

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

WANDA MCDONALD

Plaintiff

- and -

DIANE KOE, VICTOR STEWART, LAWRENCE NORBERT and MARJORIE
BAETZ

Defendants

MEMORANDUM OF JUDGMENT

[1] The Plaintiff is seeking costs as a result of the adjournment of her Notice of Motion. It is necessary to refer to the background of the case to provide some context to the issues.

[2] The Plaintiff filed a Statement of Claim on July 17, 2012 alleging that the Defendants published a letter containing defamatory statements about the Plaintiff. A Notice to the Defendants and the Statement of Claim were personally served upon the Defendants Victor Stewart, Marjorie Baetz, Lawrence Norbert, and Diane Koe on July 26, 2012, July 31, 2012, July 31, 2012 and August 9, 2012 respectively. Nothing was filed on behalf of any of the Defendants and on November 28, 2012, a Direction to the Clerk to note the Defendants in default for failing to deliver a statement of defence or appearance was filed.

[3] The Plaintiff filed an Affidavit on May 23, 2013 outlining the allegations which form the basis of her claim that the Defendants defamed her. The Plaintiff then filed a Notice of Motion returnable on July 5, 2013 seeking default judgment against the Defendants and damages as a result of their being noted in default. All

of the Defendants were served with the Notice of Motion by registered mail on June 18 and 19, 2013.

[4] On July 3, 2013, Lawrence Norbert wrote to the Clerk of the Supreme Court requesting to appear by telephone and advising that the Defendants had retained Dwayne Brown, a lawyer with Merchant Law Group, to represent them. Mr. Norbert advised that Mr. Brown had taken steps to be admitted to the Northwest Territories bar. He further advised that the Defendants had requested a ten week adjournment which the Plaintiff's counsel would not agree to. Attached to Mr. Norbert's letter was a July 2, 2013 letter addressed to counsel for the Plaintiff signed by Anthony Merchant, Q.C., of the Merchant Law Group which requested that the Plaintiff agree to a ten week adjournment so that a member of his firm could gain admission to the Northwest Territories bar.

[5] Counsel for the Plaintiff instead agreed to a one week adjournment and the matter was withdrawn on consent and relisted for July 12, 2013.

[6] On July 11, 2013, one of the Defendants, Diane Koe, attempted to file a Statement of Defense by facsimile. The document was rejected by the clerk as it was not in compliance with the Rules in several respects.

[7] This matter was before me in regular chambers on July 12, 2013. Counsel for the Plaintiff was present and no one appeared for the Defendants. The Court directed that this matter be set over for a special chambers application for two reasons: 1) that the matter is likely to take longer than 30 minutes and requires a special chambers application pursuant to Rule 387; and 2) to provide the Defendants with another opportunity to appear and address the Notice of Motion. In considering the latter reason, I acknowledged that the Defendants had not appeared on July 12, 2013 and had done little to defend this action to date. However, given the amount of damages that the Plaintiff is seeking in her Statement of Claim and that the Defendants had taken some, albeit rather late, steps to defend this action, I felt that providing them with a further opportunity to respond to the Notice of Motion would not result in any significant prejudice to the Plaintiff.

[8] The Plaintiff now seeks her costs for the July 12, 2013 appearance. She seeks costs at three times Column 3 of Schedule A of the Tariff. The Plaintiff argues that she is entitled to costs because the adjournment was not at her instance, she has complied with the Rules and was prepared to proceed with the application. Further, that she provided the Defendants with notice of her application even

though the Rules did not require her to do so. Also, she had already agreed to a one week adjournment at the request of the Defendants to allow them time to retain counsel.

[9] Costs are always in the discretion of the Court although it is generally acknowledged that costs are intended to indemnify successful parties for the costs of litigation. They are also intended to encourage settlement and to discourage and punish inappropriate behavior by litigants: *Clark v. Taylor*, [2003] N.W.T.J. No. 67 at para. 5.

[10] The Plaintiff has incurred expenses including the costs of her counsel's travel from Alberta to attend on July 12, 2013. While the adjournment was not at the request of the Defendants, it may be that they will benefit from the adjournment. They will have another opportunity to appear at the application, may be able to retain counsel and will have additional time to prepare if they choose to do so.

[11] The Defendants have not filed a single document in this action, although Ms. Koe did attempt to file a Statement of Defence on July 11, 2013. While the Defendants are self-represented at this point, there is no evidence that they have been actively attempting to defend this action. All of the Defendants' correspondence and materials on the file appear to be recent and in response to the Plaintiff's Notice of Motion.

[12] In the circumstances, taking into account the materials the Plaintiff has filed to date, the expenses that would have been incurred, the inaction on the part of the Defendants and the late attempts to address the Plaintiff's Notice of Motion, I am of the view that there should be some costs ordered against the Defendants.

[13] The Plaintiff is seeking costs in an amount in excess of the Tariff and travel costs for counsel. There are a number of considerations which arise in determining whether a litigant should receive those costs: see *WCB v. Mercer et al*, 2012 NWTSC 78. Some but not all of these considerations were addressed by Plaintiff's counsel in regular chambers. Pursuant to Rule 394(2), the costs of an application that is adjourned to a special chambers date can be dealt with by the judge hearing the special chambers application. In the circumstances, these issues would be better addressed before the judge hearing the special chambers application.

[14] Accordingly, there will be an award for costs to the Plaintiff in an amount of \$100 payable by each Defendant, for a total of \$400. This amount relates to the July 12, 2013 court appearance. Additional cost issues such as travel expenses and

amounts in excess of the Tariff can be dealt with at or following the special chambers application. These costs are payable forthwith.

S.H. Smallwood
J.S.C.

Dated at Yellowknife, NT, this
17th day of July 2013

Counsel for the Plaintiff: C. Verville
No one appearing for the Defendants

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