

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200925

Docket: A-239-18

Citation: 2020 FCA 150

Present: ORELIE DI MAVINDI, Assessment Officer

BETWEEN:

ALEX MARTINEZ

Appellant

and

**HER MAJESTY THE QUEEN,
GOVERNMENT OF BRITISH COLUMBIA,
ROYAL CANADIAN MOUNTED POLICE
(RCMP), COMMUNICATIONS SECURITY
ESTABLISHMENT (CSE), PUBLIC
COMPLAINTS COMMISSION TO THE
ROYAL CANADIAN MOUNTED POLICE,
BRITISH COLUMBIA PUBLIC SERVICE,
THE CITY OF CALGARY, THE
UNIVERSITY OF CALGARY, THE
GOVERNMENT OF ALBERTA, TECK COAL
LIMITED, COURT OF QUEEN'S BENCH
CALGARY, MANITOBA COURT OF
QUEEN'S BENCH, MANITOBA COURT OF
APPEAL, GOVERNMENT OF MANITOBA,
THE WINNIPEG POLICE SERVICE, BELL
CANADA, MANITOBA TELECOM SYSTEM
ALLSTREAM, VONAGE CANADA, TELUS
CANADA, PRESIDENTS CHOICE
FINANCIAL, PRESIDENTS CHOICE BANK,
BofA CANADA BANK, TORONTO-
DOMINION BANK, WINNIPEG CHILD AND
FAMILY SERVICES, MANITOBA**

**INSTITUTE OF REGISTERED SOCIAL
WORKERS, MANITOBA PUBLIC
INSURANCE CORPORATION**

Respondents

Assessment of costs without appearance of the parties.
Certificate of Assessment delivered at Toronto, Ontario, on September 25, 2020.

REASONS FOR ASSESSMENT BY:

ORELIE DI MAVINDI, Assessment Officer

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200925

Docket: A-239-18

Citation: 2020 FCA 150

Present: ORELIE DI MAVINDI, Assessment Officer

BETWEEN:

ALEX MARTINEZ

Appellant

and

**HER MAJESTY THE QUEEN,
GOVERNMENT OF BRITISH COLUMBIA,
ROYAL CANADIAN MOUNTED POLICE
(RCMP), COMMUNICATIONS SECURITY
ESTABLISHMENT (CSE), PUBLIC
COMPLAINTS COMMISSION TO THE
ROYAL CANADIAN MOUNTED POLICE,
BRITISH COLUMBIA PUBLIC SERVICE,
THE CITY OF CALGARY, THE
UNIVERSITY OF CALGARY, THE
GOVERNMENT OF ALBERTA, TECK COAL
LIMITED, COURT OF QUEEN'S BENCH
CALGARY, MANITOBA COURT OF
QUEEN'S BENCH, MANITOBA COURT OF
APPEAL, GOVERNMENT OF MANITOBA,
THE WINNIPEG POLICE SERVICE, BELL
CANADA, MANITOBA TELECOM SYSTEM
ALLSTREAM, VONAGE CANADA, TELUS
CANADA, PRESIDENTS CHOICE
FINANCIAL, PRESIDENTS CHOICE BANK,
BofA CANADA BANK, TORONTO-
DOMINION BANK, WINNIPEG CHILD AND
FAMILY SERVICES, MANITOBA
INSTITUTE OF REGISTERED SOCIAL**

**WORKERS, MANITOBA PUBLIC
INSURANCE CORPORATION**

Respondents

REASONS FOR ASSESSMENT

ORELIE DI MAVINDI, Assessment Officer

[1] On September 19, 2018, the Court dismissed the appeal with costs payable by the Appellant, further to Her Majesty the Queen (the “Respondent”)’s motion to quash the matter. Thereafter, the Appellant filed a motion for contempt and for reconsideration, where it was held by the Court on October 18, 2018, that it was unclear what motion or judgment was at issue. The motion was then dismissed and the file closed to further filings.

[2] On November 26, 2019, the Registry sought permission to file the Respondent’s bill of costs from the Court and subsequently filed the document. On January 2, 2020, directions were issued advising the parties that the matter would proceed in writing and setting out timelines for submissions. The direction read:

Having reviewed Her Majesty the Queen (the “Respondent”)’s Bill of Costs, filed on November 26, 2019, it has been determined that this is an assessment which may be dealt with by way of written submissions.

Therefore, it is directed that:

- (a) the Respondent may serve and file all materials (if it has not already done so) including the bill of costs, supporting affidavit and written submissions together with a copy of this direction by February 3, 2020;
- (b) the Appellant may serve and file any reply materials by March 3, 2020;
- (c) the Respondent may serve and file any rebuttal materials by March 31, 2020.

[3] Further to the directions, the Registry received informal correspondence from the Appellant objecting to the assessment of costs on January 5, 2020 and January 6, 2020. On January 15, 2020, the Respondent produced the supporting affidavit to the bill of costs of Cynthia Gaulin Gallant sworn on January 13, 2020.

I. Preliminary Issues

A. *Appeal at the Supreme Court of Canada*

[4] On December 12, 2018, the Appellant filed leave to appeal at the Supreme Court of Canada in file 38563 of the Federal Court of Appeal's October 18, 2018 dismissal of the motion for contempt and for reconsideration mentioned at the outset. The Supreme Court of Canada dismissed leave to appeal on June 13, 2019 in *Alex Martinez v. Her Majesty the Queen, et al.*, 2019 CanLII 53416 (SCC) (*Alex Martinez v. Her Majesty the Queen, et al.*), the Court held:

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-239-18, dated October 18, 2018, is dismissed with costs to the respondents, Her Majesty the Queen, Government of British Columbia, Royal Canadian Mounted Police (RCMP), Communications Security Establishment (CSE), Public Complaints Commission to the Royal Canadian Mounted Police, University of Calgary, Teck Coal Limited, Winnipeg Police Service, President's Choice Financial, Bank of America, National Association and Toronto-Dominion Bank.

Côté J. took no part in the judgment

[5] On January 5, 2020, the Registry received informal communications from the Appellant objecting to the assessment of costs by way of email on the basis of the potential appeal at the Supreme Court of Canada. It was submitted by the Appellant that:

This matter was referred to the Supreme Court of Canada and is currently under Appeal. There has been no correspondence or indication that it was being referred back to your court.

Would you please advise as to what is occurring. This is not something that I am in agreement with as the 'Doctrine of Res Judicata' has not been respected and therefore; the matter is coming to an end with default judgment and award for me, the Applicant; Alex Martinez.

[6] On January 6, 2020, the Registry received a copy of a cover letter from the Appellant to counsel for the Respondent dated December 23, 2019. The letter purported that the Appellant served the Respondent by email with a document titled “‘Notice of Motion to a Judge Amending Judgment’ for the case of Alex Martinez v. Her Majesty the Queen, et al.” in relation to Supreme Court of Canada file 38563. Presumably, the intent of this letter was to convey that the Appellant intended to pursue the aforementioned application for leave to appeal at the Supreme Court of Canada by way of a motion to amend the judgment. From a review of the Supreme Court of Canada docket in file 38563, it appears that the Registrar returned all materials filed by the Appellant subsequent to the dismissed application for leave to appeal; to date the decision has not been amended.

[7] Nonetheless, the present assessment of costs flows from the Federal Court of Appeal’s September 19, 2018 decision to quash the appeal with costs. Further, the Appellant provided neither caselaw nor reference to the *Federal Courts Rules* (the Rules) that substantiates the argument that the existence of an appeal in a discrete decision in of itself prevents the Respondent from initiating an assessment of costs in relation to another decision where there has been an award of costs from the Court. As outlined by the assessment officer in *Latham v. Canada*, 2007 FCA 179 (*Latham v. Canada*) at paragraph 8:

The existence of outstanding appeals does not prevent the Respondents from proceeding with these assessments of costs: see *Culhane v. ATP Aero Training Products Inc.*, [2004] F.C.J. No. 1810 (A.O.) at para. [6]

[8] Upon review of the parties' materials, the Supreme Court of Canada and Federal Court of Appeal dockets and the leave dismissal in the *Alex Martinez v. Her Majesty the Queen, et al.* at the Supreme Court of Canada, I determined that it would be appropriate to move forward with the assessment of costs; the Appellant's preliminary objection based on Supreme Court of Canada file 38563 was disallowed. Accordingly, the following directions were issued on January 30, 2020:

The assessment of Her Majesty the Queen's Bill of Costs filed in A-239-18 on November 26, 2019, will proceed as directed on January 2, 2020. Parties may provide written submissions specifically addressing the disbursements and services claimed under Tariff B of the *Federal Courts Rules*, within the allocated timeframes.

B. *Self-represented litigants and costs*

[9] On February 25, 2020, reply submissions were received from the Appellant in the form of a letter, stating:

In 'Reply' to the Affidavit of Cynthia Gaulin Gallant; there can be no other finding other than for the Applicant; Alex Martinez, as all of the Defending parties and the Courts involved have failed the 'Doctrine of Res Judicata' and have been found to be 'incompetent.' This was the conclusion as the case was part of a massive sweep and 'internal investigation.' Therefore there can be no 'Bill of Costs' and as a self-represented individual; the Applicant; Alex Martinez cannot be held accountable for damages or costs. In addition, the case is a confirmed Police/Government/Criminal error that has been 'corrected' and apologized for and since the Applicant; Alex Martinez, has not been employed since 2012 and has had 'no income;' it cannot be paid. This is evidenced in the attached Copy of the 2013 – 2017 'Notice of Assessment,' from the Canada Revenue Agency.

[10] As mentioned, the letter enclosed the Appellant's Canada Revenue Agency Notices of Assessment from the years 2013 to 2017. No further materials were received from either party.

[11] The Appellant submits that as a self-represented litigant, he cannot be held accountable for damages or costs. However, the Court in its September 19, 2018 decision to dismiss the appeal with costs exercised its discretion pursuant to rule 400 (1) to award them against the Appellant.

Discretionary powers of Court

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.

Pouvoir discrétionnaire de la Cour

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 payer

[12] An assessment officer may assess the allowable quantum of costs in view of jurisprudence, the Rules and Tariff B, but may not vary or interfere with the Court's underlying decision to award costs against a party in a proceeding.

[13] With respect to the Appellant's argument that he is unable to pay costs due to unemployment, while I am sympathetic to the Appellant's circumstances, the inability to pay costs is not a factor that can be taken into consideration by an assessment officer. I echo the sentiments articulated in *Latham v. Canada* at paragraph 8:

That is, I cannot interfere with the exercise of the Court's Rule 400(1) discretion which established the Respondents' right for recovery here of assessed costs from the Applicant/Appellant. I do not think that financial hardship falls within the ambit of "any other matter" in Rule 400(3)(o) as a factor relevant and applicable by an assessment officer, further to Rule 409, to minimize assessed litigation costs. Self-represented litigants and litigants represented by counsel receive the

same treatment relative to the provisions for litigation costs: see *Scheuneman v. Canada (Human Resources Development)*, [2006] F.C.J. No. 1278 (A.O.). The Courts here made their findings concerning entitlements to costs: I have no jurisdiction to interfere.

[14] The inability to pay costs is further discussed in *Exeter v. Canada (Attorney General)*, 2012 FCA 153 (*Exeter v. Canada*) (A.O.) at paragraph 12:

Concerning the Appellant's contention that she is not able to pay any amount to the Respondent, it has been decided that ability to pay is not a factor which may be considered in an assessment of costs (see: *Solosky v Canada*, [1977] 1 F.C. 663; *Moodie v Canada (Minister of National Defence)*, 2009 FC 608; *Seesahai v Via Rail Canada Inc.*, 2011 FCA 248; *Murray v Canada (Attorney General)*, 2009 FCA 52). Therefore, in keeping with the above decisions, this factor will not be considered in assessing the costs of the Respondent.

[15] Thus in light of the Court's rule 401 (1) discretionary powers and as outlined by the assessment officers in *Latham v. Canada* and *Exeter v. Canada*, the Appellant's objections to proceeding with the assessment of costs on the basis of being self-represented and impecunious are disallowed.

II. Assessment

[16] As the preliminary issues have been addressed, I will proceed with the assessment of costs. The Respondent sought costs for assessable services in accordance with column III of Tariff B of the Rules. In addition to the assessable services and disbursements claimed in relation to the Court's underlying decision to dismiss the appeal with costs, the Respondent claims lump sum awards from related Federal Court file T-404-18, *Alex Martinez v. Royal Canadian Mounted Police, et al.* (*Martinez v. RCMP et al.*). In the Respondent's bill of costs, it is argued:

Bill of Costs owed to Her Majesty the Queen and taxable against the Appellant, Alex Martinez for a total amount of **\$3,393.50**:

- as per an order to be rendered by the Federal Court of Appeal in this file (A-239-18), quashing the Appellant's Appeal with costs in the amount of **\$1,393.50** determined pursuant to Tariff B and proposed in Table here below for all fees and disbursement; and
- as per Madam Prothonotary Mirelle Tabib's order rendered on May 11, 2018 striking out Mr. Martinez' Statement of Claim with costs, in the amount of **\$750.00** (T-404-18) to be paid to the Attorney General of Canada; and
- as per the Honourable Mr. Justice Locke's order rendered on July 11, 2018, dismissing Mr. Martinez' Motion to Appeal with costs, in the amount of **\$1,250.00** (T-404-18) to be paid to the Attorney General of Canada.

[17] With the exception of the matters outlined above under Preliminary Issues, the Appellant did not make use of the opportunity to serve and file responding material specifically speaking to the assessable services, disbursements and lump sum awards claimed in the Respondent's bill of costs as directed on January 2, 2020 and January 30, 2020. Nor did the Appellant request an extension of time to serve and file said responding materials. I will thus proceed with the assessment of costs in light of the comments at paragraph 2 of *Dahl v. Canada*, 2007 FC 192

(*Dahl v. Canada*) (A.O):

Effectively, the absence of any relevant representations by the Plaintiff, which could assist me in identifying issues and making a decision, leaves the bill of costs unopposed. My view, often expressed in comparable circumstances, is that the Federal Courts Rules do not contemplate a litigant benefiting by an assessment officer stepping away from a position of neutrality to act as the litigant's advocate in challenging given items in a bill of costs. However, the assessment officer cannot certify unlawful items, i.e. those outside the authority of the judgment and the Tariff.

[18] Having reviewed the Court file, the materials provided by the parties and in keeping with *Dahl v. Canada*, the assessable services claimed under items 21 (a), 25, 26 and 27 are considered

both reasonable and necessary to advance the conduct of the proceeding and Her Majesty the Queen's motion to quash the appeal; they are allowed as claimed. The claimed disbursements relating to the photocopying of the motion to quash are equally considered reasonable and necessary, the quantum sought is allowed as claimed. The requested \$1,393.50 flowing these items is allowed.

[19] Concerning the lump sum amounts claimed by the Respondent in related file T-404-18, *Martinez v. RCMP et al.*, there appears to be an error in the Respondent's claims for costs that were awarded in relation to the decision dated July 11, 2018. The Respondent claims \$1,250.00 and the Court's judgment awarded a lump sum amount of \$1,200.00. As counsel provided no explanation for the residual \$50.00, I will consider the discrepancy a clerical error or oversight. Considering the lump sum award claims have gone unopposed and given the Order of the Court dated May 11, 2018 awarding \$750.00 and the Judgment dated July 11, 2018 awarding \$1,200.00, against Mr. Martinez and in favor of the Attorney General of Canada, a Certificate of Assessment will be issued in T-404-18 in the amount of \$1,950.00.

III. Conclusion

[20] For the above Reasons, Her Majesty the Queen's Bill of Costs in A-239-18 is assessed and allowed at \$1,393.50. A Certificate of Assessment will be issued in this amount. A separate Certificate of Assessment will be issued in T-404-18 in the amount of \$1,950.00, reflecting the lump sum cost awards in this matter.

"Orelie Di Mavindi"
Assessment Officer

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-239-18

STYLE OF CAUSE: ALEX MARTINEZ. v. HER
MAJESTY THE QUEEN

**MATTER CONSIDERED AT TORONTO, ONTARIO WITHOUT PERSONAL
APPEARANCE OF THE PARTIES**

REASONS FOR ASSESSMENT BY: ORELIE DI MAVINDI, Assessment Officer

DATED: SEPTEMBER 25, 2020

WRITTEN SUBMISSIONS BY:

Alex Martinez SELF-REPRESENTED

Marieke Bouchard FOR THE RESPONDENT
Marilou Bordeleau HER MAJESTY THE QUEEN

SOLICITORS OF RECORD:

Alex Martinez APPELLANT
Self-Represented
Toronto, Ontario

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