

Date: 20090424

Docket: T-2067-07

Citation: 2009 FC 414

Ottawa, Ontario, April 24, 2009

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

RONALD ALLEN SMITH

Applicant

and

**ATTORNEY GENERAL OF CANADA;
MINISTER OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE;
MINISTER OF PUBLIC SAFETY**

Respondents

SUPPLEMENTAL REASONS FOR JUDGMENT AND JUDGMENT

[1] In my earlier Reasons for Judgment in this proceeding dated March 4, 2009 I requested further submissions from the parties concerning costs. These are my supplemental Reasons on that outstanding issue.

[2] The Applicant is seeking solicitor-client costs on the basis of the novelty and complexity of the case. There are no assertions of improper conduct on the part of the Respondents or their counsel.

[3] Costs on a solicitor-client scale are rarely awarded and then generally only when the unsuccessful party is shown to have acted in bad faith or was guilty of some form of underlying misconduct. The principles which inform an increased award of costs were stated by Justice Carolyn Layden-Stevenson in *AB Hassle v. Genpharm Inc.*, 2004 FC 892, [2004] F.C.J. No. 1087 at para. 15:

15 Success normally entitles a party to costs, not increased costs. Costs should be neither punitive nor extravagant. It is a fundamental principle that an award of costs represents a compromise between compensating a successful party and not unduly burdening an unsuccessful party: *Apotex v. Wellcome Foundation Ltd.* (1998), 159 F.T.R. 233 (F.C.T.D.), aff'd. (2001) 199 F.T.R. 320 (F.C.A.). The discretion to order increased costs is not to be exercised lightly and is the exception: *Conorzio*, supra.

[4] I agree with counsel for the Respondents that this is not a case where solicitor-client costs or an award falling outside of the Tariff would be justified. On the other hand, there is merit to the Applicant's submission that the death penalty aspect to this case raised the stakes for his counsel. The amount of work that was put into this case by his counsel and the high quality of that work is clearly evident on the record before me. Notwithstanding the fact that the case was resolved on the basis of the relatively more prosaic issue of procedural fairness, the Applicant's counsel were fully justified in pleading the Charter issues which, in the end, were unnecessary for me to resolve.

[5] The award of costs in this proceeding should reflect the complexity and importance of the issues raised and the thoroughness of the legal work carried out by the Applicant's very experienced legal team. The costs of this proceeding will be taxed under Column V.

JUDGMENT

THIS COURT ADJUDGES that the Applicant's costs in this proceeding will be taxed under Column V.

“ R. L. Barnes ”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-2067-07

STYLE OF CAUSE: SMITH
v.
ATTORNEY GENERAL OF CANADA,
MINISTER OF FOREIGN AFFAIRS AND
INTERNATIONAL TRADE,
MINISTER OF PUBLIC SAFETY

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 29 and 30, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** Mr. Justice Barnes

DATED: April 24, 2009

APPEARANCES:

Mr. Lorne Waldman
Ms. Marlys Edwardh
Ms. Adriel Weaver
Ms. Ildiko Erdei
Mr. Craig Forcese

FOR THE APPLICANT

Mr. Eric Groody
Mr. David de Vlieger
Ms. Katherine Reiffenstein

FOR THE RESPONDENTS

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FOR THE RESPONDENTS