

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
NAVIN MEHTA		THE COLLEGE OF PHYSICIANS AND SURGEONS OF NOVA SCOTIA and INVESTIGATION COMMITTEE "A" (of THE COLLEGE OF PHYSICIANS AND SURGEONS OF NOVA SCOTIA)
(Appellant)	- and -	(Respondents)
CA 164272	Halifax, N.S.	CROMWELL, J.A. (Orally)

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**[Cite as: Mehta v. College of Physicians and  
Surgeons of Nova Scotia , 2000 NSCA 141]**

**APPEAL HEARD:** December 5, 2000

**JUDGMENT DELIVERED:** December 5, 2000

**WRITTEN RELEASE OF ORAL:** December 6, 2000

**SUBJECT:** Practice and Procedure - Application for Contempt - Costs -  
Imposition of Terms

**SUMMARY:** Dr. Mehta applied *ex parte* for leave to bring a contempt application against the College of Physicians and Surgeons and others. The basis of the application was that the College had exercised jurisdiction over him even though he had instituted proceedings against the College and further that representatives of the College had refused to produce documents and answer certain questions on discovery. No stay of the College proceedings had been granted and no judicial ruling on the issues of production of documents or the propriety of the questions had been made. Counsel for the College and the named individuals became aware of the application and were permitted to appear and file affidavit evidence. The Chambers judge held that it was proper for counsel for the respondents to appear and file material on what normally would be an *ex parte* application, that the application for leave to apply for a contempt order should be dismissed and that Dr. Mehta should pay costs and be prohibited from bringing further interlocutory applications in the action until the costs were paid. Dr. Mehta sought leave to appeal.

**ISSUES:** Did the Chambers judge err in principle or did his order give rise to an injustice?

RESULT:

Leave to appeal granted, the order amended as noted below, but in all other respects the appeal was dismissed. The Chambers judge did not err in the circumstances of allowing the respondents to participate and file material once they became aware of the *ex parte* application. The judge considered only whether leave should be granted and did not thereby convert the application into anything other than a leave application. On the merits of the application, the judge was right to find there was no arguable case for contempt disclosed in the material. Given that this low threshold was not met, it is not necessary to decide whether a higher threshold test ought to be applied.

As to costs, there were two previous costs orders in interlocutory applications against Dr. Mehta which remain unpaid. In these circumstances, and given the complete lack of merit of Dr. Mehta's application, the Chambers judge did not err in these circumstances in imposing the prohibition he did, although he ought to have permitted interlocutory applications to be made with leave of a judge of the Supreme Court. With that minor amendment to the judge's order, the appeal was, in all other respects, dismissed.

<p>This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 6 pages.</p>
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