

COURT FILE NO.: 03-CV-244195 CP

Marsha Martin and Fern Camirand – Plaintiffs - and - Michael Barrett et al
Defendants

ENDORSEMENT ON COSTS

Following my endorsement granting judgment pursuant to rule 19.05 against the defendants, Mark Edward Workman and Whittacat Holdings Ltd, plaintiff's counsel filed additional written submissions on costs. These have been requested on the basis of a substantial indemnity of \$ 111,740 for fees and \$41,620.19 for disbursements.

In the circumstances of this case I am satisfied that the plaintiffs should receive a substantial indemnity for part, but not all, of the fees payable by them. A substantial indemnity for part of the fees is, in my judgment, justified by the decision of the defendants to abandon the defence of the proceeding without consenting to judgment and their subsequent refusal to comply with requirements of the Rules of Civil Procedure. In my judgment, this conduct of the defendants deserves the court's reprobation but does not justify a substantial indemnity for all of the work done earlier in the proceeding in furtherance of the plaintiffs' claims against these defendants. This is not a case in which the nature of the breaches of fiduciary duty would itself justify a substantial indemnity for costs.

Accordingly, I will fix the fees element of the costs at \$103,000 - inclusive of GST. Disbursements of \$37,710 (inclusive of GST) are allowed - this amount reflecting a reduction from the amount claimed relating to matters that I consider are more properly allocated to overhead. These costs are to be paid within 30 days of the release of this endorsement.

Released:

May 21/2010



CULLITY J..