Federal Court Cour fédérale

Date: 20250923

Docket: T-3640-24

Citation: 2025 FC 1559

Ottawa, Ontario, September 23, 2025

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

ALAN BARNES

Applicant

and

THE PRIME MINISTER

Respondent

JUDGMENT AND REASONS

[1] The underlying proceeding is an application commenced pursuant to section 41 of the *Access to Information Act*, RSC, 1985, c A-1 [*Act*]. According to the Notice of Application, the Applicant, a senior fellow at the Centre for Security, Intelligence and Defence Studies at the Norman Paterson School of International Studies, made a request to the Privy Council Office [PCO] under the *Act* for a document entitled the "Davey Report".

[2] In response to his request, the PCO produced a 42-page document with extensive redactions made on the basis of subsection 15(1) of the *Act*. The Applicant requested that the PCO review its decision, noting that other documents on similar subjects had been released without, or with fewer, redactions.

[3] After filing his request with the PCO, the Applicant obtained a copy of the Davey Report from another researcher. That copy of the Davey Report — produced to the other researcher in or about 1989 — had far fewer redactions and, in fact, some of the information that was redacted in the version produced by the PCO to the Applicant was completely unredacted in the other researcher's copy.

[4] The Applicant filed a complaint with the Office of the Information Commissioner [Information Commissioner], contesting the PCO's decision to heavily redact the Davey Report. While the PCO disclosed some additional information to the Applicant as part of the proceeding before the Information Commission, it did not disclose all of the information sought by the Applicant, nor did the PCO respond to the Information Commissioner's initial report. The Information Commissioner ultimately issued her final report, in which she recommended that the PCO disclose the Davey Report in its entirety.

[5] The PCO did not respond to the Information Commissioner's final report and no further production was made to the Applicant. As a result, the Applicant commenced this application. Immediately prior to the service and filing of the Applicant's application record, the parties reached a settlement, with the PCO releasing the Davey Report to the Applicant in its entirety as recommended by the Information Commissioner.

[6] Despite reaching an agreement on the merits of the application, the parties were unable to reach an agreement on the issue of costs. The parties agree that the Applicant is entitled to his costs of the application but disagree on the quantum. As such, the sole remaining issue for the Court's determination on this application is the quantum of costs payable by the Respondent [Canada] to the Applicant.

[7] The Applicant seeks a lump sum cost award of $8,632.35, representing 50% of his actual legal fees, plus disbursements in the amount of $178.82. The Applicant asserts that this Court has the discretion to award lump sum costs on a case such as this and favours lump sum awards wherever possible. Having regard to the factors under Rule 400(3) of the *Federal Court Rules*, SOR/98-106 [*Rule*s], the Applicant asserts that the following factors support a lump sum award of 50% of actual fees: (a) the Applicant was entirely successful on the application as the Davey Report was released in full, but only after significant time, cost and effort that should never have been required; (b) the issues were important to the Applicant as he is an academic who frequently makes requests under the *Act* and encounters resistance to production which, at times, seems inconsistent or unprincipled; and (c) the case was of serious public importance as it concerned the scope of the state's authority to withhold information under the *Act*. In addition, the Applicant asserts that a lump sum cost award is justified given the stark financial imbalance between the parties — the Applicant being an academic of limited means up against the PCO with unlimited means.

[8] In the alternative, the Applicant seeks legal fees in the amount of $5,874.02, calculated at the high end of Column IV of Tariff B of the *Rules*, plus disbursements. The Applicant asserts that

costs calculated pursuant to Column IV of Tariff B is appropriate for the same reasons that support a lump sum approach.

[9] Canada asserts that the appropriate quantum of costs is $2,570, which represents legal fees calculated in accordance with the mid-point of Column III of Tariff B, plus disbursements limited to $50 for the court filing fee of the application.

[10] Canada asserts that an award in excess of Tariff B is exceptional and cannot be justified solely on the basis that a successful party's actual fees were significantly higher than the Tariff B amounts. Canada asserts that nothing in this case justifies a departure from Column III of Tariff B, as this was a straightforward complaint under the *Act* in which Canada fully disclosed the requested record, rendering this application moot. Canada asserts that the issues in the application were not complex, novel nor important and that the Applicant only took a few steps to move the application forward. Canada notes that this case is unlike other cases in which lump sum awards have been made, such as complex intellectual property litigation or constitutional and indigenous matters that proceeded to hearings. Canada asserts that the resource imbalance between the parties is but one relevant factor and there is no evidence of bad faith or malicious action on the part of Canada warranting an elevated cost award. To the contrary, Canada asserts that it cooperated with the Applicant in resolving this matter in an expeditious and non-adversarial manner.

[11] In relation to the Applicant's Bill of Costs, Canada asserts that, for an award based on Tariff B, two items are unreasonable and unjustified — (a) Item 3 of the Bill of Costs seeks six units for an amendment of documents and Canada asserts that no amendment occurred; and (b) Item 11 of the Bill of Costs seeks three units for the attendance of a second counsel at a case

management conference and Canada asserts that the attendance of a second counsel was not justified.

[12] Turning to the applicable Rules and principles, Rule 400(1) of the *Rules* provides this Court with "full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid."

[13] The principal objectives underlying an award of costs are to: (a) provide indemnification for costs associated with successfully pursuing a valid legal right or defending an unfounded claim; (b) penalize a party who has refused a reasonable settlement offer; and (c) sanction behaviour that increases the duration and expense of litigation or is otherwise unreasonable or vexatious [see *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71 at para 25; *Allergan Inc v Sandoz Canada Inc*, 2021 FC 186 at para 19 [*Allergan*]].

[14] The default level of costs in this Court is the midpoint of Column III of Tariff B [see Rule 407]. However, Rule 400(4) expressly contemplates an award of costs in a lump sum in lieu of any assessed costs pursuant to Tariff B.

[15] A lump sum award, based on a percentage of a party's actual legal fees, can simplify the costs determination and further the goal articulated in Rule 3 of ensuring "the just, most expeditious and least expensive" determination of every proceeding on its merits. The burden is on the party seeking increased costs to demonstrate why their particular circumstances warrant an increased award [see *Apotex Inc v Shire LLC*, 2021 FCA 54 at para 18; *Nova Chemicals Corporation v Dow Chemical Company*, 2017 FCA 25 at para 13 [*Nova*]]. As noted by the Federal Court of Appeal in *Nova*, there appears to be a trend in recent intellectual property decisions of

favouring lump sum costs awards, particularly in cases involving sophisticated commercial litigants [see *Nova, supra* at para 16]. However, this Court has also made lump sum cost awards in non-intellectual property proceedings, noting that it is becoming increasingly common and being done "wherever possible" [see *Jahazi v Canada (Citizenship and Immigration)*, 2024 FC 2072 at para 30, citing *Philip Morris Products SA v Marlboro Canada Limited*, 2015 FCA 9 at para 4; *Elevate LLP v Canada (Attorney General)*, 2025 FC 858 (CanLII) at para 16; *Powless v Canada (Attorney General)*, 2025 FC 1425].

[16] Lump sum costs awards tend to be between 25% and 50% of a party's actual fees. However, there may be cases where a higher or lower percentage is warranted. The Court's wide discretion to award costs is structured by the factors set out in Rule 400(3), the case law and the objectives that underly awards of costs [see *Nova, supra* at paras 17, 19]. While the criteria under Rule 400(3) are useful beacons in the selection of the percentage of actuals to award, the determination of the lump sum is not an exact science [see *Nova, supra* at para 21].

[17] Having regards to the above-referenced principles and the factors detailed in Rule 400(3), I am satisfied that an award of lump sum costs is warranted in this application, based on 25% of the Applicant's actual legal fees, based on the following:

A. In light of the Information Commissioner's final report, and the fact that Canada was well aware that it had already disclosed the Davey Report with fewer redactions, the Applicant should never have had to bring this application in order to obtain proper disclosure of the Davey Report.

B. While Canada may have cooperated and acted in good faith to expedite the settlement of this application, such conduct is expected of counsel and does not overcome the shortcomings in Canada's conduct which necessitated the bringing of this application.

C. The Applicant was entirely successful on the application (although brokered through a settlement) and the issues raised on the application, while not complex, were of importance to the Applicant.

D. There is a significant resource imbalance between the parties, such that a heightened cost award is consistent with the objective of facilitating access to justice.

[18] Having reviewed the materials provided by the Applicant, I am satisfied that the fees incurred are reasonable and justified. Accordingly, the Applicant is entitled to legal fees in the amount of $4,226.77.

[19] With respect to disbursements, for a disbursement to be reasonable, it must be a justified expenditure in relation to the issues in the proceeding. Counsel's decision to incur the expense must reflect a prudent and reasonable representation, considering the circumstances as they existed at the time [see *Nova, supra* at para 20; *Janssen Inc v Teva Canada Limited*, 2012 FC 48 at para 68]. The Applicant seeks disbursements of $50 for the Court filing fee (which is not contested) and $128.82 for the fee associated with the use of an automated civil litigation document assembly program. I see nothing unreasonable regarding this fee and I note that Canada has not asserted any

rationale for finding otherwise. Accordingly, the Applicant is entitled to recover all disbursements as claimed.

JUDGMENT in T-3640-24

THIS COURT'S JUDGMENT is that:

1. The Respondent shall pay to the Applicant his costs of this application in the amount of $4,405.59, inclusive of all fees, disbursements and taxes.

2. No costs are otherwise awarded on this Judgment.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-3640-24
STYLE OF CAUSE:	ALAN BARNES v. THE PRIME MINISTER
SUBMISSIONS ON COSTS CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO THIS COURT'S DIRECTION DATED SEPTEMBER 4, 2025	
WRITTEN SUBMISSIONS:	SEPTEMBER 4, 2025 SEPTEMBER 11, 2025 SEPTEMBER 16, 2025
JUDGMENT AND REASONS:	AYLEN J.
DATED:	SEPTEMBER 23, 2025

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