Federal Court Cour fédérale

Date: 20250702

Docket: IMM-11973-23

Citation: 2025 FC 1175

Ottawa, Ontario, July 2, 2025

PRESENT: Madam Justice McDonald

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

SHIYUAN SHEN

Respondent

SUPPLEMENTARY JUDGMENT AND REASONS

[1] In *Canada (Citizenship and Immigration) v Shen*, 2025 FC 756 [Judgment], I awarded costs to the Respondent, Shiyuan Shen, concluding that there were special reasons within the meaning of Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22.

[2] Having considered the post-Judgment written submissions from the parties, the following are my Reasons on costs.

I. Analysis

A. *Costs - general principles*

[3] In this case, the starting point is Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 that states no costs are awarded in immigration proceedings, unless there are "special reasons" for doing so.

[4] In *Ndungu v Canada (Citizenship and Immigration)*, 2011 FCA 208 at paragraph 7, the Court of Appeal outlined the potential circumstances giving rise to "special reasons" justifying costs against the Minister.

[5] Rule 400(3) sets out various factors that the Court may consider in exercising its discretion, which include the importance and complexity of the issues and any conduct that tended to shorten or unnecessarily lengthen the duration of the proceeding.

[6] Under Rule 400(4), costs may be fixed by reference to Tariff B or by lump sum. Lump sum awards are to be awarded "whenever possible" (*Philip Morris Products SA v Marlboro Canada Limited*, 2015 FCA 9 at para 4) as such awards reduce the significant time and effort typically associated with preparing and reviewing a detailed bill of costs that is required for the

purposes of an assessment under Tariff B (*Catalyst Pharmaceuticals, Inc v Canada (Attorney General)*, 2022 FC 1669 at para 21).

[7] Lump sum awards must not be "plucked from thin air" and have been found to fall within a range of 25-50% of the actual legal costs of the successful party (*Nova Chemicals Corporation v Dow Chemical Company*, 2017 FCA 25 at paras 15, 17).

[8] Under Rule 400(4) the "default" is the mid-point of column III in Tariff B, which is intended to provide partial indemnification for "cases of average or usual complexity" (*Allergan Inc v Sandoz Canada Inc*, 2021 FC 186 at para 25).

[9] Full indemnification or "solicitor-client" costs are awarded "in exceptional circumstances such as where a party has shown bad faith or inappropriate, reprehensible, scandalous or outrageous conduct," or where it is in the public interest (*Jahazi v Canada (Citizenship and Immigration)*, 2024 FC 2072 at para 32 [*Jahazi*]).

[10] In the absence of demonstrated exceptional circumstances, any costs awarded based on the existence of "special reasons" ought to be on a partial indemnity, i.e., party-and-party costs (*Jahazi* at para 32).

[11] Substantial indemnification, this is short of full indemnification but significantly above the partial indemnification, is contemplated by the Rules but requires a demonstration of

circumstances that justify an award beyond what is contemplated by the columns in Tariff B (*Jahazi* at para 33).

B. *Assessment*

[12] I am satisfied that this case presents "special reasons" within the meaning of Rule 22, meriting an award of costs against the Minister. The only issue is what is the appropriate scale or quantum of costs. Both parties agree that any cost award should be for a lump sum.

[13] The Respondent submitted a Bill of Costs and seeks solicitor-client or substantial indemnity costs in the total amount of $56,508.13 including $4,353.69 for disbursements. Alternatively, he seeks party-and-party costs under column V of Tariff B in the amount of $21,148.46 including disbursements.

[14] The Respondent argues that the issues of abuse of process and natural justice were complex, and that the matter had a lengthy procedural history, with a Certified Tribunal Record spanning 24 volumes. The Respondent also highlights that the conduct of the Applicant which lengthened the proceedings as referenced in the Judgment as follows:

> [34] […] A proceeding must not be unduly delayed or disrupted due to a party's inability or unwillingness to secure witness testimony. In the present matter, the Minister's conduct had precisely that effect.
>
> [35] While the Minister argues they were "prevented" from calling witnesses, the record indicates otherwise. In fact, the record demonstrates that it was the Minister's own actions that resulted in their witnesses not being heard.

[…]

> [44] Further, I am satisfied that the RPD's findings were sufficiently serious for the RPD to conclude that the Minister breached their duty of candour to the RPD and that this breach rose to the level of an abuse of process.…

[15] The Applicant argues that solicitor-client—or substantial indemnity costs—are not appropriate in an immigration proceeding, where costs are only awarded in special circumstances. Further the Applicant argues that any costs should be restricted to party-and-party costs in accordance with column III of Tariff B, which they have calculated to be $5,846.40.

[16] The Applicant highlights the following in relation to the Respondent's proposed Bill of Costs:

A. the Minister of Public Safety attempted to contemporaneously address the RPD's interlocutory decisions and that this represents an attempt to reduce fragmentation and delay;

B. the abuse of process finding by the RPD did not warrant the exclusion of the Minister from ongoing participation in the proceedings, as sought by the Respondent, nor did the RPD otherwise stay the exclusion proceedings;

C. the issues raised were not particularly complex (discrete issues linked to interlocutory decisions);

D. fees and expenses for a second counsel should not be permitted, and if they are, they should be calculated at 50%; and

E. disbursements are presented in aggregate without breakdown and therefore the Applicant cannot assess the reasonableness of these amounts.

[17] Even though the Minister's conduct caused delay and was found to be an abuse of process, I am not satisfied that this case rises to the level to which costs on a substantial indemnification basis should be awarded—particularly considering the award of costs in an immigration proceeding is the exception and not the rule. Accordingly, it is appropriate to exercise restraint.

[18] Further, while these proceedings unfolded over several years, the core issues in the judicial review itself were not particularly complex. The proceeding got mired in procedural wranglings, which ultimately resulted in significant delay, an abuse of process finding, and the exclusion of certain evidence. It is the delay and the abuse of process findings that satisfy me that costs should be awarded.

[19] Having considered and weighed the above factors and noting the parties' preference for a lump sum award, I exercise my discretion and award the Respondent costs representing roughly 25% of the costs claimed under column V of Tariff B, in the all-inclusive amount of $5,500.00.

JUDGMENT IN IMM-11973-23

THIS COURT'S JUDGMENT is that the respondent shall have costs in the all-inclusive sum of $5,500.00.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11973-23
STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION V HIYUAN SHEN
SUBMISSIONS ON COSTS CONSIDERED AT:	OTTAWA, ONTARIO
SUPPLEMENTARY JUDGMENT AND REASONS:	MCDONALD J.
DATED:	JULY 2, 2025

WRITTEN REPRESENTATIONS BY:

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