

NOVA SCOTIA COURT OF APPEAL

Cite as Ayres v. Nova Scotia Barristers' Society, 1995 NSCA 1

BETWEEN:

RAMEY AYRES

Applicant

- and -

NOVA SCOTIA BARRISTERS' SOCIETY FOR THE
PROVINCE OF NOVA SCOTIA, DARREL PINK, Executive
Director, KERRY OLIVER, Director of Discipline,
C. RICHARD COUGHLAN, Q.C., Chair, JOEL E. PINK, Vice,
BRIAN D. WILLISTON, Q.C., Vice, THOMAS O. BOYNE,
Q.C., DOUGLAS A. CALDWELL, Q.C., ERIC KIERANS,
SILVER DONALD CAMERON, MARJORIE HICKEY,
RAYMOND F. LARKIN, Q.C., ALEXANDER G.
MACDONALD, Q.C., JOSEPH A. MACDONELL,
BRIAN S. NORTON, Q.C., RONALD J. MACDONALD,
JOHN MCFARLANE, Q.C., GERALD R.P. MOIR, Q.C.,
W. BRIAN SMITH, KEVIN PATRIQUIN, HEATHER
ROBERTSON, and LARAIN SINGLER, Chairman and
Members respectively of the Discipline Subcommittee "A" for
the years 1993/94 and 1994/95 of the Barristers' Society
for the Province of Nova Scotia and JOHN T. RAFFERTY,
Q.C., the Investigator for the Discipline Subcommittee "A" of
the Barristers' Society of Nova Scotia

Respondents

) The Applicant
) appeared in person
)

) Thomas Burchell, Q.C.
) for the Respondents
)

) Application Heard:
) May 25, 1995
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) Decision Delivered:
) May 25, 1995
)

**BEFORE THE HONOURABLE JUSTICE J. DOANE HALLETT,
IN CHAMBERS**

HALLETT, J.A.: (orally, in Chambers)

This is an application by Ms. Ayres for

"an order pursuant to ss. 7 and 11 of the **Charter of Rights and Freedoms** and Rule 62.10 of the Civil Procedure Rules for a stay of the proceedings of the Nova Scotia Barristers' Society which are being reviewed on an appeal under Rule 56 of the Civil Procedure Rules and under s. 32(13) of the **Barristers and Solicitors Act**, R.S.N.S. 1989, Chap. 30, and the amendments thereto."

I have reviewed Ms. Ayres' affidavits of April 19, 1995, May 17, 1995 and May 25, 1995, and have reviewed Mr. Pink's affidavit. I have considered the arguments of Ms. Ayres and counsel for the Society.

Two lawyers, Mr. Leahey and Mr. Anderson, made complaints to the Society against Ms. Ayres. A subcommittee of the Society investigated the complaints as authorized by s. 32 of the **Barristers and Solicitors Act** and the Regulations made thereunder. On May 6, 1994 pursuant to Regulation 43(5)(d), the subcommittee instructed the Executive Director of the Society to file a formal complaint. The formal complaint, signed by Kerry Oliver, was filed September 2, 1994. On April 10, 1995 the Executive Director (Mr. Pink) advised Ms. Ayres that the formal complaint would be heard by a subcommittee on June 13 - 16, 1995.

With respect to the application before me, Rule 62.10 deals with stays of execution of judgments. That Rule is not applicable in these circumstances as there is no judgment to be stayed, there having been no formal termination of the complaints. The relevant legislation authorizing an application to this court for a stay of the complaint proceedings is s. 32(13) of the **Barristers and Solicitors Act** which provides:

(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.

The remedies that could be granted by the court under that provision would include a stay of proceedings. Pursuant to s. 32(13) a Chambers judge, in an emergency, can exercise jurisdiction under this section. The hearing of the formal complaint is scheduled for June 13. It is now May 25. It is appropriate to have heard the application.

Having considered the factual circumstances giving rise to this application and the provisions of s. 32(13), it is my opinion that this court has no jurisdiction to intervene as the investigation of the two complaints has been completed and as the formal complaint has not yet been heard, a resolution or order has not been made pursuant to s. 32 of the **Barristers and Solicitors Act**. Therefore, there is no basis for this court to intervene at this time.

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) following the adoption of a resolution of a subcommittee made under s-s. (2), (3), (9) and (10) of s. 32.

The application for a stay of the Society proceedings against Ms. Ayres on the formal complaint is dismissed. If Ms. Ayres wishes to set down the appeal from Justice Cacchione's decision refusing her relief claimed under Civil Procedure Rule 56, she may do so by making such an application. However before making the application, Ms. Ayres and counsel for the Society should attempt to agree on the contents of the appeal book.

The Society shall have its costs of this application, payable by Ms. Ayres, in the amount of \$500 plus disbursements.

J.A.