

Date: 19980527

Docket: C.A. 146312

NOVA SCOTIA COURT OF APPEAL

Cite as: Fares v. Nova Scotia (Workers' Compensation Board), 1998 NSCA 140

Roscoe, Hart and Flinn, J.J.A.

**BETWEEN:**

OMAR FARES	)	Appellant in person
	)	
	)	Appellant
	)	John R. Ratchford
- and -	)	for the Respondent
	)	Board
	)	
	)	Sarah Bradfield
WORKERS' COMPENSATION BOARD	)	for the Respondent
OF NOVA SCOTIA and WORKERS'	)	Tribunal (Watching
COMPENSATION APPEALS TRIBUNAL	)	only)
OF NOVA SCOTIA	)	
	)	
	)	Respondents
	)	Appeal Heard:
	)	May 27, 1998
	)	
	)	
	)	Judgment Delivered:
	)	May 27, 1998
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**THE COURT:** Appeal dismissed per oral reasons for judgment of Flinn, J.A.; Hart and Roscoe, J.J.A. concurring.

**FLINN, J.A.: (Orally)**

This is an application, by the appellant, to extend the time for filing a notice of appeal, and, if granted, he asks for leave to appeal a decision of the Workers' Compensation Appeals Tribunal (WCAT) dated March 3<sup>rd</sup>, 1997.

Section 256 of the **Workers' Compensation Act**, R.S.N.S., 1994-95, c. 10 (the **Act**) provides that this Court shall not grant leave to appeal a decision of WCAT unless application for leave is applied for within thirty (30) days of receipt, by the applicant, of WCAT's decision. Section 256 further provides that any such appeal must be on a question as to the jurisdiction of WCAT. There is no right to appeal on a question of law or fact.

This Court has a discretion as to whether it will extend the time for filing of a notice of appeal. In determining whether justice requires that the Court exercise its discretion in favour of the extension, the Court takes into account all of the circumstances. The general guidelines for the exercise of that discretion require that the appellant demonstrate:

1. that his appeal raises arguable issues;
2. that there was a *bona fide* intention to appeal while the right to appeal existed; and
3. that there is a reasonable excuse for the delay in launching the appeal.

See **Irving Oil Ltd. v. Sydney Engineering Inc. et al** (1996), 150 N.S.R. (2d) 29

and **Tibbetts v. Tibbetts** (1992), 112 N.S.R. (2d) 173.

The appellant's proposed notice of appeal is over one year late. There is no explanation for the delay, nor any indication that the appellant had a *bona fide* intention to appeal while the right to appeal existed. Further, the appellant's proposed notice of appeal raises issues which this Court is specifically prevented from hearing under s. 256 of the **Act**. The notice of appeal alleges errors of law and fact.

Justice does not require that we exercise our discretion in favour of granting the extension of time. The appellant was advised, shortly after the time limit to appeal had expired, that there were time limits on his right to appeal to this Court. The appellant chose not to take any steps by way of application for leave to appeal, rather, he went back to the Workers' Compensation Board seeking reconsideration of his claim.

Even if we were prepared to extend the time for filing the notice of appeal, we would not grant leave to appeal. Since the proposed appeal raises issues on which this Court has no jurisdiction to intervene under s. 256 of the **Act**, it would not be appropriate to grant leave to appeal in any event.

The appellant's application is dismissed.

Flinn, J.A.

Concurred in:

Hart, J.A.

Roscoe, J.A.

NOVA SCOTIA COURT OF APPEAL

**BETWEEN:**

OMAR FARES

Appellant

- and -

WORKERS' COMPENSATION BOARD OF  
NOVA SCOTIA and WORKERS'  
COMPENSATION APPEALS TRIBUNAL  
OF NOVA SCOTIA

Respondents

REASONS FOR  
JUDGMENT BY:

FLINN, J.A.  
(Orally)