



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

Citation: *Vey v. Newfoundland and Labrador Pharmacy
Board*, 2019 NLCA 72

Date: November 5, 2019

Docket Number: 201901H0068

BETWEEN:

BEVERLEY VEY

APPLICANT/APPELLANT

AND:

NEWFOUNDLAND AND LABRADOR
PHARMACY BOARD

RESPONDENT

Coram: Welsh J.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
General Division 201801G2093
(2019 NLSC 111)

Application Heard: November 5, 2019

Decision Rendered: November 5, 2019 (Orally)

Reasons for Oral Decision Filed: November 6, 2019

Counsel for the Applicant/Appellant: Cletus E. Flaherty

Counsel for the Respondent: Augustine F. Bruce Q.C.

Welsh J.A.:

[1] This is an application by Beverley Vey, pursuant to rule 42 of the *Court of Appeal Rules*, NLR 38/16, for a stay of enforcement of an order pending the

disposition of her appeal. At the hearing, the application was dismissed. Following are the reasons for that decision.

[2] By decision dated February 28, 2018, an adjudication tribunal appointed pursuant to the provisions of the *Pharmacy Act, 2012*, SNL 2012, c. P-12.2, found that Ms. Vey, a pharmacist, had committed conduct deserving of sanction, having breached the *Regulations* under the *Act* by failing to cooperate with the assessor regarding a practice site assessment. Before a sanction was imposed by the tribunal, its decision regarding Ms. Vey's misconduct was appealed to the Supreme Court, General Division pursuant to section 51 of the *Act*. By decision dated May 27, 2019, the judge determined that the tribunal's decision was entitled to deference, and applied a standard of review of reasonableness. In the result, he dismissed the appeal.

[3] On July 23, 2019, Ms. Vey filed a notice of appeal in this Court with respect to the judge's decision. Pending determination of the appeal, she sought to stay further proceedings by the tribunal. I note that, at the instance of the parties, the application for a stay was not set to be heard until November 5, 2019, just days before the tribunal was scheduled to proceed with the hearing to determine an appropriate sanction.

[4] In determining whether to grant an application for a stay pending an appeal, a three-pronged test is applied as discussed in *Weir's Construction Limited v. Warford Estate*, 2016 NLCA 65, 1 C.A.N.L.R. 282:

[17] The first prong of the test is whether there is a serious issue to be argued on appeal. This requires a preliminary, but not a detailed or extensive, investigation of the merits of the appeal to ascertain whether the appeal is frivolous or vexatious. ...

[18] The second prong of the test is whether the applicant for the stay will suffer irreparable harm if the stay is not granted. It is the nature of the harm, rather than its magnitude, that must be considered. ...

[19] The third prong of the test is an assessment of the balance of inconvenience. ...

In *Weir's Construction*, under the third prong of the test, the Court considered as a relevant factor the "potential for avoiding unnecessary time, expense and resources" (at paragraph 20).

[5] As applied to this case, under the first prong of the test, I was satisfied from a preliminary review that the appeal would not be characterized as frivolous or vexatious.

[6] Under the second prong of the test, Ms. Vey submitted that the range of possible sanctions the tribunal may impose may result in irreparable harm to her. She is particularly concerned about the publication of any sanction and the effect it would have on her personal and business reputation. However, until the tribunal imposes the sanction, the potential effect is unknown. A speculative harm is not sufficient in these circumstances to support the granting of a stay.

[7] Finally, applying the third prong of the test, I was satisfied that the balance of inconvenience weighs in favour of denying the stay. It is particularly relevant that the tribunal has not completed its work because a sanction for the misconduct has not yet been imposed. Indeed, a hearing for that purpose has been set for November 15, 2019, just a few days from now.

[8] One factor properly considered under the third prong of the test is the Court's concern with providing for "the orderly and expeditious administration of justice in the Court" (rule 2 of the *Court of Appeal Rules*). This is a case of an uncompleted matter, which is defined in rule 7(n) to mean:

... a matter where the issues between the parties have not been determined by a final decision or order in the court appealed from.

[9] In the case of an uncompleted matter it is open to a respondent to apply pursuant to rule 35 of the *Court of Appeal Rules* to strike the notice of appeal. While that has not been done in this case, the factors the Court would consider are relevant to assessing the application for a stay:

(b) hearing the appeal before the matter is completed in the court appealed from would result in delay, inconvenience or an inefficient use of judicial resources; or

(c) there is good reason for delaying an appeal until the matter has been completed.

[10] In this case, to determine an appropriate sanction, the tribunal has scheduled a hearing which will proceed within a few days. Ms. Vey or the Board may decide to appeal that determination to the Supreme Court, General Division, a decision which may, in turn, be appealed to this Court. This manner of proceeding with multiple appeals is neither an expeditious nor an efficient use of the courts' resources.

[11] In the absence of a stay of proceedings ordered by this Court, the tribunal may proceed to determine an appropriate sanction. Either party may appeal against that decision to the Supreme Court, General Division. If there is a further appeal to this Court, the two appeals could be joined to provide a complete set of issues dealing with the finding of misconduct and the sanction.

[12] I would draw a distinction between this kind of situation and the bifurcation of liability and damages in tort claims. Regarding the latter, an appeal lies directly to this Court. Frequently, once liability is determined, the parties are able to settle all or part of the damages, thereby obviating or reducing the need for further court involvement. However, in the case of professional misconduct, the matter is ordinarily dealt with at first instance by an administrative tribunal. The tribunal's decision may be the subject of an appeal or judicial review, which may, in turn, be appealed to this Court. A finding of misconduct and an appropriate sanction completed at first instance by the tribunal before proceeding to the courts will, in all but rare circumstances, provide the most expeditious and effective procedure for all parties and the courts.

[13] Having considered the facts of this case in the context of the three-pronged test, I was satisfied that it would not be in the interests of justice to order a stay to prevent the tribunal from proceeding with determining an appropriate sanction.

[14] Accordingly, I dismissed the application. As the successful party, the Board shall have its costs of this application under column 3 of the scale of costs under the *Court of Appeal Rules*.

B. G. Welsh J.A.