Date: 20070926

Docket: T-595-01

Citation: 2007 FC 961

BETWEEN:

MÉTIS NATIONAL COUNCIL OF WOMEN
and SHEILA D. GENAILLE

Applicants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ASSESSMENT OF COSTS - REASONS

Charles E. Stinson
Assessment Officer

[1] A copy of these reasons is filed today in Federal Court of Appeal matter A-127-05 (the A-127-05 matter) (Métis National Council of Women and Sheila D. Genaille v. The Attorney General of Canada) and applies there accordingly. The Applicants (MNCW) in this matter (the T-595-01 matter) brought an application for judicial review of the federal government's decision to not permit them to become a party to an agreement under a program for labour market development for aboriginal people. MNCW asserted a breach of rights of Métis women under sections 15 and 28 of the *Canadian Charter of Rights and Freedoms* [*Charter*]. The Federal Court decision (the T-595-01 decision) held that there was insufficient evidence that Métis women were not already adequately represented and that they have had problems with access to programs or

funds under the current arrangements. The T-595-01 decision also found insufficient evidence that Métis women substantially supported MNCW as compared to the Métis National Council and dismissed the application with costs. The Federal Court of Appeal dismissed its appeal with costs. After some discussion and adjustments, these assessments of costs proceeded in writing. I have not summarized the submissions for items 5 (preparation of motion) and 6 (attendance on motion) for two orders silent on costs or directing no costs as I am satisfied further to my conclusions in *Balisky v. Canada (Minister of Natural Resources)*, [2004] F.C.J. No. 536 at para. 6 (A.O.) and *Aird v. Country Park Village Properties (Mainland) Ltd.*, [2005] F.C.J. No. 1426 at para. 10 (A.O.) [*Aird*], that I have no jurisdiction to allow any of the associated costs.

I. The Respondent's General Position

[2] The Respondent argued that extensive cross-examinations of MNCW's three affiants (Bonita Lawrence, Sheila Genaille and Joyce Gus) were central to the T-595-01 decision's findings. As well, certain unnecessary and improper conduct on the part of MNCW required the Respondent to bring certain motions in turn substantially lengthening and complicating the proceedings. MNCW's assertions concerning public interest status are irrelevant because *Starlight v. Canada*, [2001] F.C.J. No. 1376 at para. 7 (A.O.) [*Starlight*] held that the same point in the respective ranges for counsel fee items need not be used. The Respondent argued that MNCW does not meet the criteria set in *Harris v. Canada*, [2002] 2 F.C. 484 (F.C.T.D.) [*Harris*] for status as a public interest litigant. If it had, both the Federal Court and the Federal Court of Appeal would not have awarded costs against it.

[3] As the T-595-01 decision found that there was a complete absence of evidence of any support by Métis women for MNCW and that MNCW's evidence was made up and not credible or intelligible, the inescapable conclusion is that this litigation was restricted to the interests of MNCW. Therefore, MNCW cannot satisfy the first criterion of *Harris* above, i.e. that the issues extend beyond the immediate interests of the parties involved. The problem for MNCW is that its continued attempts to brand itself as a public interest litigant representing a particular segment of the public and to bring unmeritorious litigation on behalf of said segment does not equate to actually representing said segment.

[4] The record indicates that this litigation was really about a long-standing power struggle between the president of MNCW (Sheila Genaille) and that of a rival organization as opposed to the advancement of Métis women. This litigation was the culmination of an extended effort by MNCW for direct access to and control over government-funded programs to the exclusion of rival organizations. MNCW's *Charter* arguments should not obscure the real personal and political purpose, i.e. funding from and recognition by the federal Crown and not public interest advocacy for Métis women whom the T-595-01 decision found did not support it. Therefore, MNCW does not satisfy the second criterion of *Harris* above, i.e. that the parties do not have a personal or pecuniary interest in the outcome.

[5] The Respondent conceded that the issue of funding (relative to the subject program) for MNCW had not previously been determined in litigation, i.e. the third criterion of *Harris* above. However, MNCW chose to bring this litigation with none of the requisite evidence despite the

existence of the well-known finding in *Native Women's Assn. of Canada v. Canada*, [1994] 3 S.C.R. 627 [*NWAC*], that such evidence was essential to sustain a section 15 *Charter* claim relative to exclusion from a government program. This should weigh against any consideration of MNCW as a public interest litigant.

[6] The Respondent noted that the Crown would likely be able to bear costs more easily than most litigants, but that alone should not somehow transform MNCW into a public interest litigant shielded from costs. The Federal Court of Appeal has held that a presumed superior financial capacity should not prejudice the Crown's entitlement to costs. For example, in *Canada v. James Lorimer & Co.*, [1984] 1 F.C. 1065 at 1076-1077 (C.A.), cited in *Canada (A.G.) v. Georgia College of Applied Arts and Technology*, [2003] 4 F.C. 525 at para. 29 (F.C.A.), the Court in overturning the trial judge's refusal to award costs to spare the unsuccessful litigant further punishment or burden and because of the Crown's particular capacity to bear its own costs, held:

> …It is trite law that costs are not awarded to punish an unsuccessful party. There was a time when the "rule of dignity" dictated that the Crown neither asked nor paid costs in the ordinary course of events. That time is long past and the position of the Crown, even if it be "unusual", is no more relevant than the colour of a litigant's hair. With respect, none of the reasons given for denying the appellant costs have anything to do with the case nor any facts connected with it or leading up to it [emphasis added]….

Although Métis women are a generally impoverished and disadvantaged demographic, there is no evidence of MNCW's capacity to bear costs relative to that of the Crown, i.e. the fourth criterion of *Harris* above. The Crown should not have to even partially subsidize this failed litigation which was

completely devoid of the required evidentiary foundation: see *Robinson Motorcycle Ltd. v. Fred Deely Imports Ltd.*, (2005), 44 C.P.R. (4th) 146 at para. 29 (Comp. Trib.).

[7] The Respondent argued that the record discloses a number of instances of vexatious, frivolous or abusive conduct (the fifth criterion of *Harris* above) by MNCW which should negate any presumption of public interest status. For example, three years into this litigation and after the exchange of affidavits and numerous cross-examinations on those affidavits, MNCW attempted to introduce substantive new evidence under the guise of authorities in its Memorandum of Fact and Law. This conduct prompted a motion by the Respondent resulting in an order dated May 28, 2004 granting it in part and including both a rebuke to MNCW for its conduct and a compliment on the Respondent's conduct. Another example was MNCW's improper objection to the continued cross-examinations of the affiants Sheila Genaille and Bonita Lawrence. This required another motion by the Respondent which was granted in part. The continued cross-examination of Sheila Genaille was central to the complete discounting of her evidence in paragraph 67 of the T-595-01 decision, i.e. made up and not credible or intelligible.

[8] The Respondent asserted that MNCW improperly sought to argue at the hearing of the judicial review on the basis of a race-based comparison of rival organizations as opposed to a gender-based comparison. That is, the proposed comparison had not been previously raised in MNCW's instituting document. The T-595-01 decision at paragraph 45 refused to permit this on the basis of prejudice to the Respondent at an advanced stage of the proceeding as a consequence of the raising of an entirely new claim. The Respondent argued that Rules 409 and 400(3)(*i*)

(conduct unnecessarily lengthening proceedings) and (*k*) (improper, vexatious or unnecessary steps) should be applied further to these examples to discount public interest considerations and to increase assessed costs. The finding in paragraph 72 of the T-595-01 decision that MNCW had adduced no evidence of differential treatment for Métis women relative to Métis men, which was the obvious and elementary minimum evidentiary requirement for such a constitutional challenge, and should therefore pay costs, undercuts MNCW's public interest argument for low-end costs. The finding in the T-595-01 decision is consistent with that in *Bow Valley Naturalists Society v. Canada (Minister of Canadian Heritage)*, [2001] 2 F.C. 461 at para. 79 (C.A.), i.e. litigants purporting to act in the public interest without the requisite evidentiary foundation should not be shielded from costs. All of the above suggests that public interest factors, if applied here, should result in increased costs to discourage unmeritorious litigation that is completely devoid of any evidentiary foundation and that features repeated instances of improper conduct.

[9] The Respondent, in response to MNCW's assertion that the Respondent's objection to MNCW's choice of comparator group was improper because said objection was raised for the first time at the hearing of the judicial review and not in the Memorandum of Fact and Law and because the Respondent handed up a copy of a decision, i.e. *NWAC* above, not first reproduced in the Respondent's Book of Authorities, argued that the Respondent's Memorandum of Fact and Law and the cross-examination of Marguerite Russell on her affidavit sworn April 29, 2007, in opposition to the claimed costs, explicitly refutes this assertion. That is, paragraphs 73 – 78 of the Respondent's Memorandum of Fact and Law expressed the objection to MNCW's chosen comparator group and paragraph 45 of the T-595-01 decision agreed with the Respondent's position. Marguerite Russell

repeatedly and incorrectly in her cross-examination asserted that this was not so and admitted that she had not attended the hearing. Both the Respondent and MNCW cited *NWAC* above and MNCW reproduced it in its Book of Authorities. Therefore, MNCW cannot credibly argue that it was taken by surprise. MNCW's assertion of misconduct is specious and unfounded.

[10] The Respondent discounted entirely MNCW's position advanced further to Rule 400(3)(*c*) (complexity) and (*g*) (amount of work), i.e. that this case was not complex because of the similarity of the Crown' s affidavit led here to another affidavit led in a previous case, because of alleged similarities of the legal argument advanced here to that in previous proceedings, because of the supposed speed (30 days) with which the Court rendered the T-595-01 decision and because the Court here refused to rule on a ground of review not included in the instituting application. The problematic conduct by MNCW detailed above transformed what was supposed to be a summary procedure into a proceeding exponentially more complex and lengthy than intended (instituted in 2001 but not heard until 2004). This included MNCW's failed motion to substitute the estate of Joyce Gus as a party to the proceeding. That the T-595-01 decision ultimately found many of MNCW's arguments either without merit or improperly raised does not indicate lack of complexity or that the Respondent did not have to carefully prepare responses to each point raised in the MNCW's Notice of Application and Memorandum of Fact and Law.

[11] The Respondent noted that asserted violations of section 15 *Charter* rights are assessed further to the test in *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497 at para. 88 [*Law*]. If an applicant can meet its three inquiries, a *prima facie* breach of s. 15 is

established and the burden of proof then shifts to the Crown to justify the breach further to section 1 of the *Charter* and the test set in *R. v. Oakes*, [1986] 1 S.C.R. 103 [*Oakes*]. The T-595-01 decision found that MNCW failed to discharge its burden for the first inquiry of *Law* above, i.e. that there had been differential treatment on the basis of one or more personal characteristics, therefore obviating the need to address the other tests in *Law* and *Oakes* above. Despite this result, the Respondent still had to prepare carefully for a complete canvass of the application of *Law* and *Oakes* above. Thus, MNCW cannot rely on the early and complete failure of this litigation as the foundation for its grossly inaccurate assertion of lack of complexity and time-consuming work for the Respondent's counsel.

[12] The Respondent argued that the extent of overlap of the evidence here with that in previous proceedings is of minimal relevance given that the initial burden of the test in *Law* above falls squarely on applicants such as MNCW. That is, the primary focus of the Crown in responding to an alleged section 15 *Charter* breach is to test an applicant's evidence via cross-examination of its affiants. Here, such cross-examinations exceeded 24 hours, with that of Sheila Genaille being particularly tedious and lengthy (10 hours over 2 days). Counsel for the Respondent then had to painstakingly scrutinize the evidence to determine and demonstrate that it was, as characterized by paras. 55 and 67 of the T-595-01 decision, "made up" and not "credible or intelligible."

II. MNCW's General Position

[13] MNCW argued further to Rule 400(3)(*c*) that the Respondent did not lead any evidence of complexity and therefore cannot justify anything more than the minimum value in the range for

each counsel fee item. The Respondent's only submission was a brief letter asserting complexity, extensive cross-examinations and several interlocutory motions. The deficiency in proof should minimize assessed costs: see *Zündel v. Citron*, [2001] F.C.J. No. 379 at paras. 11-14 (A.O.).

[14] MNCW argued that Rule 400(3)(*c*) and (*g*) as factors here to minimize assessed costs are intertwined. Although MNCW considered the issues to be of broad public importance and of particular importance to MNCW because of its mandate to advance the interests of Métis women, said issues were neither novel nor complex and required the Respondent's counsel to do only little legal analysis, drafting, research and development of evidence that had not already been done for a similar section 15 *Charter* challenge in *Ardoch Algonquin First Nation v. Canada (A.G.)*, [2003] 2 F.C. 350 (F.C.T.D.), affirmed [2004] 2 F.C. 108 (F.C.A.) [*Ardoch Algonquin*]. A direct textual comparison of the Respondent's affidavit here with the respondent's affidavit, originally filed in an Ontario Court (General Division) proceeding subsequently refiled in the Federal Court as an application for judicial review, in *Ardoch Algonquin* above confirms that these two proceedings were very similar in a highly specific sense as opposed to a general or generic sense. The affidavit here appears to be a lightly edited, simplified and shortened version of the affidavit led in *Ardoch Algonquin* above. There were common counsel for much of both cases and they relied on much of the same jurisprudence for both.

[15] MNCW argued that this case raised issues of gender discrimination not addressed in *Ardoch Algonquin* above. It was decided on an issue not raised in either the Respondent's affidavit or Memorandum of Fact and Law and which was first raised at the hearing of the judicial review,

i.e. MNCW's choice of comparator group, being a new claim not previously asserted. MNCW had expressly asserted this claim in its Memorandum of Fact and Law and the Respondent did not advance this objection until mid-hearing despite having cross-examined the affiants on that very comparator. The Respondent's counsel also improperly handed up *NWAC* above coincident with making the objection, not having included it in his Book of Authorities.

[16] MNCW argued that the hearing judge's announcement at the outset that the judicial review would last only two days and not the scheduled three days, refusal to hear most of MNCW's planned *Charter* submissions, rulings from the bench on all issues and issuance of the T-595-01 decision within 30 days all confirm the absence of complexity. This proceeding was a simple and direct reconsideration of *NWAC* above and raised no *Charter* or constitutional issues beyond the narrow question of whether the approach in *NWAC* above applied to Métis women as well as Native women. Lack of success does not indicate complex issues: see *Compulife Software Inc. v. Compuoffice Software Inc.*, [2002] F.C.J. No. 1509 (A.O.)

[17] MNCW argued further to Rule 400(3)(*h*) (public interest) that Métis women have given it their mandate to advocate for their interests. This has involved a multi-faceted educational, political and legal campaign to promote their interests, including their Aboriginal and equality rights, in overcoming the legacy of discrimination, poverty and marginalization that characterizes their existence.

[18] MNCW argued that it meets each criterion of *Harris* above. The record establishes MNCW's participation in and relevance for a broad range of programs addressing several areas additional to Métis women thereby satisfying the first criterion of *Harris* above, i.e. broad public significance. That MNCW brought this litigation for the benefit of a clearly disadvantaged group, i.e. Métis women, meets the second criterion of *Harris* above, i.e. no personal or pecuniary interest in the outcome. Relative to the third criterion (no prior determination) and the fifth criterion (absence of vexatious conduct), a superior court had not previously addressed those issues. Relative to the fourth criterion (superior capacity to bear costs) of *Harris* above, Rule 400(3)(*h*) as applied in an assessment of costs ordered against a public interest litigant does not require consideration of whether the public interest litigant is affluent or impecunious. Rather, to ensure adequate representation by counsel of a public interest litigant, it should blunt the financial impact of said representation in the face of the Crown's clearly superior financial capacity. As well, the fiduciary and constitutional obligations of the Crown to Métis women (as the applicants here) are relevant to this criterion.

III. Assessment

[19] In *Bow Valley Naturalists Society v. Canada (Minister of Canadian Heritage)*, [2002] F.C.J. No. 1795 (A.O.), I considered the relevance of public interest for assessments of costs and concluded that the application of Rule 409 and 400(3) factors against the interest of successful litigants would require carefully considered discretion. That a judgment for costs does not accord the unsuccessful litigant special consideration relative to costs as a function of public interest does not preclude me from applying Rules 409 and 400(3)(*h*) to minimize assessed costs. I will not do so

here. MNCW undoubtedly is a positive factor in the community, but I view the finding here, i.e. that there was no evidence that Métis women as a group act solely through MNCW, as indicative that this litigation could be considered as essentially an attempt to broaden or increase its status relative to or at the expense of rival organizations. The Court's findings did not suggest that existing program structures had resulted in prejudice to the Canadian public interest in general or to that of Métis women in particular.

[20] My view, often expressed further to my approach in *Carlile v. Canada (Minister of National Revenue)* (1997), 97 D.T.C. 5284 (T.O.) and the sentiment of Lord Justice Russell in *Re Eastwood (deceased)* (1974), 3 All. E.R. 603 at 608, that assessment of costs is "rough justice, in the sense of being compounded of much sensible approximation," is that discretion may be applied to sort out a reasonable result for costs equitable for both sides. I think that my view is reinforced by the editorial comments (see: The Honourable James J. Carthy, W.A. Derry Millar & Jeffrey G. Gowan, *Ontario Annual Practice 2005-2006* (Aurora, Ont: Canada Law Book, 2005)) for Rules 57 and 58 to the effect that an assessment of costs is more of an art form than an application of rules and principles as a function of the general weight and feel of the file and issues, and of the judgment and experience of the assessment officer faced with the difficult task of balancing the effect of what could be several subjective and objective factors.

[21] In *Almecon Industries Ltd. v. Anchortek Ltd.*, [2003] F.C.J. No. 1649 at para. 31 (A.O.), I found certain comments in the evidence, although self-serving, nonetheless to be pragmatic and sensible concerning the reality of a myriad of essential disbursements for which the costs of proof

might or would exceed their amount. However, that is not to suggest that litigants can get by without any evidence by relying on the discretion and experience of the assessment officer. The proof here was less than absolute, but I think there is sufficient material in the respective records of the Federal Court and the Federal Court of Appeal for me to gauge the effort and associated costs required to reasonably and adequately litigate the Respondent's position. The less that evidence is available, the more that the assessing party is bound up in the assessment officer's discretion, the exercise of which should be conservative, with a view to the sense of austerity which should pervade costs, to preclude prejudice to the payer of costs. However, real expenditures are needed to advance litigation: a result of zero dollars at assessment would be absurd.

[22] In *Starlight* above, I concluded that the same point in the ranges throughout the Tariff need not be used as each item for the services of counsel is discrete and must be considered in its own circumstances. As well, broad distinctions may be required between an upper versus lower allowance from available ranges. Generally, I do not think that this litigation was the most complex of proceedings and I think that it was simplified somewhat by existing clear case law. However, I do think that more than a simple and routine analysis of MNCW's position and evidence was required of the Respondent's counsel relative to careful drafting of materials and preparation for hearing to preserve the integrity of the Crown's programs as applied in a sensitive area of Canadian society. I also think that MNCW's conduct somewhat complicated this proceeding.

A. *The T-595-01 Matter*

(1) Counsel Fees

(a) *Counsel fee item 2 (Respondent's record / available range = 4 to 7 units) claimed at 7 units ($120.00 per unit)*

[23] The Respondent did not advance submissions particular to the respective items of costs. MNCW argued that only 4 units should be allowed because little work was required that was not directly based on the record in *Ardoch Algonquin* above. Counsel for the Respondent protracted this proceeding by not advancing certain critical information from the record in *Ardoch Algonquin* above, blocking MNCW's efforts to fill said gap and then raising the late objection to the comparator group. The Respondent's Memorandum of Fact and Law incorporated much of the work already done for previous cases and for interlocutory motions here. Any potential complexity was precluded by the Respondent's success in preventing MNCW from adducing the missing information from *Ardoch Algonquin* above. Motion issues resulting in orders providing for no costs did not imbue the substantive proceedings with more complexity, difficulty or work. The small amount of demonstrable work justifies only the minimum allowance: see *Zundel* above at paras. 13 – 14.

Assessment

[24] I do not find MNCW's point on *Ardoch Algonquin* above particularly relevant because the responsibility of the Respondent's counsel was to the particular circumstances of this proceeding. I allow 6 units.

(b) *5 units claimed for fee item 5 (preparation for motion) and 3 units per hour claimed for fee item 6 (attendance on motion)*

Assessment

[25] These claims address a motion brought at the commencement of the hearing of the judicial review on behalf of the Estate of Joyce Gus to permit it to continue the application on behalf of the deceased. Paragraphs 17 – 24 of the T-595-01 decision under the subheading – Motion by Estate of Joyce Gus – ruled on the motion, i.e. denying leave to continue the application, but expressly admitting her existing evidence, and did not mention costs. MNCW's position was that it cannot be inferred that the award of costs in para. 72 for the judicial review itself was intended to also give costs of this motion to the Respondent because the reason that the Respondent opposed the motion was to achieve coincident exclusion of her evidence.

[26] MNCW had filed a separate motion for this relief. The Court issued an order separate from and dated one week before the T-595-01 decision. Notwithstanding that the same judge rendered the motion order and the T-595-01 decision, the latter could not purport to vary the former's disposition of costs, i.e. silent on costs, by allowing motion costs. The hearing judge was *functus* at that point. I disallow items 5 and 6 consistent with my reasons in para. 1 above.

(c) *Fee item 8 claims (preparation for cross-examination of affiants / available range=2 to 5 units): 4 units for each of Sheila Genaille and Joyce Gus on January 23, 2003; 3 units for David Hallman on February 20, 2003; 5 units for Bonita Lawrence on February 27, 2003; 3 units for Bonita Lawrence on August 5, 2003 and 5 units for Sheila Genaille on August 8, 2003*

[27] MNCW argued that six preparation fees for four witnesses, one (Mr. Hallman) of which was the Respondent's witness, are excessive and that only three fees each at the minimum 2 units should be allowed because of the duration and nature of the cross-examinations, absence of complexity or difficulty, the circumstances associated with the re-examination of Sheila Genaille and Bonita Lawrence and public interest considerations. Only one preparation fee applicable to both Ms. Genaille and Joyce Gus should be allowed because their cross-examinations occurred on the same day (January 23, 2003), were brief (4 hours for Ms. Genaille and 2 hours, 12 minutes for Ms. Gus), both were almost exclusively confined to material in their affidavits served two years prior, and the small number of undertakings were satisfied shortly thereafter. The preparation fee for Mr. Hallman should be the minimum 2 units because he was the Respondent's witness and the cross-examination was confined to his brief affidavit which was largely derived verbatim from *Ardoch Algonquin* above. The preparation fee for Ms. Lawrence (February 27, 2003) should be the minimum 2 units because her affidavit had been served two years prior, no reference to the cross-examination was made in the legal submissions and the cross-examination devoted very little time to the actual affidavit instead largely focusing on a comparator group matter ultimately found irrelevant and inadmissible by the Court.

[28] MNCW argued further to *Carpenter Fishing Corp. v. Canada*, [1999] F.C.J. No. 393 at para. 19 (A.O.), that a second and separate item 8 preparation fee should not be allowed for Ms. Lawrence (August 5, 2003) and Ms. Genaille (August 8, 2003). At the end of the cross-examination of Ms. Lawrence (February 27, 2003), the Respondent's counsel stated that he had no further questions and did not seek or enter an adjournment. There were no unsatisfied undertakings.

Her further cross-examination was very short (28 pages) and was not difficult. The Respondent's subsequent submissions did not refer to it or her affidavit.

[29] MNCW noted that supervising counsel for the Respondent was unable to attend on January 23, 2003 and sent another counsel in his place for the cross-examination of Ms. Genaille. Several months later after undertakings were satisfied and nothing further had been said, counsel for the Respondent announced that he needed further cross-examination of Ms. Genaille and Ms. Lawrence before he could agree to new dates for completion of the record. The further cross-examinations overlapped the previous two to a considerable extent. There is no evidence of relevance, necessity or complexity to justify the excessive claims for a second preparation fee.

Assessment

[30] Counsel for the Respondent could not take any of these witnesses lightly even if he felt that MNCW would likely not meet its evidentiary burden. I think that resisting the potential impact of Ms. Genaille was of particular importance to the Respondent's case preparation. My conclusions in *Aird* above at paras. 23 to 26 and in *Halford v. Seed Hawk Inc.*, [2006] F.C.J. No. 629 (A.O.) [*Halford*] at paras. 121 to 128 indicate that a second item 8 fee may be claimed for the same affiant. The Respondent did not advance any evidence of the particular circumstances necessitating what in effect would be new preparation work. I read the cross-examinations. Contrary to the sense of MNCW's submissions, there appeared to be unfinished business with regard to Ms. Genaille, i.e. the closing assertion on January 23, 2003 by counsel for the Respondent that he had not completed his cross-examination past paragraph 103 of her affidavit (109 paragraphs in length).

[31] On June 17, 2003, the Court ordered Ms. Genaille to attend for continued cross-examination which was not to be limited to paragraphs 104 and following, but not to include questions previously asked. Said order also required Ms. Lawrence to attend to answer follow-up questions. The grounds asserted in the Respondent's motion record had been that MNCW had improperly objected to several questions and had not satisfied all undertakings. I allow both item 8 fees as claimed for Ms. Genaille. I allow the item 8 fees as claimed for each of Ms. Gus and Mr. Hallman. I allow only a single item 8 fee at the maximum 5 units for Mr. Lawrence as I find that adequate in the circumstances. The T-595-01 decision did not criticize counsel for the manner in which the Respondent advanced the objection concerning a comparator group. NOTE: I have not given weight to MNCW's public interest argument and will not refer to it again as I address items in turn below, although it was advanced for almost all items.

(d) *Fee item 9 claims (attendance on cross-examination of affiants / available range 0 to 3 units per hour): 3 hours x 3 units per hour and 7 hours x 3 units per hour for Ms. Genaille on January 23 and August 8, 2003 respectively; 3 hours x 3 units per hour for each of Ms. Gus and Mr. Hallman; and 1 hour x 3 units per hour and 4 hours x 3 units per hour for Ms. Lawrence on February 27 and August 5, 2003, respectively*

[32] MNCW argued that an effective hourly rate of $360.00 for four witnesses is excessive further to the absence of complexity, difficulty and extended duration. Tariff B 1(2) requires supporting evidence for items based on an hourly charge. Here, there is only the brief statement in a paralegal's affidavit in part on information and belief that she prepared the bill of costs further to her review of the disbursement file kept by the Department of Justice, but nothing about the source of the number of hours claimed. The claim for Ms. Gus is indicative of the excessive claimed costs

ultimately to be borne by Métis women disadvantaged as a group, i.e. 3 hours where the transcript clearly indicates a duration of 2 hours 12 minutes including a recess. As well, MNCW argued that the claim of 4 hours for Ms. Lawrence on August 5, 2003, was excessive given that the verbatim reporter billed for only 1 hour.

[33] MNCW argued that there should be some differentiation in claimed rates for one's own witness (Mr. Hallman) and for an opposing witness respectively because there are qualitative differences in the respective roles of counsel for each. The claimed rates do not account for the differing experience of the two lawyers involved for the Respondent nor is there evidence of their skill and expertise to justify $360.00 per hour.

[34] MNCW argued that the verbatim reporter's invoices are insufficient evidence under Tariff B 1(2). That is, the invoice for August 8, 2003 (Ms. Genaille) charges for 7 hours. The transcript itself discloses an actual duration closer to 5.5 hours because it ran for 6 hours 45 minutes interrupted by at least 70 minutes in recesses including some for Ms. Genaille to alter travel plans because counsel for the Respondent underestimated the time required. The claim of $2,520.00 for August 8, 2003, is excessive given lack of reliable evidence of number of hours, relevance of this cross-examination and skill required of counsel. Several of the hours should be rated at 0 units per hour given misleading statements of time required and the inconvenience and additional expense caused for Ms. Genaille's travel plans. In general, MNCW relied on all of the factors identified above, as well as asserting that the Court made scant reference to the cross-examinations, to argue that no item 9 claims should be allowed because of the failure to prove the actual number of hours.

Assessment

[35] At times, I find MNCW's position problematic. For example, its assertion that the Court made "scant" reference to the cross-examinations presumably means that the cross-examinations were inconsequential for the outcome. The T-595-01 decision indeed did not refer often to the cross-examinations, but when it did, it did so to significant and adverse effect for MNCW's position, i.e. paragraph 67 making a core finding concerning insufficient or made up evidence of its level of support by Métis women. As well, a core premise of MNCW's position before me was that Métis women as a disadvantaged constituency have endorsed it as their sole or primary advocate. It would be irrational for me to accept that in the face of the findings otherwise. In other words, it is MNCW and not disadvantaged Métis women as a constituency who are solely and directly liable to satisfy the Respondent's costs.

[36] Charges by verbatim reporters for brief recesses are common because as the contractor for a specific deposition, they are not available during a recess for other remunerative work. United Reporting Service, Ltd. is a well-known and experienced firm. Although inadvertent clerical errors can occur, I have no reason to doubt the general integrity of its billing system. That said, the invoice for Ms. Lawrence (August 5, 2003) charged for 1 hour attendance and 33 pages of transcript (there was no recess and the concluding time was not recorded) equating to 33 pages per hour. The invoice for Ms. Genaille (August 8, 2003) charged for 7 hours attendance and 215 pages of transcript equating to about 30 pages per hour, or about 39 pages per hour if MNCW's estimate of 5.5 hours is used. Mistakes can occur, i.e. the bill of costs incorrectly shows August 7 for Ms. Genaille. In these circumstances, I think that I can piece together the appropriate hours for each day. Specifically, the

bill of costs displays inadvertent errors likely attributable to unfamiliarity with the case and not referring to all materials. For example, the transcript for Ms. Lawrence (February 27, 2003) indicating a duration of the better part of a day and the verbatim reporter's attendance charge combine to suggest that the paralegal may have reversed the hours in preparing the bill of costs. She should have attributed 4 hours and 1 hour to February 27 and August 5, 2003 (Ms. Lawrence) respectively. If she had had the transcripts in front of her in addition to the accounting records of the Department of Justice, she likely would have noticed the error. I have made the switch in the bill of costs as assessed.

[37] The transcripts for Ms. Genaille and Ms. Gus (both January 23, 2003) record start and end times that indicate durations of 4 and 2 hours respectively. The verbatim reporter's invoice showed a charge for 6 hours without breaking them down between the two affiants respectively. As above, the paralegal putting together the bill of costs likely just worked with the accounting records and did not compare, as I did, the actual transcripts with the invoice. She apparently attributed 3 hours in the bill of costs to each affiant by dividing the invoice's total in half. I have corrected that in my dispositions below. I am otherwise satisfied that the hours claimed for item 9 need not be further adjusted.

[38] As above, I think that the cross-examination of Ms. Genaille was a key factor for the Respondent's position, as was that of Ms. Lawrence. I do not so find for Ms. Gus. I allow the item 9 claims as presented for Ms. Genaille and Ms. Lawrence subject to the adjustments noted above for the hours. I allow 2 hours at only 2 units per hour for Ms. Gus. There are instances in which the

work of counsel during examination of one's own witness warrants the maximum. I do not think so in this instance and allow 3 hours at only 2 units per hour for Mr. Hallman.

(e) *Fee item 10 claims (preparation for case management teleconference / available range = 3 to 6 units): 1 hour x 3 units per hour for each of the April 11, 2003 and January 27, 2004 conferences*

Fee item 11 claims (attendance / available range = 1 to 3 units per hour): 1 hour x 1 unit per hour for these two conferences (actual durations were 30 and 15 minutes respectively)

[39] MNCW's objection was that the first conference related solely to the Respondent's motion for re-attendance of Ms. Genaille and Ms. Lawrence resulting in an order silent on costs and that the second conference related solely to the Respondent's motion to strike certain authorities of MNCW resulting in an order specifically providing for no costs. Therefore, as above, these items cannot be assessed.

Assessment

[40] The record discloses that counsel for the Respondent initially proposed that the first conference address general case management issues, i.e. completion of undertakings and cross-examinations. He mentioned a potential motion to compel answers to undertakings and refusals. Ensuing correspondence from the Respondent's counsel maintained that general case management activities must be addressed in the first conference as well as a potential motion to compel answers. The first conference resulted in a direction that the Respondent could file a motion, if any, within 30 days. Otherwise, the parties were to submit a timetable on consent. I think that the Court's direction was clearly a general case management provision within the meaning of items 10 and 11. In

particular, provision for a potential motion would not be part of the Court's subsequent disposition of any motion, if filed. I allow these items as presented for the first conference.

[41] The record discloses that counsel for the Respondent requested the second conference to address the manner of bringing a motion for the removal of allegedly prejudicial authorities advanced by MNCW. The resulting direction required MNCW to file its requisition for hearing within five days as well as providing for the bringing of the Respondent's motion. It was in the nature of case management. I allow items 10 and 11 as presented for the second conference.

> (f) *Fee item 13(a) (preparation for hearing / available range = 2 to 5 units) claimed at 5 units for the first day of hearing of the judicial review; fee item 13(b) (preparation / available range = 2 to 3 units) claimed at 2 units for the second day of hearing; fee item 14(a) (attendance / available range = 2 to 3 units per hour) claimed at 3 units per hour x 9 hours over two days; fee item 24 (travel time of counsel to attend the hearing / available range = 1 to 5 units) claimed at 4 units and fee item 25 (services after judgment / available range = 1 unit) claimed at 1 unit*

[42] MNCW argued that the item 13(a) and 13(b) claims are excessive given minimal complexity or difficulty of the issues and the complete absence of evidence of the amount and nature of work done. As well, the Respondent succeeded on an objection improperly raised. The hearing ended at noon of the second day. The item 14(a) claim results in $3,240.00 for a hearing lasting only 1.5 days. This is excessive because it overstates the number of actual hearing hours, does not reflect adjournments exceeding one hour, does not properly reflect minimal complexity and difficulty of the issues and was decided on an objection improperly raised. Only minimum units should be allowed.

[43] MNCW argued that nothing should be allowed for item 24 because the Court has not specifically authorized indemnification for the time of counsel to travel to the hearing venue. Nothing should be allowed for item 25 given the absence of evidence of what if anything was done.

Assessment

[44] I have taken into consideration the Respondent's submissions concerning unmeritorious litigation in assessing items 13 and 14. Counsel for the Respondent acted in a measured and responsible manner. The bill of costs correctly factored out the hour for the motion addressing Joyce Gus at the start. I allow items 13(a) and (b) and 14(a) as presented. I disallow item 24 further to my conclusions in *Marshall v. Canada*, [2006] F.C.J. No. 1282 at para. 6 (A.O.) [*Marshall*] that there must be a visible direction by the Court to the assessment officer specifically authorizing fees for the time of counsel in transit. Such a direction is not however necessary to assess the associated travel disbursements. I routinely allow item 25, as I will here, unless I think that responsible counsel would not have reviewed the judgment and explained its implications to the client.

(g) *Fee item 26 (assessment of costs / available range = 2 to 6 units) claimed at 5 units*

[45] MNCW argued that the bill of costs contains several items clearly not assessable under the Tariff and a number of excessive, erroneous and unsupported claims that required extensive submissions on the part of MNCW. MNCW should receive 6 units for item 26 because counsel for the Respondent caused unnecessary and complex procedural issues for conduct of this assessment thereby creating additional expense which Métis women as an already disadvantaged group can ill afford. Initially, he requested written disposition of the assessment. After a timetable had been set,

he then indicated by letter that he would prefer disposition of the assessment by oral hearing if that was more convenient to counsel for MNCW. Subsequently, he scheduled an oral hearing of the assessment without first contacting counsel for MNCW as to her availability on that date or authority to incur travel costs from Ontario to British Columbia. Counsel for MNCW requested a teleconference before me in which venue and mode of conduct were discussed: the oral hearing was replaced with a fresh timetable for written disposition. If the Respondent does receive item 26 costs, the allowance should be the minimum 2 units.

Assessment

[46] There were aspects of the conduct of this assessment of costs that did not come out in MNCW's submissions. For example, after the oral hearing had been replaced with a timetable for written materials, counsel for the Respondent requested and received on behalf of counsel for MNCW an extension of time to accommodate the latter's international practice of law. As well, counsel for MNCW asked for directions on the scope of rebuttal materials with regard to Rule 84 (requiring that a party first file all of its affidavits before cross-examining opposing affiants unless consent or leave is given) and whether the Respondent could file rebuttal affidavits after cross-examining MNCW's reply affiant on costs. Counsel for the Respondent asserted that Rule 84(1) applies only to motions or applications and is therefore not applicable to assessments for which Rule 408(1) applies (authorizing an assessment officer "to direct the production of books and documents and give directions for the conduct of an assessment"). He noted that *Halford* above at para. 2 held that Rule 408(1) provides the assessment officer with broad parameters of conduct and asserted that my timetable permitted the Respondent to adduce "rebuttal materials", a term obviously including

affidavits, after cross-examination of MNCW's reply affiant on costs. The Respondent's counsel asserted that the objection should have been raised long before the expiry of the time limit for cross-examinations as opposed to just two days before its expiry and that the objection was premature given that he had not yet even considered whether rebuttal affidavits would be necessary. Counsel for MNCW renewed her objection.

[47] I issued these directions on July 11, 2007:

> …An assessment of costs is an interlocutory process. Rule 408(1) should not be used to create practice alien to features in other process available under the Rules. See for instance the findings in *Lord v. Canada*, [2004] F.C.J. No. 430, 2004 FC 366 (A.O.), which were consistent with the hearing principle that a party should present in chief its complete case as opposed to splitting it.
>
> The terms "reply materials" and "rebuttal materials" used in Rule 408(1) directions for conduct of assessments of costs were chosen to ensure that parties may advance their respective positions consistent with principles or practice available in other process, including the use of affidavits and written submissions. With particular regard to "rebuttal materials", this does not mean an unrestricted mandate to repair one's case in chief by adducing new or fresh evidence readily available all along. That is, evidence which would permit direct evaluation, by the party liable to pay costs and by the assessment officer, of given items of costs and which the party presenting the bill of costs could reasonably have been expected to understand said evidence as relevant and potentially determinative for the result of the assessment of costs i.e. invoices, timesheets, etc. The exceptions to this, which might ultimately prove completely irrelevant for the assessment officer's considerations, might be for example the introduction in the reply materials of evidence of extracts from the record of litigation in another jurisdiction, which the party presenting the bill of costs could not reasonably have been expected to raise in chief, asserted to have some relevance for the subject assessment of costs. That might or might not create circumstances requiring responsible and prudent counsel to consider rebuttal evidence within such narrow parameters to augment the record.

> The Assessment Officer understands the concern of counsel for the Applicants, but he will not decide anything at this point given that counsel for the Respondent has apparently not yet decided whether rebuttal evidence is necessary and therefore the proposed form of any evidence is not apparent at this time. Counsel for the Respondent should proceed according to the existing timetable keeping in mind the comments above.
>
> Any rebuttal affidavit and written submissions, once served, will be accepted by the Registry and held for directions as to acceptability for filing. Counsel for the Applicant may advise opposing counsel and the Registry in writing of any objections and their underlying rationale by August 8, 2007. Counsel for the Respondent may advise opposing counsel and the Registry of his response by August 17, 2007. If counsel for the Respondent ultimately decides that rebuttal materials will simply take the form of written submissions, the Registry should file them.

The Respondent did not file rebuttal affidavits.

[48] As it happened, MNCW's reply materials advanced material from the record of another Federal Court of Appeal proceeding (A-209-01) and included a request to set off the $2,250.00 awarded as a lump sum in the cause by order dated April 2, 2002, in Federal Court of Appeal file A-209-01. MNCW had originally sought its relief by way of action. That approach and subsequent other steps proved problematic. File A-209-01 was part of the process to eventually frame its petition for relief in a manner compliant with legislative requirements, i.e. the T-595-01 matter.

[49] I think that my discretion for set-off is broad: see *Halford* above at paras. 300 – 306. MNCW's assessment submissions repeatedly pointed to insufficient evidence on the part of the Respondent. MNCW's material in support of set-off was essentially a statement that the costs had been awarded to it. Given omissions that I have noted in MNCW's position, I am not confident that

those costs have not already been satisfied. As well, it would be exceptional in the general financial framework of the federal government to permit a client department to have a liability which could not be reversed (no appeal was taken) remain outstanding through several fiscal years without steps having been taken to discharge it by paying the $2,250.00 to MNCW. I allow item 26 as presented and decline set-off.

(2) Disbursements

(a) *Disbursements for verbatim reporter fees and transcripts for the various cross-examinations of affiants ($4,280.00)*

Assessment

[50] MNCW advanced submissions consistent with those above for items 8 and 9 to argue that counsel for the Respondent was responsible for the unnecessary re-attendances. Therefore, nothing should be allowed for August 5 and 8, 2003. I note that the re-attendances were buttressed by an order. This claim is reasonable. I allow the $4,280.00 as presented.

(b) *Disbursements for courier to file motion to strike authorities ($16.50); photocopies (various amounts totalling $3,818.84); couriers (various amounts totalling $191.89); online computer legal research (various amounts totalling $474.60) and travel expenses for the hearing of the judicial review ($1,271.38)*

[51] MNCW argued that the $16.50 must be disallowed because it relates to the motion to strike certain authorities of MNCW for which the order directed that there be no costs. MNCW argued that seven photocopying items totalling $1,098.44 should be disallowed for the reasons above because they address the motions. The $15.36 for auto-feed of documents on March 26, 2003,

should be disallowed given the absence of evidence as to what it relates: see *Marshall* above at para. 5. The costs for the three remaining photocopying items, i.e. Mr. Hallman's affidavit ($49.90), the Respondent's Application Record ($1,155.59) and the Book of Authorities ($1,499.55) should be reduced because in-house photocopying would have been cheaper than the outside commercial outlets used. If MNCW had been aware of this approach at the time it was consenting in the spirit of cooperation to the Respondent's several requests for time extensions to file these materials, it would have readily agreed to even more time in the interest of promoting a cheaper approach.

[52] MNCW argued further to *Marshall* above at para. 5 that proof of purpose and to what they relate are less than absolute for the courier charges. The dates for some correspond to times when the Respondent was bringing motions. As well, the materials do not explain why one item ($60.37) is so much higher than the other six items thereby casting doubt on its purpose. MNCW argued further to its submissions for couriers and *Inter-Church Uranium Committee v. Canada (Atomic Energy Control Board)*, [2006] F.C.J. No. 1204 at para. 11 (A.O.) that the online computer research charges should be disallowed given lack of proof of purpose and relevance. As well, the Federal Court database is an official, free and viable alternative to commercial and unofficial sites such as Quicklaw.

[53] MNCW argued that there is no proof of the reasonableness of the travel expenses. Métis women are historically disadvantaged, MNCW is based in Ottawa, its counsel was based in Kingston and the venue was in Ottawa. The Toronto office of the Department of Justice had conduct dating back to when the matter was an action (Federal Court file T-1804-98).

Toronto counsel opted to transfer to Vancouver for personal reasons and surrendered carriage. The Toronto office did not immediately assign new counsel, but there was counsel available in Toronto willing to assume carriage. Several months later, the original counsel suddenly resumed carriage, but from Vancouver. MNCW argued that as the Department of Justice is the largest employer of lawyers in Canada, the cheaper option of Toronto-based counsel should have been maintained. MNCW conceded that a party may opt for out of town counsel, but the resultant extra costs in the face of a cheaper and viable option should not be passed on to impoverished litigants: see *Sax v. Chomyn*, [2000] F.C.J. No. 145 at para. 17 (A.O.). There is no evidence via invoices that a cost-effective airfare was sought or that the flat rate Treasury Board allowance for meals was even spent. The GST associated with disallowed items should also be removed.

Assessment

[54] For the reasons above for fee item disallowances relating to the motions, I disallow the $16.50 and the seven photocopying items identified by MNCW. The timing of the auto-feed (March 26, 2003) was about when the flurry of correspondence began in the record eventually resulting in the April 11, 2003 case management conference. This item could be just about anything. I disallow it. I find the remaining photocopying items reasonable and allow them as presented. The evidence for couriers included some invoices, but they were not very informative. I allow a reduced amount of $95.00 for couriers. My decision in *Englander v. Telus Communications Inc.*, [2004] F.C.J. No. 440 (A.O.) confirms that I routinely allow costs for online computer research. However, that process includes consideration of whether all, none or only part of the research was reasonably necessary, irrelevant or simply in the nature of cautionary or secondary authorities,

keeping in mind the professional obligation of counsel both to the client for diligent representation and to the Court for as much assistance as reasonably possible on all aspects of the law potentially affecting final adjudication on the substantive issues of the litigation. I examined the dates in the accounting records. I think that some of the research related to the motions. I allow a reduced amount of $310.00 for online computer research.

[55] In *Halford* above, I addressed several instances of travel disbursements for counsel. I find the charges here for ground transportation, hotel, meals and incidentals reasonable and allow them as presented as they would have been incurred whether counsel was based in Toronto or Vancouver. I allow the extra baggage charge of $25.00 for court documents. That leaves $725.00 for the return airfare on January 18, 2005, between Vancouver and Ottawa. If I can recognize a reasonable charge given an invoice, I can likely recognize one without an invoice. I think that there are circumstances when the manner (supervising counsel from Toronto removing himself and then resuming from Vancouver after several months) by which carriage of the Respondent's case unfolded could be justified. I am not convinced that this is one of them. I allow a reduced amount of $500.00 for airfare as indicative of a flexible airfare (should the hearing be cancelled, shorter or longer) between Toronto and Ottawa. I reduce the GST accordingly to reflect disallowed or reduced disbursements.

B. *The A-127-05 Matter*

(1) Counsel fees

(a) *Fee items 19 (Memorandum of Fact and Law / available range = 4 to 7 units) claimed at 7 units; 22(a) (attendance at appeal hearing / available range = 2 to 3 units per hour) claimed at 3 units per hour x 4 hours and 24 (travel time of counsel to attend the hearing / available range = 1 to 5 units) claimed at 5 units*

Assessment

[56] I disallow item 24 for the reasons above. MNCW advanced submissions similar to those above (T-595-01) for reduction of items 19 and 22(a) to minimum amounts and also argued that the brevity of the decision indicates that the Court did not find this matter particularly difficult or complex in rendering its decision shortly after the hearing. I tend to agree with MNCW that they should be reduced, but for very different reasons. The manner by which this matter was brought in the Federal Court was initially flawed and often problematic otherwise. I do not think that there was ever any prospect of success at the appellate level which could be of concern to counsel for the Respondent. Counsel for the Respondent had to carefully prepare, but I think that the "board was tilted" considerably in his favour. I allow reduced amounts of 6 units and 2 units per hour for items 19 and 22(a) respectively. The Respondent did not ask for item 26. I refuse item 26 for MNCW.

(2) Disbursements

(a) *Disbursements for photocopies (various amounts totalling $1,361.68); couriers (various amounts totalling $58.10); online computer legal research (various amounts totalling $40.83) and travel expenses for the hearing of the appeal ($1,722.39)*

[57] MNCW advanced submissions similar to those above (T-595-01) for photocopies and noted the lack of evidence of cost per page or purpose. The courier charge of $15.77 for a motion record

should be disallowed because the resultant order was silent on costs. As MNCW has asked for costs of the assessment, the courier charge of $16.39 for service of the bill of costs should be disallowed. MNCW argued that the online computer research charges should be disallowed further to lack of evidence of purpose, relevance or necessity. MNCW objected to paying for counsel based in Vancouver on the same basis as above (T-595-01). The individual amounts comprising the total of $1,722.39 for travel in the bill of costs are $1,141.69 not identified at all, $554.19 described as "March 1, 2006" and $26.51 described as "Vancouver-Ottawa from February 12,16/06". A final line in the bill of costs shows "Fees" with no amount opposite it. The supporting evidence indicates that these amounts addressed travel between February 12 and 19, 2006 from Vancouver to Ottawa, Halifax, Montreal and then back to Vancouver (the hearing was in Ottawa). This is excessive if this indeed is for air travel for a matter that had been set well in advance, apart from being unsupported by evidence. The GST claim should be disallowed further to the flawed evidence for disbursements.

Assessment

[58] MNCW specifically criticized the absence of evidence for two photocopying charges ($66.30 and $198.25) for the courthouse library. They could relate to the Respondent's Book of Authorities (filed January 17, 2006, and showing a photocopying charge of $1,059.50) as they occurred the day before. The only evidence is a library invoice with the account number, quantity, date and amount. I allow the $66.30 and $198.25 at a reduced single amount of $100.00 and allow the other photocopying charges as presented. I remove the courier charge of $15.77 associated with the order silent on costs and allow the other courier charges as presented. I allow the online

computer research charges at a reduced amount of $12.00 as I think some related to motions and orders without costs.

[59] The asserted problem of lack of identification in the bill of costs of the individual items comprising travel is likely clarified by looking at the evidence in the record and how the bill of costs was printed. Each amount was put on its own line in the bill of costs slightly misaligned (by one line) from the description of the item to which it relates. For example, the credit card statement clearly shows that the $26.51 relates to "Fees". That means that the $554.19 should have been aligned with "Vancouver-Ottawa from February 12, 16/06." The evidence does not so specifically state, but someone has written $554.19 on the credit card statement beside the Vancouver-Ottawa leg of this three-city trip (Montreal being a transit change point on the way back from Halifax to Vancouver). My guess is that counsel's travel claim for meals etc (which is not in evidence) was submitted on "March 1, 2006." The $1,141.69 should have been aligned with it. The supporting affidavit indicates that a legal assistant used the office disbursement file in assembling the bill of costs. She may not have looked further than that. The credit card statement also has a notation of $384.85 roughly opposite Halifax for a moot competition, the likely explanation for the extra trip legs. I think that irrelevant charges may have been introduced by simply working with the disbursement file, if that indeed is what happened. I allow a reduced amount of $1,000.00. As above (T-595-01), GST is adjusted accordingly.

[60] The Respondent's bill of costs in the T-595-01 matter, presented at $32,836.94, is assessed and allowed at $24,866.01. The Respondent's bill of costs in the A-127-05 matter, presented at $6,285.81, is assessed and allowed at $4,089.06.

"Charles E. Stinson"

Assessment Officer

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-595-01
STYLE OF CAUSE:	MÉTIS NATIONAL COUNCIL OF WOMEN et al. v. AGC

ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF THE PARTIES

REASONS FOR ASSESSMENT OF COSTS:	CHARLES E. STINSON
DATED:	September 26, 2007

WRITTEN REPRESENTATIONS:

Ms. Kathleen A. Lahey	FOR THE APPLICANTS
Mr. Robert Danay	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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