

Court File No.: CV-10-404604

ASSOCIATION OF JUSTICE COUNSEL - and -  
Applicant

ATTORNEY GENERAL OF CANADA  
Respondent

May 31, 2012

COSTS ENDS

- ① I have reviewed the Costs Outline of the ATSC and the last submissions of the A.G.
- ② While the ATSC did not succeed on all arguments, its success in establishing a violation of s.2(2) of the Charter, on the s.1 analysis, in obtaining a declaration that ss. 16(1) and 24(1) of the Charter are unconstitutional and requiring the A.G.'s for a suspension of the declaration of invalidity is significant.
- ③ In other words, while the ATSC did not obtain all that it sought, a remedy was granted which precedes the ATSC's objective of obtaining a salary increase well above the ERA mandated increase for the 2006-7 fiscal year. It obtained that increase with virtually the numbers of the ATSC going forward.
- ④ With respect, the A.G.'s characterization of the case as "divided success" is wide of the mark.
- ⑤ In my view, the ATSC is entitled to costs of the application - both the merits and remedy component - a partial indemnity basis.
- ⑥ I turn to quantum. In my view, the substituted evidentiary award would have been just before the court even if the ATSC had sought principally for solely the declaration it obtained.

ONTARIO  
SUPERIOR COURT OF JUSTICE

COSTS OUTLINE  
OF THE ASSOCIATION OF JUSTICE  
COUNSEL

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② A SC sought alternative remedies but the same <sup>and legal</sup> ~~fact~~ <sup>analyses</sup> applied to every argument it advanced and the A.G.'s response.

③ The factual record was historical and complex. It addressed historical matters pre-dating the creation of the ASC, the evolution of the negotiations that pre-dated the introduction of the ERA, the impact of the ERA and its consequences.

④ The AG filed volumes detailing the legislative <sup>history</sup> ~~creation~~ - the economic developments which caused <sup>the ERA's</sup> ~~creation~~, the steps taken by the government both publicly and privately, both before and after Parliament was prorogued.

⑤ Legal authorities abounded. While there was some duplication, the fact is that this involved required detailed analyses of each step, taken during the constitutional review, and dozens of cases impugned the analysis.

⑥ The stakes of the application were high. Both parties conducted evidence that fact. The factual and legal materials were skilfully prepared. They were detailed, almost encyclopedic.

⑦ Several days of argument were required. Supplementary written admissions were made given the date of release of Ontario (Attorney General) v. Fraser.

⑧ Submissions were efficiently and effectively made - whether oral or written.

⑨ In short, this application involved matters of great importance, that were legally and factually complex and which were clearly and necessarily expensive.

⑩ I have absolutely no doubt that counsel for the ASC spent every hour claimed.

⑪ The A.G. referred (at para. 81) to the 2011 decision of Forley J. in Fraser - (I have reviewed his decision (2006), 79 O.R. (3d) 219 (S.C.J.). With respect

interlocutory

that decision is of an assistence. I do not know what analysis - if any - was undertaken or whether Cost Outlines were even prepared. Faculty J. simply noted that he had obtained the "views of the parties as to costs" at the conclusion of the hearing: see para. 35.

(12) With respect, that <sup>aspect of the</sup> decision is not authority for any proposition let alone a basis for concluding that an award of nominal costs is appropriate.

(13) The A.S.C. were represented by one lawyer during argument. It is clear from the Cost Outline of the A.S.C. that tasks were delegated. I have no quarrel with the amount claimed in general terms and the reduction made is to reflect the fact that there may have been some <sup>as a result of duplication of effort</sup>.

(14) In my view, an appropriate award of costs in favour of the A.S.C. is \$135,000 inclusive of disbursements and applicable taxes. That amount is payable by the AG forthwith.

Released:  
June 1, 2012

Grace J.  
GRACE J.