

Federal Court



Cour fédérale

**Date: 20130308**

**Dockets: T-1677-79  
T-3488-82  
T-2518-89  
T-2521-89  
T-2522-89**

**Citation: 2013 FC 255**

**BETWEEN:**

**GRANT R. WILSON**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**ASSESSMENT OF COSTS - REASONS**

**BRUCE PRESTON, Assessment Officer**

[1] On October 27, 2000, the Court rendered Reasons for Order and Order (review decision) concerning the motions for review of the assessment decision filed by the Plaintiff and Defendant on files T-1677-79, T-3488-82, T-2518-89, T-2521-89 and T-2522-89. At paragraph 62, the Court ordered:

- a. The assessments before me are to be remitted to the assessment officer for the purpose of re-calculating the set-off in light of the respective entitlements of the parties to interest on their awards of costs.
- b. The balance of the plaintiff's motion for review of the assessment of costs is dismissed.

- c. The defendant's motion for an order disallowing or limiting interest is dismissed.
- d. Either party is at liberty to apply for further directions.

[2] At paragraph 60 of the review decision, it was held:

As for implementation of this order, I think it simplest if these matters are remitted to the assessment officer for the purpose of re-calculating the set-off in light of the respective entitlements of the parties to interest on their awards of costs. It should not be overlooked that the Crown, in the absence of an order made by the trial judge to the contrary, will be entitled to post-judgment interest on its judgment as provided by section 37 of the *Federal Court Act* (assuming it to be in force when the Crown's judgments were obtained, the evidence before me not being clear as to when those judgments were obtained) and pursuant to the provisions of the *Ontario Courts of Justice Act*.

[3] For reasons that are unknown to me, these matters were not remitted back to the Assessment Officer and Mr. Stinson has since retired. Before proceeding further I find it necessary to provide a brief outline concerning these assessments of costs.

[4] By way of a Certificate of Assessment dated April 13, 2000, Assessment Officer Charles E. Stinson allowed the Plaintiff's costs in Court files T-1677-79, T-3488-82 and T-2521-89 at \$3,700.00, \$3,200.00 and \$4,000.00 respectively and allowed the Defendant's costs in T-2518-89 and T-2522-89 at \$6,260.34 and \$3,560.00 respectively. Assessment Officer Stinson concluded the Certificate by applying a set-off to the above amounts pursuant to Rule 408(2), resulting in the sum of \$1,079.66 payable by the Defendant to the Plaintiff. It is noted that at paragraph 26 of the Assessment of Costs - Reasons (assessment decision) in these matters, also dated April 13, 2000, that Assessment Officer Stinson disallowed the claim for interest.

[5] By way of letter dated November 7, 2012 (the Plaintiff's letter) the Plaintiff outlined his position concerning the outstanding legal costs on the above files.

[6] Given these circumstances, I will address the issues raised by the Plaintiff and, further to the review decision; I will re-calculate the set-off in light of the respective entitlements of the parties to interest on their awards of costs.

[7] The Plaintiff's letter seems to be raising two distinct issues. The first issue relates to the recalculation of costs pursuant to the review decision. The second issue relates to a "refund due", which appears to relate to the substantive issues found in his appeals under the *Income Tax Act*. Concerning the "refund due", pursuant to Rules 2, 400(1), 405 and 409 of the *Federal Courts Rules*, I find that, as an Assessment Officer, I lack the jurisdiction to make any findings concerning that issue.

[8] Concerning the outstanding legal costs, the Plaintiff submits:

In my position, I am including interest on the Assessment of T-1677-79; T-3488-82 and T-2521 in the reassessed amount of \$9900.00 and under T-2518-89 and T-2522-89 of \$10,900.00, while denying interest to the Defendants in their claim and reassessed claim to \$19,070.34, due to their misrepresentations to Madam Justice Simpson in Court file T-2518-89, where they did not divulge the receipt and garnishment of \$85,400.00 and then re-directing to the bank.

I am also claiming on costs never assessed upon thru officer Stinson, noted within paragraph (57) of Justice Dawson's order, \$25,598.12, paid and outstanding, while the Defendants had use.

I'm attaching of costs due @ April 1/2000 totalling \$116,950.01 with interest and the Defendants set-off of \$19,070.34 claiming a refund on costs due of \$116,950.01.

In addition, the costs due, wherein, interest has not been reassessed by the Assessment Officer as directed by Justice Dawson, as shown on the attached schedule thru March 30/2012, with interest amounts to \$216,064.60.

Attached to his letter, the Plaintiff submitted several pages of calculations. Upon close examination of these calculations, it is apparent that they are calculations of interest on the various amounts the Plaintiff submits as outstanding legal costs. It is noted that the Plaintiff uses a variable rate of interest which appears to have been compounded quarterly.

[9] Although the Defendant has not presented any submissions in response to the Plaintiff's letter, this is not of consequence since I find that the Court, by providing that the simplest method would be to remitted the matters to the Assessment Officer for re-calculation, did not anticipate a requirement for submissions from the parties. Further, all of the information necessary to recalculate the set-off, in light of the respective entitlements of the parties to interest on their awards of costs, is found in the Court files and the review decision.

[10] Concerning the Plaintiff's submissions, it is not clear to me from where the amounts to which he is referring were derived. Pursuant to the assessment decision, the amounts allowed, which were not altered by the review decision, entitled the Plaintiff to a total of \$10,900.00 in costs and the Defendant to a total of \$9,820.34 in costs. Also, contrary to paragraph 60 of the review decision, which stipulates that the Defendant is entitled to post-judgment interest, the Plaintiff submits that he has denied interest to the Defendant due to their misrepresentations to Madam Justice Simpson. Although the Plaintiff may be of the opinion that the Defendant is not entitled to interest, the Court has held that they are entitled to interest and I am bound by the Court's review decision. Further, the amount of \$85,400.00, which the Plaintiff submits is related to the issue of

garnishment, bears no relation to the assessment of costs and will not be considered in the recalculation.

[11] The Plaintiff also submits that, further to paragraph 57 of the review decision, he is claiming \$25,598.12 in costs never assessed by Mr. Stinson. Paragraph 57 states:

Second, the purpose of awarding interest on costs is to ensure that through the effluxion of time the level of indemnity provided by an award of costs is not eroded. In evidence before me was a bill from Mr. Wilson's counsel at trial in 1988 which showed payment in October of 1988 of fees and disbursements in the amount of \$25,598.12 for services provided in connection with the proceeding which resulted in the judgment in 1988. A similar bill was in evidence with respect to the 1986 trial, although the evidence is not clear as to when the account was paid. The crown has had the benefit of the use of the money it otherwise would have been obliged to pay to Mr. Wilson in respect of costs.

[12] Then at paragraph 58, the Court states: "In those circumstances, I am not persuaded that the Crown should benefit by not being required to pay interest on the award of costs in the normal course".

[13] When these paragraphs are taken together, it is clear that the Court was not awarding the Plaintiff an additional \$25,598.12 in costs but was referring to the evidence presented, in support of a finding that the Crown is responsible for paying the Plaintiff post-judgment interest.

[14] Finally, the costs to which the Plaintiff claims to be entitled, \$116,950.01 as of April, 2000 and \$216,064.60 with interest through to March 30, 2012 do not appear to have any relationship to the amounts awarded in the assessment decision, the recalculation of which is now before me.

[15] As mentioned earlier, the Plaintiff has presented several pages of compound interest calculations using a variable rate of interest. There are two reasons these pages provide no assistance in reaching a decision. First, in *Bank of America v Mutual Trust Co.*, 2002 SCC 43, the Supreme Court of Canada found that historically compound interest is not available at common law (paragraph 37). The Court also found that a Court may make an award of compound interest but it would “generally be limited to breach of contract cases where there is evidence that the parties agreed, knew, or should have known, that the money which is the subject of the dispute would bear compound interest as damages. It may be awarded as consequential damages in other cases but there would be the usual requirement of proving that damage component” (paragraph 55). Therefore, as the Court has not awarded the Plaintiff compound interest in this particular matter, interest must be calculated as simple interest.

[16] Second, as held at paragraphs 42 and 43 of the review decision, the rate of interest applicable to the 1988 judgments on files T-1677-79 and T-3488-82 is 5% per annum, being the rate prescribed by section 3 of the *Interest Act* and the interest rate applicable to the 1996 judgment on file T-2521-89 is 6% per annum as prescribed by the *Courts of Justice Act* of Ontario. Concerning the post-judgment interest on files T-2518-89 and T-2522-89, the review decision did not specify the interest rate to be used as the date of judgment was not before the Court. From a review of the files, I find that these judgments were issued on June 21, 1996. Pursuant to Section 129(1) of the *Courts of Justice Act* of Ontario, an interest rate of 7% is to be used in calculating post-judgment interest on judgments rendered in the second quarter of 1996. This being the situation the variable rates used by the Plaintiff are not applicable.

Recalculation

[17] In the review decision, the Court ordered that the assessment was to be “remitted to the assessment officer for the purpose of re-calculating the set-off in light of the respective entitlements of the parties to interest on their awards of costs”. I find that, in order to re-calculate the set-off, I must first calculate the amount of interest owing from the dates of judgment to the date of my decision (March 8, 2013). A table containing the parameters used to calculate the accumulated simple interest is attached as Annex A to these Reasons.

[18] For file T-1677-79, the assessment decision allowed costs in the amount of \$3,700.00. As the Court’s judgment on this file was rendered on August 31, 1988, interest is calculated at 5% as set out at paragraph 42 of the review decision. When interest is calculated, the total interest owing on these costs is \$4,536.13 for a total costs and interest as of March 8, 2013 of \$8,236.13.

[19] For file T-3488-82, the assessment of April 13, 2000 allowed costs in the amount of \$3,200.00. As the Court’s judgment on this file was also rendered on August 31, 1988, interest is calculated at 5% as set out at paragraph 42 of the review decision. When interest is calculated, the total interest owing on these costs is \$3,923.14 for a total costs and interest as of March 8, 2013 of \$7,123.14.

[20] For file T-2521-89, the assessment of April 13, 2000 allowed costs in the amount of \$4,000.00. As the Court’s judgment was rendered on July 23, 1996, interest is calculated at 6% as set out at paragraph 43 of the review decision. When interest is calculated, the total interest owing on these costs is \$3,990.28 for a total costs and interest as of March 8, 2013 of \$7,990.28.

[21] For file T-2518-89, the assessment of April 13, 2000 allowed costs in the amount of \$6,260.34. As the Court's judgment was rendered on June 21, 1996, interest is calculated at 7% pursuant to Section 129(1) of the *Courts of Justice Act* of Ontario. When interest is calculated, the total interest owing on these costs is \$7,324.25 for a total costs and interest as of March 8, 2013 of \$13,584.59.

[22] Lastly, for file T-2522-89, the assessment of April 13, 2000 allowed costs in the amount of \$3,560.00. As the Court's judgment was rendered on June 21, 1996, interest is calculated at 7% pursuant to Section 129(1) of the *Courts of Justice Act* of Ontario. When interest is calculated the total interest owing on these costs is \$4,165.03 for a total costs and interest as of March 8, 2013 of \$7,725.03.

[23] Having determined the quantum of costs plus interests allowable on the individual files, I must now calculate the set-off. At paragraphs 2, 3 and 4 of the review decision, the Court finds that the Plaintiff was successful and was awarded costs in files T-1677-79, T-3488-82 and T-2521-89 and that the Defendant was successful and was awarded costs in files T-2518-89 and T-2522-89. Therefore, I will use these results in the calculation of the set-off.

[24] Further to the results outlined above, I find that the Plaintiff is entitled to a total of \$23,349.55 in costs and interest, being the total costs and interest on files T-1677-79, T-3488-82 and T-2521-89. Similarly, I find that the Defendant is entitled to a total of \$21,309.62 in costs and interest, being the total costs and interest on files T-2518-89 and T-2522-89. This results in a total set-off of \$2,039.93, plus interest from this date until the date of payment, in favour of the Plaintiff.



Pursuant to section 129(1) of the *Courts of Justice Act* of Ontario, any additional interest payable is to be calculated at 3% per annum.

[25] A single Certificate of Assessment, styled in these five actions, will be issued.

[26] One final note; in his letter of February 21, 2013 the Plaintiff inquires about the security for costs paid into Court on file T-745-99. As file T-745-99 is not at issue before me, any assessment of costs will only be addressed upon the filing of a Bill of Costs on that file. All other issues raised in the Plaintiff's letter of February 21, 2013, have been addressed in these Reasons.

“Bruce Preston”  
\_\_\_\_\_  
Assessment Officer

Toronto, Ontario  
March 8, 2013

ANNEX A

PARAMETERS USED IN THE CALCULATION OF SIMPLE INTEREST

T-1677-79

Principle Amount: \$3,700.00

Judgment Date: August 31, 1988

Annual Interest Rate: 5.00%

Number of days per year: 1988 – 123 Days, 1989 to 2012 – Full Years, 2013 – 67 Days

T-3488-82

Principle Amount: \$3,200.00

Judgment Date: August 31, 1988

Annual Interest Rate: 5.00%

Number of days per year: 1988 – 123 Days, 1989 to 2012 – Full Years, 2013 – 67 Days

T-2521-89

Principle Amount: \$4,000.00

Judgment Date: July 23, 1996

Annual Interest Rate: 6.00%

Number of days per year: 1996 – 162 Days, 1997 to 2012 – Full Years, 2013 – 67 Days

T-2518-89

Principle Amount: \$6,260.34

Judgment Date: June 21, 1996

Annual Interest Rate: 7.00%

Number of days per year: 1996 – 194 Days, 1997 to 2012 – Full Years, 2013 – 67 Days

T-2522-89

Principle Amount: \$3,560.00

Judgment Date: June 21, 1996

Annual Interest Rate: 7.00%

Number of days per year: 1996 – 194 Days, 1997 to 2012 – Full Years, 2013 – 67 Days

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1677-79, T-3488-82, T-2518-89, T-2521-89,  
T-2522-89

**STYLE OF CAUSE:** GRANT R. WILSON v HER MAJESTY THE QUEEN

**ASSESSMENT OF COSTS WITHOUT PERSONAL APPEARANCE OF THE PARTIES**

**PLACE OF ASSESSMENT:** TORONTO, ONTARIO

**REASONS FOR ASSESSMENT OF COSTS:** BRUCE PRESTON

**DATED:** March 8, 2013

**WRITTEN REPRESENTATION:**

Grant Wilson FOR THE APPLICANT  
(ON HIS OWN BEHALF)

N/A FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

N/A FOR THE APPLICANT  
(ON HIS OWN BEHALF)

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada