

NOVA SCOTIA COURT OF APPEAL

Citation: *Li v. Jean*, 2013 NSCA 8

Date: 20130111

Docket: CA 370944

Registry: Halifax

Between:

Hui Li

Appellant

v.

Kong On Jean, Labour Standards Tribunal
and Attorney General of Nova Scotia

Respondents

Judge: The Honourable Justice Peter M. S. Bryson

Motion Heard: January 9, 2013, in Halifax, Nova Scotia, in Telephone
Chambers

Held: Appellant's motion for extension of time to file the Appeal
Book is granted

Counsel: Appellant, self represented, with Zhijun Qiu, interpreter
Level Chan, for the respondent, Kong On Jean
Siobhan Ryan and Pat Miller, for the respondent, Labour
Standards Tribunal
Edward A. Gores, Q.C., for the respondent, the Attorney
General of Nova Scotia

Decision:

[1] The appellant, Ms. Li, has brought another motion in telephone Chambers to extend time for the filing of the Appeal Book. Zhijun Qiu was on the line with Ms. Li and translated for her. This is one of many motions brought by Ms. Li with respect to this appeal which was commenced in December 2011. Ms. Li appealed the Labour Standards Tribunal Decision that had dismissed her appeal from the Director of Labour Standards, who in turn had dismissed her complaint against her former employer, Mr. Kong On Jean.

[2] Some sense of the protracted history of this matter can be found in an earlier decision: *Li v. Jean*, 2012 NSCA 125.

[3] The immediate background to the Motion is this: The Registrar brought a motion before the Court in October 2012 for dismissal of this appeal, pursuant to Rule 90.43(3) and (4), (failure to perfect the appeal). Accordingly, the Honourable Justice David P. S. Farrar issued an order providing that Ms. Li file the Appeal Book by December 13, 2012, failing which the appeal would be dismissed.

[4] On November 21, 2012, by way of telephone Chambers, Ms. Li applied for an extension of time to file the Appeal Book as well as other relief. In support of her November 21st motion, Ms. Li filed a copy of an email from Rita Newton of “Discover Us Transcription Services” advising that a transcript could be done by January 31st. In light of this evidence, I allowed an extension to Ms. Li to file her appeal book by February 8, 2013.

[5] In support of her current motion, Ms. Li also filed a copy of an email from Rita Newton dated November 27, 2012, in which she says the sound quality of the CD of the evidence is “just horrible” with only “one track” rather than four.

There’s absolutely no way we will be able to transcribe this one for you, simply due to the really poor one track only quality of the MP3 files.

[6] Ms. Li also filed an email from Monica Bailie, Court Transcriber, dated November 29, 2012, in which Ms. Bailie describes the cost of her services and acknowledges that the hearing will involve a translator, and then says:

I am completely tied up doing transcripts until Christmas. It is also better to give the courts more lead time rather than run short due to life interfering, so I would suggest that you tell the courts that the transcript wouldn't be ready [until] at least the middle of February. Because of the different language it may take a little longer.

[7] Ms. Bailie closes her email with this request:

Should you desire to use my services, please get the disks to me at your earliest convenience. I may be able to start them earlier, time permitting.

[8] Ms. Li confirmed during the hearing today that she has hired Ms. Bailie and has provided a \$500 deposit fee to her. But Ms. Li did not forward the CD to Ms. Bailie until after the Labour Standards Tribunal had forwarded the court log. Apparently, Ms. Bailie did not receive the CDs until December 30, 2012. The court log and the CD are separate items. Ms. Li was asked by Ms. Bailie to send the CDs to her on November 29th and she should have done so. Nevertheless, the material before me discloses that Ms. Li has made an effort to obtain a transcript and to comply with the November 21st court order.

[9] The request for an extension of time is opposed by the Labour Standards Tribunal and Mr. Jean. Both these parties complain that they have had to respond to numerous motions by Ms. Li and that Ms. Li has been slow to perfect her appeal. They argue that if the Court is inclined to grant any extension to Ms. Li, it should be on terms. As a condition to any extension, Mr. Jean requests costs and a *Jollymore*-type order (*Jollymore Estate v. Jollymore*, 2001 NSCA 116, where Justice Jamie W. S. Saunders imposed terms on an extension to perfect an appeal which included that no further extensions of time be given).

[10] In light of the evidence of Ms. Li's efforts to obtain a transcript, I am inclined to grant her extension. She seeks an extension until April 26th. She argues that:

1. There was a delay of 16 days in December in sending the CD to Ms. Bailie because the Labour Standards Tribunal did not forward the court logs to Ms. Bailie, so it will take until March 3 to do the transcription;

2. She has to send documents by mail which will be time consuming and expensive;
3. She has to make copies of the transcript;
4. She and her husband have to review the transcript to identify alleged errors and omissions in the evidence.

[11] There is no evidence before the Court that it will take until March 3rd to produce the transcript. The 16-day delay argument is without merit. Ms. Li could have sent the CDs to Ms. Bailie on November 29th. She did not. Ms. Bailie's email suggests that she could have the transcript completed by the middle of February. Allowing a little bit of extra time for difficulty with translation or quality of recording, I am prepared to extend the time to file the Appeal Book to Wednesday, March 13, 2013. This should give Ms. Li ample time to prepare the Appeal Book.

[12] During discussions, Mr. Qiu expressed some confusion about the content of the Appeal Book and what "pleadings" were. Ms. Ryan, on behalf of the Labour Tribunal, clarified that everything Ms. Li needs to put in the Appeal Book was sent to her in February 2012, except for the transcript with Ms. Li is now obtaining. In other words, for Ms. Li's clarification, the Appeal Book should contain the materials forwarded to her by the Labour Tribunal in February 2012 and the transcript.

[13] As has already been explained to Ms. Li on more than one occasion, any errors or omissions in the transcript can be pointed out to the Court of Appeal in her factum. Mr. Qiu asked about when the factums would be filed. I informed him that I was not prepared to consider any filing dates for the factums until the Appeal Book was filed.

[14] In considering Ms. Li's further request for an extension, I not only have to take into account the interests of Ms. Li but also the interests of the respondents. Ms. Li is not the only party entitled to "justice". This includes procedural justice which embraces the admonition in *Civil Procedure Rule* 1.01 that determination of proceedings should be "speedy and just":

1.01 These Rules are for the just, speedy, and inexpensive determination of every proceeding.

This appeal has not been speedy and the delays have not been just as far as the respondents have been concerned. They have been faced with the expense of responding to numerous motions by Ms. Li. It is possible that Ms. Li's court transcriber may have difficulty transcribing the evidence in time for her to file Appeal Books. Ms. Li argues that the conduct of the court transcriber is "out of her hands". But Ms. Li – and the respondents – are in their present position because Ms. Li has previously ignored the *Civil Procedure Rules* of the Court and the direction of both judges and officials of the court for almost a year.

[15] In light of all of the foregoing, and keeping in mind the overarching requirement to do what is "just", (*Jollymore, para. 29*), I will extend the date for filing the Appeal Book to March 13, 2013. I will not order costs against Ms. Li. However, as a condition of this extension, ***there are to be no further extensions.*** The order shall reflect this condition.

[16] Ms. Li may wish to forward a copy of the order to her transcriber, Ms. Bailie.

Bryson, J.A.