

Case No.
Cite as: Fickes v. Lamey, 1999 NSSC 97

Vol. No.

JACKSON W. FICKES

PLAINTIFF

-and-

**SAMUEL R. LAMEY, ALAN G. FERRIER
and ALLEN C. FOWNES**

DEFENDANTS

Justice Walter R.E. Goodfellow Halifax, Nova Scotia File No. S.BW. No. 3705

LIBRARY HEADING

DATE HEARD: **February 24, 1999**

**WRITTEN
DECISION:** **March 10, 1999**

SUBJECT: **JUDICATURE ACT - Right to Jury Trial**

SUMMARY: Fickes engaged Lamey, a Barrister and allegedly sought legal advice as to whether or not he could use part of a right-of-way contained in his Deed that did not touch his property for a helicopter pad and to remove trees, etcetera, to facilitate access by helicopter. In preparation for trial, it was apparently determined Mr. Lamey would become a witness and Fickes engaged the firm of Ferrier & Fownes, Barristers. Owner of land said to have warned Fickes if he went ahead, he would be sued and in any event, Fickes was sued and at trial the owners recovered damages against Fickes of \$32,032.69 plus costs of \$7,500.

Fickes sues Barristers' alleging wrong advice, failure to advise properly, failure to conduct the trial properly, failure to handle evidentiary matters appropriately and alleges negligence and

breach of contract, seeking recovery of his loss plus solicitor and client legal fees and disbursements and damages.

Barristers' move to strike jury notice, reference **Cameron et al v. Excelsior Life Insurance Co.** (1978), 27 N.S.R. (2d) 218. *Prima facie* entitlement to a jury trial and a justice must give substantial cogent reasons to exercise discretion depriving a party of *prima facie* entitlement. Review of argument and determination of several factual issues that can be dealt with by a jury and legal issues easily separated so that the jury can be instructed in the law based upon the juries factual findings. Two experts reports appear to address only the question whether or not previous trial conclusion should be appealed. Reminder this action is not an appeal process but an action founded on negligence and contract and although it may require some care in charging the jury, it was not sufficient reason to deprive the Plaintiff of his *prima facie* entitlement to a jury trial. Facts and issues in this case are no more complex than in most medical malpractice suits and application to strike jury notice dismissed.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS COVER SHEET.