

IN THE COURT OF APPEAL OF NEW BRUNSWICK

Hoyt, C.J.N.B.  
(Orally)

B E T W E E N:

MICHAEL STEWART )  
 )  
 APPELLANT )  
 )  
 - and - )  
 )  
 WORKPLACE HEALTH, SAFETY )  
 AND COMPENSATION COMMISSION )  
 )  
 RESPONDENT )

Jacob J. van der Laan, Esq.  
for the Appellant

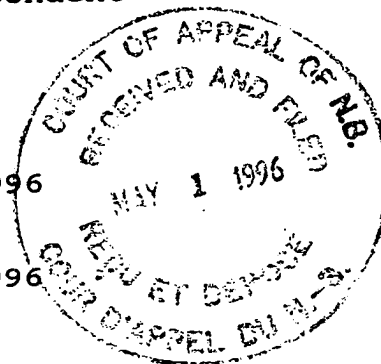
Richard J. Tingley, Q.C.  
for the Respondent

DATE OF HEARING

April 30, 1996

DATE OF DECISION

April 30, 1996



DECISION ON MOTION

This is an application for directions by Michael Stewart concerning the contents and form of the statement of facts to be provided by the respondent Workplace, Health, Safety and Compensation Commission pursuant to s. 23 of the Workplace, Health, Safety and Compensation Commission Act, S.N.B. 1994, c. W-14.

Section 23 of the Act governs appeals from the Appeals Tribunal of the Commission to the Court of Appeal. Since the removal of the requirement that a judge of the Court of Queen's Bench determine that a question of law or jurisdiction is involved, there has been a dramatic increase in the number of appeals to this

Court from decisions of the Tribunal. Whether this increase results from the removal of the requirement or from the Tribunal's less generous interpretation of the Act is not yet apparent. But what is apparent is an increase in the number of appeals from the Appeals Tribunal.

This background is relevant only because hitherto the Court did not, when considering two or three such appeals a year, strictly enforce the **Rules of Court** respecting material to be received by the Court for these appeals. The record for these appeals consists primarily of the worker's case history. This history usually contains voluminous handwritten reports from doctors and other health professionals. These reports are sometimes augmented by additional handwritten notes on the original reports. At its best, much of the handwriting is hard to read and often it is completely illegible. As well, the photocopying of the material often is of poor quality. The Court, however, because of the few appeals and a desire not to put a burden on either the worker or the Commission, accepted such material and struggled through it - usually with the assistance of counsel.

The proliferation of appeals and poor quality of the material, however, prompted us on September 21, 1995 to say that the provisions of ~~Rule 62.13(2) and Rule 62.25 would be enforced.~~ The Registrar's Note reads:

The reason is that much of the handwriting in the documents received from the Board is difficult to read. The Board will have to produce the material to meet the requirements of the **Rules**.

**Rule 62.25** provides for the Appeal Book to be typed or reproduced on one side of good quality white paper. **Rule 62.25** has been slightly modified by Order-in-Council 96-78,

which was published in the Royal Gazette of February 21, 1996. It will come into force on September 1, 1996.

This application arises as a result of the Commission taking the position that as an appeal is not commenced until a notice of appeal is filed, the Commission is required only to provide a statement of facts in their original or photocopied form and it is the obligation of the appellant to provide the material in a form satisfactory to the Court.

In the past, the practice has been to include the entire statement of facts in the Appeal Book. It was this practice that attracted the comment of the Court on September 21, 1995.

~~Rule 62.13(4)~~ prescribes the contents of the Appeal Book. The only item that s. 23(2) of the Act requires the Commission to furnish that must be included in the appeal book is the ~~decision, order or ruling~~. The remaining items that the Commission is required to furnish, namely, a transcript of the proceedings, all evidence and documents in the possession of the Commission that relate to the decision, are akin to the transcript of evidence and exhibits that constitute the record in a civil appeal. For that reason, they do not have to be included in the Appeal Book and are thus not subject to the requirements of Rule 62.25.

In my view, it is the appellant's responsibility to provide the record, as in any civil appeal, in a manner that can be satisfactorily viewed by the Court. Section 23(2) of the Act requires the Commission to furnish only copies of the documents to the proposed appellant whereas in civil appeals the original exhibits are filed with the Court. The problem, as noted, apart from the illegibility of some of the handwriting,

often arises from the poor quality of photocopying. In this respect, it is the responsibility of the Commission to provide legible and good quality copies to the proposed appellant for him or her to file with the Court. Such copies would be furnished by the Commission, as now, in bound volumes with the pages numbered consecutively. Thus, of the items required to be furnished by the Commission by s. 23(2) of the Act, ~~only the~~ **decision, order or ruling of the Appeals Tribunal is required for the Appeal Book.** The transcript of evidence and proceedings and the documents form part of the record on appeal.

In addition to requesting directions concerning the form of the appeal book, the applicant requested that the Commission be ordered to furnish a complete copy of the transcript of the proceedings. This request was made because of the large number of "inaudibles" that appear in the transcript. The applicant says that he may not be able to properly prosecute his appeal, while the Commission says that it has provided as faithful a transcript as is possible. The panel hearing the appeal may come to the conclusion that it cannot properly consider the appeal because of a deficient record and, for that reason, would have to order a new hearing with its attendant costs. That, however, is a matter for the panel hearing the case and not for me.

The appellant will have to May 20, 1996 to perfect his appeal.

For the above reasons, I would dismiss the application, but without costs.

W. L. H. T.  
CHIEF JUSTICE OF NEW BRUNSWICK