



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

Citation: *Oleynik v. Memorial University of
Newfoundland*, 2021 NLCA 40

Date: June 30, 2021

Docket Number: 202101H0006

BETWEEN:

ANTON OLEYNIK

APPELLANT

AND:

GARY KACHANOSKI, THE PRESIDENT AND
VICE-CHANCELLOR OF MEMORIAL UNIVERSITY
OF NEWFOUNDLAND AND LABRADOR

RESPONDENT

AND:

MICHAEL HARVEY, in his capacity as
THE INFORMATION AND PRIVACY
COMMISSIONER OF NEWFOUNDLAND
AND LABRADOR

INTERVENOR

Coram: Welsh J.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
General Division 201901G5833

Case Management Heard: June 3, 2021

Directions Filed: June 30, 2021

Counsel for the Appellant: Self-Represented

Counsel for the Respondent: Koren Thomson

Counsel for the Intervenor: Andrew Fitzgerald

Authorities Cited:

STATUTES CONSIDERED: *Access to Information and Protection of Privacy Act, 2015*, SNL 2015, c. A-1.2, section 52.

RULES CONSIDERED: *Court of Appeal Rules*, NLR 38/16, rules 20(2) and (3), 2, 3.

DIRECTIONS

Welsh J.A.:

[1] In order to determine an appropriate procedure for addressing notices of appeal filed by Mr. Oleynik, the Court, of its own motion, directed a case management hearing (*Court of Appeal Rules*, NLR 38/16, rule 20(2)). The Court's concern is that a piecemeal approach could result in several separate appeals regarding issues that are integrally related.

[2] The issues on appeal relate to Mr. Oleynik's requests to Memorial University for the release of records and information which he believes will assist in making his case in an arbitration proceeding involving his employment at the University. When he has been refused records or received redacted records, Mr. Oleynik has brought numerous appeals to the Supreme Court of Newfoundland and Labrador pursuant to the *Access to Information and Protection of Privacy Act, 2015*, SNL 2015, c. A-1.2.

[3] That *Act* is engaged because the University is a public body to which the *Act* applies. The appeals are brought pursuant to section 52, which provides:

(1) Where an applicant has made a request to a public body for access to a record ... the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division [Supreme Court of Newfoundland and Labrador].

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; ...

[4] A judge of the Supreme Court of Newfoundland and Labrador has been designated to deal with the significant number of appeals brought by Mr. Oleynik to date. I was advised that several days for case management have been set for the next three months in the Supreme Court. Mr. Oleynik has indicated that he expects to continue seeking more records which may result in further appeals. The numerous appeals apparently result at least in part from the fifteen day limitation period for filing an appeal.

[5] Because Mr. Oleynik is requesting the information from the University for the purpose of assisting in making his case in the arbitration proceedings, the appeals pursuant to section 52 of the *Act* and the arbitration are integrally related. While Mr. Oleynik maintains that each decision on an appeal is a final decision that may be appealed to this Court, he fails to recognize or accept that the requests and decisions form a comprehensive whole. All are related to the arbitration proceeding, even though they are being pursued individually, and separately from that proceeding. The requests are a means of obtaining, or seeking to obtain evidence for purposes of the arbitration.

[6] At the case management hearing in this Court there was significant discussion regarding the most efficient, timely and cost effective manner of proceeding. At his request, Mr. Oleynik was permitted to file further written submissions to address any issues arising from the discussion. I have read and considered those submissions. The respondents chose not to file further submissions.

[7] Rules 2, 3, and 20(2) of the *Court of Appeal Rules* speak to achieving an orderly, expeditious, efficient, cost effective resolution of appeals for the benefit of all parties. These rules provide:

2. The purpose of these rules is to provide for the orderly and expeditious administration of justice in the Court.

3. In applying these rules, the Court shall make orders and give directions that are proportionate to the importance and complexity of the issues.

20(2). The Court may at any time, of its own motion ... direct the case management of an appeal for the purpose of

(a) achieving the efficient use of court resources and promoting access to the Court in a timely and cost effective manner;

(b) providing information and resolving questions of procedure ...;

(c) giving directions regarding documents to be filed; ...

Preferred Approach

[8] The most efficient and effective method of proceeding in this situation would be for Mr. Oleynik to make all his requests of the University and complete all the appeals pursuant to section 52 of the *Act*. Then, using that and any other relevant information and evidence, complete the arbitration. A decision on the arbitration would provide context within which to consider the value of and necessity for the records at issue should there be an appeal to this Court. All the issues would be before this Court at the same time resulting in the most effective and efficient use of judicial resources and the resources of the parties.

Alternate Approach

[9] If Mr. Oleynik does not pursue that option, then a process for dealing with multiple appeals to this Court must be adopted. To proceed in this Court with a separate appeal for each request and appeal pursuant to the *Act* with which Mr. Oleynik disagrees would not constitute an orderly, expeditious, efficient and cost effective manner by which to proceed when the purpose of the requested information is the same in each case, that is, the gathering of evidence or information for purposes of the arbitration.

[10] Mr. Oleynik submits that this Court has no authority to make an order as a result of a case management unless the parties consent. He relies on rule 20(3), which provides:

A judge conducting a ... case management may make an order consented to by the parties, other than an order determining the appeal, and may set the time or modify the time set for the hearing of the appeal.

[11] That rule is permissive. Its purpose is to make clear that, where the parties consent, during case management, the Court may make orders determining issues which may assist in the final determination of the appeal. The rule does not constrain the authority of the Court to determine its own procedure, or to give directions regarding how an appeal will be prosecuted.

[12] Mr. Oleynik submits that, once an appeal has been perfected with the filing of the necessary documents, the Court has no authority to direct how the appeal will proceed. That proposition is incorrect. The Court throughout the appeal process retains the authority to determine its own procedure and to give

directions regarding the manner in which an appeal will be heard. Examples include delaying the hearing of an appeal pending a decision in another case, requiring appeals to be heard together, or directing how materials are to be provided to the Court in a particular situation.

[13] Mr. Oleynik's submission that a delay in proceeding with his appeals amounts to a "stay" is incorrect. A stay, in contrast to a delay, refers to a stay of enforcement of the orders for which notices of appeal have been filed.

[14] I am satisfied that it would not be consistent with the efficient administration of justice, fairness to the respondents, and the appropriate use of the resources of the Court and of the parties to permit each of Mr. Oleynik's appeals to proceed separately. Because his purpose is to collect records and information to be used at the arbitration proceedings, and given the large number of requests he has made to the University with no indication when he will have completed that process, it is not appropriate to proceed with any matters on appeal to this Court until all the related matters are before the Court. It will be advantageous to consider all the related matters at one time since this will provide context within which to address the issues with the purpose of ensuring that all relevant factors are considered and applied with consistency.

Directions

[15] As set out above, the Court would encourage Mr. Oleynik to complete both his collection of evidence and the arbitration prior to proceeding in this Court. However, should Mr. Oleynik choose to proceed with appeals of the decisions made by the Supreme Court judge pursuant to section 52 of the Act, the following directions will apply:

1. For each decision Mr. Oleynik intends to appeal, other than those notices already filed, a notice of appeal shall be filed with the Court and served on the respondents within ten days after the decision is filed, but the notice shall include only the items in (1)(a) to (e) of Form 1;
2. All notices of appeal including those already filed shall be adjourned until Mr. Oleynik files with the Court and serves on the respondents a written notice confirming that he has completed his requests for records and information from Memorial University, and that no further notices of appeal to this Court will be filed regarding such requests;

3. Upon receipt of the notice under 2, above, the notices of appeal shall be consolidated and heard as one appeal;
4. After the notice under 2, above, has been filed and served, one set of written materials shall be filed encompassing all the notices of appeal; that is, one appeal book, one factum and, to the extent necessary, one transcript. The limit of forty pages for the factum shall apply unless Mr. Oleynik or a respondent provides a written request, with reasons, for a specified number of additional pages.
5. After the materials referenced in 4, above, are filed, Mr. Oleynik may make a written request to set a date for hearing of the consolidated appeals.

[16] Costs related to this case management shall be costs in the cause.

B. G. Welsh J.A.