

SUPREME COURT OF NOVA SCOTIA
Citation: *Ferrier v. Ferrier*, 2017 NSSC 299

Date: 20171121

Docket: Tru. 1207-004466(105425)

Registry: Truro

Between:

Jo-Anne Ferrier

Petitioner

v.

Alan Ferrier

Respondent

DECISION

Judge: The Honourable Justice Jeffrey R. Hunt

Heard: October 17, 2017, in Truro, Nova Scotia

Oral Decision: November 21, 2017

Written Release: November 27, 2017

Counsel: Bradford Yuill, Solicitor for the Petitioner
Rubin Dexter, Solicitor for the Respondent

By the Court:

[1] For decision is the motion of Jo-Anne Ferrier who seeks an Order for interim spousal support from Alan Ferrier her spouse of 28 years.

[2] The parties married in March, 1987 and separated in May of 2015. This was a long-term marriage. The couple had three children. None are dependant children of the marriage within the meaning of the *Divorce Act*.

[3] Allan Ferrier is currently 66 years old. Jo-Anne Ferrier is 52.

[4] The employment backgrounds of the parties can be summarized as follows:

- Mr. Ferrier has been for a number of years a practicing lawyer. He is a Q.C. and a senior practitioner within the province.
- His current firm is Ferrier Kimball Thomas of Bridgewater.
- He has worked full time through the marriage.
- In 2011, he unfortunately suffered a heart attack that took him out of work for approximately three months.
- He dates some of his financial reversals and challenges to this health scare and the disruption it caused.

- Ms. Ferrier has a Grade 12. She holds a diploma in Social Services from NSIT. She obtained this in 1986. She took one year of International studies from Saint Mary's University in 1988.

[5] During the period immediately after the couple married she was employed as a sports assistant with the South Shore School Board. Following the birth of the couples first child she left that position to care for the baby before returning to work for another shorter period before the second child of the marriage was born in 1991. After that birth, Ms. Ferrier was out of the work force for approximately 10-11 further years.

[6] In or about 2001 she became a full-time teacher assistant with the South Shore Regional School Board. She continues to have this position which pays her approximately \$22,900.00 per year.

[7] Mr. Ferrier's occupation as a lawyer in private practice operating as a professional corporation within a partnership means that his finances are more complex than the average. The Court is dealing with an interim motion. This is not the setting that will allow for a full unpacking of all these financial issues and claims. In the interim hearing, we have had a preview of the issues to come. The

full trial will engage with issues of capital accounts, receivables and tax debt management, among many others.

[8] We do have a summary of the income earned and collected by Mr. Ferrier as reported by the law firm (rounded):

2013 -	\$174,700.00
2014 -	\$225,600.00
2015 -	\$186,600.00
2016 -	\$202,200.00

These are drawn from Mr. Ferrier's first filed Financial Statements from June 17, 2017. Subsequent to that date he filed on September 18, 2017 an "Up-dated Affidavit of Financial Information". It attaches capital account reconciliations which are noted to have been prepared by Grant Thornton. These show a substantial negative capital account balance with his law firm as of August 31, 2017.

[9] There are large capital account draws in July, 2017 and August, 2017 which he testifies were taken to pay off 2016 tax owing for AGF Law Inc. (his professional corporation), as well as tax owing personally for Alan Ferrier and Jo-Anne Ferrier, and outstanding property tax on the matrimonial home.

[10] The 2015 and 2016 figures found in the document equate to the “Revenue” figures in the unaudited December 31, 2016 Financial Statements of AGF Incorporated prepared by Grant Thornton. These are also in evidence.

[11] A few points to note:

- Mr. Ferrier indicates that he has for some time now been in a situation where he pays the prior year’s income tax obligation from current year cash flow.
- He does not foresee being in a situation where he is able to be current with his yearly tax installments until the end of 2019 at the earliest.
- The couple engaged in a form of income splitting during their marriage. This continued during much of the period of separation but has now stopped. It is Ms. Ferrier’s position while the income splitting continued on paper post separation the funds did not actually flow to her. While this may not be unusual for these arrangements, she asserts that it did impact her ability to qualify for certain EI and tax benefits.

Entitlement

[12] For the purposes of this interim motion, Mr. Ferrier does not contest the question of the Applicant's entitlement to spousal support. Indeed, he points out that he has been voluntarily paying \$1,500.00 per month. The acknowledgment of entitlement does not specify whether it would be based in a compensatory or non-compensatory model, or both. In any event the without prejudice concession does allow us to focus on the real issue at hand.

Quantum – Position of Applicant

[13] With respect to quantum – the parties take very different positions. Counsel to Ms. Ferrier has advanced Child View calculations that suggest a range of \$7,000.00 and up. This is based on a pure Spousal Support Advisory Guideline calculation. The inputs used by the Applicant are questioned. The payor income figure used in the calculation was \$252,200.00. This is challenged by counsel to the Respondent.

Quantum – Position of Respondent

[14] In addition to disagreeing with the amount used in the Child View calculations, Mr. Ferrier has a further and more generalized challenge to the use of this approach. He argues that the overall debt situation of the couple constitutes an exception within the application of the guidelines. The Court has reviewed the applicable portions of the SSAG exception analysis including 12.1 and 12.2.

[15] The Respondent asserts that the joint debt situation in this circumstance would qualify as extraordinary. He argues that he has largely or entirely assumed responsibility for the joint debt since separation. These expenses include:

Matrimonial Home Costs

- \$ 1,788.00 per month for the mortgage (home resided in by him alone)
370.00 per month for taxes (accruing)
80.00 per month for insurance

\$ 2,238.00 (Total)

- \$ 606.00 per month for secured line of credit

Vehicles

- \$ 465.00 - Ms. Ferrier's vehicle
- \$ 443.00 - Mr. Ferrier's vehicle

- \$ 227.00 - dual insurance and registration costs

Credit Cards

- \$ 800.00 - credit card minimums

Insurance

- \$ 950.00 - dual life insurances
(Note: \$850.00 for his insurance and
\$100.00 for her insurance)

[16] The position of the Applicant is that these expenses can be and ought to be substantially downsized. These comments are directed most strongly to the housing expenses and the insurance cost.

[17] The Respondent has presented his own Divorce Mate calculations which put the range for spousal support between \$ 1,174.00 and \$ 2,349.00. The Applicant challenges the income figures used by the Respondent as inputs in these calculations.

Legislation

[18] The applicable provisions of the *Divorce Act* provide as follows:

15.2(1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum or periodic sums, as the court thinks reasonable for the support of the other spouse:

(2) Where an application is made under subsection (1), the court may, on application by either or both spouses, make an interim order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse, pending the determination of the application under subsection (1).

(3) The court may make an order under subsection (2) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including:

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

...

(6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should:

- (a) Recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) Apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) Relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) In so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

Law – Quantum

[19] Fixing the amount of spousal support is a discretionary exercise after considering the factors set out in s. 15.2(4) of the *Divorce Act* and the objectives of spousal support orders as set out in s.15.2(6).

[20] All four objectives enumerated in s.15.2(6) of the *Divorce Act* are to be borne in mind in making an award of spousal support, and none is paramount. The summary of principles below draws on the reasons for judgment in *Gates v. Gates*, 2016 NSSC 49.

[21] There is no hard and fast rule. The Judge must look at all the factors in light of the stipulated objects of support and exercise his or her discretion in a manner that equitably alleviates the adverse consequences of the marriage breakdown.

[22] While some factors may be more important than others in a particular case, the Judge cannot proceed at the outset by fixating on only one variable. The quantum awarded, both in the sense of amount and duration, will vary with the circumstances and practical and policy considerations affecting any given case.

(*Bracklow v. Bracklow*, [1999] 1 SCR 720, para. 53)

[23] The fundamental principles in spousal support cases are balance and fairness. The goal is an order that is equitable having regard to all of the relevant circumstances. (*Fisher v. Fisher*, 2001 NSCA 18)

[24] The duty of support is on the payor to provide “reasonable support”. The key question is what is reasonable support having regard to all the circumstances. (*Saunders v. Saunders*, 2011 NSCA 81; *Read v. Read*, 2000 NSCA 33)

[25] It does not follow that the quantum of support must always equal the amount of need which is established. For example, nothing forecloses making an order for support for a portion of a spouses need, whether viewed in terms of amount or duration.

[26] As marriage should be generally regarded as a joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution. (*Moge v. Moge*, [1992] 3 S.C.R. 813).

[27] However, length of marriage is only one factor which the Judge will consider. Thus, the general expectation following a long-term marriage for a more equal standard of living upon marital breakdown is not an immutable rule

constraining the factors applicable to determining quantum of spousal support.

(*Bracklow*, para. 54)

[28] The overarching principle that must be kept in mind on spousal support is the “equitable sharing” of the economic consequences of marriage or marital breakdown (*Moge*, para 73-77).

[29] It is a matter of applying the relevant factors and striking the balance that best achieves justice in the particular case before the Court (*Bracklow*, para. 32)

Condition, Means and Needs

[30] “Condition” of the spouses includes such things as their ages, health, employability, obligations, dependants, and overall situation in life.

[31] “Means” is a broad term and should be generously interpreted to give effect to the statutory purpose of spousal support. It would include all financial resources, capital and income, as well as earning capacity. It also takes into account capital acquired after the marital breakdown (*Leskum v. Leskum*, 2006 SCC 26; *Richards v. Richards*, 2012 NSCA 7).

[32] “Needs” is a flexible concept that may vary according to the circumstances of the parties and the family unit as a whole. It does not necessarily end when the

spouse seeking support achieves a subsistence level of income or any level of income above subsistence (*Yumchuk v. Yumchuk*, 2005 BCCA 406).

Nature of Interim Hearing

[33] This is an interim hearing. As Justice Beaton of the Supreme Court (Family Division) noted in *Jardine-Vissers v. Vissers* 2011, NSSC 195 [para. 33]:

It is to be remembered that this is an interim hearing for spousal support and therefore it is not intended that this Court should conduct an analysis of the financial histories of and future prospects of the parties to the same extent a final hearing would demand. Rather, the Court should concern itself more with what is happening at present and less with the long term consequences to either party of the termination of the marriage.

[34] On the subject of the usual parameters of an interim spousal support application, Justice Jollimore in *Legg v. Legg*, 2010 NSSC 326 said as follows [para. 11]:

In interim applications where spousal support is in issue, the focus is to ensure that the support order maintains a reasonable standard of living for both spouses and the means and needs of both spouses are relevant... In an interim application there is less emphasis on the objectives of a support order: the interim nature of proceeding may mean a court has little opportunity to examine these objectives fully. In *Mitchell*, 1993 Can LII, 3442 (NSSC), Justice Haliburton noted that his order was an interim one, and that the evidence before him, such as the circumstances of the parties, may be very different at the time of the final disposition of the issue.

The Nova Scotia Court of Appeal has endorsed the position that interim determinations, such as this one now before the Court, are meant to be a "...swift and summary process.": see *Richards v. Richards*, 2012 NSCA 7.

[35] This proceeding does not allow for a deep dive into all the issues which will rightly receive substantial attention at the final hearing. We know there will likely be questions of how properly to quantify Mr. Ferrier's earnings and partnership interests. There may be issues around the opportunity for self employed persons operating through professional corporations to manage their income flow beyond what may be possible for a person on salary. There will be substantial evidence and considerations before that Court which are simply not possible to engage at this stage. This interim hearing is a bridging step as we advance to a full hearing on the merits.

Summary of the Evidence

[36] I do intend to undertake a brief overview of the evidence.

[37] It is not my intention here to re-state or summarize every single item of evidence or submission. I will summarize central elements and core items of relevance.

[38] I have, however, reviewed, weighed, and considered all of the evidence in coming to my conclusions – even if I do not refer to every individual item here.

[39] You should note, however, that not every item proffered in evidence is of equal value.

[40] For example, the law says that I must not consider inadmissible hearsay evidence. This means that I cannot consider facts advanced in evidence from people who were not called as witnesses or made available for cross-examination (unless this is specifically allowed). The law also states that I must not consider opinion evidence from people who are not qualified as experts – except on a limited range of issues on which lay persons are permitted to offer opinion evidence.

[41] Finally, the law says that I am not to consider facts that are not relevant to the issues that I must decide. I have followed these rules in weighing the evidence on this hearing.

APPLICANT

[42] Ms. Ferrier gave evidence in her own case. She identified and adopted her filings in this matter.

[43] In limited additional direct questioning, she updated some recent dealings between the parties and commented on her living situation.

Matrimonial Home

[44] She identified pictures of the matrimonial home. She left this residence in May 2015. She is renting a small bungalow in Bridgewater, Nova Scotia. She identified photographs of that residence.

Joint Chequing Account

[45] She identified a document which she described as her work product attempting to reconcile transactions within the joint bank account between November, 2016 and May, 2017.

[46] The ability and opportunity for the Court to fully weigh this document on an interim motion is limited.

[47] With respect to what has been referred to as the “Monthly Allowance”, she testifies that she began to receive this in May, 2015. It is stated to be \$1,500.00 per month. She agreed that her income statement does not include either the \$1,500.00 monthly figure or EI payments she has received. She stated that she was unaware of a requirement to include these amounts on those worksheets.

[48] In cross-examination by counsel for the Respondent, Ms. Ferrier was asked about her receipt of EI benefits in 2017. She acknowledged receipt of \$2,003.00 in EI benefits in that year.

Expenses

[49] She was questioned about some of the items in her Statement of Expenses. There are some items which appear surprising in the context of parties who are attempting to downsize their spending and lifestyle expectations. The example pointed out to her was the monthly budget for manicure/pedicures. I accept that presented budgets such as these often seem to have an aspirational aspect.

RESPONDENT

[50] Mr. Ferrier was called in the Respondent's case. He identified and adopted his filings. In some brief additional direct evidence, he updated his Statement of Expenses. For instance, he noted that he has lowered the minimum payment on the credit cards to \$200.00 a month. They had been at \$250.00. This reflects, he advises, the ever-tightening nature of his cash flow.

[51] His income tax deductions were changed as well. He explained that when the Applicant was removed from the family trust there was a requirement to increase tax deductions. He now pays \$2,209 per month, as follows:

- \$1,188.93 increase to \$1,605.03
\$ 536.16 increase to \$ 603.97
\$ 1,752.00 increase to \$2,209.00

[52] He also detailed changes in the payment he makes on the line of credit (line 37). That figure has increased to in the neighbourhood of \$600.00.

[53] His Statement of Property was updated as well to reflect some growth in the value of the locked-in RRSP with Wood Gundy. It has grown to approximately \$259,000.00.

[54] In cross-examination Mr. Ferrier was referred to a number of issues. He confirmed that he has been in receipt of CPP benefits since May, 2016. He receives \$1,107.80 in CPP per month for approximately \$13,000.00 a year. He was questioned about the monthly sum expended on life insurance policies:

- He argues that the policies are reasonable in all the circumstances.

There is one policy on his life and one on Ms. Ferrier. The one on Mr.

Ferrier is by far the most expensive. He notes that the policy on himself:

- Is protecting the mortgage;
- Reflects security for a potential future spousal support order;
- Addresses the age gap between the parties.

Average Income

[55] Mr. Ferrier was questioned about what would be a fair “gross” average income for him over the past three years. He accepted that \$218,000.00 a year would reflect a reasonable estimate. There was discussion of the distinction between legal accounts rendered and accounts collected. The mechanism for write-offs of uncollected fees at his law firm was explored.

Home Costs

[56] Mr. Yuill pressed Mr. Ferrier on the home expenses associated with maintaining his residence in the matrimonial home. Mr. Ferrier acknowledged the disproportionate expense. But his position is that if the matrimonial home were to be sold he believes that the couple are “underwater” on the mortgage. He also

points out that he has been providing housing to their adult daughter. It does have to be said though that the daughter is not a dependant within the meaning of the *Divorce Act*. He says that he accepts the home will have to be sold. He says he has recognized that for some time.

Scotia Bank Visa (\$8,700.00)

[57] There were questions about the various credit card debts. At the time of separation the Scotiabank Visa balance was essentially zero. He has been using it, he indicates, to fill the gap between income and expenditure.

RBC Visa (\$15,700.00)

[58] At the time of separation the RBC Visa was essentially paid off. He has been using it since. He was questioned about a charge to “Peak Audio” for \$2,500.00. He indicated it was for a home speaker system that required replacement. These sorts of high end systems have long been an interest of his.

BMO MasterCard (\$4,500.00 +/-)

[59] Back at separation it was around \$4,400.00. It remains around the same today. This is the card that Mr. Ferrier puts a lot of transactions through as it accumulates loyalty points which he finds useful.

Travel

[60] Mr. Ferrier was questioned about his golf travel and travel outside of the country. He agreed that he has maintained his yearly golf trip to PEI. He has travelled to New Hampshire for a blues concert. He advised that it was not a costly trip, in his view. He testified that his current girlfriend covered her own costs. They took her vehicle.

[61] He was directed to his capital account statements from the law firm. He agreed that it has moved from (+) \$11,000.00 to (-) \$90,300.00 since 2014.

Conclusions

[62] When the Court steps back and assesses the evidence as a whole it does appear that one party, Ms. Ferrier, has more obviously downsized her lifestyle.

[63] Mr. Ferrier has not done so as evidently.

[64] I fully accept that Mr. Ferrier is operating with financial stresses. I accept that he does constrain his spending more than someone with his seniority in his profession might hope to do.

[65] The most obvious place where the respective situations are out of balance is Mr. Ferrier's continued residence in the costly matrimonial home. There is also a

continuation to a degree of leisure, travel and recreational pursuits by Mr. Ferrier that are out of proportion to the Applicant. I do not wish to over-emphasize this last point. Ms. Ferrier has done some limited travelling as well, apparently to visit one of the children in central Canada.

[66] Leaving aside these issues, the disproportionate housing expense is the most striking factor. Mr. Ferrier has framed his continued residence within the matrimonial home up to the present time almost as a necessity because of the fear of negative equity. Whatever the motivation may have been at the outset, it has been unsustainable for some time. It is impacting the equitable sharing of the combined resources.

[67] I have not lost sight of the fact that Mr. Ferrier has been maintaining the mortgage, insurance and taxes. Obviously, these must be maintained until sale. But the fact is that the status quo is unsustainable. If a dispassionate analysis had been made some time ago this would have been recognized and acted on previously. At the hearing, Mr. Ferrier indicated that he now believes the home has to be sold. This is simply a recognition of reality.

[68] While I accept that the sale may not free up substantial equity for the parties, it does have the very real likelihood of freeing up cash flow. Simply put, too much

of the combined available resources are going to house only one of the parties. If a sale allows Mr. Ferrier to have the appropriate level of housing at a more reasonable and sustainable cost it will normalize the budgeting and cash flow requirements for the two parties.

[69] Beyond the housing cost I have reviewed the other debts being maintained by the Respondent. I will not make any comments on the life insurance issue other than to say that for the purposes of an interim order I find it reasonable to maintain insurance policies. I pass no judgment on whether these are the exact correct products and amounts. However, it is recognized that terminating the “whole life” policy on Mr. Ferrier would be a step that could not be undone. It may be that this policy, or one like it, will ultimately have a role to play in securing a future payment stream or obligation. Those issues are more properly left to the final hearing.

[70] I have assessed and considered the debts associated with the credit cards and line of credit. There appears to be no option but to have Mr. Ferrier continue to maintain these in the interim. The treatment of these as matrimonial debts, or perhaps partly post separation debts, must await the hearing on the merits. There is at least a substantial marital debt component. In adopting this approach, I apply the analysis from *Brake v. Brake, 2011 NSSC 440*, a decision of Justice Legere-Sers. I

am also mindful of the comments from *MacLeod and Mamos Annual Review of Family Law* where the authors comment on issues of debt maintenance as follows at page 849:

“While it may be reasonable to expect a payor to refinance or reorganize his or her debts in the long term, it may not be possible to make the necessary adjustments in the context of an interim motion.”

[71] I am also aware of the issue raised by Mr. Ferrier with respect to his belief that matrimonial funds were used by Ms. Ferrier post separation in a way that impaired his ability to manage debt and tax issues. On the evidence I have before me this cannot be resolved. This will not be resolved at this interim stage.

[72] After considering and weighing all these factors, it is the task of this Court to set an appropriate figure for spousal support. This cannot wait for the sale of the matrimonial home. As was noted at the hearing that is not going to happen overnight. The calculation of the figure must take into account the joint debt obligations to the extent this can be done on an interim application. All parties will suffer harm if the debt management fails.

[73] I have previously outlined the evidence of the parties as it relates to their current conditions, means and needs. I have reviewed each of their budgets and the spending needs and shortfalls. I have summarized the debt and expenses being addressed at this stage by Mr. Ferrier.

[74] These parties had a very significant integration of their finances. Post separation the integration was maintained to a greater degree and for a longer period as compared to most separated couples. The pace of the financial disentanglement has accelerated with the withdrawal of Ms. Ferrier from the income splitting regime. This Order will accelerate this further as it will terminate the “monthly allowance” arrangement and create a more conventional and appropriate spousal support regime.

[75] Ms. Ferrier ought to begin to assume responsibility for more of her own expenses. The most obvious being her vehicle, car insurance and registration costs.

[76] This will reduce some of the debts being maintained by Mr. Ferrier.

[77] I find that this is not a case for a blanket application of the Spousal Support Advisory Guidelines. I have used them as a guide and as a touchstone in assessing the overall reasonableness of the number to be ordered.

[78] I do consider the debt management situation here to be a complicating and distinguishing factor. I note that in the exceptions portion of the Guidelines (paragraph 12.2) there is reference to the fact that the payor ought to have made all

reasonable efforts to reduce or refinance the debt payments before a full application of the exception is possible.

[79] My weighing of the exceptional circumstance language is impacted by my conclusion that Mr. Ferrier has not acted in as expeditious fashion as he could have to take these steps, specifically with respect to the housing costs. Left unaddressed this situation could have drifted on for a further substantial period of time. In making this observation I note that I have not lost sight of the fact that Ms. Ferrier was resident in the house for a period of time post separation, as referenced earlier.

[80] Ms. Ferrier's claim for more appropriate spousal support has brought to a head the realization that the matrimonial residence costs must be dealt with.

[81] The spousal support figure required to normalize the respective household standards of living must take into account the fact that Mr. Ferrier will in the foreseeable future be maintaining the bulk of the matrimonial debt. The exception is Ms. Ferrier's vehicle/insurance/registration cost which will move to her.

[82] Mr. Ferrier has earned a substantial income on average over the past three years. While I recognize the arguments with respect to matrimonial debt and the ongoing partnership and business obligations, I am also obliged to give serious

consideration to the objective of providing some equity with respect to the household resources available to either side.

[83] I have weighed all these factors and the submissions of the parties and have concluded that commencing December 1, 2017 the Respondent will pay monthly spousal support to the Applicant in the amount of \$3,800.00. This will obviously be taxable to the Applicant and tax deductible to the Respondent. It will continue thereafter until further agreement or order of the court. In arriving at this figure, I note that I have employed Justice Douglas Campbell's practice memo regarding marginal tax rate calculations.

[84] As of the same date Ms. Ferrier will assume direct responsibility for the vehicle, vehicle insurance and registration costs as referenced earlier.

[85] The Court recognizes that this figure is below an amount that might have been generated by a blanket application of the Spousal Support Advisory Guidelines.

[86] Given the various competing considerations here including debt repayment, the fact the mortgage and taxes cannot be allowed to go into default and the interim nature of the hearing, it is not a realistic objective at this stage to achieve a more

complete equalization of resources. There are simply too many issues yet to be developed. This is an effort to bridge the parties to a final determination of issues.

[87] This matter ought to proceed toward a hearing on the merits with all reasonable speed. The Court will give any assistance possible with respect to scheduling in order to see that this can happen in a timely fashion.

[88] In the event the parties are unable to agree with respect to costs, the Court will accept written submissions within 30 days.

J.