Signals from the Court / Don't Overlook the Obiter

(i) Walker v. Walker, 2025 NSCA 16

On an ex parte application the Court of Appeal stated:

[60] Before concluding my reasons, I observe that the appellant's submissions before the judge and this Court did not discharge an important requirement, especially in circumstances where there is no meaningful adversary. There must be a complete, accurate, and balanced briefing presented to the Court – anything less will be contrary to the interests of justice and may well run afoul of other important duties and obligations.

(ii) Umeshappa v. PJ, 2025 NSCA 76

This decision comments on two issues.

On making sure that the Court has all relevant authorities before it, the Court of Appeal stated:

[22] Regrettably, the chambers judge was not referred to the decision in Sherman Estate. In the absence of the relevant principles, the judge appears to have focused exclusively on P.J.'s personal interests and her concerns about the potential negative impact on her personal and professional life if her identity was not protected. None of the analytical steps from Sherman Estate were identified or addressed.[15]

[23] Applying Sherman Estate to the evidence offered on the motion, we are of the view that it falls short of satisfying the test. While the authorities reveal a spectrum of evidence that may meet the legal requirements, Sherman Estate tells us that although harm may be identified through logical inferences, "this process of inferential reasoning is not a licence to engage in impermissible speculation […] An inference must still be grounded in objective circumstantial facts that reasonably allow the finding to be made inferentially"…

On the issue of counsel providing its own affidavit in the application the Court of Appeal stated:

[23] …In the present case, the evidence offered was an affidavit from counsel citing the plaintiff 's concern about the potential negative impact. Speculative evidence of this kind is insufficient. Further to this point, we would adopt the caution provided by Jamieson, J. in A.B. v. United Kingdom (Attorney General):

[31] The practice of a solicitor making an affidavit that swears facts going to the merits of the motion must be avoided as, invariably, it leads to counsel arguing the case on the basis of their own affidavit. Although, in the present case, a Solicitor's Affidavit was filed, cross-examination was not requested and Mr. Dull did not argue the motion. Regardless, Solicitors' Affidavits should be limited to purely procedural content and should not contain assertions of facts that may be in issue. Clearly, an affidavit from the Plaintiff is preferred where there are factual assertions of the Plaintiff being advanced.

(iii) Ural Link Ltd. v. Hennigar Trucking Limited, 2025 NSSC 322

In dealing with an application to renew a writ that, though issued within time, was not served and therefore expired, an issue we are increasingly seeing in reported claims, the Court said:

[15] An interpretation that would not require the plaintiff to make any reasonable efforts to notify or otherwise engage with the defendant within the first twelve (12) months distorts the

proper interpretation of the applicable Rules; is unfair and potentially, unnecessarily prejudicial; and fails to fulfill the promise of either Rule 1.01 or the Supreme Court of Canada's call for interpreting Civil Procedure Rules in a way that promotes efficient and proportionate proceedings (Hyrniak v. Mauldin, 2014 SCC 7).

[16] My reasons include:

1. *Commencing a civil action against a defendant is a serious matter. A civil action levels factual allegations against the named defendant(s) in pursuit of a judicial remedy. If granted, the remedy is reduced to a Court Order. The plaintiff might then call upon the state to assist in enforcing that Order against the defendant. Given the serious implications, the defendant is entitled to expect to be notified under the Rules – and that the plaintiff will make reasonable efforts to effect such notice.*

   The integrity of the process is also dependent on relatively timely notice. A defendant who is unaware of an outstanding claim may lose or inadvertently destroy relevant evidence thus undermining both its own interests and the presumption for full disclosure under Rule 14.08.

   At the same time, plaintiffs should be given a reasonable opportunity to notify defendants and advance their claims. A rule that places undue urgency on notification or imposes an overly draconian penalty for failure to immediately provide notice is equally unjust.

   Rule 4.04 reflects a compromise position which balances these competing concerns. The plaintiff is given twelve (12) months to notify the defendant before the action is deemed to have expired. To further ensure a result that does not precipitously or unfairly deny a plaintiff's access to justice, the evidentiary standard for renewal under Rule 4.04(2) that is relatively low. I return to this issue below. Suffice it to say that a plaintiff may not have to do much to justify relief under Rule 4.04(2). However, the plaintiff cannot do nothing…

***(iv) Turner-Lienaux v. Townsend*, 2025 NSSC 324**

In awarding substantial costs against a plaintiff in an action the Court determined was vexatious, the Court stated:

[1] A party who pursues a vexatious and abusive Application in Court or other Court proceeding against another party should suffer the consequences of their meritless actions when costs are assessed. A party is free to spend their own money to pursue meritless and vexatious proceedings, but when they drag another party with them to Court to respond to such allegations, they should expect to make a significant contribution to that party's legal costs. That is only fair and the only way that the Court can attempt to do justice between the parties in setting costs.

[2] That is exactly what the Applicant, Karen Turner-Lienaux did in this Application in Court. Her counsel throughout has been her husband and lawyer Charles Lienaux. Karen Turner-Lienaux attempted to re-litigate, collaterally attack, and in essence appeal to this Court the substance of a matter already decided by Justice Scott Norton of this Court reported

at Turner-Lienaux v. Nova Scotia (Registrar of Motor Vehicles), 2020 NSSC 292, Hfx. No. 494797. The genesis of that Application in Court is set out in both Justice Norton's decision and this Court's decision dismissing the within Application reported at Turner-Lienaux v. Townsend, 2025 NSSC 146.