



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

Citation: *Mansfield v. College of Physicians and Surgeons of
Newfoundland and Labrador*, 2026 NLCA 17

Date: May 14, 2026

Docket Number: 202501H0042

BETWEEN:

RHONDA MANSFIELD

APPELLANT

AND:

COLLEGE OF PHYSICIANS AND SURGEONS
OF NEWFOUNDLAND AND LABRADOR

RESPONDENT

AND:

SHANE SEAL

APPLICANT/
INTERVENOR

Coram: D.M. Boone J.A.

Court Appealed From:

Supreme Court of Newfoundland and Labrador,
Grand Bank 202301G3401
(2025 NLSC 48)

Application Heard:

May 11, 2026

Judgment Rendered:

May 14, 2026

Reasons for Judgment by:

D.M. Boone J.A.

Counsel for the Appellant: Self-Represented
Counsel for the Respondent: Ruth E. Trask
Counsel for the Applicant/Intervenor: Robin F. Cook and Sonya Vey

Authorities Cited:

CASES CITED: *Brace v. Snow*, 2010 NLCA 16; *Humby v. Newfoundland and Labrador Housing Corp.*, 2012 NLCA 16; *Elton Estate v. Elton*, 2010 NLCA 2; *Connolly v. Law Society of Newfoundland and Labrador*, 2011 NLTD(G) 152; *Tilley v. Law Society of Newfoundland & Labrador*, 2010 NLTD(G) 187; *Eastern Regional Integrated Health Authority v. Association of Registered Nurses of Newfoundland and Labrador*, 2014 NLCA 52; *Canadian Union of Postal Workers v. Her Majesty in Right of Canada*, 2017 ONSC 6503; *Daly v. Ontario (Attorney General)*, [1999] O.J. No. 3405 (Ont. C.A.).

RULES CONSIDERED: *Court of Appeal Civil Rules, 2025*, NLR 44/25, rule 43(1), 7.05(3); *Rules of the Supreme Court, 1986*, SNL 1986, c. 42, Schedule D, rule 57.13.

TEXTS CONSIDERED: M. Orkin, *The Law of Costs*, 2d ed., looseleaf (Aurora, ON: Canada Law Book, 2009), 2.18, 2.36.

D.M. Boone J.A.:

[1] The Appellant (Mansfield) complained to the College of Physicians and Surgeons of Newfoundland and Labrador (the College) about the conduct of the Applicant (Seal). The College Registrar referred the complaint to the Complaints Authorization Committee (the CAC). The CAC dismissed the complaint. Mansfield appealed the CAC decision to a Supreme Court judge. Seal applied to intervene in that appeal. Mansfield contested Seal’s application, but the judge allowed him to intervene. The judge dismissed Mansfield’s appeal and ordered that she pay costs to Seal. The College did not seek costs.

[2] Mansfield appealed the dismissal of her appeal and the costs award.

[3] Seal now applies for an order for security for costs on appeal. He says that there is a very real prospect that Mansfield will not be able to pay his costs if she is unsuccessful on appeal.

[4] Mansfield opposes that application.

[5] The College takes no position on Seal's application.

[6] I have decided that Seal's application should be dismissed for reasons that I will now explain.

[7] Seal's application is taken pursuant to Rule 43 of the *Court of Appeal Civil Rules, 2025*, NLR 44/25, which says:

43(1) Security for costs shall not be required in an appeal unless, upon application, by reason of special circumstances, security is ordered by the Court.

[8] This Court has not yet applied Rule 43(1). However, the wording of the rule is the same as the predecessor Rule 57.13 of the *Rules of the Supreme Court, 1986*, SNL 1986, c. 42, Schedule D. This Court interpreted Rule 57.13 to mean that the court will usually exercise its discretion to order security for costs where a respondent clearly demonstrates that an appellant could not pay costs, unless the appellant shows that it is reasonably or fairly apparent that the appeal has merit (*Brace v. Snow*, 2010 NLCA 16, at para. 24; *Humby v. Newfoundland and Labrador Housing Corp.*, 2012 NLCA 16, at para. 17). I see no reason to interpret the present Rule 43(1) any differently than the previous rule.

Seal has not clearly demonstrated that Mansfield will be unable to pay his costs on appeal.

[9] Seal relies on two facts to establish that Mansfield will not be able to pay his costs if her appeal is unsuccessful:

- 1) that she has refused to pay his taxed costs from the Supreme Court proceedings; and
- 2) that she has no registered interest in real estate in this province.

[10] The fact that an appellant has failed to pay a costs order may tend to show that they are unable to afford to do so. However, in this case, Mansfield has asked the Supreme Court to stay the costs order or, alternatively, to allow her to pay those costs into court pending the outcome of her appeal. She has not refused to pay Seal's costs and her failure to pay does not establish her inability to do so. She has clearly indicated an intention to pay the costs if the order is upheld.

[11] Moreover, that Mansfield does not have a registered interest in real property is insufficient proof that she is unable to pay a costs award. More evidence is necessary to establish that an appellant has insufficient assets.

[12] It is also not certain that Seal will be awarded costs of appeal even if Mansfield's appeal is dismissed. Courts, as a general rule, do not award costs against or to intervenors (M. Orkin, *The Law of Costs*, 2d ed., looseleaf (Aurora, ON: Canada Law Book, 2009), 2.18; *Elton Estate v. Elton*, 2010 NLCA 2, at para. 38).

[13] Seal's application for security for costs therefore fails because he has not demonstrated that Mansfield will be unable to pay his costs should she lose her appeal.

The costs appeal has merit

[14] The formulation used in the cases cited requires that to resist an order for security for costs an appellant must show that it is "reasonably or fairly apparent" that the appeal has merit. This is a preliminary application with limited argument on the substantive issues on appeal. I am mindful that utilizing the "fairly or reasonably apparent" standard brings the Court close to expressing a premature view on the outcome of the appeal.

[15] Nonetheless, Mansfield's appeal from the costs order meets that standard. The costs order stemmed from the order allowing Seal to intervene. Both the costs award and the order allowing intervention are discretionary orders. This Court can only overturn a discretionary order if the judge erred in principle, misapprehended or failed to take account of material evidence, or reached an unreasonable decision.

[16] It is fairly apparent that there is merit to the costs appeal because, on a preliminary assessment, there are good arguments that the judge erred in principle in the following ways:

- By allowing Seal to intervene because Seal had an interest in the proceeding, without considering the nature of the interests at stake as described in *Connolly v. Law Society of Newfoundland and Labrador*, 2011 NLTD(G) 152, at paragraphs 15 to 23, or the possible outcomes of Mansfield’s appeal as explained in *Tilley v. Law Society of Newfoundland & Labrador*, 2010 NLTD(G) 187, at paragraphs 26 to 28.
- By accepting that Seal should be allowed to intervene because Seal had an interest in the proceeding without, as required by Rule 7.05(3), considering whether Seal’s intervention would unduly delay or prejudice the adjudication of the rights of the parties or whether Seal would make a useful contribution to the proceedings (*Eastern Regional Integrated Health Authority v. Association of Registered Nurses of Newfoundland and Labrador*, 2014 NLCA 52, at para. 4) or whether to impose conditions or limits on Seal’s participation;
- By awarding costs to Seal because he was “successful” without considering the general rule that intervenors should bear their own costs (*The Law of Costs*, 2.18 and *Elton Estate*, at para. 38); or the factors that a court should consider in deciding whether to deviate from that general rule (*Canadian Union of Postal Workers v. Her Majesty in Right of Canada*, 2017 ONSC 6503, at paras. 25-31).
- By failing to consider the public policy impact (the potential chilling effect) of awarding costs to professionals against complainants who invoke the discipline process.

No need to consider the merit of the other grounds of appeal.

[17] The preceding analysis is sufficient to deal with the question of the apparent merits of the appeal. There is no need to consider whether Mansfield’s other grounds of appeal have merit.

CONCLUSION AND DISPOSITION

[18] Seal's application for security for costs is dismissed.

[19] As noted, the general rule is that intervenors are usually neither awarded costs nor have costs awarded against them. The circumstances and extent of the intervenor's participation is one of the factors should be considered in deciding whether to deviate from this general rule (*Canadian Union of Postal Workers v. Her Majesty in Right of Canada*, paragraphs 53 to 65; *Daly v. Ontario (Attorney General)*, [1999] O.J. No. 3405 (Ont. C.A.), at paragraph 6; *The Law of Costs*, 2.36).

[20] Seal initiated this application. He was unsuccessful. Seal shall pay Mansfield her costs of this application, taxed on Column III.

D.M. Boone J.A.