

Date: 20090123

Docket: T-611-04

Citation: 2009 FC 71

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

BETWEEN:

MICHEL VENNAT

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ASSESSMENT OF COSTS – REASONS

DIANE PERRIER, ASSESSMENT OFFICER

[1] This is an assessment of the applicant's bill of costs following the Federal Court judgment on August 23, 2006, allowing the application for judicial review with costs according to the highest number of units set out in Column IV of Tariff B.

[2] On April 4, 2008, counsel for the applicant filed his bill of costs and the affidavit of Nathalie Mercier-Filteau with exhibits A to D, inclusively, and requested that the bill of costs be assessed in writing. On April 17, 2008, the respondent filed its submissions against the bill of costs. On

September 5, 2008, letters were sent to the parties, setting a timetable to file a response and other additional submissions, if required. No other documents were filed in the Court record. I am now ready to assess the costs based on the documentation in the record.

[3] The fees to be assessed are allowed in the amount of \$23,603.13 (\$20,520 + \$1,436.40 GST + \$1,646.73 QST). I allowed the following fees: item 1 – preparation of the notice of application (9 units), item 8 – preparation for the examination on affidavit of the applicant on January 24, 2006 (8 units), item 9 – attending on the examination on affidavit of the applicant on January 24, 2006 (4 units x 3 hours), item 5 – response to the respondent’s motion record – objections during the examination on affidavit of the applicant (9 units), item 6 – hearing on March 15, 2006 (1.5 hours x 4 units), item 1 – applicant’s record (9 units), item 13(a) – counsel fees for preparing for the hearing on June 27 and 28 and July 4 and 5, 2006 (9 units), item 13(b) – counsel fees for preparing for the hearing, for each day present in Court after the first day (12 units), item 14(a) – counsel fees during the hearing, for the first counsel, per hour in Court (22.5 hours x 4 units) and item 26 – assessment of costs (7 units).

[4] I disallowed the following fees: items 6 for case management hearings on June 2, 2004; August 18, 2004; June 17, 2005; September 21, 2005; February 15, 2006; and March 31, 2006, because the Court orders rendered on June 2, 2004; August 18, 2004; June 17, 2005; September 21, 2005; February 15, 2006; and March 31, 2006, were silent on costs. The application filed under section 7 is refused because no affidavit of documents pursuant to Rule 222 *et seq.* of the *Federal Courts Rules* appears on file. This type of affidavit is typically prepared for an action rather than for

an application. Item 5 – response to the respondent’s motion record – intervention by the BDC – is disallowed because the Court order rendered on February 15, 2006, was silent on costs. Item 5 – record of the applicant’s motion to strike the respondent’s allegations of fact in its record – is disallowed because the Court judgment delivered on August 23, 2006, partially allows the motion, but is silent on the motion’s costs. Item 15 – preparation and filing of a written plea with Court permission – is disallowed because it does not appear in the Court record that the Court required such a written plea. In addition, item 27 – other services (letters to the coordinating judge and prothonotary during the trial to seek directions) – is disallowed because these services are normally provided in the course of a legal proceeding, and there is no provision in Tariff B to cover these services.

[5] Legal fees in the amount of \$50 for filing the notice of application under Tariff A were allowed, in addition to Court fees in the amount of \$75 for the judicial review hearing of more than three days. Therefore, I allowed the sum of \$125 for those fees.

[6] Disbursements are allowed in the amount of \$3,094.39. In his submissions, counsel for the respondent stated that the cost of photocopies should not be allowed because no proof of these costs was provided. I find that, although the evidence filed by counsel for the applicant could have been more extensive, it is clear that photocopies were made. However, the assessment officer must ensure that photocopy costs may be claimed.

[7] The applicant is claiming disbursements for the motion record filed on December 23, 2005. These disbursements cannot be allowed because the order dated January 20, 2006, is silent on costs. However, I allowed the disbursements for the motion record filed on March 3, 2006, because the order dated March 16, 2006, provided costs in the cause.

[8] The costs of photocopying the affidavits of Denis Desautels and Michel Vennat can be allowed only partially, because the Court judgment rendered on August 23, 2006, struck out the affidavit of Denis Desautels and certain paragraphs of Michel Vennat's affidavit. Therefore, I cannot allow any photocopy costs for the affidavit of Denis Desautels, as counsel for the respondent states in his submissions against the applicant's bill of costs. That is why I allowed the sum of \$686 for photocopy costs of part of Michel Vennat's affidavit as opposed to the \$1,077 claimed.

[9] The disbursements claimed for the applicant's application record and memorandum of fact and law and exhibits MV-14 to MV-17 (April 28, 2006) shall be allowed in accordance with the invoices submitted and the photocopy costs claimed. The same shall apply to the applicant's authorities.

[10] The disbursements claimed for the applicant's motion record filed on June 21, 2006, to strike out the respondent's allegations in its response record are refused because, in its judgment on August 23, 2006, the Court partially allowed the motion but was silent on its costs. In this regard, I am entirely in agreement with the written submissions of counsel for the respondent.

[11] The applicant's bill of costs totalling \$41,452.71 is allowed in the amount of \$26,822.52. A certificate of assessment will be issued for this amount.

MONTRÉAL, QUEBEC
January 23, 2009

DIANE PERRIER
ASSESSMENT OFFICER

FEDERAL COURT
SOLICITORS OF RECORD

COURT FILE NO.: T-611-04

Between:

MICHEL VENNAT

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ASSESSMENT OF COSTS IN WRITING

PLACE OF ASSESSMENT: Montréal, Quebec

REASONS OF DIANE PERRIER, ASSESSMENT OFFICER

DATED: January 23, 2009

WRITTEN SUBMISSIONS:

Louis P. Bélanger
Patrick Girard

for the applicant

Alexandre Brosseau-Wery
Kugler Kandestin

for the respondent

SOLICITORS OF RECORD:

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