

Federal Court



Cour fédérale

Date: 20231006

Docket: T-1678-23

Citation: 2023 FC 1337

Ottawa, Ontario, October 6, 2023

PRESENT: Madam Justice Walker

BETWEEN:

MOREEN MAKEDA ROBINSON

Plaintiff

and

**HIS MAJESTY THE KING &
THE AUDITOR GENERAL OF CANADA,
THE RECEIVER GENERAL OF CANADA**

Defendants

ORDER AND REASONS

[1] On August 10, 2023, Ms. Robinson, the Plaintiff, filed a motion in writing pursuant to Rule 369(1) of the *Federal Courts Rules*, SOR/98-106, (the Rules) for a waiver of the filing fee payable pursuant to Rule 19 and Tariff A in respect of a proposed Statement of Claim. The amount of the filing fee is \$150.

[2] In support of her motion, Ms. Robinson stated that she is a person of low income receiving social assistance benefits and that payment of the fee would result in financial strain.

[3] Ms. Robinson is self-represented in this matter.

[4] Associate Judge Cotter dismissed the motion on September 7, 2023 (September Order), concluding that the evidence filed by Ms. Robinson did not meet the requirement for particularized and credible evidence.

[5] Ms. Robinson appealed the September Order in reliance on Rule 51(1) and the appeal was assigned to me for consideration.

[6] For the reasons that follow, Ms. Robinson's appeal is dismissed. The Associate Judge did not err in the application of the law to his consideration of the motion for a fee waiver. In applying the standard of review set out in *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 (*Hospira*), I find that there is no basis for this Court to intervene and set aside the Order.

I. Associate Judge Cotter's September Order

[7] As stated above, Associate Judge Cotter dismissed Ms. Robinson's motion for a waiver of the filing fee required to file her proposed Statement of Claim. After considering Ms. Robinson's motion materials and the relevant jurisprudence, AJ Cotter determined that the limited financial information provided in Ms. Robinson's affidavit fell short of being

“particularized, credible evidence detailing [her] financial situation and setting out sources of funding, assets, and expenses” (*Rooke v Canada (Attorney General)*, 2018 FC 204 at para 19 (*Rooke*), *Fabrikant v Canada*, 2014 FCA 89 at paras 10-11 (*Fabrikant 2014*)). AJ Cotter stated that Ms. Robinson’s affidavit contained no information regarding assets, if any, or expenses. He concluded that Ms. Robinson had not established that she was impecunious or that payment of the filing fee would prevent her from pursuing her claim.

[8] With respect to Ms. Robinson’s financial information, AJ Cotter stated:

Moreen Robinson’s evidence falls short. The body of the Robinson Affidavit consists of two paragraphs which state:

1. I am a woman of low income currently receiving benefits for the social assistant program of Ontario Works. Exhibit A will be attached as evidence of this statement.
2. Attached as Exhibit B will be my notice details for the tax year of 2023 as further evidence of my low-income status at the present time.

With respect to the exhibits to the Robinson Affidavit, Exhibit A appears to confirm that as of July 23, 2023, Moreen Robinson was receiving “social assistance” under a benefit program identified as “Ontario Works”. Exhibit B is a “Notice of Assessment” for the 2022 tax year with a date issued of April 24, 2023.

[9] AJ Cotter also canvassed a number of decisions that indicate another relevant consideration in assessing a request to waive a filing fee is whether the proposed plaintiff has a reasonably good cause of action (*Spatling v Canada (Solicitor General)*, 2003 FCT 443; *Rooke* at para 20; *Fabrikant v Canada*, 2016 FC 954 (appeal to Federal Court dismissed and further appeal to the Federal Court of Appeal dismissed in *Fabrikant v Canada*, 2018 FCA 43

(*Fabrikant 2018*). The Associate Judge noted that the requirement to demonstrate a reasonably good claim should not be applied as a strict test to guard against establishing an artificial barrier to equal access to the Court. He then observed that it was not apparent that Ms. Robinson's Statement of Claim discloses a reasonably good claim.

II. Appeal Motion

[10] Ms. Robinson appealed the September Order pursuant to Rule 51(1) on September 13, 2023 (Appeal Motion). In her representations in support of the Appeal Motion, Ms. Robinson states again that she is of low income status and that payment of the filing fee in order to have her claim heard by the Court would cause her financial strain. Ms. Robinson also states that she has no assets and adds a statement of her monthly income from Ontario Works to the financial information filed in respect of her original motion.

[11] Ms. Robinson describes her proposed claim as follows:

The basis of my claim revolves around concerns regarding the validity and credibility of government departments and their operations with regards to my fundamental rights and freedoms. As a woman and mother, I am deeply motivated to understand the role and position of both my children within Canadian society. My inquiry is grounded in international agreements emphasizing the enforcement of fundamental rights and freedoms. I humbly contend that Canada may have fallen short in fulfilling its obligations to its populace regarding the promotion of self-determination rights (fundamental rights and freedoms).

[12] The Defendants were served with the Appeal Motion on September 14, 2023 but have filed no response.

III. Analysis

[13] In her Appeal Motion, Ms. Robinson requested a hearing during the Court's General Sittings on September 20, 2023. However, upon review of her Appeal Record, and in the absence of a response from the Defendants, I concluded that the Appeal Record provides a full and proper basis for my consideration of the Appeal Motion in writing pursuant to Rule 369(1).

[14] The Court's power to consider a request for a fee waiver derives from Rule 55, which provides that the Court may in "special circumstances" vary or dispense with compliance with the Rules (*Fabrikant 2014* at paras 2-5). It follows that a decision regarding a request for fee waiver is discretionary (*Fabrikant v Canada (Attorney General)*, 2017 FC 576 at para 5). The fact that another judge or associate judge may have exercised their discretion differently is not enough to warrant interference on appeal.

[15] In *Fabrikant 2014*, Justice Stratas set out the two competing principles at the heart of the Court's exercise of its discretion to waive filing fees: the right of access to the Court and the need to charge for services rendered. Further, the Court must have regard to Rule 71.1(1) which provides for the requirement to pay a fee upon filing a document and Rule 55 and its requirement for "special circumstances" in order for the Court to dispense with the obligation to pay fees.

[16] In this Appeal Motion, I must consider the competing principles and Rules against the standard of review of the September Order, that of palpable and overriding error (*Hospira* at para 64).

[17] A palpable and overriding error is an error that is both obvious and apparent.

[18] AJ Cotter properly considered and applied the relevant jurisprudence where he cites Justice Diner's decision in *Rooke* (at paras 18-20):

[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).

[19] AJ Cotter reviewed Ms. Robinson's evidence and submissions (as described above) and concluded that it was not particularized and credible evidence setting out her financial situation, sources of funding, assets and expenses.

[20] I find that it was open to AJ Cotter to reach this conclusion. The financial evidence provided by Ms. Robinson establishes that she is in receipt of social assistance from a program entitled "Ontario Works" and her Notice of Assessment for 2022 sets out total income of \$12,562. The monthly information included in the Appeal Record is consistent with the evidence

provided in the original fee request. However, neither the original waiver request nor the Appeal Record contains evidence regarding any other sources of funding, assets (other than a general statement of no assets) or expenses. While Ms. Robinson's 2022 Notice of Assessment reflects low total income, it does not alone establish that she is unable to pay the filing fee in order to pursue her claim.

[21] AJ Cotter briefly considered whether Ms. Robinson's proposed Statement of Claim demonstrates a "reasonable good cause of action" (*Spatling* at para 11; *Fabrikant v Canada*, 2016 FC 954 at para 7 (upheld on appeal and further appeal to the Federal Court of Appeal in *Fabrikant 2018*)). He also emphasized that this question does not impose a strict test, words that reflect Justice Pelletier's statement that "court fees should not be a barrier which prevents an indigent litigant with an arguable case from being heard" (cited in *Fabrikant 2018* at para 9).

[22] In her Statement of Claim, Ms. Robinson claims that the live birth certificates belonging to her children and herself are security instruments that carry monetary value recognized under the *Bank of Canada Act* and *Financial Administration Act*. She states that a "constructed registered holder status" (CRH) has been placed on those security instruments by Canada which limits her ability to exercise full legal capacity rights to use of the securities. In Ms. Robinson's view, the Office of the Auditor General of Canada has the mandate to correct the CRH placed on the security instruments. She states that she contacted the Office on June 2, 2023 and, in the absence of a reply, sent follow-up correspondence and an Agreement Notice on June 19, 2023. In the second correspondence, Ms. Robinson stated that, should the security instruments not be corrected within 20 days, the Agreement Notice would serve as an agreement that the issue be

brought before a tribunal of competent jurisdiction for resolution. Ms. Robinson claims (1) a right of access to adequate living expenses that is currently restricted until she receives absolute title holder status to the security instruments and (2) restoration of her right of appropriation to Canada's central accounts.

[23] I echo AJ Cotter's assessment of the Statement of Claim: "it is not apparent that it discloses a reasonably good claim".

[24] For the foregoing reasons, I conclude that AJ Cotter identified and applied the applicable law. The September Order discloses no errors of fact or law.

[25] Accordingly, the appeal is dismissed. I make no award as to costs.

ORDER IN T-1678-23

THIS COURT ORDERS that:

1. The appeal of Associate Judge Cotter's Order dated September 7, 2023 is dismissed.
2. No costs are awarded.

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1678-23

STYLE OF CAUSE: MOREEN MAKEDA ROBINSON v HIS MAJESTY
THE KING & THE AUDITOR GENERAL OF
CANADA, THE RECEIVER GENERAL OF CANADA

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

ORDER AND REASONS: WALKER J.

DATED: OCTOBER 6, 2023

WRITTEN REPRESENTATIONS BY:

Moreen Makeda Robinson

FOR THE PLAINTIFF
(ON HER OWN BEHALF)

SOLICITORS OF RECORD:

Attorney General of Canada
Ottawa, Ontario

FOR THE DEFENDANTS