

**Date: 20080910**

**Docket: T-699-06**

**Citation: 2008 FC 1014**

**BETWEEN:**

**HARI S. NESATHURAI AND  
1322901 ONTARIO LIMITED**

**Applicants**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**ASSESSMENT OF COSTS - REASONS**

**Johanne Parent  
Assessment Officer**

[1] The application to cancel or vary Requests for Information (RFI's) issued by the respondent, was granted and the RFI's quashed by the Honourable Mr. Justice Phelan on February 12, 2008. An amended judgment was further issued, on March 31, 2008, allowing costs on a party-and-party basis as provided for in Column III of the table to Tariff B of the *Federal Court Rules*. Counsel for the applicants and respondent filed their submissions on costs and agreed on the written disposition of the assessment of the applicants' bill of costs.

[2] The applicants claim as assessable services seven units for the preparation and filing of originating documents (Item 1). Considering the factors in Rule 400(3) and my reading of the file, five units will be allocated.

[3] With regard to the various claims made under Items 4 and 5 for preparation and filing of uncontested and contested motions, the Court's orders of August 26, 2006, January 22, 2007, March 5, 2007, April 30, 2007 and May 14, 2007, are all silent as to costs. In *Janssen-Ortho Inc. and Daiichi Pharmaceutical Co., Ltd v. Novopharm Limited*, 2006 FC 1333, the Court determined that, "any pre-trial order that is silent as to costs means that no costs have been awarded to any party". Consequently, items 4 and 5 are not allowed.

[4] The number of units claimed for counsel fees under Item 13 (a) is not contested and will be allowed 5 units as claimed. Two units will be allowed for counsel fee for preparation for hearing per day in Court after the first day (Item 13(b)). Item 14(a) was not contested and will be allowed as claimed i.e. three units per hour for the ten hours in Court. Items 25 and 26 are allowed as claimed, respectively one and two units.

[5] The applicants claim one unit under Item 27 for other services as may be allowed by the assessment officer, namely for the filing of the requisition for hearing. This service is not an assessable service specifically referred to in Tariff B of the *Federal Court Rules*. I allow the minimum unit under item 27 to indemnify counsel for items not covered in the Tariff.

[6] Under the sub-heading C - Discovery and Examinations, the applicants claim the maximum number of units for Items 7, 8 and 9. With regard to Item 7, I cannot find any proof of discovery of documents in this matter within the meaning of Section 222 and subsequent sections of the *Federal Court Rules* regarding the disclosure of documents in an action. This assessment of costs deals specifically with costs on an application and, therefore, no units will be allowed for this item. In view of my reading of the documents on file, four units will be allowed for Item 8 and two units per hour for the 13 hours on attending the examination.

[7] The amounts claimed for disbursements substantiated in the respondent's submissions on costs and consented to by the applicants were all charges necessary to the conduct of this matter. The amounts are reasonable and are, therefore, allowed.

[8] The bill of costs is allowed at \$12,269.53 plus GST on assessable services, photocopy and facsimile disbursements (\$464.39) for a total amount of \$12,733.92.

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“Johanne Parent”  
Assessment Officer

Toronto, Ontario  
September 10, 2008

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

**DOCKET:** T-699-06

**STYLE OF CAUSE:** HARI S. NESATHURAI AND 1322901 ONTARIO  
LIMITED v. THE MINISTER OF NATIONAL REVENUE

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

**REASONS FOR ASSESSMENT OF COSTS:** JOHANNE PARENT

**DATED:** SEPTEMBER 10, 2008

**WRITTEN REPRESENTATIONS:**

Jeffrey L. Goldman FOR THE APPLICANTS

Pierre-Paul Trottier FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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