
Citation: *Fredericton Police Association v. New Brunswick (Superintendent of Pensions)*, 2019 NBFCST 10

PROVINCE OF NEW BRUNSWICK
FINANCIAL AND CONSUMER SERVICES TRIBUNAL
IN THE MATTER OF THE *PENSION BENEFITS ACT*, S.N.B. 1987, c P-5.1

Date: 2019-08-26
Docket: PE-001-2018

BETWEEN:

Fredericton Police Association, Local 911 United Brotherhood of Carpenters and Joiners of America and Applicant 2, Fredericton Fire Fighters Association, International Association of Fire Fighters, Local 1053 and Applicant 4,

Applicants,

-and-

Superintendent of Pensions and The City of Fredericton,

Respondents.

ORDER

WHEREAS:

1. The Appellants request an extension of the deadline for providing their notice of expert report, their own expert report and for providing their additional documents from August 15, 2019 to August 30, 2019 on the basis that it has taken longer than anticipated to review the voluminous documentation provided by the City of Fredericton, and to have it properly assessed by their expert;
2. On August 1, 2019, the City of Fredericton filed a motion requesting a further extension of time to file their expert report, to September 30, 2019, which would necessitate the rescheduling of the September

23-27 hearing dates. The specific Order requested was:

- a) that the City of Fredericton provide the Appellants with their notice of expert testimony and expert witness report by September 30, 2019;
 - b) that all other dates for pre-trial procedures be adjusted accordingly; and
 - c) that the hearing of this matter, which was scheduled for September 23-27, 2019 be rescheduled within ninety (90) days;
3. The Appellants did not oppose the City of Fredericton's August 1, 2019 motion seeking an extension of time provided the Tribunal set "suitable deadlines for the filing of reports by both sides";
 4. In granting the City of Fredericton's August 1, 2019 motion, the Tribunal extended the deadline for the City of Fredericton providing their notice of expert witness and expert report from August 26, 2019 to September 30, 2019. The Tribunal was silent on the deadline for the Appellants to provide their expert report and additional documents, which may have led to some confusion regarding the deadline for the submission of the Appellants' notice of expert witness and expert report;
 5. Rule 10.5(1) of the Tribunal's *Rules of Procedure* stipulates that a party who fails to disclose or produce a document in compliance with Part 10 may not use the document at the hearing without the permission of the Tribunal, which may be on any conditions that the Tribunal considers just;
 6. Rule 10.7(1) of the *Rules of Procedure* provides that a party who fails to provide notice of an expert witness or fails to provide an expert report in compliance with Part 10 may not call the expert as a witness nor use the expert report at the hearing without permission of the Tribunal, which may be on any conditions that the Tribunal considers just;
 7. The Superintendent of Pensions consents to the Appellants' request for an extension;
 8. The City of Fredericton opposes the Appellants' request for an extension in the absence of affidavit evidence providing information as to when the Appellants provided the documentation to their expert and as to how long it took the expert to review the documentation;
 9. The Appellants' request for an extension will not affect the scheduled hearing dates of January 27-31, 2020;
 10. The City of Fredericton will sustain no prejudice if a two-week extension is granted as their expert will have one month to review the expert report obtained by the Appellants and to respond;
 11. Given the deadlines set in the August 19, 2019 Order and in order to avoid further delays in this matter, the Tribunal chose to deal with this motion informally by varying the procedure for a motion pursuant to rule 1.3(4) of the *Rules of Procedure*;
 12. Further, with respect to the lack of Affidavit evidence, subsection 38(6) of the *Financial and Consumer Services Commission Act*, S.N.B. 2013, c-30 states that the Tribunal may receive in evidence anything that, in the opinion of the Tribunal, is relevant to the matter before it, regardless of whether it is given or produced under oath or would be admissible as evidence in a court of law.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The timelines set out in the Tribunal's June 7, 2019 Order in relation to the Appellants notice of expert testimony, expert witness report and additional documents are varied as follows:
 - a) The Appellants shall provide their notice of expert testimony and expert witness report by August 30, 2019 in accordance with rule 10.6 of the *Rules of Procedure*; and
 - b) The Appellants shall provide any additional documents they intend to rely on at the hearing to all other parties and the Registrar by August 30, 2019 in accordance with rule 10.3 of the *Rules of Procedure*.

DATED this 26th day of August 2019.

Judith Keating

Judith Keating, Q.C.

Tribunal Chair