IN THE SUPREME COURT OF NOVA SCOTIA
Citation: *Allen v. Royal Canadian Legion*, 2006 NSSC 292

Date: 20060803
Docket: SH No. 264961
Registry: Halifax

Between:

Donald Allen, a member of the Royal Canadian Legion and the branch thereof formerly chartered under the name "Scotia" Branch and a representative of a number of persons who are former members of the Scotia Branch, Royal Canadian Legion, Halifax, NS

Representative Plaintiff

v.

Nova Scotia - Nunavut Command, a Provincial Command of the Royal Canadian Legion

Defendant

Judge:	The Honourable Justice M. Heather Robertson
Heard:	August 3, 2006, in Halifax, Nova Scotia
Written Decision:	October 16, 2006 (**Orally:** August 3, 2006)
Counsel:	Allen C. Fownes, for the representative plaintiff David A. Cameron, for the defendant

Robertson, J.: (Orally)

[1] This has been a difficult time for the Scotia Branch Legion facing dissolution and revocation of its Charter. Legion members are an aging population and legions as we know are running into difficulty all across the Province in trying to maintain their membership and afford their premises. I have great sympathy for the active legion members who are presented with these challenges. In these circumstances the Provincial Command are required to make the hard decision to close a legion, revoke a Charter, and sell off the assets to meet the legion's financial commitments. That is indeed what transpired in this case. Mr. Allen and his colleagues are aggrieved members of the Scotia Branch Legion, unhappy with the decision, made from early October through December 2003 with respect to formal revocation of their Charter and subsequent sale of the Scotia Branch Legion property on Cogswell Street in Halifax. They question the use of which the proceeds of sale were put in helping build a new regional Legion Headquarters.

[2] They come to the court to resist the defendant's application to dismiss the action.

[3] The application to dismiss the plaintiffs' claim is based on the following grounds:

a. That the plaintiffs have failed to bring the action within 6 months of the decision complained of as required by *Civil Procedure Rule* 50.06 and

b. That the plaintiffs failed to avail themselves to the appeal process contained in the by-laws made pursuant to an *Act* to incorporate the Royal Canadian Legion.

[4] I find for the applicant in this matter and dismiss the plaintiffs' claim. The plaintiffs have failed to avail themselves of the appeal process contained in the Legion by-laws made pursuant to an *Act* to incorporate the Royal Canadian Legion and are out of time in making this application pursuant to *CPR.* 56.06.

[5] I find that the plaintiffs were informed of the proposed revocation of their Charter on October 17, 2003. The meeting of Scotia Branch Legion members was held specifically to consider the future of the Legion and revocation of its Charter.

[6] At that meeting the plaintiffs knew of the decision to revoke. It is not clear to me when Mr. Allen received a copy of the by-laws from colleagues in Ontario, however, he did acquire the by-laws which set out the appeal procedure.

[7] Section 314 (e) of the by-law specified that the decision to revoke can be appealed within 30 days of the notice of the decision. Read together with section 418, dealing with special powers of the president and the powers of the president and the Command to revoke or suspend a Charter, it is clear that an appeal procedure is laid out in Article 3. I agree, that upon a cursory reading of these sections, the appeal process deals largely with complaints made against members and discipline proceedings, but it is also intended, by the operation of section 418 (b), to apply to the extent applicable on an appeal of <u>any decision</u> of the Command.

> 418 (b) An appeal to Dominion Command may be made by any command, branch, auxiliary or officer affected by such action. The procedure for appeal set out in Article III of these by-laws shall apply to the extent applicable to such an appeal.

[8] Some three years have now passed since the Provincial Command decision was made and the plaintiffs now come to the court and are seeking remedies in the nature of *certiorari* and declaratory relief to revisit and reverse these decisions.

[9] Mr. Allen was not denied any right of appeal under the by-laws of the Royal Canadian Legion. He simply chose not to take that course of action and sought legal representation more than two years after the fact to seek a judicial remedy. In these circumstances the doctrine of laches does apply.

[10] I find there was adequate explanation of the process of revocation and the intention of sale of the assets of Scotia Branch to meet the outstanding obligations of the Branch .

[11] The provisions of the by-law not only provide for the appeal process but also the composition of the appeal committee to review the decisions made in late variety 2003. Appeals to the command level provide under section 314. j. for variety of remedies appropriate to the circumstances.:

> 314 j. The Appeal Committee may make any of the following decisions as appropriate:

1. where the appeal is against the decision and penalty:

(1) confirm the decision and penalty;

(2) confirm the decision but vary the penalty;

(3) reverse the decision and revoke any penalty imposed;

(4) where none of the above are appropriate, return the matter to the original level for a new hearing.

Mr. Allen did not take advantage of these processes that were available to him.

[12] The courts are traditionally reluctant to intervene where there is some internal appeal process available whether it be statutory process or one by constitution and by-law such as those of the Scotia Branch Legion and its Provincial Command.

[13] The remedy sought is an equitable remedy. The doctrine of laches does apply in these circumstances. It would impossible for this court to give redress or provide a remedy several years after the fact. After revocation the branch was sold. It no longer exists. Members are disbursed and the assets have been sold.

[14] I accept the case law city by Mr. Cameron and in particular adopt the approach taken by Justice Beetz in *Harelkin v. University of Regina* 1979 CarswellSask 79. Justice Beetz notes that the remedies of *mandamus* and *certiorari* are discretional remedies and an appellant should not assume that if they had taken appeal procedures available to them the decision to appeal would be a wasted exercise and a foregone conclusion.

[15] In *Harbourview Acres et al v. Rent Review Commission, et al (1983), 57 N.S.R. (2d) 347* MacKeigan, C.J. affirmed Justice Burchell's decision that the declaration sought was barred by the failure of the appellant to appeal to the court from the Commission's decision on the *Rent Review Act*. The Rent Review Commission is a government related body and I note that the distinction Mr. Fownes has made in respect to that, nevertheless the relief sought was found by Justice Burchell to be in fact a substitute for a *certiorari* proceeding. And even if it

were a suitable remedy he commented that no exceptional circumstances appear which would permit the appellant or the court to eschew the appeal remedy provided by the legislature. That is also the case in the circumstances of this case.

[16] There was an appeal process. Had it been followed, then the court could assume jurisdiction and review a decision of that body.

[17] It is inappropriate to come to the court years after the fact and ask for a remedy.

[18] Nor do I feel that there has been a breach of nature justice, including bias. The appeal procedure available to hear an appeal took bias out of the equation by ensuring there are 37 members of the council and it could allow the appointment of members who are not interested in the decision and could therefore provide for a fair review procedure.

[19] In these circumstances we are also not dealing with a contractual relationship where at a time limit of six years would apply.

[20] Accordingly, the application is dismissed.

Justice M. Heather Robertson