



Date: 20230221

Docket: T-1822-19

Citation: 2023 FC 232

[ENGLISH TRANSLATION]

BETWEEN:

GABRIEL ROULEAU-HALPIN

Applicant

and

BELL SOLUTIONS TECHNIQUES INC.

Respondent

REASONS FOR ASSESSMENT

Stéphanie St-Pierre Babin, Assessment Officer

I. Introduction

[1] In a judgment and reasons rendered on February 25, 2021, [the Judgment], the Court dismissed the application for judicial review of Gabriel Rouleau-Halpin [the applicant] and awarded costs in favour of Bell Solutions Techniques Inc. [the respondent]. After the respondent's bill of costs was submitted on April 15, 2021, a directive was issued by an assessment officer informing the parties that the assessment of the bill of costs would be done in writing and included the deadlines for filing written submissions. After having reviewed the bill of costs and the written representations received from both parties, I will first address two

preliminary issues. Then, I will address the taxable services and disbursements claimed in the bill of costs.

II. Preliminary issues

A. *Effect of the appeal on the assessment of costs*

[2] In response to the bill of costs, the applicant submits that the Federal Court judgment and reasons, including costs, are the subject of an appeal before the Federal Court of Appeal and that he is awaiting a hearing date. In response, the respondent fairly submits that because a Federal Court decision awarding costs is under appeal before the Federal Court of Appeal does not prevent its taxation. It is indeed well established that the assessment of costs can proceed despite the fact that a final Federal Court decision has been brought under appeal, as is the case here (*Teva Canada Limited v Janssen Inc*, 2018 FC 1175 at para 10; *Safe Gaming System Inc v Atlantic Lottery Corporation*, 2018 FC 871 at para 9; *Bacon St-Onge v Conseil des Innus de Pessamit*, 2018 FC 655 at para 14). Based on the above, I am able to proceed with the assessment of costs.

B. *Complexity of file*

[3] In its bill of costs, the respondent claims the maximum number of units available under Column III for all the services claimed under Tariff B. At paragraph 3 of his reply, the applicant feels that considering the nature of a response to an application for judicial review (that essentially claims that the impugned decision was reasonable), the non-complex nature of the issue (termination of employment) and the fact it is a judicial review issue (not a trial), all costs

should be taxed at the lower end of Tariff B. Lastly, the respondent submits that the nature of the case justifies the unit rate claimed and that the units requested are [translation] “sufficiently reasonable in the circumstances” and “relies on the appreciation of the assessment officer” (Respondent’s Reply, para 5).

[4] It is well established that each item in Tariff B presents unique circumstances and it is not necessary to attribute the same point within the range of available units for all the taxable services in the same bill of costs (*Starlight v Canada*, 2001 FCT 999 at para 7). Considering the above, and in the absence of instructions from the Court regarding costs in the judgment, I will determine the number of eligible units for each item claimed on an individual basis, within the full range of Column III (section 407 of the *Federal Courts Rules*, SOR/98-106 [Rules], *Hoffman-La Roche Limited v Apotex Inc*, 2013 FC 1265 at para 8).

III. Assessable Services

A. *Item 2 – Preparing and filing the respondent’s file*

[5] The respondent is claiming 7 units under item 2, namely the upper limit of Column III. As for the applicant, he submits that item 2 should be reduced to the lower limit of Tariff B, which is 4 units. In response, the respondent submits that the nature of the case justifies the highest unit rate. First, I note that the respondent’s file, filed on March 10, 2020, required a certain workload; it contains Jean-Marc Ouimet’s affidavit with 28 supporting documents, a memorandum of fact and law, and a list of authorities with 28 references. However, further to reading the Judgment and reviewing the respondent’s file, I am not prepared to allow the

maximum number of units claimed considering the nature of the case. Considering section 400 and the factors set out in paragraphs 400(3)(c) and (g) of the Rules, 5 units are allowed.

B. *Item 13(a) – Counsel fees for preparation for hearing*

[6] The respondent is claiming 5 units under counsel fees for the preparation for the hearing, which again represents the upper limit of Column III (available range: 2 to 5 units). At paragraph 5 of his reply, the applicant indicates that this item should not be allowed or should only be allowed at the low end of Column III at 2 units, because the respondent did not prepare witnesses, did not deliver a subpoena, and sent very little correspondence. In response, the respondent suggested that [TRANSLATION] “the preparation of the hearing was relatively long considering the many arguments raised by the applicant” (Respondent’s Reply, para 13).

[7] Item 13(a) aims not only to compensate a party for correspondence, preparing witnesses and issuing subpoenas in preparation for a hearing, but also to compensate “other services not otherwise particularized” in Tariff B. For these services, the assessment officers must rely on the evidence and the parties’ written submissions as well as the Court record to assess the number of units to allow for the services carried out for the purpose of preparing for the hearing. Having considered the written submissions of each party, I note first that it would have been pertinent to have made more detailed written submissions such as providing a list of the “other services not otherwise particularized” in Tariff B that counsel for the respondent carried out for the preparation of the hearing. Only a general statement characterizing the hearing preparation as “relatively long” was submitted by the respondent. Moreover, I reviewed the Court record to assess the level of preparation and I note that two authorities were filed on February 2, 2021, in

preparation for the hearing of the application for judicial review that was held the following day. Recognizing that a certain level of preparation was required for the hearing held on February 3, 2021, 2 units are allowed.

C. *Item 14(a) – Counsel fee for presence in Court*

[8] The respondent is claiming a total of 19.5 units—3 units under Column III of Tariff B multiplied by 6.5 hours—in fees for the counsel’s presence at the judicial review hearing held on February 3, 2021, by videoconference. According to the entries recorded in the Court record by the registry officer who attended the hearing, the total recorded duration of the hearing was 6 hours and 28 minutes. The claimed duration of 6.5 hours is therefore reasonable. As for the number of units to allow under Column III, I consulted the parties’ written submissions and considered the result in favour of the respondent and the significance and complexity of the issue, and find that it is reasonable to allow 2 units (paragraphs 400(3)(a) and (c) of the Rules). In light of the foregoing, 13 units will be allowed, the total of 6.5 hours multiplied by the 2 units allowed under Column III.

D. *Item 15 – Preparation and filing of written argument*

[9] At paragraph 19 of its reply, the respondent withdrew its claim under item 15. As a result, no units are allowed.

E. *Item 26 – Assessment of costs*

[10] The respondent is claiming 6 units for the respondent for the assessment of costs, which represents the upper limit of Column III. The applicant instead submits that item 26 “was not awarded by the Federal Court” and the assessment of costs was necessary because “the Respondent has insisted on claiming items that they are not entitled to” (Applicant’s Response, at para 8). The respondent instead alleges that it was entitled to a notice of appointment for assessment pursuant to subsection 406(1) of the Rules (Respondent’s Reply, para 31).

[11] Subsection 406(1) sets out the right to an assessment of costs:

Obtaining appointment

406 (1) A party who is entitled to costs may obtain a notice of appointment for assessment by filing a bill of costs, a copy of the order or other document giving rise to the party’s entitlement to costs and any reasons, including dissenting reasons, given in respect of that order.

[Emphasis added.]

Convocation

406 (1) La partie qui a droit aux dépens peut obtenir un avis de convocation pour la taxation en déposant un mémoire de dépens et une copie de l’ordonnance — ainsi que les motifs, le cas échéant, y compris toute dissidence — ou autre document lui donnant droit aux dépens.

[Non souligné dans l’original.]

[12] A reading of the law and paragraph 69 of the Judgment, makes it clear that it was open to the respondent to ask an assessment officer to perform an assessment pursuant to subsection 406(1) of the Rules.

[13] As for item 26 of Tariff B, it aims to compensate the party entitled to costs for the work performed in relation to the assessment of costs. Contrary to the applicant's allegations, the respondent is entitled to claim item 26, as Tariff B does not make any mention of the fact it must be ordered by the Court or that it is at the Court's discretion, as is the case for other Tariff B items (see for example, items 14(b), 22(b) and 24 of Tariff B). I considered the variable complexity of the cost assessments filed before this Court and I feel that this assessment is of medium complexity, considering the number of claims in the bill of costs, Sandrine Mainville's affidavit and the reply submitted by the respondent. For this reason, I conclude that it is reasonable to allow 4 units, which represents the middle of Column III of Tariff B (*Allergan Inc v Sandoz Canada Inc*, 2021 FC 186 at para 25).

IV. Costs

A. *Taxes*

[14] At paragraph 9 of his reply, the applicant challenged the taxes without submitting any legislation or case law to support his argument. On this subject, Tariff B states the following:

Disbursements

(3) A bill of costs shall include disbursements, including

[...]

(b) any service, sales, use or consumption taxes paid or payable on counsel fees or disbursements allowed under this Tariff.

Débours

(3) Le mémoire de frais comprend les débours, notamment :

[...]

(b) les taxes sur les services, les taxes de vente, les taxes d'utilisation ou de consommation payées ou à payer sur les honoraires

d'avocat et sur les débours
acceptés selon le présent tarif.

[Emphasis added.]

[Non souligné dans
l'original.]

[15] Moreover, GST and QST are allowed consistently when costs are awarded to counsel working in the province of Québec (*Teksavvy Solutions Inc v Bell Media Inc*, 2021 FCA 181, Annex “Modified Bill of Costs”; *Leo Pharma Inc v Teva Canada Limited*, 2016 FC 107, Annex A). Pursuant to the preceding, and considering that counsel for the respondent practices in Montréal, I will allow GST and QST on counsel fees and on the costs that I will accept for the purposes of this assessment of costs.

B. *Bailiff fees*

[16] In its bill of costs, the respondent claimed \$229.84 (including taxes) under bailiff fees. It produced the certificates of service and the court service fees as Exhibit A in support of Sandrine Mainville’s affidavit. In response, the applicant stated that he should not be made to pay fees identified as “*non-admissible à l’état des frais* [non-eligible for cost submission]” in the certificates of service. The respondent accepted this argument and indicated at paragraph 29 of its response that the bailiff fees requested [translation] “should be adjusted to \$116.34 (plus taxes).”

[17] During my review of the Court record, I was able to find the certificates of service that corroborate the invoices included with Sandrine Mainville’s affidavit for services rendered on January 15 and March 10, 2020. I will therefore allow the adjusted amount—which excludes

amounts that are non-eligible for cost submission—that I consider reasonable and necessary, and I will allow the bailiff fees in the amount of \$133.76 (taxes included).

V. Conclusion

[18] For all these reasons, the respondent's bill of costs is allowed in the amount of \$4,272.86.

A certificate of assessment will be issued for this amount.

"Stéphanie St-Pierre Babin"
Assessment Officer

Ottawa, Ontario
February 21, 2023

Certified true translation
Elizabeth Tan

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1822-19

STYLE OF CAUSE: GABRIEL ROULEAU-HALPIN v. BELL SOLUTIONS
TECHNIQUES INC.

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

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

DATED: FEBRUARY 21, 2023

WRITTEN SUBMISSIONS

Jérémy H. Little

FOR THE APPLICANT

Maryse Tremblay

FOR THE RESPONDENT

SOLICITORS OF RECORD

OLS, Avocats en droit du travail
Montréal, Quebec

FOR THE APPLICANT

Borden Ladner Gervais LLP
Montréal, Quebec

FOR THE RESPONDENT