Cole v. British Columbia Nurses' Union

Decision Summary

Court	B.C. Court of Appeal
Citation	2014 BCCA 2
Result	Appeal Allowed
Judges	Mr. Justice Donald Madam Justice Newbury Mr. Justice Lowry
Date of Judgment	January 7, 2014
WCAT Decision Reviewed	WCAT-2008-03834

Keywords

Appeal – Summary dismissal – Dismissal for want of prosecution – Supreme Court Civil Rule 22-7(7) – Self-represented litigant liable to have petition dismissed for want of prosecution where delay tactical or strategic

Summary:

The British Columbia Nurses' Union had applied to dismiss the petition for judicial review on the basis of a want of prosecution. The chambers judge had dismissed the union's application because the petitioner was self-represented. The Court of Appeal allowed the union's appeal, finding that although the courts should accommodate self-represented litigants in procedural matters, a litigant's lack of sophistication is no defence to an application to dismiss for want of prosecution where the delay is not attributable to his or her self-representation.

Neil Cole applied for judicial review of a Workers' Compensation Appeal Tribunal (WCAT) decision. He did not proceed with his petition for several years while he sought wide-ranging disclosure of documents through WCAT and the Office of the Information and Privacy Commissioner.

After warning Mr. Cole of its intention to do so, the union, a respondent to the petition for judicial review, applied to have the petition dismissed for want of prosection. The chambers judge hearing the application found that Mr. Cole's delay in pursuing the petition was inordinate, deliberate, and prejudicial and thus met three of the four criteria for dismissal. On the fourth criterion – the balance of justice – the chambers judge held that Mr. Cole's status as a self-represented litigant militated against granting the draconian relief sought by the union. The Court of Appeal held that the chambers "judge erred in dismissing the motion on the ground of Mr. Cole's status in the absence

of any nexus between his status and the delay".