

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Sayhoun v. British Columbia (Employment and Assistance Appeal Tribunal)*,
2013 BCCA 461

Date: 20130916
Docket: CA040293; CA040294

Between:

Dr. Nabil Riad Sahyoun

Appellant
(Petitioner)

And

**Employment and Assistance Appeal Tribunal of British Columbia
and Minister of Social Development of B.C. and Attorney General of British Columbia**

Respondents
(Respondents)

Before: The Honourable Madam Justice A. MacKenzie
(In Chambers)

On appeal from: Supreme Court of British Columbia, September 5, 2012
(*Sahyoun v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2012 BCSC 1306, Vancouver
Registry No. S110473; S121839)

Oral Reasons for Judgment

Appellant appearing In Person:

Counsel for the Respondent, Employment and
Assistance Appeal Tribunal of B.C.:

A.R. Westmacott

Counsel for the Respondents, Minister of Social
Development of B.C. and Attorney General of British
Columbia

B.A. Mackey

Place and Date of Hearing:

Vancouver , British Columbia
September 16, 2013

Place and Date of Judgment:

Vancouver, British Columbia
September 16, 2013

Summary:

The respondent Minister and the respondent Tribunal applied for an order that the appellant's two appeals be heard together by the same division of the Court because they were linked both factually and in their legislative schemes.

Held: The consolidation application was granted in the interests of justice and judicial economy. There was no potential prejudice to Dr. Sayhoun in having the two appeals heard together by the same division. The appeals are founded on similar facts and legal issues and there is a significant concern about embarrassing the Court if separate divisions were to hear the appeals.

[1] **A. MACKENZIE J.A.:** The respondent Minister of Social Development and the respondent Employment and Assistance Appeal Tribunal apply for an order that appeals CA040293 and CA040294 be heard at the same time and date by the same division. One appeal is set for two days in early October and the other for two days in later October, for a total of four days.

Background of CA040293

[2] On September 13, 2010, the Ministry of Housing and Social Development (the “Ministry”) denied Dr. Sayhoun’s application for recognition of his status as a person with persistent multiple barriers to employment (“PPMB”) under the *Employee and Assistance Act*, S.B.C. 2002, c. 40 (the “EA Act”) , on the grounds that Dr. Sayhoun failed to complete the PPMB application process and failed to submit current medical information about his condition. Dr. Sayhoun filed a request for reconsideration and on October 29, 2010, the reconsideration officer confirmed the September 13, 2010 decision.

[3] Dr. Sayhoun appealed the reconsideration decision to the Employment and Assistance Appeal Tribunal. The Tribunal heard the appeal and on December 3, 2010, confirmed the reconsideration decision. As a result of missing documents in the record of the proceedings, a hearing of the appeal was conducted before a new panel and on May 10, 2011, the second panel also confirmed the reconsideration decision.

Background of CA040294

[4] On January 7, 2010, the Ministry denied Dr. Sayhoun’s request for a continuation of his medical service only (“MSO benefits”) under the *EA Act* on the basis that he was not designated as a PPMB, so there was no statutory authority to continue these benefits. Dr. Sayhoun filed a request for reconsideration of this decision and on November 21, 2011, the reconsideration officer confirmed the decision. The Tribunal confirmed the reconsideration decision on January 12, 2012.

[5] Dr. Sayhoun sought judicial review of the two tribunal decisions upholding the reconsideration decisions. He argued his status as an unemployable person under the previous *Guaranteed Available Income For Need Act*, R.S.B.C. 1979, c. 158 (the “GAIN Act”), automatically transitioned him to PPMB status under the subsequent *EA Act*, even though he did not meet the initial and continuing requirements under the current legislation.

[6] On September 5, 2012, Madam Justice Stromberg-Stein held that the tribunal set out the relevant facts, legislation and law and conducted fair and proper hearings. She concluded the Tribunal decisions were not patently unreasonable and dismissed Dr. Sayhoun’s petitions.

[7] On October 4, 2012, Dr. Sayhoun filed two notices of appeal of the orders of Madam Justice Stromberg-Stein.

[8] As to jurisdiction to make the consolidation order sought, the respondents rely on s. 30 of the *Court of Appeal Act*, which provides:

If no special provision is contained in this Act or the rules, the procedure and practice of the court is to be regulated by analogy to this Act and the rules or, if there is no appropriate analogy, by analogy to the *Supreme Court Act* and the Supreme Court Rules.

[9] The relevant *Supreme Court Rule* referred by the respondents is Supreme Court Rule 22-5(8), the *Consolidation Rule*. It appears to me that s. 10 (2)(a) of the *Court of Appeal Act* also applies:

10(2) In an appeal or other matter before the court, a justice may do one or more of the following:

- a) make an order incidental to the appeal or matter not involving a decision of the appeal on the merits.

It seems to me that this is clearly an incidental order that does not involve an appeal on the merits.

[10] Dr. Sayhoun has made detailed submissions before me. Many are set out in his affidavit which I have read carefully. Dr. Sayhoun is handicapped. He requires the assistance of his wife. His wife is unable to help him for more than two consecutive days because she has her own serious health issues. Dr. Sayhoun does not wish to aggravate his own health condition and had some previous difficulty in the hearing before Madam Justice Stromberg-Stein, which I understand took five days. Dr. Sayhoun wishes four days because he wants a full opportunity to make submissions on both appeals.

[11] In para. 24 of his affidavit, after having reviewed the exhibits to his affidavit and the prior proceedings, he says:

Accordingly, I respectfully submit that if this Honourable Court grants the Order Sought by the Applicants (Respondents) in the Notice of Motion, my estimate time for hearing both Appeals of four days in two different weeks be allowed as the minimum time required for the purpose of holding a thorough review and analysis of the complex nature surrounding numerous issues in both Appeals, and in consideration of my circumstances.

[12] Dr. Sayhoun submitted that these appeals are extremely complex and involve many important questions.

[13] Regarding the time required, both the Ministry and the Tribunal have assured the Court they will, as respondents, be relying essentially on their factums. Therefore, Dr. Sayhoun will have most of the time at the hearing for his oral argument. I emphasize, however, he is expected to file a factum which comprehensively addresses his appeal.

[14] The Tribunal supports the application made on behalf of the Minister. The overriding consideration is what the justice of the case requires: *Viskovic v. B.C. Transit*, [1997], B.C.J. 1581 (C.A.) at para. 18. These appeals are very similar. The factums of each respondent on each appeal will be very similar. Their factums individually on each appeal will be very similar. There will be no lengthy argument as to the standard of review.

[15] Decisions of the Tribunal are governed by s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, because there is a privative clause. Counsel for the Tribunal recognizes the Tribunal's limited role on appeal. Counsel will appear to answer questions about the legislative scheme or to explain any parts of the record, as required. She will only rely on her factum, apart from responding to questions which will greatly reduce court time. As I stated, the Minister will be brief in oral submissions.

[16] The decision appealed from addressed two petitions. These appeals are so factually linked and linked in their lengthy scheme that they fit comfortably together, as the Minister submits. It is therefore appropriate to hear both appeals together.

[17] On the same reasoning that founded the decision to hear the petitions together, there ought not to be two separate hearing dates for these appeals. They are founded on similar facts and legal issues, and there is a significant concern about embarrassing the Court if separate divisions were to hear these appeals.

[18] The consolidation application is granted. The two appeals are clearly related with interwoven facts and law. It is in the interests of justice and judicial economy that they be heard together. There are clear advantages in time and cost and potential prejudice. There is no potential prejudice to the appellant, Dr. Sayhoun, in having these heard together.

[19] As to Dr. Sayhoun's request that four days be maintained and in two separate weeks, to be only two consecutive days each week, I do not agree. Four days is not required. Two days is ample and already unusual for an appeal of this nature. The Court is well equipped to hear, and does routinely hear appeals in one day. Two days is unusual. This appeal will be set for two days which are the first two days currently set.

“The Honourable Madam Justice MacKenzie”