

Federal Court of Appeal



Cour d'appel fédérale

**Date: 20100811**

**Docket: A-427-07**

**Citation: 2010 FCA 208**

[ENGLISH TRANSLATION]

**BETWEEN:**

**CANADIAN BROADCASTING CORPORATION**

**Appellant**

**and**

**THE CITY OF MONTRÉAL**

**Respondent**

**and**

**ATTORNEY GENERAL OF CANADA**

**Intervener**

**ASSESSMENT OF COSTS – REASONS**

**DIANE PERRIER, ASSESSMENT OFFICER**

[1] On September 19, 2008, the Federal Court of Appeal allowed the appeal with costs, the decision and order issued by the Federal Court were set aside, and the City of Montréal's application for judicial review was dismissed.

[2] On April 20, 2010, the appellant filed its bill of costs, which was supported by France Jean's affidavit, and requested that the assessment proceed in writing. On May 31, 2010, a direction was sent to the parties, setting out a schedule for filing the parties' written representations. The parties filed their written representations within the prescribed time.

[3] In these written representations against the appellant's bill of costs, the respondent claims there is no need to award any costs nor disbursements to the appellant because the Supreme Court of Canada's judgment entirely restores the findings of Martineau J., so this implicitly suggests that all the Federal Court of Appeal's findings—including those on the costs—are set aside.

[4] However, according to the appellant, the Supreme Court of Canada possesses very broad discretion concerning awarding costs, and if the Supreme Court of Canada had intended to set aside the costs awarded by the Federal Court of Appeal, it would have done so clearly. The appellant refers to section 47 of the *Supreme Court Act*, which stipulates that "The Court may, in its discretion, order the payment of the costs of the court appealed from, of the court of original jurisdiction, and of the appeal, or any part thereof, whether the judgment is affirmed, or is varied or reversed." The appellant believes that it has the right to the costs claimed and it requests that the number of units requested be maintained given the significance and complexity of the matters in issue.

[5] In this case, perhaps referring to the following judgment issued by the Supreme Court of Canada is in order: "The appeal from the judgment of the Federal Court of Appeal, Number A-427-

07, 2008 FCA 278, dated September 19, 2008, heard on December 16, 2009, is allowed with costs. All the conclusions of the judgment by Martineau J. of the Federal Court are restored. The matter is referred back to the respondent to recalculate the payments it makes in lieu of real property tax. The cross-appeal is dismissed with costs.”

[6] Having read this judgment, I believe that the Supreme Court of Canada restored the judgment of the Federal Court, so the judgment from the Federal Court of Appeal is dismissed. If the Supreme Court of Canada had wanted to award costs in the Federal Court of Appeal, it would have mentioned this in its judgment. Since costs are not mentioned, the assessment officer has no jurisdiction, so this individual cannot award any costs nor disbursements as the respondent states in its written representations.

[7] In accordance with the reasons set out at paragraph 5 above, the bill of costs submitted by the appellant on April 20, 2010, cannot be assessed.

MONTRÉAL, QUEBEC  
AUGUST 11, 2010

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“Diane Perrier”  
DIANE PERRIER  
ASSESSMENT OFFICER

**FEDERAL COURT**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-427-07

**STYLE OF CAUSE:** CANADIAN BROADCASTING CORPORATION  
v. THE CITY OF MONTRÉAL ET AL.

**WRITTEN ASSESSMENT OF COSTS**

**PLACE OF ASSESSMENT:** Montréal, Quebec

**REASONS BY DIANE PERRIER, ASSESSMENT OFFICER**

**DATED:** August 11, 2010

**WRITTEN REPRESENTATIONS:**

Sylvie Gadoury FOR THE APPELLANT

Luc Lamarre FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Canadian Broadcasting Corporation-Legal Services FOR THE APPELLANT  
Montréal, Quebec

Brunet, Lamarre s.e.n.c. FOR THE RESPONDENT  
Montréal, Quebec

Myles J. Kirvan FOR THE INTERVENER  
Deputy Attorney General of Canada  
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