NOVA SCOTIA COURT OF APPEAL

Citation: *Nova Scotia Barristers' Society v. Harris*, 2002 NSCA 144

Date: 20021121
Docket: CA 188516
Registry: Halifax

In the matter of: The *Canada Evidence Act*

- and -

In the matter of: The *Barristers and Solicitors Act*, R.S.N.S. 1989, C. 30, and the Regulations of the Nova Scotia Barristers' Society, as amended

- and -

In the matter of: Corina T. Harris (Applicant) a Barrister and Solicitor, of Dartmouth, in the County of Halifax, Province of Nova Scotia

Revised Decision: The text of the original decision has been corrected according to the attached erratum dated November 27, 2016.

Judge: The Honourable Justice Linda Lee Oland, In Chambers

Application Heard: November 14, 2002, in Halifax, Nova Scotia

Written Judgment: November 21, 2002

Held: Application dismissed without costs.

Counsel: Applicant in person

Alan J. Stern, Q.C. and David Demirkan, for the respondent Nova Scotia Barristers' Society

Oland, J.A.:

[1] Corina T. Harris seeks the intervention of this court pursuant to s. 32(13) of the *Barristers and Solicitors Act*, R.S.N.S. 1989, c. 30 (the *Act*). To that end, she brings an application in Chambers to set down the hearing of her matter and for directions as to the filing of materials.

[2] On March 29, 2001, the Nova Scotia Barristers' Society (the Society) filed a complaint against the applicant charging her with professional misconduct or conduct unbecoming a barrister. The complaint alleged failures in 1997 and 1998 to comply with trust account regulations, and a continued disregard from 1993 to 1998 of those regulations.

[3] The Society served its complaint on the applicant on September 24, 2002.

[4] According to her affidavit, the applicant was called to the Bar in 1993 and practised law for a total of two years, in broken periods between 1996 and 1999. She deposed that she has not practised since 1999, that due to health problems she has not been employable since the fall of 2000, and that she is presently in receipt of disability benefits.

[5] Her affidavit briefly recounted how, following audits conducted over a year and a half commencing in 1998, the Society alleged professional misconduct based upon exemptions noted in her Form 20 accounting forms. She also referred to certain dealings with the Society's solicitor regarding what the applicant describes as serious errors and omissions in the Society's statement of facts and other issues, which dealings ceased in September 2000. The applicant heard nothing further until she was served with the complaint at her home in Shearwater in September 2002.

[6] She deposed:

> THAT because of the manner in which the Society has conducted their investigation of me with what I believe to be a bias towards finding something to legitimize their probe, intruded into my personal matters and recklessly disregarded the errors I have pointed out to them in their "statement of facts", I have absolutely no faith that I would receive a fair or impartial hearing from them.

[7] In material filed immediately prior to Chambers, the applicant submitted that the Society's pursuit of its complaint of Form 20 exceptions against someone who hadn't practised law in three years and has been totally disabled from working in any capacity for over two years is an abuse of its powers, a misuse of its resources, and presents as overt and deliberate harassment.

[8] The applicant applies for a date for a hearing by this court to consider intervention on the grounds of denial of natural justice, breach of procedural fairness, and abuse of process. The relief she would seek in that proceeding includes prohibition and *certiorari*.

[9] The Society filed an affidavit sworn by Victoria Rees, its Director of Professional Responsibility. It included an affidavit sworn in the fall of 2001 by Darlene Young of Skip Trace Service, who deposed that she believed Corina T. Hollis to be the same as Corina Tobin who resided in Kingston, Nova Scotia and who had had a law practice in Greenwood, Nova Scotia. In her affidavit, Ms. Rees deposed that the Society had tried to serve its complaint on the applicant between March and September 2001 but could not locate her and that she was served shortly after the Society learned her current address.

[10] The issue is whether, in the circumstances of this case, this court has the jurisdiction to intervene pursuant to s. 32(13) of the *Act*. If it does not, this application for a date for hearing must be dismissed.

[11] Section 32(13) reads as follows:

> **32**(13) Where
>
> (a) an investigation is being conducted; or
>
> (b) a resolution or order is made,
>
> pursuant to this Section, the Appeal Division of the Supreme Court, or in the case of urgency a judge of that Court, may, upon such grounds and in accordance with such procedures as it shall determine, at any time during the investigation or subsequent to a resolution or order being made but not later than six months following the day on which the order is made, intervene upon the request of

> (c) the barrister or articled clerk being investigated or in respect of whom a resolution or order is made;
>
> (d) an officer of the Society; or
>
> (e) a member of the Discipline Committee or a subcommittee thereof,
>
> and make such order or give such direction as it shall deem fit and necessary under the circumstances.

[12] This court has considered when it has jurisdiction to intervene in several decisions including *Ayres v. Nova Scotia Barristers' Society et al.* (1995), 142 N.S.R. (2d) 158; *Ayres v. Nova Scotia Barristers' Society et al.* (1995), 144 N.S.R. (2d) 318; and *Crosby v. Nova Scotia Barristers' Society*, [1999] N.S.J. No. 119. The law was succinctly summarized by Freeman, J. A. in *Crosby*, supra at ¶ 11 and 12:

> That is, intervention is possible during the investigative stage and after the final resolution of a matter, but not during the adjudicative phase.
>
> In Ayres v. Nova Scotia Barristers' Society et al (1995), 142 N.S.R. (2d) 158 (N.S.C.A.), the first of two cases of similar name, Hallett J.A., interpreted s. 32(13)(b) to mean this court had no jurisdiction to intervene when "the investigation of the two complaints has been completed and ... the formal complaint has not yet been heard, a resolution or order has not been made ..."

[13] In this application, a completed investigation led to the Society's complaint. A date for a hearing of the complaint has not yet been set. There is, of course, no resolution or order that has yet been made. The situation here is identical to that in *Ayres v. Nova Scotia Barristers' Society et al.*, (1995), 142 N.S.R. (2d) 158 in which Hallett, J.A. concluded that this court had no jurisdiction to intervene under s. 32(13) where an investigation was completed but the formal complaint had not yet been heard.

[14] In that decision, Justice Hallett continued at p. 160:

> The Barristers and Solicitors Act authorizes the Society to institute investigations of complaints and the power to hold hearings and discipline its members if the complaint it made out. As a general rule, this process should take its course without court intervention. That is not to say there could not be exceptional circumstances that would warrant intervention. An appeal lies to this court from an order made pursuant to s. 32(12) (sic) following the adoption of a resolution of a subcommittee made under s-s. (2), (3), (9) and (10) of s. 32. (emphasis added)

[15] The applicant argues that the present matter is not governed by Justice Hallett's determination that this court cannot intervene when the investigation was completed but before a resolution or order has been made because he was dealing with s. 32(12) of the *Act* whereas her application is pursuant to s. 32(13). This argument has no merit. Section 32(12) deals with orders of the prothonotary giving effect to a resolution. Justice Hallett's reference to that subsection in the extract quoted above was for the limited purpose of describing the order process. In his decision, Justice Hallett clearly identified s. 32(13) as the relevant legislation on the issue of the court's jurisdiction to intervene.

[16] The applicant submits that it is within the discretion of the court to intervene at any point in the complaint process. She also urges that her situation falls into the category of "exceptional circumstances". She takes the position that, in laying and pursuing its complaint of Form 20 exceptions against her, the Society has been obsessive, failed to accord her procedural fairness, and erred in law. She points out her difficult personal circumstances. She suggests that it appears to be a "witch hunt approach". The applicant also argues that the Society has recognized that the court has the authority to intervene at this stage of the proceedings and in that regard points to the "Discussion Paper Regarding a Proposed *Legal Profession Act* in Nova Scotia" (Discussion Paper).

[17] I am unable to accept any of these submissions by the applicant.

[18] In support of her argument that this court may intervene at any time, the applicant relies upon a passage in *Ayres v. Nova Scotia Barristers' Society et al.* (1998), 169 N.S.R. (2d) 318, a decision of this court on an appeal against several interlocutory rulings and against a finding of professional negligence following a

hearing. Those interlocutory rulings included those reported in *Ayres v. Nova Scotia Barristers' Society* (1995), 142 N.S.R. (2d) 158 and *Ayres v. Nova Scotia Barristers' Society et al.* (1995), 144 N.S.R. (2d) 318. The applicant points out that at ¶ 25, Hart, J.A. for the court stated:

> For the reasons set out earlier, governments have been afforded the right to place self-governing societies in a unique position when it comes to the discipline of their members. This is what was pointed out to the appellant by Justices Cacchione, Hallett and Chipman in their interlocutory decisions and to the extent that they exercised their discretion to wait until a hearing was complete to permit intervention, I concur and I would dismiss the three interlocutory appeals. (emphasis added)

In my view, this passage was not intended to and does not establish that the court has the discretion to intervene at any time. It appears that the application before Justice Cacchione was for an order to prohibit the formal hearing panel from adjudicating upon certain complaints, that before Justice Hallett was for a stay prior to the commencement of a formal hearing, and that before Justice Chipman was for a stay while a hearing was in process. The statement merely notes that the justices who heard those interlocutory applications declined to intervene before the hearing was finished.

[19] I am not persuaded that exceptional circumstances, such that the court should intervene at this point of the disciplinary proceedings, have been made out in this application.

[20] In s. 32(13) of the *Act*, the legislature set out when this court may intervene and the law in this Province in that regard is well settled. Cases in which the court might consider intervention and prerogative remedies on the basis of exceptional circumstances will be rare, and will depend upon the unique facts of each particular case.

[21] The applicant here has not demonstrated substantial prejudice arising from any delay by the Society in laying or serving the complaint against her. For example, there is no evidence that any material necessary for her response to the complaint has been lost or destroyed, or that the passage of time has been so extensive as to affect the memory of any person whose evidence is important to her case. While her affidavit refers to her illness having resulted in physical

disabilities and cognitive dysfunction which the applicant says have been exacerbated by the stress of this complaint resurfacing, she does not identify the illness, nor provide any particulars as to the extent of those disabilities and dysfunction, nor state that they prevent her from putting forward an effective defence.

[22] Nor is there any indication that the Society has failed to comply with any requirement in the *Act* or its *Regulations* with respect to the laying or serving of a complaint. Further, while the affidavit filed by the Society does not show the most determined effort to locate the applicant throughout the period since the laying of the complaint, I am not persuaded that the Society's delay in proceeding has been shown to be either inexcusable or so inordinately lengthy as to give rise to an inference of material prejudice.

[23] I cannot agree that the Discussion Paper assists the applicant's position. Its purpose as stated in its introduction is to present a brief overview of some key areas that new legislation governing the practice of law in this Province might cover, and to seek direction and input. The Discussion Paper does not purport to set out the position of the Society in respect of any of those areas. I cannot discern any suggestion in its examination of issues arising through the disciplinary process that the Society accepts that the jurisdiction of this court is not limited as set out earlier. Even if I could, it would be inappropriate to rely upon such a document in that regard.

[24] I would dismiss the application. There will be no order as to costs.

Oland, J.A.

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[1] The word “present” in the last sentence of ¶ 4 should be amended to read “presently.”