

Federal Court  
of Appeal



CANADA

Cour d'appel  
fédérale

**Date: 20090519**

**Docket: A-4-06**

**Citation: 2009 FCA 160**

**BETWEEN:**

**HERMAN GEBELE**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

**ASSESSMENT OF COSTS - REASONS**

**Johanne Parent**  
**Assessment Officer**

[1] On October 17, 2006, the Court dismissed the appeal of a judgment of the Tax Court of Canada dated December 9, 2005, with costs. A timetable for the written disposition of the respondent's Bill of Costs was issued on February 27, 2009. Counsel for the respondent filed a supporting affidavit and written submissions within the prescribed timeframe. In response, counsel for the appellant sent a letter informing the Court that Mr. Gebele was deceased and, as

his estate may have no assets, he was not given any instructions to take any position in respect of the assessment of costs.

[2] As stated in *Latham v. Canada*, 2007 FCA 179, the appellant's inability to pay costs cannot be a consideration in the 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.

[3] Despite the lack of challenge by the opposing party and in accordance with my colleague's view in *Dossa v. Canada (Minister of Human Resources and Development)*, 2007 FCA 319:

The *Federal Courts Rules* do not contemplate a litigant benefiting by having an assessment officer step away from a neutral position 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 judgment and the tariff. I examined each item claimed in the bill of costs and the supporting materials within those parameters.

[4] I am prepared to determine the weight that should be given to all factors submitted in the respondent's Bill of Costs.

[5] In considering the respondent's success and the issues raised, the assessable services claimed under Tariff B of the *Federal Courts Rules* for the preparation of the responding memorandum of fact and law (Item 19), services after judgement (Item 25) and assessment of costs (Item 26) are allowed as claimed.

[6] The respondent claims one unit each under Item 18 (preparation of Appeal Book) and 20 (Requisition for hearing). These claims are denied since the Court record indicates that the aforementioned documents were prepared and filed by the appellant. Counsel fee on the hearing of the appeal [Item 22(a)] is reduced to one hour to reflect the Court record and the actual time spent in Court.

[7] The disbursements claimed for the photocopying of the appellant's Factum, the appellant's Appeal Book and the appellant's Factum and Appeal Book are disallowed considering my previous findings that said documents were filed and served by the appellant and the lack of evidence in the respondent's representations on the pertinence of claiming for copies of documents produced by the other party. All other disbursements are substantiated, were all charges necessary to the conduct of this matter, are not contested and will therefore be allowed.

[8] The respondent's bill of costs is allowed for a total amount of \$1,906.33.

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“Johanne Parent”  
Assessment Officer

Toronto, Ontario  
May 19, 2009

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-4-06

**STYLE OF CAUSE:** HERMAN GEBELE v. HER MAJESTY THE  
QUEEN

**ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL  
APPEARANCE OF THE PARTIES**

**PLACE OF ASSESSMENT:** TORONTO, ONTARIO

**REASONS FOR ASSESSMENT OF COSTS:** JOHANNE PARENT

**DATED:** MAY 19, 2009

**WRITTEN REPRESENTATIONS:**

N/A FOR THE APPELLANT

Donna Dorosh FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

George Gligoric FOR THE APPELLANT  
Hamilton, Ontario

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