

**Date: 20071213**

**Docket: T-1701-04**

**Citation: 2007 FC 1319**

**BETWEEN:**

David **BIRKETT**

**Applicant**

**and**

**CANADIAN HUMAN RIGHTS COMMISSION**

**and**

**SUE GOODWIN**

**Respondents**

**ASSESSMENT OF COSTS – REASONS**

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

[1] The role of the Respondent, the Canadian Human Rights Commission (the CHRC Respondent) before the Canadian Human Rights Tribunal (the Tribunal) is to represent the public interest, not to represent the complainant or respondent. This application for judicial review of a decision of the Tribunal, finding that the Applicant had sexually harassed the Respondent, Sue Goodwin, was dismissed with costs. I issued a timetable for written disposition of the assessment of the CHRC Respondent's bill of costs. The exchange of submissions resulted in

the withdrawal of counsel fee item 5 for preparation of a contested motion. Other items not attracting any objections are allowed as presented.

#### I. The CHRC Respondent's Position

[2] The CHRC Respondent argued generally that all items in the bill of costs were proper. In particular, fee item 15 addresses the factum prepared as part of the responding Application Record. Fee item 24 for the time of counsel to travel to the hearing venue in Toronto and the associated travel disbursements of \$693.65 are properly claimed given the statutory scheme locating the headquarters of the CHRC Respondent in Ottawa, meaning that its solicitor of record is also located there. The Court in *Canada v. James Lorimer & Co.*, [1984] 1 F.C. 1065 at 1076-77 (C.A.), held that the Crown is entitled to obtain costs.

#### II. The Applicant's Position

[3] The Applicant argued that fee item 24 and the associated travel disbursements should be disallowed because the Crown and her legal representatives should be presumed to be present throughout the realm. That is, litigants who are liable to pay costs to the Crown and who do not live in Ottawa should not be penalized with travel costs. Fee item 25 (services after judgment not otherwise specified) should be disallowed in the absence of details thereof. The Applicant objected to fee item 15.

### III. Assessment

[4] I disallow fee item 24 further to my conclusions in *Marshall v. Canada*, [2006] F.C.J. No. 1282 at para. 6 (A.O.), 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. Paragraphs 2 and 8 of *Bellemare v. Canada (A.G.)* (2004), 327 N.R. 179 (F.C.A.), indicate that the arrangements for the location of the Crown's legal representative are permissible if reasonable as here. The CHRC Respondent, in response to the Applicant's complaint about the absence of invoices for the travel disbursements, produced in rebuttal the travel claim for its counsel prepared within the Treasury Board of Canada guidelines. This document was readily available all along and should have been produced as part of the materials in chief: see *Métis National Council of Women v. Canada (A.G.)*, [2007] F.C.J. No. 1259 (A.O.). However, the amount on its face is reasonable and I will not penalize the CHRC Respondent. I allow the \$693.65.

[5] Fee item 15 falls under the subheading in the Tariff of "Trial or Hearing" and generally refers to written argument produced in connection with the hearing of the substantive issues of the litigation. It is not intended as additional compensation for the work associated with fee item 2, which falls under subheading "Originating Documents and Other Pleadings." As well, the use in fee item 2 of the adjective "all" in conjunction with "respondents' records and materials" precludes additional compensation using other items such as fee item 15. I routinely allow fee 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. Fee item 26 is allowed as presented at 3 units (\$120.00 per unit).

[6] The CHRC Respondent's bill of costs, presented at \$6,322.45, is assessed and allowed at \$3,676.85.

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"Charles E. Stinson"  
Assessment Officer

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1701-04

**STYLE OF CAUSE:** DAVID BIRKETT V. CANADIAN HUMAN RIGHTS  
COMMISSION et al.

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

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

**DATED:** December 13, 2007

**WRITTEN REPRESENTATIONS:**

Charles C. Roach FOR THE APPLICANT

Philippe Dufresne FOR THE RESPONDENT  
Canadian Human Rights Commission

**SOLICITORS OF RECORD:**

Roach, Schwartz & Associates FOR THE APPLICANT

Toronto, ON  
Canadian Human Rights Commission FOR THE RESPONDENT  
Toronto, ON Canadian Human Rights Commission