

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230116

Docket: A-101-19

Citation: 2023 FCA 7

Present: AUDREY BLANCHET, Assessment Officer

BETWEEN:

ROLF DE GEEST

Appellant

and

HIS MAJESTY THE KING

Respondent

Assessment of costs without appearance of the parties.
Certificate of Assessment delivered at Ottawa, Ontario, on January 16, 2023.

REASONS FOR ASSESSMENT BY:

**AUDREY BLANCHET, Assessment
Officer**

Federal Court of Appeal



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REASONS FOR ASSESSMENT

AUDREY BLANCHET, Assessment Officer

I. Background

[1] This is an assessment of the Respondent's Bill of Costs following the Judgment and the Reasons for Judgment of the Court rendered on February 7, 2022, dismissing the appeal with costs.

[2] Further to the Court's decision, costs will be assessed in accordance with Rule 407 of the *Federal Courts Rules* SOR/98-106 [Rules], which states:

**Assessment according to
Tariff B**

407. Unless the Court orders otherwise, party-and-party costs shall be assessed in accordance with column III to the table of Tariff B.

Tarif B

407. Sauf ordonnance contraire de la Cour, les dépens partie-partie sont taxés en conformité avec la colonne III du tableau du tarif B.

[3] On May 4, 2022, the Respondent filed a Bill of Costs, which initiated the Respondent's request for an assessment of costs.

[4] On May 11, 2022, a direction was issued to the parties regarding the conduct and filing of additional documents for the assessment of costs. Further to the issuance of the direction, on June 24, 2022, the Respondent filed Written Submissions on Costs. My review of the court record shows that the Appellant did not file any responding documents for this assessment of costs. As the prescribed timeframes have now expired, I will proceed with the assessment of costs.

II. Preliminary Issue

A. *The Respondent's Bill of Costs being substantially unopposed.*

[5] Given the absence of responding documents from the Appellant, the Respondent's Bill of Costs is considered substantially unopposed.

[6] With respect to the standard to be applied by an Assessment Officer in assessing a substantially unopposed bill of costs, the Assessment Officer in *Dahl v. Canada*, 2007 FC 192 [*Dahl*] stated the following:

[2] Effectively, the absence of any relevant representations by the Plaintiff, which could assist me in identifying issues and making a decision, leaves the bill of costs unopposed. My view, often expressed in comparable circumstances, is that the *Federal Courts Rules* do not contemplate a litigant benefiting by an assessment officer stepping away from a position of neutrality to act as the litigant's advocate in challenging given items in a bill of costs. However, the assessment officer cannot certify unlawful items, i.e. those outside the authority of the judgment and the Tariff. [...]

[7] In addition to the *Dahl* decision, in *Merck and Co v. Apotex Inc*, 2006 FC 631, the Court held:

[3] In general a successful party is entitled to recover costs to be assessed on a Column III basis together with disbursements that are reasonable and necessary for the conduct of the proceeding. [...]

[8] In *F-C Research Institute Limited v. Canada*, 95 DTC 5583 [*F-C Research Institute*], the Court states:

[...] it would be improper not to question disbursements, even, I would add, in the absence of any apparent opposition on the part of other interested parties. Secondly, disbursements must be supported by evidence which satisfactorily demonstrates that the costs claimed meet the twofold test of reasonableness and necessity [...]

[9] Bearing in mind the principles set out in the above-mentioned decisions, and further to the Court's decision, I will only allow costs claimed by the Respondent for which it is entitled and that are within the range of units set out in Column III of Tariff B. I will also review the court record, the Rules and any relevant jurisprudence in addition to the Respondent's

assessment of costs documents to ensure that any claims that are allowed are necessary and reasonable.

III. Assessable services

[10] The Respondent has claimed 14.5 units for assessable services, for a total dollar amount of \$2,175.00.

A. *Item 19, 22(a), 25 and 26 of Tariff B*

[11] After review of the Respondent's Bill of Costs in conjunction with the court record and the Rules, I found the amounts claimed under Items 19 and 22(a) to be reasonable and the services performed to be necessary for the litigation of this court file. Specifically, 5 units are allowed for Item 19 and 4.5 units representing 3 units per hour multiplied by 1.5 hours are allowed for Item 22(a).

[12] The Respondent claims 1 unit under Item 25, without evidence to substantiate their claim. Notwithstanding the absence of evidence, Item 25 is routinely allowed for counsel to review the judgment and explain associated implications to the client (*Halford v. Seed Hawk Inc.*, 2006 FC 422 at para 131). Therefore, I conclude that the Respondent is entitled to 1 unit as claimed.

[13] As for Item 26, I am in the opinion that this assessment of costs is not contested nor complex. Given that the default level of costs is the mid-point of Column III in Tariff B (*Allergan Inc. v. Sandoz Canada Inc.*, 2021 FC 186 at para 25), I allow 4 units as claimed.

B. Total amount allowed for the Respondent's assessable services

[14] The assessable services are allowed for a total amount of \$2,175.00.

IV. Disbursements

[15] The Respondent has claimed \$1,003.56 for disbursements.

A. Photocopies

[16] As for photocopies, the Respondent submitted two invoices from CETTEC Digital Imaging (Respondent's Affidavit of Disbursements, pages 10 and 11).

[17] The first invoice in the amount of \$755.37 refers to 8 copies of the Respondent's Book of Authorities. It is unclear from my review of the Respondent's costs documents, in conjunction with the court record and the Rules, why the Respondent required 8 copies of the Respondent's Book of Authorities. My review of the court record took into consideration the number of documents that needed to be prepared for the court registry and the parties. The Appellant should only be responsible for the costs related to the photocopying of 7 copies of this document, which accounts for 5 copies for the court registry, 1 copy for the Appellant, and 1 copy for the Respondent (paragraph 348(1)(b) of the Rules).

[18] In *F-C Research Institute (supra)*, the assessment officer stated the following regarding the reasonableness and necessity of disbursements:

In my opinion, the simple delineation of expenditures generally described in a Bill and supported only by the scant statement that they were reasonable and necessary fails to provide sufficient information upon which a taxing officer can discharge the responsibility of being satisfied that the costs claimed were essential to the conduct of the proceeding, that they were prudently incurred, or that the quantity or rate applied, as the case may be, was reasonable in the circumstances. [...]

[19] In the absence of an explanation from the Respondent regarding the need for an additional copy, I have determined that only 7 copies of the Respondent's Book of Authorities shall be allowed for reimbursement, for a total amount of \$660.94.

[20] As for the second invoice in the amount of \$177.80, the Respondent has claimed charges for 3 copies of Appeal Book of the Appellant and 1 scan of hard copy documents to PDF format.

[21] The Appeal Book of the Appellant filed with the court registry on September 4, 2019, had been served to the Respondent on September 3, 2019. However, it is not specified how the document was served to the Respondent, either electronically or hard copy. On the other hand, since it appears from the invoice that services to scan a hard copy in PDF format were requested, I can infer that the Respondent has obtained a hard copy of the Appeal Book of the Appellant.

[22] In *Bujnowski v. Canada*, 2010 FCA 49, the Assessment Officer stated the following regarding the reimbursement of additional copies:

[34] The Respondent has submitted receipts for all the photocopies prepared and these seem to be reasonable in the circumstances of this case. There are however two items which cannot be allowed, the disbursement to Ethical Solutions for copying the Appellant's Motion Record and the disbursement to Ikon Office Solutions for copying the Appellant's Memorandum of

Fact and Law. These documents were provided to the Respondent by the Appellant. If the Respondent required additional copies, the Appellant should not be required to reimburse them for the copies.

[23] With the absence of evidence to substantiate the reasonableness and necessity for the Respondent to print or scan further copies of the Appellant's document, any additional copies that were made of these documents, whether hard copy or digital, were discretionary. Therefore, said disbursements must be disallowed.

B. Courier disbursements

[24] The Respondent has submitted 3 claims totalling \$70.39 for the courier service of documents on the Appellant.

[25] First, a copy of a FedEx invoice in the amount of \$8.23 shows that a delivery was made to the Appellant on March 7, 2019. (Respondent's Affidavit of Disbursements, page 7) The service date on the invoice corresponds with the filing of the Notice of Appearance on behalf of the Respondent on March 7, 2019, with the court registry. I have found that the fee charged for the service of the Notice of Appearance on the Appellant was reasonable and necessary. Therefore, I have determined that the Respondent's claim for \$8.23 for the courier service disbursement is allowed as claimed.

[26] Two additional invoices were submitted by the Respondent; a copy of a Purolator invoice in the amount of \$5.57 indicating that a delivery was made to the Appellant on April 26, 2019. (Respondent's Affidavit of Disbursements, page 8); and a copy of an invoice from TForce in the

amount of \$56.59 indicating that a delivery was made to the Appellant on July 7, 2019. (Respondent's Affidavit of Disbursements, page 9) After review of the court record and the Respondent's Written submissions, I have noted that the service dates on those invoices do not correspond with the filing of any documents with the court registry. Since there is no evidence that the courier services were reasonable nor necessary, I have determined that the Respondent's claims for these disbursements should not be allowed.

[27] Thus, the Purolator and TForce invoices attached at pages 8 and 9 of the Affidavit of Disbursement of Julie Wilson, sworn on June 23, 2022, will be subtracted from the Respondent's Bill of Costs. As only FedEx fees are allowed, the amount allocated for courier disbursements is \$8.23.

C. Total amount allowed for the Respondent's disbursements.

[28] The total amount allowed for the Respondent's disbursements is \$669.17.

V. Conclusion

[29] For the above reasons, the Respondent's costs are assessed and allowed in the total amount of \$2,844.17. A Certificate of Assessment will be issued accordingly, payable by the Appellant to the Respondent.

“Audrey Blanchet”
Assessment Officer

Ottawa, Ontario
January 16, 2023

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-101-19

STYLE OF CAUSE: ROLF DE GEEST v. HIS MAJESTY THE KING

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

**REASONS FOR ASSESSMENT
BY:** AUDREY BLANCHET, Assessment Officer

DATED: JANUARY 16, 2023

WRITTEN SUBMISSIONS BY:

Rolf De Geest FOR THE APPELLANT
(SELF-REPRESENTED)

David McCormick FOR THE RESPONDENT
Christa Akey

SOLICITORS OF RECORD:

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