

Federal Court



Cour fédérale

**Date: 20240523**

**Docket: T-268-17**

**Citation: 2024 FC 784**

**Ottawa, Ontario, May 23, 2024**

**PRESENT: The Honourable Madam Justice Ayles**

**BETWEEN:**

**KRISTIN ERNEST HUTTON**

**Plaintiff**

**and**

**RIA SAYAT, LYNN DUHAMIE also known as STEPHANIE DUHAMIE the former  
Canadian Charge d’Affaires for the Republic of Iraq, THE ATTORNEY GENERAL OF  
CANADA, HIS MAJESTY THE KING**

**Defendants**

**ORDER AND REASONS**

[1] By Order and Reasons issued April 19, 2024 [Order], I declared the Plaintiff, Kristin Hutton, a vexatious litigant and, amongst other relief, quashed this proceeding. On the consent of the parties, the issue of costs of the underlying action (both entitlement and quantum) were reserved for a future determination following receipt of cost submissions from the parties, based on the timetable and parameters set out in my Order. I have now received and reviewed cost

submissions from the Attorney General of Canada [AGC] and Ria Sayat. Despite participating in the vexatious litigant motion, Mr. Hutton did not file any cost submissions.

**I. Entitlement to Costs**

[2] I see no reason to depart from the general principle that the successful party should be entitled to their costs. As such, I find that the AGC and Ms. Sayat are both entitled to an award of costs.

**II. Quantum of Costs**

[3] Pursuant to Rule 400(1) of the *Federal Courts Rules*, SOR/98-106, the Court has full discretionary power over the amount of costs. In determining the appropriate quantum, the focus is on the specific facts and circumstances of the case in relation to the factors outlined in Rule 400(3), which factors include, among others, the result of the proceeding, the amounts claimed and the amounts recovered, the importance and complexity of the issues, the amount of work, any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the proceeding, whether any step in the proceeding was improper, vexatious or unnecessary and whether more than one set of costs should be allowed where two or more parties were represented by different solicitors.

[4] As noted by the Federal Court of Appeal in *Air Canada v Thibodeau*, 2007 FCA 115 at paragraph 24 [*Thibodeau*], the objective of awarding costs is three-fold – to provide compensation, promote settlement and deter abusive behaviour.

[5] Pursuant to Rule 407, the quantum of costs is to be assessed in accordance with Column III of Tariff B. Tariff B represents “a compromise between awarding full compensation to the successful party and imposing a crushing burden on the unsuccessful party” and Column III is intended to be applied to cases of average or usual complexity [see *Thibodeau, supra* at para 21]. That said, pursuant to Rule 400(4), the Court retains the discretion to assess or fix costs above or below Column III of Tariff B or by way of a lump sum award. Pursuant to Rule 400(6)(c), the Court also has the discretion to award costs on a solicitor-client basis.

[6] An award of costs on a solicitor-client basis is exceptional and the party seeking such costs must demonstrate that the conduct of the paying party was reprehensible, scandalous or outrageous or that such costs are justified by reason of public interest [see *Rice v New Brunswick*, 2002 SCC 13 at para 86; *Hamilton v Open Window Bakery Ltd*, 2004 SCC 9 at para 26; *Asics Corporation v 9153-2267 Québec Inc*, 2017 FC 257 at para 80, citing *Quebec (Attorney General) v Lacombe*, 2010 SCC 38 at para 67]. Justice Harrington in *Microsoft Corporation v 9038-3746 Quebec Inc*, 2007 FC 659 at paragraph 16 described such conduct as follows:

"Reprehensible" behaviour is that deserving of censure or rebuke; blameworthy. "Scandalous" comes from scandal which may describe a person, thing, event or circumstance causing general public outrage or indignation. Among other things, "outrageous" behaviour is deeply shocking, unacceptable, immoral and offensive [...].

**A. AGC**

[7] The AGC has provided the Court with a bill of costs calculated in accordance with Column V of Tariff B of the *Federal Courts Rules*. In their accompanying written submissions, the AGC

seeks costs in accordance with the bill of costs in the amount of \$14,365.76, comprised of \$12,060.00 in fees, \$603.00 in GST on fees, and disbursements in the amount of \$1,702.76.

[8] However, later in their written submissions, the AGC stated that “this Court should exercise its discretion to also award costs against the Plaintiff on a solicitor-client basis pursuant to Rule 400(6)(d)”, in an amount “to be determined by the Court”.

[9] I take the AGC’s submissions to mean that they are seeking an award of solicitor-client costs or in the alternative, a heightened award of costs calculated in accordance with Column V of Tariff B. However, it is entirely unhelpful to the Court for the AGC to not specify the amount of solicitor-client costs they are seeking and simultaneously provide the Court with no information upon which to make a reasoned determination of that amount – namely, the AGC’s actual legal fees incurred. It is not the role of the Court to undertake this exercise for the AGC and I will not speculate as to what their actual legal fees were. Having not provided the Court with what it needs to make an award of solicitor-client costs, the Court will not entertain the request.

[10] While I appreciate that I could refer the question of quantum of solicitor-client costs for an assessment, the parties specifically asked at the hearing of the vexatious litigant motion that I remain seized of the issue of quantum so as to avoid the need for an assessment. Given the lengthy history of this matter, it is in no one’s interest to further prolong the proceeding with an assessment of costs simply because the AGC did not provide the requisite materials to decide the issue now before me.

[11] In light of the findings in my Order regarding Mr. Hutton's conduct in this proceeding, I am satisfied that a heightened cost award is warranted and I find that costs calculated in accordance with Column V of Tariff B is reasonable. Having reviewed the AGC's calculation, I find that it accurately reflects the steps taken in this proceeding for which costs have not yet been awarded and is reasonable. I also find that the limited disbursements claimed by the AGC are reasonable.

[12] Accordingly, Mr. Hutton shall pay to the AGC costs of this proceeding in the amount of \$14,365.76, inclusive of taxes and disbursements.

**B. Ms. Sayat**

[13] Ms. Sayat seeks her costs of this proceeding on a full indemnity basis in the amount \$68,071.55, comprising fees of \$59,573.50, HST on fees of \$7,744.56 and disbursements of \$753.49. She relies on the case law cited above related to solicitor-client cost awards in support of her assertion that Mr. Hutton's conduct warrants an award of costs on a full indemnity basis.

[14] None of the parties addressed the issue of whether solicitor-client costs and full indemnity costs are synonymous. This Court made the following comment on solicitor-client costs in *Merck*

*& Co v Apotex Inc*, 2002 FCT 1210 at paragraph 11 [*Merck*], which I find to be instructive:

The award of costs on a solicitor and client basis is intended to provide full indemnification of costs reasonably incurred in the course of carriage by the plaintiffs of this litigation. In fixing those costs, the Court must carefully consider the costs claimed in relation to the work reasonably required, not on the basis of hindsight with 20/20 vision of what was finally required, and not as an assessment item by item as an assessing or taxing officer would do, but sufficiently reviewed to ensure that costs awarded are reasonably incurred. [Citation omitted.]

[15] In *Mediatube Corp v Bell Canada*, 2017 FC 495 at paragraph 33, Justice Locke (as he then was) held, after citing the aforementioned paragraph from *Merck*, that:

In my view, the term "solicitor-and-client costs" in this Court generally contemplates the full amount of a party's necessary expenses reasonably incurred. Nothing I have seen in the plaintiffs' authorities clearly convinces me that solicitor-and-client costs, in this Court, should be construed to mean anything less.

[16] Accordingly, I will proceed on the basis that solicitor-client costs constitute the full amount of Ms. Sayat's legal fees reasonably incurred.

[17] I am satisfied that Mr. Hutton's conduct, which is described in detail in my Order, warrants awarding Ms. Sayat her costs on a solicitor-client basis. By way of example, this Court and the Federal Court of Appeal have found that Mr. Hutton: (a) initiated and pursued claims against Ms. Sayat in a manner tantamount to harassment, including through the advancement of humiliating and unsubstantiated allegations of sexual assault and professional misconduct, resulting in her need to participate in numerous proceedings over the last eight years to protect her reputation and privacy; (b) advanced claims that were predicated on delusion and had no apparent basis in reality; (c) consumed an inordinate amount of Court and party resources through abusive and vexatious litigation tactics leading to the issuance of over 60 directions, the convening of at least ten case management conferences and the creation of over 483 recorded entries; and (d) advanced his claims against Ms. Sayat in a manner that was both abusive and vexatious.

[18] I am also satisfied that it is in the public interest to make an award of solicitor-client costs in Ms. Sayat's favour, as she is an innocent party with limited resources who has been victimized by Mr. Hutton's abusive and vexatious claims and litigation conduct for the past eight years.

[19] Turning to her bill of costs, I find that it accurately reflects the steps taken in this proceeding for which costs have not yet been awarded and reflects costs reasonably incurred in the course of defending this litigation. Further, I find that the limited disbursements claimed are reasonable.

[20] Accordingly, Mr. Hutton shall pay costs to Ms. Sayat in the amount of \$68,071.55, inclusive of taxes and disbursements.

### **III. Interest Payable on Cost Award**

[21] By virtue of subsection 37(1) of the *Federal Courts Act*, RSC 1985, c F-7, the law of the province of Ontario relating to interest on judgments is applicable to this case. Subsection 129(1) of the *Courts of Justice Act*, RSO 1990, c C43, provides that money owing under an order bears interest at the post-judgment interest rate calculated from the date of the order. The current post-judgment interest rate applicable under the *Courts of Justice Act* is 7.0%. As such, the cost awards payable by Mr. Hutton shall bear post-judgment interest at the rate of 7.0% calculated from the date of this Order.

**ORDER**

**THIS COURT ORDERS that:**

1. Kristin Hutton shall pay costs to Ria Sayat in the amount of \$68,071.55, inclusive of taxes and disbursements.
2. Kristin Hutton shall pay costs to the Attorney General of Canada in the amount of \$14,365.76, inclusive of taxes and disbursements.
3. These cost awards shall bear post-judgment interest at the rate of 7.0% per annum from the date of issuance of this Order.

"Mandy Aylen"

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Judge



**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-268-17

**STYLE OF CAUSE:** KRISTIN ERNEST HUTTON v RIA SAYAT, LYNN DUHAMIE also known as STEPHANIE DUHAMIE the former Canadian Charge D’Affaires FOR THE REPUBLIC OF IRAQ, THE ATTORNEY GENERAL OF CANADA, HIS MAJESTY THE KING

**SUBMISSIONS ON COSTS CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO THIS COURT’S ORDER AND REASONS IN 2024 FC 601**

**ORDER AND REASONS:** AYLEN J.

**DATED:** MAY 23, 2024

**SOLICITORS OF RECORD:**

Lloyd Law Professional Corporation  
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FOR THE DEFENDANTS  
ATTORNEY GENERAL OF CANADA,  
HIS MAJESTY THE KING IN RIGHT OF  
CANADA AND STEPHANIE DUHAIME