

Date: 20080829

Docket: A-426-06

Citation: 2008 FCA 252

BETWEEN:

GÉRARD MÉNARD

Applicant

and

**ATTORNEY GENERAL OF CANADA,
CANADIAN UNION OF POSTAL WORKERS
and
CANADA POST**

Respondents

ASSESSMENT OF COSTS – REASONS

DIANE PERRIER, ASSESSMENT OFFICER

[1] This is an assessment of the bill of costs of the respondent, Canada Post, following the judgment of the Court dated May 15, 2007, dismissing the application for judicial review with costs in favour of the respondents, the Canadian Union of Postal Workers and Canada Post.

[2] On August 2, 2007, the respondent, Canada Post, filed its bill of costs and requested that the assessment be done without the appearance of the parties. On March 10, 2008, letters were sent to

the parties setting a schedule for the filing of written submissions. The parties' written submissions have been received, so I am now prepared to assess costs.

[3] In these submissions, the applicant asserts that the assessment officer should not allow the costs claimed because they are abusive and inaccurate. I would like to recall that under Rule 400 of the *Federal Courts Rules*, only the Court may grant the costs. Furthermore, under Rule 405 of the *Federal Courts Rules*, costs are assessed by the assessment officer. Therefore, the assessment officer's role is to quantify the party-and-party costs, and the assessment remains a partial indemnification of the fees paid by the parties.

[4] The taxable fees are allowed in the amount of \$1539.69 (\$1351.20 + \$81.07 (GST) + \$107.42 (QST)). Since this is an appeal from an application for judicial review, the assessment officer may allow costs in accordance with items 1 to 14 of Tariff B and items 24 to 28 of Tariff B. I have therefore allowed the following items: item 2 for the applicant's record (5 units), item 14(a) for first counsel's attendance in Court (1.42 hour x 3 units x \$120) and item 26, assessment of the bill of costs (2 units).

[5] I did not allow item 21(a)—motion for an extension of time for the service and filing of a notice of appearance and the record of respondent Canada Post—because the Court is silent in its order dated March 1, 2007, and Rule 410(2) of the *Federal Courts Rules* states that the costs of a motion for an extension of time shall be borne by the party bringing the motion.

[6] I did not allow item 18, preparation of the appeal book, since no appeal book was prepared in this case. Item 19, memorandum of fact and law, was allowed for the respondent's record in accordance with item 2 of Tariff B, and I allowed only 5 units, which appears reasonable to me in the circumstances of the case. Item 22, first counsel's attendance in Court, was allowed as item 14 of Tariff B, and the length of the hearing was amended to one hour five minutes in keeping with the transcript of May 14, 2007.

[7] I did not allow item 24—travel by counsel to attend a hearing, at the discretion of the Court—because the judgment of the Court is silent in this respect. Additionally, I did not allow item 27—preparation and transmission of a notice of change of solicitor—since Tariff B makes no mention of this type of document and item 27, in my opinion, remains an exception, such as the written representations filed following a status review under Rule 380 of the *Federal Courts Rules*. The same will apply for item 27 for the preparation and transmission of consent to an extension of time and the filing of pleadings.

[8] The disbursements are allowed in the amount of \$151.93. I allowed disbursements for the service of the respondent's record in the amount of \$135.93. As for the cost of photocopies of the appeal book and authorities, I have only the respondent's 8-page record in evidence, so I have allowed 8 pages at \$0.25 per page x 8 copies for a total of \$16. All the other disbursements for bailiff fees for the production of documents to the Court seem to me to be part of an office's normal operating expenses, so they are not allowed. As for the disbursements for the service of the notice of appearance and the service of a notice of change of solicitor, the assessment officer cannot allow the

fees for these documents because they are not considered taxable. The cost of photocopies of the motion record for the motion for an extension of time cannot be allowed since the order of the Court dated March 1, 2007, remains silent in this regard.

[9] The bill of costs of the respondent, Canada Post, filed at \$4033.72, is allowed at \$1691.62.

A certificate of taxation will be issued for this amount.

MONTRÉAL, QUEBEC
August 29, 2008

DIANE PERRIER
ASSESSMENT OFFICER

Certified true translation
Sarah Burns

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-426-06

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Applicant

and

**ATTORNEY GENERAL OF CANADA,
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and
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Respondents

ASSESSMENT OF COSTS IN WRITING

PLACE OF ASSESSMENT: Montréal, Quebec

REASONS BY DIANE PERRIER, ASSESSMENT OFFICER

DATED: August 29, 2008

WRITTEN SUBMISSIONS:

Mr. Gérard Ménard
(on his own behalf)

for the applicant

Mr. Yvon Brisson

for the respondent
Canada Post

SOLICITORS OF RECORD:

Grondin Poudrier Bernier
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Canada Post