Federal Court  Cour fédérale

Date: 20210520

Docket: T-69-20

Citation: 2021 FC 470

BETWEEN:

GEORGE FRANK QUINN, FLOYD WILLIAM QUINN, FRANCES DOREEN WABASCA, VIOLET ANDRES AND THE PASS-PASS-CHASE (PAHPAHSTAYO) FIRST NATION ASSOCIATION OF ALBERTA BAND 136

Plaintiffs

and

HER MAJESTY THE QUEEN AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA, CALVIN DUDLEY BRUNEAU, JOYCE BRUNEAU (ALSO KNOWN AS LENA DESJARLAIS), EZRA BERGSMA, SHEILA DESJARLAIS, LYLE DONALD, CYNTHIA PAUL, DALE WHITE, GREGORY PAUL, RON MAURICE AND WILL WILLIER

Defendants

REASONS FOR ASSESSMENT

GARNET MORGAN, Assessment Officer

I. Background

[1] This assessment of costs is further to the Plaintiffs filing a Notice of Discontinuance on October 7, 2020, which "wholly discontinued" the Plaintiffs' action against the following Defendants: Calvin Dudley Bruneau, Joyce Bruneau (also know as Lena Desjarlais), Ezra Bergsma, Sheila Desjarlais, Lyle Donald, Cynthia Paul, Dale White, Ron Maurice and Will Willier. In these Reasons for Assessment the aforementioned Defendants will be referred to as the "Non-Crown Defendants".

[2] Subsequent to the filing of the Plaintiffs' Notice of Discontinuance, the Non-Crown Defendants filed a Bill of Costs on October 26, 2020.

[3] Rules 402 and 412 of the *Federal Courts Rules*, SOR/98-106 *(FCR)*, are the rules governing costs for discontinuances and state the following:

> 402. Costs of discontinuance or abandonment - 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.
>
> […]
>
> 412. Costs of discontinued proceeding - The costs of a proceeding that is discontinued may be assessed on the filing of the notice of discontinuance.

[4] In addition, Rule 407 of the *FCR* states the following regarding the level of costs for assessments of costs:

> 407. Assessment according to Tariff B - Unless the Court orders otherwise, party-and-party costs shall be assessed in accordance with column III of the table to Tariff B.

[5] Further to Rules 402, 407 and 412, in the absence of a Court decision specifying any particulars regarding how the Non-Crown Defendants' costs should be assessed; the costs will be assessed in accordance with Rule 407, which will be at column III of the table to Tariff B.

[6] Directions related to the conduct and filing of documents for the assessment of costs were issued to the parties on November 9, 2020, December 31, 2020 and January 12, 2021. Further to these directions, the following documents were filed by the parties for the assessment of costs:

a) On October 26, 2020, the Non-Crown Defendants filed a Bill of Costs;
b) On December 21, 2020, the Non-Crown Defendants filed an Affidavit of Calvin Bruneau, sworn on December 17, 2020;
c) On February 25, 2021, the Plaintiffs filed an Affidavit of George Frank Quinn, sworn on February 19, 2021 and written submissions;
d) On March 19, 2021, the Non-Crown Defendants filed a revised Bill of Costs and written submissions.

II. Preliminary Issues

[7] Before assessing the Non-Crown Defendants' costs, the parties' costs documents have raised some issues that I will address as preliminary issues.

A. *The absence of specific submissions from the parties for some of the Non-Crown Defendants' claims for costs.*

[8] My review of the parties' costs documents found that there was a significant focus on the particulars of the Plaintiffs' underlying action. While these particulars do have some relevance for the assessment of costs, I found that there was an absence of specific submissions for some of the Non-Crown Defendants' claims contained in the Bill of Costs. In *Dahl v Canada*, 2007 FC

192, at paragraph 2, the Assessment Officer states the following regarding the absence of relevant submissions (representations) for assessments of costs:

> 2. Effectively, the absence of any relevant representations by the Plaintiff, which could assist me in identifying issues and making a decision, leaves the bill of costs unopposed. My view, often expressed in comparable circumstances, is that the *Federal Courts Rules* do not contemplate a litigant benefiting by an assessment officer stepping away from a position of neutrality to act as the litigant's advocate in challenging given items in a bill of costs. However, the assessment officer cannot certify unlawful items, i.e. those outside the authority of the judgment and the Tariff. I examined each item claimed in the bill of costs and the supporting materials within those parameters. Certain items warrant my intervention as a function of my expressed parameters above and given what I perceive as general opposition to the bill of costs.

[9] In addition to the *Dahl* decision, in *Carlile v Canada*, [1997] F.C.J. No. 885, at paragraph 26, the Assessment Officer states:

> 26. […] Taxing Officers are often faced with less than exhaustive proof and must be careful, while ensuring that unsuccessful litigants are not burdened with unnecessary or unreasonable costs, to not penalize successful litigants by denial of indemnification when it is apparent that real costs were indeed incurred.

[10] Further to the decisions in *Dahl* and *Carlile*, although there is an absence of specific submissions from the parties for some of the Non-Crown Defendants' claims contained in their Bill of Costs, as an Assessment Officer, I have an obligation to ensure that any claims that are allowed are not "unnecessary or unreasonable". In addition to the parties' costs documents, the court record, the *FCR* and any relevant jurisprudence will be utilized to assess the costs of the Non-Crown Defendants to ensure that they were necessary and are reasonable.

B. *The Non-Crown Defendants' request for solicitor-and-client costs.*

[11] In the Non-Crown Defendants' written submissions, it is requested that their costs be assessed at the solicitor-and-client level. It is submitted that "[c]osts are necessary to dissuade parties from bringing any unnecessary costs, time, stress and uncertainty to litigation"; that the "action was "wholly" unnecessary"; and that a request for solicitor-and-client costs was made in the Non-Crown Defendants' Statement of Defence.

[12] My review of Part 11 of the *FCR*, which is the section pertaining to costs in the Federal Court, did not specify that solicitor-and-client costs is a possible level of indemnification for discontinued proceedings. As noted earlier in these Reasons, Rule 407 of the *FCR* states, "[u]nless the Court orders otherwise, party-and-party costs shall be assessed in accordance with column III of the table to Tariff B." Further to Rule 407, I also reviewed the court record for this file and I did not find a Court decision awarding solicitor-and-client costs to the Non-Crown Defendants in relation to the Plaintiffs filing a Notice of Discontinuance. In *Pelletier v Canada*, 2006 FCA 418, at paragraph 7, the Court states the following regarding awards of costs:

> 7. […] Section 409 provides that "[i]n assessing costs, an assessment officer may consider the factors referred to in subsection 400(3)." In short, the duty of an assessment officer is to assess costs, not award them. An officer cannot go beyond, or contradict, the order that the judge has made.

[13] Further to the decision in *Pelletier*, my role as an Assessment Officer is only to assess costs. I do not have the authority to award solicitor-and-client costs to the Non-Crown Defendants, as I am not a Judge. Therefore, in the absence of a Court decision awarding costs to the Non-Crown Defendants at the solicitor-and-client level, I find that I must adhere to the parameters set out in Rule 407 of the *FCR* and assess the Non-Crown Defendants' costs at the party-and-party level in accordance with column III of the table to Tariff B.

C. *The Plaintiffs' offers to settle.*

[14] In the Plaintiffs' written submissions, it is submitted that the Plaintiffs made offers to settle with the Non-Crown Defendants. On page 2 of the Plaintiffs' written submissions, it is submitted:

> However, further to the Affidavit of George Frank Quinn, one of the Plaintiffs, sworn February 19, 2021, the Plaintiffs had offered to settle this matter without prejudice except as to costs on December 10, 2020, prior to having to make written submissions and well in advance of the non-Crown defendants' deadline for making submissions.

[15] In the Plaintiffs' Affidavit of George Frank Quinn, sworn on February 19, 2021, at paragraph 16, the following statement was made regarding the Plaintiffs' December 10, 2020 offer to settle:

> 16. On December 10, 2020, we offered to settle the matter of costs with Mr. Willier "without prejudice except as to costs." There was no reply. Attached as Exhibit "F" is a redacted copy of the offer, showing the date it was sent and confirmation.

[16] In addition to the Plaintiffs' redacted letter, which is attached as Exhibit "F" to the Affidavit of George Frank Quinn; attached at Exhibit "D" is a copy of the Minutes of Hearing from a case management conference for this file that was held on March 4, 2020. On pages 5 and 6 of the Minutes of Hearing it shows that the issue of costs was discussed at the case management conference and that the Non-Crown Defendants did not agree with the Plaintiffs' proposal of their action being discontinued in relation to the Non-Crown Defendants on a "without costs basis".

[17] Further to my review of the parties' costs documents, I reviewed the rules governing costs in Part 11 of the *FCR*, of which Rules 419 to 422 specify the requirements for offers to settle. These rules only refer to offers to settle which are made prior to the conclusion of a court proceeding. In *Canadian Olympic Assn. v Olymel, Société en commandite*, [2000] F.C.J. No. 1725, at paragraph 11, the Court states:

> 11. The purpose of the offer to settle rule, as pointed out by Morden A.C.J.O. in Data General, supra, is to encourage the termination of litigation by agreement of the parties -- more speedily and less expensively than by judgment of the Court at the end of a trial. He added the impetus to settle is a mechanism which enables a plaintiff to make a serious offer respecting his or her estimate of the value of the claim which will require the defendant to give early and careful consideration to the merits of the case.

[18] For this particular assessment of costs, the Plaintiffs made their first offer to settle (discontinue) their action against the Non-Crown Defendants at a case management conference held on May 4, 2020 but this offer was made on a without costs basis. As noted earlier in these Reasons, Rules 402 and 412 of the *FCR* entitle a party to seek costs when a discontinuance is filed against them. The Plaintiffs' second offer to settle with the Non-Crown Defendants, by letter dated December 10, 2020, was made after the filing of the Plaintiffs' Notice of Discontinuance on October 7, 2020.

[19] Upon my review of the parties' costs documents, the court record, Part 11 of the *FCR*, and the aforementioned jurisprudence, I find that the Plaintiffs' offers to settle have not met the threshold for consideration under Rule 400(3)(e) of the *FCR*. The Plaintiffs' first offer to settle (discontinue) their action against the Non-Crown Defendants was offered without costs, contrary to Rules 402 and 412 of the *FCR* and no evidence was provided that the Plaintiffs made a further

offer to settle with costs prior to the filing of the Plaintiffs' Notice of Discontinuance. The Plaintiffs' second offer to settle (costs) was made after the conclusion (discontinuance) of the Plaintiffs' action against the Non-Crown Defendants. Further to the clarification provided in the *Canadian Olympic Assn*. decision, an attempt to settle costs informally after a court proceeding has concluded is a step that parties may consider but there is no imperative requirement in the *FCR* that this step must be taken or that any offer made to settle costs must be accepted by the parties involved. I have therefore determined that based on the aforementioned facts that the Plaintiffs' offers to settle are not factors that will adversely affect my assessment of the Non-Crown Defendants' costs.

III. Assessable Services

A. *Item 2 – Preparation and filing of all defences, replies, counterclaims or respondents' records and materials.*

[20] The Non-Crown Defendants have claimed 10 units for the "[p]reparation and filing of all Defences", as noted in the Non-Crown Defendants' revised Bill of Costs filed on March 19, 2021. There were no specific submissions provided by the Non-Crown Defendants in relation to this claim. In the Plaintiffs' written submissions, it is proposed that 1 unit be allowed for Item 2 but there were no specific submissions provided for this proposal. In *Merck & Co. v Apotex*, 2008 FCA 371, at paragraph 14, the Court states the following regarding Assessment Officers having limited documents (material) available:

> 14. In view of the limited material available to assessment officers, determining what expenses are "reasonable" is often likely to do no more than rough justice between the parties and inevitably involves the exercise of a substantial degree of discretion on the part of assessment officers.

[21] My review of the court record shows that the Non-Crown Defendants filed a Statement of Defence on February 14, 2020, which is 4 pages in length and that the Plaintiffs' Statement of Claim that needed to be reviewed is 13 pages in length. My review of the table to Tariff B in the *FCR* shows that Item 2 has a range of units of 4-7 units under column III, which is more than the 1 unit that the Plaintiffs proposed and less than the 10 units that the Non-Crown Defendants claimed. In determining the quantum of units to allow, I took into consideration that this file was of moderate complexity and the effort required to prepare the Non-Crown Defendants' Statement of Defence for several clients. Further to my review of the parties' costs documents; the court record, Tariff B in the *FCR*, and the aforementioned jurisprudence; I find that it is reasonable to allow 6 units for Item 2.

B. *Item 5 - Preparation and filing of a contested motion, including materials and responses thereto; Item 6: Appearance on a motion, per hour.*

[22] The Non-Crown Defendants have claimed 10 units for Item 5 for the "[p]reparation and filing of a Contested Motion" and 10 units for Item 6 for the "[a]ppearance on a Motion, per hour", as noted in the Non-Crown Defendants' revised Bill of Costs filed on March 19, 2021. There were no specific submissions provided by the Non-Crown Defendants advising which motion(s) these claims were pertaining to, nor were the details for the corresponding Court decision(s) awarding costs to the Non-Crown Defendants provided. The Plaintiffs did not provide any specific submissions for this particular claim. In *Canada v Uzoni*, 2006 FCA 344, at paragraph 4, the Assessment Officer states the following with regards to motions and costs:

> 4. The Respondent has requested 4 units for its item 4 (Preparation and filing of an uncontested motion, including all materials for late filing of Notice of Appearance). I have reviewed the Order of the Federal Court of Appeal dated March 22, 2005, in

> which the Court granted the Respondent's motion for an extension of time to file its Notice of Appearance. However, the same Order of the Federal Court of Appeal made no reference whatsoever to the issue of costs associated with the Respondent's motion. It is a well established principle that costs are at the respective Court's discretion and where an order is silent with respect to costs, it implies there is no visible exercise of the respective Court's discretion under Rule 400(1). Reference may also be made to a relevant passage in Mark M. Orkin, Q.C., *The Law of Costs* (2nd Ed.), 2004, paragraph 105.7:
>
> ... Similarly if judgment is given for a party without any order being made as to costs, no costs can be assessed by either party; so that when a matter is disposed of on a motion or at a trial with no mention of costs, it is as though the judge had said that he "saw fit to make no order as to costs"...
>
> Similarly, I rely on *Kibale v. Canada (Secretary of State)*, [1991] F.C.J. No. 15, [1991] 2 F.C. D-9 which reflects the same sentiment:
>
> If an order is silent as to costs, no costs are awarded.

[23] Utilizing the *Uzoni* decision as a guideline, I conducted a review of the court record and did not find any Court decisions awarding costs to the Non-Crown Defendants for any of the motions filed on this particular file. As a result, I find that I do not have the authority to allow the Non-Crown Defendants' claims made under Item 5 and Item 6, as there are no Court decisions specifically awarding costs for any motions on this particular file to them. Therefore, the Non-Crown Defendants' claims under Item 5 and Item 6 are disallowed.

C. *Item 7 - Discovery of documents, including listing, affidavit and inspection.*

[24] The Non-Crown Defendants have claimed 30 units for Item 7 for the "[d]iscovery of Documents", as noted in the Non-Crown Defendants' revised Bill of Costs filed on March 19,

2021. There were no specific submissions provided by the Non-Crown Defendants or the Plaintiffs for this particular claim.

[25] My review of the court record did not reveal that there were any discoveries of the parties' documents, as specified in Rules 222 to 233 of the *FCR*, prior to the filing of the Plaintiffs' Notice of Discontinuance on October 7, 2020. Utilizing the *Dahl*, *Carlile* and *Merck* decisions (supra) as guidelines, I find that in the absence of evidence on the court record or specific submissions and/or evidence from the Non-Crown Defendants supporting their claim for Item 7, that it must be disallowed.

D. *Item 10 - Preparation for conference, including memorandum; Item 11: Attendance at conference, per hour.*

[26] The Non-Crown Defendants have claimed 40 units for Item 10 for the "[p]reparation for conference" and 10 units for Item 11 for the "[a]ttendance in hearings, per hour", as noted in the Non-Crown Defendants' revised Bill of Costs filed on March 19, 2021. There were no specific submissions provided by the Non-Crown Defendants advising which conference(s) these claims were pertaining to. In the Plaintiffs' written submissions, it is proposed that 1 unit be allowed for Item 11 but there were no specific submissions provided for this proposal or for Item 10.

[27] My review of the court record shows that the Non-Crown Defendants' participated in one case management conference on March 4, 2020, which was held by telephone conference. The hearing details for the case management conference that are on the court record shows that it was one hour in duration.

[28] Concerning Item 10, my review of the table to Tariff B in the *FCR* shows that Item 10 has a range of units of 3-6 units under column III, which is less than the 40 units that the Non-Crown Defendants claimed. In determining the quantum of units to allow, I took into consideration that the case management conference was of low to moderate complexity, wherein various issues related to the Plaintiffs' court proceeding were discussed. I also took into consideration that no memorandum or other document(s) were filed by the Non-Crown Defendants prior to the case management conference being heard by the Court on March 4, 2020. Considering these facts, I have determined that it is reasonable to allow 4 units for Item 10.

[29] Concerning Item 11, the Non-Crown Defendants have claimed 10 units. My review of the table to Tariff B in the *FCR* shows that Item 11 has a range of units of 1-3 units under column III, which is multiplied by the number of hours that a party was in attendance at a conference. As I previously noted for Item 10, the Non-Crown Defendants only attended one case management conference, which was held on March 4, 2020 and I found this hearing to be of low to moderate complexity. Upon considering the aforementioned facts and the Plaintiffs' proposal that 1 unit be allowed for Item 11, I have determined that it is reasonable to allow 2 units for Item 11. This was calculated by multiplying the hearing duration of one hour by 2 units under column III, which is at the mid-range for Item 11.

E. *Item 13 - Counsel fee: (a) preparation for trial or hearing, whether or not the trial or hearing proceeds, including correspondence, preparation of witnesses, issuance of subpoenas and other services not otherwise particularized in this Tariff; and (b) preparation for trial or hearing, per day in Court after the first day.*

[30] The Non-Crown Defendants have claimed 40 units for Item 13 for the "[p]reparation for trial or hearing", as noted in the Non-Crown Defendants' revised Bill of Costs filed on March 19, 2021. There were no specific submissions provided by the Non-Crown Defendants or the Plaintiffs for this particular claim.

[31] My review of the court record does not show that this particular file was nearing the final hearing stage of the action prior to the filing of the Plaintiffs' Notice of Discontinuance on October 7, 2020. The court record also shows that the Non-Crown Defendants were only involved with one court hearing on March 4, 2020, which has already been assessed under Item 10 and Item 11.

[32] There were two motions heard by the Court on December 2, 2020, but neither of these motions involved the Non-Crown Defendants. Subsequent to these motions being heard, the Plaintiffs' Statement of Claim was struck, without leave to amend, by a Court Order dated April 20, 2021. In *Bernard v Professional Institute of The Public Service*, 2020 FCA 152, at paragraphs 23 and 24, I dealt with a similar scenario to the Non-Crown Defendants' claim for Item 13, wherein I stated the following:

> 23. […] Though the Applicant has correctly identified that no hearing was actually scheduled for this particular file, the wording of Item 13(a) in Tariff B, does not explicitly state that a hearing must be scheduled in order for Item 13(a) to be claimed by a party. Item 13 in Tariff B of the *FCR* states the following:
>
> > 13. Counsel fee:
> >
> > (a) preparation for trial or hearing, whether or not the trial or hearing proceeds, including correspondence, preparation of witnesses, issuance of subpoenas and other services not otherwise particularized in this Tariff; and

> (b) preparation for trial or hearing, per day in Court after the first day.
>
> 24. Further to the concerns raised in the Applicant's submissions though, there should be some parameters associated with assessing Item 13(a), especially in a situation where no hearing was actually scheduled and a party submits a claim under Item 13(a) for pre-hearing work. After a Requisition for Hearing has been filed and based on a party's submissions and evidence of the pre-hearing work performed on a particular file, it may support an allowance of costs by an Assessment Officer. This being said, my review of the Respondent's costs material did not fully illuminate the pre-hearing work that was done by the Respondent, which was not already claimed under Item 2 and Item 5 (assessed under Item 27). More detailed submissions and evidence, such as an itemized listing of counsel's billable hours with the specific tasks performed would have been helpful in assessing Item 13(a).

[33] Utilizing my decision in *Bernard* as a guideline, I find that there is no indication on the court record that this particular file was nearing the final hearing stage prior to the filing of the Plaintiffs' Notice of Discontinuance on October 7, 2020. In addition, the Non-Crown Defendants did not provide any submissions and/or evidence illuminating what pre-hearing work was done for this particular file. Therefore, I find that in the absence of evidence on the court record or from the Non-Crown Defendants illuminating that this particular court proceeding was nearing the final hearing stage prior to the filing of the Plaintiffs' Notice of Discontinuance and what pre-hearing work was done that the claim for Item 13 must be disallowed.

F. *Item 26 - Assessment of costs.*

[34] The Non-Crown Defendants have claimed 12 units for Item 26 for the "[a]ssessment of costs", as noted in the Non-Crown Defendants' revised Bill of Costs filed on March 19, 2021. There were no specific submissions provided by the Non-Crown Defendants in relation to this

claim. In the Plaintiffs' written submissions, it is proposed that 1 unit be allowed for the Plaintiffs' services with regards to this assessment of costs but there were no specific submissions provided for this proposal and there was no proposal provided for the amount of units that should be allowed for the Non-Crown Defendants' services.

[35] Concerning the Plaintiffs' request for costs for Item 26, both parties are eligible to claim costs for the services performed in relation to the assessment of costs. My review of the table to Tariff B in the *FCR* shows that Item 26 has a range of units of 2-6 units under column III, which is more than the 1 unit that the Plaintiffs have proposed for their services. This range of units is also less than the 12 units that the Non-Crown Defendants have claimed for their services.

[36] Further to my review of the parties' costs documents, I have determined that the assessment of costs was of low to moderate complexity and that 4 units is a reasonable amount to allow for the Non-Crown Defendants' services. For the responding party, I have determined that 2 units is a reasonable amount to allow for the Plaintiffs' services in relation to the assessment of costs. Pursuant to Rule 408(2) of the *FCR*, I have set-off the Plaintiffs' allowed units from the Non-Crown Defendants' allowed units, which leaves 2 units remaining for Item 26 that will be allowed to the Non-Crown Defendants for Item 26.

G. *Item 27 – Such other services as may be allowed by the assessment officer or ordered by the Court.*

[37] In the Plaintiffs' written submissions, it is proposed that 1 unit be allowed for the Plaintiffs' services with regards to the "preparation of Affidavit in Response [sic] George Frank

Quinn to the Affidavit of Calvin Bruneau". In *Halford v Seed Hawk Inc.*, 2006 FC 422, at paragraph 131, the Assessment Officer states the following regarding claims under Item 27:

> 131. […] Items 1 to 26 in the tariff are not an exhaustive listing of possible services. Item 27 only comes into play for services not otherwise addressed by items 1 to 26. […]

[38] The Plaintiffs' Affidavit of George Frank Quinn was filed in relation to the assessment of costs and was assessed under Item 26. Utilizing the *Halford* decision as a guideline, I have determined that the Plaintiffs' claim for Item 27 is a duplication of their claim for Item 26 and as a result, it is disallowed.

[39] A total of 14 units have been allowed for the Non-Crown Defendants' assessable services for a total amount of $2,100.00.

IV. Disbursements

A. *Photocopies.*

[40] The Non-Crown Defendants have claimed $670.50 for photocopies, as noted in the Non-Crown Defendants' revised Bill of Costs filed on March 19, 2021. There were no specific submissions provided by the Non-Crown Defendants or the Plaintiffs for this particular claim.

[41] The Non-Crown Defendants' Bill of Costs claims that 2,682 pages of photocopies were made for a total amount of $670.50 but no details were provided as to which documents were photocopied or where they were photocopied. In *Inverhuron & District Ratepayers Assn. v*

Canada, 2001 FCT 410, at paragraphs 60 and 61, the Assessment Officer states the following regarding claims for photocopies:

> 60. The Respondents submitted claims for in-house photocopies. The evidence produced in support of these claims is thin. It does not provide any information as to how they arrived at the amount of $0.25/page. At the hearing, it was suggested that this was the "normal standard for the Court". This rate has generally been accepted by Federal Court assessment officers, but I am not prepared to concede that this is what it really costs law firms for in-house photocopies.
>
> 61. The following excerpt from Justice Teitelbaum's decision in *Diversified Products Corp. et al* v. *Tye-Sil Corp.*, 34 C.P.R. (3d) 267 supports my thinking on the actual cost for photocopies;
>
> The Item of photocopies is an allowable disbursement only if it is essential to the conduct of the action. Therefore, this is not intended to reimburse a party for the actual out-of-pocket cost of the photocopy. The 25 charge by the office of plaintiffs' counsel is an arbitrary charge and does not reflect the actual cost of the photocopy. A law office is not in the business of making a profit on its photocopy equipment. It must charge the actual cost and the party claiming such disbursements has the burden to satisfy the taxing officer as to the actual cost of the essential photocopies.

[42] Utilizing the *Inverhuron* decision as a guideline, it indicates that the onus was on the Non-Crown Defendants to provide details related to the actual cost of their photocopies. In addition, the Non-Crown Defendants did not indicate if the photocopies were prepared in-house or requisitioned through a third party company, as the amount per page can vary depending on this factor.

[43] Utilizing the *Dahl*, *Carlile* and *Merck* decisions (supra) as guidelines, I reviewed the court record to try to determine a reasonable quantum of costs to allow. My review took into consideration the size and the number of documents that needed to be prepared for the court

registry and the parties. My review found that most the of documents were electronically served between the parties and filed with the court registry, therefore the photocopying (printing) of any documents was mainly required for the parties' own files. My review of the court record found that there were approximately 380 pages of documents that may have been photocopied (printed) by the Non-Crown Defendants for their file. Utilizing the aforementioned jurisprudence as guidelines, I have determined that $60.00 is a reasonable amount to allow for the Non-Crown Defendants' claim for photocopies.

[44] The total amount allowed for the Non-Crown Defendants' disbursements is $60.00.

V. Conclusion

[45] For the above Reasons, the Non-Crown Defendants' Bill of Costs is assessed and allowed in the total amount of $2,160.00. A Certificate of Assessment will be issued for $2,160.00, payable by the Plaintiffs to the Non-Crown Defendants (Calvin Dudley Bruneau, Joyce Bruneau (also know as Lena Desjarlais), Ezra Bergsma, Sheila Desjarlais, Lyle Donald, Cynthia Paul, Dale White, Ron Maurice and Will Willier).

"Garnet Morgan"
Assessment Officer

Toronto, Ontario
May 20, 2021

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-69-20
STYLE OF CAUSE:	GEORGE FRANK QUINN, FLOYD WILLIAM QUINN, FRANCES DOREEN WABASCA, VIOLET ANDRES AND THE PASS-PASS-CHASE (PAHPAHSTAYO) FIRST NATION ASSOCIATION OF ALBERTA BAND 136 v HER MAJESTY THE QUEEN AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA, CALVIN DUDLEY BRUNEAU, JOYCE BRUNEAU (ALSO KNOWN AS LENA DESJARLAIS), EZRA BERGSMA, SHEILA DESJARLAIS, LYLE DONALD, CYNTHIA PAUL, DALE WHITE, GREGORY PAUL, RON MAURICE AND WILL WILLIER

PLACE OF HEARING: HELD BY TELECONFERENCE

REASONS FOR ASSESSMENT BY:	GARNET MORGAN, Assessment Officer
DATED:	MAY 20, 2021

WRITTEN SUBMISSIONS BY:

Darlene M. Misik	FOR THE PLAINTIFFS
Will Willier	FOR THE DEFENDANTS (CALVIN DUDLEY BRUNEAU, JOYCE BRUNEAU (ALSO KNOW AS LENA DESJARLAIS), EZRA BERGSMA, SHEILA DESJARLAIS, LYLE DONALD, CYNTHIA PAUL, DALE WHITE, RON MAURICE AND WILL WILLIER)

SOLICITORS OF RECORD:

St. Paul Legal Services St. Paul, Alberta	FOR THE PLAINTIFFS
Willier and Company Edmonton, Alberta	FOR THE DEFENDANTS (CALVIN DUDLEY BRUNEAU, JOYCE BRUNEAU (ALSO KNOW AS LENA DESJARLAIS), EZRA BERGSMA, SHEILA DESJARLAIS, LYLE DONALD, CYNTHIA PAUL, DALE WHITE, RON MAURICE AND WILL WILLIER)