

**Date: 20071022**

**Docket: T-1685-05**

**Citation: 2007 FC 1093**

**BETWEEN:**

**CALVIN SANDIFORD**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**ASSESSMENT OF COSTS - REASONS**

**Charles E. Stinson**  
**Assessment Officer**

[1] The Plaintiff brought this action for relief concerning career progression and regulation of his military life as an officer in the Canadian Armed Forces. Further to the Defendant's motion, a Prothonotary struck out his action and fixed costs of the motion at \$750.00. The Plaintiff's appeal by way of notice of motion was dismissed with costs. I issued a timetable for written disposition of the assessment of the Defendant's bill of costs for the appeal proceeding.

[2] The Plaintiff did not file any materials in response to the Defendant's materials. My view, often expressed in comparable circumstances, is that the *Federal Courts Rules* do not contemplate a litigant benefiting by having an assessment officer step away from a neutral position to act as the

litigant's advocate in challenging given items in a bill of costs. However, the assessment officer cannot certify unlawful items, i.e. those outside the authority of the judgment and the tariff.

I examined each item claimed in the bill of costs and supporting materials within those parameters.

[3] Certain items warrant my intervention in view of my expressed parameters above as I feel that the Defendant cannot establish entitlement thereto notwithstanding the absence of objections from the Plaintiff. Items 5 and 6 under the subheading "Motions" in Tariff B address respectively preparation for and attendance on a motion. Items 13(a) under the subheading "Pre-Trial and Pre-Hearing Procedures" and 14(a) under the subheading "Trial or Hearing" address respectively preparation for and attendance on a hearing. The Defendant claims all four items for the same hearing, i.e. the appeal of the Prothonotary's decision. This is not a situation in which costs for a motion brought within the hearing of the trial of an action can be claimed under items 5 and 6 separate from the costs of the trial. Items 13(a) and 14(a) would apply to the latter costs. As the practice has been to use items 5 and 6 for a notice of motion appealing a decision of a Prothonotary, I allow them as presented, but disallow items 13(a) and 14(a).

[4] The Defendant has claimed the maximum amount for item 15 (written argument) also under the subheading "Trial or Hearing". I am not convinced that this is appropriate, but as I think that the Defendant might have been able to argue for additional amounts elsewhere in the Tariff, I allow it at

the minimum value in its range. The other items of costs are generally arguable as reasonable within the limits of the award of costs. The Defendant's bill of costs, presented at \$6,251.80, is assessed and allowed at \$4,451.80.

"Charles E. Stinson"

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Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** T-1685-05

**STYLE OF CAUSE:** CALVIN SANDIFORD v. HMQ

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

**REASONS FOR ASSESSMENT OF COSTS:** CHARLES E. STINSON

**DATED:** October 22, 2007

**WRITTEN REPRESENTATIONS:**

n/a

FOR THE PLAINTIFF

Ms. Valerie J. Anderson

FOR THE DEFENDANT

**SOLICITORS OF RECORD:**

n/a

FOR THE PLAINTIFF

John H. Sims, Q.C.  
Deputy Attorney General of Canada

FOR THE DEFENDANT