

# Court of King's Bench of Alberta

Citation: Lemay v Zen Residential Ltd., 2023 ABKB 682

Date: 20231130  
Docket: 2303 20025  
Registry: Edmonton

2023 ABKB 682 (CanLII)

Between:

**Andre Lemay**

Applicant

- and -

**Zen Residential Ltd.**

Respondent

- and -

**Andrew S. Botar**

Unauthorized Representative

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**Memorandum of Decision  
of Acting Chief Justice  
K.G. Nielsen**

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## **I. Introduction**

[1] On November 3, 2023, an Originating Application and Affidavit were filed with the Court of King's Bench of Alberta that, in brief, has Andre Lemay (Mr. Lemay) dispute a rental

arrangement with his landlord, Zen Residential Ltd. (Zen) (*Rental Dispute*). Mr. Lemay seeks \$364,678 in allegedly overpaid rent and interest. This action was initiated pursuant to a fee waiver, so no filing fees have been paid by the Applicant. There now have been several Applications Judge Chambers appearances in this matter.

[2] This Memorandum of Decision only peripherally addresses Mr. Lemay, Zen, and the *Rental Dispute*. This matter was brought to my attention as the supervising Administrative Justice who responds to abusive litigation and litigant management for northern Alberta. The focus of this Memorandum of Decision is Andrew S. Botar (Mr. Botar). Mr. Botar in Mr. Lemay's filed materials refers to himself as "... the "MacKenzie Friend" of the Applicant for this Action ..." Mr. Botar is not that. He is, instead, acting as an unlicensed legal practitioner, in breach of the *Legal Profession Act*, RSA 2000, c L-8.

[3] In addition, Mr. Botar is in contempt of earlier litigation and litigant management Orders imposed by this Court. Mr. Botar's contempt of court is not a question of possible, or probable contempt. Mr. Botar's own Affidavit evidence swears he is in contempt of this Court's Orders.

[4] This Memorandum of Decision responds to Mr. Botar's illegal and abusive activities in the *Rental Dispute*, and takes steps to better manage this individual's litigation misconduct.

## II. Andrew S. Botar

[5] Mr. Botar has a lengthy and highly problematic history with the Court of King's Bench of Alberta. His pattern is to sue his landlords, often making allegations that parallel those in the *Rental Dispute*. The first example is reported in *Botar v Mainstreet Equity Corp*, 2007 ABQB 608. Next Mr. Botar sued his landlord demanding to sublet storage lockers and a parking stall; that lawsuit was dismissed: *Botar v Mainstreet Equity Corp*, 2010 ABQB 710. Mr. Botar's next lawsuit against his landlord is again a claim that he had overpaid rent. Associate Chief Justice Rooke in *Botar v Mainstreet Equity Corp*, 2012 ABQB 417 rejected Mr. Botar's argument, and, instead, concluded Mr. Botar owed his landlord over \$20,000.

[6] Mr. Botar's lawsuits continued. In 2016 Mr. Botar filed three lawsuits against his then landlord, Braden Equities Inc: Court of King's Bench Action Nos. 1603 04182, 1603 11591, and 1603 18620. Now Mr. Botar's misconduct escalated. First, Mr. Botar was found taking the same application to multiple Justices and Applications Judges, until he got caught doing so. In response, Shelley J on January 26, 2017 fined Mr. Botar \$2,000, and prohibited Mr. Botar from making any Applications or initiating Actions in the Court of King's Bench, except with leave of then Associate Chief Justice Rooke. Mr. Botar then breached the January 26, 2017 Order by issuing a garnishee summons. That led to a further Order of this Court on February 5, 2018, in which an expanded court access restriction Order was issued by Associate Chief Justice Rooke, who was case managing Mr. Botar's expanding litigation pattern. A part of that Order responds to Mr. Botar's harassing and bullying of staff of the Court:

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;

(ii) personally appearing at the Resolution Services office in the John E. Brownlee Building;

(iii) telephone communications with the Alberta Court of [King's] Bench clerks, judicial assistants, trial coordinators, or other Alberta Court of [King's] Bench staff; and

(iv) email communications directed to the Alberta Court of [King's] Bench clerks, judicial assistants, trial coordinators, or other Alberta Court of [King's] Bench staff;

without an order of the Chief Justice, or Associate Chief Justice, or his or her designate which permits that contact.

[7] Mr. Botar almost immediately attempted to circumvent the February 5, 2018 Order by a collateral attack and "judge shopping" to then Chief Justice Moreau, alleging Shelley J and Rooke ACJ were biased and acting illegally:

It is apparent/clear/obvious from the facts/evidence provided/stated/submitted herein, that the Alberta legal system has failed to provide Botar with the presumption of innocence ... allowing those matters to bias/prejudice the Q.B. civil Court system against him ... Rooke's & Shelley's blatant/clear/obvious/unambiguous verbal/written bias/prejudice against Botar & ... Rooke's conflict of interest with Botar's matters & verbal/written animosity/bias/contempt/prejudice against Botar, may be perceived to and bring the administration of justice in Alberta Q.B. civil matters into disrepute.

(*Re Botar*, 2018 ABQB 193 at para 5.)

[8] Chief Justice Moreau rejected Mr. Botar's demands, observed Mr. Botar had repeatedly ignored the Court's instructions, was attempting to bypass the case management of his lawsuits, engaging in "judge shopping", and that was part of a longer pattern of persistent, abusive conduct.

[9] Even more dramatic was that in 2017 Mr. Botar was detected to have forged a letter from Rooke ACJ, so as to reverse its effect, and then presented that forged letter to the Court of King's Bench of Alberta and the Court of Appeal of Alberta. Justices relied on the forged letter, which, among other things, resulted in Mr. Botar illegally garnisheeing money from his landlord: *Unrau v National Dental Examining Board*, 2019 ABQB 283 at paras 320-323; *Botar v Braden Equities Inc*, 2017 ABQB 21. That led to a criminal investigation and fraud proceedings. Mr. Botar then left Alberta, but, now, apparently, he has returned.

[10] As this review indicates, Mr. Botar is an aggressive, abusive, bullying self-represented litigant. He has required multiple escalating steps, but those have not managed his bad litigation

activities. Mr. Botar has been made subject to broad court access restrictions because he abuses the Court and legal system participants. Now, in the *Rental Dispute*, Mr. Botar is taking his bad conduct to a new level, and harming others. Mr. Botar is not a suitable litigation representative for anyone. Mr. Botar’s bad litigation and conduct record is the first basis on which I conclude he should not be permitted to participate in the *Rental Dispute* in any capacity, or any other non-litigant role before the Court of King’s Bench of Alberta.

### III. Mr. Botar is Engaged in the Unauthorized Practice of Law

[11] The *Legal Profession Act*, RSA 2000, c L-8 s 106 expressly prohibits non-lawyers such as Mr. Botar from representing other persons in the Court of King’s Bench of Alberta. Mr. Botar is clearly engaged in the unauthorized practice of law.

[12] This Court has a broad and flexible inherent jurisdiction to control its processes, so that the Court may operate effectively to achieve its functions: *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. That inherent jurisdiction includes the authority to remove lawyers, where appropriate: *MacDonald Estate v Martin*, 1990 CanLII 32 (SCC), [1990] 3 SCR 1235 at 1245.

[13] That same authority applies to non-lawyer representatives and agents. While the Court of Appeal of Alberta has ruled in *Jonsson v Lymer*, 2020 ABCA 167 that persons in Alberta have a right to self-represent, the law in Canada is clear that a Court does not merely have the authority to restrict and control who acts as a legal representative of any type, but, further, that the Court has a positive obligation to ensure persons appearing before the Court are “... properly represented ...”, and “... to maintain the rule of law and the integrity of the court generally ...”: *R v Dick*, 2002 BCCA 27, para 7.

#### A. Mr. Botar’s Court Document Activity

[14] In this matter, Mr. Botar’s filings explicitly show he is directing this litigation. While he calls himself a “MacKenzie Friend” (incorrectly named, since this court participant role was first described in *McKenzie v McKenzie*, [1970] 3 All ER 1034 (UK CA)), that role is strictly limited. A proper McKenzie friend is a person who accompanies a self-represented litigant, sitting at the counsel table, and who assists by prompting, taking notes, and providing documents. A McKenzie friend is a non-speaking role. The Court of Appeal of Alberta in *Lameman v Alberta*, 2012 ABCA 59 at paras 8-9 held that r 2.23(2) captures the full McKenzie friend role that is permitted in Alberta courts:

- 2.23(1) The Court may permit a person to assist a party before the Court in any manner and on any terms and conditions the Court considers appropriate.
- (2) Without limiting subrule (1), assistance may take the form of
  - (a) quiet suggestions,
  - (b) note-taking,
  - (c) support, or
  - (d) addressing the particular needs of a party.

...

[15] Mr. Botar’s activities clearly extend outside the limited authorized role for McKenzie friends. All of the documents filed in this action state the address for service and contact information of the party filing the document is:

Attention: Andrew S. Botar

“MacKenzie Friend” of the Applicant for this Action

#201 10345 114 Street NW, Edmonton, Alberta, T5K-1S2

[16] Another example, in the November 14, 2023 “Application (With Notice)”, shows Mr. Botar is the one directing evidence in relation to the Application:

**Affidavit/other evidence/material(s) to be relied on in support of this application:**

...

Such further/other materials as the “MacKenzie Friend” of the Applicant may advise and this honourable court may permit.

(Emphasis in original.)

[17] However, in the November 3, 2023 Originating Application, that same passage is even more direct:

Such further/other materials as the Legal Representative of the Applicant may advise and this honourable court may permit. (Emphasis added.)

[18] Mr. Botar also has deposed in multiple Affidavits that it was he who filed the documents in this action. I will comment upon that more closely further below.

**B. Mr. Botar’s In Court Activity**

[19] Mr. Botar has also appeared in Court with Mr. Lemay. There, Mr. Botar self-identified as “Andy Botar”, and as Mr. Lemay’s “McKenzie Friend”. Reviewing the most recent appearance before Applications Judge Birkett on November 17, 2023, Mr. Lemay did speak on behalf of himself, however Applications Judge Birkett cautioned that Mr. Botar had no authority to prepare and file documents.

[20] What also emerged at this appearance was that:

- 1) Mr. Botar was exclusively the one interacting with Zen and Zen’s counsel, to the point that Zen’s counsel did not have contact information for Mr. Lemay;
- 2) Mr. Botar was preparing and filing documents; and
- 3) Mr. Botar had prepared a litigation plan for the *Rental Dispute*, and then advanced that litigation plan to Zen’s counsel, representing Mr. Lemay as his “McKenzie Friend”, while Mr. Lemay was only “a witness”.

[21] Once again, Mr. Botar is clearly operating outside the scope of a McKenzie Friend, and is instead, engaged in the unauthorized practice of law.

[22] I, therefore, at this point conclude:

- 1) Mr. Botar is operating far beyond the scope of what a proper McKenzie Friend is authorized to do;
- 2) Mr. Botar is, instead, operating as an unauthorized legal representative in breach of the *Legal Profession Act*; and
- 3) Mr. Botar's illegal activity warrants Mr. Botar being prohibited from taking any role in the *Rental Dispute*, and any other non-litigant role before the Court of King's Bench of Alberta.

#### IV. Mr. Botar is in Contempt of Court

[23] Paragraphs 6-7 of the February 5, 2018, court access restrictions Order of Rooke ACJ limit how Mr. Botar can communicate and interact with the Court of King's Bench of Alberta:

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.)

[24] In multiple Affidavits of Service, Mr. Botar deposes it is he who has filed Mr. Lemay's documents with the Court. For example, the body of the Affidavit of Service sworn on November 3, 2023, and filed on November 3, 2023 reads:

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 03 November 2023, the Originating Application and Supporting Affidavit for this Action.

[25] So, *in his own sworn evidence*, Mr. Botar has stated as fact that he breached the prohibition against not interacting with the Court of King's Bench of Alberta Clerks. And if there were any question about whether that was the case, the November 3, 2023 Affidavit of Service is commissioned by a Clerk of the Court of King's Bench of Alberta, who confirmed the identity of Mr. Botar via photo ID. This document can only mean one thing. On November 3, 2023, Mr. Botar went into the Edmonton Law Courts, stood at the Court of King's Bench of Alberta Clerk's Counter, had a Clerk witness and commission Mr. Botar signature, that was then confirmed by the Clerk signing and stamping this document.

[26] *By his own evidence, and by the document he himself filed*, Mr. Botar has explicitly operated in breach of the February 5, 2018 Order. Here, Mr. Botar is not simply *prima facie* in contempt of court. By his own declaration, he is in contempt of court, and the same is true for two other Affidavits of Service he filed on November 14 and 17, 2023. Both of those Affidavits of Service were also commissioned in person by other Court Clerks. Mr. Botar's rejection of this Court's authority is a further reason for him to be prohibited from any further role in the *Rental Dispute*, and any other litigation in the Court of King's Bench of Alberta in which Mr. Botar is not a party.

[27] Mr. Botar's illegal filings also mean none of the documents in the *Rental Dispute* are properly before the Court.

## V. Steps in Response

[28] Mr. Botar is not an appropriate person to represent any other litigant, or to be involved with any other litigation in which he is not a party. I therefore Order:

- 1) Andrew S. Botar is prohibited from:
  - a) providing legal advice, preparing documents intended to be filed in the Court of King's Bench of Alberta for any person other than himself, and filing or otherwise communicating with the Court of King's Bench of Alberta, except on his own behalf; and
  - b) acting as an agent, next friend, McKenzie friend (from *McKenzie v McKenzie*, [1970] 3 All ER 1034 (UK CA) and *Alberta Rules of Court*, Alta Reg 124/2010, ss 2.22-2.23), or any other form of representation in proceedings, before the Court of King's Bench of Alberta.
- 2) For clarity, Andrew S. Botar is entirely prohibited from any further participation in the *Andre Lemay v Zen Residential Ltd.*, Court of King's Bench of Alberta Action No. 2303 20025 litigation, in any capacity.
- 3) The Clerks of the Court of King's Bench of Alberta shall refuse to accept or file any documents or other materials from Andrew S. Botar, unless Andrew S. Botar is a named party in the action in question, and Andrew S. Botar has been authorized to file that document by an Administrative Justice of the Court of King's Bench of Alberta, or his or her designate.

[29] Mr. Botar's record of bad litigation conduct, forged documents, abuse and bullying of court personnel, and contempt of court in relation to contact with Clerks of the Court warrants a further regulation of Mr. Botar's communications with the Court of King's Bench of Alberta. The communications protocol set in paragraphs 6-7 of Associate Chief Justice Rooke's "Court Communication Restriction Order for Andrew S. Botar", filed February 7, 2018, is vacated and replaced with a litigant communications process modelled on *Royal Bank of Canada v Anderson*, 2022 ABQB 525 at para 62 and *McClelland v Harrison*, 2023 ABKB 638 at para 12:

- 1) Andrew S. Botar is prohibited from any direct or indirect communication with the Court of King's Bench of Alberta, except:

- a) in documentary form and by registered mail to the office of the Chief Justice of the Court of King's Bench of Alberta, or the office of his or her designate; or
  - b) by filing or submitting documents via a member in good standing of the Law Society of Alberta, or another person authorized to represent Andrew S. Botar in the Court of King's Bench of Alberta, pursuant to the *Legal Profession Act*, RSA 2000, c L-8.
- 2) To eliminate any confusion, that means that Andrew S. Botar is prohibited from:
- a) any communication with any Court of King's Bench of Alberta Clerks, Judicial Assistants, Court Coordinators, Court decision-makers, or other Court of King's Bench of Alberta staff, for example by email, telephone, letters or other correspondence, and faxes;
  - b) personally appearing at the Court of King's Bench of Alberta Counters, or reception desks;
  - c) filing or otherwise submitting documents by entering the courthouse and physically depositing those documents; and
  - (d) personally appearing at the Resolution Services office in the John E. Brownlee Building or other Resolution Services offices in other locations in Alberta;
- without an Order of the Chief Justice of the Court of King's Bench of Alberta, or his or her designate, which permits that contact.
- 3) Andrew S. Botar is prohibited from filing any documents with the Court of King's Bench of Alberta, except according to paragraph 1(b), and, unless Andrew S. Botar engages the services of a lawyer, the only way that Andrew S. Botar may file any documents with the Court of King's Bench of Alberta is if:
- a) those documents are received by the office of the Chief Justice of the Court of King's Bench of Alberta, or the office of his or her designate, by registered mail;
  - b) after review, those documents are determined to be legally valid and not an abuse of the Court; and
  - c) Andrew S. Botar pays any filing and document review fee set by the Court.
- 4) Any materials received from Andrew S. Botar, including communications of any kind, documents, and purported filings, that are received by means other than the approved forms, shall be referred to the office of the Chief Justice of the Court of King's Bench of Alberta, or the office of his or her designate, for punitive steps.



- 5) When Andrew S. Botar is permitted to file any document with the Court of King's Bench of Alberta, that filing may include a pre-requisite that Andrew S. Botar is required to pay outstanding penalties pursuant to r 10.49(1) of the *Alberta Rules of Court*, unpaid costs awards, and/or security for costs, in an amount determined by the Court.
- 6) When a document submitted by Andrew S. Botar is rejected pursuant to this Memorandum of Decision, Andrew S. Botar may be required to pay a penalty amount.

[30] Mr. Botar has on multiple occasions acted in contempt of court by his interactions with the Court of King's Bench of Alberta Clerks of the Court. In light of this repeated contempt, I conclude negative consequence should be considered. This Court has used r 10.49(1) of the *Alberta Rules of Court* penalties as a mechanism to respond to situations in which the Court's operations and rules are abused. Mr. Botar has until December 20, 2023 to provide written submissions to my office by registered mail as to why he should not be subject to a r 10.49(1) of the *Alberta Rules of Court* penalty in response to his repeated contempt of court.

[31] As I previously indicated, Mr. Lemay's *Rental Dispute* filings were all filed in contempt of court, and are not properly before the Court. The Rental Dispute is stayed, and the scheduled December 6, 2023 hearing cancelled. Mr. Lemay has until January 19, 2024 to submit to my office a replacement Statement of Claim for potential filing to replace all documents illegally filed by Mr. Botar in the *Rental Dispute*. If no replacement Statement of Claim is received, then the *Lemay v Zen Residential Ltd.*, Court of King's Bench of Alberta Action No. 2303 20025 proceeding will be terminated, and the Court may impose costs on Mr. Lemay.

[32] I very strongly advise that Mr. Lemay contact and consult with a qualified legal representative, and that is not Mr. Botar. Mr. Lemay should ask about the negative consequences of advancing an unsuccessful lawsuit, particularly one in which he seeks a large monetary award.

[33] Mr. Botar and/or Mr. Lemay may disagree with the results of this Memorandum of Decision. 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, if Mr. Botar and/or Mr. Lemay seek to challenge steps imposed in this Memorandum of Decision, then they should seek a remedy from the Court of Appeal of Alberta.

[34] This Court will prepare the Order giving effect to this Memorandum of Decision. Mr. Botar and Mr. Lemay's approval of that Order is dispensed with, pursuant to the *Alberta Rules of Court*. Copies of this Memorandum of Decision and Order will be directed to counsel for Zen, counsel for Braden Equities Inc, the Law Society of Alberta, and the Edmonton Police Service.

**Dated** at the City of Edmonton, Alberta this 30<sup>th</sup> day of November, 2023.

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**K.G. Nielsen**  
**A.C.J.C.K.B.A.**

**Appearances:**

None.