

Federal Court of Appeal



Cour d'appel fédérale

Date: 20121109

Docket: A-353-11

Citation: 2012 FCA 287

**CORAM: NOËL J.A.
PELLETIER J.A.
MAINVILLE J.A.**

BETWEEN:

GARY SAUVE

Appellant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

Heard at Ottawa, Ontario, on November 6, 2012.

Judgment delivered at Ottawa, Ontario, on November 9, 2012.

REASONS FOR JUDGMENT BY:

MAINVILLE J.A.

CONCURRED IN BY:

**NOËL J.A.
PELLETIER J.A.**

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REASONS FOR JUDGMENT

MAINVILLE J.A.

[1] This is an appeal from an order, cited as 2011 FC 1081, under which Justice Martineau (“judge”) of the Federal Court dismissed an appeal from a decision of Prothonotary Tabib (“prothonotary”) requiring the appellant to give security for costs in the amount of \$10,000 pursuant to paragraph 416(1)(f) of the *Federal Courts Rules*, SOR/98-106 (“Rules”).

[2] The appellant, a former RCMP officer, has initiated six separate actions in the Federal Court seeking compensation for harm allegedly suffered at the hands of the RCMP. Several costs orders

have been made against the appellant in these proceedings, most of which have remained outstanding.

[3] The *Rules* provide that when a plaintiff has outstanding costs orders against him, the Federal Court may order that security be given for the defendant's costs. However, the *Rules* also provide that such security may be refused if the plaintiff demonstrates impecuniosity. The pertinent provisions of the *Rules* read as follows:

416. (1) Where, on the motion of a defendant, it appears to the Court that

...

(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,

the Court may order the plaintiff to give security for the defendant's costs.

417. The Court may refuse to order that security for costs be given under any of paragraphs 416(1)(a) to (g) if a plaintiff demonstrates impecuniosity and the Court is of the opinion that the case has merit.

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) 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;

417. La Cour peut refuser d'ordonner la fourniture d'un cautionnement pour les dépens dans les situations visées aux alinéas 416(1)a) à g) si le demandeur fait la preuve de son indigence et si elle est convaincue du bien-fondé de la cause.

[4] The prothonotary determined that the appellant had not established that he was impecunious. She consequently found that section 417 of the *Rules* did not apply. She conservatively set the security for costs at \$10,000 taking into account the plaintiff's own pre-trial submissions that some 50 witnesses would be called, and her estimate that the trial would last for 2 to 3 weeks. She also set a one year period to provide the security, considering that the plaintiff was also required to comply with other orders for costs (including security for costs) made against him.

[5] After carefully reviewing the jurisprudence concerning paragraph 416(1)(f) and section 417 of the *Rules*, the judge denied the appeal from the prothonotary's order. The appellant, who represents himself, now appeals that decision to our Court.

[6] I need not discuss in any detail the legal principles applicable to security for costs orders under the *Rules* since these principles are ably set out in the reasons of the judge.

[7] I only need to point out that though security for costs is a tool in the furtherance of the efficient and orderly administration of justice, in determining if such security is required, courts must ensure not only that the justice system works efficiently, but also that it works fairly for all the parties involved. When a defendant has obtained an order for costs against a plaintiff, and the latter does not comply with that order, fairness requires that the defendant not be unduly exposed to further costs risks. However, fairness also requires that when it is clear that the effect of an order for security for costs would be to preclude an impecunious plaintiff from advancing an otherwise meritorious claim, security for costs in favour of the defendant should usually be denied.

[8] The appellant submits in this appeal that the prothonotary and the judge denied him access to the judicial system and breached his constitutional rights because he was poor and self-represented. This submission is a mischaracterization of the proceedings and of the issues dealt with by both the prothonotary and the judge. The only relevant issue before them was whether the appellant had indeed established impecuniosity that prevented him from pursuing his action should security for costs be ordered.

[9] The only evidence submitted by the appellant to support his claim of impecuniosity were bald statements. A bald statement from a litigant that he does not have the means to provide security for costs is clearly insufficient to trigger the application of section 417 of the *Rules: B-Filer Inc. v. Bank of Nova Scotia*, 2007 FCA 409; 371 N.R. 292 at paras. 9 to 11; *Chaudhry v. Canada (Attorney General)*, 2009 FCA 237; 393 N.R. 67 at para. 10.

[10] Material evidence must be submitted in order to sustain a claim of impecuniosity, including complete and clear financial information presented in a comprehensible format. Tax returns, bank statements, lists of assets, and (where possible) financial statements should be submitted. Evidence of the impracticability of borrowing from a third party to satisfy the security order should also be provided. The possibility of accessing family and community resources should be considered. No material issue should be left unanswered.

[11] The appellant presented no such evidence to the prothonotary.

[12] During the hearing of this appeal, the appellant acknowledged that he had recently paid \$5,000 to satisfy a security for costs order in another related proceeding before the Federal Court, and that he was prepared to provide a reduced amount of \$5,000 as security for costs in these proceedings. The appellant also informed this Court that he had secured legal counsel to represent him at trial. All this seems at odds with his prior statements before the prothonotary and the judge that he could not pursue these proceedings if the security for costs order was left standing.

[13] At the appeal hearing, the appellant requested that the amount of the security be reduced to \$5,000 on the ground that the respondent is partly responsible for the large number of witnesses and the estimated length of the trial. I would deny this request. There is no evidence before us of misconduct on the part of the respondent in its defence to this action. In setting the amount of the security at \$10,000, the prothonotary considered the relevant factors, including the list of 50 witnesses proposed by the appellant and the estimated length of the trial. She further determined that the amount of \$10,000 would be considerably less than the costs to which the defendant would be entitled to in the event its defence to the action was successful.

[14] Consequently, the prothonotary committed no reviewable error in setting the security for costs at the amount she ordered, and the judge rightfully declined to interfere with that order. I would therefore dismiss this appeal, with costs.

"Robert M. Mainville"

J.A.

"I agree
Marc Noël J.A."

"I agree
J.D. Denis Pelletier J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-353-11

**APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE MARTINEAU,
DATED SEPTEMBER 20, 2011, DOCKET NO. T-996-09**

STYLE OF CAUSE: Sauve v. The Queen

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: November 6, 2012

REASONS FOR JUDGMENT BY: MAINVILLE J.A.

CONCURRED IN BY: NOËL J.A.
PELLETIER J.A.

DATED: November 9, 2012

APPEARANCES:

Gary Sauve ON HIS OWN BEHALF

Agnieszka Zagorska FOR THE RESPONDENT
Abigail Martinez

SOLICITORS OF RECORD:

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada