**Date: 20070822**

**Docket: T-1145-05**

**Citation: 2007 FC 847**

**BETWEEN:**

**JUNE STEVENS**

**Applicant**

**and**

**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 file T-1146-05 (the T-1146-05 matter) (Jacki McCallum v. Attorney General of Canada) and applies there accordingly. The Applicant in this matter (the Stevens Applicant) and in the T-1146-05 matter (the McCallum Applicant) are self-represented litigants who filed discrete applications for judicial review. These involved almost identical facts, were heard together and addressed decisions of the Canadian Human Rights Commission (the CHRC decisions) refusing to address their respective complaints because of the passage of time. The Stevens Applicant and the McCallum Applicant (the Applicants) are inspectors with the Canadian Food Inspection Agency who alleged gender prejudice regarding their duties and pay classification. The Court set aside the CHRC decisions,

referred the matters back to the Canadian Human Rights Commission for reconsideration and awarded costs to the Applicants. I issued a timetable for written disposition of the assessment of the respective bills of costs of the Applicants.

I. <u>The Applicants' Positions</u>

[2] The Stevens Applicant presented her bill of costs claiming $5,987.04 for her time (calculated by using Column III items in Tariff B for the services of counsel) and $188.15 for disbursements. The McCallum Applicant presented her bill of costs claiming $6,984.88 for her time (calculated in the same manner as the Stevens Applicant) and $409.14 for disbursements.

[3] The Applicants advanced this argument in chief:

> 1. We attempted to negotiate with the Department of Justice costs we were awarded based on Tariff B as we had been given to understand that is what we were to follow.
>
> 2. Department of Justice agreed to pay only disbursements. They sited [*sic*] Court File No. A-104-97 where the decision was that lay litigants were not entitled to counsel fees. We initially took this to mean we were not entitled to use Tariff B so we modified our costs based on case law Court File No. T-222-03 and T-346-02 where self representing litigants had been awarded costs for the time they had spent on researching, preparing, and filing their case.
>
> 3. This submission was also rejected by Department of Justice.
>
> 4. When preparing the bill of Costs we realized that in Tariff B, counsel fees are specific only to items 13, 14, 16, 21, 22, 24. We have therefore complied and respectfully submit the attached Bill of Costs using Tariff B but have not claimed any counsel fees under the aforementioned items….

[4] In rebuttal, the Applicants noted the wording of Rule 407: "[u]nless the Court provides otherwise, party-and-party costs shall be assessed in accordance with Column III of the table to Tariff B." They argued that *Lavigne v. Canada (Human Resources Development)*, [1998] F.C.J. No. 855 (F.C.A.) [*Lavigne*] held that lay litigants are not entitled to "counsel fees", but it did not say that lay litigants are not entitled to fees under Tariff B. Tariff B is entitled: "Counsel Fees and Disbursements Allowable On Assessment", but uses the term "counsel fees" only in items 13, 14, 16, 21, 22 and 24. The Applicants are not seeking costs under said items and therefore should have costs for their time assessed under the remaining items in Column III. The Court in *Thibodeau v. Air Canada*, [2005] F.C.J. No. 2001 (F.C.) [*Thibodeau*], acknowledged that *Lavigne* held that lay litigants are ineligible for costs under Tariff B, referred to *Canada (A.G.) v. Kahn*, [1998] F.C.J. No. 1542 (F.C.T.D.) holding that an appropriate sum could be awarded for a lay litigant's time and then awarded a lump sum for the lay litigant's time in conducting his case. The findings in *Turner v. Canada*, [2001] F.C.J. No. 250 (A.O.), affirmed [2001] F.C.J. No. 1506 (F.C.T.D.), affirmed [2003] F.C.J. No. 548 (F.C.A.) [*Turner*] do not help the Respondent's position because Mr. Turner incorrectly claimed numbers of units exceeding the limits in Tariff B, had deficient evidence and misconceived the award of costs.

II. The Respondent's Position

[5] After noting deficiencies in the Applicants' supporting evidence, the Respondent conceded their claimed disbursements, but objected to any fees for their time. The Court in *Lavigne* above held that lay litigants cannot claim counsel fees under Tariff B as a service cannot be rendered by a litigant to herself. The findings in *Turner* above were that an assessment officer can only allow a lay

litigant's disbursements since only a judge exercises Rule 400 jurisdiction for entitlement and that Rule 405 does not permit an assessment officer to allow costs for a lay litigant's time in the absence of a prior direction by the Court. The Court here did not authorize assessment of a lump sum for fees or any fees under Tariff B.

[6] The Applicants' case law cited in chief does not assist their respective positions. The Court in *Comeau v. Canada (A.G.)*, [2004] F.C.J. No. 1323 (F.C.) (docket T-222-03) simply awarded costs to the Applicant at the conclusion of the judicial review, but there was no subsequent assessment of costs. The Court in *Thibodeau* above awarded lump sum costs. That did not occur here.

## III. Assessment

[7] The Applicants' respective positions are succinct and well presented. Unfortunately for them, the Respondent's position correctly states the prevailing law. The Applicants' point concerning the title of Tariff B was interesting, but it is well settled that a court tariff such as that for the Federal Court addresses fees for the time of counsel. The only remedy for the Applicants would have been to raise compensation for their time with the judge at the end of the hearing of the judicial reviews. To assist the Applicants in appreciating some of the issues associated with compensation (a word carefully chosen by me as an alternative to the term costs in its traditional meaning of indemnity) for the time of litigants, I will add some *obiter* commentary on *British Columbia (Minister of Forests) v. Okanagan Indian Band*, [2003] 3 S.C.R. 371 (S.C.C.) [*Okanagan*] and on

Mark M. Orkin, *The Law of Costs*, 2d ed. looseleaf (Aurora: Canada Law Book, 2006), at 2-44 to 2-145 [*Orkin*].

[8] In *Okanagan* above, the British Columbia government (the Government) launched a proceeding in the British Columbia Supreme Court (the trial court) to enforce stop-work orders against the four respondent Indian Bands (the Bands) to prevent logging of Crown land. The Bands asserted constitutional protection of aboriginal rights as well as a lack of financial means for a protracted and expensive trial. They therefore asked the trial court to order the provincial Crown to pay their legal fees and disbursements in advance and in any event of the cause. The trial court (the chambers judge) refused. The British Columbia Court of Appeal (the appeal court), despite finding no constitutional right to legal fees funded by the Crown, allowed the Bands' appeal by finding that there was a discretionary power to order interim costs, which it did in favour of the Bands. The majority opinion in *Okanagan* above (the majority opinion) dismissed the Government's appeal. It set the criteria for interim costs, i.e. impecunious circumstances precluding access to trial and a *prima facie* case of sufficient merit meeting the narrow threshold for an extraordinary exercise of discretion.

[9] The majority opinion stated:

> I. Introduction
>
> These two appeals concern the inherent jurisdiction of the courts to grant costs to a litigant, in rare and exceptional circumstances, prior to the final disposition of a case and in any event of the cause (I will refer to a cost award of this nature as “interim costs”). Such a jurisdiction exists in British Columbia. This discretionary power is subject to stringent conditions and to the observance of

> appropriate procedural controls. In this case, for the reasons which follow, I would uphold the granting of interim costs to the respondents by the British Columbia Court of Appeal, and I would hold that the Court of Appeal had sufficient grounds to review the exercise of discretion by the trial court….(pp. 379-380)

The majority opinion summarized (pp. 380-383) the underlying facts and relevant legislation and then addressed the considerations of the chambers judge:

> …Sigurdson J. declined to order the Minister to pay the Bands' costs in advance of the trial. He found that his jurisdiction to make such an order was very narrow and was limited by the principle that he could not prejudge the outcome of the case. In this case, liability was still in issue, and Sigurdson J. held that ordering the payment of costs in advance would involve prejudging the case on the merits. For this reason, he was of the view that he was precluded from making such an order. Sigurdson J. added a recommendation that the federal and provincial Crown consider providing funding to ensure that the cases, which had elements of test cases, would be properly resolved at trial. He also suggested that the litigation might be able to proceed if the Bands could work out a contingent fee arrangement with counsel…. (pp. 383-384)

I think that the notion of "funding" expressed in this passage was of the Crown simply assuming financial responsibility from the outset for the conduct of the Bands' case. This is conceptually different from the traditional notion of costs as an indemnity because the Bands' money would never be used to pay their lawyers. As well, the liability for payment to counsel for conduct of the Bands' case would exist between the Crown and the Bands' counsel, not between the Bands and their counsel. The Bands would never be out of pocket, an essential traditional circumstance for litigation costs as an indemnity.

[10] The majority opinion then summarized (pp. 384-387) the considerations by the appeal court and included this passage:

> …On the question of funding the litigation, Newbury J.A. distinguished between a constitutional right to full funding of legal fees and disbursements, on the one hand, and on the other, the court's discretion to make orders as to "costs" as that term is used in the rules of court and in general legal parlance — meaning a payment to offset legal expenses, usually in an amount set by statutory guidelines, rather than payment of the actual amount owed by the client to his or her solicitor…. (p. 384)

The subsequent summary of the appeal court's considerations did not, in my opinion, suggest that the appeal court's notion of "funding' intersected with the traditional notion of costs as an indemnity.

[11] The majority opinion continued:

> …
> V. <u>Issues</u>
>
> This case raises two issues: first, the nature of the court's jurisdiction in British Columbia to grant costs on an interim basis and the principles that govern its exercise; and second, appellate review of the trial court's discretion as to costs. The issue of a constitutional right to funding does not arise, as it was not relied on by the respondents in this appeal…. (p. 387)

This passage indicates that the notion of funding by the Crown relative to the traditional notion of costs as an indemnity is irrelevant for the analysis below. The majority opinion continued:

> …VI. <u>Analysis</u>
>
> A. *The Court's Discretionary Power to Grant Interim Costs*
>
> (1) <u>Traditional Costs Principles — Indemnifying the Successful Party</u>
>
> The jurisdiction of courts to order costs of a proceeding is a venerable one. The English common law courts did not have inherent jurisdiction over costs, but beginning in the late 13th century they were given the power by statute to order costs in favour of a successful party. Courts of equity had an entirely

discretionary jurisdiction to order costs according to the dictates of conscience (see M. M. Orkin, *The Law of Costs* (2nd ed. (loose-leaf)), at p. 1-1). In the modern Canadian legal system, this equitable and discretionary power survives, and is recognized by the various provincial statutes and rules of civil procedure which make costs a matter for the court's discretion.

In the usual case, costs are awarded to the prevailing party after judgment has been given. The standard characteristics of costs awards were summarized by the Divisional Court of the Ontario High Court of Justice in *Re Regional Municipality of Hamilton-Wentworth and Hamilton-Wentworth Save the Valley Committee, Inc.* (1985), 51 O.R. (2d) 23, at p. 32, as follows:

> (1) They are an award to be made in favour of a successful or deserving litigant, payable by the loser.
>
> (2) Of necessity, the award must await the conclusion of the proceeding, as success or entitlement cannot be determined before that time.
>
> (3) They are payable by way of indemnity for allowable expenses and services incurred relevant to the case or proceeding.
>
> (4) They are *not* payable for the purpose of assuring participation in the proceedings. [Emphasis in original.]

The characteristics listed by the court reflect the traditional purpose of an award of costs: to indemnify the successful party in respect of the expenses sustained either defending a claim that in the end proved unfounded (if the successful party was the defendant), or in pursuing a valid legal right (if the plaintiff prevailed). Costs awards were described in *Ryan v. McGregor* (1925), 58 O.L.R. 213 (App. Div.), at p. 216, as being "in the nature of damages awarded to the successful litigant against the unsuccessful, and by way of compensation for the expense to which he has been put by the suit improperly brought".

(2) Costs as an Instrument of Policy

These background principles continue to govern the law of costs in cases where there are no special factors that would warrant a departure from them. The power to order costs is discretionary, but it is a discretion that must be exercised judicially, and accordingly the ordinary rules of costs should be followed unless the circumstances justify a different approach. For some time, however, courts have recognized that indemnity to the successful party is not the sole purpose, and in some cases not even the primary purpose, of a costs award. Orkin, *supra*, at p. 2-24.2, has remarked that:

> The principle of indemnification, while paramount, is not the only consideration when the court is called on to make an order of costs; indeed, the principle has been called "outdated" since other functions may be served by a costs order, for example to encourage settlement, to prevent frivolous or vexations [*sic*] litigation and to discourage unnecessary steps.

The indemnification principle was referred to as "outdated" in *Fellowes, McNeil v. Kansa General International Insurance Co.* (1997), 37 O.R. (3d) 464 (Gen. Div.), at p. 475. In this case the successful party was a law firm, one of whose partners had acted on its behalf. Traditionally, courts applying the principle of indemnification would allow an unrepresented litigant to tax disbursements only and not counsel fees, because the litigant could not be indemnified for counsel fees it had not paid. Macdonald J. held that the principle of indemnity remained a paramount consideration in costs matters generally, but was "outdated" in its application to a case of this nature. The court should also use costs awards so as to encourage settlement, to deter frivolous actions and defences, and to discourage unnecessary steps in the litigation. These purposes could be served by ordering costs in favour of a litigant who might not be entitled to them on the view that costs should be awarded purely for indemnification of the successful party.

Similarly, in *Skidmore v. Blackmore* (1995), 2 B.C.L.R. (3d) 201, the British Columbia Court of Appeal stated at para. 28 that "the view that costs are awarded solely to indemnify the successful litigant for legal fees and disbursements incurred is now outdated". The court held that self-represented lay litigants should be allowed

to tax legal fees, overruling its earlier decision in *Kendall v. Hunt (No. 2)* (1979), 16 B.C.L.R. 295. This change in the common law was described by the court as an incremental one "when viewed in the larger context of the trend towards awarding costs to encourage or deter certain types of conduct, and not merely to indemnify the successful litigant" (para. 44).

As the *Fellowes* and *Skidmore* cases illustrate, modern costs rules accomplish various purposes in addition to the traditional objective of indemnification. An order as to costs may be designed to penalize a party who has refused a reasonable settlement offer; this policy has been codified in the rules of court of many provinces (see, e.g., Supreme Court of British Columbia *Rules of Court*, Rule 37(23) to 37(26); Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, Rule 49.10; Manitoba *Queen's Bench Rules*, Man. Reg. 553/88, Rule 49.10). Costs can also be used to sanction behaviour that increases the duration and expense of litigation, or is otherwise unreasonable or vexatious. In short, it has become a routine matter for courts to employ the power to order costs as a tool in the furtherance of the efficient and orderly administration of justice.

Indeed, the traditional approach to costs can also be viewed as being animated by the broad concern to ensure that the justice system works fairly and efficiently. Because costs awards transfer some of the winner's litigation expenses to the loser rather than leaving each party's expenses where they fall (as is done in jurisdictions without costs rules), they act as a disincentive to those who might be tempted to harass others with meritless claims. And because they offset to some extent the outlays incurred by the winner, they make the legal system more accessible to litigants who seek to vindicate a legally sound position. These effects of the traditional rules can be connected to the court's concern with overseeing its own process and ensuring that litigation is conducted in an efficient and just manner. In this sense it is a natural evolution in the law to recognize the related policy objectives that are served by the modern approach to costs….

(pp. 387-391)

This passage indicated the majority opinion's willingness to consider costs beyond the traditional notion of costs as an indemnity for the successful litigant. It has implications for self-represented litigants seeking to assess costs for their time.

[12] The majority opinion then considered (pp. 391-393) public interest litigation and noted the caution that the Crown should not be considered as an unlimited source of funds to preclude the encouragement of marginal applications. The majority opinion then stated that concerns "about access to justice and the desirability of mitigating severe inequality between litigants also feature prominently in the rare cases where interim costs are awarded" (p. 393). The majority opinion then (pp. 393-403) set up the threshold criteria above for an award of interim costs, concluded that the Bands' circumstances met them and affirmed the appeal court's award of interim costs. This latter award uses the term 'legal costs', but in no way required or suggested that the Bands would ever have to pay anything to their counsel. Therefore, the costs in said award appeared to be outside the traditional notion of costs as an indemnity (for payment to one's counsel). I would not think that the circumstances of the Stevens Applicant and of the McCallum Applicant could ever meet the criteria for interim costs. I do think that the result in *Okanagan* above would strengthen an argument that a court could award something for the time of a lay litigant on the basis that costs can be something additional to or other than an indemnity.

[13] The dissenting opinion in *Okanagan* above (the dissenting opinion) then weighed in:

> … At issue in this appeal is how trial courts should be guided in their award of interim costs. When are these advance costs appropriate? How much deference should appellate courts give to the trial judge’s discretion in the matter?

Four Indian bands are suing the Crown in right of British Columbia, to establish aboriginal title over land they wish to log. Because this litigation will be expensive, they seek interim costs — that is, advance costs awarded whether or not they are successful at trial. By any standard, this is an extraordinary remedy.

The chambers judge could not find a supporting precedent and in the exercise of his discretion he chose not to grant interim costs. The British Columbia Court of Appeal, and now my colleague LeBel J., reversed the chambers judge on what appears to be a new rule for interim costs. With respect for the contrary view, I conclude that Sigurdson J. interpreted the applicable principles correctly and can find no basis for reversing his discretion. I would therefore allow the appeal.

The appeal raises difficult questions. In particular, how may impoverished parties sue to establish what is submitted to be constitutionally supported rights? Constitutional issues, however, were not pursued in this appeal. The respondents rely solely on the common law rules on costs.

Traditionally, costs — usually party and party costs — are awarded after the ultimate trial or appellate decision and almost always to the successful party. Party and party costs in all Canadian jurisdictions are only partial indemnification of the litigants' legal costs. In certain cases, interim costs may be awarded to a spouse suing for the division of property as a consequence of separation or divorce. The *ratio* of the matrimonial cases is clear: a spouse usually owns or is entitled to part of the matrimonial property; some success on the merits is practically assured. Thus, the traditional purpose of costs — indemnification of the prevailing party — is preserved.

But to award interim costs when liability remains undecided would be a dramatic extension of the precedent. Furthermore, to do so in a case with serious constitutional considerations where the Crown is the defending party would be an unusual extension of highly exceptional private law precedent into an area fraught with other implications.

The common law is said to evolve to adapt prevailing principles to modern circumstances. But the common law of costs should develop through the discretion of trial judges. This equitable trial-

> level discretion, developed over centuries, is essential to the primary traditional use of the discretionary costs power by courts: to manage litigation and case loads. It may be that there are public law questions where access to justice can be provided through the discretionary award of interim costs. Even so, such cases must lie closer to the heart of the interim costs case law.
> Such developments should be initiated by trial courts properly exercising their discretionary power, not the appellate reversal of that discretion…. (pp. 403-405)

[14] The dissenting opinion reviewed (pp. 405-406) certain background and findings and then continued:

> II. Analysis
>
> A. *The Law of Costs*
>
> The standard rule on party and party costs is that they are generally awarded to the successful litigant at the end of litigation. These costs are a contribution to the successful party's actual expense. Full indemnification by way of solicitor-client costs is infrequently ordered in Canada. Such costs require unusual and egregious conduct by the losing party. On rare occasions the court may award solicitor-client costs where equity is met by doing so.
>
> My colleague points to what he describes as a modern trend in the law on costs — its use as an instrument to encourage litigation in the public interest. With respect, I think this proposition mistakes public funding to pursue *Charter* claims as an exercise in awarding costs. It is a separate function. Although the trial judge retains a discretion on the question of costs in such cases, they have always been awarded at the conclusion of the litigation…
> (pp. 406-407)

The dissenting opinion then noted (p. 407) that the notion of interim costs could lead to a "reasonable apprehension of bias in favor of the respondent" by calling into question the objectivity of a court and stated:

> The award of costs before trial is a more potent incentive to litigation than the possibility of costs after the trial. The awarding of interim costs in the circumstances of this appeal appears as a form of judicially imposed legal aid. Interim costs are useful in family law, but should not be expanded to engage the court in essentially funding litigation for impecunious parties and ensuring their access to court. As laudable as that objective may be, the remedy lies with the legislature and law societies, not the judiciary…. (p. 407)

[15] The dissenting opinion analyzed (pp. 407-413) the law of interim costs and asserted this caveat:

> In my view, a court should be particularly careful in the exercise of its inherent powers on costs in cases involving the resolution of controversial public questions. Not only was such precedent not required at common law, but by incorporating such an amorphous concept without clearly defining what constitutes "special circumstances", the distinction between the traditional purpose of awarding costs and concerns over access to justice has been blurred…. (p. 412)

The dissenting opinion disagreed with the majority opinion's criteria for interim costs, found that the Bands did not qualify for interim costs and concluded:

> … If this Court enlarges the scope for interim costs it should be seen as a new rule and not an adaptation of existing law. On the basis of the law on costs at the time of this application the chambers judge properly exercised his discretion.
>
> Sigurdson J. was correct in his assessment that liability remains an open question in this appeal and that ordering interim costs would inappropriately require prejudging the case. Accordingly, he was justified in concluding that "[a]lthough [he had] a limited discretion in appropriate circumstances to award interim costs this case falls far outside that area" (para. 129).

> III. Conclusion
>
> The common law is to advance by increments while generally staying true to the purposes behind its rules. The new criteria endorsed by my colleague broaden the scope of interim costs to an undesirable extent and are not supported in the case law. In my view, the common law rules on interim costs should not be advanced through an appellate court ignoring and overturning the trial judge's correctly guided discretion. This is more appropriately a question for the legislature. See *Watkins v. Olafson*, [1989] 2 S.C.R. 750; *R. v. Salituro*, [1991] 3 S.C.R. 654; and *Winnipeg Child and Family Services (Northwest Area) v. G. (D.F.)*, [1997] 3 S.C.R. 925.
>
> Since Sigurdson J. committed no error of law and did not commit a "palpable error" in his assessment of the facts, I would defer to his decision not to exercise his discretion to make the extraordinary grant of interim costs.
>
> I would allow the appeal, with each side to bear its own costs.
>
> (pp. 413-414)

[16] The dissenting opinion found that the law on costs provides for indemnification, but not funding in the nature of the Crown assuming outright financial responsibility for both sides of litigation with no right for the Crown to recover any costs from the losing and non-Crown side. That finding addressed interim costs. In my respectful view, its implication for litigants such as the Stevens Applicant and the McCallum Applicant is that the law of costs as expressed by the dissenting opinion would preclude the notion of costs for their time because of the absence of an element of indemnification. This is not an easy threshold to overcome further to the dissenting opinion's assertion that the common law should advance by increments via legislative remedies and exercises of discretion by trial judges. The Federal Court of Appeal's finding in *Lavigne* above would make the latter difficult in this Court. However, as the majority opinion's findings occurred

several years after *Lavigne* above, a self-represented litigant might rely on them to argue that the law has moved beyond *Lavigne* above concerning compensation for the time of lay litigants.

[17] For the benefit of the Applicants, I set out some brief comments on *Orkin* above referred to in *Okanagan* above. Part 204 (pp. 2-44 to 2-49) addresses the concept of costs as an indemnity for the expense to which a litigant has been put by reason of the litigation. Part 204 (p. 2-48) notes exceptions to the notion of indemnification, i.e. costs as a penalty or deterrent for certain conduct. Part 209.14 (pp. 2-135 to 2-138) addresses the traditional notion of costs that if a litigant was not liable to pay her solicitor, said litigant could not have a judgment for costs because there was nothing to be indemnified against. It notes (p. 2-137) that the "earlier case law has, however, been overtaken by a recognition that the principle of indemnification, while paramount, is not the only consideration when the court is called upon to make an order of costs". This resulted in costs to a litigant whose lawyer acted gratuitously or *pro bono*. As well, the absence in a contingency fee agreement of an actual liability for any payment of fees does not preclude recovery of costs (the counsel fees) from the other side.

[18] Part 209.15 (pp. 2-139 to 2-145) of *Orkin* above addresses lay litigants and notes (p. 2-139) that, although there is no legislation in Canada comparable to that currently in the United Kingdom providing costs for a lay litigant's time, "the common law appears to be moving towards awarding costs to litigants who represent themselves." Part 209.15 raises (p. 2-140) the matter of whether costs for the time of a lay litigant offends the "common law principle that follows from the concept of costs as an indemnity, namely, that costs cannot be made a source of profit to a successful party."

Part 209.15 then discusses some recent inclination to move the common law towards costs for the time of a lay litigant and the necessity in doing so to therefore distinguish (pp. 2-142 to 2-143) three factors, i.e. that the loss of time and interference with normal life experienced by all litigants, whether represented or not, has never been considered compensable in costs, that what is compensable is the lay litigant's time taken to do the work ordinarily done by the lawyer and that the lay litigant suffered a loss in doing the lawyer's work because other remunerative activity was thereby precluded. Part 209.15 then discusses several instances of awards for the time of lay litigants and suggests formulas therefor, i.e. a percentage of the tariff for counsel fees on the basis that full counsel fee tariff allowances would be excessive or by simply fixing a lump sum.

[19] I think that jurisprudence such as *Okanagan* above and respected authorities such as *Orkin* above represent for lay litigants an encouraging sense of shift in the common law on costs towards embracing compensation for the time of lay litigants. However, with specific regard to the Applicants in these two Federal Court matters, it has not moved so significantly that an assessment officer could ordinarily read the award of costs here as a Rule 400(1) exercise of discretion authorizing recovery from the Crown of compensation for their time. The alternative, which did not occur here, would have been a petition to the hearing judge for lump sum costs or for a direction to the assessment officer to allow something for their time. I therefore have no jurisdiction to allow costs for their time. The bill of costs of the Stevens Applicant, presented at $6,175.19, is assessed

and allowed at the $188.15 claimed for disbursements. The bill of costs of the McCallum Applicant, presented at $7,394.02, is assessed and allowed at the $409.14 claimed for disbursements.

"Charles E. Stinson"
Assessment Officer

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-1145-05 |
| **STYLE OF CAUSE:** | JUNE STEVENS v. AGC |

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

| | |
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| **REASONS FOR ASSESSMENT OF COSTS:** | CHARLES E. STINSON |
| **DATED:** | August 22, 2007 |

**WRITTEN REPRESENTATIONS:**

| | |
|---|---|
| Ms. June Stevens | FOR THE APPLICANT |
| Ms. Jackie McCallum | FOR THE APPLICANT (T-1146-05) |
| Ms. Tracy King | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| n/a | FOR THE APPLICANTS |
| John H. Sims, Q.C.<br>Deputy Attorney General of Canada | FOR THE RESPONDENT |