

SUPREME COURT OF NOVA SCOTIA
Citation: Saunders v. Patterson Law, 2014 NSSC 242

Date: 20140708
Docket: Amh No.: 420816
SCT No.: 393840
Registry: Amherst

Between:

David Stephen Saunders

Applicant

v.

Patterson Law, Lloyd Berliner

Respondents

Judge: The Honourable Justice Glen G. McDougall

Heard: May 30, 2014, in Amherst, Nova Scotia

Counsel: David Stephen Saunders, on his own behalf
Sandra McCulloch, for the Respondent Patterson Law
Stacy Gerrard, for the Respondent Lloyd Berliner

By the Court:

[1] This pertains to an appeal of a decision of Small Claims Court Adjudicator, William M. Wilson, Q.C., issued on the 11th day of July, 2013.

BACKGROUND

[2] On May 31, 2012 Patterson Law filed a Notice of Claim to recover outstanding legal fees and disbursements for services rendered to Dr. David Saunders.

[3] Dr. Saunders had retained the services of Mr. Lloyd Berliner, a partner at Patterson Law, to represent him in a divorce proceeding. Mr. Berliner was retained after Dr. Saunders dismissed his first lawyer for allegedly failing to properly represent him in proceedings commenced by his wife in Nova Scotia Family Court.

[4] Mr. Berliner acted for Dr. Saunders first in Nova Scotia Family Court and then at trial in the Supreme Court of Nova Scotia and finally on appeal to the Nova Scotia Court of Appeal. Mr. Berliner also offered advice to Dr. Saunders regarding the very limited chance of succeeding with an application for leave to appeal to the Supreme Court of Canada.

[5] Dr. Saunders was presented with a number of interim accounts from Patterson Law during the course of these proceedings. These were all paid with the exception of the final two accounts rendered by the law firm. They dealt mainly with the preparation for, and representation of, Dr. Saunders at the Court of Appeal.

[6] Dr. Saunders did have some success on appeal. His spousal support payments were reduced and the formula for determining the Canadian dollar equivalent of his annual income earned in the United States of America was modified to provide for a review every second year starting September 1, 2012. That determination would be based on the average exchange rate over the 24 month period preceding August 1st.

[7] The various other grounds of appeal raised by Mr. Berliner, on behalf of Dr. Saunders, were dismissed by the Court of Appeal in a written decision from the Honourable Justice David P.S. Farrar with Fichaud and Bryson, J.J.A. concurring.

[8] Dr. Saunders' failure to achieve success on certain issues at the Supreme Court level and again at the Court of Appeal were advanced by him cited as examples of his counsel's alleged negligence and incompetence.

[9] Dr. Saunders did not defend the claim made by Mr. Berliner and Patter Law but rather brought a counterclaim based on allegations of representational negligence and incompetence along with complaints of unethical and unprofessional conduct.

GROUND OF APPEAL

[10] In his Notice of Appeal, the appellant lists a number of instances in support of his contention that the Learned Adjudicator erred in law in rendering his decision.

[11] Dr. Saunders also lists jurisdictional error as a ground of appeal. In support of this he questions the competence and impartiality of the adjudicator even going so far as to query whether the adjudicator's "**marked limp**" might have "**prejudiced (him) against the medical profession due to a poor outcome of treatment.**"

[12] Dr. Saunders, fearing a potential conflict, should a Nova Scotia based adjudicator be assigned to hear and decide a case involving a fellow-member of the Nova Scotia Barristers' Society, asked that the matter be heard by an adjudicator from outside the Atlantic Provinces.

[13] Putting aside for the moment the insensitive nature of questioning whether the adjudicator's limp might cause him to be prejudiced against the entire medical profession, to request the assignment of an adjudicator from outside the Atlantic Region clearly demonstrates the appellant's lack of understanding of the Court's jurisdiction.

[14] If the appellant was concerned that the adjudicator might have known Mr. Berliner personally, or, perhaps had some personal involvement with him or some other members of his firm prior to hearing the case, he should have raised it prior to the commencement of the trial. He cannot raise it on a whim, after the fact, unless clear evidence of some connection or relationship between the adjudicator and Mr. Berliner or some other member of the Patterson Law firm has come to his knowledge, post-hearing. There is no such evidence of this. There is absolutely no

merit to this ground of appeal which amounts to an allegation of bias on the part of the adjudicator.

[15] As to Dr. Saunders' other ground of appeal – error of law – he does little to establish any error of law on the part of the adjudicator. He is using the appeal provisions of the Small Claims Court to try to re-argue what he failed to convince the adjudicator of at first instance. In doing so he challenges not only his former counsel's competence and ethical standards but also the competence and ethical standards of the adjudicator.

[16] Dr. Saunders' opinion of the legal community, which also includes adjudicators, who, according to section 6, sub-section (3) of the *Small Claims Court Act*, R.S.N.S., 1989, c. 430, must be “a practising member in good standing of the Nova Scotia Barristers' Society can best be summed up by quoting from his brief at para. 7:

... I am an ethical, honest professional of more than 35 years. Mr. Berliner is a lawyer, lawyers are perceived by the public and me to be deceitful and dishonest. Mr. Wilson did not consider my honesty of evidence and therefore erred.

[17] I have no doubt that Dr. Saunders is a properly trained and competent medical doctor. He is not, however, competent to make such unfounded, generalized statements that call into question the integrity of the entire membership of the legal profession in this Province and elsewhere.

[18] It is clear from reading Adjudicator Wilson's decision and his Summary Report that he considered all of the evidence presented at the hearing. He also considered the arguments of Mr. Berliner and Patterson Law's counsel and Dr. Saunders, who was self-representing. He then reached a decision that was thorough, well-reasoned and supported in law. This ground of appeal therefore fails.

DISPOSITION OF APPEAL

[19] The decision of Adjudicator William M. Wilson, Q.C. dated the 11th day of July, 2013 and filed at the Small Claims Court on the 17th day of July, 2013 is upheld.

[20] The *Small Claims Court Act* Regulations allow for an award of costs on appeal that is limited to \$50.00. I will therefore award the respondents costs of \$50.00 payable forthwith. If the respondents wish to seek reimbursement of out-

of-pocket expenses, I will allow them 30 days from the date of this decision to provide me with a list of those expenses.

[21] I will leave it to counsel for the respondents to prepare the Order reflecting this decision, including costs, leaving it open for me to insert an amount for any out-of-pocket expenses that might be approved.

McDougall, J.