Court of King's Bench of Alberta

Citation: Singh v GlaxoSmithKline Inc, 2025 ABKB 378

Date: 20250623
Docket: 1201 12838
Registry: Calgary

Between:

Fiona Singh
and
Muzaffar Hussain, by his litigation representative Fiona Singh

Plaintiffs

- and -

GlaxoSmithKline Inc,
GlaxoSmithKline LLC, and
GlaxoSmithKline PLC

Defendants

Endorsement on costs arising from the Costs Application
of the
Honourable Justice EJ Sidnell

Introduction

[1] On March 7, 2025, I issued a written decision in relation to the legal fees for a class action, which was referred to as the "Costs Application": ***Singh v GlaxoSmithKline Inc***, 2025 ABKB 136 (the ***Costs Decision***). To the extent that I use terms that were defined in the ***Costs Decision*** in this Endorsement, those terms have the meanings given to them in the ***Costs Decision***.

[2] At para 16 of the ***Costs Decision***, I set out the procedural steps for the Costs Application, and the dates of the two hearing days on which the Costs Application was heard, together with related collateral applications.

[3] During the ***Costs Application***, various parties indicated that they would be seeking costs of the ***Costs Application***. I advised that these applications would be heard after the ***Costs Decision*** determined the allocation of legal fees. I provided deadlines for submissions on costs in the ***Costs Decision*** at para 184.

Parties

[4] The Costs Application did not relate to the merits of the class action because the settlement between the class and GSK was approved at the Approval Application. The parties at the Costs Application were:

(a) Casey Churko, who throughout has made all of his submissions under the banner of Napoli Shkolnik Canada (Mr. Churko, and to the extent that he represents Napoli Shkolnik Canada, collectively, the "Churko NSC Group");

(b) Fiona Singh, as she sought an honorarium, and was represented by the Churko NSC Group;

(c) the other parties with an interest in Napoli Shkolnik Canada and Clint Docken, KC (collectively, the "Docken NSC Group"); this group being considered together because they were represented by the same law firm, Ross Nasseri LLP;

(d) Merchant Law; and

(e) Guardian Law.

[5] As noted in the ***Costs Decision***, I found that Mathew Farrell, formerly with both Guardian Law and Napoli Shkolnik Canada, did not have standing.

Summary of the positions of the parties seeking costs

[6] As with the Cost Application, the disagreements between the parties run deep, and this summary of the positions of the parties seeking costs is meant to highlight the main issues and not to recite all of the submissions or to be exhaustive in any way.

Docken NSC Group

[7] The Docken NSC Group seeks costs against Mr. Churko, personally, and KoT Law PC, jointly and severally.

[8] Attached to the submissions of Docken NSC Group is a draft Bill of Costs showing fees claimed as $10,800, with a two times multiplier applied for a total of $21,600, plus tax. The draft Bill of Costs is based on applications on September 24, 2024, November 4, 2024, December 6, 2024 and January 27, 2025. However, the Costs Application was not heard on September 24, 2024. Further, there was no hearing on November 4, 2024, though there was a short scheduling hearing on November 8, 2024, without written submissions, after my office made repeated requests of Mr. Docken to provide his availability.

[9] Under Schedule C of the *Alberta Rules of Court*, AR 124/2010, there are only two hearing dates that could provide a foundation for tariff costs: December 6, 2024 (first ½ day and second ½ day) and January 27, 2025 (additional ½ day). Written submissions were provided in relation to those two dates. These hearing dates could engage the application of Item 8(1) of Schedule C.

[10] Item 8(1) of Schedule C of the *Rules*, relating to an application where a brief is allowed or required, under Column 5, provides a tariff amount of:

(a) $2,700 for the first half day, under Item 8(1)(a); and

(b) $1,350 for each additional ½ day, under Item 8(1)(b); however, additional ½ days are limited to a single ½ day, unless the Court otherwise orders.

[11] There was no request for tariff costs to be considered beyond the limit set out in Item 8(1)(b), in other words beyond the limit of one additional ½ day.

[12] Under Schedule C, Item 8(1), Column 5, costs of the Costs Application could result in costs of $4,050, calculated as $2,700 for the first ½ day hearing on December 6, 2024, and $1,350 for the additional two ½ days of hearing on December 6, 2024 and January 27, 2025, plus tax.

[13] I also received an affidavit of Mario D'Angelo filed in support of the Docken NSC Group submissions. Mr. D'Angelo attached the following to his affidavit:

(a) Exhibit A: a spreadsheet with a total of $150,373.68 for time and costs (without description) of Ross Nasseri LLP, together with disbursements, related to the Costs Application, which stated that charges related to the proceeding in Ontario between Napoli Shkolnik Canada and Mr. Churko had been excluded, which statement was disputed by Mr. Churko; and

(b) Exhibit B: a formal offer issued by Napoli Shkolnik Canada to "Casey R Churko and KoT Law Professional Corporation" after the issuance of the ***Costs Decision***.

[14] The spreadsheet, at Exhibit A of Mr. D'Angelo's Affidavit, does not contain invoices, and, in the re-submitted version, has the description of the legal services provided redacted. The information provided is of no assistance in the consideration of costs. Further, there is no description of the disbursements claimed in the amount of $8,074.05, plus tax; but in any case, I would not consider travel costs for three counsel from Toronto to attend the Costs Application in Calgary to be an appropriate disbursement in this case.

[15] The formal offer, at Exhibit B of Mr. D'Angelo's Affidavit, was not issued in relation to the Costs Application, for which costs are now sought. Rather, the formal offer relates to the costs that I am now being asked to determine. The formal offer was served after the ***Costs Decision*** was published. Since this Endorsement relates to the same matter as the formal offer, its disclosure ahead of my decision on entitlement is premature. Furthermore, even if the formal offer were not premature, any doubling of costs would occur after its service, which post-dated the ***Costs Decision***. Since there were no steps taken, other than the written submissions on costs of the Costs Application, there would be nothing to double. Reliance on a formal offer served in these circumstances does not succeed because it is misconceived and non-effective.

Guardian Law

[16] Guardian Law seeks costs against the "Plaintiff, Fiona Singh (represented by Casey Churko ...), KoT Law PC ..., and Churko himself, jointly and severally".

[17] Guardian Law acknowledges that for a period of time it was counsel for the representative plaintiffs in the class action, Ms. Singh and her son, and on that basis asserted a claim for a portion of the legal fees. Guardian Law was awarded legal fees in the ***Costs Decision*** for its role in representing the representative plaintiffs in the class action lawsuit.

[18] Guardian Law states in its written materials that it seeks costs of:

(a) "$2,700.00 x 2 = $5,400.00 x 1.25 plus GST = $7,087.50", which it states is doubled as a result of a formal offer; and

(b) for a total of $28,350, which is actually four times $7,087.50.

[19] Guardian Law provided a draft Bill of Costs relating to an appeal (which was not before me) and not the Costs Application. Claiming under what it refers to as "No. 20(1)" and "No. 21(1)", which appear to be a reference to Items 20(a) and 21(a) in Schedule C in the *Rules*, but without mentioning the applicable Column, Guardian Law seeks costs of $26,365.50. This amount includes a "*Grimes* factor – 25%", which is a reference to ***Grimes v Governors of the University of Lethbridge***, 2023 ABKB 432.

[20] Guardian Law relies on a formal offer not issued in relation to the Costs Application; but which instead relates to the costs of the Costs Application. This formal offer is misconceived and non-effective, and does not succeed for the same reason that the formal offer issued by the Docken NSC Group does not succeed.

Merchant Law

[21] Merchant Law seeks enhanced or fixed costs over and above the Schedule C tariff costs against Mr. Docken and "those within Napoli Shkolnik Canada ... (excluding Mr. Churko) who retained Ross Nasseri to appear on their behalf". Collectively, this would be what I have referred to as the Docken NSC Group.

[22] Merchant Law also includes in its draft Bill of Costs a reference to appeal items concurrently with Item 8(1) of Schedule C of the *Rules*. Only Item 8(1) of Schedule C is relevant to the Costs Application, and I will not consider the other references. The first amount claimed is $4,050, but that is the amount for the appeal item and not Item 8(1)(a). The second amount claimed is $2,160 for each of the additional half days on December 6, 2024 and January 27, 2025, but that is the amount for the appeal item and not Item 8(1)(b). The draft Bill of Costs indicates a tariff claim of $8,370, plus tax, for a total of $8,788.50.

Churko NSC Group

[23] The Churko NSC Group asserts a claim for the "plaintiffs", against Napoli Shkolnik PLLC, Mr. D'Angelo and Mr. Docken. I understand that the reference to the "plaintiffs" means Ms. Singh and her son who are the representative plaintiffs in the class action. As I noted above, the class action had been resolved before the Costs Application, and the only involvement that Ms. Singh had in the Costs Application was in relation to her application for an honorarium, which consumed very little of the one-and-a-half days of Court time spent on the Costs Application.

[24] It would be misleading to suggest that the representative plaintiffs had any stake in the Costs Application, other than Ms. Singh's honorarium. Based on her Affidavit evidence, Ms. Singh indicated that she preferred working with Mr. Churko, and she was positive about the legal advice he provided. It is possible, but unknown, that Ms. Singh wanted to see Mr. Churko compensated for the work he performed through his professional corporation as opposed to through Napoli Shkolnik Canada (even though Mr. Churko continues to assert that he is a partner of that firm and the only person with authority over it). All that is actually known is that Ms. Singh swore an Affidavit in support of the Proposed Settlement Agreement, which included a settlement on the merits with GSK and legal fees for certain legal counsel.

[25] At the Costs Application, there were numerous submissions about which of the competing legal fee allocations would best protect the class. I found that the invalid Contingency Fee Agreement set the expectations of the class as to legal fees. I determined that the legal fees should be capped at an amount in accordance with the Contingency Fee Agreement, which was more favourable to the class than the Proposed Legal Costs sought by the Churko NSC Group on behalf of the representative plaintiffs. Other than the legal fees eating into the global recovery for the class, the interests of the class were not the focus of the Costs Application. This is also reflected in the written submissions. Further, the ***Costs Decision*** was more generous to the class than any of the lawyers' proposals.

[26] Although the Churko NSC Group asserted throughout that its position was that of the "plaintiffs", in other words, Ms. Singh and her son, the Costs Application was about the significant legal fees that each of the various legal groups wanted to be allocated to themselves. Indeed, Mr. Churko filed an affidavit he swore and which I permitted him to rely on. The contents of that affidavit went well beyond issues relating to the plaintiffs and it exhibited documents directly related to the relationship between the various lawyers. The lawyers' claims took hours of hearing time, and Ms. Singh's request for an honorarium took minutes and was unopposed.

[27] The Churko NSC Group costs claim is for solicitor-client costs, or in the alternative, $5,400 based on Column 5 of Schedule C. The $5,400, is calculated as Item 8(1)(a) for $2,700 for the first ½ day and $1,350 for each of the two following half days on December 6, 2024 and January 27, 2025. The Churko NSC Group also seeks $755.31 in costs relating to Mr. Churko's travel from Toronto to Calgary for the January 27, 2025 hearing. I do not consider the costs of Mr. Churko's travel to attend a hearing in Calgary to be an appropriate disbursement in this case.

Positions of the parties responding to the parties seeking costs

Docken NSC Group

Regarding the costs claimed by Merchant Law

[28] The Docken NSC Group asserts that they were more successful than Merchant Law and take issue with Merchant Law suggesting that they lengthened the Costs Application.

[29] The Docken NSC Group further adds that it will not ever be known what was discussed between Mr. Churko and Mr. Merchant and led to Mr. Churko presenting the Proposed Settlement Agreement without their knowledge and consent. As it relates to this Court, the same is true regarding much of what happened between Mr. Churko and the partners or members of Napoli Shkolnik Canada, as their apparent conflict was not before the Court and is being litigated in Ontario.

Regarding the costs claimed by the Churko NSC Group

[30] The Docken NSC Group submits that Mr. Churko re-wrote the settlement which resulted in the Proposed Settlement Agreement, to the benefit of Mr. Churko and Merchant Law; that he concealed the Proposed Settlement Agreement from his partners; and that he failed to advise his partners about the legal fees that would benefit Mr. Churko and Merchant Law. The Docken NSC Group further alleges that Mr. Churko "submitted a false document to the Court", having signed the Proposed Settlement Agreement on behalf of his co-class counsel, Mr. Docken, who never saw it. Although peripheral to the Costs Application, these allegations were not argued in

the Costs Application, and, as I noted, it was made clear to this Court that the dispute between Napoli Shkolnik Canada and Mr. Churko is being litigated in Ontario.

[31] As set out in the ***Costs Decision***, the Proposed Settlement Agreement was approved as it related to the settlement with GSK, and the issue on the Costs Application was the legal fees and disbursements to which the lawyers claimed they were entitled. The disagreement between the Churko NSC Group and the Docken NSC Group relates primarily to the allocation of legal fees and not the underlying merits of the action. Indeed, more court time was spent by the lawyers making submissions on the legal fees (the Costs Application) than was spent on the settlement of the class action (the Approval Application). The majority of the Costs Application was spent on the allocation among the lawyers and not on the impact of the total costs on the class.

Churko NSC Group and Mr. Churko

Regarding the costs claimed by Guardian Law

[32] The Churko NSC Group and Mr. Churko take issue with Guardian Law's claims for costs on the basis of Guardian Law being struck on June 2, 2024, and having no capacity to make claims. In reply, Guardian Law relies on s 90(3) of the *Partnership Act*, RSA 2000, c P-3, which states that cancellation of the registration of an Alberta LLP only affects a partnership's registration as an LLP and does not dissolve the partnership. This issue was not fully argued before me and was raised for the first time in reply to the costs submissions of Guardian Law.

Regarding the costs claimed by the Docken NSC Group

[33] The Churko NSC Group and Mr. Churko state that the submissions of the Docken NSC Group were not signed by anyone; though both the initial and reply submissions were submitted under Mr. Docken's name.

[34] The Churko NSC Group and Mr. Churko assert that "NSC's Canadian partner, [Mr. Churko] did not authorize NSC to seek costs against anyone". Mr. Churko also relies on Ontario and Alberta legislation as to whether one partner can claim against another. This issue was not argued before me and was raised for the first time in reply to the costs submissions of the Docken NSC Group. Mr. Churko submits that because Mr. Docken abandoned a claim for legal fees to be paid to him, and because Napoli Shkolnik Canada has no capacity to claim costs against him, neither party can claim costs against him personally.

Analysis

[35] On a costs application, Rule 10.31(1) directs the Court to first consider the factors set out in Rule 10.33. Rule 10.33(1) sets out factors that may be considered in making a costs award, and the following are relevant to costs in this case:

> (a) the result of the action and the degree of success of each party;
>
> (b) the amount claimed and the amount recovered;
>
> . . .
>
> (d) the complexity of the action;
>
> . . .
>
> (g) any other matter related to the question of reasonable and proper costs that the Court considers appropriate.

The result of the Costs Application and the degree of success of each party; and the amount claimed and the amount recovered

[36] Throughout the Approval Application and the Costs Application, the Churko NSC Group and the Docken NSC Group have been fractious and contentious. As noted above, the internal dispute engulfing Napoli Shkolnik Canada is being addressed by the Ontario Superior Court of Justice. This dispute was never before this Court and was only ever at the periphery of argument. I make no findings about any of the internal Napoli Shkolnik Canada disputes. Napoli Shkolnik Canada received a third of the legal fees under the ***Costs Decision***. Until the Ontario action is resolved, it is unclear whether that will benefit the Churko NSC Group or the Docken NSC Group, or both of them.

[37] Guardian Law was successful in the ***Costs Decision*** to the extent it was recognized as a member of the Consortium that was confirmed as counsel for the representative plaintiffs in the ***Change of Representation Decision***. However, Guardian Law was not successful in obtaining an increased allocation of legal fees based on *quantum meruit*.

[38] Merchant Law did not fair as well as it had under the Proposed Settlement Agreement, but was still allocated a third of the legal fees in the ***Costs Decision***.

[39] Ms. Singh was not a party seeking an allocation of the legal fees in the Costs Application and only sought an honorarium. She received a smaller honorarium than sought. While the global interests of the class were argued and considered in the ***Costs Decision***, the vast majority of submissions related to the various lawyers seeking an allocation of, or larger allocation of, the legal fees to be paid by the class to their various legal counsel.

Complexity of the Cost Application

[40] The Costs Application was not overly complex as the merits of the class action had been resolved. However, the parties dug deep and raised multifaceted arguments, many of them procedural, that made the Costs Application more contentious and, as a result, took more time to hear. However, even though more contentious, and lengthier because of the actions of the parties, the Costs Application was not legally complex.

Any other matter related to the question of reasonable and proper costs that the Court considers appropriate

[41] There were a number of unnecessary or unsuccessful steps taken by various parties and most of them lengthened or delayed the Costs Application. A small and not exhaustive list includes:

(a) Mr. Docken not providing his availability for a procedural hearing, even though I made several requests;

(b) the Churko NSC Group making an application on the admissibility of the Docken NSC Group affidavit evidence, which was withdrawn;

(c) the Docken NSC Group challenging Mr. Churko's ability to rely on his own affidavit (not that of Ms. Singh) in relation to the Costs Application, which objection was dismissed, when the Docken NSC Group sought to also rely on an affidavit of Mr. Docken, which was permitted, but which affidavit was

challengeable on the same basis that Mr. Churko's affidavit was objected to by the Docken NSC Group;

(d) Mr. Docken requesting, and being permitted to, make his own submissions, even though he was represented by counsel;

(e) the Docken NSC Group seeking to rely on unfiled information from the Claims Administrator, which was objected to by Mr. Churko, but which information was permitted to be relied upon after Mr. Block gave an undertaking to arrange for the Claims Administrator file an affidavit (which required a short adjournment), but which undertaking was not promptly fulfilled; and

(f) the Docken NSC Group challenging Mr. Merchant's capacity to represent Merchant Law, which objection was dismissed, despite Mr. Merchant not providing evidence of his being a member in good standing with the Law Society of Alberta when the issue was raised.

Rule 10.33(2) factors

[42] Under Rule 10.33(2)(a), I may also consider the conduct of a party that was unnecessary or that unnecessarily lengthened or delayed the action or any stage or step of the action. I have addressed some of that conduct in the paragraph above.

[43] Under Rule 10.33(2)(f), I may consider non-compliance with an order. As noted at para 30 of the ***Costs Decision***, I permitted the Docken NSC Group to rely on information from the Claims Administrator on the express undertaking of counsel that it would be filed as an exhibit to an affidavit. However, when I enquired over two weeks after the undertaking had been given, counsel had not satisfied the undertaking. While this non-compliance did not relate to a court order, it related to an undertaking given by counsel that permitted reliance on a document that would otherwise not have been before the Court. It should not be the responsibility of the Court to ensure that such undertakings are complied with.

[44] Under Rule 10.33(2)(h), I may consider any offer of settlement made, regardless of whether or not the offer of settlement complies with Part 4, Division 5 of the *Rules*. At paragraphs [15] and [20], I have explained why the offers of settlement cannot be considered in this decision.

Conclusion

[45] Given all of the above, and noting that a multitude of factors made the Costs Application longer and more contentious, and that there was mixed success on the Costs Application, I find that none of the Docken NSC Group, the Churko NSC Group, Guardian Law or Merchant Law are entitled to any costs. I find that Ms. Singh, as the recipient of a reduced and uncontested honorarium, is not entitled to any costs. In conclusion, I find that it is appropriate for all parties to bear their own costs and disbursements of the Costs Application.

[46] Further, although KoT PC, Mr. Churko's professional corporation, did not receive any portion of the Legal Costs, as set out in the ***Costs Decision***, the internal Napoli Shkolnik Canada dispute is not before this Court. The entitlement of the various parties to the legal fees awarded to the Consortium is to be addressed, and as set out in para 174 of the ***Costs Decision***, those legal fees are to be held in trust pending a further order of this Court. In addition to finding that there is no entitlement to costs, because the internal Napoli Shkolnik Canada dispute is not resolved, I would, in any event, decline to award costs against KoT PC or Mr. Churko in relation to the Costs Application.

Written submissions received the 23rd day of April, 2025 and the 7th day of May, 2025.
Dated at the City of Calgary, Alberta this 23rd day of June, 2025.

E.J. Sidnell
J.C.K.B.A.

Appearances:

Casey R Churko
for Applicant, Ms. Singh as proponent

EF Anthony Merchant, KC
for Respondent, Merchant Law

Eric Block, Eric Brousseau and Viktor Nikolov
for Respondents, Mr. Docken and Napoli Shkolnik Canada

Jonathan Denis, KC
for Respondent, Guardian Law