

# Court of Queen's Bench of Alberta

**Citation: Roberts v Edmonton Northlands, 2022 ABQB 515**

**Date:** 20220902  
**Docket:** 1603 04883  
**Registry:** Edmonton

Between:

**Janet A. Roberts, Lorianne Marie Wooldridge, Teresa Gail Hooper-Troudt,  
Sonia Jean Phillips, Tammy Lynne Lockwood, Mary Gaye Gray, Denise Dion,  
Kathryn Ann Millar, Monique Elise M. Labonte, Sarah Esther Pollard,  
Donnagail Nally, Karen Gail Carlson, Sherry Elaine Chaba, Margaret Burton,  
Annette Margaret Martin, Ashley Elizabeth Carlson, Angela Karen Pegg,  
Judith Marlaine Hryniw and Annie Mary Handfield**

Applicants/Plaintiffs

- and -

**Edmonton Northlands and Tim Reid**

Respondents/Defendants

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**Memorandum of Decision  
of the  
Honourable Justice T.G. Rothwell**

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## **A. Introduction and Background**

[1] The Plaintiffs were employed by the Defendant, Edmonton Northlands (Northlands) as cashiers. They were terminated without cause in October of 2015. Their termination attracted media attention for a variety of reasons including allegations by Northlands that some parking cashiers were not properly collecting parking fees.

[2] The Plaintiffs commenced an action alleging wrongful termination and defamation. The trial of the matter began before me on March 28, 2022 and was scheduled for three weeks. The Plaintiffs were represented by Glenda Pidde. The trial began slowly as a result of Ms. Pidde requesting additional preparation time and as a result of her raising concerns about the Defendants' document production.

[3] No evidence was called on March 28. On March 29 and 30 the following Plaintiffs testified:

- Lorraine Woolridge – Ms. Woolridge has discontinued her action and is no longer a party in this action;
- Sonia Phillips – examined and cross-examined; and
- Sarah Pollard – examined, but not cross examined.

[4] On March 31 I received a note from the Plaintiffs asking to speak with me about their case. I declined to speak with the Plaintiffs and advised that it would not be appropriate for a number of reasons including the fact that they were represented by Ms. Pidde. I encouraged the Plaintiffs to speak with Ms. Pidde if they had any concerns. Following several adjournments Ms. Pidde requested permission to cease representing the Plaintiffs and withdraw as counsel of record. I granted Ms. Pidde's request and granted the Plaintiffs an adjournment to seek new counsel.

[5] The Plaintiffs secured new counsel and now seek a mistrial of the matter arguing that they have suffered prejudice that cannot be remedied. They have filed six affidavits in support of their application. The Defendants have not filed any evidence.

[6] For the reasons that follow I find that the Plaintiffs were prejudiced by Ms. Pidde's conduct; however, the prejudice is curable and accordingly a miscarriage of justice has not occurred. I deny their request for a mistrial and direct that the matter resume as soon as scheduling permits.

## **B. Law**

[7] In *R v Burke*, 2002 SCC 55 at para 75, Justice Major directed trial judges deciding mistrial applications with the following test: "in declaring a mistrial, the trial judge therefore turns his or her mind to the question of whether a mistrial is needed to prevent a miscarriage of justice."

[8] The following legal principles govern an application for a mistrial in both civil and criminal matters:

- A mistrial is a discretionary remedy and should be avoided if reasonable alternatives exist: *Craggs v Stolz*, 2004 ABCA 196 at para 4 and *Homeniuk v Costain*, 2008 ABQB 197 at para 3.
- Competent counsel is a component of a fair trial and counsel is presumed competent: *R v GDB*, 2000 SCC 22 at paras 25 and 27 [*GDB*].
- The onus to demonstrate the necessity of a mistrial rests on the party seeking the mistrial: *GDB* at para 27.

- Incompetence of counsel can amount to a miscarriage of justice; however, a nexus must exist between the incompetence and prejudice to client: *R v Meer*, 2015 ABCA 141 at para 43.
- A court should generally only opine on competence of counsel if it is apparent that prejudice has occurred: *GDB* at para 29.
- Evidence is required to support an application for a mistrial: *R v Levin*, 2012 ABQB 769 at para 57.

[9] I am guided by these legal principles and the relevant test in determining whether a mistrial should be granted.

[10] Trial fairness for both the Plaintiffs and Defendants is paramount.

### **C. Position of the Parties**

#### ***Plaintiffs***

[11] The Plaintiffs rely upon the following aspects of their former counsel's actions or inactions in support of their argument that an incurable miscarriage of justice has occurred:

- Inappropriate and unprofessional conduct;
- Failure to accept a settlement offer;
- Failure to properly prepare for trial;
- Withdrawal of pay in lieu of notice claims; and
- Court's perception of their claim as a result of their counsel's conduct.

[12] The Plaintiffs have filed six affidavits in support of their mistrial application. The affidavits provide a description of their interactions with Ms. Pidde beginning on or about March 6, 2022 leading up to the trial and some communications following the trial's adjournment. The affidavits also detail their concerns regarding their ability to receive a fair trial as a result of the matters that I observed.

#### ***Defendants***

[13] The Defendants oppose the mistrial application. They advance the following arguments:

- A mistrial will not remedy inappropriate or unprofessional conduct nor will it revive an expired offer of settlement;
- The Court has the ability to allow relevant witnesses to be recalled and that the Plaintiffs are bound by Ms. Pidde's withdrawal of their claim for pay in lieu of notice;
- A mistrial, as opposed to an adjournment, will result in further delay which will prejudice their ability to defend this claim given the passage of time and because Northlands is winding down its operations;
- The withdrawal of the pay in lieu of notice claims should not be given any weight in this Application; and

- The Plaintiffs have failed, when all of the factors are considered holistically, to establish that they have suffered any incurable prejudice.

#### **D. Analysis**

##### ***Counsel's conduct***

[14] The Plaintiffs' affidavits establish that Ms. Pidde engaged in some unorthodox trial preparation techniques such as encouraging her clients to engage in chants and dances and requiring them to address her as the "General". The affidavits also reveal that Ms. Pidde used coarse and racist language in her interactions with some of the Plaintiffs. Moreover, her self-disclosed use of alcohol and cannabis and requests for a "wake up call" prior to court is inconsistent with professional conduct and does little to inspire confidence in her ability to represent the Plaintiffs. However, notwithstanding the undesirability of such behaviour, I do not find that this behaviour prejudiced the Plaintiffs' substantive legal position. The Plaintiffs' affidavits do not reveal a nexus between Ms. Pidde's conduct and her ability to represent them in the legal proceedings.

[15] I also accept the Defendants' argument that neither an adjournment nor a mistrial will remedy the Plaintiffs' concerns with Ms. Pidde's behaviour.

##### ***Failure to Accept a Settlement Offer***

[16] Tammy Lockwood, a Plaintiff, filed an affidavit describing how she instructed Ms. Pidde to accept a settlement offer from the Defendants. She was initially advised that she would receive the settlement proceeds, but then was advised by Ms. Pidde that the Defendants did not accept her offer. I have no evidence from Ms. Pidde, but it appears that Ms. Pidde missed the deadline to accept whatever offer the Defendants had tabled prior to trial.

[17] Ms. Lockwood remains a party in this Action and her new counsel concedes that a mistrial will not guarantee that another settlement offer will be made. Ms. Lockwood also raises the concern that even if she exits this action, she could still be liable for costs.

[18] A mistrial will not remedy this situation. If it is established that Ms. Pidde failed to accept the offer in a timely fashion Ms. Lockwood has a potential remedy against Ms. Pidde for her loss as well as any associated court costs. Further, the decision of whether to advance a new settlement offer rests solely with the Defendants.

##### ***Lack of Trial Preparation***

[19] The Plaintiffs argue that Ms. Pidde did not properly prepare them for trial with respect to direct examination and cross examination. The Plaintiffs also point to Ms. Pidde's failure to have relevant documents organized including documents from the Defendants' disclosure as well her failure to produce medical records and medical expert evidence to support their defamation claim.

[20] I also witnessed Ms. Woolridge seek to read out a prepared statement as opposed to being led through a direct examination. The Plaintiffs argue that they require a mistrial in order to adduce the necessary evidence including medical evidence in order to establish their claims. I am satisfied that the Plaintiffs' affidavits reveal a lack of trial preparation on Ms. Pidde's part with respect to readying the witnesses for examination.

[21] The Plaintiffs do not detail any of the additional evidence that they wish to tender.

[22] The Defendants observe that only three witnesses have testified and that one of them (i.e. Ms. Woolridge) is no longer a party. The Defendants argue that neither Ms. Phillips nor Ms. Pollard have stated in their affidavit that there are gaps in their evidence or that they have been advised that they failed to provide necessary evidence. The Defendants conceded that it is open to me as the trial judge to allow both witnesses to provide additional evidence. Additionally, even though Ms. Phillips was cross examined, the Defendants indicated on the record that they would not oppose an application to allow both of them to be recalled to provide additional evidence.

***Withdrawal of Pay in Lieu of Notice of Claims***

[23] On March 25, 2022 I conducted a brief pre-trial conference with counsel for both parties. This pre-trial conference was on the record. During that pre-trial conference Ms. Pidde stated that the Plaintiffs were not advancing a claim for pay in lieu of notice but instead were focused on seeking aggravated damages for the manner of discharge and the defamation claim. When the trial commenced on March 28, 2022 I confirmed Ms. Pidde's position with her in open court on the record. She advised that her position had not changed.

[24] On April 6, 2022 the Plaintiffs' new counsel appeared before me to seek an adjournment. Counsel for the Defendants, at that time, sought an order from me confirming that the Plaintiffs had withdrawn their claim to pay in lieu of notice. I declined to grant such an order and advised that I would hear argument on that issue at a later date. The Plaintiffs never amended their Amended Statement of Claim withdrawing their claim. I heard this Application on June 10, 2022 and during the course of my deliberations I requested further submissions on this issue on July 29, 2022 so that I could more fully consider it.

[25] The Plaintiffs' affidavits indicate that they did not instruct Ms. Pidde to withdraw this aspect of their claim. The Plaintiffs argue that Ms. Pidde's notice to the Court that she was abandoning the claims was not an effective discontinuance of the claim and argue that there is no prejudice to the Defendants if they are allowed to advance the claims.

[26] The Defendants note that there is no evidence before the Court from Ms. Pidde regarding her decision to withdraw the pay in lieu of notice claim. They further argue that the Plaintiffs were casually employed and argue that perhaps Ms. Pidde came to the conclusion that her clients would not succeed in advancing such a claim. The Defendants also note that Ms. Pidde had abandoned the claim during a Judicial Dispute Resolution (JDR) and point to correspondence from March 17, 2022 wherein they confirmed her position in this regard as well. Finally, the Defendants argue that Ms. Pidde is the Plaintiffs' agent and that they are bound by her representations to the Court: ***Martin v Busenius***, 1999 ABQB 340 at para 16 [***Martin***].

[27] Based upon the evidence that is before me the Plaintiffs did not consent to withdrawing their claim. I find that the Plaintiffs' potential inability to advance this claim creates prejudice.

[28] The primary issues are whether Ms. Pidde's withdrawal of the claim was effective and whether the Plaintiffs are bound by the withdrawal if it was effective. I find that analyzing these issues would be the same whether the trial continues or a mistrial is granted. If I granted a mistrial the new trial Justice would be required to deal with these same issues as the Defendants would maintain their position that the claim was withdrawn. Granting a mistrial will not eliminate or resolve these issues.

[29] While the Plaintiffs are prejudiced by Ms. Pidde's withdrawal of the claim it will either be remedied by the Court allowing them to proceed with the claim or they can advance a claim against Ms. Pidde if they are unable to advance their claim.

[30] I considered determining whether the withdrawal was binding or not but determined that I did not need to decide that issue in order to determine whether a mistrial was necessary. I also note that I do not have an Application before me seeking a determination of that issue and the parties may have filed additional evidence if such an application were before me.

***Court's Perception of Plaintiffs' Claim***

[31] The Plaintiffs are concerned that the Court's perception of their claim has been tainted or besmirched by their former counsel's conduct. The Plaintiffs are concerned they will not receive a fair hearing.

[32] Plaintiffs' counsel acknowledges that trial judges disabuse themselves of inadmissible evidence on a routine basis.

[33] The Plaintiffs' concern is legitimate. Maintaining confidence in the administration of justice and the decisions that emanate from our courts is integral to their proper functioning. The appearance of a fair process fosters such confidence.

[34] The Plaintiffs argue that a mistrial is necessary to ensure that the Plaintiffs' confidence in a fair process is maintained.

[35] The Defendants do not specifically take issue with the Plaintiffs' concern about the Court's perception; however, they argued that a mistrial would result in greater prejudice to them than an adjournment.

[36] The Defendants raise two primary concerns:

- A mistrial will result in a greater delay as a result of scheduling a new trial versus a continuation;
- There is greater potential for duplicate and additional preparation if the mistrial results in a broader scope of claims being advanced and associated document production issues.

[37] Northlands is also no longer operational and delay presents additional challenges relative to locating former employees.

***Continuation or Mistrial?***

[38] I now turn to the central issue: Is a mistrial needed to prevent a miscarriage of justice?

This determination depends largely upon my consideration of the following three factors:

- Failure to properly prepare for trial;
- Withdrawal of pay in lieu of notice claims; and
- Plaintiffs' perception of their ability to receive a fair trial.

[39] I am satisfied that neither Ms. Pidde's conduct nor her alleged failure to accept a settlement offer create a miscarriage of justice and, more importantly, a mistrial will remedy neither.

[40] I find that Ms. Pidde's trial preparation with respect to witness preparation appears lacking. The Plaintiffs' evidence focused on the period of approximately one month prior to trial. Both sides point to the fact that only three witnesses have testified and argue that this militates in favour of their position. In light of the Defendants' position that they would not oppose either Ms. Pollard or Ms. Phillips being recalled to testify I conclude that any prejudice suffered by their inadequate preparation can be remedied.

[41] The Plaintiffs have also raised the issue of potential prejudice that may result from Ms. Pidde not producing relevant medical records or medical experts to support their claims. The document production phase of the litigation has long passed. If the Plaintiffs wish to supplement their production they will have to seek the Defendants' consent or bring an application before this Court.

[42] Whether a mistrial or an adjournment is granted, the Plaintiffs would have to bring an application to supplement their production, absent the Defendants' consent. The Plaintiffs also have potential remedies against Ms. Pidde in this regard. Multiple actions are not desirable, but nonetheless a potential remedy exists. Furthermore, I note that there is no evidence before me from any of the Plaintiffs setting out what evidence they would call if they were permitted the opportunity.

[43] Turning to the withdrawal of the pay in lieu of notice claims, there is prejudice to the Plaintiffs if they are unable to advance these claims. However, granting a mistrial will not resolve that issue. The issue will either be resolved in the Plaintiffs' favour or they will be required to pursue a claim against Ms. Pidde.

[44] The Plaintiffs' concern regarding the Court's perception of their claim is understandable; however, their former counsel's conduct will not play any role in the assessment of the evidence or consideration of the legal issues in this matter.

[45] The Defendants also raise fairness and oppose the mistrial on the basis that further delay will prejudice their ability to defend against the Plaintiffs' claim.

[46] It is difficult to determine how much time a continuation would save in comparison to granting a mistrial. However, it is clear that granting a mistrial would not save anytime as the matter would have to be scheduled afresh as opposed to a continuation. Where there is remediable prejudice, any savings of time weighs against a mistrial.

[47] A continuation will save time by not having Ms. Phillips and Ms. Pollard repeat all of their testimony.

[48] The considerations for and against a continuation or mistrial need to be considered in a holistic fashion against the background of the relevant legal test keeping in mind that mistrials in a civil matter are rare, discretionary and should only be granted when no other reasonable alternatives exist.

[49] In conclusion, I am satisfied that the prejudice suffered by the Plaintiffs can be remedied for the reasons that I have set out above and that there are no other circumstances present that would give rise to a miscarriage of justice. The Plaintiffs desire to start over is understandable; however, a mistrial is an extraordinary remedy and it should only be ordered when absolutely necessary.

[50] This is not one of those situations.

**E. Conclusion**

[51] The Plaintiffs' application for a mistrial is dismissed. The trial remains adjourned and counsel are directed to contact the Trial Coordinator to have the matter scheduled to continue. The Defendants are entitled to bring an application on notice to the Plaintiffs' former and present counsel seeking costs arising out of the adjournment of the proceedings.

[52] I invite the Plaintiffs to consider whether they wish to bring an application to address the withdrawal of the pay in lieu of notice claims. I direct Counsel to contact my judicial assistant to make arrangements to schedule a case conference with me within 30 days to discuss both of these issues.

[53] Costs of this application shall be in the cause.

Heard on the 10<sup>th</sup> day of June, 2022.

**Dated** at the City of Edmonton, Alberta this 2<sup>nd</sup> day of September, 2022.

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**T.G. Rothwell**  
**J.C.Q.B.A.**

**Appearances:**

Philip Prowse  
Prowse Chowne LLP  
for the Applicants/Plaintiffs

David Risling  
McLennan Ross LLP  
for the Respondents/Defendants