SUPREME COURT OF NOVA SCOTIA

Citation: *Dempsey v. Pagefreezer Software Inc.*, 2023 NSSC 240

Date: 20230721
Docket: Hfx No. 523054
Registry: Halifax

Between:

Nathan K. Dempsey

Applicant

v.

Pagefreezer Software Inc. and Michael Riedijk

Respondents

Decision

Judge:	The Honourable Justice Peter Rosinski
Heard:	July 12, 2023, in Halifax, Nova Scotia
Counsel:	Nathan K. Dempsey, Self-Representative Applicant Noah Entwisle, for the Respondents

By the Court:

Introduction

[1] Mr. Dempsey was successfully sued in British Columbia.

[2] The Judgment and Costs Orders were registered in Nova Scotia in April 2023, which gives them the equivalent status to Nova Scotia Judgments for enforcement purposes.

[3] Pagefreezer Software Inc. [“Pagefreezer”] obtained an Execution Order in Nova Scotia which allows it to pursue Mr. Dempsey’s assets in satisfaction of the judgments in its favour.

[4] By his Notice of Motion (Amended), Mr. Dempsey seeks that this Court order a “stay” of that Nova Scotia Execution Order issued based on the monies owing pursuant to the British Columbia judgments.[1]

[5] I am not satisfied that I should order a stay of the Execution Order.

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[1] After registration of the British Columbia judgments in Nova Scotia, their registration is akin to having created a “proceeding” here in Nova Scotia. Consequently, I believe the proper procedure is to file *a motion* (rather than an Application which procedure otherwise is used when there is no existing proceeding in Nova Scotia) because for enforcement purposes, the British Columbia judgments are considered to be Nova Scotia judgments. I say this, even though the word “application” is the language used in section 8 of the *Enforcement of Canadian Judgments and Decrees Act*, and that “Registration in Nova Scotia is effected by the administrative act of the litigant having paid the fee and provided the requisite information in proper form to the Prothonotary of the Supreme Court of Nova Scotia.” Being Footnote 13 in *Canadian Mortgage and Housing Corporation v. Gravelle*, 2023 NSSC 26 (under appeal).

[6] I dismiss Mr. Dempsey's motion.

Background

[7] Once the two related Orders (Judgment and Costs) rendered against Mr. Dempsey in British Columbia were properly registered in Nova Scotia in April 2023, Pagefreezer made a Motion for an Execution Order to recover the amounts owing thereunder.

[8] An Execution Order was issued by this Court April 27, 2023.

[9] On June 9, 2023, Mr. Dempsey filed a Notice of Motion seeking a stay of that Execution Order.[2]

[10] I have examined Mr. Dempsey's affidavits, keeping in mind the admissibility concerns identified by Pagefreezer.[3]

Analysis – Should the Execution Order be stayed?

[2] On June 15, 2023, he filed an Amended Notice of Motion for a stay of the Execution Order. That motion was set hearing before me on July 12, 2023, at 9:30 a.m. In support of his motion, he filed two affidavits – one on June 13 and the other on July 10, 2023. In response, on July 6, 2023, Pagefreezer filed affidavits from Christian Garton, and Noah Entwistle. A further affidavit from Mr. Entwistle was filed July 10, 2023.

[3] To be clear, I recognize that Mr. Dempsey has been self-represented during the entirety of the proceedings in British Columbia, and in this Court. He is not trained in legal matters. Generally speaking, this places him at a disadvantage in the litigation when faced with lawyers who have legal training, which the Respondents have had throughout the litigation. He is articulate and grasps the general contours of the legal framework in which he had to operate in putting his claims forward in British Columbia, and in advocating that the court here in Nova Scotia impose a stay of the Execution Order presently in place. I do clearly understand his arguments in this Court.

[11] In summary, Mr. Dempsey says that although he was unsuccessful in the British Columbia courts, I should bear in mind that the merits of the wrongs he claimed were not heard by those courts, with the consequence that his claims were dismissed, he would say, prematurely.

[12] He says that this is unjust (in a "personal" sense to him) and diminishes the public's confidence in the courts and administrative institutions in British Columbia (as a "public interest" factor).

[13] He has commenced an Application for Leave to Appeal to the Supreme Court of Canada from the decisions of both the British Colombia Court of Appeal and British Columbia Supreme Court.

[14] He says that the present circumstances justify a stay of the Execution Order issued in Nova Scotia by this Court.

[15] In particular, he says that the fact that he has filed an Application for Leave to Appeal to the Supreme Court of Canada, should be a sufficient basis for him to be granted a stay of the Execution Order.

[16] While that generally stated *could* be a sufficient basis for a court to consider imposing such a stay, whether it should, will turn on the unique facts of the present case.

[17] The Respondents to the motion do not dispute that he has filed a so-called "Leave Application", however they say I have sufficient information to conclude that his Leave Application will not likely be granted, and therefore his request for a stay of the Execution Order should be dismissed.

[18] Let me say first that it is important to remember the Supreme Court of Canada is not "a court of correction". It does not hear every proposed appeal which may have arguable, or even persuasive, legal grounds to overturn the result in a particular case.

[19] It only grants leave to appeal for Applications where the matter of law at issue is one of national importance, and the law is uncertain and requires clarification by the Supreme Court of Canada.[4]

[4] Mr. Dempsey's June 13, 2023, affidavit ["Exhibit Materials"] para. 4 reads as follows: "Attached to my affidavit and marked as Exhibit D are true copies of motions Mr. Dempsey filed to the Supreme Court of Canada regarding the November 3, 2022 [Extension of time to appeal and Stay of costs] and a true excerpt from Mr. Dempsey's Application for Leave to Appeal the same Order. This Exhibit further includes a true copy of the Order of Justice Marchand on November 3, 2022, and a subsequent copy made in January 2023 by the Respondents which added an immediate payment clause [not included in the original Order nor pronounced by [British Columbia Court of Appeal Registrar Timothy Outerbridge in the January 26, 2023, settling of the same Order]. Finally, this Exhibit further includes an excerpt of Mr. Dempsey's Notice of civil claim in S-229680, paragraph 57(j), which carries consideration of costs in 2022 into the same matter." Mr. Dempsey's Motion for extension of time appears to be dated May 23, 2023. Included therewith is also a "Motion for stay of costs of courts below". Thus, it is possible that pursuant to section 65.1 of the *Supreme Court Act* the Supreme Court of Canada may consider itself in a position to consider the granting of a stay of the proceedings in British Columbia, which, in my opinion, *could negative* the legal effect of the Judgment and Costs Orders which have effectively been registered in Nova Scotia for enforcement. Notably, the preferred and expected practice is for Applicants seeking a stay to first seek it from the lower court being appealed from (i.e., the British Columbia Court of Appeal and Supreme Court): para. 35, *Nova Scotia (Attorney General) v. Cameron*, 2019 NSCA 58.

[20] Secondly, I have significant experience and knowledge of the Application for Leave to Appeal to the Supreme Court of Canada process. It is well-known that historically the rates that Leaves to Appeal are granted are very, very low.

[21] Although Mr. Dempsey's Application for Leave to Appeal is only one factor, not necessarily determinative in relation to Mr. Dempsey's Motion for a Stay, I am satisfied it is the most significant factor by far in support of his request for a stay of the Execution Order.

[22] I conclude on the evidence presented, that it is more likely than not that leave to appeal to the Supreme Court of Canada will not be granted to Mr. Dempsey.

Conclusions

[23] I have considered the materials filed and arguments put forward by Mr. Dempsey, and examined the brief filed by Pagefreezer on July 6, 2023, including the oral been arguments put forward by Mr. Entwistle, and I come to the following conclusions.

1 - The basis for my jurisdiction to grant a stay of the Execution Order

[24] My jurisdiction to order a stay in relation to the Execution Order from Nova Scotia derives from section 8(2) of the *Enforcement of Canadian Judgments and*

Decrees Act, SNS 2001, c. 30 ["ECJDA"]; not as suggested by Pagefreezer, (in its Brief at para. 26) section 65.1(1) of the *Supreme Court Act*, RSC 1985, c. S-26, which reads:

> The Court, [the Supreme Court of Canada] the court appealed from [the British Columbia Court of Appeal and the British Columbia Supreme Court] or a judge of either of those courts may, on the request of the party who has served and filed a notice of application for leave to appeal, order that proceedings be stayed with respect to the judgment from which leave to appeal is being sought, on the terms deemed appropriate.

[25] In my opinion, section 65.1 of the *Supreme Court Act*, RSC 1985, c. S – 26 only permits stays of proceedings by the Supreme Court of Canada or the Court of Appeal appealed from, or a judge of either of those courts.[5]

[26] Thus, *if so stayed by one of those courts*, Mr. Dempsey could likely successfully argue to this Court that it should also stay the enforceability of the Execution Order in Nova Scotia. But that is not presently the case.

2 - The proper test for granting a stay in these circumstances

[27] Pagefreezer also argued that even if I proceed under section 8 of the ECDJA, I should nevertheless consider the common law factors as articulated in *Purdy v. Fulton Insurance Agencies Ltd.*, (1990) 100 NSR (2d) 341, by Justice Hallet at

[5] See for example Justice Beveridge's decision in *Nova Scotia (Attorney General) v. Cameron*, 2019 NSCA 58, where he considered whether he should, pursuant to section 65.1 of the *Supreme Court Act*, stay the effect of the Nova Scotia Court of Appeal's order in that case.

para. 28; and more recently restated by Justice Derrick in *Muir v. Day*, 2022 NSCA 34:

> 3 The Muirs have sought a stay pursuant to *Civil Procedure Rule* 90.41. They argue the financial cost and personal effort associated with moving the garage and fence justify staying Justice Keith's Order until the appeal is determined.
>
> 4 For the reasons that follow, I am not persuaded the legal requirements for a stay have been made out. I have concluded the Muir's motion should be dismissed.
>
> **The Legal Principles Governing Motions for a Stay**
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> 5 A stay is a discretionary remedy. As the filing of a Notice of Appeal does not suspend the enforcement of the order being appealed from, a stay may be required to "achieve justice as between the parties in the particular circumstances of their case" (*Hendrickson v. Hendrickson*, 2004 NSCA 98 at para. 11, per Saunders, J.A. quoting *Widrig v. R. Baker Fisheries Ltd.*,1998 NSCA 20.
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> 6 **The discretionary power to enter a stay is structured by the "*Fulton*" test (***Fulton Insurance Agencies Ltd. v. Purdy*, 1990 NSCA 23**). Under the *Fulton* test, the party seeking the stay carries the burden of showing, on a balance of probabilities: (1) an arguable issue for appeal; (2) they would experience irreparable harm if the stay was to be denied; and (3) the balance of convenience favours a stay. The balance of convenience concerns the question of whether the appellant will suffer greater harm if there is no stay than the respondent will suffer if a stay is granted.**
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> 7 **In the event the applicant for a stay cannot satisfy the primary test's three criteria, exceptional circumstances may justify the granting of a stay on the basis of it being "fit and just" to do so** (*Colpitts v. Nova Scotia Barristers' Society*, 2019 NSCA 45 at para. 23). Mr. Bryson for the Muirs indicated he is not suggesting this is an "exceptional circumstances" case that qualifies for a stay under **the secondary test**.
>
> 8 I am reminded by *Fulton* that **the "fairly heavy burden" borne by the applicant/appellant is warranted "considering the nature of the remedy which prevents a litigant from realizing the fruits of his litigation pending the hearing of the appeal**" (*Fulton* , supra at para. 27).
>
> [My bolding added]

[28] In *Nova Scotia (Attorney General) v. Cameron, supra*, Justice Beveridge discussed whether the common law principles regarding a stay should apply in the

context of an Application pursuant to section 65.1 of the *Supreme Court Act.* He stated:

> 29 Section 65.1(2) of the *Supreme Court Act* gives to this Court or a judge thereof the power to grant a stay of proceedings. The respondent consented to an interim stay until two weeks after the motion is dismissed or further order of the Count should the motion be granted. I issued an Interim Order dated May 31, 2019, granting the relief requested until the hearing of June 13, 2019.
>
> 30 At the conclusion of the hearing on June 13, 2019, I issued a Further Interim Order staying the Order of this Court dated May 16, 2019, and extending the October 23, 2018, sealing order and publication ban issued by Farrar J.A. until two weeks after my decision should the motion be dismissed or upon further order of the Court should the motion be granted.
>
> PRINCIPLES THAT GUIDE THE DISCRETIONARY POWER
>
> 31 **The parties do not disagree about the existence or content of my discretion to grant a stay of proceedings pursuant to the *Supreme Court Act,* R.S.C. 1985, c. S-26. Section 65.1** of the *Act* creates concurrent jurisdiction for the Supreme Court of Canada, a provincial appeal court or a judge of either, to order that proceedings be stayed on appropriate terms. It provides as follows:
>
> > **Stay of execution — application for leave to appeal**
> >
> > 65.1 (1) The Court, the court appealed from or a judge of either of those courts may, on the request of the party who has served and filed a notice of application for leave to appeal, order that proceedings be stayed with respect to the judgment from which leave to appeal is being sought, on the terms deemed appropriate.
> >
> > **Additional power for court appealed from**
> >
> > (2) The court appealed from or a judge of that court may exercise the power conferred by subsection (1) before the serving and filing of the notice of application for leave to appeal if satisfied that the party seeking the stay intends to apply for leave to appeal and that delay would result in a miscarriage of justice.
> >
> > **Modification**
> >
> > (3) The Court, the court appealed from or a judge of either of those courts may modify, vary or vacate a stay order made under this section.

32 **The general rule is that the applicant for a stay must first seek relief from the provincial court of appeal or a judge thereof** (see *Confederation Treasury Services Ltd., Re*, [1997] 2 S.C.R. 5 (S.C.C.); *3017970 Nova Scotia Co. v. Pacifica Papers Inc.*, [2001] S.C.C.A. No. 400 (S.C.C.)).

33 When the appellants first brought their motion, they had not yet filed an application for leave to appeal. However, they intended to do so prior to June 13, 2019. Hence, they tailored their submissions to the s. 65.1(1) test rather than the more stringent requirements of s. 65.1(2). The appellants filed their application for leave to appeal on June 11, 2019. Later, I will set out its details.

34 **The parties accept that the potential for relief is not limited to a stay of execution in the traditional sense, but can extend to making an order that preserves matters between the parties pending appeal** (see: *Northern Construction Enterprises Inc. v. Halifax (Regional Municipality)*, 2015 NSCA 75 (N.S. C.A.) at paras. 10-13).

35 **The appellants submit that the test for granting a stay of an order or judgment appealed from under s. 65.1 is the general test for stays more broadly. The applicant must demonstrate on a balance of probabilities**:

(a) There is an arguable issue (or serious question) to be adjudicated;

(b) If the stay is not granted and the appeal is successful, the applicant will have suffered irreparable harm;

(c) The balance of convenience favours a stay.

36 **However, the appellants cannot appeal as of right to the Supreme Court of Canada. Leave is required. It is widely accepted that this creates an important nuance to the first part of the test: the appellants must not only show that its appeal raises arguable issues, but their leave application demonstrates serious or arguable issues for leave to be granted by the Supreme Court of Canada** (see: *Northern Construction Enterprises Inc. v. Halifax (Regional Municipality)*, *supra*; *Turf Masters Landscaping Ltd. v. Dartmouth (City)* (1995), 144 N.S.R. (2d) 326 (N.S. C.A. [In Chambers]); *Nova Scotia (Minister of Community Services) v. F. (B.)*, 2003 NSCA 125 (N.S. C.A. [In Chambers]); *G. (T.) v. Nova Scotia (Minister of Community Services)*, 2012 NSCA 71 (N.S. C.A. [In Chambers]); *Higgins v. Nova Scotia (Attorney General)*, 2013 NSCA 118 (N.S. C.A.); *Leis v. Leis*, 2011 MBCA 109 (Man. C.A. [In Chambers]); *Merck & Co. v. Nu-Pharm Inc.* (2000), 5 C.P.R. (4th) 417 (Fed. C.A.); *BTR Global Opportunity Trading Ltd. v. RBC Dexia Investor Services Trust*, 2011 ONCA 620 (Ont. C.A. [In Chambers]); *Donovan v. Sherman Estate*, 2019 ONCA 465 (Ont. C.A.)).

37 With these principles in hand, I turn to how they apply.

[My bolding added]

3 - Has Mr. Dempsey met at least one of the preliminary criteria to permit me to consider an Order to stay the Execution Order? [He has]

[29] The ECJDA makes the British Columbia judgments effectively Nova Scotia judgments for purposes of enforcement.

[30] As I understand it, in these circumstances I must adhere to the statutory language in section 8 of the *ECDJA*, yet import and consider the common law principles of "the general test for stays" (para. 35 in *Cameron*) - with the modification suggested by Justice Beveridge that, since Mr. Dempsey cannot appeal as of right to the Supreme Court of Canada, "this creates an important nuance to the first part of the test: the appellants must not only show that its appeal raises arguable issues, but their leave application demonstrates serious or arguable issues for leave to be granted by the Supreme Court of Canada [citations omitted]." (para. 36)

[31] I have jurisdiction to stay the Execution Order herein pursuant to section 8(2)(c) of the *ECDJA*, which reads:

> (2) On an application under subsection (1), the court may
>
> …
>
> (b) make an order stipulating the procedure to be used in enforcing the judgment;

(c) make an order staying or limiting the enforcement of the judgment, subject to any terms and for any period the court considers appropriate in the circumstances, if [on any one of the following grounds]

(i) such an order could be made in respect of an order or judgment of the Supreme Court of Nova Scotia under the *Judicature Act* and the *Civil Procedure Rules*, [I conclude that such an order could be made in respect of an order or judgment of this Court. This prerequisite has been satisfied.]

(ii) the party against whom enforcement is sought has brought, or intends to bring, in the province or territory where the Canadian judgment was made, a proceeding to set aside, vary or obtain other relief in respect of the judgment, [there is no evidence of Mr. Dempsey has sought to have the courts in British Columbia reconsider their decisions, albeit he had appealed unsuccessfully – thus there are no such ongoing processes in British Columbia; however there is no express reference in the language of the ECDJA to applications for leave to appeal to the Supreme Court of Canada, thus it is unclear whether their status was intended to be subsumed in this subsection. My sense is that the legislation would intend that a leave application is included within the language "a proceeding to set aside… the judgment". I conclude that this prerequisite has been satisfied.]

(iii) an order staying or limiting enforcement is in effect in the province or territory where the Canadian judgment was made, [not applicable here] or

(iv) is contrary to public policy in the province [not applicable here – although the fact that Mr. Dempsey had been declared a vexatious litigant in British Columbia could perhaps qualify].

[32] Pagefreezer had argued in its brief (para. 24):

Section 8(2)(c) of the *ECJDA* gives this Honourable Court the discretion to stay the enforcement of the Canadian judgment if a party satisfies one or more of the criteria under subparagraphs 8(2) (c) (i-iv). [The Respondents] submit that none of these criteria are satisfied…

[33] I am satisfied two of the grounds in section 8(2)(c) are satisfied and therefore I "may", if otherwise appropriate, make an order to stay the Execution Order.[6]

[34] Noteworthy as well is subsection 8(3):

> Notwithstanding subsection 8(2), the Supreme Court of Nova Scotia shall not make an order staying or limiting the enforcement of a registered Canadian judgment solely on the grounds that,
>
> (a) the judge, court or tribunal that made the judgment lacked jurisdiction over the subject matter of the proceeding that led to the judgment, or over the party against whom enforcement is sought, under
>
> (i) principles of private international law, or
>
> (ii) the domestic law of the province or territory where the judgment was made,
>
> (b) the Supreme Court of Nova Scotia would have come to a different decision on a finding of fact or law or on an exercise of discretion from the decision of the judge or court that made the judgment; or
>
> (c) a defect existed in the process or proceeding leading to the judgment.

[35] I find none of the factors in section 8(3) are established in this case.[7]

[36] I accept that the applicable test recently arose in the Court of Appeal decision *Muir v. Day*, 2022 NSCA 34, per Derrick JA:

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[6] Under section 8(2) I conclude that, "such an order could be made in respect of an order or judgment of the Supreme Court of Nova Scotia under the *Judicature Act* and the Civil Procedure Rules" and Mr. Dempsey has by his Notice of Application for Leave to Appeal to the Supreme Court of Canada also satisfied section 8(2)(c)(ii).

[7] CPR 79.22 – Stay and Expiry of Execution Order, subsection 1 reads: "A Judge may stay enforcement of an execution order or a periodic execution order, conditionally or unconditionally, and on any terms the judge sees fit." I conclude that I should not have recourse to that Rule in the specific circumstances of this case, because my specific authority arises pursuant to section 8 of the *ECJDA* as modified by the common law principles noted above.

> 6 The discretionary power to enter a stay is structured by the *Fulton* test (… 1990 NSCA 23). Under the *Fulton* test, the party seeking the stay carries the burden of showing, on a balance of probabilities: (1) an arguable issue for appeal; (2) they would experience irreparable harm if the stay was to be denied; and (3) the balance of convenience favours a stay. The balance of convenience concerns the question of whether the appellant will suffer greater harm if there is no stay than the respondent will suffer if a stay is granted.
>
> 7 In the event the applicant for a stay cannot satisfy the primary test's three criteria, exceptional circumstances may justify the granting of a stay on the basis of it being "fit and just" to do so …

[37] I would add to this Justice Beveridge's nuanced refinement from his reasons in *Cameron*:

> However, the appellants cannot appeal as of right to the Supreme Court of Canada. Leave is required. It is widely accepted that this creates an important nuance to the first part of the test: the appellants must not only show that its appeal raises arguable issues, but their leave application demonstrates serious or arguable issues for leave to be granted by the Supreme Court of Canada.

[38] Thus, the test I must apply to Mr. Dempsey's application for a stay of the Execution Order is:

1. Does Mr. Dempsey's leave application to the Supreme Court of Canada demonstrate serious or arguable issues for leave to be granted by the Court?
2. Would Mr. Dempsey experience irreparable harm (not compensable by money) if his application for stay was to be denied?
3. Will Mr. Dempsey suffer greater harm if there is a stay ordered then the Respondents will suffer if no stay is granted?

4. Even if Mr. Dempsey cannot satisfy the first three criteria, are their exceptional circumstances here such that a stay should be granted on the basis of it being "fit and just" to do so?

4 - Application of the test to the circumstances of this case

1. Does Mr. Dempsey's Leave Application to the Supreme Court of Canada demonstrate serious or arguable issues for leave to be granted by the Court? No

[As I interpret this question, it intends to have this court consider whether there is any realistic likelihood that Mr. Dempsey could be granted Leave to Appeal – I conclude there is not, bearing in mind that the legal issue(s) must be one of "national importance". Mr. Dempsey has not satisfied this criterion.]

2. Would Mr. Dempsey experience irreparable harm (not compensable by money) if his request to this Court for stay of the Execution Order was to be denied? No

[The Execution Order concerns amounts in the range of approximately $40,000. If enforcement processes are permitted in relation to the Execution Order, Mr. Dempsey's assets would be subject to seizure. Should Mr. Dempsey ultimately be successful in having the underlying judgments found to be unlawful, he would have been deprived of those monies in the interim, but would be entitled to receive

them back at some point in the future upon his ultimate success. The prejudice to him would be the loss of the monies over that time interval. Strictly speaking, although that could impose a hardship upon him, there is no evidence that such temporary loss of those monies would amount to a situation of irreparable harm – i.e., not compensable by the payment of money. Therefore, I conclude Mr. Dempsey would not experience irreparable harm. Mr. Dempsey has not satisfied this criterion.]

3. Will Mr. Dempsey suffer greater harm if there is a stay ordered than the Respondents will suffer if no stay is granted? Yes

[Mr. Dempsey has the burden to establish that he will be in a precarious financial position, if no stay of the Execution Order is imposed. There was no specific and reliable evidence presented regarding Mr. Dempsey's financial circumstances, but I infer from what was available that for him it is reasonable to conclude the permanent loss of $40,000 would be a material financial hardship. On the other hand, from what was available it is reasonable to infer that the Respondents would not suffer material financial hardship if the Stay of the Execution Order was granted. Mr. Dempsey has satisfied this criterion.

4. Even if Mr. Dempsey cannot satisfy the first three criteria, are their exceptional circumstances here such that a stay should be granted on the basis of it being "fit and just" to do so? There are not.[8]

Summary

[39] Mr. Dempsey has not satisfied me on the evidence, and applicable law, to exercise my discretion to enter a stay of the Execution Order herein.

[40] The matter proceeded in General Chambers (without objection). For that reason, there was no cross examination requested of Mr. Dempsey. The matter was argued in its entirety for less than an hour.

[41] The Respondents claimed costs of $850 inclusive of disbursements.

[42] Tariff "C" of our Civil Procedure Rules suggests a maximum of $500.

[43] However, Tariff "C" also states "notwithstanding this Tariff C, [in the exercise of discretion to award costs… a judge…] may award costs that are just and appropriate in the circumstances of [the case]."

[8] As I stated elsewhere, his chances of obtaining leave to appeal to the Supreme Court of Canada are remote. The I also note that Mr. Dempsey did not seek reconsideration of the costs' awards in British Columbia, nor does he come to this court with "clean hands" as his outstanding contempt findings remain un-purged in the British Columbia Courts.

[44] In my opinion, $500 inclusive of disbursements, is a just and appropriate award of costs.

Rosinski, J.