

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**No.Cv. 00037 of 2006**

**BETWEEN**

**ASHFORD SANKAR**

**Applicant**

**AND**

**PUBLIC SERVICE COMMISSION**

**Defendant**

*Before the Honorable Justice P. Moosai*

**APPEARANCES:**

*Mr. Anand Ramlogan and Mr. Sheldon Ramnanan for the Applicant*

*Mr. Russell Martineau SC and Ms. Karen Fournillier for the Defendant*

**RULING**

1. On April 2, 2007 I delivered a written judgment ordering the Defendant to pay to the Applicant the costs of the application and, after hearing arguments on that date from both sides on the issue of costs, assessed costs in the sum of \$45,000. I now give my reasons for so doing.

2. The Applicant, an Acting Deputy Permanent Secretary, pursued an application under the Freedom of Information Act ("FOI Act") for certain documents from the Public Service Commission ("PSC") which were used to assess his suitability for promotion to the post of Deputy Permanent Secretary. The Applicant requested eight different sets of documents. The Applicant received some of the documents and/or information before trial, and did not pursue request 7 which concerned the score sheets or other documents of all public officers who were assessed or evaluated by the Personnel Psychology Centre of Canada ("PPC") for appointment/promotion to the offices of Permanent Secretary or Deputy Permanent Secretary.

3. At trial therefore, the court only concerned itself with requests numbers 1, 2 and 6. Requests 1 and 2 dealt respectively with: (i) the results of the screening interview/assessment conducted in 1997 by the management consultants acting on behalf of the PSC for the filling of the office of Deputy Permanent Secretary; (ii) the names of all public officers whose names were retained for future reference arising from the said exercise conducted by the management consultants in 1997. Request 6 concerned the minutes of the meetings of the PSC at which the issue(s) of appointment/promotion to the office of Deputy Permanent Secretary were discussed/determined relative to the appointments made in October 2005.

4. In my written judgment I made the following orders:

- (1) With respect to the minutes (request 6), the Defendant do provide to the Applicant within 10 days from the date thereof the criteria applied or the policy adopted in the appoint and/promotion of the Deputy Permanent Secretaries including what impact, if any, the Assessment Centre Exercise had on the selection process.
- (2) With respect to requests 1 and 2, namely, the documents that cannot be found and where searches are continuing for same, that the matter be remitted to the Ombudsman, together with a copy of this judgment, for the Ombudsman to consider the matter according to law.

5. In addressing the issue of costs on April 2, 2007, both counsel made passing reference to the decision of Mr. Justice Stollmeyer in *National Insurance Board v National Insurance Appeals Tribunal* CV2005-00748. Mr. Martineau SC for the Defendant submitted that even if the judge was right in his judgment, \$14,000 should be the maximum sum awarded. In any event the Defendant in the instant case was partially successful so that the Applicant should not be awarded the full sum of \$14,000 as costs.

6. Mr. Ramlogan argued that the FOI Act provides for partial access, so that the Applicant could be regarded as having been successful in the action. On the issue of quantum Mr. Ramlogan highlighted the following factors as being relevant:

1. The novelty of the matter, there being only one written judgment in this area previously.
2. In terms of importance of the case to the client, the Applicant is a senior civil servant and the requested information is crucial as to whether he was treated fairly.
3. There is an obvious public interest beyond the reach of this case, given the reach of the FOI Act and its impact on public administration.
4. The complexity of the matter there being little or no learning from the English jurisdiction, thereby requiring resort to jurisprudence from Australia, Canada, Ireland and New Zealand.

7. On that date I neither sought nor entertained submissions on the mode of assessment of costs (although in hindsight I should have), but applied *National Insurance Board* and assessed costs pursuant to Rule 67.12 in the sum of \$45,000.

8. The Civil Proceedings Rules 1998 ("CPR") at Part 56 deals with applications for an administrative order (which includes applications for judicial review). Rule 56.14 (3) provides that at the hearing of the application the judge may grant any relief that appears to be justified by the facts proved before him. Rule 56.14 (4) provides that the "judge may, however, make such order as to costs as appear to him to be just including a wasted costs order. "The general rule is that the successful party is entitled to costs: Rule 66.6 (1) of CPR. In the instant case, having regard to all the circumstances, including the issues canvassed and the eventual outcome, I thought it just that the costs be paid by the unsuccessful Defendant.

9. Rule 56.14 (5) of CPR then mandates the judge who makes any order as to costs to assess them: "Where the judge makes any order as to costs he must assess them." However the question arises as to the way in which costs are to be quantified. Are they to be quantified in

accordance with the prescribed costs régime (Rule 67.5), or by assessment in accordance with Rule 67.12 (there being no application for budgeted costs)? At this stage it might be helpful to sets out the relevant parts of Rules 66 and 67.

### **"Definition and applications**

- 66.2** (1) In this Part and in Part 67, unless the context otherwise requires –
- “costs” include attorney’s charges and disbursements, fixed costs, prescribed costs, budgeted costs or assessed costs;
  - “fixed costs” has the meaning placed on it by Rule 67.4;
  - prescribed costs” has the meaning placed on it by Rule 67.5;
  - “budgeted costs” has the meaning placed on it by rule 67.8; and
  - “assessed costs” and “assessment” have the meanings placed on them by Rule 67.11 and 67.12.
- (2) The rules in this Part and in Part 67 (so far as applicable) apply also where the costs of –
- (a) arbitration proceedings;
  - (b) proceedings before a tribunal or other statutory body; or
  - (c) an attorney-at-law to his client,
- are to be taxed or assessed by the court.
- (3) Where in any enactment there is a reference to the taxation of any costs this is to be construed as referring to the assessment of such costs in accordance with rule 67.12.

### **Ways in which costs are to be quantified**

- 67.3** Costs of proceedings under these Rules are to be quantified as follows:
- (a) where rule 67.4 applies, in accordance with the provisions of that rule; and
  - (b) in all other cases if, having regard to rule 66.6, the court orders a party to pay all or any part of the costs of another party, in one of the following ways:

- (i) costs determined in accordance with rule 67.5 (prescribed costs”);
- (ii) costs in accordance with a budget approved by the court under rule 67.8 (budgeted costs”); or
- (iii) where neither prescribed nor budgeted costs are applicable, by assessment in accordance with rule 67.11 and 67.12.

### **Prescribed costs**

**67.5(1)** The general rule is that where rule 67.4 does not apply and a party is entitled to the costs of any proceedings those costs must be determined in accordance with Appendices B and C to this Part and paragraphs (2)-(4) of this rule.

### **Assessment of costs – general**

- 67.12 (1)** This rule applies where costs fall to be assessed in relation to any matter or proceedings, or part of a matter or proceedings other than a procedural application.
- (2) Where the assessment relates to part of court proceedings it may be carried out by the judge or master hearing the proceedings, or the judge or master may give directions as to how the assessment is to be carried out.
  - (3) Where the assessment does not fall to be carried out at the hearing of any proceedings then the person entitled to the costs must apply to a master for directions as to how the assessment is to be carried out."

10. Although *the general rule* is that prescribed costs are applicable where fixed costs do not apply, Stollmeyer J. in *National Insurance Board* did not apply same, holding that it was more appropriate in the context of judicial review proceedings to quantify costs by way of assessment pursuant to Rule 67.12, assessment being the stipulated mode of quantification where neither prescribed costs nor budgeted costs are applicable: see Rule 67.3 (b) (iii). At page 3 the judge also opined that the conjoint effect of Rules 56.14 (5) and 67.12 (2) precluded any discretion in a judge, where he makes an order as to costs under Rule 56.14 (5), from having costs assessed by anyone other than himself:

"Although Rule 67.12 (2) has been amended to replace the word "must" with the word "may", so that there is a discretion in the Judge as to whether to carry out the assessment himself or herself, that is in relation only to "... part of court proceedings." There is no similar amendment to Rule 56.14 (5) so that there does not appear to be any discretion in me to have the costs assessed by any other person or court... This assessment is therefore carried out in accordance with the provisions of Rules 67.3 (b) (iii) and 67.12."

11. In carrying out an assessment in accordance with Rule 67.12, Rule 67.2 of CPR prescribes the basis on which costs are to be quantified. The material parts provide:

"**67.2 (1)** Where the court has any discretion as to the amount of costs to be allowed to party, the sum to be allowed is the amount that the court deems to be reasonable were the work to be carried out by an attorney-at-law of reasonable competence and which appears to the court to be fair both to the person paying and the person receiving such costs.

...

- (3) In deciding what would be reasonable the court must take into account all the circumstances, including --
- (a) any orders that have already been made;

- (b) the conduct of the parties before as well as during the proceedings;
- (c) the importance of the matter to the parties;
- (d) the time reasonably spent on the case;
- (e) the degree of responsibility accepted by the attorney-at-law;
- (f) the care, speed and economy with which the case was prepared;
- (g) the novelty, weight and complexity of the case;

....”

12. In exercising its discretion as to the amount of costs to be allowed to a party, the court must seek to give effect to the overriding objective of dealing with cases justly: Rules 1.1 and 1.2 of CPR. In seeking to quantify costs Part 67 incorporates notions of reasonableness and fairness. The test to be applied in determining quantum is the amount that the court deems to be reasonable were the work to be carried out by an attorney-at-law of reasonable competence and which appears to the court to be fair both to the person paying and the person receiving such costs. In determining what would be reasonable the court must take into account all the circumstances including the factors set out at Rule 67.2. It is manifest that the costs awarded must not be disproportionate. I therefore proceed to apply the foregoing principles.

13. It is clear that the FOI Act is a novel piece of legislation designed to extend the right of members of the public to access to information in the possession of public authorities. There being a dearth of authority in our jurisdiction and indeed in the United Kingdom would necessarily have entailed attorneys seeking to assist the court by relying on cases from other Commonwealth jurisdictions. In that regard both attorneys' researches were quite commendable and done timeously and expeditiously. The matter could therefore be regarded as one that was novel and complex. Moreover it involved a public officer in the highest echelons of the public service, and required arguments that centred on whether disclosure of the minutes of an independent commission (PSC) concerning the Applicant's promotional aspects would be contrary to the public interest. The matter therefore would have been of considerable importance to the parties, and would have an obvious public interest beyond the reach of this case given the conferral of a legal right to information under the FOI Act.

14. However in the instant case the factual issues were reduced to a minimum, there being no cross-examination. Moreover on the date that the trial commenced, the court was only concerned with Requests 1, 2 and 6, the PSC having supplied all other documents requested. Requests 1 and 2 dealt with a relatively simple issue, namely, what was the position under the FOI Act where documents could not be found, there being no evidence of bad faith on the part of the Defendant.

15. In all the circumstances I was of the view that the global award of \$45,000 was reasonable. An estimate of the complete time spent on this matter by a reasonably competent attorney-at-law would be approximately 25 hours.

**DATED** this 8th day of October, 2008.

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**PRAKASH MOOSAI**  
**JUDGE**