

Date: 20090505

Docket: A-503-08

Citation: 2009 FCA 140

BETWEEN:

**JARET CARDINAL, RONALD WILLIER, RUSSEL WILLIER
and SUCKER CREEK FIRST NATION #150A**

Applicants

and

GEORGE PRINCE and PAULETTE CAMPIOU

Respondents

ASSESSMENT OF COSTS – REASONS

**Johanne Parent
Assessment Officer**

[1] The respondents filed a revised Bill of Costs on March 19, 2009 along with an affidavit of disbursements and their written submissions. The original Bill of Costs was filed January 7, 2009 further to the filing of a notice of discontinuance by the appellants on November 1, 2008. A timetable for the written disposition of the assessment of the respondents' Bill of Costs was issued on February 25, 2009. Counsel for both parties filed and served their written submissions within the prescribed timeframe.

[2] As noted by the appellants' counsel, Rule 165 of the *Federal Courts Rules* allows a party to discontinue all or part of a proceeding. According to the cited jurisprudence, a party need not give any explanation to the Court or the other party in doing so (*Mayne Pharma (Cda) Inc. v. Pfizer Canada Inc.* 2007 FCA 1). The costs of a discontinuance are governed by Rule 402 of the *Federal Courts Rules*: "Unless otherwise ordered by the Court or agreed by the parties, a party against whom an action, application or appeal has been discontinued or against whom a motion has been abandoned is entitled to costs forthwith, which may be assessed and the payment of which may be enforced as if judgment for the amount of the costs had been given in favour of that party".

[3] The appellants unilaterally discontinued their notice of appeal from a decision of Madam Justice Hansen. In the absence of a Court decision ordering otherwise or an agreement by the parties, Rule 402 allows the respondents to claim their costs and have them assessed.

[4] The respondents claimed three units under Item 21(a) for the preparation of their representations on the motion to stay Madam Justice Hansen's decision. On October 31, 2008, the said motion was dismissed with costs by the Court. Considering the criteria specified in Rule 400(3), I allow the number of units as claimed. The six units claimed under Item 26 (assessment of costs) are reduced to three. I do not consider this assessment complex and it does not appear to have required a substantial amount of work. With regard to the disbursements claimed, they are supported by affidavit and all charges are deemed necessary to the conduct of this matter. The amounts claimed are reasonable and are, therefore, allowed.

[5] The respondents' bill of costs is allowed for a total amount of \$835.10.

“Johanne Parent”
Assessment Officer

Toronto, Ontario
May 5, 2009

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-503-08

STYLE OF CAUSE: *JARET CARDINAL, RONALD WILLIER, RUSSEL WILLIER and
SUCKER CREEK FIRST NATION #150A v. GEORGE PRINCE and
PAULETTE CAMPIOU*

**ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF
THE PARTIES**

PLACE OF ASSESSMENT: TORONTO, ONTARIO

REASONS FOR ASSESSMENT OF COSTS: JOHANNE PARENT

DATED: MAY 5, 2009

WRITTEN REPRESENTATIONS:

Priscilla Kennedy FOR THE APPELLANTS

Thomas R. Owen FOR THE RESPONDENTS

SOLICITORS OF RECORD:

DAVIS, LLP
Edmonton, Alberta FOR THE APPELLANTS

OWEN LAW
Edmonton, Alberta FOR THE RESPONDENTS