



**IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR**

Citation: *Oleynik v. Newfoundland and Labrador (Labour Relations Board)*, 2025 NLCA 43

Date: December 31, 2025

Docket Number: 202301H0013

BETWEEN:

ANTON OLEYNIK

APPELLANT

AND:

LABOUR RELATIONS BOARD OF
NEWFOUNDLAND AND LABRADOR

FIRST RESPONDENT

AND:

MEMORIAL UNIVERSITY OF NEWFOUNDLAND
FACULTY ASSOCIATION

SECOND RESPONDENT

AND:

MEMORIAL UNIVERSITY OF NEWFOUNDLAND

THIRD RESPONDENT

Coram: F.P. O'Brien, W.H. Goodridge, K.J. O'Brien JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador,
General Division 202201G1567

Appeal Heard: December 19, 2025

Judgment Rendered: December 31, 2025

Reasons for Judgment by: W.H. Goodridge J.A.

Concurred in by: F.P. O’Brien and K.J. O’Brien JJ.A.

Counsel for the Appellant: Self-Represented

Counsel for the First Respondent: Megan S. Reynolds

Counsel for the Second Respondent: James R. Farrell

Counsel for the Third Respondent: Darren C. Stratton

Authorities Cited:

CASES CITED: *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342; *Newfoundland and Labrador Association of Public and Private Employees v. Newlab Clinical Research Inc.*, 2004 NLCA 45; *Home Trust Company v. Ballam*, 2025 NLCA 10; *Newfoundland and Labrador (Information and Privacy Commissioner) v. Beverage Industry Association of Newfoundland and Labrador*, 2023 NLCA 2; *Z.B. v. Provincial Director of Adults in Need of Protective Intervention*, 2020 NLCA 17; *M.S. v. Newfoundland and Labrador (Child and Youth Services)*, 2020 NLCA 43; *Powers v. Mitchell*, 2019 NLCA 16; *Rees v. Fong*, 2018 NLCA 60.

W.H. Goodridge J.A.:

[1] Anton Oleynik appeals a procedural order, dated February 17, 2023, and filed February 20, 2023, to adjourn the hearing of a *mandamus* application.

BACKGROUND

[2] Mr. Oleynik made a complaint to the Labour Relations Board of Newfoundland and Labrador (the “Labour Relations Board”) that the Memorial University of Newfoundland Faculty Association had breached its duty of fair representation owed to him in its handling of a grievance. The complaint was progressing slowly, prompting Mr. Oleynik to file a *mandamus* application in the

Supreme Court, requesting that the Court command the Labour Relations Board to perform its statutory duty, namely, to determine his complaint. When the *mandamus* application was called for hearing, counsel for the First Respondent advised the Court that the vice-chairperson of the Labour Relations Board had recently been assigned to the file as Chair of the panel and that the panel would convene in the normal course to determine the complaint.

[3] Collateral to, but contemporaneous with, the *mandamus* application, Mr. Oleynik had asked the presiding judge (Noel J., as he then was) to recuse himself from hearing the application, alleging potential bias. This was the second time that Mr. Oleynik had asked for Noel J.'s recusal. The previous month Noel J. had heard Mr. Oleynik's application to have him recused as case management judge from several proceedings before the court; that decision was still pending on reserve.

[4] In the circumstances, Noel J. did not hear argument on the *mandamus* application and instead made the procedural order to adjourn the hearing. That adjournment order is the subject matter of this appeal. In oral reasons, Noel J. explained that it would be a waste of the parties' and the Court's time to proceed with the *mandamus* application while the recusal decision was pending, and that the *mandamus* application was not urgent because it appeared that active steps were being taken to convene a panel to determine the complaint. In his oral reasons, Noel J. explained:

Oleynik has raised in his written submissions and supporting affidavits that I recuse myself from hearing the [*mandamus*] application herein.

...

I am not prepared to hear the application in this matter while my recusal decision is under consideration. It would be an unnecessary waste of court time and resources, as well as the parties, to proceed with the matter at this time.

I exercise my discretion to postpone the application pursuant to Rules 29.18, 29.10 (g) and 42.02.

...

I am aware of the urgency that Oleynik advances of wanting this application for an order of *mandamus* to proceed forthwith and immediately. However, the issue of urgency and the necessity of the *mandamus* order is ameliorated with the appointment of ... as a vice chairperson of the Labour Relations Board and assignment as chair of the panel to hear Oleynik's [complaint].

...

The application is adjourned without a date. The parties have leave to seek further directions following the filing of the recusal decision.

(Appeal Book, Part I, Tab 2, at 41-45)

[5] The recusal decision was filed on June 9, 2023 (2023 NLSC 86).

[6] The Notice of Appeal of the adjournment order was filed on March 2, 2023. Mr. Oleynik alleges in that notice that Noel J. erred in two respects when making the adjournment order: (1) by denying him the right to be heard (procedural fairness); and (2) by making a palpable and overriding error in stating that the vice-chairperson of the Labour Relations Board had been assigned to address the complaint, and it would be proceeding expeditiously.

[7] The Respondents raise in written submissions, as a threshold issue, that the appeal of the adjournment order is now moot – no longer needs to be addressed – because the Labour Relations Board has determined Mr. Oleynik’s complaint. The Labour Relations Board determined Mr. Oleynik’s complaint on March 31, 2023; it was dismissed. The resulting order was issued by the Board and circulated to the parties on April 3, 2023.

[8] The Court has agreed to address the mootness as a threshold issue.

ANALYSIS

[9] The substance behind this appeal has disappeared. There is no possible advantage or benefit to Mr. Oleynik in proceeding. The relief sought in the *mandamus* application, to command the Labour Relations Board to determine Mr. Oleynik’s complaint, has already been achieved; the Labour Relations Board determined the complaint on March 31, 2023. The substance behind the appeal is now a moot issue because the decision of this Court – whether the appeal is allowed or denied – will have no practical effect on Mr. Oleynik’s rights. Although there are occasions when this Court exercises its discretion to hear a moot issue, this is not one of those occasions.

[10] The doctrine of mootness is discussed by the Supreme Court of Canada in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342. Sopinka J., writing for a unanimous Court, stated at page 353:

The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly, if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot. The general policy or practice is enforced in moot cases unless the court exercises its discretion to depart from its policy or practice. The relevant factors relating to the exercise of the court's discretion are discussed hereinafter.

The approach in recent cases involves a two-step analysis. First, it is necessary to determine whether the required tangible and concrete dispute has disappeared and the issues have become academic. Second, if the response to the first question is affirmative, it is necessary to decide if the court should exercise its discretion to hear the case. ...

[11] In this case, the live controversy has disappeared – the matter is moot – and the only question is whether the Court should exercise its discretion and hear the appeal. *Borowski*, at pages 358 to 363, discusses three criteria that a court should consider in the exercise of this discretion. The three criteria were encapsulated by Mercer J.A. in *Newfoundland and Labrador Association of Public and Private Employees v. Newlab Clinical Research Inc.*, 2004 NLCA 45:

[16] ... These criteria are: whether there still exists an adversarial context to the proceeding; whether the case merits the allocation of scarce judicial resources; and the necessity of the Court demonstrating awareness of its proper lawmaking function.

[12] The criteria have been applied by this Court on numerous occasions, including in *Home Trust Company v. Ballam*, 2025 NLCA 10; *Newfoundland and Labrador (Information and Privacy Commissioner) v. Beverage Industry Association of Newfoundland and Labrador*, 2023 NLCA 2; *Z.B. v. Provincial Director of Adults in Need of Protective Intervention*, 2020 NLCA 17; *M.S. v. Newfoundland and Labrador (Child and Youth Services)*, 2020 NLCA 43; *Powers v. Mitchell*, 2019 NLCA 16; and *Rees v. Fong*, 2018 NLCA 60.

[13] The first criterion examines whether there remains any adversarial context to the proceedings. The Respondents have indicated that they are indifferent to the

appeal outcome. The relief sought in the *mandamus* application was achieved more than two years ago, and there are no collateral consequences that might have otherwise preserved the necessary adversarial context.

[14] The second criterion recognizes that judicial resources are limited and must be efficiently allocated amongst competing claimants. This Court should not address legal issues in the absence of a live controversy between the parties unless there are special circumstances to warrant that allocation of resources. No such special circumstances arise in this matter. The adjournment order made by Noel J. was entirely fact-specific; there are no unique legal issues, public issues, or recurring issues that could justify the Court expending judicial resources to address this moot appeal.

[15] The third criterion, the necessity of the Court demonstrating awareness of its proper law-making function, is not engaged here. None of the parties suggested that this third criterion was engaged. An adjournment order is a matter within a court's discretion, and there is no uncertainty in the law regarding the exercise of that discretion.

DISPOSITION

[16] Having decided that this appeal is moot, I would decline to exercise the Court's discretion to decide it on the merits. I would dismiss the appeal and order Mr. Oleynik to pay the Second and Third Respondents' party and party costs based on Column Three. The First Respondent did not seek costs, and accordingly, no costs are awarded to the First Respondent.

W.H. Goodridge J.A.

I concur: _____

F.P. O'Brien J.A.

I concur: _____

K.J. O'Brien J.A.