

CANADA / JUDGMENT

DLE v. Canada

2025 FC 471

COURT

Federal Court

DECIDED

13 March 2025

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D.L.E. v. Canada Court (s) Database Federal Court Decisions Date 2025-03-13 Neutral citation 2025 FC 471 File numbers T-626-20 Decision Content Date: 20250313 Docket: T-626-20 Citation: 2025 FC 471 Vancouver, British Columbia, March 13, 2025 PRESENT: Mr. Justice Norris BETWEEN: D. L. E. Plaintiff and HIS MAJESTY THE KING Defendant ORDER AND REASONS

- [1] The plaintiff is a former federal offender. He pled guilty to serious offences committed against his ex-wife. On August 21, 2009, he was sentenced to imprisonment for 15 years. After being given credit for time spent in custody before sentencing, a term of imprisonment of 12 years and 10 months was imposed on the plaintiff.
- [2] The Parole Board of Canada (PBC) released the plaintiff on day parole on August 13, 2015. The PBC granted the plaintiff full parole on October 11, 2016.
- [3] The plaintiff's full parole was suspended by Correctional Service Canada (CSC) and then revoked by the PBC on the basis of information that the plaintiff had been outside his daughter's place of employment in Winnipeg on May 31, 2018. If true, this would have been contrary to the terms of a travel permit issued to the plaintiff by CSC that had authorized him to travel from Victoria, British Columbia (where he resided), to visit his mother in Portage La Prairie, Manitoba. Among other things, the travel permit had prohibited the plaintiff from entering the City of Winnipeg.
- [4] The plaintiff was arrested by members of the Winnipeg Police Service late in the evening on May 31, 2018. He was charged with committing an offence under section 127 of the Criminal Code (disobeying a court order – namely, a family court order prohibiting the plaintiff from having contact or communication with his daughter). This charge was stayed by the Crown on August 24, 2018. In the meantime, CSC continued with the suspension of the plaintiff's full parole and sought revocation of the plaintiff's parole by the PBC.
- [5] The PBC revoked the plaintiff's parole after a hearing on September 6, 2018. Following an unsuccessful appeal to the Appeal Division of the PBC, this Court granted the plaintiff's application for judicial review and the matter was remitted to the PBC for redetermination. The PBC revoked the plaintiff's full parole again on August 27, 2019. On January 17, 2020, the Appeal Division allowed the plaintiff's appeal and remitted the matter to the PBC for

redetermination. Following a hearing, on March 20, 2020, the PBC cancelled the suspension of the plaintiff's full parole.

- [6] The plaintiff completed his federal sentence without further incident.
- [7] The plaintiff has brought the present action against the Crown for damages under a number of heads of liability relating to the conduct of CSC employees in connection with the suspension and revocation of his full parole.
- [8] One of the witnesses the defendant intends to call as part of its case is Mary-Kay Thompson. At the time of the events in question, Ms. Thompson was an employee of CSC. She had been assigned as the plaintiff's Community Parole Officer following his arrest on May 31, 2018.
- [9] The trial of this matter is proceeding before me in person in Vancouver. Ms. Thompson does not reside in or near Vancouver. The defendant has requested that she be permitted to provide her evidence by videoconference. The plaintiff opposes this request.
- [10] This request, along with some others relating to the attendance of other witnesses, first came before me by way of a motion I heard in the context of a Trial Management Conference on March 3, 2025. I addressed the issues relating to the attendance of the other witnesses in an Order issued on March 4, 2025. In that Order, I also stated that I would take the issue of the manner of Ms. Thompson's attendance under advisement pending receipt of additional information from her. In particular, I was concerned that there were indications that Ms. Thompson did not wish to testify in any manner, despite having been subpoenaed by the defendant.
- [11] Counsel for the defendant has now confirmed with Ms. Thompson that she is willing to testify by way of videoconference if this is permitted by the Court.
- [12] Rule 282(1) of the Federal Courts Rules, SOR/98-106 (FCR) provides that, unless the Court orders otherwise, "witnesses at trial shall be examined orally and in open court." Rule 32 of the FCR provides that the Court "may order that a hearing be conducted in whole or in part by means of a telephone conference call, video-conference or any other form of electronic communication." The term "hearing" in this context includes the trial of an action (*United Air Lines Inc v Cooperstock*, 2016 FC 1314).
- [13] Rule 32 of the FCR does not identify the factors the Court should take into account in determining whether to grant a request for the attendance of a witness otherwise than in person. In *Rovi Guides, Inc v Videotron Ltd*, 2020 FC 596, Justice Lafrenière held: "The appropriateness of proceeding by videoconference will depend on the specific circumstances of each case. The Court must weigh the relative prejudice that may accrue to any of the parties if a remote hearing is ordered against the general principle in Rule 3 of the Rules requiring that matters be determined in the most expeditious manner on their merits" (at para 18).

- [14] As I stated in brief oral reasons given on March 11, 2025, I am satisfied that it is appropriate to permit Ms. Thompson to testify by way of videoconference.
- [15] There is no question that Ms. Thompson's evidence is important for both parties. Her actions in preparing material to be put before the PBC in connection with the hearings concerning the revocation of the plaintiff's full parole and in other respects are central to the plaintiff's theory of liability. They are also central to the defendant's defence.
- [16] On one side of the scale are the concerns that gave rise to the request for Ms. Thompson's attendance by way of videoconference in the first place. As already mentioned, Ms. Thompson does not reside in Vancouver. In fact, she does not reside in British Columbia. As well, she is now retired from CSC. Furthermore, Ms. Thompson has stated that she is not comfortable attending court in person, where the plaintiff (a former federal offender who was convicted of a serious offence of sexual violence) would also be present. Information put before the Court indicates that any offender contact would exacerbate symptoms of re-occurring personal safety issues for Ms. Thompson arising from her former employment. It appears that, prior to her retirement, Ms. Thompson's position was accommodated so that she would not have any contact with offenders. As well, she was on long-term disability arising from her employment. (The precise period of time and the reasons for this are not entirely clear in the information before me.) Ms. Thompson's reluctance to attend court in person is supported by the opinion of her treating psychologist, who even goes as far as saying that Ms. Thompson should not testify at all.
- [17] While I would not have been satisfied on the basis of the information before me that Ms. Thompson should be excused from testifying entirely, as noted above, she is not pursuing such a request, despite having given some indications previously that she might do so. That being said, I am satisfied that requiring her personal attendance as a witness would place an undue burden on her and could well be detrimental to her psychological well being. However, the main source of her anxiety – being in physical proximity to the plaintiff – can be avoided entirely if she testifies by way of videoconference. Should the need for accommodations for Ms. Thompson arise during her testimony, this can be addressed at that time.
- [18] On the other side of the scale, the plaintiff is concerned that it will be difficult to cross-examine Ms. Thompson effectively if she is permitted to testify by way of videoconference, especially because it will likely be necessary for counsel to refer her to a large number of documents during the cross-examination. The plaintiff's concerns are understandable. However, counsel for the defendant has agreed to deliver to Ms. Thompson hard copies of all the documents counsel for the plaintiff may wish to use in cross-examining Ms. Thompson. (This trial is proceeding with hard copies of all documents, not electronic copies.) In my view, this will facilitate effective cross-examination and should be sufficient to alleviate the plaintiff's concerns. If any difficulties arise, they will be addressed at that time.

- [19] On a more general level, I would observe that, since the onset of the COVID-19 pandemic five years ago, lawyers and judges have become much more adept at dealing with the presentation of evidence virtually. I am confident that counsel for the plaintiff will be able to make the adjustments necessary for an effective cross-examination of Ms. Thompson despite the fact that she is appearing virtually. I am also confident that having Ms. Thompson appear virtually will not unduly hamper my ability to assess her evidence.
- [20] Thus, when Ms. Thompson is testifying, the trial will proceed in a hybrid format. Ms. Thompson will appear to be examined and cross-examined by videoconference. Counsel for the parties as well as the plaintiff himself will be present in court before me in Vancouver.
- [21] In *Rovi Guides, Inc v Videotron Ltd*, 2020 FC 637 [Rovi Guides II], Justice Lafrenière directed that specific instructions be provided to witnesses who would be testifying virtually in that proceeding. In my view, the comprehensive instructions prepared by Justice Lafrenière are equally appropriate in the present proceeding; there is no need to reinvent the wheel. Consequently, this Order will include a direction that counsel for the defendant provide a copy of Schedule A from *Rovi Guides II* to Ms. Thompson before she is called to testify.
- [22] Finally, Ms. Thompson asks that her address and any other personal information not be shared with the plaintiff. The plaintiff does not oppose this request. In all the circumstances, I agree that this is appropriate. In particular, despite the usual practice, Ms. Thompson will not be asked to provide her place of residence when she is sworn or affirmed. ORDER IN T-626-20 THIS COURT ORDERS that The motion to permit Mary-Kay Thompson to testify by way of videoconference is allowed. Counsel for the defendant shall deliver to Ms. Thompson hard copies of the documents counsel for the plaintiff may wish to put to Ms. Thompson in cross-examination. Counsel for the plaintiff will be responsible for preparing this set of documents for delivery by counsel for the defendant. Counsel for the defendant shall provide Ms. Thompson with a copy of Schedule A in *Rovi Guides, Inc v Videotron Ltd*, 2020 FC 637 (either electronically or in hard copy) before she is called to testify. Ms. Thompson's place of residence and any other personal information shall not be disclosed to the plaintiff. "John Norris" Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: T-616-20 STYLE OF CAUSE: DLE v HIS MAJESTY THE KING MOTION IN WRITING PURSUANT TO RULE 369 OF THE FEDERAL COURTS RULES, ORAL SUBMISSIONS MADE BY VIDEOCONFERENCE ON MARCH 3, 2025 ORDER AND REASONS: NORRIS J. DATED: March 13, 2025 APPEARANCES: Toby Rauch-Davis For The PLAINTIFF Callum G. Kelly Charles Jago Anila Srivastava For The DEFENDANT SOLICITORS OF RECORD: GRATL & COMPANY Vancouver, British Columbia For The PLAINTIFF QA LAW Vancouver, British Columbia For The DEFENDANT

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