

Federal Court



Cour fédérale

**Date: 20120116**

**Docket: A-317-10**

**Citation: 2012 FC 58**

**Ottawa, Ontario, January 16, 2012**

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

**BETWEEN:**

**GREG MCMEEKIN**

**Applicant**

**and**

**THE MINISTER OF HUMAN RESOURCES  
AND SKILLS DEVELOPMENT**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] This case concerns a motion for a review of an assessment of costs under Rule 414 of the *Federal Courts Rules*, SOR/98-106 [the Rules];

[2] The applicant was self-represented at the hearing before this Court;

[3] The facts of this case are as follows:

- a) On September 10, 2010 the applicant issued and filed a notice of application for judicial review with respect to a decision of the Pension Appeals Board dated August 20, 2010;
- b) An exchange of affidavits ensued and the applicant was served with a written cross-examination dated November 22, 2010;
- c) The respondent filed a Notice of Motion on March 3, 2011 for an order compelling the applicant to respond to the cross-examination questions;
- d) On March 21, 2011 the respondent was served with the applicant's Response to Motion Record and Counter Motion by the applicant;
- e) By a Direction dated April 6, 2011, Justice Trudel of the Federal Court of Appeal directed the respondent to re-serve its list of cross-examination questions before April 15, 2011; and the applicant to serve and file its answers by May 16, 2011. It is important to note that no award of cost was granted to either party;
- f) On April 15, 2011, the applicant was served with the respondent's cross-examination questions;

- g) On May 2, 2011, the respondent was served with a Motion Record dated April 27, 2011;
- h) By Order dated May 13, 2011, Justice Sharlow of the Federal Court of Appeal dismissed the applicant's April 27, 2011 motion and further ordered the applicant to serve and file his affidavit responding to the respondent's written cross-examination questions by no later than May 31, 2011. Again, no award of costs was granted to either party;
- i) On May 31, 2011, the respondent was served with the applicant's affidavit responding to the respondent's written cross-examination questions;
- j) On the same day, the respondent was served with a further motion record and request for oral hearing;
- k) On June 9, 2011, the respondent filed a response to the applicant's motion and a counter motion with the Court;
- l) By Judgment of Justice Evans of the Federal Court of Appeal dated June 28, 2011, the application for judicial review was dismissed and costs of the counter motion were awarded to the respondent;
- m) On June 30, 2011, the respondent was provided with a copy of the applicant's Bill of Costs;

- n) On July 14, 2011, the Assessment Officer issued a Direction to both parties stating that costs shall be assessed by an assessment officer and provided the parties with a timeline for serving and filing submissions;
  
- o) Upon receipt of the costs submissions of both parties, the assessment officer issued Certificates of Assessment and an Assessment of Costs – Reasons, both dated December 16, 2011, wherein the applicant’s costs were assessed and allowed at nil dollars and the respondent’s costs were assessed and allowed at \$1,758.75;
  
- p) On December 28, 2011, the applicant requested a review of the costs assessment under Rule 414.

I Standard of review

[4] It is trite law that an assessment officer’s decision should be awarded deference. In *Merck & Co. v Apotex Inc.*, 2002 FCT 1037, 224 FTR 278, Justice Noël, as he then was, observed the following at para 6:

[6] The standard of review set by the case law, dictates that a decision of an assessment officer is not to be interfered with unless the taxing officer committed an error of law, or the award on any item is so inappropriate or the decision so unreasonable so as to suggest an error in principle. As such, the court in reviewing the taxing officer's decision should be most cautious before interfering with the decision. [inter alia, see: *I.B.M. Can. Ltd. v. Xerox of Can. Ltd.*, [1977] 1 F.C. 181 (Fed. C.A.), *Diversified Products Corp. v. Tye-Sil Corp.* (1990), 34 C.P.R. (3d) 267 (F.C.T.D.), *McCain Foods Ltd. v. C.M. McLean Ltd.* (1980), 51 C.P.R. (2d) 23 (F.C.A.)].

[5] Hence, the Court will not intervene unless there is an error of law or that the award is so inappropriate or unreasonable as to suggest an error in principle (*Bellemare v Canada (Attorney General)*, 2004 FCA 231, 327 NR 179; *Butterfield v Canada (Attorney General)*, 2008 FCA 385, 384 NR 153).

## II Analysis

[6] At the hearing before this Court, the applicant argued and sought a number of remedies that go far beyond the scope of this proceeding. The Court recalls that the applicant's motion is brought under Rule 414 which reads as follows:

ASSESSMENT OF COSTS	TAXATION DES DÉPENS
Review of Assessment	Révision de la taxation
<p><b>414.</b> A party who is dissatisfied with an assessment of an assessment officer who is not a judge may, within 10 days after the assessment, serve and file a notice of motion to request that a judge of the Federal Court review the award of costs.</p>	<p><b>414.</b> La partie qui n'est pas d'accord avec la taxation d'un officier taxateur, autre qu'un juge, peut demander à un juge de la Cour fédérale de la réviser en signifiant et déposant une requête à cet effet dans les 10 jours suivant la taxation.</p>

[7] The issue before this Court is therefore whether the assessment officer erred in assessing and allowing costs.

[8] In his decision, the assessment officer properly recognized that he was not the 'Court' as referred to in Rule 400(1). Hence, only the Court has jurisdiction to award costs. The assessment officer's jurisdiction under Rule 405 is limited to assessing costs as opposed to awarding costs which is a jurisdiction reserved to the Court. The assessment officer's duty is thus to fix a dollar

amount for an award of costs. Without costs, there can, of course, be no assessment (*Pelletier v Canada (Attorney General)*, 2006 FCA 418, [2006] FCJ No 1884).

[9] In the case at bar, the Court notes that the Direction and the Order of the Federal Court of Appeal, dated April 6, 2011 and May 13, 2011, did not award costs to either party. However, the Judgment dated June 28, 2011 awarded costs but to the respondent. Since no costs were awarded by the Court to the applicant, the assessment officer was correct in finding that he did not have jurisdiction to allow costs to the applicant.

[10] Further, the assessment officer noted in his decision that the applicant was provided with an opportunity to produce an order giving rise to his entitlement of costs but “he has not done so” (Certificate of Assessment, at para 7).

[11] Under these circumstances, the Court finds that since no costs were awarded to the applicant in the Federal Court of Appeal’s Judgment dated June 28, 2011 – or in any other decision – the assessment officer was correct in finding that he lacked jurisdiction in order to assess costs in favour of the applicant.

[12] The Court also finds that the respondents’ costs in the amount of \$1,758.75 – using the Tariff B – Unit Value – are reasonable given the amount of work involved for the preparation and filing of a contested motion.

[13] The applicant failed to convince this Court that the assessment officer erred in law or in principle. The Court's intervention is thus not warranted.

**ORDER**

**THIS COURT ORDERS that** the applicant's motion be dismissed with costs in the amount of \$500.00 inclusive of disbursements and taxes to be paid to the respondent.

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"Richard Boivin"  
Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** A-317-10

**STYLE OF CAUSE:** Greg McMeekin v. MHRSD

**PLACE OF HEARING:** Edmonton, Alberta

**DATE OF HEARING:** January 9, 2012

**REASONS FOR ORDER AND ORDER:** BOIVIN J.

**DATED:** January 16, 2012

**APPEARANCES:**

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FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Benoît Laframboise

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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FOR THE APPLICANT  
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FOR THE RESPONDENT