



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

Citation: *Quinlan v. Eastern Regional Integrated Health Authority*, 2022 NLCA 17

Date: March 2, 2022

Docket Number: 202101H0079

BETWEEN:

JOHN QUINLAN and A. GERARD QUINLAN

APPELLANTS

AND:

EASTERN REGIONAL INTEGRATED
HEALTH AUTHORITY

FIRST RESPONDENT

AND:

CATHERINE MANN

SECOND RESPONDENT

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

Court Appealed From: Supreme Court of Newfoundland and Labrador
General Division 201501G5528

Appeal Heard: March 2, 2022

Judgment Rendered Orally: March 2, 2022

Memorandum of Disposition Filed: March 16, 2022

Counsel for the Appellant: Self-Represented

Counsel for the First Respondent: Janet L. Carpenter and Julia P. Morris

Counsel for the Second Respondent: Travis D. Payne

Authorities Cited:

CASES CITED: *Rowe v. Newfoundland and Labrador*, 2017 NLCA 17, 1 C.A.N.L.R. 535; *Wewaykum Indian Band v. Canada*, 2003 SCC 45, [2003] 2 S.C.R. 259.

RULES CONSIDERED: *Court of Appeal Rules*, rule 8(2)(b).

Welsh J.A.:

[1] John and Gerard Quinlan made an application to a judge in the Supreme Court, General Division, in which they sought to have the judge recuse himself from hearing the trial of their action, an allegation of negligence on behalf of the estate of their brother, Joseph Quinlan. The judge dismissed their application to recuse himself, with reasons.

[2] The Quinlans, who do not have legal counsel, then filed a notice of appeal in this Court. As discussed below, the notice of appeal was filed after the expiration of the limitation period. As a result, the Quinlans should have filed an application for extension of time to file a notice of appeal. This issue was raised in the factum filed by the second respondent. In the circumstances, the Court was satisfied that sufficient notice of the issue had been given, and that no party would be prejudiced by the Court proceeding in the absence of a written application by the Quinlans for an extension of time to file the notice of appeal.

[3] The application and appeal were heard together. At the hearing, the application for an extension of time to file a notice of appeal was granted, but the appeal was dismissed. Following are the reasons.

Extension of Time to File Notice of Appeal

[4] An appeal of a recusal decision by a trial judge is characterized as an appeal in an uncompleted matter for which a notice of appeal must be filed within ten days after the order appealed from has been filed (*Court of Appeal Rules*, rule 8(2)(b)). The order was filed on November 12, 2021. The notice of appeal was filed on December 13, 2021, well past the ten-day limitation period.

[5] In granting the extension of time within which to file a notice of appeal, the panel was satisfied that the relevant test was met (*Rowe v. Newfoundland*

and Labrador, 2017 NLCA 17, 1 C.A.N.L.R. 535, at paragraph 6). In particular, it is clear that the Quinlans intended to appeal. However, they are self represented and, not recognizing that their appeal was in an uncompleted matter, they understood that they had thirty days within which to file a notice of appeal. While the error was unfortunate, the other parties and the Court were able to accommodate the filing of materials and hearing of the appeal without further delay. The issue of recusal of a judge arises very infrequently and, in the circumstances, the Court concluded that there was a benefit in allowing submissions on the appeal.

Recusal by the Trial Judge

The Law

[6] The criterion for disqualification of a judge to hear a case is discussed in *Wewaykum Indian Band v. Canada*, 2003 SCC 45, [2003] 2 S.C.R. 259. McLachlin C.J.C., for the Court, explained:

[60] In Canadian law, one standard has now emerged as the criterion for disqualification. The criterion, as expressed by de Grandpré J. in *Committee for Justice and Liberty v. National Energy Board* [[1978] 1 S.C.R. 369], at p. 394, is the reasonable apprehension of bias:

... the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is “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?”

[7] A fundamental principle in the analysis when applying this criterion is the presumption of impartiality, referenced in *Wewaykum*:

[58] The essence of impartiality lies in the requirement of the judge to approach the case to be adjudicated with an open mind. ...

[59] Viewed in this light, “impartiality is the fundamental qualification of a judge and the core attribute of the judiciary” It is the key to our judicial process, and must be presumed. As was noted by L’Heureux-Dubé J. and McLachlin J. (as she then was) in *S. (R.D.)*, [[1997] 3 S.C.R. 484], at para. 32, the presumption of impartiality carries considerable weight, and the law should not carelessly evoke the possibility of bias in a judge, whose authority depends upon that presumption. Thus, while the requirement of judicial impartiality is a stringent one, the burden is on the

party arguing for disqualification to establish that the circumstances justify a finding that the judge must be disqualified.

Application of the Law

[8] In making an application to have the judge recuse himself, the Quinlans submitted that the judge had a pre-conceived bias against them, which was based on an earlier case in which the Quinlans had been unsuccessful before that judge. At the recusal hearing, the judge asked if the Quinlans were “prepared to argue [the recusal issue] today or do you want time in order to make your argument?” Gerard Quinlan responded:

We filed our views in the application, Your Honour. In my opinion, it doesn’t matter whether or not the issues [in an earlier case the Quinlans had before the same judge] were different enough, it’s that you were a judge in another hearing process that we were involved in and, personally speaking, I did not – I don’t like the way it was handled and I expressed my views in the document that was filed with the Court.

[9] In this Court, Gerard Quinlan said that the trial judge was “combative”, “dismissive”, and “hostile”, and that he would not hear the matter with an open mind. There is nothing in the transcript of the hearing that would support that submission.

[10] In dismissing the recusal application, the judge emphasized the oath he swore as a judge to “do right to all manner of people after the laws and usages of this Province, without fear or favour, affection or ill will.” He explained:

If I made a ruling against you in the past, it’s because I found that you had not made out your case. I bear no ill will against the Quinlan family, but I’m obligated by my oath to uphold the law.

You as litigants are bound by that law. And as Plaintiffs, it’s your duty and responsibility to make out your case on a balance of probabilities. You have, in the past, employed the argument that the facts speak for themselves. Certain things happened and, therefore, because they happened, the Court must assign blame. You’re employing the same argument in this recusal application.

Medical malpractice suits don’t work that way. You must be able to show that there’s actual evidence of malpractice. You’re not qualified, as lay people, to express an opinion about a doctor’s course of treatment. You must get a specialist to render that opinion for you. That is not as a result of any bias that I harbour against you or your cause, it will be because you have not followed the law and done what’s necessary to put your best foot forward.

[11] The judge then correctly stated the test that applies in a recusal application:

The test for recusal is whether an informed person, viewing the matter realistically and practically, and having thought the matter through, would think that it's more likely than not that the decision-maker, whether consciously or unconsciously, would not decide fairly.

[12] Consistent with the principles stated in *Wewaykum*, the judge concluded:

The grounds for an apprehension of bias must be substantial. A real likelihood or possibility of bias must be demonstrated and a mere suspicion is not enough. The threshold for a finding of reasonable apprehension of bias is high because the Courts recognize the presumption that judges will carry out their oath of office. Cogent evidence is required to displace the presumption that judges will carry out their oath of office.

[13] Finally:

I cannot recuse myself on the basis of the arguments that you have put before me. If I rule against you in an upcoming application, you have a right to appeal my decision. If you feel that ruling that I may make was biased, you can advance that argument as part of the appeal. But I have no option but to deny your request that I recuse myself.

[14] The judge properly applied the appropriate test and gave reasons for determining that it would be improper for him to recuse himself from hearing the matter.

[15] Accordingly, at the hearing, after granting an extension of time within which to file a notice of appeal, the Court dismissed the appeal. Costs shall be costs in the cause.

B. G. Welsh J.A.

I concur:_____

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

I concur:_____

W. H. Goodridge J.A.