

Date: 20121210
Docket: 12/86
Citation: *Memorial University of Newfoundland Students' Union*
v. *St. John's (City)*, 2012 NLCA 76

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

BETWEEN: MEMORIAL UNIVERSITY OF
NEWFOUNDLAND STUDENTS' UNION
APPELLANT

AND: CITY OF ST. JOHN'S
FIRST RESPONDENT

AND: MEMORIAL UNIVERSITY OF
NEWFOUNDLAND
INTERVENOR

Coram: Hoegg J.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
Trial Division (G) 201001T2693

Application Heard: December 4, 2012
Judgment Rendered: December 4, 2012
Memorandum of Disposition Filed: December 10, 2012

Counsel for the Applicant: Raman Balakrishnan
Counsel for the Respondent: Linda Bishop
No one appearing for the Intervenor

MEMORANDUM OF DISPOSITION

Hoegg J.A.:

[1] Memorial University of Newfoundland Students' Union (MUNSU) applies to reinstate its appeal of a Supreme Court of Newfoundland and Labrador Trial Division decision, filed on May 31, 2011, which determined that MUNSU operations are subject to property and/or business taxation by the City of St. John's (the City).

[2] MUNSU filed its notice of appeal on July 7, 2011. On July 13, 2011 MUNSU filed an interlocutory application to dispense with the filing of transcripts. The application was granted with the consent of all parties. MUNSU filed its appeal book on September 1, 2011, its supplemental appeal book on September 21, 2011, and its factum on October 4, 2011.

[3] The parties subsequently engaged in discussions in an attempt to resolve the appeal, so MUNSU advised the City and the intervenor Memorial University of Newfoundland (MUN) that it was not necessary for them to file their facta. MUNSU sent formal correspondence to the City containing its proposal for resolution on July 30, 2012, and sometime during the month of October 2012 the City advised MUNSU that the matter could not be resolved.

[4] The onus is on MUNSU to establish that it is in the interest of justice to reinstate its appeal. The threshold for reinstatement is low, unless prejudice and deliberate delay tactics are involved (*Law Society (Newfoundland) v. Fahey*, 2003 NLCA 8, 221 Nfld. & P.E.I.R. 79) and procedural fairness is an important governing principle (*F.(J.) v. S.(T.P.)*, 2011 NLCA 70). In *Fahey*, a non-exhaustive list of factors for consideration in reinstatement applications was set out. The results of consideration of the factors are to be weighed and balanced against each other so as to come to a just decision. (*Fahey*; *F.(J.) v. S.(T.P.)*; and *Performance Factory Inc. v. Atlantic Insurance Company Limited*, 2012 NLCA 15.)

[5] In this case, the applicant satisfies me that it is in the interests of justice to reinstate the appeal.

[6] Applying the *Fahey* factors to the case at hand, the grounds of appeal disclose an arguable case, in that they are legal and involve interpretation and application of three separate pieces of legislation. As well, MUNSU has demonstrated that it had a *bona fide* intention to appeal by meeting all of its

required filings in a timely manner, and by providing undisputed information as to the parties' ongoing attempts at resolution since October, 2011. The excuse offered by MUNSU for failing to proceed with the appeal prior to the date of the deemed abandonment is that it has been preoccupied with resolving the matter. While I cannot condone the oversight, it is a reasonable excuse in the circumstances. MUNSU's application for reinstatement was made approximately 40 days following notice of the deemed abandonment. This length of time, not unduly long in any event, was explained as being due to the fact that counsel's dealings with the applicant involve decisions which must be made either by an elected body or groups of people, thereby making the process of obtaining instructions lengthier than usual. Counsel for the respondent City, whose client is similarly constrained, agreed. Neither the City nor MUN asserted they were prejudiced by the reinstatement, and no prejudice is apparent to me. As well, the issues raised in the appeal may affect the City's taxation of other entities associated with MUN. This possibly wider application suggests that appellate determination of the merits of the appeal is desirable. Lastly, the City did not substantially object to MUNSU's position or any of its arguments. MUN did not appear, having advised counsel for the applicant and the Court that it was taking no position on the application.

[7] In balancing the analytical outcomes of the *Fahey* factors as indicated above, there is very little working against reinstatement. Accordingly, reinstatement of MUNSU's appeal is granted.

Costs

[8] Counsel for MUNSU submitted that each party bear its own costs for this application. Counsel for the City agreed.

[9] In the result, MUNSU's notice of appeal is reinstated and each party shall bear its own costs of this application.

L. R. Hoegg J.A.