

Federal Court



Cour fédérale

**Date: 20130920**

**Docket: T-400-13**

**Citation: 2013 FC 967**

**Ottawa, Ontario, September 20, 2013**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**DEBBIE LYNNE SIMMONDS**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of the decision of Peter Bulatovic, Director, Investigation Division of Passport Canada [Passport Canada], pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. The Adjudicator revoked the Applicant's passport and ordered that passport services to the Applicant be withheld until July 16, 2017.

I. Background

[2] The facts underlying Passport Canada's decision are not in dispute. On July 16, 2012, the Applicant submitted a passport application for her son Adam. As part of this application, the

Applicant answered “yes” to the question “Are there any separation agreements, court orders or legal proceedings pertaining to custody or mobility of, or access to, the child?” She submitted two court orders. One was dated June 16, 2008, and granted joint custody of Adam to the Applicant and the Applicant’s ex-husband, Ryan Simmonds. The other was dated March 18, 2011, and granted Mr. Simmonds access rights to Adam.

[3] However, this was not the extent of any court orders or legal proceedings pertaining to Adam. Most relevant were the Reasons of Judgment by Justice Brown of the British Columbia Supreme Court, dated July 5, 2012, which granted Mr. Simmonds sole custody of Adam, and the Order of Justice Brown dated and entered July 6, 2012, which granted Mr. Simmonds the right to take Adam to the United States from August 13 to 27, 2012, and to apply for a passport for Adam without the Applicant’s signature. These documents would have made the Applicant ineligible to apply for a passport for Adam, pursuant to s. 7(1)(b) of the *Canadian Passport Order*, SI/81-86 [the Order].

[4] The omission of these documents came to the attention of Passport Canada via Mr. Simmonds, who had, on July 9, 2012, first contacted Passport Canada to make them aware he had not signed any Application for Adam’s passport. On July 16, 2012, Mr. Simmonds attended the Passport Canada office in Surrey, British Columbia to provide it with 14 court documents relating to family law matters between the Applicant and himself, dating from April 18, 2008 to July 6, 2012. These documents included the Order and Reasons for Judgment described above.

[5] On August 22, 2012, Passport Canada wrote to the Applicant advising her that she was the subject of an investigation on the basis that she had submitted a passport application for Adam which contained false or misleading information. This letter included a questionnaire for return and instructions to immediately surrender her passport. Passport Canada did not receive a response to this letter.

[6] On November 13, 2012, Passport Canada sent a letter to the Applicant reiterating the information contained in the August 22 letter. In addition, the letter provided a list of the 14 court documents submitted by Mr. Simmonds and the fact that she was also asked by a Passport Canada officer on July 16, 2012, whether there were other custody, mobility or access court documents pertaining to Adam and that she replied in the negative.

[7] On November 26, 2012, Mr. Simmonds wrote a letter which replied to several questions from Passport Canada, including whether, and if so, how the Applicant had Mr. Simmonds sign Adam's passport, the last time he had contact with the Applicant, and how he became aware that the Applicant was applying for a passport for Adam. In addition, Mr. Simmonds provided a chronology of recent events with regard to his interactions with the Applicant concerning Adam's passport.

[8] On November 29, 2012, the Applicant wrote to Passport Canada stating that she had responded to the August 22 letter, and that her response must have not been received. She sent the questionnaire, and included reference to the July legal proceedings written by Justice Brown. She also addressed the court documents she submitted in her application (in part) as follows:

I do admit, that in mid-July when I applied in person for this passport, that I did give the Justice Stromberg-Stein custody order. These orders stated joint custody and joint guardianship between both parties. I was made aware on July 5, 2012 via email of new custody orders. However these new orders were not signed by either party or filed at the courthouse at the time I applied in person to the passport office. Because I had a signed passport application and time was running out for Adam's vacation with his father, Aug 13/12, I submitted the Stromberg-Stein custody orders. I did not want to delay Adam's vacation with his father and thought that submitting unsigned and unfilled orders would do such.

[9] On January 10, 2013, the Applicant spoke with an investigator at Passport Canada via telephone, and subsequently submitted a letter which expressed concern over whether Mr. Simmonds and his lawyer was communicating with Passport Canada and the sharing of her personal information with third parties.

[10] On January 18, 2013, Passport Canada wrote to the Applicant stating that Passport Canada does not disclose information concerning third parties, and that no new information had been provided by the Applicant which would require further investigation.

[11] On February 5, 2013, Passport Canada wrote the Applicant informing her that passport services were withheld until July 16, 2017. The basis of this decision was the fact that the Applicant had submitted false or misleading information to Passport Canada in support of the application to obtain a Canadian Passport on behalf of her son.

II. Issue

[12] The issue raised in the present application is as follows:

- A. Whether the principles of procedural fairness were violated in the Investigation conducted by Passport Canada in response to the passport application submitted by the Applicant.

III. Standard of review

[13] The parties agree that the standard of review is correctness (*Kamel v Canada (Attorney General)*, 2008 FC 338; *Dunsmuir v Canada*, 2008 SCC 9).

IV. Analysis

[14] The Applicant argues that Passport Canada breached its duty of procedural fairness by failing to provide adequate disclosure of communications with Mr. Simmonds and his lawyers (citing *Kamel v Canada (Attorney General)*, 2008 FC 338 and *Abdi v Canada*, 2012 FC 642). The Applicant claims that in not being able to address allegations made by her estranged spouse, she was prejudiced unfairly.

[15] I must disagree with the Applicant. There is no breach of disclosure requirements where irrelevant or immaterial facts are not disclosed to the Applicant, or where there is no reliance on those facts by Passport Canada in making the decision in question (*Slaemen v Canada*, 2012 FC 641, at para 37). The facts relied upon by the Respondent include:

- The Applicant submitted a passport application for Adam and only provided two court documents relating to custody or access;

- The Applicant confirmed to a passport officer that she had submitted all documents pertaining to custody, mobility of, or access to, Adam;
- The Applicant had not submitted all documents pertaining to custody or mobility of, or access to, Adam. Ten other documents existed, including the July 5, 2012 Judgment and the July 6, 2012 Order.

[16] The Applicant was made aware of the relevant facts in the Respondent's November 13, 2012 letter to the Applicant, was given an opportunity to respond, and did not dispute these facts. While other letters from Mr. Simmonds and his lawyer may suggest that the Applicant lacks credibility, credibility was not a factor in the Respondent's decision.

[17] There was no procedural unfairness here. Finally, the Applicant appears to raise a concern over the "unduly punitive" nature of the period of punishment prescribed by Passport Canada in her memorandum of fact and law. This issue was never raised in the Applicant's Notice of Application, and is not a matter to be considered in this review (Federal Court Rule 301(e); *Republic of Cyprus v International Cheese Council of Canada*, 2010 FC 719, at para 48).

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. the Applicant's application is dismissed;
2. Costs to the Respondent fixed in the amount of \$500.00.

"Michael D. Manson"

---

Judge

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

**DOCKET:** T-400-13

**STYLE OF CAUSE:** Simmonds v. AGC

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** September 18, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** MANSON J.

**DATED:** September 20, 2013

**APPEARANCES:**

Mr. Garry K. Thomas FOR THE APPLICANT

Mr. Olivier Pulleyblank FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Thomas and Associates FOR THE APPLICANT  
Barristers and Solicitors  
New Westminster, B.C.

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Vancouver, British Columbia