Federal Court  Cour fédérale

Date: 20190724

Docket: 16-T-6

Citation: 2019 FC 979

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, July 24, 2019

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

DAVID LESSARD-GAUVIN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

[1] This is a motion by the applicant seeking (1) a review of the assessment of a bill of costs for the original motion on record and (2) an order to compel a person to appear for contempt of court for making a false statement or committing perjury. On February 19, 2016, the Court partially allowed the original motion on record seeking an extension of time to file an application for judicial review. The Court therefore ordered costs against the applicant. Subsequently, in

January 2019, the respondent requested an assessment of its bill of costs. It is not necessary to provide more details concerning the original motion in order to dispose of this new motion.

[2] The Assessment Officer (the Officer) issued a certificate of costs on May 23, 2019, further to written representations from the parties. In so doing, the Officer rejected the applicant's representations that costs should be assessed only at the end of the proceedings, which are currently ongoing, along with other proceedings involving the applicant, in Docket T-1136-16. The Officer also made two changes to the respondent's bill of costs. First, she adjusted the unit value for the bill from $140 to $150, to reflect the change in the unit value that was made on April 1, 2018. Second, she adjusted the units claimed for assessment services to 50% of the unit value, in accordance with section 28 of the Table in Tariff B of the *Federal Courts Rules*, SOR/98-106, given the respondent's admission that these services were performed by a paralegal, not by a solicitor.

[3] On June 6, 2019, the applicant filed this motion. The applicant submits that the Officer erred in law by failing to take into account a rule of interpretation when determining the unit value. According to the applicant, the Officer should have considered Quebec law, which requires the use of values in effect on the day of the judgment. The applicant also contends that the Officer breached the fundamental principles of justice by refusing to issue a directive asking the respondent to confirm which other services may have been performed by a paralegal. Consequently, according to the applicant, he was not given the right to be heard. The applicant also claims that the paralegal, who prepared an affidavit suggesting that a solicitor had done the work that she herself had performed, made a false statement that warranted the attention of the

Court. In fact, the applicant accuses the respondent of failing to comply with section 28, which indicates that paralegal fees are to be charged at 50% of the unit value.

[4] For the reasons set out below, the applicant's motion is dismissed in its entirety, with costs.

I. **Standard of review**

[5] The respondent identified the correct standard of review. In reviewing assessments of costs, the Court should intervene only if the Officer erred in principle or the amount of the award is so inappropriate or unreasonable so as to suggest an error in principle: *McMeekin v Canada (Human Resources and Skills Development)*, 2012 FC 58 at paras 4–5; *Butterfield v Canada (Attorney General)*, 2008 FCA 385 at para 8. Moreover, the Court should intervene only in "the plainest cases": *Apotex Inc v Merck & Co Inc*, 2008 FCA 371 at paras 16–17 [*Apotex FCA*].

[6] Before continuing, I must confirm that, for the reasons set out below, I do not accept the applicant's arguments that the Officer erred in law or breached the fundamental principles of justice. The above standard is therefore the only standard of review for the Officer's decision.

II. **Certificate of costs**

[7] Essentially, the applicant submits that the Officer should have taken into account Quebec law, which uses the values in effect on the day of the judgment rather than the values in effect on the day of assessment. According to the applicant, the unit value should therefore be $140 instead of $150. However, as the respondent submits, the case law of this Court and the Federal

Court of Appeal states that the value in effect on the day of assessment must be used: *Rogers Communications Incorporated v Buschau*, 2012 FCA 100 at paras 9, 14, 22; *Horn v Canada*, 2010 FC 501 at para 26; *Ferme avicole Kiamika Inc v Canada (Agriculture and Agri-Food)*, 2006 FC 1392 at para 3; *Doucet v Canada (Attorney General)*, 2005 FCA 268 at para 5; *Kumar v Canada*, 2006 FCA 256 at para 7; *Tucker v Canada*, 2007 FCA 133 at paras 1, 4.

[8] The applicant is correct in claiming, in reply, that these cases do not discuss legal principles in order to support the fact that the unit value on the day of assessment must be used. Nevertheless, the case law of the Federal Court of Appeal, which is binding for this Court, confirms that the unit value on the day of assessment should be used. This case law is therefore sufficient to conclude that the Officer did not err in using the unit value of $150.

[9] Furthermore, there was no breach of the fundamental principles of justice. The applicant did not submit any case law or analysis indicating that, under these circumstances, the right to be heard required more than the written submissions he was granted. As the respondent contends, the Officer had the discretion to issue a directive or an order. The mere fact that the Officer did not exercise her discretion and did not issue a directive that the applicant would have liked does not constitute a breach of the fundamental principles of justice.

[10] Consequently, the applicant did not point to any error in principle on the part of the Officer and did not contend that the amount awarded suggested an error in principle. This is not one of the plainest cases; there is therefore no reason for the Court to intervene.

III. **Contempt of court**

[11] The applicant essentially submits that, since the paralegal submitted an affidavit for the assessment of costs confirming that the four units at solicitor rates were actual expenses, and since the respondent later admitted to the Officer that the bill of costs had in fact been prepared by the paralegal, the latter had therefore made a false statement that warranted the attention of the Court. In reply to the respondent's submissions that these allegations cannot be presented during an assessment review, the applicant added that this motion was not made as part of the review, but separately, and that the Court therefore had jurisdiction to hear it.

[12] Even if the Court accepts the reply submission that the applicant's motion is in fact two separate motions, the contempt application still could not stand. I will therefore explain why the application cannot stand without addressing the issue of whether the applicant's motion can or should be separated into two motions at this stage.

[13] I agree with the respondent that the applicant's claims disclose no reasonable cause of action. I also agree that the claims are vexatious and constitute an abuse of process. Moreover, the applicant's claims do not reveal that the paralegal had any intent to deceive, an element that the respondent correctly submits is necessary at the preliminary stage for contempt of court proceedings: *Chaudhry v Canada*, 2008 FCA 173 at para 6; *Orr v Fort Mckay First Nation*, 2012 FC 1436 at para 15; *Kumar v The Queen*, 2004 TCC 521 at para 6.

[14] I would add that, as submitted by the respondent, the applicant never asked to cross-examine the paralegal in question. Nevertheless, I agree with the applicant's reply

submissions that the respondent's explanations about the preparation of the bill of costs cannot be filed with this Court in written representations because these explanations are not in evidence. However, since the applicant did not succeed in satisfying the requirements for contempt of court proceedings, these allegations are unfounded. The fact that the respondent agreed to reduce the units in this context is not *prima facie* evidence of contempt of court. Therefore, the Court cannot move forward with an appearance for contempt.

IV. **Costs**

[15] The respondent sought costs in the event of a decision in his favour. In the past, the Court's approach appears to have been to refrain from awarding costs for an assessment reviews: *Merck & co inc v Apotex inc*, 2007 FC 1035 at para 53. However, I note that that Federal Court decision was set aside for other reasons, and that the Federal Court of Appeal awarded costs: *Apotex FCA*, *supra* at para 20. Furthermore, a number of recent decisions by the Federal Courts confirm that a fixed amount for costs may be appropriate in a situation such as this one: *Butterfield*, *supra*; *McMeekin*, supra; *Cameco Corporation v MCP Altona*, 2013 FC 9; *Stubicar v Canada*, 2015 FC 722.

[16] Given the applicant's attempt to have his applications treated as two separate motions and given the vexatious nature of the allegations of contempt in this case, I am awarding costs to the respondent.

V. **Conclusion**

[17] The applicant's motion is dismissed in its entirety, with costs awarded to the respondent in the amount of $500, inclusive.

ORDER IN 16-T-6

THE COURT ORDERS that the applicant's motion is dismissed in its entirety, with costs to the respondent in the amount of $500, inclusive.

"Richard G. Mosley"
Judge

Certified true translation
This 30th day of July 2019

Margarita Gorbounova, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	16-T-6
STYLE OF CAUSE:	DAVID LESSARD-GAUVIN v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO

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

ORDER AND REASONS:	MOSLEY J.
DATED:	JULY 24, 2019

WRITTEN REPRESENTATIONS BY:

David Lessard-Gauvin	FOR THE APPLICANT (applicant not represented)
Marilou Bordeleau	FOR THE RESPONDENT

SOLICITORS OF RECORD:

ATTORNEY GENERAL OF CANADA OTTAWA, ONTARIO	FOR THE RESPONDENT