

**CITATION:** Myriam Michail v. Ontario English Catholic Teachers' Association ('OECTA') et al, London District Catholic School Board ('LDCSB'), Ontario Labour Relations Board ('OLRB'), 2017 ONSC  
**COURT FILE NO.:** 624-17  
**DATE:** 2017/08/09

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Myriam Michail, Applicant

**AND:**

Ontario English Catholic Teachers' Association ('OECTA'), et al, London District Catholic School Board ('LDCSB'), Ontario Labour Relations Board ('OLRB'), Respondents

**BEFORE:** Mr. Justice A.D. Grace

**COUNSEL:** Self-Represented, Applicant  
P. Cavalluzzo, for the Respondent OECTA  
B. Traynor, for the Respondent LDCSB  
L. Marvy, for the Respondent OLRB

**HEARD:** By written submissions

**Date:** **Handwritten endorsement released August 9, 2017**  
**Transcribed August 21, 2017**

**COSTS ENDORSEMENT**

- [1] I have reviewed the written submissions on costs of LDCSB dated July 11, 2017, Ms. Michail dated July 24, 2017 and of OECTA dated July 31, 2017.
- [2] LDCSB seeks costs on a partial indemnity basis in the all-inclusive amount of \$11,903.75 with payment deferred until after the application for judicial review is finally determined.
- [3] Ms. Michael resists that request and asks for costs herself. A bill of costs (disbursement summary) was attached to her submission seeking reimbursement of \$1,475.
- [4] OECTA made no request for costs. It did respond to Ms. Michail's request for a costs award against it. It rightly noted that I had anticipated a request by but not against OECTA.
- [5] I dealt with a motion under s. 6(2) of the *Judicial Review Procedure Act*. That required consideration of two issues: urgency and whether the delay required for hearing of the application by the Divisional Court was likely to involve a failure of justice. While the merits were a factor to be considered, I concluded it was not possible to formulate an opinion on the substantive issues based on the record assembled.

- [6] I assumed that Ms. Michail had met the test for urgency. However, the delay required for an application to the Divisional Court was not likely to involve a failure of justice. Consequently, Ms. Michail's motion was dismissed.
- [7] Since the respondents were successful on the motion, they are presumptively entitled to costs. As noted, OECTA decided not to pursue the issue. I did not receive submissions from the OLRB.
- [8] Only LDCSB asks for an award. I was well satisfied on the materials filed that the respondents were willing to cooperate in ensuring that the application was argued as quickly as possible before a panel of the Divisional Court. Ms. Michael was adamant that the matter proceed before a single Superior Court of Justice judge.
- [9] With respect, that position was a problematic one. The only suggestion I made which seemed to be new was participation by Ms. Michail by teleconference if she felt, with the support of Dr. Horne and Dr. Reist, unable to travel to Toronto for an in person hearing. While Ms. Michail continues to maintain an inability to participate comfortably in that fashion, her position on that point is not supported by any professional opinion.
- [10] Costs are, of course, discretionary. Nothing was said or done by LDCSB that deprives it of costs. Put another way, I know of nothing that displaces LDCSB's presumptive entitlement. I simply do not agree with Ms. Michail's submissions to the contrary.
- [11] Ms. Michail raises the issue of impecuniosity. With respect, one Canada Revenue Agency document from July 5, 2017 does not satisfy me one way or the other.
- [12] In any event, those who access the court must understand that they cannot expect adverse parties to fund expensive litigation with impunity. This motion was ill-advised. It involved voluminous materials. Factual and legal responses were required. Argument was extensive. LDCSB cannot be faulted for the steps it took nor can OECTA.
- [13] Frankly, the costs requested by LDCSB are entirely reasonable, although as a rule of thumb the range of partial indemnity costs is fifty to sixty percent. In this case, sixty-five percent is sought. A modest downward adjustment is appropriate.
- [14] In my view, the all-inclusive sum of \$10,000 is fair and reasonable. Payment shall be made by Ms. Michail to LDCSB within thirty days after final disposition of the application for judicial review, including the issue of costs of that application. If successful on the application and awarded costs as against LDCSB, she shall only be obligated to pay the net amount owing, if any. Otherwise, each party shall bear their own costs of the motion I heard.

**"Justice A.D. Grace"**

Justice A.D. Grace

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