

Federal Court



Cour fédérale

**Date: 20211208**

**Docket: T-663-20**

**Citation: 2021 FC 1372**

**BETWEEN:**

**R. MAXINE COLLINS**

**Plaintiff**

**and**

**CANADA POST CORPORATION**

**Defendant**

**REASONS FOR ASSESSMENT**

**ORELIE DI MAVINDI, Assessment Officer**

I. Introduction

[1] This is an assessment of costs pursuant to the Plaintiff's January 6, 2021, filing of a notice of abandonment of their motion filed pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 (the "*FCR*") to set aside or vary the Order of the Court dated July 29, 2020.

II. Background

[2] On January 19, 2021, the Defendant filed its Bill of Costs and the affidavit titled the “Affidavit of Gianni Bianchi in Support of Assessment of Costs”, enclosing Exhibits A to D sworn on January 15, 2021 (the “Affidavit of Gianni Bianchi”).

[3] On January 28, 2021, the Plaintiff attempted to file an affidavit and written representations titled, the “RESPONDING MOTION RECORD Defendant’s Motion Rule 402 and Rule 411” (the “Plaintiff’s Responding Motion Record”). On January 28, 2021, the Court issued the following Directions concerning the materials:

The Plaintiff has sought to file an affidavit and written representations that are entitled “RESPONDING MOTION RECORD Defendant’s Motion Rule 402 and Rule 411”. The written representations indicate that the documentation the Plaintiff seeks to file responds to correspondence counsel for the Defendant has provided the Plaintiff. The Registry advises that this correspondence has not been filed with the Court. The Registry has no record of a Notice of Motion having been filed by the Defendant. The Plaintiff states in written submissions that “[the Defendant] has not filed a notice of motion”. The purpose for the requested filing is unclear. The documents are therefore to be refused for filing.

[4] By letter dated January 28, 2021, the Defendant filed a letter in response to the Directions of the Court advising that it appeared that “the Plaintiff ha[d] attempted to file a Responding Motion Record in response to a request for the assessment of costs regarding her recently abandoned motion, which ha[d] not yet been directed to take place”. The Defendant sought directions from the Court instructing an assessment of costs by an assessment officer, or in the

alternative, directions on how to proceed with the Plaintiff's motion for the purposes of an assessment of costs.

[5] On January 29, 2021, the Plaintiff filed a letter in response to the Directions of the Court restating the merits of the Plaintiff's Responding Motion Record and objecting to the Court's refusal. Subsequently, the Plaintiff again sought permission from the Court to have the materials accepted for filing.

[6] On March 31, 2021, I received confirmation from the Court that no additional directions would be issued following the January 28, 2021, Direction refusing the Plaintiff's Responding Motion Record for filing. As such, I issued the following Directions establishing timelines for submissions for the assessment of costs:

Further to the filing of the Defendant's Bill of Costs on January 19, 2021, the assessment of costs will proceed in writing pursuant to rules 402 and 411(b) of the *Federal Courts Rules*. It is directed that:

1. the Defendant may serve and file all materials (if they have not already done so) including the bill of costs, supporting affidavit(s) and written submissions together with a copy of this direction by Thursday, April 8, 2021;
2. the Plaintiff may serve and file any responding materials (affidavit(s) and/or written submissions) by Friday, May 7, 2021;
3. the Defendant may serve and file any reply submissions by Friday, May 14, 2021.

[7] In response, on April 1, 2021, the Defendant submitted a letter advising that they intended to continue to rely upon the Affidavit of Gianni Bianchi previously filed on January 19,

2021, and would not provide additional material in support of their Bill of Costs. On April 1, 2021, the Plaintiff equally submitted a letter outlining a number of objections. The Plaintiff's letter objected to the assessment of costs proceeding without a notice of appointment pursuant to Rule 406 of the *FCR*. The letter objected to the Defendant's intention to rely upon the previously filed cost material. The Plaintiff objected to the assessment of costs being disposed of by an assessment officer in Toronto. The Plaintiff objected to the Defendant seeking an assessment of costs in this matter as not in compliance with the *FCR* for "pursuing this matter now after the FCA suspended proceedings due to my broken wrist and after a two month delay which began before I broke my wrist on February 17th". Accordingly, on April 12, 2021, I issued the following Directions in response to the Plaintiff's objections:

I note the Plaintiff's objection to the assessment of costs proceeding as directed on March 31, 2021, on the basis that no notice of appointment was received pursuant to rule 406 of the *Federal Courts Rules (FCR)*. To clarify, a notice of appointment under rule 406 of the *FCR* is typically issued by an assessment officer for an assessment of costs that will proceed by way of an oral hearing. However, in these present circumstances, no appointment for an oral hearing is necessary, as the assessment of costs will proceed in writing as directed. Please see rule 408(1) of the *FCR* for further clarification. The assessment officer's decision in *Wong v. Canada*, 2006 FC 758 [hyperlinked] at paragraph 1 may also prove instructive on this point.

Please note that while the assessment officer team for the Federal Court of Appeal and Federal Court is located in Toronto, you may continue to file all materials via the regular channels at the local office of your choosing, your materials will be forwarded to the assessment officer by the Registry.

[8] In response, on April 12, 2021, the Plaintiff provided the following correspondence:

Ma Di Orelie [*sic*]

The case referenced in your Direction does not contain any reference to Rule 406 and Rule 406 states notice of appointment

for assessment not notice of appointment for a hearing - oral or otherwise. If as you state you have the authority to issue a notice of appointment although employed in Toronto, why not do so instead of adding words to the Rule which is not permissible? My position is unchanged you should not be involved in this matter.

R. Maxine Collins

[9] On April 13, 2021, I received a letter from the Plaintiff emailed to the Federal Court Registry on March 31, 2021, as it had been mislabeled by the Registry email firewall as possibly being a spam email. In the letter the Plaintiff restated the merits of the Plaintiff's Responding Motion Record refused for filing by the Court, refused to provide costs material as directed; sought a 60-day suspension of proceedings due to a broken wrist on the basis of a suspension at the Federal Court of Appeal for that reason; and objected to an assessment officer in Toronto, as opposed to Ottawa, conducting the assessment of costs. The Plaintiff in particular argued that I became seized of this matter to assist counsel for the Defendant, stating "Why are you directing a new filing? I see only one case online indicating you are in Toronto but this file is in Ottawa which to me indicates you should not be involved and are so involved to assist Mr. Brook". The Plaintiff's objections to the assessment of costs will be addressed below as preliminary issues.

### III. Preliminary Issues

[10] A number of preliminary issues arise from the Plaintiff's correspondence dated April 1, 2021, April 12, 2021, and March 31, 2021, received on April 13, 2021. The pertinent objections can be broadly summarized into two categories. The first preliminary issue is whether the assessment of costs can proceed without a notice of appointment pursuant to Rule 406 of the *FCR*, and be conducted by an assessment officer located in Toronto. The second preliminary

issue is whether it was proper for the Defendant to seek an assessment of costs in light of the purported 60-day suspension of the Plaintiff's Federal Court of Appeal proceedings due to a broken wrist.

A. *Necessity of a Notice of Appointment and Assessment Officer Location*

[11] Rule 405 of the *FCR* provides that “costs shall be assessed by an assessment officer”.

Rule 2 of the *FCR* states, an “assessment officer means an officer of the Registry designated by an order of the Court, a judge or a prothonotary, and includes, in respect of a reference, the referee presiding in the reference”. My jurisdiction in this matter as an assessment officer arises from the first category, an officer of the Registry designated by an order of the Court. The *FCR* does not restrict the location of an assessment officer. Presently, all assessment officers designated by an order of the Court for the Federal Court of Appeal and Federal Court are based in Toronto and routinely handle files initiated across the country. Furthermore, assessment officers can travel to attend returnable appointments, or offer remote conferencing by videoconferencing and teleconferencing, as needed. The location of the assessment officer seized of a matter does not determine the location of the appointment for an assessment of costs. However, in these circumstances the question of the location of an appointment is theoretical as the assessment of costs at hand is proceeding by way of written representations.

[12] Rule 406 of the *FCR* outlines how to obtain an appointment for an assessment of costs, it reads:

**Obtaining appointment**

**406 (1)** A party who is entitled to costs may obtain a

**Convocation**

**406 (1)** La partie qui a droit aux dépens peut obtenir un

notice of appointment for assessment by filing a bill of costs, a copy of the order or other document giving rise to the party's entitlement to costs and any reasons, including dissenting reasons, given in respect of that order.

**Notice of appointment**

(2) A notice of appointment for assessment and the bill of costs to be assessed shall be served on every other interested party at least 10 days before the date fixed for the assessment.

avis de convocation pour la taxation en déposant un mémoire de dépens et une copie de l'ordonnance — ainsi que les motifs, le cas échéant, y compris toute dissidence — ou autre document lui donnant droit aux dépens.

**Avis de convocation**

(2) L'avis de convocation et le mémoire de dépens sont signifiés à toute autre partie intéressée au moins 10 jours avant la date prévue pour la taxation.

[13] In practice, the party entitled to costs may obtain a returnable date for a notice of appointment for assessment of costs by sending a letter to the Registry with proposed dates for the appointment. The assessment officer will then review the proposed dates and confirm a date for the appointment. Once an appointment is scheduled by the assessment officer, the date is inserted into the notice of appointment which is then issued by the Registry on behalf of the assessment officer, to the parties. In these circumstances, the Defendant did not provide proposed dates for an assessment of costs and requested that the matter proceed instead on the basis of written representations; as is open to them to do so. Rule 3 of the *FCR* provides as a “General principle – These Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits”. Having reviewed the Court file and the Defendant's Bill of Costs, I found it appropriate for the matter to proceed on the basis of written representations, as requested, given the modest quantum sought and the relative straightforwardness of the issues.

[14] Accordingly, a notice of appointment was not issued to the parties as no particular date, time and place would be set to meet for the assessment of costs. As is implied in the body of the text of a notice of appointment for assessment of costs, a sample of which can be found on the Federal Court website, the internal document is used to set down the date, time and place for an appointment, in other words, a returnable assessment of costs. Instead, Directions were issued to parties establishing a timetable for the service and filing of supporting affidavits and written submissions to proceed with the assessment of costs on the basis of written representations. The Directions to proceed on the basis of written representations were issued pursuant to Rule 408 (1) of the *FCR*, which provides that “[a]n assessment officer may direct the production of books and documents and give directions for the conduct of an assessment”. Rule 408 (1) outlines an assessment officer’s broad discretionary parameters for the conduct of an assessment of costs (*Wong v Canada (Minister of Citizenship and Immigration)*, 2006 FC 758 (A.O.), *Métis National Council of Women v Canada (Attorney General)*, 2007 FC 961, *Apotex Inc. v Merck & Co. Inc.*, 2008 FCA 371). Though I take note of the Plaintiff’s objection, my determination to exercise my discretion, as requested, to direct that the assessment of costs in this matter will proceed in writing pursuant to Rule 408 (1) of the *FCR*, without a returnable date for the assessment of costs in the form of a Rule 406 Notice of Appointment, remains unchanged.

B. *Suspension of the Assessment of Costs due to a Broken Wrist*

[15] The Plaintiff claimed that it was improper for the Defendant to request an assessment of costs in this proceeding in light of a purported 60-day suspension of the Plaintiff’s Federal Court of Appeal proceedings due to a broken wrist. The Plaintiff objected to the Defendant seeking an assessment of costs in this matter as not in compliance with the Rules for “pursuing this matter



now after the FCA suspended proceedings due to my broken wrist and after a two-month delay which began before I broke my wrist on February 17th”. It appears that the Defendant is referencing a Direction from the Federal Court of Appeal in consolidated files A-258-20 and A-191-20 (*R. Maxine Collins v. Canada Post Corporation*) dated March 29, 2021. The Direction reads:

The Direction of the Court dated February 23, 2021 has not been complied with.

In light of the appellant’s injury, the Court is prepared to be lenient concerning the non-compliance with the February 23, 2021 Direction. Therefore, “thirty days” at the top of page two of that Direction shall read “sixty days”. The sixty days shall run from today’s date. Absent extraordinary cause, due to the last period of extension and this latest period of extension, there shall be no further extensions.

The Court reiterates the following from the Direction:

Until these motions are determined by the Court, the Registry shall reject all filings from the parties that do not concern these motions. To be clear, for the immediate future, the parties are directed to address themselves to these motions and to no other issue.

[16] The extension of time provided to the Appellant (the Plaintiff in this matter), related specifically to Directions of the Court dated February 23, 2021, that had not been complied with in these discrete proceedings. The Court’s Direction did not address the suspension of all matters in A-258-20 and A-191-20, nor did it suspend any other proceedings the parties are involved in at the Federal Court of Appeal, or at the Federal Court. Accordingly, I am not satisfied that the Defendant was precluded from seeking an assessment of costs in this matter on the basis of an extension of time to complete steps in A-258-20 and A-191-20, following the filing of the Bill of Costs. It was open to the Plaintiff to formally request, with supporting materials, the suspension

of the assessment of costs in this proceeding or request additional time to file submissions due to the broken wrist, in a timely fashion on February 18, 2021, following the first Direction establishing timelines for costs submissions issued January 28, 2021; as they had been done in Federal Court of Appeal files A-258-20 and A-191-20. Additionally, it is noted that from the Plaintiff's own letter dated April 1, 2021, 60-days from the Appellant's injury on February 17, 2021, would be April 18, 2021. As outlined in my initial Direction establishing the timelines for written submissions in this matter, the Plaintiff would have until beyond 60-days from the injury to Friday, May 7, 2021, to provide written submissions.

[17] To date, the Plaintiff did not make use of the opportunity to serve and file responding costs materials within or following the prescribed timeframe. I will thus proceed with the assessment of costs in light of the comments at paragraph 2 of *Dahl v Canada*, 2007 FC 192 (*Dahl*) (A.O.):

2 Effectively, the absence of any relevant representations by the Plaintiff, which could assist me in identifying issues and making a decision, leaves the bill of costs unopposed. My view, often expressed in comparable circumstances, is that the *Federal Courts Rules* do not contemplate a litigant benefiting by an assessment officer stepping away from a position of neutrality to act as the litigant's advocate in challenging given items in a bill of costs. However, the assessment officer cannot certify unlawful items, i.e. those outside the authority of the judgment and the Tariff.

#### IV. Assessment

[18] The Defendant claimed \$787.50 in assessable services, inclusive of 5% GST. The Bill of Costs was prepared at the mid-range of column III to Tariff B of the *FCR*.

[19] The Defendant claimed 5 units under Item 5 (Preparation and filing of a contested motion, including materials and responses thereto) in relation to the Plaintiff's filing of a Notice of Abandonment on January 6, 2021, concerning the motion filed under Rule 369 of the *FCR* to set aside or vary the Order of the Court dated July 29, 2020. At paragraph 5 of the Affidavit of Gianni Bianchi, it was sworn that "[t]he Defendant, Canada Post Corporation, incurred costs reviewing the Plaintiff's materials and filing a responding Motion Record". This was further outlined at paragraph 3 of the Defendant's letter dated April 1, 2021, in response to the March 31, 2021 Directions establishing timelines for submissions:

In particular, Canada Post Corporation was forced to incur legal costs in preparing responding written representations to the Plaintiff's interlocutory motion (which are included as Exhibit C to the Affidavit of Bianchi Gianni sworn January 15, 2021). Canada Post submits that the costs sought in the Bill of Costs filed January 19, 2021 are reasonable and in accordance with the normal practices and applicable Tariffs of the Federal Court. Canada Post also submits that the Plaintiff, though self-represented, is an experienced and frequent litigant in the Federal Courts who understands the potential cost consequences of bringing and abandoning motions.

[20] The Plaintiff was within their rights to file a Notice of Abandonment of their motion filed under Rule 369 of the *FCR* to set aside or vary the Order of the Court. Rule 370 (1) of the *FCR* provides that "[a] party who brings a motion may abandon it by serving and filing a notice of abandonment in Form 370". However, as underlined in the Defendant's letter, Rules 402 and 411, do not shield a party from the corresponding cost consequences.

[21] Rule 402 of the *FCR* provides that unless ordered by the Court, a party against whom a motion has been abandoned is entitled to costs, it reads:

**Costs of discontinuance or abandonment**

**402** The Unless otherwise ordered by the Court or agreed by the parties, a party against whom an action, application or appeal has been discontinued or against whom a motion has been abandoned is entitled to costs forthwith, which may be assessed and the payment of which may be enforced as if judgment for the amount of the costs had been given in favour of that party.

**Dépens lors d'un désistement ou abandon**

**402** Les Sauf ordonnance contraire de la Cour ou entente entre les parties, lorsqu'une action, une demande ou un appel fait l'objet d'un désistement ou qu'une requête est abandonnée, la partie contre laquelle l'action, la demande ou l'appel a été engagé ou la requête présentée a droit aux dépens sans délai. Les dépens peuvent être taxés et le paiement peut en être poursuivi par exécution forcée comme s'ils avaient été adjugés par jugement rendu en faveur de la partie.

[22] Rule 411 of the *FCR* provides that the costs of an abandoned motion may be assessed where a notice of abandonment was served, it reads:

**Costs of abandoned motion**

**411** The costs of a motion that is abandoned or deemed to be abandoned may be assessed on the filing of

**(a)** the notice of motion, together with an affidavit stating that the notice was not filed within the prescribed time or that the moving party

**Dépens en cas de désistement — requête**

**411** Les dépens afférents à une requête qui fait l'objet d'un désistement ou dont le désistement est présumé peuvent être taxés lors du dépôt :

**a)** de l'avis de requête accompagné d'un affidavit précisant que l'avis n'a pas été déposé dans le délai prévu ou que le requérant n'a pas

did not appear at the hearing  
of the motion; or

comparu à l'audition de la  
requête;

**(b)** where a notice of  
abandonment was served, the  
notice of abandonment.

**b)** de l'avis de désistement,  
dans le cas où cet avis a été  
signifié.

[23] Having reviewed the Court file, the Defendant's costs material and in keeping with *Dahl* and the Rules 370, 402 and 411 of the *FCR*, I am satisfied that the 5 units claimed under Item 5 in relation to the filing of the notice of abandonment of the Plaintiff's motion to set aside or vary the Order of the Court dated July 29, 2020, are reasonable, necessary and should be allowed as presented.

V. Conclusion

[24] For the above reasons, the Defendant's Bill of Costs is assessed and allowed at \$787.50, inclusive of GST. A Certificate of Assessment will be issued.

\_\_\_\_\_  
"Orelie Di Mavindi"  
Assessment Officer

Toronto, Ontario  
December 8, 2021

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-663-20

**STYLE OF CAUSE:** R. MAXINE COLLINS v CANADA POST CORPORATION

**MATTER CONSIDERED AT TORONTO, ONTARIO WITHOUT PERSONAL APPEARANCE OF THE PARTIES**

**REASONS FOR ASSESSMENT BY:** ORELIE DI MAVINDI, Assessment Officer

**DATED:** DECEMBER 8, 2021

**WRITTEN SUBMISSIONS BY:**

R. Maxine Collins

SELF-REPRESENTED

Ted Brook

FOR THE DEFENDANT

**SOLICITORS OF RECORD:**

Norton Rose Fulbright Canada LLP  
Barristers and Solicitors  
Toronto, Ontario

FOR THE DEFENDANT