

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Pierce v. Nickerson*, 2019 NSSC 377

Date: 20191213

Docket: SFHD-067648

Registry: Halifax

Between:

Trevor Pierce

Applicant

v.

Tracy Nickerson

Respondent

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| Decision |
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Judge: The Honourable Justice Moira C. Legere Sers

Heard: October 30, 2019, in Halifax, Nova Scotia

Written Release of Decision: Friday, December 13, 2019

Counsel: Eugene Tan, counsel for Applicant
Danika Beaulieu for Respondent

I have reviewed the submissions and law related to this Motion for Costs due to the late cancellation of a settlement conference. I have recently reviewed the authorities in two recent decisions *Oickle v Briggs*, 2019 NSSC 380, and *Bussey v Bussey*, 2019 NSSC 379.

By the Court:

[1] There are many issues dealt with in the submissions. These issues relate to a failure to disclose in a timely fashion, delays, etc., which may be better served at a cost application in the cause.

[2] The preparation required for this decision will serve as notice to the parties and their counsel that the bulk of the preparation for any costs decision in the cause has been done.

[3] It may best be considered “*work that has a lasting value and may yet be costs recoverable in the cause.*” (*Burgar v Assh*, 2017 NSSC 135)

[4] No doubt there is valid concern about the length of time this case has taken from initiation to date with no resolution in sight.

[5] I restrict myself to the facts surrounding this settlement conference.

[6] The July 25, 2019 settlement conference was adjourned to October 30, 2019 due to the unavailability of the assigned judge.

[7] This was the principle reason for adjournment despite the incomplete disclosure as of that date.

[8] There were a series of problematic communications between counsel for the parties due to a failure to disclose, in a timely manner, proof of the expenses claimed by the Respondent. These expenses rested in a file in Mr. Tan’s office.

[9] There were also significant intervening events that created obstacles to Ms. Nickerson’s counsel.

[10] According to Mr. Tan the Respondent required medical attention due to a condition that appeared to limit her ability to respond between June 2019 and her subsequent surgery in September 22, 2019.

[11] I have insufficient evidence to conclude to what degree the Respondent’s illness interfered with her ability to provide the documentation in a timely fashion. That may be the subject of a subsequent costs motion should more evidence be forthcoming.

[12] The other more compelling reason to cancel the settlement conference (in the absence of consent of the parties) was the damage done to the offices occupied by Mr. Tan and his Associates. This damage prohibited him from accessing his files and the receipts kept in his files for the purpose of disclosure.

[13] There was always the hope that there would be time to access his file before the conference date. However, according to the Crane Removal Update provided by the Government of Nova Scotia on October 30, 2019, the date of the prohibition against entry into his office was extended to November 13, 2019.

[14] That date was subsequent to the settlement conference date.

[15] How long that extension lasted is unknown to the Court, however it was issued October 30, 2019.

[16] While Mr. Tan may have thought to request an adjournment earlier, I am not certain how much this would have mitigated the costs of preparation at that point.

[17] In any event, his attention was then diverted when he was called to respond to a family crisis; a death in his family. Sadly, his attention was taken to assisting his family navigate this crisis.

[18] These two factors put the admittedly last-minute cancellation beyond his control.

[19] I refrain from determining whether before or after these emergencies there is a case for costs; leaving that to the hearing judge.

[20] I am in no doubt that Mr. Pierce has been prejudiced by the delay in that he has to pay counsel for preparation.

[21] I reserve the right to Mr. Pierce to seek costs relating to all matters concerning delay and failure to disclose to the hearing judge who has already issued a warning that failure to delay may result in costs.

[22] I am satisfied that the adjournment in this case falls into the category as confined to the specifics of this case that ought not to be subject to an order for costs however unsatisfactory this may be to the Applicant.

Legere Sers, J.