

Date: 20071022

**Dockets: ITA-12276-02
ITA-8992-04
ITA-13404-04
ITA-13163-04
GST-4304-04**

Citation: 2007 FC 1085

Ottawa, Ontario, October 22, 2007

PRESENT: The Honourable Madam Justice Heneghan

In the matter of the *Income Tax Act*,

and

In the matter of an assessment or assessments by the Minister of National Revenue under one or more of the *Income Tax Act, Canada Pension Plan, Employment Insurance Act*, against

**HUMBY ENTERPRISES LIMITED
Box 342, 325 Garrett Drive, Gander, NL A1V 1W7
(Court File No. ITA-12276-02)**

**A & E PRECISION FABRICATING AND MACHINE SHOP INC.
Post Office Box 342, Gander, Newfoundland and Labrador, A1V 1W7
(Court File No. ITA-8992-04)**

**A & E PRECISION FABRICATING AND MACHINE SHOP INC.
Post Office Box 342, Gander, Newfoundland and Labrador, A1V 1W7
(Court File No. ITA-1340404)**

**CENTRAL SPRINGS LIMITED
Post Office Box 342325 Garrett Drive, Gander, Newfoundland and Labrador, A1V 1W7
(Court File No. ITA-13163-04)**

In the matter of the *Excise Tax Act*, R.S.C., 1985, c. E-15,

and

In the matter of an assessment or assessments by the Minister of National Revenue under the *Excise Tax Act*, against:

**A & E PRECISION FABRICATING AND MACHINE SHOP INC.
Post Office Box 342, Gander, Newfoundland and Labrador, A1V 1W7
(Court File No. GST-4304-04)**

REASONS FOR ORDER AND ORDER

I. Introduction

[1] In cause number ITA-12276-02, the Canada Revenue Agency (the “CRA” or the “Applicant”) certified a debt owing by Humby Enterprises Limited (“Humby”) pursuant to the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (the “Income Tax Act”) in the amount of \$98,805.47. The certificate was filed on November 21, 2002.

[2] On November 21, 2002, the Applicant filed a request for the issuance of a Writ of Seizure and Sale pursuant to the *Federal Courts Rules*, SOR-98/206 (the “Rules”). On November 21, 2002, a Writ of Seizure and Sale was issued by the Registry of this Court directed to the Sheriff of Newfoundland and Labrador.

[3] On January 5, 2007, the Applicant filed a Notice of Motion seeking an order that the Sheriff continue the seizure of property seized pursuant to the Writ of Seizure and Sale and further, that the Sheriff proceed to sell the seized property of Humby.

[4] In cause number GST-4304-04, the Applicant certified a debt owing by A & E Precision Fabricating and Machine Shop Inc. (“Precision”) pursuant to the *Excise Tax Act*, R.S., 1985, c. E-15 (the “Excise Tax Act”) in the amount of \$16,668.42. The certificate was filed on August 12, 2004.

[5] On the same day, that is August 12, 2002, a request was filed for the issuance of a Writ of Seizure and Sale pursuant to the Rules. On August 16, 2002, a Writ of Seizure and Sale was issued by the Registry of this Court directed to the Sheriff of Newfoundland and Labrador.

[6] On February 5, 2007, the Applicant filed a Notice of Motion seeking an order that the Sheriff continue the seizure of the seized property and to proceed to sell the said property of Precision.

[7] In cause number ITA-8892-04, the Applicant certified a debt owing by Precision pursuant to the Income Tax Act in the amount of \$2,046.14. The certificate was filed on August 16, 2004.

[8] On August 16, 2004, a Writ of Seizure and Sale was issued by the Registry of this Court pursuant to the Rules. It was directed to the Sheriff of Newfoundland and Labrador.

[9] In cause number ITA-13163-04, the Applicant certified a debt owed by Central Springs Limited (“Central”) pursuant to the Income Tax Act in the amount of \$73,664.16. The certificate was filed with the Court on December 17, 2004. On February 17, 2004, a Writ of Seizure and Sale was issued by the Registry of this Court directed to the Sheriff of Newfoundland and Labrador.

[10] On February 5, 2007, a Notice of Motion was filed by the Applicant, seeking an Order that the Sheriff continue the seizure of the seized property and further, that he proceed to sell the seized property of Central.

[11] In cause number ITA-13404-04, the Applicant certified a debt owing by Precision pursuant to the Income Tax Act in the amount of \$62,441.91. The certificate was filed with this Court on December 29, 2004.

[12] On December 29, 2004, a Writ of Seizure and Sale was issued by this Court, directed to the Sheriff of Newfoundland and Labrador in respect of the said debt of Precision. On January 5, 2007, the Applicant filed a Notice of Motion seeking an Order that the Sheriff continue in possession of the seized property and further, that he proceed to sell the seized property of Precision.

[13] The motions were originally set down for hearing on February 23, 2007. By Direction issued by Prothonotary Morneau on March 3, 2007, the hearing was re-scheduled for April 18, 2007. The Prothonotary characterized the remedies sought by the Applicant as being in “the nature

of an injunction and mandamus against a provincial board” and said that such remedies were matters to be adjudicated before a Judge, not a Prothonotary, of this Court.

[14] Humby, Precision, and Central are jointly referred to as the “Judgment Debtors”.

II. The Evidence

[15] In support of the motions, the Applicant filed the affidavit of Mr. Jerry Peddle, Collection Enforcement Officer for the CRA, located in St. John’s, Newfoundland and Labrador. In his affidavit, Mr. Peddle recounted the history of the proceedings instituted under the Income Tax Act and the Excise Tax Act against Precision, Humby and Central. He also deposed to the facts concerning instructions given to the Sheriff to seize property pursuant to the Writs of Seizure and Sale that had been issued by this Court relative to the Certificates that had been filed. These instructions were given by a letter dated January 17, 2005 from the CRA, as representative of the judgment creditor, that is Her Majesty in Right of Canada as represented by the Minister of National Revenue. Those instructions were issued pursuant to the *Judgment Enforcement Act*, S.N.L. 1996 c. J-1.1 (the “JEA”) and the *Federal Courts Act*, R.S.C. 1985, c. F-7 (the “Federal Courts Act”).

[16] Mr. Peddle stated that after goods were seized, the Sheriff returned some of those goods to those parties who had filed effective Notices of Claim, pursuant to the JEA.

[17] The Sheriff then proceeded to obtain appraisals of the property that remained seized from the Judgment Debtors. One appraisal was provided by Rideout Tool and Machine Inc. and estimated the value of certain goods to be approximately \$77,300.00. This written appraisal was received by the Sheriff's Office on or about May 4, 2005.

[18] On May 17, 2005, the Sheriff's office received correspondence from Western Star Trails Newfoundland Limited, containing an estimate of goods seized from one of the Judgment Debtors. These goods were assessed at approximately \$85,800.00.

[19] In July 2005, the Applicant instructed the Sheriff to sell the seized property. The sale was advertised in the local newspaper "The Telegram" and the date of the sale was September 9, 2005. However, on September 1, 2005, the CRA instructed the Sheriff to postpone the sale. On March 6, 2006, the CRA instructed the Sheriff to proceed with the sale.

[20] Again, the Sheriff advertised the sale by publishing a "Notice of Sheriff's Sale" in "The Evening Telegram". The sale was scheduled to be held on June 28, 2006.

[21] The Sheriff's Office designated the chattels seized from the Judgment Debtors into 54 lots. Following a further auction held on June 28, 2006, a number of the seized items were sold. The Sheriff declined to sell the remaining goods on the grounds that the price offered was less than the "appraised" value of the property.

[22] On June 28, 2006, a bid in the amount of \$13,055.00 was made relative to the remaining property. On July 12, 2006, a further bid was made in the amount of \$19,600.00 plus HST for the remaining property.

[23] On January 23, 2007, the Office of the High Sheriff of Newfoundland and Labrador notified the CRA that the Sheriff will be releasing the remaining property identified in Schedule "A" attached to the letter of January 23, 2007.

[24] The Sheriff sent further correspondence to the CRA on January 25, 2007 relative to his reasons for releasing the remaining property.

[25] The Judgment Debtors filed two affidavits of Mr. Eli Humby, the President and owner of Humby, Precision and Central. Mr. Humby takes issue with the process by which the CRA issued assessments. Mr. Humby deposed to his understanding of the circumstances surrounding the assessments made by the CRA under the Income Tax Act. He also provided information about an application that he made to the Tax Court of Canada concerning the validity of the assessments upon which the actions of the Minister are founded.

[26] He also referred to proceedings that had been undertaken in the Supreme Court of Newfoundland and Labrador and an alleged undertaking by the CRA to defer collection proceedings pending the outcome of that litigation.

[27] Mr. John MacDonald, the High Sheriff of Newfoundland and Labrador filed an affidavit in which he outlined the steps that had been taken by the Office of the High Sheriff following receipt of the Writs of Seizure and Sale on behalf of the CRA, including the various instructions to proceed with a sale of seized goods, to defer the sale, and then to proceed. In his affidavit, Mr. MacDonald also refers to his decision, set out in his letter of January 23, 2007, to return the remaining seized goods to the Judgment Debtors. This decision was repeated in the letter dated January 27, 2007 from the Office of the High Sheriff.

[28] The Sheriff also referred to an application that he brought before the Supreme Court of Newfoundland and Labrador, Trial Division, seeking an order pursuant to the JEA for the sale of the remaining property for the best obtainable price. That application was adjourned *sine die* on December 18, 2006.

III. Submissions

[29] The Applicant argues that the Sheriff is subject to a duty to act in a “commercially reasonable manner” in discharging his obligations pursuant to the JEA. In this regard, the Applicant relies on subsection 3(5)(f) of the JEA. The Applicant submits that the meaning of the words “commercially reasonable manner” can be interpreted by analogy with the interpretation of the *Personal Property Security Act*, S.N.L. 1998 c. P-7.1, the *Bankruptcy and Insolvency Act*, R.S., 1985, c. B-3 and the *Canada Business Corporations Act*, R.S.C. c. C-44.

[30] The Applicant further argues that the Sheriff is wrong to base his decision not to proceed to sale of the remaining property on the grounds that the last offer does not reflect the appraised value of the goods. In this regard, the Applicant submits that the appraisal of the goods obtained by the Sheriff is not reflective of the value of the goods and that the value of those goods has been established by the market, that is by the amount offered by the last prospective buyer.

[31] The Applicant argues that the JEA does not require the Sheriff to obtain an appraisal. It submits that the Sheriff should be guided by the principle of acting in a “commercially reasonable manner”, as discussed in *National Bank of Canada v. Marguis Furs Ltd.*, [1987] O.J. No. 1220.

[32] The Applicant filed further submissions shortly before the hearing of these motions. In these submissions, the Applicant said that it was seeking judicial review of the Sheriff’s decision to return the remaining property. The Applicant purports to rely on subsection 80(3) of the JEA that allows a creditor affected by a decision to return goods to “apply to the court”.

[33] The Respondents argue that this Court should not exercise jurisdiction since the Applicant has already commenced proceedings in the Supreme Court of Newfoundland and Labrador relative to the claims here in issue. Further, they submit that the Applicant did not act fairly in giving instructions to the Sheriff relative to the enforcements of the judgments obtained by the Applicant.

[34] The Sheriff made no written representations with respect to his affidavit or his position. He was represented by counsel at the hearing of the motion but no submissions were made on his behalf.

IV. Discussion and Disposition

[35] The Applicant seeks relief in the nature of an injunction that is requiring the Sheriff to prohibit the return of the remaining goods to the Judgment Debtors, and in the nature of an order of *mandamus*, that is an order compelling the Sheriff to sell the remaining goods.

[36] For the purposes of this proceeding, the Sheriff is acting as an officer of the Federal Court of Canada. In that regard, I refer to subsection 13(2) of the Federal Courts Act which provides as follows:

13(2) If no sheriff is appointed under subsection (1) for a court for a geographical area, the sheriff and deputy sheriffs of the county or other judicial division or part of the county within that geographical area who are appointed under provincial law are ex officio sheriff and deputy sheriffs, respectively, of the Federal Court of Appeal and of the Federal Court.

13(2) À défaut de nomination d'un shérif sous le régime du paragraphe (1) pour un secteur géographique donné, les titulaires, nommés sous le régime de lois provinciales, des charges de shérif et shérifs adjoints pour le comté ou tout ou partie d'une autre circonscription judiciaire de ce même secteur sont de droit respectivement shérif et shérifs adjoints de la Cour d'appel fédérale ou de la Cour fédérale, selon le cas.

[37] Pursuant to section 56 of the Federal Courts Act, judgments of the Court can be enforced in a manner analogous to the enforcement of judgments in the province where execution of the judgment is sought. Subsection 56(1) and (3) of the Federal Courts Act provide as follows:

56. (1) In addition to any writs of execution or other process that are prescribed by the Rules for enforcement of its judgments or orders, the Federal Court of Appeal or the Federal Court may issue process against the person or the property of any party, of the same tenor and effect as those that may be issued out of any of the superior courts of the province in which a judgment or an order is to be executed, and if, by the law of that province, an order of a judge is required for the issue of a process, a judge of that court may make a similar order with respect to like process to issue out of that court.

56(3) All writs of execution or other process against property, whether prescribed by the Rules or authorized by subsection (1), shall
(a) unless otherwise provided by the Rules, be executed, with respect to the property liable to execution and the mode of seizure and sale, as nearly as possible in the same manner as similar writs or process that are issued out of the superior courts

56. (1) Outre les brefs de saisie-exécution ou autres moyens de contrainte prescrits par les règles pour l'exécution de ses jugements ou ordonnances, la Cour d'appel fédérale ou la Cour fédérale peut délivrer des moyens de contrainte visant la personne ou les biens d'une partie et ayant la même teneur et le même effet que ceux émanant d'une cour supérieure de la province dans laquelle le jugement ou l'ordonnance doivent être exécutés. Si, selon le droit de la province, le moyen de contrainte que doit délivrer la Cour d'appel fédérale ou la Cour fédérale nécessite l'ordonnance d'un juge, un de ses juges peut rendre une telle ordonnance.

56(3) Sauf disposition contraire des règles, les brefs de saisie-exécution ou autres moyens de contrainte visant des biens — qu'ils soient prescrits par les règles ou autorisés aux termes du paragraphe (1) — sont, quant aux catégories de biens saisissables et au mode de saisie et de vente, exécutés autant que possible de la manière fixée, pour des moyens de contrainte semblables émanant d'une cour

of the province in which the property to be seized is situated are, by the law of that province, required to be executed; and (b) bind property in the same manner as similar writs or process issued by the provincial superior courts, and the rights of purchasers under the writs or process are the same as those of purchasers under those similar writs or process.	supérieure provinciale, par le droit de la province où sont situés les biens à saisir. Ils ont les mêmes effets que ces derniers, quant aux biens en question et aux droits des adjudicataires.
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[38] In Newfoundland and Labrador, the JEA governs the enforcement of judgments. Paragraph 2(bb) defines “judgment” as follows:

(bb) “judgment” includes an order, decree, certificate, duty or right that may be enforced as or in the same manner as a judgment of the court including a judgment made under the Small Claims Act and the Federal Court Act, but does not include a support order registered with the director under the Support Orders Enforcement Act, 2006, except as provided in section 3;

[39] The Applicant relies on paragraph 3(5)(f) of the JEA which provides as follows:

3.
...
(5) The following applies to enforcement proceedings:
..
(f) all rights, duties and functions of creditors and the sheriff under this Act shall be exercised or discharged in good faith and in a commercially reasonable manner;
..

[40] Section 80 of the JEA provides as follows:

80. (1) Where personal property is seized, it remains under seizure until

(a) sold or otherwise disposed of under this Act; or

(b) released from seizure by the sheriff.

(2) Where personal property has been seized and

(a) the sheriff has been unable to serve the debtor as required by subsection 75(2); or

(b) the personal property has been seized for not fewer than 60 days and, in the opinion of the sheriff, it is appropriate that the property be released from seizure,

the sheriff shall give notice of the proposed release to every creditor who, at the time that the notice is given, has a related notice of judgment of his or her intention to release the property from seizure.

(3) A creditor served with a notice under subsection (2) may apply to the court within 15 days of receiving that notice for a continuance of the seizure on the terms and conditions that the court may impose.

(4) Property shall not be released from seizure or returned to the debtor under subsection (2) until

(a) the period for an application to the court has elapsed with no application being made; or

(b) the application is dismissed.

[41] The parties did not address the status of the JEA as a statute affecting substantive rights or as a statute regulating procedures. In light of subsection 3(1) of the JEA, I would characterize the JEA

as legislation addressing the procedures for judgment enforcement. Subsection 3(1) provides as follows:

3(1) All money judgments shall be enforced in accordance with this Act.

[42] According to the decision in *Maple Leaf Mills Limited. v. "Baffin Bay" (The)*, [1973] F.C. 1097 (T.D.), subsection 56(3) sets out the scheme for enforcement of judgments of the Federal Court. The status of a provincial sheriff as an *ex officio* sheriff of the Federal Court was addressed by the Federal Court of Appeal in *Forest v. Hancor Inc.*, [1996] 1 F.C. 725 (C.A.); leave to S.C.C. refused (1996), 203 N.R. 398n (S.C.C.) where the Court held that judgments can be enforced pursuant to the mechanism provided for in provincial legislation governing the enforcement of judgments.

[43] In *Chartier v. Chartier et al.* (1989), 21 F.T.R. 76, the Federal Court commented on the meaning of sub-section 56(1) and said the following at paragraph 9:

With regard to judgment creditor's second argument that s. 56(1) of the **Federal Court Act** and the **Weniuk** case can be used to permit the Court to resort by analogy to provincial enforcement mechanisms and make an order binding on the Crown in right of Ontario; as Mr. Justice Muldoon said in **Weniuk**, the analogy may only occur by way of adaptation of a provincial superior court process. The Federal Court may not adopt provincial processes. In addition, s. 56(1) deals with procedural provisions; the combining of provincial superior court processes with those of the Federal Court would not be sufficient to confer express jurisdiction over the Crown in right of Ontario as a matter of substantive law. The jurisdiction of the Federal Court is entirely statutory and as such the Court may only entertain

those claims against the Crown that have been provided for by statute law [emphasis in original].

[44] This is the background against which the Applicant's motions for injunctive and mandatory relief are to be assessed. The test for obtaining injunctive relief is set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311. An applicant must show a serious issue for trial, irreparable harm and that the balance of convenience lies in his favour. All three elements must be established in order to obtain this relief.

[45] I am not persuaded that the Applicant has shown that a serious issue arises here. The Applicant is seeking enforcement of its judgments; there is no pending trial.

[46] Further, I am not satisfied that the Applicant has shown that it will suffer irreparable harm if the relief sought is denied. The judgments still exist. The Applicant has not shown that it enjoys an absolute right to determine the manner in which those judgments can or will be enforced. Since the Applicant has failed to establish the first two elements of the tripartite test for the issuance of an injunction, it is not necessary for me to address the issue of balance of convenience.

[47] I turn now to the Applicant's request for an order of *mandamus*.

[48] The test for obtaining an order of *mandamus* is set out in *Apotex Inc. v. Canada (Attorney General)*, [1994] 1 F.C. 742; affirmed [1994] 3 S.C.R. 1100. The essential elements of the test are the existence of a public legal duty requiring the decision maker to act; proof that performance of

the duty is owed; an absence of discretion as to whether the duty must be performed; and proof of a demand that the duty be performed and refusal of performance.

[49] The first issue to be addressed is whether the Sheriff of Newfoundland and Labrador, in his capacity as a Sheriff of this Court, is subject to a public legal duty to sell the remaining goods of the Respondents, as requested by the Applicant. In my opinion, he is not.

[50] From my reading of the relevant provisions of the JEA, the Sheriff is responsible for the enforcement of judgments. I refer to section 5 of the JEA which provides as follows:

5.(1) The Sheriff shall supervise the registry and the system of enforcement of judgments under this Act.

(2) The Sheriff may designate an employee of his or her office or another employee of the government of the province to assist in the supervision of the judgment enforcement system under this Act and to co-ordinate enforcement proceedings conducted under this Act.

[51] Some examples of the discretion available to the Sheriff with respect to the enforcement of judgments can be found in sections 6, 8 and 9 of the JEA.

[52] According to section 3 of the JEA, the Sheriff is to exercise his discretion in accordance with the criteria set out in subsection 3(5), including the obligation to act in good faith and in a commercially reasonable manner.

[53] The Applicant, relying on the decisions in *National Bank of Canada* and *Thoms v. Louisville Sales and Service Inc.*, [2006] 11 W.W.R. 486 (SKQB), argues that acting “in a commercially reasonable manner” means that the Sheriff must accept whatever is offered and submits that the price offered is to be accepted as the fair market value of the goods.

[54] The decisions relied on by the Applicant with respect to the interpretation of “commercially reasonable manner” involved the interpretation of provincial legislation. In my view, these decisions have limited relevance to the issues raised in the present motions.

[55] The obligations to act in a “commercially reasonable manner” for the purposes of the JEA, lie upon a creditor such as the Applicant, as well as upon the Sheriff in the discharge of his duties. However, any duty in that regard is overtaken by the discretion conferred upon the Sheriff by subsection 80(2) of the JEA. Pursuant to this subsection, if the Sheriff is “of the opinion” that goods should be returned, he can take such action. The language of paragraph 3(5)(f) does not fetter the Sheriff’s discretion that is granted by subsection 80(2). Rather, the language of paragraph 3(5)(f) informs the manner in which the Sheriff shall act.

[56] The JEA authorizes the Sheriff, not a creditor, to enforce judgments. A creditor may give instructions but ultimately, the Sheriff chooses the course of action. In the present case, he is authorized to exercise discretionary power to return the goods. The availability of this discretion means that *mandamus* will not lie to make him act otherwise.

[57] Although section 11 of the JEA authorizes applications to the Supreme Court of Newfoundland and Labrador or to the Court of Appeal for that province for directions with respect to administration of the JEA by the Sheriff, the availability of such judicial remedies does not change the discretionary nature of the powers conferred upon the Sheriff. However, in any event, the definition of “court” in the JEA is specifically limited to the superior courts of Newfoundland and Labrador.

[58] The language of subsection 80(3) of the JEA says that a creditor “may apply to” the Court. In the present case, the Sheriff is acting as an officer of the Federal Court. This means that his decisions are those of a “federal board, commission or other tribunal” as defined in subsection 2(1) of the Federal Courts Act.

[59] Subsection 80(2) of the JEA clearly gives the Sheriff discretion over the matter of retaining or releasing goods that have been seized. That subsection speaks of “the opinion of the sheriff”.

[60] The remedy of *mandamus* is available to direct performance of a duty. It is not available to direct the manner of performance of such duty. In that regard, I refer to the decisions in *Maple Lodge Farms Ltd. v. Canada*, [1981] 1 F.C. 500 (Fed. C.A.); affirmed [1982] 2 S.C.R. 2 and *NsC Diesel Power Inc. (Bankrupt), Re* (1995), 101 F.T.R. 97.

[61] The Applicant argues that the Sheriff erroneously based his decision to return the goods upon his assessment of the appraisals that were obtained by his office. The Applicant argues that the

Sheriff was under no obligation to obtain appraisals and consequently, the Sheriff should not take those appraisals into consideration in deciding whether to return the goods.

[62] In my opinion, the fact that the JEA does not specifically address the issue of obtaining appraisals for property to be sold pursuant to a writ of seizure and sale is irrelevant to the present motion.

[63] The decision of the Sheriff to obtain appraisals is not the subject of this motion. The manner in which the Sheriff exercised his discretion, vis-à-vis appraisals or otherwise, can only be challenged by means of an application for judicial review pursuant to sections 18 and 18.1 of the Federal Courts Act. No such application was taken in the present case. The fact that the Applicant filed further written submissions in which it argued that it was seeking judicial review of the Sheriff's decision upon this motion does not convert this motion into a judicial review of the Sheriff's decision.

[64] The Applicant has not shown that there is a public legal duty upon the Sheriff to act, that is to retain possession of the goods for the purpose of selling them. It has also failed to show that it is entitled to performance of a duty. The Sheriff is vested with a discretion to act and he did so, pursuant to subsection 80(2) of the JEA, in deciding to return the goods. It is not necessary to address the remaining elements of the test in *Apotex*.

[65] In the result, the Applicant's motion for an order of *mandamus* is dismissed.

[66] In their submissions, the Respondents requested costs on a solicitor-client basis, as well as an order for punitive damages. The criteria for making an award of solicitor and client costs are discussed in the decision of *Merck & Co. et al v. Apotex Inc.* (2002), 225 F.T.R. 285; affirmed (2003), 305 N.R. 68; leave to appeal refused (2004), 329 N.R. 198n. I am not persuaded that an order for solicitor and client costs is justified or appropriate in the present case and the Respondents shall have their costs to be taxed.

[67] The Respondents' request for an order for damages is likewise dismissed. The remedy of damages is not available upon a motion. If I were to treat this motion as an application for judicial review, damages are equally unavailable; see *Ross v. Mohawk Council of Kanesatake* (2003), 232 F.T.R. 238.

[68] These reasons will be filed in cause number ITA-1276-02 and placed on the files in ITA-8992-04, ITA-13404-04, ITA-13163-04 and GST-4304-04.

ORDER

The motions are dismissed with taxed costs to the Respondents.

“E. Heneghan”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: ITA-12276-02, ITA-8992-04, ITA-13404-04,
ITA-13163-04, GST-4304-04

STYLE OF CAUSE: Humby Enterprises Limited, A & E Precision
Fabricating and Machine Shop Inc., and Central
Springs Limited

PLACE OF HEARING: St. John's, Newfoundland and Labrador

DATE OF HEARING: April 18, 2007

**REASONS FOR ORDER
AND ORDER:** HENEGHAN J.

DATED: October 22, 2007

APPEARANCES:

Mark D. Murray FOR THE APPLICANT

Robert B. Anstey FOR THE RESPONDENT

Rolf Pritchard FOR THE HIGH SHERIFF OF
NEWFOUNDLAND AND LABRADOR

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Mr. Rolf Pritchard FOR THE HIGH SHERIFF OF
Department of Justice NEWFOUNDLAND AND LABRADOR
St. John's, NL