IN THE SUPREME COURT BERMUDA
CIVIL JURISDICTION
2008: No.259

IN THE MATTER OF an Application for Judicial Review
IN THE MATTER OF the Public Service (Delegation of Powers) Regulations, 2001

AND

IN THE MATTER OF the Twice Termination of Employment of LEYONI JUNOS by the MINISTER OF TOURISM AND TRANSPORT, first on 10 April 2008 and second on 22 May 2008, while the first termination was under Appeal

BETWEEN:

LEYONI JUNOS **Applicant**

-v-

THE MINISTER OF TOURISM & TRANSPORT

Respondent

JUDGMENT
(Review of Registrar's Taxation of Costs)
(in Chambers)

Dates of Hearing: July 31, October 2, October 8, 2012
Date of Judgment: October 11, 2012

The Applicant in person
Ms. Maryellen Goodwin, Attorney-General's Chambers, for the Respondent

Introductory

1. On April 25, 2009, the Applicant was granted a declaration that the termination of her employment as a temporary public officer was in breach of her public law rights and awarded the costs of her application. The Judgment ran to over 38 pages. This decision was upheld by the Court of Appeal on November 16, 2009[1] (the Applicant appealed my refusal to order her reinstatement). The Appeal Court made no order as to the costs of the appeal.

2. On July 15, 2011, the Applicant filed a Bill of Costs. As it was disputed by the Respondent, a contested taxation hearing took place with Ms. Goodwin (who did not appear in the substantive proceedings) representing the Respondent throughout. The first effective hearing was on September 14, 2011. The taxation continued the following day when attention seemingly focussed on the legal principles applicable to taxing litigant in person costs and was adjourned part-heard to September 22, 2011. On September 22, 2011, the Applicant indicated she had sought legal representation but her attorney was not present. She also sought leave to amend her Bill of Costs. It appears that the Registrar adjourned the taxation hearing until October 20, 2011 and reserved the issue of the Crown's costs until then.

3. On October 20, 2011, Mr. Hodgson appeared with the Applicant and indicated that her amended Bill of Costs was not yet ready and that consideration needed to be given to an offer in respect of costs. The Registrar adjourned the taxation for final determination on November 1, 2011, directed the Applicant to file an Amended Bill of costs by October 28, 2011 and awarded the Respondent the costs of attendance at the September 22 and October 20 hearings. On November 1, 2011, Mr. Hodgson again appeared with the Applicant and the taxation process continued. The Registrar again directed the Applicant to serve an Amended Bill of Costs on the Respondent, further directing that the Crown's costs should be deducted and granted liberty to apply.

4. Although the record is somewhat unclear as to whether the usual order had been made with respect to the costs of the amendment (i.e. whether the reference to the Crown's costs which appears in the Learned Registrar's notes for November 1, 2011 encompasses such costs), the Applicant conceded before me at the final hearing of the review application that such order had been made. At the November 1, 2011 hearing, the Registrar handed down a written Ruling explaining the legal approach she was taking in respect of the novel taxation. Although the Amended Bill was signed and taxed as of November 1, 2011, it appears that an Amended Bill of Costs showing the amounts taxed off was not filed by the Applicant until April 11, 2011. The result in monetary terms may be summarised as follows:

    (a) Claimed: $48,385.00;

[1] *Junos-v- Minister of Tourism and Transport* [2009] Bda LR 26; *Junos-v-Minister of Tourism and Transport*- [2009] Bda LR 57.

(b) Taxed off: $29,943.75;

(c) Added on: $260.00;

(d) Allowed: $18,701.25.

5. On May 11, 2012, the Applicant issued a Summons seeing a Review of the Taxation. Directions were ordered by me on June 20, 2012 and the matter was first substantively heard on July 31, 2012 when both parties addressed the law (and the Court decided to deal with the correct legal approach first) and judgment was reserved. I ruled on the legal submissions on August 31, 2012[2]. The review hearing was reconvened for October 2, 2012 when Ms. Goodwin addressed the Court on the merits of the taxation for just over half the morning and the Applicant addressed the Court for the remainder of the day. The hearing was not completed and the Applicant addressed the Court for just under a full day on October 8, 2012 when the review hearing concluded.

6. It seemed obvious throughout the hearing that the Applicant was more concerned about establishing justice for litigants in person generally through clarifying the law and practice applicable to taxing the costs of litigants in person than she was about achieving commercial justice in her own case. I say this in part because she appeared far more familiar with the case law which she relied upon than she did with the raw financial practicalities of her application. What was in controversy was approximately $30,000 (ignoring any deductions for costs awarded to the Crown by the Registrar); it was easy to imagine that the Respondent's costs before the Registrar and this Court in relation to the taxation were likely a significant proportion of that amount. Had the Court not curtailed the matters upon which the Applicant addressed the Court to financially significant items, the review hearing might easily have lasted a full working week.

7. However, the Applicant also openly admitted that she was collaborating with other litigants in person who have publically expressed grievances about the way their cases are handled by the Courts; she based her critique of the taxation in the present case to some extent on the apparently different approach adopted in relation to the taxation of other litigant in person costs. While at times taxing the patience of the Court, the Applicant's dogged approach to the present application (combined with her recitation of persuasive authorities which were not strictly on point) compelled the Court to appreciate that a distinctive case management approach is required to civil cases involving litigants in person to ensure that their fair trial rights are adequately met.

8. The majority of cases are conducted by lawyers with routine opportunities for procedural short-cuts to be taken based on tacitly shared common professional knowledge in an atmosphere dominated by the mutual trust which professional conduct rules engender. The collegial ties which bind lawyers to each and to the legally-trained judge do not exist between the litigant in person and an opposing lawyer nor indeed the Court. The presiding judge must strive to avoid falling between two stools, the one designed to support the efficient and expeditious conduct of civil

[2] *Leyoni Junos-v-Minister of Tourism* [2012] SC (Bda) 46 Civ (31 August 2012).

litigation and the other designed to support the litigant in person's sense that their case is being fairly heard.

9. An important aspect of the Overriding Objective, however difficult it may in practice be to achieve, is to ensure that the parties are as far as possible on level terms. Because of the twin dangers of underestimating the strength of a litigant in person's case and undermining the litigant's confidence that their case (irrespective of its merits) is being fairly heard, the Court is will be bound in such cases to allow the unrepresented party more time than would be afforded to counsel. If their case is unmeritorious, the other party will be compensated in costs. If the litigant in person's case succeeds but consumes more time than would ordinarily be considered reasonable, the paying party will ordinarily be compensated by the fact that costs will be payable at the far lower litigant in person rate.

10. It is against this background that the present review of the Registrar's taxation of the Applicant's costs (and any consequent application for costs in relation to the present review) must be determined.

Applicable legal principles to taxation of litigant in person costs under Order 62 rule 18

11. The Learned Registrar ruled that the Applicant was a litigant person who had suffered no pecuniary loss whose costs were to be taxed under Order 62 rule 18(3) based on a maximum hourly rate of $50.00. In paragraph 4 of her November 1, 2011 'Decision', after reciting the relevant rule, she stated:

> "*As such, when the Bill of Costs is reviewed by a successful litigant in person, it must be viewed in that light of reasonableness as well as would this kind of work have been done by an attorney on the litigant's behalf.*"

12. In paragraph 14 of her Ruling, in the course of considering the largest single discretionary item claimed, she asked the following question, quoting the words of Order 62 rule 18(1): "*Are these such '…costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by an attorney on the litigant's behalf…*'?"

13. In my August 31 Ruling, I effectively confirmed this approach although the Applicant complained (perhaps with some justification) not in sufficiently clear terms. Accordingly, I will attempt to summarise with some refinements the applicable legal principles set out in my August 31, 2012 Ruling. The starting point is to set out again the relevant rule:

> "***62/18 Litigants in person***
>
> *18 (1) Subject to the provisions of this rule, on any taxation of the costs of a litigant in person there may be allowed such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by an attorney on the litigant's behalf together with any payments reasonably made by him for legal advice relating to the conduct of or the issues raised by the proceedings.*

(2) The amount allowed in respect of any item shall be such sum as the Registrar thinks fit but not exceeding, except in the case of a disbursement, two-thirds of the sum which in the opinion of the Registrar would have been allowed in respect of that item if the litigant had been represented by an attorney.

(3) Where it appears to the Registrar that the litigant has not suffered any pecuniary loss in doing any item of work to which the costs relate, he shall be allowed in respect of the time reasonably spent by him on that item not more than $50.00 per hour.

(4) A litigant who is allowed costs in respect of attending court to conduct his case shall not be entitled to a witness allowance in addition.

(5) Nothing in Order 6, rule 2(1)(b), or in rule 17(3) of, or Part III to, this Order shall apply to the costs of a litigant in person.

(6) For the purposes of this rule a litigant in person does not include a litigant who is a practising attorney.

(7) This rule shall apply, with the necessary modifications, to the summary assessment of costs by the court under paragraph 4A of rule 7." [emphasis added]

14. Based on the submissions of the parties and the authorities cited, it is clear that there are two primary and alternative bases of taxing the costs of litigants in person who are not attorneys:

    (a) Rule 18(2) where a litigant in person has suffered pecuniary loss in preparing his case. Here, the starting point is 2/3^{rds} of what an attorney would have charged. This did not apply to the Applicant's case;

    (b) Rule 18(3) where a litigant in person has suffered no pecuniary loss, the litigant is only entitled to recover based on a discretionary hourly rate up to a maximum of $50 per hour. In this context, the time allowed is also primarily based on how much time an attorney would take on the tasks in question, by virtue of Order 62 rule 18(1), adjusted downward in quantum terms in accordance with the selected litigant in person rate. However:

        (i) where a litigant in person would have to incur extra time or expense because of a lack of the administrative support a lawyer would have, allowance may be made for such additional expense or time. As explained further below, some uplift may be appropriate in respect of items such as

legal research above the time that an experienced attorney would be allowed;

(ii) an hourly rate based claim under rule 18(3) is not unlimited in its scope; it is subject to the ultimate cap of 2/3^{rds} of what an attorney would charge by virtue of rule 18(2);

(iii) accordingly, although the primary taxation task under rule 18(3) is to assess whether the time claimed for each discretionary item is reasonable having regard to what an attorney would charge but taking into account to the limited extent permissible the fact that the tasks were in fact carried out by a non-lawyer, it may in some cases be useful to test the reasonableness of the claim by comparing the amount claimed with 2/3^{rds} of what a lawyer would charge at an appropriate lawyer's hourly rate, and take the lower figure.

15. I reject the Applicant's submission, purportedly supported by a brief citation from an unreported case by Buckley J in *Mealing-Mcleod-v-The Common Professional Examination Board* [2000] All ER (D), to the effect that the ordinary approach to assessing costs under rule 18(3) is to compare the amount claimed with 2/3^{rds} of what lawyer would charge. Since Buckley J proceeded to assess the time which could reasonably be allowed for various items, it is far from clear from the report of that case in what context or for what forensic purpose the comparative exercise he approved was being deployed.

16. In a non-pecuniary loss case, the primary taxation exercise is to assess the reasonableness of the time spent and to apply the specified litigant in person hourly rate. That is the crucial distinction between the pecuniary loss and non-pecuniary loss categories. In an exceptional case where the paying party was able to claim that what the taxing master determined to be a reasonable item produced an amount in excess of the maximum lawful claim of 2/3^{rds} of what a lawyer would charge, reference to that maximum amount would be relevant. If one makes this comparison automatically in all cases (save for ensuring that the upper limits of what can be claimed have not been exceeded) then the whole purpose of a time-based assessment is defeated and there will be little distinction between the approach in pecuniary loss and non-pecuniary loss cases.

17. However while I do find that reference should in general terms be made to how much time a lawyer would have taken to carry out various tasks (apart from tasks a lawyer would have others perform for her), the Registrar must have the discretion to allow more time to a litigant in person for items such as research than would be allowed to an experienced lawyer charging at a higher rate. I derive this additional point, not addressed in my August 31, 2012 Ruling, from *Moulder-v-Cox Hallett Wilkinson et al* [2012] Bda LR 1 at paragraph 7(i) of Ground CJ's Judgment:

"L*awyers are assumed to know the law and cannot normally charge for researching it. I take that to be self-evident, but if authority was needed there is the following (which I accept was not referred to at the hearing):*

> *'Time spent considering the law and procedure is usually non-chargeable – and the higher the expense rate, the more law and procedure the fee earner is 30 expected to know. In a review of criminal costs it was held that leading and junior counsel can be assumed to be fully up-to-date with the law in the field in which they hold themselves out as practising in and they will not be paid for researching the law unless the case is unusual or infrequent (Perry v Lord Chancellor (1994) Times, 26 May, QBD). The same principle of course applies to civil work and to solicitors." ['Cook on Costs', Butterworths 2004, p. 230]*
>
> *While I accept that this case had some unusual elements, largely because the plaintiff was in person and his claims were pushing the envelope of accepted law, I do not think that the case was so unusual as to warrant going outside this general rule. This is particularly so as Mr. Cook's rate of $500 per hour is considerable above the guideline base rate for 9+ years post-qualification experience, which is $350: see Practice Direction 2006 No. 11.*"

18. In a complicated case which would ordinarily be conducted by an experienced lawyer, some uplift of the time allowed for tasks which even a lawyer performs <u>may</u> be required above the time which would reasonably be expended by an experienced lawyer to take into account that in reality the relevant tasks are being performed by a litigant in person at a lower hourly rate. This will be a discretionary consideration to be taken into account on a case by case basis and given such weight as the Registrar think fits in the exercise of her discretion.

19. In my judgment great care is needed in applying the English rule that lawyers cannot normally charge for research time in the Bermudian legal context taking into account the absence of local academic and vocational legal qualifications and the limited availability of relevant practitioner's texts. Far more novel points arise in a developing legal system such as Bermuda's than arise in a mature jurisdiction with a long history of a high volume of litigation such as England and Wales.

20. Moreover, great care must also be taken in seeking to apply the English CPR approach to the taxation of costs under our own Order 62 rule 18. The primary right of the litigant in person under Bermudian law is to recover "*such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by an attorney on the litigant's behalf*" : rule 18(1). The English CPR Rule, formulated in conjunction with a far lower hourly rate, is far more flexible. It is, according to paragraph 48.6(4) of the CPR, "*an amount in respect of the time spent reasonably doing the work at the rate specified in the costs practice direction*"; however this is subject to the same cap imposed under our own rule 18(2), namely 2/3^{rds} of what would be allowed had the litigant in person been legally represented. In England, the focus required by the CPR rule is on <u>the time actually spent by the litigant in person</u>; in Bermuda the focus mandated by Order 62 rule 18 is on <u>the time which would be spent if the litigant in person had been legally represented</u>.

21. The danger of assuming that experienced lawyers are familiar with the intricacies of Bermuda law are vividly demonstrated by what occurred in the present case when costs were awarded at the end of the trial on April 25, 2009. Both I and counsel for the Respondent mistakenly assumed that the only costs recoverable by a litigant in person were disbursements. This is because, based on a cursory review of the Rules of the Supreme Court 1985 as published in the 1989 Revision of the Laws of Bermuda, Order 62 made no express provision for the recovery of costs by litigants in person at all. Order 62 rule 18 appears to have been introduced as part of the modernisation of Order 62 as a whole with effect from January 1, 2006 as Ms. Goodwin helpfully confirmed.

22. The first considered judgment to deal with the current version of Order 62 rule 18 appears to be *Re Elcome Trust (Taxation of Costs)* [2010] Bda LR 3, a case where Ms. Goodwin herself appeared as a litigant in person and which only concerned rule 18(6). *Moulder-v-Cox Hallett Wilkinson et al* [2012] Bda LR 1 was a case where at the review stage, the litigant in person was the paying party. The present case appears to be the first review of a taxation by the Registrar of a Bill of Costs filed by a litigant in person who does not suffer pecuniary loss and whose costs fall to be assessed with primary reference to order 62 rule 18(3).

23. Ms. Junos referred the Court to the taxed Bill of Costs by the 3rd Defendant in the *Moulder* case and complained that, shortly before her own Bill of Costs was taxed, the Registrar awarded that litigant in person 2/3rds of an attorney's hourly rate without any claim for pecuniary loss. This was an uncontested taxation and, as Ms. Goodwin pointed out, the litigant in person is a well-known businessman who was undoubtedly entitled to claim pecuniary loss. Assuming this to be the case, no substantial injustice was suffered by the paying party in that litigation.

24. However, the apparently different approach adopted by the Registrar in *Moulder* as contrasted with the present case does demonstrate that the Applicant was right to complain that the approach to taxing the costs of litigants in person required clarification. And the present case appears to be the first to consider the implications of Order 62 rule 18(3).

Approach to reviewing the taxation of costs by the Registrar

25. In *Moulder-v-Cox Hallett Wilkinson et al* [2012] Bda LR 1, the Ground CJ defined this Court's jurisdiction when reviewing a taxation of costs as follows:

> "*I do appreciate that on a review such as this that I have a discretion to reconsider the taxation afresh and am not fettered by the manner in which the Registrar exercised her discretion: see Mudrasinghe v Penguin Electronics [1993] 3 All ER 20. That does not mean that I will attach no weight to the Registrar's decisions on the various items. Nor does it mean that I will tinker with the amounts allowed or disallowed.*"

26. I am guided by this approach.

27. Ms. Goodwin for the Respondent invited the Court to reduce certain items where she submitted the Registrar was too generous to the Applicant. I agreed to entertain these submissions without requiring her to file a formal cross-appeal.

Findings: review of the Registrar's taxation

Reduction of hourly rate

28. Although the Respondent's counsel did not challenge the Applicant's claiming the maximum $50 hourly rate, the Registrar ruled as follows:

> "*7. The Plaintiff has RSC Order 62 Rule 18(3) wherein she set herself out at $50 an hour as a non-lawyer. It is the Registrar's discretion to allow '…not more than $50.00 per hour'. It does not automatically follow that the Registrar must allow $50.00 per hour for any item of work. This was a two day case which spanned a very short period of time and there were two central issues throughout the case, most of the documentation was within her knowledge and not a lot of case law. I will place the hourly rate at $40 per hour and that will be the hourly rate used in this taxation.*"

29. I reject the suggestion that the maximum rate ought to apply automatically, as appears to have been the practice in the England and Wales where the equivalent rate is much more modest than our own. The Learned Registrar was right to find that she possessed the discretion to determine what rate she should apply. Reasonable judges may differ as to whether the maximum rate should apply in any particular case. However, in most cases the trial judge is best placed to assess the complexity of a trial. In paragraph 2 of her Ruling, the Learned Registrar appears to acknowledge the views I expressed as to the complexity of the case, but ultimately formed her own view as she was entitled to do.

30. Ms. Junos quite correctly submitted that how much was allowed generally must take into account the following guiding principles set out in the Schedule to Order 62, Part II, which provides as follows:

> "*1 (1) The amount of costs to be allowed shall (subject to rule 18 and to any of order of the Court fixing the costs to be allowed) be in the discretion of the Registrar.*
>
> *(2) In exercising his discretion the Registrar shall have regard to all the relevant circumstances, and in particular to —*
>
> > *(a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;*
> >
> > *(b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the attorney;*

(c) the number and importance of the documents (however brief) prepared or perused;

(d) the place and circumstances in which the business involved is transacted;

(e) the importance of the cause or matter to the client;

(f) where money or property is involved, its amount or value;

(g) any other fees and allowances payable to the attorney in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question." [emphasis added]

31. The complexity, difficulty and/or novelty of the issues raised, the skill required to adequately address the issues and their importance to the Applicant may best be demonstrated by the following extracts from my Judgment:

"*4. Mr. Howard for the Respondent invited the Court to adjudicate both the private law and public law position with a view to avoiding a multiplicity of proceedings. Accordingly, the Court is required to determine the following key private law issues: (1) was the employer entitled to terminate the Applicant's employment on seven days' notice without cause, and unilaterally elect to bypass any applicable disciplinary procedural regime? And, assuming the termination was unlawful: (2) was the Applicant entitled to be paid beyond the termination date of her fixed term contract which expired on May 22, 2008? And (3) was the Applicant entitled to an order of reinstatement at common law?*

5. Irrespective of whether the contractual interpretation question were to be resolved in favour of the Respondent, public law issues would still arise and the Applicant's claim would not be liable to be dismissed. The following crucial public law issues fall to be considered: (1) what were the public law rules which were applicable to the Applicant's employment and did they arise under statutory or contractual provisions or a combination of both? (2) did the premature termination of the Applicant's employment comply with the applicable statutory rules? (3) if the termination was unlawful on jurisdictional or procedural unfairness terms, did the Applicant have a substantive legitimate expectation that she would be employed beyond the expiry of her fixed term contract and, if so, until what date? (4) if the Applicant is prima facie entitled to public law relief, should any potential relief be refused on discretionary grounds?

6. These questions are all complicated by the elaborate nature of the contractual documentation (which purports to incorporate into a three month contract the terms of the Public Service Commission Regulations, the Code of Conduct and the Collective Agreement between the Bermuda Government and the Bermuda Public Services Union ("BPSU")). The legal regimes purportedly

incorporated by reference into the Applicant's contract are themselves not easy to digest, as regards the status of a temporary Government employee…

113… the Applicant was a litigant in person, apparently unemployed and facing foreclosure of her mortgage, pursuing a claim against a Respondent who is not only a Minister but is Premier as well…"[3] [emphasis added]

32. In the exercise of my independent discretion, I find that there is no justification for reducing the hourly rate below the $50 maximum prescribed by Order 62 rule 18 (3) in all the circumstances of the present case and allow the Applicant's appeal in respect of this item.

Miscellaneous small and more substantial items

33. Ms. Goodwin challenged the Registrar's assessment of a number of small items which I declined to allow the Applicant to deal with on the grounds that dealing with them would consume a disproportionate amount of Court time. For instance it was suggested that the Registrar allowed one hour too much in the case of items 1 and 1(b); in respect of item 20 it was suggested that half an hour rather than an hour should have been allowed. Interfering with assessments would in my judgment be "tinkering". I only heard the Applicant on items involving not less than 5 hours.

34. There were a number of other items where the amount claimed was more substantial but the amounts challenged by the Respondent seemed modest. For example, the Applicant claimed 20 hours for item 4 and the Registrar taxed off 15 hours allowing the claim at 5 hours. The Respondent submitted that 16 ½ hours ought to have been taxed off. More substantial challenges included item 27 where the Registrar taxed off 2 hours and Ms. Goodwin submitted 5 hours ought to have been taxed off. As regards item 43(c), it was submitted the Registrar ought to have disallowed the item altogether rather than allowing 4 hours. The Registrar also allowed $400 for legal costs which perhaps ought to have been refused in the absence of proof that the invoices relied upon had been paid. Without deciding any of these complaints, it appeared to me that in many instances the Registrar had adopted a generous approach towards the items claimed despite the fact that she did not allow them in full.

35. The Applicant demonstrated that the Registrar had in some instances adopted an excessively restrictive approach. For instance, for travelling time, she allowed $135 for a bus pass when the Applicant was in my judgment entitled to recover based on her travelling time at the relevant hourly rate because she had to not just attend court to file documents but also travel to a library as she had no internet access at home. If 30 hours had been allowed for travel time at $50 per hour, $1500 might have been allowed instead. Ms. Junos also pointed out that in the *Moulder* case, the 3rd Defendant had been allowed far more time for drafting a short Defence than she had been allowed for drafting far longer Affidavits. While it is rarely useful to compare apples and oranges, and the Applicant's Fifth Affidavit appears to contain more by

[3] [2009] SC (Bda) 23 Civ (25 April 2009); [2009] Bda LR 26.

way of legal submission than assertion of facts, it does seem to me that somewhat more time might have been allowed for drafting Affidavits and preparing exhibits.

36. However when the position on either side is looked at as a whole, I find that in broad terms the cases where the assessment might be reduced and increased more or less cancel each other out and that the overall picture painted shows that the Registrar approached the taxation task in an even-handed manner not accepting wholesale the contentions of either party. I see no good reason to substitute my own independent assessment of the amount properly due for each of the items of which complaint was made.

Item 59 and the Registrar's award as a whole

37. The biggest single item was item 59 in respect of which 450 hours were claimed for research and 200 hours were taxed off. Ms. Goodwin still complained that what was allowed was excessive while Ms. Junos pointed out that the English Court of Appeal in *R (on the application of Wulfson)-v-Legal Services Commission*[2002] EWCA Civ 250 had accepted without any apparent shock or horror that the litigant in person there had spent over 1200 hours on his case altogether. She fairly accepted that this item was not based on a precise computation of her time. It is helpful in my judgment to look at the approach to this item by reference to the costs allowed overall.

38. The Applicant submitted that in *Finn-Hendrickson* [2008] Bda LR 8, a total costs claim in the region of $88,000 had been allowed at approximately $85,000 with approximately 175 hours of lawyer and 15 other units of recoverable time allowed. These calculations were not positively challenged even though the Attorney-General's Chambers which also appeared in the earlier case were in a position to do so.

39. The Applicant complained that the amount taxed off in her case was disproportionately large on item 59 and overall. *Finn-Hendrickson* was a shorter case in terms of hearing time and the length of the Judgment than the present case. It is a matter of record that the length of hearing and judgment in the present case were each twice as long as in *Finn-Hendrickson*, suggesting more work would reasonably have been required in the present case.

40. Ms. Goodwin countered that in the present case the Registrar had allowed 379.8 hours of time in total. This is just over twice the amount of time allowed in *Finn-Hendrickson*. That might appear to suggest that, relative to the size of the present case, no dramatic allowance was made in global terms for the fact that the Applicant was a litigant in person. But in my view it is overly simplistic to infer, based on the length of hearing and judgments alone, that twice as much time was reasonably required in the Applicant's case than in *Finn-Hendrickson*. A more accurate assessment of the additional time reasonably required for a lawyer would probably fall midway between the hours allegedly allowed in the former case (190 in total) and the hours allowed in the present case (almost 380).

41. Accordingly, on balance, I find that overall the Registrar did make a material allowance for the fact that the Applicant was a litigant in person. Making a very rough and ready assessment, she likely allowed 50% more time to the Applicant than she

would have allowed had the claim for costs been made by a lawyer sufficiently experienced to effectively handle her case.

42. This somewhat high-level view undermines the rationale for differing from the view the Registrar formed of the amount of time it was reasonable to allow for research. The Learned Registrar reduced the 450 hours claimed to 250 hours and, applying the reduced rate of $40 per hour, allowed the claim at $10,000, almost 60% of the total sum awarded. Taking into account the fact that I have decided to increase the hourly rate to be applied to all costs awarded by 25% from $40 to $50 (increasing the sum allowed for item 59 from $10,000 to $12,500), in the exercise of my discretion I find that no further adjustment is required to item 59.

The Crown's costs to be deducted

43. By email dated March 5, 20012 written on a without prejudice basis to the Applicant's then lawyer, the Respondent's counsel offered to agree the Crown's costs to be deducted from the amount awarded by the Registrar in the amount of $1575. The Applicant herself by email on May 1, 2012 confirmed that she had instructed her attorney to agree this amount "*on a 'Without Prejudice' basis*". Despite subsequent correspondence form Ms. Goodwin reiterating the offer despite the fact that she claimed that her strict entitlement was to $1800, the Applicant unreasonably refused to unequivocally accept the offer.

44. I assess the Crown's costs to be deducted from the amount awarded to the Applicant in the amount of $1800 claimed by the Respondent.

Conclusion

45. The Learned Registrar adopted the correct legal approach to taxing a litigant in person's costs under Order 62 rule 18 (1)-(3). The Rules require primary regard to be had to the time a lawyer would have spent on the tasks in question, with some uplift in respect of, for instance (a) tasks a lawyer would have support staff perform, and (b) basic research which an experienced lawyer charging at a higher rate would not be able to claim for.

46. The sum awarded by the Registrar in respect of fees/profits costs based on 379.8 hours @ $40 per hour is increased based on the same amount of hours @$50 per hour from $15,192.00 to $18,990. In all other respects the taxation of the Learned Registrar is confirmed.

47. By agreement of the parties, the costs awarded to the Respondent in the taxation proceedings to be deducted from the sum awarded to the Applicant are assessed in the amount of $1800.

48. I will hear the parties as to the costs of the present review application.

Dated this 11th day of October, 2012 _____
IAN R.C. KAWALEY