

In the Court of Appeal of Alberta

Citation: Baugh v. Faculty Association of Red Deer College, 2004 ABCA 203

Date: 20040616

Docket: 0301-0123-AC

Registry: Calgary

Between:

David Baugh

Appellant (Plaintiff)

- and -

**Faculty Association of Red Deer College, Jim Scott, Peter Slade, Lorinda Myers also
known as Lorinda Stuber, Pliny Hayes and Glynis Wilson-Boulton**

Respondents (Defendants)

The Court:

**The Honourable Madam Justice Carole Conrad
The Honourable Madam Justice Elizabeth McFadyen
The Honourable Madam Justice Anne Russell**

**Memorandum of Judgment
Delivered from the Bench**

Appeal from the Whole of the Judgment and Interim Orders by
The Honourable Mr. Justice A.M. Lutz
Dated the 10th day of April, 2003
(Docket: 9810-01328)

**Memorandum of Judgment
Delivered from the Bench**

Conrad J.A. (For the Court):

[1] I have been asked to give the unanimous decision of the court. Dr. Baugh, before announcing a decision, I want to say that you argued well and have said everything that can be said. We are not satisfied, however, that the standard of review has been met. Thus, the appeal is dismissed for the following reasons.

[2] The appellant, Dr. David Baugh (“Baugh”), is an instructor at Red Deer College (“the College”) and a member of the Faculty Association at the College (“Faculty Association”). He sued the Faculty Association and various members of the Executive for defamation and breach of the Union’s duty of fair representation.

[3] The alleged defamation arose when Dr. Baugh wrote an open letter to the members of the Faculty Association claiming, among other things, that he had been fully exonerated by proceedings under the Board with regard to a complaint against him alleging professional misconduct. The president of the Faculty Association wrote a letter to its membership stating that the claim that Baugh had been fully exonerated on all charges by proceedings under the Board is not at all accurate. Dr. Baugh alleges that statement is defamatory.

[4] The claim for breach of the duty of fair representation was based on the appellant’s belief that the Faculty Association acted without due process and in bad faith when dealing with a complaint of professional misconduct in front of the Professional Standards Committee. As a result, Dr. Baugh says he was required to obtain a lawyer.

[5] The respondents filed a statement of defence and then sought summary judgment under Rule 159 of the *Rules of Court*. The chambers justice granted the application, holding that the defamation action could not be sustained because the words that were alleged to be offensive were not capable of being defamatory and, in any event, they were true. Baugh’s letter leaves the impression that he was exonerated on the merits by the Board which was not the case. The justice dismissed the action for breach of the common-law duty of fair representation holding that the duty did not apply to internal Union matters and the appellant had never asked the Union for help. From these findings Dr. Baugh appeals.

[6] The standard of review in the Court of Appeal on an appeal from a summary judgment decision is “whether an error of law has been made or the decision is unreasonable in that no weight or insufficient weight has been given to relevant considerations”: *Herman v. Blomme*, [1993] A.J. No. 645 (C.A.) at para. 2. Thus, absent an error of law, a chambers justice has considerable discretion in an application for summary judgment and this court does not interfere unless the justice has come to an unreasonable conclusion. We have reviewed the reasons of the learned justice and

listened carefully to the arguments made before us. We are not convinced that the chambers justice committed any errors that would allow us to intervene. He stated the applicable law correctly, and his conclusions in applying the law to the facts were reasonable. His conclusion that the statement was not defamatory in the totality of the circumstances, which included Dr. Baugh's letter prompting the response, is reasonable. Similarly, his finding that the Faculty Association statement was true was also reasonable. As a result, the appeal is dismissed.

Appeal heard on May 20, 2004

Memorandum filed at Calgary, Alberta
this 16th day of June, 2004

Conrad J.A.

David Baugh
On His Own Behalf

Appearances:

S. Renouf, Q.C.
For the Respondents