

IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR

Citation: *Chaulk v. Coffin*, 2025 NLCA 19
Date: May 9, 2025
Docket Number: 202501H0030

BETWEEN:

BRUCE CHAULK, in his capacity as Chief Electoral Officer of Newfoundland and Labrador	FIRST APPELLANT

AND:

SHERRY MORRISSEY	SECOND APPELLANT

AND:

ALISON COFFIN	FIRST RESPONDENT

AND:

WHYMARRAH WHITBY	SECOND RESPONDENT

AND:

JOHN ABBOTT	THIRD RESPONDENT/ APPLICANT

Coram: F.J. Knickle J.A.

Court Appealed From:	Supreme Court of Newfoundland and Labrador, General Division (Grand Bank) 202101G2556
Application Heard:	May 6, 2025
Judgment Rendered:	May 9 2025
Reasons for Judgment by:	F.J. Knickle J.A.

Counsel for the Appellants:	Andrew A. Fitzgerald K.C.
Counsel for the First and Second Respondents:	William A.F. Hiscock and Lori Wareham
Counsel for the Third Respondent/Applicant:	G. John Samms and Sarah M. Byrne

Authorities Cited:

CASES CITED: *Coffin v. Morrissey*, 2021 NLSC 65; *Coffin v. Chaulk*, 2025 NLSC 49; *RJR — MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311; *Canada (Royal Canadian Mounted Police) v. Rees*, 2005 NLCA 4; *Canada Fluorspar (NL) Inc. v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 9220*, 2021 NLCA 53; *Jadhav v. Kielly*, 2018 NLCA 50; *Weir's Construction Limited v. Warford Estate*, 2016 NLCA 65; *Lee v. Lee*, 2019 NLCA 75; *J. (D.L.) v. M.(V.)*, 2004 NLCA 49; *Kelly v. Condon*, 1987 CanLII 3971 (NLCA); *Knox v. Conservative Party of Canada*, 2007 ABCA 143; *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342; *Mitchell v. Jackman*, 2016 NLTD(G) 132; *Harper v. Canada (Attorney General)*, 2000 SCC 57, [2000] 2 S.C.R. 764; *Nova Scotia Liberal Party v. Chief Electoral Officer*, 2024 NSSC 172.

STATUTES CONSIDERED: *Canadian Charter of Rights and Freedoms*, section 3; *House of Assembly Act*, RSNL 1990, c. H-10, section 54; *Elections Act, 1991*, SNL 1992, c. E-3.1, sections 256, 58, 266(4).

OTHER: Marc Bosc and André Gagnon, eds, *House of Commons, Procedure and Practice*, 3rd ed (Canada: Éditions Yvon Blais).

F.J. Knickle J.A.:

OVERVIEW

[1] This is an application for a stay of an Order pending an interlocutory appeal. The Order in question directs that a trial proceed on June 16th, 2025, in the Supreme Court of Newfoundland and Labrador. The trial is in regard to the provincial election in February of 2021, and the district of St. John's East - Quidi Vidi.

[2] One of the candidates, Alison Coffin, the first plaintiff at trial and first respondent in this appeal, alleges that the election was improperly conducted. She seeks a remedy declaring the election void. The other plaintiff and second respondent, Whymarrah Whitby, alleges his section 3 rights under the *Charter* were violated and seeks damages under the *Charter*.

[3] The Chief Electoral Officer for the province is a defendant, and an appellant before this Court. However, it is John Abbott, the elected candidate, third defendant and third respondent on the appeal, who is the applicant for the stay. He submits he will suffer irreparable harm if the trial is permitted to proceed before the appeal of the order directing the trial proceed, can be addressed by this Court. Mr. Abbott also seeks to expedite the hearing of the appeal, particularly if no stay is imposed. The appellant (the Chief Electoral Officer) does not oppose the application, but the first and second respondents (Ms. Coffin and Mr. Whitby) in the appeal oppose staying the trial.

[4] I would dismiss the application for a stay of the Order for the trial date as scheduled. I am not satisfied that all criteria for a stay have been met. While I am satisfied there is a serious issue to be tried on appeal and that Mr. Abbott will suffer irreparable harm, the harm is minimal, and the balance of convenience does not favour a stay. I am satisfied that the respondents, Ms. Coffin and Mr. Whitby, will suffer greater irreparable harm if the stay is imposed. That is to say, the harm suffered by Mr. Abbott if the trial proceeds is outweighed by the harm suffered by Ms. Coffin and Mr. Whitby if the trial does not proceed pending the appeal.

[5] Having refused to stay the Order directing that the trial commence June 16th, 2025, this Court is prepared to hear this matter once the appeal is perfected in due course.

Background circumstances

[6] In March 2021, Ms. Coffin ran in the provincial election for a seat in the House of Assembly for the district of St. John's East-Quidi Vidi. Mr. Abbott, who also ran for that district, was the successful candidate by a margin of 53 votes. After unsuccessfully seeking a judicial recount under the relevant provincial elections legislation (*Coffin v. Morrissey*, 2021 NLSC 65), in April 2021, Ms. Coffin, along with a resident from the district, Mr. Whitby, applied to the Supreme Court under the same legislation to have Mr. Abbott's election win declared void on the basis of irregularities in the process. The Chief Electoral Officer, Bruce Chaulk, the Returning Officer for the district, Sherry Morrissey, and John Abbott, the successful candidate, were named as respondents. If Ms. Coffin is successful in having the election declared void, this determination would precipitate a byelection for that seat. Mr. Whitby also seeks damages under the *Charter* for an alleged violation of his section 3 *Charter* rights.

[7] Although Mr. Abbott is a defendant at trial, he is accused of no wrongdoing in his participation in the election. He is a party to the proceedings solely because of his circumstances as the successful candidate for that district, and there may be consequences for him as the winning candidate, should it be established that the election is void. For this reason, he has an interest in the proceedings.

[8] With the consent of the parties, the case management judge overseeing the proceedings converted the initial application to a statement of claim and the matter has been case managed since its inception. Although a trial date was tentatively scheduled in February 2024, that date had to be abandoned as none of the parties were ready to proceed to trial, despite that approximately three years had elapsed since the election. All parties were aware that a new general election would, by law, have to occur on October 14th, 2025, at the very latest. This meant that the election would be called at the latest in mid-September 2025.

[9] In February 2025, Ms. Coffin and Mr. Whitby brought an application to have the matter declared ready for trial and for a date to be set. Before responding to that application, the Chief Electoral Officer brought an application to have the matter declared moot on the basis that section 54 of the *House of Assembly Act*, RSNL 1990, c. H-10 (*HOA*) rendered the prospect of the remedy of a new byelection moot. Section 54 of the *HOA* states:

> 54**.** (1) Where a vacancy occurs in the House of Assembly, the Lieutenant-Governor in Council shall, within 60 days after the seat becomes vacant, issue a proclamation for the holding of an election and return of a member for the district in respect of which the vacancy has occurred.
>
> (2) Subsection (1) does not apply where a vacancy in the House of Assembly occurs 6 months or less before the day upon which a general election is required to be held under (a) subsection 3(2); or (b) subsections 3(4) and (5).

[10] Mr. Abbott supported the application. The defendants argued that by virtue of section 54, no byelection must be held within six months of the next general election. Because the next general election has to be called this year, 2025, and held no later than the second Tuesday in October, in the defendants' view, the six-month period before the next general election as contemplated by section 54(2), began as of April 14th, 2025. The defendants argued that the effect of these timelines and section 54 is that the trial has to be completed and any byelection, if to be held, must be completed prior to April 14th, 2025. Given that the application was brought in February of 2025, the defendants argued it would be impossible to complete a trial much less have the necessary steps put in place for a byelection, even if Ms. Coffin was successful, before April 14th, 2025.

[11] In contrast, Ms. Coffin and Mr. Whitby argued that section 54 of the *HOA* had no application to the circumstances where an election is declared void under the *Elections Act, 1991*, SNL 1992, c. E-3.1. Further, they submitted that section 54(2) is not mandatory in prohibiting a byelection within six months of a general election, but does no more than remove the requirement to hold a byelection within 60 days of a vacancy being declared. In their view, it would still be open to the Lieutenant-Governor in Council to issue the proclamation if the vacancy is declared within six months of the October deadline for a general election.

[12] Ms. Coffin and Mr. Whitby argued that the discretion available to the Lieutenant-Governor in Council to not call an election within six months of a general election cannot override the mandatory nature of calling a new election where a controverted election is declared void. They argued that if they are successful at trial, even at this late date, it would still be possible for there to be a byelection for the seat, although they agreed that given that a general election must be held no later than the second Tuesday in October 2025, that election could be called at any time in the coming months. They agreed that if this were to happen, the remedy of a byelection would be rendered moot.

[13] However, Ms. Coffin and Mr. Whitby argued that whether a new election could actually be held does not render the trial moot because this is not their only remedy sought. Firstly, they argued that whether there were irregularities during the election needs to be resolved. Ms. Coffin submitted she and the public are entitled to know whether she wrongly lost the election and whether Mr. Abbott rightfully won. A declaration from the Court that the election was controverted and is void is not a remedy that is moot, even if a new election cannot be held.

[14] Secondly, Mr. Whitby is seeking damages for the alleged violation of his section 3 *Charter* rights. Both Ms. Coffin and Mr. Whitby argue that this remedy is available whether or not a new election can be held.

[15] For these reasons, Ms. Coffin and Mr. Whitby argued that even if the remedy of holding a new election could disappear because of the prospect that there will be insufficient time to hold a byelection before the general election is called, the other remedies available mean that the matter is not moot and should proceed to trial.

The decision of the case management judge

[16] In his written decision (*Coffin v. Chaulk*, 2025 NLSC 49, the "Decision"), the case management judge (who will also be the trial judge) first addressed whether the matter was ready for trial. He then addressed whether the trial was moot because of the timelines for the next general election and the application of section 54 of the *HOA*. The trial judge concluded that section 54 did not apply to the provisions respecting controverted elections under the *Elections Act* (Decision, at para. 65). The judge stated that while the "focus" of the procedures under the *Elections Act* is to address the "propriety of an election" (Decision, para. 68), section 54 of the *HOA* "simply instructs as to how a vacancy in the House of Assembly is to be filled" (Decision, para. 69). The judge also observed that section 54 of the *HOA* had none of the "urgency" that is associated with the procedures for determining whether an election was controverted (Decision, at paras. 75-76). The judge stated, at paragraph 77:

> Given the pace of proceedings apparent in the section 253 procedure, it is antithetical to its spirit to insist, as the Defendants do, that the move towards correcting the wrong revealed by the judge could simply be undone by the anomaly of the resultant byelection (if ordered) falling within 6 months of the next general election. It is clear that the legislature is quite concerned by what an election application may yield, and it wants to ensure that it is addressed as quickly as possible in a new election, the only practicable remedy, if warranted.

[17] The applications judge also distinguished between the reference in section 54 of the *HOA* to "proclamation" with the use of the term "writ" in the *Elections Act*, particularly section 256, the section that directs the Speaker of the House to take steps to have a new election where a judge has declared the election void. Section 256 states:

> 256. (1) The speaker shall, at the earliest practicable moment after receiving the certificate and report of the trial judge, give the necessary directions, and adopt all the proceedings necessary, for confirming or altering the return, or shall request the Lieutenant-Governor in Council to issue a writ for a new election.
>
> (2) Where the Lieutenant-Governor in Council receives a request from the speaker under subsection (1), he or she shall, as soon as practicable, issue a writ for a new election.

[18] The judge concluded that section 54 of the *HOA* had no application to the timing of a new election to remedy an election that has been declared void, and the matter was not moot.

[19] The appellants, the Chief Electoral Officer and Ms. Morrissey, now seek to set aside the judge's decision that section 54 does not apply to a new election called because of a determination that an election was void.

[20] However, it is the third respondent, Mr. Abbott, who seeks to stay the trial pending the determination of the appeal.

The principles governing whether to impose a stay of an order pending appeal

[21] The three-part test for a stay of enforcement of an order pending appeal is well established, as stated by the Supreme Court of Canada's decision in *RJR — MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, and repeatedly applied by this Court (*Canada (Royal Canadian Mounted Police) v. Rees*, 2005 NLCA 4; *Canada Fluorspar (NL) Inc. v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 9220*, 2021 NLCA 53; *Jadhav v. Kielly*, 2018 NLCA 50; *Weir's Construction Limited v. Warford Estate*, 2016 NLCA 65; and *Lee v. Lee*, 2019 NLCA 75).

[22] The first question is whether Mr. Abbott has established that there is a serious issue to be argued on appeal. This question requires a preliminary but not a detailed or extensive investigation of the merits of the appeal.

[23] Secondly, Mr. Abbott must establish that he would suffer irreparable harm if no stay were granted. It is the nature of the harm that is considered, not the magnitude of the harm. In *RJR—MacDonald*, the term "irreparable" was described in this way, at page 341:

> "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court's decision (*R.L. Crain Inc. v. Hendry* (1988), 48 D.L.R. (4th) 228 (Sask. Q.B.)); where one party will suffer permanent market loss or irrevocable damage to its business reputation (*American Cyanamid*, *supra*); or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined (*MacMillan Bloedel Ltd. v. Mullin*, [1985] 3 W.W.R. 577 (B.C.C.A.)). The fact that one party may be impecunious does not automatically determine the application in favour of the other party who will not ultimately be able to collect damages, although it may be a relevant consideration (*Hubbard v. Pitt*, [1976] Q.B. 142 (C.A.)).

[24] It is not necessary to establish conclusively that the contemplated harm will occur (*Lee*, at para. 17). For example, in the context of harm that might otherwise be compensable by way of damages, the prospect of incurring monetary loss may nonetheless constitute irreparable harm if there is a "credible reason for uncertainty" as to whether those damages can be recovered (*Rees*, at para. 60).

[25] Thirdly, Mr. Abbott must establish that the balance of convenience, as between the parties, favours imposing a stay of the Order. That is, will he be more inconvenienced because the stay is not granted, or would Ms. Coffin and Mr. Whitby be more inconvenienced if the stay is granted? In this assessment, it is also appropriate to consider broader interests or potential harm beyond those of the immediate parties. As stated in *RJR—MacDonald* at pages 342-343:

> The factors which must be considered in assessing the "balance of inconvenience" are numerous and will vary in each individual case. In *American Cyanamid*, Lord Diplock cautioned, at p. 408, that:
>
> > [i]t would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.
>
> He added, at p. 409, that "there may be many other special factors to be taken into consideration in the particular circumstances of individual cases."

[26] In these circumstances, the public interest in having elections run efficiently and properly is relevant to the proper assessment of the balance of convenience between the parties. The public interest is also engaged in ensuring that an allegation that election results should be voided because of irregularities in the process that could have affected the result, be resolved as quickly as possible.

The application of the principles to the circumstances

[27] Applying the principles to the circumstances here, I am not satisfied to enter the stay as requested by Mr. Abbott.

1) Serious issue to be tried

[28] The issue raised on this appeal is whether the case management judge erred in concluding that the trial was not moot in light of the certainty of a pending general election before October 2025. Whether the judge was correct in his interpretation of section 54 of the *HOA* and that it did not apply to byelections called as a result of a controverted election, is a question of statutory interpretation and therefore raises questions of law. Insofar as the appeal raises a question of law related to statutory interpretation, I am satisfied that this raises a serious question to be tried on the appeal.

2) Irreparable harm

[29] Mr. Abbott raised five types of harm that he could suffer if the trial is not stayed pending appeal, that cannot be addressed by an award of damages.

1) The appeal will be rendered nugatory

[30] Firstly, he argues that if the trial proceeds before the appeal is heard, the appeal will be rendered nugatory. He argues that the question that is being asked by this Court is whether the judge erred in concluding that the trial was not moot. If the trial proceeds, the purpose in having appealed the judge's order, that is to avoid the trial proceeding because it is moot, will be lost.

[31] I accept that whether an appeal will be rendered nugatory has been found to constitute irreparable harm and warrant entering a stay, including in the context of election results or nomination of candidates (See *J. (D.L.) v. M.(V.)*, 2004 NLCA 49, at para. 11, in the context of child custody; *Kelly v. Condon*, 1987 CanLII 3971

(NLCA), at paras. 5-6, in the context of winding up a company; and *Knox v. Conservative Party of Canada*, 2007 ABCA 143, at para. 16, in the context of an election). However, in my view, if this harm occurs in these circumstances, it would be minimal given that the trial could proceed to resolve the allegations even if the remedy of a new election is unavailable.

[32] Further, even if the appellants are correct that the trial is moot, this does not mean that the trial could not proceed if there is public interest in having the dispute litigated (*Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342; and *Mitchell v. Jackman*, 2016 NLTD(G) 132).

[33] In other words, even if both the Chief Electoral Officer and Mr. Abbott are correct that the remedy of a byelection is unavailable, there are still live issues to be resolved that do not impact the main issue on appeal: the proper interpretation of the two statutes.

[34] In light of the above, I am satisfied that to the extent having the trial proceed could render this appeal nugatory, Mr. Abbott may suffer irreparable harm. However, I am of the view this harm is minimal.

2) A moot trial would offend parliamentary privilege

[35] Mr. Abbott submits that to allow the trial to proceed if, as he described, it is "illegal" because it is moot, would be to allow an unwarranted incursion upon his parliamentary privileges by "obstruction, interference, intimidation and molestation" (Marc Bosc and André Gagnon, eds, *House of Commons, Procedure and Practice*, 3rd ed (Canada: Éditions Yvon Blais), Ch. 3 Privileges and Immunities). Mr. Abbott submits that as a sitting member of the House of Assembly, he "enjoys the privileges and immunities associated with parliamentary privilege" (Mr. Abbott's Memorandum of Fact and Law, at para. 43). He submits that the Court's interference with those privileges beyond what is permitted under the *Elections Act* would offend those privileges. For this reason, Mr. Abbott submits that a trial to determine whether an election is controverted should not occur unless the practical remedy is available "that is a by-election".

[36] I do not accept that if this trial proceeds, even if it were later determined to have been moot insofar as the remedy of the byelection is concerned, that this constitutes an unwarranted incursion into Mr. Abbott's parliamentary privileges. While it may be that the *Elections Act* carefully circumscribes the jurisdiction of the

Court to review the electoral process, there is absolutely nothing in the *Act* that states that a trial under those provisions can only proceed if the remedy of a byelection is available. Any elected individual may face a challenge to the legitimacy of their election win. That a byelection may not be called does not mean that the seat may nonetheless be declared void.

[37] Given the above, I am not satisfied that if this trial proceeds, it will cause irreparable harm to Mr. Abbott by intruding on his parliamentary privileges.

3) Having to re-win his seat if the trial proceeds

[38] Mr. Abbott submits that if the trial is allowed to proceed and the plaintiffs are successful, he might face having to "re-win" his elected office before the expiration of his term. I do not accept that the prospect of having to face "re-winning" his seat before the expiration of his term constitutes irreparable harm. Firstly, whether Mr. Abbott might face an election to "re-win" his seat depends on whether or not the plaintiffs are successful at trial. Mr. Abbott may very well be successful; in which case no election will occur. Even if the plaintiffs are successful, it would be open to Mr. Abbott to appeal the decision, in which case the *Elections Act* automatically stays the decision from the trial (*Elections Act*, s. 266(4)). Under the *Elections Act*, no election will occur until it is established that the original election is void. In other words, no election would be held until the appeal of the decision was addressed.

[39] Further, the assertion that he might be obliged to "re-win" his seat is predicated on the assumption that the seat was rightfully won in 2021. Whether the seat was "rightfully" won is the point of the trial. If Mr. Abbott must seek the seat in a new election, it will be because the first election was void. He will not be running to re-win his seat. For this reason, I am not satisfied that this concern constitutes irreparable harm. Further, if it is possible to hold the byelection, it means that the argument that the trial is moot no longer can be sustained.

4) The prospect of a byelection and general election in rapid succession

[40] Related to Mr. Abbott's concern that he might be exposed to an unnecessary byelection is his concern that he might be exposed to a byelection and then a general election in "rapid succession" given the timelines for the next general election.

[41] Like the argument above, this anticipated outcome is contingent on the plaintiffs being successful at trial. The contingency of this concern is too uncertain

to constitute harm. As well, this is the reality of the consequences of an election having been found to be controverted. There is always a chance that a general election might be called at any time before the four-year expiration occurs. Any trial respecting an allegation of a controverted election faces the risk that there could be a general election called before or near when a byelection for a void election is called. Given this, I am not satisfied that this risk constitutes irreparable harm that would justify staying the trial.

5) Incurring unnecessary costs

[42] Although Mr. Abbott is not the appellant, he agrees with the appellant Chief Electoral Officer that the trial should not proceed because it is moot. His interest in the matter is solely whether his election to the district will be rendered void and a new election called. If it is correct that the trial should not have proceeded because the remedy of a new election is for all intents and purposes no longer available, I accept that to have to go through an unnecessary trial would incur costs that might have been otherwise avoided.

[43] However, I do not accept that this constitutes irreparable harm. Firstly, as discussed earlier, the trial could proceed to address the issue of whether the election was controverted even if no byelection is available as a remedy. Thus, the costs will not be unfairly incurred because of an "illegal trial". Further, if Mr. Abbott is successful at trial, he will be able to seek his costs. If he is unsuccessful at trial, but ultimately successful on an appeal, he will also be able to seek his costs.

Conclusion on Irreparable Harm

[44] In summary, although I reject four of the five types of harm alleged by Mr. Abbott, I am satisfied that there could be irreparable harm to Mr. Abbott if the trial of the matter is not stayed pending appeal because it could render some aspects of the appeal moot. However, in my view, this harm is minimal. There remain other issues on the appeal, including the proper interpretation of the two statutes to be addressed by the Court of Appeal.

3) The balance of convenience.

[45] Even if I am satisfied that Mr. Abbott could suffer minimal irreparable harm, where does the balance of convenience fall?

[46] As stated, I accept that if the trial is not stayed, the appeal of the judge's decision, insofar as to whether there should have been a trial because it was moot, may be rendered nugatory.

[47] However, if a stay *is* ordered, the availability of a remedy of a byelection for Ms. Coffin will conclusively be rendered moot. All parties agree that the pending timelines for a general election will make it impossible to hold a trial at a later time that will also facilitate holding a byelection before a general election, should Ms. Coffin be successful. In contrast, if the trial proceeds as scheduled, it is possible that the trial could be completed, and if the plaintiffs are successful, the remedy of a byelection could occur; albeit the window of time is very small. All parties agree that given the present timelines, the best-case scenario for Ms. Coffin and Mr. Whitby would be that a byelection could be called in August or early September. Given that the latest the general election can be proclaimed is mid-September (a minimum of 28 days before the polling day under section 58 of the *Elections Act*), this leaves little room for Ms. Coffin, if successful, to enjoy the remedy of a new election. But it is nonetheless possible.

[48] Given the public interest in elections being fairly and properly conducted, and the urgency with which the *Elections Act* suggests these disputes over election results should be resolved, I am reluctant to interfere with the trial judge's exercise of his discretion to proceed with the trial. Even if the appellants are correct that the judge erred in his interpretation of the relationship between the *Elections Act* and the *HOA*, these time constraints were before the case management judge, yet he was satisfied that the trial date should be set.

[49] Further, a stay of the trial will compose part of the very remedy that is sought on appeal. Providing the very relief sought on appeal by granting the stay weighs against imposing the stay. As stated by the Supreme Court of Canada in *Harper v. Canada (Attorney General),* 2000 SCC 57, [2000] 2 S.C.R. 764, at para. 7:

> … This application is governed by the principles set forth in previous cases. On appeal the applicant Harper may seek alteration of these principles, but for the moment they govern. Applying these principles, the balance of convenience in this case favours granting the stay of the injunction. One of these principles is the rule against granting the equivalent of final relief in interlocutory challenges to electoral statutes, even in the course of elections governed by those statutes: *Gould v. Attorney General of Canada*, [1984] 2 S.C.R. 124; see also *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110, *per* Beetz J., at p. 144; *Haig v. Canada*, [1993] 2 S.C.R. 995. In this case, allowing the injunction to stay in place will in effect give Mr. Harper the ultimate relief he seeks in his action, at least with respect to the current

> election. The trial judge, however, did not address this factor, nor the case law which addresses it.

Although the above principle in *Harper* was applied in the context of a constitutional challenge to elections legislation, the principle is also applicable in this context.

[50] There is also a public interest in having any substantial irregularities identified so that they do not happen again. Ms. Coffin submitted that a declaration that the election was void will be significant because it will affirm that she did not lose the election. In this regard, I note that Mr. Abbott also has an interest in the trial proceeding as, if he is successful, it will verify the legitimacy of his election win.

[51] I am also concerned that to further postpone this matter pending resolution of an interlocutory appeal, in these circumstances, would undermine the legislative intent of the *Elections Act*. As observed by the judge, controverted election proceedings have a character of urgency. They should be decided quickly so that if there is to be a new election, it can also be done quickly so that the House of Assembly can get on with its duties to the public. It is unfortunate that the resolution of this matter has taken so long. However, the circumstances of the allegations are unusual and it has taken time for all parties to properly pursue the claim.

[52] It is in everyone's interests, the respondents, the appellants and the public at large that the question of whether there were irregularities in the election that would render the election void, be resolved. It is in the public interest that elections are conducted properly, whether or not a byelection could be held should it be found that, in fact, the original election was not properly managed (*Nova Scotia Liberal Party v. Chief Electoral Officer*, 2024 NSSC 172, at para. 32):

> Even if there is no live controversy due to the withdrawal of the order, I am satisfied that hearing this matter is not a waste of judicial resources. This is a recurring issue of brief duration which is likely to evade review, given that it is unlikely that a judicial review application could ever come before the court within the span of a campaign. I also find this to be a matter of public importance whose resolution is in the public interest...

CONCLUSION

[53] I am satisfied that there is a serious issue to be tried on the appeal. I am also satisfied that insofar as to whether the trial judge erred in permitting the trial to proceed, to not impose the stay may render aspects of the appeal nugatory. However,

there are other alleged errors, the determination of which will not be rendered nugatory, such as the proper interpretation of the relationship between the *Elections Act* and the *HOA*. Given that the stay of the trial is one of the main remedies sought on appeal, to render a stay would be to provide the appellate remedy before deciding the appeal. Likewise, if the stay is imposed, not only will the trial be delayed further, the availability of the remedy of a byelection will be eliminated. Given the urgency with which these matters are to be resolved under the *Elections Act*, in my view, the balance of convenience favours denying a stay of the trial pending appeal.

[54] Once the parties have perfected the appeal, a date for a hearing of the appeal may be sought in the usual course.

[55] The application for a stay is dismissed.

[56] Costs will be in the cause on the appeal.

F.J. Knickle J.A.