

Date: 20071026

Docket: A-133-06

Citation: 2007 FCA 340

BETWEEN:

SWAN RIVER FIRST NATION, ALBERTA

Appellant

and

**JOHN GIROUX, CHARLES CHALIFOUX
THERESA WILLIER, LEON CHALIFOUX
DARRYL SOUND, CLAYTON TWIN
COUNCILLORS OF THE SWAN RIVER FIRST NATION
BUDDY GIROUX, GERALD GIROUX JUNIOR
RON SUNSHINE, ELECTORAL OFFICER**

Respondents

ASSESSMENT OF COSTS - REASONS

**Charles E. Stinson
Assessment Officer**

[1] This appeal from a decision of the Federal Court allowing an application for judicial review addressing an Election Appeal Committee of the Swan River First Nation (the Committee) was allowed in part with costs. A cross-appeal by the Respondent, John Giroux, was dismissed without costs. I issued a timetable for written disposition of the assessment of the Appellant's bill of costs.

[2] The Respondents did not file any materials in response to the Appellant'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 the supporting materials within those parameters.

[3] Certain items warrant my intervention in view of my expressed parameters as I feel that the Appellant cannot establish entitlement thereto notwithstanding the absence of objections from the other side. The bill of costs claims counsel fee item 21(a) for preparation of a motion to extend time to file a Memorandum of Fact and Law. As the resultant order was silent on costs, 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.) that I have no jurisdiction to allow item 21(a). As well, I have reduced the claimed disbursement total by \$100.00 to account for this motion. In any event, the Appellant had already filed its Memorandum of Fact and Law for the appeal (I have allowed a fee item 19 for that). This motion appeared to address its Memorandum of Fact and Law as cross-respondent in the cross-appeal. The judgment specifically denied costs for the cross-appeal thereby precluding this item 21(a). It follows that item 19 for the Memorandum of Fact and Law filed for the cross-appeal must also be disallowed. 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, which I find reasonable in

these circumstances for both first and second counsel. For similar reasons, I disallow item 22(b) (attendance by second counsel at the appeal hearing).

[4] The Court delivered its judgment on the second day from the bench. The bill of costs claimed under fee item 23 for the time of first counsel to receive judgment. I disallow item 23 as I think that item 22(a) (attendance by first counsel) applies for that service. The other items are generally arguable as reasonable within the limits of the award of costs. The Appellant's bill of costs, presented at \$10,394.76, is assessed and allowed at \$6,994.76.

"Charles E. Stinson"
Assessment Officer

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-133-06

STYLE OF CAUSE: SWAN RIVER FIRST NATION, ALBERTA
v. JOHN GIROUX et al.

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

REASONS FOR ASSESSMENT OF COSTS: CHARLES E. STINSON

DATED: October 26, 2007

WRITTEN REPRESENTATIONS:

Mr. Peter C. Graburn

FOR THE APPELLANT

n/a

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Rath & Company
Priddis, AB

FOR THE APPELLANT

Miller Thomson LLP
Edmonton, AB

FOR THE RESPONDENT, John Giroux