

Federal Court



Cour fédérale

Date: 20260108

Docket: T-219-24

Citation: 2026 FC 21

Ottawa, Ontario, January 8, 2026

**PRESENT: The Honourable Mr. Justice Duchesne
Co-Case Management Judge**

BETWEEN:

**DHL GLOBAL FORWARDING (CANADA)
INC.**

Plaintiff

and

LOWE'S CANADA AND RONA INC.

Defendant

ORDER AS TO COSTS

[1] On October 28, 2025, the Court issued its Order pursuant to Rule 215(1) of the *Federal Courts Rules* [the *Rules*] dismissing the Plaintiff DHL Global Forwarding (Canada) Inc.'s [DHL] motion for summary judgment (2025 FC 1618). The Court also dismissed DHL's action against the Defendant Rona Inc. [Rona] as there was no genuine issue for trial raised by DHL's Statement of Claim as against Rona.

[2] Rona had sought its costs of the summary judgment motion and of the action as a whole as against it (the Court notes that the Plaintiff continues to have outstanding litigation in this proceeding as against the other named Defendant, Lowe's Canada). The Court gave the parties directions as to their costs submissions and the parties have now provided the Court with their submissions as to the costs of the summary judgment motion and of the action as it concerns Rona.

[3] This Order disposes of the costs of this proceeding as it concerns the litigation between DHL and Rona.

I. **Rona's Evidence and Arguments**

[4] As the successful party on the motion for summary judgment and in the action, Rona claims its costs of the action, including of the motion for summary judgment, in the amount of \$ 116 946.60. This amount is argued to represent 50% of its reasonably incurred costs in the proceeding.

[5] Rona has submitted 30 pages of detailed dockets contained in a "Time, charges and disbursement Details" table in support of its claim for costs. The table contains redactions that withdraw unclaimed items and protects information that may be subject to various privileges. Rona has backed out costs incurred in respect of preparing a contested action for trial such as documentary review and matters related to the administration of electronic evidence that are more properly directed to trial preparation.

[6] Rona argues that Rule 400 of the *Rules* provides the Court with full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid while considering the factors set out in Rule 400(3) of the *Rules*.

[7] Rona argues that a lump sum costs award is appropriate in this case given that the parties are sophisticated and informed commercial parties. Rona also argues that a lump sum award better reflects the reality of its costs actually incurred than would an award determined through the application of Rule 407 of the *Rules* and Tariff B.

[8] Rona's evidence is that a claim for its costs of the proceeding calculated in accordance with Tariff B would lead to a costs award of \$ 7,380. This tariff based amount, it argues, is not consistent with the practice of fixing costs on a lump sum basis as a percentage of the actual costs incurred when sophisticated commercial parties are the litigants and therefore should not apply in this case. Rona relies on *Sport Maska Inc. v. Bauer Hockey Ltd.*, 2019 FCA 204, at paragraph 50 in support of a lump sum costs award:

II. **DHL's Arguments**

[9] DHL argues that costs should be assessed in accordance with Tariff B of the *Rules* or, alternatively, that a lump sum award should not exceed 20% of Rona's actual legal fees.

[10] DHL argues that the guiding principles for costs orders were summarized in *Canadian Pacific Railway Company v R*, 2022 FC 392, as follow:

- a) the Court has full discretionary power over the amount and allocation of costs;

- b) the successful party is generally entitled to costs;
- c) costs customarily provide partial compensation, compromising between compensating the successful party and burdening the unsuccessful party;
- d) the three principal objectives underlying a costs award are to
 - i. provide indemnification for costs associated with successfully pursuing a valid legal right or defending an unfounded claim,
 - ii. penalize a party who has refused a reasonable settlement offer; and
 - iii. sanction behaviour that increases the duration and expense of litigation, or is otherwise unreasonable or vexatious; and,
- e) where they achieve the objectives mentioned above, costs may be awarded on a lump sum basis, as this significantly reduces the time and effort involved in preparing and reviewing detailed bills of costs, providing the “just, most expeditious and least expensive determination” of proceedings.

[11] DHL also argues that the Court may consider the factors set out in Rule 400(3) of the *Rules* in the exercise of its discretion while keeping in mind that costs should be neither punitive nor extravagant.

[12] DHL argues that lump sum awards come from the world of intellectual property litigation and are not benchmarks for costs awards in other contexts because intellectual property litigation often requires the prepare and presentations of expert evidence at trial and a number of motions prior to trial. None of these litigation costs drivers are present in this case it argues. It follows, in DHL’s argument, that a Tariff B costs award is appropriate. This proceeding, it argues, does not

fall within the “most exceptional cases” where an award should depart from Tariff B (*Porto Seguro Companhia de Seguros Gerais v Belcan SA*, 2001 FCT 1286, at para 23; *Wihksne v Canada (Attorney General)*, 2002 FCA 356, at para 1).

[13] DHL argues that a Tariff B award in this case, even if at the high end of Column V, would be in the range of \$ 9,180 and \$ 16,200.

[14] DHL argues that if a lump sum award is to be made in this case, that award should not exceed 20% of the actual fees incurred. DHL relies on *Eli Lilly Canada Inc v Teva Canada Limited*, 2023 FC 782 at paragraphs 16 and 35, and on *AGI Suretrack, LLC v Farmers Edge Inc*, 2025 FCA 214, at paragraphs 16 and 17 for the propositions that a lump sum award at the high end of the 25 to 50% range should only be made when the Court wishes to express its displeasure with the conduct of the parties or where the litigation is complex, neither of which are at issue here. DHL suggests that a reasonable lump sum award here would be 20% of Rona’s actual legal fees (i.e. \$ 23,289.32).

III. Analysis

[15] The legal arguments made by the parties intersect and overlap significantly. The parties agree that the successful party should be awarded costs as determined by the Court. They also agree on the Court’s wide discretion in making a costs award and on the factors the Court should consider pursuant to the *Rules*. The parties also largely agree on the direction the jurisprudence provides on making a lump sum rather than a Tariff B based costs award. Where they disagree is

whether the costs award to be made here should be in a lump sum, and if so, in which percentage of Rona's actual costs.

[16] Beginning with the Rule 400(3) factors, the Court retains that:

- a) Rona was entirely successful on the motion for summary judgment and in the proceeding;
- b) DHL had claimed a significant quantum of damages from Rona and did not recover any of it;
- c) while the matter was of importance to the parties, it was not a particularly complex proceeding, either legally or factually;
- d) no offers to settle appear to have been made by any party;
- e) the work carried out by the claiming party is reasonable considering the monetary value of the claim asserted against it and does not appear to be duplicative;
- f) neither party engaged in conduct that tended to lengthen the proceeding and the parties worked cooperatively in connection with the motion for summary judgment;
- g) considering DHL's admissions in its Statement of Claim, no party failed to admit anything that should have been admitted; and,
- h) the parties are both large and sophisticated commercial entities who can be assumed to be aware of the potential consequences of their litigation choices.

[17] The Court acknowledges Rona's arguments that it should be awarded more significant costs because of the Court's findings and conclusions regarding the admissibility of some of

DHL's evidence, the rejection of DHL's arguments based on inapplicable law, and absence of jurisprudential support for DHL's argument regarding the sufficiency of the notice to terminate that was at issue. The Court cannot agree with Rona's argument. Negative evidentiary findings and the distinguishing and rejection of legal arguments are usual occurrences in litigation. They are not drivers for a significant cost award in this proceeding.

[18] The Court observes that the only party to lead evidence on the summary judgment motion was DHL. There was no cross-examination on affidavits and there were only a few documents at issue. Rona's motion materials were limited to the production of a few noncontroversial letters to the Court as filed by the parties, its memorandum of argument, jurisprudence and doctrine. Rona's dockets suggest that significant time and effort was directed toward the pleadings, considerations of the issue of whether there was any obligation on DHL to mitigate its damages, and the preparation of Rona's memorandum of argument. The actual work carried out as it appears from Rona's produced dockets is also a factor in determining a costs award.

[19] In *Nova Chemicals Corporation v. Dow Chemical Company*, 2017 FCA 25 [*Nova Chemicals Corporation*], the Federal Court of Appeal remarked:

[16] The practice of awarding lump sum costs as a percentage of actual costs reasonably incurred is well established in the jurisprudence. In *Philip Morris Products SA v. Marlboro Canada Ltd*, 2015 FCA 9, at para. 4, this Court observed that "when dealing with sophisticated commercial parties, it is not uncommon for such lump sums to be awarded based on a percentage of actual costs incurred." As noted by the Federal Court in *H-D U.S.A., LLC v. Berrada*, 2015 FC 189, there appears to be a "[t]rend in recent case law favouring the award of a lump sum based on a percentage of the actual costs to the party when dealing with sophisticated commercial litigants that clearly have the means to pay for the

legal choices they make”: at paragraph 22, quoting *Eli Lilly & Co. v. Apotex Inc.*, 2011 FC 1143, at para. 36.

[20] There is no reason to depart from the well-established principle that the successful litigant ought to be awarded costs (*Bell Media Inc. v. Macciachera (Smoothstreams.tv)*, 2023 FC 1698, at paragraphs 14 and 15). Rona will therefore be awarded costs of the motion and of the proceeding.

[21] The parties are sophisticated commercial litigants that clearly have the means to pay for the legal choices they make given their presence in their respective markets. This factor suggests that a lump sum costs award may be more appropriate to meet the three-fold objective of costs than a Tariff B award (*Air Canada v. Thibodeau*, 2007, 2007 FCA 115 at paras. 21 and 24; *Nova Chemicals Corporation*, at para 16).

[22] I have considered the Tariff B line items and calculations proposed by the parties, Rona’s produced dockets, and the parties’ respective submissions as to whether a Tariff B or a lump sum award would be most appropriate in this case. Having considered these items and submissions, I am not persuaded that making a cost award based on Tariff B would yield a result that is consistent with the thrust of this Court’s jurisprudence regarding lump sum awards in proceedings involving sophisticated commercial parties in maritime law matters. A Tariff B costs award would not in my view meet the indemnification objective of a costs award in the circumstances of this proceeding. A lump sum award of costs will therefore be made.

[23] While I agree with Rona that a lump sum costs award is appropriate, I cannot agree with its suggested percentage of costs to be awarded. As noted above, this proceeding was neither factually nor legally complex and the parties conducted themselves appropriately considering the nature of the dispute and the amounts claimed. This proceeding is also not an intellectual property matter and therefore does not, in my view, fall within the type of litigation that typically results in a costs award of 25 to 50% of actual fees, plus reasonable disbursements.

[24] In the circumstances I consider a costs award equal to 22.5 % of Rona's total costs incurred in the proceeding to be appropriate. As Rona's evidence is that it incurred reasonable costs of \$ 233,893.20 in the proceeding, it shall be awarded costs of \$ **52,625.97** all-inclusive in costs for the motion for summary judgment and for the proceeding.

ORDER in T-219-24

THIS COURT ORDERS that:

1. The Plaintiff DHL Global Forwarding (Canada) Inc. shall pay the Defendant Rona Inc. its costs of the summary judgment motion and of this proceeding which are hereby fixed at \$ **52,625.97**, all-inclusive.

“Benoit M. Duchesne”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-219-24

STYLE OF CAUSE: DHL GLOBAL FORWARDING (CANADA) INC. v.
LOWE'S CANADA ET AL.

COSTS ORDER: DUCHESNE, J.

DATED: JANUARY 8, 2026

COSTS DETERMINED IN WRITING PURSUANT TO THE COURT'S DIRECTION

WRITTEN SUBMISSIONS BY:

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