Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-2154

Appeal MA-030211-3

Le Conseil scolaire public de district du Centre-Sud-Ouest

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NATURE OF THE APPEAL:

The Conseil scolaire public de district du Centre-Sud-Ouest (the Conseil) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to copies of all e-mails containing the requester's family name in the e-mail accounts of six named individuals and their assistants. The request set out the particulars of the information requested and specified how the search for that information should be conducted:

> Identify all email addresses of these [named] individuals, including those maintained by them or maintained by others for them such as their assistants, and those that are maintained in computer archives or back-ups.
>
> Perform a text search with the email application for email containing the text ["appellant's surname"]. The list of the email found containing this text is requested as a record in itself, which can be printed, faxed or emailed to me. The email[s] themselves are also requested records. Create a digital copy of the email identified and email them to me at [a specified email address].

Subsequently, the requester clarified that the request includes deleted e-mails.

The Conseil did not provide a decision within 30 days as required by the *Act*, and the requester filed a "deemed refusal" appeal. Appeal MA-030211-1 was opened to deal with this issue. In that appeal, the Acting Adjudicator issued Order MO-1668, which ordered the Conseil to issue a decision. The Conseil issued its first decision in relation to the request and Appeal MA-030211-1 was closed.

This first decision letter stated that the Conseil no longer has backups of e-mails prior to August 2002, and that the period for which e-mails could be provided runs from August 31, 2002 to February 16, 2003 (the date of the request). It stated further that the fee for the first part of the request would be $129,112.50, which included the cost of acquiring a server and two computers, and that the task would require a technician to do the programming of the server and the recovery of the backups. The Conseil indicated that a deposit of $64,556.25 would be required before "undertaking such work". The Conseil further indicated that, as regards the second part of the request, the fee could not be determined because the number of responsive pages is unknown.

The Conseil did not indicate whether it would claim any of the exemptions in the *Act* as a basis for denying access if the deposit were paid and responsive records located. Instead, the Conseil informed the requester that it considered the request to be frivolous or vexatious under section 4(1)(b) of the *Act* and denied access to the records on that basis.

The requester filed an appeal of this decision, which became Appeal MA-030211-2.

During mediation of Appeal MA-030211-2 the requester clarified that he was seeking the emails found in the accounts of the six named individuals and their assistants, rather than the email accounts of all Conseil employees, as the Conseil had believed when it issued its original decision letter. The Conseil therefore issued a revised decision letter, which reiterated that it considered the requester's request to be frivolous or vexatious under section 4(1)(b) of the *Act*.

The Conseil also relied on section 1 of Regulation 823, which provides that a "machine readable record" is not a record under the *Act* if "producing it would unreasonably interfere with the operations of the institution". Finally, the revised decision contained an amended fee estimate for the processing of the request in the amount of $8,100.

The requester appealed the Conseil's revised decision and when further mediation did not produce a resolution, Appeal MA-030211-2 was transferred to adjudication.

Appeal MA-030211-2 was resolved by my Order MO-1924, which addressed three issues: (1) whether the request was frivolous or vexatious; (2) whether the requested records were excluded from the definition of "record" in the *Act* by section 1 of Regulation 823; and (3) whether the fee estimate should be upheld. In Order MO-1924, I found that the request was not frivolous or vexatious, and that the records were not excluded from the definition of "record" under section 1 of Regulation 823. I ordered the Conseil to issue a new decision and fee estimate. The order provision relating to the latter states as follows:

> I order the [Conseil] to issue a final or interim access decision and fee estimate to the appellant regarding access to the records under the *Act*, consistent with the findings in this order in relation to "frivolous or vexatious" and section 1 of Regulation 823, and consistent with the requirements for access decisions and fee estimates outlined in this order and in sections 26, 28, 29 and 57 of the *Act* and in sections 6, 6.1 and 7 of Regulation 823, without recourse to a time extension, treating the date of this order as the date of the request.

The Conseil issued a new interim decision and fee estimate to the requester in response to Order MO-1924. In its decision, the Conseil indicated that the request encompasses the e-mail accounts of the six named employees and their four assistants, for a total of ten e-mail accounts.

The new decision also stated:

> Our interim access decision is based on a review of a representative sample of the requested records and the advice of our Superintendent of Business and our Co-ordinator of Technology and Information Services.
>
> …
>
> From the sample collected and to the best of our knowledge, the requested records will be for the most part disclosed. If they are containing personal information related to you, which we believe would be few, we would of course release them without charging for searching, preparing or severing part of the record if need be. The only exemption that may apply is section 12. If it would be the case, the e-mails would then be severed appropriately. The severance of those records would be to prevent the disclosure of information subject to solicitor-client and litigation privileges.

> Considering the amount of work this request involves which would interfere with our operations and constitute a burden for our staff, since we are a small school board, we would have to retain the service of a technician of a company to undertake the task required.
>
> Consequently, we are enclosing a quote of the cost involved submitted by company Micro Alternative Solutions which provide[s] regular services to our Board and is specialized in that field. The estimated cost for providing copies of the requested e-mails is $31,783.13 and we would require a deposit of $15,891.56 before such work would be undertaken.
>
> This quote includes the cost for the acquisition of the equipment needed to undertake such a task and the breakdown of the fees to recover and provide the requested records. The estimated cost is calculated based on the fact that the operations of programming, locating, retrieving, processing and recovering the records, which are archived in a different version then the one we are presently using, do not encounter problems.
>
> As for providing a list of all e-mails containing the text ["appellant's surname"], the work could only be done after each recovery of mail boxes so the estimated cost would be the same as indicated in the enclosed quote except for the printing of the list which would add an extra fee of 20 [cents] per page.
>
> As stipulated in Section 45(4) of the Act, we will waive part of the amount required if the actual cost of locating, retrieving and processing the records varies from the estimated fee.

Attached to the interim decision letter is the quote of Micro Alternative Solutions which formed the basis of the fee estimate. The quote broke down the fees to be charged as follows:

New Server [to] support small exchange and NT install	$4,500.00
Desktop	1,000.00
8 port switch	150.00
External LTO1 drive	2,000.00
Basic Laser Printer	250.00
Install and configure WNT on server, with updates, install E5.5 on Svr, identify patch and SP levels for original install, and configure that Level 3, days at $1300.00 per day	3,900.00
Build stand alone new network, 4 hrs at 162.5/hr	650.00

Install W2K on D/t, attach to network, 4 hours at 162.5/hr	650.00
Install BUexec 9.0, 2 hours at 162.5/hr	350.00
Recover historical email Data, 2 hours at 162.5/hr per cassette	700.00
Identify and isolate 10 requested email boxes, 3 hrs at 162.5/hr	487.50
Recover requested emails from each box, indeterminate time, 1300.00/day until completed, determining factor is number of email that need to be recovered, and the size of each mail box, minimum 1 day per box	13,000.00
Subtotal	27,637.50
GST	1,934.63
PST	2,211.00
Total	$31,783.13

The requester (now the appellant) appealed this decision with respect to the amount of the fee and Appeal MA-030211-3 was opened. Mediation of the issues was not successful and the file moved to the adjudication stage of the appeal process. I commenced my inquiry by issuing a Notice of Inquiry to the Conseil to seek its representations solely on the fee estimate issue. The Conseil filed representations in response. I then issued a modified Notice of Inquiry to the appellant, enclosing a copy of the non-confidential portions of the Conseil's representations. The appellant advised this office that he did not intend to file representations in this appeal. His letter of appeal sets out some of his views on the matter, which I will refer to later in this order.

RECORDS:

The requested records consist of emails and deleted emails, containing the surname of the appellant, in the mailboxes of six named individuals and their four assistants, dated between August 31, 2002 and February 16, 2003. The appellant has also requested that the Conseil produce a list of the emails and deleted emails.

DISCUSSION:

FEES

Section 45(1) sets out the fees institutions are required to charge under the *Act*. It states:

> A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

(a) the costs of every hour of manual search required to locate a record;

(b) the costs of preparing the record for disclosure;

(c) computer and other costs incurred in locating, retrieving, processing and copying a record;

(d) shipping costs; and

(e) any other costs incurred in responding to a request for access to a record.

More specific requirements for the calculation and payment of fees are found in sections 6, 6.1, 7 and 9 of Regulation 823 under the *Act*. Section 6 of Regulation 823 deals with requests for access to general records, and section 6.1 with requests for one's own personal information. These sections state:

6. The following are the fees that shall be charged for the purposes of subsection 45(1) of the *Act* for access to a record:

1. For photocopies and computer printouts, 20 cents per page.

2. For floppy disks, $10 for each disk.

3. For manually searching a record, $7.50 for each 15 minutes spent by any person.

4. For preparing a record for disclosure, including severing a part of the record, $7.50 for each 15 minutes spent by any person.

5. For developing a computer program or other method of producing a record from machine readable record, $15 for each 15 minutes spent by any person.

6. *The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.* [Emphasis added.]

> 6.1 The following are the fees that shall be charged for the purposes of subsection 45(1) of the Act for access to personal information about the individual making the request for access:
>
> 1. For photocopies and computer printouts, 20 cents per page.
>
> 2. For floppy disks, $10 for each disk.
>
> 3. For developing a computer program or other method of producing a record from machine readable record, $15 for each 15 minutes spent by any person.
>
> 4. *The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.* [Emphasis added.]

The purpose of a fee estimate is to give the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access [Orders P-81, MO-1367, MO-1479, MO-1614, MO-1699]. The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees [Order MO-1520-I]. My obligation under section 45(1) is to ensure that the amount estimated by the Conseil is reasonable in the circumstances. The burden of establishing the reasonableness of the estimate lies upon the institution [Order 86]. To discharge this burden, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated [Order P-81, MO-1614].

Previous orders of this office have upheld fee estimates that are based on invoiced costs provided that the activities for which the institution is invoiced would have been recoverable under the *Act* if performed by the institution's employees [Order P-1536, M-1090, Order PO-2214].

Sections 6 and 6.1 of Regulation 823

Section 6 of Regulation 823 applies to requests for general records. Section 6.1 relates to a request for one's own personal information. Given that the fees permitted under section 6.1 are more restricted than those allowed under section 6, this distinction can be significant and I must therefore consider whether it has any impact in the circumstances of this file and if so, how to deal with the issue. Pursuant to Order MO-1934, the Conseil issued a new interim access and fee decision whose contents are outlined in detail above, and in this decision, the Conseil observes that only a few records would be likely to contain the appellant's personal information. In this regard, I note that although the request appears to relate to the appellant's business dealings, the appellant seeks records that contain his family name.

In my view, however, it is not necessary for me to decide whether the records contain the appellant's personal information as the basis for a ruling on the extent to which sections 6 and 6.1, respectively, might apply. This is so because in the present appeal, the costs being claimed

by the Conseil are computer costs specified in an invoice, and the relevant provision would be either item 6 of section 6, or item 4 of section 6.1. These two sections are identical. In this instance, therefore, the costs chargeable will be the same whether or not the record contains the appellant's personal information.

In reaching this conclusion, I have considered the possible impact of the interpretation in Order P-1536 and other decisions, as referenced above. These orders indicate that, in order for invoiced costs to be recoverable, fees for the activities for which the institution is invoiced must also be recoverable under the *Act* if performed by the institution's employees. Arguably, this is not so for time spent "locating" or "recovering" any records that contain the appellant's personal information, since a notable difference between sections 6 and 6.1 is that in section 6.1, no fees are allowed for institution staff "manually searching" for records. However, section 45(1)(c) of the *Act* contemplates fees for "computer and other costs incurred in locating, retrieving, processing and copying a record", and section 6.1 of Regulation 823, which deals *specifically* with requests for one's own personal information, authorizes institutions to charge for costs incurred "… in locating, retrieving, processing and copying the record if those costs are specified in an invoice …." On this basis, I have concluded that invoiced costs for locating or recovering a record may therefore be charged under item 4 of section 6.1, even for records that contain the appellant's personal information.

The Conseil's Fee Estimate

The fee estimate is calculated on the basis of the invoice for materials and services from Micro Alternative Solutions, set out in full above. I note that the invoice includes an amount of $7,900 for new computer hardware and a total of $19,735.50 for labour which is charged at the rate of $162.50 per hour.

The Conseil's Representations

The Conseil submits that it does not have the staff in its office to retrieve the records that are responsive to the request. It also submits that their computer equipment is in continuous use and is not available to retrieve the responsive records, therefore it is necessary to purchase new equipment to respond to the request. The Conseil states in its submissions:

> The amount of work involved by this request would constitute a burden for our staff and would interfere with our operations. Being a small school board, we would have to retain the service of a technician of a company to recover the records. For those reasons, we asked the company Micro Alternative Solutions, which provides regular services to our Board and is specialized in that field, to give us a quote on the cost of retrieving and producing the requested records.

In order to retrieve the data, the Conseil submits that it must create a stand alone replica of the Conseil's network and the Exchange environment as it was at the time that the emails were created because the current network and exchange environment is not compatible with what was in use in 2003. The Conseil submits that it is necessary to develop a computer program to

search and retrieve the records requested. It submits that the estimate provided by Micro Alternative Solutions is calculated on the assumption that no problems will be encountered in this process.

The Conseil states that in order to prepare its estimate of the fee shown above, it relied on the invoice provided and the advice of the Superintendent of Business and the Co-Coordinator of Technology and Information Services. It also conducted a review of a representative sample of the requested records.

The Appellant's Comments

As noted, the appellant did not file any representations in this appeal, but his letter of appeal describes the Conseil's fee decision as an "abuse of process designed to prevent access to records and information…." The appellant does not elaborate on his abuse of process allegation and in my view it is without merit. The Conseil's decision was specifically produced pursuant to my earlier Order MO-1934. I must now decide whether the proposed fees are permissible under the *Act* and Regulation 823.

Analysis and Findings

Cost of New Computer Hardware

As the invoice submitted by the technician includes $7,900.00 for the purchase of new computer equipment, one of the issues before me is whether the legislature intended that the words "computer and other costs" found in section 45 of the *Act*, and the words "computer costs" found in sections 6 and 6.1 of Regulation 823, were intended to include the capital cost of purchasing new computer equipment. The Conseil submits that section 45(1)(c) and sections 6 and 6.1 of Regulation 823 authorize the Conseil to include this expenditure in the fee estimate.

Although I am sympathetic to the circumstances outlined by the Conseil, I find that the capital cost of computer equipment is not an expense for which they are entitled to seek payment from the appellant. For the reasons that follow, I do not believe that the Legislature intended that the capital cost of computer equipment, which would continue to be the property of the institution after completion of the request, is an expense that should be recoverable from an individual requesting access to records under the *Act*.

Pursuant to section 45(1)(c) the institution is required to charge fees for "computer and other costs incurred in locating, retrieving, processing and copying a record." As already noted, the allowable fees are set out in sections 6 and 6.1 of Regulation 823, both of which refer to "the costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received."

In determining the meaning of these provisions, I turn to the modern rule of statutory interpretation, articulated by Ruth Sullivan in *Driedger on the Construction of Statutes*, 4th ed. (Toronto: Butterworths, 2002) at pp. 1 and 3:

> … [I]n the first edition of the *Construction of Statutes*, Elmer Driedger described an approach to the interpretation of statutes which he called the modern principle:
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> The modern principle has been cited and relied on in innumerable decisions of Canadian courts, and in *Re Rizzo and Rizzo Shoes Ltd*. [[1998] 1 S.C.R. 27 at 41].
>
> …
>
> At the end of the day, after taking into account all relevant and admissible considerations, the court must adopt an interpretation that is appropriate. An appropriate interpretation is one that can be justified in terms of (a) its plausibility, that is, its compliance with the legislative text; (b) its efficacy, that is, its promotion of the legislative intent; and (c) its acceptability, that is, the outcome complies with legal norms; it is reasonable and just.

(a) Plausibility or Compliance with Legislative Text

Driedger states (at p. 123) that to be a plausible interpretation it "must be one that the words of the text can reasonably bear." I am willing to accept that an interpretation of the words "computer and other costs" in section 45(1)(c) and "computer costs" in sections 6 and 6.1 of Regulation 823 that includes the capital costs of computer equipment may be a plausible interpretation. However, for the reasons that follow, I find that such an interpretation is inconsistent with the purpose of the legislation and results in an outcome that is both unreasonable and unjust.

(b) Promotion of Legislative Intent

Section 1 of the *Act* provides some context for the interpretation of the language used in section 45(1)(c) and in the Regulations. Section 1 states:

> The purposes of this Act are,
>
> > (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
> >
> > > (i) information should be available to the public,

> (ii) necessary exemptions from the right of access should be limited and specific, and
>
> (iii) decisions on the disclosure of information should be reviewed independently of the institution controlling the information; and
>
> (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

Section 1 makes it clear that the intent of the Legislature in enacting the *Act* is that government information should be available to the public, subject only to limited and specific exemptions.

Section 45 clearly contemplates a "user pay" principle, and provides for waiver of fees in certain instances, but in my view, against the backdrop of section 1 of the *Act*, an interpretation of section 45 of the *Act* and sections 6 and 6.1 of Regulation 823 that creates a financial barrier or a deterrent to access by requiring a requester to pay an institution's invoiced capital costs for equipment it will retain after the request is completed would be inconsistent with the overall legislative intent as reflected in section 1.

(c) Outcome must be Consistent with Legal Norms and Reasonable and Just

In the *Driedger* text quoted above, Ruth Sullivan discusses the meaning of "legal norms" and indicates, at p. 2, that "[t]heir primary source … is the common law." As well as conforming with such norms, the outcome must be reasonable and just.

In my view, the interpretation of section 45 of the *Act* and sections 6 and 6.1 of Regulation 823 advanced by the Conseil does not meet any of these criteria. The payment by a requester for the purchase of computer equipment would result in the institution having received an unfair benefit from the requester as a result of the access request. The institution would have the benefit of the computer equipment for the lifetime of that equipment following the fulfilment of the access request, regardless of the length of time the equipment may have been used to satisfy the access request.

At common law, such a result would be viewed as "unjust enrichment" (a common law principle affirmed in, for example, *Garland v. Consumer's Gas Co.*, [2004] S.C.J. No. 21) and therefore inconsistent with legal norms. The test for unjust enrichment requires the enrichment of one party and corresponding deprivation of another, clearly present in this case. It also requires an absence of "juristic reason" for the enrichment. In my view, section 6 and 6.1 of the regulation are subject to interpretation and, although it may be plausible to include capital costs, it is not clear that these sections should be interpreted in that manner, and as canvassed here, there are reasons for finding otherwise. I therefore find that sections 6 and 6.1 are not sufficient to provide a "juristic reason" to charge for capital expenses, and the test to establish "unjust

enrichment" is met. In addition to the fact that this interpretation does not, therefore, accord with legal norms, it is also not, in my view, reasonable or just. Accordingly, this aspect of the modern principle indicates that it should not be adopted.

Furthermore, with the shift towards electronic records management practices, the acquisition and maintenance of computer systems by institutions is recognized as a cost of providing services to the public and there is nothing in the *Act* to suggest that the Legislature intended that cost should be borne or transferred to those seeking access to information.

In summary, I find that the interpretation advanced by the Conseil of the words "computer and other costs" in the *Act* and the words "computer costs" in the Regulation is not appropriate. Although it may be plausible, it does not promote the clear legislative intent, does not conform to applicable legal norms and produces an unreasonable and unjust result. I find that the reference to computer costs in section 45 of the *Act* and in sections 6 and 6.1 of Regulation 823 of the *Act* does not include the capital cost associated with the purchase of computer equipment. Accordingly, I will disallow the portion of the Conseil's fee estimate in the amount of $7,900 and any taxes referable to that portion of the invoice.

Installation and Configuration of basic operating software

In its representations, the Conseil provides details of the labour costs referred to in the invoice provided by Micro Alternative Solutions. It submits that the amount of $650 included in the quote for labour to "Install W2K on D/t, attach to network" is for the following service:

- Install, configure and update Windows 2000
- Install, configure and update Microsoft Office and the Outlook client
- Install local printer
- Join the Windows 2000 workstation client to the replicated CSDCSO domain

These items refer to expenses that occur after purchasing a new computer that has no operating software installed. The cost associated with the installation of this software is similar in nature to the capital cost of purchasing the new computer and other equipment. Although this expense represents a labour cost, it is an expense that the Conseil would have the benefit of long after the access request in this appeal is dealt with. In view of my finding with respect to the purchase of a new computer, it logically follows that the Conseil is not entitled to claim for the costs of installing basic software that it would have had to install in any event to make the computer fully operational. The Conseil should not find itself in a better financial position as a result of the request for access in this case than it would have been without the request.

For the same reasons given above in relation to the capital cost of computer equipment, I find that the Conseil should not be entitled to recover the cost of installing the basic software on the new computer equipment. Accordingly, I will disallow the Conseil's fee estimate in the amount of $650, and any taxes referable to that portion of the invoice.

Other expenses

I find that the other expenses contained in the invoice all relate to work that is essential to retrieve the emails and the email list that are requested by the appellant. I accept the evidence of the Conseil that in order to retrieve the data which will be archived in formats that may be incompatible with the Conseil's current versions of computer software, it is necessary to create a replica of the network as it existed at the time that the emails were created. These are activities for which the Conseil would be entitled to recover a fee under the *Act*, if they were performed by its own employees.

There is, however, one aspect of these other expenses that needs to be addressed. The invoice claims that, once the e-mails have been recovered, "indeterminate time" will be required to retrieve the e-mails from each of ten reconstructed mailboxes, and that a "minimum" of one mailbox can be reviewed each day. On this basis, the invoice provides an estimate based on ten days of searching. The invoice does not describe the nature of these searches, but it strains credulity to the breaking point to assume that an electronic search through one e-mail account for a single word of text could possibly occupy an entire day. In my view, one-half day per e-mail account is a more reasonable estimate.

Accordingly, in my view, this aspect of the fee estimate should be recalculated as follows:

> .5 days x 10 employee e-mail accounts x $1,300.00 per day = $6,500.00, plus associated taxes.

While sections 6 and 6.1 of the Regulation contemplate fees that are "specified in an invoice" to be passed on to a requester, I am mindful of the fact that in this instance, the invoice is an estimate for work that has not yet been performed. It is my responsibility to arrive at an estimate that is fair to all concerned, *i.e.*, one that avoids unfair expenditures by the Conseil but also avoids a deposit that will act as a barrier to access where the original fee estimate appears to be excessively high. In adjusting this aspect of the estimate, I am also mindful of the fact that if the eventual cost is greater or less than the estimate, the amount charged to the appellant must be adjusted accordingly, and this can be done by charging a deposit and reflecting any discrepancy in the payment or refund to be made before or at the time when access is given.

Accordingly, the fee for recovering the e-mails from the reconstructed e-mail accounts, currently stated as $13,000, is reduced to $6,500 plus applicable taxes.

Conclusions

In conclusion, I find that the fee estimate for these items in the amount of $12,587.50 plus applicable taxes is reasonable and I therefore, uphold the Conseil's fee in that amount. With respect to taxes, the Conseil may charge an additional amount for any taxes in the invoice that are referable to the $12,587.50 fee, provided that these are taxes the Conseil is actually required to pay. Under section 7(1) of the Regulation 823, The Conseil may require a deposit of 50% of this amount before proceeding further.

As well, in the event that the Conseil's costs of processing the request are different than those reflected in the invoice (e.g. if more or less time is actually required to recover the e-mails), this difference may be reflected in an adjusted fee. As noted below in the order provisions, if the actual amount is lower, the appellant must not be required to pay more than the actual costs paid by the Conseil in relation to the parts of the invoice I have allowed. The Conseil may also charge for photocopies at $0.20 per page. If issues arise in this regard that the parties are unable to resolve, they may approach this office for further directions. If the amount of the fee increases as a result, the appellant may appeal within thirty days of the decision relating to the increase.

FEE WAIVER

In his appeal letter, the appellant argues that the fee should be waived in the public interest. The appellant does not point to any of the grounds for a fee waiver set out in section 45(4) of the *Act*, which deals with that subject, nor has he provided representations in this appeal. I dismiss this aspect of the appeal.

ORDER:

1. I do not uphold the Conseil's fee estimate of $31,783.13.

2. I uphold a fee estimate in the amount of $12,587.50, plus any appropriate taxes. Under section 7(1) of the Regulation 823, The Conseil may require a deposit of 50% of this amount before proceeding further. The Conseil may also charge for photocopies at $0.20 per page.

3. If the cost of completing the request differs from the amount in the invoice, and issues arise in this regard that the parties are unable to resolve, they may approach this office for further directions. The appellant must not be required to pay more than the actual costs paid by the Conseil in relation to the parts of the invoice I have allowed. If the amount of the fee increases, the appellant may appeal within thirty days of the Conseil's decision relating to the increase.

Original signed by: January 31, 2007
John Higgins
Senior Adjudicator