

Federal Court



Cour fédérale

Date: 20190523

Docket: 16-T-6

Citation: 2019 FC 726

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

BETWEEN:

DAVID LESSARD-GAUVIN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ASSESSMENT

JOHANNE PARENT, assessment officer

[1] On February 19, 2016, the Court granted an extension of time to file the application for judicial review of the Public Service Commission's decision, and dismissed the rest of the applicant's motion with costs against him.

[2] On January 15, 2019, the respondent served and filed his bill of costs as well as Cynthia Gaulin Gallant's affidavit, solemnly affirmed on December 10, 2018. Directions were issued

informing the parties that the assessment of the bill of costs would proceed on the basis of written submissions and that these submissions would have to be filed within certain time limits. Submissions were produced in response and in reply. In light of the sur-reply that the applicant submitted for filing in the Court record on March 12, 2019, the respondent was offered the chance to file submissions regarding the adjustment of the unit value.

[3] In the applicant's response submissions, in which he argues that there is an [TRANSLATION] "assessment principle to the effect that costs should be assessed at the end of the continuum of related proceedings", he claims that the request for assessment should be postponed until a final decision is made in case T-1136-16. He alleges that the debt burden would interfere with his right to justice while the respondent would not suffer any significant harm. He then argues that he lacks information to respond to the units claimed for the preparation of the bill of costs when it is clear that the work was done by a paralegal, not by a lawyer. Finally, referring to rule 60 of the *Federal Courts Rules*, the applicant expresses the wish that [TRANSLATION] "the Court inform him of any deficiencies in evidence or procedure . . .".

[4] In reply, the respondent alleges that the applicant has not submitted any grounds that could justify postponing the assessment. Citing paragraph 6 of *Suresh v Canada*, 2000 CanLII 15812 1, it is argued that no "compelling circumstances" could motivate an assessment officer to defer the assessment of costs and that files 16-T-6 and T-1136-16 are separate. Referring to the *Suresh* decision and paragraphs 12 and 13 of *Almacon Industries Ltd. v Anchortek Ltd.*, 2003 FCT 127, the respondent notes that the existence of an appeal does not justify postponing the assessment of costs. As indicated in *Suresh*, the respondent argues that a motion for a stay of execution would have been the appropriate procedure for postponing the execution of the

February 10, 2016 order. In addition, the respondent acknowledges that the bill of costs was prepared by a paralegal and that, as such, the claim under item 26 of the table to Tariff B must be adjusted in accordance with item 28. Finally, the respondent maintains that the unit value used in the bill of costs should be adjusted to \$150 per unit to reflect the change effective April 1, 2018.

[5] On March 12, 2019, the applicant filed a sur-reply which was accepted for filing in the Court's record against the new element brought by the respondent in his submissions regarding the adjustment of the unit value. In his submissions, the applicant argues that the unit value to be used is the one in effect at the time the costs were awarded. He alleges that [TRANSLATION] "there is little detailed/argued federal case law that assessment is based on value at the time of filing the request for assessment" and that this request, not relying on any rule of law, should be [TRANSLATION] "set aside to take into account existing rules of interpretation" when a [TRANSLATION] "new legal issue" arises (*Canada (Attorney General) v Bedford*, 2013 SCC 72 and *Carter v Canada (Attorney General)*, 2015 SCC 5). Citing *Al Sammour v Jamour*, 2016 QCCS 46, note 22, the applicant invokes the existence of a new rule of interpretation stating that [TRANSLATION] "the law governing the forms and effects of the judgment is the law of the day of the judgment". Alleging that the *Federal Courts Rules* do not provide an answer on this subject, it is proposed to use Quebec case law through the application of rule 4. Referring to both *Canada (Attorney General) v Almalki*, 2015 FC 1278, and *Canada (Attorney General) v Almalki*, 2016 FCA 195, the applicant argues that [TRANSLATION] "a distinction must be made between a purely procedural provision and an amendment to a provision on a substantive right related to the procedure", that [TRANSLATION] "the right to costs crystallized on the day of the judgment and that the assessment officer has no other role than to determine the characteristics of that crystal".

[6] In his sur-reply to the unit value adjustment, the respondent cites rule 4 and both *Tucker v Canada*, 2007 FCA 133, and *Kumar v Canada*, 2006 FCA 256, arguing that the unit value to be used by the assessment officer is the one in effect at the time of taxation.

I. ASSESSMENT

[7] Considering the applicant's first argument with respect to the prematurity of the assessment of costs, I am of the opinion, in light of the parties' submissions, of the case law cited by the respondent and of *Latham v Canada*, 2007 FCA 179, *ITV Technologies, Inc. v WIC Television Ltd.*, 2000 FCJ No 67, and *Mennes v Canada (Correctional Service)*, 1999 FCJ No 664, that the existence of an appeal or an unresolved case in potentially related cases cannot justify a deferral of the assessment of costs.

[8] Relating to the unit value adjustment, I had the opportunity to review the parties' submissions, the case law cited and Tariff B of the *Federal Courts Rules*. Items 2, 3 and 4 of Tariff B read as follows:

2 (1) On an assessment, the assessment officer shall determine assessable costs by applying the formula

$$\mathbf{A \times B + C}$$

where

A is

- (a) the number of units allocated to each assessable service, or
- (b) where the service is based on a number of hours, the

2 (1) Lors de la taxation, l'officier taxateur détermine les dépens taxables au moyen de la formule suivante :

$$\mathbf{A \times B + C}$$

où :

A représente :

- (a) soit le nombre d'unités attribué à chaque service à taxer,
- (b) soit si le service est taxable selon un nombre d'heures,

number of units allocated to that service multiplied by the number of hours;

le nombre d'unités attribué à ce service multiplié par le nombre d'heures;

B is the unit value as established in section 3 and adjusted in accordance with section 4; and

B la valeur unitaire établie à l'article 3 et rajustée selon l'article 4;

C is the amount of assessable disbursements.

C les débours taxables.

(2) On an assessment, an assessment officer shall not allocate to a service a number of units that includes a fraction.

(2) Aux fins de la taxation, l'officier taxateur ne peut attribuer à un service un nombre d'unités comportant une fraction.

3 The unit value as at January 1, 1998 is \$100.

3 Au 1^{er} janvier 1998, la valeur unitaire est de 100 \$.

4 (1) On April 1 in each year, the Chief Justices of the Court of Appeal and the Federal Court, in consultation with one another, shall adjust the unit value by multiplying it by the amount determined by the formula

4 (1) Le 1^{er} avril de chaque année, les juges en chef de la Cour d'appel fédérale et de la Cour fédérale, après s'être consultés, rajustent la valeur unitaire en la multipliant par le résultat de la formule suivante :

$$A/B \times 100$$

$$A/B \times 100$$

where

où :

A is the Consumer Price Index for all items for Canada, as published by Statistics Canada under the authority of the *Statistics Act*, in respect of December of the preceding year; and

A représente l'indice d'ensemble des prix à la consommation pour le Canada, publié par Statistique Canada en vertu de la Loi sur la statistique, pour le mois de décembre de l'année précédente;

B is the Consumer Price Index for all items for Canada, as published by Statistics Canada under the authority of the *Statistics Act*, in respect of December 1994.

B l'indice d'ensemble des prix à la consommation pour le Canada, publié par Statistique Canada en vertu de la Loi sur la statistique, pour le mois de décembre 1994.

(emphasis added)

(je souligne)

[9] In light of subsections 2(1) and 4(1) of Tariff B and existing Federal Court case law, the unit value to be used in taxing the costs of the pending case will be the adjusted value under section 4 of the Tariff, being \$150.

[10] In his submissions in response to the bill of costs, the applicant challenges the number of units claimed under item 26 of the table to Tariff B regarding the preparation of the bill of costs in relation to the work performed by a paralegal under item 28 of the table. Taking into account the respondent's admission regarding the work of a paralegal, the units claimed under item 26 will be allowed, but under item 28 up to 50% of the amount that would be calculated for the services of a lawyer. No further representations were made as to the other services and disbursements claimed by the respondent in the bill of costs. These other services and disbursements will be allowed, taking into account my duty of deference and *Dahl v Canada*, 2007 FC 192, at paragraph 2, which states the following:

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.

[11] The bill of costs submitted by the respondent is assessed and allowed in the amount of
\$2,157.25

“Johanne Parent”

Assessment Officer

Toronto, Ontario
May 23, 2019

Certified true translation
This 30th day of May, 2019.

Michael Palles, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: 16-T-6

STYLE OF CAUSE: DAVID LESSARD-GAUVIN v ATTORNEY
GENERAL OF CANADA

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

REASONS FOR ASSESSMENT BY: JOHANNE PARENT, ASSESSMENT OFFICER

DATED: MAY 23, 2019

WRITTEN SUBMISSIONS:

David Lessard-Gauvin FOR THE APPLICANT
(SELF-REPRESENTED)

Marilou Bordeleau FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada FOR THE RESPONDENT