

Commercial Litigation Insights: Vexatious Litigant Proceedings Reformulated

August 7, 2024

By Jeff Cowan

On August 2, 2024, [O.Reg. 322/24](#) made numerous changes to the *Rules of Civil Procedure* (“**RCP**”) and prescribed forms to establish a new framework for vexatious litigant proceedings under s. 140 of the *Courts of Justice Act* (“**CJA**”) and to update the procedure under Rules 2.1 and 2.1.01 of the *RCP* for the stay or dismissal of proceedings or motions on the grounds that they are frivolous, vexatious, or an abuse of process. The amendments will come into force on the date that the amendments to s. 140 of the *CJA* come into force by proclamation of the Lieutenant Governor. Currently, s. 140 requires an application to be commenced, as opposed to a motion within a proceeding.

New Rule 2.2 brings together all components of the vexatious litigant framework under the *RCP*. It sets out the procedure governing the making of vexatious litigant orders (VLOs) when they are sought by way of motion or on a judge’s initiative in an ongoing proceeding, or by application in a standalone proceeding.

The new procedure generally consists of an initial notice step to the person who is the potential VLO subject and to all others identified as being involved in ongoing litigation with that person; a period for the potential VLO subject to respond; a further reply period for all persons involved in ongoing litigation with the potential VLO; an initial review by a judge and a decision to dismiss or order a hearing; a hearing if ordered; a decision, with ancillary terms as appropriate as to scope; and requirements for staff to immediately issue the VLO if made, circulate it to the parties and persons, and have it included in the index of VLOs.

Seven new forms under Rule 2.2, including model order forms, are also prescribed and are available on the [Ontario Court Forms website](#). Amongst other content, they reflect that VLOs may be limited in scope and therefore a stay or dismissal under the rule should only occur where the proceeding commenced/continued without leave falls within the ambit of the order; and clarify that the rule does not alter the registrar’s authority to refuse a document for filing or issuance if they determine that a VLO applies in the context.

Minor consequential amendments were also made to the rules governing originating process, motions, applications, and case management.

Rules 2.1 and 2.1.01 are amended to better reflect the chronology of steps and to distinguish between the court acting in response to a written request and on its own initiative; to automatically stay proceedings pending a determination under Rule 2.1.01; to better align Rule 2.1 with other rules, especially with regard to terminology; and to include a new request form (Form 2.1A) with details about what to include for the court.

It is hoped these changes will better enable parties and the courts to address vexatious litigants while preserving access to justice.

The information and comments herein are for the general information of the reader and are not intended as advice or

opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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