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Docket: 96-1998(IT)I

BETWEEN:

DIANE MARCIL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### REASONS FOR TAXATION

[1] This taxation came on for hearing on Friday, September 1, 2000 at the Tax Court of Canada. It was heard by telephone conference call. It follows a judgment of the Honourable Judge Archambault dated February 16, 2000 allowing the Appellant's appeal, with costs.

[2] The Respondent was represented at the taxation by Mrs. Suzanne Morin, and the Appellant by an Agent, Mr. Jean-Michel Prieur. The Appellant was also present.

#### [3] Counsel Fees

The Appellant claimed the following amounts for the services of counsel:

A.a) la préparation de l'avis d'appel	150,00 \$
b) la préparation de l'audience	200,00 \$
c) l'audience (2)	600,00 \$
d) frais de subsistance et de déplacement	100,00 \$

[4] Counsel for the Respondent agreed to item A.a) as the Notice of Appeal was prepared by a lawyer.

[5] Section 11 of the *Tax Court of Canada Rules (Informal Procedure)* (hereinafter, the “*Rules*”) reads as follows:

11. On the taxation of party and party costs the following fees may be allowed for the services of counsel
  - (a) for the preparation of a notice of appeal, \$150,
  - (b) for preparing for a hearing, \$200,
  - (c) for the conduct of a hearing, \$300 per half day or part thereof, and
  - (d) for the taxation of costs, \$50.

[6] Subsection 12(3) reads as follows:

- (3) Such other disbursements may be allowed as were essential for the conduct of the appeal, if it is established that the disbursements were made or that the party is liable for them.

[7] The Agent for the Appellant claimed that this was a proper item to be allowed to her client. As a claim under section 11, he felt that the english term “counsel” was less restrictive than the french use of “avocat”; as a result, he believed that these amounts could be allowed even though he is not a lawyer. Alternatively, he suggested that if they could not be allowed under section 11, they could be allowed as disbursements under section 12.

[8] Counsel for the Respondent objected to all items other than A.a) as the Appellant was represented by Mr. Prieur, who is not a “person who may practise as a barrister, advocate, attorney or solicitor in any of the provinces” as set out in section 2 of the *Rules*. She stated that the Appellant could not therefore claim the fees under section 11 of the *Rules*. She noted that this was confirmed by the Honourable Judge Christie in *Edgar v. Canada* ([1994] 1 C.T.C. 2562) in which fees claimed under section 11 for the services of an agent were taxed off. She also referred me to the decision of the Federal Court of Appeal in *Munro* (unreported – F.C.A. A-570-97, July 3, 1998) in which counsel fees claimed for representation by a non-lawyer which had been claimed as disbursements under section 12 of the *Rules* had also been disallowed.

[9] I agree with Counsel for the Respondent. The decisions in *Munro* and *Edgar* (supra) are clear: fees under section 11 cannot be allowed for representation other than by counsel, and what is not allowed under that section cannot be recharacterized and claimed under section 12 as a disbursement. The \$150 for the preparation of the Notice of Appeal is allowed because he had counsel at the time. The other items in the amount of \$900 are taxed off.

[10] Witness Fees

The Appellant claimed \$50 for witness fees for the Appellant, who was called to testify at the hearing of the appeal.

[11] Subsection 12(1) and 12(1.1) read as follows:

12. (1) A witness, other than a witness who appears to give evidence as an expert, is entitled to be paid by the party who arranged for his attendance \$50 per day, plus reasonable and proper transportation and living expenses.

(1.1) An amount is not payable under subsection (1) in respect of an appellant unless the appellant is called upon to testify by counsel for the respondent.

[12] The minutes of the hearing, which are prepared by the Court Registrar in attendance, indicate that the Appellant was called upon to testify by her Agent, Mr. Prieur, and not by Counsel for the Respondent. This amount is taxed off.

[13] Expert Witness Fees

Mr. Prieur withdrew, at the taxation, claims totalling \$700 for his testimony as an expert witness.

[14] Disbursements

Counsel for the Respondent agreed to a claim in the amount of \$20 for postage, and I will therefore allow that amount.

[15] The Appellant claimed \$702.40 for lost wages while attending the hearing. Counsel for the Respondent rightly pointed out that this matter was dealt with in *Tippett v. The Queen* (unreported T.C.C. 95-380(GST)I). In that case, a claim for lost wages was taxed off by the Taxing Officer as it was not a proper claim. This was upheld by the Honourable Judge Rip who was asked to review the Taxing Officers decision. The claim for \$702.40 is taxed off.

[16] The last disbursement claimed is an amount for \$50 for the hearing of the taxation of costs. This was claimed under subsection 12(4) for reasons unknown to me. However, the same applies to this claim as did to the other claims for counsel

fees: they are not allowable when the Appellant is represented by a non-lawyer. This \$50 is taxed off.

[17] The Bill of Costs of the Appellant is taxed, and I allow the sum of \$170. A certificate will be issued.

Dated at Ottawa, Ontario, the 15<sup>th</sup> day of September 2000.

R.P. Guenette

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Registrar