

Date: 20090306

Docket: T-1156-05

Citation: 2009 FC 245

BETWEEN:

DONALD VOGAN

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ASSESSMENT OF COSTS - REASONS

Bruce Preston
Assessment Officer

[1] By way of Reasons for Order and Order dated February 6, 2006, the Court dismissed the Applicant's Application for Judicial Review, with costs to be paid by the Applicant to the Respondent, such costs to be assessed at the lower end of Column III of Tariff B.

[2] On November 25, 2008 the Respondent filed its Bill of Costs together with a letter requesting an assessment of costs.

[3] On December 29, 2008, Christine Ball, Assessment Officer issued the following oral direction (confirmed in writing):

The Assessment Officer, Christine Ball, has noted the Respondent's bill of costs received on November 25, 2008 and has further noted that this assessment appears appropriate for disposition by way of written submissions.

Therefore the Senior Assessment Officer has directed that:

- a) the Respondent may serve and file all material (if not already done), including bill of costs, supporting affidavit and written submissions, together with a copy of this direction by January 19, 2009;
- b) the Applicant may serve and file any reply materials by February 9, 2009;
- c) the Respondent may serve and file any rebuttal material by February 23, 2009."

[4] The time limits set by the direction have now passed and at this time the Respondent has filed its Bill of Costs and the Applicant has filed submissions in reply. The Respondent did not file submissions. The Applicant's submissions are of no assistance as they address issues that were before the Court rather than issues relating to the assessment.

[5] In *Reginald R. Dahl v. Her Majesty The Queen*, [2007] F.C.J. No.192 at paragraph 2, the assessment officer stated:

Effectively, the absence of any relevant representations by the Plaintiff, which could assist me in identifying issues and making a decision, leaves the bill of costs unopposed. My view, often expressed in comparable circumstances, is that the *Federal Courts Rules* do not contemplate a litigant benefiting by an assessment officer stepping away from a position of neutrality to act as the litigant's advocate in challenging given items in a bill of costs.

However, the assessment officer cannot certify unlawful items, i.e. those outside the authority of the judgment and the Tariff.

[6] Having reviewed the file of the proceedings and the Bill of Costs and in view of the Courts direction concerning Column III of the Tariff, I am satisfied that the amounts claimed for assessable services should be allowed as presented.

[7] On the question of disbursements, Tariff B 1(4) provides:

No disbursement, other than fees paid to the Registry, shall be assessed or allowed under this Tariff unless it is reasonable and it is established by affidavit or by the solicitor appearing on the assessment that the disbursement was made or is payable by the party. [Emphasis added]

[8] The direction of December 29, 2008 invited the Respondent to serve and file a bill of costs, affidavit and written submissions. No affidavits or submissions have been filed. Although I must remain neutral, I have reviewed the file of the proceedings to determine whether or not there is any evidence to support the disbursements claimed. I was unable to find any evidence to support the following disbursements: process server, on line enquiry, office supplies and couriers.

[9] The Respondent has claimed \$211.25 for the cost of photocopies. While it is clear from my review of the file that the Respondent did incur photocopying expenses, I will apply the decision of the assessment officer in *Métis National Council of Women v. The Attorney General of Canada*, [2007] FC 961 at paragraph 21:

The less that evidence is available, the more that the assessing party is bound up in the assessment officer's discretion, the exercise of which should be conservative, with a view to the sense of austerity

which should pervade costs, to preclude prejudice to the payer of costs. However, real expenditures are needed to advance litigation: a result of zero dollars at assessment would be absurd.

[10] The claim for photocopying expenses will be allowed at \$180.00.

[11] The Bill of Costs presented at \$2,333.08 is allowed in the amount of \$2,236.80. A certificate of assessment will be issued.

“Bruce Preston”
Assessment Officer

Toronto, Ontario
March 6, 2009

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1156-05

STYLE OF CAUSE: DONALD VOGAN v. ATTORNEY GENERAL OF
CANADA

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

PLACE OF ASSESSMENT: TORONTO, ONTARIO

REASONS FOR ASSESSMENT OF COSTS: BRUCE PRESTON

DATED: MARCH 6, 2009

WRITTEN REPRESENTATIONS:

Donald Vogan FOR THE APPLICANT
(SELF-REPRESENTED)

Jeff Anderson FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A FOR THE APPLICANT
(SELF-REPRESENTED)

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