

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260115

Docket: A-303-19

Citation: 2026 FCA 7

Present: Stéphanie St-Pierre Babin, Assessment Officer

BETWEEN:

LITTLE BLACK BEAR FIRST NATION

Applicant

and

KAWACATOOSE FIRST NATION, PASQUA FIRST NATION, PIAPOT FIRST NATION, MUSCOWPETUNG FIRST NATION, GEORGE GORDON FIRST NATION, MUSKOWEKWAN FIRST NATION, DAY STAR FIRST NATION, STAR BLANKET FIRST NATION, STANDING BUFFALO DAKOTA FIRST NATION, PEEPEEKISIS FIRST NATION, and HIS MAJESTY THE KING IN RIGHT OF CANADA

Respondents

Assessment of costs without appearance of the parties.
Certificate of Assessment delivered at Ottawa, Ontario, on January 15, 2026.

REASONS FOR ASSESSMENT BY:

**STÉPHANIE ST-PIERRE BABIN,
Assessment Officer**

Federal Court of Appeal



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REASONS FOR ASSESSMENT

Stéphanie St-Pierre Babin, Assessment Officer

I. Overview

[1] On September 22, 2023, Standing Buffalo Dakota First Nation, Kawacatoose First Nation, Little Black Bear First Nation (Little Black Bear), and Star Blanket First Nation jointly requested the judicial reviews in Court files A-303-19 and A-328-19 be heard simultaneously. On September 26, 2023, the Court heard simultaneously the judicial review applications in Court files A-303-19 and A-328-19.

[2] By way of Judgment and Reasons for Judgment dated July 12, 2024, the Court dismissed both judicial review applications and requested the parties to make submissions on costs. In a subsequent Judgment issued in A-303-19 on September 10, 2024 (Judgment), the Court determined that costs shall be paid by the applicant to each of the respondents, Kawacatoose First Nation and Standing Buffalo Dakota First Nation (Standing Buffalo or the respondent), and ordered that such costs shall be assessed “based on the midrange of column III of Tariff B.” The Court also issued a separate and identical Judgment in A-328-19.

[3] Upon receipt of Standing Buffalo’s bill of costs on June 30, 2025 (Bill of Costs), a direction was issued to inform the parties that the assessment would proceed in writing and of the deadlines to file their respective costs materials. As the delays set out in the direction have

expired, the file is perfected and ready for assessment. I have reviewed the Court file and note that for the purposes of this assessment, the parties filed the following:

- Standing Buffalo's letter in support of the Bill of Costs, dated August 1, 2025;
- Little Black Bear's letter in response, dated September 5, 2025 (Response);
- Standing Buffalo's letter in reply, dated September 24, 2025.

[4] I will now discuss a preliminary issue before addressing the assessable services.

II. Preliminary Issues

A. *What unit value shall apply to this assessment of costs?*

[5] Likely through inadvertence, the respondent applied the unit rate of \$183.43 in the Bill of Costs, and no further explanation was provided in the written representations in support of this amount. I cannot accept to apply this unit value. The Court of Appeal has confirmed the settled doctrine of the federal courts stating that the unit value to be used is the one in effect at the time the request for an assessment of costs was filed (*Lessard-Gauvin v. Canada (Attorney General)*, 2019 FCA 233 at paras. 4, 22). As the respondent's Bill of Costs was filed on June 30, 2025, the unit value in force at that time should apply, which was \$180.00 (subsection 4(1) to Tariff B).

III. Assessment of Costs

A. *Assessable Services*

(1) Items 25, 26 and 27

[6] At the outset, I find that the uncontested claims presented under Item 25 (1 unit) and Item 26 (4 units) to be in accordance with the Rules, the jurisprudence and the authority of the Judgment awarding costs based on the midrange of column III to Tariff B. With regard to Item 27, some units might have been presented under Item 11, but ultimately the result would have been the same at taxation. As the parties did not argue these claims, it is preferable not to intervene and allow the 3 units as claimed. Accordingly, a total of 8 units are allowed for Items 25, 26 and 27.

[7] Some assessable services are contested and will be addressed in turn.

(2) Item 2 – Preparation and filing of respondent record

[8] Standing Buffalo claims 6 units pursuant to Item 2 for the respondent record filed on June 26, 2023. Standing Buffalo also claims the same number of units for the filing of in its respondent record in its Bill of Costs filed in A-328-19. Little Black Bear submits that by doing so, Standing Buffalo incorrectly claims 6 units as the respondent records were the same in Court files A-303-19 and A-328-19, they were heard jointly, and they should not be compensated twice

for the preparation of the same materials. Essentially, Standing Buffalo rightly argues in reply that the Court did not order only one set of costs for A-303-19 and A-328-19, and it is therefore entitled to claim Item 2 on each bill of costs.

[9] As already detailed at paragraph 2 of these Reasons, the Court issued joint Reasons on the merits of the judicial review cases for Court files A-303-19 and A-328-19 on July 12, 2024. However, the Court subsequently issued two separate judgments on September 10, 2024, awarding costs to Standing Buffalo in each of the Court files. This action in itself denotes an intention to award two separate sets of costs. If the Court had intended to award only one set of costs, it would have stated so in its ruling (see, for example, *Di Mauro v. Canada*, 2015 FCA 208 at para. 4; *Care Nursing Agency Ltd. v. Canada (National Revenue)*, 2008 FCA 334 at para. 4). Further, I agree with Standing Buffalo that it had to review distinct application records in each of A-303-19 and A-328-19, as well as research and prepare submissions in response. In view of the foregoing and considering that the midpoint of column III represents 5 or 6 units, 5 units are allowed (*Miller Thomson LLP v. Hilton Worldwide Holding LLP*, 2020 FCA 134 at para. 162 (*Miller Thomson*); Rule 409; paragraph 400(3)(g) of the Rules).

[10] Additionally, the respondent claimed 3 units pursuant to Item 2 – half of 6 units on each of A-303-19 and A-328-19 – for two-day books filed respectively on September 26 and September 27, 2023. Item 2 is permitted once for the preparation of “all” the documents in response to an application (*dTechs EPM Ltd. v. British Columbia Hydro and Power Authority*, 2023 FC 1446 at para. 17). Therefore, the units claimed under Item 2 cannot be allowed.

[11] However, the day books were filed due to the potential “difficulties during the hearing in accessing the electronic materials filed” as there were “no connection available to the Court’s electronic files in the courtroom in Regina” (Direction issued on September 15, 2023). They were specifically filed at the Court’s request pursuant to the direction and, as such, they go beyond the usual preparation of the hearing provided for under Item 13. Standing Buffalo is correct in asserting that the day books do not fall within the definition of Item 18 either as contended by Little Black Bear, because they are not the appeal book contemplated by Rule 345. The unique circumstances warrant an allowance of 2 units – the midpoint of column III – per day book pursuant to Item 27, which leaves 2 units allowed for file A-303-19 (half of 4 units).

(3) Item 5 – Preparation and filing of a contested motion

[12] Standing Buffalo claims 5 units for the motion record filed on December 19, 2022, in response to Little Black Bear’s motion for abeyance. Little Black Bear rightly submits that this claim should be struck out as the Court made no ruling regarding costs in the order dated January 20, 2023. Standing Buffalo finally contends that it is entitled to the costs of the motion since the judge who awarded costs on the merits is the same judge who decided the interlocutory motion. The Federal Courts have consistently held that an interlocutory order which is silent as to costs is treated as an award of no costs (*Exeter v. Canada (Attorney General)*, 2013 FCA 134 at para. 14; *Janssen-Ortho Inc. v. Novopharm Ltd.*, 2006 FC 1333 at para. 13). The fact that the judge who heard the motion is the same as the one who awarded costs on the merits does not permit dispensing with the jurisprudential requirement for an expressed indication awarding costs. Therefore, no costs are allowed pursuant to Item 5.

(4) Items 13(a) and 13(b) – Preparation of the first and the second day of hearing

[13] Standing Buffalo claims 4 units pursuant to Item 13(a) and 3 units pursuant to Item 13(b), for the preparation of the two hearing days held on September 26, 2023, and September 27, 2023. Little Black Bear contends in response that the costs under Item 13(a) and (b) shall be reduced and that this claim is another attempt to “double-dip in the recovery of costs for a jointly heard motion” (Response at p. 2). Lastly, Standing Buffalo replies that each proceeding necessitated separate and extensive preparation, including but not limited to the independent review of extensive evidentiary records and the consideration of distinct written representations in Court files A-303-19 and A-328-19.

[14] The assessment officer’s jurisdiction is limited to what was ordered by the Court when it awarded costs. Once again, the Court issued two separate sets of costs, and once it is determined that Standing Buffalo is entitled to an Item, the Judgment expressly orders to apply the midpoint of column III at taxation. In consideration of the previous, I will round down the midpoint of column III and allow 3 units for the preparation of the first day of hearing under Item 13(a) (*Miller Thomson* at para. 162). I will also round down the midpoint of column III, which represents 2 or 3 units, and allow 2 units under Item 13(b) for the second day (*Miller Thomson* at para. 162; Rule 409; paragraph 400(3)(g) of the Rules).

(5) Item 14(a) – Appearance of first counsel at the hearing

[15] Standing Buffalo claims a total of 11 units for the first hearing day held on September 26, 2023, hearing that was held together with the application in Court file A-328-19. This rounded total represents half the total of 22 units obtained by multiplying 7.2 hours by 3 units, the midpoint of column III. I conducted a thorough review of the minutes of hearing prepared by the registry officer in attendance which contains a detailed statement of the hearing time. The reported time indicated is 5.5 hours, rather than 7.2 hours. This discrepancy arises because breaks are not considered when calculating the hearing duration. As a result of the foregoing, 9 units are allowed for the first day of hearing. That rounded total represents half of 17 units obtained by multiplying 5.5 hours by 3 units.

[16] Turning to the second hearing day held on September 26, 2023, Standing Buffalo claims a total of 4 units. This rounded amount represents half the total of 8 units claimed for both A-303-19 and A-328-19, which was obtained by multiplying 2.5 hours by 3 units, the midpoint of column III. Again, I conducted a review of the minutes of the hearing and the reported time indicated is 1 hour and 49 minutes duration that I round up to 2 hours. As a result, 3 units are allowed for the second day of hearing. This total represents half of the 6 units obtained by multiplying 2 hours by 3 units.

(6) Item 14(b) – Appearance of second and third counsel at the hearing

[17] Standing Buffalo claims a total of 16 units under Item 14(b) for the attendance of a second and a third counsel at the hearing of the judicial review held on September 26, 2023.

Little Black Bear submits that the claim for a third counsel is not permitted under the applicable Rules and that these costs should be struck out, while Standing Buffalo argues that the claim is appropriate on the grounds that Little Black Bear had three counsel to represent it at the hearing as well.

[18] Item 14(b) of the table to Tariff B may be claimed for the presence of a second counsel at the hearing “where Court directs” [emphasis added]. Assessment officers are officers of the Registry, not members of the Court (Rule 2). Consequently, the decision awarding costs must bear an order of the Court entitling the recovery for assessment officers to have the necessary discretion to allow costs for the presence of a second counsel, and similarly, for a third counsel (see, for example, *Visx Inc. v. Nidek Co. Ltd.*, 2001 FCT 1183 at para 2.(c)). Since this is not the case here, the claims are disallowed.

[19] In total, 32 units are allowed to Standing Buffalo.

IV. Disbursements

A. *Printing*

[20] The amount of \$693.23 – representing one half of the total of \$1,386.45 claimed on each A-303-19 and A-328-19 – is claimed for in-house printing. In support of its bill of costs, Standing Buffalo attached a document listing the printed documents and the number of pages, while specifying whether the printing was in colour or black and white. The rate charged is \$0.50 per colour page and \$0.35 per black and white page. Little Black Bear responds that the printing costs are excessive and should be reduced and that 80% of the materials were printed in colour which was completely unnecessary, and should not be a cost borne by Little Black Bear. Standing Buffalo finally replies that the firm's system only charges colour printing at the rate of \$0.50 when a specific page within a document is printed in colour. That page, and only that colour page within the document, is charged at the colour rate.

[21] With regards to in-house printing, there is a principle to the effect that the amount per page that may be claimed in a bill of costs is the actual cost incurred by a law firm, not the amount charged to the client (*Diversified Products Corp. v. Tye-Sil Corp.*, [1990] F.C.J. No. 1056 (QL) at para. 35. The amounts of \$0.50 and \$0.35 per page are too high in comparison with the market price, which is why the amount of \$0.25 will be applied to the Bill of Costs, an amount deemed reasonable by case law (*Clorox Company of Canada, Ltd. v. Chloretec S.E.C.*, 2023 FCA 25 at para. 17).

[22] Turning to the number of pages indicated in the list of printing, it is considered reasonable and represents necessary expenses to the conduct of the litigation (*Merck & Co. Inc. v. Apotex Inc.*, 2006 FC 631 at para. 3). Consequently, a total of \$354.00, which represents half of \$708.00 for each Court files A-303-19 and A-328-19 is allowed for photocopy expenses.

B. *Lunch*

[23] Standing Buffalo claims half of \$35.63 – which is the total claimed on each of A-303-19 and A-328-19 – for counsel’s lunch fees incurred on September 26, 2023, which was the first day of the simultaneous hearing. A receipt in the amount of \$37.31 from Eurest City Hall was attached to the written representations without detailing the lunch order. In the circumstances, the rate for lunches under Appendix C of the National Joint Council Travel Directive is allowed, which was \$29.60 at the commencement of assessment of costs (*Canada (Attorney General) v. Sam Lévy & Associés Inc.*, 2008 FC 934 at para. 3). The amount of \$14.80, which represents half of \$29.60 for each Court files A-303-19 and A-328-19, is therefore allowed.

V. Conclusion

[24] Standing Buffalo Dakota First Nation's Bill of Costs is assessed and allowed in the amount of \$6,128.80 payable by Little Black Bear First Nation to Standing Buffalo Dakota First Nation. A Certificate of Assessment will be issued for this amount.

Stéphanie St-Pierre Babin
Assessment Officer

Ottawa, Ontario
January 15, 2026

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-303-19

STYLE OF CAUSE:

KAWACATOOSE FIRST
NATION, PASQUA FIRST
NATION, PIAPOT FIRST
NATION, MUSCOWPETUNG
FIRST NATION, GEORGE
GORDON FIRST NATION,
MUSKOWEKWAN FIRST
NATION, DAY STAR FIRST
NATION, LITTLE BLACK BEAR
FIRST NATION, STANDING
BUFFALO DAKOTA FIRST
NATION, PEEPEEKISIS FIRST
NATION, and HIS MAJESTY THE
KING IN RIGHT OF CANADA

**MATTER CONSIDERED AT OTTAWA, ONTARIO WITHOUT PERSONAL
APPEARANCE OF THE PARTIES**

REASONS FOR ASSESSMENT BY:

STÉPHANIE ST-PIERRE BABIN,
Assessment Officer

DATED:

JANUARY 15, 2026

WRITTEN SUBMISSIONS BY:

Aron Taylor

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Mervin C. Philips

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Deputy Attorney General of Canada

FOR HIS MAJESTY THE KING
IN RIGHT OF CANADA (AS
REPRESENTED BY THE
MINISTER OF INDIAN AFFAIRS
AND NORTHERN
DEVELOPMENT)