

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150114

Docket: A-94-13

Citation: 2015 FCA 8

**CORAM: PELLETIER J.A.
GAUTHIER J.A.
SCOTT J.A.**

BETWEEN:

VLASTA STUBICAR

Appellant

and

**DEPUTY PRIME MINISTER AND MINISTER
OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondents

Heard at Montréal, Quebec, on January 12, 2015.

Judgment delivered at Montréal, Quebec, on January 14, 2015.

REASONS FOR JUDGMENT BY:

PELLETIER J.A.

CONCURRED IN BY:

**GAUTHIER J.A.
SCOTT J.A.**

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REASONS FOR JUDGMENT

PELLETIER J.A.

I. The appeal

[1] The appellant, Ms. Stubicar, appeals from an order of the Federal Court dismissing her application for a review of the decision of an Assessment Officer pursuant to Rule 414 of the *Federal Courts Rules*, SOR/98-106. For the reasons that follow, the appeal should be allowed.

[2] Ms. Stubicar appealed two interlocutory decisions made in the course of the same proceeding. The appeals were heard together. The Court dismissed both appeals and awarded costs in favour of the respondents "with costs limited to one set for the hearing on appeal". This gave rise to a certain controversy. Ms. Stubicar contended before the Assessment Officer that costs were limited to one appeal, and within that appeal, were limited to the costs of the hearing of the appeal (item 22 of Tariff B), and the costs of the assessment (item 26 of Tariff B). The respondents argued that they were entitled to costs for all steps taken in each appeal but that they were limited to one set of costs for the hearing itself (item 22) as the two appeals were heard together.

[3] The Assessment Officer awarded the respondent costs for items 22 and 26 in the first file (A-237-11). Ms. Stubicar does not challenge this aspect of the assessment. He refused to award costs for item 22 in the second file (A-244-11). However, he did award an amount for item 26 "as the respondents argued costs on both files even though, ultimately, costs were only allowed on file A-237-11". Ms. Stubicar challenges this portion of the award.

[4] In my view, Ms. Stubicar's challenge is well founded. Having found that costs were allowed in only one appeal, the Assessment Officer was not free to assess them in a second appeal. The Assessment Officer's jurisdiction to assess costs flows from the order made by the Court. Rule 408(3) does not confer a power to assess costs which have not been awarded by the Court: (*Pelletier v. Canada (Attorney General)*, 2006 FCA 418, [2006] F.C.J. No. 1884, at paragraph 7). Having found, as he did, that costs were only allowed in file A-237-11, the Assessment Officer was without jurisdiction to award them in file A-244-11.

[5] The Assessment Officer thereby committed an error in principle which should have led the Federal Court judge to intervene, following *Bellemare v. Canada (Attorney General)*, 2004 FCA 231, [2004] F.C.J. No. 1048, at paragraph 3. The Federal Court judge overlooked the Assessment Officer's error and, as a result, dismissed Ms. Stubicar's review application. As a result, his decision should be set aside and the certificate of assessment with respect to file no. A-244-11 should be quashed.

II. Costs

[6] This leaves the matter of costs.

[7] This appeal has generated a significant amount of incidental litigation. On the day set for the hearing of the appeal, December 2, 2014, Ms. Stubicar requested an adjournment to allow her to retain a lawyer to argue, on her behalf, that one member of the panel, Madam Justice Gauthier, should recuse herself on the basis of reasonable apprehension of bias. An order was made adjourning the matter to December 4, 2014. Ms. Stubicar appeared on that date and indicated that she was advised that no lawyer would accept such a brief on such short notice. She also indicated that, in her view, I was precluded from sitting on the appeal as I was a member of the panel which made the original order for costs and that, therefore, I was caught by subsection 16(4) of the *Federal Courts Act*, R.S.C. 1985 c. F-7, which prohibits a judge from sitting on appeal from a decision he or she has made.

[8] As a result, the matter was adjourned once again to January 12, 2015 and an order was made, providing a timetable for the making of such motions as Ms. Stubicar thought necessary

with respect to the composition of the panel, with costs of the day to be spoken to at the hearing of the appeal. Ms. Stubicar brought her motion for recusal of Madam Justice Gauthier and for my disqualification pursuant to rule 369. Both were dismissed, with costs to be spoken to at the hearing of the appeal.

[9] On January 9, 2015, Ms. Stubicar wrote to the Court to request an adjournment of the hearing scheduled for January 12, 2015 on the basis that her inquiries with the Court's registry left her with the impression that her motions had been decided before her Reply had been provided to the judges. In her view, this was a denial of her right to be heard. She wished an adjournment to allow her to pursue her remedies with respect to this alleged breach. Ms. Stubicar was advised that the matter could be spoken to prior to the hearing of her appeal.

[10] On January 12, 2015, the Court advised Ms. Stubicar that, notwithstanding what she believed was disclosed by her inquiries of the Registry, both Justice Gauthier and I had her Reply in hand at the time each of us decided the motion which concerned us. Nonetheless, Ms. Stubicar pursued her argument at the conclusion of which her request for an adjournment was dismissed.

[11] As I indicated to Ms. Stubicar at the time, all of these proceedings concerned an order in which the sum of \$390 was at stake. That appeal needed to be heard and it was finally heard on January 12, 2015.

[12] As a result of these various proceedings, costs with respect to the following matters need to be addressed:

- The appeal itself;
- The two motions with respect to the composition of the panel; and
- The costs of the day of December 4, 2014.

[13] With respect to the appeal proper, Ms. Stubicar was the successful party, but she did not seek costs. When asked about disbursements, she indicated that she had some, but she could not quantify them at this time. In order to bring some finality to this matter, I am prepared to award Ms. Stubicar the sum of \$150 with respect to disbursements, as a rough measure of her out-of-pocket expenses.

[14] As for the two motions with respect to the constitution of the panel, Ms. Stubicar was unsuccessful; the normal rule is that costs follow the event. Ms. Stubicar argued that she should not be subject to costs as she was self-represented and that the points she raised were legitimate points going to the jurisdiction of the Court. She was of the view that she should not be penalized for raising serious questions of law.

[15] In addition, Ms. Stubicar noted that when she successfully opposed the Attorney General's motion for security for costs already incurred, she was not awarded her costs even though she was the successful party (see *Stubicar v. Canada (Deputy Prime Minister and Minister of Public Safety and Emergency Preparedness*, 2013 FCA 163). Unfortunately, the

reasons for decision do not discuss the matter of costs so we cannot know what the motions judge had in mind when he denied Ms. Stubicar her costs. In any event, that is not a matter which we can remedy here, other than by being even-handed in our award of costs.

[16] The Attorney General suggested that he should be awarded the sum of \$700 for each motion. This was based on the high end of Column 5 of Tariff B. If Column 3 is used, the Attorney General's position was that he was entitled to 3 units for each motion, at a cost of \$140 per unit, for a total claim of \$420 per motion.

[17] I am not satisfied that the complexity of the matters raised by Ms. Stubicar merits an award of costs at the high end of Column 3. I am prepared to award a global amount of \$280 per motion.

[18] With respect to the costs of the day of December 4, 2014, I would award the amount of \$100. Counsel for the respondents was required to attend before the Court twice within a period of 3 days. As no costs were awarded for the day of December 2, 2014, it is equitable that costs should be awarded for the counsel's second appearance in the week, only to have the matter adjourned again at Ms. Stubicar's request.

III. Conclusion

[19] As a result, I would order that:

- a) The appeal from the order of Justice Boivin is allowed, his order is set aside and, making the order which he should have made, the certificate of assessment with respect to A-244-11 is quashed.
- b) Ms. Stubicar is awarded her disbursements which are set at \$150.
- c) The respondents are awarded costs of the motion brought by Ms. Stubicar seeking the recusal of Madam Justice Gauthier in the amount of \$280, inclusive of fees and disbursements.
- d) The respondents are awarded the costs of the motion seeking the disqualification of Mr. Justice Pelletier in the amount of \$280, inclusive of fees and disbursements.
- e) The respondents are awarded the costs of the day for their appearance on December 4, 2014, in the amount of \$100, inclusive of fees and disbursements.

"J.D. Denis Pelletier"

J.A.

"I agree
Johanne Gauthier J.A."

"I agree
A.F. Scott J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-94-13

STYLE OF CAUSE: VLASTA STUBICAR v. DEPUTY
PRIME MINISTER AND
MINISTER OF PUBLIC SAFETY
AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JANUARY 12, 2015

REASONS FOR JUDGMENT BY: PELLETIER J.A.

CONCURRED IN BY: GAUTHIER J.A.
SCOTT J.A.

DATED: JANUARY 14, 2015

APPEARANCES:

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