

Federal Court



Cour fédérale

**Date: 20250815**

**Docket: T-1255-25**

**Citation: 2025 FC 1379**

**Ottawa, Ontario, August 15, 2025**

**PRESENT: Madam Justice Conroy**

**BETWEEN:**

**PATRICK CULLY**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS ON COSTS AND ORDER**

[1] On June 23, 2025, I granted Mr. Cully’s application for judicial review, setting aside a decision by an Assistant Deputy Minister at Indigenous Services Canada [ISC] on May 16, 2025, to partially deny an appeal of a funding request under Jordan’s Principle for Mr. Cully’s daughter [Appeal Decision]. I remitted the request to ISC’s Appeals Secretariat for reconsideration on certain conditions: *Cully v Canada (Attorney General)*, 2025 FC 1132 [*Cully*].

[2] I requested submissions from the parties on costs, should they be unable to agree on quantum. This is my decision on costs.

[3] I make a lump sum costs award in favour of the Applicant in the amount of \$34,748.60, all inclusive, which represents 40% of the legal fees.

I. Parties' Positions

[4] Counsel for the Applicant provided its services *pro bono*. The Applicant's costs submissions included a detailed breakdown showing what the legal costs would have been had counsel charged their usual rates.

[5] The Applicant seeks a lump sum costs award on an elevated basis, in the amount of \$43,599.57 (50% of fees), or in the alternative in the amount of \$28,667.61 (33%). If a lump sum is not awarded, he seeks costs calculated at the high end of Column IV of Tariff B in the amount of \$9,720.

[6] The Respondent consents to the Applicant's request of costs calculated under the high end of Column IV of Tariff B in the amount of \$9,720. In the alternative, the Respondent argues for a lump sum award in favour of the Applicant in the amount of \$15,500, which is approximately 17.5% of the Applicant's legal fees.

[7] The parties disagree on the typical range of lump sum costs awards.

[8] The Applicant submits that lump sum costs awards tend to range between 25% to 50%, citing *Nova Chemicals Corporation v Dow Chemical Company*, 2017 FCA 25 at para 17 [*Nova*]; *McCarthy v Whitefish Lake First Nation #128*, 2023 FC 1492 at para 26; *Crocs Canada, Inc v*

*Double Diamond Distribution Ltd*, 2023 FC 184 at para 10; *Quality Program Services Inc v Canada*, 2019 FC 19 at para 20; *Collins v Saddle Lake Cree Nation #462*, 2023 FC 1566 at para 23.

[9] The Respondent submits that the typical quantum of a lump sum award is one-quarter to one-third, “but there may be cases where a lower percentage is warranted”, citing *Jahazi v Canada (Citizenship and Immigration)*, 2024 FC 2072 at para 34 [*Jahazi*]; *Apotex Inc v Shire LLC*, 2021 FCA 54 at para 22 [*Apotex*]; *Nova* at para 17.

## II. Analysis

[10] The Federal Court has broad but not unfettered discretion in making costs awards. In exercising this discretion, the Court may take into account a list of non-exhaustive factors set out in Rule 400(3) of the *Federal Courts Rules*, SOR/98-106, as well as the objectives that underlie costs awards generally: *Nova* at para 19 (appeal dismissed on different grounds, 2022 SCC 43).

[11] The objectives that underlie costs awards include: (1) indemnifying the successful party for costs incurred; (2) incentivizing the rational use of scarce judicial resources; and (3) facilitating access to justice: *AGI Suretrack, LLC v Farmers Edge Inc*, 2024 FC 1887 at para 4; *Whalen v Fort McMurray No 468 First Nation*, 2019 FC 1119 at paras 3–5 [*Whalen*]; *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71 at paras 22–27.

[12] The contemporary trend favours an award of lump sum costs “wherever possible”: *Jahazi* at para 30. Importantly, as this Court has emphasized, “[t]hey save the parties time and money”

and generally “secure the just, most expeditious and least expensive outcome” of proceedings:  
*Nova* at para 11; *Federal Courts Rules*, Rule 3(a).

[13] Typically, lump sum costs awards range between 25% to 33% of actual costs, but there may be circumstances that warrant up to 50% of cost recovery: *Metis Settlements General Council v Canada (Crown-Indigenous Relations)*, 2024 FC 919 at para 12; *Apotex* at para 22.

[14] It is my view that, in accordance with the Court’s broad discretion under Rule 400(3), in the circumstances here, a departure from the Tarriff is justified. Costs are awarded in favour of the Applicant in the amount of \$34,748.60, all inclusive (40%).

[15] Both access to justice and the public interest in having the issues in *Cully* litigated (Rule 400(3)(h)) weigh heavily in favour of granting an elevated costs award.

[16] The case provided an opportunity to obtain legal clarity on the relationship between orders issued by the Canadian Human Rights Tribunal arising from the Caring Society litigation, and the contours of ISC’s discretion in determining applications for funding under Jordan’s Principle. This clarity is helpful to both the First Nations children who may benefit from Jordan’s Principle funding and also to those in the federal government who process these funding applications.

[17] Access to justice is also a key consideration in the circumstances here. There is a resource imbalance between the parties, and it is probable that the matter would not have been heard had Applicant counsel not agreed to take the matter on a *pro bono* basis: *Whalen* at para 32.

[18] As noted by the Applicant, counsel acting *pro bono* does not prohibit a costs award in their favour: *Roby v Canada (Attorney General)*, 2013 FCA 251 at para 24. Indeed, “it promotes access to justice by enabling and encouraging more lawyers to volunteer to work *pro bono* in deserving cases”: *1465778 Ontario Inc v 1122077 Ontario Ltd*, 2006 CanLII 35819 (ON CA) at para 35.

[19] Other factors in Rule 400(3) also justify a higher lump sum award.

[20] First, the Applicant was successful in the application (Rule 400(3)(a)). For the purpose of this costs decision, it made little difference that the Applicant’s request for a directed verdict was rejected in favour of an order to send the matter back to be redetermined.

[21] Second, time was of the essence in the determination of the application: *Cully* at para 3. Counsel was required to undertake a significant amount of work in a short period of time to accommodate the compressed timeline (Rule 400(3)(g)). Again, this was all done on a *pro bono* basis.

[22] Third, I consider the importance of the case to the parties (Rule 400(3)(c)). This factor overlaps somewhat with the consideration in Rule 400(3)(h): the “public interest in having the

proceeding litigated”. There can be no dispute that the case was exceptionally important to the Applicant’s daughter. Also, as noted above, the case’s importance also lies in its potential to provide guidance to those in the government who make decisions on funding applications under Jordan’s Principle.

[23] I do not find that the factor in Rule 400(3)(i), the conduct of the parties, is as important as the parties suggest in their submissions. The Respondent argues, in the alternative to the Tarriff, that a lump sum award lower than the typical lump sum range (17.5%) is warranted based on its “good faith conduct and its cooperation with the Applicant in moving this matter as quickly as possible towards an expedited hearing on the merits”. In reply, the Applicant states that the Respondent was “inaccurate” when it stated that it “recognized the urgent nature of the issues presented and consented to an order expediting the application.” The Applicant notes that the Respondent consented to expediting the hearing, but not to the schedule.

[24] I accept that the Respondent conducted itself in good faith, recognized the urgency of the application, and was reasonable in its level of cooperation to expeditiously move the matter toward a hearing on the merits. However, this is conduct expected of counsel in all proceedings; it does not justify a lump sum costs order lower than the typical range.

**THIS COURT'S JUDGMENT is that** the Respondent, Attorney General of Canada,  
pay costs in the amount of \$34,748.60, all inclusive, to the Applicant, Patrick Cully.

"Meaghan M. Conroy"

Judge

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

**DOCKET:** T-1255-25

**STYLE OF CAUSE:** PATRICK CULLY V. ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** JUNE 16, 2025

**REASONS ON COSTS AND  
ORDER:** CONROY J.

**DATED:** AUGUST 15, 2025

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