Date: 2013 05 31
Docket: S-1-CV-2012000018

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

UNION OF NORTHERN WORKERS

Applicant

- and -

KATHRYN CARRIERE, MICHELE LETOURNEAU
and ANNEMIEKE MULDERS

Respondents

MEMORANDUM OF JUDGMENT AS TO COSTS

A) INTRODUCTION AND OVERVIEW

[1] This Memorandum of Judgment deals with the issue of costs arising from the appeal disposed of on January 29, 2013 in *Union of Northern Workers* v. *Carriere*, 2013 NWTSC 5 (*UNW* v. *Carriere*). The parties have filed written submissions and also had an opportunity to present oral submissions at a hearing held March 22, 2013.

[2] The appeal was from three decisions made by the Rental Officer pursuant to the *Residential Tenancies Act*, R.S.N.W.T. 1988, c.8 (the *Act*). The circumstances that led to the hearings before the Rental Officer, his decisions, and the history of the appeal proceedings in this Court are set out in *UNW* v. *Carriere* and I will not go over all those details again here. For the purposes of this decision, I will simply refer to the aspects that are necessary to put the parties' costs submissions in context.

[3] The complaints to the Rental Officer were based on changes to the tenants' access to the back of the building, which is where the entrance leading to the rental

units are located. The Respondents complained that their ability to access to this area from the main street had been taken away, forcing them to use a laneway at the back of the building. They argued that this was unsafe, given some of the people who frequent the back alley and the activities that take place in that area.

[4] In all three cases, the Rental Officer ordered that the UNW restore the tenants' access to the building from the main street, through a walkway located on the west side of the building. As there was a fence blocking off the walkway, this meant either removing the fence or installing an opening gate on it.

[5] In Ms. Mulders' and Ms. LeTourneau's matters, the Rental Officer ordered, as an alternative, that the UNW give them access to the building through the building's entrance on the main street. This would necessarily mean access through the UNW's office space.

[6] In Ms. Mulders' matter, the Rental Officer also ordered that the UNW pay her $100.00 in compensation.

[7] The UNW filed appeals of each of these decisions. The appeals were eventually consolidated and scheduled to be heard together on November 5, 6 and 7, 2012.

[8] On October 23, 2012, the UNW filed an Application seeking a declaration that it would be permitted to pursue its appeal of the decision granting access through its office space even if it discontinued its appeal of the order that the walkway access be restored. The UNW was concerned that if it discontinued its appeal regarding the walkway access, the issue of access through its offices would be considered moot.

[9] On October 26, this Court granted the declaration that the UNW was seeking. On October 30, the UNW filed a Notice of Discontinuance for the portion of the appeals related to restoration of the walkway access. The appeal proceeded on November 5 on the remaining issues.

[10] The appeal was allowed in part. This Court concluded that the Rental Officer did not have jurisdiction to order the UNW to provide the tenants access through its office space. That aspect of his decision in each of Ms. Mulders' and Ms. LeTourneau's cases was quashed. The UNW's appeal of the compensation order in favour of Ms. Mulders was dismissed.

[11] All three Respondents now seek costs against the UNW, but their claims engage different legal principles. This is because Ms. Carriere, in June 2012, retained counsel to assist her with the appeal, while Ms. LeTourneau and Ms. Mulders represented themselves throughout.

[12] A useful starting point for the analysis of the issues that arise in this matter is an overview of the principles that govern costs awards generally.

B) ANALYSIS

1. General principles

[13] Part 50 of the *Rules of the Supreme Court of the Northwest Territories* (the *Rules*) provides the framework and parameters that govern entitlement to costs arising from legal proceedings. Awarding costs is a highly discretionary exercise. That discretion must be exercised judicially and in a manner that is consistent with the principles that underlie the *Rules*.

[14] Generally, a successful party is entitled to costs calculated in accordance with Schedule A of the *Rules* (the Tariff). These types of costs, commonly referred to as "party and party" costs, are intended to provide the successful party with partial financial indemnification for the legal costs it has incurred as a result of the litigation.

[15] Costs can also be awarded on a solicitor-client basis. Solicitor-client costs, unlike party and party costs, are intended to provide full financial indemnity for the legal costs that a party incurred in the litigation. This is an exceptional measure, usually reserved for situations where one of the parties has displayed reprehensible conduct that the court considers deserving of sanction. *Young* v. *Young* [1993] 4 S.C.R. 3; *5142 NWT Ltd*. v. *Town of Hay River et al.*, 2008 NWTSC 31, at paras 6 and 7; *Paul's Aircraft Service* v. *Kenn Borek Air* Ltd. 2012 NWTSC 85, at para.7.

[16] The *Rules* provide that certain specific situations give rise to an entitlement to solicitor-client costs. For example, the rejection of a settlement offer can have this effect under certain circumstances (Rule 201).

[17] Finally, there are situations where costs may be awarded on an enhanced basis, in an amount that exceeds the Tariff, but does not amount to full indemnification on a solicitor-client basis. A number of factors can lead to this type of order, such as the complexity of the matter, the inadequacy of the tariffs, or whether the issues raised had important implications for the parties or the

community at large. *WCB* v. *Mercer*; *Mercer* v. *WCB*, 2012 NWTSC 78, at para. 11; *5142 NWT LTD et al* v. *Town of Hay River et al*, 2008 NWTSC 31, at para.6.

2. Ms. Carriere's claim for costs

[18] The only issue in Ms. Carriere's case was the one that was the subject of the discontinuance filed on October 30, 2012. The UNW acknowledges that this makes her the successful party and entitles her to party and party costs. The UNW argues that there is no basis for granting her any costs beyond that.

[19] Ms. Carriere's position is that she is entitled to costs in excess of the Tariff. She says there are two reasons for that: the first is an offer to settle that she made to the UNW; the second is the UNW's overall conduct of this case, and more particularly, what she calls a "pattern of delays" on the UNW's part.

a. Offer to settle

[20] On October 17, 2012, Ms. Carriere sent a settlement offer to the UNW. This offer proposed that the UNW withdraw its appeal and pay her costs. The UNW did not accept that offer. On October 18, it served its pre-hearing brief on Ms. Carriere. On October 23, the UNW filed the Application referred to above at Paragraph 8.

[21] Ms. Carriere says that she is entitled to solicitor-client costs from October 17 pursuant to Rules 193 and 201:

> **193.** A party to an action or a proceeding may serve on any other party an offer to settle any one or more of the claims between them in the action or proceeding.
>
> (…)
>
> **201.** (1) A plaintiff who makes an offer to settle at least 14 days before the commencement of the hearing is entitled to party and party costs to the day on which the offer to settle was served and solicitor and client costs from that day where
>
> (a) the offer to settle is not withdrawn and is not accepted by the defendant; and
>
> (b) the plaintiff obtains a judgment on terms as favourable as or more favourable than the offer to settle.

> (2) Where a defendant makes an offer to settle at least 14 days before the commencement of the hearing, the plaintiff is entitled to party and party costs to the day on which the offer was served and the defendant is entitled to solicitor and client costs from that day if
>
> (a) the offer to settle is not withdrawn and is not accepted by the plaintiff; and
>
> (b) the plaintiff obtains a judgment on terms as favourable as or less favourable than the terms of the offer to settle.

[22] For Rule 201 to be engaged, there must be a "judgment" to which the settlement offer can be compared. Ms. Carriere acknowledges that because the appeal was discontinued, no judgment was ever rendered on the appeal. But she argues that the effects of the Rule should nonetheless be engaged, by analogy, because for her, the net result is exactly the same as if the appeal had been dismissed by a judgment following arguments on the merits. Ms. Carriere submits that the UNW discontinued its appeal because it recognized that it had no chance of success, having regard to the standard of review. She argues that under the circumstances, it would be unfair for the discontinuance to enable the UNW to escape the consequences of Rule 201.

[23] I understand the argument but there are a number of difficulties with it. The fact is that the appeal was not argued. To engage in an analysis of the relative merits of the case now, without giving the parties an opportunity to make submissions on it, would be unfair. On the other hand, to invite submissions on the issue would turn the costs hearing into a hearing into the merits of the appeal, which is undesirable for obvious reasons. Besides, it had been contemplated that *viva voce* evidence would be adduced on the appeal. Since this did not in fact occur, weighing the relative merits of the appeal is even more problematic; it would invite speculation as to what the *viva voce* evidence might have been and how it might have influenced the outcome.

[24] Under those circumstances, I do not think it is appropriate or desirable to engage in an analysis of the merits of the appeal and allow this factor to impact the parties' entitlement to costs. Instead, costs must be assessed on the basis of what actually happened.

[25] Ms. Carriere invites the Court to consider that the declaration granted to the UNW on the issue of mootness can serve as the "judgment" for the purposes of the application of Rule 201. Again, I cannot agree with that submission. This Court's declaration on the issue of mootness paved the way for the UNW to file the

discontinuance, but it was not a judgment in Ms. Carriere's favor. It dealt with an issue that was completely distinct from the issue that was the subject matter of the settlement offer that she made to the UNW.

[26] An order for solicitor-client costs is an exceptional measure. That being the case, rules that trigger that consequence must be interpreted strictly. I conclude that Rule 201 is not applicable in the circumstances of this case.

b. Enhanced costs based on UNW's conduct of the case

[27] Ms. Carriere's alternative submission is that she should be granted costs on an enhanced basis because the UNW's conduct of this case was characterized by a pattern of delays. She argues that this conduct should be sanctioned by this Court because the delays had a direct impact on the costs that she ultimately incurred. To that extent Ms. Carriere's position is in line with submissions made by the other two Respondents, who also call into question the UNW's motives on this matter and allege that it engaged in reprehensible conduct.

[28] I am unable to conclude that the record of these proceedings establishes that the UNW engaged in deliberate dilatory tactics in these matters. It is clear from the submissions made at various points during this case that the Respondents believe that the UNW has operated in bad faith, and among other things, delayed matters in the hopes that the Respondents would eventually give up. Many of the allegations are not supported by the evidentiary record. For that reason I cannot take them into account in assessing costs. The Respondents may be sincerely convinced of what they allege, but that is not the same as having established it through admissible evidence.

[29] This much is clear: the *Act* contemplates processes for a speedy and informal resolution of disputes that arise between landlords and tenants, and irrespective of the allegations that these parties have made about each other's good faith and truthfulness, this is not a case where it can be said that "speedy and informal resolution" of the conflict was achieved. Instead, there were multiple court appearances, prolonged proceedings, considerable acrimony, and what can only be described as a complete disintegration of any relationship of trust between these parties. That is most unfortunate. But assigning blame for that is well beyond the scope of what this Court can or should attempt to do in assessing entitlement to costs. The conduct of the parties is relevant to costs to an extent, of course, but at the same time, there are good reasons not to turn a costs hearing into a commission of inquiry into the parties' true motives and every aspect of how a dispute

escalated. And it is not for this Court to speculate about parties' motives, or about anything else that is not in evidence.

[30] All that being said, the fact is that these proceedings went on for some time. The appeals were pending for several months. Ms. Carriere's matter was the one that was delayed the longest because hers was the first matter that proceeded before the Rental Officer. But a number of factors contributed to the delays. One of those, and a significant one, was the consolidation of the three cases. Consolidation made sense under the circumstances, but arranging hearing dates taking into account the schedules of four parties was inevitably more difficult than if only two were involved.

[31] Another factor was that the hearing was expected to require 3 full days of Court time, because of the number of parties, the number of issues, and the fact that several parties indicated they would call *viva voce* evidence. This too had an impact in attempting to identify a date for the hearing, given the Court's limited resources and the fact that it has to respond to demands for court time in all family, civil and criminal matters that arise across the Northwest Territories.

[32] All these factors contributed to the hearing being scheduled several months after the Rental Officer's decisions were rendered. But on the whole, the record does not support the general allegation that all delays were due to the UNW's conduct of the case.

[33] At the same time, and to be clear, I do not think that the Respondents were responsible for the delay either. In particular, I am not satisfied that their opposition to the UNW`s stay applications resulted in any further delay on this matter, or should be held against them. There were a number of court appearances dealing with the UNW's request to stay the Rental Officer's orders. This Court initially granted short term stays, adjourning the matter several times to monitor the progress of the installation of the locking gate to restore access to the west walkway. The Respondents had been told for some time that the UNW would comply with the Rental Officer's orders notwithstanding the appeal, and they were concerned about whether this would actually happen. Given the history of the proceedings and the state of the relationship between the parties at that point, their concern was understandable. In any event, there is no indication that the appeal could have been heard any sooner if the stay applications had not been opposed.

[34] For those reasons, I conclude that the delay between the Rental Officer's decisions and the date on which the appeal was finally heard to be a neutral factor in the determination of costs.

[35] I find, however, that there are certain aspects of the UNW's conduct of this case that do raise concerns and are relevant to Ms. Carriere's claim for enhanced costs.

[36] The first is that the UNW did not apply for a stay of the decision that the Rental Officer made in her favour, and it also did not comply with it initially. The UNW simply filed an appeal. There may well have been confusion as to whether the appeal automatically stayed the Rental Officer's Order. But whatever the reason was, and even absent any bad faith, the net result was that Ms. Carriere had an enforceable order that was neither stayed nor complied with, until much later. This, in turn, had a snowball effect. The failure of the UNW to comply with the Order was what prompted the two other Respondents to file complaints of their own with the Rental Officer. From there, the matter mushroomed and became increasingly complicated.

[37] The second area of concern, and it is the area of the greatest concern in my view, is the timing of the UNW's decision not to pursue its appeal regarding the order to restore access through the west walkway. That concern is relevant for all three appeals, and significant for Ms. Carriere for two reasons: first, the aspects of the appeals that remained live issues after the discontinuance had nothing to do with her and were never part of her case; second, the timing of the UNW's decision significantly increased her legal costs.

[38] As I have already alluded to, there were various court appearances dealing with the UNW's request to stay the Rental Officer's Orders during the summer of 2012. While various allegations were made at those appearances about the UNW's motives and intentions about installing a locking gate, and the causes for the delay, the gate was ultimately installed. And as I have already stated, in the end, there was no evidence contradicting the UNW's assertion that the delays in the installation were due to causes beyond its control.

[39] What matters, though, is that for several months, the UNW said it intended to comply with the Rental Officer's order on this issue on a "without prejudice" basis only, and that it fully intended on proceeding with its appeals. On that basis, a hearing date was set, deadlines were set for the filing of briefs, and considerable time and effort went into preparing for the hearing.

[40] It was not until October 23, *after* having filed and served its brief in preparation for the appeal, that the UNW switched gears altogether and took steps to obtain a declaration from the Court dealing with the issue of mootness. It is understandable that the UNW did not file discontinuances without first taking steps to protect its ability to pursue those aspects of its appeals that it wanted to pursue. But it is not understandable that those steps were taken so close to the hearing date. During the costs hearing, I raised the issue but the UNW did not provide an explanation for why this happened when it did, and not earlier on in the proceedings.

[41] It is abundantly clear from the record that the restoration of access through the walkway was at the heart of the controversy between the parties. It was what the three Respondents cared about. They were concerned about access to the building, not the legalese related to the Rental Officer's jurisdiction. That was obvious to the Court and should have been obvious to the UNW.

[42] Of course, any party affected by a decision has the right to appeal it, and to later exercise its option not to pursue the appeal. But a party acting in this fashion exposes itself to costs consequences beyond those set out in the Tariff. The situation is analogous to that of a party who initiates an action and later chooses to discontinue it. *Yellowknife (City)* v. *Foliot*, 2002 NWTC 1.

[43] I am not overlooking the fact that the discontinuance, ultimately, saved court time and made for a much more streamlined appeal. It also meant that for Ms. Carriere, the matter was over. But that does not change the fact that had this decision been made sooner, Ms. Carriere might not have had to retain counsel at all. Or, at the very least, she could have ended that retainer before having incurred the costs associated with the preparation of the appeal.

[44] Under those circumstances, I am satisfied that it is appropriate for Ms. Carriere to be compensated in an amount that exceeds the Tariff. I am also satisfied that the best way to deal with this matter is to make a lump sum award inclusive of costs and disbursements.

[45] In setting that amount I have taken into account what she would be entitled to in any event under Column 3 of the Tariff for party and party costs. I have also taken into account the information that she has provided about the legal costs and disbursements that she has incurred after October 17, as well as the fact that additional costs were incurred by her for the costs hearing itself.

[46] Taking all of that information into account, I conclude that Ms. Carriere is entitled to a lump sum of $7,000.00 for her costs and disbursements on this matter.

3. Costs for Ms. Mulders and Ms. LeTourneau

[47] The UNW's position is that Ms. Mulders and Ms. LeTourneau are not entitled to any costs because success was divided on their matters. It also argues that in any event, self-represented litigants are not entitled to costs.

a. Divided success

[48] As a result of the discontinuance, Ms. Mulders and Ms. LeTourneau were successful on the part of the appeal that related to the order for the restoration of access to the west walkway. Ms. Mulders was also successful in having the compensation order made in her favour upheld. On the other hand the UNW was successful in having the alternate relief granted by the Rental Officer quashed. The UNW argues that because success was divided, Ms. Mulders and Ms. LeTourneau are not entitled to costs.

[49] It is true that often, where success is divided, there is no order as to costs. But to characterize this as a "divided success" situation, in my view, does not accurately reflect the realities of this case and the parties' positions on the various aspects of the appeal.

[50] The record of the proceedings amply demonstrates that the key objective, for Ms. Mulders and Ms. LeTourneau, was to have this Court uphold the Rental Officer's Order that access be restored to the west walkway to put an end to the requirement that they use the laneway at the back of the building. They filed their complaints to the Rental Officer because the UNW was not complying with the order to that effect that had been granted to Ms. Carriere. The issue of access through the UNW's offices, which led to the Rental Officer's jurisdictional error, came up during the hearing, in response to the UNW's opposition to restoring access through the west walkway.

[51] The reality is that Ms. LeTourneau and Ms. Mulders were successful on the issue in this appeal that they were engaged in, cared about, and invested time and energy in. Once that issue was no longer part of the appeal, they did not participate further. When the appeal was heard they made no submissions to attempt to defend the Rental Officer's decision granting them access to the building through the UNW's office. And throughout the proceedings, the concerns

they expressed were consistently focused on access through the walkway and on the installation of the locking gate.

[52] Under the circumstances, I think it would be somewhat artificial to treat this case as one where success was divided. For that reason I do not consider that the UNW's success on the jurisdictional issue is a reason to necessarily conclude that Ms. LeTourneau and Ms. Mulders are not entitled to costs.

b. Costs for unrepresented litigants

[53] The UNW argues that self-represented litigants are not entitled to costs. While this may have been the approach that prevailed historically, the law in this area has evolved considerably. This was recognized by this Court a decade ago:

> There is now a significant body of authority recognizing that self-represented lay litigants are entitled to recover costs: *Fong* v. *Chan* (1999), 181 D.L.R. (4th) 614 (Ont.C.A.); *Skidmore* v. *Blackmore* (1995), 122 D.L.R. (4th) 330 (B.C.C.A.); *McBeth* v. *Dalhousie University* (1986), 10 C.P.C. (2d) 69 (N.S.C.A.). Indeed, respondent's counsel did not raise any question about this.
>
> *Clark* v. *Taylor*, 2003 NWTSC 50, at para.6.

[54] The Alberta Court of Appeal had occasion to examine this issue in some depth in *Dechant* v. *Law Society of Alberta* 2001 ABCA 81, leave to appeal dismissed [2001] S.C.C.A. No. 20. That case provides useful guidance in dealing with such matters.

[55] The Court noted that although the traditional approach and foundation for costs orders was indemnification to a party for the costs of retaining counsel, the approach to costs orders in many jurisdictions has become more flexible. The Court accepted that there are other rationale for costs orders, apart from strict indemnification:

> … indemnity is not the only rationale for a costs order. An ability to award costs serves many objectives. Costs provide partial indemnity for legal fees incurred, encourage settlement, and discourage frivolous actions as well as improper and unnecessary steps in litigation (...)
>
> *Dechant* v. *Law Society of Alberta*, *supra*, at para. 8.

[56] At the same time, the Court recognized the policy concerns and potential risks in granting costs to self-represented litigants. One of those risks is that the

expectation of costs may encourage litigation and discourage settlement if a self-represented litigant comes to anticipate a windfall arising from an eventual costs order. The Court also noted that all litigants, whether represented or not, spend time and energy on their case. Compensating the self-represented litigant who has not had to pay for a lawyer in the same way as a litigant who has spent money on a lawyer can result in inequity for the represented litigant. *Dechant* v. *Law Society of Alberta*, *supra*, at paras 15-16.

[57] The Court of Appeal concluded that the preferable approach is to view the matter of costs for a self-represented litigant as discretionary. In other words, there is no automatic entitlement. And if costs are awarded, they are not awarded in accordance with the tariffs that are used to compensate litigants who have retained lawyers. The Court must assess the circumstances in each case and determine what is fair and appropriate. *Dechant* v. *Law Society of Alberta*, *supra*, at para. 18. This is how this Court has approached the issue of costs for self-represented litigants. *Clark* v. *Taylor, supra*; *Hegeman v. Carter,* 2008 NWTSC 04.

[58] In my view, there is no hard and fast rule that self-represented litigants are not entitled to costs. Each case must be examined on its own facts. That said, there is good reason to approach the issue with caution. In that regard I adopt the following comments from *Dechant*:

> That balancing of equities involved in crafting a just costs award is a delicate exercise. When determining an appropriate costs award for a successful unrepresented litigant, courts should consider many factors, including the lost opportunities of the litigant as a result of self-representation. For the sake of expediency, proof of the exact value of that lost opportunity is not required (or we would be into trials about costs). Nonetheless, whether a person has lost time from work to represent themselves is a relevant factor to consider. If an unrepresented litigant was not otherwise employed, the fee portion of costs attributable to lost opportunity may not exist or, at a minimum, would be significantly less than a person who has suffered a loss of income due to employment absences.
>
> …
>
> When awarding costs above disbursements for the unrepresented litigant, the court must look at the particular facts of each case. Was the matter complicated? Was the work performed of good quality? Did the self-representation result in unnecessary delays? Did the litigant take up an unreasonable amount of time of opposing parties or the courts? Did the litigant lose time from work? In general terms, what is the lost opportunity of the unrepresented litigants? What would they have earned if not required to prepare their own case? Did the other side

> take advantage of the fact that they were facing unrepresented litigants by taking frivolous and unnecessary steps to thwart that litigant? Did the other side refuse to entertain reasonable requests to discuss settlement? What is an appropriate amount for the issues involved?
>
> *Dechant* v. *Law Society of Alberta*, *supra*, at paras 19 and 21.

[59] It is important to note, as well, that costs are not intended to compensate litigants for all of the inconvenience and stresses caused by the litigation. The scope of costs remains relatively narrow, and is not akin to compensatory or punitive damages. For this reason, many aspects of Ms. Mulders' and Ms. LeTourneau's submissions outlining the personal impacts that this litigation has had on them are not matters that can be taken into account in assessing their entitlement to costs.

[60] I now turn to the considerations referred to in *Dechant*, quoted above at Paragraph 58. As I already mentioned, I do not consider that either of these Respondents is responsible for delaying matters or having used a disproportionate amount of the Court's time. Their opposition to the stay applications did result in several additional Court appearances, but I am not convinced that this should be held against them. They were entitled to oppose the stay applications sought by the UNW. They were concerned about compliance and were entitled to express their views and concerns about the UNW's delay in complying with the Rental Officer's orders. By that point, there was no trust left between these parties. Placed in the broader context of these proceedings, the Respondent's opposition to the stay applications was a position they were entitled to advance, even if in the end that position did not prevail.

[61] I also do not consider that the Respondents unnecessarily took up court time at any other points of the proceedings. Once the matter that they cared about was no longer a part of the appeal, they did not take up *any* Court time to make submissions. And while they both filed written submissions as to costs, they used up very little time making submissions on that issue.

[62] The UNW has submitted that the Respondents acted improperly during these proceedings because they questioned the UNW's motive and veracity. I agree with the proposition that litigants, whether they are represented by counsel or not, should not be permitted to use the court as a forum to engage in grandstanding of a political nature. But having carefully reviewed the transcripts of the various appearances on this matter, as well as the written submissions, I am not persuaded that this is what these Respondents did. Some submissions went beyond what is

appropriate for oral written submissions and included allegations of a factual nature. But that is not the same as to say that the Respondents were acting in bad faith when they made those comments.

[63] Evidently, and to this day, the Respondents and the UNW have very different perspectives about what this case, fundamentally, was about. The Respondents considered that it was primarily about their personal safety, and that this issue was not taken seriously by the UNW. The UNW views matters differently. It may well be that ultimately, all involved will forever remain convinced that they are right and the other is wrong. But in the final analysis, the fact remains that the Rental Officer agreed with the Respondents' points of view, ordered that access from the main street be restored, and those conclusions, in the end, were not challenged in this Court.

[64] In my view, both Ms. Mulders and Ms. Letourneau are entitled to some compensation for the time they have spent on this case, attending Court appearances, reviewing the voluminous materials filed by the UNW - much of which related to the issue that was not ultimately argued - and preparing for an appeal which, in the end, was discontinued at the eleventh hour.

[65] As noted in *Dechant*, however, there has to be proportionality between costs awarded to self-represented litigants and those awarded to represented litigants. Like Ms. Mulders and Ms. LeTourneau, Ms. Carriere invested time and energy in her case. But in addition, she invested money to retain counsel. Fairness dictates that this significant difference be reflected in the costs orders.

[66] It is problematic to calculate all the time spent on a self-represented litigant on his or her case and to set the amount of compensation on the basis of that litigant's hourly or daily rate of pay. For example, based on the information provided by Ms. LeTourneau in her written submissions, she would, based on her rate of pay, be entitled to almost $6,000.00 in costs, which is very close to what I have decided Ms. Carriere, who incurred the expenses of retaining counsel, is entitled to.

[67] I have, however, considered the number of appearances that took place in this Court that these litigants had to attend. I have considered the information provided about the time they had to spend preparing for those appearances. I have considered the time they had to take off work. I have considered the volume of the materials filed and that they had to review, analyze, and respond to in order to prepare for the appeal. I have also considered the information Ms. LeTourneau

provided about her daily rate of pay. Ms. Mulders has not provided this specific information, but the information on the Court's file suggests that she too was employed full time during the relevant time frame. As noted in *Dechant*, proof of the exact value of the loss of opportunity is not required in these matters. And loss of opportunity is only one of the factors to be considered.

[68] On the whole, I see no reason to draw a distinction between Ms. LeTourneau and Ms. Mulders as far as their entitlement to costs. They have both spent considerable time, and a comparable amount of time, on this case. Taking into account what I have decided about Ms. Carriere's costs entitlement, as well as the factors referred to above, and the information provided by Ms. Mulders and Ms. LeTourneau, I conclude that they are each entitled to costs in a lump sum of $2,000.00, inclusive of costs and disbursements.

[69] Accordingly, I order that the UNW pay costs to the Respondents, as follows:

A) $7,000.00 to Ms. Carriere;

B) $2,000.00 to Ms. LeTourneau; and

C) $2,000.00 to Ms. Mulders.

L.A. Charbonneau
J.S.C.

Dated at Yellowknife, NT, this
31st day of May, 2013

Counsel for the Applicant: Austin Marshall
Counsel for Respondent Kathryn Carriere: Amy Groothuis
Respondent Michele Letourneau represented herself
Respondent Annemieke Mulders represented herself

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