

Federal Court



Cour fédérale

Date: 20250411

Docket: T-268-25

Citation: 2025 FC 674

Ottawa, Ontario, April 11, 2025

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

**HEIDELBERG MATERIALS CANADA
LIMITED**

Applicant

and

**TORONTO PORT AUTHORITY DOING
BUSINESS AS PORTSTORONTO**

Respondent

ORDER AND REASONS

I. Introduction

[1] This decision deals with the quantum of costs to be paid in respect of the Court Judgment reported at 2025 FC 543 dated March 25, 2025 (the “Judgment”).

[2] For the reasons set out below, and in consideration of the factors set out in rule 400(3) of the *Federal Courts Rules*, SOR/98-106 (“*Rules*”) costs are awarded to the Respondent in the amount of \$21,723, all inclusive.

II. Background

[3] The underlying proceeding involved a judicial review of a decision by the Minister of Transport dated January 16, 2025, approving rehabilitation work on a bridge located in the Port of Toronto (the “Decision”). The Decision approved the closure of the bridge for two 12-week periods from January to April in each of 2025 and 2026.

[4] The Applicant, Heidelberg Materials Canada Limited (“Heidelberg”), uses the bridge to transport its cement by ship vessel to a storage facility. The bridge closure forced it to use the more costly alternative of transporting its cement by truck. Heidelberg sought to quash the Decision and requested this Court order an alternative rehabilitation plan that would allow the bridge to open for a period of two weeks in late March of 2025 for cost-saving purposes.

[5] This proceeding was heard on an expedited schedule, pursuant to an Order by Associate Judge Crinson dated March 12, 2025. Associate Judge Crinson found that there was sufficient evidence of urgency in the sense that the usual timelines for an application would render the purpose of the proceeding moot, at least in part, and that the Respondent, PortsToronto, had not provided sufficient evidence of prejudice.

[6] This Court found that the Decision was reasonable and dismissed Heidelberg's application. Costs were awarded to the Respondent, and the parties were given 10 days, following the date of the Judgment to make written representations on the nature and amount of costs to be awarded.

III. General Principles on Costs

[7] This Court has "full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid" (*Rules*, rule 400(1)). The Court exercises its discretion in accordance with the various purposes underlying an award of costs which include: indemnifying the successful party, encouraging settlement and efficient litigation, and sanctioning behaviour that increases the duration and expense of litigation (*Allergan Inc v Sandoz Canada Inc*, 2021 FC 186 at para 19; *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71 at para 25).

[8] This Court may consider various factors in awarding costs, as outlined in rule 400(3) of the *Rules*. The factors relevant to this case include: (a) the result of the proceedings; (c) the importance and complexity of the issues; (e) any written offer to settle; (g) the amount of work; (i) any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the proceeding; (k) whether any step in the proceeding was improper, vexatious or unnecessary, or taken through negligence, mistake or excessive caution; and (o) any other matter that the Court considers relevant.

[9] Pursuant to rule 400(4) of the *Rules*, the Court may “fix all or part of any costs by reference to Tariff B and may award a lump sum in lieu of, or in addition to, any assessed costs.”

IV. The Parties’ Positions

[10] PortsToronto requests a lump sum costs award in the amount of \$65,000, which it asserts is commensurate with tariff costs calculated at the upper end of Column IV. This represents a doubling of the recoverable costs as of February 25, 2025, which PortsToronto states it is entitled to pursuant to rule 420 of the *Rules* for its offer to settle.

[11] Heidelberg submits that a cost award based on the mid-point of Column III under Tariff B is appropriate and rule 420 of the *Rules* is not engaged in this case. While Heidelberg takes issue with some of the items in PortsToronto’s bill of costs, it does not provide an alternative bill of costs or suggest a more appropriate numerical value.

V. Analysis

A. *No Valid Rule 420 Offer*

[12] Under rule 420(2)(b) of the *Rules*, where a defendant makes a written offer to settle and a plaintiff obtains a judgment less favourable than the terms of the offer to settle, the plaintiff may only be entitled to party-and-party costs up to the date of the offer and the defendant may be entitled to costs calculated at double the rate from the date of the offer to the date of judgment.

[13] For rule 420 of the *Rules* to be engaged, the offer in question must be clear and unequivocal, must contain an element of compromise, must be made at least 14 days before the start of trial and remain open until the commencement of trial, and if accepted, it must be capable of bringing the litigation to an end (*Venngo Inc v Concierge Connection Inc (Perkopolis)*, 2017 FCA 96 at para 87, citing *H-D USA, LLC v Berrada*, 2015 FC 189 at para 32 and *Syntex Pharmaceuticals International Ltd v Apotex Inc*, 2001 FCA 137 [*Syntex*] at para 10).

[14] On February 25, 2025, after the parties received the Certified Tribunal Record (“CTR”), counsel for PortsToronto wrote to Heidelberg to set out its position on the merits and stated, “we would be prepared to recommend that our client not seek costs if Heidelberg discontinues this proceeding.”

[15] In this case, the PortsToronto’s offer does not meet the requirements of being clear and unequivocal and if it was accepted, it would not bring the litigation to an end. PortsToronto’s offer was not an offer to settle but an offer to make a recommendation to their client. Regardless of Heidelberg’s response to the letter, it would have still been open to PortsToronto to accept or reject their counsel’s recommendation (*Syntex* at para 10).

[16] That being said, settlement proposals or offers that do not meet the conditions of rule 420 of the *Rules* may be considered under rule 400 in making a costs award (*Pharmascience Inc v Teva Canada Innovation*, 2022 FCA 207 at para 18).

B. *Costs Calculated at Column IV of Tariff B are Appropriate*

[17] Heidelberg asserts that there is no basis to award a lump sum or depart from Column III of Tariff B, which is the default scale in assessing costs. Heidelberg submits that this case was of average complexity, with the parties and the Court assessing the reasonableness of a short decision with a non-extensive CTR, culminating in a hearing of approximately 1.5 hours in duration.

[18] Although I agree with Heidelberg that this case was of average complexity, I find the other rule 400(3) factors justify a cost award calculated at the high end of Column IV.

[19] Most significantly, Heidelberg's conduct in this proceeding favours a higher cost award. Heidelberg unnecessarily expedited this proceeding, and then at the hearing, made a number of fundamental concessions, abandoned many of its arguments raised in its memorandum of fact and law, and brought, without notice, a motion to strike PortsToronto's responding evidence. This conduct required both PortsToronto and the Court, which was given less than a week with the Applicant's materials and a day and a half with the Respondent's materials, to expend unnecessary time and resources to prepare for the hearing and issues that were ultimately uncontested.

[20] With respect to the urgency motion, I agree with PortsToronto that the motion to expedite was unnecessary and unwarranted. As stated in the Judgment, Heidelberg's application was

admittedly “principally about money”, and irreparable harm was not established (Judgment at para 27). However, PortsToronto is not entitled to costs on that motion.

[21] Associate Judge Crinson did not order costs and neither party, in their submissions on that motion, requested costs. The general principle is that a court may not award costs when costs were not requested (*Exeter v Canada (Attorney General)*, 2013 FCA 134 [*Exeter*] at para 12). It is not open to this Court to override Associate Judge Crinson’s decision not to award costs (*Exeter* at para 14).

[22] Notwithstanding the above, given that Heidelberg itself undermined the basis for its success on that motion at the hearing, this conduct supports an increased cost award.

[23] Finally, although PortsToronto’s “offer to settle” did not meet the requirements under rule 420 of the *Rules*, given the outcome of this proceeding and Heidelberg’s unmerited and evolving pursuit of this proceeding in light of the record before it, this factor supports an increased costs award.

VI. Conclusion

[24] PortsToronto is awarded costs in the amount of \$21,723, all inclusive, which comprises fees assessed in accordance with the upper end of Column IV of Tariff B. This amount reflects the costs associated with preparation of materials and submissions for this application, pre-hearing procedures, the attendance of two counsel for a half-day hearing, and assessment of

costs. No disbursements are awarded because the only disbursements claimed relate to the motion to expedite, which PortsToronto is not entitled to costs on.

ORDER in T-268-25

THIS COURT ORDERS that Heidelberg shall pay to PortsToronto costs of \$21,723,
all inclusive.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-268-25

STYLE OF CAUSE: HEIDELBERG MATERIALS CANADA LIMITED v
TORONTO PORT AUTHORITY DOING BUSINESS
AS PORTSTORONTO

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 19, 2025

ORDER AND REASONS: MANSON J.

DATED: APRIL 11, 2025

APPEARANCES:

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