

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130917

Docket: A-538-12

Citation: 2013 FCA 216

**CORAM: NOËL J.A.
MAINVILLE J.A.
WEBB J.A.**

BETWEEN:

VLASTA STUBICAR

Appellant

and

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

Respondent

Heard at Ottawa, Ontario, on September 17, 2013.

Judgment delivered from the Bench at Ottawa, Ontario, on September 17, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on September 17, 2013).

NOËL J.A.

[1] We see no error in Boivin J.'s assessment of items 1 and 2 of the appellant's direction to attend. However, he erred in failing to address items 3 and 4 altogether.

[2] Nevertheless, we do not see how the appellant can succeed in this appeal except insofar as the award of costs is concerned.

[3] The appellant claims that relevant documents have not been brought forward by Tara Rapley, the respondent's affiant, in response to her direction to attend.

[4] The documents which are said to be improperly withheld include 3 pages from a 26 page document which were removed by the Canada Border Services Agency (CBSA) before being turned over to the appellant. The CBSA explains through the affidavit of Tara Rapley at paragraphs 8 and 9 why the three pages in question are not relevant. This in our view provides a full answer to the appellant's claim insofar as these documents are concerned.

[5] The appellant also relies on paragraph 7 of the affidavit of Tara Rapley to argue that there are other documents that have been reviewed in assessing her correction requests that have not been produced. That is so. But the fact that documents were reviewed does not establish their relevance and the examination of the affiant conducted by the appellant does not establish any basis for holding that relevant documents are being withheld. In order to succeed on appeal, the appellant had to ask the affiant to identify the class or category of documents that were being withheld and explain why documents which relate to her correction requests were considered to be irrelevant. Only then could the appellant hope to have a foundation for her claim. As the record stands, there is no basis for putting into question the affiant's assertion that all relevant documents have been produced.

[6] It remains however that the difficulties underlying this appeal and the proceedings below can be traced back to the loose language of the affidavit with the result that the award of costs made by Boivin J. is not justified.

[7] The appeal will be allowed in respect of costs only, and giving the decision which Boivin J. ought to have given, the appeal from the decision of Prothonotary Aronovitch will be dismissed without costs. No costs will be awarded on this appeal.

“Marc Noël”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-538-12

**(APPEAL FROM AN ORDER OF THE HONOURABLE JUSTICE BOIVIN OF THE
FEDERAL COURT DATED NOVEMBER 28, 2012, DOCKET NO. T-2061-11.)**

DOCKET: A-538-12

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

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: SEPTEMBER 17, 2013

REASONS FOR JUDGMENT OF THE COURT BY: NOËL J.A.
MAINVILLE J.A.
WEBB J.A.

DELIVERED FROM THE BENCH BY:
NOËL J.A.

APPEARANCES:

Vlasta Stubicar FOR THE APPELLANT
(on her own behalf)

Leah Garvin FOR THE RESPONDENT
Sarah Johnston

SOLICITORS OF RECORD:

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada

