

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Mercier v. Nova Scotia (Attorney General)*,  
2015 NSCA 62

**Date:** 20150617

**Docket:** CA 428778

**Registry:** Halifax

**Between:**

Roger Edouard Mercier

Applicant/Appellant

v.

Attorney General of Nova Scotia and  
Police Complaints Commissioner

Respondents

**Judge:** Farrar, J.A.

**Motion Heard:** By correspondence: Applicant: June 10, 2015; Respondent  
June 12, 2015

**Held:** Motion for an adjournment granted.

## **Background**

[1] On May 22, 2015, the respondents filed a Notice of Motion to dismiss the appeal of Mr. Mercier as a result of his failure to post security for costs pursuant to an order of Justice Cindy Bourgeois dated November 6, 2014.

[2] The motion was scheduled to be heard in Chambers on June 18, 2015, at 10 a.m.

[3] Mr. Mercier, by correspondence, requested an adjournment of the respondents' motion for health reasons. The respondents refused.

[4] However, the respondents agreed that Mr. Mercier could make a motion for an adjournment in writing. On June 10, 2015, Mr. Mercier filed his motion and supporting affidavit.

[5] On June 12, 2015, the Attorney General responded opposing the motion and asking that the matter proceed as scheduled on June 18.

[6] By correspondence to the parties on June 15, 2015, I advised the parties that I was granting the adjournment with reasons to follow. These are those reasons.

## **Decision:**

[7] This appeal arises from a decision of Supreme Court Justice Arthur LeBlanc dated February 27, 2014 (reported 2014 NSSC 79).

[8] The events leading up to Justice LeBlanc's decision are outlined in detail in the security for costs decision of Justice Bourgeois dated November 6, 2014, (2014 NSCA 101). I will not repeat them here. The end result was that Justice Bourgeois ordered security for costs against Mr. Mercier in the amount of \$500.00 to be paid by December 19, 2014.

[9] Nothing further occurred on this appeal until May 14, 2015, when Mr. Eddy, on behalf of the respondents, inquired of the Registrar whether Mr. Mercier had posted the security for costs on or before December 19, 2014. The Registrar responded on May 19, 2015, advising that the security for costs had not been posted. That led to the respondents making a motion to dismiss.

[10] Mr. Mercier in his motion for an adjournment (without explaining why), relies on the **Charter of Rights and Freedoms**, s. 15(1) as legal authority for granting the adjournment. He does not cite any other authority in support of his motion.

[11] He also filed a detailed affidavit which provides as follows:

4. I have epilepsy.
5. I have underwent three brain surgeries over the past five months.
6. I continue to have difficulty with my physical strength and mental stamina and acuity.
7. As indicated to me by my neurosurgeon, excessive exertion during the recovery period could trigger seizure activity and/or life threatening neurological events.
8. After receipt of the motion of the Respondents, CA No. 428778. Via email to Mr. Duane Eddy on May 27, 2015, I notified the Respondents of my medical situation and requested the Respondents assistance in postponing the hearing date of the motion until the last week of August 2015.
9. Via email on May 27, 2015, the Respondents suggested that I direct my request to the Registrar for the Court of Appeal.
10. I spoke with Ms. Anselm by phone of May 29, 2015. Via email correspondence, I sent Ms. Anselm, cc. to Mr. Duane Eddy, requesting that the motion of the Respondents be adjourned until the last week of August 2015.
11. On June 1, 2015, I received a phone call from the Registrar, Ms. Anselm informing me that the Respondents had refused my request for adjournment of the motion by the Respondents. Ms. Anselm indicated to me that I would have to make a separate motion to the Court of Appeal requesting the adjournment of the motion commenced by the Respondents.
12. I received an email from the solicitor for the Respondents on May 31, 2015 indicating their position in respect to adjournment of the motion scheduled for June 18, 2015. It is my understanding this correspondence is on file with the court.
13. On June 3, 2015, an email from the Respondents was received. On June 4, 2015, a paper copy of the contents of the same email from the previous day was received.
14. It is my belief that the Justices of the Supreme Courts of Nova Scotia in creating of the Nova Scotia Civil Procedure Rules (CPR), under Rule 1, has at its central meaning in stating: "The Rules are for the Just, ...

determination of every proceeding.”, that a party to a court proceeding can not use a Rule of the CPR to deny another party to a court proceeding their rights. Further to this point, I do not believe it was the objective of this same Rule to force a party to the proceedings to have to place their health and long term recovery after undergoing multiple brain surgeries at risk in order to exercise their right to attend and present one’s position in relation to the hearing of the motion.

15. It is my belief that the actions of Respondents, in respect to my attempts to adjourn the matter due to medical reasons, are deliberately attempting to place both my physical neurological health in jeopardy.
16. I will not be able to attend the hearing date in person as my physical and neurological health must come first. It is my belief that the Canada Charter of Rights and Freedoms, section 15(1), guarantees the Appellant the same rights as all citizens of Canada. As such, the court must grant the motion of the Appellant and adjourn the motion of the Respondents, not to be heard before the last week of August 2015.

[12] I accept that Mr. Mercier, for health reasons, is unable to attend court at the present time. I also note that there is no urgency to the hearing of this motion. The respondents did not even inquire of the Prothonotary about whether Mr. Mercier posted security until almost five months after time for doing so had expired.

[13] The materials filed in support of the motion to dismiss do not suggest there is any urgency to hearing it. Nor does the respondents’ response to the motion for an adjournment indicate that they will suffer any prejudice if the motion is adjourned for a period of time.

[14] As a result, I am prepared to adjourn the matter to September 17, 2015, to allow Mr. Mercier to attend and make representations on the motion.

[15] By granting this adjournment I am in no way relying on s. 15(1) of the **Charter** and this decision to adjourn should not be taken as supporting Mr. Mercier’s assertions that failure to adjourn the matter would infringe his s. 15(1) rights.

## **Conclusion**

[16] The respondents’ motion to dismiss is adjourned to September 17, 2015, at 10 a.m. Costs of this motion will be in the amount of \$250.00 which will be in the cause. In other words, if Mr. Mercier is successful in defending the motion to

dismiss he will be awarded \$250.00 costs on this motion. If he is not successful, the respondents will be awarded \$250.00 costs on this motion.

Farrar, J.A.