

NOVA SCOTIA COURT OF APPEAL

Cite as: Roose v. Hollett, 1995 NSCA 235

BETWEEN:

GAIL BRENDA ROOSE

Applicant
(Respondent on
cross appeal)

- and -

DOUGLAS HOLLETT

Respondent

- and -

**THE ATTORNEY GENERAL OF
NOVA SCOTIA**

Respondent
(Applicant on
cross appeal)

) Edward T. Dunsworth
) for the Applicant

) Mr. Hollett was not represented

) Alison Scott
) for the Respondent
) (Appellant on cross appeal)

) Application Heard:
) December 14, 1995

) Decision Delivered:
) December 20, 1995

**BEFORE THE HONOURABLE JUSTICE RONALD N. PUGSLEY,
IN CHAMBERS**

PUGSLEY, J.A.: (in Chambers)

After a lengthy trial, Gail Roose was awarded, by decision of a Supreme Court Justice, on July 24, 1995, general damages of \$75,000 against the Crown, in negligence.

The Crown, pursuant to the award, paid Ms. Roose, in August, 1995, approximately \$90,000, including damages, interest, and costs.

A notice of appeal has been filed on behalf of Ms. Roose, seeking, *inter alia*, an award for lost income, an award for punitive damages, solicitor-client costs of trial, and a declaration that pre-judgment interest be awarded from 1976 rather than 1992.

The Crown has cross appealed, seeking that the trial judgment be reversed and that Ms. Roose be required to repay to the Minister of Finance all monies paid to her pursuant to the order of the trial judge.

This application is brought by Ms. Roose seeking an order pursuant to Civil Procedure Rule 62.14 to compel the Crown to pay to Ms. Roose one-half of the costs to be incurred by her for the preparation of the transcript of evidence for inclusion in the appeal book.

C.P.R. 62.14(1) provides:

Except in an interlocutory appeal or an appeal as to costs only or where otherwise ordered by a judge, the appellant shall, within sixty days from the filing of the notice of appeal,

- (a) file with the Registrar five copies of the appeal book for the use of the court; and
- (b) deliver to each respondent or his solicitor a copy of the appeal book.

In support of the application, Mr. Dunsworth has filed his affidavit deposing in part as follows:

- "2. That in the processing of this Appeal and on behalf of the Appellant, I have caused to be ordered a transcript of the trial proceedings.
3. That under the new regime recently implemented by the Registrar, court house staff no longer type transcripts for civil appeal matters.
4. That accordingly, I have had to make arrangements to have the transcript typed by a private firm, namely New Scotland Discoveries.
5. That I have been advised by Diane Burns of New Scotland Discoveries, and do verily believe that the transcript costs will be approximately \$5,000.00, . . .
6. . . .
7. That after I became aware of the Crown's cross appeal, I requested the respondent Crown through its attorney, Alison Scott to share in the costs of the preparation of the transcript, which request was denied.
8. That under the circumstances that present themselves, it is my belief that it would be equitable for the Crown to bear half the cost of the transcript and accordingly, I seek an order from this Honourable Court to that effect."

Both counsel acknowledged that there is no reported case in this jurisdiction or in any other jurisdiction which they have located, supporting the position advanced by Ms. Roose.

Counsel further advised that under the previous regime, Court House staff would charge for preparation of transcripts for civil appeal matters, but that their account would not be as high as that charged by private firms carrying out the same work.

Mr. Dunsworth refers to C.P.R. 62.01(a) which defines the word "appeal" to mean "an appeal to the Court and includes a cross appeal".

C.P.R. 62.01(b) defines appellant to mean "any person who files a notice of appeal".

He submits that the word "appellant" as it appears in C.P.R. 62.14(1) includes both Ms. Roose as well as the Crown as a consequence of the cross appeal that has been filed.

He further argues that the transcript of the trial evidence is required for the Crown to advance its cross appeal and on this basis that it is fair and equitable that the Crown share in the cost.

Without conceding that C.P.R. 62.14(1) is the appropriate provision for bringing the application, Ms. Scott advises that the practice in this jurisdiction has always required the appellant to pay for the costs of preparation of the appeal book.

There is no material before me to suggest that Ms. Roose is unable to pay for the transcript, or that her ability to prosecute her appeal will any way be affected by the cost incurred in preparing the appeal book. Indeed, the money paid by the Crown to her, in August, 1995, would indicate to the contrary.

I have not been supplied with any material that convinces me that I should exercise my discretion to depart from the usual practice of requiring the appellant to fund the cost of the appeal book.

The application is dismissed, but in view of the Crown's submissions, without costs.

J.A.

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