

Federal Court of  
Appeal



Cour d'appel  
fédérale

**Date: 20091209**

**Dockets: A-547-05  
A-548-05**

**Citation: 2009 FCA 363**

**A-547-05**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant**

**and**

**ADELA GILBERT**

**Respondent**

**A-548-05**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant**

**and**

**PIERRE GILBERT**

**Respondent**

**ASSESSMENT OF COSTS – REASONS**

**DIANE PERRIER, ASSESSMENT OFFICER**

[1] This is an assessment of the appellant's bill of costs following a judgment of the Federal Court of Appeal dated April 4, 2007, which allowed the appellant's appeal from a decision of the

Tax Court of Canada with costs, dismissed the respondent's cross-appeal with costs and set aside the decision of the Tax Court of Canada. The Federal Court of Appeal rendered the judgment which the Tax Court of Canada should have rendered, namely "the appeal filed by the respondent against the Minister's assessment is dismissed with costs".

[2] On August 25, 2009, the appellant filed its bill of costs, supported by the affidavit of Marie-Aimée Cantin, counsel, and exhibits A-1 to A-5 inclusively, and requested that the assessment be disposed of in writing. Letters were sent to the parties establishing a timetable for the filing of written representations. The parties filed their written representations in the court record. On November 4, 2009, the respondents filed a reply to the appellant's reply, even though this was not provided for in the timetable for the filing of written representations. The respondents requested that the document be submitted to the assessment officer, and the document was filed in the record. I am now ready to assess the costs.

[3] In response to the respondents' document submitted on November 4, 2009, I would like to specify the following points: when the Court renders a judgment with costs under Rule 400 of the *Federal Courts Rules*, the assessment officer's role is to quantify the amount of the costs. In addition, the respondents are requesting that the assessment officer adjust the costs in light of the file in Superior Court. The assessment officer is defined in Rule 2 of the *Federal Courts Rules* as "an officer of the Registry designated by an order of the Court . . .", and under Rule 405 of the *Federal Courts Rules*, costs are assessed by the assessment officer. Accordingly, the assessment

officer does not have any jurisdiction in a court other than the federal courts and can therefore not adjust the costs claimed by the respondents.

[4] The appellant is claiming the following counsel fee items:

- item 17 – preparation, filing and service of the notice of appeal in docket A-547-05 (1 unit),
- item 17 – preparation, filing and service of the notice of appeal in docket A-548-05 (1 unit),
- item 18 – preparation of appeal book for dockets A-547-05 and A-548-05 (1 unit),
- item 19 – appellant’s memorandum of fact and law (5 units),
- item 19 – appellant’s memorandum of fact and law as a respondent in the cross-appeal (5 units),
- item 20 – requisition for hearing (1 unit),
- item 21 (a) – counsel fees: motion, preparation of the respondent’s motion record (2 units),
- item 22 (a) – counsel fees for the hearing on February 21, 2007, to first counsel, per hour (2 units x 2.75 hours),
- item 25 – services after judgment not otherwise specified, and
- item 26 – assessment of costs (4 units).

[5] I allow all of the counsel fees claimed, except for item 26 – assessment of costs, for which I allow three units, which I consider to be reasonable in this case. As far as the two claims under item 17, preparation, filing and service of each of the notices of appeal, are concerned, it is my opinion that the appellant had to file two notices of appeal because Justice Nadon’s order allowing the motion for the consolidation of dockets A-547-05 and A-548-05 was made after both notices of appeal were filed. I therefore allow both claims under item 17. The respondents state that only

four units should be allowed under items 19, appellant's memorandums of fact and law, because the memorandums are only 11 pages long and therefore the minimum number of units should be allowed. In my opinion, considering the type of case, Rule 400(3) of the *Federal Courts Rules* and what seems to me to be reasonable, I will allow the five units claimed for each of the memorandums. The respondents are opposed to item 25 because in their opinion, such services were not rendered. In my view, as the appellant states in its written representations in reply to paragraph 3 and the case law submitted, namely *Richards v. Canada*, [2005] F.C.J. No. 334 (QL), 2005 D.T.C. 5157, the appellant does not have to provide justification for this item, since the item is meant to compensate for services rendered after a final judgment. On April 1, 2009, the unit value of Tariff B was increased from \$120 to \$130. As the appellant's bill of costs was filed on August 25, 2009, I have therefore adjusted Tariff B items accordingly. I therefore allow counsel fees in the amount of \$3315.

[6] As far as disbursements are concerned, I allow an amount of \$320.50 for photocopies, \$130.63 for bailiff's fees, \$33.70 for courier fees and \$40.66 for text transcript costs, totalling \$525.49. I allow all uncontested disbursements because they seem to be reasonable, required for the conduct of the proceeding and established by the affidavit of Marie-Aimée Cantin.

[7] I did not allow the following disbursements: invoice J0018797 for photocopies in the amount of \$20.42 because this invoice does not seem to correspond to any of the documents filed on record. I did not allow invoice J0018135 for photocopies in the amount of \$171.87 or invoice

P-136204 for bailiff's fees in the amount of \$137.91 because the Court order dated July 12, 2007, concerning the motion for a stay of order makes no mention of costs.

[8] Invoice J0017889 in the amount of \$43.72 for photocopies was allowed because it was for the photocopying of the appellant's book of authorities. Invoice J0019636 in the amount of \$25.07 is allowed for the photocopying of two (2) responding motion records because both Court orders dated December 10, 2007, were granted with costs. Invoice P-143935 in the amount of \$100.81 and invoice P-143936 in the amount of \$14.84 for bailiff's fees for the service of the two (2) responding motion records were allowed because both Court orders dated December 10, 2007, were granted with costs.

[9] The respondents also oppose the amount of \$40.66 for the transcript of the hearing before the Tax Court of Canada. I allow this invoice because under Rule 344(2) of the *Federal Courts Rules*, transcripts are part of the appeal book and the appellant could therefore claim this disbursement.

[10] I allow the appellant's court fees under Tariff A in the amount of \$100 for the filing of the notices of appeal in dockets A-547-05 and A-548-05.

[11] The bill of costs for \$4135.69 submitted by the appellant is assessed and allowed for in the amount of \$3940.49. A certificate of assessment will be issued for this amount. A copy of the

reasons for the assessment in the lead file (A-547-05) will be filed in the related docket (A-548-05) to serve as reasons therein.

“Diane Perrier”  
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DIANE PERRIER  
ASSESSMENT OFFICER

MONTRÉAL, QUEBEC  
December 9, 2009

Certified true translation  
Johanna Kratz

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKETS:** A-547-05, A-548-05

**STYLE OF CAUSE:** Her Majesty the Queen v. Adela Gilbert  
A-547-05

Her Majesty the Queen v. Pierre Gilbert  
A-548-05

**WRITTEN ASSESSMENT OF COSTS WITHOUT APPEARANCE OF PARTIES**

**PLACE OF ASSESSMENT:** Montréal, Quebec

**REASONS BY DIANE PERRIER, ASSESSMENT OFFICER**

**DATED:** December 9, 2009

**WRITTEN REPRESENTATIONS BY:**

Marie-Aimée Cantin FOR THE APPELLANT

Adela Gilbert FOR THE RESPONDENT  
(for herself)

Pierre Gilbert FOR THE RESPONDENT  
(for himself)

**SOLICITORS OF RECORD:**

John H. Sims, Q.C. FOR THE APPELLANT  
Deputy Attorney General of Canada