

CANADA / JUDGMENT

Hamer-Jackson v. Neustaeter

2025 BCSC 1458

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1458 Hamer-Jackson v. Neustaeter

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hamer-Jackson v. Neustaeter,

2025 BCSC 1458

Date: 20250708

Docket: S62241

Registry: Kamloops

Between:

Reid Allen Hamer-Jackson

Plaintiff

And

Keturah Neustaeter, also known as Katie Neustaeter

Defendant

Before: The Honourable Justice J. Hughes

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

J. Wells

Counsel for the Defendant:

D. Reid

Place and Date of Hearing:

Kamloops, B.C.

July 7, 2025

Place and Date of Judgment:

Kamloops, B.C.

July 8, 2025

- [1] THE COURT: The plaintiff, Reid Hamer-Jackson, applies for an adjournment of the defendant, Katie Neustaeter's, application to dismiss the underlying defamation action under s. 4 of the Protection of Public Participation Act, S.B.C. 2019, c. 3 [PPPA]. The plaintiff is the mayor of the City of Kamloops and was elected in October of 2022. The defendant is one of eight city councillors who were elected at the same time as the plaintiff.
- [2] The underlying defamation action was filed by the plaintiff in June of 2023. It involves allegations of defamation arising out of four statements allegedly made by the defendant regarding the plaintiff's conduct as mayor. The defendant says that the speech at issue is political speech on matters of public interest and defends the defamation claim on the basis of, inter alia, substantial truth, qualified privilege, and fair comment.
- [3] This is the third hearing date set for the defendant's application to dismiss under the PPPA. The application was filed in June of 2024. The plaintiff was represented by counsel at that time. Counsel was served with the notice of application and supporting affidavits on October 18, 2024, and the application was set for hearing November 4 to 8, 2024.
- [4] The November 2024 hearing dates were adjourned by consent to the week of January 20, 2025, to permit to plaintiff's then-counsel additional time to prepare response materials. No response was filed. The application was not heard in January of 2025 due to the lack of presider availability and was reset to the current dates.
- [5] The plaintiff became self-represented in December of 2024. That remained the case until very recently. He retained new counsel last Thursday, July 3, 2025. The plaintiff now seeks a further adjournment to afford new counsel time to file response materials and prepare for the hearing.
- [6] The defendant opposes the adjournment application and says that the plaintiff has had ample time over the past seven months to retain legal counsel and file response materials. In the defendant's submission, the plaintiff's failure to do so until the eve of the hearing constitutes deliberate delay and an abuse of the court's process such that it is not in the interests of justice to grant the adjournment.

Procedural History

- [7] After the November 2024 hearing dates were adjourned by consent, the defendant's counsel repeatedly wrote to plaintiff's counsel seeking a timeline for delivery of materials and indicated that he would not consent to a further adjournment. No response was received until November 22, 2024, when counsel for the plaintiff sent a notice of intention to withdraw.
- [8] A notice of withdrawal was subsequently served by the plaintiff's former counsel on December 5, 2024. No response materials were filed or served prior to the withdrawal of counsel.
- [9] On December 6, 2024, defendant's counsel wrote to the plaintiff directly, requesting response materials be filed by December 20, 2024, noting that he would not consent to a further adjournment, and urging the plaintiff to obtain legal advice. Further correspondence to the same effect followed in the ensuing weeks.
- [10] The plaintiff did not respond until December 24, 2024, when he wrote to the defendant's counsel, indicating that he required an adjournment of the January 20, 2025 hearing date to gather documents and prepare for the hearing. The plaintiff said that he could provide his response materials by January 10, 2025.
- [11] On January 10, 2025, the plaintiff emailed the defendant a witness list, an unsworn affidavit, and package of documents titled "Exhibits" but which documents were not attached to any sworn affidavit. No application response or sworn evidence was provided. In response, the defendant wrote to the plaintiff indicating the deficiencies in the materials he had provided, reiterating that she would not consent to a further adjournment, and advising that if the plaintiff was seeking an adjournment, a further application would be required.
- [12] On the Thursday before the January 20, 2025 hearing--January 16, 2025--the plaintiff filed and served an adjournment application. The stated reason for the adjournment was that the plaintiff was not adequately prepared for the hearing because his counsel had withdrawn, the matter was too complex for him to represent himself, and, as such, he had realized that he needed to seek new legal representation.
- [13] The plaintiff's adjournment application was not heard because the matter did not proceed due to the unavailability of a judge. The plaintiff thus effectively obtained the adjournment sought. The matter was reset for five days commencing July 7, 2025.
- [14] Since January 2025, the defendant has sent six letters and multiple emails to the plaintiff reminding him of the need to file an application response to the PPPA application and requesting that he do so. As of June 2025, the defendant also put the plaintiff on notice that she would be objecting to any attempt by the plaintiff to introduce evidence or seek a further adjournment. The defendant repeatedly encouraged the plaintiff to seek legal advice.

- [15] On Thursday, July 3, 2025, two business days before the hearing, the plaintiff retained new counsel, James Kitchen, who wrote to the Court indicating that he had been recently retained and would be seeking an adjournment of the July 7 hearing.
- [16] This adjournment application and supporting affidavits were filed late in the day on Friday, July 4, 2025, setting the application for Monday, July 7, 2025, the date set for the defendant's PPPA application. The proper procedure for bringing an application on short leave was not followed. Short leave was not sought or granted. The reason for the adjournment stated was that Mr. Kitchen and Jody Wells were only recently retained and required time to file response materials and prepare for the hearing of PPPA application.

Analysis

- [17] The parties agree that the test to be applied on this application is as set out in *Navarro v. Doig River First Nation*, 2015 BCSC 2173. The decision to grant or deny an adjournment is discretionary. The discretion must be exercised judicially and requires careful consideration of all the elements of the case: *Navarro* at para. 18. The paramount consideration is the interests of justice in ensuring a fair hearing on the merits: *Naravrro* at para. 19.
- [18] The factors to be considered by the Court in exercising its discretion to grant an adjournment are well-settled and are set out in para. 20 of *Navarro* as follows:
- a) the expeditious and speedy resolution of the matter on the merits;
 - b) the reasonableness of the request;
 - c) the grounds or explanation for the adjournment;
 - d) the timeliness of the request;
 - e) the potential prejudice to each party;
 - f) the right to a fair trial;
 - g) the proper administration of justice;
 - h) the history of the matter, including deliberate delay or misuse of court process; and
 - i) the fact of a self-represented litigant.
- [19] Because the overall interests of justice must prevail at the end of the day, courts are generous, rather than overly strict, in granting adjournments, particularly where granting the request will promote a decision on the merits: *Navarro* at para. 19. As the court noted in *Navarro*, the natural frustration of judicial officials and opposing parties over delays in processing civil cases must give way to the interests of justice, which favour a litigant having their day in court and a fair chance to make out their case: *Navarro* at para. 19, citing *Graham v. Vandersloot*, 2012 ONCA 60. This comment is, in my view, particularly apposite in the present circumstances, where the defendant has made diligent efforts to bring the application on for hearing in the face of the plaintiff's failure to meaningfully engage in the

litigation process he initiated.

(a) Timeliness and reasonableness of the request

[20] I am satisfied that the adjournment application was brought with reasonable dispatch once counsel was retained. Counsel was retained on Thursday, July 3, 2025, and the application was filed the following day, Friday, July 4, 2025. Indeed, the defendant accepts that counsel moved quickly to bring the application once retained.

[21] I am also satisfied that an adjournment of six weeks, or 45 days, as sought by the plaintiff, is within the realm of reasonableness, given the circumstances. This is particularly the case given the need to file responsive materials to the PPPA application on the plaintiff's behalf, and the defendant's indication that she expects to conduct cross-examination of the plaintiff's affiants as provided for in s. 9(5) of the PPPA.

(b) Expeditious resolution of the application of the merits

[22] The expeditious and speedy resolution of a matter raises the question of whether there has been a previous adjournment and, if so, the reasons for that prior adjournment. If the circumstances have not changed, a subsequent application will likely not be successful: Navarro at para. 22.

[23] This is the first determination of a contested adjournment application, but is effectively the plaintiff's third request for an adjournment as the application was adjourned once by consent and a second time on account of no presider being available.

[24] The defendant says that the plaintiff's circumstances have not changed. The reason for the adjournment is the same now as it was in January 2025: the plaintiff requires additional time to retain counsel and prepare for the hearing. The defendant also notes that the plaintiff is engaged in fee disputes with two prior counsel who represented him in this matter, and says there is no evidence that the plaintiff's financial circumstances have changed such that he is now in a position to pay counsel.

[25] I disagree. In my view, a material change in circumstances arises on account of a plaintiff having now retained counsel. Ms. Wells appeared on this application and advised the Court that she has no reason to believe that, if an adjournment is granted she will not continue to represent the plaintiff. Ms. Wells assured the court that she intends to file a response on the plaintiff's behalf, represent him on the PPPA application, and will make herself available for the hearing in the coming weeks, "money or not". In the circumstances, I am not inclined to engage in a speculative assessment of the plaintiff's finances or terms of his retainer with present counsel, nor does the record before me permit such an inquiry to be made.

(c) Grounds or explanation for the adjournment & deliberate delay

- [26] The explanation for the need for an adjournment is an important consideration. In Navarro, the Court noted "that simple neglect to get properly ready for a hearing, while irksome for the other party, will still usually lead to an adjournment on the theory that the prejudice to the person denied the adjournment will be greater than prejudice to the person who is forced to accept an adjournment": para. 24.
- [27] That said, I agree with the defendant that the plaintiff's evidence regarding the efforts he made to retain counsel from December 2024, when prior counsel withdrew, to July 3, 2025, when he eventually retained present counsel, is lacking in material detail. The plaintiff simply states that he "contacted no less than a dozen firms, none of which was able to provide representation", lists eight firms by name, and says he has also contacted additional unnamed firms.
- [28] It is difficult to assess whether the plaintiff was diligent in his search for counsel based on the sparsity of the evidence he has provided. Notably, the plaintiff does not say when he contacted any of the firms. This is of particular concern given the lengthy time period, approximately seven months, that he has had to retain counsel in advance of this hearing.
- [29] In the absence of such evidence, the Court is left in a position where it is difficult to determine whether the plaintiff did, in fact, make diligent efforts to retain counsel while he was self-represented or, conversely, and as the defendant suggests, deliberately waited until the eve of the hearing to attempt to retain new counsel with a view to further delaying a hearing on the merits. The lack of evidence from the plaintiff on this material point and the fact of counsel only being retained on the eve of the hearing is suggestive of the latter. In my view, the plaintiff has not established that he acted diligently in his efforts to retain counsel.
- [30] Turning to delay, Navarro recognized that prolonged delay due to tactical considerations may be inexcusable and result in injustice to the other side if a fair hearing is no longer possible: at para. 26. However, I am not satisfied that the delay here rises to the level of imperiling a fair hearing of the PPPA dismissal application. The application materials were not served until October 2024, and the initial hearing dates were set for November 2024. The resulting delay is, therefore, approximately eight months, of which approximately six months resulted from no judge being available for the January 2025 hearing dates. I recognize that the plaintiff had sought to adjourn those dates in any event, but I cannot speculate as to whether the adjournment would have been granted in the circumstances that existed at that time.
- [31] Moreover, I find that the further modest delay required to permit the plaintiff to have the assistance of counsel is to the benefit of the parties and the administration of justice as a whole. The plaintiff being represented by counsel is likely to foster a more expeditious resolution of the PPPA application on the merits going forward than may well otherwise be the case if it were to proceed with the plaintiff remaining self-represented.
- (d) Prejudice to the parties and administration of justice

- [32] Prejudice to each of the parties if an adjournment is granted or refused must be weighed and balanced; however, it is non-compensable prejudice that is pivotal. If the problems raised by an explanation of prejudice can be met by conditions of an adjournment, then, upon consideration of all of the circumstances, an adjournment may be granted: Navarro at para. 25.
- [33] The prejudice to the plaintiff of proceeding with the PPPA dismissal application as a self-represented litigant in the absence of any response material is manifest. Ms. Wells alluded to the likelihood that she would not be in a position to continue to represent the plaintiff if an adjournment were refused.
- [34] It is also important, in my view, to bear in mind that the potential consequences of the PPPA application if the defendant is successful, are significant. The defendant is seeking dismissal of the plaintiff's claim and full indemnity costs against him. Further, as the defendant's counsel acknowledged in correspondence with the plaintiff, defamation claims and applications under the PPPA are complex matters.
- [35] The potential prejudice to the plaintiff is also heightened by the procedure and shifting burdens on a dismissal application as prescribed in s. 4 of the PPPA. The applicant (defendant) bears the initial burden under s. 4(1) of demonstrating that the proceeding arises from the expression made by the applicant and the expression relates to a matter of public interest. However, if the applicant discharges that threshold burden, the onus then shifts to the respondent (plaintiff) under s. 4(2) to satisfy the court there are "grounds to believe" that the proceeding has substantial merit and that the applicant has no valid defence in the proceeding: Simán v. Eisenbrandt, 2024 BCCA 176 at paras. 35-36. The PPPA dismissal application is thus not an application where the burden rests entirely with the applicant throughout.
- [36] For her part, the defendant says the silencing effect of being a defendant in a defamation suit represents ongoing prejudice, generally and to her ability to do her job as an elected city councillor. I accept this to be the case, and I also accept that the PPPA is intended to protect public participation in matters of public interest. However, the defamation action and resulting prejudice to the defendant has existed since the plaintiff's claim was first filed in 2023, including during the year that passed before the defendant filed this application in June 2024.
- [37] The defendant also submits that granting an adjournment runs counter to the express purpose of the PPPA, including s. 9(3), thereby representing further prejudice to the defendant. Section 9(3) of the PPPA provides that "an application for a dismissal order under section 4 must be heard as soon as practicable." This means that an application must be heard "soon in the circumstances", namely, within a reasonable amount of time, considering the circumstances: Hobbs v. Warner, 2020 BCSC 1180 at paras. 98 and 105. Applications under s. 4 of the PPPA are not intended to be heard on an urgent basis and what may be practicable in one case may not be so in another. Consequently, what constitutes a

"practicable" timeline must be considered within the context of each case: Hobbs at para. 98.

- [38] In my view, the delay in having the PPPA application heard in this case is approaching the limits of what would be considered "reasonably practicable" in the circumstances, but I am not prepared to dismiss the adjournment application on that basis, particularly as some of the delay was occasioned by a lack of presider availability for the January hearing dates. Court registry capacity constraints are one of the circumstances Hobbs expressly contemplates being factored into the analysis of what is, "reasonably practicable" in the circumstances of a particular case: Hobbs at paras. 97-98, 105.
- [39] I accept that there is some prejudice to the defendant both in terms of having the defamation claim remain outstanding, and on account of delay more generally. As noted by the BC Court of Appeal in *Giacomini Consulting Canada Inc. v. The Owners, Strata Plan EPS 3173*, 2023 BCCA 473 at para. 51: "litigation delay impacts the public interest in a justice system that promotes the timely and cost-effective resolution of legal disputes. Defendants also have an interest in the expeditious resolution of claims against them that goes beyond their ability to defend themselves in the litigation." That comment was made in the context of an application to dismiss for want of prosecution, but I find it is equally applicable here.
- [40] However, I am not satisfied that the prejudice to the defendant arising from the modest adjournment sought is other than that which already exists on account of the fact of the defamation claim brought against her. I recognize that the underlying litigation engages issues of expression on matters alleged to be of public interest, but I am not satisfied that the potential prejudice to the defendant occasioned by the present adjournment request is of the non-compensable nature, Navarro instructs is pivotal on an adjournment application. I am satisfied that the potential prejudice to the defendant can be addressed by way of costs, and the PPPA application being reset for hearing on relatively short timelines.
- [41] Balancing the prejudice to the parties, I conclude that the prejudice to the defendant from further delay in the hearing of the PPPA application is outweighed by the manifest prejudice to the plaintiff and the administration of justice that would result from refusing the adjournment and proceeding with the PPPA application in the present circumstances. In my view, the interests of justice are promoted when an application can be heard, and a decision rendered, based on a complete record that puts both parties' positions and evidence put before the Court.
- (e) Self-represented litigant
- [42] Finally, the fact that the plaintiff was a self-represented litigant during the material times leading up to this adjournment application is relevant, but I remain cognizant that it does not entitle him to a "pass". The objective remains to facilitate, as far as reasonable, the ability of a self-represented litigant to fairly present his case on the relevant issues: Navarro at para. 27.

- [43] The fact of the matter is that the plaintiff now has counsel who has represented to the Court that she will move quickly and diligently to file response materials, and make herself available for a hearing of the PPPA application in the coming weeks. I accept these assertions of counsel as an officer of the court.
- [44] Again, I decline the defendant's invitation to engage in an analysis of the plaintiff's ability to pay counsel or speculate about whether he will become self-represented again in the future based on the extant fee disputes he has with prior counsel.

Conclusion

- [45] Accordingly, considering the Navarro factors and balancing the interests of the parties, and bearing in mind that the paramount consideration remains the interest of justice in ensuring a fair hearing on the merits, I conclude that granting the plaintiff a modest adjournment is required to secure a fair hearing of the PPPA application on its merits.
- [46] The plaintiff's adjournment application is granted, and the adjournment is to be pre-emptory on the plaintiff.
- [47] In order to facilitate the matter being reset and heard in a timely way with minimal delay, I will remain seized of the PPPA application.

Costs

- [48] In the event an adjournment is granted, the defendant seeks costs thrown away in preparation for the PPPA hearing, in any event of the cause, payable forthwith. The defendant did not pursue her claim for special costs.
- [49] The usual costs award in cases where a late adjournment is sought and granted is an award of costs thrown away: *Bolin v. Lylick*, 2018 BCCA 127 at paras. 16-17. This is the case even where no fault is attributed to the applicant because, by asking for an adjournment, the applicant is seeking an indulgence from the Court that has adverse consequences for the respondent who is prepared and wishes to proceed, *Bolin* at para. 19.
- [50] An award of costs in any event of the cause is a mechanism that the court can use to indemnify the opposing party and control the court's process by deterring unreasonable conduct in the balance of the proceedings: *F.C.A.S. v. C.E.S.*, 2023 BCSC 2098 at para. 8.
- [51] The plaintiff did not address the defendant's request for costs thrown away, but says that an award of costs in any event is not warranted here because: (a) his adjournment application was not unmeritorious; and (b) there is no need for indemnification because the defendant is already being indemnified by the City of Kamloops.
- [52] I am satisfied that the conduct of the plaintiff in the circumstances--specifically his failure to file responsive materials despite the deadline having long passed, and delay in bringing this adjournment application until the eve of hearing of the PPPA application without adequate explanation for the delay in seeking counsel, and despite repeated correspondence from

counsel for the defendant advising of the steps that needed to be taken to respond or seek an adjournment--warrants a cost order being made against him in accordance with the usual form of order made when a later adjournment is sought.

- [53] The fact is that the defendant has incurred costs in preparing for a hearing that has now been wasted because of the late adjournment application. Contrary to the plaintiff's submission, it matters not in my view whether those costs are being paid by the defendant personally or via the public purse through an indemnity.
- [54] Based on the plaintiff's conduct in the proceeding to date, I am satisfied that an order for costs thrown away, payable in any event, is necessary to control the court's process and specifically to deter future delay or a failure by the plaintiff to meaningfully engage in the litigation he commenced and take the necessary steps to allow both the defendant's PPPA application and the underlying defamation action to be brought before the court for hearing on the merits.
- [55] Accordingly, I made the following costs orders, both of which are payable in any event of the cause:
- a) the plaintiff will pay costs thrown away in respect to the preparation for and attendance at the hearing of the PPPA application on July 7 and 8, 2025; and
 - b) the defendant is entitled to her costs of the adjournment application.
- [56] I have not ordered payment forthwith, because on the underlying PPPA application, the defendant seeks costs for both the PPPA dismissal application and the underlying civil action to be assessed on a full indemnity basis pursuant to s. 7 of the PPPA. In such circumstances, the appropriate scale of costs for the PPPA application, including my order for costs thrown away, will be contingent on the outcome of, and costs award made at the PPPA application.
- [57] As such, there is little utility, in my view, in making an order that costs are payable forthwith when determination of the scale of those costs is contingent on the outcome of an application yet to be heard and where the expectation is that the application will be brought on for hearing in short order.

"Hughes J."

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