

Federal Court



Cour fédérale

Date: 20130418

Docket: T-427-09

Citation: 2013 FC 517

Ottawa, Ontario, April 18, 2013

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

**COUNCIL OF NATURAL MEDICINE
COLLEGE OF CANADA**

Applicant

and

**COLLEGE OF TRADITIONAL CHINESE
MEDICINE PRACTITIONERS AND
ACUPUNCTURISTS OF BRITISH
COLUMBIA**

Respondent

ORDER

WHEREAS on March 19, 2013 the application for judicial review by the Council of Natural Medicine College of Canada (the Council) was dismissed;

AND UPON reviewing the Council's submissions on costs, being a letter dated April 5, 2013 (received April 10, 2013), and the College's submissions on costs, received April 9, 2013, the Court endorses the record as follows:

Endorsement

Costs are awarded to the College and fixed at \$90,000.00. The Court has jurisdiction pursuant to Rule 400(1) and 400(4) to award costs in a lump-sum, in lieu of costs which would be awarded under the Tariff: *Microsoft Corporation v 9038-3746 Quebec Inc.*, 2007 FC 659, para 27. In my view, this amount is reasonable, if not conservative, given the complexity of the proceedings and the nature of the issues at stake.

There are a number of criteria which warrant an award beyond the usual Tariff schedule. These include:

- (i) The College was successful on all issues which were varied.
- (ii) The College made a reasonable offer of settlement which was not withdrawn.
- (iii) The issues were factually complex. The Council's evidence was in excess of 1,700 pages, and that of the College, 1,200 pages. Cross-examinations were lengthy but focussed and necessary, and resulted in relevant admissions.
- (iv) There was nothing in the conduct of the successful respondent which would suggest that it should be denied costs beyond the Tariff amount. The hearing was originally scheduled for four days, but was completed in three days; in part, due to a compendium filed by the respondent which facilitated the hearing.

- (v) The division of powers questions were complex, as they involved the interplay of the doctrines of inter-jurisdictional immunity, the trade and commerce power and related doctrines of interpretation: *Abdelrazik v Canada (Foreign Affairs and International Trade Canada)*, 2009 FC 816, paras 21-22.
- (vi) The issues raised by the proceedings were important, as reflected by the intervention and participation of the Attorney General of British Columbia.
- (vii) The Attorney General of Canada did not intervene to assist in the defence of federal legislation, leaving the respondent the burden of defending legislative scheme.
- (viii) One of the constitutional arguments advanced by the Council was without merit, the issue having been determined by the Supreme Court of Canada.
- (ix) There is evidence before me as to the solicitor and client fees and the amount awarded is not a proxy for an award on a solicitor-client basis. The amount fixed is approximately 50% of the costs that would be awarded on a full-indemnity basis.
- (x) Where possible, costs should be awarded on a lump sum basis, as it saves the time and expense associated with taxation. The evidence tendered via the Affidavit of Nana Umbach, sworn April 8, 2012, establishes the costs incurred and was not challenged by the applicant. In sum, there is sufficient evidentiary foundation for the award.
- (xi) The applicant raises no compelling argument to the contrary, other than to plead inability to pay.

THIS COURT ORDERS that costs, fixed in the amount of \$90,000.00, are awarded in favour of the respondent College.

"Donald J. Rennie"

Judge