



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

Citation: *Penney v. Newfoundland and Labrador*,
2021 NLCA 35

Date: June 16, 2021

Docket Number: 202001H0048

BETWEEN:

SHAWN CORDALE PENNEY

APPELLANT

AND: GOVERNMENT OF NEWFOUNDLAND
AND LABRADOR

FIRST RESPONDENT

AND: GOVERNMENT OF CANADA
(ATTORNEY GENERAL OF
CANADA)

SECOND RESPONDENT

Coram: Fry C.J.N.L., Welsh and Goodridge JJ.A.

Court Appealed From: Supreme Court of Newfoundland & Labrador,
St. John's General Division 201901G2743
(2020 NLSC 46)

Appeal Heard: June 7, 2021

Judgment Rendered: June 16, 2021

Reasons for Judgment by: Welsh J.A.

Concurred in by: Fry C.J.N.L. and Goodridge J.A.

Counsel for the Appellant: Self-Represented

Counsel for the First Respondent: Mark P. Sheppard

Counsel for the Second Respondent: Heidi Collicutt

Authorities Cited:

CASES CITED: *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25, [2015] S.C.R. 282.

RULES CONSIDERED: *Court of Appeal Rules*, NLR 38/16, scale of costs.

Welsh J.A.:

[1] Shawn Penney is required by court order to obtain leave of the court before commencing or continuing with any proceedings in the Supreme Court of Newfoundland and Labrador. When Mr. Penney filed a statement of claim without seeking the necessary leave, the proceeding was stayed. When Mr. Penney then sought the required leave to proceed, leave was refused. Mr. Penney appeals that decision.

BACKGROUND

[2] The applications judge described Mr. Penney’s statement of claim as incoherent. Counsel submitted that the statement of claim is “frivolous, vexatious, and an abuse of process of this Court” (decision of the applications judge, 2020 NLSC 46, at paragraph 20). The judge continued:

[20] ... Counsel relies on this excerpt from paragraph 4 of Mr. Penney’s statement of claim to support his belief:

The right to seeking lawful Self determination is an individual right and the rule of law domestically, nationally and internationally ... The right of individual Shawn Cordale Penney to self determination status and/or de jure [persona] is a reality in rule of law.

[21] Quite frankly, I have no idea what Mr. Penney means when he uses that terminology (and his statement of claim is replete with it) but Mr. Penney is asserting rights that are completely unknown to me and alleging harms that are equally unfamiliar.

[3] The applications judge noted that, during the previous two and one-half years, Mr. Penney has commenced numerous similar proceedings, leading ultimately to the order that he must obtain leave of the Court to commence new

proceedings. Regarding the statement of claim at issue here, the judge commented that it “lacks logic, it is rambling and incoherent and it does not state any cause of action known to law” (decision of the applications judge, at paragraph 24). Further, Mr. Penney offers no facts to support his claim, does not specify which rights were violated, and how they were breached.

[4] In appealing the judge’s decision, Mr. Penney submits that he did not receive a fair hearing, that there was a reasonable apprehension that the judge was biased, and that the judge erred by referring to jurisprudence from other Canadian jurisdictions.

ANALYSIS

Hearing Fairness

[5] There is no basis on which to conclude that Mr. Penney did not have a fair hearing. I am satisfied from a review of the judge’s decision and submissions on this appeal, that Mr. Penney’s written materials and oral submissions were fully considered by the applications judge who gave reasons for refusing to grant Mr. Penney leave to file the statement of claim. In summary:

[32] ... By the claim [Mr. Penney] does not show that he has any cause of action; his allegations are not grounded in facts; and it will serve no one’s interest, including Mr. Penney’s, to grant leave and allow him to go forward with the claim.

[6] I note that the judge outlined a procedure for Mr. Penney to follow if he wishes to start or continue other proceedings in the future.

[7] Mr. Penney had the opportunity to present his case and, as evidenced by the decision, he received a fair adjudication.

Apprehension of Bias

[8] Reasonable apprehension of bias is discussed in *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25, [2015] S.C.R. 282:

[20] The test for a reasonable apprehension of bias is undisputed and was first articulated by this Court as follows:

... what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he

think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly. [Citations omitted.]

[9] A review of the applications judge's decision in this case leads to the conclusion that there is absolutely no basis on which to suggest the judge did not decide the case fairly. He provided reasons in law for his conclusion that the statement of claim was without merit. The judge's reference to the statement of claim as frivolous, vexatious and scandalous is language long accepted in law to describe a claim that cannot succeed, and which prejudices the responding party in wasted time and costs.

[10] The fact that Mr. Penney was unsuccessful in his application for leave to file the statement of claim is not indicative of bias by the judge. An informed person, "viewing the matter realistically and practically – and having thought the matter through" would not have any reason to believe that bias, real or apprehended, entered into the adjudication of Mr. Penney's application.

Use of Jurisprudence from Other Jurisdictions

[11] It is common practice for courts to refer to legislation and case law from other jurisdictions to assist in deciding matters. While decisions from other jurisdictions are not binding on the courts of this Province, they may provide guidance as to appropriate legal principles to be applied in a given situation.

[12] In this case, the applications judge did not err in referring to judicial authorities from outside the Province which he found helpful in assessing the merits of Mr. Penney's application for leave to file the statement of claim.

Costs

[13] Costs for this appeal in the amount of \$2500 are requested by both the Province and the Attorney General of Canada. These parties have expended time and resources to respond to Mr. Penney's groundless appeal. The amounts requested are less than the tariff under the scale of costs in the *Court of Appeal Rules*, NLR 38/16.

[14] In the circumstances, I would order costs of this appeal to be paid forthwith by Mr. Penney to each respondent in the amount of \$2500.

DISPOSITION

[15] I would dismiss the appeal with costs as set out in paragraph 14.

B.G. Welsh J.A.

I concur: _____

D.E. Fry C.J.N.L.

I concur: _____

W.H. Goodridge J.A.