

July 25, 2018

A Short Comment on the Public Interest Costs Exception

By: Shaun Fluker

Case Commented On: *Canadian Centre for Bio-Ethical Reform v Grande Prairie (City)*, [2018 ABCA 254 \(CanLII\)](#)

The normal rule in Canadian litigation is that costs follow the event, and this is reflected in rules 10.29(1) and 14.88(1) of the *Alberta Rules of Court*, [Alta Reg 124/2010](#) which state the successful party is entitled to a partial indemnification of its legal costs. In exceptional cases the successful party may be awarded full indemnification (solicitor-client) or no costs at all. An award of costs lies in the discretion of the judge. The public interest exception to the normal costs rule is available to shield the losing party from a costs award, and I discussed this exception at some length in [The Public Interest Exception to the Normal Costs Rule in Litigation](#). For a good overview on costs in public interest environmental litigation see also [Costs and Access to Justice in Public Interest Environmental Litigation](#). This comment touches briefly on the decision by the Court of Appeal to deny an application for the public interest costs exception in *Canadian Centre for Bio-Ethical Reform v Grande Prairie (City)*, [2018 ABCA 254 \(CanLII\)](#).

The Centre for Bio-Ethical Reform was unsuccessful in its application for judicial review of a decision by the City of Grande Prairie to refuse to post its anti-abortion advertisement on municipal buses. See [here](#) for commentary by Ola Malik on the Court of Queen's Bench decision in 2016. The Court of Appeal recently dismissed the appeal by the *Centre* in *upheld Canadian Centre for Bio-Ethical Reform v Grande Prairie (City)*, [2018 ABCA 154 \(CanLII\)](#). The Centre argues that because of the public importance of the constitutional issues raised in its case (freedom of expression) that no costs should be awarded against it.

The leading Alberta decision for the application of the public interest costs exception is *Pauli v ACE INA Insurance Co*, [2004 ABCA 253](#). Alberta courts have the discretion to shield a party from adverse costs, and the criteria taken into account includes whether the proceedings raise a novel point of law or of significant importance to the public and whether the party seeking relief has a pecuniary interest in the proceedings.

In *Canadian Centre for Bio-Ethical Reform v Grande Prairie (City)* the Court of Appeal declines to grant public interest relief to the Centre. The Court notes that the Centre has a particular message it wishes to convey to the public and has fought to advertise in other public places in Canada (at para 5). The Court also remarks that while the Centre perceives its message is in the public interest, it can also be construed as advancing its own agenda (at para 6). And finally, the Court observes that the Centre has asserted a right to costs in those cases where it has been the successful party (at para 6).

This post may be cited as: Shaun Fluker, “A Short Comment on the Public Interest Costs Exception” (July 25, 2018), online: ABlawg, http://ablawg.ca/wp-content/uploads/2018/07/Blog_SF_CCBER_July2018.pdf

To subscribe to ABlawg by email or RSS feed, please go to <http://ablawg.ca>

Follow us on Twitter [@ABlawg](https://twitter.com/ABlawg)

