

Docket: T-2244-06

Citation: 2011 FC 421

BETWEEN:

GABRIEL SAVARD

Plaintiff

and

CANADA POST CORPORATION

Defendant

REASONS FOR ASSESSMENT

ASSESSMENT OFFICER JOHANNE PARENT

[1] On May 27, 2008, the Court dismissed the application for judicial review of a decision rendered on April 20, 2006, by Canada Post Corporation, with expenses. On December 29, 2010, the Defendant presented its bill of costs to the Court. Instructions were then issued informing the parties that the assessment of costs would proceed in writing and of the deadlines set for filing submissions.

[2] In support of its bill of costs, the Defendant served and produced the evidence justifying the outlays. No other submission by the parties was received at the Court registry, not even a request for a time extension.

[3] Therefore, I will proceed with assessing the bill of costs, taking into consideration the observations of my colleague in *Dahl v. Canada*, 2007 FC 192 (OT) at paragraph 2:

Effectively, the absence of any relevant representations by the Plaintiff, which could assist me in identifying issues and making a decision, leaves the bill of costs unopposed. My view, often expressed in comparable circumstances, is that the *Federal Courts*

Rules do not contemplate a litigant benefiting by an assessment officer stepping away from a position of neutrality to act as the litigant's advocate in challenging given items in a bill of costs. However, the assessment officer cannot certify unlawful items, i.e. those outside the authority of the judgement and the Tariff.

[4] In keeping with the foregoing and given the services claimed under Tariff B of the *Federal Courts Rules*, the units charged for preparation and filing of the Defendant's case (item 2), for preparation of the hearing (item 13a), for attendance in Court (item 14a) and for assessment of costs (item 26) are awarded as charged.

[5] The Defendant submitted no details or submissions in support of its claim under item 4 for preparation and filing of an uncontested motion. A detailed review of the Court record did not turn up any motion or order able to justify that charge. As rule 400(1) of the *Federal Courts Rules* states, only 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." Therefore, the assessment officer does not have the necessary jurisdiction enabling him/her to award expenses. Being unable to find any Court decision, other than the final decision, awarding expenses and based on rule 400(1) and on the decision in *Janssen-Ortho Inc. v Novopharm Ltd* 2006 FC 1333, in which it was determined that "any order made before the court proceedings that does not deal with the issue of expenses means that no expenses were awarded to either party," the units claimed under item 4 will not be awarded.

[6] The units claimed under item 24 for travel by counsel cannot be awarded. Item 24 of Tariff B specifically states that these costs are at the discretion of the Court. Given that an assessment officer is not considered a member of the Court and that the Court, in its decision, makes no mention of travel expenses, the units claimed will not be awarded.

[7] The value of each unit in Tariff B claimed in the bill of costs at \$129.78 is adjusted to \$130.00 to more accurately reflect the unit value set out by the Honourable Chief Justice of this Court in its directive of April 23, 2010.

[8] The outlays claimed in the Defendant's bill of costs are uncontested and considered expenses needed for conducting this case. The amounts are reasonable and are therefore awarded.

[9] The Defendant's bill of costs is awarded in the amount of \$2,536.08.

“Johanne Parent”
Assessment Officer

Toronto, Ontario
April 5, 2011

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-2244-06

STYLE OF CAUSE: GABRIEL SAVARD v. CANADA POST
COPORATION

**ASSESSMENT OF EXPENSES ON RECORD WITHOUT APPEARANCE OF THE
PARTIES**

REASONS FOR ASSESSMENT BY: THE ASSESSMENT OFFICER
JOHANNE PARENT

DATE OF THE ASSESSEMENT: April 5, 2011

WRITTEN SUBMISSIONS:

No written submissions FOR THE PLAINTIFF

Mr. Richard Pageau FOR THE DEFENDANT

NAMES OF COUNSEL AND SOLICITORS OF RECORD:

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