

Federal Court



Cour fédérale

**Date: 20110714**

**Docket: T-1252-10**

**Citation: 2011 FC 890**

**BETWEEN:**

**NELSON KEEPER**

**Applicant**

**and**

**HER MAJESTY THE QUEEN  
IN RIGHT OF CANADA, as represented by  
THE MINISTER OF INDIAN AFFAIRS &  
NORTHERN DEVELOPMENT,  
CHIEF MARTIN OWENS, COUNCILLOR  
DEON LAM and DEPUTY ELECTORAL  
OFFICER IAN KEEPER**

**Respondents**

**ASSESSMENT OF COSTS - REASONS**

**Charles E. Stinson  
Assessment Officer**

[1] The Court allowed with costs to be fully paid by the Respondent, the Minister of Indian Affairs and Northern Development (the Minister), this application for judicial review of the decision of the Minister's Delegate to dismiss an appeal of the results of a First Nations election in 2009.

I issued a timetable for written disposition of the Applicant's bill of costs.

[2] The Respondent, Chief Martin Owens, asserted that costs were not assessable as against him and took no position on the costs claimed. The Minister conceded the claimed disbursements (registry fees, laser printing, photocopies and service fees) totalling \$746.94, as well as all claimed counsel fees other than fee item 1 (preparation and filing of the Notice of Application and the Application Record) claimed at the maximum 7 units (\$130 per unit). Although the existence of an outstanding appeal and the impecuniosity of a litigant were mentioned in the materials relative to potential delay of an assessment of costs, they ultimately did not requiring findings on my part.

### I. The Applicant's Position

[3] The Applicant noted that the Notice of Application (8 pages) was drafted by the legal staff at the Public Interest Law Centre (PILC) and that his solicitor of record was retained after its filing. The latter had to orient herself quickly to this matter to address service issues and preparation of the application record, which represented the bulk of the work claimed under counsel fee item 1. The complexity of the issues and the breadth of the associated regulations and statutes justified the maximum 7 units (\$130 per unit) claimed. The assessed amount should not be determined in hindsight, but rather on the effort required at the time for prudent representation of the client: see *Carlile v Canada* (1997), 97 DTC 5284 (TO). Applicant asserted that any amount representing the work to draft the originating document would be directed to the PILC.

### II. The Minister's Position

[4] The Minister argued that the Applicant's assessment materials confirm that the PILC, where counsel act *pro bono*, prepared and filed the Notice of Application, and therefore nothing should be allowed for fee item 1 in the absence of evidence that the PILC billed the Applicant for its services.

### III. Assessment

[5] Paragraphs 15 and 16 of *Madell v Canada*, [2011] FCJ No 432, 2011 FCA 105 (AO) set out my general approach for assessments of costs and for counsel fee items respectively. Costs are an indemnity and not a windfall or source of profit: see *Stevens v Canada (Attorney General)*, 2007 FC 847, [2007] FCJ No 1107 (AO) for fuller commentary on underlying principles of costs as an instrument of policy in the efficient and orderly administration of justice.

[6] I have addressed and allowed costs in circumstances which were not strictly the historical notion of indemnity: see *Rollinson v Canada* [1993] FCJ No 692 (TO) [*Rollinson*]. However, I do not think the circumstances here are comparable to those of *Rollinson*. That is, it seems that PILC did not and is not seeking costs from the client. That absence of billing, or even intent, does not create the prerequisite indemnity underlying payment of assessed litigation costs between parties adverse in interest. Accordingly, I accept the Minister's point that the Applicant cannot recover fee item 1 to the extent that it reflects the PILC work. However, to the extent that fee item 1 can address the work by the Applicant's solicitor of record on the Application Record, it is recoverable from the Minister and is in the circumstances assessed at the minimum 4 units.

[7] The Applicant's bill of costs, presented at \$4,386.94, is assessed and allowed at \$3,950.14.

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"Charles E. Stinson"  
Assessment Officer

Vancouver, BC  
July 14, 2011

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

**DOCKET:** T-1252-10

**STYLE OF CAUSE:** NELSON KEEPER v. HMQ et al.

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

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

**DATED:** July 14, 2011

**WRITTEN REPRESENTATIONS:**

Martin S. Minuk and  
Melissa N. Burkett

FOR THE APPLICANT

Martin U. Kramer

FOR THE RESPONDENT  
Chief Martin Owens

Yvette Creft and  
Lisa Cholosky

FOR THE RESPONDENT  
The Minister of Indian Affairs  
and Northern Development

**SOLICITORS OF RECORD:**

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The Minister of Indian Affairs  
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