

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Renick v. Steeves, 2008 NSSC 106

Date: 20080310

Docket: SH 274038

Registry: Halifax

Between:

John Renick and Tracie Renick

Plaintiffs

and

Brian Steeves and Atlantic Rentals Ltd.

Defendants

Judge: Chief Justice Joseph P. Kennedy

Heard: February 26th, 2008 in Halifax, Nova Scotia

Oral Decision: March 10th, 2008

**Written Release
of Decision:** September 16th, 2008

Counsel: Mark V. Rieksts, on behalf of the applicant Attorney General
Glenn Jones, on behalf of the respondents Renick
Joey Palov, on behalf of the respondents Steeves and Atlantic
Rentals Ltd.

By the Court:

[1] This is for oral decision, this is *Renick v. Steeves and Atlantic Rentals Ltd.* An application was brought before me as a chambers judge by the Attorney General seeking to have constitutional issues in this matter stayed. The case involves a motor vehicle accident which occurred November 19th, 2003. The plaintiffs claim that they were injured in that accident and have brought this action against the defendant driver Steeves and his employer Atlantic Rentals Ltd. The defendants deny the claim and furthermore have pleaded the “minor injury” provision of the *Insurance Act*, R.S.N.S. 1989, c. 321, the tort cap legislation. As a result the plaintiffs have filed a notice of constitutional question pursuant to s. 10 of the *Constitutional Questions Act*, R.S.N.S. 1989, c. 89. The plaintiffs indicate that they intend to challenge the constitutional validity of the provisions of the *Insurance Act* that the defendants are relying on. That notice has brought the Attorney General into this matter, and the Attorney General is the applicant in relation to the specific application that is before me.

[2] October 16th, 2007, the Attorney General applied for an order staying the constitutional issues in this case and compelling the matter to be case managed. Justice Murphy issued an order dated December 5th, 2007, which order I will make reference to subsequently.

[3] The application for a stay was motivated by the *Hartling* case, October 6th, 2005. An action was started *Hartling v. Nova Scotia (Attorney General)* SH 236705 which likewise challenges the constitutionality of the motor vehicle insurance tort cap law. The Insurance Bureau of Canada was given permission to intervene in the *Hartling* matter. Since the commencement of this case there has been, the Attorney General tells me, 34 additional notices received, raising virtually the same constitutional issues as are the subject of this application.

[4] The Attorney General wants to address this constitutional issue on Renick by taking one case to finality as a ‘test case’, and to have the result available when the court is determining this matter. This court has ordered that the constitutional issue in eight cases be placed under court management. All eight have raised the constitutional issues prior to this matter. I am told by counsel that in six of those cases they have consented to a stay pending the disposition of *Hartling*. The defence in this matter has informed the Attorney General that they do not consent to a stay of the constitutional issues in this case. The Attorney General brought the application for case management and stay of the constitutional issues which was heard by Murphy, J. and which resulted in his decision of December 6th, 2007. Justice Murphy directed

that this matter, the Renick matter, also be case managed and granted a limited stay, ordering that no party take any steps to set down or move to trial the constitutional issues for 90 days following the date of that hearing, that hearing again being October 16th, 2007. Justice Murphy's order provided that any party could apply to extend the 90 day period or obtain a broader stay.

[5] The Attorney General now has filed this second application December 7th, 2007, seeking the broader stay of the constitutional issues raised in Renick, or in the alternative, an extension of the 90 day delay period ordered by Justice Murphy.

[6] The stay requested by this application has subsequently been expanded by the Attorney General to include delay until the disposition of not only the *Hartling* case, but also the subsequent *John Alex McKinnon and Saquoia McKinnon, an infant by her Litigation Guardian, Kathryn Jean McKinnon v. Adam Thomas Roy*, S.P. No. 217706 case because *McKinnon* includes the issue of age discrimination not raised in *Hartling*, apparently it was raised in *Hartling*, but subsequently it was abandoned but age discrimination is a part of the application in *McKinnon*, it is one of the constitutional issues before this court, so the Attorney General wants this stay application to relate not only to the *Hartling* decision, but also to the *McKinnon*

decision and in fact, both *Hartling* and *McKinnon*, are now being dealt with simultaneously.

[7] If I can formally state what the Attorney General is seeking, it is the granting of a stay of the constitutional issues in this matter, including the issue of *ultra vires* regulations, subject to any further order pending resolution of *Hartling* and the constitutional issues in the matter of *McKinnon* both matters scheduled to be heard together between October 6th and 24th, 2008.

[8] Alternatively, the Attorney General is seeking an extension for a further period, such time as this court considers just to the determination made by Justice Murphy on October 16th, 2007, an order that no party is to take any step within 90 days following the court's decision on October 16th, 2007, to set down or move for trial the constitutional issues in this case, the Renick case.

[9] Let me make reference to a couple issues. First, the authority of this court, I agree with Justice Murphy's conclusion that this court has the power to grant a stay, or similar order, directing how this matter should proceed. In so concluding Justice Murphy cited the *Judicature Act*, R.S.N.S. 1989, c. 240 this is paragraph 14 of this

decision, he cited the *Judicature Act*, the *Civil Procedure Rules* and the inherent jurisdiction of this court as canvassed in *37 Halsbury's Laws of England, 4th Ed. Practice and Procedure* at p. 20, para. 12 and by Master I. H. Jacob, in the text *The Inherent Jurisdiction of the Court in Current Legal Problems*, 1970, at paras. 23-52. It was Justice Murphy's conclusion that, "The court could grant either a complete or partial stay." Has the power to do that, yes it does. Not seriously questioned. I'd say something further, the applicant has the onus and it is a significant onus, you are asking something as dramatic as a stay, an intervention to prevent a party from moving their case forward, it is a dramatic intervention on the part of the court, so yes, there is a significant onus. Leading case is *Global Petroleum Corp. v. C.B.I. Industries Inc.*, [1997] N.S.J. No. 60, C.A. In that case, the Court of Appeal indicated that the power to grant a stay was a significant one and should not be granted lightly. The Attorney General faces a heavy burden. The Court of Appeal in that case noted paras. 15 and 16, the words quoted by Cullen, J. in *Mon-Oil Limited v. Canada* (1989), 27 F.T.R. 50 at p. 51:

"The law is quite clear and best stated by Muldoon, J., in *Fruit of the Loom Inc. v. Chateau Lingerie Mfg. Co. Ltd.* (1984), 79 C.P.R. (2d) 274, at page 278:

'a genuine onus rests on the application seeking to interfere with the plaintiff's right to pursue a lawful cause of action. Such applicant

must persuade the court that continuing the action would be an abuse of process in which the applicant would somehow be prejudiced and not merely inconvenienced.’ ”

[10] Certainly applies just as surely to a defendant as to a plaintiff.

[11] Secondly the emphasis in relation to Global Petroleum was abuse of process. Nobody is talking about abuse of process in this matter, but the power to stay is not limited to cases where abuse of process is evident. Justice Moir of this Court in *Canada (Attorney General) v. Marineserve.MG Inc.*, [2003] N.S.S.C. 26, Justice Moir states at para. 6:

“I find it helpful to think of the stay as a remedy and to allow that there are diverse circumstances in which the discretion might be exercised. It is the expected response to an abuse of process. However, a stay of proceedings may respond to circumstances that do not amount to abuse.”

[12] He goes on to say at para. 7:

“The power to stay proceedings is ancient and it is closely connected to the inherent jurisdiction of the Court to control its own processes. I do not read the authorities to which counsel referred to me as having restricted the exercise of the power to cases of abuse of process. The power is to be approached with great caution. Its use is exceptional. A case for its use must be clearly established.”

[13] All of which I’ve said before.

[14] Justice Moir cited two cases, goes on to say, paragraph 8:

“However what is important for the moment is that he did not rest this stay upon finding of abuse, indeed the stated facts are against it. ”

[15] This is Justice Moir referring to the decision *Borat Sweden AB v. NYA Stromer AB* (1988), 41 D.L.R. 295, decision of the Ontario Superior Court, speaking of the justice in that case when he says:

“However what is important for the moment is that he did not rest this stay upon a finding of abuse. Indeed, the stated facts are against it. Rather, this is an example of a case where a temporary stay was granted to achieve procedural fairness and efficiency.”

[16] Not abuse of process, procedural fairness and efficiency. I agree with Justice Moir that this is also a proper motivator, a proper reason for a stay, all part and parcel of the court controlling its process, exercising its inherent jurisdiction to do so. It is this fairness and efficiency that the Attorney General is asking this Court to consider in an effort to satisfy the onus herein. So nobody’s talking about abuse of process here. Talking about fairness and efficiency and the question is whether by that criteria that the Attorney General has satisfied the onus.

[17] The Court does have the authority, the onus is significant. What the Attorney General submits in attempting to satisfy that onus is this, that a stay of the constitutional issues in this case, pending disposition of essentially duplicative and/or overlapping issues in *Hartling* and *McKinnon, supra*, is the most efficient and practical way to facilitate determination of the outstanding constitutional challenges to the motor vehicle tort cap laws and avoid unnecessary duplication and inefficiency in the courts and possibly conflicting decisions.

[18] The Attorney General says that it is just and reasonable that the constitutional issues in this, the Renick case, be stayed pending disposition of those test cases. That this is the just and reasonable thing to do. The Attorney General says there is no significant prejudice to the defendants if the stay is granted, but there would be significant prejudice to the efficient administration of the courts and its process if the stay is not granted. Also some prejudice to the plaintiff perhaps.

[19] Multiple cases challenging the constitutionality are as indicated proceeding through this Court. Stay of the constitutional issues in these cases pending disposition of the two test cases is the procedural framework that the Attorney General is

attempting to have put in place to facilitate the effective, efficient and timely disposition in the courts of this duplicative and overlapping issues raised in these numerous cases. That plan, that procedural framework is designed to avoid duplication of evidence, evidence including expert evidence, evidence on the purpose, history and development of the challenged laws. Legal argument, court time, multiple possible conflicting rulings, overlapping issues, those are the aspects of these mini matters that the Attorney General wants to deal with effectively and efficiently.

[20] The Attorney General says that he does not have objection to the personal injury actions proceeding in the normal course while the constitutional issues are temporarily stayed, should this procedure prove practical. That is as I understand it, what Justice Murphy anticipated through the case managing process, the non constitutional issues can go forward. It is the constitutional issues only that are subject of his limited stay. Again the Attorney General in trying to address the onus, says that there is no discernable prejudice to the defendants having the constitutional issues raised in this case, in *Renick*, determined in the context of *Hartling* and *McKinnon, supra*. Points out that those cases are much closer to determination, the constitutional issues, than is this case, and are expected to be determinative of most, possibly all, of the constitutional issues in this matter.

[21] Well, some stuff going on in Alberta and New Brunswick as well, it may have something to do with that. The plaintiffs have indicated that they do not wish to proceed with determination of the constitutional issues at this time. They agree with the Attorney General's application. The plaintiffs are happy to await the determination, disposition in *Hartling* and *McKinnon*, *supra*, before deciding whether to pursue the constitutional issues that they have raised in *Renick*. They want to know what the court is saying in *Hartling* and *McKinnon* so that they can assess the situation.

[22] The plaintiffs suggest that the outcome in those test cases will determine how they proceed to trial. Going to have an effect on them. How they proceed to trial.

[23] The defendants, as indicated, oppose this application. The respondents/defendants submit that there is a better approach, that is to allow the defendants to file a notice of trial, to set the matter down for trial, now. Why can't they do it now, they say, on all of the issues including constitutional, setting it down for trial now with the proviso that the trial dates that would be obtained will be following the last day of the *Hartling* and *McKinnon* hearing matters of which matters begin October 24th, 2008.

So that the trial dates they get will be after those decisions, after those matters are heard at any rate, say the defendants. In the meantime it allows us to continue the process of getting this matter ready for trial in all respects. This would, the defendants suggest, strike an appropriate balance between the Attorney General's interest in having the *Hartling* decision on the constitutional issues made before this trial and the defendants' interest in getting the matter tried in an expeditious and reasonable manner.

[24] The accident happened in 2003. They want to get this matter tried. Let's get to trial, why can't we get our dates, why can't we, pending the decision of *Hartling* and *McKinnon* go through the processes that will allow us to get to trial as soon as possible.

[25] The Attorney General in response opposes that approach. Responds that the defendants' position does not answer all of the fundamental arguments supporting the Attorney General's application in this stay application. Efficient operation of the court in the face of duplicative proceedings involving extensive and I repeat duplication of evidence, legal argument etc. etc., possible conflicting decisions of the court. Already, same overlapping issues are proceeding to determination, the

defendants' position also effectively undermines the test case framework of the Attorney General in attempting to put in place 45 constitutional cases, now 45. The Attorney General does not want to get involved in preparing and proceeding on the constitutional issues in this matter. Does not want to get involved in that at this stage, they want those decisions and other test cases before they do anything on a constitutional and of course that is their only interest in these matters, from a constitutional perspective in Renick or any of these other cases.

[26] The defendants' proposal with respect, says the Attorney General, is not, as they suggest an appropriate balance of interest, between the Attorney General's wish to participate in this litigation pursuant to the provisions of the *Constitutional Questions Act*, and the parties to the litigation. Not an appropriate balance between the Attorney General and the parties. All it would appear to accomplish is delay in the hearing of the constitutional issues in the Renick case. In fact, the defendants themselves admit they probably could not even get a date before the hearing date already scheduled for the test cases, so in that respect, it does not appear that the defendants' position does anything other than request that the court deny the Attorney General's application for stay. None of the duplication of the test cases would be avoided, nor would the possibility of conflicting decision of the court. It is not an

appropriate balance, it's an attempt to distinguish this case from the other cases and upset the Attorney General's apple cart in relation to how they wish to proceed in relation to constitutional issues.

[27] I find that I agree with the Attorney General's assessment. Two factors are principle to my finding. Firstly, I agree with the Attorney General's plan to deal with the constitutional issues in this case, *Renick*, and many other cases that are raising the same constitutional issues before this Court. I generally agree with the plan. I think it is the only reasonable way to go, as did Justice Murphy before me. Quoting from paragraph 13 of his decision:

“I agree with the principle advanced by the Attorney General and the plaintiff that a test case would go forward in the context of the constitutional issues which are developing in this case, the *Hartling* case, and others which have been made subject to case management. I am satisfied, based on what is before me, given the number of claims and the complexity of the constitutional issue which will arise and be repeated in each case, that it is appropriate to advance the test case. Based on what is known to me at this time, it would not be in the interest of the administration of justice to move each case forward separately. They involve different parties and different facts, but all arise from a common fact situation to the extent at least that they involve motor vehicle accidents. At issue in each case will be the constitutionality of a single piece of legislation.”

[28] I adopt Justice Murphy's assessment. I conclude that the Attorney General has in totality satisfied the onus to stay to the extent that what they propose addresses

procedural fairness and efficiency. I agree that the stay process fosters procedural, fairness and efficiency which is one of the reasons that stays can be accomplished.

[29] Secondly, I accept that Justice Murphy intended that all activity on the constitutional issues, any action to move toward trial on the constitutional issues, cease during the period of his directed stay and conclude on the totality of the information before me that his directive should be continued. The best process to do that is in the form of a continued limited stay that would allow for the case management process to move forward, subject always to the decisions of the case management judge who will be in a better position to assess the situation, from time to time, and determine the proper course as the matter proceeds.

[30] I therefore direct that the order made by Murphy, J. on October 16th, 2007, that no party is to take any steps to set down or move for trial of the constitutional issues in this case, be continued until the date of the decisions in the test cases *Hartling v. Nova Scotia* and *McKinnon v. Roy Limited* stay will continue until the date of the decisions in the test cases. This order does not limit or affect any aspect of this proceeding which does not involve constitutional issues. I repeat, I direct that the order made by Murphy, J. On October 16th, 2007, that no party is to take any steps to

set down or move for trial of the constitutional issues in this case, be continued until the date of the decisions in the test cases *Hartling v. Nova Scotia* and *McKinnon v. Roy*. This order does not limit or affect any aspect of this proceeding which does not involve constitutional issue. Thank you counsel.

Chief Justice Joseph P. Kennedy