

Date: 20081024

Docket: T-107-06

Citation: 2008 FC 1197

BETWEEN:

CANADIAN PRIVATE COPYING COLLECTIVE

Plaintiff

and

**J & E MEDIA INC., J & E MEDIA INC.,
MEDIA DISTRIBUTORS CANADA INC.,
2069152 ONTARIO LTD., 1477034 ONTARIO INC.
and 1657523 ONTARIO LTD.**

Defendants

ASSESSMENT OF COSTS - REASONS

Johanne Parent
Assessment Officer

[1] On February 18, 2008, the Court granted the plaintiff's motion for an order pursuant to rule 104(1) of the *Federal Courts Rules* to join four individuals as parties, save and except that Mr. Matthew Boyce be not included as a party defendant and granting Mr. Boyce's costs against the plaintiff. Directions were further issued, on July 10, 2008, making the costs payable forthwith and to be assessed under Column III of the table to Tariff B of the *Federal Courts Rules*. Counsel for the plaintiff and for Mr. Boyce filed their submissions on costs and agreed on the written disposition of the assessment of the bill of costs.

[2] Mr. Boyce seeks the maximum number of units for all assessable services claimed in his bill of costs. Party-and-party costs does not necessarily result in a successful party being reimbursed for all fees and disbursements incurred in a proceeding. In assessing costs, the factors referred to in subsection 400(3) of the *Federal Court Rules* along with the specifics of this file need to be considered. Matthew Boyce was successful in the motion brought by the Canadian Private Copying Collective (CPCC). Although suggested, there is no indication that the motion brought by CPCC was, pursuant to Rule 400(3)(k) improper, vexatious, unnecessary or taken through negligence, mistake or excessive caution. With regards to paragraph 400(3)(c) and (g), the relative complexity of this case, the apparent amount of work and actual time in Court do not justify the high end of Column III. Considering the above, five units will be allocated to Item 5 for the preparation and filing of responding motion material.

[3] Counsel claimed three units times three hours for their appearance on the plaintiff's motion on February 13, 2008 (Item 6). For the above mentioned reasons, two units for each hour where counsel appeared in Court will be allocated. Furthermore, in view of my reading of the Court's file for that day, the number of hours will be reduced to two.

[4] Item 25 is allowed as claimed. Item 26 for the assessment of costs is reduced to three units considering the non-complexity of the bill of costs.

[5] The amounts claimed for disbursements substantiated in the affidavit of Christine Mara sworn on August 22, 2008 are not contested by the plaintiff and were all charges necessary to the conduct of this matter. The amounts are reasonable and are, therefore, allowed.

[6] The bill of costs is allowed at \$1674.99 plus GST (\$83.75) for a total amount of \$1758.74.

“Johanne Parent”

Assessment Officer

Toronto, Ontario
October 24, 2008

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-107-06

STYLE OF CAUSE: CANADIAN PRIVATE COPYING COLLECTIVE v. J & E MEDIA INC., J & E MEDIA INC., MEDIA DISTRIBUTORS CANADA INC., 2069152 ONTARIO LTD., 1477034 ONTARIO INC. and 1657523 ONTARIO LTD.

ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF THE PARTIES

REASONS FOR ASSESSMENT OF COSTS: JOHANNE PARENT

DATED: OCTOBER 24, 2008

WRITTEN REPRESENTATIONS:

Randy Sutton FOR THE PLAINTIFF

Igor Ellyn Q.C. FOR MATTHEW BOYCE
Orie H. Niedzviecki

SOLICITORS OF RECORD:

Ogilvy Renault LLP FOR THE PLAINTIFF
Toronto, ON

Ellyn Law LLP FOR MATTHEW BOYCE
Toronto, ON