

Federal Court



Cour fédérale

Date: 20250910

Docket: T-1515-15

Citation: 2025 FC 1498

BETWEEN:

PHILIPPE THIRION

Plaintiff

and

**LOUIS LESSARD
MARYSE BREAUT
CANADA BORDER SERVICES AGENCY
HIS MAJESTY THE KING**

Defendants

REASONS FOR ASSESSMENT

Stéphanie St-Pierre Babin, Assessment Officer

I. Background

[1] By way of Judgment and Reasons dated February 20, 2024, the Court dismissed the Plaintiff's action with costs in favour of the Defendants (*Thirion v Lessard*, 2024 FC 275 [the Judgment]).

[2] On March 24, 2025, the Defendants filed a Bill of Costs and its accompanying letter thereby initiating an assessment of costs process in accordance with subsection 406(1) of the *Federal Courts Rules*, SOR/98-106 [Rules]. In support of their Bill of Costs, the Defendants produced the affidavit of Amanda Postigo with Exhibits A to I attached thereto [Postigo Affidavit].

[3] On April 9, 2024, Turgeon A.O. issued a direction informing the parties that the assessment of costs would proceed in writing and of the deadlines to file their respective materials.

[4] As the time limits set out in the direction have expired, the file is now perfected and ready for assessment. I have reviewed the Court file and note that for the purposes of this assessment, the Defendants additionally filed the Defendants' Written Submissions on Costs on May 5, 2025 [Defendants' Submissions on Costs]. As for the Plaintiff, he did not file any written representation opposing the Bill of Costs.

[5] In view of the foregoing, I will now discuss a preliminary issue. Thereafter, I will address the assessable services, disbursements and judgment interest claimed to finally determine the amount for this assessment of costs.

II. Preliminary Issue

A. *What is the impact of the absence of opposition by the Plaintiff?*

[6] As is the case here, where a party ordered to pay costs does not oppose the bill of costs, assessment officers must assess whether each claim is within the authority of the Court's decision awarding costs, the Rules and Tariff B. If certain claims go beyond, they must intervene to ensure that the assessable services and disbursements claimed comply with this legal framework (*Dahl v Canada*, 2007 FC 192 [*Dahl*] at para 2).

III. Assessment of Costs

[7] The Defendants present a Bill of Costs for assessable services (\$16,074.00) and disbursements (\$8,714.24) for a total amount of \$24,788.24. As rightly pointed out by the Defendants, and in the absence of instructions from the Court to the contrary, the Bill of Costs will be assessed in accordance with column III of the table to Tariff B (Defendants' Submissions on Costs at para 27).

A. *Assessable Services*

[8] The Defendants claimed assessable services pursuant to Item 2 (6 units), Item 5 (18 units), Item 6 (2 units), Item 7 (6 units), Item 8 (4 units), Item 9 (6 units), Item 10 (10 units), Item 11 (4 units), Item 12 (2 units), Item 13(a) (4 units), Item 14(a) (3 units), Item 25 (1 unit), Item 26 (4 units) and of the table to Tariff B for a total of 70 units.

[9] Having reviewed the Bill of Costs in conjunction with the Court file, I first conclude that each assessable service claimed was indeed provided and reflect the procedural steps followed in this matter. The number of minutes indicated in the Bill of Costs, when required, also reflects the recorded entries made by the registry officer in the case management system.

[10] Regarding the number of units claimed per assessable service within the range offered by column III, I note that certain claims are above the midpoint, without, however, requesting the high end of the available range. On this point, the Defendants generally submit that costs “higher than the midpoint” of column III of the table to Tariff B should be allowed given the particular context of the case (Defendants’ Submissions on Costs at para 28). They further argue that the amount claimed of \$24,788.24 is reasonable to cover a fraction of their costs and of the invested time over the years “which are on the higher spectrum” (Defendants’ Submissions on Costs at paras 34, 36).

[11] The Defendants support this claim with numerous factors set forth under subsection 400(3) of the Rules, which can be summarized as follows:

- the result of the proceeding is in favour of the Defendants (paragraph 400(3)(a) of the Rules);
- the proposed quantum captures a fraction of the costs incurred (paragraph 400(3)(b) of the Rules);
- the amount of work accomplished was considerable and disproportionate to the nature of the proceeding (paragraph 400(3)(c) of the Rules);

- the Plaintiff’s conduct tended to lengthen the duration of the proceeding as he changed solicitors four times, sought numerous extensions, motions and appeals of orders (paragraph 400(3)(i) of the Rules);
- the Plaintiff’s late payment of the security for costs, the two postponement requests of the trial and the absence on the first day of trial (paragraph 400(3)(k) of the Rules);
- the “allegations of falsification signature by the Defendants brought forth by the Plaintiff required an expert witness on handwriting analysis as the Defendants have always denied the Plaintiff’s accusations” (Defendants’ Submissions on Costs at para 49; subparagraph 400(3)(n.1)(ii) of the Rules).

[12] In the particular circumstances of this case, I find it reasonable for the Defendants to be allowed costs at a level slightly higher than the midpoint of column III on the following grounds.

[13] Although the “default” level of costs is the midpoint of column III, an assessment officer is able to allow costs at a lower or higher level than the midpoint when specific circumstances dictate otherwise (*Allergan Inc v Sandoz Canada Inc*, 2021 FC 186 at para 25; *Truehope Nutritional Support Limited v Canada (Attorney General)*, 2013 FC 1153 at paras 11–14). This will depend on their analysis of the materials submitted, the Court file and the factors set forth under subsection 400(3) that they may consider (Rule 409).

[14] At the outset, I concur with the Defendants’ arguments summarized at paragraph 10, above.

[15] Additionally, in the Judgment awarding costs, Grammond J. made comments which are useful to set out here, especially with regard to the conduct of the Plaintiff:

[17] The usual rule is that the losing party pays the costs of the successful party: *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71 at paragraph 20, [2003] 3 SCR 371. I see no reason to deviate from this general principle. On the contrary, Mr. Thirion's flippant attitude during the conduct of the hearing in the past few weeks has caused considerable prejudice to the defendants, which fully justifies awarding costs.

[Emphasis added.]

It is plain and obvious from this observation that the Plaintiff's conduct justifies an allowance of the assessable services at a higher level than the midpoint of column III (subparagraph 400(3)(k)(i) of the Rules).

[16] The Court also concluded that the claims made by the Plaintiff at trial were simply a "roundabout manner of presenting a new request for adjournment" (Judgment at para 15). It is also apparent from this remark that the Plaintiff's actions unnecessarily lengthen the duration of the proceeding (paragraph 400(3)(i) of the Rules).

[17] In the end, the action was dismissed 10 years after the commencement of the proceeding because the Plaintiff failed to present evidence to prove the allegations made in the pleadings (Judgment at paras 12–15). This, in my view, also warrants an allowance above the midpoint of column III (paragraph 400(3)(o) of the Rules).

[18] For all the above reasons, the 70 units claimed in the Bill of Costs are reasonable and are within the authority of the Judgment, the Rules and Tariff B (*Dahl* at para 2). They are allowed as claimed for a total amount of \$16,074.00.

B. *Disbursements*

(1) Photocopies

[19] In their Bill of Costs, the Defendants request a cumulative amount of \$431.25 for photocopies of various materials filed with the Court. They argue that this expense is a normal amount associated with responding to the claim, and that they were ordered to produce the trial book for the Plaintiff (Defendants' Submissions on Costs at paras 54–55).

[20] After careful review of the Court file, I conclude that the photocopies made were necessary expenses to the conduct of the litigation, and that the number of pages indicated in the Bill of Costs is consistent with the number of pages appearing in the Court's Proceedings Management System (*Merck & Co Inc v Apotex Inc*, 2006 FC 631 [*Merck*] at para 3). With respect to the requested amount of \$0.25 per page, I consider this amount to be reasonable in light of the jurisprudence (*Clorox Company of Canada, Ltd v Chloretec SEC*, 2023 FC 174 at paras 19–20). Consequently, the amount of \$431.25 is allowed for the photocopy expenses.

(2) Stenographer Fees

[21] In their Bill of Costs, the Defendants claim \$765.10 as stenographer fees for the expenses related to the examination of Mr. Philippe Thirion held on November 5, 2015. They also claim

\$222.48 for the expenses related to the examinations of Mr. Louis Lessard and Mrs. Maryse Breault held on March 1, 2017. The invoices supporting these claims are attached to the Postigo's Affidavit as Exhibits A and B. Counsel for the Defendants generally argues that the disbursements incurred are "in keeping with the normal amounts associated with responding to this claim" (Defendants' Submissions on Costs at para 54).

[22] Upon my review of the Court record, the transcription of Mr. Thirion appears as Exhibit D-59.1 in the List of Exhibits produced by the Defendants in the preparation of the trial. The transcripts of the examinations of Mr. Lessard and Mrs. Breault, for their part, were filed as Exhibits H and I of the Plaintiff's record in response to the motion for summary judgment, on July 13, 2017. Accordingly, these expenses are deemed necessary (*Merck* at para 3). I further conclude that the requested amounts established by affidavit are reasonable stenographic fees. They are allowed for the cumulative amount of \$987.58 (subsection 1(4) of Tariff B).

(3) Expert Reports

[23] The Defendants first claim \$3,880.41 for the expert report of M. Jean C. Dumont dated October 23, 2017. Additionally, they claim \$3,415.00 for the expert report of Mr. André Münch dated December 9, 2015. The invoices supporting these claims are attached to the Postigo Affidavit as Exhibits G and H.

[24] I am satisfied the expert reports were reasonable and necessary to the conduct of the litigation as they were both filed, at the Court's request, in preparation for trial (Order dated

January 30, 2024, at para 3; *Merck* at para 3). They are allowed in the cumulative amount of \$7295.41.

C. *Judgment Interest*

[25] At paragraph 56 of their submissions of costs, the Defendants advance that “this Court should exercise its discretion to award costs to the amount of \$24 788.24, plus accrued interest since rendering of the judgment dismissing Plaintiff’s Action” [emphasis added]. The Defendants did not submit any argument to support this claim.

[26] In the particular circumstances of this case, I am unable to deal with this matter for several reasons.

[27] Rule 405 confers the jurisdiction for assessment officers to assess costs. As the Federal Court of Appeal stated in *Pelletier v Canada (Attorney General)*, 2006 FCA 418 at paragraph 7, assessment officers have the authority “to assess costs, not award them” [emphasis added]. They are officers of the Registry, not members of the Court (Rule 2). In their function, they are empowered to: determine and allow the amount of the assessment of costs, issue reasons to that effect, and issue a certificate of assessment for that amount. They cannot render orders or judgments (unreported Direction of Rennie J.A., dated November 27, 2023, in Docket A-3-23).

[28] More specifically with respect to judgment interest, Dawson J.A. for the Court of Appeal established that assessment officers do not have the right to award or to deny the substantive right to judgment interest provided by the *Federal Courts Act*, RSC, 1985, c F-7 [the Act], or

other applicable legislation (*Wilson v Canada*, 2000 CanLII 16367 (FC) [*Wilson*] at para 46).

The right to judgment interest depends “upon the terms of the applicable legislation and the order of the presiding judge or [associate judge]” (*Wilson* at para 47). The Federal Court of Appeal’s approach is particularly apt considering that, in some instances, only the Federal Court or the Federal Court of Appeal has the authority to establish the applicable rate, not assessment officers (subsection 37(2) of the *Federal Courts Act*, RSC 1985, c F-7).

[29] In this case, as the Court in *Halford v Seed Hawk Inc.*, 2004 FC 1259, I find myself unable to deal with this matter due to the absence of written representations on the applicable legislation concerning the judgment interest rate (para 62). Therefore, I will strictly allow the amount of this assessment of costs.

[30] The Defendants may file a motion with the Court pursuant to section 369 of the Rules to request judgment interest while submitting the applicable legislation. An amended certificate of assessment could subsequently be issued if need be.

IV. Conclusion

[31] The Defendants’ Bill of Costs is assessed and allowed at \$24,788.24. A Certificate of Assessment will be issued for that amount.

“Stéphanie St-Pierre Babin”
Assessment Officer

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1515-15

STYLE OF CAUSE: PHILIPPE THIRION v LOUIS LESSARD, MARYSE
BREAULT, CANADA BORDER SERVICES AGENCY,
HIS MAJESTY THE KING

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

**REASONS FOR
ASSESSMENT:** STÉPHANIE ST-PIERRE BABIN, Assessment Officer

DATED: SEPTEMBER 10, 2025

WRITTEN SUBMISSIONS BY:

Marjolaine Breton

FOR THE DEFENDANTS

SOLICITORS OF RECORD:

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