

Date: 20001205
Docket: CA 164272

NOVA SCOTIA COURT OF APPEAL
**[Cite as: Mehta v. College of Physicians and
Surgeons of Nova Scotia, 2000 NSCA 141]**

Cromwell, Chipman and Oland, JJ.A.

BETWEEN:

NAVIN MEHTA

Appellant

- and -

THE COLLEGE OF PHYSICIANS AND SURGEONS OF NOVA SCOTIA
and INVESTIGATION COMMITTEE "A" (of THE COLLEGE OF
PHYSICIANS AND SURGEONS OF NOVA SCOTIA)

Respondents

REASONS FOR JUDGMENT

Counsel: Appellant in person
Marjorie A. Hickey, Q.C. for the respondents

Appeal Heard: December 5, 2000

Judgment Delivered: December 5, 2000

THE COURT: Appeal allowed in part per oral reasons for judgment of
Cromwell, J.A.; Chipman and Oland, JJ.A. concurring.

CROMWELL, J.A.: (Orally)

[1] Dr. Mehta applies for leave to appeal and, if granted, appeals the order of a Chambers judge which denied Dr. Mehta leave to bring an application for contempt of court, ordered costs against him and prohibited him from initiating further interlocutory applications until those costs are paid.

[2] Dr. Mehta applied *ex parte*, as contemplated by **Rule 55.02**, for a contempt order against the College of Physicians and Surgeons, its Investigations Committee, one of its members and the Committee's solicitor. The basis of the application appears to have been that the College exercised jurisdiction over Dr. Mehta even though he had instituted proceedings against it and that representatives of the College had refused to produce documents and answer certain questions on discovery in that proceeding. No stay of the College proceedings had been granted and no judicial ruling on the issues of production of documents or the propriety of the questions had been made. Counsel for the College and the named individuals in Dr. Mehta's application became aware of the application for leave to seek a contempt order and was permitted to appear and file affidavit evidence in opposition.

[3] The judge decided three points against Dr. Mehta and dismissed his application. The judge held, first, that it was proper for counsel for the respondents to appear and to file material; second, that the application for leave to apply for a contempt order should be dismissed on the basis that Dr. Mehta had not shown that there was an arguable case of contempt; and third, that Dr. Mehta should pay costs in the amount of \$1,200.00 inclusive of disbursements and, in light of earlier unpaid costs awards made against him, that Dr. Mehta should be prohibited from bringing further interlocutory applications in the action until the costs awarded on this application were paid.

[4] Dr. Mehta submits that the judge erred in allowing the respondents to participate and file material in what he says ought to have been an *ex parte* application, in refusing leave to bring a contempt application and in imposing costs and related terms.

[5] In our view, the judge did not err, in the circumstances of this case, in allowing the respondents to participate and file material. Although they were not required to be given notice of Dr. Mehta's application, they became aware of it and

it would have been highly artificial for the judge to preclude their participation.

The material filed by the respondents outlined the rather complicated procedural history of the file and was, no doubt, of assistance to the judge in dealing with the application on its merits. Notwithstanding the participation of the respondents, the judge considered only whether leave should be granted and did not convert the application into anything other than a leave application.

[6] As to the substance of the application, the judge was right, in our view, to find that there was no arguable case of contempt disclosed in the material filed by Dr. Mehta. In view of the fact that even this low threshold was not met, it is not necessary for us to decide whether a higher threshold test ought to be applied.

[7] The costs of the application before the judge were in his discretion. While generally the costs of an *ex parte* application are in the cause and are to be included in the general costs of the proceeding (see **Rule 63.05(1)**), the judge did not err in principle in departing from his general approach in the particular circumstances of this case.

[8] As to the prohibition on further interlocutory applications until the costs are paid, we think that, with one minor alteration, there was no error in principle or patent injustice occasioned by it. The application was completely lacking in merit and there were two previous orders for costs unpaid. We would not interfere with the judge's discretion to impose the terms he did in relation to the payment of the costs he ordered except to add to the third operative paragraph of the order a proviso that further interlocutory applications in S.H. No. 157371 shall not be brought without leave of a judge of the Supreme Court until the costs are paid.

[9] The third operative paragraph of the order under appeal should now read:

And that the Plaintiff/Applicant, Dr. Navin Mehta, be prohibited from initiating any further interlocutory applications in S.H. No. 157371, **without leave of a judge of the Supreme Court**, unless and until such time as the Plaintiff/Applicant, Dr. Navin Mehta, has paid the costs in the amount of One Thousand Two Hundred Dollars (\$1,200.00) to the Respondents, through their legal counsel, Marjorie A. Hickey.

[10] Leave to appeal is granted. In all respects other than the amendment of the order just noted, the appeal is dismissed. The appellant shall pay the costs of the appeal fixed in the amount of \$750.00 plus disbursement and payable forthwith.

Cromwell, J.A.

Concurred in:

Chipman, J.A.

Oland, J.A.