

CANADA / JUDGMENT

Yan. v. Canada (Chief Electoral Officer)

2026 ONCA 95

COURT

Court of Appeal for Ontario

DECIDED

9 February 2026

Source: norma.lexum.com · Research copy typeset by Esheria. Not court-issued or certified.

Yan. v. Canada (Chief Electoral Officer) Collection Decisions of the Court of Appeal Date 2026-02-09 Neutral citation 2026 ONCA 95 Docket numbers COA-25-CV-1166, M56651 Judges Monahan, Patrick J. Subject Civil Decision Content COURT OF APPEAL FOR ONTARIO CITATION: Yan. v. Canada (Chief Electoral Officer), 2026 ONCA 95 DATE: 20260209 DOCKET: M56651 (COA-25-CV-1166) Monahan J.A. (Motion Judge) BETWEEN Nathalie Xian Yi Yan Applicant (Appellant/ Moving Party) and Chief Electoral Officer of Canada Respondent (Respondent/Responding Party) Nathalie Xian Yi Yan, acting in person Andrea Bourke, for the responding party Heard: February 2, 2026 REASONS FOR DECISION

[1] The moving party, Nathalie Xian Yi Yan (“Ms. Yan”), brings a motion seeking to abandon her appeal of the April 4, 2025 order of the application judge, and an order granting her costs of the appeal against the responding party, the Chief Electoral Officer of Canada (the “CEO”). At the hearing, Ms. Yan indicated that she wished to abandon her appeal without conditions and was merely seeking costs.

Background

- [2] Ms. Yan was a candidate in the 2021 federal general election. Although she filed the financial reports required by the Canada Elections Act, S.C. 2000, c. 9 (the “Act”), she failed to do so in the proper form by the deadline prescribed in the Act. When she attempted to register as a candidate for the April 2025 federal general election, Elections Canada (the “Agency”) advised her that she was ineligible to stand as a candidate by virtue of s. 65(i) of the Act.
- [3] Ms. Yan immediately brought an application to extend the time for the filing of her 2021 financial report and/or for relief from the consequence of the late filing (the “Application”), so that she could run in the 2025 federal election.
- [4] On January 16, 2025, in unrelated proceedings, Ms. Yan was declared a vexatious litigant pursuant to s. 140 of the Courts of Justice Act (“CJA”): see *College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario v. Yan & Bahadur v. Yan*, 2025 ONSC 352.[1] The terms of that order required her to seek leave to institute new proceedings in any court or continue any proceeding previously commenced. Ms. Yan therefore was required to seek leave under s. 140(3) of the CJA to institute the Application. The application judge found

that the Application was not an abuse of process and that Ms. Yan acted reasonably in bringing it, and thus granted her leave under s. 140(4). However, the application judge proceeded to dismiss the Application on its merits, finding that he did not have jurisdiction to grant an extension of time to file the report and that Ms. Yan did not exercise sufficient due diligence in the filing of her financial reports.

- [5] Ms. Yan filed a notice of appeal to this court from the application judge's order. It is this appeal which she is now abandoning, because subsequent to the 2025 federal election, the Agency reinterpreted s. 65(i) of the Act and decided that Ms. Yan is no longer ineligible to stand as a candidate, thereby effectively rendering her appeal moot.
- [6] The Agency's change of position concerning s. 65(i) of the Act was publicly communicated in Interpretation Note 2025-08, *Effect of Late Reporting on Eligibility*, issued by the Agency on November 14, 2025 (the "Interpretation Note"). The Interpretation Note explained that there was an inconsistency between the English and French versions of s. 65(i) of the Act, and the Agency decided to apply the English version going forward, which narrowed the class of persons ineligible to those who had failed to file a financial report. As a result, persons such as Ms. Yan, who had filed the necessary reports but had done so late, were no longer ineligible to be candidates. On December 23, 2025, the Agency informed Ms. Yan that her name was removed from the list of people ineligible to be candidates in future federal elections. Had this interpretation been in effect in March 2025, Ms. Yan would have been permitted to register as a candidate in the April 2025 election.
- [7] Since the outcome Ms. Yan was ultimately seeking was the ability to run in future federal elections and she obtained this outcome from the Agency's reinterpretation, on January 23, 2026, she brought a motion seeking "permission" to abandon her appeal of the application judge's order, while also seeking an order for costs of her abandoned appeal and the Application in the Superior Court. Does Ms. Yan require leave under s. 140 of the CJA to bring the present motion?
- [8] As noted above, Ms. Yan remains subject to a vexatious litigant order (VLO), pending her appeal of that order. Although she was granted leave under s. 140 of the CJA to commence the Application in the Superior Court, the issue is whether that grant of leave also grants her an automatic right to appeal the order dismissing her Application, or whether a fresh application for leave under s. 140 is required in order to commence an appeal and bring this associated motion within the appeal.
- [9] In my view, the latter interpretation is correct. The fact that a person subject to a VLO has been given leave to commence a particular proceeding does not thereby suspend the effect of the VLO. Thus, where a person is subject to a VLO which includes terms preventing them from instituting further proceedings in any court or continuing previously instituted proceedings in any court unless they obtain leave (i.e., the exemplar terms provided in s. 140(1) of the CJA), then that person must obtain leave to bring any further proceedings beyond those for which leave has been granted. A "proceeding" includes an appeal: *Varma v.*

Rozenberg, 1998 CanLII 4334 (Ont. C.A.), at para. 5. This is also plain on the face of the order, which requires leave to institute or continue proceedings. In other words, a grant of leave does not carry forward; it applies only to the specific action, application, or motion for which it is granted. If it were otherwise and a person subject to a VLO had an automatic right to bring motions or appeals whenever they are granted leave to institute or continue a proceeding, it could give rise to the very mischief that the VLO was intended to prevent, namely, subjecting other parties and the court to potentially frivolous and vexatious litigation.

- [10] Therefore, Ms. Yan was required to obtain leave to commence her appeal of the application judge's order and to bring the present motion for costs. While she failed to do so, in the exceptional circumstances of this case, I am nevertheless prepared to grant her leave to bring this motion myself, for a number of reasons.
- [11] First, Ms. Yan has now abandoned her appeal, a step for which no permission is required, and the only remaining live issue is her request for costs. Second, it does not appear that the specific issue of whether a grant of leave under s. 140 extends to appeal proceedings has ever squarely been addressed by this court, so Ms. Yan should not be faulted for failing to seek leave of a Superior Court judge before bringing this motion. Third and most importantly, Ms. Yan's appeal as well as her motion for costs each had reasonable grounds and were not an abuse of process, given the fact, as noted above, that had the Agency's current interpretation of s. 65(i) of the Act been in effect at the relevant time, Ms. Yan would have been permitted to run in the April 2025 election. This would have meant that the entire litigation would have been unnecessary.
- [12] I therefore find that it is in the interests of justice that Ms. Yan be permitted to seek costs of her abandoned appeal. I grant her leave to bring the motion for costs pursuant to s. 140(4) of the CJA, exercising my jurisdiction as a Superior Court judge pursuant to s. 13(2) of the CJA and relying on r. 2.03 of the Rules to dispense with the procedural requirements set out in r. 38.13, which must normally be followed when seeking leave. I do so in the exceptional circumstances of this case, where it was previously unclear whether a person subject to a VLO needed a separate grant of leave to file an appeal where leave had been granted to bring the underlying proceeding in the Superior Court.
- [13] In the future, even where leave was granted to initiate or continue a proceeding in another court, leave must be sought from a Superior Court judge under s. 140(3) of the CJA prior to filing a notice of appeal with this court or bringing any associated motions. If leave is not obtained, the Registrar will refuse to accept a notice of appeal or notice of motion, pursuant to r. 2.2.09(5) of the Rules. Is Ms. Yan Entitled to her Costs of an Abandoned Appeal?
- [14] As a preliminary matter, Ms. Yan does not require "permission" to abandon her appeal but may do so simply by filing a notice of abandonment with the court: r. 61.14(1). She included a draft notice of abandonment in her motion record before me.

- [15] When an appellant abandons their appeal, the respondent is entitled to costs of the appeal, unless they did not file a response to the appeal: rr. 61.14(3), 61.14(4). The CEO did not file responding materials to the underlying appeal, and does not seek costs of this motion, so no costs should be ordered in their favour.
- [16] The issue is whether I should exercise a residual jurisdiction under s. 131 of the CJA to order costs in favour of Ms. Yan in the context of her abandoned appeal. Ms. Yan sought costs from the CEO of \$150,000, but also invited me to determine a “justified number” for the quantum of a costs award.
- [17] As noted above, Ms. Yan argues that had the Agency adopted the narrower interpretation of s. 65(i) of the Act set out in the Interpretation Note prior to the April 2025 federal election, she would have been eligible to be a candidate, and this entire litigation would have been unnecessary.
- [18] At the same time, the Agency’s previous interpretation of the Act was reasonable, given the inconsistency between the French and English versions. Moreover, the Agency proactively decided to adopt a less restrictive interpretation of s. 65(i) following the election, recognizing that ambiguity in a statute should be resolved in favour an interpretation that furthers the exercise of Charter rights. I am concerned that statutory bodies such as the Agency should not be penalized through costs orders for modifying their interpretations of statutory provisions where, as here, they did so in good faith and to advance Charter values.
- [19] On balance, therefore, I decline to order costs in favour of Ms. Yan.

Disposition

- [20] Ms. Yan’s appeal bearing court file no. COA-25-CV-1166 is abandoned. Her motion for costs of that appeal is dismissed and no costs are ordered in favour of either party. “P.J. Monahan J.A.”
- [1] Ms. Yan has appealed the vexatious litigant order to this court (COA-25-CV-0147), but her appeal has not yet been decided.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF’s page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://norma.lexum.com/coa/coa/en/item/23921/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/yan-v-canada-chief-electoral-officer-2026>

Prepared on 27 October 2026 · Esheria