



**Date: 20101126**

**Docket: A-391-08**

**Citation: 2010 FCA 321**

**Present: JOHANNE PARENT, Assessment Officer**

**BETWEEN:**

**PATRICK GROULX**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Dealt with in writing without the appearance of the parties.

Certificate of Costs delivered at Toronto, Ontario, on November 26, 2010.

**REASONS FOR ASSESSMENT BY:**

**JOHANNE PARENT, Assessment Officer**



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**REASONS FOR ASSESSMENT**

**JOHANNE PARENT, Assessment Officer**

[1] On February 9, 2009, the Court dismissed the appeal from an Order of Madam Justice Valerie Miller of the Tax Court of Canada, with costs. A timetable for the written disposition of the Bill of Costs was issued on September 16, 2010. Both parties filed representations in the prescribed timeframe.

[2] The respondent states that the Bill of Costs was prepared in accordance with Column III of Tariff B of the *Federal Courts Rules* and that all disbursements claimed are supported by the affidavit of Josie Borg sworn September 10, 2010.

[3] In response, the appellant argues that an assessment of costs would be an unfair hardship as he lives on a fixed income below the poverty level. The appellant also indicates having been informed by a lawyer at the Department of Justice that “billing and collecting costs is discretionary”. He further argues that the costs “seem like harassment and malicious prosecution”.

[4] In rebuttal to the first argument raised by the appellant, counsel for the respondent cites paragraph 8 of the decision in *Latham v. Canada* 2007 FCA 179 (A.O.):

**8.** The existence of outstanding appeals does not prevent the Respondents from proceeding with these assessments of costs: see *Culhane v. ATP Aero Training Products Inc.*, [2004] F.C.J. No. 1810 (A.O.) at para. [6]. In *Clarke v. Canada (Attorney General)*, [2005] F.C.J. No. 814 (A.O.), the Applicant (an inmate), in arguing before me that his limited resources coupled with the potential amount of assessed costs would interfere with his rehabilitation, correctly conceded in my view that both capacity to pay and likelihood of satisfaction of the assessed costs are irrelevant in the determination of issues of an assessment of costs. That is, I cannot interfere with the exercise of the Court's Rule 400(1) discretion which established the Respondents' right for recovery here of assessed costs from the Applicant/Appellant. I do not think that financial hardship falls within the ambit of "any other matter" in Rule 400(3) (o) as a factor relevant and applicable by an assessment officer, further to Rule 409, to minimize assessed litigation costs. Self-represented litigants and litigants represented by counsel receive the same treatment relative to the provisions for litigation costs: see *Scheuneman v. Canada (Human Resources Development)*, [2006] F.C.J. No. 1278 (A.O.). The Courts here made their findings concerning entitlements to costs: I have no jurisdiction to interfere. (Underlining added)

[5] The respondent adds that as no evidence can be found regarding harassment and malicious prosecution, they therefore should not be considered in this assessment of costs. As for the discretion for costs, counsel for the respondent refers to Rule 400(1) of the *Federal Courts Rules* and the full discretionary authority of the Court to award costs.

### ASSESSMENT

[6] As stated in Latham (previously cited) and later by the undersigned in *Gebele v. Canada* 2009 FCA 160: “the appellant's inability to pay costs cannot be a consideration in the assessment of costs”.

[7] Concerning the appellant’s argument regarding discretion on awarding costs, Rule 400(1) of the *Federal Courts Rules* states “The Court shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid”. The decision of February 9, 2009 in this matter is unambiguous seeing that the Court clearly exercised its discretion in dismissing the appeal, with costs.

[8] The parties did not specifically argue the services and disbursements claimed in the respondent’s Bill of Costs. In considering the assessable services claimed under Tariff B of the *Federal Courts Rules*, I note that the respondent claimed the minimum number of units for each service. In light of the Court file, I consider that the services claimed for the Memorandum of Fact and Law, Counsel fee on hearing and services after judgment are all justified and reasonable. They will therefore be allowed as claimed. I have further reviewed all the disbursements claimed along

with the affidavit of Josie Borg. All disbursements are substantiated, were all charges necessary to the conduct of this matter and will, therefore, be allowed.

[9] Regarding the claim that the costs amounted to “harassment and malicious prosecution”, I have carefully read the appellant’s affidavit sworn October 27, 2010 along with the factors mentioned in Rule 400(3) of the *Federal Courts Rules*. I find that none of the factors mentioned in Rule 400(3) apply to the case at bar and that the numerous statements contained in this affidavit are irrelevant for this assessment of costs.

[10] The respondent’s Bill of Costs is allowed for a total amount of \$1,739.10

“Johanne Parent”  
\_\_\_\_\_  
Assessment Officer

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-391-08

**STYLE OF CAUSE:** PATRICK GROULX v. HER MAJESTY THE QUEEN

**ASSESSMENT OF COSTS DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ASSESSMENT OF COSTS BY:** JOHANNE PARENT, Assessment Officer

**DATED:** November 26, 2010

**WRITTEN REPRESENTATIONS BY:**

Patrick Groulx (Self-Represented)

FOR THE APPELLANT

Amit Ummat  
Donna Dorosh

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Patrick Groulx (Self-Represented)  
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FOR THE APPELLANT

Myles J. Kirvan  
Deputy Attorney General of Canada

FOR THE RESPONDENT