

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Hiscock v. Pasher, 2008 NSSC 36

Date: 20080204

Docket: SN No. 112927

Registry: Sydney

Between:

Florence M. Hiscock

Applicant/Plaintiff

v.

Mary M. Pasher

Respondent/Defendant

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Judge: The Honourable Justice Frank Edwards

Heard: January 22, 2008 in Sydney, Nova Scotia

Subject: Civil Procedure Rule 28.11 - Order by Prothonotary dismissing action.

Facts: The lawyer failed to move the action along for almost six years prior to a Prothonotary's dismissal order. While he responded to the first notice from the Prothonotary, he completely ignored the second. Further, the lawyer did not advise the Plaintiff of the Dismissal. The application to set aside was not made for more than one year after the dismissal.

Issue: Whether Order should be set aside; application of appropriate criteria; explanation for the delay; inadvertence in missing deadline; motion brought promptly; no prejudice to Defendant.

Result: Application dismissed. Lawyer's wilful neglect more than mere inadvertence. Conduct should not be condoned by the Court especially where Plaintiff has remedy in action against lawyer.

Cases Noted: *Goodwin v. Rogerson*, (2002) NSJ No. 469

Osborne v. Irving Oil Ltd. (2007) NSJ No. 331 (S.C.)
Reid v. Dowe Corning Corporation (2001) 11 C.P.C. (5th) 80,
2001 (Ont Master)
Scaini v. Prochnicki and Winn, [2007] O.J. No. 299
*Marché D'Alimentation Denis Thériault Ltée v. Giant Tiger
Stores Ltd.*, [2007] O.J. No. 3872 (C.A.)
Printing Circles v. Compass Group Canada (Beaver Ltd.),
[2007] O.J. No. 2682 (Sup. Ct. J.)

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