

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20121113**

**Docket: A-144-12**

**Citation: 2012 FCA 288**

**CORAM: SHARLOW J.A.  
STRATAS J.A.  
WEBB J.A.**

**BETWEEN:**

**VLASTA STUBICAR**

**Appellant**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

**Respondent**

Heard at Ottawa, Ontario, on November 13, 2012.

Judgment delivered at Ottawa, Ontario, on November 13, 2012.

**REASONS FOR JUDGMENT BY:**

**STRATAS J.A.**

**CONCURRED IN BY:**

**SHARLOW J.A.  
WEBB J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT**

**STRATAS J.A.**

[1] Ms. Stubicar appeals from the order of the Federal Court (per Justice O'Keefe): 2012 FC 549. The Federal Court judge set aside part of Prothonotary Tabib's order dated October 13, 2011. He found that the Prothonotary erred in two respects:

- the Prothonotary erred in holding that Ms. Stubicar could inspect the notebooks of customs officer Haeckel and two of her supervisors (the “inspection issue”);
- the Prothonotary erred in requiring that the respondent list in a supplementary affidavit of documents certain pages in the notebooks of the two supervisors (the “listing issue”).

[2] In my view, the inspection issue was not properly before the Federal Court judge. The Prothonotary did suggest in her reasons that Ms. Stubicar could inspect the notebooks. But she expressly declined to make an order requiring the respondent to let Ms. Stubicar inspect the notebooks. It is trite law that appeals lie only from orders, not reasons. An appeal from the Prothonotary’s comments on the inspection issue did not lie to the Federal Court. Simply put, there was nothing for the Federal Court to set aside on the inspection issue.

[3] The Prothonotary did deal with the listing issue in her order. Therefore, the listing issue was properly before the Federal Court judge. The Prothonotary’s order on the listing issue was a discretionary interlocutory order not vital to the outcome of the action. Accordingly, the Federal Court judge could interfere with the Prothonotary’s order concerning the listing issue only if she were “clearly wrong”: *Eli Lilly Canada Inc. v. Hospira Healthcare Corp.*, 2010 FCA 282 at paragraph 5.

[4] In my view, there was no basis upon which the Federal Court judge could find that the Prothonotary's order concerning the listing issue was clearly wrong. There was a constellation of facts upon which the Prothonotary could require that certain pages in the notebooks of the two supervisors be listed:

- the two supervisors were on shift when Ms. Stubicar passed through customs and, therefore, in the Prothonotary's view, were potential witnesses;
- the two supervisors were in a position of authority over customs officer Haeckel and might be expected to receive a report of anything untoward;
- in its affidavit of documents, the respondent had listed documents of others in the chain of authority over customs officer Haeckel, thus arguably conceding the relevance of the views and observations of persons in that chain;
- in another, unchallenged part of her order, the Prothonotary found that certain documents responsive to one of Ms. Stubicar's *Privacy Act* requests (P-2010-01954) were relevant and should be listed in a supplementary affidavit of documents; these documents included five pages of internal emails – *i.e.*, writings of customs officials other than customs officer Haeckel.

[5] The Prothonotary was not obligated to require that certain pages in the notebooks of the two supervisors be listed. She could have accepted the respondent's assertion that the two supervisors'

notes are irrelevant. However, she exercised her discretion differently based on the record before her, a record containing a constellation of facts sufficient to permit her to make the order she made. Therefore, it cannot be said that the Prothonotary was clearly wrong.

[6] Therefore, I would allow the appeal, set aside the order of the Federal Court judge and dismiss the motion of the respondent appealing the Prothonotary's order. I would award Ms. Stubicar her costs throughout.

"David Stratas"

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J.A.

"I agree  
K. Sharlow J.A."

"I agree  
Wyman W. Webb J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-144-12

**APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE O'KEEFE  
DATED MAY 7, 2012, NO. T-2102-10**

**STYLE OF CAUSE:** Vlasta Stubicar v. Her Majesty the  
Queen in Right of Canada

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** November 13, 2012

**REASONS FOR JUDGMENT BY:** Stratas J.A.

**CONCURRED IN BY:** Sharlow J.A.  
Webb J.A.

**DATED:** November 13, 2012

**APPEARANCES:**

Vlasta Stubicar

ON HER OWN BEHALF

Jeffrey G. Johnston  
Max Binnie

FOR THE RESPONDENT

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Deputy Attorney General of Canada

FOR THE RESPONDENT