



**IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR**

Citation: *MacIsaac v. Newfoundland Liquor Licensing Board*,
2023 NLCA 25

Date: August 30, 2023

Docket Number: 202301H0046

BETWEEN:

WILLIAM MACISAAC

APPLICANT/
INTENDED FIRST
APPELLANT

AND:

MACISAAC ENTERPRISES LIMITED

INTENDED SECOND
APPELLANT

AND:

NEWFOUNDLAND LIQUOR LICENSING
BOARD

RESPONDENT

Coram: W.H. Goodridge J.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
General Division 1998011772

Application Heard: August 30, 2023

Decision Given Orally: August 30, 2023

Memorandum of Disposition Filed: August 31, 2023

Counsel for the Applicant/Intended First Appellant: Self-Represented
Counsel for the Intended Second Appellant and Respondent: No appearance

Authorities Cited:

CASES CITED: *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59

RULES CONSIDERED: *Court of Appeal Rules*, NLR 38/16, rule 44, *Rules of the Supreme Court, 1986*, SNL 1986, c. 42, Schedule D, rule 44A.01

MEMORANDUM OF DISPOSITION

W.H. Goodridge, J.A.:

[1] William MacIsaac seeks an exemption from the payment of fees and charges associated with an intended appeal.

[2] The intended appeal alleges error by the applications judge who denied his *ex parte* application for advance payment of \$100,000 on account of special damages claimed in an unresolved civil action against Newfoundland Liquor Licensing Board.

[3] Exemption from the payment of these fees and charges is governed by rule 44 of the *Court of Appeal Rules*, NLR 38/16. The relevant subsections of that rule state:

44. ...

(2) A person whose ability to commence or proceed with an appeal, or a party whose ability to participate in the appeal, is impaired for financial reasons may apply for an exemption from or suspension of the payment of all or a portion of the fees and charges which may be payable by that person or party.

...

(6) Factors the Court may consider in assessing the application include

(a) undue hardship that would result from the payment of fees and charges or a portion thereof;

- (b) whether the applicant is in receipt of social assistance;
- (c) steps taken by the applicant to arrange his or her finances, making reasonable sacrifices, to enable payment of all or a portion of the fees and charges payable for the appeal;
- (d) whether the applicant applied for and was refused legal aid under a provincial plan providing legal aid or similar services;
- (e) whether the appeal is frivolous or vexatious in the sense that there is no arguable basis or sufficient merit for the appeal; and
- (f) whether the appeal is brought for a public purpose and the applicant has standing to pursue the appeal.

[4] The aim of the rule 44 is to establish a hearing-fee scheme that allows an exemption of payment of appeal fees and charges to anyone for whom payment would constitute an undue financial hardship. This is consistent with the long tradition in the common law of providing exemptions for classes of people who might be prevented from accessing the courts. However, an important factor in that consideration is whether the appeal is frivolous or vexatious in the sense that there is no arguable basis or sufficient merit for the appeal. In those situations, an exemption would not be appropriate. As stated by McLachlin, C.J. in *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59:

[47] Of course, hearing fees that prevent litigants from bringing frivolous or vexatious claims do not offend the Constitution. There is no constitutional right to bring frivolous or vexatious cases, and measures that deter such cases may actually increase efficiency and overall access to justice.

ANALYSIS

[5] In his affidavit filed on August 25, 2023, Mr. MacIsaac represented that he has no assets other than his car; he is living in a car; he is unemployed; he has no income beyond his Canada Pension Plan at \$167.04 and Old Age Security at \$1,664.05; he has applied for and was refused legal aid. I accept these representations and the representation from paragraph 1(a) of his affidavit, “I need all my present income to survive”. Despite this reality that Mr. MacIsaac would suffer undue financial hardship if required to pay the fees and charges, I am dismissing his

application on the basis that the intended appeal is frivolous. There is no arguable basis or sufficient merit for the intended appeal.

[6] The discretion of the applications judge to order an advance payment on account of special damages, is governed by rule 44A.01 of the *Rules of the Supreme Court, 1986*, SNL 1986, c. 42, Schedule D, which states as follows:

44A.01. Before damages are assessed, a judge may order the defendant to make an advance payment to the plaintiff on account of special damages if the court is satisfied that

(a) the defendant against whom the order is sought has admitted liability for all or part of the special damages claimed; or

(b) the plaintiff has obtained judgment against the defendant with damages to be assessed, and, following notice of the plaintiff's application for advance payment given in accordance with rule 44A.07, the defendant has not filed any reply taking issue with the special damages, or sought any part thereof, for which the advance payment is sought.

[7] Under this rule, a judge has no discretion to order an advance payment of special damages unless the applicant has obtained a judgment, or the defendant has admitted liability. Mr. MacIsaac acknowledges that he has not obtained a judgment, and there has been no admission of liability. In the circumstances, the judge had no authority to order an advance payment on account of special damages and appropriately dismissed the application.

DISPOSITION

[8] The application for an exemption from the payment of fees and charges associated with the intended appeal is dismissed.

W.H. Goodridge J.A.