

Federal Court of Appeal



Cour d'appel fédérale

Date: 20170905

Docket: A-21-17

Citation: 2017 FCA 179

**CORAM: BOIVIN J.A.
RENNIE J.A.
WOODS J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

M.D. CHARLTON CO. LTD.

Respondent

Heard at Ottawa, Ontario, on September 5, 2017.
Judgment delivered from the Bench at Ottawa, Ontario, on September 5, 2017.

REASONS FOR JUDGMENT OF THE COURT BY:

BOIVIN J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on September 5, 2017).

BOIVIN J.A.

[1] The Applicant, the Attorney General of Canada (the AGC), seeks judicial review of the costs portion of a decision by the Canadian International Trade Tribunal (the CITT) rendered on December 16, 2016.

[2] The AGC submits that it was successful in defending its procurement process from M.D. Charlton Co. Ltd.'s allegations of discrimination, and that the CITT erred in deciding that "each party will bear its own costs".

[3] As a matter of general principle, costs are awarded to the successful party. This principle is also reflected in the CITT's Procurement Costs Guideline, updated on June 1, 2014. The Guideline mandates that, "[i]n general, costs should be awarded to the successful party, whether it be the complainant or the government institution". However, like all general principles it can be subject to exception and the CITT may depart from the general principle on costs.

[4] The problem with the CITT's decision on costs is that, in the CITT's Determination and Reasons of December 16, 2016, there is no explanation as to why it departed from the general principle. Further, there is nothing in the record that supports the decision of the CITT to have each party bear its own costs (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708 at para. 12).

[5] In these circumstances, we are all in agreement that the CITT did not properly exercise its discretion in the costs portion of its decision.

[6] Before concluding, it is noteworthy that the respondent did not file a notice of appearance and did not file a factum. An Order of the Chief Justice dated 20 of June, 2017 set the time, location and duration of the appeal hearing and this was sent to the respondent. The respondent

was contacted by the Registry and confirmed receiving the said Order. However, the respondent also confirmed his intention to not attend the hearing.

[7] For the above-stated reasons, the application for judicial review will be granted. The CITT's Order respecting costs will be set aside.

"Richard Boivin"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-21-17

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA v. M.D. CHARLTON
CO. LTD.

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: SEPTEMBER 5, 2017

REASONS FOR JUDGMENT OF THE COURT BY: BOIVIN J.A.
RENNIE J.A.
WOODS J.A.

DELIVERED FROM THE BENCH BY: BOIVIN J.A.

APPEARANCES:

Sanam Goudarzi FOR THE APPLICANT

SOLICITORS OF RECORD:

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Deputy Attorney General of Canada