Federal Court of Appeal | Cour d'appel fédérale

Date: 20250619

Docket: A-242-22

Citation: 2025 FCA 121

Present: **KARINE TURGEON, Assessment Officer**

BETWEEN:

EHTESHAM A RAFIQUE

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Assessment of costs without appearance of the parties.
Certificate of Assessment delivered at Ottawa, Ontario, on June 19, 2025.

REASONS FOR ASSESSMENT BY: KARINE TURGEON, Assessment Officer

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REASONS FOR ASSESSMENT

KARINE TURGEON, Assessment Officer

I. Overview

[1] By way of Judgment and Reasons for Judgment rendered on February 28, 2024 [Judgment], the Court dismissed the appeal in the present file, with costs in favour of the Respondent.

[2] Given that "[c]osts shall be assessed by an assessment officer" pursuant to section 405 of the *Federal Courts Rules*, SOR/98-106 [Rules], the Respondent initiated this assessment following Rule 406 by filing a request letter and an affidavit of Nancy Snow, to which were attached as exhibits a Bill of Costs and an affidavit of disbursements.

[3] On January 8, 2025, a Direction was issued to the parties regarding the conduct and filing of additional documents for this assessment. On February 5, 2025, the Respondent served and filed written submissions, along with authorities. On March 4, 2025, the Appellant submitted written submissions, authorities, and excerpts of legislation in response. In reply, the Respondent advised on March 12, 2025, relying on the materials previously submitted.

[4] Given the representations received from the Appellant, the question of the lawfulness of the initiation of this assessment of costs process must be examined as a preliminary issue.

II. Preliminary issue

A. *Did the Respondent lawfully initiate this assessment of costs?*

[5] The Appellant objects to all the assessable services and disbursements claimed in the Bill of Costs on the ground that the Judgment would have been issued by the Court without jurisdiction, and that, therefore, this decision would be "without force" (Appellant's representations, at para. 28). In support of this objection, the Appellant submits that this decision "of the Court is deemed to not be in force since it is not based on jurisdiction from an Act of Parliament, and instead is based on a presumption of jurisdiction that has not been conferred".

The Appellant also contends that the legal basis of his objection is of public interest, a factor found at subsection 400(3) of the Rules (Appellant's representations, at para. 15). Despite the Appellant's reliance on numerous decisions to support this objection, it will not be retained for the following reasons.

[6] I concur with the position of the Respondent concerning the effectiveness and enforceability of the Judgment, as well as the limits of the jurisdiction conferred on an assessment officer.

[7] First, it must be clarified that the Judgment took effect upon its issuance pursuant to subsection 392(2) of the Rules (also see definition of "order" found at Rule 2). Moreover, this Judgment has not been amended, varied, or declared invalid by any court.

[8] Secondly, as per submitted at paragraph 11 of the Respondent's written submissions, the settled legal position is that once the Court exercised its jurisdiction under subsection 400(1) of the Rules, it triggers and restricts the jurisdiction of an assessment officer to the parameters of Rule 407, which is more specifically assessing costs following Tariff B (*Scheuneman v. Canada (Minister of Human Resources Development)*, 2006 FC 1012 at para. 4). The comment made in the case *Marshall v. Canada*, 2006 FC 1017, a case cited by the Respondent, bears directly on the question of jurisdiction of an assessment officer, and applies to a decision rendered by the Federal Court:

> [3] (ii) A judge of the Federal Court exercised his jurisdiction under Rule 400(1) to award costs to the Defendant. An assessment officer carrying out an assessment of costs under the Rules and Tariff has no jurisdiction to vacate or vary that result.

> Rather, the role of the assessment officer is essentially to arrive at a dollar value for said award of costs within the parameters of the Rules and Tariff.

[9] In my capacity as an assessment officer, I am not a member of a Court and "cannot go beyond, or contradict," a decision that a Court has made (*Pelletier v. Canada (Attorney General)*, 2006 FCA 418 at para. 7). Disallowing lawfully made claims would also amount to vacating the order, which falls outside my jurisdiction.

[10] For all these reasons, I conclude that the Respondent lawfully initiated this assessment of costs. The award of costs made in favour of the Respondent is valid and entitles me to proceed with this assessment following the Rules. To that end, it is relevant to add that assessment officers are empowered to issue reasons for assessment and certificates of assessment (*Canada (Attorney General) v. Iris Technologies Inc.*, 2024 FCA 118 at para. 6). The Respondent will be entitled to take any subsequent enforcement measures deemed necessary, upon receipt of such documents.

[11] The analysis will now turn to the particulars of the assessable services and disbursements claimed.

III. Assessable Services

[12] The Respondent indicates that the Bill of Costs was prepared in accordance with column III of the table to Tariff B of the *Federal Courts Rules* (submissions of the Respondent, at paras. 10 and 14). In the absence of any different indication in the Judgment awarding costs, it is correctly submitted that costs in the present case shall be assessed in this manner, following Rule

407. In addition, since the assessable services are discrete, it is to be added that they should be assessed separately (*Starlight v. Canada*, 2001 FCT 999 at para. 7).

[13] In response, the Appellant contests all the claims made for assessable services and submits that they should all be disallowed on the basis of the invalidity of the Judgment. As noted above, this argument was deemed to be unsustainable. The Appellant's submissions did not specifically engage with most of the claims set out in the Respondent's Bill of Costs. Under these circumstances, for each amount claimed for assessable services substantially unopposed, my role will be to assess its conformity with the Court decision awarding costs, the Rules, Tariff B, and the jurisprudence. If a claim does not comply with this legal framework, I will be required to intervene to ensure that no unlawful item is certified (*Dahl v. Canada*, 2007 FC 192 at paragraph 2).

[14] It is noteworthy that an assessment officer may consider factors referred to in subsection 400(3) of the Rules, where found relevant (Rule 409). In that regard, the Respondent indicates that "the result of the proceeding", "the complexity of the issue" and "the amount of work required" were considered in determining the number of units claimed (Respondent's representations, at para. 15.)

[15] Except for an adjustment required regarding Item 22, all the claims made for assessable services will be allowed as requested.

A. *Items 19 – Memorandum of fact and law*
Item 25 – Services after judgment not otherwise specified
Item 26 – Assessment of costs

[16] The Respondent claims 6 units for Item 19, 1 unit for Item 25, and 4 units for Item 26. These claims will be allowed in full for the following reasons.

[17] Turning first to Item 19, the Respondent submits that the amount of work required to prepare the Memorandum would justify allowing more than the middle range of Column III for this item.

[18] The middle of Column III was found to be the default level of costs for a file of average complexity in *Allergan Inc. v. Sandoz Canada Inc.*, 2021 FC 186 at paragraph 25 [*Allergan*]. Subsection 2(2) of Tariff B, however, prohibits the allocation of a fraction of a unit.

[19] The range of units under Column III for Item 19 is 4 to 7, with a midpoint at either 5 or 6. In such a situation, the number of units allocated to a particular service may be rounded up or down to a whole number (*Miller Thomson LLP v. Hilton Worldwide Holding LLP*, 2020 FCA 134 at para. 162). Considering the factor "amount of work" advanced by the Respondent, and in the absence of submissions specifically engaging with this item, I find it appropriate to round up the number of units (*Maggie Carrasqueiras v. Sunwing Airlines Inc.*, 2023 FC 1312 at paragraph 5, unpublished reasons for assessment of costs rendered in File T-1314-21 on October 3, 2023). Therefore, 6 units are allowed.

[20] Second, the single unit claimed under Item 25 is allowed, as I agree with the Respondent that the claim is justified. This item is routinely allowed to permit counsel to review the final

decision and explain associated implications to clients (*Halford v. Seed Hawk Inc.*, 2006 FC 422 at para. 131).

[21] Thirdly, Item 26 relates to units claimed for the current assessment of costs. Although there appears to be a clerical error in the Respondent's submissions with respect to the range of units available for this item, 4 units are claimed in the Bill of Costs, which corresponds to the default level of costs following *Allergan*. It is submitted that certain steps taken by the Respondent to recover costs prior to filing the request for assessment could support a claim under Item 26. However, it is unnecessary to analyze this argument, as I find that the comprehensive costs materials filed by the Respondent in this assessment are sufficient to justify the claim (subsection 408(3) of the Rules).

B. *Item 22 – Counsel fee on hearing of appeal: (a) to first counsel, per hour*

[22] The Respondent claims 9 units under Item 22(a) for the appearance of one counsel at the appeal hearing. The range of units available for this item is 2 or 3 per hour of presence. The number of units claimed corresponds to 3 units multiplied by 3 hours (3 units x 3 hrs).

[23] On the one hand, the Respondent notes that the hearing was scheduled for a maximum of 3 hours and submits that the time required to prepare materials and pack up should be considered permissible and added to the 2 hours and 14 minutes used for the hearing (Respondent's representations, at para. 17). On the other hand, the Appellant submits that the hearing lasted one and a half hours, but how this duration was calculated is not specified. After a review of the minutes of hearing, it appears that the duration of a recess may have been excluded by the

Appellant. The Appellant also notes that the Respondent was not required to make submissions at the hearing (Appellant's representations, at para. 13).

[24] First, the default level of costs following *Allergan* and the Rules being at either 2 or 3 following the rationale discussed above, 2 units per hour will be allowed, since the amount of work that was performed by Counsel for the Respondent at the hearing appears to have been moderate to slightly below moderate in comparison with comparable files (Rule 409; paragraph 400(3)(g) of the Rules).

[25] Second, the abstract of hearing confirms that the hearing lasted around 2.25 hours. The duration of the recess indicated in the minutes of hearing will not be subtracted, since the parties were certainly required to remain in the vicinity of the courtroom during the recess, which is understood to be encompassed by Item 22. In addition, the recording confirms that the parties' representative had to arrive at around 9:15 to be ready to proceed for 9:30, and I also agree that it is reasonable to allow 15 minutes for gathering materials at the conclusion of the hearing. However, a fifteen-minute period claimed by the Respondent is found to be unjustified and therefore will be subtracted from the 3 hours claimed.

[26] As a result of this adjustment, a total of 5.5 units, corresponding to 2 units x 2.25 hrs, are allowed for this item.

[27] A total of 16.5 units amounting to $2,805 is allowed for assessable services.

IV. Disbursements

[28] The Respondent claims disbursements totalling $313.89, consisting of $40.09 for courier fees for serving documents and $273.80 for photocopies. The Appellant's argument that no disbursements should be allowed because of the invalidity of the Judgment was set aside previously, and no other argument that could assist me regarding disbursements claimed were presented.

[29] The proof that these disbursements were incurred is provided in the Affidavit of disbursements of Nancy Snow, except for part of the courier fees, as it will be explained below (subsection 1(4) of Tariff B).

[30] The governing principle in assessing disbursements is that a successful party is entitled to recover those disbursements that are both "reasonable and necessary to the conduct of the proceeding" (*Merck & Co. Inc. v. Apotex Inc.*, 2006 FC 631 at para. 3).

[31] Considering this framework, and for the reasons set out below, the claimed disbursements will be allowed, except for the courier fee of $25.33.

A. *Courier fees*

[32] The claim made for a disbursement of $14.76 incurred for courier fee is allowed, the Court file confirming that a Notice of Appearance was served on the Appellant on the indicated date.

[33] My review of the evidence submitted in support of the courier fee of $25.33, in conjunction with the Court file, although reveals a discrepancy that cannot be reconciled so as to allow a claim for this fee. The submitted invoice supports the fact that a courier fee was incurred for delivering a document to the Appellant, even if it does not specify that the Memorandum was the document that was delivered. However, the Solicitor's certificate of service certifies that the Memorandum was served electronically and by facsimile, and not by courier. Given this discrepancy, and in the absence of submissions that could explain it, I am not satisfied that the evidence submitted by the Appellant meets the requirements of subsection 1(4) of Tariff B, and therefore, the courier fee of $25.33 is disallowed.

B. *Photocopies*

[34] The Appellant claims fees for photocopies prepared internally.

[35] First, my review of the Court record confirms that the photocopied documents pertain to this appeal. Second, the number of copies claimed corresponds to the number required for one or more of the following purposes: enabling the Respondent to retain a single paper copy, providing the required number of copies to the Registry in accordance with the Rules, or serving the Appellant. Third, the number of pages claimed for each document does not exceed the document's actual length as shown in the Court record. Consequently, I find that the number of copies and pages requested was essential for the proper conduct of the case (*Diversified Products Corp. v. Tye-Sil Corp.*, [1990] F.C.J. No. 1056 at para. 31).

[36] As a result, the Respondent is entitled to a total of $288.56 for disbursements, after subtraction of $25.33 for the disallowed courier fee.

V. Conclusion

[37] For the above reasons, the Respondent's Bill of Costs is assessed and allowed at $3,093.56, payable by the Appellant to the Respondent. A Certificate of Assessment will be issued.

"Karine Turgeon"
Assessment Officer

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-242-22
STYLE OF CAUSE:	EHTESHAM A RAFIQUE v. MINISTER OF NATIONAL REVENUE
MATTER CONSIDERED AT OTTAWA, ONTARIO WITHOUT PERSONAL APPEARANCE OF THE PARTIES	
REASONS FOR ASSESSMENT BY:	KARINE TURGEON, Assessment Officer
DATED:	JUNE 19, 2025

WRITTEN SUBMISSIONS BY:

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