

Federal Court



Cour fédérale

Date: 20231031

Docket: T-227-17

Citation: 2023 FC 1446

BETWEEN:

DTECHS EPM LTD.

**Plaintiff/
Defendant by Counterclaim**

and

**BRITISH COLUMBIA HYDRO AND POWER
AUTHORITY AND AWESENSE WIRELESS INC.**

**Defendants/
Plaintiffs by Counterclaim**

PUBLIC REASONS FOR ASSESSMENT

(The parties were canvassed about redactions for my Confidential Reasons for Assessment issued on May 11, 2022, and I was advised on October 27, 2023, that no redactions are required.)

GARNET MORGAN, Assessment Officer

I. Background

[1] This is an assessment of costs pursuant to multiple decisions of the Federal Court, wherein costs were awarded to British Columbia Hydro and Power Authority (hereafter BC Hydro), in relation to the Plaintiff's action proceeding and various motions on this file.

[2] Concerning the action proceeding, the Court's Order and Reasons dated April 22, 2021, states the following regarding the Court's award of costs at the Order portion of the decision:

1. The costs, including disbursements, payable to the Defendant British Columbia Hydro and Power Authority by the Plaintiff dTechs epm Ltd shall be assessed in accordance with the high end of Column IV of Tariff B of the Federal Courts Rules, SOR/98-106 [Rules]. Costs shall be calculated at double the Tariff rate (but not double disbursements) from October 30, 2020 to March 1, 2021.
2. The costs, including disbursements, payable to the Defendant Awesense Wireless Inc by the Plaintiff dTechs epm Ltd shall be assessed in accordance with the high end of Column IV of Tariff B of the Rules. Costs shall be calculated at double the Tariff rate (but not double disbursements) from April 24, 2020 to March 1, 2021.
3. If the parties are unable to agree upon the costs, including disbursements, payable pursuant to this Order, then the matter will be referred to an assessment officer for determination.
4. Post-judgment interest shall be calculated on a simple basis at a rate of 2.5% per annum from the date of this Order.

[3] In addition, at paragraphs 48 and 49 of the Court's Order and Reasons dated April 22, 2021, it states the following regarding costs at the Reasons portion of the decision:

48. BC Hydro and Awesense are each entitled costs, including reasonable disbursements, in accordance with the high end of Column IV of Tariff B of the Rules. The assessment of costs will include a doubling of Tariff values, but not disbursements, after the dates of the Defendants' respective settlement offers. Post-judgment interest will be calculated on a simple basis at a rate of 2.5% *per annum*.
49. If the parties are unable to agree upon the costs, including disbursements, payable pursuant to this Order and Reasons, then the matter will be referred to an assessment officer for determination.

[4] Subsequent to the Court's Order and Reasons being issued to the parties on April 22, 2021, the co-Defendants (British Columbia Hydro and Power Authority and Awesense Wireless Inc.) filed a motion pursuant to Rule 403 of the *Federal Courts Rules*, SOR/98-106 (*FCR*), for directions to be given to the Assessment Officer respecting second counsel and travel fees. The Court issued an Order on June 23, 2021, wherein the following directions were provided to the Assessment Officer assessing the costs for this file:

1. The assessment officer is directed to award to BC Hydro reasonable fees for second counsel under items 2, 3, 5, 7-11, 13(a), 13(b), 14(b), 15, and 24-27 of Tariff B of the Rules.
2. The assessment officer is directed to award to BC Hydro reasonable costs for travel by counsel under item 24 of Tariff B of the Rules.
3. The assessment officer is directed to award to Awesense reasonable fees for second counsel under items 2-4, 7, 8, 10-12, 13(a), 13(b), 14(b), 15 and 26 of Tariff B of the Rules.
4. The assessment officer is directed to award to Awesense reasonable costs for travel by counsel under item 24 of Tariff B of the Rules.
5. Costs of this motion are awarded to BC Hydro.

[5] As noted earlier in these Reasons, this assessment of costs is also pursuant to multiple Court decisions related to various motions on this file. These motions are discussed in detail later in these Reasons under Item 5 in the Assessable Services section.

[6] Further to the issuance of the aforementioned Court decisions, on July 21, 2021, BC Hydro filed a Bill of Costs, which initiated BC Hydro's request for an assessment of costs.

[7] On July 25, 2021, and January 31, 2022, directions were issued to the parties regarding the conduct and filing of additional documents for the assessment of costs. The court record shows that the following documents were filed by the parties for this assessment of costs: on August 27, 2021, BC Hydro filed a 2 volume record entitled Costs Submissions of BC Hydro, which included Written Representations and an Affidavit of Susan Burkhardt, sworn on August 27, 2021; on January 31, 2022, the Plaintiff filed a record entitled Reply to Costs Submissions of BC Hydro and Awesense, which included Written Representations; and on February 22, 2022, BC Hydro filed a record entitled Reply Submissions of BC Hydro, which included Reply Submissions and an Affidavit of Chirani Mudunkotuwa, sworn on February 22, 2022.

[8] BC Hydro's Bill of Costs attached as Exhibit "B" to the Affidavit of Susan Burkhardt, sworn on August 27, 2021, will be reviewed for this assessment of costs.

II. Assessable Services

[9] BC Hydro has claimed \$365,827.48 for assessable services, inclusive of taxes.

A. *Item 3 – Amendment of document, where the amendment is necessitated by a new or amended originating document, pleading, notice or affidavit of another party; Item 12 – Notice to admit facts or admission of facts; notice for production at hearing at hearing or trial or reply thereto; Item 14 – Counsel fee: (a) to first counsel, per hour in Court; and (b) to second counsel, where Court directs, 50% of the amount calculated under paragraph (a); Item 15 – Preparation and filing of written argument, where requested or permitted by the Court; Item 24 – Travel by counsel to attend a trial, hearing, motion, examination or analogous procedure, at the discretion of the Court; Item 25 - Services after judgment not otherwise specified; Item 26 – Assessment of costs; Item 27 – Such other services as may be allowed by the assessment officer or ordered by the Court.*

[10] I have reviewed the parties' costs documents in conjunction with the court record, the *FCR* and any relevant jurisprudence and I have determined that BC Hydro's claims submitted under Items 3, 12, 14, 15, 24, 25, 26 and 27 are reasonable and can be allowed as claimed. The remaining claims under Items 2, 5, 7, 8, 9, 10, 11 and 13 have some issues to look into and as a result, they will be individually reviewed further below in these Reasons.

[11] Concerning my assessment of the claims for Items 3, 12, 14, 15, 24, 25, 26 and 27, I reviewed the factors in awarding costs that are listed under Rule 400(3) of the *FCR*, which I am able to consider in an assessment of costs pursuant to Rule 409 of the *FCR*. When I considered factors such as; (a) the result of the proceeding; (c) the importance and complexity of issues; and (g) the amount of work performed by BC Hydro; the court record reflects that BC Hydro was a successful party in the action proceeding and was awarded costs at the high-end of Column IV of Tariff B of the *FCR*; that the issues argued were of significant importance and of moderate to high complexity; and that a substantial amount of work was done by BC Hydro for Items 3, 12, 14, 15, 26 and 27. In addition, the Plaintiff did not provide any specific submissions regarding any issues pertaining to the aforementioned Items. In *Dahl v Canada*, 2007 FC 192, at paragraph 2, the Assessment Officer stated the following regarding the absence of relevant representations for assessments of costs:

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. I examined each item claimed in the bill of costs and the

supporting materials within those parameters. Certain items warrant my intervention as a function of my expressed parameters above and given what I perceive as general opposition to the bill of costs.

[12] In addition to the *Dahl* decision, in *Carlile v Canada*, [1997] F.C.J. No. 885, at paragraph 26, the Assessment Officer stated the following regarding having limited material for assessments of costs:

26. [...] Taxing Officers are often faced with less than exhaustive proof and must be careful, while ensuring that unsuccessful litigants are not burdened with unnecessary or unreasonable costs, to not penalize successful litigants by denial of indemnification when it is apparent that real costs were indeed incurred. This presumes a subjective role for the Taxing Officer in the process of taxation. My Reasons dated November 2, 1994, in T-1422-90: *Youssef Hanna Dableh v. Ontario Hydro* cite, [1994] F.C.J. No. 1810, at page 4, a series of Reasons for Taxation shaping the approach to taxation of costs. *Dableh* was appealed but the appeal was dismissed with Reasons by the Associate Chief Justice dated April 7, 1995, [1995] F.C.J. No. 551. I have considered disbursements in these Bills of Costs in a manner consistent with these various decisions. Further, *Phipson On Evidence*, Fourteenth Edition (London: Sweet & Maxwell, 1990) at page 78, paragraph 4-38 states that the "standard of proof required in civil cases is generally expressed as proof on the balance of probabilities". Accordingly, the onset of taxation should not generate a leap upwards to some absolute threshold. If the proof is less than absolute for the full amount claimed and the Taxing Officer, faced with uncontradicted evidence, albeit scanty, that real dollars were indeed expended to drive the litigation, the Taxing Officer has not properly discharged a quasi-judicial function by taxing at zero dollars as the only alternative to the full amount. Litigation such as this does not unfold solely due to the charitable donations of disinterested third persons. On a balance of probabilities, a result of zero dollars at taxation would be absurd.

[...]

[13] I have utilized the *Dahl* and *Carlile* decisions as guidelines, and although there is an absence of specific submissions from the Plaintiff regarding BC Hydro's claims for Items 3, 12,

14, 15, 24, 25, 26 and 27, as an Assessment Officer, I still have an obligation to ensure that any claims that are allowed are not “unnecessary or unreasonable”. This being noted, I have reviewed BC Hydro’s Bill of Costs in conjunction with the court record, the *FCR* and any relevant jurisprudence to ensure that the claims were necessary and are reasonable and I have found that BC Hydro has met these requirements for the claims submitted under Items 3, 12, 14, 15, 24, 25, 26 and 27. Therefore, these claims will be allowed as claimed in BC Hydro’s Bill of Costs.

[14] Concerning the quantum of costs for BC Hydro’s claims submitted under Items 3, 25 26 and 27, the Item allowances are as follows: for Item 3, 7 units are allowed for first counsel’s services and 3.5 units are allowed for second counsel’s services, for a total of 10.5 units, which is a total dollar amount of \$1,764.00, inclusive of taxes. For Item 25, 1 unit is allowed for first counsel’s services and a 0.5 unit is allowed for second counsel’s services, for a total of 1.5 units, which is a total dollar amount of \$252.00, inclusive of taxes. For Item 26, 7 units are allowed for first counsel’s services and 3.5 units are allowed for second counsel’s services, for a total of 10.5 units, which is a total dollar amount of \$1,764.00, inclusive of taxes. For Item 27, 4 units are allowed for first counsel’s services and 2 units are allowed for second counsel’s services, for a total of 6 units, which is a total dollar amount of \$1008.00, inclusive of taxes.

[15] Concerning the quantum of costs for BC Hydro’s claims submitted under Items 12, 14, 15 and 24, the Court’s Order and Reasons dated April 22, 2021, ordered that BC Hydro’s “[c]osts shall be calculated at double the Tariff rate (but not double disbursements) from October 30, 2020 to March 1, 2021.” For Items 12 and 24, there are 2 claims for each Item that fall within the timeframe for the doubling of costs, and for Items 14 and 15, all of the claims submitted fall

within the timeframe for the doubling of costs. Specifically, the Item allowances are as follows: for Item 12, 20 units are allowed for first counsel's services, with 8 units being doubled, for a total of 28 units, which is a total dollar amount of \$4,704.00, inclusive of taxes. For Item 14(a), 266 units are allowed for first counsel's services. All of these units are doubled for a total of 532 units, which is a total dollar amount of \$89,376.00, inclusive of taxes. For Item 14(b), 133 units are allowed for second counsel's services. All of these units are doubled for a total of 266 units, which is a total dollar amount of \$44,688.00, inclusive of taxes. For Item 15, 9 units are allowed for first counsel's services. All of these units are doubled for a total of 18 units, which is a total dollar amount of \$3,024.00, inclusive of taxes. Also for Item 15, 4.5 units are allowed for second counsel's services. All of these units are doubled, for a total of 9 units, which is a total dollar amount of \$1,512.00, inclusive of taxes. For Item 24, 28 units are allowed for first counsel's travel fees, with 7 units being doubled, for a total of 35 units, which is a total dollar amount of \$5,880.00, inclusive of taxes. Also for Item 24, 10.5 units are allowed for second counsel's travel fees, with 3.5 units being doubled, for a total of 14 units, which is a total dollar amount of \$2,352.00, inclusive of taxes.

[16] The total dollar amount allowed for BC Hydro's claims submitted under Items 3, 12, 14, 15, 24, 25, 26 and 27 is \$156,324.00, inclusive of taxes.

B. *Item 2 - Preparation and filing of all defences, replies, counterclaims or respondents' records and materials.*

[17] BC Hydro has submitted multiple claims under Item 2 in relation to the preparation and filing of BC Hydro's Demand for Particulars, Statement of Defence and Counterclaim, and the

Reply to Defence to Counterclaim. In the following decisions: *Flag Connection Inc. v Canada*, 2006 FC 10, at paragraph 9; *Abbott Laboratories Ltd. v Canada*, 2009 FC 399, at paragraph 10 (*Abbott #1*); and in *Toronto Sun Wah Trading Inc. v Canada*, 2009 FC 1037, at paragraph 3, the issue of multiple claims submitted under Item 2 was addressed and it was determined that the use of the word all (*emphasis added*) in Item 2 only allows a party to submit one claim for all of the documents prepared and filed under Item 2. Utilizing the aforementioned decisions as guidelines, I find that BC Hydro's separate claims for the Demand for Particulars, the Statement of Defence and Counterclaim, and the Reply to Defence to Counterclaim should be subsumed under a singular claim for Item 2. Further to my review of the parties' costs documents, the court record, the *FCR* and the aforementioned jurisprudence, I have determined that it is reasonable to allow 9 units for first counsel's services and 4.5 units for second counsel's services for Item 2, for a total of 13.5 units, which is a total dollar amount of \$2,268.00, inclusive of taxes.

C. *Item 5 – Preparation and filing of a contested motion, including materials and responses thereto.*

[18] BC Hydro has submitted multiple claims under Item 5 for the preparation and filing of documents related to the following motions: BC Hydro's bifurcation motion filed on April 6, 2018; BC Hydro's motion for security for costs filed on April 16, 2020; BC Hydro's motion to serve and file a Fourth Amended Statement of Defence and Counterclaim filed on November 4, 2020; BC Hydro's motion for leave pursuant to Rule 285 of the *FCR* to adduce at trial the Affidavit of Michele Marzola filed on November 6, 2020; and BC Hydro's motion pursuant to Rule 403 of the *FCR* for directions to be given to the Assessment Officer respecting the assessment of BC Hydro's costs filed on May 25, 2021.

[19] At paragraphs 8 to 12 of the Plaintiff's Written Representations it is acknowledged that the Plaintiff opposed BC Hydro's motion for security for costs and agreed to costs resulting from that motion. The Plaintiff also submitted that BC Hydro's remaining motions were not opposed and that "[t]he motions were in essence resolved by consent, and so no units should be assessed for motions." In support of this argument, the Plaintiff cited the decision: *Dableh v Ontario Hydro*, [1998] F.C.J. No. 491. In reply, at paragraphs 5 to 11 of BC Hydro's Reply Submissions it is submitted that the Plaintiff initially contested all of BC Hydro's motions before any of them were consented to by the Plaintiff. BC Hydro submitted that a motion on consent does not necessarily negate an award of costs, and noted that BC Hydro's bifurcation motion had an award of costs of \$1,200.00, even though the Plaintiff had consented to this motion. BC Hydro also noted that Item 4 of Tariff B of the *FCR* is designated for uncontested motions, indicating that costs are not only recoverable for contested motions.

[20] Further to my review of the parties' submissions, I am in agreement with BC Hydro that costs may be recoverable for motions that have been consented to depending on the facts pertaining to a particular motion and this is supported by the *Dableh* decision that was cited by the Plaintiff. The *Dableh* decision discusses the nuances with motions that may have been contested to initially but then are consented to and whether Item 4 (for uncontested motions) or Item 5 (for contested motions) should be used in Tariff B and the number of units that may apply. My review of *Dableh* did not reveal that an assessment of costs is not permitted for motions that have been consented to. This being noted, my review of the court record did not reveal that there are Court decisions awarding costs to BC Hydro for all of the motions that have

been submitted under Item 5. In *Canada v Uzoni*, 2006 FCA 344, at paragraph 4, the Assessment Officer stated the following regarding Court decisions being silent with respect to costs:

4. [...] It is a well established principle that costs are at the respective Court's discretion and where an order is silent with respect to costs, it implies there is no visible exercise of the respective Court's discretion under Rule 400(1). Reference may also be made to a relevant passage in Mark M. Orkin, Q.C., *The Law of Costs* (2nd Ed.), 2004, paragraph 105.7:

... Similarly if judgment is given for a party without any order being made as to costs, no costs can be assessed by either party; so that when a matter is disposed of on a motion or at a trial with no mention of costs, it is as though the judge had said that he "saw fit to make no order as to costs"...

Similarly, I rely on *Kibale v. Canada (Secretary of State)*, [1991] F.C.J. No. 15, [1991] 2 F.C. D-9 which reflects the same sentiment:

If an order is silent as to costs, no costs are awarded.

[21] The *Uzoni* decision indicates that a Court decision must explicitly award costs to a party for costs to be assessed. This decision is supported by a recent decision of the Court in *Tursunbayev v Canada*, 2019 FC 457, at paragraph 39, wherein the Court discusses the issue of decisions that are silent on costs. My review of BC Hydro's claims submitted under Item 5 found that for BC Hydro's bifurcation motion, that the Court's Order dated May 8, 2018, awarded costs of \$1,200.00, inclusive of disbursements and taxes to BC Hydro. Therefore, the costs for this motion has already been assessed by the Court.

[22] Concerning BC Hydro's motion for security for costs, the Court's Order dated May 8, 2020, awarded costs to BC Hydro. On May 8, 2020, BC Hydro sent a letter to the Court advising that the parties had settled the costs for the motion for security for costs at \$6,606.68, "payable in

any event of the cause.” Therefore, this motion does not require an assessment of costs, as the parties have agreed to the costs for this motion.

[23] Concerning BC Hydro’s motion to serve and file a Fourth Amended Statement of Defence and Counterclaim, on November 6, 2020, the Plaintiff sent a letter to the Court advising that the Plaintiff consented BC Hydro’s motion. Subsequently, in a letter dated November 9, 2020, BC Hydro advised the Court that the parties had not settled the issue of costs and proposed that the issue be discussed at a trial management conference (TMC) scheduled for November 10, 2020. The court record shows that at the TMC, the issue of costs was deferred to the trial scheduled to begin on November 16, 2020. My review of the Court’s decisions dated March 1, 2021, March 16, 2021, April 22, 2021, and June 23, 2021, which were issued subsequent to the trial, did not reveal that costs were specifically awarded to any party in relation to BC Hydro’s motion to serve and file a Fourth Amended Statement of Defence and Counterclaim. Therefore, costs cannot be assessed for this motion.

[24] Concerning BC Hydro’s motion for leave pursuant to Rule 285 of the *FCR* to adduce at trial the Affidavit of Michele Marzola, the court record shows that at the TMC held on November 10, 2020, that this motion was deferred to the trial scheduled to begin on November 16, 2020. My review of the Court’s decisions dated March 1, 2021, March 16, 2021, April 22, 2021, and June 23, 2021, which were issued subsequent to the trial, did not reveal that costs were specifically awarded to any party in relation to BC Hydro’s motion for leave pursuant to Rule 285 of the *FCR* to adduce at trial the Affidavit of Michele Marzola. Therefore, costs cannot be assessed for this motion.

[25] Concerning BC Hydro's motion pursuant to Rule 403 of the *FCR* for directions to be given to the Assessment Officer respecting the assessment of BC Hydro's costs, the Court's Order dated June 23, 2021, awarded costs to BC Hydro. Therefore, costs will be assessed for this motion.

[26] Utilizing the *Uzoni* and *Tursunbayev* decisions as guidelines, I find that the only motion claimed by BC Hydro which requires an assessment of costs is the Rule 403 motion for directions to be given to the Assessment Officer respecting the assessment of BC Hydro's costs. The bifurcation motion had costs fixed by the Court at \$1,200.00, and the parties consented to costs at \$6,606.68 for BC Hydro's motion for security for costs. The remaining motions for BC Hydro to serve and file a Fourth Amended Statement of Defence and Counterclaim, and for leave pursuant to Rule 285 of the *FCR* to adduce at trial the Affidavit of Michele Marzola, do not have corresponding Court decisions awarding costs for these motions nor has BC Hydro provided evidence that the Plaintiff consented to pay the costs for these motions, therefore I have determined that the costs claimed for these motions must be disallowed.

[27] With regards to BC Hydro's Rule 403 motion for directions to be given the Assessment Officer respecting the assessment of BC Hydro's costs, further to my review of the parties' submissions in conjunction with the court record, I have determined that it is reasonable to allow 9 units for first counsel's services and 4.5 units for second counsel's services for Item 5, for a total of 13.5 units, which is a total dollar amount of \$2,268.00, inclusive of taxes.

[28] Lastly, with regards to the taxes, the Court's Order dated May 8, 2018, awarded costs of \$1,200.00, inclusive of disbursements and taxes (*emphasis added*) and it is unclear from the costs documents filed if the consented to amount of \$6,606.68 for the bifurcation motion includes any taxes, as a result these two amounts will be excluded from my tax calculation for Item 5. Therefore, the total dollar amount allowed for BC Hydro's claims submitted under Item 5 is \$10,074.68, inclusive of taxes.

D. *Item 7 – Discovery of documents, including listing, affidavit and inspection; Item 8 – Preparation for an examination, including examinations for discovery, on affidavits, and in aid of execution; and Item 9 – Attending on examinations, per hour.*

[29] BC Hydro has submitted multiple claims under Items 7, 8 and 9 in relation to the discovery of documents, and the preparation for, and attendance at examinations for discovery. At paragraphs 23 and 24 of BC Hydro's Written Representations, it is submitted that BC Hydro "is only claiming one set of costs for the listing, affidavit and inspection (as the case may be) with respect to each of the three parties' documents" and that the oral discoveries took approximately 6 days in total. In response, at paragraphs 13 and 14 of the Plaintiff's Written Representations it is submitted that no costs should be assessed for BC Hydro's claims for the discovery of documents and oral discovery in relation to the co-Defendant, Awesense Wireless Inc., "[a]s there were no issues raised between the defendants themselves". In reply, at paragraph 12 of BC Hydro's Reply Submissions it is submitted that:

12. With respect to paragraphs 13 and 14 of dTechs' submissions, while the Defendants did not raise issues against one another, dTechs did raise the issue of infringement by common design, and alleged that the Defendants acted together to infringe dTechs' now-invalid patent. dTechs' accusation required that the Defendants inspect each other's productions of documents and attend oral discovery of

each Defendant's representative in order to fully and informatively defend against dTechs' infringement claim.

[30] Further to the parties' submissions, Rule 222 of the *FCR* provides the following definition of a document, which is found in the *Discovery and Inspection* section of Part 4 of the *FCR*:

Definition of document

222.(1) In rules 223 to 232 and 295, document includes an audio recording, a video recording, a film, a photograph, a chart, a graph, a map, a plan, a survey and a book of account, as well as data that is recorded or stored on any medium in or by a computer system or other similar device and that can be read or perceived by a person or a computer system or other similar device.

Interpretation

(2) For the purposes of rules 223 to 232 and 295, a document of a party is relevant if the party intends to rely on it or if the document tends to adversely affect the party's case or to support another party's case.

[31] My review of the rules governing the discovery and inspection of documents, found at Rules 222 to 233, and my review of Part 11 of *FCR*, and also my review of Items 7, 8 and 9 contained in Tariff B, did not reveal that a Defendant's claims for the discovery of documents or for oral discovery in relation to the co-Defendant's case are restricted if the Defendants did not raise any issues against one another. My review of the definition found at Rule 222 indicates that a party's interest in another party's documents is not limited to only documents that could adversely affect a party's case but also includes documents that could support a party's case, or could support another party's case. With regards to examinations, in *Enterprise Rent-A-Car Co. v Singer*, [1994] F.C.J. No 1356, the Court ordered that the co-Defendants in that particular case

should be excluded from attending the examination of another co-Defendant, and stated the following at paragraphs 12 and 13 of the decision:

12. I am satisfied that the applicant has met the onus of satisfying me that justice will be better served if the personal defendants are excluded; if not better served, in the least better protected in the circumstances of this case. The possibility of injustice for failure to exclude is more remote and has the potential of being more substantial to the plaintiffs; on the facts I am satisfied that there is sufficient basis for apprehension.

13. As in *Rogers, supra*, the exclusion, as far as one can be practical, will reduce the risk that the evidence of one will have on the other. It should also be emphasized that they are both being represented by the same counsel which also assures a further measure of protection and safeguard. In this particular case "I consider that the ends of justice will be best served by an order for exclusion."

[32] My review of the *Enterprise Rent-A-Car Co.* decision indicates that co-Defendants may attend the examination of a co-Defendant, unless the Court decides otherwise. My review of the court record for this particular file did not reveal that there are any Court decisions excluding the co-Defendants from attending the examinations for discovery of another co-Defendant. In addition, the Court's decisions dated April 22, 2021 and June 23, 2021, did not specify that costs should not be assessed for a co-Defendant's claims related to the discovery of documents or the attendance at an examination for discovery in relation to another co-Defendant. Therefore, in the absence of any jurisprudence from the Plaintiff to support their position, I find that BC Hydro's claims for Items 7, 8 and 9 have been submitted in accordance with the *FCR* and are supported by BC Hydro's costs documentation and the court record. I have reviewed BC Hydro's claims submitted under Items 7, 8 and 9, and in the absence of any specific objections from the Plaintiff for any of the remaining claims that were submitted by BC Hydro, and having considered that BC Hydro is entitled to submit claims for Items 7, 8 and 9 at the high-end of column IV and is

also entitled to claim second counsel fees, I have determined that it is reasonable to allow BC Hydro's claims for Items 7, 8 and 9, as they have been submitted.

[33] Concerning the quantum of costs for BC Hydro's claims submitted under Items 7, 8 and 9, the Item allowances are as follows: for Item 7, 27 units are allowed for first counsel's services, which is a total dollar amount of \$4,536.00, inclusive of taxes, and 13.5 units are allowed for second counsel's services, which is a total dollar amount of \$2,268.00, inclusive of taxes. For Item 8, 56 units are allowed for first counsel's services, which is a total dollar amount of \$9,408.00, inclusive of taxes, and 24 units are allowed for second counsel's services, which is a total dollar amount of \$4,032.00, inclusive of taxes. For Item 9, 150 units are allowed for first counsel's services, which is a total dollar amount of \$25,200.00, inclusive of taxes, and 72.2 units are allowed for second counsel's services, which is a total dollar amount of \$12,129.60, inclusive of taxes.

[34] The total dollar amount allowed for BC Hydro's claims submitted under Items 7, 8 and 9 is \$57,573.60, inclusive of taxes.

E. *Item 10 – Preparation for conference, including memorandum; Item 11 – Attendance at conference, per hour.*

[35] BC Hydro has submitted multiple claims under Items 10 and 11 in relation to the preparation for, and the attendance at case management, pre-trial, and trial management conferences. At paragraph 15 of the Plaintiff's Written Representations it is submitted that BC Hydro's claims, "for costs for preparation is double that for the attendances" and that

“preparation costs ought not to exceed attendance costs.” At paragraphs 13 and 14 of BC Hydro’s Reply Submissions it is submitted that:

13. With respect to paragraph 15, dTechs provides no legal or factual support for its bald assertion that preparation costs for court conferences ought not to exceed attendance costs.

14. While attendance costs are to compensate for the time spent attending the conferences, preparation costs are to compensate for the time spent preparing. Preparation time very often exceeds attendance time (e.g., preparing for trial of this action took years (from 2017 to 2020), whereas the actual trial only took days (10 days of hearing between November 16 and December 4, 2020)).

[36] Further to my review of the parties’ submissions, I am in agreement with BC Hydro that the Plaintiff did not provide any legal or factual support for the argument that the preparation costs should not exceed the attendance costs that have been claimed under Items 10 and 11. I did a review of the costs jurisprudence and I did not find any decisions that made the correlation that preparation costs should not exceed the attendance costs as a general guideline. Further to my review of the Court’s Order and Reasons dated April 22, 2021, I find that BC Hydro’s claims for Item 10 were submitted in accordance with the Court’s decision and the *FCR*. There may be some nuances as to whether or not an individual claim made under Item 10 should have been claimed at 7 or 8 units, but the Plaintiff did not provide any submissions regarding any individual claims being particularly excessive in the number of units claimed. Utilizing the *Dahl* and *Carlile* decisions (supra) as guidelines, I have reviewed BC Hydro’s Bill of Costs in conjunction with the court record and the *FCR* to ensure that any costs that are allowed were necessary and are reasonable and I have confirmed that all of the claims submitted under Items 10 and 11, with the exception of the CMC held on May 8, 2018, have met these requirements.

[37] Concerning BC Hydro's claims for Items 10 and 11 for the CMC held on May 8, 2018, the court record shows that the Court Registrar documented the hearing as only having one counsel present for BC Hydro in the court registry's electronic database. The Court Registrar, who was present for the hearing, also attended other hearings for this file and documented other hearings as having either one counsel or multiple counsel in attendance for BC Hydro, therefore this entry does not appear to have a clerical oversight. In addition, I reviewed the Affidavit of Susan Burkhardt, sworn on August 27, 2021, and at Exhibit "A", the invoice dated June 19, 2018, does not explicitly state that multiple counsel were present for the CMC held on May 8, 2018. Therefore, further to my review of the court record and BC Hydro's costs documentation, I have determined that it is reasonable to allow the first and second counsel fees for Item 10 for the preparation for CMC held on May 8, 2018, and that it is reasonable to only allow first counsel fees for Item 11, for the attendance at this CMC.

[38] Concerning the quantum of costs for BC Hydro's claims submitted under Items 10 and 11, further to the Court's Order and Reasons dated April 22, 2021, there are 2 claims under each Item that fall within the timeframe for the doubling of costs. Specifically, the Item allowances are as follows: for Item 10, 64 units are allowed for first counsel's services, with 8 units being doubled, for a total of 72 units, which is a total dollar amount of \$12,096.00, inclusive of taxes. Also for Item 10, 32 units are allowed for second counsel's services, with 4 units being doubled, for a total of 36 units, which is a total dollar amount of \$6,048.00, inclusive of taxes. For Item 11, 33.2 units are allowed for first counsel's services, with 4 units being doubled, for a total of 37.2 units, which is a total dollar amount of \$6,249.60, inclusive of taxes. Also for Item 11, 15.6

units are allowed for second counsel's services, with 2 units being doubled, for a total of 17.6 units, which is a total dollar amount of \$2,956.80, inclusive of taxes.

[39] The total dollar amount allowed for BC Hydro's claims submitted under Items 10 and 11 is \$27,350.40, inclusive of taxes.

F. *Item 13 – Counsel fee: (a) preparation for trial or hearing, whether or not the trial or hearing proceeds, including correspondence, preparation of witnesses, issuance of subpoenas and other services not otherwise particularized in this Tariff; and; (b) preparation for trial or hearing, per day in Court after the first day.*

[40] BC Hydro has submitted multiple claims under Items 13(a) and 13(b) in relation to the initial preparation for the trial, which was scheduled to begin on November 16, 2020, for 10 days, and also for the daily preparation for the trial after the first day of the trial had commenced. At paragraphs 26 to 31 of BC Hydro's Written Representations it is submitted that a significant amount of work was required to prepare for the trial due to the complexity and importance of the matter to BC Hydro, with at least 2 counsel assisting with all of the services claimed under Item 13(a). In response, at paragraphs 16 and 17 of the Plaintiff's Written Representations the following is submitted:

16. Item 13(a) can only be awarded once, and not 19 times: *Hughes* p. 5, citing *Halford v Seed Hawk Inc*, 2006 FC 422 at para 130.

17. Moreover, item 13 is only for correspondence, preparation of witnesses, preparation of subpoenas, and other matters not provided for in the Tariff.

[41] In reply, at paragraphs 13 and 14 of BC Hydro's Reply Submissions it is submitted that:

15. With respect to paragraph 16, contrary to dTechs' assertion, *Halford* does not stand for the proposition that item 13(a) can only

be awarded once. Rather, *Halford* provides that if trial is divided into two portions, item 13(a) cannot be claimed a second time for the second portion of that trial.

16. BC Hydro properly claims each of the services under item 13(a) because item 13(a) expressly provides recovery for, as dTechs acknowledges at paragraph 17 of its submissions, services for preparation for trial including:

- a) correspondence;
- b) preparation of witnesses;
- c) issuance of subpoenas; and
- d) other services not otherwise particularized in this Tariff.

17. BC Hydro's item 13(a) claims are supported by evidence, and reflect the complexity of the proceeding and the amount of work required to prepare for a ten-day trial.

[42] Further to my review of the parties' submissions, I am in agreement with BC Hydro that the *Halford* decision makes a distinction that a trial that has been split into separate parts with non-consecutive dates, does not entitle a party to make multiple claims for Item 13(a) for the beginning of each separated part of the trial. Once the trial has begun, any subsequent claims for the preparation for a hearing day are made under Item 13(b). My review of Item 13(a) in Tariff B does not appear to limit any claims submitted to one singular claim for a party's preparation for the beginning of a trial. I find it reasonable that depending on the facts for a particular trial or hearing, such as the type of proceeding, the number of issues to be argued, the complexity of the proceeding, how voluminous the documentation is, and the number of days of the hearing, that these factors may support multiple claims being submitted under Item 13(a), depending on the submissions and evidence provided by a party and an Assessment Officer's review of the court record. In addition, I do not agree with the Plaintiff's argument that "item 13 is only (*emphasis*

added) for correspondence, preparation of witnesses, preparation of subpoenas, and other matters not provided for in the Tariff.” The description for Item 13 found at Tariff B of the *FCR*, does not include the word only and states the following:

Item 13. Counsel fee:

(a) preparation for trial or hearing, whether or not the trial or hearing proceeds, including correspondence, preparation of witnesses, issuance of subpoenas and other services not otherwise particularized in this Tariff; and; (b) preparation for trial or hearing, per day in Court after the first day.

[43] I find that the description of Item 13 includes some examples of the types of services that could be claimed under Item 13 but it is not a closed list of services that can be performed for the preparation for a trial or hearing. I have reviewed BC Hydro’s Bill of Costs in conjunction with the court record, including the Court’s decisions dated May 8, 2018, and April 22, 2021, the *Halford* decision, and the *FCR*, to assess the costs of BC Hydro submitted under Items 13(a) and 13(b) to ensure that they were necessary and reasonable, and further to the non-exhaustive list of factors that I included in paragraph 42, I have found that these factors have been sufficiently met and that all of the claims can be allowed as they have been submitted by BC Hydro in the Bill of Costs. In my assessment of these claims, I reviewed the factors in awarding costs that are listed under Rule 400(3) of the *FCR*, and when I considered factors such as; (a) the result of the proceeding; (c) the importance and complexity of issues; and (g) the amount of work performed by BC Hydro; the court record reflects that BC Hydro was a successful party in the action proceeding and was awarded costs at the high-end of Column IV of Tariff B of the *FCR*; that the issues argued were of significant importance and of moderate to high complexity; and that a substantial amount of work was done by BC Hydro, including the bifurcation of the quantification and liability issues per the Court’s Order dated May 8, 2018, and the preparation

for several witnesses that attended the trial. There may be some nuances as to whether or not an individual claim made under Items 13(a) or 13(b) should have been claimed at 8 or 9 units, but the Plaintiff did not provide any specific submissions regarding any individual claims being particularly excessive in the number of units claimed.

[44] Utilizing the *Dahl* and *Carlile* decisions (*supra*) as guidelines, I have reviewed BC Hydro's claims submitted under Items 13(a) and 13(b), and in the absence of any specific objections from the Plaintiff concerning the quantum of costs claimed by BC Hydro for any particular claim, and having considered that BC Hydro is entitled to submit claims for Items 13(a) and 13(b) at the high-end of column IV, and is also entitled to claim second counsel fees, I have determined that it is reasonable to allow BC Hydro's claims for Items 13(a) and 13(b), as they have been submitted.

[45] Concerning the quantum of costs for BC Hydro's claims submitted under Items 13(a) and 13(b), further to the Court's Order and Reasons dated April 22, 2021, there are 24 claims submitted under Item 13(a) that fall within the timeframe for the doubling of costs, and for Item 13(b) both of the claims submitted fall within the timeframe for the doubling of costs.

Specifically, the Item allowances are as follows: for Item 13(a), 171 units are allowed for first counsel's services, with 108 units being doubled, for a total of 279 units, which is a total dollar amount of \$46,872.00, inclusive of taxes. Also for Item 13(a), 85.5 units are allowed for second counsel's services, with 54 units being doubled, for a total of 139.5 units, which is a total dollar amount of \$23,436.00, inclusive of taxes. For Item 13(b), 54 units are allowed for first counsel's services. All of these units are doubled for a total of 108 units, which is a total dollar amount of

\$18,144.00, inclusive of taxes. Also for Item 13(b), 27 units are allowed for second counsel's services. All of these units are doubled for a total of 54 units, which is a total dollar amount of \$9,072.00, inclusive of taxes.

[46] The total dollar amount allowed for BC Hydro's claims submitted under Items 13(a) and 13(b) is \$97,524.00, inclusive of taxes.

G. *The cumulative total for BC Hydro's assessable services.*

[47] The cumulative dollar amount for BC Hydro's claims for assessable services that have been allowed is \$351,114.68, inclusive of taxes.

III. Disbursements

[48] BC Hydro has claimed \$206,122.57 for disbursements, inclusive of taxes.

A. *Testifying Expert Witness.*

[49] BC Hydro has claimed \$143,469.46 for the expert services of J.B. Shepherd & Company, Inc. (hereafter Mr. Shepherd). At paragraphs 50 to 53 of BC Hydro's Written Representations it is submitted that BC Hydro's requisitioning of the expert services of Mr. Shepherd was necessary as "[t]he issues at play in this case were technical in nature and a technical expert was therefore required to assist and familiarize the Court with the relevant technology." BC Hydro submitted that retaining the services of Mr. Shepherd was reasonable and necessary and is

consistent with the Assessment Officer's decision in *Canada v Meyer*, [1988] F.C.J. No. 482, and also noted that all three parties had their own technical expert.

[50] In response, at paragraphs 18 to 24 of the Plaintiff's Written Representations it is submitted that "[e]xpert fees are to be limited to the time spent in reviewing the patent and relevant scientific literature, reviewing the opposite party's experts writing, and preparing for and attending their own examinations" and cited the decision *GlaxoSmithKline Inc. v Pharmascience Inc.*, 2008 FC 849. The Plaintiff also cited the decisions *Merck & Co. v Apotex Inc.*, 2007 FC 1035 and *Abbott Laboratories v Canada (Minister of Health)*, 2008 FC 693, (*Abbott #2*), regarding the benchmarking of expert disbursements. In addition, the Plaintiff cited *AlliedSignal Inc. v DuPont Canada Inc.*, [1998] F.C.J. No. 625, which provides a test for expert services, wherein "[t]he hiring of an expert must be prudent and reasonable, must not constitute a blank cheque for an award, and consideration must be given to the reliance placed on the expert's testimony by the trial judge". The Plaintiff has submitted that no evidence has been provided by BC Hydro for the services performed by Mr. Shepherd other than invoices. It was also submitted that the time spent by Mr. Shepherd as an observer was not reasonably necessary and that Mr. Shepherd's fees were considerably higher than Awesense Wireless Inc.'s expert fees, and that the fees exceed the trial costs for BC Hydro's counsel.

[51] In reply, at paragraphs 18 to 21 of BC Hydro's Reply Submissions it is submitted that "Mr. Shepherd's role was to assist the Court by providing an opinion on the validity of dTechs' patent, based on dTechs' inventor's testimony and the testimonies of BC Hydro's fact witnesses who spoke about the prior art that Mr. Shepherd relied upon, as well as in response to dTechs'

expert's opinion." BC Hydro submitted that Awesense Wireless Inc. relied on Mr. Shepherd's invalidity expert evidence, and had its expert, Mr. Bennett, focus on the infringement allegations directed toward Awesense Wireless Inc., therefore a fee comparison between the two experts is not appropriate in this particular instance. BC Hydro also cited the decisions, *Bauer Hockey Ltd. v Sport Maska Inc.*, 2020 FC 862; *Guest Tek Interactive Ltd. v Nomadix, Inc.*, 2021 FC 848; *Swist v MEG Energy Corp.*, 2021 FC 198; and *Camso Inc. v Soucy International Inc.*, 2019 FC 816, which discuss the issues surrounding expert services and the reasonableness and quantum of those costs, some of which were considerably higher than BC Hydro's expert costs.

[52] Further to the parties' submissions, at paragraphs 84 and 89, of the Court's Judgment and Reasons dated March 16, 2021, the following was stated with regards to the expert witnesses for this file:

84. The parties acknowledged the expertise of the expert witnesses who were called to testify in these proceedings, reserving any questions they might have regarding the quality of their evidence for cross-examination and argument.

[...]

89. Some of the criticisms made by the parties respecting the qualifications or approaches of the expert witnesses who testified in these proceedings are valid. However, none of them is sufficient to undermine any of the witnesses' evidence in its entirety. My reasons for preferring some witnesses' evidence over others are explained below.

[53] Also at paragraphs 33, 34, 35, 39 and 40 of the Court's Order and Reasons dated April 22, 2021, it states the following with regards to costs for this file:

33. Both BC Hydro and Awesense were wholly successful in their defences of the actions and the prosecutions of their counterclaims. Both Defendants are entitled to costs.

34. While being of limited public importance, the issues and their complexity justified both Defendants in expending commensurate resources to defend their respective interests.

35. BC Hydro cites a number of cases where this Court awarded costs at the high end of Column V in complex patent litigation. However, at its essence this case was less complex than many intellectual property disputes. Much of the complexity of this proceeding resulted from the myriad issues raised by BC Hydro in its defence and counterclaim. Awesense benefited from BC Hydro's comprehensive approach to the litigation, adopting BC Hydro's positions or proffering its own, depending on what it considered to be most advantageous.

[...]

39. dTechs has not challenged the draft Bills of Costs submitted by BC Hydro and Awesense, except with respect to the applicable column of Tariff B. dTechs also asks that Awesense's costs award be restricted to the unique points of its defence.

40. BC Hydro's and Awesense's positions aligned in many respects, but there was a clear potential for conflict of interest. I do not fault Awesense for pursuing its defence and counterclaim independently. Furthermore, dTechs' claim against Awesense was always dubious (see dTechs at paras 177-179). dTechs did not abandon its allegation of direct infringement by Awesense until trial.

[54] I have reviewed the parties' submissions in conjunction with the court record and I find that the facts pertaining to this particular file support the allowance of costs for BC Hydro's expert witness disbursements. My review of the Court's decisions dated March 16, 2021, April 22, 2021, and June 23, 2021, did not reveal that there were any issues with the admissibility or usefulness of the expert evidence of Mr. Shepherd nor with the associated costs. At paragraphs 84 and 89 of the Court's Judgment and Reasons dated March 16, 2021, it is stated by the Court that the parties acknowledged the expertise of the expert witnesses and that the criticisms raised by the parties regarding the qualifications or approaches of the expert witnesses was not sufficient enough to undermine any of the witnesses' evidence in its entirety. The Court did

indicate a preference for “some witnesses’ evidence over others” but the Court did not conclude that any of the experts’ evidence should be considered partially or totally inadmissible for consideration by the Court.

[55] My review of the Court’s Order and Reasons dated April 22, 2021, which is related to the Court’s Judgment and Reasons dated March 16, 2021, and deals with the costs portion of the Court’s final decision, states at paragraph 39 that the Plaintiff did not challenge BC Hydro’s Bill of Costs, except for the applicable column of Tariff B to apply in calculating costs. My review of BC Hydro’s draft Bill of Costs that was submitted as part of BC Hydro’s costs documents for the Court’s consideration shows that the costs related to the expert services of Mr. Shepherd were included in the draft Bill of Costs. The Court’s Order and Reasons dated April 22, 2021, states at paragraphs 33 and 34, that the Defendants “were wholly successful in their defences of the actions and the prosecutions of their counterclaims” and that although the proceeding had “limited public importance, the issues and their complexity justified both Defendants in expending commensurate resources to defend their respective interests.” The Court also stated that “this case was less complex than many intellectual property disputes” and that much of the complexity was created by BC Hydro in its defence and counterclaim.

[56] Further to the aforementioned facts related to the Court’s Order and Reasons dated April 22, 2021, it is acknowledged that the Plaintiff submitted at paragraph 41 of the Plaintiff’s Response to Defendants’ Costs Submission filed on March 31, 2021, that “[s]hould a costs award be made against dTechs, the matter of costs should be directed to an assessment officer including with respect to payments to experts so that it may respond fully.” I will respectfully state though,

that the Plaintiff's issues regarding the expert services requisitioned by BC Hydro could have been raised with the Court, as there was the opportunity to do so. The presiding Court had first hand knowledge of all of the issues pertaining to this file, including the factors listed in the *AlliedSignal Inc.* decision (supra), pertaining to the services of experts, which was cited by the Plaintiff.

[57] My review of the Court's Order dated June 23, 2021, which is related to BC Hydro's Rule 403 motion for directions to be given to the Assessment Officer respecting costs, found that the only mention of the expert witnesses in the decision was to itemize that there were three experts and multiple expert reports filed for this particular file. There is no mention in the decision that the quantum of costs for any of the experts' services was a contentious issue between the parties. In addition, my review of the court record did not show that the Plaintiff raised the issue of the experts' services in its responding letter dated June 11, 2021, nor did the court record show that the Plaintiff filed its own Rule 403 motion for directions to be given to the Assessment Officer respecting to costs.

[58] Further to my review of all of the aforementioned Court decisions related to expert services and also for the costs awarded for this file, they did not reveal that the Court had raised any concerns regarding the admissibility or the usefulness of the expert services of Mr. Shepherd. As noted earlier in these Reasons, the Court did state that it had a preference for some of the experts, for which it appears that Mr. Shepherd was not one of the preferred experts, but the Court did not determine that the expert services of Mr. Shepherd were partially or totally inadmissible. The Court did point out that BC Hydro's defence and counterclaim did add

additional complexity to the court proceeding but the Court also stated that “the issues and their complexity justified both Defendants in expending commensurate resources to defend their respective interests.” With regards to the quantum of costs to be allowed, I have considered the three factors listed in the *AlliedSignal Inc.* decision, and I have found that the Court’s determination that the Defendants were justified in expending commensurate resources and the Court’s comparative review of all of the experts’ evidence to determine the preferred witnesses’ evidence, for which none of the evidence was found to be inadmissible or not useful, positively affirms the first and third factors contained in the *AlliedSignal Inc.* decision.

[59] With regards to the second factor in the *AlliedSignal Inc.* decision that the cost of an expert “must not constitute a blank cheque”, I have reviewed the decisions cited by the parties and have found that the underlying premise with these decisions was regarding the reasonableness of the disbursements for the experts, as it pertains to the facts for a particular file. From the decisions submitted by the parties, I found the following passage from *Bauer Hockey Ltd. v Sport Maska Inc. (c.o.b. CCM Hockey)*, [2020] FCJ No 881, at paragraphs 55 and 56, which was submitted by BC Hydro, to be of particular relevance as it was recently rendered by the Court in an intellectual property case:

55. Bauer also contends that CCM's experts' fees should be reduced on account of "errors" contained in their reports. A distinction should be drawn, however, between disagreement and error. The purpose of a costs award is not to dissect the positions advanced by the parties at trial and assess their correctness. In *Seedlings*, at paragraph 31, I suggested that expert fees should be discounted only when it was unreasonable or excessive for a party to rely on the testimony of an expert. The rejection of an aspect of an expert's testimony, in the judgment on the merits, does not rise to this high threshold. In this case, the financial experts disagreed on a wide range of subjects. Given the view I took of the case, I did not find it necessary nor useful to make findings

regarding their evidence in my judgment on the merits. At this stage of the proceedings, I will confine myself to saying that the financial experts legitimately disagreed with each other, but there was nothing in the substance of their evidence that warrants a reduction in their fees.

56. I agree with Bauer, however, that the portion of an expert's fees related to attendance to portions of the trial unrelated to his evidence and attendance of a colleague at trial should be disallowed. Accordingly, I am deducting \$15,000.

[60] In addition to the *Bauer Hockey Ltd.* decision, in *Abbott #1* (supra), at paragraphs 48 and 49, the Assessment Officer stated the following regarding expert fees:

48. Several factors are found in the jurisprudence and have been put before me to help assess experts' fees. These different manners all seem to provide formulas, the application of which would effectively equalize experts' fees. Considering the different mandates for which experts are called before the Federal Courts and with no specific directions from the Court in this case, I find it difficult to benchmark the hours billed or the rates per hour charged by the experts called to testify. Each expert has an explicit mandate which calls for specific qualifications. In taking the approach of comparing one with the other, we lose sight of the different circumstances of each file.

49. The approach consisting of not paying experts a higher rate than the senior counsel on file is quite tempting but considering the variation in legal fees across the country, it may be seen as disproportionately benefiting parties represented by counsel in larger municipalities and it should be applied with careful consideration. Also, I have reviewed the decision of the Court in *Bristol-Myers Squibb Canada Co. v. Apotex Inc.* (2009 FC 137) as submitted by counsel for the applicants subsequent to the hearing. I recognize that fees allowed for one particular expert should not be disproportionately large when compared to the fees charged by another expert. However, in my view and in the circumstances of this case, there is no need to determine whether one of these approaches should be adopted.

[61] Utilizing the *Bauer Hockey Ltd.* and the *Abbott #1* decisions as guidelines, I find that the quantum of costs for the expert services of Mr. Shepherd to be reasonable as it pertains to the

facts for this particular file. As I noted earlier in these Reasons, the Court did not conclude that any of the experts' evidence should be considered partially or totally inadmissible. In addition, at paragraph 35 of the Court's Order and Reasons dated April 22, 2021, it states that "Awesense benefited from BC Hydro's comprehensive approach to the litigation, adopting BC Hydro's positions or proffering its own, depending on what it considered to be most advantageous."

Further to the Court's statement, at paragraph 20 of BC Hydro's Reply Submissions, the following was stated about BC Hydro's expert services:

20. Having recognized at paragraph 4 of dTechs' submissions that Awesense benefitted from BC Hydro's comprehensive approach to this litigation, dTechs nonetheless argues at paragraph 24 that BC Hydro's expert fees cannot reasonably exceed those of Awesense. In fact, as Awesense puts it, "Awesense relied upon BC Hydro's invalidity expert evidence and focused Mr. Bennett's attention on dTechs' infringement allegations directed at Awesense specifically". As such and based on dTechs' submissions at paragraph 4, Awesense's expert fees are clearly not the appropriate comparison in this case. Rather, an appropriate comparison may have been to dTechs' expert fees, but dTechs chose not to disclose those, thus making a comparison of expert fees impossible and dTechs' submissions meaningless.

[62] Consistent with Court's statement contained in the Order and Reasons dated April 22, 2021, BC Hydro's submissions confirms that Awesense Wireless Inc. was able to benefit from the use of BC Hydro's expert services, which reduced the overall costs for the hearing, as the Defendants shared their resources. I find this to be a cost effective approach to the Defendants' litigation of this matter. I have reviewed Mr. Shepherd's invoices found at Exhibit "G" of the Affidavit of Susan Burkhardt, sworn on August 27, 2021, and I found the invoices to be satisfactorily itemized and consistent with the court record and BC Hydro's costs documentation. It is also noted that the invoices are in United States currency, which contributed to the increased costs for the expert services once a Canadian currency exchange was performed.

[63] With regards to Mr. Shepherd's invoicing related to observing the trial, I found that BC Hydro's explanation found at paragraph 19 of BC Hydro's Reply Submissions, is not inconsistent with paragraph 56 of the *Bauer Hockey Ltd.* decision. Paragraph 19 states the following:

19. Mr. Shepherd's role was to assist the Court by providing an opinion on the validity of dTechs patent, based on dTechs' inventor's testimony and the testimonies of BC Hydro's fact witnesses who spoke about the prior art that Mr. Shepherd relied upon, as well as in response to dTechs' expert's opinion. In addition, Mr. Shepherd provided an opinion on whether BC Hydro infringed dTechs' patent, based on testimonies from BC Hydro's witnesses. As such, Mr. Shepherd's attendance at trial as an observer for the first 7 days were not only necessary and reasonable, but also indispensable for BC Hydro's success in this action.

[64] The Court made the determination in *Bauer Hockey Ltd.* that the fees unrelated to the expert's evidence should be disallowed, which was based on the facts that pertained to that particular file. Utilizing the *Abbott #1* decision as a guideline, I concur with the passage found at paragraph 48 that "[e]ach expert has an explicit mandate which calls for specific qualifications. In taking the approach of comparing one with the other, we lose sight of the different circumstances of each file." Having considered BC Hydro's submissions, I do find it reasonable that Mr. Shepherd provided technical advice to BC Hydro throughout the trial with regards to the parties' witnesses and that the expert's attendance for additional days was a shrewd decision of counsel for this particular file, as is reflected in BC Hydro being the successful party for this action proceeding and is also supported by the Court's statement contained in the decision dated April 22, 2021, that "the issues and their complexity justified both Defendants in expending commensurate resources to defend their respective interests."

[65] With regards to the Plaintiff's submissions that there is no evidence to assess Mr. Shepherd's fees, my review of the court record shows that expert reports were exchanged between the parties, including the work performed by Mr. Shepherd, and the court record also shows that Mr. Shepherd was a witness at the trial. The Plaintiff did not specifically identify what additional evidence should have been provided by BC Hydro nor was any jurisprudence provided to assist in identifying what additional evidence should have been provided. Further to my review of the aforementioned facts pertaining to the expert services of Mr. Shepherd, I find that the second factor in the *AlliedSignal Inc.* decision has been sufficiently met by BC Hydro.

[66] Therefore, having considered all of the aforementioned facts pertaining to the expert services of Mr. Shepherd, in conjunction with the court record, the related jurisprudence and the *FCR*, I have determined that BC Hydro's claims for the expert services of Mr. Shepherd were necessary and are reasonable, and can be allowed as they have been claimed in the Bill of Costs, for a total dollar amount of \$143,469.46, which is inclusive of any taxes paid.

B. *Travel Expenses.*

[67] BC Hydro has claimed \$28,831.29 for travel disbursements, which includes expenses for ground and air transportation, accommodations and meals. At paragraphs 54 and 55 of BC Hydro's Written Representations it is submitted that:

54. BC Hydro incurred \$28,831.29 in travel expenses for counsel in connection with this matter. These disbursements include travel (including airfare and ground transportation) for: (i) a first examination for discovery of the Plaintiff's representative (travel of first counsel and second counsel from Ottawa to Calgary to conduct the multi-day examination); (ii) an examination for discovery of BC Hydro's representative (travel of first counsel

from Ottawa to Vancouver to defend the multi-day examination); (iii) a second examination for discovery of the Plaintiff's representative (travel of first counsel and second counsel from Ottawa to Calgary to conduct the examination); and (iv) trial (travel of three counsel from Ottawa to Vancouver for two weeks of trial). These disbursements include expenses for accommodations for traveling counsel, and meals for counsel during each of these trips.

55. Each member of the BC Hydro trial team handled a wide number of duties throughout trial, and each member of the trial team was essential for full presentation of BC Hydro's case.

[68] At paragraphs 25 to 27 of the Plaintiff's Written Representations it is submitted that:

25. As noted in Hughes' Cases Relating to Specific Tariff Items and Disbursements:

- a. Travel should be recovered at a modest level, and no alcohol or entertainment expenses are allowed;
- b. Taxi fares are office expenses and are not recoverable;
- c. Hotel charges such as telephone and laundry are not allowed as taxation is only a partial indemnity of expenses;
- d. Meals are not allowed where the hearing took place in the same city as counsel's office;
- e. Meal expenses can be reduced where the evidence did not disclose who was present and alcohol beverages were included.

26. Review of the invoices for travel expenses show:

- a. Hotel charges from \$197 to \$429 – both for Fairmont Hotels, but the first being the Hotel Vancouver and the second the Pacific Rim. Both are relatively lavish, and the latter's reasonableness is belied by the former;
- b. Flight change charges, which are not appropriate for indemnification;

c. Transportation to and from one's home to the airport, and cabs to and from the office on the weekend, or cabs to the office early for trial are not matters to dTech's account;

d. Meals for client meetings, which are not appropriate; and

e. Meal charges and catering, which need be limited to those for lawyers actually travelling.

27. Rough justice should not obviate the need for evidence.

[69] In reply, at paragraphs 22 to 27 of BC Hydro's Reply Submissions it is submitted that the Court found that BC Hydro's travel expenses were reasonably necessary for this case and referred to subparagraphs (e) to (g) found on pages 2 and 3 of the Court's Order dated June 23, 2021. It is submitted that BC Hydro's hotel expenses are based on the market rate at the time of travel and noted that the hotel rate in July 2019, which was prior to the Covid-19 pandemic, is quite different than the hotel rate in November 2020, which was during the Covid-19 pandemic. It is submitted that BC Hydro's transportation expenses were reasonable and necessary and that the flight change charges related to the trial were necessary due to the Plaintiff's request for the trial to be extended. With regards to meals, BC Hydro submitted that the "meals for counsel and witnesses while preparing for examinations at trial were also reasonable and necessary" and that reimbursable meals are not only limited to counsel that have travelled but can also include local counsel heavily engaged in a trial.

[70] Further to my review of the parties' costs documents, I have found the majority of BC Hydro's travel expenses to be necessary and reasonable, that they correspond with the dates for cross-examinations and court hearings on the court record, and also align satisfactorily with the evidence requirements for disbursements found at section 1(4) of Tariff B of the *FCR*, the federal

government's approved travel rates for government business, and any relevant jurisprudence.

This being noted, the Plaintiff has highlighted a variety of issues with some of the Defendant's travel related claims and as a result, these claims will be individually reviewed below.

(1) Accommodation

[71] Further to my review of BC Hydro's claims for accommodation, there is one claim that requires a more in-depth review. The Plaintiff has raised the issue of the variances in room prices between two different Fairmont Hotel locations in Vancouver, questioning the reasonableness of the more expensive priced room. I have reviewed the claims made for the accommodations at the Fairmont Hotel locations and I find BC Hydro's explanation regarding the market prices for lodging to be reasonable. The most expensive room accommodation was made in July 2019, which was prior to the Covid-19 pandemic and was during the summer tourist season. This booking is the only exception of the accommodation claims submitted that has a higher than average room rate. I have determined that considering the time of year of the hotel booking and also that the booking was prior to the Covid-19 pandemic, that it does not demonstrate a pattern of BC Hydro booking lavish accommodations and that it is reasonable to allow this claim as it has been submitted. As I noted earlier, I did not find any other claims for accommodation that required my intervention, therefore all of the accommodation expenses are allowed as claimed for a total amount of \$14,892.68, inclusive of taxes.

(2) Airfare

[72] Further to my review of BC Hydro's claims for airfare, I did not find any claims that required my intervention. I have considered the Plaintiff's submissions regarding the change of flight fees associated with BC Hydro's airfare reservations at the end of November 2020, and my review of pages 77 and 78 of the transcript for the trial held on November 26, 2020, found at Exhibit "A" of the Affidavit of Chirani Mudunkotuwa, sworn on February 22, 2022, shows that the Court delayed the resumption of the trial to provide the Plaintiff with additional time to file written arguments. I therefore find that BC Hydro's counsels' change of flight fees to be reasonable, due to the change of the trial schedule. As I noted earlier, I did not find that any of BC Hydro's airfare claims required my intervention. There were no claims for airfare that were not supported by the court record or for which the expenses appeared to be lavish in nature, therefore all of the airfare expenses are allowed as claimed for a total amount of \$8,196.02, inclusive of taxes.

(3) Ground Transportation

[73] Further to my review of BC Hydro's claims for ground transportation, I did find a few claims that required my intervention. I am in agreement with the Plaintiff that travel for local counsel to and from their home office is not a reasonable expense but travel to and from the airport is an acceptable expense and is in line with the federal government's approved travel rates for government business and the decision *Novopharm Ltd. v Eli Lilly and Co.*, 2010 FC 1154, at paragraph 9. It is only in rare circumstances that travel would be permissible for local counsel, such as a hearing being extended for several hours after the scheduled end time for a

particular day. I have reviewed the court record and found that these travel expenses were not connected with an extended hearing duration, and as a result, these taxi claims are disallowed. The specific travel claims that are disallowed in full are invoice 4390456812172206 for the dates November 22, 24 and 26, 2020, and invoice 4388073512221300 for the date December 4, 2020. Aside from these claims, I did not find that any of BC Hydro's remaining claims for ground transportation required my intervention. There were no claims for ground transportation that were not supported by the court record or for which the expenses appeared to be lavish in nature, therefore the remaining ground transportation expenses are allowed for a total amount of \$517.71, inclusive of taxes.

(4) Meals

[74] Further to my review of BC Hydro's claims for meals, there are multiple claims that require a more in-depth review. With regards to the purchase of alcohol, I am in agreement with the Plaintiff that the reimbursement of alcohol is not a reasonable meal expense and that these purchases should have been subtracted from the meal invoices. The purchase of alcohol instead of a non-alcoholic beverage was a personal choice made by BC Hydro's counsel and is not an essential component of a meal being claimed for reimbursement. Therefore, for invoice 3380644106072104, \$19.44 is subtracted from the meal expense dated May 27, 2019, \$31.50 is subtracted from the meal expense dated May 28, 2019, and \$16.85 is subtracted from the meal expense dated May 29, 2019.

[75] Concerning BC Hydro's claims for meals for client meetings, I am in agreement with the Plaintiff that meal expenses should be limited to travel only. It is only in rare circumstances that

meals would be permissible for local matters, such as a hearing being extended for several hours after the scheduled end time for a particular day. I have reviewed the court record and found that these meal expenses were not connected with a specific out-of-town hearing, nor with an extended hearing duration, and as a result, these claims are disallowed. The specific meal claims that are disallowed in full are invoice 33293 for \$70.35 on July 17, 2019, and invoice 76924 for \$60.69 on July 18, 2019.

[76] Concerning invoice 3887040912292203 for the meal purchased on Dec. 17, 2019, the meal appears to be for one person at a cost of \$100.36, which I find to be a lavish amount for one meal. Further to my review of the federal government's approved travel rates for government business, I have reduced the amount for this meal to \$60.00.

[77] There are several claims that have been submitted for the "trial team" but there are limited specifics as to whom these claims pertained to. For the trial held in Vancouver, there were 3 counsel from out-of-town who qualify for meal reimbursement but local counsel do not qualify for meal reimbursement, which is in line with the federal government's approved travel rates for government business and the *Dableh* decision (supra), at paragraph 58. Therefore, the claims for meals for local counsel on November 21 and 27, 2020, submitted under invoice 4390456812172206 are disallowed. For some of the invoices submitted, the "trial team" meals appear to be for up to 8 persons but a complete list of attendees was not provided for these meals. There are some claims for which the name of a witness was included, and I find that these meals can be reimbursed but otherwise I find that the balance of these meal expenses must be

disallowed other than for the 3 counsel from out-of-town. This finding is supported by the jurisprudence, *Hoffman-La Roche Ltd. v Apotex Inc.*, 2013 FC 1265, at paragraph 55.

[78] Concerning the following meal invoices for the trial held in Vancouver, due to the lack of specificity in providing a complete list of names for whom the meals were for, they have been reduced to allow for the reimbursement of the meals for the 3 out-of-town counsel only. The invoices are: 4347807012151304 for the dates November 13, 14, 15, 17, 19, 20, 2020; 4351194811182208 for the date November 16, 2020; 17716 for the date November 17, 2020; 17733 for the date November 18, 2020; 17734 for the date November 19, 2020; 4354331512021309 for the date November 20, 2020; 4381609912152202 for the dates November 21, 23, and 24, 2020; 17852 for the date November 24, 2020 (the Bill of Costs has the incorrect date of December 9, 2020); 4390456812172206 and 17863 for the date November 25, 2020; and 4347807012151304 and 17865 for the date November 26, 2020.

[79] Concerning the following meal invoices for the trial held in Vancouver, due to the lack of specificity in providing a complete list of names for whom the meals were for, they have been reduced to allow for the reimbursement of the meals for the 3 out-of-town counsel and 1 witness. The invoices are: 4347807012151304 for the dates November 16 and 18, 2020; and my review of the invoices numbered 4354331512021309 and 4363292712011302 for November 23, 2020, has revealed that they are both for the same meals, therefore the claim for 4354331512021309 is disallowed.

[80] Concerning the meal invoice 4382081612162206 for the trial closing arguments on December 4, 2020, my review of the court record and BC Hydro's invoices for airfare show that the 3 out-of-town counsel had returned to Ottawa prior to this date. There is a lack of specificity for this particular meal expenditure purchased in Vancouver, as a list of names was not provided. As I noted earlier in the Reasons, it is only in rare circumstances that meals would be permissible for local matters. Without an explanation for this meal expense or a list of names for whom the meals were purchased for, I find that the minimum threshold for me to exercise my discretion under Rule 400(3) of the *FCR* has not been met for this particular expense and as a result, I have determined that it must be disallowed.

[81] Lastly, an invoice for parking was submitted amongst the claims for meals in BC Hydro's Bill of Costs. Invoice 3364572005312103 is for parking at the airport in Ottawa from May 27 to 30, 2019. These dates correspond with the dates for the cross-examinations held in Calgary, Alberta. Therefore, I have determined that it is reasonable to allow the parking expense for \$51.00, although it was itemized in the meals section of BC Hydro's Bill of Costs.

[82] The total amount allowed for the meals and parking disbursements is \$2,973.46, inclusive of taxes.

C. *Court Fees, Court Reporter and Transcripts.*

[83] BC Hydro has claimed \$32,179.95 for court fees, court reporters and transcripts and at paragraph 56 of BC Hydro's Written Representations it is submitted that these disbursements were reasonably incurred. In response, at paragraph 28 of the Plaintiff's Written Representations

it is submitted that BC Hydro chose to purchase trial transcripts and objected to the Plaintiff's use of them and that if payment is required, the transcripts should be made available to the Plaintiff. In reply, at paragraphs 28 and 29 of BC Hydro's Reply Submissions it is submitted that the transcripts of hearing memorialized the evidence for the trial and also for use in any related appeals. In addition, BC Hydro submitted that the Plaintiff had elected to forgo receiving and paying for the transcripts and that BC Hydro made an objection to the Court with regards to the Plaintiff having access to the transcripts.

[84] Further to my review of BC Hydro's claims for court fees, court reporters and transcripts, I did not find any claims that required my intervention, as they are common services requisitioned in intellectual property proceedings, are supported by the court record and are for reasonable amounts. I have considered the Plaintiff's submissions that if payment is required for the transcripts of hearing, that the transcripts should be made available to the Plaintiff, and I do not have the authority as an Assessment Officer to allow this request. The Court's decisions have awarded costs to BC Hydro and not to the Plaintiff. The Plaintiff's payment of costs is to reimburse the successful party (BC Hydro) for its litigation costs, not for the purchasing of items for its use and/or ownership. The Plaintiff had the option to purchase the transcripts of hearing when the underlying action proceeding was active but opted not to do so, and I do not find that the assessment of costs stage for this file is the appropriate avenue to requisition the purchase of transcripts, which could possibly contravene existing court reporting contracts. It is also noted that the Plaintiff did not provide any jurisprudence to support this particular request. Therefore, I have determined that the Plaintiff's request must be disallowed, as it pertains to the facts for this particular file. As I noted earlier, I did not find that any of BC Hydro's claims for court fees,

court reporters or transcripts required my intervention and as a result, they are allowed as claimed for a total amount of \$32,179.96, inclusive of taxes.

D. *Office Expenses and File Administration*

[85] BC Hydro has claimed \$666.15 for office related expenses such as photocopying, phone, conference call, fax charges, courier fees, and research, and at paragraph 56 of BC Hydro's Written Representations it is submitted that these disbursements were reasonably incurred. In response, at paragraph 29 of the Plaintiff's Written Representations it is submitted that all of the claims submitted under office expenses and file administration are overhead and are not compensable. In reply, at paragraph 30 of BC Hydro's Reply Submissions it is submitted that the expenses claimed are directly attributable to this file and that none of the disbursements would have been necessary if the Plaintiff did not initiate the litigation.

[86] Further to my review of BC Hydro's claims for office expenses and file administration, I found that most of the claims, such as external photocopying, faxing and the service of documents, to be common services requisitioned in court proceedings, and are supported by the court record and are for reasonable amounts. This being noted, there are a few claims for internal photocopying, online research and literature that have some issues to look into and as a result, they will be individually reviewed below.

[87] Concerning BC Hydro's claim of \$127.11 for internal photocopying, BC Hydro did not provide any specific submissions and/or evidence regarding the disbursement for these photocopies, such as the number of pages or the documents photocopied. In *Inverhuron &*

District Ratepayers Assn. v Canada, 2001 FCT 410, at paragraphs 60 and 61, the Assessment Officer stated the following:

60. The Respondents submitted claims for in-house photocopies. The evidence produced in support of these claims is thin. It does not provide any information as to how they arrived at the amount of \$0.25/page. At the hearing, it was suggested that this was the "normal standard for the Court". This rate has generally been accepted by Federal Court assessment officers, but I am not prepared to concede that this is what it really costs law firms for in-house photocopies.

61. The following excerpt from Justice Teitelbaum's decision in *Diversified Products Corp. et al v. Tye-Sil Corp.*, 34 C.P.R. (3d) 267 supports my thinking on the actual cost for photocopies;

The Item of photocopies is an allowable disbursement only if it is essential to the conduct of the action. Therefore, this is not intended to reimburse a party for the actual out-of-pocket cost of the photocopy. The 25 charge by the office of plaintiffs' counsel is an arbitrary charge and does not reflect the actual cost of the photocopy. A law office is not in the business of making a profit on its photocopy equipment. It must charge the actual cost and the party claiming such disbursements has the burden to satisfy the taxing officer as to the actual cost of the essential photocopies.

[88] In addition, in *Merck & Co. v Apotex*, 2008 FCA 371, at paragraph 14, the Court stated the following regarding Assessment Officers having limited material available:

14. In view of the limited material available to assessment officers, determining what expenses are "reasonable" is often likely to do no more than rough justice between the parties and inevitably involves the exercise of a substantial degree of discretion on the part of assessment officers.

[89] Utilizing the *Inverhuron* and *Merck* decisions as guidelines, they indicate that the onus was on BC Hydro to provide details related to the actual cost of the internal photocopies. I have

reviewed the court record to try to determine a reasonable quantum of costs to allow and I have determined that it is reasonable to allow \$75.00 for BC Hydro's claim for internal photocopying.

[90] Concerning BC Hydro's claim of \$167.21 for WestlaweCarswell, I find that this particular claim could be considered to be part of office overhead in a modern law practice, as online research tools are commonly used in law firms. BC Hydro's documentation did not provide any details regarding what online services were purchased from WestlaweCarswell, which may have been different from any online services already purchased by the law firm. This being noted, I have reviewed the decision *Advance Magazine Publishers Inc. v Farleyco Marketing Inc.*, 2010 FCA 143, at paragraph 25, provided by BC Hydro, and also *Condo v Canada*, 2006 FCA 286, at paragraph 9, which discusses the "paucity of evidence" related to a claim for online research. Concerning the *Advance Magazine* decision, I find that unlike the *Advance Magazine* decision, that BC Hydro had the opportunity to flesh out the expenditure for WestlaweCarswell in the reply documentation filed for this file but it was not provided. This being stated, I have taken note that both of the aforementioned decisions allowed some costs even though there may have been some irregularities with the claims submitted. Therefore, I have determined that in the absence of more fulsome submissions and/or evidence, that it is reasonable to allow 50% of the claim for WestlaweCarswell for a total amount of \$84.00.

[91] Concerning BC Hydro's claim of \$86.48 for the purchase of literature from Amazon, I also find that this literature could be considered to be part of office overhead. Although, the literature may have been purchased specifically for research for this particular file, the literature can become part of the law firm's library for future research, if needed. Therefore, I have

determined that it is reasonable to allow 75% of the claim for literature for a total amount of \$65.00.

[92] The total amount allowed for the office expenses and file administration disbursements is \$513.34, inclusive of taxes.

E. *Expenses Related to Reports and Official Documents*

[93] BC Hydro has claimed \$975.72 for expenses related to obtaining official documents and reports such as certified copies of patents and file histories, various reports, and copies of court documents and at paragraph 56 of BC Hydro's Written Representations it is submitted that these disbursements were reasonably incurred. In response, at paragraph 30 of the Plaintiff's Written Representations it is submitted that all of BC Hydro's claims are of no apparent relevance to the action. In reply, at paragraph 31 of BC Hydro's Reply Submissions it is submitted that the expenses claimed were related to BC Hydro's motion for security for costs and for the gathering and preparation of evidence for the trial.

[94] Further to my review of BC Hydro's claims related to reports and official documents in conjunction with the court record, I found the claims submitted to be relevant in relation to the type of action proceeding that was being litigated. I have considered the parties' submissions and I found the Plaintiff's submissions to be too general in nature for me to determine definitively that a particular claim submitted by BC Hydro was not relevant. The Plaintiff's intellectual property action pertains to such issues as the detection of atypical energy consumption, and the ability to identify those involved with electrical theft, and I found the claims submitted by BC

Hydro to be relevant in terms of the types of reports and official documents that were purchased. This being noted, I found that the fee related to the cancellation of a purchase from Internet Archives to be unreasonable to include in BC Hydro's Bill of Costs, and as a result, invoice 4319897410231601 for \$155.87 is disallowed. Other than the aforementioned claim, I found the remaining claims to be plausible and reasonable expenses given the type of action proceeding that was being litigated. Therefore, the remaining claims are allowed as claimed for a total amount of \$819.86, inclusive of taxes.

F. *The cumulative total for BC Hydro's disbursements.*

[95] The cumulative dollar amount for BC Hydro's claims for disbursements that have been allowed is \$203,562.49, inclusive of taxes.

IV. Conclusion

[96] For the above Reasons, British Columbia Hydro and Power Authority's Bill of Costs is assessed and allowed in the total amount of \$554,677.17, with post-judgment interest calculated on a simple basis at a rate of 2.5% *per annum*, payable by the Plaintiff to British Columbia Hydro and Power Authority. A Certificate of Assessment will also be issued.

"Garnet Morgan"
Assessment Officer

Toronto, Ontario
October 31, 2023

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-227-17

STYLE OF CAUSE: DTECHS EPM LTD. v BRITISH COLUMBIA
HYDRO AND POWER AUTHORITY AND
AWESENSE WIRELESS INC.

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

**CONFIDENTIAL REASONS
FOR ASSESSMENT BY:** GARNET MORGAN, Assessment Officer

DATED: OCTOBER 31, 2023

WRITTEN SUBMISSIONS BY:

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