NOVA SCOTIA COURT OF APPEAL

Citation: *Dempsey v. Pagefreezer Software Inc.*, 2025 NSCA 32

Date: 20250513
Docket: CA 542305
CA 540475
Registry: Halifax

Between:

Nathan Kirk Dempsey

Appellant

v.

Pagefreezer Software Inc. and Michael Riedijk

Respondents

Judge:	Van den Eynden, J.A.
Motion Heard:	May 8, 2025, in Halifax, Nova Scotia in Chambers
Written Decision:	May 13, 2025
Held:	Security for costs motions granted with costs
Counsel:	Nathan Kirk Dempsey, appellant in person Noah Entwisle, for the respondent

Decision:

Introduction

[1] Mr. Dempsey commenced two appeals (CA 540475 and CA 542305). They arise from the same proceeding (Hfx No. 529459) which is ongoing in the Nova Scotia Supreme Court. The appeals have not been consolidated.

[2] In appeal CA 540475 Mr. Dempsey challenges the decision and confidentiality order issued by Justice John A. Keith (2025 NSSC 47). Mr. Dempsey raises 14 grounds of appeal alleging the judge made numerous errors and requests the materials he filed in the proceeding be unsealed and thus available for public viewing.

[3] In appeal CA 542305 Mr. Dempsey challenges the decision (delivered orally on April 1, 2025) and order of Justice Anne E. Smith holding him in contempt for failing to comply with a discovery subpoena in aid of execution. In this appeal, Mr. Dempsey raises 53 grounds of appeal.

[4] The respondents filed a motion for security for costs in each appeal. They sought $8,000 in each appeal, payable within 10 clear days, failing which they requested the respective appeals be automatically dismissed.

[5] I heard the motions on May 8, 2025 and delivered a bottom line oral decision granting the respondents motions with written reasons to follow. These are the reasons.

[6] These reasons apply equally to each motion.

Guiding Principles

[7] The granting of security for costs is a discretionary remedy. *Civil Procedure Rule* 90.42 provides:

> 90.42 Security for costs
>
> (1) A judge of the Court of Appeal may, on motion of a party to an appeal, at any time order security for the costs of the appeal to be given as the judge considers just.

> (2) A judge of the Court of Appeal may, on motion of a party to an appeal, dismiss or allow the appeal if an appellant or a respondent fails to give security for costs when ordered.

[8] To succeed on a motion for security for costs the respondents must establish "special circumstances" that impact the level of risk of them not collecting any costs award in the event Mr. Dempsey's respective appeals are unsuccessful. In *Sable Mary Seismic Inc. v. Geophysical Services Inc*., 2011 NSCA 40, this Court explained:

> [6] There are a variety of scenarios that may constitute "special circumstances". There is no need to list them. All bear on the issue of the degree of risk that if the appellant is unsuccessful the respondent will be unable to collect his costs on the appeal. In *Williams Lake Conservation Co. v. Kimberley-Lloyd Development Ltd*., 2005 NSCA 44, Fichaud J.A. emphasized, merely a risk, without more, that an appellant may be unable to afford a costs award is insufficient to constitute "special circumstances". He wrote:
>
> > [11] Generally, a risk, without more, that the appellant may be unable to afford a costs award is insufficient to establish "special circumstances." It is usually necessary that there be evidence that, in the past, "the appellant has acted in an insolvent manner toward the respondent" which gives the respondent an objective basis to be concerned about his recovery of prospective appeal costs. The example which most often has appeared and supported an order for security is a past and continuing failure by the appellant to pay a costs award or to satisfy a money judgment: [citations omitted].

[9] In addition to insolvent behaviour, special circumstances can be established in other ways. This was discussed in *Marshall v. Robbins*, 2020 NSCA 7:

> [25] Insolvent behaviour is one way of objectively justifying a respondent's concern. Other special circumstances may include evidence of actual insolvency; a demonstrated unwillingness or inability to meet obligations such as paying judgments or costs; not pursuing an appeal in good faith or otherwise abusing the court's process to name a few of those circumstances [citations omitted].

[10] Even if special circumstances are established an order for security for costs may not follow. The Court retains discretion to decline the relief, if granting the order would prevent a good faith appellant without resources from advancing an arguable appeal. In *Sable Mary Seismic Inc* this Court said:

> [7] However, the demonstration of special circumstances does not equate to an automatic order of security for costs. It is a necessary condition that must be

> satisfied, but the court maintains a discretion not to make such an order, if the order would prevent a good faith appellant who is truly without resources from being able to prosecute an arguable appeal. This has sometimes been expressed as a need to be cautious before granting such an order lest a party be effectively denied their right to appeal merely as a result of impecuniosity [citations omitted].

Analysis

[11] This is not a case where I need to be concerned with an impecunious appellant. Quite the contrary.

[12] Mr. Dempsey is a self-represented litigant; however, he is a very experienced one. This is not his first time facing a security for costs motion brought by the respondents.

[13] In *Dempsey v. Pagefreezer Software Inc.*, 2023 NSCA 60, another appeal brought by Mr. Dempsey, Justice Beaton found Mr. Dempsey acted in an insolvent manner toward the respondents and ordered him to pay security for costs in the amount of $2,500 by a date certain, failing which his appeal would be forthwith dismissed.

[14] In response to this previous motion for security for costs Mr. Dempsey raised no ability to pay concerns. As Justice Beaton wrote:

> [6] […] Mr. Dempsey also made clear that should he be required to pay security for costs he is able to do so; in other words, there is no financial barrier to him meeting such an obligation.
>
> […]
>
> [10] Given Mr. Dempsey's representations to the Court about his ability to pay, this is clearly not a case in which the Court needs to be concerned that an order for security for costs would result in an impecunious appellant losing the opportunity to advance a reasonable appeal.

[15] In *Dempsey v. Pagefreezer Software Inc.*, 2024 NSCA 53, yet another appeal launched by Mr. Dempsey, Justice Bourgeois found he acted in an insolvent manner toward the respondents. She ordered him to pay security for costs in the amount of $7,500 by a date certain, failing which his appeal would be forthwith dismissed. Mr. Dempsey raised no ability to pay concerns. Justice Bourgeois said:

> [24] […] I am unable to conclude that the appellant is impecunious, or there is any other reason why I should decline to award security for costs.

[16] In his submissions on the motions before me, Mr. Dempsey said the security for costs ($2,500) granted by Justice Beaton was "reasonable insofar as it aligned with the customary tariff". He was far more critical of Justice Bourgeois' award ($7,500). He complained "she had tripled the quantum […] without any viable explanation and is expected to have been ordered in bad faith." Justice Bourgeois' decision is published. It is evident she provided sound and detailed reasons for the award granted.

[17] Returning to the issue of impecuniosity in the motions before me, Mr. Dempsey is undoubtedly aware this is a consideration. As established, he knows this from prior litigation before this Court, and he was reminded of this consideration in the materials filed by the respondents in these current motions.

[18] Notwithstanding this knowledge, in his 356-page response affidavit Mr. Dempsey made a conscious decision not to provide any financial information, nor did he indicate an inability to pay. Similarly, his written and oral submissions did not hint of any inability to pay. Only when I questioned Mr. Dempsey about the absence of any evidence respecting his financial circumstances did he make vague and unsubstantiated references to the possibility of liquidity issues within the 10-day payment timeframe pursued by the respondents.

[19] In short, there is no evidence before me that suggests Mr. Dempsey could not respond to a security for costs award both in the amount and timeframe requested by the respondents, and which I found to be reasonable.

[20] Whether Mr. Dempsey is a good faith appellant, advancing an arguable appeal, is in doubt. The respondents submit:

> 70. When determining the size of the anticipated cost award, Mr. Dempsey's established pattern of conduct should be considered. Mr. Dempsey has been held in contempt of court twice in British Columbia, and twice in this province. He was declared a vexatious litigant in British Columbia. He has attempted to thwart the enforcement of the BC Cost Awards at every turn, repeatedly bringing meritless motions and appeals that are subsequently dismissed. He constantly files prolix and irrelevant written materials, riddled with confidential or sealed materials.
>
> […]
>
> 73. Generally, Mr. Dempsey has shown himself to be […] [a] difficult litigant with a personal vendetta against the Respondents and open contempt for the Court's authority. He constantly relitigates settled matters and brings unnecessary, meritless, and vexatious motions. The Respondents respectfully

> submit that Mr. Dempsey's overarching pattern of conduct is a risk factor that should increase the quantum of the security for costs.

[21] Strong words, which are not without foundation.

[22] The respondents refer to the decision of Justice Scott C. Norton also rendered in the proceeding below (2024 NSSC 233),[1] wherein Mr. Dempsey's conduct and disregard for the court's authority was of considerable concern.

[23] Justice Norton found Mr. Dempsey in civil contempt for failing to comply with subpoenas personally served on him to compel his attendance at discovery in aid of execution. Mr. Dempsey owes a substantial sum to the respondents, in excess of $400,000, which he has failed to pay, and the respondents seek to enforce.

[24] Justice Norton gave Mr. Dempsey an opportunity to purge his contempt by attending at a rescheduled discovery. Once again, he failed to attend. In determining what a fit and proper sentence was for Mr. Dempsey's contemptuous behavior, Justice Norton noted several aggravating factors. He said:

> [8] The Judgment Creditors seek a relatively modest suspended custodial sentence of two weeks despite the presence of significant aggravating factors. The following is a non-exhaustive list of these factors:
>
> > (a) Mr. Dempsey intentionally refused to comply with the subpoenas despite being fully aware of what they required him to do.
> >
> > (b) Mr. Dempsey has flatly refused to purge his contempt. He continues to assert a general right to refuse to comply with any subpoena issued in this proceeding, or any other Court order that he personally determines to be unlawful.
> >
> > (c) Mr. Dempsey has repeatedly asserted that this Honorable Court is complicit in "grand theft felony" by facilitating the enforcement of the Cost Awards.
> >
> > (d) Mr. Dempsey has frustrated the Judgment Creditors' ability to gather important information to assist in enforcing a nearly $300,000 special costs award against him, as well as the related Cost Awards.
> >
> > (e) Mr. Dempsey is a serial contemnor and has failed to pay the contempt fines levied against him by the Courts of British Columbia. He has not pleaded impecuniosity as a reason for failing to pay these fines.

[1] This decision, although assigned a citation number, has not yet been published.

> (f) Mr. Dempsey has failed to pay any of the Cost Awards.
>
> (g) Mr. Dempsey was declared a vexatious litigant in British Columbia in respect of the litigation that gave rise to the Cost Awards.
>
> (h) Mr. Dempsey has not changed his position despite the fact the Supreme Court of Canada dismissed his application for leave to appeal in December 2023 and refused his motion for reconsideration on or around July 5, 2024.
>
> […]
>
> [10] […] Mr. Dempsey has repeatedly expressed his contempt for this Court's authority in the clearest possible terms. He repeatedly elevates his own theories and judgment above the lawful authority of this Court, and he refuses to accept the legitimacy of any order or decision which is contrary to his interests. Mr. Dempsey's words and actions pose a serious threat to the administration of justice and warrant a strong rebuke by this Court.

[25] The judge imposed a custodial sentence of 30 days subject to him purging by attending the discovery:

> [12] In these circumstances, I find that it is appropriate and proportionate to impose on Mr. Dempsey a custodial sentence of 30 days, subject to being purged if he attends a discovery examination in aid of execution before the completion of his sentence. I do not see how suspending the sentence will be of any value given Mr. Dempsey's clear, repeated and adamant statements that he will not attend a discovery. A warrant of committal shall issue.

[26] Mr. Dempsey refused to purge and served his full sentence. Mr. Dempsey has not appealed Justice Norton’s decision.

[27] Mr. Dempsey has also failed to comply with orders of this Court. He failed to pay an outstanding costs award to the respondents of $1,500 as directed by Justice Bourgeois in 2024 NSCA 53 at para. 27 and failed to pay costs of $750 ordered by Justice Bryson in 2024 NSCA 76 at para. 36.

[28] Mr. Dempsey’s refusal to comply with court orders continues. As indicated, Mr. Dempsey appealed his second contempt finding in Nova Scotia made by Justice Anne E. Smith (CA 542305). The order under appeal, which has not been stayed, provides:

> 1. A hearing for the penalty phase of the contempt proceeding shall be heard at the Law Courts, […] on June 18th 2025;

2. [Mr. Dempsey] shall appear for a discovery in aid of execution at 10:00 AM on May 5, 2025 at the offices of McInnes Cooper […] or at such other date, time, and place as the parties may agree, providing that such date and time is before June 18, 2025; and
3. [Mr. Dempsey] shall bring to the aforesaid discovery all the documents which he was required to bring pursuant to the Subpoena.

[29] Mr. Dempsey failed to attend as required by Justice Smith above on May 5, 2025; which was just three days before I heard these motions. Mr. Dempsey offered no explanation nor exhibited any remorse for his non-compliance. There is no reason to believe he will agree to attend on another date before June 18, 2025, as the judge allowed.

[30] To convey a sense of Mr. Dempsey's pursuit to relitigate issues for which appeals have been exhausted, the decision of Justice Keith, which is the subject of CA 540475 is instructive.[2] Justice Keith explained the history of the proceeding in British Columbia which resulted in several large awards against Mr. Dempsey and the ensuing enforcement proceedings that followed Mr. Dempsey to Nova Scotia upon his relocation to this province. He wrote:

> [7] Ultimately, however, the actual legal issues can be distilled into a series of relatively simple, uncontroverted facts:
>
> […]
>
> [4] […] (b) **Ultimately, Mr. Dempsey was unsuccessful in British Columbia. All of his actions were ultimately dismissed or discontinued. Related findings against Mr. Dempsey were harsh. The decisions in British Columbia included findings of contempt against Mr. Dempsey and he was eventually declared to be a vexatious litigant;** and
>
> […]
>
> […] I pause here to emphasize that Mr. Dempsey vociferously objects to and continues to challenge these costs awards and, more generally, the process and findings surrounding the British Columbia judicial proceedings. He is adamant in his view that these findings are inaccurate and unjust. **Nevertheless, the legal reality before me is that Mr. Dempsey exhausted or otherwise abandoned any appeal of these decisions. I am bound to consider them as final and binding judgments of the British Columbia courts. Put slightly differently,**

[2] The respondents also filed affidavit evidence in support of their motions detailing the history of the court proceedings in British Columbia and Nova Scotia and set out Mr. Dempsey's failure to comply with numerous court orders.

> **Mr. Dempsey's personal liability for these costs awards is no longer in issue for Mr. Dempsey. The issue in Nova Scotia has shifted to enforcement.**
>
> [emphasis added]

[31] Mr. Dempsey does not refute that (1) various courts have found against him and ordered him to pay monies to the respondents, and (2) he exhausted his appeals either before provincial courts of appeal and/or the Supreme Court of Canada. In other words, his conventional appellate challenges are spent. But that does not deter him from his mission. He unequivocally submits that he will never pay the substantial sums he owes to the respondents, who, in his view, are "bad actors".

[32] Mr. Dempsey made some unfounded and unusual submissions. I will address them briefly. In summary, Mr. Dempsey maintains he is the victim of cyber-torture—meaning to him that a yet unidentified organized criminal outfit is set out to harm him. He claims the use of "neurotechnologies coupled with criminal mischief" is at play. When I questioned him about this, he explained that he believes his "biometric information is available on the dark web" and there is some "sophisticated program that tracks his movements" and he no longer has "any privacy". He says this is evident in images/messages etc. that appear unsolicited on his computer. He maintains that his "cognitive liberty" has been "compromised through some measure of external tampering" and this is all connected to his ongoing legal pursuit to obtain a result he sees as just.

[33] I afford these conspiracy theories no weight. They have no bearing on the assessment of whether I should exercise my discretion to award security for costs; and failing which, whether to order the pending appeals be automatically dismissed.

[34] I granted the relief sought by the respondents because I was satisfied they overwhelmingly established that Mr. Dempsey has acted in an insolvent manner towards them and there is real cause for concern that he will not respect court decisions that do not align with his views. Said differently, there is a high degree of probability the respondents will not recover costs in the event Mr. Dempsey does not succeed on his respective pending appeals.

[35] I reviewed the range of quantum awarded by this Court. In addition to the two earlier motions involving Mr. Dempsey (wherein security for costs of $2,500 and $7,500 were ordered), the quantum of security for costs orders from this Court have ranged from $500 to $15,000. See *Marshall v. Robbins* – $8,000; *Certified Coating Specialists (Receiver of) v. Halifax-Dartmouth Bridge Commission*, 2016

NSCA 77 – $4,000; *Doncaster v. Field*, 2015 NSCA 83 – $15,000; *Mercier v. Nova Scotia (Attorney General)*, 2014 NSCA 101 – $500; *Korem v. Kedmi*, 2014 NSCA 42 – $2,000; *Liu v. Composites Atlantic Ltd*., 2014 NSCA 27 – $15,000; *Bardsley v. Stewart*, 2014 NSCA 32 – $10,000 to the individual respondents and $15,000 for the corporate respondent; *Power v. Power*, 2013 NSCA 137 – $5,000; *Wolfridge Farm Ltd. v. Bonang*, 2014 NSCA 41 – $10,000; and *Leigh v. Belfast Mini-Mills Ltd.*, 2013 NSCA 110 – $4,000.

[36] I was satisfied, based on the affidavit evidence and submissions from respondent counsel, which included the details of legal costs incurred by the respondents when answering to previous unsuccessful appeals commenced by the Mr. Dempsey, that the quantum of $8,000 for each appeal was reasonable and just.

[37] The final matter to address is Mr. Dempsey's submission that should I award security for costs, the respondents must make a further motion under Rule 90.42(2) to dismiss the appeal but that must wait until he defaults on payment. I asked Mr. Dempsey if he had any authority from this Court that interpreted Rule 90.42(2) as he suggested. He did not provide any such authority.

[38] There are several recent decisions from this Court where security for costs were granted and if not paid, the appeal was ordered to be automatically dismissed. I reviewed two of them earlier, both involving Mr. Dempsey. A third example is *Marshall v. Robins* referenced earlier in which Justice Bryson stated:

> [38] The order will provide for an automatic dismissal if security is not posted, because Ms. Robbins should not be put to the further time and expense of yet another motion which Mr. Marshall's conduct to date suggests may well be necessary.

[39] There are also decisions where security for costs were ordered and this Court directed that in the event of a failure to pay, a motion could be brought seeking to dismiss the appeal. See for example: *Doncaster*; *Mercier*; *Certified Coating Specialists Inc.*; and *Liu.*

[40] Mr. Dempsey referred to 9383859 *Canada Ltd. v. Saeed*, 2023 ONCA, which references this Court decision in *Dataville Farms Ltd. v. Colchester (Municipality)*, 2014 NSCA 95.

[41] *Dataville* was a case where a subsequent motion was brought under Rule 90.42(2) as the original security for costs decision did not provide for an automatic dismissal in the event the appellant defaulted on the security for costs order. Justice

Bourgeois heard the motion in chambers and set out several factors that guided her consideration in these circumstances. In part she said:

> [19] […] Firstly, the remedy sought by the respondents - dismissal of the appeal due to failure to provide security for costs, is, in accordance with Rule 90.42(2), discretionary. It should not be presumed that an order for dismissal will automatically flow from an appellant's failure to abide by an order to give security.
>
> […]
>
> [25] Once it is established by evidence that an appellant has failed to abide by an order requiring the posting of security for costs, in my view, the onus then shifts to the appellant to provide compelling reasons why dismissal is not in the interests of justice. Support for this proposition is found in the Court's well-established approach to motions to dismiss arising from an appellant's failure to perfect.

[42] In my view, the reasoning in *Dataville* does not stand for the principle that a chambers judge lacks the discretion to simultaneously order security for costs and automatic dismissal of the appeal for failure to pay. As noted, this Court has in fact granted such relief numerous times. Rather, the point in *Dataville* is that if the order does not specify, dismissal should not be presumed, not that automatic dismissal is an impermissible condition of the order granting security for costs.

[43] As I read Rule 90.42(2), it does not mandate that a second and separate motion be made. To repeat, the Rule provides;

> (2) A judge of the Court of Appeal may, on motion of a party to an appeal, dismiss or allow the appeal if an appellant or a respondent fails to give security for costs when ordered.

[44] In this case, the respondents made clear they were seeking, as part of their motions, relief under both Rule 90.42(1)—security for costs, and under Rule 90.42(2)—automatic dismissal should Mr. Dempsey not comply with payment as ordered. Further, Mr. Dempsay did not attempt to establish he was an impecunious appellant, which he knew was a relevant consideration. Also, whether Mr. Dempsey is a good faith appellant advancing a meritorious appeal is in question.

[45] In *Power v. Power*, 2013 NSCA 137, although an automatic dismissal was not ordered, this Court recognized the discretion to do so:

> 31 The respondent requested that if security for costs was not paid as ordered, the appeal should stand dismissed. While there may well be circumstances that such an order is appropriate, I see no reason to do so in this case. […]

[46] Given Mr. Dempsey's failure to comply with court orders, including the payment of costs, and his history of contempt for judicial authority, I exercised my discretion to include an automatic term of dismissal in the orders granted. To do otherwise would be a waste of judicial resources and put the respondents through unnecessary expense.

Conclusion

[47] For the foregoing reasons[3], I granted the respondents motions with costs and ordered Mr. Dempsey to:

1. Deposit with this Court security in the amount of $8,000 for appeal (CA 540475). He must do so within 10 clear business days calculated from May 8, 2025. Failing which this appeal will automatically be dismissed.
2. Deposit with this Court security in the amount of $8,000 for appeal (CA 542305). He must do so within 10 clear business days calculated from May 8, 2025. Failing which this appeal will be automatically dismissed.
3. Forthwith pay costs of $500 to the respondents for each motion, for a total of $1,000 (inclusive of disbursements).

Van den Eynden, J.A.

[3] There is an *ex parte* interim confidential order in place for both CA 542305 and CA 540475. The publication of this decision does not compromise the substance and purpose of the interim order.