

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120215

**Dockets: A-237-11
A-244-11**

Citation: 2012 FCA 52

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

BETWEEN:

VLASTA STUBICAR

Appellant

and

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

Respondent

Heard at Ottawa, Ontario, on February 15, 2012.

Judgment delivered at Ottawa, Ontario, on February 15, 2012.

REASONS FOR JUDGMENT BY THE COURT

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REASONS FOR JUDGMENT

THE COURT

[1] The appellant launched two appeals against interlocutory decisions of the Federal Court which confirmed two orders issued by Prothonotary Morneau, one in file A-237-11, the other in file A-244-11.

[2] In file A-237-11, Prothonotary Morneau rejected the appellant's motion to strike the public and confidential affidavits of the respondent. He applied the principles developed in *Bull (David)*

Laboratories (Canada) Inc. v. Pharmacia Inc. et al. (1994), 176 N.R. 48 and found that the appellant's case was not so exceptional as to allow a motion to strike proceedings in the course of a judicial review application.

[3] On appeal from the dismissal of the appellant's motion, Martineau J. of the Federal Court ruled that he was neither satisfied that the appeal raised a question vital to the final issue nor that the Prothonotary's discretionary order was clearly wrong. Martineau J. also agreed that the judge hearing the judicial review application is in the best position to determine, in light of the entire evidentiary record, what evidence, if any, should be struck from the affidavit and whether the confidential affidavit is appropriate. Consequently, he dismissed the appeal.

[4] In file A-244-11, the appellant made a motion for production of documents pursuant to Rule 318 of the *Federal Courts Rules*. In an order issued on May 19, 2011, Prothonotary Morneau accepted the respondent's argument that the question of the respondent's obligation under Rule 318 had already been confirmed by the Court and fulfilled by the respondent. Therefore, he refused to grant any of the remedies requested by the appellant.

[5] The appellant's appeal from this order of Prothonotary Morneau to the Federal Court was dismissed by Harrington J. who confirmed that the appellant's motion under Rule 318 was redundant as well as a collateral attack on another order previously rendered by Prothonotary Morneau. In addition, he was of the view that he could not interfere with the Prothonotary's exercise of discretion since the Prothonotary was clearly right in coming to his conclusion.

[6] We have not been convinced that Martineau J. and Harrington J. committed errors which would justify our intervention. The two appeals will be dismissed with costs limited to one set for the hearing on appeal.

[7] Copy of these reasons will be filed in file A-244-11.

“Gilles Létourneau”

J.A.

“Marc Noël”

J.A.

“J.D. Denis Pelletier”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: A-237-11 and A-244-11

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: February 15, 2012

REASONS FOR JUDGMENT BY: THE COURT (LÉTOURNEAU J.A., NOËL J.A.
and PELLETIER J.A.)

DATED: February 15, 2012

APPEARANCES:

Vlasta Stubicar

SELF-REPRESENTED

Jacques Mimar

FOR THE RESPONDENT

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FOR THE RESPONDENT