

SUPREME COURT OF NOVA SCOTIA

Citation: *Lappin v. Bauer*, 2015 NSSC 108

Date: 2015-04-09

Docket: *Syd.* No. 431635

Registry: Sydney

Between:

Jacqueline Lappin

Plaintiff/Applicant

v.

Colin Bauer and Patricia Curry-Bauer

Defendants/Respondents

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Judge: The Honourable Justice Frank Edwards

Heard: February 18, 2015, in Sydney, Nova Scotia

Final Written Submissions: March 6, 2015

Written Decision: April 9, 2015

Subject: Motion to have Respondents Counsel declared to be in a conflict.

Facts: The Applicant had retained the law firm of Sampson McDougall (SM) in 2010 to represent her in the purchase of the subject property. In 2013, the Respondents blocked what the Applicant thought was a driveway easement to her house. The Applicant spoke with Robert Sampson, Q.C. of SM who told her she had a good case for a prescriptive easement. Mr. Sampson undertook to send a cease and desist letter to the Respondents. He also undertook to and did speak to the predecessor in title. Three days later, another SM lawyer also told the Applicant she had a good case but that SM had a conflict and could not accept her retainer. The Applicant then retained a lawyer with the Breton Law

Group (BLG). Between October 2013 and May 2014, the Applicant and the Respondents attempted unsuccessfully to negotiate a settlement while both parties were represented by BLG. In May 2014, the Respondents retained Mr. Risk, a lawyer with SM.

Issues: Is SM in a conflict?

Result: SM deemed to be in a conflict. Duty of loyalty to former client and implications of 2013 interaction between Applicant and SM discussed.

Cases Noticed: *Johnson v. Rudolph*, 2013 NSSC 2010; *Bhandal v. Khalsa Diwan Society of Victoria* 2013 BCSC 1425; *MacDonald Estate v. Martin*, [1990] 3 SCR 1235 (SCC); *Descoteaux et al v. Mierzwinski*, 1982 CanLII 22 (SCC); *Brookville Carriers Flatbed GP Inc. v. Blackjack Transport Ltd.*, 2008 NSCA 22; *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39 (CanLII), [2013] S.C.J. No. 39.

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