

Federal Court



Cour fédérale

Date: 20150831

Docket: T-1028-15

Citation: 2015 FC 1034

Ottawa, Ontario, August 31, 2015

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

VLASTA STUBICAR

Applicant

and

**DEPUTY PRIME MINISTER AND MINISTER
OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS**

Respondent

ORDER AND REASONS

I. Introduction

[1] The Respondent brings a motion under *Rules* 416(1)(f) and 369 of the *Federal Court Rules* [the *Rules*] for an order requiring the Applicant to give security for its costs in the amount of \$5000 and further ancillary orders including one prohibiting the Applicant from taking any

further steps in this matter until the security has been posted and notice has been provided of her doing so.

[2] The Applicant, a lawyer, is a self-represented litigant in this and several other related cases involving the federal Crown. She has commenced a myriad of legal proceedings against the Attorney General of Canada [AGC], the Canada Border Services Agency [CBSA] as well as other impugned Access to information decision-makers either before the Federal Court [FC] and/or the Federal Court of Appeal [FCA].

II. Factual Background

[3] The spate of proceedings first arose out of a belief by the Applicant that CBSA officials surreptitiously seized/retained her Croatian Passport and other materials upon her return from a trip to Croatia in 2008. She commenced an action against the Crown seeking an Order that her rights under section 8 of the *Canadian Charter of Rights and Freedom* had been violated accompanied by an Order for the return of her passport and other materials allegedly seized. The action was dismissed by summary judgment (*Stubicar v. R., 2012 FC 1393*) which was upheld by the Federal Court of Appeal (*Stubicar v. R., 2013 FCA 239*).

[4] Many of the other proceedings flow from the Applicant's dissatisfaction with access to information requests as well as other procedural matters (A-454-12, A-363-12, A-144-12, A-531-12, T-1436-11, T-2061-11, T-19-12, T-618-12, T-940-12, and T-2102-10).

[5] This application pursuant to section 41 of the *Access to Information Act* appears to be for the purpose of the obtaining information to support the Applicant's allegation that the CBSA has withheld her passport as well as other information about her, presumably with a view to re-initiating litigation against the Crown that has already been dismissed.

III. Disputed Cost Amounts

[6] There is some dispute over the cost amounts outstanding claimed by the Respondent. Of the total amount claimed (\$12,572.74), it would appear that \$500 for costs in Federal Court File T-2061-11 was reversed on appeal. After deducting that amount, in addition to the \$719.64 to be set off for which the Applicant has cost awards outstanding in her favour, the total assessed cost amounts claimed by the Respondent appears to be \$11,293.10. The Applicant has never paid any amount of costs to the Respondent.

IV. Issues and Analysis

[7] The Court may order a party to give security in the same or other proceedings that remain unpaid in whole or in part, *Rule* 416(1)(f):

416. (1) Where, on the motion of a defendant, it appears to the Court that

416. (1) Lorsque, par suite d'une requête du défendeur, il paraît évident à la Cour que l'une des situations visées aux alinéas a) à h) existe, elle peut ordonner au demandeur de fournir le cautionnement pour les dépens qui pourraient être adjugés au défendeur :

(f) the defendant has an order

f) le défendeur a obtenu une

against the plaintiff for costs in the same or another proceeding that remain unpaid in whole or in part,	ordonnance contre le demandeur pour les dépens afférents à la même instance ou à une autre instance et ces dépens demeurent impayés en totalité ou en partie;
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[8] The Federal Court of Appeal has confirmed that *Rule 416* applies to all proceedings – actions, applications and appeals.

[9] Moreover, in order to be entitled to an order for security for costs pursuant to *Rule 415(1)(f)*, a defendant does not have to satisfy any other requirement than those specifically contained in that paragraph.

[10] In *Coombs v Canada*, 2008 FC 894, it has been determined that a defendant is “*prima facie*” entitled to security for costs where there is an unpaid order in favour of the defendant.

[11] The Applicant claims that several amounts claimed are subject to reconsideration on appeals, which she claims she has filed or will be filing on or before the appeal dates. If Federal Court File T-2102-10 was reversed, Ms. Stubicar claims she would be entitled to a further \$3700 relating to the refusal of the Court to award her costs for her fees. She also claims that the amounts of the assessments against her under Federal Court File A-531-12 (\$1162.46) could be reversed on appeal. She further, notes that the assessment amounts in Federal Court Files T-19-12 and a T-618-12 of \$1140.95 and \$1947.25, respectively, were subject to review. However, in these latter two matters, I have upheld the assessments (*Vlasta Stubicar v Deputy Prime Minister and Minister of Public Safety and Emergency Preparedness*, 2015 FC T-19-12 and *Vlasta*

Stubicar v Deputy Prime Minister and Minister of Public Safety and Emergency Preparedness, 2015 FC T-618-12). Presumably, they too could be subject to appeal.

[12] The Applicant advances no case law in support of her contention that pending appeals on outstanding cost awards can be relied upon to diminish the obligations outstanding to pay awarded amounts. In order to persuade the Court to take into consideration pending appeals, there would have to be some basis to suggest that she could prove successful on appeal.

[13] There is no foundation for the Court to arrive at such a conclusion. Furthermore, as already indicated in the two matters where I have upheld the Certificate of Assessments (Federal Court Files T-19-12 and a T-618-12), I have stated my agreement with the remarks of Justice Harrington in *Stubicar v. Canada*, 2015 FC 722, to the effect that the Applicant has engaged in microscopic examinations of decisions, with the view to appeal everything when she loses, all of which delays and adds costs to the claim, which are ignored, while simply moving the substantive basis for the proceedings ahead.

[14] The Applicant argues that the Court cannot order security for costs because it is not authorized to do so under Section 53 of the *Access to Information Act*, R.S.C., 1985, c. A-1, which reads as follows:

53. (1) Subject to subsection (2), the costs of and incidental to all proceedings in the Court under this Act shall be in the discretion of the Court and shall follow the event unless the Court orders otherwise.

53. (1) Sous réserve du paragraphe (2), les frais et dépens sont laissés à l'appréciation de la Cour et suivent, sauf ordonnance contraire de la Cour, le sort du principal.

(2) Where the Court is of the opinion that an application for review under section 41 or 42 has raised an important new principle in relation to this Act, the Court shall order that costs be awarded to the applicant even if the applicant has not been successful in the result.

[Emphasis added by the Applicant]

(2) Dans les cas où elle estime que l'objet des recours visés aux articles 41 et 42 a soulevé un principe important et nouveau quant à la présente loi, la Cour accorde les frais et dépens à la personne qui a exercé le recours devant elle, même si cette personne a été déboutée de son recours.

[Soulignement ajoutés par la requérante]

[15] I disagree that section 53 limits the Court's discretion to award security for costs where circumstances warrant it in applications relating to the *Access to Information Act*. The concept behind security for costs is to ensure that the Defendants or Respondents are not prevented from obtaining costs when successful in the various circumstances described in *Rule 416*. It is one thing not to have costs awarded against the Applicant if unsuccessful, but this has no impact on her failure to pay outstanding cost awards which *Rule 416* describes as an impediment to proceeding with another matter in the Court, which would include access requests.

[16] Nor is the Court prevented from accepting the Respondent's assessment of an amount required to be posted in security for costs on the pending application. If the Applicant had advanced some argument to the effect that her case raises an important new principle in relation to the *Access to Information Act*, the Court may have had some basis to exercise its discretion in her favour. Not having done so and with a poor record in terms of outcomes given the large number of rejected and tenuous appeals launched, there would be no basis for the Court to exercise its discretion in her favour.

V. Conclusion

[17] There is no suggestion that the Applicant is impecunious, such that payment of the security for costs would prevent her from proceeding with the Application. No other ground was raised.

[18] Having examined the basis for the Respondent's amount claimed for security for costs, I am satisfied that it is reasonable in the circumstances.

[19] Accordingly, the Respondent's motion is granted in the form requested.

THIS COURT ORDERS that:

1. The Applicant is required to pay security for the Respondent's costs in the amount of \$5000;
2. The Applicant is required to provide notice to the Respondent when payment to the Court is made;
3. The Applicant is prohibited in accordance with *Rule* 416(3) from taking any further steps in this judicial review until the above-mentioned security has been posted and the notice given to the Respondent;
4. The timeline pursuant to *Rule* 318 (1) is extended to twenty (20) days from payment of security and said notice having been given; and

5. The Applicant is to pay the Respondent's costs of this motion in the amount of \$980.

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1028-15

STYLE OF CAUSE: VLASTA STUBICAR V DEPUTY PRIME MINISTER
AND MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

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

ORDER AND REASONS: ANNIS J.

DATED: AUGUST 28, 2015

WRITTEN REPRESENTATIONS BY:

Vlasta Stubicar

FOR THE APPLICANT
(On her own behalf)

Philippe Lacasse

FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of
Canada

FOR THE RESPONDENT