

Docket: 2018-253(IT)G

BETWEEN:

SEAN MCNICHOLAS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Motion disposed of upon written representations

Before: The Honourable Lucie Lamarre, Associate Chief Justice

Appearances:

Counsel for the Appellant: Raymond G. Adlington

Counsel for the Respondent: Devon Peavoy

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**ORDER**

The Appellant's motion requesting the adjournment of the hearing of this matter, originally scheduled to be heard in Halifax on October 1, 2019 by order of this Court dated January 22, 2019, is granted with costs of \$2,000 payable forthwith to the Respondent, in accordance with the attached Reasons for Order.

Signed at Ottawa, Canada, this 16th day of August 2019.

“Lucie Lamarre”

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Lamarre A.C.J.

Citation: 2019 TCC 171

Date: 20190816

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BETWEEN:

SEAN MCNICHOLAS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR ORDER**

Lamarre A.C.J.

[1] Upon a joint application made by the parties at the status hearing held at the Court in Halifax on January 7, 2019, a one-day hearing was scheduled for October 1, 2019 by Order of the Court dated January 22, 2019.

[2] On August 2, 2019, the Appellant's counsel filed a motion seeking to have the hearing of the appeal postponed on the grounds that the Appellant will be travelling outside of the country and will be unable to attend the hearing on the date set by the Court.

[3] It appears from the motion record that the flight tickets were purchased on December 9, 2018.

[4] It is settled law that the Court has the inherent power to prevent and control abuses of its process, and the awarding of costs is one mechanism for preventing or remedying "abusive delays or procedures" (*Fournier v. The Queen*, 2005 FCA 131, at paragraphs 10-12).

[5] In this case, the Appellant waited seven months to advise the Court that he had already booked his flight in December 2018 and was not available at the date that was proposed by his own counsel at the status hearing held in January 2019. This is a case where the Appellant acted negligently and that conduct negatively affects the course of the judicial process.

[6] Under the circumstances, the adjournment is granted, but given the lateness of the Appellant's adjournment request and even though the Respondent does not oppose the adjournment, I award costs in the amount of \$2,000 payable to the Respondent upon receipt of the Order.

Signed at Ottawa, Canada, this 16th day of August 2019.

“Lucie Lamarre”

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Lamarre A.C.J.

CITATION: 2019 TCC 171  
COURT FILE NO.: 2018-253(IT)G  
STYLE OF CAUSE: SEAN MCNICHOLAS v. HER MAJESTY  
THE QUEEN

REASONS FOR ORDER BY: The Honourable Lucie Lamarre, Associate  
Chief Justice

DATE OF ORDER: August 16th, 2019

APPEARANCES:

Counsel for the Appellant: Raymond G. Adlington  
Counsel for the Respondent: Devon Peavoy

COUNSEL OF RECORD:

For the Appellant:

Name: Raymond G. Adlington

Firm: McInnes Cooper  
Halifax, NS

For the Respondent: Nathalie G. Drouin  
Deputy Attorney General of Canada  
Ottawa, Canada