

CANADA / JUDGMENT

Lee v. Young et al

2001 BCCA 748

COURT

British Columbia Court of Appeal

DECIDED

21 December 2001

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2001BCCA0748 Citation: Lee v. Young et al Date: 20011221 2001 BCCA 748 Docket: CA029043
Registry: Vancouver COURT OF APPEAL FOR BRITISH COLUMBIA ORAL REASONS FOR
JUDGMENT BEFORE THE HONOURABLE Mr. Justice Low December 21, 2001 IN CHAMBERS
Vancouver, B.C. In the Matter of the Representation Agreement Act, R.S.B.C. 1946 c. 405 and the
Patients Property Act, R.S.B.C. 1996 c. 349 BETWEEN: NELLIE LEE APPELLANT (APPLICANT)
AND: DIANA YOUNG, MARJORIE WONG and EDMUND LEE PETITIONERS (RESPONDENTS) J.D.
Shields appearing for the Appellant H. Shapray appearing for the Respondents

- [1] LOW, J.A.: This is an application for leave to appeal an order made under s. 5 of the Patients Property Act. That section reads as follows: 5(1) If [1] an application is made or an issue is tried under section 3,
- [2] an appeal is taken from an order under section 3, or
- [3] an application is made under section 4, the court hearing the appeal or application or trying the issue may order the person who is the subject of the application or the patient to attend and submit at the time and place the order directs to examination. [2] An examination under this section must be made by
- [1] one or more medical practitioners other than those whose affidavits were before the court on the appeal, application or trial, or
- [2] a board of 3 or more medical practitioners designated by the College of Physicians and Surgeons of British Columbia at the request of the court.
- [3] If the person who is the subject of the application or the patient requests an examination under this section, unless the court hearing the appeal or application is satisfied that the person or patient is not mentally competent to form and express the request, the Court must order the examination.
- [2] This is an unfortunate, tense family situation involving issues as to the mental competency of Nellie Lee, the respondent to the petition in the trial court and the applicant today. Mrs. Lee is 91 years old and her children are divided as to what is appropriate for her care at the present time.

- [3] The learned chambers judge had before him four affidavits from physicians, three filed on behalf of the petitioners in the trial court and the respondents in this court. It is said that the three affidavits filed on behalf of the petitioners do not contain appropriate underlying facts to support the opinions that are given in those affidavits as to the lack of mental competency of Mrs. Lee. The affidavit from a doctor filed on behalf the appellants is, in my view, somewhat cryptic and is based upon, as I read it, one simple test relating to mental competency.
- [4] The chambers judge had before him somewhat conflicting evidence. He said that without the affidavit in opposition filed on behalf of the applicant, he would have found that the balance of the evidence was compelling as to the mental incompetency of Mrs. Lee. In view of the conflict in the evidence, however, he adopted a middle ground under s. 5 of the Patient's Property Act and ordered an independent mental examination. It is that decision that is under appeal. That is an interlocutory matter and leave to appeal is required.
- [5] The matters I must consider are (1) whether the point under appeal is of significance to the practice; (2) whether the point raised is of significance to the action itself; (3) whether the appeal is *prima facie* meritorious, or on the other hand, whether it is frivolous; and (4) whether the appeal will unduly hinder the progress of the action.
- [6] Those points apply in a more cogent fashion to interlocutory appeals under the Rules of Court and do not exactly fit a circumstance of this nature being an appeal brought from an order made under a specific statute. However, it appears to me that the issue raised on this intended appeal is of significance to the action itself, but it is, in my opinion, not *prima facie* meritorious. The chambers judge exercised a discretion. It was a discretion based, in my view, upon the proper principle, that is the best interests of Mrs. Lee.
- [7] The chambers judge was not entirely satisfied with the state of the evidence, and s. 5 gives him the discretion to make an order for further mental examination of the patient by an appropriate medical person. There is nothing in the material before me or the arguments made today that persuades me that this court would overturn that exercise of discretion. It is very difficult, of course, to overturn an exercise of discretion. I would think that it is even more difficult to overturn one that involves the medical welfare of an individual.
- [8] I would say further that, in my view, this appeal would hinder the progress of the proceedings under the Patients Property Act. It remains to be determined under those proceedings whether or not Mrs. Lee is mentally incompetent. All that has happened to this point is that the court has, in my view, properly exercised its discretion to seek further evidence. That is a discretion that vests in the trial court under s. 5 before the hearing or during the hearing. The importance of gathering evidence in the interests of the patient under the entire scheme of the Patient's Property Act is emphasized by the fact that s. 5 also provides that even after a decision is made on the competency hearing this court, on the hearing of an appeal, can order a further medical examination.

-
- [9] I see no merit in this appeal at all and leave to appeal is denied. (discussion with counsel)
- [10] LOW, J.A.: Although I am of the opinion that the application for leave to appeal in this case was ill advised, I am not persuaded that the bringing of it or any aspect of the preparation of material and positions taken in the bringing of the application is deserving of reproof or rebuke. The respondents will recover ordinary costs. "The Honourable Mr. Justice Low"
-

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/01/07/2001bccca0748.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/lee-v-young-et-al-2001>

Prepared on 29 October 2026 · Esheria