

NOVA SCOTIA COURT OF APPEAL

Citation: MacDonald v. Nova Scotia (Workers' Compensation Appeals Tribunal), 2010 NSCA 23

Date: 20100322

Docket: CA 290670

Registry: Halifax

Between:

Murray Ross MacDonald

Appellant

v.

Nova Scotia Workers' Compensation Appeals Tribunal (WCAT) and
the Workers' Compensation Board of Nova Scotia

Respondents

Judge:

The Honourable Mr. Justice Jamie W.S. Saunders

Application Heard by

Written Submission:

Halifax, Nova Scotia in Chambers

Held:

Registrar's motion brought in Chambers to dismiss (application for leave to) appeal for failure to perfect it as required by the **Rules** disposed of on the basis of written submissions only. **CPR** 90.35(5).

Counsel:

appellant in person
respondents not participating

Reasons for judgment:

Introduction

[1] The matter came before me in Chambers. By notice of motion dated February 19, 2010 (as amended February 23) the Registrar sought an order dismissing Mr. MacDonald's application for leave to appeal pursuant to **Civil Procedure Rule 90.43(3)**. The basis for the Registrar's motion was that Mr. MacDonald had not perfected his application as required by the **Rules**.

[2] Upon receipt of the Registrar's notice of motion, I determined that I would deal with the matter on the basis of written submissions only as the **Rules** now permit (**CPR 90.35(5), 90.37(2) and 90.37(10)**).

[3] Having considered the submissions and the entire record, I am satisfied that the Registrar's motion ought to be granted. I will grant such an order for the reasons that follow.

[4] But first, I will briefly describe the somewhat tortuous background to these protracted proceedings.

Background

[5] This matter arises from a Registrar's motion to dismiss Mr. MacDonald's application for leave to appeal a ruling of the Workers' Compensation Appeals Tribunal (WCAT) dated December 27, 2007, which denied his claim for chronic pain. The Registrar's motion was brought as a result of Mr. MacDonald's repeated failure to perfect his appeal.

[6] Although Mr. MacDonald received confirmation on May 15, 2008, that he had been approved for a Legal Aid certificate to assist him with his case, he says he has been unable to find any lawyer who is willing to represent him.

[7] After receiving the Registrar's notice of motion during my term in Chambers, I directed the Registrar to advise the parties that her motion would be decided on the basis of correspondence, with all submissions to be filed and exchanged not later than 12 noon local time March 3. If correspondence was not

forthcoming, the parties were informed that I would decide the matter, without further notice.

[8] In response to the Registrar's communication, counsel for both the Attorney General of Nova Scotia, and the Workers' Compensation Board advised that they would be taking no position on the motion.

[9] For his part, Mr. MacDonald filed a 3-page letter dated February 28. He also telephoned the Registrar's office on March 2 and left two voice mail messages, which were later transcribed for my review.

[10] The facts can be simply stated.

[11] Murray Ross MacDonald, a Class 1 Truck Driver, fractured the outside tip of his little finger in a workplace accident on January 16, 1996. The Workers' Compensation Board accepted his claim for this injury and Mr. MacDonald was paid temporary benefits until January 25, 1996. In a March 18, 1997 board hearing, the benefit payments were extended to February 29, 1996.

[12] In 1999, Mr. MacDonald injured his left eye while working overseas for the Red Cross. His claim for that injury was eventually accepted under Ontario's **Workplace Safety and Insurance Act, 1997**, S.O. 1997, c. 16, Sch. A.

[13] In 2003, Mr. MacDonald was involved in a motor vehicle accident. Although this was not a workplace accident, Mr. MacDonald applied for compensation under Nova Scotia's Chronic Pain Regulations, O.I.C. 2004-299 (July 22, 2004, effective April 2, 2004), N.S. Reg. 187/2004 (Regulations) enacted pursuant to ss. 184 and 184A of the **Workers' Compensation Act**, S.N.S. 1994, c. 10 (**WCA**). The Regulations and the **WCA** permit claims to be made for chronic pain if the pain meets the definition contained in the Regulations (s. 2(c)) and if the pain is causally connected to an original compensable injury (s.3). The Regulations define an original compensable injury as "a personal injury by accident arising out of and in the course of employment" (s. 2(d)).

[14] The Workers' Compensation Board (WCB) denied Mr. MacDonald's claim. The WCB accepted the opinion of two Board physicians that while Mr. MacDonald may have chronic pain, this was attributable to the 2003 motor vehicle

accident and was not related to his 1996 finger injury. In a decision dated December 27, 2007 the Workers' Compensation Appeals Tribunal (WCAT) confirmed the WCB determination.

[15] On January 16, 2008, Mr. MacDonald filed an application for leave to appeal to this Court pursuant to s. 256 of the **WCA**. The application did not conform to the requirements of the **Civil Procedure Rules**, 1972 (then in force) and in particular **Rule 62.04** which required that a notice of appeal specify the grounds of appeal as well as the errors which the tribunal appealed from was alleged to have made. By letter dated January 28, 2008, the Registrar advised Mr. MacDonald that under the **Civil Procedure Rules**, 1972 Mr. MacDonald had until April 27, 2008 to perfect his appeal. Mr. MacDonald did not meet this deadline.

[16] A telephone Chambers conference was held October 1, 2008 to assist Mr. MacDonald in moving his application forward. I presided. I advised Mr. MacDonald that his notice of application for leave to appeal was deficient. I explained why. No grounds of appeal were stated and no errors had been particularized. Mr. MacDonald was given until October 29 to file five copies of a leave application in the proper form. I also cautioned Mr. MacDonald that if he failed to file the application in the proper form by October 29, it was probable that the Registrar would at some point bring a motion to dismiss.

[17] Following the October 1, 2008 Chambers conference, Mr. MacDonald filed a new "Notice of Appeal" which was received October 30.

[18] By letter dated February 10, 2009, the Registrar advised Mr. MacDonald that this Court was prepared to grant him an additional two months to secure the services of a lawyer. He was advised that if he had not obtained a lawyer by April 14, 2009 the Registrar would bring a motion to dismiss on account of his failure to perfect the appeal. Mr. MacDonald responded by letter dated February 19. He advised that he had called "100%" of the lawyers prepared to do legal aid certificate work but that none would take his case. Mr. MacDonald indicated that he would attempt to file a proper application for leave by April 13.

[19] Mr. MacDonald filed a new, 10 page "Notice of Application for Leave to Appeal" which was received April 12.

[20] Like the initial notice of application for leave, neither the October, 2008 nor the April, 2009 filings is in the proper form. Simply to illustrate Mr. MacDonald's repeated failure to comply with the requirements of the **Civil Procedure Rules I** will mention a few of the deficiencies. Mr. MacDonald has consistently failed to specify or list his grounds of appeal. The text of all of his handwritten materials contain virtually the same unfocused attacks on a host of persons or bodies at whose hands Mr. MacDonald feels aggrieved. Legal errors are never clearly particularized. For example, Mr. MacDonald has alleged a breach of his constitutional rights but, he does not specify which constitutional right or rights were infringed. Mr. MacDonald also alleges errors under the **WCA** but at no time does he articulate what those errors might be. Mr. MacDonald fails to identify the respondents to his appeal. He also fails to provide his address for service or include the names and addresses of those parties on whom the notice was served in his various submissions (as was required by **Civil Procedure Rules, 1972, Rule 62.04(3)**).

[21] The October 2008 filings state "that the grounds of appeal are errors in the rule of law set out in the Nova Scotian [*sic*] Workers' Compensation Act". This bare assertion does not satisfy the requirements of the **Civil Procedure Rules**.

[22] The two filings also contain allegations that medical information was not available during the WCAT hearing and that the WCAT transcripts relating to his 1996 injury had been "censored" from the WCAT Commissioner who heard his claim for chronic pain. Mr. MacDonald says this amounts to a denial of his right to natural justice. There is nothing in the record which would even remotely suggest the relevance of this "censored" material to the issue before the WCAT at the hearing in December, 2007. In any event, WCAT addressed Mr. MacDonald's complaint concerning the completeness of his medical records, in its written reasons.

[23] Attached to Mr. MacDonald's April, 2009 10-page purported notice of application for leave to appeal is a letter to him from legal counsel, Kenny LeBlanc, Chief Worker Advisor with the workers' advisors program dated March 25, 2009. Mr. LeBlanc provides a detailed legal opinion explaining why Mr. MacDonald would have no reasonable prospect for success in appealing the WCAT decision dated December 27, 2007. Thus, for the past year Mr. MacDonald has had the benefit of independent legal advice from senior counsel well versed in

such matters that there was no basis upon which the WCAT decision could be successfully challenged.

[24] To date, the matter has not been set down for a hearing. The certificate of readiness filed by Mr. MacDonald in January 2008 confirmed that the transcripts of the WCAT proceedings had not been ordered. The certificate indicated that the appeal book would be ready by an “unknown date in 2008”. No appeal book has ever been filed and nothing in the Court file suggests that the transcripts of the WCAT proceedings have since been ordered.

[25] On December 9, 2009, the Registrar issued a notice of motion to dismiss. The motion did not proceed at that time. Mr. MacDonald responded to the Registrar’s notice by letter dated December 29, 2009 objecting to the motion and advised that “two or three months ago” he had contracted H1N1 flu and therefore had been unable to meet the deadlines. Although Mr. MacDonald expressed the hope that his letter would suffice as notice, it is not clear whether he intended this letter as merely a notice in response to the Registrar’s motion or whether this was a further notice of application for leave to appeal.

[26] On February 19, the Registrar issued a notice of motion to dismiss. This notice was amended slightly on February 23 to reflect certain minor corrections, all of which were promptly communicated by the Registrar in her letter to the parties dated February 23.

Analysis

[27] By any objective standard, this file has long passed any reasonable margin for tolerance in enforcing compliance with the **Rules**. Notwithstanding the Registrar’s and counsels’ repeated efforts to accommodate Mr. MacDonald and his circumstances, to say nothing of the Court’s own investment of time and resources, Mr. MacDonald, with respect, seems incapable of understanding what he needs to do and when he needs to do it.

[28] None of Mr. MacDonald’s documentation, painstakingly printed in his own handwriting, complies with the requirements under the **Rules**. Rather than state, with precision, the grounds of appeal, the specific errors allegedly made in the tribunal below, the authority for bringing the (application for leave to) appeal, and

the relief sought, Mr. MacDonald's materials are consumed with complaints against persons and bodies including government, the medical profession, the legal profession, and the public service concerning a variety of perceived ills. His allegations cover a broad spectrum, and would include: alleged human rights violations, discrimination, infringement of his "civil liberties", denial of access to information under **FOIPOP**, an ongoing dispute with the Department of Community Services, unfair labour practices, prejudicial legislation, disadvantage by not being a trained lawyer, denial of access to medical services, censorship, all of these apparently subsumed under his overarching complaint which Mr. MacDonald has variously described as:

... the systemic state sponsored discriminations being ongoingly illegally imposed upon me as a chronic pain syndrome injured worker that resides within this Canadian province. ... (2010-03-01)

I am at great disadvantage facing ongoing unconstitutional treatment as a chronic pain syndrome injured worker of our Canadian workforce exiled to a life long Canada pension plan purely monthly amount other than my lost time injury benefits that are being ongoingly illegally denied because of the endless illegal censorship of medical information piled up. (2010-03-01)

...

My natural laws to justice (sic) had therefore been denied to me because of the unconstitutional censorship imposed within the Nova Scotian Workers' Compensation Board. (2008-10-27)

[29] The record is replete with correspondence and running file log notes documenting this Court's repeated attempts to explain to Mr. MacDonald the deficiencies in his filings and what it would take to comply with the **Rules**. Counsel for the parties were also generous in offering suggestions to Mr. MacDonald so as to assist him in meeting his responsibilities as an intended appellant.

[30] Mr. MacDonald's successive failures in following directions and complying with the substantive and time sensitive requirements of the **Rules**, despite the fact that a Legal Aid certificate has been available to him for two years, convinces me that he cannot or will not honour the procedural obligations facing any litigant in Nova Scotia.

Conclusion

[31] The **Rules** are written in plain language so that legal proceedings may be determined through a process that is accessible, affordable, timely and fair. The old **Rule 62** (and its successor **CPR 90**) offer straightforward instructions concerning both the form and substance required to properly initiate a civil appeal. Printed brochures as well as information kits available on the Court's own website provide additional guidance for persons who choose to represent themselves. For those who can read, the necessary steps and content should be easily understood. For those who cannot, court staff and professional agencies are always available to help. However, the efficient progression of cases through the system requires that the **Rules** governing their passage be respected and enforced. Otherwise, the Court's resources are undermined and the purpose of the **Rules** in maintaining a system for the just, speedy and inexpensive resolution of disputes is frustrated. Litigation has a shelf-life. This case is well passed its due date.

[32] By his conduct Mr. MacDonald has, in my respectful opinion, forfeited the right to seek this Court's leave to appeal.

[33] There can be no doubt that the Registrar's motion to dismiss was justified. Her motion is granted. I order that Mr. MacDonald's application for leave to appeal the WCAT decision dated December 27, 2007, is dismissed. In the circumstances there will be no order for costs.

Saunders, J.A.

