Federal Court of Appeal

Cour d'appel fédérale

Date: 20210305

Docket: A-259-19

Citation: 2021 FCA 47

Present: ORELIE DI MAVINDI, Assessment Officer

BETWEEN:

DOUBLE DIAMOND DISTRIBUTION LTD.

Appellant

and

CROCS CANADA, INC., CROCS INC, CROCS RETAIL, LLC, WESTERN BRANDS HOLDING COMPANY, LLC.

Respondents

Assessment of costs without appearance of the parties.
Certificate of Assessment delivered at Toronto, Ontario, on March 5, 2021.

REASONS FOR ASSESSMENT BY: ORELIE DI MAVINDI, Assessment Officer

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REASONS FOR ASSESSMENT

ORELIE DI MAVINDI, Assessment Officer

I. Introduction

[1] This is an assessment of costs arising from the Order of the Court dated October 1, 2019, dismissing the Appellant's motion for stay, with costs payable to the Respondents. The

assessment of costs equally arises from the Appellant's subsequent discontinuance of the underlying appeal pursuant to rule 402 of the *Federal Courts Rules*, SOR/98-106 (*FCR*).

II. Background

[2] On October 1, 2019, the Court dismissed the Appellant's motion to stay the Order of the Federal Court dated June 27, 2019, (2019 FC 868) (the "motion for stay"), with costs. On October 28, 2019, the Appellant submitted a letter accepted by the Court in the place of Form 166, Notice of Discontinuance, for the purposes of concluding the proceeding pursuant to rule 166 of the *FCR*. On November 27, 2020, the Respondents submitted a letter to the Court requesting a direction setting a schedule for submissions regarding the outstanding costs relating to the award for the motion for stay and the subsequent discontinuance. Accordingly, on December 24, 2019, the Court issued directions establishing timelines for costs submissions.

[3] On January 17, 2020, the Respondents filed the "Respondents' Costs Submissions", seeking costs for the motion for stay and discontinuance. On January 31, 2020, the Appellant filed the "Appellant's Response to the Respondents' Request for Costs for Motion to Stay and Discontinuance of the Appeal" (Appellant's Cost Material), requesting that costs be denied, discounted or set at a nominal amount. The Appellant further requested an Order under rule 402 of the *FCR*, to disallow the Respondents entitlement to costs on a forthwith basis; as rule 402 permits a discontinuance to be assessed and enforced as though judgment for the amount of the costs had been given in favour of that party. On February 17, 2020, the Court found that:

> **AND WHEREAS** the appellant has not presented any circumstances to the Court that would justify the making of an Order under Rule 402;

> **AND WHEREAS** this Court sees no reason to depart from costs being assessed at the mid-range of column III of Tariff “B” plus reasonable disbursements;
>
> **AND WHEREAS** if there is any dispute as to quantum, the parties shall proceed before an assessment officer under the Rules;
>
> **THIS COURT ORDERS** that no order shall be made under Rule 402 and costs shall be to the respondents.

[4] On April 14, 2020, the Respondents filed a bound letter requesting an assessment of costs, disposed of in writing, and enclosing Appendices A to L, that contained a draft notice of appointment, a bill of costs, the affidavit of disbursements of Jayson Dinelle sworn on April 9, 2020, written representations and jurisprudence (Respondents’ Costs Material).

[5] On July 23, 2020, the following direction establishing timelines for submissions for the assessment of costs was issued to the parties:

> Further to a review of the Respondents’ Bill of Costs, filed on April 14, 2020, the assessment of costs will proceed in writing.
>
> It is directed that:
>
> 1. The Appellant may serve and file any responding materials by Friday, August 28, 2020;
> 2. The Respondents may serve and file any reply materials by Friday, September 11, 2020.

[6] No responding materials were received by the Appellant by the aforementioned August 28, 2020, deadline. On September 2, 2020, the Appellant submitted a letter advising that they intended to rely upon their costs materials filed on January 31, 2020, predating the Respondents’ bill of costs and providing no context for the delay. On September 8, 2020, the Respondents submitted a letter to both the Registry and opposing counsel, objecting to the Appellant’s

reliance on the January 31, 2020, Appellant's Cost Material. No further correspondence was received from either party.

III. Preliminary Issue

[7] The Respondents objected to the Appellant's reliance on the Appellant's Cost Material as it predated the bill of costs at issue and was produced in response to the Court's December 24, 2019, directions. On page three of the Respondents' letter received September 8, 2020, under the header "B". The enclosures to the Appellant's September 1, 2020 Letter are irrelevant to the issue of assessment of Crocs' costs at this stage", it was discussed that:

> As indicated above, the dispute as to Crocs' entitlement of costs and the appropriateness of assessment at the mid-range of column III of Tariff "B" plus reasonable disbursements has already been adjudicated by the Federal Court of Appeal, resulting in the February 17, 2020 Order. After reviewing both Crocs' January 17, 2020 costs materials and the Appellant's January 31, 2020, costs materials (which the Appellant is again attempting to rely on now), Stratas JA found that the Appellant presented no circumstances to the Court that would justify the making of an Order under Rule 402. Further Stratas JA saw no reason to depart from costs being assessed at the md-range of column III of Tariff "B" plus reasonable disbursements (Appendix E of the April 9, 2020 Letter).
>
> Therefore, the only issue in this costs assessment is the ***amount*** of costs payable to Crocs. The entitlement to costs, and the approach by which costs are to be assessed, have been decided. It is inappropriate and *res judicata* to present any argument at this stage: (1) with respect to Crocs' entitlement to costs under Rule 402 or with respect to the Appellant's failed motion; or, (2) seeking a departure from assessment at the mid-range of column III of Tariff "B".

[8] Ultimately, it was incumbent upon Appellant's counsel to ensure that the submissions relied upon for the assessment of costs were sufficient to address the Respondents' Costs Material. Even so, I am satisfied that aspects of the Appellant's Costs Material, though predating the bill of costs, speak to relevant issues, such as the reasonableness and necessity of travel

expenses and reference factors that may be considered by an assessment officer pursuant to rules 400(3) and 409 of the *FCR*. Any questions arising in the Appellant's Costs Material previously addressed in the Court's Order dated February 17, 2020, such as the entitlement to costs, are outside the parameters of this assessment of costs and are considered *res judicata* (*Marshall v. Canada*, 2006 FC 1017 (*Marshall*); *Pelletier v. Canada*, 2006 FCA 418). Finally, any aspects of the Respondents' bill of costs that are substantially unopposed will be disposed of in light of the assessment officer's comments at paragraph 2 of *Dahl v. Canada,* 2007 FC 192 (*Dahl*) (A.O.):

> **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.

IV. Assessment

[9] The Respondents claimed $2,966.25 in assessable services, inclusive of 13% HST. The bill of costs was prepared at the mid-range of column III of Tariff B of the *FCR* in accordance with the Order of the Court dated February 17, 2020.

A. *Item 17: Preparation, filing and service of notice of appeal.*

[10] The Respondents made two claims under Item 17, the first at 1 unit for "Consideration, review and reporting of Notice of Appeal", the second, at 1 unit for "Preparation, service and filing of Notice of Appearance". Though the Appellant's submissions were silent on the issue, in view of *Dahl* and Tariff B, I am not satisfied that a respondent's consideration, review and

reporting of a Notice of Appeal falls within the technical parameters of Item 17 intended for the preparation, filing and the service of the Notice of Appeal. As outlined at paragraph 16 of *Coca-Cola Ltd. v. Pardhan (c.o.b. as Universal Exporters)*, 2006 FC 45 (A.O.):

> 16. The Pardhan Defendants have claimed 1 unit for their Item 17 (Services for receiving Notice of Appeal) for each of these proceedings in their respective Bills of Costs. In Tariff B of the Federal Courts Rules, this assessable service actually reads "17. Preparation, filing and service of Notice of Appeal.". In my opinion, these assessable services may have been claimed by the Coca-Cola Plaintiffs had they been successful on these appeal proceedings since they prepared, filed and served the Notices of Appeal. However, I do not think it is appropriate for the Pardhan Defendants to request 2 units for simply receiving the Notices of Appeal at their respective offices. Therefore, the assessable services for Item 17 in each of the appeal proceedings are disallowed.

[11] Accordingly, the claim under Item 17 for "Consideration, review and reporting of Notice of Appeal" is disallowed.

[12] The Respondents' second claim under Item 17 for "Preparation, service and filing Notice of Appearance", will be disposed of taking into consideration the observations of my colleague in *Williams (IT Essentials) v. Cisco Systems, Inc*., 2020 FCA 173 (A.O.) (*Williams*) at paragraphs 30 and 31:

> **30.** The Respondent has claimed 1 unit for Item 17 for the preparation, filing and service of a Notice of Appearance. Item 17 in Tariff B of the FCR is for the "preparation, filing and service of notice of appeal." [Underline added for emphasis]. In *Mitchell v. Canada*, 2003 FCA 386, at paragraph 12, the Court states:
>
>> 12. The Appellants are correct that the wording for item 27 does not generally fetter discretion. However, that discretion, as for other items in bills of costs, is still fettered by reasonable necessity and the limits of an award of costs. Consistent with Rule 3, and with my sentiment in *Feherguard Products Ltd. v. Rocky's of B.C. Leisure Ltd*., [1994] F.C.J. No. 2012 (A.O.), at para. 10 that the "best way to administer the scheme of

> costs in litigation is to choose positive applications of its provisions as opposed to narrower and negative ones", application of discretion should be part of a reasoned process to achieve a result on assessment which is equitable for both sides. Item 27 addresses the professional services of counsel not already addressed by items 1 - 26. Its wording, "such other services", is clearly plural and I understand that to permit assessment of discrete services, as opposed to a restriction to a bundling of several services, not already addressed by items 1 - 26, within a single item 27 claim. That is, item 27 may be claimed more than once.

> **31.** Utilizing the *Mitchell* decision as a guideline, I have determined that assessing the Respondent's claim for the Notice of Appearance under Item 27 is an acceptable alternative to Item 17 and will allow for a positive application of the costs provisions instead of a narrower one. Further to my review of the court record, I have verified that the Respondent performed the service claimed and that it was necessary. Therefore, I will allow 1 unit under Item 27 for the Respondent's claim for the Notice of Appearance, which was initially submitted under Item 17.
>
> [Emphasis added in the original decision]

[13] In view of *Williams*, the Respondents' claim under Item 17 for "Preparation, service and filing Notice of Appearance" would more properly have been claimed under Item 27 (Such other services as may be allowed by the assessment officer or ordered by the Court); as Item 27 comes into play for services not otherwise addressed by items 1 to 26. From a review of the Court file, the Respondents served and filed their notice of appearance, as necessary, pursuant to rule 341(1) of the *FCR* on July 15, 2019. Thus, I find it reasonable to allow 1 unit under Item 27 for the Respondents' claim for "Preparation, service and filing Notice of Appearance".

B. *Item 18: Preparation of appeal book.*

[14] The Respondents made two claims under Item 18, the first at 1 unit for "Negotiation of Appeal Book Agreement, including extension for filing" and the second, at 1 unit for "Consideration, review and reporting of Appeal Book". From a review of the Court file, the appeal book was prepared and filed by the Appellant on September 18, 2019. While the appeal book was prepared by the Appellant, Item 18 is routinely allowed for successful respondents as "both sides have real obligations in ensuring proper preparation of appeal books". (*Milliken & Co v. Interface Flooring Systems (Canada) Inc.*, 2003 FC 1258, *Actra Fraternal Benefit Society v. Canada*, [2000] FCJ No. 1214). Considering *Dahl* and Tariff B, it is my view that negotiation of the appeal book agreement, including an extension for filing, and consideration, review and reporting of the appeal book, can all be subsumed into the assessable services performed in relation to the preparation of the appeal book. Accordingly, I allow one unit under Item 18 for the services performed by the Respondents concerning the appeal book (*Nada Elroumi v. Shenzhen Top China Imp & Exp Co*., 2020 FCA 215 (A.O.).

C. *Item 21: Counsel Fee: (a) on a motion, including preparation, service and written representations or memorandum of fact and law and (b) on the oral hearing of a motion, per hour.*

[15] The Respondents claimed 2.5 units under Item 21(a) and one hour at 3 units for the September 26, 2019, hearing of the motion for stay in Saskatoon. From a review of the Court file, the *FCR*, parties' submissions and in light of the Court's decision dated February 17, 2020, outlining that it saw "no reason to depart from costs being assessed at the mid-range of column III of Tariff "B" plus reasonable disbursements", I find the claims made under Item 21(a) reasonable, necessary and sufficiently substantiated. Concerning the claim made under Item 21(b), from a review of the docket, the hearing lasted a duration of 45 minutes. I find it

reasonable for an additional fifteen minutes to be factored into the allowance for Item 21(b) in order for counsel to settle into the courtroom. Paragraphs 15 and 16 of *Estensen Estate v. Canada (Attorney General)*, 2009 FC 152, are instructive on this point, as such the Respondents' claim under Item 21(b) is allowed as presented.

D. *Item 24: Travel by counsel to attend a trial, hearing, motion, examination or analogous procedure, at the discretion of the Court.*

[16] The Respondents claimed 3 units under Item 24 for travel by counsel to the hearing of the motion for stay in Saskatoon on September 26, 2019. Tariff B indicates that Item 24 is at the discretion of the Court. In this case, the October 1, 2019, Order dismissing the Appellant's motion for stay awarding costs to the Respondents was silent on the matter of costs for counsel's travel time. The discretion referenced in Item 24 does not extend to an assessment officer; absent a clear direction from the Court, I do not have the jurisdiction to allow the claim as submitted (see: *Fournier Pharma Inc. v. Canada (Health)*, 2013 FC 859 (*Fournier*) (A.O.); *Marshall, Mugford v. Nunatsiavut (First Minister)*, 2012 FC 821 (A.O.), *Gagné v. Canada*, 2014 FCA 44 (A.O.)).

E. *Item 25: Services after judgment not otherwise specified and Item 26: Assessment of costs.*

[17] The Respondents claimed 1 unit under Item 25, citing "Preparing Bill of Costs". Item 25 is routinely allowed without extensive submissions on the point to permit counsel to "review the judgment and explain associated implications to the client" (*Halford v. Seed Hawk Inc.*, 2006 FC 422, *Beima v. Minister of National Revenue*, 2019 FCA 221). However, in order for Item 25 to

be applicable, it cannot be applied to other services after judgment already specified in Tariff B (*AstraZeneca AB v. Novopharm Ltd.*, 2004 FCA 258 (A.O.)). Preparation of the bill of costs is factored into Item 26 for the assessment of costs, as outlined in *Bujnowski v. Queen*, 2010 FCA 49 (*Bujnowski*) (A.O.), at paragraphs 24 to 26, Item 25 cannot be allowed when linked to Item 26:

> **24.** The Respondent has claimed 1 unit under Item 25, services after judgment. In response the Appellant submitted that no explanation and no support were provided for this assessment of costs.
>
> **25.** In her rebuttal the Respondent contends:
>
> Counsel for the Respondent has had to render services after judgment. The services have included requests for the costs of the Appellant and attempts to settle costs amounts. Costs consequences are reasonably expected to follow from unsuccessful steps in the course of an Appeal.
>
> **26.** Although I agree with counsel for the Respondent that costs consequences are reasonably expected after judgment, the services after judgment claimed by the Respondent relate to costs for which a claim has been made under Item 26. Although I am sure justifiable services were rendered by counsel for the Respondent, none have been claimed. For the above reasons, Item 25 is not allowed.

[18] In light of *Dahl* and using *Bujnowski* and Tariff B as a guideline, the claim under Item 25 for the preparation of the bill of costs is disallowed, as it has not been claimed in relation to services not otherwise specified in Tariff B (*Williams* at paras 39 to 41). Further, as this assessment of costs was relatively straightforward, the 4 units claimed by the Respondents under Item 26 (Assessment of costs) is sufficient to capture the preparation of the bill of costs. Having reviewed the Court file, the materials provided by the parties and the Court’s decision dated February 17, 2020, that costs be assessed at the mid-range of column III of Tariff “B”, the Respondents’ claim under Item 26 is allowed as presented.

V. Disbursements

[19] The Respondents claimed $2,624.27 in disbursements. $462.75 was claimed for photocopying charges and $41.25 for binding. Concerning the Respondents' travel to the September 26, 2019, hearing of the motion for stay in Saskatoon, $42.07 was claimed for taxis, $22.60 for meals, $223.60 for hotel and $1,832.00 for economy airfare. The justification for the claimed disbursements was at paragraph 20 of the written representations and at paragraphs 4 to 8 of the Affidavit of Jayson Dinelle contained within the Respondents' Costs Material.

A. *Photocopying and Binding.*

[20] At paragraph 4 of the Affidavit of Jayson Dinelle, it stated, "I determined the values for photocopying and binding fees by reviewing the invoices billed to the client". The Respondents' Cost Material did not provide specifics concerning which documents were claimed, how many copies were claimed and what rate was used to bill the clients. As the claims are substantially unopposed by the Appellant's Cost Material, I will proceed with the assessment of said disbursements in light of the assessment officer's comments in *Abbott Laboratories v. Canada (Health),* 2008 FC 693 *(Abbott)* at paragraph 71, with respect to the treatment of less than exhaustive proof:

> **71.** However, that is not to suggest that litigants can get by without any evidence by relying on the discretion and experience of the assessment officer. The proof here was less than absolute, but I think there is sufficient material in the respective records of the Federal Court and the Federal Court of Appeal for me to gauge the effort and associated costs required to reasonably and adequately litigate Apotex's position [emphasis added]. A lack of details makes it difficult to confirm whether the most efficient approach was indeed used or that there were no errors in instructions, as for example occurred in *Halford*, requiring remedial work. A paucity of evidence for the circumstances underlying each expenditure

> make it difficult for the respondent on the assessment of costs and the assessment officer to be satisfied that each expenditure was incurred further to reasonable necessity. The less that evidence is available, the more that the assessing party is bound up in the assessment officer's discretion, the exercise of which should be conservative, with a view to the sense of austerity which should pervade costs, to preclude prejudice to the payer of costs. However, real expenditures are needed to advance litigation: a result of zero dollars at assessment would be absurd.

[21] In order to gauge the reasonableness of the quantum sought for photocopying and binding, I conducted a review of the Court file and the documents filed by the Respondents to advance the proceeding (*Apotex Inc. v. Merck & Co. Inc*., 2008 FCA 371). Excluding various letters and inclusive of Court and party copies, the Respondents produced upwards of 1,875 pages for the notice of appearance filed on July 15, 2019; stay motion record and accompanying book of authorities filed on September 23, 2019; the subsequent costs material filed pursuant to Court directions on January 17, 2020; and the cost material for the assessment of costs filed on April 14, 2020. In these circumstances, absent specific objection from the Appellant, in light of *Abbott* and the documents prepared by the Respondents to advance the proceeding, I find the amounts claimed by the Respondents for photocopying and binding reasonable and necessary; the disbursements are allowed as claimed.

B. *Travel (Airfare, Hotel, Taxi and Meals).*

[22] Further to my comments above, an assessment officer is unable to assess costs related to travel under Item 24 without a visible direction from the Court allowing the assessment of said costs. However, such direction is not required to permit an assessment officer to assess essential and associated travel disbursements. (*Marshall*, *Fournier*, *Simpson Strong-Tie Company, Inc. v. Peak Innovations Inc*., 2010 FCA 78 (A.O.)).

[23] The parties disagreed on whether the Appellant's choice to proceed with the motion for stay in person, in Saskatoon, triggered an entitlement for the Respondents to claim travel expenses, as part of the costs for successfully defending the motion. At paragraph 16 of the written representations contained within the Respondents' Costs Material, the Respondents discussed:

> **16.** [..] Double Diamond, the appellant and the moving party on the stay motion: (a) decided to pursue an oral hearing on the stay pending appeal motion rather than proceed via the usual practice in the Federal Court of Appeal (*i.e.* in writing); and (b) unilaterally (*i.e.* without consulting counsel for Crocs) set the motion for a stay pending appeal for hearing in Saskatchewan when Crocs' counsel is located in Ottawa. Crocs should be permitted to receive its expenses, both fees and disbursements, associated with successfully defending against Double Diamond's failed motion and continued appeal.

[24] Paragraphs 10 and 11 of the Appellant's Costs Material countered that the Respondents are not entitled to the claimed disbursements because of the location chosen:

> **10.** Further, Crocs is not entitled to costs just because Double Diamond chose an oral hearing at a place other than next door to Crocs' attorneys' office in Ottawa (Double Diamond's attorney is in Calgary) as allowed by the Federal Court of Appeal. This action was, after all, filed in the Federal Court in Saskatchewan. If the Court of Appeal desired that all hearings be held in Ottawa, then it could of course cancel the "FCA Target dates" on its website as to the other cities in Canada.
>
> **11.** In addition, there is nothing in the rules, as suggested by Crocs, that the "usual practice in this Court" is to proceed strictly on written motions rather than orally. Further, pursuant to Federal Rule 32, Remote conferencing, oral hearings can be held telephonically [*sic*]. *See e.g., Pepper King Ltd. v. Sunfresh Ltd.*, 2000 CanLII 15466 (FC), [1] (Motion for security for costs denied at the conclusion of a telephone hearing). Double Diamond would not have objected to this procedure. Therefore, Crocs is not entitled to its fees in Exhibits I, J, K, L and M for airfare, hotel expenses, taxi expenses and meal expenses in the total combined amount of $2,120.27 for its personal discretionary decision to attend the oral hearing in person rather than telephonically. Such discretionary costs are neither normal nor reasonable.

[25] Ultimately, I can find no obligation in the *FCR* that the Appellant had to consult the Respondents on the method of proceeding with, or the choice of venue for the stay motion hearing at issue. Likewise, I can find no obligation in the *FCR* requiring a responding party to raise objections regarding the venue of a returnable motion. Whereas rule 369(2) of the *FCR* provides that if a responding party objects to disposition of the motion in writing, they may indicate within their written representations or memorandum of fact and law the reasons why the motion should not be disposed of in writing. I could find no similar provision or requirement that a responding party raise an objection to a motion's venue by proposing alternate arrangements such as a teleconference as a means of limiting travel expenses.

[26] While rule 28 of the *FCR*, stipulates, "the Court may sit at any time and at any place", there is established jurisprudence that a motion is to be heard in the venue most convenient for counsel. Where the balance of convenience is equal between parties, the applicant may select the venue (*L'Herbier de Provence Ltd v Amarsy*, [1994] FCJ No 1986). At paragraphs 23 and 24 of *Glaxo Group Ltd v Novopharm Ltd*, [1996] FCJ No 1423 (*L'Herbier de Provence Ltd*), the Court discussed:

> **23.** The Federal Court Rules are silent on the venue of motions. The plaintiffs assert that this allows a party to choose its venue from among the cities where the Court hears motions. If this were literally true, and counsel for the plaintiff did not suggest this, a party in Toronto could make a motion presentable in Quebec City or Halifax for no apparent positive reason related to the litigation. Counsel for the defendant relied on the "gap rule" (Rule 5 of the Federal Court Rules) and suggested that motions are made returnable in the place of the solicitor's office of the respondent party, pursuant to Rule 37.03 of the Ontario Rules of Civil Procedure.
>
> **24.** In four earlier decisions, the Associate Senior Prothonotary held that motions should be made returnable at the most convenient place. He did so without reference to provincial rules but by analogy with Rule 483 of this Court concerning the venue of trials. In Society of Composers, Authors and Music

> Publishers of Canada v. Landmark Cinemas of Canada Ltd.5, Noël J. resolved a similar issue:
>
> [...] the ability of a litigant before this Court to file a motion in the Registry of his choice must not be abused. Counsel are expected to strike a fair balance as between themselves with respect to venue. There is in this Court no rule permitting a party to bring its motions in the city of its choice without regard to the convenience of the other party. In matters which involve protracted pre-trial motions, the parties must share the inconveniences irrespective of who initiates the motion and counsel are expected to ensure that result.

[27] Irrespective of considerations about convenience, the very nature of selecting an in-person hearing as a moving party that required opposing counsel to travel opened the Appellant up to expectations to have to indemnify the associated costs of that travel, if unsuccessful. In *Sanmammas Compania Maritima SA v Netuno (The) Action in rem against the Ship "Netuno"*, [1995] FCJ No 1442 (*Sanmammas Compania Maritima SA*), the Court stated the following at paragraph 36:

> **36.** In United Terminals Ltd. v. M.N.R., the Taxing Officer reiterated that the practice of law in the national system embodied by the Federal Court sometimes necessitates travel. Therefore, all parties involved must expect to have to indemnify the associated costs. However, they need not subsidize lavish lifestyles. I agree with this approach.

[28] Considering the applicable provisions of the *FCR*, *L'Herbier de Provence Ltd*, *Sanmammas Compania Maritima SA* and the justifications for the claimed travel disbursements established at exhibit B for airfare, exhibit C for hotel, exhibit D for taxi and exhibit E for meal expenses in the affidavit of Jayson Dinelle contained within the Respondents' Costs Material; I find the disbursements claimed for travel, reasonable and necessary to advance the proceeding of the motion for stay in Saskatoon on September 26, 2019.

VI. Conclusion

[29] For the above Reasons, the Respondent' bill of costs is assessed and allowed at $4,573.52, inclusive of HST. A Certificate of Assessment will be issued.

"Orelie Di Mavindi"
Assessment Officer

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-259-19
STYLE OF CAUSE:	DOUBLE DIAMOND DISTRIBUTION LTD. v. CROCS CANADA, INC., CROCS INC, CROCS RETAIL, LLC, WESTERN BRANDS HOLDING COMPANY, LLC.

MATTER CONSIDERED AT TORONTO, ONTARIO WITHOUT PERSONAL APPEARANCE OF THE PARTIES

REASONS FOR ASSESSMENT BY:	ORELIE DI MAVINDI, Assessment Officer
DATED:	MARCH 5, 2021

WRITTEN SUBMISSIONS BY:

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Anthony G. Creber Alexander Gloor	FOR THE RESPONDENTS

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