

**Date: 20081223**

**Docket: T-2206-05**

**Citation: 2008 FC 1406**

**Ottawa, Ontario, December 23, 2008**

**PRESENT: The Honourable Mr. Justice Barnes**

**BETWEEN:**

**STRAUSS ENTERPRISES LTD.  
dba STRAUSS HERB COMPANY**

**Applicant**

**and**

**THE MINISTER OF HEALTH OF CANADA**

**Respondent**

**SUPPLEMENTAL REASONS FOR JUDGMENT AND JUDGMENT**

[1] Having reserved my decision on costs and considering further submissions from the parties, I am unable to identify a basis for departing from the usual approach that costs should follow the outcome of the case.

[2] While there were steps taken by both parties that were undoubtedly unnecessary to the final disposition, judicial hindsight can be an unreliable guide to the assessment of the reasonableness of litigation strategies and conduct. In this case, the steps taken by both parties do not appear to me to

have been frivolous or so devoid of reason that an adjustment in the usual award of costs should be made.

[3] Although it cannot be considered to be a predominant factor, I do agree that there was a public interest aspect to this application.

[4] I also agree that there is benefit to both parties in fixing a lump sum for costs and disbursements. In this case, I would award costs to the Respondent in the amount of \$35,000.00 inclusive of disbursements.

**JUDGMENT**

**THIS COURT ADJUDGES that** costs are payable by the Applicant to the Respondent in the amount of \$35,000.00 inclusive of disbursements.

“ R. L. Barnes ”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2206-05

**STYLE OF CAUSE:** STRAUSS ENTERPRISES LTD. ET AL  
v.  
MINISTER OF HEALTH CANADA

**PLACE OF HEARING:** Vancouver, BC

**DATES OF HEARING:** October 16, 17 and 21, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Barnes, J.

**DATED:** December 23, 2008

**APPEARANCES:**

Shawn P. Buckley FOR THE APPLICANT

Harry J. Wruck, Q.C. FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Buckley & Company FOR THE APPLICANT  
Kamloops, BC

John H. Sims, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada