

**Date: 20070830**

**Docket: T-985-05**

**Citation: 2007 FC 871**

**Ottawa, Ontario, August 30, 2007**

**PRESENT: The Honourable Mr. Justice Barnes**

**BETWEEN:**

**ASTRAZENECA AB,  
AB HASSLE and  
ASTRAZENECA CANADA INC.**

**Applicant(s)**

**and**

**APOTEX INC. and  
THE MINISTER OF HEALTH**

**Respondent(s)**

**SUPPLEMENTAL REASONS FOR JUDGMENT AND JUDGMENT**

[1] These reasons address the outstanding issue of costs on which I invited written submissions from the parties in my decision on the merits dated June 28, 2007.

[2] Notwithstanding the appeal and efficiency of fixing a lump sum for taxable fees and disbursements, I agree with the Applicants, Astrazeneca AB, AB Hassle and Astrazeneca Canada Inc. (Astrazeneca), that they ought to have the opportunity to have the reasonableness of those

claims specifically addressed on a taxation. I will, however, provide some guidance with respect to some of the issues which may simplify that exercise.

[3] The complexity of this case appears similar to that in *Eli Lilly Canada Inc. v. Novopharm Limited and The Minister of Health*, 2007 FC 708, where costs listed in the middle of Column IV were awarded. I would adopt that standard in this proceeding.

#### **Counsel Fees for Witness Examinations**

[4] I would direct that the Respondent, Apotex Inc. (Apotex), recover only a single counsel fee for its attendance on the cross-examination of its own witnesses. Travel and accommodation expenses for such examinations shall also be limited to one counsel. For the attendance to examine Astrazeneca's expert witnesses, I will allow for one senior counsel and, if in attendance, one junior counsel.

#### **Expert Fees**

[5] I am not in a position to properly assess the reasonableness of the rates charged by Apotex's expert witnesses. However, the taxable fees for those experts shall be allowed at the lesser of the actual fees charged or the hourly rate charged by Apotex's senior counsel for the actual time expended by each witness.

[6] The evidence of Mr. Oyen was of no ultimate assistance and it did venture into areas reserved to the Court. Nevertheless, Astrazeneca chose to cross-examine him and some allowance

should be made for that exercise. I would, therefore, limit the amount Apotex may recover for Mr. Oyen's professional fees to \$5,000.00.

### **Motions**

[7] Where a pretrial motion was disposed of with an Order for costs, that award will prevail. Otherwise, such costs shall be awarded at the middle of Column IV.

### **Counsel Fees at Hearing**

[8] I will allow Apotex to tax costs for first and second counsel at the hearing of this application (to the extent that two counsel were in attendance) for 4 days of Court time.

### **Other Disbursements**

[9] I am not in a position to assess the reasonableness of the claims by Apotex to other disbursements. For instance, I do not know the rate charged for photocopies but the amount claimed of slightly less than \$30,000.00 may be high. Similarly, I am not able to determine what has been claimed for "computer time charges", "file histories", "prior art charges", or "QL searches". These amounts may well be justified but, on the other hand, they may represent in-house overhead items which would be more appropriately subsumed within the amounts payable as counsel fees. These are all matters more appropriately left for an assessment by an assessment officer in accordance with the usual practice of the Court.

**JUDGMENT**

**THIS COURT ADJUDGES that** Apotex shall be entitled to tax its costs in this proceeding in accordance with these reasons.

“ R. L. Barnes ”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-985-05

**STYLE OF CAUSE:** ASTRAZENECA AB, et al  
v.  
APOTEX INC. et al

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** April 2, 2007

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** BARNES J.

**DATED:** August 30, 2007

**APPEARANCES:**

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