

FEDERAL COURT

In the matter of Application under section 14 of the *Personal Information Protection and Electronic Documents Act*, 2000, S.C. c. 5 [PIPEDA]

BETWEEN:

IZABELA POPOVA

Applicant

– and –

THE EMPIRE LIFE INSURANCE COMPANY

MAUREEN WHEELER, MANAGER OF THE GROUP LIFE AND DISABILITY CLAIMS

Respondents

APPLICANT’S WRITTEN REPRESENTATIONS

PART I – THE FACTS

1. This is a motion brought by the Applicant pursuant to Rule 369 of the *Federal Courts Rules*.
2. The motion is part of a Notice of Application filed by the Applicant under section 14 of the *Personal Information Protection and Electronic Documents Act*, 2000, [PIPEDA], on December 16, 2013.

3. The motion brought by the Applicant, Izabela Popova, seeks an order, granting Dimitre Popov (her father) permission to act on behalf of and as a representative of the Applicant, providing for no costs to either party, and allowing an extension of time for the Applicant to serve its affidavit on the Respondent's solicitor pursuant to Rule 306 of the *Federal Courts Rules*.
4. The Applicant relies on the facts as set out in the Affidavit of Dimitre Popov, with Exhibits attached, affirmed January 31, 2014 ("Affidavit of Dimitre Popov").

Applicants' Motion Record ("Record"), Affidavit of Dimitre Popov

5. The Applicant relies on the facts as set out in the Affidavit of Izabela Popova, affirmed January 30, 2014 ("Affidavit of Izabela Popova").

Applicant's Record, Affidavit of Izabela Popova

PART II – POINTS IN ISSUE

6. Despite the fact that the application is well-founded, without adequate legal help the Applicant is doomed to lose her case against the Respondents who are represented by senior litigation counsel described as a gold medalist from university, a "versatile litigator" and with "a wealth of experience and knowledge to all aspects of his litigation practice."

7. The estimated **\$32,939** for professional legal representation is nearly the net income this Applicant earns in one full year as a full-time employee. A copy of the estimate, titled “Litigation Budget,” is marked as Exhibit “**A**” to the Affidavit of Dimitre Popov.

8. The maximum the Court may award damages to the Applicant under PIPEDA (including damages for any humiliation that the Applicant has suffered) “in the most egregious situations” is **\$5,000** (*Nammo v. TransUnion of Canada Inc.*) – an amount representing less than 1/6th of the amount asked by legal counsel to defend the Applicant’s legal rights.

9. Compelling the Applicant to be represented by a licenced lawyer as a condition of allowing the Applicant access to the justice system would have the effect of inflicting emotional distress and financial suffering in addition to the suffering already caused to the Applicant by the Respondents – in the light of the fact that representation by a lawyer would cost the Applicant \$32,939 and the likelihood that the maximum the Court may award damages to the Applicant is \$5,000 (*Nammo v. TransUnion of Canada Inc.*).

10. Having to spend \$32,939 for the possible remedy of the maximum of \$5,000 not only defies logic, common sense, and financial sense, but also precludes members of the public whose legal rights have been violated from access to the justice system.

11. The Applicant has no legal knowledge and experience – essential to defending her legal rights through legal action against the Respondents that are being represented by senior litigation counsel with “a wealth of experience and knowledge to all aspects of his litigation practice.”

Applicant’s Record, Affidavit of Izabela Popova

12. Without the help of Dimitre Popov, the Applicant would not have been able to file the Application with this Honourable Court in an attempt to seek justice and remedies for the suffering arising out of the Respondents’ conduct – despite the “Report of Findings” issued by the office of the Privacy Commissioner of Canada who had concluded that the complaint against the corporate Respondent was “**well-founded.**”

Applicant’s Record, Affidavit of Izabela Popova

Applicant’s Record, Affidavit of Dimitre Popov, Exhibit “C”

13. The Applicant’s father, Dimitre Popov, has some legal experience and knowledge, and is prepared to take on the representation of the Applicant without compensation.
14. Dimitre Popov is a reasonable and responsible individual and a man of integrity who would fairly and adequately represent the interests of the Applicant.

15. By representing the Applicant in this proceeding, Dimitre Popov would also be able
- a) to facilitate the work of the Court over the course of this action; and
 - b) to contribute to greater justice.
16. An order against the motion for leave to represent the Applicant in the circumstances of this particular case, would
- a) Preclude the Applicant from seeking remedies through the justice system for the obvious reason that no reasonable or average person would seek remedies limited to \$5,000, “in the most egregious situations” (*Nammo v. TransUnion of Canada Inc.*), on the condition that they have to pay their solicitor \$32,939 (as much as 6 times the amount of the possible remedy). Not to mention that in the event that the Respondents’ solicitor wins the case for his clients, the Applicant could be ordered by this Honourable Court to pay the solicitor tens of thousands of dollars (his expenses and profit) – an outcome that could trigger suicidal thoughts.
 - b) Be in contravention of the Canadian Charter of Rights and Freedoms which dictates that, “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination.”

- c) Secure victory for the Respondents against whom there is substantiated, compelling, and conclusive evidence that would otherwise establish the Respondent's liability under the law.
- d) Allow the Respondents to evade their legal responsibility.
- e) Serve as encouragement for the Respondents to continue with their improper and legally unacceptable conduct and practices – resulting in more members of the public being harmed (given the nature of the corporate Respondent's business).
- f) Bring the administration of the Court into disrepute.

PART III – THE LAW

- 17. It is in accordance with the principles of justice that the motion to represent the Applicant be granted.
- 18. Rule 3 of the *Federal Courts Rules* states that the *Federal Courts Rules* should be interpreted and applied so as to secure the just, most expeditious and least expensive determination. In light of the fact that the Applicant has no legal knowledge, training and experience, the Applicant Popova is not only vulnerable and helpless in opposing the Respondents' senior solicitor but would also hamper the progress of this litigation.

19. The Applicant relies upon:

- a) Rules 3, 53, 54, 55, and 369 of the *Federal Courts Rules*;
- b) Paragraphs 114.(1)(b), (c), and (d) of the *Federal Courts Rules*;
- c) Subsection 15.(1) of the Canadian Charter of Rights and Freedoms.

PART IV – ORDER SOUGHT

20. The Applicant requests an order in the terms set out in the Notice of Motion and draft Order attached to this Motion Record herein.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATE: January 31, 2014

Izabela Popova

[REDACTED]

Toronto, Ontario

[REDACTED]

Tel: [REDACTED]

Fax: Please call first

E: [REDACTED]

Applicant