

Federal Court



Cour fédérale

Date: 20240614

Docket: T-425-20

Citation: 2024 FC 906

BETWEEN:

IRIS TECHNOLOGIES INC.

Applicant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

REASONS FOR ASSESSMENT

Stéphanie St-Pierre Babin, Assessment Officer

I. Overview

[1] On December 14, 2022, the Applicant, Iris Technologies Inc. [Applicant], wholly discontinued its application for judicial review by filing a notice of discontinuance endorsed by both parties [Notice of Discontinuance].

[2] On February 29, 2024, the Respondent, the Minister of National Revenue, requested that an assessment officer be assigned to assess costs pursuant to subsection 406(1) of the *Federal Courts Rules*, SOR/98-106 [Rules].

[3] Upon receipt of the Respondent's request for an assessment of costs, I issued a Direction on March 5, 2024, to inform the parties that the assessment would proceed in writing and of the deadlines to file their respective representations. Following the issuance of the direction, the parties filed the following documentation:

- On March 22, 2024, the Respondent filed its costs record containing, in particular, the bill of costs dated March 18, 2024 [Bill of Costs], as well as written representations respecting costs [Written Representations];
- On April 16, 2024, the Applicant filed its Responding Record filed on April 16, 2024, containing representations in response [Written Representations in response];
- On April 30, 2024, the Respondent filed a letter indicating that it would not be submitting any further representations in reply.

[4] Having reviewed the above documentation, I must address the point in issue of the case at bar.

II. Analysis

A. *Should the Assessment Officer grant an Order requiring the Applicant to pay costs to the Respondent in the amount of \$11,934.56?*

[5] Both parties agree that the Respondent is entitled to the costs of the application further to the filing of the Notice of Discontinuance. They have reached an agreement as permitted by

Rule 402:

The Applicant wholly discontinues this application with costs payable by the Applicant to the Respondent in the net amount of \$11,934.56 arising from the costs awarded by Justice Walker on December 8, 2020, Justice Furlanetto on April 29, 2021 and the Federal Court of Appeal on December 21, 2021.

[6] In their respective representations, the parties reiterate that they both agree on the amount to settle the issue of costs (Written Representations, para 11; Written Representations in response, para 4). The remaining issue in this case is that the Applicant, who agreed to pay the sum of \$11,934.56 on December 14, 2022, has failed to pay this amount to the Respondent from that day forth (Written Representations, para 7).

[7] Although the Respondent used the process set out in Rule 406 to initiate an assessment of costs, in the end, it is not asking an assessment officer to assess the Bill of Costs, but rather that an Order be made in respect of the agreed upon amount. More specifically, it “seeks an order of this Court directing Iris Technologies Inc. to pay the Minister costs in the amount of \$11,934.56” (Written Representations, para 18). In response, the Applicant submits that: “to the extent that the respondent seeks anything other than an assessment of costs and Certificate of Assessment

within the ambit of Part 11 of the *Federal Courts Rules*, [...] the relief is not properly sought herein” (Written Representations in response, para 6). I agree.

[8] Assessment officers and the Court are distinct entities. Subsection 5.1(1) of the *Federal Courts Act*, RSC, 1985, c F-7, states that the Federal Court “consists of a chief justice [...], an associate chief justice [...] and 39 other judges”, whereas Rule 2 defines an assessment officer as “an officer of the Registry.” Therefore, I am not a member of the Court. As the Respondent is specifically seeking the Court to issue an Order, I find myself without jurisdiction to grant the remedy sought. Neither can I determine the reasonableness of the costs amount agreed to by the parties, as the Respondent specifically addressed his submissions to the Court in this regard (Written Submissions, paras 13–17).

[9] In addition, even if the Respondent had sought an assessment officer rather than the Court to issue an Order, I would not have been entitled to do so. Rule 405 confers the jurisdiction for assessment officers to assess costs. As the Federal Court of Appeal stated in *Pelletier v Canada (Attorney General)*, 2006 FCA 418 at paragraph 7, assessment officers have the authority “to assess costs, not award them.” In their function, they are empowered to issue reasons for assessment and certificates of assessment. They cannot grant Orders or Judgments (unreported Direction of Rennie J.A., dated November 27, 2023, in Docket A-3-23).

III. Conclusion

[10] For all these reasons, I conclude that I do not have the authority to issue an Order requiring Iris Technologies Inc. to pay costs to the Minister of National Revenue in the amount of \$11,934.56.

[11] Should the Respondent still requires an Order setting out any details of the agreed upon costs, it may file a motion requesting the Court to issue such an Order (*Amgen Inc v Pfizer Canada ULC*, 2020 FC 522, para 484).

“Stéphanie St-Pierre Babin”

Assessment Officer

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-425-20

STYLE OF CAUSE: IRIS TECHNOLOGIES INC. v THE MINISTER OF
NATIONAL REVENUE

**MATTER CONSIDERED AT OTTAWA, ONTARIO WITHOUT PERSONAL
APPEARANCE OF THE PARTIES**

**REASONS FOR ASSESSMENT
BY:** STÉPHANIE ST-PIERRE BABIN, Assessment
Officer

DATED: JUNE 14, 2024

WRITTEN SUBMISSIONS BY:

Leigh Somerville Taylor

FOR THE APPLICANT

Elizabeth Chasson
Andrea Jackett
Katie Beahen
Christopher Ware
Angela Slater

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Leigh Somerville Taylor
Professional Corporation
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT