



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

Citation: *George v. The Royal Newfoundland Constabulary Public
Complaints Commission*, 2017 NLCA 16

Date: February 21, 2017

Docket: 201601H0032

BETWEEN:

CHARLIE GEORGE

APPELLANT/APPLICANT

AND:

THE ROYAL NEWFOUNDLAND
CONSTABULARY PUBLIC COMPLAINTS
COMMISSION

RESPONDENT

Coram: Welsh J.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
Trial Division (G) 2014 0161718
(2014 NLTD(G) 147)

Application Heard: February 21, 2017

Decision Rendered: February 21, 2017

Counsel for the Appellant/Applicant: Self Represented

Counsel for the Respondent: Kenneth Jerrett

Welsh J.A.:

[1] This is an application by Charlie George for reinstatement of an appeal that was deemed abandoned due to the passage of time. The application is opposed by the respondent, the Royal Newfoundland Constabulary Public Complaints Commission.

[2] The notice of appeal was filed on December 22, 2014. Mr. George was advised by notice dated January 14, 2016, that the appeal was deemed abandoned pursuant to rule 57.20(4) of the *Rules of the Supreme Court, 1986*. On March 18, 2016, Mr. George applied for reinstatement of the appeal. The matter was postponed at appearances in April, September and October 2016 while Mr. George pursued his application for legal aid. On February 16, 2017, the court registry was advised by the legal aid commission that Mr. George's application, including an appeal, had been refused and that he had been so advised by letter sent December 1, 2016. Accordingly the application for reinstatement of the appeal proceeded on February 21, 2017.

[3] The law and procedure that apply in this situation are set out in *Ellis v. Pelley Estate*, 2016 NLCA 77:

[3] On October 17, 2016, the *Court of Appeal Rules*, NLR 38/16 (the "new rules") came into force, replacing rule 57 of the *Rules of the Supreme Court, 1986* (the "former rules"). The transition from the former to the new rules is addressed in rule 60(1):

Proceedings commenced, but not completed, prior to the coming into force of these rules shall be governed by these rules without prejudice to anything lawfully done under the former rules.

[4] Under rule 57 of the former rules, an appeal was automatically deemed abandoned after the passage of a specified period of time, with the possibility of reinstatement. That rule does not preclude the operation of rule 17 of the new rules which provides a new procedure whereby an appeal may be deemed abandoned after notice, but reinstated upon application.

[5] The relevant rule here is rule 17(9) which provides for reinstatement upon terms the Court considers just. The rule does not list factors to be considered in determining whether reinstatement should be ordered. On this point, judicial authority under the former rules provides assistance. In *Law Society of Newfoundland v. Fahey*, 2003 NLCA 8, 221 Nfld. & P.E.I.R. 79, Wells C.J.N.L., for the Court, wrote:

[13] ... [U]ltimately, the decision to be made is “whether, considering the merits of the case and all other relevant matters, it is in the interest of justice that the appeal be reinstated or left [abandoned]”. That is, essentially, another way of saying *where, in the opinion of the Court, refusal to do so would create an injustice*. In either case, the decision can only be judicially arrived at as a result of consideration of factors such as:

1. Whether the appeal can be said to be frivolous or vexatious, in the sense that there is no arguable case;
2. Whether, prior to its deemed abandonment, the appellant had a *bona fide* intention to proceed with the appeal;
3. Whether there is a reasonable excuse for the failure to proceed with the appeal prior to the deemed abandonment;
4. Timeliness of the application for reinstatement after receipt of notice of deemed abandonment; and
5. The presence of any exceptional or special circumstances justifying or working against the fairness of reinstatement.

... [S]uch factors should not be considered to constitute, exclusively, “the test” for every case. However, the first four are clearly core considerations properly to be applied in virtually every case. The fifth category ... should be broad enough to include prejudice to a party, in the specific circumstances of the case, as well as any other special circumstance which justice would require should be considered in a particular case.

(Italics in the original.)

[4] In this case, the first consideration is of particular importance. The *Royal Newfoundland Constabulary Act, 1992*, SNL 1992, c. R-17, provides for an appeal of a decision of a commissioner to the Trial Division (section 36). The Trial Division judge provided a succinct summary of the basis for Mr. George’s appeal (2014 NLTD(G) 147, 360 Nfld. & P.E.I.R. 352):

[1] At issue in this appeal is whether the Commissioner of the Royal Newfoundland Constabulary Public Complaints Commission (the “Respondent”) acted unreasonably when he declined to take further action in respect of the Appellant’s conspiracy complaint against unnamed and unspecified police officers. As we will see below, this appeal is closely linked to an earlier appeal filed by the Appellant which contained essentially identical allegations.

[2] On April 11, 2014 the Appellant filed a complaint with the Respondent alleging a longstanding conspiracy by unnamed members of the Royal Newfoundland Constabulary (“RNC”) to harass the Appellant and cause him to be evicted from various places of residence. The complaint also alleges that the RNC failed to investigate crimes committed against the Appellant, improperly disclosed information about his criminal record, and engaged in a cover-up of its wrongdoing.

[5] The Trial Division judge began by determining that the appropriate standard of review of the commissioner’s decision is reasonableness. In reaching this conclusion, he considered and applied the relevant case law, including the decision of this Court in *Morgan v. Royal Newfoundland Constabulary Public Complaints Commission*, 2012 NLCA 74, 332 Nfld. & P.E.I.R. 24.

[6] After reviewing the role of the commissioner and the complaint process under the *Act*, the judge turned to an assessment of the reasonableness of the commissioner’s decision to dismiss Mr. George’s complaint on the basis that it was frivolous and vexatious. The judge explained:

[21] The Appellant maintains that the Decision is unreasonable because there is a conspiracy against him that has been going on for at least 20 years to which the RNC is a party. At the hearing of the appeal he advised me that the parties to the conspiracy include the police, the Workplace Health, Safety and Compensation Commission, the Wiseman Centre, the Waterford Hospital, a named Provincial Court judge, the Newfoundland and Labrador Legal Aid Commission, and other unnamed branches of government. The Appellant is of the view that he could prove the conspiracy (and the concomitant cover up) if he could subpoena the dozens of necessary witnesses.

[22] When pressed, however, the Appellant was unable to provide any proof of a conspiracy. He did, upon there being no objection by counsel for the Respondent, submit as evidence a handwritten note from a woman dated August 8, 2013 in which she reports that an individual called the Appellant a pedophile. He also submitted as evidence two letters from 2011 in which accusations are made of misconduct by a corrections officer at Her Majesty’s Penitentiary relating to assaults upon the Appellant and the smuggling of drugs into the penitentiary. One is unsigned and the other has an illegible signature. (Although I am no handwriting analysis expert, I note that the handwriting of the two letters looks remarkably similar.) The Appellant cannot identify the authors of these two letters.

...

[24] Counsel for the Commissioner submits that the latest complaint filed by the Appellant was devoid of any detail which could be considered a sustainable complaint. It is therefore understandable, he submits, that the Decision referred to the 2011 complaint which had been dismissed as being frivolous and vexatious. Although the Commissioner did not address the previous complaints in detail, the Decision is clear as to what was decided: the complaint was considered and was found to be groundless.

[7] The judge then reviewed the legal meaning of frivolous and vexatious, quoting, at paragraph 27, from the decision in *Walsh v. Johnson*, 2010 NLCA 6, 293 Nfld. & P.E.I.R. 101:

[19] A frivolous appeal is one that has no substance ...

[20] A vexatious appeal is one that is brought for an improper purpose such as to harass, annoy or embarrass a party and not for the legitimate purpose of seeking the vindication of legal rights.

[21] Clearly, an appeal that is obviously unsustainable or without arguable merit will also be regarded as frivolous. ...

[8] The judge recognized the limited circumstances in which a matter will be characterized as frivolous or vexatious. He referred to the decision of the commissioner:

[30] After reviewing the complaint and the surrounding circumstances, the Commissioner concluded that the weight of the evidence supported the conclusion that the Appellant's complaint could not be substantiated. The record, including the earlier court file, establishes that the Appellant brings many complaints before the Commissioner claiming an unsubstantiated conspiracy.

[31] ... I am satisfied that the Commissioner acted reasonably when he determined that the Appellant's complaint was frivolous and vexatious and that his reasons for doing so are transparent and intelligible. The legislation empowers the Commissioner to make such a determination. ...

[32] ... [T]he Appellant was advised that the Commissioner is still prepared to receive and consider complaints made by the Appellant about specific actions by named members of the RNC.

[9] The judge concluded:

[33] The Decision clearly and succinctly set out the reasons why the Appellant's complaint would not be acted upon by the Respondent. The Appellant has not shown any rational basis on which to disturb the decision of the

Commissioner not to further investigate the Appellant's complaint. Therefore, the Appellant's appeal is dismissed and the Decision is affirmed.

[10] The judge's decision, Mr. George's first level of appeal, is comprehensive and clear. The commissioner gave Mr. George reasons why his complaints are deemed to be frivolous and vexatious. The Trial Division judge confirmed that decision. Mr. George has not shown any basis on which it could be determined that the judge erred. In short, there is no arguable basis for an appeal. Accordingly, a necessary requirement for reinstatement of the appeal is not satisfied.

[11] Finally, I note in passing, as did the Trial Division judge, that Mr. George is not precluded from making a complaint about specific allegations against a named member of the RNC.

[12] In the circumstances, Mr. George's appeal will not be reinstated. His application is dismissed. There will be no order as to costs.

B. G. Welsh J.A.