

In The Matter Of an Application for a Temporary Prohibitive Injunction Pursuant to Rule
69.13 (4) of the Rules of Court and Section 33 of the Judicature Act

Dr. Alan Cockeram (applicant) v. College of Physicians and Surgeons of New Brunswick
(respondent)
(S/M/31/13; 2013 NBQB 197; 2013 NBBR 197)

Indexed As: Cockeram v. College of Physicians and Surgeons (N.B.)

Répertorié: Cockeram v. College of Physicians and Surgeons (N.B.)

New Brunswick Court of Queen's Bench
Trial Division
Judicial District of Saint John
Walsh, J.
June 10, 2013.

Summary:

Résumé:

The applicant was a medical doctor in the City of Saint John. He faced charges of sexual assault arising from criminal complaints of nine former patients. Concurrently, 19 former patients had made complaints to the College of Physicians and Surgeons of New Brunswick. The College referred the matter to its Complaints and Registration Committee (Complaints Committee), which under the Medical Act had the powers to investigate, make findings and submit recommendations to the governing Council of the College. The Complaints Committee was awaiting written responses to each of the complaints, which the applicant was required to file with the College. He had not yet done so. The applicant applied to prohibit and enjoin the College from requiring him to submit responses or considering or investigating the present complaints or any future similar complaints made to them until the criminal proceedings were disposed of at trial.

The New Brunswick Court of Queen's Bench, Trial Division, allowed the application, issuing an interlocutory injunction. The College was temporarily restrained and prohibited from exercising the following powers given it under the Medical Act and Regulations: (i) requiring the applicant to respond to the Registrar's demands in regard to any of the 19 existing complaints lodged with the College, and the applicant's obligations to respond were suspended; and (ii) requiring the applicant to submit to any demands under ss. 57 (7) or 57(7.3) of the Medical Act or in conducting a search envisioned by s. 55.2 of the Medical Act during the course of any investigation conducted by the Complaints and Registration Committee or their investigators in regard to any of the 19 existing complaints lodged with the College, and the applicant's obligations to comply were suspended. The injunction would lapse 45 days from the date of completion of the last criminal trial involving the 19 complainants.

Injunctions - Topic 1600

Interlocutory or interim injunctions - General principles respecting grant of interlocutory or

interim injunction - The applicant was a medical doctor in the City of Saint John - He faced charges of sexual assault arising from criminal complaints of nine former patients - Concurrently, 19 former patients had made complaints to the College of Physicians and Surgeons of New Brunswick - The College referred the matter to its Complaints and Registration Committee (Complaints Committee), which under the Medical Act had the powers to investigate, make findings and submit recommendations to the governing Council of the College - The Complaints Committee was awaiting written responses to each of the complaints, which the applicant was required to file with the College - He had not yet done so - The applicant applied to prohibit and enjoin the College from requiring him to submit responses or considering or investigating the present complaints or any future similar complaints made to them until the criminal proceedings were disposed of at trial - The New Brunswick Court of Queen's Bench, Trial Division, held that "[a]lthough the question of the correct test in the circumstances of this case is not without some doubt, in my respectful opinion the RJR-MacDonald [RJR-MacDonald Inc. et Imperial Tobacco Ltd. v. Canada (Procureur général) (SCC 1994)] test, modified to the extent necessary to fit the case to the framework, offers the most appropriate analytical vehicle to guide this Court." - See paragraphs 22 to 28.

Injunctions - Topic 1606

Interlocutory or interim injunctions - General principles - Balance of convenience - The applicant was a medical doctor in the City of Saint John - He faced charges of sexual assault arising from criminal complaints of nine former patients - Concurrently, 19 former patients had made complaints to the College of Physicians and Surgeons of New Brunswick - The College referred the matter to its Complaints and Registration Committee (Complaints Committee), which under the Medical Act had the powers to investigate, make findings and submit recommendations to the governing Council of the College - The Complaints Committee was awaiting written responses to each of the complaints, which the applicant was required to file with the College - He had not yet done so - The applicant applied to prohibit and enjoin the College from requiring him to submit responses or considering or investigating the present complaints or any future similar complaints made to them until the criminal proceedings were disposed of at trial - He asserted that if he was required to comply with his obligations to the College and if the Complaints Committee embarked on an investigation while criminal charges related to the same subject matter were outstanding, his right to a "fair trial" of the criminal charges would be jeopardized - The New Brunswick Court of Queen's Bench, Trial Division, found that there were serious issues to be tried and irreparable harm would come to the applicant - If the applicant's fair criminal trial interests were at "sufficiently serious" risk, then the public interest had to displace, to the extent it was necessary, the public interest the College was charged with administering - The balance of convenience favoured the applicant - See paragraphs 97 to 109.

Injunctions - Topic 1616

Interlocutory or interim injunctions - General principles - Arguable issues of law involved or serious question to be tried - The applicant was a medical doctor in the City of Saint John - He faced charges of sexual assault arising from criminal complaints of nine former patients - Concurrently, 19 former patients had made complaints to the College of

Physicians and Surgeons of New Brunswick - The College referred the matter to its Complaints and Registration Committee (Complaints Committee), which under the Medical Act had the powers to investigate, make findings and submit recommendations to the governing Council of the College - The Complaints Committee was awaiting written responses to each of the complaints, which the applicant was required to file with the College - He had not yet done so - The applicant applied to prohibit and enjoin the College from requiring him to submit responses or considering or investigating the present complaints or any future similar complaints made to them until the criminal proceedings were disposed of at trial - He asserted that if he was required to comply with his obligations to the College and if the Complaints Committee embarked on an investigation while criminal charges related to the same subject matter were outstanding, his right to a "fair trial" of the criminal charges would be jeopardized - The New Brunswick Court of Queen's Bench, Trial Division, held that in framing the question in terms of the public interests at stake, the applicant had met the first step of the RJR-MacDonald Inc. et Imperial Tobacco Ltd. v. Canada (Procureur général) (SCC 1994) test (i.e., there was a serious issue to be tried) - See paragraphs 39 to 41.

Injunctions - Topic 1800

Interlocutory or interim injunctions - Requirement of irreparable injury - General - The applicant was a medical doctor in the City of Saint John - He faced charges of sexual assault arising from criminal complaints of nine former patients - Concurrently, 19 former patients had made complaints to the College of Physicians and Surgeons of New Brunswick - The College referred the matter to its Complaints and Registration Committee (Complaints Committee), which under the Medical Act had the powers to investigate, make findings and submit recommendations to the governing Council of the College - The Complaints Committee was awaiting written responses to each of the complaints, which the applicant was required to file with the College - He had not yet done so - The applicant applied to prohibit and enjoin the College from requiring him to submit responses or considering or investigating the present complaints or any future similar complaints made to them until the criminal proceedings were disposed of at trial - He asserted that if he was required to comply with his obligations to the College and if the Complaints Committee embarked on an investigation while criminal charges related to the same subject matter were outstanding, his right to a "fair trial" of the criminal charges would be jeopardized - The New Brunswick Court of Queen's Bench, Trial Division, held that the second step of the RJR-MacDonald Inc. et Imperial Tobacco Ltd. v. Canada (Procureur général) (SCC 1994) test was required to be modified for this case - Because the present case had to address under the second step of the RJR-MacDonald test the applicant's claim that his constitutionally protected "fair trial" interests in subsequent or parallel criminal proceedings would suffer irreparable harm, it appeared unavoidable that a more demanding standard, amounting to a threshold, was called for - The distinction laid in the very special and unique nature of the harm claimed, the right to a fair trial, and where that determination would normally be made (during the criminal trial) - The court adopted the threshold of "sufficiently serious risk" of irreparable harm, measurable by whether the applicant could establish on a balance of probabilities that his fair trial interests in the criminal proceedings would be infringed unless an injunction was granted - See paragraphs 42 to 56.

Injunctions - Topic 1802

Interlocutory or interim injunctions - Requirement of irreparable injury - What constitutes - The applicant was a medical doctor in the City of Saint John - He faced charges of sexual assault arising from criminal complaints of nine former patients - Concurrently, 19 former patients had made complaints to the College of Physicians and Surgeons of New Brunswick - The College referred the matter to its Complaints and Registration Committee (Complaints Committee), which under the Medical Act had the powers to investigate, make findings and submit recommendations to the governing Council of the College - The Complaints Committee was awaiting written responses to each of the complaints, which the applicant was required to file with the College - He had not yet done so - The applicant applied to prohibit and enjoin the College from requiring him to submit responses or considering or investigating the present complaints or any future similar complaints made to them until the criminal proceedings were disposed of at trial - He asserted that if he was required to comply with his obligations to the College and if the Complaints Committee embarked on an investigation while criminal charges related to the same subject matter were outstanding, his right to a "fair trial" of the criminal charges would be jeopardized - There were two distinct parts of the Registrar's demand on the applicant: (1) answer in writing each of the allegations; and (2) provide copies of any relevant documentation - With respect to requirement (1), the New Brunswick Court of Queen's Bench, Trial Division, held that the applicant had failed to establish that there was a "sufficiently serious risk of irreparable harm" if he was required to respond in writing to the College's demands to answer the allegations - In light of the applicable constitutional law, it was not probable that his responses would be permitted to be used against him in the criminal court - He would most probably be granted "use immunity" if the prosecution made any such attempt (i.e., the responses themselves would not be admitted as evidence against the applicant) - See paragraphs 57 to 65.

Injunctions - Topic 1802

Interlocutory or interim injunctions - Requirement of irreparable injury - What constitutes - The applicant was a medical doctor in the City of Saint John - He faced charges of sexual assault arising from criminal complaints of nine former patients - Concurrently, 19 former patients had made complaints to the College of Physicians and Surgeons of New Brunswick - The College referred the matter to its Complaints and Registration Committee (Complaints Committee), which under the Medical Act had the powers to investigate, make findings and submit recommendations to the governing Council of the College - The Complaints Committee was awaiting written responses to each of the complaints, which the applicant was required to file with the College - He had not yet done so - The applicant applied to prohibit and enjoin the College from requiring him to submit responses or considering or investigating the present complaints or any future similar complaints made to them until the criminal proceedings were disposed of at trial - He asserted that if he was required to comply with his obligations to the College and if the Complaints Committee embarked on an investigation while criminal charges related to the same subject matter were outstanding, his right to a "fair trial" of the criminal charges would be jeopardized - There were two distinct parts of the Registrar's demand on the applicant: (1) answer in writing each of the allegations; and (2) provide copies of any relevant documentation -

With respect to requirement (2), the New Brunswick Court of Queen's Bench, Trial Division, held that the applicant had failed to establish that there was a "sufficiently serious risk of irreparable harm" if he was required to respond in writing to the College's demands to provide copies of any relevant documentation - The court could trust the criminal court to appropriately protect the applicant against the admission in the criminal proceedings of any such documentation he did produce by the granting of "use immunity", if the document(s) amounted to unlawful conscription within the meaning of s. 7 of the Charter - It would be for that Court to make the determination if the applicant's "fair trial" interests would be impacted - See paragraphs 66 to 72.

Injunctions - Topic 1802

Interlocutory or interim injunctions - Requirement of irreparable injury - What constitutes - The applicant was a medical doctor in the City of Saint John - He faced charges of sexual assault arising from criminal complaints of nine former patients - Concurrently, 19 former patients had made complaints to the College of Physicians and Surgeons of New Brunswick - The College referred the matter to its Complaints and Registration Committee (Complaints Committee), which under the Medical Act had the powers to investigate, make findings and submit recommendations to the governing Council of the College - The Complaints Committee was awaiting written responses to each of the complaints, which the applicant was required to file with the College - He had not yet done so - The applicant applied to prohibit and enjoin the College from requiring him to submit responses or considering or investigating the present complaints or any future similar complaints made to them until the criminal proceedings were disposed of at trial - He asserted that if he was required to comply with his obligations to the College and if the Complaints Committee embarked on an investigation while criminal charges related to the same subject matter were outstanding, his right to a "fair trial" of the criminal charges would be jeopardized - There were two distinct parts of the Registrar's demand on the applicant: (1) answer in writing each of the allegations; and (2) provide copies of any relevant documentation - It was the College's intention and obligation (under s. 57(10)(b) of the Medical Act) to share responses given by the applicant on each complaint with the respective complainant - The New Brunswick Court of Queen's Bench, Trial Division, held that the applicant would be entitled to "derivative use immunity" over the written responses to the Registrar and any relevant documents produced as part of those responses - However, in the case of "derivative use immunity" the actual derivative uses that any of the applicant's responses could be put would be very difficult to detect and/or measure in the context of the criminal trial - As examples, "would or did the applicant's response influence the complainant(s)'s (qua criminal witness) testimony; if so, in what way? What, if any, advantage would or was gained by the criminal investigation authorities? As can be readily imagined, the risks are multifarious and insidious." - The risks to the applicant's fair trial were real and significant - Actually, the risk of taint to the anticipated criminal proceedings from the release or dissemination of any responses the applicant was required to give to the College would not only jeopardize his fair trial interests but the Crown's as well, for the Crown's role was one that eschewed any notion of winning or losing - Indeed, the Crown's obligations extend to also promoting an accused's right to a fair trial - See paragraphs 73 to 81.

Injunctions - Topic 1802

Interlocutory or interim injunctions - Requirement of irreparable injury - What constitutes - The applicant was a medical doctor in the City of Saint John - He faced charges of sexual assault arising from criminal complaints of nine former patients - Concurrently, 19 former patients had made complaints to the College of Physicians and Surgeons of New Brunswick - The College referred the matter to its Complaints and Registration Committee (Complaints Committee), which under the Medical Act had the powers to investigate, make findings and submit recommendations to the governing Council of the College - The Complaints Committee was awaiting written responses to each of the complaints, which the applicant was required to file with the College - He had not yet done so - The applicant applied to prohibit and enjoin the College from requiring him to submit responses or considering or investigating the present complaints or any future similar complaints made to them until the criminal proceedings were disposed of at trial - He asserted that if he was required to comply with his obligations to the College and if the Complaints Committee embarked on an investigation while criminal charges related to the same subject matter were outstanding, his right to a "fair trial" of the criminal charges would be jeopardized - With respect to the Committee's powers of investigation, the New Brunswick Court of Queen's Bench, Trial Division, held that the applicant would most probably be afforded protection (i.e. "use immunity") against the direct admission of any such item of evidence if the police authorities "piggy backed" onto the Complaints Committees powers of warrantless search and seizure - It was more probable than not that the trial judge would find that the admission of any such evidence would "bring the administration of justice into disrepute" - To these extents the applicant had failed to establish that there was a "sufficiently serious risk of irreparable harm" if an injunction was not granted - See paragraphs 82 to 94.

Injunctions - Topic 1802

Interlocutory or interim injunctions - Requirement of irreparable injury - What constitutes - The applicant was a medical doctor in the City of Saint John - He faced charges of sexual assault arising from criminal complaints of nine former patients - Concurrently, 19 former patients had made complaints to the College of Physicians and Surgeons of New Brunswick - The College referred the matter to its Complaints and Registration Committee (Complaints Committee), which under the Medical Act had the powers to investigate, make findings and submit recommendations to the governing Council of the College - The Complaints Committee was awaiting written responses to each of the complaints, which the applicant was required to file with the College - He had not yet done so - The applicant applied to prohibit and enjoin the College from requiring him to submit responses or considering or investigating the present complaints or any future similar complaints made to them until the criminal proceedings were disposed of at trial - He asserted that if he was required to comply with his obligations to the College and if the Complaints Committee embarked on an investigation while criminal charges related to the same subject matter were outstanding, his right to a "fair trial" of the criminal charges would be jeopardized - With respect to the Committee's powers of investigation, the New Brunswick Court of Queen's Bench, Trial Division, held that it was the derivative uses of whatever might be found that was worrisome to the concept of a fair trial - The College was required to share their investigative findings with the complainants - The court could not predict if anything would be found or what it would be or if the Complaints Committee would even exercise

the power given to it by s. 55.2(2) of the Medical Act - Nonetheless, the risk of influence or informational sharing was ever-present and real; even to the extent of providing the police with investigative avenues such as the obtaining of search warrants over any information recovered - If these concerns materialized, the impact on the applicant's fair trial interests would be extremely difficult to contain by a trial judge - The result was that under the second part of the *RJR-MacDonald Inc. et Imperial Tobacco Ltd. v. Canada (Procureur général)* (SCC 1994) the court found that, without more, there was a "sufficiently serious risk of irreparable harm" to the applicant's "fair trial interests" if the Complaints Committee embarked on an investigation - See paragraphs 95 and 96.

Injonctions - Cote 1600

Injonction interlocutoire - Principes généraux concernant l'octroi d'une injonction interlocutoire ou provisoire - [Voir **Injonctions - Topic 1600**].

Injonctions - Cote 1606

Injonctions interlocutoires ou provisoires - Principes généraux - Prépondérance des inconvénients - [Voir **Injonctions - Topic 1606**].

Injonctions - Cote 1616

Injonctions interlocutoires ou provisoires - Principes généraux - Point de droit ou question sérieuse à juger - [Voir **Injonctions - Topic 1616**].

Injonctions - Cote 1800

Injonctions interlocutoires ou provisoires - Risque de préjudice irréparable - Généralités - [Voir **Injonctions - Topic 1800**].

Injonctions - Cote 1802

Injonctions interlocutoires ou provisoires - Risque de préjudice irréparable - Éléments constitutifs - [Voir **Injonctions - Topic 1802**].

Cases Noticed:

Brunelle v. Canada (Royal Canadian Mounted Police - RCMP) (1991), 81 D.L.R.(4th) 153 (F.C.T.D.), *refd to.* [para. 3].

Hedley v. Bates (1880), 13 Ch.D. 498, *refd to.* [para. 20].

Martin (M.R.) Construction Inc. v. Bryn Holdings Ltd. et al. (2010), 362 N.B.R.(2d) 147; 934 A.P.R. 147; 2010 NBCA 48, *refd to.* [para. 21].

RJR-MacDonald Inc. et Imperial Tobacco Ltd. v. Canada (Procureur général), [1994] 1 S.C.R. 311; 164 N.R. 1, *appld.* [para. 24].

AstraZeneca Canada Inc. et al. v. Mylan Pharmaceuticals ULC et al. (2011), 426 N.R. 167 (F.C.A.), *refd to.* [para. 24].

Nash v. Ontario (1995), 27 O.R.(3d) 1 (C.A.), *dist.* [para. 25].

Metropolitan Stores (MTS) Ltd. v. Manitoba Food and Commercial Workers, Local 832 and Labour Board (Man.), [1987] 1 S.C.R. 110; 73 N.R. 341; 46 Man.R.(2d) 241, *refd to.* [para. 26].

Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy) - see *Phillips et al. v. Richard, J.*

Phillips et al. v. Richard, J., [1995] 2 S.C.R. 97; 180 N.R. 1; 141 N.S.R.(2d) 1; 403 A.P.R. 1, consd. [para. 26].

White v. E.B.F. Manufacturing Ltd. et al., [2001] F.T.R. Uned. 478 (T.D.), refd to. [para. 27].

Tractor Supply Co. of Texas LP et al. v. TSC Stores LP (2010), 376 F.T.R. 218; 2010 FC 883, affd. [2011] N.R. Uned. 11; 2011 FCA 46, refd to. [para. 27].

Gore et al. v. College of Physicians and Surgeons (Ont.), [2009] O.A.C. Uned. 676; 2009 ONCA 294, refd to. [para. 28].

Dagenais v. Glombowski (1987), 57 Sask.R. 60 (Q.B.), refd to. [para. 30].

Whyte v. Provincial Medical Board (N.S.) (1980), 40 N.S.R.(2d) 650; 73 A.P.R. 650 (T.D.), refd to. [para. 30].

S.J.S. v. College of Physicians and Surgeons (Sask.) (1998), 169 Sask.R. 311; 162 D.L.R. (4th) 759 (Q.B.), dist. [para. 31].

Leier v. Shumiatcher (1962), 39 W.W.R. 446 (Sask. C.A.), refd to. [para. 31].

Potash Corp. of Saskatchewan Inc. v. Mosaic Potash Esterhazy Limited Partnership (2011), 377 Sask.R. 78; 528 W.A.C. 78; 341 D.L.R.(4th) 407; 2011 SKCA 120, refd to. [para. 33].

R. v. M.B.P., [1994] 1 S.C.R. 555; 165 N.R. 321; 70 O.A.C. 161, refd to. [para. 35].

Kenney v. College of Physicians and Surgeons (N.B.) (1993), 141 N.B.R.(2d) 76; 361 A.P.R. 76 (T.D.), refd to. [para. 36].

Imperial Sheet Metal Ltd. et al. v. Landry et al. (2007), 315 N.B.R.(2d) 328; 815 A.P.R. 328; 2007 NBCA 51, dist. [para. 39].

Anderson v. Anderson-Davis (2012), 403 N.B.R.(2d) 13; 1045 A.P.R. 13; 2013 NBQB 28, refd to. [para. 40].

Leby Fixtures & Interiors (Receivership), Re (2006), 305 N.B.R.(2d) 199; 791 A.P.R. 199; 2006 NBCA 93, refd to. [para. 42].

Canadian Civil Liberties Association et al. v. Toronto Police Service et al., [2010] O.T.C. Uned. 3525; 2010 ONSC 3525, refd to. [para. 51].

R. v. Nedelcu (M.) (2012), 436 N.R. 1; 297 O.A.C. 93; 2012 SCC 59, refd to. [para. 53].

D.H.P. v. P.L.P. (2012), 397 N.B.R.(2d) 376; 1028 A.P.R. 376 (C.A.), refd to. [para. 55].

Bram Enterprises Ltd. et al. v. A.I. Enterprises Ltd. et al. (2012), 387 N.B.R.(2d) 215; 1001 A.P.R. 215; 2012 NBCA 33, refd to. [para. 55].

F.H. v. McDougall, [2008] 3 S.C.R. 41; 380 N.R. 82; 260 B.C.A.C. 74; 439 W.A.C. 74; 2008 SCC 53, refd to. [para. 56].

R. v. White (J.K.), [1999] 2 S.C.R. 417; 240 N.R. 1; 123 B.C.A.C. 161; 201 W.A.C. 161, refd to. [para. 61].

R. v. Fitzpatrick (B.), [1995] 4 S.C.R. 154; 188 N.R. 248; 65 B.C.A.C. 1; 106 W.A.C. 1, dist. [para. 62].

R. v. D'Amour (M.) (2002), 163 O.A.C. 164; 166 C.C.C.(3d) 477 (C.A.), refd to. [para. 67].

Yri-York Limited et al. v. Canada (Attorney General) et al., [1998] 3 F.C. 186; 83 N.R. 195 (F.C.A.), refd to. [para. 76].

British Columbia Securities Commission v. Branch and Levitt, [1995] 2 S.C.R. 3; 180 N.R. 241; 60 B.C.A.C. 1; 99 W.A.C. 1, refd to. [para. 77].

R. v. R.J.S., [1995] 1 S.C.R. 451; 177 N.R. 81; 78 O.A.C. 161, refd to. [para. 77].

R. v. Omstead (1988), C.R.R.(2d) 342 (Ont. Ct. Jus.), refd to. [para. 87].

R. v. Cole (R.) et al., [2012] 3 S.C.R. 34; 435 N.R. 102; 297 O.A.C. 1; 2012 SCC 53, refd to. [para. 94].
R. v. Colarusso, [1994] 1 S.C.R. 20; 162 N.R. 321; 69 O.A.C. 81, refd to. [para. 94].
R. v. Grant (2005), 245 C.C.C.(2d) 1 (S.C.C.), refd to. [para. 94].
Matheson v. College of Physicians and Surgeons (P.E.I.) (2009), 282 Nfld. & P.E.I.R. 328; 868 A.P.R. 328; 2009 PECA 5, refd to. [para. 105].
Porter v. College of Physicians and Surgeons (Ont.), 2002 CarswellOnt 570, refd to. [para. 105].
Litchfield v. College of Physicians and Surgeons (Alta.), [2007] A.R. Uned. 641; 2007 ABQB 584, refd to. [para. 105].
Misra v. College of Physicians and Surgeons (Sask.) (1988), 70 Sask.R. 116; 52 D.L.R. (4th) 477 (C.A.), dist. [para. 109].
Thomson v. College of Physicians and Surgeons (B.C.), [1998] B.C.T.C. Uned. A35 (S.C.), dist. [para. 109].

Authors and Works Noticed:

Casey, James T., The Regulation of Professions in Canada (Looseleaf, Release No. 2) [para. 29].
Manuel and Donszelmann, Law of Administrative Investigations and Prosecutions (1999), p. 154 [para. 30].
Murdoch and Brockman, Who's First? Disciplinary Proceedings by Self-Regulating Professions and Other Agencies for "Criminal Behaviour" (2001), 64 Sask. L. Rev. 29, pp. 50 to 53 [para. 30].
Sharpe, Robert A., Injunctions and Specific Performance (Looseleaf), paras.1.20, 3.910 [para. 21]; 1.670 [para. 42]; 3.930 [para. 20].

Counsel:

Avocats:

Catherine A. Fawcett and Nathalie L. Godbout, for the applicant;
John P. Barry, Q.C., and Patrick J.O. Dunn, for the respondent.

This application was heard on May 29, 2013, by Walsh, J., of the New Brunswick Court of Queen's Bench, Trial Division, Judicial District of Saint John. Post hearing briefs were received on June 5, 2013. Walsh, J., delivered the following decision on June 10, 2013.

Application allowed.

Editor: Anick Ouellette-Levesque