

Federal Court



Cour fédérale

Date: 20191029

Docket: T-1261-19

Citation: 2019 FC 1357

Ottawa, Ontario, October 29, 2019

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

RAYMOND J. TURMEL

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

ORDER AND REASONS

[1] The Defendant moves under Rule 369 of the *Federal Courts Rules*, SOR/98-106, for an Order that the Plaintiff be ordered to provide security for costs in the amount of \$5,750.00 failing which the Plaintiff may not take any further steps in this action until such security for costs is provided, together with alternative relief including costs. The motion is granted for the following reasons:

[2] The Plaintiff filed a Statement of Claim seeking a declaration that limits on patient licenses per grower set out in paragraphs 317(1)(g), 317(1)(h) and 318(2) of the *Cannabis Regulations*, SOR/2018-144 violate section 7 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982 (UK)*, 1982, c 11 [Charter], and a declaration that a designated person may provide a true copy rather than an “original police document” on an application form.

[3] The uncontested evidence before the Court is that the Plaintiff has been ordered to pay the Defendant costs on two previous occasions in relation to matters before this Court, but notwithstanding written requests, has failed to do so. One unpaid Order for costs was issued by the Federal Court of Appeal on September 9, 2014 in the amount of \$500.00, and the other is an award of costs in the Supreme Court of Canada in relation to the same matter in which costs in the amount of \$807.73 were taxed and allowed by this Defendant against this Plaintiff. Despite requests, neither of these cost orders have been paid by the Plaintiff.

[4] Rule 416(1)(f) of the *Federal Courts Rules*, SOR/98-106 provides that the Court may order the Plaintiff to give security for the Defendant’s costs where the Defendant has another order against the Plaintiff for costs in the same or another proceeding that remain unpaid in whole or in part:

Where security available

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

Cautionnement

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.

[5] The Federal Court and Federal Court of Appeal have held that where previous costs orders remain unpaid, there is a *prima facie* right to security for costs: *Mapara v Canada (Attorney General)*, 2016 FCA 305 per Pelletier, Scott, De Montigny JJA at para 5 [*Mapara*]; and *Lavigne v Canada Post Corporation*, 2009 FC 756, per De Montigny J at para 64.

[6] In my view, therefore, the Defendant has established a *prima facie* right to an order requiring the Plaintiff to deposit security for costs.

[7] It is established that under Rule 417 of the *Federal Courts Rules*, a plaintiff may avoid an order requiring security for costs if he or she is impecunious and there is some merit to the action; however, this Plaintiff makes no such assertions.

[8] As I see it, there are two parts to this test: impecuniosity and some merit. I will deal with each separately.

[9] In terms impecuniosity, the Plaintiff says his admitted failure to pay previous cost orders, going back to 2014 “does indicate some impecuniosity.” With respect, there is no merit to this submission. If it were otherwise, security for costs could never be awarded against a plaintiff who refused to pay previous cost orders and the purposes of the of Rule 416(1)(f) would be defeated. The fact the Plaintiff did not pay may indicate impecuniosity; it may also indicate disrespect for the rules and procedures of this Court.

[10] It is also well-established that the onus of proof to establish impecuniosity is high, and must be discharged with “robust particularity”: *Mapara* at para 8; *Heli Tech Services (Canada) Ltd. v Weyerhaeuser Company*, 2006 FC 1169 per Campbell J at para 8.

[11] That said, the Plaintiff has filed nothing to suggest he is without sufficient assets to pay the previous cost orders. The Plaintiff has not suggested his own assets are insufficient to provide security, or that he is unable to raise the money elsewhere, for example, by borrowing from friends, family or others. There is no indication he has applied for and been refused assistance by legal aid. Indeed, the Plaintiff has put nothing before the Court by way of affidavit to demonstrate impecuniosity or inability to pay, leading me to reject this aspect of his response to the Defendant’s motion.

[12] The Plaintiff also argues that the Defendant should fail because it has not garnisheed his old-age benefits. There is no merit to this defence either because defendants relying on Rule 416(1)(f) are not required to demonstrate they have exhausted other enforcement options before seeking security for costs: *Stubicar v Canada (Deputy Prime Minister)*, 2015 FC 1034, per Annis J at para 9, aff'd 2016 FCA 255, per Nadon, Trudel and Scott JJA.

[13] In terms of merit, the Plaintiff argues the issue in his case “affects a whole class of patients and growers, it is an issue of national import, and it would seem unjust to let financial considerations impinge on the prosecution of the claim.”

[14] Once again, there are no facts to support these submissions, such that I am unable to give any credence to them. In particular, this claim contains no material facts to explain how they deprive the plaintiff or anyone else of life, liberty or security of person, or to explain why any deprivation is not in accordance with the principles of fundamental justice.

[15] Mere allegations of *Charter* violations are not enough yet that is virtually all the Court has before it from the Plaintiff in this respect. Moreover, the Plaintiff alleges virtually no facts concerning his personal circumstances as they relate to the relief sought. The Statement of Claim does not contain facts relating how he is personally affected by the legislation in question.

[16] In terms of the change of document requested, again there are no facts concerning how he is affected by the regulations he challenges.

[17] To the extent the Plaintiff is seeking to advance a claim on behalf of others, I agree with the Defendant's submissions that the Plaintiff has not shown he meets any of the requirements for public-interest standing. This is so because in deciding whether to grant public-interest standing, the Supreme Court of Canada has ruled that courts should have regard to (1) whether the claim raises a serious justiciable issue; (2) whether the plaintiff has a genuine interest in the outcome of the action; and (3) whether the proceeding is a reasonable and effective way to bring the case to court: *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 per Cromwell J at para 2.

[18] I agree with the Respondent that the Plaintiff has not shown his claim meets any of these requirements. With respect to the third factor in particular, the plaintiff has failed to show his claim is a reasonable and effective way to raise the constitutional issues, or explain why the issues cannot instead be brought by a directly affected medical cannabis user without unpaid costs awards.

[19] Having failed to establish an exception to rebut the Defendant's *prima facie* entitlement to security for costs, I have concluded that the Defendant's motion should be granted.

[20] I have reviewed the draft bill of costs filed with the motion to strike and supported by an affidavit of one of the Defendant's employees, setting out the basis for security for costs in the amount of \$5,750.00. The Plaintiff by way of response says only that this amount "seems excessive." With respect, I disagree. In my view the quantum is reasonable.

[21] I have concluded the Plaintiff should pay the Defendant security for costs in the amount of \$5,750.00 before being permitted to proceed with this action, and an order will go staying all steps by the Plaintiff in this action until the security for costs ordered herein is paid by the Plaintiff to the Defendant. I am not staying all proceedings: the Defendant remains at liberty to take such additional proceedings as is considered appropriate.

[22] The Defendant requests costs of this motion in the amount of \$600.00. There is no reason why costs should not follow the result. I appreciate the Applicant is a self-represented litigant. However, he cannot be said to be unfamiliar with the *Federal Courts Rules*. A quick reivew of the Federal Court website indicates he has initiated at least four other proceedings in this Court: (1) *Raymond J Turmel v AGC*, T-977-13, discontinued due to mootness on June 3, 2013; (2) *Raymond J Turmel v Her Majesty the Queen*, T-517-14, struck without leave to amend on January 11, 2017 (*Reference re subsection 52(1) of the Canadian Charter of Rights and Freedoms*, 2017 FC 30, per Phelan J); (3) *Raymond J Turmel v Attorney General of Canada*, T-1119-13 and (4) *Raymond J Turmel v AGC*, T-1207-13, both discontinued due to inactivity on March 28, 2017. Therefore the Defendant shall have Her costs of this motion. In my discretion I set costs at \$350.00.

ORDER in T-1261-19

THEREFORE THIS COURT ORDERS that:

1. The Plaintiff shall pay to the Defendant the sum of \$5,750.00 as security for costs of this action.
2. All proceedings by the Plaintiff are hereby stayed pending the Plaintiff's payment of the security for costs required by part 1 of this Order.
3. Plaintiff shall pay the Defendant \$350.00 as costs of this motion in any event of the cause.

“Henry S. Brown”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1261-19

STYLE OF CAUSE: RAYMOND J. TURMEL v HER MAJESTY THE
QUEEN

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: BROWN, J.

DATED: OCTOBER 29, 2019

WRITTEN REPRESENTATIONS BY:

Robert J. Turmel

FOR THE PLAINTIFF
(ON HIS OWN BEHALF)

Wendy Wright

FOR THE DEFENDANT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE DEFENDANT