



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

Citation: *Law Society of Newfoundland and Labrador v.
Buckingham*, 2022 NLCA 56

Date: October 13, 2022

Docket Number: 202201H0020

BETWEEN:

LAW SOCIETY OF NEWFOUNDLAND
AND LABRADOR

APPELLANT

AND:

ROBERT W. BUCKINGHAM

RESPONDENT

AND:

COLLEGE OF PHYSICIANS AND SURGEONS
OF NEWFOUNDLAND AND LABRADOR,
NEWFOUNDLAND AND LABRADOR
PHARMACY BOARD, COLLEGE OF
REGISTERED NURSES OF NEWFOUNDLAND
AND LABRADOR, NEWFOUNDLAND AND
LABRADOR COLLEGE OF DIETITIANS,
COLLEGE OF LICENSED PRACTICAL NURSES
OF NEWFOUNDLAND AND LABRADOR,
NEWFOUNDLAND AND LABRADOR
PSYCHOLOGY BOARD, NEWFOUNDLAND
AND LABRADOR COUNCIL OF HEALTH
PROFESSIONALS, and NEWFOUNDLAND
AND LABRADOR COLLEGE OF SOCIAL WORKERS

INTENDED INTERVENORS

Coram: Welsh J.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador,
General Division 202101G2711

Application Heard: September 20, 2022

Reasons for Judgment Filed: October 13, 2022

Counsel for the Appellant: Aimee N. Rowe

Counsel for the Respondent: John D. Brooks, KC

Counsel for the Intended Intervenor: Ruth E. Trask

Authorities Cited:

CASES CITED: *Weir's Construction Limited v. Warford*, 2017 NLCA 1, 1 C.A.N.L.R. 388.

STATUTES CONSIDERED: *Law Society Act, 1999*, SNL 1999, c. L-9.

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

Welsh J.A.:

[1] This is an application by several health-related, self-governing, statutory bodies to intervene in this appeal. The appeal concerns the disciplinary procedures under the *Law Society Act, 1999*, SNL 1999, c. L-9.1, and in particular, the responsibility of the complaints authorization committee to give reasons for issuing a caution or counsel to a member. The applicant intervenors submit that the decision in this appeal may result in a statement of legal principles that would apply to the complaints proceedings under their governing legislation.

[2] An application to intervene in an appeal is governed by rule 38 of the *Court of Appeal Rules*, which provides:

(1) A person who did not participate in the court appealed from may apply to be added as an intervenor for purposes of the appeal.

(2) The application shall state the intervenor's interest in the appeal, explain the failure to apply to intervene in the court appealed from, and indicate the position the intervenor intends to take on the appeal.

(3) In addition to the factors set out in subsection (2), the Court may consider any relevant factors, including whether intervention would delay or prejudice adjudication of the rights of the parties and whether the record of the court appealed from is sufficient for purposes of the intervention.

(4) The Court may define or limit the scope of participation by an intervenor in an appeal.

[3] Principles relevant to the application of this rule are discussed in *Weir's Construction Limited v. Warford*, 2017 NLCA 1, 1 C.A.N.L.R. 388:

[20] The key to a successful intervention application is to show some legitimate connection to or "interest" in the appeal that would justify the involvement of another party who is not central to the original litigation.

...

[22] Broadly speaking, there are two types of cases where intervention may be appropriate on the basis of the applicant's "interest" in the appeal. The first involves a situation where the applicant's specific legal interests will or may be affected by the decision on appeal. The second involves a broader public interest consideration. There may be situations where the legal issues in an appeal may involve broader questions which may have to be considered from differing points of view and which have significant public implications. The Court may be persuaded that the contribution from persons other than the actual parties may bring important and differing perspectives to bear on an issue of public importance and that the Court would benefit from hearing those other perspectives.

[4] I turn, then, to factors relevant in this application. The applicant intervenors submit that they did not become aware of the issue raised in this appeal and the potential effect on their disciplinary proceedings until the decision was released. This explains why they did not intervene in the court appealed from.

[5] The applicant intervenors submit that they have an interest in the appeal because their governing legislation includes the authority of a complaints authorization committee to issue a caution or counsel to a member similar to the authority in the *Law Society Act*. In their submission, principles established on this appeal may have an impact on their comparable legislation. The position that they will bring a different perspective that will be of assistance to the Court

is based on the nature of their scope of governance, that is, the health care sector, and the public interest in their disciplinary proceedings.

[6] Mr. Buckingham opposes the intervention on the basis that the issues under the *Law Society Act* are sufficiently different from those that may be engaged in the health care sector that the submissions by the applicant intervenors will not assist the Court for purposes of the appeal. Counsel submits that, should the issue arise in the health care sector, those complaints authorization committees would have the option of distinguishing their circumstances from those under the *Law Society Act*. I do not accept this position.

[7] It is probable that in deciding this appeal the Court will state principles of law that will apply generally to complaints authorization committees. It is beneficial for the Court to receive comprehensive submissions which provide a broad context within which to conduct the legal analysis.

[8] I am satisfied that granting the applicant intervenors' application will not delay the appeal or prejudice adjudication of the rights of the parties. The applicant intervenors are represented by one counsel and will file one factum. Counsel undertook to provide her factum within ten days after receiving the respondent's factum, the appellant's factum and appeal book having already been filed.

[9] Further, I am satisfied that the record of the court appealed from is sufficient for purposes of the intervention. Mr. Buckingham voiced a concern that the applicant intervenors may seek to have additional evidence adduced. At the hearing, counsel for the applicant intervenors agreed that the record is sufficient and undertook not to make any application for fresh evidence.

[10] Finally, the appellant, the Law Society of Newfoundland and Labrador, supports granting of the application to intervene on the basis that it meets the requirements for intervention. Further, counsel submits that her position is that all complaints authorization committees will be governed by the decision on the appeal, and that bases for distinguishing the decision may be limited. She submits, then, that inclusion of submissions by the applicant intervenors would be of assistance to the Court.

[11] In conclusion, I am satisfied that the applicant intervenors have met the conditions for intervention, and that the Court would benefit from hearing their submissions regarding the issue of proceedings conducted by a complaints

authorization committee, and, in particular, the responsibility of the committee to give reasons for issuing a caution or counsel to a member.

[12] Accordingly, the application for leave to intervene is granted. There will be no order as to costs of this application. Mr. Buckingham has leave to file a reply factum of no more than five pages, if he considers it necessary.

B.G. Welsh J.A.