

Date: 20081204

Docket: T-374-06

Citation: 2008 FC 1348

BETWEEN:

MOHAMMAD ASLAM CHAUDHRY

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ASSESSMENT OF COSTS – REASONS

Johanne Parent
Assessment Officer

[1] On April 13, 2007, the Court dismissed with costs the application for judicial review. A timetable for written disposition of the assessment of the respondent's bills of costs was issued on September 4, 2008. No further written submissions or affidavit were received from the respondent while the applicant filed representations within the prescribed timeframe.

[2] As indicated above, on April 13, 2007, Madam Justice Simpson dismissed the main application. The applicant appealed that decision to the Federal Court of Appeal which dismissed

the appeal with costs. On August 1, 2008, the applicant appealed the decision of the Federal Court of Appeal to the Supreme Court of Canada which disposed of the matter on November 13, 2008.

[3] Although now moot, I wish to respond to the applicant's submissions proposing that the appeal to the Supreme Court of Canada should have stayed this assessment. As stated in *Latham v. Canada* 2007 FCA 179:

“The existence of outstanding appeals does not prevent the Respondents from proceeding with these assessments of costs: see *Culhane v. ATP Aero Training Products Inc.*, [2004] F.C.J. No. 1810 (A.O.) at para. [6]. In *Clarke v. Canada (Attorney General)*, [2005] F.C.J. No. 814 (A.O.)”

Consequently and despite the applicant's position, I would not have postponed this assessment pending the disposition of the appeal to the Supreme Court of Canada.

[4] The applicant in his submissions requests that the Assessment Officer considers the financial situation of both parties. As stated in *Solosky v. Canada* [1977] 1 F.C. 663 and many times confirmed:

Furthermore, in deciding whether costs should or should not be awarded against an unsuccessful plaintiff, neither the ability to pay nor the difficulty of collection should be a deciding factor but, on the contrary, the awarding or refusal of costs should be based on the merits of the case. Unless special circumstances exist to justify an order to the contrary, costs should normally follow the event.

In accordance with the above mentioned reference, the applicant's argument concerning his financial situation is not a consideration in the assessment of costs. With reference to the applicant's argument to reduce to zero dollars the respondent's costs in view of the impact on the justice system

the granting of costs to the Attorney General of Canada would have, Rule 400(2) of the *Federal Courts Rules* is clear: “Costs may be awarded to or against the Crown”. Furthermore, pursuant to Rule 400(1), the award of costs is within the full discretionary power of the Court. The Court, in dismissing the application with costs, made an unambiguous decision and I have no authority to interfere with the Court on establishing the allocation of costs.

[5] The assessable services claimed by the respondent for the preparation of his Record (Item 2), the preparation for hearing (Item 13), the counsel fee at hearing (Item 14) and for the preparation of written submissions requested by the Court (Item 15) are all allowed as claimed.

[6] The respondent claims five units under Item 5 for preparing and filing the responding material to a contested motion for interim relief. The Court’s order of October 30, 2005 is silent as to costs. In *Janssen-Ortho Inc. and Daiichi Pharmaceutical Co., Ltd v. Novopharm Limited*, 2006 FC 1333, the Court determined that, “any pre-trial order that is silent as to costs means that no costs have been awarded to any party”. Consequently, item 5 will not be allowed.

[7] Item 24 will not be allowed as costs relating to travel by counsel to attend hearings is at the discretion of the Court and I cannot find any indication in the Court’s record of any directions or order from the Court allowing such costs.

[8] All the disbursements claimed are charges deemed necessary to the conduct of this matter.

The amounts claimed are not contested, considered reasonable and are, therefore, allowed.

[9] The respondent's bill of costs is allowed for a total amount of \$ 4,260.00.

“Johanne Parent”
Assessment Officer

Toronto, Ontario
December 4, 2008

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-374-06

STYLE OF CAUSE: *MOHAMMAD ASLAM CHAUDHRY v. THE ATTORNEY
GENERAL OF CANADA*

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

PLACE OF ASSESSMENT: TORONTO, ONTARIO

REASONS FOR ASSESSMENT OF COSTS: JOHANNE PARENT

DATED: DECEMBER 4, 2008

WRITTEN REPRESENTATIONS:

Mohammad Aslam Chaudhry FOR THE APPLICANT
(SELF-REPRESENTED)

Karl Chemsî FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A FOR THE APPLICANT
(SELF-REPRESENTED)

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada