Federal Court  Cour fédérale

Date: 20211216

Docket: T-1108-20

Citation: 2021 FC 1429

BETWEEN:

**PHILLIP NARTE, DANTE NARTE,
TINA SAM, MURRAY SAM,
ROSALIA GLADSTONE,
TERRY ST. GERMAIN JR., AND
RAEANNE RABANG**

Applicants

and

**ROBERT GLADSTONE,
MICHELLE ROBERTS,
RONALD JR. MIGUEL, BONNIE RUSSELL,
TANYA JAMES, AND
SHXWHÁ:Y VILLAGE FIRST NATION**

Respondents

REASONS FOR ASSESSMENT

GARNET MORGAN, Assessment Officer

I. Background

[1] This is an assessment of costs pursuant to a Judgment of the Federal Court dated May 12, 2021, wherein the Applicants' judicial review proceeding was dismissed with costs awarded to the Respondents.

[2] This assessment of costs is also pursuant to an Order of the Federal Court dated February 10, 2021, regarding the Applicants' motion pursuant to Rule 369 and Rule 312 of the *Federal Courts Rules,* SOR/98-106 *(FCR),* for leave to file Affidavit #3 of Murray Sam, sworn on January 4, 2021. The Court ordered that the "[c]osts of this motion shall be costs in the cause." As the Respondents were the successful party in the judicial review proceeding, they are entitled to costs for this motion.

[3] Further to the Court's decisions, costs will be assessed in accordance with Rule 407 of the *FCR,* which states:

> 407. Assessment according to Tariff B - Unless the Court orders otherwise, party-and-party costs shall be assessed in accordance with column III of the table to Tariff B.

[4] On June 15, 2021, the Respondents filed a Bill of Costs and an Affidavit of Nancy Kao, sworn on June 15, 2021, which initiated the Respondents' request for an assessment of costs.

[5] On June 21, 2021, a direction was issued to the parties regarding the conduct and filing of documents for the assessment of costs. In response to this direction, the Applicants filed Written Representations on July 30, 2021, and the Respondents filed an Affidavit of Nancy Kao, sworn on August 24, 2021, and Written Representations on August 24, 2021.

II. Preliminary Issue

A. *The complexity of the Applicants' judicial review proceeding.*

[6] At paragraphs 1, 2 and 3 of the Applicants' Written Representations it is submitted that the Applicants' Notice of Application was not complex, as "[t]he relief sought centred around declaring certain Band council seats to be vacant due to the councillors breach of the Band's own laws" and also "sought to enforce Shxwhá:y Village's own laws against the Respondent and preserve the status quo until an election can be held." The Applicants submitted that the judicial review hearing was heard in one day and that there were no witnesses, oral evidence, discovery process or cross-examination on affidavits. The Applicants submitted that "the complexity of the issues does not justify awarding the maximum number of units provided in column III of Tariff B." In reply, at paragraphs 69 and 70 of the Respondents' Written Representations it is submitted that the Applicants' Notice of Application was "in breach of Rule 302" and was not limited "to a single order in respect of the relief sought in the Application", and instead sought varied orders that required a response by the Respondents.

[7] The Applicants have characterized their judicial review proceeding as not being complex and the Respondents have characterized the judicial review proceeding as being complex. My review of the Applicants' Notice of Application filed on September 16, 2020, showed that it is 29 pages of length, with 13 pages consisting of the relief, grounds and supporting material to be relied on. The Notice of Application involved issues related to Shxwhá:y Village's written laws and the adherence to election protocols. My review of the court record showed that this particular judicial review proceeding was case managed by the Court and that there were several case management conferences (CMC) held to discuss a variety of litigation issues, including the creation of timetables and procedural steps for the judicial review proceeding to move forward.

Overall, my review of the court record showed that both parties performed a considerable amount of work to prepare their judicial review materials for this particular file.

[8] I have considered of the parties' submissions on the issue of complexity in conjunction with the court record and I find the Applicants' judicial review proceeding to be of moderate to high complexity, as it pertains to the facts for this particular file. In *Starlight v Canada*, [2001] FCJ No 1376, at paragraph 7, the Assessment Officer states the following regarding the issue of complexity and costs:

> 7. The structure of the Tariff embodies partial indemnity by a listing of discrete services of counsel in the course of litigation, not necessarily exhaustive. The Rules are designed to crystallize the pertinent issues and eliminate extraneous issues. For example, the pleading and discovery stages may involve a complex framing and synthesizing of issues leaving relatively straightforward issues for trial. Therefore, each item is assessable in its own circumstances and it is not necessary to use the same point throughout in the range for items as they occur in the litigation. If items are a function of a number of hours, the same unit value need not be allowed for each hour particularly if the characteristics of the hearing vary throughout its duration. In this bill of costs, the lower end of the range for item 5 and the upper end of the range for item 6 are possible results. Some items with limited ranges, such as item 14, required general distinctions between an upper and lower assignment in the range for the service rendered.

[9] Utilizing the *Starlight* decision as a guideline, each of the Respondents' claims made in the Bill of Costs filed on June 15, 2021, will be assessed individually to determine what level of complexity may be applicable and the quantum of costs to allow. This will be done while keeping in mind that I have found the overall complexity of the Applicants' judicial review proceeding to be of moderate to high complexity.

III. Assessable Services

[10] The Respondents have claimed 83 units for assessable services for a total dollar amount of $13,072.50.

A. *Item 2 – Preparation and filing of all defences, replies, counterclaims or respondents' records and materials.*

[11] The Respondents have claimed 7 units for the preparation and filing of the Respondents' responding documents for the Applicants' judicial review proceeding. At paragraph 4 of the Applicants' Written Representations it is submitted that Item 2 should be reduced to "no more than 4 units to align with the relatively low complexity of the matter." In reply, at paragraph 76 of the Respondents' Written Representations it is submitted that 7 units are justified based on "the number of grounds of relief raised by the Applicants, and the factual and legal complexity of same, as reflected in the size of the parties' records and number of affidavits filed". My review of the court record found that the Respondents prepared several affidavits that were served on the Applicants on December 21, 2020, and on February 5, 2021, a Memorandum of Fact and Law, an Application Record, and a Combined Book of Authorities were filed with the court registry.

[12] Further to my review of the parties' costs documents and the court record, I have reviewed the factors in awarding costs that are listed under Rule 400(3) of the *FCR*, which I am able to consider in my assessment of costs pursuant to Rule 409 of the *FCR* and I find that the Respondents' claim for 7 units for Item 2 to be justified. When I consider factors such as; (a) the result of the proceeding; (c) the importance

and complexity of issues; and (g) the amount of work performed by the Respondents, the court record reflects that the Respondents successfully argued their position before the Court; that the issues responded to were of significant importance and complexity; and that a substantial amount of work was done by the Respondents in response to the Applicants' judicial review proceeding. Therefore, I have determined that the services performed by the Respondents for the judicial review proceeding were necessary and that it is reasonable to allow 7 units for Item 2.

B. *Item 5 – Preparation and filing of a contested motion, including materials and responses thereto.*

(1) Applicants' Rule 312 motion to file Sam #3 - in writing

[13] The Respondents have claimed 5 units for the "Applicants' Rule 312 motion to file Sam #3 - in writing", and 7 units for the "Respondents' motion to strike – heard with main Application". Concerning the Applicants' Rule 312 motion, at paragraph 5(a) of the Applicants' Written Representations it is submitted that the Respondents' claim of 5 units is not contested. Further to my review of the Court's Order dated February 10, 2021, which awarded costs to the Respondents, and my review of the Respondents' responding motion material contained in the court record, I am in agreement with the parties that 5 units is a reasonable amount to allow for the Respondents' services for this particular motion.

(2) Respondents' motion to strike - heard with main Application

[14] Concerning the Respondents' motion to strike the Applicants' application for judicial review that was heard at the judicial review hearing on March 25, 2021, at paragraph 5(b) of the

Applicants' Written Submissions it is submitted that "[t]his motion was not successful and no costs should be awarded to the Respondents with respect to this motion." In addition, the Applicants submitted at paragraph 5(c), that the Court did not strike the Applicants' application for judicial review, as there was an outstanding matter regarding one of the Respondents (Bonnie Russell) that was not moot, and cited paragraph 10 of the Court's Judgment and Reasons dated May 12, 2021. In reply, at paragraph 77(b) of the Respondents' Written Representations it is submitted that "the Respondents' Motion to Strike was in fact successful and costs ought to be awarded with respect to same. This was a very complex motion, dealing with numerous types of relief sought by the Applicants and their evidence." Further to my review of the parties' submissions, I have reviewed the Court's Judgment and Reasons dated May 12, 2021, from the judicial review hearing and it did not reveal that the Court awarded costs for this specific motion. The Court's Judgment states the following:

> THIS COURT'S JUDGMENT is that
>
> 1. The application for judicial review is dismissed.
>
> 2. The applicants are condemned to pay costs to the respondents.

[15] The Court's Judgment refers to the application for judicial review as being dismissed but does not state that the application for judicial review is struck or that the Respondents' motion to strike the application for judicial review is granted. In *Tursunbayev v Canada*, 2019 FC 457, at paragraph 39, the Court states the following regarding motions and costs:

> 39. As the Defendants point out, apart from the Court's order of November 24, 2016 and the eventual supplementary costs order of March 6, 2017, which the Defendants have satisfied, all of my orders in these proceedings have either expressly awarded no costs or have been silent as to costs. This is because in the instances now raised before me the Plaintiff did not seek costs (either in writing

> or orally) so that costs were not an issue I was asked to address. As I understand the jurisprudence of this Court, I cannot now re-visit my earlier orders that were silent as to costs. In *Sauve v Canada*, 2015 FC 181, Justice Barnes had the following to say on point:
>
> > [5] I am also concerned about the Defendants' claims to costs in connection with a variety of motions that were filed by one or the other dating back as far as 2007.
> >
> > [6] Almost all of the early motions in this proceeding were concluded by Orders where no award of costs was made. It is not open to the Court to revisit those matters and to award costs where none were ordered at the time: see *Exeter v Canada*, 2013 FCA 134 at para 14.

[16] In addition, in *Canada v Uzoni*, 2006 FCA 344, at paragraph 4, the Assessment Officer states the following regarding motions and costs:

> 4. The Respondent has requested 4 units for its item 4 (Preparation and filing of an uncontested motion, including all materials for late filing of Notice of Appearance). I have reviewed the Order of the Federal Court of Appeal dated March 22, 2005, in which the Court granted the Respondent's motion for an extension of time to file its Notice of Appearance. However, the same Order of the Federal Court of Appeal made no reference whatsoever to the issue of costs associated with the Respondent's motion. It is a well established principle that costs are at the respective Court's discretion and where an order is silent with respect to costs, it implies there is no visible exercise of the respective Court's discretion under Rule 400(1). Reference may also be made to a relevant passage in Mark M. Orkin, Q.C., *The Law of Costs* (2nd Ed.), 2004, paragraph 105.7:
>
> > ... Similarly if judgment is given for a party without any order being made as to costs, no costs can be assessed by either party; so that when a matter is disposed of on a motion or at a trial with no mention of costs, it is as though the judge had said that he "saw fit to make no order as to costs"...
> >
> > Similarly, I rely on *Kibale v. Canada (Secretary of State),* [1991] F.C.J. No. 15, [1991] 2 F.C. D-9 which reflects the same sentiment:

> If an order is silent as to costs, no costs are awarded.

[17] Upon my review of the parties' costs documents, Part 11 of the *FCR*, the Court's Judgment and Reasons dated May 12, 2021, and utilizing the aforementioned jurisprudence as guidelines; I have determined that I do not have the authority to allow the second claim under Item 21(a) regarding the Respondents' motion to strike the Applicants' application for judicial review, as there is no Court decision specifically awarding costs for this motion. Therefore, the Respondents' second claim of 7 units for Item 21(a) is disallowed.

C. *Item 10 – Preparation for conference, including memorandum; and Item 11 – Attendance at conference, per hour.*

[18] The Respondents have claimed 21 units for Item 10 and 9 units for Item 11 in relation to the preparation for, and attendance at four case management conferences (CMC) that were heard on October 23, 2020, December 15, 2020, January 14, 2021, and March 11, 2021.

(1) CMC held on October 23, 2020

[19] Concerning the CMC heard on October 23, 2020, the Respondents have claimed 6 units for Item 10 and 3 units for Item 11. At paragraphs 6 and 7 of the Applicants' Written Representations it is submitted that the CMC dealt with straightforward issues and that no more than 3 units should be allowed for Item 10 and 1 unit should be allowed for Item 11. At paragraph 80 of the Respondents' Written Representations it is submitted that the Respondents prepared a 3-page letter for the Court's use at the CMC and that additional issues, such as the cross examination of affidavits and the striking out of various portions of the Applicants'

documents were discussed at the CMC. At paragraph 87 the Respondents submitted that 4.5 units should have been claimed for Item 11 for this CMC but that they are willing to stand by the 3 units claimed in the Bill of Costs.

[20] Further to my review of the court record, including the Respondents' letter dated October 7, 2020, it shows that the Respondents' letter was 3 pages in length and that it proposed a variety of issues for discussion at the CMC heard on October 23, 2020. My review of the Court's Order dated October 26, 2020, indicates that the CMC dealt with the filing of the Respondents' motion to add another Respondent to the judicial review proceeding and to remove the counsel of record for the Applicants. The court record also shows that the Court Registrar that was assigned to the hearing recorded in the Abstract of Hearing, which is a computer entry that provides the details for a hearing, that the CMC was from 2:02 pm to 3:32 pm, which was a duration of 1 hour and 30 minutes. Although, the issues discussed at the CMC may have been straightforward in nature, based on the number of issues that were discussed and the duration of the hearing, I find that this particular CMC warrants an allocation of units somewhere in the mid-range of units for Item 10 and Item 11. Upon my consideration of the aforementioned facts, I have determined that 5 units will be allowed for Item 10 and 3 units will be allowed for Item 11 for the CMC held on October 23, 2020.

(2) CMC held on December 15, 2020

[21] Concerning the CMC held on December 15, 2020, the Respondents have claimed 5 units for Item 10 and 2 units for Item 11. At paragraphs 6 and 7 of the Applicants' Written Representations it is submitted that the CMC dealt with the service and filing dates for

documents and potential hearing dates and that no more than 3 units should be allowed for Item 10 and 1 unit should be allowed for Item 11. At paragraphs 81 and 88 of the Respondents' Written Representations it is submitted that the CMC also addressed the appointment of an interim receiver manager and issues regarding a writ of *quo warranto* and that the Respondents meant to claim 3 units for Item 11 but that they are willing to stand by the 2 units claimed in the Bill of Costs.

[22] Further to my review of the court record, it shows that a 6-page letter dated December 8, 2020, was submitted by the parties for the CMC, which was prepared by the Applicants. My review of the Court's Order dated December 16, 2020, indicates that the CMC dealt with the status of the file and the scheduling of steps for the judicial review proceeding. The court record also shows that the Court Registrar that was assigned to the hearing recorded in the Abstract of Hearing that the CMC was from 3:03 pm to 3:51 pm, which was a duration of 48 minutes. Based on the preparation required, the number of issues that were discussed and the duration of the hearing, I find that this particular CMC warrants an allocation of units somewhere in the mid-range of units for Item 10 and Item 11. Upon my consideration of the aforementioned facts, I have determined that 4 units will be allowed for Item 10 and 2 units will be allowed for Item 11 for the CMC held on December 15, 2020.

(3) CMC held on January 14, 2021

[23] Concerning the CMC held on January 14, 2021, at paragraphs 6 and 7 of the Applicants' Written Representations it is submitted that the Applicants do not dispute the amounts claimed for this CMC. This CMC was regarding the content and filing dates for the parties' Application

Records. Further to my review of the court record and the Court's Order dated January 15, 2021, which is related to the CMC held on January 14, 2021, I am in agreement with the parties that it is a reasonable to allow 4 units for Item 10 and 1 unit for Item 11 for this CMC.

(4) CMC held on March 11, 2021

[24] Concerning the CMC held on March 11, 2021, the Respondents have claimed 6 units for Item 10 and 3 units for Item 11. At paragraphs 6 and 7 of the Applicants' Written Representations it is submitted that "[t]his CMC involved the Respondents' request for a stay of proceedings, which Prothonotary Ring ordered "would not be entertained by the Court". The Respondents should not be allowed to claim any costs for this CMC." At paragraphs 82 and 83 of the Respondents' Written Representations it is submitted that the Respondents prepared a 4-page letter for the Court's use at the CMC that set out the Respondents' alternative dispute resolution (ADR) proposal and that "the Respondents need not have "won" this CMC in order to claim costs". At paragraph 84 the Respondents submitted that "[s]ignificant time and expense could have been saved had the Applicants acted reasonably and accepted the Respondents' ADR proposal, and it is therefore not in the interests of justice that the Respondents be denied their costs, and therefore penalized, for bringing it before the court." In addition, at paragraph 90 the Respondents submitted that they "did not realize that this CMC lasted less than 30 minutes until reviewing the Court File, and therefore their claim for 3 units for this CMC is in error. The Respondents submit that this error balances out with underclaiming for the October and December CMCs."

[25] Further to my review of the court record, it shows that a 4-page letter dated February 25, 2021, and a 1-page letter dated March 9, 2021, were submitted by the Respondents for the CMC. My review of the Court's Order dated March 11, 2021, indicates that the CMC dealt with the Respondents' informal request for a stay of proceedings. The court record also shows that the Court Registrar that was assigned to the hearing recorded in the Abstract of Hearing that the CMC was from 9:03 am to 9:27 am, which was a duration of 24 minutes. Although, the Respondents' informal request for a stay of proceedings was not entertained by the Court, I find that wording for Item 10 and Item 11 in Tariff B of the *FCR*, does not preclude the inclusion of this CMC in the Respondents' Bill of Costs. For CMCs, if the Court has not explicitly stated that no costs are awarded for a specific CMC, then it is open to a party to include that CMC in their Bill of Costs. This being noted, I have considered the parties' submissions and the fact that the Court's Order dated March 11, 2021, states that various procedural steps were not adhered to by the Respondents, which necessitated the Court not entertaining the Respondents' informal request for a stay of proceedings. When I consider factors listed under Rule 400(3) of the *FCR*, such as; (a) the result of the proceeding; (c) the importance and complexity of issues; and (g) the amount of work performed by the Respondents, the court record reflects that the issues were of significant importance; that a substantial amount of work was done by the Respondents for the informal request for a stay of proceedings; but the Respondents were not successful with their request and the Court stated that various procedural steps were not adhered to by the Respondents. I have also considered the Respondents' suggestion that the error made in the over calculation of units for Item 11 could be allowed to compensate for the under calculation of units made for other claims in the Bill of Costs and I am unable to allow this relief, as each claim must be assessed on its own merit. In *Westbank Property Management Ltd v Westband Indian Band Council*, [1992] FCJ No 664, the Assessment Officer states the following:

> I reject Defendant's submission that allowances for some items may be used to compensate for lack of indemnification for other items. The term "reasonably necessary" in Tariff B1(2)(b) cannot be stretched to include such offsets: each item is considered within its own circumstances relative to the critical path of litigation.

[26] Upon my consideration of the aforementioned facts and utilizing the *Westbank* decision as a guideline, I have determined that 3 units will be allowed for Item 10 and 1 unit will be allowed for Item 11 for the CMC held on March 11, 2021.

D. *Item 13 – Counsel fee: (a) preparation for trial or hearing, whether or not the trial or hearing proceeds, including correspondence, preparation of witnesses, issuance of subpoenas and other services not otherwise particularized in this Tariff; and Item 14 – Counsel fee: (a) to first counsel, per hour in Court.*

[27] The Respondents have claimed 5 units for Item 13(a) for the preparation for the judicial review hearing and have claimed 18 units for Item 14(a) for first counsel's attendance at the judicial review hearing on March 25, 2021. Concerning Item 13(a), at paragraph 8 of the Applicants' Written Representations it is submitted that the judicial review proceeding "was not a highly complex mater, and no more than 3 units should be allowed under this item." Concerning Item 14(a), at paragraph 9, the Applicants submitted that they do not dispute the length of the hearing but suggested that due to the low complexity of the judicial review proceeding "it is appropriate to use 2 units per hour instead of the maximum 3, for a total of 12 units." In reply, at paragraph 91 of the Respondents' Written Representations it is submitted that for Item 13(a) that "this matter was in fact highly complex, and the proper number of units attributable to preparation for the hearing of the Application is the maximum of 5 units. This claim is further supported by the fact that the hearing was scheduled for 2 days, and counsel

prepared accordingly." Concerning Item 14(a), at paragraph 92 it is submitted that the claim of 18 units is proper based on the complexity of the judicial review proceeding.

[28] Further to my review of the court record, it shows that the Court Registrar that was assigned to the hearing recorded in the Abstract of Hearing that the judicial review hearing was from 9:30 am to 16:49 pm, which was a duration of 7 hours and 19 minutes. This hearing was originally scheduled for 2 days but concluded in 1 day. I have considered the parties' submissions and the factors listed under Rule 400(3) of the *FCR*, such as; (a) the result of the proceeding; (b) the amounts claimed and the amounts recovered; (c) the importance and complexity of issues; and (g) the amount of work performed by the Respondents, and the court record reflects that the Respondents successfully argued their position before the Court; that the amounts claimed are reflective of the time and effort expended by the Respondents for the judicial review hearing; that the issues were of significant importance and complexity; and that a substantial amount of work was done by the Respondents for this particular judicial review hearing. Therefore, I have determined that the services performed by the Respondents under Item 13(a) and Item 14(a) were necessary for the litigation of the judicial review proceeding and that it is reasonable to allow 5 units for Item 13(a) and 18 units for Item 14(a).

E. *Item 15 – Preparation and filing of written argument, where requested or permitted by the Court.*

[29] The Respondents have claimed 6 units for Item 15 but it was not specified in the Respondents' costs documents filed on June 15, 2021, which document(s) this claim pertains to. At paragraph 10 of the Applicants' Written Submissions it is submitted that the Respondents

should only be allowed 4 units for the Respondents' Memorandum of Fact and Law for the judicial review proceeding and their written representations for the Rule 312 motion. The Applicants also submitted that no costs should be allowed for the Respondents' joint record for the judicial review proceeding and the motion to strike the Applicants' application for judicial review. At paragraph 93 of the Respondents' Written Representations it is submitted that "[t]he Respondents' memorandum was 29 pages in length, and the combined book of authorities for the Respondents' position on the Application and the Motion to Strike contained 73 authorities." In *Biovail Pharmaceuticals Canada v Canada (Minister of National Health and Welfare)*, [2009] FCJ No 858, at paragraph 27, the Assessment Officer states the following regarding Item 15:

> 27. Fee item 15 (written argument where requested or permitted by the Court) falls under the subheading E. Trial or Hearing. Such written argument usually occurs shortly after a hearing, but on occasion has been requested shortly before a hearing. It is not the memorandum of fact and law included in the respondent's materials under fee item 2. As the Court did not request such written argument, I disallow the fee item 15 claim in each matter.

[30] Further to my review of Tariff B of the *FCR* and utilizing the *Biovail* decision as a guideline, I find that I cannot allow the Respondents' total claim for Item 15, as the Memorandum of Fact and Law, Application Record and Combined Book of Authorities, filed on February 5, 2021, were subsumed in my assessment of the Respondents' costs for Item 2. This being noted, the court record shows that the Court made a direction on March 1, 2021, just prior to the judicial review hearing on March 25, 2021, that the Respondents could file a Supplementary Memorandum of Fact and Law in response to the Applicants' documents filed *nunc pro tunc* on February 22, 2021. The court record shows that the Respondent's Supplementary Memorandum of Fact and Law, which is 4 pages in length was filed on March 1,

2021. Therefore, having considered all of the aforementioned facts, in conjunction with the court record, the *FCR* and the *Biovail* decision, I have determined that the Respondents' Supplementary Memorandum of Fact and Law that was permitted to be filed by the Court was necessary and that it is reasonable to allow 3 units for Item 15.

F. *Item 25 – Services after judgment not otherwise specified.*

[31] The Respondents have claimed 1 unit for Item 25 for services performed after judgment. At paragraph 11 of the Applicants' Written Representations it is submitted that no units should be allowed for Item 25 as no services were performed after judgment, other than the Bill of Costs which is factored into Item 26 for the assessment of costs. In reply, at paragraph 96 of the Respondents' Written Representations it is submitted that "[s]ervices after judgment are typically allowed by the court without the need for supporting evidence" and that Item 25 can cover services like "following up" with a client after judgment. In *Halford v Seed Hawk Inc.*, 2006 FC 422, at paragraph 131, the Assessment Officer states the following regarding services provided after judgment:

> 131. […] I routinely allow item 25, notwithstanding the absence of evidence, unless I think that responsible counsel did not, in fact, review the judgment and explain associated implications to the client. […]

[32] Further to my consideration of the parties' submissions and utilizing the *Halford* decision as a guideline, I have determined that it is reasonable to allow 1 unit for the Respondents' services performed after the final judgment was rendered by the Court.

G. *Item 26 – Assessment of costs.*

[33] The Respondents have claimed 4 units for Item 26 for services performed in relation to this assessment of costs. At paragraph 12 of the Applicants' Written Representations it is submitted that the assessment of costs is not complex and is in writing and that no more than 3 units should be allowed. In reply, at paragraph 98 of the Respondents' Written Representations it is submitted that although the assessment of costs is in writing that the parties' arguments are diametrically opposed, demonstrating that this assessment of costs "is more complex than normal." I have considered the varying complexity of assessments of costs that are filed in the Federal Court, and I find this particular assessment of costs to be of moderate complexity based on the number of claims made by the Respondents and that the fact that there is limited agreement between the parties regarding the quantum of costs to be allowed for the claims made. Further to my review of the parties' assessment of costs documents, I have determined that the Respondents' services were necessary and that it is reasonable to allow 4 units for the Respondents' claim for Item 26.

H. *Total amount allowed for assessable services.*

[34] A total of 66 units have been allowed for the Respondents' assessable services for a total dollar amount of $10,395.00, inclusive of GST.

IV. Disbursements

[35] The Respondents have claimed $3,730.75 for disbursements.

A. *Printing.*

[36] The Respondents have claimed $2,303.25 for the printing of 15,355 pages at $0.15 cents per page. At paragraph 5 of the Affidavit of Nancy Kao, sworn on June 15, 2021, it lists the various documents filed by both parties that were printed by the Respondents, including the number of pages printed per document and the number of copies made of each document. At paragraph 14 of the Applicants' Written Representations it is submitted that "15,355 pages of printing at $0.15 is excessive; the total pages should be no more than 6,464 pages, which allows for one copy of the materials listed at para. 5 of the Affidavit of Nancy Kao." The Applicants submitted that they only received electronic copies of the Respondents' documents and that "it was not necessary for the Respondents to make more than one copy of all materials, as electronic filings of materials was available for all documents other than the Notice of Application." In reply, at paragraphs 100 and 101 of the Respondents' Written Representations it is submitted that "in Affidavit #2 of Nancy Kao, dated August 19, 2021, the total amount of pages claimed for disbursements should have been 6,403." The Respondents also submitted that "[a]t $0.15 per page, an amount less than the $0.25 per page typically allowed, the total amount claimed for printing is therefore $960.45, which is reasonable in the circumstances."

[37] Concerning the electronic filing of documents, my review of Rules 71 to 74 of the *FCR*, which provide the requirements for the filing of documents with the court registry did not reveal that there is an imperative requirement that documents be filed electronically by a party. The electronic filing of documents is an option that a party may choose but they are not compelled to do so by the *FCR*. An exception would be a Court direction or decision instructing a party to file their documents electronically. My review of the court record did not reveal that the Court made such a direction or decision for this particular file, therefore I find that it was open to the

Respondents to choose the manner by which they would file their documents with the court registry, in accordance with the *FCR*.

[38] Further to my review of the parties' costs documents, it is noted that a revised list of printed documents was submitted by the Respondents at paragraph 7 of the Affidavit of Nancy Kao, sworn on August 24, 2021. I have taken note that the overall number of pages being claimed by the Respondents has been reduced and at 6,403 pages, it is a lower amount than the suggestion made by the Applicants. I have considered the parties' submissions regarding the printing cost per page and I find the Respondents' printing cost per page to be reasonable and can be supported by the jurisprudence: *Inverhuron & District Ratepayers Assn. v Canada*, 2001 FCT 410, at paragraphs 60 to 64, wherein the Assessment Officer discusses the appropriateness of a party submitting claims for photocopies at $0.25 cents per page.

[39] Concerning the Respondents' claim for their motion to strike the Applicants' application for judicial review filed on January 26, 2021, although costs were not awarded for this motion in the Court's Judgment and Reasons dated May 12, 2021, I will exercise my discretion to pursuant to Rule 409 and Rule 400(3)(o) to allow the disbursement for this printing. My review of the Court's Judgment and Reasons reveals that although costs were not awarded for this motion, that the motion was useful in narrowing the scope of issues for the judicial review hearing, which helped to reduce the overall costs for the judicial review hearing that was originally scheduled for 2 days but concluded in 1 day. Therefore, I find that it is reasonable to allow the printing costs for this motion.

[40] Therefore, having considered all of the aforementioned facts, in conjunction with the court record, the *FCR* and the *Inverhuron* decision, I have determined that Respondents' revised list of claims for printing were necessary and that it is reasonable to allow $960.45 for these disbursements.

B. *Agent Filing Fees.*

[41] The Respondents have claimed $250.00 for agent filing fees for the filing of documents at the court registry. At paragraph 15 of the Applicants' Written Representations it is submitted that the Respondents' use of a filing agent was "not necessary given that all documents could have been filed electronically without the use of an agent." In reply, at paragraph 102 of the Respondents' Written Representations it is submitted that "[t]he number of pages involved in the Respondents' submissions and supporting affidavits and authorities often rendered it difficult or impossible to file same with the Federal Court electronically."

[42] As noted earlier in these reasons, in the absence of a Court direction or decision for this particular file specifying how documents should be filed by the parties, I find that it was open to the Respondents to choose the manner by which they would file their documents with the court registry, in accordance with the *FCR*. Further to my review of the parties' costs documents, I find the Respondents' explanation for the use of agent filings to be satisfactory and that the service fees contained in the invoices attached at Exhibit "C" to the Affidavit of Nancy Kao, sworn on June 15, 2021, are reasonable amounts. The only exception is the inclusion of the agent filing fee for the Respondents' motion to add another Respondent to the judicial review proceeding and to remove the counsel of record for the Applicants. My review of the Court's

Order dated November 23, 2020, did not reveal that costs were awarded for this motion, as a result the service fee of $45.00 will be removed from my allowance for the agent filing disbursements. Further to my consideration of the aforementioned facts, I have determined that the remaining claims for agent filing fees were necessary and that it is reasonable to allow $195.00 for these disbursements.

C. *Transcript of Nov. 16, 2020, hearing.*

[43] The Respondents have claimed $637.50 for a transcript of the November 16, 2020, hearing of the Respondents' motion to add another Respondent to the judicial review proceeding and to remove the counsel of record for the Applicants. The parties did not provide any specific submissions regarding this disbursement. My review of the details regarding the Respondents' motion heard on November 16, 2020, shows that the Court's Reasons for Order and Order dated November 23, 2020, did not award costs to any party for this motion. This being noted, the court record also shows that the Respondents submitted a letter to the Court dated January 15, 2021, requesting permission to include the Affidavit of Rebecca Alexander, sworn on January 15, 2021, in the Respondents' Record pursuant to Rule 312, and that it be treated as a Rule 307 affidavit. This letter noted that the Applicants had consented to the filing of Affidavit of Rebecca Alexander, which includes a copy of the Transcript of Hearing dated November 16, 2020, at Exhibit "A". On January 19, 2021, the Court issued an Order granting the Respondents' request. Further to my consideration of the aforementioned facts, and my review of the invoice for the Transcript of Hearing, which is attached as Exhibit "A" to the Respondents' Affidavit of Nancy Kao, sworn on June 15, 2021, I have determined that it is reasonable to allow this disbursement of $637.50.

D. *BC Online Filing Fees and Xpress Post.*

[44] The Respondents have claimed $12.00 for BC Online Filing Fees and $140.28 for Xpress Post for the service of a Notice of Constitutional Question by registered mail on the Attorneys General across Canada. The parties did not provide any specific submissions regarding these disbursements. Further to my review of the court record, and my review of the Xpress Post receipts, which are attached as Exhibit "B" to the Affidavit of Nancy Kao, sworn on June 15, 2021, I have determined that the disbursements for BC Online Filing Fees, and Xpress Post are reasonable and they are allowed as claimed.

E. *Total amount allowed for disbursements.*

[45] The total amount allowed for the Respondents' disbursements is $2,178.66, inclusive of GST and PST.

V. Conclusion

[46] For the above Reasons, the Respondents' Bill of Costs is assessed and allowed in the total amount of $12,573.66, payable by the Applicants to the Respondents. A Certificate of Assessment will also be issued.

"Garnet Morgan"
Assessment Officer

Toronto, Ontario
December 16, 2021

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1108-20
STYLE OF CAUSE:	PHILLIP NARTE, DANTE NARTE, TINA SAM, MURRAY SAM, ROSALIA GLADSTONE, TERRY ST. GERMAIN JR., AND RAEANNE RABANG v ROBERT GLADSTONE, MICHELLE ROBERTS, RONALD JR. MIGUEL, BONNIE RUSSELL, TANYA JAMES, AND SHXWHÁ:Y VILLAGE FIRST NATION

MATTER CONSIDERED AT TORONTO, ONTARIO WITHOUT PERSONAL APPEARANCE OF THE PARTIES

REASONS FOR ASSESSMENT BY:	GARNET MORGAN, Assessment Officer
DATED:	DECEMBER 16, 2021

WRITTEN SUBMISSIONS BY:

Martin C. Sennott	FOR THE APPLICANTS
Seva Batkin Anna P.L. Moore	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Boughton Law Corporation Vancouver, British Columbia	FOR THE APPLICANTS
Fraser Litigation Group Vancouver, British Columbia	FOR THE RESPONDENTS