

NOVA SCOTIA COURT OF APPEAL
Citation: *Raymond v. Brauer*, 2012 NSCA 82

Date: 20120808
Docket: CA 375964
Registry: Halifax

Between:

Paulette Raymond

Appellant

v.

Connie Brauer

Respondent

Judge: The Honourable Justice Peter M. S. Bryson

Motion Heard: August 2, 2012, in Halifax, Nova Scotia, in Chambers

Held: Extension of time granted; motion for a “publication ban” and
“confidentiality order” dismissed with costs in the cause.

Counsel: Appellant, in person
Respondent, in person

Decision:

[1] Paulette Raymond brings motions to extend time and for “a confidentiality” order and publication ban which is similar to, if not identical with, a motion she brought earlier this year which was dismissed by Justice Fichaud (2012 NSCA 30).

[2] After hearing from the parties, I advised that I would provide them with a written decision. This is it.

[3] There is a lengthy history of acrimonious matrimonial litigation between Ms. Raymond and her former husband, Victor Harris. Ms. Brauer is Mr. Harris’ current partner.

[4] Ms. Raymond successfully obtained a “vexatious litigant” order against Mr. Harris, pursuant to s. 45B of the *Judicature Act*, R.S.N.S. 1989, c. 240, as amended (S.N.S. 2009, c. 17, s. 1). Ms. Raymond later moved before Justice Warner for a s. 45B order against Ms. Brauer. The motion was dismissed and Ms. Raymond’s appeal of that dismissal will be heard by a panel of this Court on November 29, 2012.

Motion to extend time:

[5] Ms. Raymond brings a motion to extend time to file her factum and the appeal book. Although Ms. Brauer opposed affording Ms. Raymond any extensions, I granted them because the appeal will not be heard until November 29th and there is ample time even with the extensions for Ms. Brauer to file her own factum and for the Court to be prepared for the appeal. Accordingly, the date for the filing of the appeal book is extended from July 31, 2012 to August 31, 2012. Ms. Raymond will have until September 13th to file her factum (extended from the earlier date of September 7th). For her part, an extension will be given to Ms. Brauer. She may now file her factum on October 19th (an extension from the original date of October 12th).

Publication Ban:

[6] At the opening of court, Ms. Raymond indicated that she wished to file a supplementary affidavit in support of her motion for a publication ban. She had only just served Ms. Brauer with that material.

[7] I provided Ms. Raymond with a choice; we could either adjourn for a week to allow Ms. Brauer to consider the additional materials and respond to them or Ms. Raymond could proceed, but she would have to withdraw her additional materials. Ms. Raymond expressed a strong preference to proceed and volunteered to withdraw her additional affidavit. The motion went forward on that basis.

[8] Ms. Raymond's Notice of Motion dated July 26, 2012 seeks the following relief:

The Appellant moves for an order of confidentiality, prohibiting the Respondent, Connie Brauer and her spouse Victor Harris from broadcasting or publicising anything with respect to me and the children of the marriage, one of whom, the youngest child although over the age of majority, remains a dependent person by reason of disability to withdraw from the charge of the custodial parent or obtain the necessities of life.

[9] I asked what conduct of Ms. Brauer's that Ms. Raymond was objecting to. Specifically, Ms. Raymond referred to alleged abuse of her by Ms. Brauer on the internet, much of it historical rather than of a current character. I specifically asked if Ms. Brauer had commenced any legal proceedings against Ms. Raymond since Justice Warner's decision. There are none but Ms. Raymond has, for her part, commenced an action against Ms. Brauer.

[10] Ms. Raymond also expressed concern that Ms. Brauer should be prevented from making any reference in any medium (ie., internet) to her adult son. She wanted a "publication ban" – really an injunction – against Ms. Brauer. Presumably, that ban would extend to internet service providers and others who "published" Ms. Brauer's comments. None of these potential third parties have been served with notice of Ms. Raymond's motion.

[11] Ms. Raymond was very familiar with the notification protocol contained in the Courts of Nova Scotia Website whereby the media are given notice of an opportunity to contest any motion restricting publication of court proceedings. Ms. Raymond acknowledged that the registrar of the Court had raised this with her but

she informed the registrar and the Court that these guidelines “did not apply” because of the *Charter* issues involved which somehow made notification under the protocol unnecessary. Whether or not *Charter* rights are involved in Ms. Raymond’s case, it does not relieve her of the obligation to provide notification to the media as required under the protocol. Even if I were inclined to grant a publication ban, I would not do so without notification to the media absent an emergency of some kind.

[12] Essentially, Ms. Raymond’s complaint is that she feels she has been defamed by Ms. Brauer primarily by means of the internet and wishes to prevent that from continuing. I explained to her that the Appeal Court is not a court of original jurisdiction and did not have the authority to grant injunctions unrelated to the appeal proceedings before the Court. Ms. Raymond confirmed that the action she had commenced in Supreme Court was in part to seek this kind of relief. Justice Fichaud also explained this to Ms. Raymond in his decision:

[16] In the proceeding under appeal, there was no claim before the Supreme Court judge whether Ms. Brauer committed a tort, such as defamation, intimidation, or invasion of privacy. So no such issue can be injected into the appeal. The Court of Appeal is not a tribunal of original jurisdiction to adjudicate a fresh cause of action that was not before the judge under appeal. A chambers judge of the Court of Appeal has no more original jurisdiction than does the Court of Appeal. As a chambers judge, my jurisdiction is limited to interlocutory matters that connect to the issues that are under appeal. I cannot issue a remedy for an alleged tort by Ms. Brauer that was not before the Supreme Court and is not appealed to the Court of Appeal. Yet that is effectively what Ms. Raymond’s motion seeks against Ms. Brauer.

...

[18] If the Court of Appeal allows the appeal and adds Ms. Brauer to the vexatious litigant order, according to s. 45B Ms. Brauer will be restrained from “starting” or “continuing to conduct” a “proceeding”. Nothing in s. 45B prescribes an injunction against dissemination of information to the media or use of the internet. The remedy that Ms. Raymond seeks in this motion against Ms. Brauer is outside the issues before the Court of Appeal, and outside my power as a motions judge of this Court.

...

[22] In summary, I have no substantive jurisdiction to grant the requested motion against Ms. Brauer. Without having given notice, Ms. Raymond has not followed the proper procedure to seek a confidentiality order against other parties, such as the media or internet providers.

[13] In conclusion, I have no jurisdiction to grant the relief requested by Ms. Raymond against Ms. Brauer. Nor is there any basis for granting a publication ban, even if proper notice had been given to the media.

[14] Ms. Raymond's motion is dismissed with costs in the cause,

Bryson, J.A.