

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**MASTER BROTT:**

**Title of Proceedings:** FARMER v MACPHERSON  
**Conference date:** July 9, 2015  
**By:** Telephone

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**Counsel:**

**William Scott**, fax no. 416-869-0271, *solicitor for the plaintiff*  
**J. Reid**, fax no. 416-593-7760, *solicitor for the defendant MacPherson*

**ENDORSEMENT:**

This case conference was convened at the request of plaintiff's counsel. This action arises out of both a slip and fall and motor vehicle accident that occurred on August 18, 2009 and October 15, 2009 respectively.

The matter came up at a Status Hearing on August 7, 2014. At the hearing it was ordered that as the action was vulnerable to a dismissal for delay, a full show cause hearing was required. The hearing was to proceed on January 14, 2015. Plaintiff's counsel proposed a timetable for delivery of materials, cross-examinations and facts. Defence counsel never responded. On January 8, 2015 defence counsel requested an adjournment of the hearing as she had to attend a medical appointment and further, the defendant had failed to deliver any materials. The solicitor for the plaintiff consented to the adjournment request. The hearing was adjourned to June 25, 2015. Ultimately defence counsel, after some inquiries by plaintiff's counsel, advised that she would deliver her materials in early June. Defence counsel delivered her materials on June 9, 2015 and on June 11, 2015 plaintiff's counsel advised that she wished to adjourn the motion as she wanted to cross-examine the defendant's affiant. On June 12, 2015, upon consenting to the plaintiff's request for the adjournment, the solicitor for the defendant advised for the first time that she wished to cross-examine the plaintiff's two affiants.

Plaintiff's counsel takes the position that defence counsel is not entitled to cross-examine the plaintiff's affiants as the defendant failed to exercise the right to cross-examine with reasonable diligence as is required pursuant to Rule 39.02(3). This case conference was convened to address the Rule 39.02(3) issue.

In my view, the court should be entitled to the best possible record in an effort to ensure fairness to all parties. Here, the defendant absolutely did not act with reasonable diligence. The defendant failed to respond to timetables, delivered materials late and never, until the eleventh hour, made any indication that they wanted to examine the plaintiff's affiants. By the same token, the new motion date is some months away and there is time to conduct all cross-examinations in advance of the hearing. This will provide a more level playing field. The defendant however, should not be given carte blanche and must bear some responsibility for letting the matter languish – and for one year passing since the initial status hearing.

Counsel were urged to attempt to resolve the motion – and to deal with the substantive issues of the action in an effort to comply with our Rules of Civil Procedure which encourage timely, economic and expeditious proceedings.

**ORDER TO GO AS FOLLOWS:**

1. The solicitor for the defendant is entitled to cross-examine the plaintiff's affiants and all costs associated with those cross-examinations shall be borne entirely by the defendant MacPherson.

2. Counsel shall agree to a timetable for the cross-examinations. Any further material shall be filed with the court by **October 9, 2015**.
3. The long motion shall now be heard on **October 19, 2015**. One full day has been set aside.

**No formal order is required.**



**Master Ronna M. Brott**

- Note:** The Registrar shall send a copy of this Order to counsel
- Note:** The Assistant Trial Coordinator for Master Brott is Ms. Christine Meditskos, 416-212-9788
- Note:** The case management fax number is (416) 326-5416