

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Doncaster v. Chignecto-Central Regional School Board*,  
2014 NSCA 37

**Date:** 20140409

**Docket:** CA 413884

**Registry:** Halifax

**Between:**

Ralph Ivan Doncaster

Appellant

v.

Chignecto-Central Regional School Board and  
The Attorney General of Nova Scotia

Respondents

**Judges:** The Honourable Justice David P.S. Farrar

**Motion Heard:** March 13, 2014, Halifax, Nova Scotia, in Chambers

**Held:** **Motion conditionally granted.**

**Counsel:** Appellant in person  
Edward A. Gores, Q.C., for the respondent Attorney General  
of Nova Scotia  
Bruce T. MacIntosh, Q.C., for the respondent Chignecto-  
Central Regional School Board (not participating)

**Decision:**

[1] This case came before me in Chambers on Thursday, March 13, 2014, on a Registrar's motion to dismiss pursuant to Rules 90.43(3) and (4).

[2] After hearing argument, I reserved decision.

[3] For the reasons that follow I am going to allow Mr. Doncaster until May 2, 2014, to file a Certificate of Readiness in conformity with Rule 90.26 and to apply for Date and Directions in conformity with Rule 90.25. If he fails to meet this deadline the Registrar's motion is allowed and the appeal is dismissed without costs to any party.

**Decision**

[4] Rule 90.43 provides:

**90.43** (3) In an appeal not perfected before 80 days from the date of the filing of the notice of appeal, or before any other time ordered by a judge, the registrar must make a motion to a judge for an order to dismiss the appeal on five days notice to the parties.

(4) A judge, on motion of a party or the registrar, may direct perfection of an appeal, set the appeal down for hearing, or, on five days notice to the parties, dismiss the appeal.

[5] The Registrar brings this motion to dismiss the appeal for failure to perfect. By way of procedural background, the appellant filed a Notice of Appeal on March 25, 2013, appealing a decision of Justice Kevin Coady (2012 NSSC 383).

[6] Coady J. dismissed an application by Mr. Doncaster in which he sought a judicial determination that the Nova Scotia **Protection of Property Act**, R.S.N.S. 1989, c. 363 did not apply to public schools and that a notice to him under that **Act** to prohibit him from being on his children's school property breached his **Charter** rights.

[7] In dismissing Mr. Doncaster's claim Coady, J. awarded \$2,500 each in costs to Chignecto-Central Regional School Board (CCRSB) and the Attorney General.

[8] Mr. Doncaster filed two separate appeals from that decision. The first, CA 410231 filed on December 11, 2012, was eventually discontinued after CCRSB filed a stay motion.

[9] The second appeal filed March 25, 2013 is the subject-matter of this appeal.

[10] In a motion heard by Justice Jamie W.S. Saunders on May 2, 2013, CCRSB sought security for costs in this appeal and for costs respecting Mr. Doncaster's discontinuance of CA 410231. CCRSB also moved to stay this appeal until Mr. Doncaster had fully satisfied the costs order imposed against him by Coady, J. and posted security in the present appeal.

[11] At the conclusion of argument by counsel and Mr. Doncaster on that day Saunders, J.A. granted CCRSB's motion and ordered security for costs in the amount of \$3,500 in the present appeal and stayed the proceedings until Mr. Doncaster had paid the costs award from the court below and paid the security for costs. Saunders, J.A. subsequently provided written reasons (now reported 2013 NSCA 59).

[12] Nothing further has happened with respect to this matter since the hearing of the motions by Justice Saunders. This prompted the Registrar's motion. The Attorney General appeared and supported the Registrar's motion. CCRSB did not appear and took no position on the motion.

[13] To date Mr. Doncaster has not made any meaningful attempt to pay the security for costs or the costs awarded below.

[14] Mr. Doncaster appeared on his own behalf and argued that the Registrar's motion was inappropriate in these circumstances as he was precluded from perfecting his appeal as a result of Saunders, J.A.'s stay of the proceedings. In essence, he argued that he was in a "Catch-22" position in that he was not in a position to pay the security for costs and, therefore, could not perfect his appeal.

[15] At first blush, this argument seems logical. However, it must fail for two primary reasons:

1. Mr. Doncaster's alleged impecuniosity was addressed by Justice Saunders in his decision (¶38). He considered Mr. Doncaster's submissions on that point and concluded security for costs was warranted.

I would also point out that Mr. Doncaster did not file an affidavit in the proceedings before Justice Saunders nor before me to support his claim of impecuniosity. In any event that issue has been dealt with by Justice Saunders and is not open for me to reconsider nor is it a valid excuse for failing to perfect the appeal.

2. To accede to Mr. Doncaster's argument would essentially hold the system hostage by allowing him to avoid the perfection of his appeal by his own inaction. By choosing not to pay the costs order imposed upon him by Coady, J. and the security for costs awarded in this appeal he could simply avoid that which the Rules required him to do, that is, to perfect the appeal within 80 days of the date of the filing of the Notice of Appeal. This simply cannot be the case.

[16] Mr. Doncaster also argues that Justice Saunders did not impose a date by which the costs below and the security for costs should be paid and therefore he was at liberty to pay them on his own timetable. As a result, he says, he is not in default of perfecting his appeal.

[17] Again this argument must fail. The stay that was imposed by Justice Saunders was only in place until such time as Mr. Doncaster had fully satisfied the costs order imposed against him by Justice Coady and had posted security in the amount of \$3,500 for this appeal.

[18] All Mr. Doncaster had to do was to fulfill the conditions of Justice Saunders' order and the stay would have been lifted and he would have been in a position to perfect his appeal.

[19] Mr. Doncaster had 80 days from the date of the filing of the Notice of Appeal to perfect his appeal or risk a Registrar's motion to dismiss. By my calculation this would have been July 12, 2013. This would have required him to fulfill the order of Justice Saunders within that period of time. He has failed to do so. As a result the Registrar was obligated by the **Rules** to bring this motion (Rule 90.43(3)).

[20] The primary object of the Rules is to provide for the "just, speedy and inexpensive determination of every proceeding". Allowing an appeal to remain in limbo as a result of one party's failure to fulfill their obligations whether ordered by the court or provided for in the Rules does not meet those objectives.

[21] In **Islam v. Sevgur**, 2011 NSCA 114, Saunders, J.A. summarized the principles that should govern the Court's discretion to dismiss an appeal for failure to perfect the appeal or to grant an extension to perfect it. I will not produce the principles here other than to say that they involve the weighing and balancing of a number of facts together with any other circumstances a judge may consider relevant to the exercise of his or her discretion (¶36-37).

[22] This is a somewhat novel situation where a stay was granted which precluded any further steps to be taken in the proceedings until certain things occurred. I will give Mr. Doncaster the benefit of the doubt and assume that he had a good faith, albeit mistaken belief, that he did not have to perfect his appeal until such time as he had paid the costs order below and the security for costs in this Court.

[23] As a result, I will not dismiss Mr. Doncaster's appeal outright. I will allow him until May 2, 2014, to file the Certificate of Readiness in conformity with Rule 90.26 and to apply for Date and Directions in conformity with Rule 90.25. If he fails to meet this deadline the Registrar's motion is allowed and the appeal is dismissed.

[24] Just so there is no uncertainty, the stay of proceedings ordered by Saunders, J.A. remains in full force and effect. Before Mr. Doncaster can file his Certificate of Readiness and apply for Date and Directions, he must satisfy payment of the costs order of \$5,000 in the court below (Hfx No. 398426) and he must post security in this appeal in the amount of \$3,500.

[25] There will be no costs awarded on this motion.

Farrar, J.A.