

Federal Court



Cour fédérale

**Date: 20150608**

**Dockets: A-144-12  
A-531-12**

**Citation: 2015 FC 722**

**Ottawa, Ontario, June 8, 2015**

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

**BETWEEN:**

**VLASTA STUBICAR**

**Appellant (Plaintiff)**

**and**

**HER MAJESTY THE QUEEN  
IN RIGHT OF CANADA**

**Respondent (Defendant)**

**JUDGMENTS AND REASONS**

[1] Ms. Stubicar, a lawyer, represented herself in two appeals before the Federal Court of Appeal. In the case bearing docket number A-144-12, the Court of Appeal upheld Ms. Stubicar's appeal and awarded her "costs throughout" (2012 FCA 288 at para 6). In the case bearing docket number A-531-12, the Court of Appeal dismissed her appeal with costs (2013 FCA 239 at para 4). It fell upon Bruce Preston, Assessment Officer, to tax the costs in each case.

[2] In A-144-12, Ms. Stubicar's costs were assessed in the amount \$372.78, which was the amount of disbursements claimed. Mr. Preston disallowed the \$2,100 claimed under Tariff B. Tariff B covers counsel fees and disbursements allowable on assessment. Ms. Stubicar is of the view that Mr. Preston was wrong to disallow the Tariff B items in respect of assessable services. In A-531-12, in a reasoned decision, Mr. Preston disallowed some items claimed and assessed Her Majesty's costs at \$1,162.46. Before me are Ms. Stubicar's motions in writing pursuant to rules 369 and 414 of the *Federal Courts Rules* for a review of both of these assessments.

[3] In A-144-12, in which she was awarded costs, Ms. Stubicar seeks an order setting aside the certificate of assessment and referring the matter for reassessment of the relevant Tariff B items in accordance with such directions the Court may issue. Let me say, at the outset, that if Ms. Stubicar succeeds I will issue the certificate of costs the assessment officer should have issued. It would be an intolerable waste of the Court's time to send the matter back.

[4] In A-531-12, the case in which Her Majesty was awarded costs, Ms. Stubicar submits that Mr. Preston erred in principle and failed to properly review the evidence on the record and her submissions.

I. A-144-12

[5] Were it not for the text of the Rules, and various decisions of the Federal Court of Appeal, Ms. Stubicar might have had a case. Her argument is that this case deprived her from earning income on other matters (or caused her to work longer hours). There could be an analogy with a corporation which repairs the damage caused to its property by the defendant. In such a

case, the plaintiff is entitled to charge the direct and indirect cost of labour, but is not permitted to make a profit (*Bell Telephone Co of Canada v Montreal Dual Mixed Concrete Ltd and Highway Paving Co Ltd* (1959), 23 DLR (2d) 346 (Québec Queen's Bench, Appeal Side) and *Air Canada v Canada* (1989), 28 FTR 148, [1989] FCJ No 234 (QL)). The idea is that labour would otherwise have been put to other use.

[6] Under Rules 400 and following, the Court has full discretionary power with respect to costs. The Court may also give special directions to the assessment officer which, in this case, it did not. Ms. Stubicar could have requested directions pursuant to Rule 403, but she did not.

[7] Under Rule 405, the assessment officer assesses costs in light of the Tariff, unless the Court has issued special directions.

[8] For the most part, the Court has not given special directions to award Tariff B costs for assessable services to self-represented litigants, be they lawyers or not. As stated in *Lavigne v Canada (Human Resources Development)*, 229 NR 205, [1998] FCJ No 855 (QL) (CA) at paras 1-2, Tariff B does not contemplate the awarding of counsel fees to lay litigants. The service cannot be rendered by a litigant to himself.

[9] On occasion, the Court has made a special award. In *Sherman v Canada (Minister of National Revenue)*, 2003 FCA 202, the Court of Appeal awarded some Tariff B costs to a self-represented lawyer. However, the order read:

...a moderate allowance for the time and effort devoted to preparing and presenting the case before both the Trial and the

Appeal Divisions on proof that the appellant, in so doing, incurred an opportunity cost by forgoing remunerative activity.

[10] Ms. Stubicar could have sought directions but she did not. As Lord Atkins stated in *Evans v Bartlam*, [1937] AC 473 at 479:

The fact is that there is not, and never has been, a presumption that everyone knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application.

## II. A-531-12

[11] Ms. Stubicar has engaged in a microscopic examination of the decision and submits that Mr. Preston misunderstood or ignored the evidence and several submissions. I cannot agree. There is a presumption that he fully considered the record. That presumption has not been rebutted. In any event, the decision is reasonable in light of the record (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708).

[12] An intervention in the decision of an assessment officer is limited to cases where there has been an error in principle or when the amount assessed is so unreasonable that an error in principle must have been the cause (*Apotex Inc v Merck & Co Inc*, 2008 FCA 371 at para 10 and *Bellemare v Canada (Attorney General)*, 2004 FCA 231 at para 3). There was no such error in this case and the amount assessed was reasonable.

III. Costs

[13] Counsel for Her Majesty submits that both assessment reviews should be dismissed with costs in each case of \$400. In my discretion, I shall fix costs at \$400, \$200 in each case.

**JUDGMENTS**

**FOR REASONS GIVEN;**

**THIS COURT'S JUDGMENTS are that:**

1. In review of the assessment of costs, the motion in court file A-144-12 is dismissed with costs in favour of the defendant of \$200, all inclusive.
2. In review of the assessment of costs, the motion in court file A-531-12 is dismissed with costs in favour of the defendant of \$200, all inclusive.
3. A copy of these Judgments and Reasons shall be placed in both files.

“Sean Harrington”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKETS:** A-144-12  
A-531-12

**STYLE OF CAUSE:** VLASTA STUBICAR v HER MAJESTY THE QUEEN  
IN RIGHT OF CANADA

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

**JUDGMENTS AND REASONS:** HARRINGTON J.

**DATED:** JUNE 8, 2015

**WRITTEN REPRESENTATIONS BY:**

Vlasta Stubicar FOR THE APPELLANT (PLAINTIFF)  
(ON HER OWN BEHALF)

Max Binnie FOR THE RESPONDENT (DEFENDANT)

**SOLICITORS OF RECORD:**

William F. Pentney FOR THE RESPONDENT (DEFENDANT)  
Deputy Attorney General of  
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