

Federal Court



Cour fédérale

Date: 20110927

Docket: T-172-10

Citation: 2011 FC 1104

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

BETWEEN:

**CONSEIL DES MONTAGNAIS DE
NATASHQUAN**

Applicant

and

**ÉVELYNE MALEC, SYLVIE MALEC,
MARCELLINE KALTUSH, MONIQUE
ISHPATAO, ANNE B. TETTAUT, ANNA
MALEC, ESTELLE KALTUSH**

and

CANADIAN HUMAN RIGHTS COMMISSION

Respondents

ASSESSMENT OF COSTS – REASONS

JOHANNE PARENT, Assessment Officer

[1] On December 23, 2010, the Court allowed the application for judicial review of a Canadian Human Rights Tribunal decision made on January 27, 2010, with costs. The Court Registry received the bill of costs on May 12, 2011, and directions were given the next day, informing the

parties that the assessment of costs would be conducted in writing and of the time limit for filing representations.

[2] To support its bill of costs, the applicant submitted John White's affidavit as well as written representations. In response, written representations were submitted by counsel for one of the respondents, the Canadian Human Rights Commission (the Commission). Although directions were served to all parties on May 13, 2011, the other respondents did not submit any representations.

However, counsel for the Commission notes the following in his representations:

[TRANSLATION] Finally, we ask that the assessed amount of the bill of costs be divided equally between the Canadian Human Rights Commission and the respondents, Malec et al. Counsel for the respondents Malec et al. and counsel for the Commission agreed on this point.

[3] The applicant is requesting the maximum number of units for all services claimed in the bill of costs, arguing that this is reasonable given the [TRANSLATION] "significant time spent" on preparing proceedings within the time limits set out in the *Federal Courts Rules* for judicial review. In response, the Commission maintains that the claim as presented is exaggerated, given the average complexity of this case. In reply, the applicant argues that this application for judicial review [TRANSLATION] "was very complex and required a more than considerable investment of time."

[4] The parties agree on the application of column III of Tariff B of the *Federal Courts Rules*. Based on my reading of the file and factums produced by the parties in this case, I consider this case to be relatively complex. As for the applicant's claims that preparing this case within the time limits set out in the Rules caused an excess of work, I do not find that this argument can automatically justify the maximum number of units requested for all the items claimed under Tariff B. In light of

the preceding and given the parties' representations regarding the bill of costs, I will consider the reasonableness of costs requested for each item claimed.

[5] Based on the applicant's arguments mentioned in paragraph 3 of these reasons and, more specifically, the fact that the file prepared within the timeframe determined by the Rules is 465 pages long, the applicant is claiming seven units for the preparation of originating documents (item 1). In response, the Commission states that the number of pages submitted was a collection [TRANSLATION] "of transcripts from the Canadian Human Rights Tribunal record and documents that were already in the applicant's possession."

[6] Following my consultation of the three-page affidavit supporting the application for judicial review, I must note that the affidavit is voluminous but essentially composed of copies of Court documents, testimony transcriptions and earlier arbitral decisions. As for the volume of the applicant's file, it includes the aforementioned affidavit with exhibits, a twenty-page factum, and copies of the relevant legislation and applicable case law. As I mentioned above, this is not a very complex case and, given the work actually required to prepare the application for judicial review and the affidavit and exhibits, I allow five units.

[7] The applicant is claiming units under Tariff B for items 19 ("Memorandum of fact and law") and 20 ("Requisition for hearing"). The applicant claims that a voluminous memorandum of fact and law had to be prepared for this case, including extensive case-law research. For his part, counsel for the Commission submits that the claim is exaggerated given the average complexity of this case.

[8] Items 19 and 20 are found in section F of Tariff B: “Appeals to the Federal Court of Appeal.” Since the application for judicial review at issue here is not an appeal to the Federal Court of Appeal, said items are not applicable. According to current case law, the memorandum of fact and law to which the applicant refers could be claimed under item 1: “Preparation and filing of originating documents, other than a notice of appeal to the Federal Court of Appeal and application records” (see *International Tae kwon-Do Federation v. Choi* 2008 FC 1103 A.O.). Given the relative complexity of this case, I will allow five units for services related to the preparation of the memorandum of fact and law. The costs claimed for the requisition for hearing under item 20 of Tariff B will be allowed for one unit, but under item 27, “Such other services as may be allowed by the assessment officer or ordered by the Court.” The Commission did not dispute this service and, according to the record, the applicant prepared such a requisition, which was served and filed in Court. However, since this service is not covered by Tariff B, I find that the preparation of a hearing requisition normally requires a minimum of work to communicate between the parties in order to, among other things, define the place where the hearing should be held, its possible duration and the dates of availability.

[9] Five units for the discovery of documents are claimed under item 7. The Commission disputes the number of units requested, given the very short distance for the discovery of documents. The claimed units will not be allowed. This service refers to Rules 222 to 232 of the *Federal Courts Rules* in PART 4 – Actions of the Rules. With no other argument to justify such a request as part of this judicial review, I do not see the relevance of such a claim.

[10] The five units claimed for preparation for trial or hearing (item 13 (a)) will be reduced to three. As mentioned earlier, this did not involve preparing for the hearing of a complex case and, more importantly, did not require the preparation of testimonies, since all the evidence was submitted through affidavits.

[11] The number of hours claimed for attendance in Court (item 14 (a)) on December 9, 2010, is reduced to two in consideration of the actual time spent before the Court during the hearing of this case, for a total of six units under this item.

[12] The claim under item 24 for travel by counsel to attend the hearing cannot be allowed. In fact, item 24 clearly specifies that this item is “at the discretion of the Court.” The discretion of the Court, as set out in item 24, does not extend to the assessment officer when the Court has not previously issued any specific direction. (*Fournier Pharma Inc. v. Canada* 2008 FC 929 A.O.)

[13] Counsel for the applicant is claiming costs under item 25, “services after judgment not otherwise specified,” and under item 27, “such other services as may be allowed by the assessment officer or ordered by the Court,” stating the following in his representations in chief and in reply:

[TRANSLATION] As for item 25, this concerns services after judgment for the clients and discussion with them as well as with the other parties to follow up on the judgment ordering that the file be referred back to the Canadian Human Rights Tribunal. This also applies to the claim mentioned under item 27.

With respect to the claim made under item 27, the applicant adds that the other services received included, but were not limited to, services after judgment. Therefore, this is not a double claim because we need to be aware that the file must be referred back to the Canadian Human Rights Tribunal and that this falls under services after

judgment. We therefore submit that we do not consider the claim we made in this regard to be unreasonable.

[14] Considering the applicant's justification for the services provided after judgment, the unit claimed under item 25 will be allowed as requested. As for the claim in the bill of costs under item 27, I share the opinion of counsel for the Commission that the applicant has not provided any justification for "other services" aside from those provided after judgment, the costs of which are already set out in the Tariff and have been allowed under item 25. Consequently, the three units claimed in the bill of costs under this item will not be allowed.

[15] With regard to the claim for the maximum number of units under item 26 of Tariff B for the assessment of costs, counsel for the Commission argues that this claim is exaggerated and that two units are sufficient. I recognize that the applicant saw to the preparation, service and filing of the bill of costs, an affidavit and supporting evidence as well as the submission of representations. Considering not only the work done, but also this assessment's lack of complexity, four units will be allowed for the assessment.

[16] With no challenge to the disbursements claimed in the bill of costs and considering their justification in John White's affidavit, said disbursements are considered to be justified and to be expenses necessary for the conduct of this matter. The amounts are justified and reasonable and will thus be allowed.

[17] The applicant's bill of costs is allowed in the amount of \$4,812.46 (including taxes). Regarding the comment from counsel for the Commission (paragraph 2 of these reasons) about

sharing the assessed costs, the parties will be responsible for ensuring that their mutual agreement is respected.

“Johanne Parent”

Assessment Officer

Toronto, Ontario
September 27, 2011

Federal Court



Cour fédérale

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-172-10

STYLE OF CAUSE: CONSEIL DES MONTAGNAIS DE
NATASHQUAN v. ÉVELYNE MALEC, SYLVIE
MALEC, MARCELLINE KALTUSH, MONIQUE
ISHPATAO, ANNE B. TETTAUT, ANNA
MALEC, ESTELLE KALTUSH AND CANADIAN
HUMAN RIGHTS COMMISSION

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

REASONS FOR ASSESSMENT OF COSTS BY:

ASSESSMENT

DATED: September 27, 2011

WRITTEN REPRESENTATIONS:

John White FOR THE APPLICANT

François Lumbu FOR THE RESPONDENT
(CANADIAN HUMAN RIGHTS
COMMISSION)

N/A FOR THE OTHER RESPONDENTS

SOLICITORS OF RECORD:

Dussault Gervais Thivierge L.L.P. FOR THE APPLICANT
Québec, Quebec

Canadian Human Rights FOR THE RESPONDENT
Commission (CANADIAN HUMAN RIGHTS
Ottawa, Ontario COMMISSION)

Jouis Lapierre FOR THE OTHER RESPONDENTS
Sept-Îles, Quebec

