Federal Court of Appeal | Cour d'appel fédérale

Date: 20251121

Docket: A-227-24

Citation: 2025 FCA 208

Present: **Stéphanie St-Pierre Babin, Assessment Officer**

BETWEEN:

EAST COAST HYDRAULICS & MACHINERY (2009) LIMITED

Applicant

and

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1976

Respondent

Assessment of costs without appearance of the parties.
Certificate of Assessment delivered at Ottawa, Ontario, on November 21, 2025.

REASONS FOR ASSESSMENT BY: STÉPHANIE ST-PIERRE BABIN,
Assessment Officer

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REASONS FOR ASSESSMENT

Stéphanie St-Pierre Babin, Assessment Officer

I. Overview

[1] By way of Judgment and Reasons for Judgment dated March 20, 2025, the Court allowed the application for judicial review with costs in favour of the applicant (*East Coast Hydraulics &*

Machinery (2009) Limited v. International Longshoremen's Association, Local 1976, 2025 FCA 64 (the Judgment).

[2] On April 9, 2025, the applicant filed its bill of costs and notice of appointment thereby initiating an assessment of costs process in accordance with subsection 406(1) of the *Federal Courts Rules*, SOR/98-106 (the Rules).

[3] On April 16, 2025, Turgeon A.O. issued a direction informing the parties that the assessment of costs would proceed in writing and of the deadlines to file their respective costs materials.

[4] As the delays set out in the direction have expired, the file is now perfected and ready for assessment. I have reviewed the Court file and note that for the purposes of this assessment, the applicant additionally filed the document “Applicant’s Submission – Costs” on April 24, 2025 (applicant’s submissions). As for the respondent, it did not file any written representation opposing the bill of costs or any request to extend the delay to do so.

[5] I will now discuss two preliminary issues. Thereafter, I will address the assessable services and determine the final amount for this assessment of costs.

II. Preliminary Issues

A. *The absence of an opposition from the respondent*

[6] As in this instance, where a party ordered to pay costs does not oppose the bill of costs, assessment officers must assess whether each claim is within the authority of the Court's decision awarding costs, the Rules and Tariff B. If certain claims go beyond, they must intervene to ensure that the assessable services claimed comply with this legal framework (*Dahl v. Canada*, 2007 FC 192 at para. 2).

B. *The applicant's bill of costs is presented entirely as a function of a number of hours*

[7] In its bill of costs, the applicant multiplies the units claimed for every assessable service by a number of hours. The bill of costs cannot be entirely assessed based on this formula for the following reasons.

[8] First, the principle of multiplying units by a number of hours is only applicable where an assessable service has the specific mention "per hour" in the table to Tariff B (subsection 1(2) of Tariff B). The only assessable services calculated as a function of a number of hours and bearing the mention "per hour" are Items 6, 9, 11, 14, 16(b), 21(b), 22 and 23 of the table to Tariff B. The other items "are not a function of a number of hours, but simply of the number of units available in the range for each item" (*Shaker v. Canada (Minister Of National Revenue)*, 2001 FCT 829 at para. 6).

[9] Second, the Court concluded the Judgment by allowing the application for judicial review "with costs to the applicant," without adding specific instructions as to costs. Rule 407 applies in these situations. It reads as follows:

407. Unless the Court orders otherwise, party-and-party costs shall be assessed in accordance with column III to the table of Tariff 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.
[Emphasis added.]	[Nos soulignements.]

[10] In view of the foregoing, where an assessable service claimed in the bill of costs is not calculated as a function of a number of hours, I will determine a unit value that reflects and is in accordance with column III to Tariff B (Rule 407). It goes without saying that the number of units allowed, and by the same effect, the amount of the assessment of costs, will be significantly lower than what was originally claimed. On this issue, the applicant submits that "there is no need for the assessment officer to depart from the tariff or reduce the amount of costs as demonstrated in the bill of costs filed" (applicant's submissions at para. 8).

[11] One must not forget the oft-cited principle that column III intends to provide partial indemnity as opposed to substantial or full indemnification (*Allergan Inc. v. Sandoz Canada Inc.*, 2021 FC 186 at para. 25). It is not intended to compensate lawyers for every hour worked in the pursuit of litigation and it must represent "a compromise between compensating the successful party and burdening the unsuccessful party" (*Canadian Pacific Railway Company v. Canada*, 2022 FC 392 at para. 23; *M.K. Plastics Corporation v. Plasticair Inc.*, 2007 FC 1029 at para. 20; *Sherman v. Canada (Minister of National Revenue)*, 2004 FCA 29 at para. 8; *Apotex Inc. v.*

Wellcome Foundation Ltd., [1998] F.C.J. No. 1736 at para. 7 (*Apotex*). In the end, these costs should "neither be punitive nor extravagant" (*Apotex* at para. 7).

III. Assessment of costs

[12] The applicant seeks a total of 186 units in the bill of costs. I will address the individual claims in turn.

A. *Item 15 – Preparation and filing of a written argument*

[13] The applicant requests 34 units—17 hours multiplied by 2 units per hour—for the preparation and filing of a written argument without specifying which service this claim pertains to. After an extensive review of the Court file, I am unable to allow units because Item 15 is only allowable where a written argument is requested or permitted by the Court, and no such request was required by the Court in a direction or an order. Additionally, Item 15 does not apply to the memorandum of fact and law filed by the applicant, which falls within the scope of Item 1 and will be compensated later in these Reasons.

B. *Items 17 to 22*

[14] Likely through inadvertence, the applicant incorrectly presented claims pursuant to Items 17 to 22 in its bill of costs. These Items are located under subheading *F Appeals to the Federal Court of Appeal* of the table to Tariff B, and they compensate for the procedural steps of an

appeal proceeding. Subheadings *A to E* of the table to Tariff B applies in this instance as it concerns a judicial review filed pursuant to paragraph 28(1)(h) of the *Federal Courts Act*, R.S.C., 1985, c. F-7 (*O-Pipon-Na-Piwin Cree Nation v. Manitoba*, 2010 FCA 187 at para. 5; *Canada (Attorney General) v. Edmison*, 2008 FCA 31 at para. 4).

[15] This does not prevent the applicant's bill of costs to be assessed because a result of zero dollars at the assessment would be absurd knowing with certainty that counsel did provide services to conduct the litigation (*Carlile v. Canada (Minister of National Revenue – M.N.R.)*, [1997] F.C.J. No. 885 at para. 26). In view of the above, I will convert the erroneous claims to the correct item of the table to Tariff B, if applicable.

(1) Item 17 – Preparation, filing and service of notice of appeal

[16] The applicant requests 13 units for the preparation, filing and service of a notice of appeal. It is rather a notice of application for judicial review that was filed pursuant to paragraph 28(1)(h) of the *Federal Courts Act* on July 2, 2024. This item shall therefore have been claimed under Item 1, providing for the preparation and filing of the originating documents and applicant records in this judicial review context.

[17] Item 1 has an available range of 4 to 7 units under column III of Tariff B. I agree with the applicant that it was successful in its application and conducted the legal proceedings in a reasonable and efficient manner. Also, there were no unnecessary or vexatious steps taken (applicant's submissions at para. 8). As a result, I will convert the claim presented pursuant to

Item 17 to allow 7 units under Item 1 for the preparation of the notice of application filed on July 2, 2024, and the applicant's record filed on October 15, 2024 (section 409 and paragraphs 400(3)(a), (k) and (o) of the Rules).

(2) Item 18 – Preparation of appeal book

[18] The applicant claims 4 units for the preparation of an appeal book made in advance of the hearing without specifying a filing date or providing any other details. A simple review of the recorded entries for Court file A-227-24 confirms that no appeal book was filed.

[19] When consulting the Court file, I do note that on March 19, 2025, the applicant filed a letter accompanied by 5 copies of a decision of the Labour Board of Nova Scotia and associated Voluntary Recognition Agreement in preparation of the hearing held on March 20, 2025. Under Tariff B, this service is compensated by Item 13(a) dealing with the preparation of a trial or hearing. As the nature of the service is simple and given the amount of work required, I allow the minimum of column III which is 2 units for Item 13(a) in lieu of Item 18 (Rule 409; paragraph 400(3)(g) of the Rules).

(3) Item 19 – Memorandum of fact and law

[20] The applicant claims a total of 60 units under Item 19 (30 hours multiplied by 2 units per hour). Again, this proceeding is not an appeal as described by Rule 335. For judicial review proceedings, the memorandum of fact and law is subsumed in the application record

compensated by Item 1 (*Conseil des Montagnais de Natashquan v. Malec*, 2011 FC 110 at para. 8). I have already allocated units for the memorandum of fact and law included in the applicant's record at paragraph 17 of these Reasons. Allowing the 60 units claimed would amount to an overpayment in favour of the applicant. Consequently, this claim is disallowed.

(4) Item 20 – Requisition for hearing

[21] The applicant claims 1 unit for the requisition for hearing filed on January 30, 2025. Unfortunately, there is no item in the table to Tariff B indemnifying the work performed in relation with requisitions for hearing for judicial review, as is the case for appeal hearings at Item 20.

[22] To overcome this absence from Tariff B, the jurisprudence recognizes the preparation and filing of a requisition for hearing under another item of Tariff B, Item 27, which gives assessment officers the discretion to allow units for other services that are not otherwise provided for by Items 1 to 26 (*Bernard v. Professional Institute of the Public Service of Canada*, 2020 FCA 152 at paras. 25–26). Accordingly, I will allow 1 unit under Item 27 in lieu of the initial claim submitted pursuant to Item 20.

(5) Item 21(a) – Counsel fee on a motion

[23] Turning to Item 21(a), the applicant claims 50 units for filing a motion, including its preparation, service and the written representations in its support, without detailing the motion

this claim pertains to and its filing date. As previously explained in detail, Item 21(a) is inapplicable in this assessment because this service is found under subheading *F Appeals to the Federal Court of Appeal* of the table to Tariff B. The applicable items are Items 4 to 6 under subheading *B Motions*.

[24] A review of the recorded entries for Court file A-227-24 confirms that no motion was ever filed or heard by the Court in this case. The only hearing that took place was the judicial review hearing and it will be indemnified under the next item. For this reason, and in the absence of written submissions or jurisprudence that could have assisted me in determining which assessable service this claim pertains to, the claim presented under Item 21(a) is not allowed.

(6) Item 22(a) – Hearing of appeal to first counsel

[25] The applicant seeks a total of 10 units—2 units under column III of Tariff B multiplied by 5 hours—in fees for the counsel's presence at the judicial review hearing held on March 30, 2025. Once again, Item 22(a) (appeal hearings) was claimed by inadvertence instead of Item 14(a) (trials and judicial review hearings).

[26] According to the entries made in the Court's record by the registry officer in attendance at the hearing, the recorded duration of the hearing was 3 hours and 25 minutes. The claim of 5 hours is significantly higher in comparison. Considering that similarly to Item 14, Item 22(a) includes some time before the scheduled start of the hearing, I will allow 4 hours (*Guest Tek Interactive Entertainment Ltd. v. Nomadix, Inc.*, 2021 FC 848 at para. 51).

[27] As for the number of units to allow under column III, I have considered the result in favour of the applicant and the significance and complexity of the issue, and I determine that it is reasonable to allow 2 units (Rule 409; paragraphs 400(3)(a) and (c) of the Rules).

[28] Considering the foregoing, 8 units are allowed under Item 14(a) instead of Item 22(a). This amount was calculated by multiplying the 2 units allowed under Column III by 4 hours.

(7) Item 22 (b) – Hearing of appeal to second counsel

[29] The applicant claims 10 units pursuant to Item 22(b) for the presence of a second counsel at the hearing. For the same reasons expressed above, the applicable item is Item 14(b) providing for hearing of judicial review and trials.

[30] Item 14(b) of the table to Tariff B compensates for the presence of a second counsel "where Court directs." Subsection 5(1) of the *Federal Courts Act* states: "the Court consists of a chief justice […] and 14 other judges." This definition does not include assessment officers who are officers of the registry (Rule 2). As an assessment officer, I solely have the authority to allow Item 22(b) where the Court has so directed. Having reviewed the minutes of hearing, the Judgment and the Reasons for Judgment, I note the absence of such direction. Consequently, this item is disallowed.

C. *Item 26*

[31] The applicant claims 4 units for the services performed in relation to the assessment of costs (available range of 2 to 6 units under column III). In my view, an allowance of 4 units is justified by the number of claims submitted and by the amount of work performed by the applicant (Rule 409; paragraph 400(3)(g) of the Rules). More precisely, the preparation of the bill of costs and notice of appointment filed on April 9, 2025, and the applicant's submission on costs filed on April 24, 2025. For these reasons, 4 units are allowed for Item 26.

IV. Conclusion

[32] The applicant's bill of costs is assessed and allowed in the amount of $4,554.00, taxes included, payable by the respondent to the applicant. A certificate of assessment will be issued for this amount.

"Stéphanie St-Pierre Babin"
Assessment Officer

Ottawa, Ontario
November 21, 2025

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-227-24
STYLE OF CAUSE:	EAST COAST HYDRAULICS & MACHINERY (2009) LIMITED v. INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1976

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

REASONS FOR ASSESSMENT BY:	STÉPHANIE ST-PIERRE BABIN, Assessment Officer
DATED:	NOVEMBER 21, 2025

WRITTEN SUBMISSIONS BY:

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