

Federal Court of Appeal



Cour d'appel fédérale

**Date: 20110517**

**Docket: A-252-09**

**Citation: 2011 FCA 168**

[ENGLISH TRANSLATION]

**Present: JOHANNE PARENT, Assessment Officer**

**BETWEEN:**

**SIMON BEUCAIRE**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Written assessment of costs without appearance of the parties.

Reasons and certificate issued in Toronto, Ontario, on May 17, 2011.

**REASONS FOR ASSESSMENT:**

**JOHANNE PARENT, Assessment Officer**

Federal Court of Appeal



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**REASONS FOR ASSESSMENT**

**JOHANNE PARENT, Assessment Officer**

[1] On April 22, 2010, the Court dismissed with costs the notice of appeal from a decision made by the Tax Court of Canada on May 21, 2009. On February 16, 2011, the respondent filed its bill of costs with the Court. Directions were issued on February 24, 2011, informing the parties that the assessment of costs would proceed in writing and of the timelines for filing representations.

[2] To support its bill of costs, the respondent served and filed representations, as well as Marie-Claude Landry's affidavit. On March 29, 2011, the appellant filed his representations with the Court.

[3] In its representations, the respondent argues that the costs claimed are reasonable, that they were necessary for the conduct of the proceeding, and that they are limited to the items set out in Tariff B of the *Federal Courts Rules*. As for the appellant, he claims that the costs are abusive and unjustified, that no work was carried out by the respondent and that the case ended once the deadlines to file documents were reached. The appellant also submits that he would not be financially able to cover said costs and that he would have dropped the case for fear of them.

[4] When I read the Court record, I noticed that on February 15, 2010, a letter from the respondent to request the dismissal of the appeal for failure was addressed to the Court and served on the appellant. On March 9, the Court enjoined the appellant to justify the reasons that the appeal should not be dismissed due to a delay. In response, the respondent addressed another letter to the Court that served notice on the appellant, requesting that the case be dismissed with costs. Based on a review of the record, the appellant reportedly did not respond to any of these mailings. Despite Rule 165 of the *Federal Courts Rules*, which allows a party to “[...] discontinue all or part of a proceeding by serving and filing a notice of discontinuance,” Mr. Beaucaire allegedly abandoned his appeal without informing the Court or the opposing party. When the appeal was dismissed, the Court—which was exercising its full discretion—considered that awarding costs to the respondent was justified. At this stage of the proceeding, the assessment officer has no other choice but to

assess the reasonableness of the costs claimed in light of the evidence, the parties' representations, and the Court record.

[5] Two units are requested for filing and serving the notice of appearance dated June 29, 2009, under item 27 of Tariff B. Despite the appellant's claims, said document was prepared by the respondent and served. However, in light of current case law, a single unit will be allocated for this service (see *Bayer Healthcare AG v Sandoz Canada Inc.* 2009 FC 691 at para 27). The expenses claimed under item 26 for taxation will be granted—as requested—because the respondent saw to preparing, serving and filing the set of costs, an affidavit, and a responding letter.

[6] As for the appellant's argument concerning his inability to pay the expenses, I will refer to *Nike Canada Ltd. v Jane Doe*, [1999] FCJ, No. 1018 (FC) and *Inverhuron & District Ratepayers' Assn v Canada* 2001 FCT 410, where it was clearly established that a party's inability to see to the payment of expenses is not a deciding factor in their allocation.

[7] The disbursement claimed in the bill of costs is considered to be an expense that is necessary for the conduct of this case. The amount is justified and reasonable, so it is awarded.

[8] The respondent's bill of costs is allowed in the amount of \$395.00.

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“Johanne Parent”  
Assessment Officer

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-252-09

**STYLE OF CAUSE:** SIMON BEAUCAIRE v. HER MAJESTY THE QUEEN

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

**REASONS FOR TAXATION**

**BY:** JOHANNE PARENT, Assessment Officer

**DATED:** MAY 11, 2011

**WRITTEN REPRESENTATIONS:**

Simon Beaucaire

FOR THE APPELLANT  
(representing himself)

Marie-Claude Landry

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

N/A

FOR THE APPELLANT

MYLES J. KIRVAN  
Deputy Attorney General of Canada

FOR THE RESPONDENT