

Federal Court



Cour fédérale

Date: 20230629

Docket: T-531-21

Citation: 2023 FC 894

[ENGLISH TRANSLATION]

BETWEEN:

STEVE LARRIVÉE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ASSESSMENT

Stéphanie St-Pierre Babin, Assessment Officer

I. Overview

[1] On November 10, 2022, the applicant, Steve Larrivée, through his counsel, filed an amended notice of discontinuance of his application for judicial review putting an end to the present case [Notice of Discontinuance]. The respondent, the Attorney General of Canada, filed a

bill of costs on March 6, 2023, thereby initiating the costs assessment process pursuant to subsection 406(1) of the Federal Courts Rules, SOR/98-106 [Rules].

[2] Following receipt of the bill of costs, I issued a direction to the parties on March 8, 2023, notifying them that the assessment of the bill of costs would proceed on the basis of written submissions and setting out the timelines for filing their respective submissions [Direction]. In response to the Direction, the applicant, like the respondent, submitted a bill of costs entitled [translation] “Bill of costs due to Applicant, Steve Larrivée, following Applicant’s discontinuance” on April 4, 2023. The respondent filed a reply to that bill of costs on April 17, 2023 [Reply].

[3] The timelines set out in my Direction having now expired, I have reviewed the Court record and all the documentation relating to the assessment. Before addressing the assessable services and the disbursements claimed, I will now address two preliminary issues that require clarification.

II. Preliminary issues

A. *What is the impact of the applicant’s failure to file written submissions?*

[4] Although the applicant’s filing of a bill of costs on April 4, 2023, effectively constitutes a challenge, the applicant has not filed any written submissions or case law that could have assisted me in analyzing certain points of contention. In these circumstances, while maintaining my position of neutrality, I will have to assess all the claims presented by the parties to ensure

that they comply with the procedural steps followed in the matter, the case law on costs, and the applicable provisions of the Rules. If some of the items claimed exceed these parameters, I will have to intervene to ensure that the assessment of costs complies with them (*Dahl v Canada*, 2007 FC 192 at para 2).

B. *What costs is the respondent entitled to claim in his bill of costs?*

(1) Costs following applicant's discontinuance

[5] Firstly, the respondent is entitled to costs in the main proceeding, as the filing of the notice of discontinuance gave rise to an award of costs under the mechanisms set out in sections 402 and 412 of the Rules. Specifically, section 402 of the Rules provides that unless otherwise ordered by the Court or agreed by the parties, a party against whom an application has been discontinued is entitled to costs. In other words, since the applicant discontinued his application for judicial review filed on March 25, 2021, it is the respondent who is entitled to costs.

[6] In addition, the Court has made no order as to costs and no agreement has been reached between the parties to that effect. In my role as assessment officer, I am not "the Court", but rather an employee of the Registry. I therefore do not have the jurisdiction reserved to the Court to make an order to vary the award of costs obtained under section 402 of the Rules in order to award costs to the applicant, as claimed in his bill of costs (*Chiu v Canada (National Parole Board)*, 2007 FC 1353 at para 7). Instead, I am required to follow the wording of section 402 of

the Rules and assess only the bill of costs of the party against whom the judicial review application has been discontinued, i.e. the respondent's bill of costs filed on March 6, 2023.

[7] In his Reply, the respondent rightly pointed out that any bill of costs, even if adduced in order to obtain an adjustment by way of set-off, must be formally filed in compliance with the requirements set out in subsection 406(1) of the Rules, and not by way of a reply to a bill of costs (Simpson Strong-Tie Co v Peak Innovations Inc, 2012 FC 63 at para 18). In any event, I would also not be entitled to make an adjustment by way of set-off under subsection 408(2) of the Rules, because, as will be further explained in the following paragraphs, this is not a case in which the parties are required to pay costs to each other; only the respondent is entitled to costs.

(2) Costs associated with the motion to strike in part

[8] Secondly, the respondent is entitled to the costs of the motion to strike in part the notice of application filed on April 15, 2021. Indeed, following the hearings held on April 27 and June 1, 2021, Associate Judge Steele rendered an order, the operative part of which reads as follows: [translation] "THE WHOLE with costs in the cause" (Order dated June 4, 2021).

[9] The fact that a court awards "costs in the cause" means that the party who eventually succeeds in the main proceeding will be awarded the costs of the interlocutory motion (Savard v Canada, 2001 FCT 1348 at para 10). In other words, by using this reference in its operative part, the Court deferred to the outcome of the main proceeding to determine the identity of the party entitled to claim costs for the preparation of the motion to strike in part. As a result, since the

respondent was entitled to costs in the main proceeding by virtue of sections 402 and 412 of the Rules, he is also entitled to costs in the motion to strike in part. Again, this is a situation in which it is impossible for me to offset those costs, since in the final analysis, only the respondent is entitled to costs in full.

III. Assessment of bill of costs

[10] It should be emphasized at the outset that, in the absence of explicit instructions from the Court and in the absence of an agreement between the parties as to costs, the respondent's bill of costs will be assessed in accordance with column III of the table to Tariff B (sections 402 and 407 of the Rules). I will now turn to each of the assessable services claimed under the items in the table to Tariff B.

A. *Assessable services claimed*

(1) Item 5

[11] In his bill of costs, the respondent presents a claim of 5 nits for the preparation and filing of the motion to strike in part on April 15, 2021, as well as for the related documents. The respondent argues that he is legally entitled to costs arising from that motion, given that costs were awarded following the outcome of the main proceedings (Respondent's Reply at p 2). As explained in paragraphs 8 and 9 of these reasons, since the outcome of the main proceeding was a discontinuance for which the respondent is entitled to costs, it follows that the respondent is

fully entitled to claim the costs associated with the motion to strike in part. All that remains is to determine the quantum.

[12] With regard to the number of units to be allowed, I noted during my review of the case that the written submissions in support of this motion were relatively straightforward. I note though that the preparation of the motion record nevertheless required a certain amount of work to produce the affidavit, the supporting exhibits and a list of authorities containing some 15 references. For all these reasons, 4 units are allocated (section 409 and paragraphs 400(3)(c) and (g) of the Rules).

(2) Item 6

[13] The respondent is claiming 2 units for counsel's appearance at the hearings on the motion to strike in part held on April 27 and June 1, 2021, respectively. Item 6 of column III of the table to Tariff B has a range of 1 to 3 units. After examining the case in conjunction with factors such as the outcome of the main proceeding in favour of the respondent and the relative straightforwardness of the issues addressed at the hearing, I find it reasonable to allocate 2 units in the circumstances of this case (section 409 and paragraphs 400(3)(a) and (c) of the Rules).

[14] As for the number of hours, the respondent is claiming a total of 1.32 hours in his bill of costs. My review of the entries recorded in the Case Management System by the registry office who attended the April 27, 2021, hearing reveals that the listed duration was 9 minutes and that the Court adjourned the hearing until June 1, 2021. The listed duration of this second hearing

was 1 hour 10 minutes. My calculations of the cumulative duration of these two hearings and their conversion into hours confirm that the applicant was indeed entitled to claim 1.32 hours in his bill of costs.

[15] In view of the foregoing, a total of 2.64 units are granted under Item 6. This amount has been calculated by multiplying the 2 units allocated under column III by 1.32 hours.

(3) Item 26

[16] In his bill of costs, the respondent is claiming 2 units for services rendered in connection with the assessment of costs. For the purposes of this assessment, the respondent has filed a bill of costs, an affidavit, an exhibit, a letter and a reply. As this assessment case was relatively straightforward in that the number of assessable services claimed was small, the written contentions were brief, and given that the range of units available from column III of Tariff B is from 2 to 6 units for Item 26, I find it reasonable to allocate the 2 units claimed.

[17] In total, 8.64 units are allocated for the respondent's assessable services, for a total of \$1,382.40.

B. *Disbursements claimed*

(1) Electronic service

[18] In his bill of costs, the respondent claimed the sum of \$4 for electronic service on the applicant on April 15, 2021, of his motion record to strike in part. Indeed, the affidavit of Jade Angers, solemnly affirmed on February 16, 2023, attests that the motion record was served via Todoc, a web platform allowing for the secure electronic service of proceedings for a fee of \$4 per transaction. Given that evidence of this disbursement was submitted by affidavit, an invoice was produced as Exhibit ANG-1 in support thereof, and the amount claimed is reasonable, the sum of \$4 is allowed (subsection 1(4) of Tariff B).

(2) Printouts

[19] The respondent is claiming the sum of \$100.50 for [translation] “printouts of the authorities in support of the respondent’s motion to strike in part, at the applicant’s request” (Bill of costs, p 2). I have carefully reviewed the motion record and conclude that the printouts were a necessary expense for the conduct of the litigation, since they were produced at the applicant’s request. As for the requested amount of \$0.25 per page, I consider it reasonable in view of the Court’s established case law (*Clorox Company of Canada, Ltd v Chloretec SEC*, 2023 FC 174 at paras 19–20). Lastly, I note that the portion of the motion record containing authorities is indeed 402 pages long, which is the number of pages claimed in the respondent’s bill of costs. For all these reasons, I allow the sum of \$100.50 for the respondent’s printouts.

[20] A total of \$104.50 is allowed in disbursements.

IV. Amount owed to the respondent

[21] The respondent's bill of costs is assessed and allowed in the amount of \$1,486.90, payable by the applicant, Steve Larrivée, to the respondent, the Attorney General of Canada.

[22] A certificate of assessment will be issued for that amount.

“Stéphanie St-Pierre Babin”
Assessment Officer

Ottawa, Ontario
June 29, 2023

Certified true translation
Sebastian Desbarats

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-531-21

STYLE OF CAUSE: STEVE LARRIVÉE v ATTORNEY GENERAL OF CANADA

**ASSESSMENT OF COSTS IN WRITING REVIEWED IN OTTAWA, ONTARIO,
WITHOUT APPEARANCE OF THE PARTIES.**

REASONS FOR ASSESSMENT BY: STÉPHANIE ST-PIERRE BABIN, ASSESSMENT OFFICER

DATED: JUNE 29, 2023

WRITTEN SUBMISSIONS:

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