

Date: 19991116
 Docket: CA 157409

NOVA SCOTIA COURT OF APPEAL

[Cite as: Hubley v. Nova Scotia (Justice), 1999 NSCA 140]

Roscoe, Pugsley and Flinn, JJ.A.

BETWEEN:

MICHAEL HUBLEY

Appellant

)
)
 Mark V. Rieksts
 for the Appellant

- and -

HER MAJESTY THE QUEEN
 in the right of the PROVINCE OF
 NOVA SCOTIA, represented by the
 MINISTER OF JUSTICE

Respondent

)
)
 Louise Y. Walsh Poirier
 for the Respondent

)
)
 Appeal Heard:
 November 16, 1999

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)
 Judgment Delivered:
 November 16, 1999

THE COURT:

The appeal is allowed and the matter is remitted to the Supreme Court of Nova Scotia as per oral reasons for judgment of Roscoe, J.A.; Pugsley and Flinn, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by:

ROSCOE, J.A.:

[1] This is an appeal from a Chambers decision of Justice David Gruchy who refused to approve the adequacy of the security offered by the appellant pursuant to s. 208(1)(c) of the **Motor Vehicle Act**, R.S.N.S. 1989, c. 293.

[2] The appellant, while driving an automobile without insurance, was involved in a motor vehicle accident which caused personal injuries to two people in another vehicle. As a result of the operation of s. 231(1) of the **Act**, the appellant's driver's license was suspended. He applied to have his license restored pursuant to s. 231(5) which provides:

...

Period of suspension

231 (5) Subject to subsections (2) and (3), every license, privilege of obtaining a license, and every permit suspended pursuant to subsection (1) shall remain so suspended, nor shall any new license be thereafter issued to or permit for the same or any other motor vehicle be permitted to be made by, the person whose license, privilege of obtaining a license, or permit has been so suspended until the person gives proof of financial responsibility to the amounts and in any of the forms mentioned in Sections 235 and 236, and

(a) gives security, sufficient in the opinion of the Registrar, to satisfy any judgment that may thereafter be recovered against such person as a result of the accident, or any sum that may be agreed upon as liquidated damages, but subject to the limits as to amount stated in Section 207; or

(b) produces to the Registrar proof satisfactory to the Registrar that he has satisfied all claims against him for damage to property in an amount of fifty dollars or more and for damages for bodily injury to, or the death of, any person, resulting from the accident, up to the limits as to amount stated in Section 207.

[3] Sections 207 to 209 of the **Act** deal with the amount, form and purpose of the security:

Amount of security

207 Where security is required to be given by any person pursuant to clause (a) of subsection (5) of Section 231 or clause (a) of subsection (4) of Section 232, it shall be given by him to the Registrar in the amount required by the Registrar but not in any case exceeding two hundred thousand dollars in respect of any one accident. R.S., c. 293, s. 207.

Form of security

208 (1) Where security is required to be given by any person pursuant to clause (a) of subsection (5) of Section 231 or clause (a) of subsection (4) of Section 232 it shall be given by the certificate of the Minister of Finance that the person named therein

(a) has deposited with him the sum of money fixed by the Registrar;

(b) has deposited with him securities for money approved by the Minister of Finance in the amount fixed by the Registrar; or

(c) has deposited with him a bond of a guarantee or surety company in the amount fixed by the Registrar or a bond with personal sureties in the amount fixed by the Registrar **approved as adequate security by a judge** of the county court of the county in which the sureties reside.

[emphasis added]

Condition in bond

(2) Any bond given pursuant to subsection (1) shall be conditioned upon the satisfaction of any judgment that may thereafter be recovered against the person by whom or on whose behalf it is deposited as a result of the accident giving rise to the suspension of his permit or license and the payment of any sum that may be agreed upon as liquidated damages as a result of that accident. R.S., c. 293, s. 208.

Purpose of security

209 (1) Any money or security deposited with the Minister of Finance pursuant to Section 208 shall be held by the Minister of Finance as security for the payment of any sum that may be agreed upon as liquidated damages, or any judgment that may thereafter be recovered against the person making the deposit in an action for damages resulting from bodily injury to or the death of another, or damages of one hundred dollars or more to property caused by an accident

(a) by reason of the occurrence of which the deposit of security is required; and

(b) which was occasioned by, or arose out of the ownership, maintenance, operation or use, of a motor vehicle by the person making the deposit or by another person for whose negligence the person making the deposit is liable.

...

[4] The Registrar of Motor Vehicles required the appellant to deposit security of \$3,500.00, but on application to the Supreme Court (as the successor to the County Court), the Chambers judge refused to approve the security saying:

... I am left to wonder by the wording of that particular section as to whether I approve the adequacy of the security in relation to the seriousness of the accident about which I have very little information, or whether I am to approve the adequacy of the sureties. The section is not clear. Frankly I do not feel comfortable about either of the possible functions set forth by that section. My concern is strengthened by a reading of s. 209 which sets forth the purpose of the security, which is that it is to respond potentially to an action for damages resulting from bodily injury or the death of another person. That brings into question the adequacy of \$3,500.00 which is the amount fixed by the Registrar. I have no idea whether that amount is sufficient. Accordingly this application will be refused.

[5] Respectfully, in our opinion, the Chambers judge erred in his interpretation of the legislation.

[6] Section 207 of the **Act** is entitled "Amount of security." It is the Registrar who fixes the amount of security which the appellant is required to give. That is also clear from the provisions of s. 231(5)(a) of the **Act**. There is nothing in the **Act** which provides for a review of the decision of the Registrar as to the amount of security to be provided by the appellant.

[7] Section 208 of the **Act** is entitled "Form of security." It sets out four alternative forms

in which the security may be given. In each case, specific reference is made to the amount of the security as fixed by the Registrar. The four alternative forms are:

1. a sum of money;
2. securities for money;
3. a bond provided by a guarantee or surety company; and
4. a bond with personal sureties.

[8] In the case of a bond with personal sureties, which is the case before us, it must be “... in the amount fixed by the Registrar approved as adequate security by a judge...” under s. 208(1)(c) of the **Act**. The other forms of security do not require approval of the court.

[9] Considering the wording of s. 208(1)(c) in the context of the other provisions referred to, it is clear that under s. 208(1)(c) of the **Act**, the judge is required to approve the adequacy of the form of the security being given by the applicant, not the amount of that security. The amount of the security, required to be given by the appellant, is the sole responsibility of the Registrar.

[10] Accordingly, we allow the appeal and set aside the decision of the Chambers judge. The matter is remitted to the Supreme Court of Nova Scotia for consideration by a judge in Chambers as to the adequacy of the form of security (a bond with personal sureties), which the appellant proposes to give to the Minister of Finance.

[11] There will be no order as to costs.

Roscoe, J.A.

Concurred in:

Pugsley, J.A.

Flinn, J.A.