

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Watkins v. Hines*, 2010 NSSC 241

**Date:** 20100504

**Docket:** Hfx No. 272509

**Registry:** Halifax

**Between:**

Peter Watkins, of Porter's Lake, Nova Scotia

Plaintiff

v.

Peter Hines, of West Chezzetcook, Nova Scotia

Defendant

**Judge:** The Honourable Justice M. Heather Robertson

**Heard:** May 4, 2010, in Halifax, Nova Scotia

**Decision:** May 4, 2010 (**Orally**)

**Written Release:** June 23, 2010

**Counsel:** Glenn Jones, for the plaintiff  
Shelley Wood , for the defendant  
Mark Rieksts, for the Attorney General of Nova Scotia

**Robertson, J.:** (Orally)

[1] This matter was first brought on Appearance Day. I appreciate that Justice Murphy thought it was more appropriate to have a formal motion made in Special Chambers.

[2] This motion is properly before the court. It probably will have an impact on the other 100 or so non-test cases arising from the challenge against the Nova Scotia legislation s. 113B of the *Insurance Act*, R.S.N.S. 1989, c. 231, as amended, and the *Automobile Insurance Tort Recovery Limitation Regulations*, N.S. Reg. 182/2003, imposing a cap on damages in personal injuries cases in the circumstances of defined minor injuries. The plaintiff seeks continuation of a limited stay of proceedings previously imposed by Justice Kevin Coady in this matter by decision dated June 9, 2009.

[3] The stay granted by Justice Coady was limited to the constitutional issues and the setting of trial dates. The stay was to continue until the Nova Scotia Court of Appeal renewed its decision in *Gionet (Hartling v. Nova Scotia (Attorney General))* 2009 NSCA 130 and that has occurred. Now leave to appeal to the Supreme Court of Canada in the *Gionet* case and its companion test cases has been sought.

[4] The plaintiff asks that this limited stay be continued until the decisions of these leave applications are rendered and if successful, would ask the stay be continued until the Supreme Court renders a final decision on these appeals. The applicable *Rules* governing the stay are the new *Civil Procedure Rules* 4.14, 4.16 and 4.21. As well, the court has the inherent jurisdiction to order a stay of proceedings as confirmed by s. 41(e) of the *Judicature Act*, R.S.N.S. 1989, c. 240.

[5] The court has to consider the issues of procedural fairness and efficacy as articulated in recent cases and they are: *Renick v. Steeves*, 2007 NSSC 359; *Renick v. Steeves*, 2008 NSSC 106; and *Watkins v. Hines*, 2009 NSSC 182.

[6] These cases determined that given the number of cap cases and the complexity of the constitutional issues which will arise and be repeated in each case, it was appropriate to advance the test case.

[7] The defendant's position is that they have a right to have their claim heard in a reasonable time and they want trial dates to be set, given that the Court of Appeal has now spoken, notwithstanding leave to the Supreme Court of Canada.

[8] The defendant argues that the plaintiff has not met the heavy onus to demonstrate the stay is warranted and that the defendants will suffer prejudice if the stay is continued, as trial dates would not be available until sometime after 2012, almost eight years following the motor vehicle accidents that are the subject of this action.

[9] The defendant also says that "the landscape has changed dramatically" as a result of the Court of Appeal decision in the *Hartling* and *McKinnon* test cases.

[10] With respect to the prejudice to the defendant, counsel relies on the *Global Petroleum Corporation v. CBI Industries Incorporated*, [1997] N.S.J. No. 60; *Waterworks Construction Ltd. v. Liberty Mutual Insurance Co.* 2001 NSSC 125; *Canadian Express Ltd. v. Blair*, [1992] O.J. No. 2029; *Gillis v. Eagleson*, [1995] O.J. No. 1160; and *Discreet Logic Inc. v. Canada (Registrar of Copyrights)*, [1993] F.C.J. No. 1094. I have reviewed all of those cases.

[11] The Attorney General of Nova Scotia supports the stay motion until the decision of the Supreme Court of Canada is rendered in the test cases. They point out that the constitutional challenges have been filed with respect to over 100 non-test motor vehicle injury cap cases and there are more to follow each day.

[12] The legal principles applicable to a stay have been articulated by Moir, J. in *Canada (Attorney General) v. Marineserve.mg Inc.*, 2003 NSSC 26. His decision was referenced again in *Watkins v. Hines*, supra, at paras. 17, 18 and 19 by Coady, J.:

[17] In *Canada Attorney General v. Marine Service MG Incorporated*, 2003 NSSC 26, Moir, J. offered the following remarks at paragraph 6:

"I find it helpful to think of a stay as a remedy, and to allow that there are diverse circumstances in which the discretion might be exercised. It is the expected response to an abuse of process. However, a stay of proceedings may respond to circumstances that do not amount to abuse."

[18] And further:

"The power to stay proceedings is ancient, and it is closely connected to the inherent jurisdiction of the court to control its own processes. I do not read the authorities to which counsel referred me as having restricted the exercise of power to cases of abuse of process. The power is to be approached with great caution. Its use is exceptional. The case for it must be clearly established.

[19] And further:

To conclude this discussion of the law governing stays of proceedings. The stay is an ancient remedy which is inherent to the jurisdiction of this Court and which is closely connected to the inherent power to control the process of the Court. The remedy is routine where the applicant clearly establishes abuse of process or *forum non conveniens*, and it is sometimes employed to bring forward a test case in advance of others or to secure procedural fairness and efficiency where two cases must be tried separately although joint trial might normally have been more just and efficient. The power is invoked with great caution because of the plaintiff's interests in having access to the Court and in having that access as swiftly as procedural fairness allows. However, in my opinion the discretion is not restricted to categories of case or by rigid rules. In cases like the present, the flexible approach evident in *Boart Sweden AB*, [1988] O.J. No. 2839, is warranted. That is, the Court should start by recognizing the caution and the importance of the plaintiff's access to the Court and weigh those in the balance with other factors relevant to the question of whether a stay is just.

[13] The court in *Watkins* granted the stay for reasons set out in para. 20:

[20] I am satisfied that the Applicant, the Attorney General of Nova Scotia, has met the onus for a stay. I agree that if a stay were denied, essentially the same constitutional issues would have to be argued and decided on many occasions. Such a situation would create duplicative proceedings and could result in conflicting rulings. A stay avoids a multiplicity of cases arguing the same issue. A stay secures procedural fairness and efficiency and is supported by the court's authority to control its process.

[14] I find that the circumstances today are identical to those which existed at the time for the previous motion of stay. In my view, the stay should be granted, pending the leave decision in the test cases and thereafter until the final decision is rendered, should leave be granted.

[15] I note that this is the same position taken in the recent appearance day decisions of the court in certain non-test cases – Mr. Justice Moir’s decision in *Benteau v. Ryan* (Hfx No. 285117); and in Mr. Justice Wright’s decision in *Burneau v. Enterprise Rent-A-Car* (Hfx No. 283397); and *MacDonald v. Coldwell* (Hfx No. 274037).

[16] There are similar results arrived at by date assignment conference judges in other non-test cases where trial dates had been granted but with the understanding that there may be applications to reschedule trial dates, postponing trial until after the decisions in these test cases are made final by the Supreme Court of Canada, or made final by the decision to reject leave.

[17] Many cases have been stayed by consent and I recognize that.

[18] In all the circumstances, I accept that the procedural fairness and efficiency will be best achieved by granting the stay. I also find that the prejudice to the defendant in granting the stay is not greater in my view than the prejudice to the plaintiff, who is more seriously affected by the passage of time in making its case for damages.

[19] If trial dates for all of these test cases were set now, then the plaintiff would bear the additional burden of meeting the challenge of providing evidence that they do not fall within the cap. This is a more significant burden, in my view, than the prejudice caused to the defendant by virtue of a stay.

[20] With respect to the trial dates, and I am very sensitive to this issue, I agree, Ms. Wood, that it is not particularly satisfactory to have a trial eight years after the accident has occurred. That is unfortunate. But I remain unconvinced that you would receive earlier trial dates, in fact, the court now tried to accommodate the 100 or so non-test cases by now giving dates for trial. The reality is that the vast majority of non-test cases will be sorted out very quickly if leave to appeal is not granted.

[21] The stay granted by Justice Coady in this matter, in his decision dated June 9, 2009, is therefore continued pending resolution of the test case *Gionet & MacDonald v. AGNS and IBC*, SCC No. 33572; and *Global Petroleum Corp. v. CBI Industries Inc.*, 1997 NSCA 42 and the constitutional issues in that matter by the Supreme Court of Canada. So, I am granting the stay in this matter.

Justice M. Heather Robertson