

In the Court of Appeal of Alberta

Citation: Law Society of Alberta v. Ady, 1994 ABCA 353

Date: 19941116
Docket: 14459
Registry: Calgary

Between:

Law Society of Alberta

Appellant

- and -

Ronald W. Ady

Respondent

The Court:

**The Honourable Mr. Justice Kerans
The Honourable Mr. Justice Bracco
The Honourable Madam Justice Hetherington**

**Memorandum of Judgment
Delivered from the Bench**

COUNSEL:

L. MacDonald, for the Appellant

Respondent, appeared on his own behalf

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

KERANS, J.A. (for the Court):

[1] I have been asked to give what is a unanimous decision of the Court.

[2] This is an appeal by the Law Society from an Order in Queen's Bench directing an extended Return at the request of the applicant, Ady, who is a disciplined lawyer and the respondent before us. The Order required that Mr. P. J. Royal, Q.C., chairman of a Hearing

Committee of the Law Society produce materials, not before that Committee but before the deputy secretary of the Law Society and the Conduct Committee of the Law Society when it processed the complaint against Mr. Ady.

[3] I will stop to describe the current scheme in place in the Legal Professions Act. All complaints against lawyers are first considered by the secretary or deputy secretary. That officer may then pass the complaint on to a committee of benchers called the Conduct Committee. The Conduct Committee, in turn, can refer the matter to a Hearing Committee. A Hearing Committee is also a committee of benchers. It is common ground that the reference of a complaint to a Hearing Committee by the Conduct Committee is, in cases like this at least, the only method by which a Hearing Committee can gain jurisdiction. We, of course, are not to decide today the question of whether or not the Hearing Committee had jurisdiction. The only issue before this Court is the appropriateness of the extended Return, - a preliminary matter.

[4] We note that the originating motion before the Queen's Bench asks for statutory review of the decision of the Hearing Committee to discipline Mr. Ady. It does not seek statutory review of earlier decisions by the deputy secretary or the Conduct Committee, decisions that may or may not have led to the hearing before the Hearing Committee.

[5] Counsel for the Law Society argues that the Return should only contain the materials or record actually before the Hearing Committee. The material in question was not before that committee. We agree with counsel for the Law Society. It is unthinkable that the chairman of the Hearing Committee should have to produce a Return which would include materials that were never before the committee.

[6] We would therefore allow the appeal and vacate the Order.

[7] Mr. Ady, speaking for himself, argues before us today that he cannot attack the jurisdiction of the Hearing Committee without the aid of this additional record. This argument is without merit. If the record actually before the Hearing Committee fails to establish the jurisdiction of the committee, his motion for review will be successful. He needs no new material for that. His difficulty may be that the Law Society will rely in reply on a concession by counsel for Mr. Ady before the Hearing Committee about jurisdiction. But we do not rule on that today, because we are dealing with only the preliminary motion.

[8] The real thrust of the extended return is to extend, we think, the enquiry by Queen's Bench beyond the decision of the Hearing Committee, that is to say, beyond the scope of the motion seeking statutory review so as to turn it into a motion for statutory review of earlier decisions. If we permitted this, we would permit Mr. Ady to seek statutory review of those earlier decisions, perhaps long after the limitation period has expired. We emphasize that Mr. Ady is free, of course, if he thinks no statutory limit applies, to make a new motion at any time for statutory review of those earlier decisions.

[9] Mr. Ady says to hold him to the record before the Hearing Committee is unfair. We have heard nothing to persuade us that it is unfair to hold him to the terms of his own motion and, if any statutory limit applies, to it.

[10] Mr. Ady also made arguments about the actual work of the Law Society officers and employees. This indicates to us that his real purpose here is to attack their work and not just the work of the Hearing Committee.

[11] We conclude that the real purpose of the extended Return is to make possible an attack on decisions preliminary to the Hearing Committee, and extend through the back door the scope of this motion. We will not permit that.

[12] Mr. Ady argues that the real object of his original application was the Law Society itself, not the decision of the Hearing Committee, and that the entire matter is all one proceeding. We do not agree. His motion does not say that and, even if it did, we would be inclined to require a more specific attack.

[13] Accordingly, we would allow the appeal.