

NOVA SCOTIA COURT OF APPEAL
Citation: *Pottie v. Boudreau*, 2023 NSCA 40

Date: 20230602
Docket: CA 522272
Registry: Halifax

Between:

Adam Frederick Pottie

Appellant

v.

Charlene Ann Boudreau

Respondent

Judge: Bourgeois, J.A.

Motion Heard: May 24, 2023, in Halifax, Nova Scotia in Chambers

Held: Motion for filing accommodations and indemnity from costs dismissed

Counsel: Adam Frederick Pottie on his own behalf, with assistance
from Julissa Stewart
Charlene Ann Boudreau on her own behalf

Decision:

[1] Mr. Pottie and his former spouse, Charlene Ann Boudreau, have been involved in legal proceedings regarding their two sons. From the material filed in support of Mr. Pottie’s motion, there appears to be a high level of conflict between these parties.

[2] On March 17, 2023, Mr. Pottie filed a Notice of Appeal seeking to challenge two orders arising from an appearance on February 17, 2023 with Associate Chief Justice Lawrence O’Neil of the Supreme Court of Nova Scotia, Family Division. In brief, those two orders permitted Ms. Boudreau to travel internationally with the children, and to obtain passports or other travel documentation for the children without the necessity of Mr. Pottie’s consent.

[3] As is required by the *Civil Procedure Rules*, Mr. Pottie filed an Amended Certificate of Readiness on April 12, 2023, and advised the appeal book could be filed by April 26, 2023.

[4] The Motion for Date and Directions was eventually scheduled for May 24, 2023. In addition to scheduling the date for hearing and filing dates, Mr. Pottie brought a motion asking to be relieved from the “technical filing requirements” in relation to the appeal book as well as any additional costs associated with the appeal.

[5] After having heard from both parties, I reserved my decision in relation to the accommodations sought by Mr. Pottie. I advised that once decided, the matter would be scheduled for another chambers appearance to address the outstanding matters, including the setting of dates.

Analysis

[6] Civil Procedure Rule 90 governs civil appeals. This Court hears appeals from lower courts and tribunals. Litigants who come before this Court have already had their matter adjudicated. When an appellant chooses to bring a matter to this Court, they should understand and be prepared to meet the various obligations set out in the *Rules*. These obligations apply to appellants who are represented by legal counsel, as well as those who represent themselves. Meeting these obligations are important for the smooth and consistent administration of the

Court, the efficient hearing of appeals, and for all litigants to receive equal treatment from the Court. For some appellants the obligations can be onerous.

[7] Rule 90.30(1) provides:

- (1) An appellant must do both of the following unless a judge of the Court of Appeal permits otherwise:
 - (a) file five copies of the appeal book for the use of the Court of Appeal;
 - (b) deliver a copy of the appeal book to each respondent.

[8] Rule 90.30(3)(b) further directs that appeal books filed with the Court be bound using plastic coil binders.

[9] A party may make a motion to a chambers judge to abridge a requirement for the form or content of an appeal book (Rule 90.30(5)).

[10] Mr. Pottie seeks to be relieved from the costs associated with preparing the required number of appeal books. Specifically, he asks to prepare one original copy, and that he be allowed to use a photocopier at the Law Courts, without charge, to make the additional required copies. He also asks that the appeal books be placed in three ring binders, as opposed to the required coil binders.

[11] Mr. Pottie proposes that once copied, he will assemble the appeal books at the Law Courts and have them filed on the same day. He further asks that he be permitted to provide Ms. Boudreau with an electronic copy of the appeal book, as opposed to a paper copy. All of these requests are advanced because of Mr. Pottie's challenging financial circumstances. He says providing the appeal books in the amount and format required by the *Rules* is cost prohibitive.

[12] Due to his financial circumstances, Mr. Pottie also asks to be relieved from any other costs that may arise in pursuance of his appeal, including any costs that may be awarded to Ms. Boudreau in the event his appeal is dismissed.

[13] Ms. Boudreau submits no accommodation should be provided in relation to the preparation of the appeal book, and that Mr. Pottie should remain responsible for any costs incurred in pursuing the appeal, including potential cost awards. She asserts the appeal is not being brought in good faith by Mr. Pottie.

The Appeal Book

[14] Advancing an appeal can be costly and may pose a challenge to would-be appellants. Appellants often discover, after the filing of a notice of appeal, that the preparation of the appeal book in compliance with the *Rules* is a significant financial expense. It is not uncommon for appellants to request that requirements be waived to alleviate expense.

[15] The *Rules* noted above give a chambers judge discretion to relieve an appellant from the requirements relating to the form and content of an appeal book. As stated earlier, the requirements exist for good reasons. Granting relief is not automatic.

[16] In this instance, Mr. Pottie asks for accommodation due to his financial circumstances. Based on the evidence before me, I accept Mr. Pottie is experiencing financial difficulties and any added costs to his family at this time would be unwelcomed. However, in my view, an appellant's financial circumstances, although relevant, should not be the only factor to be considered.

[17] Mr. Pottie asks to make copies of the appeal book by using, without charge, a photocopier at the Law Courts. On occasion, requests are also made asking for court staff to make the necessary copies. Both situations, if permitted, alleviate the financial responsibility of an appellant and make it easier to advance an appeal, by having expenses contributed to from the public purse. In granting relief, it is important to keep in mind not only fairness to the appellant, but also fairness to the respondent, the public and the potential impacts on court administration.

[18] Depending on the circumstances, other relevant considerations may include:

- What is the cost of properly preparing the appeal book? Can the impact of the cost be mitigated by providing additional time for the appellant to prepare and file the appeal book?
- Does the accommodation sought result in a transfer of costs to a respondent? If so, what is the amount?
- How would the accommodation sought impact, if at all, on court resources, including staff time?

- Is the appeal meritorious? An appeal with strong grounds of appeal or an appeal with broader legal implications, may justify an accommodation.
- Is the appeal weak or brought in bad faith? The Court should guard against easing an appellant's obligations where doing so would facilitate the advancement of an unmeritorious appeal, or one with weak grounds.

[19] Based on the material before me, and the arguments advanced, I am not prepared to grant Mr. Pottie's request to be relieved from the requirements relating to the appeal book in this matter. Although he did provide evidence relating to his current financial difficulties, Mr. Pottie did not provide evidence with respect to the anticipated cost of preparing the appeal book, including the expense of binding. He says it will be substantial. I am unable to assess whether that is the case, or whether, with enough time, he could manage financially to have the appeal book prepared and filed as required.

[20] Although I accept Mr. Pottie is experiencing financial difficulties, I am not prepared to have public funds and resources expended on the advancement of his appeal without an understanding of those projected costs.

[21] Further, I am reluctant to direct the Law Courts administration to facilitate Mr. Pottie having access to a photocopier and area to assemble the appeal books. I am unaware of whether such a request could be accommodated, how long it would take, or whether it would prevent others from having access to needed resources. I note that Mr. Pottie may have been permitted to make copies of court materials at a different Justice Centre. However, what may be possible at one Justice Centre, in terms of space and resources, may not be easily implemented at another.

[22] Finally, I am not satisfied Mr. Pottie has demonstrated his appeal is clearly meritorious. The grounds include claims that ACJ O'Neil intentionally acted in a conflict of interest, was biased and granted "fictitious orders". Claims of judicial bias and impropriety are onerous to establish on appeal.

Protection from further costs

[23] On the evidence presented, I am not satisfied it would be appropriate to grant Mr. Pottie relief from costs that may be further incurred in relation to advancing his appeal. Mr. Pottie did not specify the nature of the costs he was seeking to be immunized from in his filed materials. On the basis of questions from the bench, it became clear he sought to be shielded from a costs award in favour of Ms. Boudreau in the event his appeal is dismissed.

[24] The risk of a potential award of costs serves an important function. It remains a reminder that appeals should be advanced in appropriate circumstances and in an appropriate manner. I am not prepared to inoculate Mr. Pottie against costs in the event his appeal is dismissed, or any others that may be awarded in advancing the appeal.

Disposition

[25] For the reasons above, Mr. Pottie's request to be relieved from the requirements in Rule 90.30 and to be shielded from further costs in these proceedings, is dismissed.

[26] I would ask the Registrar to place this matter back before the Court in chambers to complete the Motion for Date and Directions, including setting the date for the filing of the appeal book, and addressing the motion for fresh evidence.

Bourgeois, J.A.