

NOVA SCOTIA COURT OF APPEAL

Cite as: *Crandall v. Atlantic School of Theology*, 1993 NSCA 119

B E T W E E N:

ALLEN CRANDALL	) Robert Murrant, Q.C.
appellant	) for the appellant
)
- and -)
)
ATLANTIC SCHOOL OF THEOLOGY,	) Thomas J. Burchell, Q.C., and
a body corporate, PAMELA BISHOP	) Kevin C. MacDonald
and BRUCE PELLEGRIN	) for respondent, Atlantic
	) School of Theology
)
respondents	) Carman G. McCormick, Q.C., and
	) Roderick H. Rogers
	) for respondent
	) Bruce Pellegrin
)
)
	) Janice E. Beaton
	) for respondent
	) Pamela Bishop
)
	) Application Heard:
	) May 27, 1993
)
)
	) Judgment Delivered:
	) May 27, 1993

BEFORE THE HONOURABLE MR. JUSTICE M.C. JONES IN CHAMBERS

JONES, J.A.:

This is an application for an order for security of costs of appeal under s. 62.13 of the Civil

Procedure Rules. There are in fact three applications.

The appellant commenced an action against the respondents for defamation. The action was tried before a jury in accordance with the provisions of the **Judicature Act**. At the end of the plaintiff's case a motion was made for non suit. The motion was granted by the trial judge. In doing so he dealt at length with both issues of law and fact. I have reviewed a copy of his decision. The appellant has now appealed. Substantial costs were awarded against the appellant to each of the respondents. The appellant is not gainfully employed and does not dispute that he is not in a position to pay those costs for which judgment has been entered. Counsel have referred to the relevant decisions with respect to the exercising of a judge's discretion under Rule 62.13. In **Frost v. Herman**, 18 N.S.R. (2d) 167, Macdonald, J.A., stated at p. 171:

" Accepting the declaration of the solicitor for the appellant that he believes that the latter is not insolvent and is in a position to pay his just debts, the fact remains that he has not paid the costs taxed against him even though an execution order therefor has been issued. In my view, the following words of Bowen, L.J., in **Cowell v. Taylor** (1885), 31 C.D. 34 (C.A.), at p. 38, in referring to the position of an insolvent appellant are particularly apt:

'...there the appellant has had the benefit of a decision of one of Her Majesty's courts, and so an insolvent party is not excluded from the courts, but only prevented, if he cannot find security, from dragging his opponent from one court to another.'

" The appellant has acted in an insolvent manner toward the respondent and whether or not the former is in fact insolvent is not for me to decide. The respondent has reason to be apprehensive about the recovery of his costs."

The exercise of the discretion depends on all of the circumstances in each case. I have reviewed the material filed by counsel and, as I have noted, the decision. On a motion for a non suit it should be clear that there is no case for the defendants to meet. While it is regrettable that the respondents have to face further proceedings, on balance I do not think it would be just to the appellant to deny him his day in court simply because he cannot pay the costs at this stage. Having reviewed the grounds of appeal and the decision, I am satisfied that there are issues which should be reviewed by the court of appeal.

The motions are dismissed. Costs will be costs in the cause.

Jones, J.A.

C.A. 02837

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ALLEN CRANDALL

appellant

- and -

**ATLANTIC SCHOOL OF THEOLOGY, a body
corporate, PAMELA BISHOP and
BRUCE PELLEGRIN**

) **REASONS FOR**
)
) **JUDGMENT BY:**
)
) **JONES, J.A.**
)
) **IN CHAMBERS**
)

