

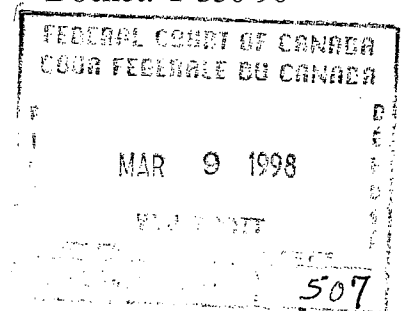
Federal Court of Canada  
Trial Division



Section de première instance de  
la Cour fédérale du Canada

Date: 19980306

Docket: T-530-90



*IN RE THE INCOME TAX ACT*

**BETWEEN:**

**ROBERT A. POCHA**

**Plaintiff**

- and -

**HER MAJESTY THE QUEEN**

**Defendant**

TAXATION OF COSTS - REASONS

**G.M. SMITH,**  
TAXING OFFICER

[1] A Statement of Claim was filed by the plaintiff on February 19, 1990 appealing a decision of the Tax Court of Canada. On November 15, 1995, the plaintiff wholly discontinued his action. The defendant is therefore entitled to her costs occasioned by this matter pursuant to Rule 406(1). This is the taxation of those costs.

[2] On December 11, 1997, the defendant filed a Bill claiming costs under Tariff B

relating two items of counsel fees as well as disbursements and taxes. The defendant requested the taxation proceed on the basis of written representations, that is to say without the personal appearance of the parties. I instructed that the plaintiff would have until February 11, 1998 to file representations in reply to the defendant's Bill. The defendant was given until February 23, 1998 to file representations in rebuttal.

[3] The plaintiff submitted written representations on February 6, 1998 in the form of an Objection of Plaintiff to Defendant's Bill of Costs. His contention in opposition to the defendant's Bill was that the services being claimed were rendered prior to the September 1, 1995 amendment to Tariff B under Amending Order No. 17, SOR/95 - 282, s. 4. Accordingly, counsel argued, the defendant's entitlement to costs for fees should be assessed in accordance with the provisions of the Tariff which was in existence before September 1, 1995.

[4] The defendant responded with Written Submissions filed on February 23, 1998 which argued that in accordance with Rule 346.1(1), and subject to subsection (2), the present Tariff applies in respect of all proceedings, whenever commenced, except where costs have already been fixed or where a taxation of costs was applied for before September 1, 1995. Counsel further pointed out that a taxation had not been requested prior to the instant Bill and no discretion has been exercised by the Court under Rule 346.1(2), which does not include a taxing officer, to preclude the application of the present Tariff in assessing the defendant's Bill.

[5] In my view, the defendant's reliance on *Yao Tsai Co. v. Dic Dac Holdings (Canada) Ltd. (c.o.b. Shanghai Lo Ching Hing Restaurant)*, [1996] F.C.J. No. 783 (QL) and *Dunlop v. Canada (Minister of National Revenue - M.N.R.)*, (1996) 96 D.T.C. 6429 (F.C.T.D.) and the provisions of Rule 346.1 fully support the argument that it is the present Tariff which should apply to an assessment of the defendant's costs. I agree as well with the defendant's contention that no taxation had been applied for, as contemplated by Rule 346.1(1), prior to September 1, 1995 and that the reference in subsection (2) to "the Court" does not bestow such discretion on a taxing officer.

[6] It is on this basis that I have reviewed the defendant's claims under items 2 and 7 of Tariff B, Part II, and have assessed them at the minimum rates, as were claimed by the defendant, under Column III, that being 4 units and 2 units respectively.

[7] The defendant also claimed disbursements of \$184.90 for transcripts and \$12.94 for Goods and Services Taxes. Costs for a transcript were also opposed by the plaintiff on the ground that the action was discontinued before Examinations for Discovery were held and no transcripts had been created in the proceedings before this Court. Counsel for the defendant responded that the disbursement claimed and the related taxes were expenditures for a transcript of the proceedings before the Tax Court of Canada and that they were prudently here.

[8] Again, I must agree with the position taken by the defendant. It may very well

now appear that a transcript of the Tax Court proceedings was not needed. The defendant was nevertheless required to undertake prudent steps to defend against the plaintiff's action. In fact, a Defence was filed on June 6, 1990. I find the disbursements and related taxes claimed to be reasonable and necessary in the circumstances.

[9] Accordingly, the defendant's Bill of Costs is assessed in the amounts of \$600.00 for fees, \$184.90 for disbursements and \$12.94 for taxes. A Certificate of Taxation will issue for the total amount of \$797.84.

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Gregory M. Smith  
Taxing Officer

Ottawa, Ontario  
March 6, 1998

FEDERAL COURT OF CANADA  
TRIAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS OF RECORD

COURT FILE NO.: T-530-90

BETWEEN: IN RE *THE INCOME TAX ACT*

ROBERT A. POCHA

Plaintiff

- and -

HER MAJESTY THE QUEEN

Defendant

TAXATION IN WRITING WITHOUT PERSONAL APPEARANCE OF PARTIES

TAXATION OF COSTS - REASONS BY G. SMITH, TAXING OFFICER

DATE OF REASONS: March 6, 1998

APPEARANCES:

James H.W. Sanderson, Q.C. for the Plaintiff

Bonnie Moon for the Defendant

SOLICITORS OF RECORD:

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Deputy Attorney General  
of Canada  
Ottawa, Ontario for the Defendant