

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Byrne v. Carlow-Byrne*, 2026 NSSC 106

Date: 20260417

Docket: Tru No. 1207-005585

Registry: Truro

Between:

Rodney James Byrne

Petitioner

v.

Karen Louise Carlow-Byrne

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Terrance G. Sheppard

Heard: April 16, 2026, in Truro, Nova Scotia

Written Decision: April 17, 2026

Subject: Introduction of fresh evidence

Summary: The Respondent sought to admit fresh evidence that the Petitioner had forged certain documents he introduced at the divorce trial.

Issue: Should the fresh evidence be admitted?

Result: The fresh evidence should not be admitted. It did not satisfy the *Palmer* Test.

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Counsel: Allison Kouzovnikov for Rodney Byrne
Karen Carlow-Byrne, unrepresented

ENDORSEMENT

By the Court:

OVERVIEW

[1] The divorce trial was held on this matter on March 25, 2026.

[2] As part of her evidence, Karen Carlow-Byrne made off hand comments about Rodney Byrne not being a red seal electrician, despite his evidence to the contrary. Further, she made off hand comments about how she did not believe that Rodney Byrne was communicating with Service Canada about his return to work after being on CPP Disability. In response to this, Rodney Byrne submitted into evidence at the divorce trial a copy of his red seal certification and various letters from Service Canada to him.

[3] After the conclusion of the divorce trial, and after my decision had been prepared but not yet released to the parties, Karen Carlow-Byrne made a motion to admit fresh evidence. The Motion was heard on April 16, 2026, and this endorsement is my decision on that Motion.

[4] The evidence is irrelevant, not credible, and even if I believed it, would not have affected the result at trial. Therefore, the motion to admit fresh evidence is dismissed.

ISSUE

[5] Should the fresh evidence be admitted?

ANALYSIS

[6] *Civil Procedure Rule* 82.22 governs motions to reopen a proceeding. The leading case is *Palmer v. The Queen* [1980] 1 S.C.R. 759. Under the “*Palmer Test*” to admit new or fresh evidence after the close of a hearing, the evidence:

- a) Could not, by exercise or due diligence, have been obtained for trial;
- b) Is relevant in that it bears upon a decisive, or potentially decisive, issue;
- c) Is credible in the sense that it is reasonably capable of belief; and
- d) Is such that, if believed, it could have affected the result at trial.

[7] Our Court of Appeal discuss the *Palmer Test* in *T.G. v. Nova Scotia (Minister of Community Services)*, 2012 NSCA 43. More recently, the Supreme Court of Nova Scotia (Family Division) discussed it in two cases: Justice Marche’s decision in *Nova Scotia (Community Services) v. NL, WM*, 2023 NSSC 184 and Justice MacLeod-Archer’s in *Munroe-Unsworth v. Unsworth*, 2024 NSSC 213. The Supreme Court of Canada also recently discussed the issue of fresh evidence

versus new evidence in the family law context in *Barendregt v. Grebliunas*, 2022 SCC 22.

THE PALMER TEST

Due Diligence

[8] Rodney Byrne did not disclose this evidence until admitting it into evidence at the trial itself. Had he disclosed these documents, even a few days prior to the trial, we could have avoided this motion for fresh evidence as it would have given Karen Carlow-Byrne some time to review these documents prior to commencing trial.

[9] I accept that by exercising due diligence Karen Carlow-Byrne could not have obtained this evidence prior to trial.

[10] I appreciate that this situation is a little different than a typical motion for fresh evidence where evidence was discovered after the trial, or the evidence was available before the trial but the applicant did not seek to admit it. In this case, Karen Carlow-Byrne is seeking to respond to evidence that Rodney Byrne submitted at trial without disclosing it beforehand. In the interest of fairness, typically litigants would be afforded an opportunity to respond to such evidence.

Relevance

[11] This evidence does not bear on any decisive or potentially decisive issue at trial. It does not touch on the issue of child support, which was not heavily contested. It does not relate to the minor issues of personal property. And, most importantly, it does not relate in any way to the issue that took up 95% of the divorce trial which was whether Rodney Byrne was entitled to a share of the sale proceeds from the matrimonial home.

[12] Further, the evidence proffered by Karen Carlow-Byrne runs squarely into the Collateral Fact Rule¹. This is an exclusionary rule that prohibits calling evidence solely to contradict a witness on collateral facts. The underlying policy consideration is to promote efficient use of court time and prevent parties from calling evidence on collateral facts for the sole purpose of impugning credibility. On occasion when the benefit of the collateral facts outweighs the negative impact on the trial process, it is allowed to come into evidence.

[13] Here, Karen Carlow-Byrne's evidence is only directed at impugning the credibility of Rodney Byrne. The evidence in no way relates to the substantive issues before the court. And the benefit of admitting this evidence, even if it were

¹ See, for example, S. Lederman, A. W. Bryant, M. Fuerst, *Sopinka, Lederman & Bryan The Law of Evidence in Canada, 4th Ed (LexisNexis 2014)*.

accepted, in no way outweighs the negative impact it would have on delaying a final decision in this matter.

Credible

[14] None of the evidence is credible or reasonably capable of belief.

[15] Karen Carlow-Byrne's objections to the red seal certificate are as follows:

- a) The certificate is signed by Michelle Bussey as Chief Executive Officer. Karen Carlow-Byrne contends that Ms. Bussey was not appointed CEO of the Nova Scotia Apprenticeship Agency until July 31, 2023, although she provides no evidence of this. She says that the certificate was issued on April 25, 2009.
- b) The document bears the logo of the Nova Scotia Apprenticeship Agency but this Agency was not established until July 1, 2014, although again she provides me with no evidence of this. She says that when this certificate was issued on April 25, 2009, they were issued by the Department of Labour and Workforce Development, which used an entirely different seal and logo.

- c) The document lists an expiry date of March 31, 2027, but Karen Carlow-Byrne says that these certificates were issued for only five years although, again, she provides me with no evidence of this.

[16] All of this can be easily explained by considering that the issue date of April 25, 2009, simply refers to the original issue date and not the date that it was reissued. As Karen Carlow-Byrne herself suggests, red sealed certificates are good for only so long and must be reissued.

[17] Karen Carlow-Byrne also argues that this is not a copy of the original card but a screenshot from a mobile device. Nothing turns on this. I have Rodney Byrne's sworn evidence that this is a true copy of his certificate confirming he is a red seal electrician.

[18] Karen Carlow-Byrne's objections to the correspondence from Service Canada are as follows:

- a) At the bottom of each letter is what Karen Carlow-Byrne refers to as "Form Revision" codes. These are "MD 96 R E (2017/09)", "MD 69 R E (2012/12)", and "MD 67 R E (2017/09)". Again, she provides no evidence of this, but her contention is that 2025 letters

from Service Canada would not use mismatched and outdated templates. I cannot simply accept her bare assertion of this;

- b) The letters are dated in one format (“September 26, 2025”) but then switch within the body of the documents to a different format (“2025/09/26”). Karen Carlow-Byrne does not provide me with any evidence of this but says that Service Canada software is programmed to use a singular, standardized date format. Again, I cannot accept her bare assertion on this;
- c) In the “Client Identification Number” box, the numbers are digitally overlaid on a stark white background, which Karen Carlow-Byrne says does not match the paper’s texture. I cannot make any sense of this evidence. There is no mismatch between the numbers and the paper’s texture.
- d) The “Associated Identification Number” box is blank which Karen Carlow-Byrne says is a common indicator of digital whiteout editing. Of course, this could simply be because Rodney Byrne does not have an Associated Identification Number. Or Rodney Byrne chose to white this out so that Karen Carlow-Byrne did not have this private information;

- e) There is no Social Insurance Number. Again, I do not know that these letters from Service Canada typically include the Social Insurance Number. It may also be that the Client Identification Number is, in fact, his Social Insurance Number;
- f) Rodney Byrne's middle initial is missing on two of the three letters. I cannot draw an inference from this that these letters are fake;
- g) On the third letter from Service Canada, their address is slightly lower than the address on the first two letters. While I agree this is true, I cannot draw an inference from this that the letters, or just the third letter, is fake;
- h) The letters provide a direct-dial phone number and personal signature; whereas, Karen Carlow-Byrne says Service Canada correspondence is signed by department titles and not individual medical staff using personal nursing designations. Again, I have no evidence of this and cannot accept Karen Carlow-Byrne's bare assertion of this fact;

- i) Karen Carlow-Byrne says that some of the language in the letters is too informal and conversational in tone. First, I do not agree that the language is informal or conversational in tone; however, even if it were, this would not indicate to me that these letters had been faked by Rodney Byrne;
- j) Karen Carlow-Byrne indicates that the documents are too identical in layout and formatting which she says suggests the reuse of a generic template rather than a system-generated letter. They could simply be identical in layout and formatting because they come from the same department of Service Canada;
- k) None of the documents contain a claim number, decision reference, or any file-specific identifier that would allow independent verification. I do not have any evidence that the letters ought to have any of these things.

[19] None of these individual concerns, or the totality of concerns, convinces me on a balance of probabilities that any of these letters were faked by Rodney Byrne.

Affect the Trial Result

[20] Even if I accepted that Rodney Byrne forged the red seal electrician certificate and the three letters from Service Canada, it would only have had a negative impact on his credibility. However, it would only have affected his credibility regarding these collateral facts and not the facts in relation to the substantive issues before the court at the divorce trial. Most of the important facts in the divorce trial were admitted by both parties and my decision did not hinge on a finding of credibility.

DECISION

[21] Karen Carlow-Byrne's motion to admit fresh evidence is dismissed.

Sheppard, J.