

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Colpitts*, 2017 NSSC 24

Date: 20170126

Docket: CRH 346068

Registry: Halifax

Between:

Robert Blois Colpitts

v.

Her Majesty the Queen

**MID-TRIAL RULING
TRIAL MANAGEMENT**

Judge: The Honourable Justice Kevin Coady

Heard: January 26, 2017

Written Decision: January 26, 2017

Counsel: James Martin, Mark Covan and Scott Millar,
for the Crown
Robert Blois Colpitts, Self-Represented
Jane O'Neill, for Daniel Frederick Potter

By the Court:

Introduction:

[1] This ruling should be read in conjunction with my previous trial management ruling which appears at 2017 NSSC 22. In that Decision I placed the following restrictions on the presentation of Mr. Colpitts' evidence:

- Mr. Colpitts will complete his witnesses' testimony by the end of the day on February 2, 2017.
- If Mr. Colpitts fails to meet this schedule, and wishes to call further witnesses, he will have to apply for leave.
- If Mr. Colpitts applies for leave he will examine each proposed witness for two hours to determine if they have probative evidence to offer. If any such witness has probative evidence to give, I will permit full examination. If they do not have such evidence, the examination will conclude. Any such leave applications will be heard on the week of February 6-10, 2017.
- No time restrictions will be placed on Mr. Colpitts' personal testimony should he elect to testify. Mr. Colpitts personal testimony will immediately follow any leave applications.

The authorities and reasons for these time limits appear in 2017 NSSC 22. I rely on these same authorities in support of further restrictions in this ruling.

[2] The principal concern in my previous ruling was Mr. Colpitts' inability to call witnesses on days scheduled for trial. The fact of the previous ruling did not result in utilization of subsequent trial days. The following represents sitting times between January 18th and February 2, 2017:

- January 18: Ms. Gueto testified from 2 p.m. until 3:12 p.m.
- January 19: Mr. Lecat testified from 9:30 a.m. until 12 noon.
- January 20: Ms. Loridon testified from 9:30 a.m. until 11 a.m.
- January 23: Mr. Robillard testified from 10:30 a.m. until 1 p.m.

- January 24: Mr. Saintonge testified from 10:30 a.m. until 12 noon.
- January 25: Ms. Beaulieu testified from 10:30 a.m. until 12 noon.
- January 26: Mr. Colpitts did not have a witness scheduled.
- January 27: Mr. Colpitts does not have a witness scheduled.
- January 30: Mr. Colpitts does not have a witness scheduled.
- January 31 – February 1: Mr. Colpitts proposes calling Mr. Mack.
- February 2 – Mr. Colpitts proposes calling Ms. Menard.

Clearly, Mr. Colpitts' ability to utilize scheduled trial dates has not improved since my previous ruling.

[3] On January 25, 2017, Mr. Colpitts filed a "Notice of Application for Timing of Calling of Defence on Behalf of R. Blois Colpitts". The filing of this Notice completely ignores my previous ruling. Mr. Colpitts seeks the following relief:

1. Justice Coady has issued a mid-trial management ruling dated January 24, 2017.
2. The Applicant seeks to make application in advance pursuant to paragraph 27 of the ruling for certainty.
3. Based on the limitations in the ruling, the Applicant seeks to comply with the ruling in the calling of future witnesses as follows:
 - a. Tuesday, January 31, 2017 – 9:30 a.m. – David Mack (in person);
 - b. Wednesday, February 1, 2017 – 9:30 a.m. – David Mack (in person);
 - c. Thursday, February 2, 2017 – 9:30 a.m. – Judith Menard (in person);
 - d. Friday, February 3, 2017 – 9:30 a.m. – 2 p.m. – Judith Menard (in person);
 - e. Week of February 6, 2017 – break week for preparation as originally scheduled;
 - f. February 13, 2017 week – balance of David Mack and Shirley Locke;
 - g. February 20, 2017 week – Carole Cushing, Richard Theroux and any other witnesses as provided to the court;
 - h. February 27, 2017 week – break for preparation for my testimony; and
 - i. March 6, 2017 – my testimony.
4. The Applicant elects to testify.
5. The Applicant acknowledges that variations may be required by the court.
6. The Applicant submits that the underlined witnesses are confirmed.

This Application was heard on January 26, 2017. It essentially is a request for reconsideration of my January 18th ruling. Mr. Colpitts is seeking two full weeks to

prepare generally and to prepare for his own testimony. His present Application indicates three prospective witnesses have been served. “Cushing, Theroux and other witnesses” have not been served.

[4] This Application proceeded by way of submissions. Mr. Colpitts’ submissions amount to a plea to give him as much preparation time as he feels is necessary to make full answer and defence. Mr. Colpitts’ submissions ignore all the time lost since this trial commenced on November 1, 2016. This trial has been shut down more than it has been sitting. These times provided Mr. Colpitts with significant preparation time. Obviously, he did not utilize the Court’s imposed down times. I reject the suggestion that the time constraints set forth in my January 18th ruling threaten Mr. Colpitts’ full answer and defence rights.

[5] Mr. Colpitts submitted that if I did not grant him the schedule he seeks in his Notice, then he will have to forego important witnesses to allow for preparation time. This is not helpful. As Doyan, J.A. stated in *R. v. Auclair*, 2013 QCCA 671: “a Judge’s role should no longer be limited to that of a mere arbiter allowing parties to conduct their case as they see fit.” The sitting record since November 1, 2016 cannot be repeated on an ongoing basis.

Conclusion

[6] Notwithstanding the above I am prepared to order that Mr. Colpitts complete his case on the following schedule:

- Tuesday, January 31 – Mr. Mack
- Wednesday, February 1 – Mr. Mack
- Thursday, February 2 – Ms. Menard
- Friday, February 3 – Ms. Menard (9:30 to 10:30 a.m. and 1:30 to 4:30 p.m.)
- Monday, February 6 – Applications for Leave
- Tuesday, February 7 – Applications for Leave
- Wednesday, February 8 – Applications for Leave

Should a proposed witness be granted leave for a full examination, such testimony will follow the granting of leave. Should leave not be granted to a proposed witness, the

directions set forth in my July 18th decision will apply. Once these Applications are decided, and any associated evidence called, Mr. Colpitts will have three calendar days to prepare for his own testimony.

[7] There will be rules associated with this schedule. I will not accept the kind of down time experienced during Mr. Colpitts' case. If, for example, Mr. Mack finishes on a scheduled day prior to the end of the day, I would expect Ms. Menard to be available to complete the day. If, for example, Ms. Menard finishes her testimony early, I expect Mr. Colpitts to immediately commence any Leave Applications he may wish to advance. Mr. Colpitts should always have available sufficient leave applicants so as to avoid losing Court time if leave is not granted.

[8] There has been much oral and documentary evidence to date concerning Ms. Menard and Mr. Mack and their involvement with Knowledge House Inc. and National Bank Financial. Therefore, I see no reason why their testimony cannot be completed in the two days allotted to each. I expect all parties to focus on what is important and what is not and avoid long drawn out examinations. I reserve the right to place time limits on the testimony of Ms. Menard and Mr. Mack should the circumstances require such. Hopefully that will not be necessary.

Coady, J.