

**Date: 20090915**

**Docket: T-1049-08**

**Citation: 2009 FC 916**

**BETWEEN:**

**GHEORGE CAPRA**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**ASSESSMENT OF COSTS - REASONS**

**Bruce Preston**  
**Assessment Officer**

[1] By way of Reasons for Judgment and Judgment dated October 29, 2008, the Court dismissed the Applicant's judicial review with costs to the Respondent.

[2] On February 11, 2009 the Respondent filed its Bill of Costs together with the Affidavit of Janet Strand.

[3] Upon reviewing the file it was determined that this was an assessment of costs that would be suitable for disposition by way of written submissions. By direction dated July 3, 2009 a timetable

was established for the filing of written submissions. The time limits set by the direction have now passed and materials have been filed by both parties.

[4] By way of written submission filed August 14, 2009 the Applicant makes no submission concerning assessable services, contesting only the photocopying disbursement charge.

[5] Faced with such limited submissions, I will follow the reasons in *Dahl v. Canada*, 2007 FC 192, [2007] F.C.J. No. 256, at paragraph 2:

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] The Respondent has claimed 7.5 units under Item 14(b), counsel fee to second counsel, where Court directs, 50% of amount calculated under paragraph (a). The position taken by the Respondent concerning Item 14(b) is set out at paragraph 5 c. of its Written Submissions:

Given the nature of the arguments raised by the Applicant, and their implications for the Respondent's legislation at issue, argument at the oral hearing required significant work and expertise. The complexity of the issues raised easily justifies the use of 2<sup>nd</sup> counsel in this instance.

[7] In support of this position the Respondent relies on *Abbott v. Canada*, 2007 FC 1338, [2007] F.C.J. No. 1731, at paragraphs 18 and 19. I have read the decision of the Honourable Mr. Justice

Russell and find it very helpful in elucidating the factors which must be considered, however, Justice Russell is a member of the Court.

[8] In *Balisky v. Canada (Minister of Natural Resources)*, 2004 FCA 123, [2004] F.C.J. No. 536, at paragraph 6 the assessment officer states:

Rule 400(1), which vests full discretionary power in the Court over awards of costs, means that orders and judgments must contain visible directions that costs have been awarded. Given the Federal Courts Act, ss. 3 and 5(1) defining the Court and Rule 2 of the Federal Court Rules, 1998 defining an assessment officer, the absence of that exercise of prior discretion by the Court leaves me without jurisdiction under Rule 405 to assess costs.

[9] Item 14(b) includes the provision “where Court directs”. As an assessment officer is not a member of the Court, and there being no direction or order of the Court concerning second counsel on file, I am without jurisdiction to allow the amount claimed under Item 14(b).

[10] Having reviewed the file, the decision of the Court and the Bill of Costs, I will allow all other assessable services as presented.

[11] Having regard to disbursements, the Affidavit of Janet Strand clearly outlines the disbursements of the Respondent. As indicated earlier, in reply the Applicant’s only submission related to photocopying disbursements. The disbursements for service and filing of documents and translation services are supported by invoices and remain uncontested. As these disbursements are reasonable and necessary to the litigation process, I will allow them as claimed.

[12] At paragraph 8 of its written submissions the Respondent submits:

The Respondent concedes that all photocopying was done in-house, and the amount of \$0.25 per page represents a notional charge, which may be reduced in the Assessment Officer's discretion. However, contrary authority has repeatedly allowed \$0.25 to be a reasonable amount per page for in-house photocopying. It is clear that photocopying six copies of all materials, for the Court and three counsel, was reasonable and essential.

[13] In support of this argument the Respondent refers to *Zhang v. Canada (Attorney General)*, 2009 FCA 54, [2009] F.C.J. No. 238, *Forestex Management Corp. v. Lloyd's Underwriters, Lloyd's, London*, 2005 FC 263, [2005] F.C.J. No. 332, and *Canadian Union of Public Employees, Local 4004 v. Air Canada*, [1999] F.C.J. No. 464 at paragraph 7.

[14] In reply the Applicant refers to *Diversified Products Corp. v. Tye-Sil Corp.*, [1990] F.C.J. No. 1056, and submits "the photocopying costs in this case are substantial. It is submitted, in the absence of any evidence of actual cost, that \$.10 a page is a more reasonable charge".

[15] In the circumstances of this particular file, I find that \$0.10 a page is an unreasonably low amount to allow. On the other hand, *Zhang v. Canada (Attorney General)*, cited above at paragraph 13, was a case before the Federal Court of Appeal. As this matter is before the Federal Court there is not a requirement to file as many copies of documents with the Court. Pursuant to Rule 309(1)(a)(i) of the *Federal Courts Rules* the Respondent is required to file 3 copies of its Application Record. In order to account for the fact that fewer copies are required for the Court, I will allow photocopying at \$1,360.00.

[16] Further to these reasons, the Bill of Costs presented at \$7,289.75 is allowed for a total amount of \$6,098.25. A certificate of assessment will be issued.

“Bruce Preston”  
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Assessment Officer

Toronto, Ontario  
September 15, 2009

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1049-08

**STYLE OF CAUSE:** GHEORGE CAPRA v. THE 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:** SEPTEMBER 15, 2009

**WRITTEN REPRESENTATIONS:**

David Matas FOR THE APPLICANT

Scott D. Farlinger FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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