

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Mosher v. Lefort Estate, 2013 NSSC 140

**Date:** 20130314

**Docket:** Hfx No. 186382

**Registry:** Halifax

**Between:**

Susan Louise Mosher

Plaintiff

and

The Estate of the Late Joseph Gerard Lefort

Defendant

---

**Decision on Conversion to Judge Alone Trial**

---

**Judge:** The Honourable Justice Gerald R. P. Moir

**Heard:** March 14, 2013

**Oral Decision  
Transcribed  
and Released:**

May 2, 2013

**Counsel:**

David W. Richey, for plaintiff

Philip M. Chapman and Christine Nault, for defendant

**Moir J. (Orally):**

[1] In my view that the issues, just considered in isolation, from the way this case has unfolded over more than ten years, are not too complicated to give to a jury, including the issues about mitigation and the loss of income. We have tried more complicated personal injuries issues with juries in this province on many occasions.

[2] From my perspective, Mr. Chapman's comments about the unpredictability of the length of trial, from my perspective those comments touch upon a broader issue. I think we are much closer to the situation where one begins a trial with a jury and it ends in a mistrial, which is a ground for putting an end to the right to a jury trial.

[3] I have no doubt that had we gone ahead with the jury trial, which was scheduled for this month, that it would have ended in a mistrial. I will not go into the details now, there is no need. You can refer to my decision on the adjourning of the trial to see why I am so sure that that is the situation we would have been in.

[4] That, I think, is a ground for not allowing the trial to come back before a jury. I think that the injustice occasioned after a mistrial, or in this case a near-mistrial, is that one is asking some several hundred members of the public to give up a morning, show up here for jury selection, and then one is asking seven members of the public to listen to the evidence and to engage in an exercise that is very unusual for them. And, it is too much to ask of the public that those sacrifices should be made unless one has some confidence that the trial is going to be organized to the kind of precision that is required to give the jury the opportunity to make the decisions and also to arm them well with the evidence to go and make the decision.

[5] So, my concern is less with the complexity of the issues, although I do recognize that they are complex, than it is with my lack of confidence that they can be presented with the kind of precision that is required to make a jury trial reasonable. And, for that reason, I will order that the trial is to be by judge alone.

J.