

Federal Court



Cour fédérale

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Facsimile / Télécopieur : Telephone / Téléphone :

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DATE : March 30, 2016**TIME / HEURE :** 1:45 PM

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Total number of pages (including this page) /
Nombre de pages (incluant cette page) : 6

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SUBJECT / OBJET :

Court File No. / N° du dossier de la Cour: T-1189-14

Between / entre: WESLEY ROOTS dba W.R. MARINE SERVICES v. THE SHIP EX "HMCS
ANNAPOLIS" ET ALEnclosed is a true copy of the Order / Vous trouverez ci-joint une copie conforme
de l'ordonnance: [REDACTED] dated / daté du [REDACTED]**COMMENTS / REMARQUES :** Please find enclosed the Order of The Honourable Madam Justice
McVeigh dated March 30, 2016

Pursuant to section 20 of the Official Languages Act all **final** decisions, orders and judgments, including any reasons given therefore, issued by the Court are issued in both official languages. In the event that such documents are issued in the first instance in only one of the official languages, a copy of the version in the other official language will be forwarded on request when it is available.

Conformément à l'article 20 de la Loi sur les langues officielles, les décisions, ordonnances et jugements **définitifs** avec les motifs y afférents, sont émis dans les deux langues officielles. Au cas où ces documents ne seraient émis, en premier lieu, que dans l'une des deux langues officielles, une copie de la version dans l'autre langue officielle sera transmise, sur demande, dès qu'elle sera disponible.

Federal Court



Cour fédérale

Date: 20160330

Docket: T-1189-14

Ottawa, Ontario, March 30, 2016

PRESENT: The Honourable Madam Justice McVeigh

SIMPLIFIED ACTION

**ADMIRALTY ACTION *IN REM* AGAINST
THE SHIP *EX HMCS ANNAPOLIS* AND *IN PERSONAM***

BETWEEN:

**WESLEY ROOTS DOING BUSINESS AS W.R.
MARINE SERVICES**

Plaintiff

and

**ARTIFICIAL REEF SOCIETY OF BRITISH
COLUMBIA, THE SHIP *EX HMCS
ANNAPOLIS*, THE OWNERS AND ALL
OTHER INTERESTED IN THE SHIP *EX
HMCS ANNAPOLIS***

Defendants

ORDER

UPON the Defendants bringing a motion to dismiss this action and to award costs against

the Plaintiff on the grounds of:

- a. Undue delay as the Plaintiff has not taken any steps since the matter was commenced on May 14, 2014;
- b. The Plaintiff has not complied with the Court order of June 30, 2015, to file a timetable;
- c. In the closely related file T-709-13 (Main Action), the file was dismissed after a status review.

AND UPON the Defendants seeking costs against the Plaintiff because of the Plaintiff disregarding the case management process and failing to discontinue the matter even though the Plaintiff had no intention of advancing the claim;

AND UPON dismissing this action for the following reasons.

[1] Both the Main Action and this action are related to the Reef Society sinking on April 4, 2015, of the HMCS Annapolis for the purpose of a sustainable artificial reef in Halkett Bay, Gambier Island, British Columbia. The Main Action was dismissed. The facts are set out in the order found at 2015 FC 1339, which dismissed the Main Action.

[2] No steps have taken place on this file since the Defendants filed their Statement of Defence on June 16, 2014. The Plaintiff did not comply with the Court order dated June 30, 2015. Nor did they respond to the offer from the Defendants on December 17, 2015, to discontinue the action by consent with no costs. The Plaintiff has not responded to the Defendants' offer, this motion or to the Court when contacted.

[3] The Federal Courts Rule 167 allows for dismissal of a proceeding or imposing other sanctions for undue delay in prosecuting the proceeding. The test is threefold in that first it must be determined if there has been inordinate delay, then whether the delay is inexcusable and finally, if there is prejudice to the defendant. The jurisprudence supports that a proceeding should be dismissed only in exceptional circumstances (*Nichols v Canada* (1990), 36 FTR 77 (TD)).

[4] With that high hurdle and the interests of justice this step is not taken without careful consideration.

[5] In this case the Main Action has been dismissed for delay in a lengthy well-reasoned decision by Prothonotary Lafrenière (above).

I. Inordinate delay

[6] In this action, other than the initial filing of the Statement of Claim, no steps have been taken. The Plaintiff has not responded to the Defendants nor have they responded to the Court when ordered to provide a timetable or when they were contacted in February 2016, after they failed to file any response to this motion.

II. Inexcusable delay

[7] The Plaintiff has not responded to the Court or to the Defendants, so I do not even have an excuse before me to describe why there is such a delay or lack of response. I find there is inexcusable delay.

III. Prejudice to the Defendants

[8] The Defendants in this case would have some prejudice as time goes by to having access to its witness(s) and suffered some prejudice by having to bring this motion to dismiss. I find on these facts the Defendants have suffered minor prejudice as after the Main Action was dismissed, the reasonable action for the Plaintiff was to accept the Defendants' offer to consent dismissal of this matter with no costs. Though this would not be sufficient prejudice in most cases this Court has found that where there is no plan to move the proceeding along that a finding of prejudice is not necessary (*Seitz v Canada*, 2002 FCT 456).

IV. Conclusion

[9] After attempts by the Defendants and the Court, I find that because of the Plaintiff's undue delay and lack of taking any concrete action to advance the claim, the test for dismissal has been met (*Friedrich v Canada*, 2001 FCA 325). With the Plaintiff not responding to Court's inquiries or to this motion, I am left with no other sanctions that would be less draconic than dismissal of the action such as a status review. Given my findings above, I will dismiss this action.

[10] The Defendants seek costs. The Defendants offered to do a consent motion to discontinue the action with no request for costs. This offer was ignored and necessitated the defendant having to bring this motion. For this reason, I will award the Defendants costs in the amount of \$1,000.00

THIS COURT ORDERS that:

1. The action is dismissed;
2. Costs are awarded in the amount of \$1,000.00 payable forthwith to the Defendants.

"Glennys L. McVeigh"
Judge