

Date: 20090424

Docket: A-532-08

A-534-08

Citation 2009 FCA 129

BETWEEN:

JOHN DETORAKIS

Appellant

and

**THE CHIEF EXECUTIVE OFFICER OF THE PUBLIC SECTOR INTEGRITY CANADA
(also known as THE PUBLIC SECTOR INTEGRITY COMMISSIONER)**

and

THE ATTORNEY GENERAL OF CANADA

Respondents

ASSESSMENT OF COSTS - REASONS

**W. DOYLE
Assessment Officer**

[1] On February 9, 2009 the Court (Sharlow, J.A.) issued an Order and Reasons for Order in each of the two above noted appeal files. The Order and Reasons for Order dealt with two motions: one - from the appellant seeking an order requiring the Public Service Integrity Commissioner to produce certain documents; and a second - from the Public Service Sector Integrity Commissioner seeking to be removed as respondent. In conclusion on page 3 of her Reasons for Order Madam Justice Sharlow, J.A. made reference to costs stating: "Costs [6] The costs of these motions will be costs in the cause".

[2] On February 11, 2009 the appellant wholly discontinued his appeal in A-532-08 and also wholly discontinued his appeal in file A-534-08. A copy of these reasons is filed today in Federal Court of Appeal file A-534-08 and applies there accordingly as did the February 11, 2009 Order and Reasons for Order of Madam Justice Sharlow, J.A.

[3] February 12, 2009 the respondent for the Attorney General of Canada (hereinafter referred to as the respondent) filed one bill of costs in each file and asked that the assessments be done in writing. Accompanying the bills of costs the respondent included a letter speaking directly to the fact that the bills of costs dealt with an earlier motion where costs on the motion were awarded in the cause.

[4] Upon receipt of the bills of costs, the appellant wrote to the Court stating that he understood that the respondent had communicated that the respondent would consent to the discontinuance of the proceedings on a without cost basis. On February 19, 2009 I sent out a schedule for the filing of written submissions. Both parties responded.

[5] In his submission the respondent states he is “seeking only to have what the court has ordered, costs on both motions”. The respondent does not pursue costs under *Rule 402* of the ***Federal Courts Rules*** which deals with costs on discontinuance and reads:

Costs of discontinuance or abandonment

402. Unless otherwise ordered by the Court or agreed by the parties, a party against whom an action, application or appeal has been discontinued or against whom a motion has been abandoned is entitled to costs forthwith, which may be assessed and the payment of which may be enforced as if judgment for the amount of the costs had been given in favour of that party.

[6] It is my respectful opinion that, as alluded to in the appellant's written submissions, indeed the appellant has erred in his interpretation of the respondent's proposal for discontinuance without cost.

[7] In referring to the amount sought by the respondent for item 5 of the **Federal Courts Rules** Tariff B Column III (preparation and filing of a contested motion , including material and responses thereto) the appellant submits that two units would be the appropriate cost. This is not possible as the permissible tariff range for this item is three to seven units. The respondent is seeking seven units. It is my respectful opinion, upon review of the documentation on the file; five units would be a more appropriate award. Five units will be awarded for this item on each bill of costs.

[8] As a result, the total assessable service amount is reduced from the requested \$840.00 to a total assessable service allowed amount of \$600.00. Each bill of costs presented at \$840.00 is accordingly assessed and allowed in the amount of \$600.00.

[9] In his written submissions the appellant makes reference to a second file and remarks that this file (A-532-08) and the second file (A-534-08) deal with the same issue, the same facts, the same arguments and the same precedents. Indeed and, in that there is an Order and Reasons for Order on each of the Federal Court of Appeal files, the respondent filed one bill of costs for each Order and Reasons for Order dealing with the two separate appeal files with similar documentation in regard to the notice of appeals, notices of motions and Orders and Reasons for Order of the Court.

[10] A certificate is issued in Federal Court of Appeal proceeding A-532-08 for \$600.00. A copy of these reasons is filed today in Federal Court of Appeal file A-534-08 and applies there accordingly. Similarly, a certificate is issued in Federal Court of Appeal file A-534-08 for \$600.00

"Willa Doyle"
Assessment Officer

Fredericton, New Brunswick
April 24, 2009

FEDERAL COURT OF APPEAL
NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-532-08 and A-534-08

STYLE OF CAUSE: John Detorakis v. The Chief Executive Officer of the
Public Service Integrity Canada and The Attorney
General of Canada

ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF
THE PARTIES

ASSESSMENT OF COSTS -
REASONS BY: Willa Doyle, Assessment Officer

DATED: April 24, 2009

WRITTEN REPRESENTATIONS BY:

John Detorakis ON HIS OWN BEHALF

Richard Fader FOR THE RESPONDENT

SOLICITORS OF RECORD:

Department of Justice FOR THE RESPONDENT
Ottawa, Ontario