

In the Court of Appeal of Alberta

Citation: Canadian Centre for Bio-Ethical Reform v Grande Prairie (City), 2018 ABCA 254

Date: 20180718

Docket: 1703-0017-AC

Registry: Edmonton

Between:

Canadian Centre for Bio-Ethical Reform

Appellant
(Applicant)

- and -

The City of Grande Prairie

Respondent
(Respondent)

The Court:

**The Honourable Mr. Justice Ronald Berger
The Honourable Mr. Justice Peter Costigan
The Honourable Mr. Justice Frans Slatter**

Memorandum of Judgment Regarding Costs

Appeal from the Order by
The Honourable Madam Justice C.S. Anderson
Dated the 22nd day of December, 2016
Filed on the 3rd day of February, 2017
(2016 ABQB 734, Docket: 1504-00784)

Memorandum of Judgment Regarding Costs

The Court:

[1] The parties have applied for directions respecting the costs consequences of the decision reported as *Canadian Centre for Bio-Ethical Reform v Grande Prairie (City)*, 2018 ABCA 154, 67 Alta LR (6th) 230.

[2] The successful respondent argues that it is presumptively entitled to costs of the appeal on the same scale as the costs awarded at trial (by agreement, Column 2): R. 14.88(3). The respondent argues that because of the complexity and importance of the issues raised, it should be entitled to costs assessed on Column 5: R. 10.33(1)(d).

[3] The appellant argues that because no monetary sum was involved, the presumptive scale of costs is Column 1: Schedule C. It argues, however, that because of the public importance of the constitutional issues raised, no costs should be awarded against it.

[4] The presumption in the Rules is that the successful party is entitled to costs: R. 10.29(1), R. 14.88(1). Exceptions can be made, for example where there is a public interest component to the litigation and “access to justice” is in issue. However, there is no blanket exemption from exposure to costs in *Charter* litigation, even though most *Charter* litigation is of public interest. Even in *Charter* litigation “. . . the general rule based on principles of indemnity, i.e., that costs follow the cause, has not been displaced”: *Little Sisters Book and Art Emporium v Canada (Commissioner of Customs and Revenue)*, 2007 SCC 2 at para. 34, [2007] 1 SCR 38. The issue of “freedom of expression” is of public importance, but not “novel”, even in its application to bus advertising. While this appeal raised some challenging questions about the application of the law to the facts, there was nothing sufficiently novel to take it outside the normal costs presumptions.

[5] The financial strength of the losing party is not generally a relevant consideration. A broader public interest can justify denying the successful party its costs, but generally only where the losing party has no private interest in the outcome. The appellant has a particular message which it wishes to convey to the public, and it has adopted a policy of aggressively pressing its right to place its advertisements in public places: see *Canadian Centre for Bio-Ethical Reform v Hinton (Town)*, [2017] A.J. No. 347; *Canadian Centre for Bio-Ethical Reform v Peterborough (City)*, 2016 ONSC 1972, 364 CRR (2d) 275 (Div Ct); *Canadian Centre for Bio-Ethical Reform v South Coast British Columbia Transportation Authority*, 2017 BCSC 1388, 100 BCLR (5th) 341.

[6] The appellant admittedly has a *Charter* protected right of free expression, but it does not follow that the exercise of that right has no private component. The appellant perceives that its message is in the public interest, but it is advancing its message as part of its own agenda. This is not an appeal where the “issues raised transcend the individual interests of the particular litigant”: *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71 at para. 40,

[2003] 3 SCR 371. It is of note that when the appellant has been successful, it has asserted a right to costs: *Hinton (Town)* at paras. 56-7. In this appeal, there is no basis for displacing the presumption that the successful party is entitled to costs.

[7] The scale of costs on appeal is generally set in accordance with Schedule C, on the same level as the costs awarded at trial. Costs awards are intended to relieve the successful party of some of its legal fees, without providing full indemnity. The costs rules attempt to strike a balance between promoting access to justice, while discouraging excessive or undesirable litigation.

[8] The respondent correctly notes that some of the issues in the appeal were complex, however, they were not completely new. There were a number of prior decisions of the Supreme Court of Canada on the topic. The complexity of the issues must be balanced against the public interest in resolving *Charter* issues.

[9] An award of costs is discretionary, and requires that the Court balance all of the competing issues raised by the parties: *Little Sisters* at para. 35. On balance, the appropriate outcome is to award the successful respondent costs on the same scale as those awarded at trial: Column 2 plus reasonable disbursements and GST.

Written submissions received June 28, 2018 and July 6, 2018

Memorandum filed at Edmonton, Alberta
this 18th day of July, 2018

Berger J.A.

Authorized to sign for: Costigan J.A.

Slatter J.A.

Appearances:

C.M. Crosson and G.D. Chipeur, Q.C.
for the Appellant

R.G. McVey, Q.C.
for the Respondent