

# Court of King's Bench of Alberta

Citation: Lemay v Zen Residential Ltd, 2024 ABKB 49

Date: 20240126  
Docket: 2303 21324  
Registry: Edmonton

2024 ABKB 49 (CanLII)

Between:

**Andre Lemay**

Plaintiff

- and -

**Zen Residential Ltd.**

Defendant

---

**Memorandum of Decision  
of the  
Honourable Justice S. Leonard**

---

## **I. Introduction**

[1] On January 10, 2024, I heard two applications in a dispute between Andre Lemay [Mr. Lemay] and his landlord, Zen Residential Ltd. [Zen]. The actual subject of this dispute is secondary to this decision. Instead, what is relevant is how documents were filed in this proceeding by a person, Andrew S. Botar [Mr. Botar], who engaged in contempt of court when he filed materials with the Alberta Court of King's Bench.

[2] Mr. Botar is an abusive litigant with a lengthy and very troubling record of misconduct at the Alberta Court of King's Bench (reviewed in *Lemay v Zen Residential Ltd.*, 2023 ABKB 682 at paras 5-10 [*Lemay #1*]) that led to Mr. Botar being subject to prospective and global court access restrictions. One of the restrictions placed on Mr. Botar was a prohibition in a February 5, 2018 Order of Associate Chief Justice Rooke that states:

6. Subject to para 7, Andrew S. Botar is to only communicate with the Alberta Court of [King's] Bench in relation to any matter before the Alberta Court of [King's] Bench or a leave application by:
  - (i) fax, mail, or courier, or
  - (ii) a person authorized under the Legal Profession Act, RSA 2000, c L-8 to act as a representative in the Alberta Court of [King's] Bench.
7. For clarity, in respect to para 6, Andrew S. Botar is prohibited from:
  - (i) personally appearing at the Edmonton Court of [King's] Bench Clerks' counters;

[Emphasis added.]

[3] On November 23, 2023, Mr. Lemay's Originating Application in this matter was filed with the Alberta Court of King's Bench that claimed a penalty under the *Residential Tenancies Act*, SA 2004, c R-17.1 [*Lemay RTA Application*]. Mr. Lemay obtained a fee waiver, so his litigation was initiated at no cost. The Originating Application states the following in the "Address for Service and Contact Information":

ATTENTION: ANDREW S. BOTAR

"MACKENZIE FRIEND" OF THE APPLICANT FOR THIS ACTION

[4] An Affidavit of Service by Mr. Botar was filed the same date and deposes:

I, ANDREW S. BOTAR, OF EDMONTON, ALBERTA, DO MAKE OATH AND SAY THAT:

1. I AM THE "MACKENZIE FRIEND" OF THE APPLICANT FOR THIS ACTION
2. I DID FILE, ON 23 NOVEMBER 2023, THE ORIGINATING APPLICATION AND SUPPORTING AFFIDAVIT OF THE APPLICANT FOR THIS ACTION.

...

[5] This Affidavit of Service was witnessed by a Clerk of the Alberta Court of King's Bench who confirmed Mr. Botar's identify with a photo ID. A second Affidavit of Service with the essentially identical text was filed by Mr. Botar on December 1, 2023 and, again, Mr. Botar's signature was witnessed personally by a Clerk of the Court.

[6] On December 6, 2023, Mr. Lemay appeared before Applications Judge Schlosser and obtained an Order that found Zen in breach of the *Residential Tenancies Act*. Zen did not attend that hearing. Subsequently, Mr. Lemay applied to the Court for an order requiring Zen to pay a \$5,000 penalty. Zen cross-applied, seeking to have the December 6, 2023 order of Applications Judge Schlosser set aside because:

1. the November 23, 2023 Originating Application was illegally filed in contempt of court because Mr. Botar is absolutely banned from appearing at the Alberta Court of King's Bench Clerks' Counters, and

2. Zen's counsel were not aware of Mr. Lemay's Action No. 2303 21324 application on December 6, 2023.

## II. *Lemay v Zen Residential Ltd., Action No. 2303 20025*

[7] The *Lemay RTA Application* was not the only proceeding that Mr. Lemay brought against Zen with the participation of Mr. Botar. On November 3, 2023, Mr. Lemay sued Zen, alleging Zen had unlawfully obtained \$364,678 in overpaid rent and interest [*Lemay v Zen Residential Ltd., Action No. 2303 20025*, the "*Lemay Rent Application*"]. Again, Mr. Botar filed this litigation with the Alberta Court of King's Bench Clerks, and Mr. Botar stated he was both Mr. Lemay's "legal representative" and "MacKenzie Friend".

[8] On November 30, 2023, Acting Chief Justice Nielsen issued *Lemay #1* that:

1. Concluded Mr. Botar was guilty of contempt of court for his filing documents as Mr. Botar personally deposed to in his Affidavits of Service (*Lemay #1* at paras 23-27).
2. Concluded Mr. Botar had also engaged in the unauthorized and illegal practice of law (*Lemay #1* at paras 11-22).
3. The documents that had been filed by Mr. Botar were done so illegally, and there was no valid *Lemay Rent Application* proceeding before the Court (*Lemay #1* at paras 27, 31). A *Lemay Rent Application* hearing for December 6, 2023 was cancelled and the *Lemay Rent Application* proceeding was stayed (*Lemay #1* at para 31). Mr. Lemay was given until January 19, 2024 to submit a replacement Statement of Claim to Acting Chief Justice Nielsen.
4. Mr. Botar was made subject to a strict and expanded prohibitions on acting as a litigation representative, and more stringent communications management structures (*Lemay #1* at paras 28-29).
5. Mr. Botar was instructed by December 20, 2023, to provide written submissions for why he should not be personally penalized for his abusive conduct and contempt of court in the *Lemay Rent Application*.

[9] When taking these steps Acting Chief Justice Nielsen was not aware of the second lawsuit by Lemay targeting Zen, the *Lemay RTA Application*.

[10] Mr. Botar has made no submissions on why he should not be penalized. Mr. Lemay did not submit a replacement *Lemay Rent Application* Statement of Claim, so the *Lemay Rent Application* is now terminated, aside from the remaining potential award of costs against Mr. Lemay (*Lemay #1* at para 31).

## III. *The January 10, 2024 Lemay RTA Application Hearing*

[11] On January 10, 2024, I heard both Mr. Lemay's Application and Zen's Cross-Application. Mr. Lemay characterized *Lemay #1* as being issued "behind his back". Mr. Lemay also advanced a number of complaints concerning Zen's conduct, including an illegal eviction notice, and alleged Zen's evidence was perjury. Mr. Lemay argued he experienced a rent increase in retaliation for his litigation.

[12] Mr. Lemay rejected that the involvement of Mr. Botar in his litigation had any relevance, because everything that occurred in the *Lemay Rent* and *Lemay RTA Applications* was “under his supervision”, and “under his control”. Mr. Lemay argued that ***Lemay #1*** has no application to the *Lemay RTA Application*. Serving Zen directly was appropriate because Mr. Lemay did not know who Zen would retain to represent the corporation in the *Lemay RTA Application*.

[13] Zen notes the two Lemay Actions are very closely linked. Zen argued that Mr. Botar was operating as Mr. Lemay’s representative, doing so illegitimately, and Mr. Botar had a substantial record of bad litigation conduct. When Acting Chief Justice Nielsen concluded the *Lemay Rent Application* proceeding was initiated illegally and in contempt of court, that same conclusion necessarily applies to the *Lemay RTA Application* litigation. Zen submits that its failure to appear before Applications Judge Schlosser was caused by issues with service, and so Applications Judge Schlosser’s decision should be set aside pursuant *Rule 9.15* of the *Alberta Rules of Court*, Alta Reg 124/2010.

[14] I reserved my decision to prepare these Reasons.

#### IV. Analysis

[15] Mr. Botar’s activities in the *Lemay Rent* and *Lemay RTA Applications* are functionally and substantively identical. In both instances, Mr. Botar filed documents with the Alberta Court of King’s Bench Clerk of the Court. Mr. Botar swore Affidavits of Service that depose Mr. Botar did these activities. Those Affidavits of Service were personally witnessed by Clerks of the Court. Mr. Botar’s contempt of court is not in question. Mr. Botar personally deposed to his contemptuous illegal conduct, and the Clerks’ signatures prove that, factually.

[16] The language in the Lemay filings made by Mr. Botar in both proceedings are also very similar or the same. As previously noted, the *Lemay Rent Application* is now terminated. Mr. Lemay has not appealed ***Lemay #1***, and the appeal limitations period for that decision has passed.

[17] The Supreme Court of Canada in *R v Sullivan*, 2022 SCC 19 defined the implications of when the same issue arises several times in the same court, specifically, the degree to which the first decision is binding on subsequent same court decision-makers. This process is sometimes called “judicial comity” or “horizontal *stare decisis*”. Except in limited situations, a decision of a justice of this Court is binding on other justices facing the same issues:

... a superior court judge faced with a prior judgment of a court of coordinate jurisdiction should apply that precedent ... unless, by exception to the principle of horizontal *stare decisis*, the earlier decision is plainly wrong.

[18] In this situation the involvement of Mr. Botar in the two Lemay proceedings are factually identical. The language of the prohibition that Mr. Botar breached is clear. Mr. Botar’s contempt is made plain and established by *his own sworn Affidavits of Service*. In these circumstances I consider myself bound by the conclusions by Acting Chief Justice Nielsen in ***Lemay #1***. I do not see any “plainly wrong” element in Acting Chief Justice Nielsen’s analysis and conclusion. Instead, I fully agree with it.

[19] On that basis, I conclude the *Lemay RTA Application* was never properly before the Court. That makes Applications Judge Schlosser’s December 6, 2023 Order a nullity. There never was a lawsuit before Applications Judge Schlosser.

[20] In parallel with *Lemay #1* at para 31, I conclude that Mr. Lemay should have an opportunity to replace the documents illegally filed by Mr. Botar in the *Lemay RTA Application*. Mr. Lemay has until March 1, 2024 to submit to my office candidate replacement originating filings. If no replacement originating filings are received by that date, then the *Lemay v Zen Residential Ltd.*, Court of King's Bench of Alberta Action No. 2303 21324 proceeding will be terminated, and the Court may impose costs on Mr. Lemay.

[21] Since Mr. Lemay has not appealed *Lemay #1* and that decision has now crystallized, his complaints at the January 10, 2024 hearing about steps taken by Acting Chief Justice Nielsen have no basis, since *Lemay #1* was the Court enforcing a pre-existing Court Order in relation to Mr. Botar. Beyond that, Mr. Lemay has no basis to criticize the Court acting to enforce the *Legal Profession Act*, RSA 2000, c L-8 and its own Court Order, as part of the Court's inherent jurisdiction to control its processes: *R v Cunningham*, 2010 SCC 10 at para 10; I H Jacob, "The Inherent Jurisdiction of the Court" (1970) 23 Curr Legal Probs 23 at 27-28.

[22] In the alternative, and if I am incorrect in adopting this *Lemay #1* analysis and approach, I would also set aside Applications Judge Schlosser's December 6, 2023 Order on the basis that Zen and Zen's counsel did not have notice of the December 6, 2023 hearing. Succinctly, the problem is that Mr. Lemay cannot rely upon the evidence of Mr. Botar, particularly when that evidence is challenged. Mr. Botar's litigation record establishes beyond question he is an unreliable witness who has, among other things, forged court orders and then passed those off as legitimate before Alberta Court judges.

## V. Conclusion

[23] The *Lemay RTA Application* is stayed. If Mr. Lemay does not submit replacement originating filings by March 1, 2024, the matter will be struck out. Counsel for Zen shall prepare the Order giving effect to this Memorandum of Decision. Mr. Lemay's approval of that Order is dispensed with, pursuant to *Rule 9.4(2)(c)* of the *Alberta Rules of Court*.

[24] If Mr. Lemay disagrees with this result, then, mindful of the *Pintea v Johns*, 2017 SCC 23 instruction that Canadian judges shall provide information on litigation alternatives to persons not represented by lawyers, Mr. Lemay should seek a remedy from the Court of Appeal of Alberta.

Heard on the 10<sup>th</sup> day of January, 2024.

**Dated** at the City of Edmonton, Alberta this 26<sup>th</sup> day of January, 2024.

---

**S. Leonard**  
**J.C.K.B.A.**

**Appearances:**

Andre Lemay  
for the Plaintiff

Justine M. Fay  
Reynolds Mirth Richards & Farmer LLP  
for the Defendant