

CANADA / JUDGMENT

Cameron (Re)

2022 BCSC 2093

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Supreme Court of British Columbia

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2022 BCSC 2093 Cameron (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Cameron (Re),

2022 BCSC 2093

Date: 20221201

Docket: S189228

Registry: Vancouver

In the Matter of Margaret Lillian Cameron and

In the Matter of the Patients Property Act, R.S.B.C. 1996, c. 349,

and amendments thereto

Before: Registrar Gaily

Reasons for Decision re

Assessment of Special Costs

Counsel for the Respondent, Leigh-Anne Cameron:

M. Magaril

No other Appearances

Place and Date of Hearing:

Vancouver, B.C.

November 18, 2022

Place and Date of Judgment:

Vancouver, B.C.

December 1, 2022

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Introduction

- [1] This is an assessment of special costs awarded in respect of applications (the "Applications") brought in contested committee proceedings under the Patients Property Act, R.S.B.C. 1996, c. 349 [PPA], which Applications were heard over six days in late 2019 and early 2020. Evidence at the assessment was tendered both by way of affidavit evidence, and through the viva voce evidence from Leigh-Anne Cameron and one of her legal counsel, Mikhael Magaril of Bear Creek Law.

Procedural Background

- [2] The Applications arose from the conflict between Leigh-Anne Cameron (who agreed to be referred to as "LAC" to avoid confusion given similar surnames) and her sister, Alison Primerano, regarding the care of their mother, Margaret Lillian Cameron (Mrs. Cameron).
- [3] In August 2018, Ms. Primerano applied for a declaration under section 3 of the PPA that Mrs. Cameron was incapable of managing herself or her affairs because of mental infirmity arising from disease, age or otherwise. Ms. Primerano also sought an order under section 6 of the PPA appointing her sole committee of Mrs. Cameron's person and estate.

- [4] LAC opposed Ms. Primerano's appointment as committee. LAC applied for an order converting the petition into an action to determine Mrs. Cameron's capacity and, if Mrs. Cameron were found to be incapable, a determination of who should be her committee.
- [5] After a 6-day hearing, Justice Grauer, as he then was, found that on the basis of the evidence filed before him, he was satisfied Mrs. Cameron was incapable of managing herself or her affairs within the meaning of the PPA and he made that declaration. However, Grauer J. converted the petition into an action to determine the appropriate committee for Mrs. Cameron, and appointed the Public Guardian and Trustee (PGT), an interim committee of Mrs. Cameron's person and estate pending that determination. His reasons were released February 10, 2020 and are indexed as 2020 BCSC 157 (the "Applications Reasons"). The Court of Appeal subsequently dismissed LAC's appeal of the order referring the matter to the trial list: *Primerano v. Cameron*, 2021 BCCA 64.
- [6] In separate reasons for judgment on costs released April 16, 2020 and indexed as 2020 BCSC 580 (the "Costs Reasons"), Grauer J. awarded each sister her "special costs for the proceedings to date", payable from Mrs. Cameron's estate: *Costs Reasons*, paras. 8 and 11. Justice Grauer's order was entered May 12, 2020.
- [7] No one appeared to oppose this special costs assessment and I was advised the parties agree that special costs are awarded up to and including April 16, 2020. I note this date is reflected in the bill of special costs submitted by Ms. Primerano's counsel to the PGT, which the PGT paid in August 2021, and is not subject of this assessment.
- [8] At the subsequent trial before Justice Caldwell conducted over four days in June 2022, LAC was appointed committee of Mrs. Cameron's person and estate, both subject to conditions. As set out in paras. 3(h) and (i)(iii) of Caldwell J's order entered June 17, 2022, LAC's committeehip of Mrs. Cameron's estate includes the following condition regarding the special costs awarded to her:
3. [LAC] is hereby appointed Committee of the estate of [Mrs. Cameron], from the date of this order, on the following conditions:
- (h) subject to subparagraph 3(i), the Committee shall have no access to the capital of the Patient's Funds other than for reinvestment purposes without either prior written approval of the PGT or a court order;
- (i) for the purposes of subparagraph 3(h), and subject to further court order, the Committee shall have the following access to capital of the Patient's Funds:
- (iii) access to additional funds to pay half of the special costs of [LAC], pursuant to the Order of the Honourable Mr. Justice Grauer of the Supreme Court of British Columbia dated February 10, 2020, in an amount to be assessed by the Registrar of this Court or agreement between the PGT and [LAC] regarding the amount;

- [9] As the PGT did not agree to the bill of special costs LAC submitted in June 2022, LAC sought this assessment in accordance with Caldwell J.'s order.
- [10] At the relevant time of the Applications, Mrs. Cameron was living in Mexico in a home on property owned by LAC, where LAC also lives. Justice Grauer noted that at the time of the Applications, LAC charged her mother \$2,500 per month for rent, and that LAC was charging Byam Properties Ltd., the family holding company, \$3,000 per month (reduced from \$4,000 per month) for LAC's services in looking after her mother and looking after the company: Applications Reasons, para. 111.

The Bill of Special Costs

- [11] The bill of special costs LAC submitted to the PGT in June 2022 was for a total of \$199,824.49; however, in the assessment before me, LAC claims a total amount of special costs of \$179,317.63. The total amount includes LAC's legal fees and disbursements, as well as various expenses and fees claimed by LAC herself, as I describe below.
- [12] The PGT did not appear at the assessment, but the PGT's letter dated September 9, 2022 disagreeing with LAC's bill of special costs was exhibited to the first affidavit of Elizabeth Korompai, Mr. Magaril's legal assistant, tendered at this assessment. In the letter, the PGT questioned the reasonableness of the following items:
- a) the inclusion of LAC's travel expenditures "that are not clearly related to steps in the litigation"; and
 - b) the fees charged by LAC for her own activities, including fees LAC incurred after April 16, 2020.
- [13] While I reviewed the whole of the special costs bill before me for reasonableness, I will provide further background on those items questioned by the PGT or which require specific analysis.

A. Canadian Legal Fees and Disbursements

- [14] As reflected in the bill of special costs, LAC retained three different lower mainland law firms for the Applications, Bear Creek Law, Synergy Business Lawyers LLP (Synergy Law) and BTM Lawyers LLP (BTM).
- [15] The expenses billed by BTM were exhibited to the second affidavit of Ms. Korompai tendered at the assessment. LAC retained BTM in April 2018 to respond to letters from Ms. Primerano and her counsel regarding the committee ship of Mrs. Cameron, but the retainer of BTM was terminated by the end of May 2018. In two invoices issued April 12 and June 1, 2018, BTM billed LAC a total of \$2,494.81, including disbursements and applicable taxes.

- [16] The expenses billed by Synergy Law were exhibited to Ms. Korompai's second affidavit. Synergy Law's invoices pertain to work they performed gathering the corporate records and related information about Byam Properties Ltd. In three separate invoices issued February 28, 2019, January 31, 2020 and March 31, 2020, Synergy Law charged LAC a total of \$5,013.76 in fees and disbursements plus applicable taxes.
- [17] The bulk of the legal fees claimed as special costs by LAC are to Bear Creek Law, whose fees amount to \$111,028.08, including disbursements and applicable taxes. Bear Creek Law issued sixteen invoices to LAC for work pertaining to the Applications. Mr. Magaril, the primary billing lawyer at Bear Creek Law, tendered an affidavit of justification for the firm's fees and testified before me at the assessment.
- [18] Mr. Magaril explained the difference in his fees reflected on the bill of special costs before me (compared to the bill sent to the PGT in June 2022) was because he had reduced his fees from \$131,534.94 to \$111,028.08 as he realized that in the bill of special costs submitted to the PGT, he had mistakenly included fees for activities unrelated to the Applications.
- [19] Mr. Magaril testified that at the time LAC retained him on the Applications in August 2018, he was a junior lawyer in his third year of call. LAC was one of Mr. Magaril's existing clients when she retained him on this matter and because she was an existing client, Mr. Magaril's evidence was that he offered LAC a discounted rate and billed his time at \$215 per hour.
- [20] Mr. Magaril also testified that on October 2, 2018, the parties appeared before Master Wilson (as he then was), who directed that the neurologist who treated Mrs. Cameron from 2015 through 2018 release his patient records to counsel for Ms. Primerano and counsel for LAC. Master Wilson ordered costs of the application before him in the cause.
- [21] Mr. Magaril's evidence was that because he was away on a scheduled vacation at the time of the application before Master Wilson, he retained counsel at the firm Cleveland Doan on a limited contract to represent LAC at that application. Mr. Magaril's evidence is that Bear Creek Law paid the invoice of Cleveland Doan for this work (including disbursements and taxes) and included the Cleveland Doan expenses in the Bear Creek Law fees claimed on this assessment. I note the Cleveland Doan invoice is exhibited to Ms. Korompai's second affidavit.
- [22] The Applications were originally scheduled for three days in May 2019, but were adjourned so the parties could attempt mediation. Mediation attempted on May 16, 2019 failed. The hearing was rescheduled and adjourned twice in July 2019. When the Applications were heard in late 2019, they were lengthy, totalling six days of hearing on October 29-31, November 1, and December 9, 2019, and January 28, 2020.
- [23] The Applications were contentious. Mr. Magaril testified LAC adopted a "leave no stone unturned" approach, and the proceedings were document intensive. Mr. Magaril estimated that 35 affidavits, including 10 from LAC, were tendered in evidence.

- [24] Both sisters were represented by legal counsel, as was Mrs. Cameron, throughout the Applications. The PGT filed written submissions, although did not appear before Grauer J. at the Applications. The sisters filed further written submissions on costs in March and April 2020.

B. Legal Costs and Disbursements Incurred in Mexico

- [25] In addition to the fees of LAC's Canadian lawyers, the bill of special costs includes \$1,466.92 in fees LAC claims she paid to Baja Legal Solutions, a law firm in Mexico near where she lives. At the assessment, LAC testified she and Mrs. Cameron consulted Baja Legal Solutions regarding Ms. Primerano's petition and to document Mrs. Cameron's wishes in response to the petition.
- [26] LAC also testified that although the invoice Baja Legal Solutions shows amounts in USD (the invoice of Baja Legal Solutions is exhibited to Ms. Korompai's second affidavit), LAC paid in Mexican pesos and used the exchange rate for pesos to Canadian dollars in reaching the amount of \$1,466.92.
- [27] The invoice of Baja Legal Solutions is only one page, describing services it provided to Mrs. Cameron in 2018 in three separate paragraphs, without a breakdown of hours or rates. The total for each entry is expressed in US dollars, for a total of \$1,565.00 USD. From March to May 2018, Baja Legal Solutions assisted with the permanent residency application of Mrs. Cameron, billing \$570 USD. The second and third entries are for October 2018, one entry for \$580 USD regarding the preparation of an affidavit, the other entry for \$415 USD for the execution of nomination of committee document.
- [28] LAC claims a total of \$2,653.85 for fees she paid to the office of a notary in Mexico to notarize seven of her own affidavits, as well as the affidavits of five other people. The invoice of a Mexican notary is exhibited to Ms. Korompai's second affidavit.
- [29] LAC claimed \$202.50 in courier costs, which she said she paid to courier documents related to the Applications from Mexico to Vancouver. I could not find invoices for these courier expenses attached to any of the affidavits before me, but I accept LAC's evidence that she paid these fees.

C. LAC's Disbursements Including Travel Expenses

- [30] LAC has claimed \$1,004.80 for fees she paid to Charest Reporting Inc. to transcribe recordings LAC made of conversations between LAC and her sister, and between LAC and her mother, which were tendered during the Applications. The Charest Reporting Inc. invoice is exhibited to Ms. Korompai's second affidavit.

- [31] LAC also claims \$489.50 in fees she paid to reimburse five people for the fees associated with the notarizing of their affidavits (one of which was covered in the expenses of Cleveland Doan). Receipts for two of the notaries' services (one in Sechelt and one in Victoria) are exhibited to Ms. Korompai's second affidavit. LAC admitted that she does not have receipts to verify the fees she claims for two of the affidavits (\$100 and \$162 respectively), but testified that these amounts are based on what these witnesses told her they were charged.
- [32] LAC claims a total of \$9,656.03 in travel expenses, explaining during her testimony at the assessment that this reflects the total cost of her airfare and taxi expenses for several return trips to Vancouver from Mexico that she was required to make during the relevant period. The travel receipts are exhibited to Ms. Korompai's second affidavit.
- [33] As set out in the "time sheets" LAC prepared for this assessment discussed further below, LAC claims travel expenses for several return trips to Vancouver prior to and in between the dates the Applications was heard as follows: September 30-October 3, 2018; October 29-November 13, 2018; January 17-23, 2019; September 12-19, 2019; and December 2-10, 2019. LAC testified that during the time she was in Vancouver, she was gathering and reviewing evidence, preparing affidavits for herself and others, and reviewing submissions.
- [34] The hearing of the Applications was originally scheduled to start on May 15, 2019 for three days and LAC has claimed travel expenses for the period May 9-22, 2019. After the hearing was first adjourned in May 2019 and mediation failed, the hearing was rescheduled to early July and LAC claims travel expenses for June 28-July 3, 2019. The hearing was rescheduled for a date in late July, but that was also adjourned, and LAC claims travel expenses for July 8-August 5, 2019.
- [35] LAC's time sheets also reflect her travel to Vancouver to attend the hearing, arriving on October 26, 2019 (three days before the start of the hearing), returning to Mexico on November 5, 2019. LAC travelled back to Vancouver on January 22, 2020 (six days before the final day of hearing), returning to Mexico on January 30, 2020.

D. LAC's Fees for Her Own Services

- [36] In addition to the out-of-pocket expenses, LAC claims \$45,307.38 as her own fees for time she testified she spent on activities related to the Applications.
- [37] In its correspondence, the PGT expressly challenged the inclusion of these fees in the bill of special costs.
- [38] LAC testified that she is a consultant who runs her own businesses, offering services to clients for either a set day rate, or an hourly rate of \$125.00, but that she had to put her businesses "on hiatus" when she moved with her mother to Mexico.

- [39] LAC's fees for her services are set out in a series of time sheets she created for the purposes of preparing the bill of special costs. The time sheets contain dated time entries for various activities for which LAC claims an hourly rate of \$120.
- [40] At the assessment (and in her 11th affidavit, tendered at the assessment), LAC admits that the time entries were not made contemporaneously, but were reconstructed after the fact based on information in emails she sent to or received from her legal counsel. LAC testified at the assessment that the \$120 hourly rate was based on the hourly rate she charged her clients in her consulting businesses.
- [41] Mr. Magaril also spoke to the fees claimed by LAC for her services, describing LAC's activities as those normally performed by his firm's paralegal, such as drafting affidavits, gathering and reviewing documents, reviewing submissions and researching medical information related to Mrs. Cameron's condition. Mr. Magaril testified that because of LAC's voluntary contributions, the time he spent conducting the proceeding was reduced, as were LAC's overall legal expenses. The paralegal hours reflected on the Bear Creek Law time sheets total 30 hours, an amount Mr. Magaril testified was much lower than it otherwise would have been, if not for LAC's assistance.
- [42] Mr. Magaril confirmed Bear Creek Law did not compensate LAC for these activities.
- [43] LAC's time entries also include claims for activities outside the normal tasks of a paralegal, such as an entry dated September 21, 2018, where LAC claims \$360 (three hours) for driving her mother, Mrs. Cameron, to an appointment with Mrs. Cameron's lawyer and waiting for her.
- [44] Further, LAC's time sheets include entries for time she spent in consultations with her legal counsel, for which her legal counsel has also billed time. For example, LAC's time sheets show an entry dated July 2, 2019 in which she claims \$240 (two hours) for meeting with "MM" (Mr. Magaril). Mr. Magaril's entry for July 2, 2019 includes an entry for 0.8 hours to "meet with client". In another example, LAC has claimed \$840 (seven hours) on July 29, 2019 for attending a meeting of "all counsel". Mr. Magaril's entry for July 29, 2019 is also for seven hours for a meeting with LAC and Mrs. Cameron's counsel (Joseph Cuenca). LAC has also claimed \$960 (8 hours) on May 16, 2019 for the attempted mediation. Mr. Magaril's entry for May 16, 2019 is for 8.3 hours for the attempted mediation.
- [45] LAC has claimed fees for some of her attendances in court, entering time on dates the hearing was adjourned (e.g., three hours on May 14, 2019, five hours on July 5, 2019, and 2.2 hours on July 30, 2019). She has also claimed \$720 in fees for the final day of hearing, January 28, 2020 (6 hours).
- [46] Finally, as the PGT pointed out in its September 2022 letter, LAC's time sheets include seven entries for activities after April 16, 2020 (from April 17-24), amounting to \$738.00.

Analysis and Assessment

- [47] Section 27 of the PPA governs the determination of costs on all proceedings under the PPA and provides that costs are in the discretion of the court. It is not uncommon in contested committee applications for the court to order that all parties receive their costs on a special costs basis from the estate: *McCoy (Re)*, 2020 BCSC 2182, para. 7.
- [48] Special costs are frequently defined as the fees that a reasonable client would be bound to pay a reasonably competent lawyer for the work done: *Bradshaw Construction Ltd. v. Bank of Nova Scotia*, 1991 CanLII 4019 (BC SC), affirmed 1992 CanLII 4038 (BC CA).
- [49] On an assessment of special costs, Supreme Court Civil Rule 14-1(3)(a) provides that the registrar must allow only those fees, expenses and disbursements that were reasonably necessary and proper to conduct the proceeding. A registrar assessing special costs should consider all of the circumstances, including the factors listed in the Supreme Court Civil Rule 14-1(3)(b).
- [50] I have considered the factors set out in Civil Rule 14-1(3)(b). For the purpose of these reasons, I will address only those of particular significance, with the others being generally neutral or of an insubstantial nature, given the circumstances of this case.
- [51] The Applications involved a contested committee. Justice Grauer described the conflict between Ms. Primerano and LAC as "deep", noting that the sisters' relationship "is marred by a strong mutual distrust", with each seeking to "impugn the motives of the other", but that he was nevertheless satisfied that "each firmly believes, in good faith, that their respective positions are in their mother's best interests as they perceive them" (Applications Reasons, para. 6).
- [52] The Applications were lengthy, consuming six days of hearings before Grauer J., with further written submissions on costs. Justice Grauer described the proceedings before him as "six days of argument based on extensive materials that comprised four exceptionally thick binders of evidence, plus audio recordings and videos, as well as briefs of authorities and written submissions" and the affidavits of two medical experts (Applications Reasons, para. 73).
- [53] In my view, the amount of \$118,991.65 claimed in legal fees, disbursements and applicable taxes by LAC's Canadian legal counsel, Bear Creek Law, Synergy Law and BTM, is objectively reasonable in the circumstances of the Applications.
- [54] I accept that the fees LAC paid to notarize several affidavits in Mexico (\$2,653.85) and for affidavits to be notarized by others (\$489.50), which affidavits were tendered in evidence during the Applications, were reasonably necessary for the conduct of the Applications, as were the courier costs of \$202.50 she claims. Although LAC has no receipts to support the courier fees, or two of the fees she claims she paid for affidavits to be notarized by others (amounting to \$262), these costs are not out of the ordinary and reasonable in the circumstances.

- [55] I also allow the fees of \$1,004.80 LAC paid to Charest Reporting in February 2019 to transcribe recordings, which were in evidence at the Applications.
- [56] The PGT challenged LAC's claimed travel expenses on the basis that it was not clear these expenses were related to the Applications. The Applications were heard prior to the pandemic and LAC would have been required to swear or affirm affidavits in person. LAC lives in Mexico and she did, on occasion, notarize affidavits in Mexico and courier them to Vancouver.
- [57] The evidence before me is that Mrs. Cameron moved to Mexico from Vancouver shortly before Ms. Primerano commenced the PPA proceedings. I accept that the difference in the legal systems and the lack of lawyers familiar with the PPA practising near where LAC lives in Mexico contributed to LAC's need to travel to Vancouver for legal advice. I also accept that the bulk of the evidence necessary to respond to and pursue the Applications was located in Vancouver. Given the nature of the hearings, including the volume and length of the affidavits, the expert medical evidence, and the need for last-minute reply evidence, I find that it was not unreasonable for LAC to travel to Vancouver to gather and review evidence and review submissions as she claims. I also find that LAC's claimed expenses for travel to attend the hearings, including on dates when the hearings were adjourned, were necessary to conduct the proceedings. Accordingly, I allow LAC's claimed travel expenses of \$9,656.03.
- [58] Turning to the legal fees charged in Mexico, it is apparent that some of the fees of Baja Legal Solutions were not proper or reasonably necessary for the conduct of the Application proceedings. In particular, the Baja Legal Solutions invoice indicates that from March to May 2018 (before Ms. Primerano filed her petition), the firm was retained to assist with Mrs. Cameron's move to Mexico, processing and managing her permanent residency application, charging \$570 USD. In my view, this specific charge was not related to the Applications and I do not allow it. I will allow, however, the other charges of Baja Legal incurred in October 2018 for \$580 USD and \$415 USD, totalling \$995 USD, as these charges relate to the preparation of an affidavit and the nomination of Mrs. Cameron's committee.
- [59] I do not allow the fees of \$45,307.38 claimed as special costs representing LAC's fees for her time (which includes those fees claimed by LAC after April 16, 2020).
- [60] Mr. Magaril submitted that if LAC had represented herself, she would have been compensated for her time, referring me to authorities in which British Columbia courts have confirmed that special costs may be awarded to self-represented litigants, such as *Skidmore v. Blackmore* (1995), 2 B.C.L.R. (3d) 201, 1995 CanLII 1537 (BC CA), *Coastal First Nations v. British Columbia (Environment)*, 2016 BCSC 804, *Fullerton v. Matsqui (District)*, [1992] B.C.J. No. 2986, and *Zhao v. Chandi*, 2021 BCSC 322, and cases cited in those decisions.

- [61] Mr. Magaril also directed me to a recent decision involving special costs awarded to self-represented litigants, *Neural Capital GP, LLC v 1156062 B.C. Ltd.*, 2022 BCSC 1800 [Neural Capital], in which Justice Fitzpatrick considered whether it is appropriate to adopt a particular methodology to assess special costs awarded to a self-represented litigant before the bill has been prepared.
- [62] As I described above, in her time sheets, LAC recorded an hourly rate of \$120 for time she spent on activities related to the Applications, as if she were a paralegal or lawyer recording time. LAC testified that she based the hourly rate on the rate she had charged clients in her consulting businesses. LAC's evidence is that her consulting businesses have been "on hiatus" since 2018, when her mother moved to Mexico and the committee proceedings began. Effectively, LAC is seeking compensation for lost opportunity (the income she was unable to earn because she was focused on the committee proceedings).
- [63] In *Neural Capital*, Fitzpatrick J. noted that the "lost opportunity" approach to assessing the special costs of a self-represented litigant has not found favour with British Columbia courts (*Neural Capital*, paras. 76, 80 and 83).
- [64] While there may be an appropriate instance where there could be a hybrid recovery of both counsel's costs and personal recovery for periods where a party is self-represented, LAC did not represent herself at any stage of the Applications, retaining legal counsel throughout.
- [65] Mr. Magaril presented no authority that a special costs award can encompass work performed by a party to advance its case where the party has paid for legal representation.
- [66] I also note that there was insufficient evidence presented to determine if the work undertaken by LAC was not work that a litigant, or affiant, would do themselves in any event, such as setting out their evidence so that it can be put into affidavit form. A litigant must always put in time and expense on their own behalf.
- [67] LAC is asking to be compensated for her participation as a party to the proceedings, as is apparent in the time she has claimed for attending the hearings and consulting with her legal counsel.
- [68] In *Gichuru v. Smith*, 2014 BCCA 414 [Gichuru], at para.135 (leave to appeal refused 2015 CanLII 19743 (SCC)), the Court of Appeal confirmed that the purpose of a special costs award is to provide an indemnity to the successful party, it is not a windfall.

CoSTS OF THE ASSESSMENT

- [69] Mr. Magaril sought special costs for the assessment before me, citing "the general rule" that an award of special costs of the proceeding carries with it special costs of the subsequent assessment.

[70] In 567 Hornby Apartment Ltd. v. Le Soleil Restaurant Inc., 2020 BCCA 69 [567 Hornby], at para. 137 (leave refused [2020] S.C.C.A. No. 140), the Court of Appeal concluded that there is no general rule that a party is entitled to special costs of the cost assessment. The Court noted that the word "proceeding" refers to the whole event; if the court orders the costs "of the proceedings" to be paid on a special cost basis, part of the proceeding is the assessment of the costs, and it follows from the order that the registrar is to allow the costs of the assessment as special costs (567 Hornby, para. 139).

[71] However, in this case, Grauer J.'s order awarding special costs to LAC and Ms. Primerano was not a blanket order for special costs "of the proceedings", but was expressly limited to special costs "in the proceedings to date" (my emphasis), which date the parties agreed is April 16, 2020. Accordingly, Grauer J.'s award of special costs for the Application proceedings to date does not extend to this assessment, following 567 Hornby.

Conclusion

[72] In summary, I assess the special costs of LAC as follows:

Fees

Disbursements

Taxes

TOTAL

Bear Creek Law

\$88,113.00

\$11,671.56

\$11,243.52

\$111,028.08

Synergy Law

\$4,102.50

\$399.00

\$512.26

\$5,013.76

BTM Lawyers

\$2,227.50

\$0

\$267.31

\$2,494.81

TOTAL

\$118,536.65

- [73] With respect to LAC's legal costs and disbursements incurred in Mexico, I assess the special costs to include \$2,653.85 (Mexican notary) and \$202.50 (courier fees), for a total of \$2,856.35
- [74] Regarding the fees of Baja Legal Solutions less the deduction of \$570 USD from the total of \$1565 USD, as of the date of the Assessment, the exchange rate from USD to CDN was \$1.329. For the purpose of calculating the certificate of costs and making that adjustment, LAC may use that exchange rate, or she is at liberty to seek further directions within 14 days of the date of these reasons as to the applicable exchange rate to use. In the event of that exchange rate being used, the deduction would be \$757.53, for a total allowed at \$1,322.36 CDN.
- [75] With respect to LAC's disbursements including travel expenses, I assess the special costs to include the fees paid to Charest Reporting Inc. of \$1,004.80, the fees of \$489.50 LAC paid to reimburse affiants for their notarizing fees, as well as the fees of \$9,656.03 LAC claims as travel expenses. The total of these allowed disbursements is \$11,150.33.
- [76] I do not allow as special costs any of the fees LAC claimed as compensation for her services.
- [77] Mr. Magaril is entitled to his ordinary costs of this assessment.

"Registrar Gaily"

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