

Federal Court



Cour fédérale

Date: 20200130

Docket: T-396-19

Citation: 2020 FC 169

Ottawa, Ontario, January 30, 2020

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

**FRASER LEISHMAN AND
GRAY GREENWAY**

Applicants

and

**HER MAJESTY THE QUEEN
IN RIGHT OF CANADA, AS REPRESENTED
BY THE MINISTER OF ENVIRONMENT
AND CLIMATE CHANGE AND
PARKS CANADA AGENCY**

Respondents

SUPPLEMENTARY JUDGMENT AND REASONS

[1] These are my supplementary reasons dealing with the outstanding issue of costs in this proceeding: see *Leishman v Canada*, 2019 FC 1589.

[2] The Respondents successfully defended the application brought by the Applicants and seek costs calculated at the mid-point of Column III of the Federal Courts Tariff. The Applicants argue that their application was brought in the public interest and that they should be excused from paying costs or, alternatively, that they should be awarded costs.

[3] It is not entirely clear what motivated the Applicants to bring this challenge. They had a personal interest in the sense that they are neighbours to the Parks Canada development that was in issue and they wanted it stopped. On the record before me, I am not satisfied that they meet all of the criteria in *Bielli v Canada*, 2013 FC 953 at paras 13-18, 439 FTR 149, and, in particular, that they had no personal interest that would justify the proceeding economically. At the same time, they were advancing a good faith argument that the development was unlawful. I accept the point that they were advancing a position shared by at least some others in the community.

[4] I am not satisfied, however, that the Applicants should be saved entirely from bearing the usual burden of unsuccessful litigation. The taxpayers of Canada who fund Parks Canada's operations also represent a public interest that should not be entirely ignored. I note as well that costs were awarded by this Court in favour of the Respondents when the first application was dismissed: see *Leishman v Canada*, 2017 FC 206, 277 ACWS (3d) 455. In the result, I will fix costs payable by the Applicants to the Respondents in the amount of \$2,750 inclusive of disbursements.

JUDGMENT IN T-396-19

THIS COURT'S JUDGMENT is that costs are fixed in the amount of \$2,750 inclusive of disbursements payable by the Applicants to the Respondents.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-396-19

STYLE OF CAUSE: FRASER LEISHMAN AND GRAY GREENWAY v HER MAJESTY THE QUEEN IN RIGHT OF CANADA, AS REPRESENTED BY THE MINISTER OF ENVIRONMENT AND CLIMATE CHANGE AND PARKS CANADA AGENCY

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: NOVEMBER 21, 2019

SUPPLEMENTARY JUDGMENT AND REASONS: BARNES J.

DATED: JANUARY 30, 2020

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