



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

Citation: *Cabot v. The Atlantic Canada Opportunities Agency*, 2017 NLCA 56

Date: September 19, 2017

Docket: 201701H0040

BETWEEN:

JOHN CABOT/LABRADOR FUR
FARMS LTD.

APPELLANT

AND:

THE ATLANTIC CANADA OPPORTUNITIES
AGENCY, ESTABLISHED UNDER THE
ATLANTIC CANADA OPPORTUNITIES ACT

APPLICANT/RESPONDENT

Coram: Welsh J.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
Trial Division (G) 201401G8389

Application Heard: September 19, 2017

Decision Rendered: September 19, 2017 (Orally)

Memorandum of Disposition Filed: September 20, 2017

Counsel for the Appellant: No One Appearing

Counsel for the Applicant/Respondent: Sheri Wicks

MEMORANDUM OF DISPOSITION

Welsh J.A.:

[1] On April 28, 2017, Mr. Cabot filed a notice of appeal against the April 13, 2017 decision of a Trial Division judge dismissing his application to have McInnes Cooper removed as solicitors of record for ACOA based on an alleged conflict of interest.

[2] ACOA filed an application to strike the notice of appeal under rule 36(1)(e) of the *Court of Appeal Rules*, which provides:

A party to an appeal may apply at any time before or at the hearing of the appeal for an order

(a) striking out the notice of appeal; ...

on the grounds that

...

(e) the appellant has unduly delayed the preparation and perfection of the appeal; ...

[3] Counsel for ACOA filed an affidavit in support of her application stating:

4. That on or about May 2, 2017, I was informed by staff at the Court of Appeal that John Cabot had been given a copy of the *Court of Appeal Rules* and that Mr. Cabot had been advised of the 120 day filing requirement for his factum, as well as the availability of the Court of Appeal's monthly legal assistance clinic.

5. That on or about August 11, 2017, I followed up with Mr. Cabot via email and facsimile to remind him of the approaching filing deadline for his factum on August 28, 2017, and advise of our intention to file the within Interlocutory Application should he fail to comply with the *Court of Appeal Rules*. ...

A copy of the letter to Mr. Cabot, attached to the affidavit, clearly states that "an application [would be filed] seeking to have your Notice of Appeal struck for failure to perfect same as required by the Rules."

[4] Mr. Cabot did not appear at the hearing of the application, nor did anyone appear on his behalf. He has failed to take steps to proceed with his appeal in a timely manner despite the clear intention transmitted to him by

ACOA. Timeliness is an important consideration when the issue relates to representation by counsel since no further steps can be taken until the issue is resolved. In these circumstances, I was satisfied that Mr. Cabot's failure to take steps to proceed with his appeal constituted undue delay and, given his failure to appear or respond to the application, at the hearing, I granted the application to strike the notice of appeal.

[5] Counsel for ACOA also requested an order for costs of the application in a lump sum amount of \$1700. She indicated that this was an amount slightly less than taxed costs under column 3 would be. In view of Mr. Cabot's failure to attend to his appeal or this application, I granted the order.

B. G. Welsh J.A.