

RULE 2.1

GENERAL POWERS TO STAY OR DISMISS IF VEXATIOUS, ETC.

STAY, DISMISSAL OF FRIVOLOUS, VEXATIOUS, ABUSIVE PROCEEDING

Order to Stay, Dismiss Proceeding

2.1.01(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:
 - (a) The court shall direct the Registrar to give notice (Form 2.1A) to the plaintiff or applicant, as the case may be, that the court is considering making the order.
 - (b) 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.
 - (c) If the plaintiff or applicant does not file a written submission that complies with paragraph (b), the court may make the order without any further notice to the plaintiff or applicant or to any other party.
 - (d) If the plaintiff or applicant files a written submission that complies with paragraph (b), the court may direct the Registrar to give a copy of the submission to any other party.
 - (e) A party who receives a copy of the plaintiff's or applicant's submission may, within 10 days after receiving the copy, file with the court a written submission, no more than 10 pages in length, responding to the plaintiff's or applicant's submission, and shall give a copy of the responding submission to the plaintiff or applicant and, on the request of any other party, to that party;
 - (f) Where notice under clause (3)(a) has been given, the proceeding shall be stayed until the court has made a determination under subrule (1), except that the parties may file the submissions referred to in clauses 3(b) to (e).
- (4) A document required under subrule (3) to be given to a party shall be mailed in the manner described in subclause 16.01(4)(b)(i), and is deemed to have been received on the fifth day after it is mailed.

Copy of Order

- (5) The Registrar shall serve a copy of the order by mail on the plaintiff or applicant as soon as possible after the order is made.

Request for Order

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

Notification of Court by Registrar

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

STAY, DISMISSAL OF FRIVOLOUS, VEXATIOUS, ABUSIVE MOTION

Order to Stay, Dismiss Motion

- 2.1.02(1)** The court may, on its own initiative, stay or dismiss a motion if the motion appears on its face to be frivolous or vexatious or otherwise an abuse of the process of the court.
- (2) Subrules 2.1.01(2) to (7) apply, with necessary modifications, to the making of an order under subrule (1) and, for the purpose,
- (a) a reference to the proceeding shall be read as a reference to the motion; and
 - (b) a reference to the plaintiff or applicant shall be read as a reference to the moving party.

Prohibition on Further Motions

- (3) On making an order under subrule (1), the court may also make an order under Rule 37.15 prohibiting the moving party from making further motions in a proceeding without leave.

STAY, DISMISSAL OF PROCEEDING IF NO LEAVE UNDER JUDICATURE ACT

Order for Stay, Dismissal

- 2.1.03(1)** If the court determines that a person who is subject to an order under subsection 65(1) of the **Judicature Act** has instituted or continued a proceeding without the order having been rescinded or leave granted for the proceeding to be instituted or continued, the court shall make an order staying or dismissing the proceeding.

Request for Order

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

Copy of Order

- (3) An order under subrule (1) may be made without notice, but the Registrar shall serve a copy of the order by mail on every party to the proceeding for whom an address is provided in the originating process as soon as possible after the order is made.

Olumide v. Police Commissioner and Human Rights Commission, 2021 PECA 4

While Rules 21 and 25 permit striking out frivolous or vexatious proceedings, these Rules apply to actions only. In this application for judicial review, Rule 2.1 was applied to scrutinize the face of the pleading. Although Rule 2.1 permits no evidence, it is sometimes necessary to review reasons and pleadings from other proceedings to make a determination.

A.G. of PEI v. Taha, 2021 PESC 43

In declaring the respondent a vexatious litigant under section 65 of the *Judicature Act*, the court relied on the factual litigation record.

Olumide v. Police Commissioner and Human Rights Commission, 2020 PESC 31

After assessing the documents filed by the applicant the court found the application for judicial review to be one of the “clearest of cases” for a finding that it is, on its face, frivolous, vexatious or otherwise an abuse of the process of the court, and should be dismissed.

Olumide v. Police Commissioner and Human Rights Commission, 2021 PECA 4

Although the case involved a motion to quash an appeal, it set out in detail the history and procedure to be followed on a Rule 2.1 motion. Further, the court found that an application for judicial review is a proceeding and thus subject to Rule 2.1.

Callow v. West Vancouver Teachers Assoc., 2019 PESC 55

The application was dismissed pursuant to Rule 2.1 after the court held that it had no jurisdiction. There was no discernible cause of action set out, and the application had all the hallmarks of a vexatious proceeding.

Taha v. National Bank of Canada, 2018 PESC 29

The Plaintiff commenced an action against the Defendant seeking general damages of \$100 Million and punitive damages of \$246 Billion. The court initiated the procedure under Rule 2.1.01. Upon review of the 75 page Statement of Claim, the court held that the claim consisted of hyperbole, exaggeration, opinion, rhetoric and scandalous allegations against the Defendant and that it was one of the “clearest of cases” where the claim should be struck on the basis of that is frivolous, vexatious or an abuse of process of the court. See also: 2019 PECA 15; 2019 PECA 16; 2019 PESC 4; 2019 PESC 11; 2019 PESC 23, 2019 PECA 2, 2019 PECA 11, and 2018 PESC 33.

Olumide v. PEI Human Rights Commission, 2019 PESC 1

Rule 2.1 – the court dismissed the plaintiff’s claim, finding no merit in the plaintiff’s action against the defendant which was a “vexatious attempt to force the commission to do what it is not legislatively permitted to and is an abuse of the process of the court”.

Taha v. Government of P.E.I., 2018 PECA 18

The Rule introduces changes to the procedures for disposing of vexatious litigation. The Rule provides summary procedures that: (a) minimize the expense to which the parties joined to vexatious litigation are put to resolve such litigation; and (b) are consistent with the principles of fairness and natural justice.

Taha v. Williams, 2018 PESC 33

The plaintiff commenced an action against the defendant who is the solicitor on record for the National Bank. The Bank had made an earlier application for summary judgment against the plaintiff. The trial judge found that Rule 2.1 had been triggered and both parties made written submissions. The Court, upon reviewing the statement of claim struck it on the basis that it was frivolous, vexatious or an abuse of process of the court.