Citation: O'Connor v Peters, 2026 MBCA 10
Date: 20260206
Docket: AF25-30-10170

IN THE COURT OF APPEAL OF MANITOBA

B E T W E E N:

	)	***J. D. Peters***
	)	*on his own behalf*
	)	
CORALEE RACQUEL O'CONNOR	)	***J. D. Ramsay***
	)	*for the Respondent*
(Petitioner) Respondent	)	
	)	***Meeting for directions***
- and -	)	***under r 37.1 of the Court***
	)	***of Appeal Rules (Civil)***
JEROME DAVID PETERS	)	
	)	*Chambers motion heard and*
(Respondent) Appellant	)	*Decision pronounced:*
	)	***January 15, 2026***
	)	
	)	*Written reasons:*
	)	***February 6, 2026***

RIVOALEN CJM

[1] The appellant (Mr. Peters) and the respondent (Ms. O'Connor) appeared before me at the Court's request for directions under rule 37.1 of the MB, *Court of Appeal Rules (Civil)*, Man Reg 555/88R. Mr. Peters was self-represented and Ms. O'Connor was represented by her lawyer, John Ramsay (Mr. Ramsay).

[2] The purpose of the meeting was for me to clarify what further transcripts and trial exhibits had to be filed in order to complete the appeal book before setting the matter down for hearing.

[3] At the meeting for directions, Mr. Peters advised that he was prepared to discontinue the appeal, with no costs payable by either party.

[4] After providing Mr. Ramsay a moment to speak with his client in private, I heard submissions from him regarding whether costs should be granted in favour of Ms. O'Connor in light of the position taken by Mr. Peters. Mr. Ramsay argued that Ms. O'Connor should be awarded costs in accordance with the tariff.

[5] After hearing Mr. Ramsay's submissions, Mr. Peters reiterated that no costs should be payable by either party.

[6] I agreed with Mr. Peters' position and ordered that if Mr. Peters filed a notice of discontinuance, each party should bear their own costs. I indicated that I would provide brief reasons for my decision.

[7] A notice of discontinuance, which specified that no costs were payable to either party, was prepared by Mr. Peters, signed by Mr. Ramsay and filed with the registry that same afternoon.

[8] The following are my reasons for ordering that each party bear their own costs.

[9] By way of background, a trial proceeded from April 30 to May 3, 2024 (the first trial) before a judge of the Court of King's Bench Family Division (the trial judge). The contested issues for trial were the determination of Mr. Peters' income and the calculation of child support. The trial judge provided her oral reasons on June 14, 2024 (the reasons) and the final order was signed on January 10, 2025 (the final order).

[10] The trial judge imputed the annual income of Mr. Peters to be $273,432. Following that imputation, child support was ordered for the two children of the marriage based on the *Manitoba Child Support Guidelines Regulation*, Man Reg 52/2023.

[11] On the issue of his income, the trial judge found that the information provided by Mr. Peters did not accurately disclose his income. Her imputation of his income was based, largely, on the income he set out in an application that he prepared for a business franchise (the application).

[12] Mr. Peters appealed the final order on the ground that the trial judge miscalculated his income. In his factum, he challenged the trial judge's conclusions regarding the application. He argued that the trial judge misread the application and that it did not disclose his income as $200,000. He said that it disclosed an income between $100,000 and $200,000, which was his and Ms. O'Connor's combined personal and business income.

[13] Essentially, Mr. Peters argued that the trial judge made a factual error that affected the calculation of his annual income.

[14] In the exercise of discretion on the matter of costs, it is proper for the Court to consider the circumstances that resulted in the appeal being discontinued. In this case, the appeal date was not set, Mr. Peters' appeal was necessary, had merit and the trial judge recognized their error (see *Pinkerton v Sport Dispute Management Inc*, 2025 BCCA 355 at para 4; *Winnipeg (City) v Sheegl et al*, 2023 MBCA 63 at paras 134-35; *Vitex Foods Ltd v Haldemann*, 1993 CarswellPEI 36 at para 7, 1993 CanLII 2867 (PESCAD)).

[15] First, Mr. Peters' appeal had merit.

[16] The trial judge may have made a palpable and overriding error. It is apparent from a review of the application in question and the reasons that the trial judge made a factual error. The application points to a range of income between $100,000 and $200,000 and states that this is the combined income of the parties.

[17] Moreover, on January 12, 2026, the trial judge released her written reasons on a second trial held from October 7 to 10, 2025 (the second trial) (see *O'Connor v Peters*, 2026 MBKB 4 [*O'Connor*]). At the second trial, spousal support and various property-related issues were resolved.

[18] In *O'Connor*, the trial judge stated: "The basis for the imputation [of Mr. Peters' income] was founded on the [application], in particular the factual determination that the income declared was $200,000. This was incorrect. The application clearly indicated that income range was between $100,000 and $200,000" (at para 76).

[19] The trial judge recognized the error she made with respect to the application and considered further information she received at the second trial. She imputed income to Mr. Peters in the amount of $161,739.71 as his current income for support purposes.

[20] Next, the appeal date had not been set.

[21] Finally, I would add that Mr. Peters could not have waited until the second trial to appeal the trial judge's determination of his annual income. In order to preserve his right to argue that the trial judge erred on the determination of his annual income, he had no choice but to appeal the final order.

[22] For these reasons, I found that it was fair and just that each party bear their own costs in these somewhat unique circumstances.

Rivoalen CJM