

Federal Court



Cour fédérale

Date: 20120123

Docket: A-77-11

(T-1482-10)

Citation: 2012 FC 85

Ottawa, Ontario, January 23, 2012

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

MOHAMMED TIBILLA

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] This is a motion by Mohammed Tibilla, the Appellant, for a review under Rule 414 of the *Federal Courts Rules*, SOR/98-106, of the assessment of costs prepared by Ms. Johanne Parent, Assessment Officer, dated December 12, 2011.

[2] The Appellant filed an appeal before the Federal Court of Appeal of Justice Beaudry's decision dated February 11, 2011, dismissing his application for judicial review.

[3] On March 4, 2011, the Appellant filed three separate motions requesting:

- (a) leave to amend his notice of appeal to include the “Reply to the final level grievance issued by Deputy Commissioner Madam Cheryl Fraser”;
- (b) the Court determine the contents of the appeal book; and
- (c) leave to file new evidence.

[4] On April 27, 2011, Justice Layden-Stevenson of the Federal Court of Appeal ordered that:

- (a) the motion for leave to amend the notice of appeal be dismissed with costs;
- (b) the contents of the appeal book will be as set out in the Respondent’s motion to determine the contents of the appeal book.
- (c) the request to introduce new “evidence” be dismissed; and
- (d) the Respondent be awarded costs on these motions notwithstanding the final outcome of the appeal.

[5] Directions were issued on June 2, 2011, informing the parties that the assessment of costs would proceed in writing.

[6] On December 12, 2011, Johanne Parent, Assessment Officer, allowed the Respondent’s Bill of Costs for a total amount of \$1950.00. In light of the parties’ submissions, Ms. Parent gave five units for each of the three motions since they “were not overly complex but required a certain amount of work on the Respondent’s part” (see Ms. Parent’s decision at para 5).

[7] Considering the Appellant's Motion Records dated December 23, 2011, and January 13, 2012, in which he submits that:

- (a) costs by the Respondent were grossly exaggerated bearing in mind the experience of Respondent's counsel and the nature of the motions;
- (b) reasons given by the Assessment Officer were erroneous and her assessment was not specific to the complexities of the materials submitted;
- (c) the amounts awarded in favour of the Respondent were unreasonable given that no complex research materials were involved and the representations were made in writing under Rule 369 of the *Federal Courts Rules*;
- (d) Rules 409 and 400 were completely ignored by the Assessment Officer; and
- (e) the Assessment Officer erred in rewarding the Respondent for his sharp practice and inappropriate behaviour, by allowing costs on the basis of five, five and seven units.

[8] Considering the Respondent's Motion Record dated January 5, 2012, in which he submits that:

- (a) in *Bellemare v Canada (Attorney General)*, 2004 FCA 231, [2004] FCJ No 1048, the Court reiterated that the discretion of an assessment officer shall not be interfered with by the Court unless there is an error in principle, or unless the amounts allowed are so inappropriate or unreasonable as to suggest that an error in principle must have been the cause;

- (b) in the present case, no error in principle was committed by the Assessment Officer; and
- (c) the costs awarded were reasonable and Ms. Parent appropriately exercised her discretion.

[9] The Court finds that the Assessment Officer did not err in its assessment of costs. Under Rules 405 and 407 of the *Federal Courts Rules*, the Assessment Officer had no choice but to apply column III of Tariff B table. She correctly determined that motions under Item 5 were not complex but needed a reasonable amount of time to prepare in order for the Respondent to make reasonable representations.

[10] Furthermore, the wording of Rule 409 does not create an obligation on the Officer's part to consider the factors referred to in subsection 400(3). However, Ms. Parent did adequately consider Rule 400(3) paragraphs (c) and (g) in her assessment of costs.

ORDER

THIS COURT ORDERS that

1. The Appellant's motion is dismissed; and
2. The Assessment Officer's order stands.

The whole with costs against Appellant.

"André F.J. Scott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: A-77-11
(T-1482-10)

STYLE OF CAUSE: MOHAMMED TIBILLA
v
ATTORNEY GENERAL OF CANADA

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO
RULE 369**

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

DATED: January 23, 2012

WRITTEN REPRESENTATIONS BY:

Mohammed Tibilla FOR THE APPELLANT
(ON HIS OWN BEHALF)

Mtre Anne-Marie Duquette FOR THE RESPONDENT

SOLICITORS OF RECORD:

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