SUPREME COURT OF NOVA SCOTIA
Citation: *Langille v. Nova Scotia (Attorney General)*, 2016 NSSC 298

Date: 2016 12 02
Docket: Hfx No. 427762
Registry: Halifax

Between:

Eric Langille and Maritime Financial Services Incorporated, a body corporate

Plaintiffs
(Defendants by Counterclaim)

v.

The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, PPI Solutions (Atlantic) Inc., a body corporate, and Transamerica Life Canada, a body corporate

Defendants

Judge:	The Honourable Justice Joshua M. Arnold
Heard:	October 21, 2016, in Halifax, Nova Scotia
Oral Decision:	October 24, 2016, in Halifax, Nova Scotia
Counsel:	Eric Langille (Self-represented), on behalf of the Plaintiffs Adriana Meloni, on behalf of the Defendant AGNS Matthew Moir, on behalf of the Defendant PPI William Ryan, Q.C., on behalf of the Defendant Transamerica

By the Court:

[1] This is a motion for adjournment by the Plaintiffs.

Background

[2] On May 28, 2014, a Notice of Action and Statement of Claim was filed on behalf of Eric Langille and Maritime Financial Services Incorporated ("MFSI").

[3] On August 6, 2014, the Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia ("AGNS") filed a Notice of Defence.

[4] On August 13, 2014, Transamerica Life Canada ("Transamerica") filed a Notice of Defence.

[5] On August 13, 2014, PPI Solutions (Atlantic) Inc. ("PPI") filed a Notice of Defence and Counterclaim.

[6] On September 25, 2014, the Plaintiffs filed a Notice of Defence to Counterclaim with Crossclaim.

[7] On November 3, 2014, Transamerica filed a Notice of Defence to Crossclaim.

[8] On September 11, 2015, a Date Assignment Conference was held. Counsel confirmed on that date that sixteen days would be required for trial.

[9] On October 15, 2015, PPI filed an amended Notice of Defence and Counterclaim.

[10] On November 24, 2015, the court offered trial dates of November 16, 17, 21, 22, 23, 24, 28, and 29, and December 5, 6, 7, 8, 12, 13, 14, and 15, 2016. The Plaintiffs confirmed their availability on November 24, 2015; PPI confirmed on November 26, 2015; AGNS confirmed on November 26, 2015; and Transamerica confirmed some two plus months later, on February 5, 2016.

[11] On April 15, 2016, Expert Reports were filed on behalf of PPI.

[12] On May 31, 2016, the trial dates commencing in November 2016 were confirmed by the court to counsel in writing. A Finish Date of August 18, 2016,

was set by the court along with a Trial Readiness Conference Date of September 16, 2016. On May 31, 2016, I was assigned to hear the matter. My judicial assistant then contacted counsel to arrange a pre-trial conference.

[13] On June 15, 2016, a pre-trial conference call was held with counsel to discuss any outstanding issues. McInnes Cooper did not raise any issues at that time about possible problems.

[14] On June 17, 2016, the Plaintiffs confirmed in writing that they would not be filing an expert report regarding damages.

[15] PPI filed a Statement of Expert Witness Qualification on August 15, 2016, and a Witness List on August 18, 2016. Witness Lists were also filed by the Plaintiffs, Transamerica, and AGNS on August 18, 2016.

[16] On August 23, 2016, a follow-up telephone conference was held with counsel. At that time, Michelle Awad, Q.C., confirmed that McInnes Cooper would be filing a motion requesting the removal of George W. MacDonald, Q.C., Michelle C. Awad, Q.C. and the law firm, McInnes Cooper, as counsel of record for the Plaintiffs. September 1, 2016, was scheduled for the motion to be heard.

[17] On August 25, 2016, the Notice of Motion was filed by Gavin Giles, Q.C., of McInnes Cooper.

[18] On August 30, 2016, PPI, AGNS and Transamerica confirmed they would appear, but would not be taking any position regarding the motion of McInnes Cooper to withdraw as counsel. However, Transamerica did request that the trial dates be kept or, if adjourned, that throw-away costs be awarded to the Defendants.

[19] The parties appeared on September 1, 2016, with respect to the motion by Plaintiffs' counsel to withdraw as solicitor of record. Mr. Langille appeared on behalf of himself and MFSI, as he was unable to obtain legal advice prior to the hearing. The motion did not proceed as Mr. Langille wanted legal advice. Dates were canvassed and September 20, 2016, was scheduled for the return of the motion.

[20] On September 16, 2016, an affidavit was filed with the court on behalf of Mr. Langille and MFSI contesting the motion of McInnes Cooper to withdraw as solicitor of record.

[21] On September 19, 2016, a supplementary brief of McInnes Cooper was received by email with originals filed with the court on September 20, 2016.

[22] On September 20, 2016, all parties appeared in court with respect to the motion of McInnes Cooper to withdraw as solicitor of record. A supplementary affidavit of Michelle Awad, Q.C., was filed during the proceeding. By way of a separate oral decision, the court granted leave to withdraw to George W. MacDonald, Q.C., Michelle C. Awad, Q.C. and the law firm of McInnes Cooper, as counsel for the Plaintiffs.

[23] At the September 20, 2016 appearance, Mr. Langille was asked if he intended to represent himself at trial. Mr. Langille said he did not know. The matter was therefore adjourned for one week to allow Mr. Langille time to decide how he would proceed. When the court raised the possibility of an adjournment of the trial depending on Mr. Langille's position, Mr. Ryan, Q.C. indicated that his client would object to any adjournment request. A recorded telephone conference was scheduled for September 26, 2016, for Mr. Langille to provide an update.

[24] During the recorded telephone conference of September 26, 2016, Mr. Langille confirmed that he had not retained counsel and that he would not be ready for the 16 day trial scheduled to commence November 16, 2016. He advised that as a result he would seek an adjournment of the upcoming trial dates. Counsel for PPI and Transamerica stated that they would oppose the adjournment request. Counsel for AGNS did not take a position. October 5, 2016, was offered by the court to the parties to argue the adjournment request. Mr. Langille was available. Counsel for Transamerica and the AGNS were not available. Therefore, the adjournment motion was scheduled to be heard on October 21, 2016, at 12:30 PM.

[25] On October 6, 2016, counsel for Transamerica filed a Notice of Motion Seeking Security for Costs along with supporting materials. A conference call was scheduled with parties for October 7, 2016; however, as counsel for Transamerica was out of the country, the call was rescheduled for October 13, 2016.

[26] The conference call was scheduled to begin at 12:00 PM on October 13, 2016. At 11:56 AM, an email was received from Mr. Langille indicating that he would be appealing the decision granting the withdrawal of McInnes Cooper as counsel for the plaintiffs.

[27] It was determined during the conference call that parties would only be arguing the Motion for Adjournment starting at 9:30 AM on October 21, 2016, and the Motion for Security of Costs of Transamerica would be argued at another time.

[28] On October 17, 2016, Transamerica filed its brief with respect to the Motion for Adjournment of the Plaintiffs.

[29] On October 18, 2016, PPI filed its brief confirming its agreement with the position of Transamerica with the addition of argument regarding their counterclaim against the Plaintiffs.

[30] The AGNS confirmed in writing on October 18, 2016, that they would continue to not take a position on the adjournment request.

[31] The motion was argued Friday, October 21, 2016.

Civil Procedure Rules

[32] Civil Procedure Rule 1.01 states:

> 1.01 These Rules are for the just, speedy, and inexpensive determination of every proceeding.

[33] Civil Procedure Rule 2.03 states:

> 2.03 (1) A judge has the discretions, which are limited by these Rules only as provided in Rules 2.03(2) and (3), to do any of the following:
>
> > (a) give directions for the conduct of a proceeding before the trial or hearing;
> >
> > (b) when sitting as the presiding judge, direct the conduct of the trial or hearing;
> >
> > (c) excuse compliance with a Rule, including to shorten or lengthen a period provided in a Rule and to dispense with notice to a party.
>
> (2) A judge who exercises the general discretion to excuse compliance with a Rule must consider doing each of the following:
>
> > (a) order a new period in which a person must do something, if the person is excused from doing the thing within a period set by a Rule;
> >
> > (b) require an excused person to do anything in substitution for compliance;

> (c) order an excused person to indemnify another person for expenses that result from a failure to comply with a Rule.
>
> (3) The general discretions do not override any of the following kinds of provisions in these Rules:
>
> (a) a mandatory provision requiring a judge to do, or not do, something;
>
> (b) a limitation in a permissive Rule that limits the circumstances in which a discretion may be exercised;
>
> (c) a requirement in a Rule establishing a discretion that the judge exercising the discretion take into account stated considerations.

[34] Civil Procedure Rule 4.20 deals with adjournments, and sets out the relevant considerations:

> 4.20 (1) A judge may adjourn trial dates before the finish date, if all parties agree the party seeking the adjournment would suffer a greater prejudice in proceeding with the trial than other parties would suffer by losing the trial dates.
>
> (2) A motion for an adjournment after the finish date must be made to the trial judge, unless a judge has not been assigned or the trial judge is not available.
>
> (3) A judge hearing a motion for an adjournment after the finish date must consider each of the following:
>
> (a) the prejudice to the party seeking the adjournment, if the party is required to proceed to trial;
>
> (b) the prejudice to other parties, if they lose the trial dates;
>
> (c) the public interest in making the best use of court facilities, judges' time, and the time of court staff.
>
> (4) The judge who hears a motion for an adjournment after the finish date must presume both of the following, unless the contrary is established:
>
> (a) losing trial dates adversely affects a party's tangible and intangible interests;
>
> (b) a late adjournment adversely affects the efficient scheduling of facilities and time.

[35] Civil Procedure Rule 4.21 sets out the available orders on a Rule 4.20 motion:

> 4.21 A judge who refuses to appoint dates for trial, cancels trial dates, or adjourns a trial may do any of the following:

> (a) order a party to do anything necessary so the court may appoint trial dates;
>
> (b) set a date for a date assignment conference;
>
> (c) give directions on what must be done before a party can make another request for trial dates;
>
> (d) order a party who failed to file a memorandum for a date assignment judge to indemnify another party for expenses caused by the failure;
>
> (e) order a party whose conduct caused the refusal, cancellation, or adjournment, to indemnify another party for the expense of preparing for and participating in the date assignment conference, trial readiness conference, or motion for an adjournment, and the expenses caused by the refusal, cancellation, or adjournment;
>
> (f) order a party whose conduct contributed to the refusal, cancellation, or adjournment to indemnify another party in proportion to the contribution

Analysis

Adjournment Following the Finish Date

[36] Counsel for Transamerica referred the court to the decision of Moir J. in *Oxford Frozen Foods v. Leading Brands Inc.*, 2014 NSSC 249, wherein the court discussed counsel's obligations to abide by the *Civil Procedure Rules*, in particular, being trial-ready by the time the Finish Date arrives.

[37] On August 26, 2016, when counsel for Mr. Langille first notified all parties that they would be moving to be removed as solicitor of record for the Plaintiffs, the Finish Date of August 18, 2016, was already past. No counsel raised this as an issue at the motion for removal heard on September 20, 2016.

[38] As noted above, Civil Procedure Rule 4.20(3) states that a judge hearing a motion for an adjournment after the finish date must consider each of the following:

> (a) the prejudice to the party seeking the adjournment, if the party is required to proceed to trial;
>
> (b) the prejudice to other parties, if they lose the trial dates;
>
> (c) the public interest in making the best use of court facilities, judges' time, and the time of court staff.

A) The prejudice to the party seeking the adjournment, if the party is required to proceed to trial

[39] Up until September 20, 2016, Mr. Langille had the benefit of two very experienced counsel and the resources of a large law firm. According to the affidavit filed by Mr. Ryan, Q.C., the disclosed documents are comprised of 26 volumes of material, plus bundles of unquantified additional disclosure from all parties. There are also 1603 pages of discovery documents.

[40] Prior to McInnes Cooper making its removal motion, this matter had proceeded along toward trial at a steady pace. No previous adjournments of the trial had been requested. Mr. Langille had not slowed down the progress of litigation. He wanted the trial to go ahead as scheduled with his previous counsel. His counsel have been removed. Mr. Langille has expressed his inability to represent himself on this claim. He says he wants to retain new counsel and have them conduct the trial. He has not yet found a new lawyer. Even if he had found a lawyer within a week or two of September 20, 2016, it is unrealistic to expect new counsel would have been prepared for trial and/or available on the trial dates as currently set.

[41] Both Mr. Ryan, Q.C. and Mr. Moir commented on the complexity of this litigation. Mr. Ryan, Q.C. wheeled a full, two-tiered cart into court as an example of just part of the materials involved in this case. He said that his law firm has been preparing for trial since June. In his argument, he stated:

> The reason I wanted Your Lordship to have a visual view of the amount of documentation is that that is what Mr. Geatros refers to when he says that the witnesses for Transamerica have been preparing for trial for an extended period of time. This is not something that somebody can pick five days, ten days before trial, and when Mr. Geatros talks about the prejudice to Transamerica knowing that the witnesses have dealt with documentation of that magnitude, knowing that the witnesses have looked at the transcripts, the documents and have discussed with counsel in preparation for trial, and My Lord, I think it's reasonable to say that any competent lawyer would not leave the preparation for witnesses to the last two, three, four weeks prior to trial of this complicated matter and of this magnitude.

[42] Mr. Langille says he has no idea how to conduct this trial. He filed an ill-advised affidavit on the application for removal of counsel. He went significantly off-track during both his arguments on removal of counsel and on this adjournment application. He says he wants to appeal, but according to Mr. Ryan, Q.C. and Mr.

Moir, he appears to have missed his appeal deadlines. He did not seem to grasp the position of his former counsel before, during and after the motion to have McInnis Cooper removed. Up until two days ago he was still trying to elicit advice from George MacDonald, Q.C., and seemed to suggest in court that he was still hopeful that Ms. Awad, Q.C. will speak with him about a referral.

[43] Mr. Langille has indicated on several occasions that he wants to appeal my decision to remove Ms. Awad, Q.C. and Mr. MacDonald, Q.C. as his lawyers. He has not yet filed any appeal documents. Mr. Ryan, Q.C. and Mr. Moir point out that Mr. Langille may be out of time to file an appeal. If Mr. Langille does appeal, and if he is successful on his appeal, but the trial goes ahead in the interim, then the parties are looking at a potential re-trial situation. However, considering the fact that Mr. Langille has not filed any appeal documents, I do not take the possibility of a successful appeal by Mr. Langille into account on this adjournment application.

[44] As early as August 26, 2016, all parties were aware of the possibility that Mr. Langille's lawyers might be removed as solicitors of record. Mr. Langille opposed the removal of his lawyers and expected that I would order them to continue on. Instead, I allowed his lawyers to be removed as solicitors of record.

[45] On September 20, 2016, once the decision to remove counsel was made, Transamerica voiced its opposition to an adjournment. Although already slightly past the Finish Date when all of this transpired, Transamerica was not available to attend court at the earliest date available to hear the adjournment motion.

[46] Had Ms. Awad, Q.C. and Mr. MacDonald, Q.C. made their application to be removed as counsel much earlier in time than they did, Mr. Langille would have had more time to either retain new counsel or prepare to do the trial as a self-represented litigant. Perhaps McInnes Cooper continued to represent Mr. Langille until just a few months prior to trial to give him every possibility to meet his retainer obligations. Perhaps they lost track of the retainer issue. For whatever reason, the timing of McInnes Cooper's removal motion could have been better in consideration of Mr. Langille, the Defendants and the court.

[47] This constellation of factors has not realistically left Mr. Langille enough time to retain new counsel or to properly prepare to litigate on his own.

[48] The purpose of the *Civil Procedure Rules* is to promote the just, speedy and inexpensive determination of every proceeding. Would it be "just" to require Mr.

Langille to proceed to trial without counsel in these circumstances? Would it be "just" to expect him to conduct a complex, sixteen-day civil trial where the Defendants are represented by very experienced members of the bar who essentially suggest that they had to start preparing for this matter months in advance of trial? On the other hand, is it "just" to have the Defendants on hold for many months while waiting for Mr. Langille to retain new counsel and for a new trial date? Of course, Mr. Langille may never retain new counsel.

[49] An adjournment will not lead to a speedy resolution of this matter. Instead, an adjournment will lead to additional expenses for the Defendants in the future as they will have to duplicate some of their trial preparation.

[50] In *Moore v. Economical Mutual Insurance Co.*, (1999), 177 N.S.R. (2d) 269, [1999] N.S.J. No. 250 (C.A.), Cromwell J.A. (as he was then) stated, for the majority:

> 33 The decision to grant or refuse an adjournment is within the discretion of the presiding judge. It is a discretion which the judge is particularly well placed to exercise. An appellate court should not substitute its judgment for that of the presiding judge but should limit its review to determining whether the judge applied a wrong principle or the decision gave rise to an injustice.
>
> 34 The appellants were left without counsel on the eve of trial. They decided to change counsel roughly 3 weeks earlier. They thought that they had obtained the services of new counsel to take the matter to trial. Their former counsel thought so too, even after he had a two hour meeting with new counsel. The trial judge was advised of the change of counsel at a pre-trial conference. New counsel subsequently advised that he would not act and stated in an affidavit that he had only ever agreed to review the matter. After this surprising turn of events, former counsel did some trial preparation, then advised that he would not act further. All of this to say that this was not a situation in which the plaintiffs were manipulating the process for the purposes of delay. While their decision to change counsel so close to trial was risky and unwise, it is clear that they and their former counsel thought there was a firm arrangement in place with new counsel before they discharged former counsel. The trial judge appears to have accepted as a fact that the plaintiffs thought they had new counsel before they discharged their former counsel and this finding is supported by the submissions made to the trial judge by their former counsel.
>
> …
>
> 36 Where the effect of refusing an adjournment is to force the party seeking the adjournment to proceed without counsel, the required balancing must have due regard to the importance of legal representation. While the principles set out by Hallett, J.A. for the Court in *R. v. Beals* (1993), 126 N.S.R. (2d) 131 were

> developed in the different context of a criminal case, I think several of them are highly relevant in civil matters. There is certainly no absolute right to counsel in civil cases and efforts to retain and instruct counsel must be exercised honestly and diligently and not for the purposes of delay. The impact of the refusal of an adjournment on the fairness of the trial must also be considered having regard, for example, to the complexity of the issues raised.
>
> 37 In this case, I think the trial judge applied wrong principles in refusing the adjournment. He did not balance the respective interests of the parties as they related to the interests of justice in securing a fair trial on the merits of the case. He did not give sufficient weight to the impact of forcing the plaintiffs to trial without counsel, particularly where he apparently did not think that the plaintiffs had attempted to use their retention of counsel for the purposes of delay. He accepted that the plaintiffs thought that they had arranged new counsel but that new counsel then declined to act, therefore leaving them without counsel. With respect, the learned trial judge appears to have given more weight to inconvenience to the Court and counsel for the respondent than to the serious disadvantage of forcing the appellants to trial without counsel in circumstances in which the absence of counsel was not entirely their fault and was not an apparent attempt to delay the proceedings. As plaintiffs in an action on an insurance policy, they had little, if anything, to gain from delay in any case.
>
> 38 I also think that the learned trial judge ought to have considered whether any prejudice to the respondent caused by granting the adjournment could have been compensated by the imposition of costs or other terms in granting it. The learned trial judge's reasons for denying the adjournment do not indicate that he considered this aspect. There was no evidence before the judge of any prejudice to the respondent which could match the obvious disadvantage of forcing the appellants on for trial without counsel in what was expected to be a two week trial involving allegations of arson and fraud. There was certainly no evidence that the inconvenience and costs thrown away that would have resulted from the granting of an adjournment could not have been compensated for in costs.

[51] Justice Saunders noted in *Abbott v. Sharpe*, 2007 NSCA 6, [2007] N.S.J. No. 21, that trial judges are given a broad discretion to grant or refuse an adjournment:

> 74 The appellants complain that:
>
> > The Learned Trial Judge erred in allowing the trial to proceed when it was apparent that it could not be completed without a lengthy break.
>
> This was clearly a matter within the trial judge's discretion. I reject the submission that Justice Edwards treated the parties unfairly in his exercise of that discretion. A trial judge's right to supervise and control the trial process includes a wide discretion to grant or refuse adjournments. The exercise of that discretion is owed considerable deference on appeal unless it can be shown that the judge erred in principle, or that the judge did not exercise his or her discretion judicially.

> *Webber v. Canada Permanent Trust Company v. Long* (1976), 18 N.S.R. (2d) 631 (A.D.), and *Moore v. Economical Mutual Insurance Co*., [1999] N.S.J. No. 250.

[52] In *Darlington v. Moore*, 2012 NSCA 68, [2012] N.S.J. No. 327, Farrar J.A. considered a situation where a trial judge forced a litigant to proceed in a family matter without a lawyer when the litigant wanted to have a lawyer. In discussing the issue of prejudice to the public, Farrar J.A. noted:

> 50 Although Rule 4.20 does not apply to these proceedings, one of the factors outlined in that Rule, prejudice to the public, is a factor the judge could take into account when considering whether to grant an adjournment. The judge mentions this factor in her written reasons where she says as follows:
>
> > The adjournment was not granted by the court because the matter had been scheduled since August 26, 2010. (para. 40)
>
> 51 With respect, this is simply a statement of fact. At some point, if scheduled proceedings are frequently adjourned, there may be prejudice to the public which must figure into the balancing act. However, as she did not weigh the relevant factors, it is difficult to determine what weight was given to the matter having to be rescheduled.

[53] In *Darlington,* Farrar J. determined that the trial judge erred in her handling of the adjournment and stated variously:

> 45 Nowhere in the judge's oral or written decision does she balance the respective interests of the parties as they relate to the interests of justice (*Moore,* infra, para. 37).
>
> 46 The prejudice to Mr. Moore in the failure to properly consider the request for an adjournment is obvious. On January 27, 2011, the pre-hearing conference judge strongly suggested to Mr. Moore that he should retain experienced counsel. Mr. Moore did exactly that. However, the counsel he retained was not available, for good reason, on the dates of the hearing. Admittedly, the request for an adjournment was made late in the day, however, as indicated by the affidavit of Mr. Moore's counsel, that was not the fault of Mr. Moore.
>
> …
>
> 49 Nor did the application judge weigh the prejudice, if any, there would be to Ms. Darlington against the prejudice to Mr. Moore. It appears from the comments of Ms. Darlington's counsel that any prejudice to her could have been compensated for in costs. As Justice Cromwell said in Moore, supra at para. 38:
>
> > [38] I also think that the learned trial judge ought to have considered whether any prejudice to the respondent caused by granting the

> adjournment could have been compensated by the imposition of costs or other terms in granting it. ...

[54] In *Wolfridge Farm Ltd. v. Bonang*, 2016 NSCA 33, [2016] N.S.J. No. 156, Bourgeois J.A. said:

> 16 It has long been recognized that in determining whether a judge erred in principle, or failed to address a request for an adjournment judicially, the context of the proceeding as a whole should be considered (*Moore, supra*).

[55] Transamerica and PPI argue that the trial should proceed as scheduled even if that means Mr. Langille represents himself. This matter has not been adjourned by Mr. Langille previously. There is no evidence before me on this motion that Mr. Langille has acted in bad faith, only that he ran into financial issues with McInnes Cooper. That being said, he has done little or nothing to secure new counsel since McInnes Cooper was removed, with the exception of unsuccessfully requesting a referral from his former counsel.

[56] In *Innocente v. Canada (Attorney General)*, 2012 NSCA 36, Fichaud J. considered the meaning of Civil Procedure Rule 1.01 when dealing with an appeal of a chambers judge's refusal to allow a self-represented litigant the opportunity to amend a claim, and stated:

> 48 As I discussed earlier, a discretionary ruling under the *Civil Procedure Rules*, including one that terminates a proceeding, is reviewable if it results in a patent injustice, even without an associated error of law. Would the chambers judge's denial of Mr. Innocente's request to further amend his claim result in a patent injustice?
>
> 49 My view is Yes.
>
> 50 "Injustice" has a flexible meaning for which guidance may be deduced from the Rules. Rule 1.01 describes the "Object of these Rules" as:
>
> > These Rules are for the just, speedy, and inexpensive determination of every proceeding.
>
> 51 The Rules offer litigants the opportunity to shepherd a claim, that is sustainable on its face, toward a proper resolution by settlement or trial. That is a "just determination". The denial of the amendment withdrew that opportunity from Mr. Innocente.
>
> 52 Rule 1.01 directs that the determination also be "speedy, and inexpensive". The Attorney General points out that Justice LeBlanc already gave Mr. Innocente one opportunity to amend, Mr. Innocente was represented by counsel for a period

> thereafter, and he filed an amendment. Enough is enough, says the Attorney General. Pleading by drawing lines in the sand is neither speedy nor inexpensive.
>
> 53 Rule 1.01 cites "just, speedy, and inexpensive" as guiding principles. When the quest for immaculate justice adds inordinately to the litigation's time and expense, the Rule expects the three factors to be balanced proportionately. A proportionate balance employs a less intrusive judicial tool, like costs, before the ultimate remedy of dismissing the claim. Unless there is bad faith or irreparable prejudice, judicial discretion over amendments should prefer the sting of costs to the guillotine of dismissal.
>
> 54 In *Stacey v. Electrolux Canada* (1986), 76 N.S.R. (2d) 182, (C.A.), Chief Justice Clarke endorsed that approach:
>
> > [5] A review of the case law leads us to conclude that the amendment should have been granted unless it was shown to the judge that the applicant was acting in bad faith or that by allowing the amendment the other party would suffer serious prejudice that could not be compensated in costs.
>
> Similar principles apply to amendments on appeal: *Scott Maritimes Pulp Limited v. B. F. Goodrich Canada Limited and Day & Ross Limited* (1977), 19 N.S.R. (2d) 181 (C.A.), paras 39-40; *Jeffrey v. Naugler*, 2006 NSCA 117, paras 12-16.
>
> 55 Mr. Innocente has not acted in bad faith. His counsel informed the chambers judge that the list of damaged items existed, but was not pleaded because, in counsel's view, those particulars were disclosable on discovery rather than in the Statement of Claim. Mr. Innocente's counsel said that, if his view was mistaken, the error was with counsel, not Mr. Innocente. (quoted above, para 44)

[57] Whatever communications there may have been between McInnes Cooper lawyers and Mr. Langille prior to August 26, 2016, Mr. Langille was clearly unprepared for the dismissal of his lawyers several weeks ago. I have no confidence from my observations of Mr. Langille that he is currently able to conduct this 16 day trial on his own.

[58] The prejudice to Mr. Langille is that having to proceed as a self-represented litigant creates the obvious risk of not adequately having his claim presented. With the amount of material involved in this case and Mr. Langille’s lack of legal training and approach to self-representation so far, I cannot see this being a positive experience if the trial goes ahead as scheduled.

B) The prejudice to other parties, if they lose the trial dates

[59] Through their counsel, Transamerica has filed an affidavit indicating that if the matter is adjourned they will lose money spent in preparing for this trial.

Volumes of material had to be reviewed by witnesses. The Defendant company has lost valuable employee work hours having employees prepare to testify. Employee schedules had to be adjusted. If the trial is adjourned all of the Defendants will have to duplicate their trial preparation sometime in the future. Mr. Ryan, Q.C. also points out that generally memories of witnesses fade over time.

[60] Mr. Moir for PPI echoes the position of Transamerica and argues that because the trial also includes PPI's counterclaim against the Plaintiffs there is additional prejudice. There is the risk that if PPI is successful, the longer PPI waits, the less likely it may be that Mr. Langille will have the resources to satisfy a judgment.

[61] As Civil Procedure Rule 4.20(4) states:

> The judge who hears a motion for an adjournment after the finish date must presume both of the following, unless the contrary is established:
>
> > (a) losing trial dates adversely affects a party's tangible and intangible interests;
> >
> > (b) a late adjournment adversely affects the efficient scheduling of facilities and time.

[62] Therefore, in addition to the concrete complaints of Transamerica and PPI, there is a presumption that losing these trial dates will adversely affect their tangible and intangible interests. Mr. Langille does not argue against this presumption and it appears clear that there will be financial prejudice to the Defendants if the trial is adjourned.

C) The public interest in making the best use of court facilities, judges' time, and the time of court staff

[63] Civil Procedure Rule 4.20(4)(b) also creates a presumption that an adjournment after the Finish Date adversely affects the efficient scheduling of facilities and time. As Mr. Ryan, Q.C. states in his written arguments:

> 22. Further, adjournment of trials granted before the commencement of the trial have a significant negative impact on the court system in the form of wasted judicial time and court dates. It is contrary to the public's interest to have such waste in a system that is already functioning with limited resources and in which parties are routinely waiting for a year or more for trial dates. Motions for adjournment brought so late in the trial preparation process ought to be strongly

> and uniformly discouraged by the courts, particularly when the stated need for an adjournment is caused by the inactivity of the party seeking the adjournment. The Plaintiff's own delay should not be rewarded with an adjournment.

Conclusion

[64] I am satisfied in balancing all of the issues in this case that an adjournment should be granted. Costs may satisfy some of the impact on the Defendants, although they are skeptical that Mr. Langille will be able to satisfy any judgment. I will have the parties file brief written submissions on costs, and we will schedule a motion for argument as both Transamerica and PPI have expressed such an interest. Dates will be set far enough in the future to allow Mr. Langille to retain counsel if he so chooses.

[65] Our scheduling office has advised that a sixteen-day trial could be accommodated by the court as early as January 2017. Additional sixteen-day blocks in 2017 are available May into June, November into December 2017 and also January 2018.

[66] In accordance with Civil Procedure Rule 4.21(b), we will set a date for a new date assignment conference immediately. The date assignment conference should also be set far enough into the future as to allow Mr. Langille to retain new counsel if he so chooses. Whether or not Mr. Langille retains new counsel, all parties including Mr. Langille, will be required to file fresh date assignment conference forms.

Arnold, J.