



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

Citation: *Bell v. Ball*, 2026 NLCA 14

Date: April 21, 2026

Docket Number: 202601H0018

BETWEEN:

KIM N.I. BELL

APPLICANT/
APPELLANT

AND:

JONATHAN A. BALL

RESPONDENT

Coram: F.J. Knickle J.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador,
General Division 202301G0842
(2026 NLSC 24)

Application Heard: April 21, 2026

Judgment Rendered (Orally): April 21, 2026

Judgment Filed: April 28, 2026

Reasons for Judgment by: F.J. Knickle J.A.

Counsel for the Applicant/Appellant: Self-Represented

Counsel for the Respondent: John F.E. Drover

Authorities Cited:

CASES CITED: *Bell v. Ball*, 2026 NLSC 24; *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; *Chaulk v. Coffin*, 2025 NLCA 19; *Szeto v. Dwyer*, 2010 NLCA 36.

F.J. Knickle J.A.:

OVERVIEW

[1] This is an application for a stay of an order pending an interlocutory appeal.

[2] The appellant, Kim N.I. Bell, filed a statement of claim against the respondent, Jonathan Alistair Ball, in the Supreme Court of Newfoundland and Labrador, General Division, alleging several forms of wrongdoing by Mr. Ball, the respondent, in the nature of false representation or breach of contract.

[3] Mr. Ball, who is from the United Kingdom, has not yet filed a statement of defence. However, upon being served with the statement of claim, he filed an application to have the Court refuse jurisdiction over the statement of claim on the basis of there being no real and substantial connection between the alleged wrongs and Newfoundland and Labrador. Mr. Ball filed an affidavit in support of the application. Mr. Bell sought to cross-examine Mr. Ball on his affidavit and also brought his own application to strike Mr. Ball’s application.

[4] The judge refused Mr. Bell permission to cross-examine Mr. Ball and provided written reasons (*Bell v. Ball*, 2026 NLSC 24 (the “Decision”). The judge also declined to address Mr. Bell’s application to strike Mr. Ball’s application until he addressed Mr. Bell’s request to cross-examine Mr. Ball. The application respecting whether the Court should take jurisdiction over the pleadings is scheduled to proceed at the end of May, 2026.

[5] Mr. Bell appealed the judge’s Decision to refuse cross-examination and now seeks a stay of the Decision pending resolution of his appeal.

[6] I would dismiss the application for a stay. I am not satisfied that all criteria for a stay have been met. Mr. Bell has not established that there is a serious issue to be tried on appeal but, even if he had, Mr. Bell has not established that he will suffer irreparable harm if a stay of the Decision is not imposed. Further, the balance of convenience does not favour a stay, but favours the proceedings continuing until a resolution on the merits is reached.

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

[7] 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 has been repeatedly applied by this Court in *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.

[8] The first question is whether Mr. Bell 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.

[9] Secondly, Mr. Bell 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 courts’ 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.)).

[10] 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 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).

[11] Thirdly, Mr. Bell must establish that the balance of convenience, as between the parties, favours imposing a stay. That is, will Mr. Bell be more inconvenienced because the stay is not granted, or would Mr. Bell be more inconvenienced if the stay is granted?

[12] In this assessment, it is also appropriate to consider broader interests or potential harm beyond those of the immediate parties (see for example, *Chaulk v. Coffin*, 2025 NLCA 19). 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.”

[13] In these circumstances, the public interest in having trials proceed without interruptions to address interlocutory issues on an appeal unnecessarily, is relevant to the proper assessment of the balance of convenience between the parties. The public has a legitimate interest in the efficient use of limited court resources in the resolution of legal disputes.

[14] In my view, this includes determining how to move forward when a judge makes an interlocutory decision with which one party disagrees. The party who is in disagreement with an interlocutory decision needs to consider the proportional response. It may not be proportional to launch an interlocutory appeal if an alleged

error on a discretionary decision could be addressed on an appeal of the final decision on the merits. Whether to appeal denial of cross-examination is one such discretionary decision that may better be addressed on an appeal on the merits.

[15] In other words, while interlocutory appeals are permitted under the rules, before appealing an interlocutory decision, parties should consider whether it is necessary to appeal the decision. As stated by this Court in *Szeto v. Dwyer*, 2010 NLCA 36, at paragraphs 64 and 65:

The underlying principle of proportionality must also inform the manner in which the parties and counsel proceed. This means that before executing a step, making a demand or application, or taking a position in response, they should consider the question of proportionality. That is, whether the manner of execution of each step in the litigation process, and whether a particular demand or procedural application or response, is proportional given its cost, impact on the litigation, timeliness, and the nature and complexity of the litigation. The question is, will the step, application, demand or position in response contribute to an expeditious and cost effective determination on the merits in a manner that is fair to all sides?

Rather than forcing a party to make an expensive, time consuming and possibly unnecessary application, attempts should be made to have matters dealt with by discussion between, or agreement by, counsel. Adverse costs consequences may result where, on an application, it appears that the actions of, or positions taken by, one party are materially counterproductive to the expeditious, cost effective and fair determination on the merits.

[16] The above paragraphs apply to all facets of litigation, including whether to expend resources commencing an interlocutory appeal of a discretionary decision, such as occurred in these circumstances.

[17] All three criteria must be met before the Court will consider that it is appropriate to enter a stay of the Decision pending resolution of the appeal.

ANALYSIS: The application of the principles to the circumstances.

[18] Applying the principles to the circumstances here, I am not satisfied to grant the stay as requested by Mr. Bell. None of the criteria have been established.

(1) Serious Issue to be Heard on Appeal

[19] The issue raised on this appeal is whether the judge erred by refusing to permit Mr. Bell to cross-examine Mr. Ball on his affidavit filed in support of Mr. Ball's

application to stay the proceedings. The judge refused permission to cross-examine Mr. Ball on the basis that it was unnecessary and that it would open the door to becoming a “fact-finding expedition” on the merits of the litigation. The judge stated, at paragraph 32 of his Decision:

I find Mr. Bell has addressed the necessary facts that I must consider on this point of law throughout his affidavit and argument. Permitting him to cross-examine Mr. Ball would only open the door to what would amount to a fact-finding expedition on the merits of his claim. This type of questioning would more properly be left to discovery or other forms of disclosure and production. It is on this basis that I am satisfied that it would be inappropriate to grant him leave to cross-examine Mr. Ball.

[20] I see no error in this reasoning.

[21] Even if it was an error to refuse cross-examination, whether to permit cross-examination on an affidavit is a discretionary decision of which a reviewing Court will show great deference in the absence of an error in principle or a failure by the judge to judicially exercise this discretion. As stated in *Szeto*, at paragraph 25:

The decision under appeal is a discretionary one made in an interlocutory proceeding. As such, it should be accorded deference unless it can be said that the discretion was exercised beyond jurisdiction, contrary to principle, on the basis of palpable and overriding error in appreciation of the facts, or will otherwise result in a manifest injustice: *Langor v. Spurrell* (1997), 157 Nfld. & P.E.I.R. 301 (NLCA) at paras. 33-34; *Moray Seafoods Ltd. v. Nasco Canada Ltd.* (2006), 256 Nfld. & P.E.I.R. 219 (NLCA), at paras. 13-21.

[22] As a discretionary decision, Mr. Bell must show that, in refusing him permission to cross-examine Mr. Ball, the judge acted contrary to principle, went beyond his jurisdiction to so refuse, made errors of fact that are palpable or overriding, or that this refusal will result in a manifest injustice. He has failed to establish a serious issue to be heard on appeal to the degree that would warrant the granting of a stay.

[23] Mr. Bell submits that the judge made errors in fact, however, I am not satisfied that he has established such errors. Even if the judge misstated certain facts, Mr. Bell has not shown how these errors are overriding. If the factual errors contributed to the judge’s decision to refuse cross-examination, the decision to refuse cross-examination does not relate to the merits of the application, that is, whether the court should decline jurisdiction.

[24] Mr. Bell asserts that in paragraph 31 of his Decision, the judge could be thought to have erroneously concluded that there was no dispute on the facts when, in Mr. Bell's view, there is a live issue as to whether a contract was formed in Newfoundland and Labrador. At paragraph 31 of his Decision, the judge stated:

I commend Mr. Bell for the extensive preparation that led to his oral argument on this procedural issue, including his detailed affidavit and Memorandum of Fact and Law. However, after listening to the argument provided by both parties, I conclude there is *no serious dispute over the facts as they pertain to the issue of this court's exercise of its discretion* to accept or to decline jurisdiction to hear Mr. Bell's claim.

(Emphasis added.)

[25] Mr. Bell submits whether there was a contract is a key factual issue and if the judge accepts that a contract was formed in Newfoundland and Labrador, this finding is compelling evidence that the court should take jurisdiction over the dispute. For this reason, Mr. Bell submits that the judge erred in concluding that there was no "serious dispute over the facts". I disagree.

[26] The judge's reasoning has to be read in the context of the decision he had to make, that is, whether it was appropriate to allow cross-examination for the purposes of deciding the application. His reasoning does not support that he made a factual finding that there was no serious dispute as to whether and where a contract was formed. The judge had Mr. Bell's pleadings, which pleads that there was a contract and he had the affidavits of both parties which take opposing views of whether a contract was formed in Newfoundland and Labrador. Given this, I take his statements at paragraph 31 to mean no more than he was not satisfied that there was a factual dispute that required elucidation by way of cross-examination. This was the issue he had to decide, and this was noted by the judge in paragraph 32 of his Decision, referenced earlier in these reasons.

[27] Further, contrary to Mr. Bell's submission, the information before me does not suggest that the judge has pre-judged whether the application to refuse jurisdiction has merit. It only means that he was not satisfied that cross-examination was warranted to assist him in deciding the application.

[28] For this reason, I am not satisfied that there is a serious issue to be tried. There is insufficient information before me to be satisfied that the judge erred in the exercise of his discretion in refusing permission to cross-examine Mr. Ball.

[29] Notwithstanding that I am not satisfied that there is a serious issue to be tried, I will address the other two criteria.

(2) Irreparable Harm

[30] Mr. Bell has failed to establish how he will suffer irreparable harm if a stay is not granted. If the stay is not granted, the application will proceed without Mr. Bell cross-examining Mr. Ball on his affidavit. It is difficult to see how this denial constitutes irreparable harm. As stated, this interlocutory decision by the judge did not decide the merits of the stay application and it has certainly not decided the merits of Mr. Bell's statement of claim.

[31] Mr. Bell asserts that this denial means that the judge will be prevented from being apprised of the facts that Mr. Bell deems pertinent or accurate. I disagree. Mr. Bell has supplied his own affidavit as to what he asserts are the facts that should be considered by the judge on the application.

[32] Further, even if the judge misapprehended facts that might contribute to the judge allowing the application and refusing to take jurisdiction, this does not mean that Mr. Bell will suffer irreparable harm. While it would be true that if the judge refuses to take jurisdiction over the proceedings as sought by Mr. Ball, Mr. Bell would have to commence proceedings in the appropriate jurisdiction, and this could mean further expense and time incurred by Mr. Bell, this does not mean Mr. Bell will suffer irreparable harm. Before such a decision would take effect, it would be open to Mr. Bell to appeal the decision on its merits, include the denial of cross-examination as a ground of appeal, and at *that* time, seek a stay pending his appeal.

[33] In other words, this appeal and application for a stay are premature. If the judge erred in refusing Mr. Bell permission to cross-examine Mr. Ball, the time to address this error, in these circumstances, would be an appeal of the decision on the merits should Mr. Ball be successful. Should Mr. Bell successfully defend against the application by Mr. Ball, in the absence of an appeal by Mr. Ball, the issue as to whether there was an error will be moot. Even if Mr. Ball were to appeal, Mr. Bell would be entitled to cross-appeal at that time.

[34] Further, as stated earlier, Mr. Bell has brought his own application to strike Mr. Ball's application. It has yet to be heard as the judge, quite appropriately, deferred the hearing of that application until after he determined whether he would allow cross-examination of Mr. Ball. If Mr. Bell is successful in striking the

application seeking a refusal of jurisdiction by the Court, this result also makes the impact of the alleged error by the judge moot. There will no longer be any threat of the proceedings being stayed on the basis that they should proceed in the foreign jurisdiction.

[35] For the above reasons, Mr. Bell has not established that he will suffer irreparable harm should the stay be denied. On that basis, the application should be dismissed, however, I will consider the final criterion.

(3) The Balance of Convenience

[36] The balance of convenience also favours denial of a stay.

[37] The harm to Mr. Ball, if a stay of the judge's Decision is granted, is that resolution of the dispute is further delayed. It is an unnecessary delay and I accept Mr. Ball's submission that this delay further elongates an already lengthy process. It is minimal harm, but it is harm nonetheless.

[38] However, also of concern in these circumstances, is the public interest in disputes being resolved in a manner that is both fair but proportional to the issues and the efficient use of sparse court resources.

[39] In these circumstances, launching an interlocutory appeal on a discretionary procedural decision by a judge to deny cross-examination that has not been shown to have an impact on the merits of the issues to be litigated, including whether the court should refuse jurisdiction of the litigation, is not a proportional response by Mr. Bell. This was a decision about trial management. As discussed above, even if Mr. Bell is able to establish that the judge erred in refusing him permission to cross-examine Mr. Ball, this is an error that can better be addressed, as submitted by Mr. Ball, by a "resolution of the matter as a whole", on an appeal from a final decision on the merits, should the application be decided in favour of Mr. Ball.

[40] For this reason, the public interest that disputes be resolved in an efficient and appropriate manner that is fair to all parties, supports that the litigation should be resolved on its merits rather than staying the litigation to address the issues on an interlocutory appeal. This consideration favours denial of a stay.

CONCLUSION

[41] I am not satisfied that the three criteria for a stay have been satisfied. Mr. Bell has not shown how the judge's exercise of his discretion to refuse to allow Mr. Bell to cross-examine Mr. Ball on his affidavit is a serious issue to be heard on appeal.

[42] Even if there was a serious issue to be heard as to whether the judge erred by failing to allow cross-examination, Mr. Bell cannot show that he will suffer irreparable harm if a stay of the judge's decision is refused until the appeal can be heard.

[43] Finally, this appeal is premature. The balance of convenience supports allowing the ongoing proceedings in the court below to continue to a final resolution. At that time, once a final decision is reached, it will be open to either party to pursue an appeal on its merits.

DISPOSITION

[44] The application for a stay is dismissed. If the parties wish to continue with the appeal, prior to the resolution of the application to the court to refuse jurisdiction on its merits, once the parties have perfected their appeal, they may seek a date for a hearing from this Court.

[45] Costs will be in the cause on a Column III basis on the appeal.

F.J. Knickle J.A.