

Date: 20080829

Docket: A-620-05

Citation: 2008 FCA 251

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

JEAN PELLETIER

Respondent

ASSESSMENT OF COSTS - REASONS

DIANE PERRIER, ASSESSMENT OFFICER

[1] On January 11, 2007, the Federal Court of Appeal dismissed an appeal from a decision by the Federal Court with costs in accordance with column III of Tariff B of the *Federal Courts Rules*.

[2] On April 27, 2007, counsel for the respondent filed his bill of costs and requested that it be assessed without personal appearance of the parties. On December 31, 2007, letters were sent to the

parties setting a schedule for filing their written submissions. The parties have filed their written submissions, so I am now ready to assess the bill of costs based on the documentation on record.

[3] Firstly, the appellant files the following objection and requests that the assessment officer, in accordance with rule 408(2) of the *Federal Courts Rules*, offset costs owing to the respondent based on his bill of costs filed on April 27, 2007, against costs owing to the appellant based on his bill of costs filed on February 4, 2008, in this case, and against the bill of costs that was filed in A-73-06 dismissing the appeal against the respondent with costs.

[4] The assessment officer cannot offset the costs since, in this case, the appellant's bill of costs was filed on February 4, 2008, after the assessment officer had sent the letters to the parties to assess the respondent's bill of costs. In addition, the assessment officer cannot make the adjustment in A-73-06, as the set-off can only be done in the same file, since a certificate of assessment must be issued in each Court file when the bill of costs has been assessed.

[5] Counsel fees are allowed in the amount of \$4,238.94 (\$3,720 + \$223.20 (6% GST) + \$295.74 (7.5% QST)). I allowed item 18 – preparation of the appeal book (1 unit), item 19 – memorandum of fact and law (7 units), item 22 (a) – counsel fee on hearing of appeal, to first counsel, per hour (7 hours x 3 units) and item 26 – assessment of costs (2 units). I allowed only 2 units for the assessment, since it does not appear to be very complicated.

[6] It should be noted that assessments are only partial indemnifications of party-and-party costs. An assessment officer can allow only those costs that have been granted by an order of the Court or based on documents filed according to counsel fees to be assessed. Therefore, any bailiff fees for filing documents at the registry of the Court cannot be allowed as disbursements, since normally they would already have been offset by the counsel fees to be assessed.

[7] Bailiff fees for service of a motion to dismiss an appeal cannot be allowed, given that the order of the Court dated March 17, 2006, dismissed the motion with costs to the appellant. Bailiff fees for service of the respondent's motion record in reply to the appellant's motion to remove the respondent's memorandum of fact and law from the file are not allowed because, in its order dated July 12, 2006, the Court is silent as to costs. Bailiff fees for service of the respondent's motion for an early hearing date cannot be allowed because the order of the Court dated October 4, 2006, is silent as to costs. Therefore, I allowed only \$51.19 for service of the memorandum of fact and law.

[8] I also allowed disbursements for the joint book of statutes, regulations and authorities in the amount of \$2,299.08, as requested by the respondent, since it was proven by the affidavit of Patrick Girard and by the accompanying invoice.

[9] I am of the opinion that disbursements for the hotel, meals and transportation during the hearing of the appeal in Ottawa will be allowed solely for first counsel, since the decision dated January 17, 2006, is silent as to costs for second counsel. In addition, the amount of \$128.42 claimed for meals seems reasonable, since, allowing expenses according to the Travel Directive of the

Treasury Board Secretariat, I allow the sum of \$34.75 for dinner and \$17.30 for incidental expenses for December 17, 2006. For December 18, 2006, I allow \$12.75 for breakfast, \$12.15 for lunch, \$34.75 for dinner and \$17.30 for incidental expenses, totalling \$129 for both days, which seems reasonable in these circumstances. Therefore, I allow the amount of \$556.86 for disbursements for the hotel, meals and transportation.

[10] The respondent's bill of costs presented at \$8,820.90 is allowed in the amount of \$7,146.07.

A certificate of assessment will be issued for this amount.

MONTRÉAL, QUEBEC
August 29, 2008

DIANE PERRIER
ASSESSMENT OFFICER

Certified true translation
Tu-Quynh Trinh

**FEDERAL COURT OF APPEAL
SOLICITORS OF RECORD**

DOCKET: A-620-05

Between:

ATTORNEY GENERAL OF CANADA

Appellant

AND

JEAN PELLETIER

Respondent

ASSESSMENT OF COSTS IN WRITING

PLACE OF ASSESSMENT: Montréal, Quebec

REASONS OF DIANE PERRIER, ASSESSMENT OFFICER

DATED: August 29, 2008

WRITTEN SUBMISSIONS:

Alberto Martinez

For the appellant

Suzanne Côté
Patrick Girard

For the respondent

SOLICITORS OF RECORD:

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