

NOVA SCOTIA COURT OF APPEAL

Citation: *Li v. Jean*, 2013 NSCA 72

Date: 20130611

Docket: CA 370944

Registry: Halifax

Between:

Hui Li

Appellant

v.

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

Respondents

Revised Decision: The text of the decision has been corrected according to the appended erratum dated June 14, 2013. This decision replaces the previously released decision.

Judge: The Honourable Justice Linda Lee Oland

Motion Heard: June 5 & 11, 2013, in Halifax, Nova Scotia, in TeleChambers

Held: Motion to set dates for filing the facta and the hearing of the appeal.

Counsel: Hui Li, Appellant in Person

Level Chan, for the Respondent, Mr. Jean

Siobhan Ryan, for the Respondent, Labour Standards Tribunal

Edward A. Gores, Q.C. for the Attorney General of Nova
Scotia (not participating)

Reasons for judgment:

[1] Usually, the Chambers judge's task of setting down dates for the filing of facta and for the hearing of the appeal is straightforward and quick. It has been neither in this instance. After I did so this morning, I indicated to the parties that I would prepare written reasons recounting what I had told them.

[2] To say that getting from the Notice of Appeal to the hearing of this appeal has been protracted, would be an understatement. The appellant, Ms. Li, asks that the deadline for filing her factum be delayed until at least, and likely beyond, November 2013. That would be eight or more months after the filing of the Appeal Book, and five or more months hence.

[3] Ms. Li is appealing an order of the Labour Standards Tribunal. She speaks Chinese Mandarin and the respondent, Mr. Jean, speaks Chinese Cantonese. At the Labour Standards Tribunal, an interpreter translated the language for each other and to English.

[4] Ms. Li now lives in Virginia, USA. On June 5, 2013 I held Chambers by teleconference to set down the dates for filing facta and the hearing date. Today's call was a continuation of that call. On the line both times were:

- (a) Ms. Li and her son, Stephen, who was translating for his mother;
- (b) Mr. Level Chan, counsel for Mr. Jean; and
- (c) Ms. Siobhan Ryan, counsel for the Tribunal.

Ms. Li's husband was also present during the second call.

[5] During the calls, Stephen would translate English to Mandarin for Ms. Li, and her Mandarin to English, for the others. Since pauses between short sentence fragments were necessary for him to do so, the conferences took quite a bit of time. Today's was a continuation of last week's, which lasted over an hour.

[6] Below is a brief summary of the most salient events in this proceeding:

2005-2006	Ms. Li works for Mr. Jean
May 6, 2008	The Director of Labour Standards dismisses her complaint of failure to comply with minimum wage

	legislation. Ms. Li appeals.
November 3, 2011	After seven days of hearing over the course of an entire year, the Labour Standards Tribunal dismisses her appeal. A recital in its decision states that the scheduling of the appeal was delayed at Ms. Li's request.
December 5, 2011	Ms. Li files her Notice of Appeal with the Court of Appeal.
October 31, 2012	Farrar, J.A. hears the Registrar's motion to dismiss for failure to perfect. He orders that the Appeal Book be filed by December 13, 2012, failing which the appeal would be dismissed.
November 26, 2012	After hearing Ms. Li's motion for an extension, Bryson, J.A. orders that the Appeal Book be filed by February 8, 2013, failing which the appeal would stand dismissed.
January 9, 2013	After hearing her further motion for an extension to April 26, 2013 because of delay in transcription, Bryson, J.A. grants a further extension to file the Appeal Book, to March 13, 2013. He specifies that no further extension will be granted.
March 7, 2013	The Appeal Book is filed.
May 22, 2013	Ms. Li files her motion to set filing and hearing dates.

[7] I would add that in the period between the filing of the Notice of Appeal (December 5, 2011) and the Registrar's motion to dismiss (October 31, 2012), there were motions for directions and discussions regarding legal representation and payment for transcription. Furthermore, Justice Bryson's decisions are reported as 2012 NSCA 125 and 2013 NSCA 8.

[8] When Ms. Li sought filing and hearing dates, she sent in written material explaining her reasons for asking that the deadline for her factum be not earlier than November. On behalf of his client, Mr. Chan filed written submissions and case law.

[9] Ms. Li elaborated during the June 5, 2013 telephone conference. She stated that the translator had made many errors in the translation of English and Mandarin during the Tribunal hearing and that, in extending the time for filing the Appeal Book, Justice Bryson had told her that she could point these out in her factum. She explained that Stephen is a student, his ability to translate is limited, and her husband must work and is already spending all his free time translating. According to Ms. Li, in the three months since the Appeal Book was filed in March past, two of the seven days of the Labour Standards Tribunal hearing have been translated. She stated that even if the translation were complete by November, only half the factum would be ready. Ms. Li emphasized that she did not know how to find the legal authorities and so is unable to complete the other half, namely the legal argument in support of her appeal.

[10] Although she did not mention this in her written submissions, during that same teleconference Ms. Li asked for judicial mediation. She stated her understanding that she would then get a free lawyer. This was the first time she had raised this since commencing her appeal in 2011. Of course, Mr. Chan had no instructions in that regard.

[11] The telephone conference ran past the hour allotted and its continuance was adjourned to today. Yesterday, I received a fax with further submissions from Ms. Li. She said that the translator had also made mistakes in the translation of English and Cantonese, as well as English and Mandarin. For the first time, she told me that she needed to find someone to translate Cantonese for her. She again emphasized that she does not have a lawyer.

[12] During the call today, I asked Mr. Chan to advise his client's position regarding mediation. Mr. Jean is not interested. Unless all parties to a matter agree, mediation cannot even begin to be a possibility.

[13] Mr. Chan had identified in his written submissions apparent omissions in the Appeal Book. During the earlier call, Ms. Li had explained the lengths to which she had gone to have the materials assembled, photocopied and bound, and the Appeal Book sent by courier to meet the extended deadline. Today Ms. Ryan helpfully pointed out that some of the allegedly missing documents were contained in the Appeal Book, but not where one would expect. For example, Ms. Li's

original Complaint is not in Volume I with the Pleadings, but in Volume II Part II beginning at page 173. Ms. Ryan also kindly undertook to review the Tribunal's records to ascertain if the handwritten statements attached to that document as found in that Volume were complete, and to confirm if the hearing before the Tribunal had indeed ended at 4:00 pm on September 8, 2011. If those items are confirmed, that would end Mr. Chan's concerns regarding the content of the Appeal Book.

[14] I then turned to the filing dates for the facta. Mr. Chan pointed out that *Civil Procedural Rule* 90.32(1) requires an appellant to file and deliver her factum no more than ten days after the filing of the Appeal Book. Taking into account the challenges apparent in this case, he properly acknowledged that additional time would be in order. He suggested a deadline of June 28, 2013. Ms. Li reiterated her arguments that nothing earlier than November was possible.

[15] At the conclusion of submissions, I set the filing dates as follows:

- (a) Ms. Li's factum is to be filed on or before July 5, 2013;
- (b) Mr. Jean's factum is to be filed on or before August 2, 2013; and
- (c) the Tribunal's factum is to be filed on or before August 2, 2013.

The hearing of the merits of Ms. Li's appeal was set down for November 18, 2013 at 10:00 am for a half day. It will be heard in the Court of Appeal in Halifax, with the parties present in person or by counsel.

[16] In setting these dates, I gave the translation and the representation issues very serious consideration. However, as I had explained to Ms. Li during our first call, the Court of Appeal will not allow an appeal to be delayed to an unreasonable extent. In my view, looking at the decision under appeal, the history of the proceedings of this appeal to date, and having considered the written and oral submissions, Ms. Li's suggested deadline of November or beyond must be rejected.

[17] Ms. Li was present for the hearing before the Tribunal. While she may not have understood every word that was said at the time, she would have a good appreciation, if not then, certainly by now, of what the witnesses said and the arguments that were made. Ms. Li has had the decision of the Tribunal since it issued in November of 2011. Those detailed and lengthy reasons recount the

evidence of each witness and explain the Tribunal's decision. She had not claimed that she is unable to appreciate those reasons.

[18] In her Notice of Appeal, Ms. Li set out her grounds of appeal thus:

1. During hearing process, the labour court was against law, leading to error decision;
2. During hearing, it is not just and fair, leading to discrimination at respects of sex, race and language for me.

[19] According to Ms. Li, it has taken three months to translate two days of the hearing transcript. Her November deadline corresponds to translation of a further two days every three months. This is not only prolonged, but unreasonable and unnecessary.

[20] It is true that in one of his decisions, Justice Bryson wrote:

[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.

However, in order to argue that the Tribunal erred as she claims, Ms. Li does not require a written translation of every word said during each day of the hearing. She need only determine the relevant passages which relate to her particular grounds of appeal, and to rely on those. This would substantially reduce the time she claims is necessary for translation purposes.

[21] In addition to alleged material errors in translation, Ms. Li argued that without a lawyer she cannot complete her factum. However, she filed her Notice of Appeal in December 2011. In doing so, she sought a hearing and knew that arguments would have to be presented. In October 2012 Justice Farrar dismissed the Registrar's motion and gave Ms. Li a firm deadline of December 2012 to file the Appeal Book. In part, this was so she could look for a lawyer. In his decisions of November 2012 and January 2013 extending the time for filing the Appeal Book, Justice Bryson spoke of the need for her to file a factum. I cannot accept Ms. Li's plea that her factum should be delayed so that she can now look for a lawyer. She could have, and should have, started this search a long time ago.

[22] Many parties appear before the Court of Appeal without counsel. While this can be difficult, it appears that some of Ms. Li's arguments relate to the record and not exclusively to the law. The panel hearing the appeal will be experienced

and thoughtful judges who will ask questions of Ms. Li, counsel for Mr. Jean and counsel for the Tribunal, so as to have a proper foundation for deciding the appeal.

[23] I advised the parties during our teleconference that the appeal would be heard in the Court of Appeal in Halifax. Having listened for over two hours to the exchanges, it is my view that an orderly and fair hearing of the appeal could not be held by teleconference or videoconference. Even during the second teleconference, despite my strict and repeated instructions, there were excited interruptions, accusations, threats of self-harm and the like by Ms. Li, and people talking over each other, that made it tremendously difficult to keep everyone focussed on the matters at hand.

[24] I would here quote Justice Bryson in 2013 NSCA 8 on procedural fairness:

[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. . . .

[25] Ms. Li brought this appeal and is expected to pursue it with vigour. This has not been the history of the matter and, before me, there have been unexpected and late suggestions, and at every turn new arguments why anything other than what she seeks are unreasonable. I recognize that she feels that my setting down of the dates for her factum and the appeal is hugely unjust. In fairness to this self-represented appellant, I would end by advising that in some circumstances the Chief Justice can review an order of the Chambers judge and refer her to Civil Procedure Rule 90.38.

Oland, J.A.

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- 1) Page 4, Paragraph [9], first line, change “June 5, 2012” to read “June 5, 2013”.
- 2) Page 5, Paragraph [15], second last line, change “November 13, 2013” to read “November 18, 2013”.