



SUPERIOR COURT OF JUSTICE

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Re:	Taylor v. AG of Canada	Date:	August 19, 2008

Pages: 3

Counsel:

Attached is the costs endorsement of Justice Cullity in respect of the motions heard on April 1, 2008. The endorsement will be attached to each of the motion records.

The release of the endorsement has been delayed as His Honour anticipated that the decision on the appeal from the dismissal of the third parties motions heard in June, 2007 would have been released by now.

Amana Karim

Assistant to Mr. Justice Cullity

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Court File No. 99-CV-181819 CP

Between:

Kathryn Anne Taylor -- Plaintiff /Moving Party/Respondent

-and-

The Attorney General For Canada -- Defendant/Moving Party/Respondent

-and-

University Health Network and Dr W. Dobrovolsky -- Third Parties

Proceeding Under the *Class Proceedings Act*, 1992

COSTS

After a long and tortuous history, this proceeding was certified under the CPA for reasons delivered on September 5, 2007. Certification did not end the problems that the plaintiff's counsel have experienced in regularising the proceeding. On April 1, 2008, the following motions were heard and disposed of either then, or subsequently, as follows:

- (a) a motion by the plaintiff to amend her pleading. (motion granted on consent of all parties);
- (b) a motion by the third parties to strike the Attorney-General's third party notices. (motion granted as a consequence of the amendments to the plaintiff's pleading);
- (c) a motion by the plaintiff to stay, or sever, the third party claims. (motion moot as a consequence of the order striking the third party claims);
- (d) a motion by the plaintiff to amend its litigation plan and notice of certification. (terms of plan and notice approved subject to amendments made at the hearing); and

(e) a motion by the Attorney-General to strike paragraphs of the plaintiff's statement of claim and reply. (motion dismissed).

Costs against the Attorney-General have been requested in connection with each of the motions.

The plaintiff (and OHIP) seek costs of \$22,478.53 in respect of motions (a), (c) and (d) and \$18,823.25 in respect of motion (e). In addition, they seek an amount of \$16,498.55 for attendances at case conferences - a grand total of \$57,800 (inclusive of disbursements and GST).

The third parties have requested costs of \$58,564.39 (Dr W.Dobrovolsky) and \$46,407.81 (University Health Network), for a total of \$104,972.20.

In my opinion, these amounts cannot be justified as costs of the motions heard on April 1, 2008.

For motion (a) the plaintiff's claim for costs is, in effect, for costs thrown away because of the failure of the Attorney General to provide his consent before the motion record and factum were prepared. Motion (c) was essentially a fall-back effort in case the third parties' motions were unsuccessful. This could have occurred if the amendments to the pleading had not been allowed. As I indicated in the endorsement made after the hearing, once the amendments were made on consent, it followed that the Attorney General could have no claims against the third parties. It was therefore unnecessary for the motion to be argued and this was not done. This also was, or should have been, evident from the reasons delivered earlier in the proceeding in which a similar motion of the third parties on the basis of the former pleading had been dismissed. I fix the costs of motions (a) and (c) at \$5,000 in the aggregate for the plaintiff and \$1,000 for OHIP.

Motion (d) should have required little or no preparatory work and, in any event, some changes were made to the materials in question. There will be no costs of this motion.

Motion (e) was fully argued and, in my judgment, the plaintiff and OHIP should receive their costs of it but as a partial indemnity and not as a substantial indemnity. These costs are fixed at \$10,500 for the plaintiff and \$1,400 for OHIP.

There will be no costs of the case conferences. They, as is very commonly the case, were held to obtain the certainty provided by a direction from the court where the parties had failed to agree among themselves, and on matters of scheduling. Very rarely are costs of the conferences awarded unless the request for the conference was frivolous or vexatious, or if it was required because of unreasonable conduct of one party. Responsibility for the failure of counsel to reach agreement among themselves is, as was the case here, usually divided between them.

The third parties' motions were opposed notwithstanding the reasons delivered in respect of their earlier unsuccessful motions. They were successful on the present motions and I am satisfied they should receive the costs of them but not, as requested, their costs of the proceeding in its entirety. Their success was wholly attributable to the amendments permitted at the hearing as it was held on the earlier motions that the claims would not be struck on the basis of the previous provisions of the statement of claim. The costs are fixed at \$8,500 for each of the third parties.

The above amounts are inclusive of disbursements and GST and are to be paid within 30 days of the release of this endorsement.

Released: August 19, 2008

Heather Cullity
CULLITY J.