Federal Court Cour fédérale

Date: 20260109

Docket: T-3378-25

Citation: 2026 FC 29

Ottawa, Ontario, January 9, 2026

PRESENT: The Honourable Mr. Justice Duchesne

BETWEEN:

HAYTHAM ELZAYAT

Applicant

and

ROGERS COMMUNICATION

Respondent

ORDER AND REASONS

[1] The Respondent and moving party Rogers Communications [Rogers] seeks an order for security for cost in the amount of $ 16,000 pursuant to Rule 416 of the *Federal Courts Rules*, SOR/98-106 [the Rules] against the Applicant and responding party, Mr. Elzayat [the Applicant, or Mr. Elzayat].

[2] For the reasons that follow, Rogers' motion is granted, and the Applicant is ordered to post security in the amount of $ 1,500.00.

I. **This Motion's Background**

[3] Rogers' motion had originally been scheduled as a motion to be heard during the Court's general sittings in Toronto on November 18, 2025. Associate Judge Milczynski issued a direction on November 14, 2025, that adjourned the hearing of the motion to December 9, 2025, and directed the Applicant to submit his responding record on December 5, 2025. The Applicant complied with Associate Judge Milczynski's direction.

[4] The hearing of the motion was further adjourned on December 9, 2025, due to the Applicant's inability to access a real-time transcription of the hearing on his electronic device during the hearing. Rogers thereafter elected to have its motion returned as a motion to be determined on the basis of written representations pursuant to Rule 369 of the *Rules* and the parties agreed that the Applicant could serve and file additional written representations not exceeding 25 pages by December 17, 2025, while Rogers could serve and file written representations in reply by December 22, 2025. The Court issued a timetable order consistent with the parties' agreement and the parties filed additional representations within the time set out in the timetable order.

II. **Background of the Litigation**

A. ***The Canadian Human Rights Commission***

[5] The Applicant seeks judicial review of an August 11, 2025, decision by the Canadian Human Rights Commission [CHRC]. The CHRC determined pursuant to paragraph 41(1)(e) of

the *Canadian Human Rights Act*, RSC 1985, c H-6 [the CHRA] that it would not deal with the Applicant's 2024 complaint against Rogers that related to events that occurred in 2015.

[6] The Applicant had attended employment interviews with Rogers in April and August 2015 [the 2015 Interviews], as well as other employment interviews in 2018. He was not hired by Rogers. On October 10, 2024, the Applicant filed a complaint with the CHRC against Rogers in connection with alleged discrimination that occurred during the 2015 Interviews. The Applicant's complaint was filed approximately 9 years after the alleged discriminatory events took place and approximately 8 years after the expiry of the one-year time period described at paragraph 41(1)(e) of the *CHRA*.

[7] The CHRC decided not to deal with the applicant's complaint notwithstanding the Applicant's argument that, a) he was sick and incapable of filing his complaint in a timely manner, and b) that he did not discover that questions regarding his country of origin could constitute discrimination until 2024. The CHRC considered the parties' evidence and submissions as to whether it should exercise its discretion and extend the time set out in paragraph 41(1)(e) of the *CHRA* and deal with the Applicant's complaint. The CHRC noted particularly that the Applicant had commenced, participated in and appeared at hearings in numerous other proceedings between 2015 and 2024. Among these other proceedings was the Applicant's 2019 CHRC complaint against Rogers regarding its alleged discrimination against the Applicant during employment interviews that occurred in 2018. The CHRC determined that, in view of the other activities which the Applicant had been capable of undertaking between 2015 and 2024, it was not plain and obvious that he was incapable of submitting his complaint

within the time set out in paragraph 41(1)(e) of the *CHRA* or shortly thereafter. Accordingly, the CHRC decided not to deal with the Applicant's complaint. The CHRC also decided that the circumstances did not warrant extending the time set out in the *CHRA* to deal with the complaint.

[8] As had been noted by the CHRC, the Applicant had indeed been involved in other proceedings against Rogers. Those proceedings were before the Ontario Superior Court of Justice and before this Court.

B. ***The Ontario Proceedings***

[9] On November 18, 2022, the Applicant caused a statement of claim to be issued in the Ontario Superior Court of Justice's Court File No. CV-22-00690473-0000 through which he claimed damages from Rogers related to the alleged events of discrimination that occurred during 2015 Interviews [the Ontario Claim]. The parties brought competing summary judgment motions to determine the proceeding.

[10] Mr. Justice Akazaki heard the parties on August 6, 2024, and, by Order made on August 19, 2024, dismissed the Applicant's claims on the basis there was no common law remedy for discrimination, and that his claims were statute barred and out of time by operation of the *Limitations Act*, 2002, SO 2002, c 24, Sch B. Akazaki J. also ordered the Applicant to pay Rogers costs fixed in the amount of $ 20,000.

[11] On October 11, 2024, the Applicant filed an appeal with the Court of Appeal for Ontario from Justice Akazaki order dismissing his proceeding against Rogers.

[12] The Applicant then brought a motion for an order permitting him to use a transcription of the hearing of the summary judgment motions as evidence on his appeal. Madam Justice Roberts of the Court of Appeal for Ontario dismissed the Applicant's motion on November 12, 2024, and ordered the Applicant to pay Rogers costs of the motion fixed in the amount of $ 1,500.

[13] The Applicant then moved for a review of Madam Justice Robert's November 12, 2024, order, by a panel of the Court of Appeal for Ontario. By way of its Order made on April 29, 2025, a unanimous panel of the Court of Appeal for Ontario rejected the Applicant's review request and ordered him to pay Rogers its costs fixed at $ 3,500.

[14] The Applicant's appeal from Justice Akazaki's order was scheduled to be heard on December 3, 2025.

[15] The Applicant represented himself in all of his proceedings and hearings before the Ontario courts.

C. ***The Federal Court Proceeding***

[16] On September 9, 2024, the Applicant filed a statement of claim before this court in docket number T-2314-24. The statement of claim contains a claim for damages arising from alleged discrimination that occurred during the 2015 Interviews. The Applicant further alleges in his pleading that he contacted the CHRC and was told that his complaint in relation to the 2015 Interviews could not be accepted due to the passing of the one-year limitation period. This proceeding remains at the pleadings stage.

[17] The Applicant represents himself in his claim against Rogers in this Court.

III. **The Notice of Motion and grounds alleged by Rogers**

[18] Rogers alleges in its notice of motion that it meets the requirements for an order for security for costs to be made against the Applicant. In addition to relying on Rules 401, 407, 416(2) and 416(3) of the *Rules* Rogers alleges and relies upon:

a) Rule 416(1)(c) of the *Rules*, because the Applicant has not provided an address for service in his application for judicial review, is a nominal plaintiff, and there is reason to believe that the Applicant has insufficient assets in Canada available to pay a costs award if ordered to do so;

b) Rule 416(1)(e) of the *Rules*, because the Applicant has other proceedings for the same relief as sought in this proceeding pending elsewhere, including the Ontario Claim and the action he commenced in this Court;

c) Rule 416(1)(f) of the *Rules*, because the Applicant has outstanding costs awards payable to Rogers and has failed pay them in whole or in part; and,

d) Rule 416(1)(g) of the *Rules*, because there is reason to believe that the Applicant's application for judicial review is frivolous and vexatious, and that the Applicant has insufficient assets in Canada available to pay a costs award if ordered to do so;

[19] Rogers also alleges that the Applicant is not impecunious and that his application in this proceeding is without merit.

IV. **The Legislative Framework for an Order for Security for Costs**

[20] The rules applicable to a motion for security for costs find their source in the *Rules* and the underlying policy applicable to the costs of a proceeding. The Court has discretion pursuant to Rule 400 of the *Rules* as to an award of costs, the amount of costs, as well as by whom to whom they are to be paid. It is usual for the successful party to be awarded costs if it requests them. The Court strives to meet the three-fold objective of costs generally, that is, the objective of providing compensation to the successful party, promoting settlement, and deterring abusive behaviour when it awards and fixes an amount of costs (*Air Canada v Thibodeau*, 2007 FCA 115 (CanLII), at para 24).

[21] A costs award, regardless of its amount, may fail to meet this objective when any one of the situations contemplated by Rule 416(1) is made out on a motion for security for costs. Aside from the statutory right to security for costs contemplated by Rule 416(1)(h), each situation described in Rule 416(1) represents a situation where the successful respondent or defendant may ask the Court to require the applicant or plaintiff to post security for costs as a condition of moving their proceeding forward because the right or ability to recover costs from the unsuccessful applicant or plaintiff may be jeopardized without security for costs being made available. Security for costs seeks to mitigate this potential jeopardy by making meaningful or sufficient applicant-held or plaintiff-held assets readily available to ensure that costs awards may be recovered in a fair manner. Security for costs therefore meets the objective of costs more generally in a procedurally fair manner pending a final determination of a costs award.

[22] Security for costs is provided for in Rules 416 to 418, as well as by Rules 400, 407 and Tariff B. The salient portions of Rules 416, 417 and 418 for the purposes of this motion read as follow:

Where security available	**Cautionnement**
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 :
(c) the plaintiff has not provided an address in the statement of claim, or has provided an incorrect address therein, and has not satisfied the Court that the omission or misstatement was made innocently and without intention to deceive,	**c)** le demandeur n'a pas indiqué d'adresse dans la déclaration, ou y a inscrit une adresse erronée, et il n'a pas convaincu la Cour que l'omission ou l'erreur a été faite involontairement et sans intention de tromper;
(e) the plaintiff has another proceeding for the same relief pending elsewhere,	**e)** le demandeur est partie à une autre instance en cours ailleurs qui vise la même réparation;
(f) the defendant has an order against the plaintiff for costs in the same or another proceeding that remain unpaid in whole or in part,	**f)** le défendeur a obtenu une 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;
(g) there is reason to believe that the action is frivolous and vexatious and the plaintiff would have insufficient assets in Canada available to pay the costs of the defendant, if ordered to do so,	**g)** il y a lieu de croire que l'action est frivole ou vexatoire et que le demandeur ne détient pas au Canada des actifs suffisants pour payer les dépens s'il lui est ordonné de le faire;
the Court may order the plaintiff to give security for the	

defendant’s costs.

Staging

(2) The Court may order that security for the costs of a defendant be given in stages, as costs are incurred.

Cautionnement en tranches

(2) La Cour peut ordonner que le cautionnement pour les dépens soit fourni en tranches représentant les dépens engagés.

Further steps

(3) Unless the Court orders otherwise, until the security required by an order under subsection (1) or (2) has been given, the plaintiff may not take any further step in the action, other than an appeal from that order.

Défaut du demandeur

(3) Sauf ordonnance contraire de la Cour, le demandeur qui ne fournit pas le cautionnement ordonné aux termes des paragraphes (1) ou (2) ne peut prendre de nouvelles mesures dans l’instance, autres que celle de porter en appel l’ordonnance de cautionnement.

Increase in security

(6) The Court may, on the motion of a defendant, order a plaintiff who has paid an amount into court under subsection (5) to pay in an additional amount as security for the defendant’s costs.

Cautionnement plus élevé

(6) La Cour peut, sur requête du défendeur, ordonner au demandeur qui a consigné une somme d’argent à la Cour en application du paragraphe (5) de consigner un montant additionnel.

Grounds for refusing security

417 The Court may refuse to order that security for costs be given under any of paragraphs 416(1)(a) to (g) if a plaintiff demonstrates impecuniosity and the Court is of the opinion that the case has merit.

Motifs de refus de cautionnement

417 La Cour peut refuser d’ordonner la fourniture d’un cautionnement pour les dépens dans les situations visées aux alinéas 416(1)a) à g) si le demandeur fait la preuve de son indigence et si elle est convaincue du bien-fondé de la cause.

How security to be given

418 Where a person is required under these Rules or an Act of

Fourniture du cautionnement

418 Sauf ordonnance contraire de la Cour ou disposition contraire

Parliament to give security for costs or for any other purpose, unless otherwise ordered by the Court or required by that Act, the person may do so	d'une loi fédérale, la personne tenue par les présentes règles ou cette loi de fournir un cautionnement pour les dépens ou à toute autre fin peut le faire :
(a) by paying the required amount into court; or	**a)** soit par consignation à la Cour de la somme requise;
(b) by filing a bond for the required amount that has been approved by an order of the Court.	**b)** soit par dépôt d'un cautionnement, approuvé par ordonnance de la Cour, représentant la somme requise.

[23] The salient portions of Rules 400 and 407 read as follow:

Discretionary powers of Court	**Pouvoir discrétionnaire de la Cour**
400 (1) The Court shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid	**400 (1)** La Cour a le pouvoir discrétionnaire de déterminer le montant des dépens, de les répartir et de désigner les personnes qui doivent les payer.
Tariff B	**Tarif B**
(4) The Court may fix all or part of any costs by reference to Tariff B and may award a lump sum in lieu of, or in addition to, any assessed costs.	**(4)** La Cour peut fixer tout ou partie des dépens en se reportant au tarif B et adjuger une somme globale au lieu ou en sus des dépens taxés.
Assessment according to Tariff B	**Tarif B**
407 Unless the Court orders otherwise, party-and-party costs shall be assessed in accordance with column III of the table to Tariff B.	**407** Sauf ordonnance contraire de la Cour, les dépens partie-partie sont taxés en conformité avec la colonne III du tableau du tarif B.

V. **The Evidence on the Motion**

A. ***Rogers' Evidence***

[24] Rogers has produced a copy of the Applicant's application for judicial review as filed in this proceeding as well as a copy of:

a) the Applicant's complaint to the CHRC in file 20240476 which gave rise to the CHRC decision sought to be judicially reviewed in this proceeding;
b) the CHRC's August 11, 2025, decision to not deal with the Applicant's complaint;
c) the Applicant's statement of claim in the Ontario Claim;
d) Justice Akazaki's August 18, 2024, decision on the competing summary judgment motions in connection with the Ontario Claim, and the related costs award;
e) Justice Roberts' November 13, 2024, decision dismissing the Applicant's motion for copies of hearing transcripts and the related costs award;
f) the Court of Appeal for Ontario's panel decision dismissing the Applicant's motion for a review of Justice Roberts' November 13, 2024, decision, and the related costs award;
g) the Applicant's statement of claim in his action commenced against Rogers in this Court; and,
h) the Applicant's September 4, 2025, letter to this Court in which he sought a waiver of the fees required to be paid pursuant to Rule 19 of the *Rules* to commence this proceeding.

[25] Rogers also relies on affidavit evidence that establishes that the costs awards made by the Court of Appeal for Ontario in the combined amount of $ 5,000 remain unpaid by the Applicant.

[26] Rogers has also included a draft bill of costs in its motion record. The draft bill of costs presented reflects anticipated Tariff B costs in the amount of $ 14,220, plus HST thereon for the steps to be taken up to the hearing of the proceeding on its merits. The draft bill of costs is not attached as an exhibit to the affidavit filed on the motion, was not identified in Rogers' notice of motion as contemplated by Rule 359(d) and is not a document that was previously filed with the Court as contemplated by Rule 364(2)(e).

[27] Rogers' draft bill of costs is not properly led in evidence before this Court pursuant to Rule 80(3) of the *Rules* as it is not an exhibit to an affidavit filed in support of Rogers' motion and is not otherwise a document that has been filed with the Court as contemplated by Rule 364(2)(f). It is therefore not admissible as evidence before the Court on this motion. I must therefore disregard it and give it no weight (*Union Square Hospitality Group, LLC v. Aquilini Restaurants Limited Partnership*, 2025 FC 880, at para 33).

B. ***The Applicant's Evidence***

[28] The Applicant's first responding record contains a copy of Roger's notice of motion, the Applicant's written representations on this motion, and three "exhibits" that are not attached to any affidavit as documentary evidence to be led on this motion.

[29] The Applicant's first responding record contains two affidavits identified as a single exhibit to his written representations. The first affidavit is the Applicant's August 29, 2023, affidavit sworn for and filed in relation to his Ontario Claim. The second is the Applicant's affidavit sworn on August 22, 2024, presumably filed in connection with his action filed in this

Court. I infer that the August 22, 2024, affidavit was intended to be served and filed in his proceeding because it bears a docket number referring to the year 2024. Whether the affidavit was in fact served or filed is not established. Neither affidavit contain any attached documentary exhibits in accordance with Rule 80(3) of the *Rules*.

[30] The Applicant included other documents in what he titled and filed as his "Motion Response (Appellant written representations)" on December 17, 2025. The first is another copy of his August 29, 2023, affidavit sworn for and filed in relation to his Ontario Claim. The second affidavit is another copy of his August 22, 2024, affidavit. The third affidavit is a copy of the Applicant's affidavit sworn pm November 18, 2024, and filed with the Court of Appeal for Ontario in court file number 24-CV-1022 pertaining to his appeal from Justice Akazaki's August 18, 2024, order. The Applicant then included copies of T5007 Statements for the 2019, 2023, and 2024 tax years. None of these documents are attached to an affidavit as documentary evidence in accordance with Rule 80(3) of the *Rules.*

[31] While the Court sympathizes with litigants who represent themselves in legal proceedings and is cognizant of the complexities of procedural rules and the rules of evidence applicable to motions, Rule 122(a) of the *Rules* provides explicitly that, "a party who is not represented by a solicitor, […], shall do everything required, and may do anything permitted, to be done by a solicitor under these Rules". The Applicant is therefore required to educate himself with respect to the *Rules* and to comply with them (*Soderstrom v. Canada (Attorney General),* 2011 FC 575, at paras 19 to 23; *Cotirta v Missinnipi Airways*, 2012 FC 1262 at para 13, aff'd 2013 FCA 280; *Rooke v Canada (Attorney General),* 2018 FC 204 at para 23; *Abdeldjalil c.*

Canada (Procureur général), 2024 CF 244, at para 20; *Abikan v. Canada (Citizenship and Immigration),* 2023 FC 149 at para 26). While the Courts should allow self-represented litigants such as the Applicant considerable latitude in assessing their pleadings, submissions and evidence, this latitude cannot give a self-represented litigant additional rights or special dispensations (*Sauve v. Canada*, 2014 FC 119, at para 9; aff'd 2015 FCA 59; *Johnson v. Canadian Tennis Association*, 2024 FC 404, at para 14).

[32] The Court accepts the Applicant's affidavits sworn on August 29, 2023, August 22, 2024, as affidavits filed in his first responding record as affidavits tendered on this motion despite the irregularities in the manner in which they were produced.

[33] The same cannot be said for the documents attached to the Applicant's written representations filed on December 17, 2025. The Court's order dated December 15, 2025, did not grant the Applicant leave to file any additional affidavit or other evidence in support of his motion. Written representations are argument while affidavits are evidence (*Malik c. Canada (Citoyenneté et Immigration),* 2025 CF 1002, at para 5; *Métis Nation - Saskatchewan v. Canada (Attorney General),* 2024 CanLII 6425, at para 37; *Canada (National Revenue) v. Distribution Carflex Inc.*, 2023 CanLII 110323, at paras 26 to 28). Leave to submit additional written representations, meaning arguments, is not the same as leave to submit additional evidence. The Applicant was permitted to serve and file additional written representations which are distinct from and do not include affidavit or documentary evidence. The Applicant's purported additional affidavit and documentary evidence included as free-standing documents in his additional responding record are therefore inadmissible as evidence on this motion.

VI. **Arguments and Analysis**

A. ***Rule 416(1) Generally***

[34] Rogers argues that it is *prima facie* entitled to an order for security for costs as long as it meets the requirements of one of the bases set out in Rule 416(1) of the *Rules*. This branch of Rogers' argument is not addressed by the Applicant in his argument.

[35] The Court agrees with Rogers. As the Court wrote in *Union Square Hospitality Group, LLC v. Aquilini Restaurants Limited Partnership,* 2025 FC 880, at para 11:

> Subject to the Court's discretion, a defendant is *prima facie* entitled to an order for security of costs if he establishes that any of the requirements set out in Rule 416(1) are met. If the moving party has demonstrated that it is entitled to an award of security, unless there is some other reason why security should not be granted, the onus shifts to the responding party to demonstrate under Rule 417 that it is impecunious and that it has a meritorious case. (*Highland Produce Ltd. v Egg Farmers of Canada*, 2010 FC 84, at para 17; *Sauve v Canada*, 2012 FCA 287, at para 6; *Sauve v Canada*, 2014 FC 119 at para 16).

B. ***Rule 416(1)(c) – No address for the Applicant in the notice of application***

[36] Rogers argues that the Applicant has not provided an address in his notice of application and has not satisfied the Court that the omission of an address was made innocently and without intention to deceive. Rogers relies on the Applicant's application for leave and for judicial review as filed in this proceeding and argues that the absence of a physical address for service contained in the originating document is sufficient to meet the requirements of Rule 416(1)(c) of the *Rules*.

[37] The Applicant argues in his written representations that his current landlords are not allowing to him to use his mailing address and that any breach of this condition will result in his being evicted. He also argues that any change in his address change was due to special and exceptional circumstances such as when the original property owner was conducting renovation and construction. He argues that he has no intention to deceive and that his address changes were innocent.

[38] The Applicant's application for judicial review does not contain any physical address for the Applicant. The Applicant has included an email address in his application and the progress of this proceeding suggests that the Applicant uses his email address as his address for service and is receiving documents and communications through that email address. While the Court appreciates the Applicant's argument as to reasons for which he has not provided a physical address in his application for judicial review, as well as his stated innocent intention, it remains that the Applicant's arguments are not supported by any evidence that is admissible on this motion.

[39] A litigant's disclosure of the physical address at which they can be located or served personally is important for the purposes of personal service when personal service is required by a Rule. The failure to disclosure a physical address when Rule 66(2) (c.1) of the *Rules* specifically requires that an address be provided is a failure to comply with the *Rules*. This failure creates a situation where Rogers' ability to recover costs from the Applicant through the procedures and means set out in the *Rules*, including through procedures for the enforcement

orders and judgments that require personal service, may be jeopardized by the absence of a physical address for the Applicant.

[40] I find that Rogers has led sufficient evidence to establish an entitlement to an order for security for costs pursuant to Rule 416(1)(c) of the *Rules* and that the Applicant has not led evidence that his omission to disclose his address is innocent or free of intention to deceive.

[41] While this is sufficient to dispose of the matter of whether Rogers has established that an order for security for costs should issue, I believe it is important for the parties to have the Court consider the other bases advanced by Rogers in support of its motion.

C. ***Rule 416(1)(e) – Another proceeding for the same relief pending elsewhere***

[42] Rogers argues that the relief the Applicant seeks in this proceeding is relief that he is pursuing in his Ontario Claim and in his action before this Court in docket no. T-2314-24.

[43] Rogers' argument is that relief sought in the underlying proceeding is either a) the substance of the CHRC complaint, that is, the discrimination claim, or b), the finding that the Applicant is out of time to bring his complaint. Rogers argues that the CHRC complaint advanced a claim for damages on the basis of discrimination pursuant to the *CHRA* and that this claim for damages is the same relief sought by the Applicant in his Ontario Claim, and is the same relief sought by the Applicant as against Rogers in his action in this Court. Rogers relies on *Double Diamond Distribution, Ltd v. Crocs Canada, Inc*., 2019 FC 1373, at para 22 [*Double Diamond*] in support of its argument.

[44] The Applicant's complaint to the CHRC as produced in the record before the Court does not set out any specific relief sought by the Applicant. Any remedy that could arise from the Applicant's complaint to the CHRC has a statutory source in the *CHRA*. Section 53 of the *CHRA* sets out that a substantiated complaint of discrimination may lead to the making of an order against the person found to have engaged in the discriminatory practice to cease the discrimination, but that order is not required to include compensation for wages and compensation and compensation for pain and suffering experienced as a result of the discriminatory practice. It follows that the relief available to the Applicant before the CHRC is based on a statute and may but need not include financial compensation for wages and/or pain and suffering.

[45] The Applicant's statement of claim in the Ontario Claim is brief and contains few allegations. The relief the Applicant sought was worded as "damages for relief of emotional distress, pain and suffering and wage loss caused", arising from the 2015 Interviews. The Applicant pleaded and stated the content of subsection 5(1) of the *Human Rights Code*, RSO 1990, c H.19 in support of his claim. Justice Akazaki considered that Rogers was not subject to the *Human Rights Code* because it was a national telecommunications company, and, that the Applicant's claim understood as a claim for damages pursuant to the tort of discrimination did not disclose a reasonable cause of action because the tort of discrimination does not exist. Justice Akazaki also determined that the Applicant's tort claims were barred as his action was commenced outside of the basic 2-year limitation period set out in sections 4 and 5 of the *Limitations Act, 2002,* SO 2002, c 24, Sch B. These determinations are now being considered by the Court of Appeal for Ontario.

[46] The Applicant's action against Rogers before this Court in docket no.: T-2314-24 sets out the Applicant's claim for "(a) monetary relief compensation for general damages including discrimination during the interview and at selecting job candidate, loss of potential earnings and, future pecuniary damages of the amount 400,000; (b) punitive or exemplary damages, distress, pain and suffering, aggravation of the amount 125,000 and 255,000 for interests and costs" pursuant to subsection 24(1) of the *Charter*. The relief sought proceeds on the factual basis of the alleged discrimination that occurred during the 2015 Interviews, but the relief sought is based on Rogers' alleged violation of the Applicant's section 15 *Charter* rights during those same 2015 Interviews.

[47] The Applicant's Ontario Claim as well as the action before this Court in docket T-2314-24 seek financial compensation or damages arising from the same facts between the same parties, but on the basis of different causes of action that, while very similar, requires the consideration of the same facts through different but similar substantive legal analyses. For instance, whether Rogers was subject to the *CHRA* and whether the tort of discrimination exists at common law were issues in the Ontario proceeding but are not issues in the action before this Court. Conversely the relief sought in the action before this Court is based on alleged violations of the Applicant's equality rights pursuant to section 15 of the *Charter* and compensation for the violation of those rights pursuant to section 24(1) of the *Charter*, whereas those rights, causes of action and remedies based on those rights are not advanced in the Applicant's other proceedings. The point of intersection between the proceedings before the Ontario courts and the action in this Court remains an award of damages despite that the underlying legal basis of the relief sought may differ.

[48] The Applicant's application in this proceeding does not seek damages. The relief sought is entirely different. The Applicant seeks judicial review of the CHRC's August 11, 2025, decision. Judicial review will require the Court to consider whether the CHRC's decision is reasonable in light of the hallmarks or reasonableness as described in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, and may lead to a judgment remitting the matter back to the CHRC for a re-determination by a different decision-maker within the CHRC.

[49] I must disagree with Rogers' argument. The relief sought by the Applicant in this proceeding is distinct from the relief sought and the claims for damages set out in the Applicant's pending Ontario Claim and in his action pending before this Court. The Applicant is not seeking the same relief he has sought in other pending proceedings elsewhere through this application. Justice Norris' analysis in *Double Diamond* does not apply on the facts of this matter. *Double Diamond* does not assist Rogers.

[50] I find that the Applicant has not met the requirements of Rule 416(1)(e).

D. ***Rule 416(1)(f) – There are Outstanding Costs Orders in Rogers' favour that remain unpaid***

[51] Rogers argues that two costs awards issued by the Court of Appeal for Ontario against the Applicant and in Rogers' favour remain unpaid and that these unpaid costs awards satisfy the requirements of Rule 416(1)(f) and that the order sought should issue as a result. The Applicant argues there are no confirmed orders against him as his appeal remains in process before the Court of Appeal for Ontario.

[52] The Court agrees with Rogers. This Court determined in *Fortyn v. Canada (T.D.),* 2000 CanLII 17133 (FC), [2000] 4 FC 184, that a costs award from a proceeding in the Ontario courts is a costs award contemplated by Rule 416(1)(f) of the *Rules*. It follows that outstanding costs awards from the courts of Ontario may be used to satisfy Rule 416(1)(f).

[53] The costs awards made by the Court of Appeal for Ontario on November 13, 2024, and April 29, 2025, are costs orders that have been made and are not stayed due to a pending appeal or order. They are payable costs orders made against the Applicant, in favour of Rogers, and remain unpaid despite being payable. The Applicant's argument must be rejected.

[54] I therefore find that Rogers has led sufficient evidence to establish an entitlement to an order for security for costs pursuant to Rule 416(1)(f) of the *Rules*.

E. ***Rule 416(1)(g) – There is reason to believe that the proceeding is frivolous and vexatious, and the Applicant has insufficient assets to pay costs***

[55] Rogers argues that a proceeding may be frivolous and vexatious if it is not a fair and honest use of the Court or that it is a collateral proceeding or brought for an improper purpose (*CRB Consulting Inc. v. Massage Addict Incorporated*, 2023 FC 1498, at para 10, citing *Maheu v IMS Health Canada*, 2002 FCT 558 at paras 16-24)). Rogers submits that this application is a collateral proceeding to Justice Akazaki's decision and findings that caused the Applicant's claim to be dismissed on summary judgment. Rogers also submits that the Applicant's discrimination claims made in his complaint to the CHRC are duplicative of the discrimination

claims he has advanced in the Ontario Claim and in the action in this Court, and that this proceeding is frivolous and vexatious as a result.

[56] The Court cannot agree. As discussed above, this proceeding seeks judicial review of the CHRC's decision to not deal with the Applicant's complaint or to extend the time for his complaint to be filed. While superficially similar issues were before the Ontario Superior Court of Justice and the Court of Appeal for Ontario, the issues in this proceeding are different that the issues before the courts in those proceedings. The Applicant's application is not a collateral proceeding to the Ontario Claim, and there is no evidence before the Court that it was brought for an improper purpose.

[57] As Rogers has not established that the Applicant's application is frivolous and vexatious within the meaning of Rule 416(1)(g), I need not consider the second requirement of the rule, that is, whether Rogers has demonstrated that the Applicant does not have sufficient assets in Canada available to pay Rogers its costs if ordered to do so.

F. ***Rule 417 – Impecuniosity and Merits***

[58] Rules 415 and 417 provide that the Court may refuse to order security for costs if an applicant demonstrates impecuniosity, and the Court is of the opinion that the case has merit. It is a conjunctive test that shifts the onus on the motion to the Applicant.

[59] The Applicant has neither pleaded that he is impecunious nor led evidence that he is impecunious. As the Applicant has not satisfied the first part of the test set out by Rule 417, I need not consider the second part of the test as to whether his application has merit.

G. ***The Amount of Security***

[60] The manner of determining the amount of security for costs to be ordered on a motion for security for costs was explained by Justice de Montigny (as he then was) in *Bodum USA, Inc v Trudeau Corporation (1889) Inc*., 2012 FC 240, at para 19 as follows:

> It is well established that the amount of security for costs must correspond to the probable costs to which the defendant would be entitled, should it be successful in defending the action brought against it. While security for costs is an indemnity and ought not be illusory, it must also not be oppressive so as to prevent a plaintiff from bringing a lawsuit. The amount of security is at the discretion of the Court, bearing in mind the draft bill of costs while also taking into account any reductions that might be made on a taxation. The appropriate factors to be taken into account in fixing the security for costs were aptly summarized by Prothonotary Hargrave in *Tough Traveler* (*Tough Traveler, Inc. v Taymor Industries, Ltd*, (1994) 1994 CanLII 19551 (FC), 59 C.P.R.(3d) 186, 90 F.T.R. 70), at p. 190:
>
> > In deciding on appropriate security for costs there are also other points that I have kept in mind including that "an allowance will have to be made for the unquenchable fire of human optimism and the likelihood that the figure of taxed costs put forward would not emerge unscathed after taxation" (*Procon Ltd., supra,* at p. 571); that every case, this included, will not necessarily be fought through to a finish and therefore security for costs might be somewhat less; that security for costs ought not to be illusory, but at the same time ought not to be oppressive so as to hamper the plaintiff in bringing a legitimate lawsuit; and that if the security proves inadequate, the defendant can always apply for additional security at a later date.

[61] The absence of a draft or skeleton bill of costs is not an impediment to security for costs being ordered as the quantum of security to be posted is fixed by the Court, not by the draft or skeleton bill of costs that may be submitted by either of the parties (*Tough Traveler, Inc. v. Taymor Industries, Ltd*., 1994 CanLII 19551 (FC), (1994),C.P.R. (3d) 186 at page 190; *Tender Loving Things Inc. v. Doctor Joy*, 1995 CarswellNat 1810, 103 F.T.R. 75, 58 A.C.W.S. (3d) 1076 [*Tender Loving Things*]). Rule 416 does not require that a bill of costs be tendered as evidence on a motion for security for costs although it is sound practice to lead a draft bill of costs in evidence on this type of motion, particularly so when a significant quantum of security is sought (*Tender Loving Things* at paras 6, and 8 to 11). In such a case, the draft bill of costs will be a factor but not the only factor considered by the Court in the exercise of its discretion. It is a certainty that costs will be incurred by the parties as this proceeding progresses and it is clear that the requirements of Rule 416(1) have been met by Rogers.

[62] In my discretion pursuant to Rule 400(1) of the *Rules* and considering that Rogers' evidence is that the Applicant receives approximately $ 15,000 per annum in disability payments from the Province of Ontario, and that there is no evidence led as to the Applicant's other assets, if any, I find that security for costs in the amount of $ 1,500.00 is appropriate in all of the circumstances, including Rogers' failure to lead a draft bill of costs in its motion record. This amount is not illusory and is not in my view oppressive on the Applicant so as to unfairly hamper this judicial review proceeding.

[63] As is provided by Rule 416(3), the Applicant may not take any further steps in this proceeding other than an appeal of this order until the security ordered to be given is given. Nothing in this Order is intended to curtail Rogers' rights pursuant to Rule 416(6) of the *Rules*.

H. ***Costs of this Motion***

[64] Rogers has sought its costs of this motion without suggesting the amount of such costs. In my discretion pursuant to Rule 400(1), considering the factors sets out in Rule 400(3) of the *Rules*, and considering paragraph 82 of the Court's *Amended Consolidated General Practice Guidelines* dated June 20, 2025, I decline to award any costs on this motion.

ORDER in T-3378-25

THIS COURT ORDERS that:

1. The Respondent and moving party Rogers Communications motion is granted.
2. The Applicant and responding party, Mr. Elzayat, is ordered to give security for the costs in this proceeding in the amount of $ 1,500.00.
3. The Applicant and responding party Mr. Elzayat may not take any further steps in this proceeding other than an appeal of this order until the security ordered to be given is given.
4. There are no costs awarded on this motion.

"Benoit M. Duchesne"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-3378-25
STYLE OF CAUSE:	HAYTHAM ELZAYAT v. ROGERS COMMUNICATION
ORDER AND REASONS:	DUCHESNE, J.
DATED:	JANUARY 9, 2026

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

WRITTEN SUBMISSIONS BY:

Haytham Elzayat	FOR THE APPLICANT (SELF-REPRESENTED)
Leslie A. Frattolin Stephanie C. Kolla	FOR THE RESPONDENT

SOLICITORS OF RECORD:

DLA Piper (Canada) LLP Toronto, Ontario	FOR THE RESPONDENT