

Federal Court of Appeal



Cour d'appel fédérale

Date: 20040614

Docket: A-443-03

Citation: 2004 FCA 231

**CORAM: DESJARDINS J.A.
LÉTOURNEAU J.A.
PELLETIER J.A.**

BETWEEN:

DANIEL MARTIN BELLEMARE

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Hearing held at Ottawa, Ontario, on June 8, 2004.

Judgment rendered at Ottawa, Ontario, on June 14, 2004.

REASONS FOR JUDGMENT:

DESJARDINS J.A.

CONCURRED IN BY:

**LÉTOURNEAU J.A.
PELLETIER J.A.**

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REASONS FOR JUDGMENT

DESJARDINS J.A.

[1] The Court has before it an appeal from a judgment by a Federal Court judge (the trial judge) acting pursuant to Rule 414. The trial judge dismissed the application for review filed by the appellant against two orders and certificates of assessment of costs made by the Assessment

Officer Michelle Lamy on May 16, 2003. In *Daniel Martin Bellemare and The Attorney General of Canada*, T-1073-99, the costs assessed and allowed amounted to \$2,442.48. In *The Attorney General of Canada and Daniel Martin Bellemare and the Information Commissioner of Canada*, A-598-99, they were \$2,217.12.

[2] The appellant alleged that the assessment officer did not take into account sections 2, 4, 49 and 53 of the *Access to Information Act*, R.S.C. 1985, c. A-1 (the Act), nor the quasi-constitutional nature of that Act. He further argued that she erred in assessing and allowing the costs in items 2, 5, 17, 18, 19, 20, 21(a), 25 and 26 of Tariff B of the *Federal Court Rules, 1998* (SOR/98-106), and that the number of units assessed and allowed in items 2, 5, 6, 21(a) and 22(a) of the said Tariff is unreasonable and excessive. By way of example, the appellant added that the assessment officer erred in finding to be reasonable the expenses and travel costs incurred by the Attorney General of Canada, who felt it preferable to be represented at the hearing by an attorney from the Québec regional office in Ottawa rather than by an attorney from the Montréal office. The appellant argued that the trial judge also erred in refusing to intervene.

[3] The applicable standard of review is not in dispute. In *Wilson v. Canada* (2000), 196 F.T.R. 99, at 102, Dawson J. stated it in the following way:

The Court's jurisdiction to intervene in the decision of an assessment officer does not allow the Court to substitute its own view on the facts for that of the assessment officer. As noted by Joyal J. in *Harbour Brick Co. v. Canada* (1987), 17 F.T.R. 255 (F.C.T.D.), intervention is limited to cases where an error in

principle has occurred, or to where the amount assessed can be shown to be so unreasonable that an error in principle must have been the cause.

[Emphasis added.]

[4] The assessment officer was acting pursuant to this Court's decision in case A-598-99,

where the formal judgment read as follows:

The appeal is allowed, the decision of the motions Judge is set aside and the application for judicial review is struck in its entirety with costs in favour of the appellant before both the Trial Division and the Appeal Division. The Information Commissioner shall bear his own costs as well as the disbursements of the respondent resulting from his intervention.

[Emphasis added.]

[5] There was no appeal from that judgment.

[6] It is worth setting out the Rules of this Court which apply in the case at bar:

<p>PART 11 COSTS</p> <p>AWARDING OF COSTS BETWEEN PARTIES</p> <p>Discretionary powers of Court</p> <p>400. (1) The Court shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid.</p>	<p>PARTIE 11 DÉPENS</p> <p>ADJUDICATION DES DÉPENS ENTRE PARTIES</p> <p>Pouvoir discrétionnaire de la Cour</p> <p>400. (1) La Cour a le pouvoir discrétionnaire de déterminer le montant des dépens, de les répartir et de désigner les personnes qui doivent les</p>
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...	payer. ...
400. (3) In exercising its discretion under subsection (1), the Court may consider ...	400. (3) Dans l'exercice de son pouvoir discrétionnaire en application du paragraphe (1), la Cour peut tenir compte de l'un ou l'autre des facteurs suivants : ...
(h) whether the public interest in having the proceeding litigated justifies a particular award of costs; ...	<i>h</i>) le fait que l'intérêt public dans la résolution judiciaire de l'instance justifie une adjudication particulière des dépens; ...
ASSESSMENT OF COSTS Assessment by assessment officer 405. Costs shall be assessed by an assessment officer. ...	TAXATION DES DÉPENS Taxation par l'officier taxateur 405. Les dépens sont taxés par l'officier taxateur. ...
Assessment according to Tarif B 407. Unless the Court orders otherwise, party-and-party costs shall be assessed in accordance with column III of the table to Tarif B. ...	Tarif B 407. Sauf ordonnance contraire de la Cour, les dépens partie-partie sont taxés en conformité avec la colonne III du tableau du tarif B. ...
Factors in assessing costs	Facteurs à prendre en

<p>409. In assessing costs, an assessment officer may consider the factors referred to in subsection 400(3).</p> <p>...</p>	<p>compte</p> <p>409. L'officier taxateur peut tenir compte des facteurs visés au paragraphe 400(3) lors de la taxation des dépens.</p> <p>...</p>
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[7] Acting pursuant to Rule 405, the assessment officer had no choice but to apply column III of the Tariff B table, as stipulated in Rule 407. In assessing and allowing the costs within the limits set in Rule 407 and pursuant to the judgment rendered in case A-598-99 she could, under Rule 409, consider in allocating the units allowed the factors referred to in Rule 400(3), including in particular that in paragraph (*h*) of that Rule. However, she could not diminish the amounts set out in the Tariff nor reduce them to zero, as the appellant wished.

[8] As regards the travel expenses and costs occasioned by the Attorney General of Canada's preference to be represented by an attorney from the Ottawa region, rather than from Montréal, the high level of the standard of review does not allow the Court to conclude that the assessment officer made an error of principle. At most, the question was one of weighing the facts.

[9] The appeal should be dismissed.

[10] The Attorney General of Canada asked the Court to set the costs of this appeal at the sum of approximately \$1,500.

[11] The appellant argued that under this Court's decision in *Information Commissioner of Canada v. Minister of National Defence* (1999), 240 N.R. 245, at paragraph 36, it does not have jurisdiction to award the costs in an appeal.

[12] Paragraph 36 of that judgment referred to section 53 of the Act, which reads as follows:

53. (1) Subject to subsection (2), the costs of and incidental to all proceedings in the Court under this Act shall be in the discretion of the Court and shall follow the event unless the Court orders otherwise.	53. (1) Sous réserve du paragraphe (2), les frais et dépens sont laissés à l'appréciation de la Cour et suivent, sauf ordonnance contraire de la Cour, le sort du principal.
Idem (2) Where the Court is of the opinion that an application for review under section 41 or 42 has raised an important new principle in relation to this Act, the Court shall order that costs be awarded to the applicant even if the applicant has not been successful in the result.	Idem (2) Dans les cas où elle estime que l'objet des recours visés aux articles 41 et 42 a soulevé un principe important et nouveau quant à la présente loi, la Cour accorde les frais et dépens à la personne qui a exercé le recours devant elle, même si cette personne a été déboutée de son recours.

[13] Section 3 of the Act also states:

INTERPRETATION Definitions	DÉFINITIONS Définitions
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<p>3. In this Act,</p> <p>...</p> <p>"Court" means the Federal Court . . .</p>	<p>3. Les définitions qui suivent s'appliquent à la présente loi.</p> <p>...</p> <p>« Cour » La Cour fédérale.</p>
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[14] In the case cited above this Court held, as prescribed by subsection 53(2) of the Act, that only the Federal Court, as the “Court” defined in section 3 of the Act as amended, awards “costs . . . to the applicant even if the applicant has not been successful in the result” when the Federal Court “is of the opinion that an application for review under section 41 or 42 has raised an important new principle in relation to this Act”. The Federal Court of Appeal cannot award this type of costs.

[15] In the case at bar, the Court is being asked to rule on costs which the successful party may claim following an appeal decided in its favour, not costs which might have been awarded to the appellant at trial.

[16] The costs at issue here are awarded under Rule 400. The situation is therefore completely different from that which was involved in *Information Commissioner of Canada v. Minister of National Defence, supra*.

[17] I would set the costs on appeal payable to the Attorney General of Canada by the appellant at \$500.

“Alice Desjardins”

J.A.

“I concur
Gilles Létourneau J.A.”

“I concur
J.D. Denis Pelletier J.A.”

Certified true translation

Suzanne M. Gauthier, C Tr, LLL

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-443-03

Appeal from order by Blanchard J. dated August 7 in case No. T-1073-99.

STYLE OF CAUSE: DANIEL MARTIN BELLEMARE
and THE ATTORNEY GENERAL OF
CANADA
and CANADA INFORMATION
COMMISSIONER

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JUNE 8, 2004

REASONS FOR JUDGMENT: DESJARDINS J.A.

CONCURRED IN BY: LÉTOURNEAU J.A.
PELLETIER J.A.

DATE OF REASONS: JUNE 14, 2004

APPEARANCES:

Daniel Martin Bellemare The appellant for himself

Francis Archambault For the respondent

SOLICITORS OF RECORD:

Montréal, Quebec The appellant for himself

Morris Rosenberg For the respondent
Deputy Attorney General of Canada