Federal Court  Cour fédérale

Date: 20090724

Docket: T-2200-07
Docket: T-2201-07
Docket: T-108-08

Citation: 2009 FC 756

Ottawa, Ontario, July 24, 2009

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

ROBERT LAVIGNE

Applicant

and

CANADA POST CORPORATION

Respondent

and

THE COMMISSIONER OF OFFICIAL LANGUAGES

Intervener

REASONS FOR ORDER AND ORDER

[1] This is an appeal from the decision of Prothonotary Tabib, rendered on August 18, 2008, whereby she dismissed the applicant's motion seeking that Canada's Commissioner of Official Languages ("the Commissioner") file with the Court and serve the other parties with investigation reports and Canada Post Corporation's responses for the complaint files included in a list sent to him on March 13, 2008.

[2] Two other motions were heard concurrently with this appeal. One was filed by the applicant and sought an order for costs in advance of litigation in the amount of $3000.00 on the basis that he is impecunious. The other was filed by the respondent and sought an order requiring the applicant to give security for the costs of the respondent in the amount of $12,537, representing the amounts provided in an estimated bill of costs.

[3] For the reasons that follow, I have come to the conclusion that all three motions should be dismissed. I will deal with the issue of costs for each motion individually.

BACKGROUND

[4] The applicant filed three applications against the respondent, pursuant to section 77 of the *Official Languages Act*, R.S.C. 1985, c. 31 (4th supplement) (the "OLA"). These applications involve the linguistic obligations of the Canada Post Corporation ("CPC") towards its employees and members of the public. In these proceedings, the applicant is seeking a remedy under the OLA for the CPC's alleged failure to comply with its obligations. The applicant claims combined damages for all three applications in the amount of $20,000 for loss of enjoyment of life, and $50,000 in punitive damages. The applicant also seeks, *inter alia*, public letters of apology and the translation of certain documents. The applicant is self-represented.

[5] The Commissioner is not a party to these applications but has received from the applicant copies of the documents that he has filed in these proceedings.

[6] In his notices of application, the applicant had the following requests from the Commissioner:

> THE APPLICANT REQUESTS the Commissioner of Official Languages send a certified copy of the following material, in complaints # 0679-2007-P1, 0500-2007-P1, 0678-2007-P1, that is not in the possession of the Applicant to the Applicant and the Registry pursuant to Federal Courts Rules 317 and 318 and section 73(b) of the Official Languages Act;
>
> THE APPLICANT REQUESTS the Commissioner of Official Languages file evidence from any similar past complaints under the OLA the Applicant made against the Respondent pursuant to section 79 of the Official Languages Act;
>
> THE APPLICANT REQUESTS the Commissioner of Official Languages file as evidence any similar past complaints against the Respondent resulting in reports and recommendations for the Respondent to respect his obligations under the Official Languages Act pursuant to section 79 of the OLA;
>
> THE APPLICANT REQUESTS the Commissioner of Official Languages file an affidavit and participate in this application pursuant to sections 74 and 78(1)© of the OLA.

[7] On January 10, 2008, the Commissioner sent the applicant materials which were in its possession and were relevant to his applications. These materials consisted of all the documents contained in the applicant's three complaints files; they form the basis for the applications.

[8] On January 23, 2008, the Commissioner sent the applicant materials relating to past complaints made by the applicant to the Commissioner against the CPC. These complaints are separate from the three which form the basis of these proceedings.

[9] On March 13, 2008, at the applicant's request, the Commissioner sent the applicant a list of similar past complaints filed with the Commissioner against the CPC. These complaints shared the following characteristics: they alleged a breach of Part V of the OLA, dealing with English-speaking employees of the CPC in the Montreal/Quebec Region who received personal written communications from the CPC in French only and were deemed founded by the Commissioner.

[10] The applicant made an access to information request to the Commissioner requesting, *inter alia*, the Commissioner's investigation reports and CPC's responses for the complaint files included in the list sent to him March 13, 2008. This request was refused by Commissioner on April 24, 2008, based on section 16.1 of the *Access to Information Act* R.S., 1985, c. A-1.

[11] On May 5, 2008, the applicant filed a Motion Record seeking, *inter alia*, that the Commissioner file with the Court and serve the other parties with the same documents and records that he was seeking in his access to information request. The applicant also seeks an order adding the Commissioner as a party and compelling the Commissioner as a witness in the applications.

[12] The Commissioner was granted leave to intervene in the applicant's motion by order of Prothonotary Morneau dated May 14, 2008.

[13] The applicant's motion was dismissed by Prothonotary Tabib with order and reasons dated August 18, 2008.

[14] At the hearing of the appeal from this decision, counsel for the respondent indicated that his client was in full agreement with the arguments presented by the Commissioner and adopted them.

THE IMPUGNED DECISION

[15] The Prothonotary did not find it necessary to determine whether the objections made by the Commissioner or the respondent based on the confidentiality of the documents are applicable or well-founded, as she was of the view that there was no provision in the OLA or in the *Federal Courts Rules*, SOR/98-106, by which the Court could compel the Commissioner to transmit the documents requested to the applicant or to produce them by way of an affidavit or through an appearance pursuant to a subpoena.

[16] First, she found that Rule 317 of the *Federal Courts Rules* does not apply to proceedings commenced by way of application pursuant to section 77 of the OLA. Incidentally, she was also of the view that to the extent Rule 317 applies, the applicant had not shown that the specific documents and information sought were part of the record of the Commission when it considered or decided on his complaints.

[17] The only other mechanism by which production of documents in an application may be compelled is by way of cross-examination on affidavit (Rules 41 and 78). Since the Commissioner had not filed an affidavit, she found that he could not be the subject of a cross-examination for the purpose of which a direction to attend could be issued.

[18] The Prothonotary also considered the various sections of the OLA invoked by the applicant in support of his motion. She determined that sections 73(b) and 78(3) confer a discretion upon the Commissioner to disclose certain information to the Court or to participate in Court proceedings. Therefore, they cannot be read as empowering the Court or a party in proceedings before the Court to compel the Commissioner to disclose information or to participate in proceedings before the Court. The same is true of sections 74 and 79 of the OLA, which does not provide a mechanism for compelling production of documents or testimony by the Commissioner.

[19] Finally, the Prothonotary concluded that even if she could find a discretionary power conferred on the Court to compel the production of these documents, she was not persuaded that the actual complaints or reports of the Commission would add anything to the information already provided by the Commissioner. In her view, the information already provided was sufficient to give a portrait of the context and possible proof of a systemic problem within the CPC.

THE ISSUES

[20] This appeal of the Prothonotary's decision raises three questions:

- Did the Prothonotary err in determining that the Commissioner has no duty under the *Federal Courts Rules* to disclose the materials requested by the applicant?

- Did the Prothonotary err in finding that the Commissioner has no duty under the *Official Languages Act* to disclose the materials requested by the applicant?

- Did the Prothonotary err in concluding that, in any event, the requested materials are not relevant to the applications?

ANALYSIS

[21] The standard of review to be applied to discretionary orders of prothonotaries is well established, and has been set out by MacGuigan J.A. in *Canada* v. *Aqua-Gem Investments Ltd.*, [1993] 2 F.C. 425 (C.A.). More recently, it has been reformulated by Décary J.A. in the following terms:

> Discretionary orders of prothonotaries ought not be disturbed on appeal to a judge unless: (a) the questions raised in the motion are vital to the final issue of the case, or (b) the orders are clearly wrong, in the sense that the exercise of discretion by the prothonotary was based upon a wrong principle or upon a misapprehension of the facts.
> *Merck & Co., Inc.* c. *Apotex Inc.*, [2004] 2 F.C.R. 459, at para. 19

[22] The applicant has not even tried to show how the questions raised in his motion were vital to the final issue of the case. It is therefore with great reluctance that I endeavour to exercise my discretion *de novo* in reviewing the decision of Prothonotary Tabib. I am not at all convinced that the additional documents requested by the applicant, which are not directly related to his complaints, are essential to the proper determination of his applications. Be that as it may, it is not necessary for me to rule on this question; even if I were prepared to assume that the issues raised by the applicant with respect to the decision under appeal are vital to the resolution of his applications, I have determined that the Prothonotary has not based her decision upon a wrong principle or upon a misapprehension of the facts.

- Disclosure of material and the *Federal Courts Rules*

[23] Rule 317(1) of the *Federal Courts Rules* states:

Material in the Possession of a Tribunal	Obtention de documents en la possession d'un office fédéral
Material from tribunal	Matériel en la possession de l'office fédéral
317. (1) A party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party by serving on the tribunal and filing a written request, identifying the material requested.	**317.** (1) Toute partie peut demander la transmission des documents ou des éléments matériels pertinents quant à la demande, qu'elle n'a pas mais qui sont en la possession de l'office fédéral dont l'ordonnance fait l'objet de la demande, en signifiant à l'office une requête à cet effet puis en la déposant. La requête précise les documents ou les éléments matériels demandés.
Request in notice of application	Demande inclue dans l'avis de demande
(2) An applicant may include a request under subsection (1) in its notice of application.	(2) Un demandeur peut inclure sa demande de transmission de documents dans son avis de demande.
Service of request	Signification de la demande de transmission
(3) If an applicant does not include a request under subsection (1) in its notice of application, the applicant shall serve the request on the other parties.	(3) Si le demandeur n'inclut pas sa demande de transmission de documents dans son avis de demande, il est tenu de signifier cette demande aux autres parties.

[24] Mr. Lavigne relies on the decision of this Court in *Lavigne* v. *Canada (Minister of Human Resources Development) et al.* (1995), 96 F.T.R. 68, for the proposition that Rule 317 applies to applications made pursuant to section 77 of the OLA. In that case, Justice Marc Noël (as he then was) wrote:

> Section 77 provides that a person who has made a complaint to the Commissioner may thereafter apply to this court for a remedy. Section 80 provides that such an application is to be heard in a summary manner in accordance with rules made pursuant to s. 46 of the *Federal Court Act*, R.S.C. 1985, c. F-7. As no such rules have been promulgated, general rules pertaining to applications made to the court are applicable.

[25] As a general principle, this proposition is unassailable. Yet for a particular rule to be applicable in the context of an application made pursuant to section 77 of the OLA, its language must be able to accommodate the situation for which its application is sought. The general principle cannot thwart or subvert the rationale behind the rule or do away with its wording.

[26] Rule 317 is designed to request materials from a tribunal in cases of judicial review of its decision. Although the present proceedings, which are not judicial review applications but rather applications commenced under section 77 of the OLA, are governed by Part V of the *Federal Courts Rules*, Rule 317 cannot be invoked against the Commissioner because its decision is not under review. There can be no production under Rule 317 unless an order of the tribunal exists and is under review: see *Patterson* v. *Bath Institution*, 18 Admin. L.R.(4th) 57, 2004 FC 972, at para. 11.

[27] An application under section 77 of the OLA is different from an application for judicial review. It is designed to verify the merits of the complaint made to the Commissioner, not of the

Commissioner's decision or report, and to secure relief that is appropriate and just in the circumstances: *Forum des maires de la péninsule acadienne* v. *Canada (Food Inspection Agency)*, [2004] 4 F.C.R. 276, 2004 FCA 263, at paras. 15 and 17.

[28] The three applications which form the basis of these proceedings do not attack the Commissioner's decisions but are rather *de novo* proceedings where the judge hears and weighs the evidence advanced by the parties to determine whether the OLA has been infringed. Therefore, the Commissioner does not have a duty under Rule 317 of the *Federal Courts Rules* to disclose information in the current proceedings. Such being the case, I can see no error in the decision of the Prothonotary.

[29] The applicant also refers to Rules 4 and 41 of the *Federal Courts Rules* to support his claim for the release of information by the Commissioner. As for Rule 4, it can not find application as the applicant's request is not a "procedural matter not provided for" in the *Federal Courts Rules* or in an Act of Parliament. As explained below, section 73 of the OLA specifically gives the Commissioner the authority to disclose information, at his discretion, in proceedings commenced under section 77 of the OLA. The OLA also gives the Commissioner the choice of whether or not to participate in court proceedings and give evidence. With respect to Rule 41, the Prothonotary was correct in stating that it is not appropriate in this case because he Commissioner has not filed an affidavit in the application and therefore cannot be the subject of a cross-examination.

- Disclosure of material and the *Official Languages Act*

[30] The applicant also invokes sections 79, 73(b), 74 and 78(3) of the OLA to support his request for disclosure of information by the Commissioner. I agree with the intervener that these provisions do not contain any duty for the Commissioner to disclose materials or to participate in the proceedings commenced by the applicant. On the contrary, the OLA outlines a general duty of confidentiality. However, certain exceptions to this general rule confer discretion on the Commissioner in matters related to disclosure and participation in legal proceedings.

[31] Section 79 of the OLA states that in proceedings commenced under section 77, "the Court may admit as evidence information relating to any similar complaint under this Act in respect of the same federal institution". Thus, section 79 does not create a duty for the Commissioner to disclose information relating to similar complaints but simply renders such types of information admissible in these proceedings.

[32] Section 79 of the OLA has a dual purpose: firstly, to present the courts with a full portrait of the context and, secondly, to enable a party to present proof that there is a systemic problem within the institution with regard to OLA compliance. It helps the Court assess the scope of the problem and the circumstances of the application so as best to determine the appropriate relief: *Commissaire aux langues officielles du Canada* v. *Air Canada* (1997), 141 F.T.R. 182, at paras. 17-18.

[33] Section 79 of the OLA does not oblige the Commissioner to provide parties with proof of similar complaints. However, the Commissioner has chosen in this case to exercise his discretion under section 73(b) of the OLA and prepare a list of similar complaints. The information contained in the list sent to the applicant by the Commissioner on March 13, 2008 provides him with the number of similar past complaints, the dates on which the complaints were made, the allegations made against the CPC, and the decisions reached by the Commissioner after having carried out each investigation. This is sufficient information to present the court with a full portrait of the context, and contains enough information to fulfill the purpose of section 79, without compromising the Commissioner's duties with regard to the confidentiality of investigators.

[34] The disclosure of confidential information contained in the investigation files will not help further the objective sought by the applicant, namely proving that there is a systemic problem. Rather, if the applicant wishes to adduce such evidence, the information contained in the list sent to him by the Commissioner is sufficient to help the Court make a determination because it includes the frequency of complaints and decisions of the Commissioner on these complaints.

[35] The applicant asks, in the alternative, for an "Order compelling the OCOL to be considered as a witness in the above matter and to file an affidavit pursuant to section 74 of the Official Languages Act".

[36] Section 74 of the OLA states a general rule that the Commissioner or any person acting on his behalf or under his direction is not a compellable witness in any proceedings, with the exception of proceedings commenced under Part X of the OLA. It does not create a duty or make it obligatory

for the Commissioner to file evidence in proceedings commenced under Part X to which he is not a party.

[37] The Commissioner is not a party to the proceedings. Under section 78(3) of the OLA, the Commissioner has the capacity to seek leave to intervene in "any adjudicative proceedings relating to the status or use of English or French". The decision to seek leave to intervene in court proceedings is at the discretion of the Commissioner. There is no obligation to do so. The Commissioner is at liberty to intervene when he deems it appropriate, and may wait until the parties have completed their respective records before deciding to seek leave to intervene.

[38] Finally, the Commissioner has the obligation to ensure that investigations are conducted in private pursuant to sections 60 and 72 of the OLA. The Commissioner and every person acting on his behalf also have a duty not to disclose any information that comes to their knowledge in the performance of their duties and functions under the OLA. The private and confidential nature of investigations is an important aspect of the implementation of the OLA, because without these protections, complainants might be reluctant to file complaints with the Commissioner, or witnesses may be reluctant to participate in the Commissioner's investigations: *Lavigne* v. *Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773, 2002 SCC 53, at paras. 36 and 42.

[39] In addition, the Commissioner has a duty under section 16.1 of the *Access to Information Act*, "to refuse to disclose any record requested under this Act that contains information that was objected or created by them or on their behalf in the course of an investigation examination or audit conducted by them or under their authority".

[40] The applicant made an access to information request to the Commissioner for the same documents he is requesting in this motion. Access to the requested information was denied by the Commissioner on the basis of section 16.1 of the *Access to Information Act*. The present proceedings should not act as a substitute for procedures under the *Access to Information Act*, nor as means to circumvent the protections that the statute puts in place.

[41] For all the foregoing reasons, I am therefore of the view that the Prothonotary did not err in finding that there are no provisions in the OLA pursuant to which the Court could compel the production of the documents and information sought by the applicant.

- Are the requested materials relevant to the applications?

[42] The applicant contends that the remedy he is seeking makes the similar past complaints relevant, as it demonstrates systemic discrimination and total disregard for past commitments made by the respondent. However, I agree with the Prothonotary that the actual complaints or reports of the Commission would add anything to the information already provided by the Commissioner.

[43] As already mentioned, the Commissioner has already sent to the applicant 23 enclosures, including every document found in the complaint files which are the basis for the current proceedings (applications T-2200-07, T-2201-07 and T-108-08), with the exception of the documents already in the possession of the applicant. Even if Rule 317 applies to the Commissioner, these documents would fulfill any obligation the Commissioner may have under it because these are all the documents which were before the Commissioner in the course of the

investigations conducted by the Commissioner on the applicant's complaints. In addition to the information contained in these files, the Commissioner provided the applicant with copies of complaints letters sent by him to the Commissioner, as well as copies of the results of the investigations sent to him by the Commissioner. Furthermore, the Commissioner provided him with a list of 18 similar past complaints filed against the CPC by other complainants. This list includes the date and nature of the complaints, as well as the result and status, and provides the applicant with the information he wished to receive without breaching the Commissioner's duties with regard to confidentiality of investigations.

[44] The present applications, commenced under section 77 of the OLA, are designed to verify the merits of the complaints made to Commissioner by the applicant and to secure relief that is appropriate and just in the circumstances. The issues before the Court in these applications is whether or not CPC complied with its obligations under Parts IV and V of the OLA in its dealings with the applicant. The materials already provided are sufficient to give the context and background of the applications brought by the applicant.

[45] Accordingly, the appeal of the decision made by the Prothonotary on August 18, 2008, is dismissed without costs.

[46] I shall now deal briefly with the two other motions, that is, the applicant's motion seeking an order for costs in advance of litigation, and the respondent's motion for an order requiring the applicant to give security for costs. These motions are closely interrelated.

[47] Since 1994, the applicant has filed at least 19 judicial and quasi-judicial proceedings, nine of which have been against the respondent.

[48] On May 15, 2006, the applicant commenced an action in this Court against the respondent alleging various causes of action arising out of or related to his employment by the respondent. The applicant's statement of claim was struck on the basis that the Court had no jurisdiction to hear the matter, and the applicant's appeal was subsequently dismissed by the Federal Court of Appeal (*Lavigne* v. *Canada Post Corporation et al.*, 2006 FC 1345; 2007 FCA 123).

[49] Almost a full year after the Federal Court of Appeal rendered its decision, the applicant sought leave to appeal to the Supreme Court of Canada, along with a motion to extend the time to apply for leave and various other ancillary motions. On July 10, 2008, the Supreme Court dismissed the application for an extension of time to apply for leave to appeal and certain ancillary motions with costs in favour of the respondent, taxed in the amount of $1,913.16.

[50] On November 26, 2008, in response to a demand for satisfaction of the debt by the respondent, the applicant refused to satisfy the outstanding debt arising out of the Costs Order, alleging that he did not have the money. An interim garnishment order was issued on January 12, 2009, but was released at the show cause hearing on February 2, 2009. There is no indication that these costs have been paid at the time of writing these reasons.

[51] There is another file that is relevant for the purposes of the two motions now before the Court. On June 19, 2008, the applicant commenced an action in the Québec Superior Court against the respondent, alleging various causes of action arising out of or related to his employment by the respondent, and claiming damages in the amount of $700,000.

[52] On February 12, 2009, pursuant to a preliminary motion made by the respondent, Justice Kirkland Casgrain dismissed the applicant's action with costs, declared the applicant "to be a vexatious and quarrelsome litigant", and ordered the provisional execution of the judgment notwithstanding appeal. On April 20, 2009, the Québec Court of Appeal dismissed the applicant's motion to force the respondent to proceed in English and allowed in substantial part the respondent's motion to dismiss the applicant's appeal, thereby upholding Justice Casgrain's ruling that the applicant is a vexatious and quarrelsome litigant (see Court of Appeal docket no. 500-09-019410-091).

[53] On April 24, 2009, the respondent was authorized by the Superior Court to seize the rent payable to Mr. Lavigne to cover the bill of costs taxed in the amount of $6,992.78. As of June 12, 2009, an amount of $6,619.15, which corresponds to the residual part of the costs described above, remained wholly unpaid by the applicant.

[54] At the hearing, the applicant submitted that he had sold his house, and that after paying his debts and mortgage, he still owed $60,000 to his mother. I authorized the applicant to file supplementary evidence regarding his indebtedness towards his mother, as there was nothing before me to support this claim.

[55] The applicant filed a supplementary affidavit from his mother, dated June 30, 2009, in which she alleges, *inter alia*, that "in the past three years my son has borrowed another 60,000$ dollars for the house and to help pay past Court costs and other things. The sale of the house will not repay this outstanding debt".

[56] The applicant asks that disbursements in the amount of $2,000 be paid in advance. At the hearing, he submitted that this amount was necessary to cover the costs of the interpreters in cross-examinations, and to cover his expenses as he is moving to Edmonton and will have to come back for the hearing of his applications. He also submitted that part of this amount would go to his defence with respect to a vexatious litigant motion that he expects the respondent to file against him.

[57] In order to be entitled to an order for costs in advance, an applicant must meet the requirements of a threefold test: (i) the applicant must be impecunious to the extent that, without such an order, that party would be deprived of the opportunity to proceed with the case; (ii) the applicant must establish a prima facie case of sufficient merit to warrant pursuit; and (iii) there must be special circumstances sufficient to satisfy the court that the case is within the narrow class of cases where this extraordinary exercise of its powers is appropriate, and must be present such that the issues raised by the applicant are of public importance and have not been resolved in previous cases: *B.C. (Minister of Forests)* v. *Okanagan Indian Band*, [2003] 3 S.C.R. 371, at para. 40; *Little Sisters Book and Art Emporium* v. *Canada*, [2007] 1 S.C.R. 38, at para. 37; *Doe* v. *Canada*, 2005 FC 537, at paras. 39, 40 and 44.

[58] Costs in advance is an extraordinary exercise of the discretionary powers of a Court which should be limited to specific and special cases. Accordingly, an applicant must meet a high standard of proof in order to demonstrate his impecuniosity in the context of a motion for costs in advance.

[59] The generality of the allegations included in the applicant's motion record and in his supplementary affidavit, and the lack of evidence in support of some of his claims, do not satisfy me that he has met the high threshold standard required in such circumstances. For example, there is no documentary evidence supporting the allegations of his mother that he still owes her $60,000. Similarly, the existence of a mortgage has not been demonstrated by the applicant, by way of a statement of account from the financial institution holding the alleged security or otherwise. The same is true of the alleged mortgage penalty of $8,000 and of the alleged bank loan of $2,000.

[60] I am also of the view that the applicant does not meet the second requirement established in *Okanagan Indian Band* (*supra*). First of all, the multiple proceedings filed by the applicant reflect poorly on the merit of the case. As previously mentioned, the applicant has been declared a vexatious and quarrelsome litigant by the Quebec Superior Court, a decision later confirmed by the Quebec Court of Appeal.

[61] Moreover, the underlying complaints that are the subject of the applications appear to have been either satisfactorily addressed by the respondent or to have been refused for lack of infraction. All of the underlying complaints in connection to the present applications concern either correspondence or internal medical notes. Correspondence sent to the applicant in French has been

acknowledged by the respondent as being inadvertent and the Office of the Commission has been satisfied with the respondent's answer. As for the complaint about the internal medical notes, the Commission found no infraction, and the applicant refused an offer made by the medical service provider to have a meeting in which he would be able to obtain explanations on his medical file in the language of his choice.

[62] For all the foregoing reasons, I have come to the conclusion that the applicant's motion for costs in advance should be dismissed with costs.

[63] As for the motion of the respondent seeking an order for security for costs, it shall be granted in part. Rule 416(1)(f) provides as follows:

416. (1) Where, on the motion of a defendant, it appears to the Court that	**416.** (1) Lorsque, par suite d'une requête du défendeur, il paraît évident à la Cour que l'une des situations visées aux alinéas *a*) à *h*) existe, elle peut ordonner au demandeur de fournir le cautionnement pour les dépens qui pourraient être adjugés au défendeur :
[…]	[…]
(*f*) the defendant has an order against the plaintiff for costs in the same or another proceeding that remain unpaid in whole or in part,	*f*) le défendeur a obtenu une ordonnance contre le demandeur pour les dépens afférents à la même instance ou à une autre instance et ces dépens demeurent impayés en totalité ou en partie;
[…]	
the Court may order the plaintiff to give security for the defendant's costs.	

[64] In order to be entitled to an order for security for costs pursuant to paragraph 416(1)(f) of the *Federal Courts Rules*, "a defendant does not have to satisfy any other requirement than those specifically contained in that paragraph": *Ayangma* v. *Canada*, 2003 FC 1013, at para. 14. Indeed, it has been determined that a defendant is "prima facie entitled to security for costs" where there is an unpaid costs order in favour of the defendant: *Coombs* v. *Canada*, 2008 FC 894.

[65] In the matter at hand, there is no doubt that the requirements of Rule 416(1)(f) of the *Federal Courts Rules* are fulfilled since two costs orders remain unsatisfied. Furthermore, the applicant has refused to willingly comply with the costs orders and has forced the respondent to incur further costs and institute garnishment proceedings in an attempt to obtain satisfaction of the debt. Now that the applicant has sold his house, the situation is even worse: the respondent will be unable to obtain a garnishment order to seize the rent payable by his tenant.

[66] In light of the above, it is appropriate to order the applicant to provide security for the respondent's costs in the present proceedings. I am mindful of Rule 417, according to which the Court may refuse to order that security for costs be given if a plaintiff demonstrates impecuniosity and the Court is of the opinion that the case has merit. However, for the reasons already given in the context of the applicant's motion for costs in advance, neither of these conditions is met in the circumstances of the present case.

[67] That being said, Rule 416(2) states that the Court may order that security for costs be given in stages. I believe this is the appropriate course of action, in order to adequately balance the interests of both parties. We are at a very early stage of the proceedings, and I can see no

justification to order the applicant to pay the respondent's total estimated costs, even if they have been assessed conservatively.

[68] I am therefore prepared, as a first stage, to order the applicant to provide security to the respondent in the amount of $1,500.00, covering the costs of the preparation and filing of the respondent's record, of this motion and of the motion filed by the applicant for costs in advance. The security shall be provided within thirty (30) days of the date of this Order.

[69] I am also prepared to order immediately that the applicant shall provide further security for costs to the respondent at further steps of the proceedings, in the amount and on the dates to be fixed by the Prothonotary upon motion by the respondent.

ORDER

THIS COURT ORDERS that the appeal of the Prothonotary's order dated August 18, 2008 is dismissed, without costs. The applicant's motion seeking an order for costs in advance of litigation is dismissed, with costs, and the respondent's motion for an order requiring the applicant to give security for the costs is granted, in part, with costs.

"Yves de Montigny"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2200-07; T-2201-07; T-108-08
STYLE OF CAUSE:	ROBERT LAVIGNE (Applicant) and CANADA POST CORPORATION (Respondent) and THE COMMISSIONER OF OFFICIAL LANGUAGES (Intervener)
PLACE OF HEARING:	Toronto, ONTARIO
DATE OF HEARING:	June 29, 2009
REASONS FOR ORDER AND ORDER:	de Montigny, J.
DATED:	July 24, 2009

APPEARANCES:

Mr. Robert Lavigne (Self-Represented)	APPLICANT
Mr. Alexandre Bourbonnais	FOR THE RESPONDENT
Ms. Christine Ruest-Norrena	FOR THE INTERVENER

SOLICITORS OF RECORD:

Mr. Robert Lavigne (Self-Represented)	FOR THE APPLICANT
Ogilvy Renault sencrl Montréal, Quebec	FOR THE RESPONDENT
The Commissioner of Official Languages Ottawa, Ontario	FOR THE INTERVENER