Federal Court of Appeal | Cour d'appel fédérale

Date: 20250626

Dockets: A-369-23
A-111-24
A-168-24

Citation: 2025 FCA 127

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

Docket: A-369-23

BETWEEN:

CHRISTOPHER JOHNSON

Appellant

and

CANADIAN TENNIS ASSOCIATION,
DENNIS SHAPOVALOV and FELIX AUGER-ALIASSIME

Respondents

Docket: A-111-24

AND BETWEEN:

CHRISTOPHER JOHNSON

Appellant

and

CANADIAN TENNIS ASSOCIATION,
DENNIS SHAPOVALOV and FELIX AUGER-ALIASSIME

Respondents

Docket: A-168-24

AND BETWEEN:

CHRISTOPHER JOHNSON

Appellant

and

CANADIAN TENNIS ASSOCIATION,
DENNIS SHAPOVALOV and FELIX AUGER-ALIASSIME

Respondents

Heard at Toronto, Ontario, on June 26, 2025.
Judgment delivered from the Bench at Toronto, Ontario, on June 26, 2025.

REASONS FOR JUDGMENT OF THE COURT BY: GOYETTE J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on June 26, 2025).

GOYETTE J.A.

[1] On November 3, 2021, Mr. Johnson commenced a copyright infringement action in the Federal Court (docket: T-1686-21). He alleges that the Canadian Tennis Association and several professional tennis players have infringed his copyright in certain photographs contrary to the *Copyright Act*, RSC 1985, c C-42.

[2] Even though the Federal Court has case managed it, the action has not advanced much since 2021. The examinations for discovery are not completed, and the action has required the Federal Court to issue some twenty-three (23) directions and twenty (20) orders.

[3] Mr. Johnson appeals three of the orders to this Court.

A. *Appeal numbered A-369-23*

[4] Appeal numbered A-369-23 relates to Mr. Johnson's motion made under Rule 97(b) of the *Federal Courts Rules*, SOR/98-106. The motion sought to compel the president of the Canadian Tennis Association and Mr. Félix Auger-Aliassime to answer some 64 pages of questions that—in Mr. Johnson's view—follow up from the answers that the Association and Mr. Auger-Aliassime gave on written examination for discovery.

[5] An Associate Judge dismissed Mr. Johnson's motion. Following a detailed review of the proposed follow up questions, the Associate Judge concluded that Mr. Johnson was seeking a second examination for discovery, that the questions were generally irrelevant, abusive or improper and well beyond the scope of Rule 97(b). The Associate Judge also found that Mr. Johnson's motion amounted to a collateral attack of a previous Federal Court order whereby most of Mr. Johnson's questions to the Association and Mr. Auger-Aliassime had been either struck or revised in scope.

[6] Mr. Johnson appealed the Associate Judge's decision to the Federal Court arguing that the Associate Judge had demonstrated bias and erred in respect of important facts. Relying on the relevant jurisprudence, the Federal Court began by explaining that because this was an appeal of a discretionary order, the court could only intervene if the Associate Judge had incorrectly decided a question of law or committed a palpable and overriding error in respect of a question of fact or a question of mixed fact and law: 2023 FC 1605 *per* Justice Turley.

[7] The Federal Court then explained why it found no such errors in the Associate Judge's decision. In this regard, the Federal Court agreed with the Associate Judge that Mr. Johnson's motion amounted to a collateral attack on a previous order and added that the motion was an abuse of the court's process as it sought to relitigate issues already decided. As for the argument that the Associate Judge was biased, the Federal Court ruled that Mr. Johnson had failed to adduce the cogent, convincing and substantial evidence of bias that the jurisprudence required him to adduce.

[8] On appeal before our Court, Mr. Johnson argues that he has a right to a proper examination for discovery, that he was simply asking questions based on the guidelines that the Federal Court had previously provided, and that both the Associate Judge and the Federal Court demonstrated bias.

[9] Our Court can only intervene if the Federal Court's refusal to interfere with the Associate Judge's decision was premised on an error of law or a palpable and overriding error of fact or mixed fact and law: *Wiseau Studio, LLC v. Harper*, 2024 FCA 157 at para. 2, leave to appeal to SCC refused, 41573 (May 1, 2025); *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras. 83-84.

[10] We find no such errors in the Federal Court's decision. As is the case for the other two appeals before us, the Federal Court properly identified the standard of review. Moreover, nothing in the record supports Mr. Johnson's argument that his right to a proper examination for discovery was denied. As for the allegations of bias, the Associate Judge and the Federal Court

objectively reviewed the follow-up questions that Mr. Johnson wanted to ask and explained why these questions were not permitted. In doing so, they did not demonstrate bias.

[11] Mr. Johnson also takes issue with the amount of costs awarded by the Associate Judge and the Federal Court in their decisions. Decisions on costs are fully discretionary: Rule 400(1) of the *Federal Court Rules*. This Court can only intervene if the Federal Court erred in law or committed a palpable and overriding error regarding a question of fact or one of mixed fact and law: *Hutton v. Sayat*, 2025 FCA 66 at para. 18; *Housen v. Nikolaisen*, 2002 SCC 33. Indeed, we should only intervene if the Federal Court "made an error in principle or if the costs award is plainly wrong": *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6 at para. 247; *Shull v. Canada*, 2025 FCA 25 at para. 44. We see no such errors. Both the Associate Judge and the Federal Court provided ample justification for their costs awards.

B. *Appeal numbered A-168-24*

[12] Appeal numbered A-168-24 relates to Mr. Denis Shapovalov's motion, based on Rules 99(2) and 242 of the *Federal Courts Rules*, seeking to strike most of the 820 written questions that Mr. Johnson wanted to ask him in written examination for discovery. In support of his motion, Mr. Shapovalov filed a refusals chart setting out the questions in issue and the basis of his objection for each question as well as the revised questions that he was prepared to answer.

[13] The Associate Judge instructed Mr. Johnson to provide his submissions on each objected question in the refusals chart. Mr. Johnson provided a document, but his annotated refusals chart

was not attached to it. The Associate Judge asked him again to provide the chart. Mr. Johnson tendered his annotated refusals chart, but the Associate Judge found the chart improper because it provided the same generic answer to each of Mr. Shapovalov's objection. On that basis, the Associate Judge issued a direction cancelling the hearing of Mr. Shapovalov's motion to strike and asking for submissions on costs. Upon review of the submissions, the Associate Judge granted Mr. Shapovalov's motion, striking some 808 of the 820 questions.

[14] Mr. Johnson appealed the order to the Federal Court, arguing that the Associate Judge was biased and had misapprehended the facts. The Federal Court found that Mr. Johnson failed to establish that the Associate Judge was biased. As for the misapprehension of facts argument, the Federal Court rejected it because the court agreed with the Associate Judge that Mr. Johnson's responses were neither clear nor cogent and for the most part were repetitions of the same response or variations thereof: 2024 FC 110, *per* Justice Turley.

[15] On appeal before us, Mr. Johnson says that he provided cogent responses opposing the striking of the 820 questions, and that he provided "at least 19 different responses to hundreds of repeated boilerplate objections". He also insists that he provided the refusals chart the first time that he was asked to do so, and that a downloading issue led the Associate Judge to conclude that he had failed to provide it. He argues again that both the Associate Judge and the Federal Court demonstrated bias.

[16] To reassure Mr. Johnson, nothing turns on the failure that occurred when he first downloaded his annotated refusals chart. That said, Mr. Johnson needed to convince us that the

Federal Court erred in law or committed a palpable and overriding error in concluding as it did. For instance, Mr. Johnson needed to convince us that the Federal Court erred when it concluded that Mr. Johnson failed to address Mr. Shapovalov's argument that question 5d) was irrelevant. Similarly, simply telling us that he provided 19 different responses to hundreds of questions does not convince us that the Federal Court erred since it did say that he gave variations of the same response. As for the allegations of bias, there is nothing in the record to support them.

[17] As with appeal 369-23, Mr. Johnson takes issue with the costs awarded by the Associate Judge and Federal Court. Again, we see no reason to intervene.

C. *Appeal A-111-24*

[18] The last appeal discussed in these reasons, Appeal numbered A-111-24, concerns a motion made by the Canadian Tennis Association, Mr. Auger-Aliassime and Mr. Shapovalov pursuant to Rule 416(1) of the *Federal Courts Rules*. The motion calls on Mr. Johnson to give security for costs.

[19] The Federal Court (2024 FC 404, *per* Justice Zinn) granted the motion.

[20] Rule 416(1)(f) provides that where it appears that "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." Here, the Federal Court found that Mr. Johnson owed a total of $19,870.50 to the respondents of unpaid costs

ordered by the Federal Court in the action (T-1686-21) and by the Provincial Court of Alberta in a similar action involving the same parties. Rule 417 provides that the Court may refuse to order security for costs "if a plaintiff demonstrates impecuniosity and the Court is of the opinion that the case has merit." The Federal Court did not exercise its discretion to waive security because Mr. Johnson neither alleged nor demonstrated impecuniosity.

[21] In this context, the Federal Court ordered Mr. Johnson to post $44,870.50 as security for costs. The amount of $44,870.50 corresponds to the total of the costs that Mr. Johnson has been ordered to pay to date, the estimated costs of a 3-day trial and the costs on the motion for security for costs. The Federal Court also ordered Mr. Johnson not to take any further steps in the action (T-1686-21) until he posts the security for costs and if he fails to do so within 60 days of the order, the Association, Mr. Auger-Aliassime and Mr. Shapovalov could bring an informal motion asking the Federal Court to dismiss the action.

[22] As mentioned, decisions on costs are fully discretionary.

[23] We see no errors in the Federal Court's decision.

[24] In this regard, we note that Mr. Johnson does not deny that he has not paid the costs identified by the Federal Court. Thus, the Federal Court did not err when it concluded that Rule 416(1)(f) applies. Mr. Johnson says that the Federal Court should not have ordered him to give security for costs related to orders that he has appealed. He also says that the Federal Court's estimate of the costs related to a 3-day trial was unreasonable. However, the application of Rule

416(1)(f) is not limited to costs related to orders not appealed. Moreover, we find that the Federal Court's estimate of the costs related to a 3-day trial was reasonable.

[25] For the foregoing reasons, we will dismiss all three appeals with one set of costs calculated in the normal range, which is based on the middle of column III of Tariff B of the *Federal Courts Rules.*

[26] The present reasons apply to all three appeals. The original reasons shall be filed in proceeding A-369-23 and a copy shall be filed in proceedings A-111-24 and A-168-24.

"Nathalie Goyette"
J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS:	A-369-23, A-111-24 AND A-168-24
STYLE OF CAUSE:	CHRISTOPHER JOHNSON v. CANADIAN TENNIS ASSOCIATION, DENNIS SHAPOVALOV and FELIX AUGER-ALIASSIME
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JUNE 26, 2025
REASONS FOR JUDGMENT OF THE COURT BY:	LOCKE J.A. LEBLANC J.A. GOYETTE J.A.
DELIVERED FROM THE BENCH BY:	GOYETTE J.A.

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