Date: 20011002
Docket: S. H. No. 172528

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Nova Scotia College of Chiropractors v. Kohoot, 2001 NSSC 136

BETWEEN:

THE BOARD OF THE NOVA SCOTIA COLLEGE OF CHIROPRACTORS

PLAINTIFF

- and -

TIMOTHY KOHOOT and LAURA KOHOOT,
carrying on business as the Atlantic Spineology Centre

DEFENDANTS

D E C I S I O N

HEARD:	**at Halifax, Nova Scotia (in Chambers), before the Honourable Justice C. Richard Coughlan on August 30th, 2001**
DATE OF DECISION:	**September 18th, 2001 (Orally)**
RELEASE OF DECISION:	**October 2nd, 2001**
COUNSEL:	**Douglas B. Shatford, Q. C. and Carmen LeBlanc-Hewitt (articled clerk), for the Plaintiff** **David G. Barrett, for the Defendants**

COUGHLAN, J.: (Orally)

[1] This is an application by the Board of the Nova Scotia College of Chiropractors for an interlocutory injunction pursuant to Civil Procedure Rule 43.01 against Timothy Kohoot and Laura Kohoot.

THE LAW

[2] The test to be used on an application for an interim injunction was set out by Matthews, J.A. in giving the Court of Appeal's decision in **Gateway Realty Ltd. v. Arton Holdings Ltd. et al**. (1990), 96 N.S.R. (2d) 82 at p. 84:

> The authority to grant an injunction is derived from s. 39(2) of the **Judicature Act**, S.N.S. 1972, c. 2, which provides that an injunction may be granted by an interlocutory order of the Court "in all cases in which it appears to the Court to be just or convenient that such order should be made; ..."
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> Prior to **American Cyanamid v. Ethicon Ltd.**, [1975] 1 All E.R. 504, courts generally considered that an applicant for interlocutory injunctive relief had to establish a threshold test that a prima facie case had been made out. However, Lord Diplock there held that at this first step it was only necessary that the applicant satisfy the court that there was a serious issue to be tried.
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> The trial division of this Court considered **American Cyanamid** and the tests to be applied on such an application in three previous cases: **McFetridge v. Nova Scotia Barristers' Society** (1981), 48 N.S.R. (2d) 323; 92 A.P.R. 323; **Lintaman et al. v. Goodman et al.** (1982), 54 N.S.R. (2d) 320; 112 A.P.R. 320; and **Kelly's Stereo Mart (Atlantic) Ltd. v. Schneider Enterprises Limited et al.** (1986), 72 N.S.R. (2d) 56; 173 A.P.R. 56.
>
> Counsel for both parties agree that the tests therein set out should be applied here. Generally speaking, the courts in those three cases stated that there is no firm or fixed rule, but rather the tendency is for the court to apply a test which is likely to produce a just result.

[3] Therefore, in an application for interim injunction, the applicant must satisfy the Court that there is a serious issue to be tried, that granting the injunction is likely to produce a just result. In doing so, the Court must consider the impact granting the injunction will have on the various parties, a weighing of the balance of convenience to the parties, to inquire as to the nature of the injury which the defendant will suffer if the injunction is granted and

ultimately wins the case, as well as that which the plaintiff might suffer if the injunction were refused and the defendant should be successful in the end. The applicant must show that such balance of convenience, or inconvenience, is in his or her favour.

[4] The first question for the Court to answer is whether there is a serious issue to be tried. I find there is.

[5] Timothy Kohoot established the Atlantic Spineology Centre on May 25, 2000. He described the nature of its business as "Nervous System Specialist". In his professional correspondence, Mr. Kohoot uses the designation "D.C." or Doctor of Chiropractic. He advertised for an associate or partnership position on the Planet Chiropractic web site and included the following in his ad:

> **Additional information**
>
> Associate or Partnership position available. Are you "ultra" principled, courageous and want to be a part of chiropractic history? Practice the pure principles the Palmer's (and others) created the chiropractic profession with. No licenses required, no exams and no corrupt boards or associations. Position available on the Canadian east coast. U.S. or Canadian applicants accepted. Must have experience with tonal correction techniques. Contact spineology@mac.com for more information.

[6] An interview on the "Breakfast Television" television show included the following exchange:

> Scott: Now Tim, spineology as we found out is at the upper end of the specialty within the Chiropractic field.
>
> Tim: Right.
>
> Scott: You are a full chiropractor and offer all the services. Where are you located and there is an open house coming up, correct?
>
> Tim: Right. We are located at the Sunnyside Mall, Suite 220 and um, we also have a web site atlanticspineology.com and that will a lot of people more

> information on our field of specialty and our open house is tomorrow evening and they can call us at 832-4456.....

[7] A brochure produced by the Atlantic Spineology Centre sets out, it performs the "Blair Technique Correction" - a chiropractic technique.

[8] I am not to consider the merits of the case any more than necessary to determine if there is a serious issue to be tried. Considering all of the evidence, there is no doubt a serious issue to be tried.

[9] Having decided there is a serious issue to be tried, I have to determine whether the balance of convenience is to grant or refuse the interlocutory injunction. In **Bird (J.W.) and Co. Ltd. v. Levesque et al.** (1988), 82 N.S.R. 435, Davison, J., dealing with the question of weighing the balance of convenience, stated at p. 441:

> In any event, it is my view that one of the most important factors in determining whether an injunction is "just and convenient" is the weighing of the balance of convenience. When I consider the evidence of Mr. Bird that the alleged action of the defendant "may well have caused damage" to the plaintiff in contrast to that of Mr. Levesque wherein he attests that an injunction would "effectively shut down" his business resulting in irreparable damage, I have no difficulty in finding that the balance of convenience strongly favors refusal of the injunction.

[10] It is indeed a serious consequence of granting an interim injunction here that the Atlantic Spineology Centre will cease its operations. In this case, however, there is a consideration which was not before Justice Davison in the **Bird (J.W.) and Co.** case. This application is being brought by the Board of the Nova Scotia College of Chiropractors which is established pursuant to the **Chiropractic Act**.

[11] The Board is authorized to do a number of things set out in the **Act**, including any matter necessary or advisable to carry out effectively the intent and purposes of the **Act**. The **Act** also establishes the Nova Scotia Chiropractic Association which has as its objects to: (a) promote and improve the proficiency of chiropractors in all matters relating to the practice of chiropractic; (b) protect the public from untrained and unqualified persons acting as chiropractors; and (c) advance chiropractic.

[12] The Board and the Association have the statutory duty to protect the public in matters relating to the practice of chiropractic. The matter of the protection of the public was addressed by Roscoe, J. (as she then was) in **Shackleton v. Nova Scotia Board of Examiners in Psychology** (1991),

103 N.S.R. (2d) 426 at p. 429, a case dealing with an application for a stay, as follows:

> That case has not been reported yet either but it is the case of **New Brunswick Broadcasting Co. and Canadian Broadcasting Corp. v. Speaker of the House of Assembly (N.S.) et al.**
>
> In any event, in that case Justice Jones refers to the case of **Metropolitan Stores (MTS) Ltd. et al. v. Manitoba Food and Commercial Workers, Local 832 and Labour Board (Man.),** [1987] 1 S.C.R. 110; 73 N.R. 341; 46 Man. R. (2d) 241, where, in quoting from another case (in any event, on p. 2 of the **Donohoe** decision) he is saying:
>
> > "... the judge assumed that the grant of the injunction would not cause any damage to the appellants. This was wrong. When a public authority is prevented from exercising its statutory powers, it can be said, in a case like the present one, that the public interest, of which that authority is the guardian, suffers irreparable harm ..."
>
> And goes on to refer to an English case (that is Beetz, J.) **Smith v. Inner London Education Authority**, [1978] 1 All E.R. 411:
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> > "He [the motion judge] only considered the balance of convenience as between the plaintiffs and the authority, but I think counsel for the authority is right in saying that where the defendant is a public authority performing duties to the public one must look at the balance of convenience more widely, and take into account the interests of the public in general to whom these duties are owed..."

[13] The Chair of the Board of the College became aware of Mr. Kohoot's activities in October, 2000. An Information charging Mr. Kohoot with practicing chiropractic without a licence was laid. Mr. Kohoot received a summons dated January 18, 2001 to appear in Provincial Court. A plea of not guilty was entered and the matter is set for trial December 6, 2001.

[14] The Board commenced action for an interim and permanent injunction on July 5, 2001. The delay in the Board bringing the action for injunctive relief weighs against there being urgency in the need for an interlocutory injunction.

[15] However, on balancing the foregoing, I considered the following: the nature of the activities being carried on - dealing with the human spine, the possibility of someone suffering injury, the fact Mr. Kohoot does not have

liability insurance, the public interest the Association and Board are statutorily obliged to protect.

[16] Considering all of the evidence, I find the balance of convenience is in favour of the interlocutory injunction being granted and I grant the application.Costs will be in the cause.

C. Richard Coughlan, J.