

Federal Court



Cour fédérale

Date: 20181219

Docket: T-508-17

Citation: 2018 FC 1282

Ottawa, Ontario, December 19, 2018

PRESENT: The Honourable Mr. Justice Bell

Docket: T-508-17

BETWEEN:

JAMIE J. GREGORY

Plaintiff

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Defendant

ORDER AND REASONS

I. Factual Background

[1] In 2008, the Applicant, Mr. Jamie Gregory (referred to as either Mr. Gregory or the Applicant), was convicted of second-degree murder as a result of an incident that occurred in Nova Scotia in December of 2006. Mr. Gregory believed, and continues to believe, that his defence counsel did not have full disclosure of all statements provided to investigators. As a

result, on the 30th day of May, 2016, Mr. Gregory wrote to the Access to Information and Privacy Branch of the Royal Canadian Mounted Police [the ATIP Branch of the RCMP] seeking disclosure, pursuant to section 4 of the *Access to Information Act*, R.S.C., 1985, c. A-1 [the *Act*], of any statement made by “a witness by the name of DON (last name unknown) he resided in Bridgetown, Nova Scotia”. Mr. Gregory also indicated that he did not require access to any statement made by his father, Donald Gregory. The request was eventually refused because of the inability to identify the subject “Don”.

[2] In early 2018, Mr. Gregory, then an inmate at the Archambault Federal Institution, filed an application for judicial review, pursuant to section 41 of the *Act*, of the decision refusing his request for access to information. On March 8, 2018, a hearing was held before me. I ordered the application to be adjourned *sine die* to afford the parties an opportunity to continue their settlement discussions. Unfortunately, the parties did not resolve the matter. The matter came before me again on September 21, 2018. On that date, counsel for the Respondent summarized the steps the ATIP Branch of the RCMP had taken since the last court appearance and expressed some degree of confidence that her client was now able to positively identify the individual who had made the statement sought by Mr. Gregory. The matter was again adjourned to provide time for the Respondent to seek the consent of the individual that his name and statement be released. A third hearing was scheduled for October 26, 2018. Upon receiving consent from the individual to disclose his identity and statement, the ATIP Branch of the RCMP released both to Mr. Gregory on October 25, 2018. This disclosure resolved the issue on its merits. The person was indeed identified as the Applicant’s father, Donald Gregory.

[3] The only issue now before me relates to costs. On October 26, 2018, I heard the parties on that issue and requested they submit further written submissions. Both parties complied with my request for written submissions.

II. ISSUE

[4] In the circumstances of this case, should costs be awarded to Mr. Gregory, a self-represented litigant?

III. ANALYSIS

[5] Rule 400(1) of the *Federal Courts Rules*, SOR/98-106, when read in conjunction with the relevant jurisprudence, provides this Court broad discretion with respect to the amount and allocation of costs (*Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271 at para. 247; *Nolan v. Kerry (Canada) Inc.*, 2009 SCC 39, [2009] 2 S.C.R. 678, at para. 126 ; *Teva Canada Limited v. Janssen Inc.*, 2018 FCA 33 at para. 154). That is also true for self-represented litigants (*Galati v. Harper*, 2016 FCA 39 at paras 21-22, 394 DLR (4th) 555; *Stubicar v. Canada*, 2015 FCA 113). Indeed, an individual who is self-represented has no legal fees to pay.

[6] The Respondent contends that each party should bear its own costs, or alternatively, that Mr. Gregory is only entitled to disbursements. The Respondent contends that costs should not be awarded because: (1) the parties have reached a settlement; and (2) none of the factors mentioned in Rule 400(3) of the *Federal Courts Rules* justifies the award of costs. Furthermore,

the Respondent contends that a period of eighteen (18) months within which to resolve the matter is not excessive in the circumstances. Mr. Gregory contends the Respondent unnecessarily delayed the process. Furthermore, he points out that he should not have been required to take the steps he did in order to obtain information (his father's identity and statement) that he clearly stated he did not need. He also reminds the Court that the matter was settled in his favour.

[7] The fact that Mr. Gregory did not require access to his father's identity and statement is not contested by the Respondent. However, I would make the following observations. First, the search for a "Don" other than Mr. Gregory's father constituted a necessary step in the process. Second, the ATIP request was, at best, ambiguous regarding the name and, unfortunately, erroneous as it relates to the address of the subject of the inquiry. Third, it cannot be overlooked that Mr. Gregory's father has a right to privacy, namely the right not to have his identity or his statements disclosed without proper steps being taken. In my view, it would have been inappropriate for the ATIP Branch of the RCMP to confirm or deny the existence of a witness by the name of Donald Gregory without following the relevant procedures. Finally, although there is no evidence on this issue before me, it cannot be overlooked that in many communities and cultures, two people often have the same first and last names. The ATIP Branch of the RCMP should not be faulted for exercising due diligence in responding to the request.

[8] I would also note that at all three hearings before me, it was evident the parties had co-operated fully, before, during and after each hearing. In my view, counsel for the Respondent demonstrated the best tradition of Crown counsel in seeking the truth, being fair-minded and in her efforts to accommodate Mr. Gregory, a self-represented litigant.

IV. CONCLUSION

[9] Having considered the parties' submissions, the fact the parties settled the matter, the right of Mr. Gregory's father to privacy subject to the requirements of the *Act* having been met, the lack of precision in identifying the subject of the ATIP request, the co-operation demonstrated throughout by the Respondent's counsel, and, being cognizant of the fact this Court is clothed with a broad discretion with regard to costs, I consider it appropriate to dismiss the application for costs but allow disbursements to Mr. Gregory.

[10] Mr. Gregory submitted the following amounts that he claims as provable disbursements: (a) courier services from February 2016 to November 2018 for a total of \$740.00; (b) photocopying from February 2016 to November 2018 for a total of \$180.00; (c) an estimate of the calls to his father Donald Gregory in the amount of \$490.00; and (d) an estimate of the costs of calls to the Registry in the amount of \$60.00. While these disbursements have not been strictly proven by Mr. Gregory, the Respondent does not contest them. Furthermore, in the face of no objection from the Respondent, I am prepared to accept Mr. Gregory's assertions, made directly by him before me, as proof of the amounts claimed. That said, I am not prepared to order the full amount claimed as it relates to phone calls between Mr. Gregory and his father. I consider it reasonable to conclude that 50% of Mr. Gregory's conversations with his father related to the within application. It is also reasonable to conclude that 50% of those conversations related to personal matters of interest between father and son regarding, for example, the father's life outside of prison, Mr. Gregory's life inside prison, developments in the lives of other family members and friends, and special occasion greetings such as birthdays, holidays and other such

events. Given the absence of proof of the exact percentages, it is reasonable and appropriate to reduce this part of the disbursement claim by one-half. I therefore assess Mr. Gregory's disbursements at \$740.00 (courier services) + \$180.00 (photocopying) + \$245.00 (phone calls to father) + \$60.00 (phone calls to Registry) for a total amount of \$1,225.00.

[11] The Applicant will be awarded \$1,225.00 in disbursements.

ORDER

THIS COURT ORDERS that the Respondent pay to the Applicant the sum of \$1,225.00 in disbursements. No costs are awarded.

“B. Richard Bell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-508-17

STYLE OF CAUSE: JAMIE J. GREGORY v. MINISTER OF PUBLIC
SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 26, 2018

**REASONS FOR ORDER AND
ORDER:** BELL J.

DATED: DECEMBER 19, 2018

APPEARANCES:

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Me Simone Truong FOR THE DEFENDANT

SOLICITORS OF RECORD:

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