Federal Court of Appeal Cour d'appel fédérale

Date: 20200327

Dockets: A-333-15
A-367-15
A-389-15
A-390-15
A-440-15
A-452-15

Citation: 2020 FCA 66

CORAM: **WEBB J.A.**
NEAR J.A.
RENNIE J.A.

Docket: A-333-15

BETWEEN:

VLASTA STUBICAR

Appellant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

Docket: A-367-15

AND BETWEEN:

VLASTA STUBICAR

Appellant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

Docket: A-389-15

AND BETWEEN:

VLASTA STUBICAR

Appellant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

Docket: A-390-15

AND BETWEEN:

VLASTA STUBICAR

Appellant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

Docket: A-440-15

AND BETWEEN:

VLASTA STUBICAR

Appellant

and

DEPUTY PRIME MINISTER AND MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

Docket: A-452-15

AND BETWEEN:

VLASTA STUBICAR

Appellant

and

DEPUTY PRIME MINISTER AND MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

Heard at Ottawa, Ontario, on December 9, 2019.

Judgment delivered at Ottawa, Ontario, on March 27, 2020.

REASONS FOR JUDGMENT BY:	WEBB J.A.
CONCURRED IN BY:	NEAR J.A. RENNIE J.A.

Federal Court of Appeal Cour d'appel fédérale

Date: 20200327

Dockets: A-333-15
A-367-15
A-389-15
A-390-15
A-440-15
A-452-15

Citation: 2020 FCA 66

CORAM: **WEBB J.A.**
NEAR J.A.
RENNIE J.A.

Docket:A-333-15

BETWEEN:

VLASTA STUBICAR

Appellant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

Docket:A-367-15

AND BETWEEN:

VLASTA STUBICAR

Appellant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

Docket:A-389-15

AND BETWEEN:

VLASTA STUBICAR

Appellant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

Docket:A-390-15

AND BETWEEN:

VLASTA STUBICAR

Appellant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

Docket:A-440-15

AND BETWEEN:

VLASTA STUBICAR

Appellant

and

DEPUTY PRIME MINISTER AND MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

Docket:A-452-15

AND BETWEEN:

VLASTA STUBICAR

Appellant

and

DEPUTY PRIME MINISTER AND MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT

WEBB J.A.

[1] Ms. Stubicar filed six appeals. Each appeal is from a different order of the Federal Court. Although the appeals were not consolidated, there is significant overlap in the issues related to these six appeals. All six appeals relate to an award of costs in other matters involving Ms. Stubicar. Two of the appeals arise from matters where Ms. Stubicar was awarded costs and the other four are related to matters where costs were awarded to the Crown.

[2] Ms. Stubicar is a lawyer. She represented herself at the hearing of these appeals and in all of the matters to which these appeals relate. All of the matters were connected to her underlying claim that the Canada Border Services Agency (CBSA) had improperly seized her Croatian passport in 2008.

[3] These reasons relate to all six appeals. The original of the reasons shall be placed in file A-333-15 and a copy of the reasons shall be placed in each of the other files.

[4] For the reasons that follow, I would dismiss all six appeals.

I. A-333-15

[5] This appeal relates to a matter in which Ms. Stubicar was awarded costs by this Court by the Judgment dated November 13, 2012 (2012 FCA 288). This matter began with an Order of the Prothonotary dated October 13, 2011 that required the Crown to list, in a supplementary affidavit of documents, certain pages in the notebooks of two supervisors who worked for the CBSA. The Federal Court allowed the Crown's appeal from this Order of the Prothonotary (2012 FC 549). Ms. Stubicar's appeal to this Court was allowed.

[6] The Judgment of this Court stated that her appeal was allowed "with costs to [Ms. Stubicar] throughout". The costs were assessed in two different decisions. The first decision addressed the costs related to the matter that was before the Federal Court and the second addressed the costs related to the appeal to this Court.

[7] In assessing the costs to which Ms. Stubicar was entitled in relation to the Federal Court matter, the assessment officer did not include any amount for Ms. Stubicar's time (2015 FC 564). The costs were assessed at $226.86. Ms. Stubicar brought a motion for a review of this assessment of costs. The Federal Court dismissed this motion by the Order dated June 2, 2015 (Docket No. T-2102-10). Ms. Stubicar has appealed this Order.

[8] In her memorandum, Ms. Stubicar identified three grounds of appeal:

- whether the Federal Court erred in applying the law governing a review under Rule 414 of the *Federal Courts Rules*, SOR/98-106;
- whether the Federal Court erred in applying the cases decided by the Federal Court of Appeal; and
- whether the Federal Court failed to properly consider the record before the assessment officer.

Although these are stated as three separate grounds of appeal, in essence they all relate to the same issue – whether any amount should have been included for Ms. Stubicar's time.

[9] Ms. Stubicar submitted that the decision of this Court in *Turner v. Canada*, 2003 FCA 173, [2003] F.C.J. No. 548 (QL) supports her position. However, I do not agree that this case supports her position.

[10] Mr. Turner was a self-represented litigant. In allowing Mr. Turner's appeal, this Court stated that "[t]he appeal is allowed with costs" (*Turner v. The Queen*, (2000), 259 N.R. 92, [2000] F.C.J. No. 1066 (QL)). Following the granting of this judgment, Mr. Turner had his costs assessed by an assessment officer who did not allow any amount for his time. Mr. Turner did not agree with the assessment of his costs and challenged the assessment in the Federal Court.

[11] Justice Nadon (as he then was) described Mr. Turner's claim for costs and the amount that he was awarded in [2001] F.C.J. No. 1506 (QL), 211 F.T.R. 299:

> 3 Although the applicant claimed that he was entitled to costs in the sum of $275,268.12, the Assessment Officer, after a thorough and detailed analysis, fixed his costs at $2,381.22.

4 The main item claimed by the applicant was a sum of $265,700., based on the number of hours spent by him times the number of units for the particular service listed in the Tariff times $100. As to the disbursements claimed, they amount to a sum of $9,568.12. The applicant argued, both before me and Mr. Stinson, that on the authority of the British Columbia Court of Appeal's decision in *Skidmore v. Blackmore*, [1995] 4 W.W.R. 524, he was entitled to compensation for his successful efforts, in the same way as if he had been represented by a lawyer.

5 I agree entirely with Mr. Stinson, for the reasons he gives, that the applicant is not entitled to the compensation he seeks.

[12] In dismissing Mr. Turner's appeal, this Court stated that:

5 The Assessment Officer decided that the Court meant to award Mr. Turner party and party costs, and that, in the absence of any directions to the contrary, the award should be calculated pursuant to *Tariff B* of the *Federal Court Rules, 1998*. However, *Tariff B* only provides for the partial recovery of legal fees and the usual disbursements, but not the value of the time spent on litigation by parties, whether or not they are self-represented.

6 In my opinion, Mr. Stinson was correct in reaching this conclusion: *Munro v. Canada*, (1998), 163 D.L.R. (4th) 541 (F.C.A.). Further, the fact that Tariff B does not provide for a self-represented litigant's lost time does not violate Mr. Turner's right to equality guaranteed by section 15 of the *Charter*: *Rubin v. Canada (Attorney General)*, [1990] 3 F.C. 642 (T.D.); *Lavigne v. Canada (Human Resources Development)* (1998), 228 N.R. 124 (F.C.A.).

7 This is not to say that, in the exercise of the plenary discretion over costs granted by Rule 400(1), the Court may not make an award that provides a litigant with some compensation for items that fall neither within disbursements as normally understood, nor counsel fees: see, for example, *Entreprises A.B. Rimouski Inc. v. Canada*, [2000] F.C.J. No. 501 (C.A.).

8 However, in the case before us, the Court made no such special award in favour of Mr. Turner in its judgment of June 27, 2000, even though it had been very critical of Revenue Canada's conduct. It was not within the jurisdiction of the Assessment Officer to amend the order made by the Court. Nor on an appeal from Nadon J.'s dismissal of Mr. Turner's motion under Rule 414 for a review of the Assessment Officer's decision may this Court amend the costs order made by another panel of this Court when it allowed Mr. Turner's appeal against his income tax assessment.

[13] The award of costs in Mr. Turner's case was identical to the award of costs that is relevant in this appeal – simply a reference to an appeal being allowed with costs. There was no special award of costs to Mr. Turner nor to Ms. Stubicar. These cases should be contrasted with the decision of this Court in *Sherman v. Canada (Minister of National Revenue)*, 2003 FCA 202, [2002] 4 FC 865 in which nine paragraphs (paragraphs 44 to 52) were devoted to the discussion of the awarding of costs to Mr. Sherman, a self-represented lawyer. In the concluding paragraph related to this issue, this Court stated:

> 52 While staying within the parameters of our Rules, I believe it is proper to award the appellant, in addition to his disbursements and on his filing appropriate evidence to support the claim, the following costs: a moderate allowance for the time and effort devoted to preparing and presenting the case before both the Trial and the Appeal Divisions on proof that the appellant, in so doing, incurred an opportunity cost by forgoing remunerative activity.

[14] In *Sherman*, there was a special award of costs. Since there was no special award of costs by this Court to Ms. Stubicar, the Federal Court did not err in dismissing her review of the assessment of costs that did not include any amount for her time. I would dismiss Ms. Stubicar's appeal in A-333-15.

II. A-367-15

[15] In this matter, costs were awarded against Ms. Stubicar by the Federal Court (2012 FC 1393). The proceeding that resulted in this costs award was a motion for summary judgment brought by the Crown. In allowing this motion, the Judgment stated:

> The [Crown's] motion for summary judgment is hereby granted and [Ms. Stubicar's] action against [the Crown] is dismissed, with costs.

[16] The assessment officer assessed costs of $3,422.08 (2015 FC 563). Ms. Stubicar sought a review of this assessment of costs. Her motion for a review of this assessment of costs was dismissed by the Order of the Federal Court dated June 8, 2015 (Docket No. T-2102-10). The same Federal Court Judge who had awarded the costs that were in issue in this assessment of costs also heard and decided her motion for review of this assessment. Ms. Stubicar noted, in paragraphs 13 to 15 of her memorandum, that her motion for the review of the assessment of costs had originally been assigned to a different Federal Court Judge but that Judge referred the motion to the same Federal Court Judge who had awarded the costs in issue. Having the same judge who awarded costs hear the motion for the review of the assessment of costs is in line with the comments of Justice Evans in *Apotex Inc. v. Merck & Co.*, 2008 FCA 371, [2008] F.C.J. No. 1656 (QL), who was writing on behalf of this Court:

> 18 Finally, I would strongly endorse Justice Gibson's recommendation (at para. 51) that the judge who presided at the underlying proceeding is in the best position to review the assessment of costs and that, whenever possible, the presiding judge should conduct any review of an assessment officer's decision.

[17] Ms. Stubicar’s references, in paragraphs 52 to 54 of her memorandum, to certain grammatical errors in the reasons of the Federal Court Judge, who allowed the Crown’s motion for summary judgment and dismissed her action, do not warrant a departure from the recommendation of Justice Evans.

[18] In her memorandum of fact and law in this appeal, Ms. Stubicar raises two grounds of appeal:

– the failure of the Federal Court Judge to consider the proper ground of review; and

– the misapplication of the standard governing review of the assessment officer's decision.

[19] In relation to the first ground of appeal, Ms. Stubicar has broken this down into two parts – one related to the interpretation of the underlying costs award and the second related to the "Disputed Justification of the [Crown's] Costs Claims".

[20] Ms. Stubicar's argument in relation to the interpretation of the costs award is that the placement of the comma in the Judgment between "dismissed" and "with costs" affected the interpretation of the costs that were awarded. The assessment officer found that the costs award related to both the motion for summary judgment and the dismissal of the action that had been brought by Ms. Stubicar. It is clear from the reasons of the assessment officer that Ms. Stubicar's arguments related to the placement of the comma were analyzed and considered by him.

[21] It is, however, far from clear how the costs award could be restricted to only the motion or the dismissal of Ms. Stubicar's claim since the comma separates the word "dismissed" from "with costs". Although Ms. Stubicar devotes several paragraphs of her memorandum to an alleged error in the interpretation of the costs award, she does not provide any indication of what she alleges is the proper interpretation. She does not indicate in her memorandum whether, in her view, the award of costs should only be for the motion or only for the dismissal of the claim.

[22] Ms. Stubicar submits that the wording of the costs award for this case should be compared with the wording of the costs award in *Source Enterprise Ltd. v. Canada (Public*

Safety and Emergency Preparedness), 2012 FC 966, [2012] F.C.J. No. 1032 (QL). In that case, the Judgment, in part, provided that:

> 2. The Defendants' motion for summary judgment is granted and the Plaintiff's action is dismissed;
>
> 3. The Defendants shall have their costs fixed in the amount of $500.

[23] The Judgment in *Source Enterprise Ltd.* also allows a motion for summary judgment and dismisses the underlying action. However, this Judgment fixes the costs in the amount of $500. This Judgment is of no assistance in interpreting the Judgment in Ms. Stubicar's case, which allows the Crown's motion and dismisses her claim, with costs.

[24] Ms. Stubicar also refers to another Judgment which granted a motion for summary judgment and dismissed an action. In *Miller v. Canada*, 2006 FC 1446, [2006] F.C.J. No. 1819 (QL), the order provided that:

> The motion for summary judgment is allowed and the plaintiffs' action is dismissed, the whole with costs.

[25] The only difference between the order in *Miller* and the Judgment in Ms. Stubicar's case is the addition of the words "the whole" before "with costs". In both cases, the part of the sentence which awards costs is separated from the other part by a comma. While it may have been clearer if the words "the whole" had been added in Ms. Stubicar's case, the failure to include these words does not lead to the conclusion that the award of costs in Ms. Stubicar's case should only apply to either the motion for summary judgment or the dismissal of the claim.

[26] It would appear that Ms. Stubicar's reading of the judgment would be either:

> – The [Crown's] motion for summary judgment is hereby granted. [Ms. Stubicar's] action against [the Crown] is dismissed with costs.
>
> or
>
> – The [Crown's] motion for summary judgment is hereby granted with costs. [Ms. Stubicar's] action against [the Crown] is dismissed.

[27] Ms. Stubicar has not provided any support for either of these two interpretations. If the first interpretation is adopted, no costs would be awarded to the successful party in relation to the motion. Since in general a successful party would be awarded costs, I do not agree with this interpretation.

[28] If the second interpretation is adopted, no costs would be awarded in relation to the dismissal of the action, which is the significant result of the successful motion. Since again, in general a successful a party would be awarded costs, there is no reason why this judgment should be interpreted to deny the successful party its costs incurred in relation to the action that has been dismissed.

[29] As a result, Ms. Stubicar has failed to establish that the assessment officer made any error in his interpretation of the Judgment that was granted in this case.

[30] The first paragraph of her memorandum following the heading "Disputed Justification of the [Crown's] Costs Claims" is paragraph 58. In this paragraph, Ms. Stubicar refers to an alleged error by the assessment officer in failing to analyze and make findings of fact supported by the

evidence and the parties' submissions. This ground appears to be the same as the second ground of appeal where she alleges that the assessment officer erred "in principle by omitting to consider or misapprehending the evidence adduced and the representations made on assessment" (paragraph 61).

[31] The second ground of appeal is addressed in paragraphs 59 to 63 of her memorandum. It appears that the error that she is alleging is that the Federal Court Judge did not apply the applicable standard of review.

[32] In paragraph 40 of her memorandum, Ms. Stubicar notes that the standard of review applicable to cost assessment reviews is as set out by Dawson, J., as she then was, in *Wilson v. Canada* (2000), 196 F.T.R. 99, 2000 CanLII 16367 (FC) and quoted by this Court in *Bellemare v. Canada (Attorney General)*, 2004 FCA 231, 327 N.R. 179:

> 3 The applicable standard of review is not in dispute. In *Wilson v. Canada* (2000), 196 F.T.R. 100 *[sic]*, 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 in *Bellemare*)

[33] In this case, it appears that Ms. Stubicar's complaint relates to services that were included in determining the amount of costs and the number of units allocated to the particular services

under paragraph 2 of Tariff B. The selection of what services should be included and the allocation of the number of units to each service are not errors in principle. Ms. Stubicar, in her memorandum, has failed to establish that the assessment officer made any error in relation to the selection of the services that were included or in the allocation of the number of units to each service that would warrant our intervention.

[34] I would dismiss the appeal in A-367-15.

III. A-389-15

[35] This appeal relates to the second assessment of costs arising from the Judgment of this Court dated November 13, 2012 (2012 FCA 288) that awarded costs to Ms. Stubicar. This assessment of costs was for the costs related to the appeal to this Court. In assessing her costs, no amount was allowed for her time (2015 FC 113). In dismissing Ms. Stubicar's motion to review this assessment of costs, the Federal Court Judge awarded the Crown $200 in costs (2015 FC 722).

[36] In her appeal to this Court, Ms. Stubicar identified three grounds of appeal in her memorandum of fact and law:

- whether the Federal Court Judge failed to consider the proper ground of review and thereby misapplied the standard governing review of the assessment officer's decision;
- whether the Federal Court Judge misinterpreted the provisions of Rule 407 of the *Federal Courts Rules*; and

– whether the Federal Court Judge erred in law by failing to properly exercise his discretion when he awarded costs in relation to the motion for a review of the assessment of costs to the Crown.

[37] Ms. Stubicar, in her submissions related to the first two grounds of appeal, focused on the denial of her claim for her time. Therefore, these two grounds of appeal, in essence, relate to her submission that she should be entitled to receive an amount for her time. This matter was addressed above in relation to A-333-15 and, for the reasons stated above, Ms. Stubicar cannot succeed in this appeal on this ground.

[38] Her brief submissions with respect to the award of costs of $200 in relation to her motion for a review of the assessment of costs refer to previous decisions of the Federal Court where, as a general practice, costs would not be awarded on a motion to review an assessment of costs. As support for this proposition, one of the cases to which Ms. Stubicar referred is the decision of the Federal Court in *Merck & Co. v. Apotex Inc.*, 2007 FC 1035, [2007] F.C.J. No. 1337 (QL). In that case, Justice Gibson noted:

> 52 In *Montreal Fast Print (1975) Ltd. v. Polylok Corporation* [(1984), 1 C.P.R. (3d) 204 (F.C.T.D.)], Justice Cattanach, in the context of an Order as to costs and an "appeal" of that Order, wrote at page 210:
>
> > In accordance with the discretion I have I shall follow the practice as I understand has prevailed in this court and there shall be no award of costs for or against either party upon this review of the certificate of the taxing officer.
>
> 53 I adopt the "practice" endorsed by Justice Cattanach. Finality to litigation should be encouraged. The hearing of this PMNOC proceeding took place over three (3) days. The hearing before the assessment officer took two (2) days. The hearing before me took another full day. In sum, it has taken as long to settle the issue of costs, and I acknowledge that that issue may not yet be finally settled, as it took to adjudicate on the substance of the PMNOC. Such should not be the case. The assessment officer evidently laboured long and hard over this

> assessment. He wrote extensive reasons. What remained to be decided should have been settled between the parties.

[39] On appeal to this Court, Justice Evans in *Merck & Co. v. Apotex Inc.* (cited above in paragraph 16), who was writing on behalf of this Court, referred to these comments related to not awarding costs on a motion to review an assessment of costs:

> 14 In view of the limited material available to assessment officers, determining what expenses are "reasonable" is often likely to do no more than rough justice between the parties and inevitably involves the exercise of a substantial degree of discretion on the part of assessment officers. Like officers in other recent cases, the Assessment Officer in this complex case, involving very large sums of money, gave full reasons on the basis of a careful consideration of the evidence before him and the general principles of the applicable law.
>
> 15 Justice Gibson referred to these considerations, including the importance of finality of litigation, when he refused (at para. 53) to award any costs in the motion to review the assessment of costs in the underlying proceeding. In my opinion, these contextual factors are equally relevant to a determination of whether when an assessment officer has erred "in principle" in assessing the reasonableness of costs.

[40] While the general practice may have been that costs were not awarded on a motion for a review of an assessment of costs, the awarding of costs is within the discretion of the Federal Court Judge (Rule 400(1)). In exercising this discretion in relation to a motion for a review of an assessment of costs, the finality of litigation was an important consideration for this Court in *Merck & Co. v. Apotex Inc.*, as this is the only consideration to which specific reference was made in paragraph 15.

[41] In the matter that is now before this Court, the costs that were awarded were fixed in the amount of $200. Since the costs were fixed, the consideration of the finality of litigation was satisfied. No assessment of these costs would need to be determined by the assessment officer.

[42] Since:

(a) it was a practice and not a rule that costs would not be awarded on a review of a costs award;

(b) awarding of costs in a fixed amount satisfies the concern that litigation be brought to an end; and

(c) the awarding of costs is a discretionary decision of the judge hearing the matter;

Ms. Stubicar cannot succeed on this ground of appeal with respect to the costs award of $200 provided in the Judgment dismissing her motion for a review of the assessment of the costs award.

[43] As a result, I would dismiss Ms. Stubicar's appeal in A-389-15.

IV. A-390-15

[44] This appeal relates to costs that were awarded against Ms. Stubicar. The costs were awarded by this Court in dismissing Ms. Stubicar's appeal from the Judgment that had granted the Crown's motion for summary judgment and dismissed Ms. Stubicar's action (2013 FCA 239). The costs were assessed in the amount of $1,162.46 (2015 FCA 112).

[45] Ms. Stubicar's motion for review of the assessment of costs was heard by the same Federal Court Judge who heard the motion for a review of the assessment of costs related to appeal A-389-15. One Judgment and one set of reasons were issued in relation to the two motions. In dismissing the motion for a review of the assessment of costs in this matter (2015 FC 722), the Federal Court Judge also awarded the Crown $200 in costs.

[46] In her memorandum of fact and law in this appeal, Ms. Stubicar raised three grounds of appeal:

- whether the Federal Court Judge erred in law with respect to the applicable standard of review;
- whether the Federal Court Judge erred in law in applying a presumption of regularity of the process; and
- whether the Federal Court Judge erred in law by failing to properly exercise his discretion when he awarded costs in relation to the motion for a review of the assessment of costs to the Crown.

[47] Ms. Stubicar submitted, in paragraph 22 of her memorandum, that the Federal Court Judge appeared to apply a reasonableness standard rather than the standard as set out in *Bellemare*, which is referred to in paragraph 30 above. Ms. Stubicar submitted that this resulted in the Federal Court Judge not allowing her review with respect to:

- the number of units allocated to the particular services for the purposes of the formula in paragraph 2 of Tariff B;
- her claim that certain disbursements should not have been allowed; and
- her claim that she should have been allowed the costs of the assessment under Rule 408(3).

[48] Ms. Stubicar's second ground of appeal relates to the Federal Court Judge's statement in paragraph 11 of his reasons that "[t]here is a presumption that he fully considered the record". However, despite making the general assertion that the record discloses that this presumption could be rebutted, she fails to identify, in her memorandum, how the record supports this. While Ms. Stubicar does include a reference to additional submissions in the footnotes, she cannot incorporate by reference other submissions made in other documents. To do so would permit her to circumvent the 30 page limitation on a memorandum as set out in Rule 70(4).

[49] Ms. Stubicar, in her memorandum, has failed to establish that, in awarding costs of $1,162.46, the assessment officer made any error in relation to the allocation of the number of units to each service or the assessment of the amount of disbursements that would warrant our intervention.

[50] With respect to Ms. Stubicar's argument that the assessment officer failed to mention her request for the costs of the assessment under Rule 408(3), it should be noted that the awarding of costs under Rule 408(3) is discretionary:

(3) An assessment officer may assess and allow, or refuse to allow, the costs of an assessment to either party.	(3) L'officier taxateur peut taxer et accorder ou refuser d'accorder les dépens de la taxation à l'une ou l'autre partie.

[51] In *Phillips Legal Professional Corp. v. Vo*, 2017 SKCA 58, [2017] S.J. No. 327 (QL), the Saskatchewan Court of Appeal noted:

> 118 With respect to Mr. Phillips's related argument that specific issues and arguments were not addressed in the certificate, reasons need not address every

> argument raised by the parties. Reasons should be read as a whole (*West Van Inc. v Daisley*, 2014 ONCA 232 at para 15, 119 OR (3d) 481, citing *R.E.M.*). The assessment officer in this case was not required to address every subordinate issue raised by Mr. Phillips in his written or oral submissions. That said, there was no indication that the certificate as a whole disregarded any substantive issues in play.

[52] Since she was not awarded the costs of the assessment, implicitly Ms. Stubicar's request for these costs was denied. Ms. Stubicar has failed to establish that the assessment officer, in assessing the costs in the amount of $1,162.46, committed any error in not assessing and allowing her the costs of the assessment or in failing to explicitly state that he was doing so, that would warrant our intervention.

[53] In paragraphs 37 to 41 of her memorandum, Ms. Stubicar addresses her second ground of appeal. However, despite making very general comments about the failure to properly consider the evidence and the submissions, she does not specifically identify in her memorandum what evidence or submissions were not properly considered. As noted above, Ms. Stubicar cannot rely on specific submissions made in another document that is part of the record and not included in her memorandum since to do so would permit her to circumvent the 30 page limitation on a memorandum as set out in Rule 70(4). As a result, it appears that she simply disagrees with the conclusions reached by the assessment officer related to the amount of $1,162.46 that was allowed for costs.

[54] With respect to the final ground of appeal, for reasons as noted above for the appeal A-389-15, Ms. Stubicar cannot succeed in this appeal in relation to the $200 costs awarded against her.

[55] As a result, I would dismiss her appeal in A-390-15.

V. A-440-15

[56] This appeal arises as a result of a costs award against Ms. Stubicar. By the Order of the Federal Court dated August 2, 2012 (Docket No. T-19-12), Ms. Stubicar's motion to extend the time to file a motion to appeal the order of the prothonotary was dismissed. The Order provided that:

> The motion for an extension of time to file an appeal of the Order of Madam Prothonotary Aronovitch granting case management for Court files T-1436-11, T-2061 and T-19-12 is dismissed with costs to the Respondent payable forthwith.

[57] In this particular case, the costs that were assessed were in the amount of $1,140.95 (2015 FC 809). In dismissing Ms. Stubicar's motion for review of the assessment costs, the Federal Court Judge awarded the Crown costs of $400 (Order dated August 31, 2015 in Docket No. T-19-12).

[58] In her memorandum of fact and law, Ms. Stubicar raises four grounds of appeal:

- whether the Federal Court Judge erred in adopting the assessment officer's error in principle as to the scope of the costs award;
- whether the Federal Court Judge erred in law by misapprehending or failing to consider the ground for review that the assessment officer erred in principle in misapplying Rule 400(3)(k)(i);
- whether the Federal Court Judge erred in law by failing to consider Ms. Stubicar's other grounds for review; and

– whether the Federal Court Judge erred in law when he awarded costs in relation to the motion for a review of the assessment of costs to the Crown.

[59] Ms. Stubicar's first ground of appeal is related to the interpretation of the costs award. Ms. Stubicar's position is that costs were only awarded for the motion for an extension of time. However, as noted by the assessment officer in paragraph 10 and 11 of his reasons, the motion that Ms. Stubicar had brought addressed both the appeal from the Order and the extension of time. Since Ms. Stubicar had framed her motion to deal with both matters, the Crown would have been obligated to address both issues in its reply to her motion. Therefore, it would only be logical that the costs of both the motion for an extension of time and the appeal of the Order would have been the subject of the costs award.

[60] As a result, Ms. Stubicar cannot succeed on this ground of appeal.

[61] Ms. Stubicar's second ground of appeal relates to Rule 400(3)(k)(i):

(3) In exercising its discretion under subsection (1), the Court may consider	(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 :
…	[…]
(k) whether any step in the proceeding was	k) la question de savoir si une mesure prise au cours de l'instance, selon le cas :
(i) improper, vexatious or unnecessary, or	(i) était inappropriée, vexatoire ou inutile,

[62] In paragraph 8 of his reasons, the assessment officer noted Rule 401(2):

(2) Where the Court is satisfied that a motion should not have been brought or opposed, the Court shall order that the costs of the motion be payable forthwith.	(2) Si la Cour est convaincue qu'une requête n'aurait pas dû être présentée ou contestée, elle ordonne que les dépens afférents à la requête soient payés sans délai.

[63] The assessment officer then noted:

> [9] Considering the provisions of subsection 401(2), I find the fact that the Respondent's costs, ordered "payable forthwith", are a clear indication that the Court was satisfied that the Motion "should not have been brought".

[64] Although Ms. Stubicar refers to Rule 401(2) in paragraph 52 of her memorandum, she does not make any submissions that the assessment officer erred in interpreting this Rule or in drawing the inference that he did in this case. Ms. Stubicar's submissions also fail to identify how this Rule affected the costs award of $1,140.95 or what Ms. Stubicar would submit the costs should have been if this Rule was not considered. There is no basis for this Court to intervene in this appeal.

[65] Ms. Stubicar's third ground of appeal appears to relate to the amount allowed for disbursements. She has not identified the amount that is in dispute but it appears that the disbursements that are in issue are the amounts allowed for photocopies of $198 and process server fees of $25. Ms. Stubicar has failed to establish any basis on which this Court can intervene in the award of the disbursements for these amounts.

[66] The final ground of appeal again relates to the award of costs by the Federal Court Judge and, as noted above for the appeal A-389-15, there is no basis for this Court to intervene in this award of costs of $400.

VI. A-452-15

[67] The underlying award of costs in this appeal arises as a result of an Order of the Federal Court dated October 18, 2012 (Docket No. T-618-12). The Order was issued following a motion brought by Ms. Stubicar to set aside an Order of the Prothonotary and to have the Prothonotary recuse herself. Ms. Stubicar's motion was dismissed. In dismissing this motion, the Federal Court Order concluded with "[c]osts of the within appeal on a solicitor and client scale payable forthwith".

[68] The costs in this matter were assessed in the total amount of $1,947.25 (2015 FC 810). The amount assessed for fees in relation to the award of solicitor and client costs was $1,670.95. In dismissing Ms. Stubicar's motion for a review of the assessment of costs, the Federal Court also awarded $400 in costs to the Crown (Order dated August 31, 2015 in Docket No. T-618-12).

[69] In her memorandum of fact and law in this appeal, Ms. Stubicar raises four grounds of appeal:

- whether the Federal Court Judge erred in law by failing to exercise his powers of review under Rule 414;
- whether the Federal Court Judge erred in law by adopting the assessment officer's errors in principle;
- whether the Federal Court Judge erred in law by endorsing erroneous findings made in the context of another review assessment (2015 FC 722), from which there was, at that time, a pending appeal (file A-390-15); and
- whether the Federal Court Judge erred in law when he awarded costs in relation to the motion for a review of the assessment of costs to the Crown.

[70] With respect to the first ground of appeal, Ms. Stubicar states, in paragraph 46 of her memorandum of fact and law:

> In light of the fact that there is no mention, in the Reasons for Assessment, of the Appellant's Affidavit on assessment, and that the argument based on the Assessment Officer's omission to consider that Affidavit was only made on review, it was not open to the Federal Court Judge to find that the Assessment Officer had carefully considered and rejected the Appellant's submissions as regards the Assessment Officer's omission to consider the Appellant's Affidavit.

[71] However, Ms. Stubicar does not indicate what in her affidavit was not considered by the assessment officer or how it would have affected the assessment of costs. Failing to identify this in her memorandum means that she cannot succeed on this ground of appeal.

[72] Ms. Stubicar also referred to her argument that the assessment officer had reversed the burden of proof. In paragraph 47 of her memorandum, Ms. Stubicar simply makes the bald statement that the assessment officer reversed the burden of proof without providing the specific details of how or when he did so.

[73] The assessment officer does note, however, in paragraph 17 of his reasons:

> Also, considering [Ms. Stubicar's] contention that the compiling of documents is routinely done by paralegals, I find that as [Ms. Stubicar] has provided no evidence to support her allegation that the [Crown's] Motion Record was in fact compiled by a paralegal. Therefore, it is not necessary to consider this factor on the assessment of the [Crown's] costs.

[74] In this case, it was Ms. Stubicar's general allegation that this type of work was routinely done by paralegals. Ms. Stubicar does not submit that the assessment officer erred in

characterizing this allegation. Ms. Stubicar also does not make any submissions with respect to why the general principle that the person “who alleges must prove” (*Ont. Human Rights Comm. v. Simpsons Sears Ltd.*, [1985] 2 S.C.R. 536, at para. 28, 1985 CanLII 18 (SCC)) would not be applicable in this case. In my view, Ms. Stubicar cannot succeed in relation to this ground of appeal.

[75] The second ground of appeal appears to mainly relate to the quantum allowed for the solicitor-client costs. At the hearing of this appeal, Ms. Stubicar submitted that an award of solicitor-client costs does not mean that she is obligated to indemnify the Crown fully for its reasonable costs of the matter for which such costs were awarded. However, Justice Locke (as he then was) in *Mediatube Corp. v. Bell Canada*, 2017 FC 495, [2017] F.C.J. No. 1218 (QL) noted:

> 32 I prefer to be guided by authorities from the federal courts on this issue. In addition to those discussed above, I note also the following passage from *Merck & Co v Apotex Inc*, 2002 FCT 1210 at para 11:
>
> > The award of costs on a solicitor and client basis is intended to provide full indemnification of costs reasonably incurred in the course of carriage by the plaintiffs of this litigation. In fixing those costs, the Court must carefully consider the costs claimed in relation to the work reasonably required, not on the basis of hindsight with 20/20 vision of what was finally required, and not as an assessment item by item as an assessing or taxing officer would do, but sufficiently reviewed to ensure that costs awarded are reasonably incurred. [Citation omitted.]
>
> 33 In my view, the term "solicitor-and-client costs" in this Court generally contemplates the full amount of a party's necessary expenses reasonably incurred. Nothing I have seen in the plaintiffs' authorities clearly convinces me that solicitor-and-client costs, in this Court, should be construed to mean anything less.

[76] I agree with the comments of Justice Locke. The award of costs on a solicitor-client basis means that Ms. Stubicar is to indemnify the Crown for its costs incurred in relation to the matter, to the extent that such costs were necessary and reasonable. In this appeal, Ms. Stubicar has not provided any basis on which it could be determined that any portion of the amount of $1,670.95, which was assessed as the fees, was not a necessary expense that was reasonably incurred.

[77] The third ground of appeal appears to relate to the standard of review that was applied. In paragraph 75 of her memorandum, Ms. Stubicar states that a motion for review of the assessment pursuant to Rule 414 is subject to the correctness standard. However, as noted above in paragraph 32, Ms. Stubicar submitted in A-367-15 that the standard of review is as set out in *Bellemare*. In any event, Ms. Stubicar has failed to establish how this would have impacted the result. It is trite law that an appeal lies from the order, not the reasons (*Stubicar v. Canada*, 2012 FCA 288, at para. 2, [2012] F.C.J. No. 1431 (QL)).

[78] The final ground of appeal relates to the awarding of costs for the review motion. For the reasons as noted above for appeal A-389-15, there is no basis for this Court to intervene in this award of costs of $400.

[79] As a result, I would dismiss Ms. Stubicar's appeal in A-452-15.

VII. Rule 357

[80] At the conclusion of the hearing of these appeals, Ms. Stubicar referred to Rule 357:

357 (1) Notwithstanding rule 352, where a judgment of the Federal Court of Appeal is delivered from the bench, a motion under section 37.1 of the *Supreme Court Act* for leave to appeal from the judgment to the Supreme Court of Canada may be made at the time the judgment is delivered and without prior notice.	357 (1) Malgré la règle 352, la requête présentée en vertu de l'article 37.1 de la *Loi sur la Cour suprême* pour obtenir l'autorisation d'interjeter appel, devant la Cour suprême du Canada, d'un jugement de la Cour d'appel fédérale peut être faite sans préavis, au moment où le jugement est rendu, si celui-ci est rendu à l'audience.

[81] Since these appeals were not dismissed from the bench, this Rule is not applicable in this case.

VIII. Conclusion

[82] I would dismiss all six appeals.

[83] At the conclusion of the hearing, Ms. Stubicar requested the opportunity to provide written submissions on costs. In relation to the costs of these appeals, I would repeat the comments of Justice Evans in *Merck & Co. v. Apotex Inc.*:

> 19. Better still, the parties should always endeavour from the outset to reach an agreement on costs.

[84] I would propose that the parties first be given the opportunity to reach an agreement on costs, failing which submissions could be made. I would propose that if the parties are unable to reach an agreement on costs by April 24, 2020, Ms. Stubicar will have the right to make additional written submissions, not exceeding 10 pages, on the costs that would be applicable to all six appeals on or before May 29, 2020. The Crown will then have the right to make written submissions, not exceeding 10 pages, on the costs that would be applicable to all six appeals on or before June 19, 2020. Ms. Stubicar will then have the right to make reply submissions, not exceeding three pages, on or before June 26, 2020. The parties are to notify the Court on or before April 24, 2020 whether an agreement on costs has been reached and, if so, the terms of that agreement.

"Wyman W. Webb"
J.A.

“I agree
D. G. Near J.A.”

“I agree
Donald J. Rennie J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS:	A-333-15, A-367-15, A-389-15, A-390-15, A-440-15 AND A-452-15

APPEALS FROM THE ORDERS OF THE FEDERAL COURT DATED JUNE 2, 2015 (DOCKET NO. T-2102-10), JUNE 8, 2015 (DOCKET NO. T-2102-10), JUNE 8, 2015 (2015 FC 722) (FOR BOTH A-389-15 and A-390-15), AUGUST 31, 2015 (DOCKET NO. T-19-12) AND AUGUST 31, 2015 (DOCKET NO. T-618-12)

DOCKETS:	A-333-15, A-367-15, A-389-15, AND A-390-15
STYLE OF CAUSE:	VLASTA STUBICAR v. HER MAJESTY THE QUEEN IN RIGHT OF CANADA
AND DOCKETS:	A-440-15 AND A-452-15
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:	DECEMBER 9, 2019
REASONS FOR JUDGMENT BY:	WEBB J.A.
CONCURRED IN BY:	NEAR J.A. RENNIE J.A.
DATED:	MARCH 27, 2020

APPEARANCES:

Vlasta Stubicar	ON HER OWN BEHALF
Stephen Kurelek	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Nathalie G. Drouin Deputy Attorney General of Canada	FOR THE RESPONDENTS