

**BEFORE THE HONOURABLE JUSTICE HALLETT IN CHAMBERS**

HALLETT, J.A.: (in Chambers)

The respondents (the Blades' interests) have filed a notice of appeal from a decision and order of Justice Flinn of this Court (sitting as a Motions Judge) wherein he fixed the contents of an appeal book to be filed in connection with an appeal from a decision and order of Justice Gruchy of the Supreme Court of Nova Scotia in which Justice Gruchy dismissed the appellant (Skipper's) action against the respondents on the ground of Skipper's contempt of the Court's Order to produce certain documents. Other respondents support the Blades' motion.

The Blades' interests seek an order fixing a date for hearing the appeal from Justice Flinn's decision and an order to reschedule the hearing of the appeal from Justice Gruchy's decision; that appeal is scheduled to be heard on November 13th, 1996.

Skipper opposes the motion.

The respondents are of the opinion that Justice Flinn unduly restricted the contents of the appeal book. As a result, the respondents are concerned that the panel of judges hearing the appeal will not have a full picture of the material that was before Justice Gruchy. The appellant argues that the appeal book should include at least the written submissions of the parties to Justice Gruchy as the submissions contained facts relevant to Justice Gruchy's decision to dismiss the appellant's action; these facts do not appear on the record.

Mr. Peter M. Rogers, counsel for the appellant, was unable to appear to respond to Blades' motion as he was involved in another matter but his associate, Mr. Lloyd I. Berliner, appeared on his behalf.

In a letter dated September 24, 1996 to myself as Chambers judge, Mr. Rogers expressed the opinion that, what he refers to as "the appeal book appeal" is frivolous and vexatious. He would like an opportunity to determine the merits of

an application, that he has under consideration, to quash the appeal from Justice Flinn's decision and suggest that he would make such an application to Appeal Court Chambers on Thursday, October 10th, 1996.

### **Disposition of the Application**

There is a very real question whether an appeal lies to this Court from a decision of a member of this Court sitting as Chambers judge. Secondly, if there is such an appeal, there is a question as to the circumstances that should exist to warrant setting down such an appeal for hearing by a panel of the Court. Finally, there is a question whether a Chambers judge, rather than the Court, has the authority, under **Rule 62.18** to quash a notice of appeal.

These proceedings have been ongoing for 10 years. I will not reschedule the hearing of the appeal set for November 13th, 1996.

In view of the questions that I perceive arise as a result of the respondents' notice of appeal from Justice Flinn's decision fixing the contents of the appeal book and the Order made thereon, I will set the "appeal book appeal" down for hearing by the panel convened to hear the appeal scheduled on November 13th. The question should be decided by a panel of Judges of this Court rather than a Judge sitting in Chambers. These questions need to be put to rest.

The contents of the appeal book shall consist of the materials presented to Justice Flinn on the application, his decision and Order.

The appeal book shall be filed by October 11th, 1996, the factum of the respondents Blades by October 18th and Skipper's factum by October 25th, 1996.

I presume that the issues the appellant wishes to raise on a motion to quash the respondents' notice of appeal from Justice Flinn's Order can be addressed in responding to the appeal from that Order.

Counsel for all parties are directed to address the questions I have

mentioned in this decision as well as the merits, or lack of the same, of the "appeal book appeal". There will be no order for costs.

Hallett J.A.

NOVA SCOTIA COURT OF APPEAL

**BETWEEN:**

SKIPPER FISHERIES LIMITED,  
a body corporate

Appellant

- and -

WAYNE THORBOURNE, CLAUDETTE  
THORBOURNE, THOR SEINERS  
LIMITED, a body corporate, PHOENIX  
FISHERIES LIMITED, a body corporate,  
PAUL EDWARD BLADES, BRIAN  
ARTHUR BLADES, CLIFFORD V.  
GOREHAM, and S. CLIFFORD HOOD

Respondents

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