

Federal Court of Appeal



Cour d'appel fédérale

Date: 20240604

Docket: A-158-23

Citation: 2024 FCA 104

**CORAM: WOODS J.A.
LOCKE J.A.
GOYETTE J.A.**

BETWEEN:

LEONARD B FRENCH

Appellant

and

**THE ROYAL CANADIAN LEGION
(DOMINION COMMAND)**

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on June 4, 2024.

**REASONS FOR ORDER BY:
CONCURRED IN BY:**

**LOCKE J.A.
WOODS J.A.
GOYETTE J.A.**

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REASONS FOR ORDER

LOCKE J.A.

I. Background

[1] This decision concerns two matters that have arisen since the dismissal of the present appeal. The first concerns costs of the appeal. The second concerns a motion by the appellant, Leonard B. French, to stay this Court's decision pending a decision by the Supreme Court of Canada (SCC) on an application by Mr. French for leave to appeal this Court's decision.

[2] In respect of costs, this Court's judgment dismissing the appeal invited the parties to make submissions in accordance with a timetable. The respondent, the Royal Canadian Legion (Dominion Command) (the Legion), provided timely submissions. Mr. French did not, and the deadline for doing so expired on April 26, 2024. Therefore, the matter of costs has been ready for this Court's consideration since that time.

[3] Mr. French served and filed his stay motion on May 7, 2024. It is possible that one purpose of Mr. French's motion was to delay this Court's decision on costs. However, I would not delay a decision on costs for three reasons. First, Mr. French did not mention delaying a decision on costs in his motion. Second, Mr. French did not file his motion until 11 days after the deadline for his costs submissions had passed. Third, as discussed below, I am not convinced that Mr. French has satisfied the criteria to stay an award of costs pending a decision on an application for leave to appeal to the SCC.

[4] The Legion provided submissions in response to Mr. French's motion on the same day the motion was filed (May 7, 2024). Mr. French did not file any submissions in reply to the Legion's, and the deadline for doing so expired on May 13, 2024. Therefore, the stay motion has been ready for this Court's consideration since that time.

II. Costs

[5] The Legion claims \$8644.50 in costs. This is based on a bill of costs comprising the following six items: (i) preparation of the appeal book, (ii) memorandum of fact and law, (iii) counsel fee for a September 2023 motion, (iv) counsel fee for the appeal hearing, (v) counsel fee

for second counsel at the appeal hearing, and (vi) preparing costs submission. The Legion calculates costs based on the middle of Column III of Tariff B of the *Federal Courts Rules*, S.O.R./98-106. It also doubles the costs in view of Rule 420(2)(b) and a settlement offer it made that Mr. French rejected.

[6] I would adjust the Legion's calculation of costs in the following ways. First, I would calculate costs based not on the middle of Column III but rather on the bottom of column I as did the Federal Court. Second, I would not award costs for the attendance of second counsel at the hearing of the appeal. In my view, the complexity of the issues in the appeal was not so great as to justify such costs. Third, I would not double the costs award in view of the Legion's settlement offer.

[7] With regard to the settlement offer, I recognize that the Legion's offer to forego costs could amount to a compromise sufficient to meet the requirements of Rule 420. However, I also recognize that the Legion's settlement offer in this case amounted to little more than an offer to accept Mr. French's capitulation. Moreover, I take into account that, as indicated in this Court's decision on the merits of this appeal (2024 FCA 63), the Legion did not respond to Mr. French's key argument in the appeal (see paragraphs 22 and following). This Court dealt with that argument without much assistance from the Legion. In the circumstances of this case, I would exercise this Court's discretion not to apply Rule 420.

[8] By my calculation, costs awarded as described above would amount to seven units. At \$180 per unit, and 13% HST added, I would order that Mr. French pay the Legion's costs of the appeal in the amount of \$1423.80, all-inclusive.

III. Motion for Stay

[9] The practical goal of Mr. French's motion is difficult to understand. As indicated above, he seeks a stay of this Court's decision pending leave to appeal to the SCC. I acknowledge the power of this Court, or a judge of this Court, to grant such a stay pursuant to subsection 65.1(2) of the *Supreme Court Act*, R.S.C. 1985, c. S-26. However, it is not clear what step or action Mr. French seeks to stay. The Federal Court simply dismissed his action against the Legion with costs. This Court in turn simply dismissed Mr. French's appeal of the Federal Court's decision, with a decision on costs to follow. Mr. French may make an application for leave to appeal this Court's decision to the SCC in accordance with the *Supreme Court Act*, and his right to do so, and to benefit from a successful appeal of this Court's decision, does not appear to depend on obtaining a stay of that decision.

[10] I note that this Court's power to grant the requested stay requires a finding that a delay in obtaining a stay "would result in a miscarriage of justice." While Mr. French argues that this Court's decision on the appeal contains several errors, he does not explain what miscarriage of justice will result from denying a stay at this time.

[11] Mr. French must also convince this Court that his motion meets the requirements of the tripartite test set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117

(S.C.C.), [1994] 1 S.C.R. 311 at p. 334. I need not discuss all of the requirements of this test. It is sufficient to note that I am not convinced that Mr. French will suffer any irreparable harm if no stay is granted, even if costs are awarded prior to a decision on an application for leave to appeal to the SCC: Mr. French has not made any submissions to the contrary.

[12] I would dismiss Mr. French's motion for a stay with additional costs in the all-inclusive amount of \$200.

"George R. Locke"

J.A.

"I agree.
Judith Woods J.A."

"I agree.
Nathalie Goyette J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-158-23

STYLE OF CAUSE: LEONARD B FRENCH v. THE
ROYAL CANADIAN LEGION
(DOMINION COMMAND)

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES:

REASONS FOR ORDER BY: LOCKE J.A.

CONCURRED IN BY WOODS J.A.
GOYETTE J.A.

DATED: JUNE 04, 2024

WRITTEN REPRESENTATIONS BY:

Leonard B French

FOR THE APPELLANT
SELF-REPRESENTED

Timothy Bourne
Meika Ellis

FOR THE RESPONDENT

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FOR THE RESPONDENT