

1941  
 \* April 25.  
 \* June 24.

JAMES ALEXANDER McCAFFRY }  
 (PLAINTIFF) ..... } APPELLANT;

AND

THE LAW SOCIETY OF ALBERTA }  
 (DEFENDANT) ..... } RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA

*Solicitor—Barrister—Law Society of Alberta—Hearing of charge of misconduct against a member—Chairman of discipline committee—Power to name investigation committee.*

Under rule 55 of the rules and regulations of the Law Society of Alberta, the chairman of the discipline committee is authorized to appoint an investigating committee to hear a charge of conduct unbecoming a barrister or solicitor against a member of the Society.

*Harris v. Law Society of Alberta* ([1936] S.C.R. 88) dist.

APPEAL from the judgment of the Appellate Division of the Supreme Court of Alberta (3), affirming the judgment of the trial judge, Shepherd J., and dismissing an

\* PRESENT:—Duff C.J. and Crocket, Kerwin, Hudson and Taschereau JJ.

(1) (1842) 9 Clark & Finnelly  
583 (H.L.).

(2) [1936] Ch. 259.

(3) [1941] 1 D.L.R. 213.

action by the appellant, a disbarred barrister, for a declaration that he was still a member of the respondent Society.

The material facts of the case and the questions at issue are stated in the judgments now reported.

*R. D. Tighe K.C.* for the appellant.

*E. W. S. Kane* for the respondent.

THE CHIEF JUSTICE—The rule ought to be read and construed with a view to giving effect to the plainly declared intention that an Investigating Committee shall be named. The rule should receive an interpretation reasonably calculated to effect its purpose. I think the construction adopted is an admissible construction and that the appeal should be dismissed.

The judgment of Crocket, Hudson and Taschereau JJ. was delivered by

HUDSON J.—In this action the plaintiff alleges that the defendant Society, wrongfully and without legal right, ordered his name to be struck off the rolls of the Society, and he claims a declaration that he is still a member of the Society in good standing and entitled to practise as a solicitor and barrister in Alberta. At the trial before Mr. Justice Shepherd the action was dismissed and this decision was confirmed by the court of appeal, Mr. Justice Lunney dissenting.

The material facts are as follows: The plaintiff was practising as a solicitor and barrister in Alberta. On the 9th May, 1928, a complaint was lodged with the secretary of the Society, charging him with unprofessional conduct. In due course the appellant was notified of this complaint and asked for an explanation. He did send in an explanation which the chairman of the Discipline Committee of the Society thought insufficient and thereupon instructed the secretary of the Society that the matter should go to investigation in the usual way. Thereafter the chairman of the Discipline Committee, by letter dated November 25th, 1928, fixed the 10th December following, at the Court House, Edmonton, as the time and place for the hearing of the complaint, and named an Investigating Committee, composed of three benchers, to hear the same.

The appellant was duly notified of this hearing and on December 10th appeared personally and by counsel on

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further adjourned hearings on December 28th, 1928, and January 2nd, 1929. The appellant was duly notified that the report of the Investigating Committee would be presented to Convocation of the Benchers of the respondent Society at Calgary on 3rd January, and was informed that he had a right to be present or to have counsel or agent present to make such representation as he might deem necessary. A report of the Investigating Committee with the evidence and record of proceedings was duly presented to Convocation on the 3rd of January, and thereafter the following motion was passed unanimously:

That Convocation having considered the report of the Investigating Committee, the evidence taken before it and the record of proceedings, that the report of the said Committee be received and adopted and that the said James A. McCaffry be found guilty of conduct unbecoming a barrister and solicitor.

and the following resolution was then passed:

That the name of James A. McCaffry be struck off the roll of the Law Society of Alberta.

The plaintiff was duly notified of this resolution and appealed therefrom to the court of appeal but such appeal was dismissed, apparently on the ground that the Court had no jurisdiction. There is nothing in the case to indicate that the question now under consideration was raised, but I can see no reason why it should not have been raised. The appellant now claims that he did not know that the members of the Investigating Committee had been appointed by the chairman of the Discipline Committee until long after the appeal; but when he launched his appeal to the court of appeal he must have had the report of the Investigating Committee which, on its face, did show by whom the Committee had been appointed.

On several occasions thereafter plaintiff applied for reinstatement but his applications were refused.

There is not and, indeed, from the record it does not appear that there could be any charge of unfairness about the mode of procedure or lack of opportunity for the plaintiff to present any defence that he might have before the Investigating Committee or the benchers in Convocation.

The *Legal Profession Act* with amendments to the date of the hearing of the complaint against the appellant provided:

31. The benchers may from time to time make rules and regulations in respect of the following matters, that is to say:

(a) The government of the said society and other purposes connected therewith, including the determination of or adjudication upon any matter or thing which it is the duty of the benchers or any committee thereof to adjudicate upon or determine.

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Provided that all rules and regulations of the Law Society of the North-West Territories in force upon the fifteenth day of March, one thousand nine hundred and seven, shall *mutatis mutandis* constitute the rules and regulations of the society, until and except in so far as they shall be repealed or amended by the benchers.

32. (1) Any three benchers thereunto authorized in accordance with the rules and regulations of the society shall constitute an Investigating Committee and such committee may investigate whether any member of the society has been guilty of conduct unbecoming a barrister or solicitor and the said committee may also investigate any other matter or thing that might form the subject matter of a charge or complain against the member of the Law Society whose conduct is being investigated that shall arise in the course of the said investigation, and may report thereon to the benchers, as hereinafter provided.

Rules and regulations were adopted by the benchers, taking effect January 7th, 1927. Rules 54, 55 and 56 dealt with discipline and Rule 55 is the pertinent one in so far as this appeal is concerned. It provides:

Upon receipt of a complaint against any member of the Society for unprofessional conduct, the Secretary of the Society shall submit the same to the Chairman of the Discipline Committee, and if instructed so to do by such Chairman, shall proceed to formulate a charge in conformity with the facts complained of and shall then forward the charge to the member complained of with a request for his explanation, and shall fix a time for answering. If within the period fixed for answer, none is received, or if received, the answer does not in the opinion of the Chairman of the Discipline Committee suffice to clear the member complained of, a place and time shall be fixed by him for hearing the said charge and an Investigating Committee named, and the matter shall thereupon proceed to a hearing according to the provisions of *The Legal Profession Act* as in force from time to time.

Apart from this, there is no evidence of any written rule or regulation of the benchers, but it does appear that from the year 1927 onwards the practice had been for the chairman of the Discipline Committee to name the members of any investigating Committee that became necessary. That this course had been adopted in the present case was shown by the report of the Investigating Committee itself which was adopted by the benchers on the 3rd January. Although Rule 55 is not clear and specific, I think it is fairly open to the interpretations thus adopted by the benchers and, in view of the fact that the benchers

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themselves constituted the body which had power to make these regulations, I do not think that their action in the matter should now be disturbed.

The decision of this Court in the case of *Harris v. Law Society of Alberta* (1) was relied on by counsel for the appellant and forms the basis of the dissenting judgment of Mr. Justice Lunney in the court below. The relevant statute of Alberta in force then was quite different from that which applies to the present case. Moreover, it appears that the Court was of the opinion that Harris never had an opportunity of putting his case fully before the Discipline Committee or the benchers in convocation. In the present case, the appellant had ample opportunity of doing so before the Committee and the Benchers. Then, the provision for appeal applicable in the *Harris* case (1) referred to an appeal from the Discipline Committee as well as from the benchers; but under the statute now in force, section 32 (15), the appeal is from the order of the Benchers and not from the Discipline Committee. This, I think, indicates that it was intended by the Legislature that the decision of the Benchers should be the final decision in the matter, subject only to the right of appeal as provided for in section 32 (15). For these reasons, I think the appeal should be dismissed, but with costs if demanded.

KERWIN J.—The appellant sued for a declaration that he was still a member of the Law Society of Alberta and entitled to exercise and enjoy all the rights and privileges of a barrister and solicitor and a member of the Law Society. The action was dismissed and an appeal to the Appellate Division of the Supreme Court of Alberta was dismissed.

By *The Legal Profession Act*, R.S.A., 1922, chapter 206, the Law Society of Alberta is to be governed by a body composed of members of the Society, to be designated benchers. By section 31:—

The benchers may from time to time make rules and regulations in respect of the following matters, that is to say:

(a) The government of the said society and other purposes connected therewith.

(1) [1936] S.C.R. 88.

A new section 32 was enacted in 1924 and as that section was in force when the benchers made certain rules and regulations, it is important to note subsections 1 and 2:—

32. (1) Any three benchers meeting together as such shall constitute an investigating committee of the society and may investigate under oath any written charge or complaint that a member of the society has been guilty of conduct unbecoming a barrister or solicitor, or has made default in the payment of moneys received by him as a barrister or solicitor, or has been guilty of such misconduct as in England would have been sufficient to bring a solicitor under the punitive powers of the Supreme Court of Judicature, or has been guilty of any breach of the provisions of this Act or of any rules and regulations of the society made or passed under the authority of this Act.

(2) At least ten days' notice in writing shall be given by the secretary of the society to such member of the intention of an investigating committee of three benchers as aforesaid to investigate the said charge or complaint and such notice shall specify the charge or complaint to be investigated and the time and place at which such investigation will be held and shall be served upon such member by being enclosed in a sealed prepaid and registered envelope addressed and mailed to such member at his last post office address on the books of the society.

The rules and regulations took effect January 7th, 1927. Under rule 20, a standing committee known as the discipline committee is to be selected at the first convocation of benchers following the regular election. By rule 53:—

the discipline committee shall be charged with the supervision of the exercise of the disciplinary powers of the Society.

Rules 54 and 55 as so enacted are as follows:—

Rule 54. The Secretary shall from time to time report in writing to the Chairman of the Discipline Committee all complaints against a member of the Society which come to his notice, whether orally or in writing, other than charges ordered by the Benchers to be investigated. Wherever possible, the Secretary shall, before making such report, obtain a complaint in writing.

Rule 55. Upon receipt of a complaint against any member of the Society for unprofessional conduct the Secretary of the Society shall submit the same to the Chairman of the Discipline Committee, and if instructed so to do by such Chairman shall proceed to formulate a charge in conformity with the facts complained of and shall then forward the charge to the member complained of with a request for his explanation, and shall fix a time for answering. If within the period fixed for answer, none is received, or if received, the answer does not in the opinion of the Chairman of the Discipline Committee suffice to clear the member complained of, a place and time shall be fixed by him for hearing the said charge and an Investigating Committee named and the matter shall thereupon proceed to a hearing according to the provisions of *The Legal Profession Act* as in force from time to time.

It is argued that under subsection 1 of section 32 of the Act as enacted in 1924 only the benchers could appoint

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an investigating committee and that they had no authority to delegate that power to anyone. If that be so, it is then argued that subsection 1 of section 32 as enacted in 1928 (assented to March 21st but by virtue of a general Act not to come into force until July 1st) could not affect the matter even if its terms were sufficiently wide. It is also contended that on its true construction rule 55 does not purport to authorize the Chairman of the Discipline Committee to appoint the three members of the Investigating Committee.

On July 4th, 1928, the benchers amended the first part of Rule 55 but the amendment is of no importance. It was after this date that the chairman of the Discipline Committee nominated the members of the Investigating Committee and that the investigation occurred. I have come to the conclusion that the 1924 Act did not require the whole body of benchers to appoint the three members of an investigating committee, nor did it contemplate any three benchers meeting together and constituting themselves such a committee. I am of opinion that under clause (a) of section 31 (which was also amended in 1928 but not so as to affect the present question), and under ss. 1 of s. 32 as enacted in 1924, the benchers had power to direct that the chairman of the Discipline Committee should nominate the members of an Investigating Committee. The construction of rule 55 is not easy but on this point I have come to the conclusion that the rule carries into effect the power which I believe was possessed by the benchers.

I would dismiss the appeal with costs, if demanded.

*Appeal dismissed with costs if demanded.*

Solicitors for the appellant: *Tighe & Wilson.*

Solicitor for the respondent: *E. W. S. Kane.*

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