

Federal Court



Cour fédérale

**Date: 20180223**

**Docket: 17-T-62**

**Citation: 2018 FC 204**

**Toronto, Ontario, February 23, 2018**

**PRESENT: The Honourable Mr. Justice Diner**

**BETWEEN:**

**JOSEPH STEPHEN ROOKE**

**Plaintiff**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Defendant**

**ORDER AND REASONS**

[1] This motion is an appeal, brought under Rule 51(1) of the *Federal Courts Rules*, SOR/98-106 [*Rules*], from the December 4, 2017 order of Prothonotary Tabib [Order], which dismissed the Plaintiff's motion to waive Court fees associated with the filing of his Statement of Claim.

[2] The Prothonotary concluded that the Plaintiff, Joseph Stephen Rooke, had not provided sufficient details of his financial circumstances to demonstrate his inability to pay the required

filing fees. For the following reasons, I find that there is no basis on which to interfere with the Prothonotary's Order.

I. Background

[3] Mr. Rooke attempted to file a motion record on September 25, 2017 seeking, among other things, the certification of a class proceeding, and a waiver of filing fees for his motion. However, Mr. Rooke provided no proof of service of his motion record, and there was no existing proceeding within which to file it. Thus, on September 27, 2017, Justice Southcott directed that the Registry return Mr. Rooke's motion record to him, explaining that he could initiate an action by filing a statement of claim. Justice Southcott further suggested that, when Mr. Rooke provided his statement of claim to the Registry for filing, he could also provide a letter explaining any request for a waiver of filing fees.

[4] Mr. Rooke then attempted to file a statement of claim, with which he included a short letter stating that he was unemployed and collecting a "modest, non-indexed, monthly private pension". He also stated that he was in the process of moving and would be incurring related expenses.

[5] On October 12, 2017, the Prothonotary directed that Mr. Rooke's letter would not be entertained as an informal request and that a motion, on notice, was required. The Prothonotary observed that Mr. Rooke's request was, in any event, accompanied by inadequate and insufficient materials.

[6] In response, on October 20, 2017, Mr. Rooke resubmitted his letter for a fee waiver, adding the following note by hand: “My income is approx. \$2443.00 per month. Directions are requested”.

[7] The Prothonotary repeated her earlier direction, explaining that the Court had exercised its discretion to require a formal motion, and that Mr. Rooke had, in any event, failed to meet the requirements of the Federal Court’s August 25, 2017 *Notice to the Parties and the Profession*, which applies to informal requests for interlocutory relief.

[8] By letter dated November 7, 2017, Mr. Rooke requested that Prothonotary Tabib reconsider her directions, or issue them as an order. Mr. Rooke relied on (i) Justice Southcott’s direction suggesting that Mr. Rooke set out his request in a letter, (ii) his monthly income, which he stated to be \$2443.00 per month, and (iii) what Mr. Rooke described as the lack of guidance in the *Rules* on the issue of requesting a fee waiver.

[9] In response, the Prothonotary exercised her discretion to treat Mr. Rooke’s informal request as a motion. The Prothonotary reconsidered her previous directions and dismissed Mr. Rooke’s request (treated as a motion). That Order is the subject of this appeal.

[10] With respect to Mr. Rooke’s reliance on Justice Southcott’s direction, the Prothonotary held at pages 3-4 of her Order:

The fact that a judge or prothonotary has, by direction, suggested a procedural means to seek relief from the Court does not guarantee that the relief will be granted, or that the judicial officer seized of the request will be satisfied that the material submitted is sufficient

to properly rule on the issue. In the case of Mr. Rooke's request, The Court reviewed the material and was not satisfied that it was sufficient to support the granting of the relief requested.

The case law is clear to the effect that in order to grant a waiver of filing fees, litigants must describe their financial situation in detail, including potential sources of funding, assets and expenses, to demonstrate not only that they are impecunious but that the requirement of paying a filing fee would prevent them from pursuing a reasonably good claim before the Court (*Fabrikant v Canada (AG)*, 2014 FCA 89 and *Fabrikant v Canada*, 2017 FC 576).

[11] The Prothonotary also explained to Mr. Rooke why the Court is constrained in its ability to counsel litigants, and that multiple requests do not right a procedural wrong:

The Court must remain independent and neutral. It cannot provide legal advice to parties or dictate what evidence they must tender in order to succeed on a motion. It is up to the parties to seek independent legal advice, or to educate themselves as to the criteria to be met to obtain the relief they seek. It is, further, not appropriate for parties to be given multiple attempts to attain a desired result by tweaking their materials until it is found sufficient. Sadly, Mr. Rooke failed to seize the opportunity given to him by the Court to avoid the outright dismissal of his motion by submitting better and more complete evidence by way of formal motion.

[12] The Prothonotary noted that her previous direction had been an opportunity for Mr. Rooke to improve and supplement his evidence, which he had declined to do.

[13] Ultimately, the Prothonotary found that Mr. Rooke had failed to substantiate his alleged impecuniosity, and had not provided sufficient details with respect to his assets, expenses, or alternative sources of funding. The Prothonotary concluded that Mr. Rooke's pension was *prima*

*facie* sufficient to permit him to pay the relevant filing fee, and that this fact was determinative of his motion.

## II. Standard of Review

[14] A prothonotary's decision is reviewed according to *Housen v Nikolaisen*, 2002 SCC 33. Factual conclusions are reviewed on a palpable and overriding error standard, while questions of law, or of mixed fact and law containing an extricable legal principle, are reviewed on a correctness standard (see *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at para. 79; *Fabrikant v Canada*, 2017 FC 1115 at paras 19-22 [*Fabrikant* 2017 (Harrington J.)]).

[15] Further, a decision on a request for fee waiver is discretionary (*Fabrikant v Canada (Attorney General)*, 2017 FC 576 at para 5 [*Fabrikant* 2017 (Gagné J)]). Even though a different judge or prothonotary may have exercised his or her discretion differently, that is not enough to warrant interference (*Fabrikant v Canada*, 2015 FCA 53 at para 12).

## III. Analysis

[16] Under Rule 19 and Tariff A, a party must pay \$150 to the Registry for the issuance of a statement of claim. If a party wishes to have that fee waived by the Court, the *Rules* provide no specific procedure for doing so. A party seeking a fee waiver may therefore file a preliminary motion — namely, a motion brought prior to the commencement of the proposed action —

seeking a fee waiver. There is no fee payable on such a motion (*Fabrikant* 2017 (Harrington J.) at para 6).

[17] However, a party may instead submit a letter for the Court's consideration at the time they attempt to file their statement of claim, as noted by Justice Southcott in his direction of September 25, 2017. In some cases, the Court may consider such a letter and waive the filing fee, depending on all the circumstances, including the sufficiency of the evidence provided. But it is always within the Court's discretion to require a formal, preliminary motion. As the Prothonotary noted at page 3 of her Order, it is up to the judge or prothonotary ultimately seized of the request to be satisfied that the materials provided will allow him or her to properly rule on the issue. In this case, the Prothonotary directed Mr. Rooke to file a formal motion. To his detriment, Mr. Rooke insisted that his request be considered in the form submitted.

[18] The Court's power to consider a request for a fee waiver arises from Rule 55, which provides that the Court may in "special circumstances" vary or dispense with compliance with the Rules (*Fabrikant v Canada*, 2014 FCA 89 at paras 2-5 [*Fabrikant* 2014]; *Fabrikant* 2017 (Harrington J.) at para 6).

[19] Because of this "special circumstances" requirement, it is rare that the Court will relax the requirement to pay fees (*Fabrikant* 2014 at para 8). The Court should not even consider its discretion to do so unless there are exceptional circumstances (*Fabrikant* 2017 (Harrington J.) at para 27). A party must have particularized, credible evidence detailing their financial situation and setting out sources of funding, assets, and expenses (*Fabrikant* 2014 at paras 10-11).

[20] Given these constraints provided in the jurisprudence, the Prothonotary correctly observed at pages 3-4 of her Order that a party seeking a fee waiver must demonstrate that they are impecunious and that paying a filing fee would prevent them from pursuing a reasonably good claim (see also *Fabrikant 2017 (Gagné J)* at para 5).

[21] Having reviewed the motion record and considered the parties' submissions, I do not find that Prothonotary Tabib's Order discloses any error of fact or law. Mr. Rooke did not detail his financial position or provide any evidence thereof, other than his handwritten statement regarding his monthly pension of \$2443.00. In light of the governing case law, the Prothonotary properly exercised her discretion in dismissing Mr. Rooke's motion.

[22] Mr. Rooke submits that, because he is self-represented, the Prothonotary had a duty to advise what further information he had to produce, or to provide him with further time to build his case.

[23] The Prothonotary was under no such duty. Even though Mr. Rooke is self-represented, he must still comply with the *Rules* (see *MacDonald v Canada (Attorney General)*, 2017 FC 2 at paras 29-30 [*MacDonald*]; *Boulet v Canada (Attorney General)*, 2014 FC 577 at para 5 [*Boulet*]). As the Prothonotary appropriately noted in her Order, being self-represented carries with it obligations of self-education (see *Exeter v Canada (Attorney General)*, 2016 FCA 234 at para 12 [*Exeter*]; *MacDonald* at paras 30-33).

[24] Further, the Court is constrained, for the reasons set out by the Prothonotary, with respect to the advice it can provide to self-represented litigants, such as Mr. Rooke. In this appeal, Mr. Rooke refers to information contained in the Federal Court website. However, in those website materials, the Court makes this position clear. For instance, in “Information about Registry Services to Assist Self-Represented Litigants” (July 2008) ([http://cas-cdc-www02.cas-satj.gc.ca/portal/page/portal/fc\\_cf\\_en/SRL\\_Registry](http://cas-cdc-www02.cas-satj.gc.ca/portal/page/portal/fc_cf_en/SRL_Registry)), it is clear that the Registry cannot give legal or tactical advice. It cannot give instructions on how to initiate proceedings, suggest wording to use in submissions, or advise as to the sufficiency of Court documentation.

[25] In short, both the Registry and the Court must be fair and neutral to everyone, and not give individualized attention to one party (*Boulet* at para 6). Doing otherwise would be inconsistent with the Court’s role as an independent and impartial decision-maker (*Exeter* at paras 10-12). Indeed, for the Prothonotary to have advised Mr. Rooke as he suggests would have been tantamount to advising him how to prove his case, which is not the Court’s role.

#### IV. Conclusion

[26] The Prothonotary’s Order discloses no errors of fact or law. The appeal is dismissed.

#### V. Costs

[27] The Defendants seek their costs, and understandably so. However, having considered all of the circumstances, including the difficult situation in which Mr. Rooke finds himself, I make no order as to costs — this time.



[28] I warn Mr. Rooke so that he clearly understands going forward, he bears the full risk of cost orders being made against him in the future, whether in the context of interlocutory or procedural matters like this motion, or with respect to the determination of any action. Costs are an inevitable risk of litigation, and even self-represented litigants, like Mr. Rooke, always run that risk.

**ORDER in 17-T-62**

**THIS COURT ORDERS that**

1. This appeal is dismissed.
2. There is no award as to costs.

"Alan S. Diner"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** 17-T-62

**STYLE OF CAUSE:** JOSEPH STEPHEN ROOKE v THE ATTORNEY  
GENERAL OF CANADA

**CONSIDERED IN WRITING WITHOUT PERSONAL APPEARANCE OF THE  
PARTIES**

**ORDER AND REASONS:** DINER J.

**DATED:** FEBRUARY 23, 2018

**WRITTEN REPRESENTATIONS:**

Joseph Stephen Rooke

FOR THE PLAINTIFF  
ON HIS OWN BEHALF

Sanam Goudarzi

FOR THE DEFENDANT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Ottawa, Ontario

FOR THE DEFENDANT