

CASE NO.

VOLUME

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Cite as: Fickes v. Lamey, 1997 NSCA 192

JACKSON W. FICKES

SAMUEL R. LAMEY,
ALLAN G. FERRIER and
ALLEN C. FOWNES

- and -

(Appellant)

(Respondents)

C.A. No. 140741

Halifax, N.S.

FLINN, J.A.

APPEAL HEARD:

December 5, 1997

JUDGMENT DELIVERED:

December 16, 1997

SUBJECT: Issue Estoppel

SUMMARY: In a claim against a lawyer for damages, arising out of alleged incorrect legal advice, the Chambers judge struck out portions of the appellant's claim on the basis that it had already been decided, in a prior proceeding, that the appellant had not relied on such legal advice. Without reliance, there is no claim.

ISSUE: Had the issue of reliance already been decided in a prior proceeding?

RESULT: Appeal allowed.

The Chambers judge erred in misinterpreting the decision in the prior proceeding. The issue of reliance was not decided in the prior proceeding so as to foreclose the appellant from raising it in this proceeding.

1. In the decision in the prior proceeding, the trial judge identified, by list, the issues before him. Reliance (or otherwise) on legal advice was not included.
2. A finding, in the prior proceeding, as to the appellant's conduct, so as to give rise to punitive damages, is not a finding that the appellant placed no reliance on his lawyer's advice.
3. A finding, with respect to the issue of reliance, was not fundamental to the decision arrived at in the prior proceeding (see **Angle v. M.N.R.**, [1975] 2 S.C.R. 248).

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