Board proceedings	Yes
63	*Charendoff v McLennan*	09-Nov-15	SCJ	Responding Party	2015 ONSC 6883, [2015] OJ No 6469	N/A	Notice Not Ordered	N/A	None	N/A	Myers	Questionable late attempt to add plaintiff's lawyer as third party	No
64	*Kavuru v Ontario (Public Guardian and Trustee)*	09-Nov-15	SCJ	Responding Party	2015 ONSC 6344, [2015] OJ No 5288	2015 ONSC 6877, 2015 Carswell Ont 18764 (partial); 2015 ONSC 7697, [2015] OJ No 6468 (full)	Granted After Notice	Affirmed: 2016 ONCA 758, [2016] OJ No 5557	Unclear	27 Days: Oct 13, 2015 to Nov 9, 2015 (to Dec 9, 2015 to Oct 14, 2016)	Myers	Suit against A-G due to decision of Divisional Court and other claims against PGT	Yes
65	*Perkins-Aboagye v Becker*	26-Nov-15	SCJ	Responding Party	2015 ONSC 6812, [2015] OJ No 6472	2015 ONSC 7366, [2015] OJ No 6291	Granted After Notice	N/A	Unclear	23 Days: Nov 3, 2015 to Nov 26, 2015	Beaudoin	Attempt to re-litigate	Yes
66	*Hagey v Ontario (Racing Commission)*	27-Nov-15	SCJ	Unclear	N/A	2015 ONSC 7506, [2015] OJ No 6203	Granted After Notice	N/A	Unclear	Unclear	Nadeau	Claim for breach of procedural fairness by Racing Commission	Yes
67	*Nguyen v Economical Mutual Insurance Co*	01-Dec-15	SCJ	Unclear	2015 ONSC 6802, [2015] OJ No 5723	2015 ONSC 7449, [2015] OJ No 6251	Granted After Notice	N/A	None	27 Days: Nov 4, 2015 to Dec 1, 2015	Myers	Attempt to re-litigate	Yes
68	*Munroe v Salvation Army*	01-Dec-15	SCJ	Responding Party	2015 ONSC 7448, [2015] OJ No 6220	N/A	Lack of Notice Reconsidered: 2016 ONSC 5564, [2016] OJ No 4643	N/A	Unclear	N/A	Myers	Wrongful dismissal with outrageous facts	Yes

69	*Gebremariam v Toronto (City) Police Service*	01-Dec-15	SCJ	Responding Party	2015 ONSC 7447, [2015] OJ No 6243	N/A	Notice Not Ordered	N/A	Unclear	N/A	Myers	Police brutality	Unclear
70	*Ghasempoor v DSM Leasing Ltd*	07-Dec-15	SCJ	Responding Party	2015 ONSC 7628, [2015] OJ No 6422	N/A	Notice Not Ordered	N/A	Unclear	N/A	Myers	Equipment lease	Yes
71	*Shafirovitch v Scarborough Hospital*	07-Dec-15	SCJ	Responding Party	Dismissed without notice	2015 ONSC 7627, 85 CPC (7th) 149	Granted Without Notice	N/A	None	0 Days	Myers	Belief hospital threw bugs at him	Yes
72	*Brown v Loblaws Companies Ltd*	07-Dec-15	SCJ	Responding Party	2015 ONSC 6501, [2015] OJ No 5440	2015 ONSC 7629, [2015] OJ No 6394	Granted After Notice	N/A	None	47 Days: Oct 21, 2015 to Dec 7, 2015	Myers	Claims related to denied credit card application	Yes
73	*Asghar v Alon*	14-Dec-15	SCJ	Responding Party	2015 ONSC 3835, 74 CPC (7th) 311	2015 ONSC 7823, [2015] OJ No 6573	Dismissed After Notice	N/A	Unclear	182 Days: June 15, 2015 to Dec 14, 2015	Myers	Libel	Yes
74	*MacLeod v Bell Canada Enterprises*	22-Dec-15	SCJ	Responding Party	2015 ONSC 7116, [2015] OJ No 5958	2015 ONSC 8019, [2015] OJ No 6770	Granted After Notice	N/A	None	35 Days: Nov 17, 2015 to Dec 22, 2015	Myers	Simply gave a collection of bills	Yes
75	*MacLeod v Ontario*	22-Dec-15	SCJ	Responding Party	2015 ONSC 7240, [2015] OJ No 6047	2015 ONSC 8020, [2015] OJ No 6772	Granted After Notice	N/A	None	32 Days: Nov 20, 2015 to Dec 22, 2015	Myers	Incomprehensible; request for exemption from credit check	Yes
76	*MacLeod v Hanrahan Youth Services*	22-Dec-15	SCJ	Responding Party	2015 ONSC 8018, [2015] OJ No 6771	N/A	Notice Not Ordered	N/A	Unclear	0 Days	Myers	Request to dismiss defendant's motion (itself frivolous and vexatious)	Yes
77	*Reyes v Esbin*	11-Jan-16	SCJ	Responding Party	2015 ONSC 6885, [2015] OJ No 6469	2015 ONSC 254, [2015] OJ No 97	Partially Granted	N/A	Unclear (submissions called for)	63 Days: Nov 9, 2015 to Jan 11, 2016	Myers	Loss of valuable chattels after eviction	Yes
78	*Frick v Frick*	18-Feb-16	SCJ	Responding Party	N/A – Formal Motion Brought	2016 ONSC 359, 78	Dismissed After Appeal	Allowed in Part: 2016 ONCA	Unclear	70 Days: Dec 10, 2015 to Feb 18,	Ellies	Family law use	No

						RFL (7th) 430		799, 132 OR (3d) 321		2016 to Oct 31, 2016			
79	*Purcaru v Vacaru*	07-Mar-16	SCJ	Responding Party	2016 ONSC 1037, [2016] OJ No 726	2016 ONSC 1609, 76 RFL (7th) 333	Dismissed After Notice	N/A	Unclear	25 Days: Feb 10, 2016 to March 7, 2016	Myers	Family law dispute	Yes
80	*Dias v Ontario (Workplace Safety & Insurance Board)*	10-Mar-16	SCJ	Responding Party	2016 ONSC 980, [2016] OJ No 671	2016 ONSC 1752, [2016] OJ No 2464	Granted After Notice	N/A	Unclear	30 Days: Feb 8, 2016 to March 10, 2016	Myers	Attempt to re-litigate WSIB	Yes
81	*Lee v Future Bakery ltd*	10-Mar-16	SCJ	Unclear	N/A	2016 ONSC 1764, [2016] OJ No 1266	Granted Without Notice	N/A	Unclear	0 Days	Myers	Attempt to re-litigate	Unclear
82	*Ochnik v Belusa*	10-Mar-16	SCJ	Unclear	N/A	2016 ONSC 1767, [2016] OJ No 1302	Granted – Notice Unclear	N/A	Unclear	N/A	Myers	Attempt to re-litigate but different party	Unclear
83	*Ochnik v Belusa*	10-Mar-16	SCJ	Unclear	N/A	2016 ONSC 1861, [2016] OJ No 1386	Granted – Notice Unclear	N/A	Unclear	N/A	Myers	Attempt to re-litigate but different party	Unclear
84	*Noddle v Attorney General (Ontario)*	14-Mar-16	SCJ	Responding Party	2016 ONSC 1826, [2016] OJ No 1317	N/A	Notice Not Ordered	N/A	None	N/A	Myers	Claim Against Gov't for Med Mal and Incarceration	Yes
85	*Rallis v Scarborough Hospital*	04-Apr-16	SCJ	Unclear	2016 ONSC 1763, [2016] OJ No 1264	2016 ONSC 2263, [2016] OJ No 1773	Ordered to Serve Amended Pleading	N/A	Unclear	25 Days: March 10, 2016 to April 4, 2016	Myers	Medical malpractice	Yes
86	*Goralczyk v Beer Store*	04-Apr-16	SCJ	Responding Party	2016 ONSC 993, [2016] OJ No 675	Mostly granted: 2016 ONSC 2265, [2016] OJ No 1763 and entirely granted: 2016	Granted After Notice	N/A	None (against some); Unclear (against others)	55 Days: Feb 8, 2016 to April 4, 2016 to July 5, 2016 (More time granted on	Myers	Mostly incomprehensible claim including slip-and-fall	Yes

						ONSC 4416, [2016] OJ No 3597				March 9 and May 9: 2016 ONSC 1699, [2016] OJ No 1196)			
87	*Nguyen v Bail*	04-Apr-16	SCJ	Responding Party	2016 ONSC 1828, [2016] OJ No 1316	2016 ONSC 2259, [2016] OJ No 1769	Granted After Notice	N/A	None	21 Days: March 14, 2016 to April 4, 2016	Myers	Attempt to re-litigate	Yes
88	*Nguyen v Economical Mutual Insurance Co*	04-Apr-16	SCJ	Unclear	N/A	2016 ONSC 2260, 2016 Carswell Ont 5186	Granted After Notice	N/A	None	40 Days: Feb 23, 2016 to April 4, 2016	Myers	Attempt to re-litigate	Yes
89	*Lin v ICBC Vancouver Head Office*	04-Apr-16	SCJ	Unclear	N/A	2016 ONSC 2262, [2016] OJ No 1766	Granted After Notice	Affirmed: 2016 ONSC 3934, [2016] OJ No 3223 (Div Ct), 2016 ONCA 788, [2016] OJ 6071, leave to appeal ref'd, 2017 Carswell Ont 807 (SCC)	Unclear	25 Days: March 10, 2016 to April 4, 2016 to Oct 2016 to April 13, 2017	Myers	Attempt to re-litigate – appeals dismissed under Rule 2.1	Yes
90	*Nguyen v Bail*	07-Apr-16	SCJ	Unclear	N/A	2016 ONSC 2365, [2016] OJ No 1840	Granted Without Notice	N/A	Unclear	0 Days	Myers	Attempt to re-litigate	Yes
91	*Leandre v Windsor Regional Hospital*	20-Apr-16	SCJ	Responding Party	2016 ONSC 2657, [2016] OJ No 2300	N/A	Notice Ordered; Unclear Result	N/A	Unclear	N/A	Faieta	Discrimination/ failure to honour insurance	Unclear
92	*Ramlall v Jahir Ullah Pharmacy Inc #1333*	22-Apr-16	SCJ	Responding Party	2016 ONSC 2705, [2016] OJ No 2139	N/A	Notice Not Ordered	N/A	Unclear	N/A	Myers	Failure to honour sale prices	Yes

93	*Chalupnicek v Children's Aid Society of Ottawa*	26-Apr-16	SCJ	Responding Party	2016 ONSC 2353, [2016] OJ No 1940	2016 ONSC 2787, [2016] OJ No 2122	Granted After Notice	Request for re-consideration: 2016 ONSC 4452, [2016] OJ No 3876 to Appeal: 2017 ONSC 1278, 2017 Carswell Ont 272 (Div Ct)	$17,684.83 (Appeal - Full Indemnity)	19 Days: April 7, 2016 to April 26, 2016 to July 6, 2016 to Feb 23, 2017	MacLeod	Kidnapping of children	No
94	*Dias v Ontario (Liquor Control Board)*	12-May-16	SCJ	Responding Party	2016 ONSC 2364, [2016] OJ No 1827	2016 ONSC 3135, [2016] OJ No 2465	Granted After Notice	N/A	Unclear	35 Days: April 7, 2016 to May 12, 2016	Myers	Attempt to re-litigate	Yes
95	*Murray v Toronto (City)*	12-May-16	SCJ	Responding Party	2016 ONSC 2355, [2016] OJ 1839	2016 ONSC 3137, [2016] OJ No 2472	Granted After Notice	N/A	Unclear	35 Days: April 7, 2016 to May 12, 2016	Myers	Seeks public inquiry	Yes
96	*Leandre v Children's Aid Society of London*	18-May-16	SCJ	Responding Party	2016 ONSC 2472, [2016] OJ No 1902	2016 ONSC 3250, [2016] OJ No 2959	Granted After Notice	N/A	Unclear	35 Days: April 13, 2016 to May 18, 2016	Diamond	Attempt to re-litigate	Yes
97	*Thompson v WJ Holdings Ltd*	31-May-16	SCJ	Responding Party	2016 ONSC 2704, [2016] OJ No 2145	2016 ONSC 3591, [2016] OJ No 2942	Granted After Notice	N/A	Unclear	39 Days: April 22, 2016 to May 31, 2016	Myers	Attempt to re-litigate	Yes
98	*SC v Children's Aid Society*	31-May-16	SCJ	Responding Party	2016 ONSC 3592, [2016] OJ No 2953	N/A	Notice Not Ordered	N/A	Unclear	N/A	Myers	Claim against CAS for bad treatment	Yes
99	*Chaloob v Canada (Attorney General)*	31-May-16	SCJ	Unclear	N/A	2016 ONSC 3569, [2016] OJ No 3002	Granted After Notice	N/A	Unclear	55 Days: April 6, 2016 to May 31, 2016	Beaudoin	Unclear	Unclear
100	*Ochnik v Belusa*	31-May-16	SCJ	Unclear	2016 ONSC 1860,	2016 ONSC 3589,	Granted After Notice	N/A	Unclear	77 Days: March 15, 2016	Myers	Attempt to re-litigate	Yes

					[2016] OJ No 1385	[2016] OJ No 2950				to May 31, 2016			
101	*Leandre v Collection Services of Windsor Ltd*	01-Jun-16	SCJ	Unclear	2016 ONSC 2733, [2016] OJ No 2125	2016 ONSC 2733, [2016] OJ No 2931	Granted After Notice	N/A	None	37 Days: April 25, 2016 to June 1, 2016	Diamond	Motion to seek immediate arrest of many individuals	Yes
102	*TFB v Office of the Children's Lawyer*	07-Jun-16	SCJ	Unclear	N/A	2016 ONSC 3816, [2016] OJ No 3024	Granted After Notice	N/A	Unclear	77 Days: March 22, 2016 to June 7, 2016	Trimble	Claims against children's lawyer not actionable	Yes
103	*Mitchell v Ontario (Ministry of Transportation)*	16-Jun-16	SCJ	Unclear	N/A	2016 ONSC 4016, [2016] OJ No 3643	Granted After Notice	N/A	Unclear	118 Days: Feb 18, 2016 to June 16, 2016	Daley	Obviously meritless appeal brought in wrong court	Unclear
104	*Marleau v Brockville (City)*	30-Jun-16	SCJ	Responding Party	N/A	2016 ONSC 4364, [2016] OJ No 3634	Granted After Notice	N/A	$5500: 2016 ONSC 5901, [2016] OJ No 4961	Unclear	Trousdale	Statutory Abuse of Power, *etc*	Yes
105	*Jarvis v Morlog*	07-Jul-16	SCJ	Responding Party	2016 ONSC 1827, [2016] OJ No 1314	2016 ONSC 4476, [2016] OJ No 3662	Granted After Notice	N/A	$2,256.39: 2015 ONSC 5061, 2016 CarswellOnt 12693 (substantial)	115 Days: March 14, 2016 to July 7, 2016	Myers	Freeman on the land re criminal court summons	Yes
106	*Irmya v Mijovick*	15-Jul-16	SCJ	Responding Party	2016 ONSC 3608, [2016] OJ No 2935	2016 ONSC 4629, [2016] OJ No 3797	Granted After Notice	N/A	$13,615.94, $6706.65, $9,865.19 (full indemnity): 2016 ONSC 5276, [2016] OJ No 4372	45 Days: May 31, 2016 to July 15, 2016	Myers	Condo dispute	Yes
107	*Asghar v Toronto (City)*	27-Jul-16	SCJ	Responding Party	2016 ONSC 4844,	N/A	Notice Ordered;	N/A	Unclear	N/A	Faieta	Unclear	Unclear

	Police Services Board				[2016] OJ No 4028		Unclear Result						
108	*Park v Crossgate Legal Services*	28-Jul-16	SCJ	Registrar	N/A	2016 ONSC 4864, [2016] OJ No 4021	Granted Without Notice	N/A	Unclear	0 Days	Myers	Commenced in violation of vexatious litigant order	Unclear
109	*Noddle v Canada (Deputy Attorney General)*	28-Jul-16	SCJ	Responding Party	2016 ONSC 4866, [2016] OJ No 4038	N/A	Notice Ordered; Unclear Result	N/A	Unclear	N/A	Faeita	Suit alleging defamation based on contents of past pleadings	Unclear
110	*Polanski v Scharfe*	29-Jul-16	SCJ	Responding Party	2016 ONSC 4892, [2016] OJ No 4039	N/A	Notice Not Ordered	N/A	Unclear	N/A	Myers	Strange claim based on dismissal from articling	Unclear
111	*D'Orazio v Ontario (Attorney General)*	29-Jul-16	SCJ	Responding Party	N/A	2016 ONSC 4893, [2016] OJ No 4031	Granted Without Notice	N/A	Unclear (partial)	0 Days	Myers	Acknowledged attempt to re-litigate	Yes
112	*Mester v Weh*	29-Jul-16	SCJ	Responding Party	Dec 17, 2015 (not reported – by registrar)	2016 ONSC 4887, [2016] OJ No 4274	Dismissed After Notice	N/A	None	252 Days: Nov 19, 2015 to July 29, 2016	Maddalena	Serious allegations but detailed	Unclear
113	*Musole v Buset & Partners LLP*	02-Aug-16	SCJ	Responding Party	2016 ONSC 4429, [2016] OJ No 3886	2016 ONSC 5561, [2016] OJ No 4699	Granted After Notice	N/A	None	63 Days: July 5, 2016 to Sept 6, 2016	Beaudoin	Attempt to re-litigate	Yes
114	*Carby-Samuels v Carby-Samuels*	05-Aug-16	SCJ	Responding Party	2016 ONSC 4974, [2016] OJ No 4188	N/A	Notice Not Ordered	N/A	Unclear	N/A	Beaudoin	Muddled but discernible claim	Unclear
115	*Graff v Network North Reporting and Mediation*	15-Aug-16	SCJ	Responding Party	2016 ONSC 5158, [2016] OJ No 4301	N/A	Notice Not Ordered	N/A	Unclear	N/A	Myers	Claim against former medical experts	Unclear
116	*MacLeod (Litigation guardian of) v*	19-Aug-16	SCJ	Unclear	2016 ONSC 5231, [2016] OJ No 4342	2016 ONSC 5845, [2016]	Granted After Notice	N/A	Unclear	33 Days: Aug 17, 2016 to Sept 19, 2016	Myers	Attempt to litigate prerogative of family courts	Yes

	Hanrahan Youth Services					OJ No 4814							
117	*Lochner v Toronto (City) Police Service*	26-Aug-16	SCJ	Responding Party	2016 ONSC 5384, [2016] OJ No 4534	N/A	Notice Ordered; Unclear Result	N/A	Unclear	N/A	Goldstein	Motion was 2.1ed after determination on other issues appears to have rendered moot	Yes
118	*Zhang v Oh*	31-Aug-16	SCJ	Responding Party	2016 ONSC 3734, [2016] OJ No 3021	2016 ONSC 5484, [2016] OJ No 4710	Granted After Notice	N/A	Unclear	86 Days: June 6, 2016 to Aug 31, 2016	Beaudoin	Suit of senator for being spy	Yes
119	*Reyes v Buhler*	06-Sep-16	SCJ	Unclear	N/A	2016 ONSC 5559, [2016] OJ No 4635	Granted Without Notice	N/A	Unclear (Full)	N/A	Myers	Commenced in violation of vexatious litigant order	Unclear
120	*Reyes v Jocelyn*	06-Sep-16	SCJ	Unclear	N/A	2016 ONSC 5568, [2016] OJ No 4642	Granted Without Notice	N/A	Unclear (Full)	N/A	Myers	Commenced in violation of vexatious litigant order	Unclear
121	*Reyes v Embry*	06-Sep-16	SCJ	Unclear	N/A	2016 ONSC 5558, [2016] OJ No 4636	Granted Without Notice	N/A	Unclear (Full)	N/A	Myers	Commenced in violation of vexatious litigant order	Unclear
122	*Dias v Ontario (Workplace Safety & Insurance Board)*	09-Sep-16	SCJ	Responding Party	2016 ONSC 5226, [2016] OJ No 4355	2016 ONSC 5636, [2016] OJ No 4662	Granted After Notice	N/A	Unclear	23 Days: Aug 17, 2016 to Sept 9, 2016	Braid	Attempt to re-litigate Toronto actions	Yes
123	*Sagos v Edelson*	23-Sep-16	SCJ	Responding Party	2016 ONSC 4482, [2016] OJ No 3894	2016 ONSC 5987, [2016] OJ No 4936	Granted After Notice	N/A	Unclear	78 Days: July 7, 2016 to Sept 23, 2016	Beaudoin	Statute-barred, likely jurisdiction-barred, unclear claim against lawyer	Yes
124	*Bisumbule v Conway*	30-Sep-16	SCJ	Responding Party	2016 ONSC 6138, [2016] OJ No 5209	N/A	Notice Not Ordered	N/A	Unclear	N/A	Beaudoin	Arguable *res judicata*/limitations period	Unclear

125	*Troncanada & Associates v B2Gold Corp*	06-Oct-16	SCJ	Responding Party	2016 ONSC 6271, [2016] OJ No 5190	N/A	Notice Not Ordered	N/A	Unclear	N/A	Dow	Arguable attempt to re-litigate	Unclear
126	*M.S. v Elia Associates Professional Corp*	26-Oct-16	SCJ	Responding Party	2016 ONSC 5375, [2016] OJ No 4479	2016 ONSC 6714, [2016] OJ No 5628	Granted After Notice	N/A	Unclear	62 Days: Aug 25, 2016 to Oct 26, 2016	Beaudoin	Attempt to re-litigate	Yes
127	*Sagos v Bermuda (Attorney General)*	01-Nov-16	SCJ	Responding Party	2016 ONSC 5664, [2016] OJ No 4709	2016 ONSC 6806, 2016 Carswell Ont 17293	Granted After Notice	N/A	Unclear	52 Days: Sept 12, 2016 to Nov 1, 2016	Beaudoin	Attempt to sue Bermudan police in Ontario	Yes
128	*Chapadeau v Addelman*	01-Nov-16	SCJ	Responding Party	2016 ONSC 6803, [2016] OJ No 5655	N/A	Notice Not Ordered	N/A	None	N/A	Beaudoin	"Arguable issues"	Unclear
129	*Bouragba v Conseil des Écoles Publiques de l'Est de l'Ontario*	01-Nov-16	SCJ	Responding Party	2016 ONSC 6810, [2016] OJ No 5652	N/A	Notice Ordered; Unclear Result	N/A	Unclear	N/A	Beaudoin	Claims arising from suspension from school	Yes
130	*Zeleny v Canada*	18-Nov-16	SCJ	Responding Party	N/A	2016 ONSC 7226, [2016] OJ No 6101	Granted After Notice	N/A	None	N/A	Minnema	Sought half-billion dollars as per obviously fake bonds	Yes
131	*Clark v Sports Cafe Champions*	21-Nov-16	SCJ	Responding Party	2016 ONSC 7303, [2016] OJ No 5991	2016 ONSC 8046, [2016] OJ No 6605	Granted After Notice	N/A	None	28 Days: Nov 23, 2016 to Dec 21, 2016	Myers	Wrong forum, no standing	Yes
132	*Beseiso v Halton (Regional) Police*	17-Dec-16	SCJ	Unclear	N/A	2016 ONSC 7986, [2016] OJ No 6752	Granted After Notice	N/A	Unclear	23 Days: Nov 24, 2016 to Dec 17, 2016	Beaudoin	Unclear	Yes
133	*R v Samuels*	04-Jan-17	SCJ	Responding Party	2016 ONSC 7748,	2017 ONSC 67,	Granted After Notice	N/A	Unclear	25 Days: Dec 9, 2016 to	Myers	Attempt to stay criminal case through	Yes

					[2016] OJ No 6396	[2017] OJ No 20				Jan 4, 2017		civil proceedings	
134	*Noddle v Canada (Attorney General)*	10-Jan-17	SCJ	Responding Party	2017 ONSC 215, [2017] OJ No 154	N/A	Notice Ordered; Unclear Result	N/A	Unclear	N/A	Beaudoin	Attempt to re-litigate	Unclear
135	*Mpamugo v Canada (Revenue Agency)*	17-Jan-17	SCJ	Responding Party	2016 ONSC 7569, [2017] 1 CTC 186	2017 ONSC 406, [2017] OJ No 200	Dismissed After Notice	N/A	Unclear	43 Days: Dec 5, 2016 to Jan 17, 2017	Myers	Attempt to re-litigate (submissions suggest potential change of circumstances)	Yes
136	*Van Sluytman v Department of Justice (Canada)*	23-Jan-17	SCJ	Responding Party	N/A (Jan 5, 2017 per appeal decision)	2017 ONSC 481, 2017 Carswell Ont 9603	Granted After Notice	Affirmed: 2018 ONCA 32, 2018 Carswell Ont 301	Unclear	18 Days: Jan 5, 2017 to Jan 23, 2017 (to Jan 16, 2018)	Wood	Statute-barred, many actions	Yes
137	*Van Sluytman v Orillia Soldiers' Memorial Hospital*	27-Jan-17	SCJ	Judge	N/A	2017 ONSC 692, [2017] OJ No 445	Granted After Notice	Affirmed: 2018 ONCA 32, 2018 Carswell Ont 301, 2017 ONSC 1359, [2017] OJ No 969 (Div Ct)	Unclear	24 Days: Jan 3, 2017 to Jan 27, 2017 to Jan 16, 2018	DiLuca	Statute-barred, many actions	Yes
138	*2222028 Ontario Inc v Adams*	27-Jan-17	SCJ	Responding Party	2017 ONSC 690, [2017] OJ No 565	N/A	Notice Not Ordered	N/A	Unclear	N/A	Matheson	Badly drafted claim alleging misappropriation of funds	Non-Lawyer Purports to Act
139	*Bresnark v Canada*	31-Jan-17	SCJ	Responding Party	2017 ONSC 767, [2017] OJ No 960	N/A	Notice Ordered; Unclear Result	N/A	Unclear	N/A	Chiappetta	Unclear	Unclear
140	*Caliciuri v Matthias*	07-Feb-17	SCJ	Responding Party	N/A	2017 ONSC 748, [2017] OJ No 547	Dismissed in Context of Other Motion	N/A	Unclear	137 Days (formal motion in conjunction with Rule 21): Sept 23, 2016 to	MacLeod	Alleged attempt to re-litigate	No

										Feb 7, 2017			
141	*Lin v Ontario (Ombudsman)*	10-Feb-17	SCJ	Unclear	N/A	2017 ONSC 966, [2017] OJ No 699	Granted After Notice	N/A	Unclear	79 Days: Nov 23, 2016 to Feb 10, 2017	Chiappetta	Many actions	Yes
142	*Milne v Livingston*	27-Feb-17	SCJ	Responding Party	2017 ONSC 1367, [2017] OJ No 1031	N/A	Notice Ordered; Unclear Result	N/A	Unclear	N/A	Chiappetta	"On its face"	Unclear
143	*Ellis v Wernick*	03-Mar-17	SCJ	Responding Party	N/A	2017 ONSC 1461, [2017] OJ No 1070	Granted After Notice	N/A	Unclear	N/A	Marrocco	Attempt to challenge Royal Proclamation of 1763	Yes
144	*Strang v Toronto (City)*	10-Mar-17	SCJ	Judge	2017 ONSC 997, [2017] OJ No 680	2017 ONSC 1622, [2017] OJ No 1295	Granted After Notice	N/A	Unclear	29 Days: Feb 9, 2017 to March 10, 2017	Myers	Hallmarks of vexatiousness	Yes
145	*Strang v Paragon Security*	10-Mar-17	SCJ	Judge	2017 ONSC 996, [2017] OJ No 684	2017 ONSC 1623, [2017] OJ No 1299	Granted After Notice	N/A	Unclear	29 Days: Feb 9, 2017 to March 10, 2017	Myers	Hallmarks of vexatiousness	Yes
146	*Strang v Ontario Public Service Employees Union*	10-Mar-17	SCJ	Judge	2017 ONSC 995, [2017] OJ No 683	2017 ONSC 1625, [2017] OJ No 1298	Granted After Notice	N/A	Unclear	29 Days: Feb 9, 2017 to March 10, 2017	Myers	Hallmarks of vexatiousness	Yes
147	*Strang v Ontario*	10-Mar-17	SCJ	Judge	2017 ONSC 994, [2017] OJ No 682	2017 ONSC 1625, [2017] OJ No 1297	Granted After Notice	N/A	Unclear	29 Days: Feb 9, 2017 to March 10, 2017	Myers	Hallmarks of vexatiousness	Yes
148	*Strang v Ontario (Treasury Board)*	13-Mar-17	SCJ	Judge	2017 ONSC 993, [2017] OJ No 681	2017 ONSC 1638, [2017] OJ No 1296	Granted After Notice	N/A	Unclear	32 Days: Feb 9, 2017 to March 13, 2017	Myers	Hallmarks of vexatiousness	Yes
149	*Zhang v Zang*	17-Mar-17	SCJ	Responding Party	2017 ONSC 1183, [2017] OJ No 950	2017 ONSC 1772, [2017]	Granted After Notice	N/A	Unclear	23 Days: Feb 22, 2017 to March 17, 2017	Beaudoin	Attempt to re-litigate allegations of spying	Yes

						OJ No 1858							
150	*DeMasi v Toronto (City)*	24-Mar-17	SCJ	Unclear	N/A	2017 ONSC 1916, [2017] OJ No 1541	Granted After Notice	N/A	None	162 Days: Oct 13, 2016 to March 24, 2017	Dunphy	Incomprehensible	Yes
151	*Fex v McCarthy Tetrault LLP*	27-Mar-17	SCJ	Responding Party	2017 ONSC 1280, [2017] OJ No 905	2017 ONSC 1907, [2017] OJ No 1548	Granted After Notice	N/A	Unclear	31 Days: Feb 24, 2017 to March 27, 2017	Sweeny	Attempt to re-litigate	Yes
152	*Dias v Ontario (Workplace Safety & Insurance Appeal Tribunal)*	27-Mar-17	SCJ	Responding Party	2017 ONSC 1277, [2017] OJ No 902	2017 ONSC 1888, [2017] OJ No 1542	Granted After Notice	N/A	Unclear	31 Days: Feb 24, 2017 to March 27, 2017	Sweeny	Attempt to re-litigate	Yes
153	*Van Sluytman v Brewster*	28-Mar-17	SCJ	Responding Party	N/A	2017 ONSC 1957, [2017] OJ No 2287	Granted After Notice	Affirmed: 2018 ONCA 32, 2018 Carswell Ont 301	Unclear	61 Days: Jan 26, 2017 to March 28, 2017	DiLuca	Obviously statute-barred	Yes
154	*White v Graham*	10-Apr-17	SCJ	Responding Party	2017 ONSC 1268, [2017] OJ No 948	2017 ONSC 2236, [2017] OJ No 1856	Granted After Notice	N/A	Unclear	47 Days: Feb 22, 2017 to April 10, 2017	Beaudoin	Outrageous, delusional claims	Yes
155	*Reyes v KL*	12-Apr-17	SCJ	Responding Party	2017 ONSC 308, [2017] OJ No 192	2017 ONSC 2304, [2017] OJ No 2195	Granted After Notice	N/A	Unclear	90 Days: Jan 12, 2017 to April 12, 2017	Faieta	Scandalous and/or statute-barred employment allegations	Yes
156	*Ramsarran v Assaly Asset Management Corp*	19-Apr-17	SCJ	Responding Party	2017 ONSC 2394, [2017] OJ No 1937	N/A	Notice Not Ordered	N/A	Unclear	N/A	Beaudoin	Trying to explain why abusive through argument	No
157	*Carby-Samuels v Carby-Samuels*	12-May-17	SCJ	Responding Party	2017 ONSC 2911, [2017] OJ No 2406	N/A	Notice Not Ordered	N/A	Unclear	N/A	Beaudoin	"Clearly inappropriate" attempt to short circuit Defendant's summary judgment motion after failure to file	Unclear

												notice of motion	
158	*Foster v Children's Aid Society*	15-May-17	SCJ	Responding Party	2017 ONSC 2086, [2017] OJ No 2692	2017 ONSC 2990, [2017] OJ No 2693	Granted After Notice	N/A	Unclear	42 Days: April 3, 2017 to May 15, 2017	Beaudoin	No material facts pleaded – simply demanded money	Yes
159	*Korolew v Canadian Union of Public Employees*	05-Jun-17	SCJ	Responding Party	2017 ONSC 2984, [2017] OJ No 2696	2017 ONSC 3474, [2017] OJ No 2949	Granted After Notice	N/A	None	21 Days: May 15, 2017 to June 5, 2017	Beaudoin	Statement of Claim containing one word: Dafamation (sic)	Yes
160	*Gebremariam v Jenkins*	21-Jun-17	SCJ	Unclear	N/A	2017 ONSC 3845, [2017] OJ No 3197	Granted After Notice	N/A	Unclear	55 Days: April 27, 2017 to June 21, 2017	Glustein	Attempt to re-litigate, unknown claim	Yes
161	*Kashani v Algonquin College*	28-Jun-17	SCJ	Responding Party	2017 ONSC 3971, [2017] OJ No 3513	N/A	Notice Ordered; Unclear Result	N/A	Unclear	N/A	Beaudoin	Manifestly frivolous and/or in the wrong Court	Yes
162	*Khan v Krylov & Company LLP*	N/A	SCJ	Unclear	N/A	N/A	Dismissed After Appeal	Reversed: 2017 ONCA 625, 2017 Carswell Ont 16235	$3,000 at CA; $2,000 at SCJ	N/A	Daley	Not "clearest of cases"	Yes
163	*R. v Jayaraj*	03-Nov-14	Div Ct	Judge	N/A	2014 ONSC 6367, 69 CPC (7th) 287	Granted After Notice	N/A	None	14 Days: Oct 20, 2014 to Nov 3, 2014	Nordheimer	Seeking to quash appointments of judges	Unclear
164	*Beard Winter LLP v Shekhdar*	15-Mar-16	Div Ct	Unclear	N/A	2016 ONSC 1852, [2016] OJ No 1350	Granted After Notice	N/A	None	1 Day: Judge Asked Day Before	Marrocco	Jurisdictional submissions sought on own submission	Yes
165	*Lin v Zhang*	18-Apr-16	Div Ct	Unclear	N/A	2016 ONSC 2485, [2016] OJ No 1988	Granted After Notice	N/A	None	27 Days: March 22, 2016 to April 18, 2016	Sachs	Seeking damages in Divisional Court based on Landlord-Tenant proceeding	Yes
166	*Lin v Springboard*	22-Jul-16	Div Ct	Unclear	N/A	2016 ONSC 4705,	Granted After Notice	Affirmed: 2016 ONCA	Unclear	42 Days: June 10, 2016 to	Sachs	Seeks relief that cannot be granted in	Yes

						[2016] OJ No 3917		787, [2016] OJ No 6072, Leave to appeal refused: [2016] SCCA No 562		July 22, 2016 to Oct 26, 2016 to Feb 23, 2017		judicial review	
167	*Cerqueira Estate v Ontario*	18-Aug-16	Div Ct	Unclear	N/A	2016 ONSC 5112, [2016] OJ No 4353	Granted After Notice	N/A	None	77 Days: June 2, 2016 to Aug 18, 2016	Sachs	Attempt to re-litigate (dealt with by SJ in SCJ)	Yes
168	*Gates v Humane Society of Canada for the Protection of Animals and the Environment (cob The Humane Society of Canada)*	24-Aug-16	Div Ct	Unclear	N/A	2016 ONSC 5345, [2016] OJ No 4424	Granted After Notice	N/A	$8,000: 2016 ONSC 6051, [2016] OJ No 4957	N/A	Horkins	Dismissal of appeal of Small Claims Court decision after many frivolous steps	Yes
169	*Adamson v Iracleous*	27-Sep-16	Div Ct	Unclear	N/A	2016 ONSC 6055, [2016] OJ No 4943	Granted After Notice	N/A	None	N/A	Nordheimer	Attempt to JR to "fix to do what is right"	Yes
170	*El Zayat v Hausler*	28-Sep-16	Div Ct	Unclear	N/A	2016 ONSC 6099, [2016] OJ No 4984	Granted After Notice	N/A	None	N/A	Nordheimer	"Motion" really attempt to have second appeal	Yes
171	*Adamson v Lo*	29-Sep-16	Div Ct	Unclear	N/A	2016 ONSC 6114, [2016] OJ No 5012	Granted After Notice	N/A	None	N/A	Nordheimer	Attempt to JR to "fix to do what is right"	Yes
172	*Graff v Capreit Limited Partnership*	03-Oct-16	Div Ct	Unclear	N/A	2016 ONSC 6173, [2016] OJ No 5073	Dismissed After Notice	N/A	Unclear	N/A	Nordheimer	Landlord Dispute that had become moot	Yes

173	*Lin v Toronto (City) Police Services Board*	27-Oct-16	Div Ct	Unclear	N/A	2016 ONSC 6736, [2016] OJ No 5540	Granted After Notice	N/A	Unclear	37 Days: Sept 20, 2016 to Oct 27, 2016	Nordheimer	Unintelligible	Yes
174	*Stefanizzi v Ontario (Landlord and Tenant Board)*	09-Nov-16	Div Ct	Responding Party	N/A	2016 ONSC 6932, [2016] OJ No 5779	Granted After Notice	N/A	Unclear	N/A	Gauthier	Div Ct obviously not proper forum	Yes
175	*Hemchand v Toronto (City)*	16-Nov-16	Div Ct	Responding Party	N/A	Unreported (referred to in 2016 ONSC 7134, [2016] OJ No 5857)	Granted After Notice	N/A	None	N/A	Nordheimer	No jurisdiction for Div Ct	Yes
176	*Coady v Law Society of Upper Canada*	02-Dec-16	Div Ct	Unclear	N/A	2016 ONSC 7543, [2016] OJ No 6194	Granted Without Notice	N/A	None	N/A	Nordheimer	Seeking relief that cannot be granted	Yes
177	*Son v Khan*	06-Dec-16	Div Ct	Unclear	N/A	2016 ONSC 7621, [2016] OJ No 6283	Granted After Notice	N/A	$2,611.93	N/A	Price	Attempt to re-litigate	Yes
178	*Cerqueira (Estate Trustee of) v Ontario*	19-Dec-16	Div Ct	Unclear	N/A	2016 ONSC 7961, [2016] OJ No 6512	Granted After Notice	N/A	None	33 Days: Nov 16, 2016 to Dec 19, 2016	Nordheimer	Attempt to re-litigate	Yes
179	*Nithianantan v Quash*	09-Jan-17	Div Ct	Registrar	N/A	2017 ONSC 155, [2017] OJ No 62	Granted After Notice	No appeal allowed: 2017 ONSC 1359, 2017 Carswell Ont 2764	None	20 Days: Dec 20, 2016 to Jan 9, 2017	Nordheimer	Seeking leave to appeal a decision declining leave to appeal. No right of appeal per Marrocco ACJ	Yes
180	*Volnyansky v Ontario (Attorney General)*	14-Mar-17	Div Ct	Responding Party	2017 ONSC 1692, [2017] OJ No 1330	N/A	Notice Not Ordered	N/A	Unclear	N/A	Daley	Arguable attempt to re-litigate	Yes

181	*Apollo Real Estate Ltd v Streambank Funding*	23-Mar-17	Div Ct	Judge	N/A	2017 ONSC 1877, [2017] OJ No 1463	Granted After Notice	N/A	None	N/A	Nordheimer	Denying frivolous motion for leave to appeal	Unclear
182	*Lin v Fluery*	09-Jun-17	Div Ct	Judge	N/A	2017 ONSC 3601, 2017 Carswell Ont 8926	Granted Without Notice	Affirmed: 2017 ONCA 695, 2017 Carswell Ont 13756	None	3 Days: Notice of Appeal filed June 6; appeal dismissed June 9	Nordheimer	Dismissal of appeal without jurisdiction	Yes
183	*Khan v 1806700 Ontario Inc*	15-Jun-17	Div Ct	Judge	N/A	2017 ONSC 3726, 2017 Carswell Ont 9122	Granted Without Notice	N/A	None	7 Days: June 8, 2017 to June 15, 2017	Nordheimer	Dismissal of attempt to appeal denial of leave to appeal	Yes
184	*Okel v Misheal*	15-Oct-14	CA	Judge	N/A	2014 ONCA 699, [2014] OJ No 4842	Granted After Notice	N/A	None	0 Days	Juriansz, Rouleau, Pepall	Vexatious step by family law litigant	Yes
185	*Gallos v Toronto (City)*	20-Nov-14	CA	Judge	N/A	2014 ONCA 818, [2014] OJ No 5570	Granted After Notice	N/A	Unclear	0 Days	Feldman, Juriansz, MacFarland	Attempt to re-open appeal after SCC denied leave	Yes
186	*Hoang v Mann Engineering Ltd*	02-Dec-15	CA	Responding Party	N/A	2015 ONCA 838, [2015] OJ No 6316	Granted After Notice	N/A	$1,500	N/A	Strathy, LaForme, Huscroft	Second attempt to rehear appeal; causes endless trouble in SCC	No
187	*Simpson v Chartered Accountants Institute of Ontario*	01-Nov-16	CA	Responding Party	N/A	2016 ONCA 806, [2016] OJ No 6382	Granted After Notice	N/A	None	Unclear	Laskin, Sharpe, Miller	Attempt to re-litigate	Yes
188	*Collins v Ontario*	19-Apr-17	CA	Responding Party	N/A	2017 ONCA 317, [2017] OJ No 1982	Partially Granted	N/A	Unclear	106 Days: Jan 3, 2017 to April 19, 2017	LaForme, Peppall, Pardu	Appellant refusing to perfect appeal	Yes

189	*Damallie v Ping*	17-Feb-17	CA	Responding Party	2016 ONCA 603, [2016] OJ No 4009	2017 ONCA 146, [2017] OJ No 1229	Granted After Notice	N/A	Unclear	205 Days: July 27, 2016 to Feb 17, 2017	Gillese referred to MacFarlane, van Rensburg, Huscroft	Attempts to re-litigate	Yes
190	*Children's Aid Society of Toronto v VD*	19-Jun-17	CA	Judge	N/A	2017 ONCA 514, 2017 Carswell Ont 9499	Granted After Notice	N/A	None	47 Days: May 3, 2017 to June 19, 2017	Epstein, sent to Rouleau, Benotto, Hourigan	Attempt to bring frivolous motions and appeals not in interests of child	Yes

APPENDIX C – COSTS ORDERS

TABLE 2: COSTS ORDERS IN RULE 2.1 CASES

	Case Name	First Instance Costs	Appeal Costs
	Hawkins v Schlosser[248]	$1,148.02	None
	Nguyen v Economical Mutual Insurance Co[249]	$2,000	None
	Obermuller v Kenfinch Co-Operative Housing Inc[250]	Unclear	$2,000
	Chalupnicek v The Children's Aid Society of Ottawa[251]	None	$17,684.83 (full indemnity)
	Marleau v Brockville (City)[252]	$5,500	None
	Jarvis v Morlog[253]	$2,256.39 (substantial indemnity)	None
	Irmya v Mijovick[254]	$30,187.78 (full indemnity, three defendants)	None

[248] 2015 ONSC 1691, [2015] OJ No 1346 (SCJ).
[249] *Nguyen v Economical*, *supra* note 49.
[250] 2015 ONSC 6800, [2015] OJ No 5743 (SCJ), aff'd 2016 ONCA 330, [2016] OJ No 2362.
[251] *Chalupnicek*, *supra* note 148.
[252] 2016 ONSC 5901, [2016] OJ No 4961 (SCJ).
[253] 2015 ONSC 5061, 2016 CarswellOnt 1269 (SCJ).
[254] 2016 ONSC 5276, [2016] OJ No 4372 (SCJ).

	Case Name	First Instance Costs	Appeal Costs
	Khan v Krylov & Company LLP[255]	$2,000	$3,000
	Son v Khan[256]	$2,611.93	None
	Gates v Humane Society of Canada for the Protection of Animals and the Environment (cob The Humane Society of Canada)[257]	$8,000	None
	Hoang v Mann Engineering Ltd[258]	$1,500	None

APPENDIX D – CALCULATION OF DELAY

Disposition		Number of Cases	Superior Court	Divisional Court	Court of Appeal
Granted		136	111	19	6
	After Notice	*121*	*99*	*16*	*6*
	Average Delay – Excluding Appeal (102)	45 Days (102)	45 Days (92)	31 Days (8)	126 Days (2)
	Average Delay – Including First Appeal (13)	232 Days (13)	274 Days (10)	80 Days (3)	N/A (0)
	Average Delay – Including Second Appeal and/or Supreme Court Leave Application (13)	338 Days (4)	411 Days (3)	120 Days (1)	N/A (0)
	Unclear About Notice	*2*	*2*	*0*	*0*
	Delay Not Calculable				
	Without Notice	*13*	*10*	*3*	*0*
	Average Delay	0 Days			
Partially Granted		2	1	0	1
	Average Delay (2)	84.5 Days	63 Days	N/A	106 Days
Notice Ordered of Dismissal Being Considered But Final Disposition Not Reported		13	13	0	0
	Delay Not Calculable				
New Pleading Ordered		1	1	0	0
	Delay (1)	25 Days		N/A	
Resolved After Claim Withdrawn Against One Defendant on Consent		1	1	0	0
	Delay (1)	28 Days		N/A	
Dismissed		37	35	2	0
	No Notice Ordered	*27*	*26*	*1*	*0*
	Average Delay	0 Days			
	After Notice	*4*	*3*	*1*	*0*

[255] *Khan*, *supra* note 65.
[256] 2016 ONSC 7621, [2016] OJ No 6283 (Div Ct).
[257] 2016 ONSC 6051, [2016] OJ No 4957 (Div Ct).
[258] *Hoang*, *supra* note 148.

Disposition		Number of Cases	Superior Court	Divisional Court	Court of Appeal
	Average Delay (3)	108 Days	108 Days	Unreported	N/A
	In Context of Broader Motion	*3*	*3*	*0*	*0*
	Average Delay	Not Informative			
	After Amended Pleading Served	*1*	*1*	*0*	*0*
	Average Delay	180 Days		N/A	
	After Appeal	*2*	*2*	*0*	*0*
	Average Delay	326 Days (1)	326 Days (1)	N/A	
Total		190	162	21	7

APPENDIX E – POTENTIAL STANDARD FORM

The defendant/respondent/responding party (circle one) asks the Court to consider using Rule 2.1 of the *Rules of Civil Procedure* to dismiss ____ (name of proceeding and document filed).

The proceeding is frivolous, vexatious, and, or abusive:
_ in its entirety;
_ in part at paragraphs _____.

_ The proceeding is abusive because the matters raised therein have been finally determined in a previous decision, a copy of which is attached.

_ The proceeding is abusive because the matters raised therein are subject to a final release, a copy of which is attached.