

Date: 20080125

ITA-12276-02

ITA-8992-04

ITA-13404-04

ITA-13163-04

GST-4304-04

Citation: 2008 FC 104

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

P. O. Box 342325 Garrett Drive, Gander, Newfoundland & 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)

ASSESSMENT OF COSTS – REASONS

Willa Doyle
Assessment Officer

[1] There was an individual motion filed by the Applicant (Canada Revenue Agency) in each of the five above noted cases. The matters were collectively and originally set down for hearing on February 23, 2007 in St. John's Newfoundland and Labrador at the regular monthly motions day. However, by Direction of Prothonotary Morneau issued on March 3, 2007, the Prothonotary (considering the remedies sought by the Applicant were "in the nature of an injunction and mandamus against a provincial board") re-scheduled the matters to April 18, 2007 to be adjudicated before a Judge of this Court.

[2] Subsequently, on April 18, 2007 the matters were heard collectively by personal appearance before the Honourable Madam Justice Heneghan in St. John's, Newfoundland and Labrador with each party presenting their respective positions. On October 22, 2007 the Honourable Madam Justice Heneghan issued an Order which stated: "The motions are dismissed with taxed costs to the Respondents".

[3] On October 31, 2007 the Respondent filed their Bill of Costs encompassing all five matters (as they were heard) and asking that the Bill of Costs be dealt with in writing without personal appearance. I issued a timetable for reply and rebuttal materials to be served and filed. Following this I received a request for an extension of time for the Applicant to serve and file all reply materials, this was granted and a new time table was issued for both parties. I received the Applicant's written reply, the Respondent's response and a further letter from the Applicant. I am now prepared to proceed with the assessment of costs.

[4] In regard to assessable services the Respondent is seeking the following; item 2 – preparation and filing of Respondent's Response to the Motion record filed by the Applicant and subsequent Memorandum of Fact and Law and related materials including, but not limited to; legal research, meeting with the client, extensive review of this large file involving multiple parties; and preparation memorandum of Fact and Law - six units, item 13(a) preparation for hearing on March 22, 2007 including review of Applicant's material, supplemental material and material filed by the solicitor for the High Sheriff of

Newfoundland , that was postponed until April 18, 2007, including correspondence to/from the opposing solicitors – three units, item 13(b) preparation and filing of written argument including four copies of the Respondents' Memorandum and written representations, extensive Affidavit of Eli Humby; further Supplemental Affidavit of Eli Humby; legal research and correspondence– three units, item 14 – counsel fee to first counsel per hour in Court on April 18, 2007 - three and three-quarters hour, item 25 – services after judgment not otherwise specified; following up with client - one unit, item 26 – assessment of costs - four units, item 27- consultations with client - three and one-half units.

[5] The Respondent's position is that "...This was a complex claim with three Respondents, three parties with solicitors and considerable documentation filed by each party that dealt with an ongoing dispute that was ongoing for two and one have (*sic*) years." The Applicant's position is " ... that the proceedings before the Court were with respect to a motion. Costs, therefore, should be awarded under the Tariff accordingly."

[6] In my respectful opinion, based on the reading and application of ***Federal Court Rules*** Part 11 – Costs, the Applicant is correct. The matter before the Court in the above was the hearing of a motion. Consequently, and in the absence of any further direction from the Court, it is only the items 4, 5 and 6 listed under ***Federal Courts Rules*** Tariff B, Assessable services, B. Motions, column III that may be subject to costs in this matter.

[7] In reference to my paragraph [6] and coupled with the fact that the Applicant in their submission also noted that item 2 is not available on motion and have instead made reference to item 5 – preparation and filing of a contested motion, including materials and responses thereto, I agree and allow five units for the preparation and filing of a contested motion, including materials and responses thereto. As referenced in paragraph [6] neither claim under item 13 (a) nor 13(b) can be allowed, both are reduced to zero units.

[8] Item 14 is claimed at three and three-quarter hours, this amount confirmed by a review of the recorded entries in the Registry's data base and uncontested by the Applicant, is allowed at three and three-quarter hours not under item 14 as requested but allowed under item 6 – appearance on a motion, per hour.

[9] Item 25 – services after judgment not otherwise specified, claimed at one unit, this item is allowed at one unit as claimed.

[10] Item 26 – assessment of costs is claimed at four units. In my respectful opinion, this assessment was not complex additionally it was done in writing without the need for personal appearance, I have therefore reduced the claim from four units and I allow two units for the assessment of costs.

[11] Item 27 – such other services as may be allowed by the assessment officer or ordered by the Court is reduced to zero units. Respectfully in my opinion, as I have stated

in previous assessment of costs reasons, item 27 is meant to indemnify counsel for extraordinary items not covered elsewhere in the tariff.

[12] Based on the forgoing paragraphs, the numbers of disbursement units are reduced from the claimed twenty-four and one-quarter units for a dollar figure of \$2,910.00 to an allowed eleven and three-quarters units producing a dollar figure of \$1,410.00.

[13] The disbursements, uncontested and supported by the affidavit of Bernadette Melvin, are allowed as requested at \$393.10. The Respondents' Bill of Costs presented at \$3,303.10 is assessed and allowed in the amount of \$1,803.10. A certificate is issued in this Federal Court proceeding in the amount of \$1,801.10.

Willa Doyle
Assessment Officer

Fredericton, New Brunswick
January 25, 2008

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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

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

ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF
THE PARTIES

ASSESSMENT OF COSTS
REASONS BY:

Willa Doyle, Assessment Officer

DATED: January 25, 2008

WRITTEN REPRESENTATIONS BY:

Gregory A. MacIntosh FOR THE APPLICANT

Robert B. Anstey FOR THE RESPONDENT

SOLICITORS OF RECORD:

Justice Canada
Halifax, Nova Scotia FOR THE APPLICANT

Robert B. Anstey Law
St. John's, NL FOR THE RESPONDENT

