NOVA SCOTIA COURT OF APPEAL

Citation: *Martin v. Hapi Feet Promotions Inc.*, 2005 NSCA83

Date: 20050511
Docket: CA 237290
Registry: Halifax

Between:

Barbara Martin and Grayec Management Incorporated

Appellants

v.

Hapi Feet Promotions Inc., Frank J. Leahy and
Dawn Penelope Attis, Executrix of the Estate of
Don Messer

Respondents

Judge:	Justice Linda Lee Oland
Appeal Heard:	March 29, 2005
Subject:	*Interim injunctions; undertaking for damages*
Summary:	The Chambers judge granted the respondents partial interlocutory injunctive relief. In doing so, he did not require them to give an undertaking in damages.
Issue:	Whether the Chambers judge erred by (a) not requiring an undertaking in damages, (b) in failing to find that the balance of convenience favoured the appellants, and (c) by issuing an order, the scope of which exceeded the scope of his written decision.
Result:	Appeal dismissed. It was the Chambers judge who raised the matter of an undertaking in damages. According to the record, the respondents neither refused nor declined to give one and the appellants did not press for one. While an undertaking in damages is usually required, here the Chambers did not fail to consider whether such an undertaking was appropriate, but decided not to order the respondents to provide one.

Alternatively, the appellants had not raised the matter of an undertaking before the Chambers judge and are seeking to raise a new issue on appeal.

The Chambers judge's determination as to the balance of convenience is not to be lightly disturbed. The court was not persuaded that there was reason to intervene with his interlocutory and discretionary decision. Assuming (without deciding) that an order which is broader than the decision is an error, the order here did not exceed the scope of the decision.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 11 pages.