

Date: 20080814

Docket: T-1974-06

Citation: 2008 FC 948

BETWEEN:

DENIS BÉGIN

Plaintiff

and

**MARC SÉGUIN
PAROLE OFFICER
FOR THE CORRECTIONAL SERVICE OF CANADA**

Defendant

ASSESSMENT OF COSTS – REASONS

DIANE PERRIER, ASSESSMENT OFFICER

[1] This is the assessment of costs pursuant to an order of the Court dated January 15, 2007, striking the plaintiff's statement of claim under paragraph 221(1)(a) of the *Federal Courts Rules*, with costs.

[2] On March 29, 2007, counsel for the defendant filed his bill of costs and asked that it be assessed without the appearance of the parties. On November 8, 2007, we sent the parties letters establishing a timetable. Since the parties have filed their written submissions, I am now ready to assess costs.

[3] The plaintiff has asked the assessment officer not to assess costs because he is unable to pay them and would be forced to declare bankruptcy if required to do so. The defendant, for his part, relies on the decision of the Honourable Justice Addy in *Solovsky v. Canada*, which states that "... in deciding whether costs should or should not be awarded against an unsuccessful plaintiff, neither the ability to pay nor the difficulty of collection should be a deciding factor but, on the contrary, the awarding or refusal of costs should be based on the merits of the case." In my opinion, assessment officers are bound by the reasons in *Solovsky*. I should also note that, under section 400 of the *Federal Courts Rules*, only the Court has the power to award costs. Thus, since the Court has awarded costs in this matter, and since, under section 405, costs are assessed by an assessment officer, the assessment officer has no choice but to quantify the costs.

[4] The defendant seeks the following fees: Item 5 – preparation and filing of a contested motion (7 units x \$120) and Item 26 – assessment of costs (6 units x \$120). The defendant seeks the maximum number of units for the motion to dismiss the plaintiff's action and for the assessment of costs. Section 409 of the *Federal Courts Rules* provides that, in assessing costs, an assessment officer may consider the factors referred to in subsection 400(3). On this basis, I allow five units under Item 5 in view of the amount of work done by the defendant to bring the motion to dismiss the action, because the defendant clearly had to mount a substantial case to secure the dismissal of the action, but I do not consider it reasonable to grant more than five units for this type of motion, because there are, in my opinion, other more complex and complicated motions than the motion in issue. For Item 26, assessment of costs, I will allow only three units, because this

assessment of costs does not appear to me to be particularly complex or complicated. Consequently, I assess the fees at \$960.

[5] Disbursements in the amount of \$258.21 are allowed for photocopies of the record of the motion to dismiss, for the reply to the plaintiff's motion record, and for the service by bailiff and filing of the record of the motion to dismiss, because they appear to me to be reasonable and are supported by the affidavit of Patricia Sills.

[6] The defendant's bill of costs totalling \$1,818.21 is assessed and allowed in the amount of \$1,218.21.

MONTRÉAL, QUEBEC
August 14, 2008

"Diane Perrier"

DIANE PERRIER
ASSESSMENT OFFICER

Certified true translation

Brian McCordick, Translator

**FEDERAL COURT
SOLICITORS OF RECORD**

DOCKET: T-1974-06

Between:

DENIS BÉGIN

Plaintiff

and

**MARC SÉGUIN
PAROLE OFFICER
FOR THE CORRECTIONAL SERVICES OF CANADA**

Defendant

ASSESSMENT OF COSTS IN WRITING

REASONS OF DIANE PERRIER, ASSESSMENT OFFICER

DATE OF REASONS: August 14, 2008

WRITTEN SUBMISSIONS:

Denis Bégin

PLAINTIFF

Nicholas R. Banks

FOR THE DEFENDANT

SOLICITORS OF RECORD:

John Sims
Deputy Attorney General of Canada
Ottawa, Ontario

FOR THE DEFENDANT