

Date: 20010213
Docket: CA 167052

NOVA SCOTIA COURT OF APPEAL

Cite as: Colchester Young Men's Christian Association v. YMCA Canada, 2001
NSCA 39

Roscoe, Flinn and Cromwell, J.J.A.

BETWEEN:

THE COLCHESTER YOUNG MEN'S
CHRISTIAN ASSOCIATION

Appellant

- and -

YMCA CANADA

Respondent

REASONS FOR JUDGMENT

Counsel: Vincent Roberts on behalf of the Appellant
Robert G. Grant, Q.C. for the Respondent

Appeal Heard: February 13, 2001

Judgment Delivered: February 13, 2001

THE COURT: Leave to appeal is granted, but the appeal is dismissed,
with costs as per oral reasons for judgment of Roscoe,
J.A.; Flinn and Cromwell, J.J.A., concurring.

ROSCOE, J.A.: (Orally)

[1] This is an application for leave to appeal from a decision of Justice Arthur J. LeBlanc, who in the exercise of his discretion, refused to grant the appellant's application to issue an interim injunction against the respondent to restrain it from disaffiliating the appellant association as a member for failure to abide by the conditions of membership.

[2] In his application of the established test as articulated in **American Cyanamid Co. v. Ethicon**, [1975] A.C. 396 (H.L.) and confirmed by the Supreme Court of Canada in **RJR - MacDonald v. Canada (Attorney General)**, [1994] 1 S.C.R. 311, the Chambers judge found that, although technically there is a serious issue to be tried between the parties, the issue to be tried was not one to which the injunction was relevant. Secondly, he determined that disaffiliation of the appellant would not cause irreparable harm for which damages could not adequately compensate. With respect to the balance of convenience, the Chambers judge found that this was not a case where the court should exercise its equitable jurisdiction, since the appellant did not come to the court with "clean hands". As well, he was hesitant to interfere with the internal governance of a national federation where there were no claims of procedural unfairness alleged or evident.

[3] The appellant seeks the admission of new evidence on the appeal, mainly intended to prove that the actual consequences of the disaffiliation are causing it irreparable damage.

[4] Assuming, without deciding, that the new evidence meets the criteria for admission on appeal, and considering it in addition to the record before the Chambers judge, we are not satisfied that in the circumstances of this case, we should interfere with the exercise of his discretion in refusing to grant the interlocutory injunction. While we would not necessarily endorse every aspect of the judge's reasons, his refusal to exercise his discretion was properly founded on the considerations set out in § 25 to 27 of his reasons.

[5] The application for leave to appeal is granted, but the appeal is dismissed, with costs to the respondent in the amount of \$1,000 plus disbursements, payable forthwith.

Roscoe, J.A.

Concurred in:

Flinn, J.A.

Cromwell, J.A.