

**Date: 20080912**

**Docket: T-473-06**

**Citation: 2008 FC 1030**

**Ottawa, Ontario, September 12, 2008**

**PRESENT: The Honourable Mr. Justice O'Keefe**

**BETWEEN:**

**ALLAN JAY GORDON**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

**Defendant**

**Docket: T-474-06**

**BETWEEN:**

**JAMES A. DEACUR & ASSOCIATES LTD. and  
JAMES ALLAN DEACUR**

**Plaintiffs**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

**Defendant**

**REASONS FOR ORDER AND ORDER**

**O'KEEFE J.**

[1] This is a submission by the plaintiffs with respect to costs in my decision on these Court files. The plaintiffs are seeking an order for costs on a solicitor and client basis payable forthwith. The plaintiffs are also seeking an order setting a litigation timetable.

[2] The plaintiffs state that the defendant stated in its notice of motion that the defendant brought the motion “out of an abundance of caution and to ensure that the Canada Revenue Agency (CRA), Department of Justice (DOJ) and the Federal Prosecution Services (FPS) may provide the relevant information and documentation to counsel for the defendant to defend the civil action brought against the defendant without violating the law.”

[3] I have considered the submissions of the parties and have noted that the applicable sections of the legislation do, in certain situations, provide for the release of taxpayer information and personal information. The parties did not disagree that the exemption provisions of paragraph 241(3)(b) of the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supplement) and paragraphs 8(2)(b) or (d) of the *Privacy Act*, R.S.C. 1985, c. P-21, apply to the taxpayer information in this case. The defendant requested a declaration to this effect from the Court.

[4] The plaintiffs are seeking solicitor and client costs payable forthwith as they claim it was not necessary for the defendant to seek this confirmatory relief from the Court.

[5] First, I will deal with the issue of whether the plaintiffs are entitled to the grant of costs on a solicitor and client basis. In *Mackin v. New Brunswick (Minister of Finance)* 2002 1 S.C.R. 405 at paragraph 86:

At trial, the respondents were awarded party-and-party costs. In the Court of Appeal, this decision was reversed and it was decided that the government's conduct justified the award of solicitor-client costs. It is established that the question of costs is left to the discretion of the trial judge. The general rule in this regard is that solicitor-client costs are awarded only on very rare occasions, for example when a party has displayed reprehensible, scandalous or outrageous conduct (*Young v. Young*, [1993] 4 S.C.R. 3, at p. 134). Reasons of public interest may also justify the making of such an order (*Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3, at p. 80).

[6] I have reviewed the factual background of this action contained in the application and submissions for costs and I cannot find any evidence of reprehensible, scandalous or outrageous conduct by the defendant. As a result, I cannot make an award of solicitor and client costs against the defendant.

[7] That does not mean that I should not make an award of costs. The defendant did seek and receive a declaration that the relevant exemption provisions of the *Income Tax Act* and the *Privacy Act* applied to the actual facts of this case. It gave the defendant some degree of comfort that the requested information could be released with safety. The plaintiffs did not need this comfort.

[8] As a result, I am of the view that even though the defendant succeeded in its application, the plaintiffs should be awarded their costs of the application. There shall be one set of costs.

[9] If the parties cannot agree on the amount of the costs, the amount may be determined by an assessment officer.

[10] I agree that a timetable should be set but I do not have adequate information to set this timetable. As this matter is in case management, maybe the case management team should set the timetable. I retain jurisdiction with respect to this issue.

**ORDER**

[11] **IT IS ORDERED that** the plaintiffs shall have their costs of the application and if the parties cannot agree on the amount of the costs, the amount may be set by an assessment officer.

“John A. O’Keefe”

---

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-473-06 & T-474-06

**STYLE OF CAUSE:** ALLAN JAY GORDON

- and -

HER MAJESTY THE QUEEN  
IN RIGHT OF CANADA

JAMES A. DEACUR & ASSOCIATES LTD.  
and JAMES ALLAN DEACUR

- and -

HER MAJESTY THE QUEEN  
IN RIGHT OF CANADA

**WRITTEN SUBMISSIONS BY THE PARTIES**

**REASONS FOR ORDER  
AND ORDER OF:**

O'KEEFE J.

**DATED:** September 12, 2008

**APPEARANCES:**

Sarah J. O'Connor

FOR THE PLAINTIFFS

Wendy J. Linden  
Edward Park

FOR THE DEFENDANT

**SOLICITORS OF RECORD:**

Sarah J. O'Connor  
Concord, Ontario

FOR THE PLAINTIFFS

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

FOR THE DEFENDANT