Federal Court Cour fédérale

Date: 20231101

Docket: T-227-17

Citation: 2023 FC 1460

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 June 10, 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 an Order of the Federal Court dated April 22, 2021, wherein costs were awarded to Awesense Wireless Inc. (hereafter Awesense), in relation

to the Plaintiff's action proceeding. The Court's Order dated April 22, 2021, states the following regarding the Court's award of costs:

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.

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

> 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*.
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> 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.

[3] Subsequent to the Court's Order and Reasons being issued to the parties on April 22, 2021, both of the Defendants (British Columbia Hydro and Power Authority (hereafter BC Hydro) and Awesense Wireless Inc.) filed a motion pursuant to Rule 403 of the *FCR*, for directions to be given to the Assessment Officer regarding 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.

[4] In addition to the aforementioned Court decisions, this assessment of costs is also pursuant to the Court's decisions related to various motions on this file. These motions are discussed in detail later in these Reasons under Items 4 and 5 in the Assessable Services section.

[5] On August 24, 2021, Awesense filed a Bill of Costs, which initiated Awesense's request for an assessment of costs.

[6] On August 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 September 16, 2021, Awesense filed a costs assessment record, containing Written Representations and an Affidavit of Rachel Marcus, sworn on September 16, 2021; on January31, 2022, the Plaintiff filed a record entitled Reply to Costs Submissions, containing Written Representations; and on January 22, 2022, Awesense filed Reply Submissions.

[7] Awesense's Bills of Costs for assessable services and disbursements found at Exhibit "A" and Exhibit "S" of the Affidavit of Rachel Marcus, sworn on September 16, 2021, will be reviewed for this assessment of costs.

II. Assessable Services

[8] Awesense has claimed $310,128.00 for assessable services, inclusive of taxes.

A. *Item 2 - Preparation and filing of all defences, replies, counterclaims or respondents' records and materials. 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 24 – Travel by counsel to attend a trial, hearing, motion, examination or analogous procedure, at the discretion of the Court; and Item 26 – Assessment of costs.*

[9] I have reviewed of the parties' costs documentation, including the Plaintiff's submissions in relation to BC Hydro's assessment of costs, as requested at paragraph 31 of the Plaintiff's Written Representations, in conjunction with the court record, the *FCR* and any relevant jurisprudence, including my decision (2002 FC 700) dated May 11, 2022, for BC Hydro's assessment of costs and I did not find that any of Awesense's claims submitted under Items 2, 3, 12, 14, 24 and 26, required my intervention. The remaining claims submitted under Items 4, 5, 7, 8, 9, 10, 11, 13, 15 and 27 have some issues to look into and as a result, they will be individually reviewed further below in these Reasons.

[10] Concerning my assessment of the claims for Items 2, 3, 12, 14, 24 and 26, 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 Awesense; the court record reflects that Awesense was the successful party in the action 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 Awesense for Items 2, 3, 12, 14 and 26. 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.

[11] 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.
> […]

[12] I have utilized the *Dahl* and *Carlile* decisions as guidelines for this assessment of costs. Further to these decisions, as an Assessment Officer, I have an obligation to ensure that any claims that are allowed are not "unnecessary or unreasonable", although there may be an absence of specific submissions from the Plaintiff regarding Awesense's claims for Items 2, 3, 12, 14, 24, and 26. This being noted, I have reviewed Awesense's Bill of Costs in conjunction with the court record, the *FCR* and any relevant jurisprudence to assess the costs of Awesense to ensure that they were necessary and are reasonable and I have found that Awesense has met this requirement for the claims submitted for Items 2, 3, 12, 14, 24 and 26. Therefore, these claims will be allowed as claimed in Awesense's Bill of Costs.

[13] Concerning the quantum of costs for Awesense's claims submitted under Items 2 and 24, the Item allowances are as follows: for Item 2, 13.5 units are allowed for first and second counsels' services, for a total dollar amount of $2,268.00, inclusive of taxes. For Item 24, 14 units are allowed for first counsel's travel fees, for a total dollar amount of $2,352.00, inclusive of taxes.

[14] Concerning the quantum of costs for Awesense's claims submitted under Items 3, 12, 14 and 26, the Court's Order dated April 22, 2021, ordered that Awesense's "[c]osts shall be calculated at double the Tariff rate (but not double disbursements) from April 24, 2020 to March 1, 2021." For Item 3, there is 1 claim that falls within the timeframe for the doubling of costs, and for Items 12, 14 and 26 all of the claims submitted fall within the timeframe for the doubling of costs. Specifically, the Item allowances are as follows: for Item 3, 21 units are allowed for first and second counsels' services, with 10.5 units being doubled, for a total of 31.5 units, which is a total dollar amount of $5,292.00, inclusive of taxes. For Item 12, 18 units are allowed for first and second counsels' services, with all 18 units being doubled, for a total of 36 units, which is a total dollar amount of $6,048.00, inclusive of taxes. For Item 14(a), 224 units are allowed for first counsel's services. All of these units are doubled for a total of 448 units, which is a total dollar amount of $75,264.00, inclusive of taxes. For Item 14(b), 112 units are allowed for second counsel's services. All of these units are doubled for a total of 224 units, which is a total dollar amount of $37,632.00, inclusive of taxes. For Item 26, 10.5 units are allowed for first and second counsels' services, with all 10.5 units being doubled, for a total of 21 units, which is a total dollar amount of $3,528.00, inclusive of taxes.

[15] The total dollar amount allowed for Awesense's claims submitted under Items 2, 3, 12,14, 24 and 26 is $132,384.00, inclusive of taxes.

B. *Item 4 – Preparation and filing of an uncontested motion, including all materials.*

[16] Awesense has submitted a claim under Item 4 for the preparation and filing of documents related to BC Hydro's motion for the protection and maintenance of the confidentiality of materials in the action proceeding, which was filed on February 25, 2019. My review of the Court's Order dated April 29, 2019, did not reveal that costs were specifically awarded to any party, as the decision states at paragraph 29 that "[e]ach Party shall bear its own costs in connection with this motion." 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. The Respondent has requested 4 units for its item 4 (Preparation and filing of an uncontested motion, including all materials for late filing of Notice of Appearance). I have reviewed the Order of the Federal Court of Appeal dated March 22, 2005, in which the Court granted the Respondent's motion for an extension of time to file its Notice of Appearance. However, the same Order of the Federal Court of Appeal made no reference whatsoever to the issue of costs associated with the Respondent's motion. 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.

[17] 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. Utilizing the *Uzoni* and *Tursunbayev* decisions as guidelines, and further to my review of the Court's Order dated April 29, 2019, I have determined that Awesense's claim submitted for Item 4 that is related to BC Hydro's motion for the protection and maintenance of the confidentiality of materials must be disallowed, as there is an absence of a Court decision awarding costs for this motion to any party, nor has Awesense provided evidence that the Plaintiff consented to pay the costs for this motion.

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

[18] Awesense has submitted a claim under Item 5 for the preparation and filing of documents related to Awesense's motion for security for costs filed on April 16, 2020. For this particular motion, the Court's Order dated May 1, 2020, awarded costs to Awesense. Subsequent to the issuance of the Court's Order, Awesense sent a letter to the Court dated May 8, 2020, advising that the parties had settled the costs for the motion for security for costs at $1,800.00, "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. With regards to the taxes, it is unclear from the court record if the consented to amount of $1,800.00 includes any taxes. As a result, the taxes

have been excluded from my costs calculation for Item 5. Further to the Court's Order and Reasons dated April 22, 2021, the costs allowed for Item 5 qualify for the doubling of costs. Therefore, the total dollar amount allowed for Item 5 is $3,600.00, which is inclusive of any taxes that may have been agreed to by the parties.

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.*

[19] Awesense 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 17 and 18 of Awesense's Written Representations, it is submitted that:

> 17. Awesense's counsel considered approximately 200 documents during 8 rounds of documentary productions, three of which related to the inspection of dTechs' productions. Awesense excluded from its claim the review associated with the 393 documents produced by BC Hydro.
>
> 18. Awesense engaged in two rounds of oral discovery, which included approximately five days of examinations for discovery as outlined below. Only one counsel for Awesense attended the examinations for discovery in order to conserve resources. […]

[20] In response, at paragraphs 32 and 33 of the Plaintiff's Written Representations it is submitted that:

> 32. Awesense seeks five items under Tariff 7 for production of its own documents, one for production on each of five separate dates. That is but to encourage piece meal production of documents so as to increase costs. No more than a single tariff item is appropriate.
>
> 33. Similarly, Awesense seeks three items under Tariff 7 for inspection of dTechs productions. Responding to further requests for production and disclosing material records as the matter develops is not a reason to increase a party's exposure to costs.

[21] In reply, at paragraph 3 of Awesense's Reply Submissions it is submitted that the Plaintiff has provided no legal or factual support for the argument that Item 7 can only be claimed once and cited the decision *Cameco Corporation v MCP Altona (The Ship)*, 2013 FC 1263, at paragraph 9, to support the premise that Item 7 can be claimed more than once. Awesense also submitted that the Plaintiff had multiple document productions, with a total of 3 document productions.

[22] At paragraph 9 of the *Cameco Corporation* decision, the Assessment Officer stated the following:

> 9. In conformity with the decisions in *Early Recovered Resources Inc. v Gulf Log Salvage Co-Operative Assn.*, 2001 FCT 1212 (par.14) and *Distrimedic Inc. v Dispill Inc.*, 2011 FC 410 (par.64), I too consider that Item 7 can be claimed and allowed, when properly justified as is the case here, more than once. However, considering the award of costs at the low end of Column IV, three units will be allowed for each claim.

[23] My review of the *Cameco Corporation* decision indicates a party may submit multiple claims under Item 7 depending on the facts pertaining to a particular file. Further to my review of the *Cameco Corporation* decision, my review of the court record did not reveal that there are any Court decisions limiting Awesense's claims submitted under Items 7, 8 or 9. I have considered the Plaintiff's concerns regarding the number of claims submitted by Awesense and I have found that Awesense has sufficiently provided an explanation for the claims that have been submitted, and that they are supported by the court record. Therefore, in the absence of any jurisprudence from the Plaintiff to support their position, I have determined that Awesense's claims for Items 7, 8 and 9 have been submitted in accordance with the *FCR* and the Court's decisions dated April

22, 2021, and June 23, 2021, and that it is reasonable to allow Awesense's claims for Items 7, 8 and 9, as they have been submitted.

[24] Concerning the quantum of costs for Awesense's claims submitted under Items 7, 8 and 9, further to the Court's Order and Reasons dated April 22, 2021, there are 3 claims for Item 7 that fall within the timeframe for the doubling of costs, and for Items 8 and 9 none of the claims submitted fall within the timeframe for the doubling of costs. The Item allowances are as follows: for Item 7, 108 units are allowed for first and second counsels' services, with 40.5 units being doubled, for a total of 148.5 units, which is a total dollar amount of $24,948.00, inclusive of taxes. For Item 8, 48 units are allowed for first and second counsels' services, which is a total dollar amount of $8,064.00, inclusive of taxes. For Item 9, 112 units are allowed for first and second counsels' services, which is a total dollar amount of $18,816.00, inclusive of taxes.

[25] The total dollar amount allowed for Awesense's claims submitted under Items 7, 8 and 9 is $51,828.00, inclusive of taxes.

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

[26] Awesense 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 Awesense's claims "for costs for preparation is double that for the attendance" and that "preparation costs ought not to exceed attendance costs." At paragraph 7 of Awesense's Reply Submissions it is submitted that Awesense "relies upon British Columbia Hydro and Power

Authority's ("BC Hydro") Confidential Reply Submissions ("BC Hydro's Reply") [at paras 13 and 14]." Paragraphs 13 and 14 of BC Hydro's Confidential Reply Submissions states the following:

> 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)).

[27] Further to my review of the parties' submissions, I am in agreement with Awesense that the Plaintiff did not provide any legal or factual support for the argument that preparation costs should not exceed attendance costs for claims submitted 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 Awesense'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 submitted 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 Awesense'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 this requirement.

[28] Concerning Awesense'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 Awesense 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 Awesense, therefore this entry does not appear to have a clerical oversight. In addition, I reviewed the Affidavit of Rachel Marcus, sworn on September 16, 2021, and at Exhibit "E", the copies of counsels' billable hours for this file, only reflect that one counsel was present for the CMC held on May 8, 2018. Therefore, further to my review of the court record and Awesense'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.

[29] Concerning the quantum of costs for Awesense's claims submitted under Items 10 and 11, further to the Court's Order and Reasons dated April 22, 2021, there are 2 claims submitted under each Item that fall within the timeframe for the doubling of costs. Specifically, the Item allowances are as follows: for Item 10, 84 units are allowed for first and second counsels' services, with 24 units being doubled, for a total of 108 units, which is a total dollar amount of $18,144.00, inclusive of taxes. For Item 11, 39 units are allowed for first and second counsels' services, with 26.4 units being doubled, for a total of 65.4 units, which is a total dollar amount of $10,987.20, inclusive of taxes.

[30] The total dollar amount allowed for Awesense's claims submitted under Items 10 and 11 is $29,131.20, 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.*

[31] Awesense has submitted multiple claims under Items 13(a) and 13(b) in relation to the initial preparation for the trial, which began 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 20 to 23 of Awesense's Written Representations it is submitted that an extensive amount of work was required to prepare for the trial, including responses to 2 Requests to Admit from the Plaintiff to "reduce of the scope of the facts to be tried." It is submitted that Awesense had 2 counsel in attendance at the trial due to the complexity and the amount of work required for the trial. In response, at paragraphs 35 and 36 of the Plaintiff's Written Representations it is submitted that:

> 35. Item 13(a) can only be awarded once: *Hughes* p. 5, citing *Halford v Seed Hawk Inc*, 2006 FC 422 cf. para 130).
>
> 36. And as to 13(a) and (b), it is to reasonable second counsel fees that Awesense is entitled (23 June 2021 Order), not two first counsel fees as it has claimed – some 232 units for a nine day trial.

[32] In reply, at paragraphs 8 and 9 of Awesense's Reply Submissions it is submitted that:

> 8. In regards to paragraph 35 of dTechs' submissions, Awesense relies upon BC Hydro's Reply [at paras 15-17]. Contrary to dTechs' argument, the *Halford* case states that item 13(a) cannot be awarded more than once for the preparation of the same trial when the trial is divided into multiple portions; *Halford* is no authority for the proposition that item 13(a) may only be awarded once. Awesense's evidence shows its extended preparation for trial, which is captured by Awesense's tariff item 13(a) claims.

> 9. With respect to paragraph 36, Awesense concedes that tariff item 13(a) and (b) should have been calculated at one first counsel and reasonable fees for second counsel.

[33] Further to my review of the parties' submissions, I am in agreement with the reply submissions of BC Hydro, relied upon by Awesense, 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 submitted 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(a) can only *(emphasis added)* be awarded once". 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.

[34] 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 Awesense'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 Awesense 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 33, 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 Awesense 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 Awesense; the court record reflects that Awesense 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 Awesense, 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 submitted 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.

[35] Utilizing the *Dahl* and *Carlile* decisions *(supra)* as guidelines, I have reviewed Awesense'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 Awesense for any particular claim, and having considered that Awesense 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 Awesense's claims for Items 13(a) and 13(b). This being stated, costs will only be allowed for first and second counsel fees and not for 2 first counsel, as correctly pointed out by the Plaintiff and acknowledged by Awesense at paragraph 9 of Awesense's Reply Submissions.

[36] Concerning the quantum of costs for Awesense's claims submitted under Items 13(a) and 13(b), further to the Court's Order and Reasons dated April 22, 2021, all 3 claims submitted under Items 13(a) and 13(b) fall within the timeframe for the doubling of costs. Specifically, the Item allowances are as follows: for Item 13(a), 54 units are allowed for first and second counsels' services, with all of the units being doubled, for a total of 108 units, which is a total dollar amount of $18,144.00, inclusive of taxes. For Item 13(b), 90 units are allowed for first and second counsels' services, with all of the units being doubled, for a total of 180 units, which is a total dollar amount of $30,240.00, inclusive of taxes.

[37] The total dollar amount allowed for Awesense's claims submitted under Items 13(a) and 13(b) is $48,384.00, inclusive of taxes.

G. *Item 15 – Preparation and filing of written argument, where requested or permitted by the Court;*

[38] Awesense has submitted multiple claims under Item 15 for the preparation and filing of written arguments, a closing compendia and a closing Book of Authorities, in relation to the conclusion of the trial hearing. At paragraphs 37 and 38 of the Plaintiff's Written Representations it is submitted that Item 15 is to be claimed once and not three times for the

written arguments, compendia and Book of Authorities and also that Awesense is entitled to claim first and second counsel fees and not fees for 2 first counsel. In reply, at paragraphs 10 and 11 of Awesense's Reply Submissions it is submitted that the Plaintiff provided no legal or factual support for the argument that Item 15 can only be claimed once and cited the decision *Aird v Country Park Village Properties (Mainland) Ltd.*, 2005 FC 1170, at paragraphs 31 to 34, to support the premise that Item 15 can be claimed more than once in a Bill of Costs.

[39] My review of the *Aird* decision indicates that a party may submit multiple claims under Item 15 depending on the facts pertaining to a particular file. Further to my review of the *Aird* decision, my review of the court record did not reveal that there are any Court decisions limiting Awesense's claims submitted under Item 15. I have taken the Plaintiff's concerns into consideration regarding the number of claims submitted by Awesense and I have found that although Awesense may be entitled to submit multiple claims under Item 15, the wording for this Item in Tariff B specifies that it is limited to the "[p]reparation and filing of written argument (emphasis added)", therefore I find that the claims for the compendia and the Book of Authorities must be disallowed under Item 15. This is being determined, the *Carlile* decision *(supra)*, states that:

> […] 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.

[40] In addition to the *Carlile* decision, in *Mitchell v Canada*, 2003 FCA 386, at paragraph 12, the Assessment Officer stated the following regarding the positive application of costs provisions:

> 12. The Appellants are correct that the wording for item 27 does not generally fetter discretion. However, that discretion, as for other items in bills of costs, is still fettered by reasonable necessity and the limits of an award of costs. Consistent with Rule 3, and with my sentiment in *Feherguard Products Ltd. v. Rocky's of B.C. Leisure Ltd.*, [1994] F.C.J. No. 2012 (A.O.), at para. 10 that the "best way to administer the scheme of costs in litigation is to choose positive applications of its provisions as opposed to narrower and negative ones", application of discretion should be part of a reasoned process to achieve a result on assessment which is equitable for both sides. Item 27 addresses the professional services of counsel not already addressed by items 1 - 26. Its wording, "such other services", is clearly plural and I understand that to permit assessment of discrete services, as opposed to a restriction to a bundling of several services, not already addressed by items 1 - 26, within a single item 27 claim. That is, item 27 may be claimed more than once.

[41] Utilizing the *Carlile* and *Mitchell* decisions as guidelines, I have determined that assessing Awesense's claims for the compendia and the Book of Authorities under Item 27 is an acceptable alternative to assessing the claims under Item 15 and will allow for a positive application of the costs provisions instead of a narrower one. Further to my review of the court record, I have verified that the Respondents performed the services claimed for the documents prepared and filed in relation to the trial. Therefore, I have determined that the services rendered by the Awesense were necessary and that it is reasonable to allow 4 units under Item 27 for the each of the services rendered for the compendia and the Book of Authorities for a total of 8 units.

[42] Concerning the quantum of costs for Awesense's claims allowed under Items 15 and 27, further to the Court's Order and Reasons dated April 22, 2021, all of the claims for Item 15 and

27, fall within the timeframe for the doubling of costs. The Item allowances are as follows: for Item 15, 13.5 units are allowed for first and second counsels' services, with all of the units being doubled, for a total of 27 units, which is a total dollar amount of $4,536.00, inclusive of taxes. For Item 27, 8 units are allowed for first counsel's services, with all of the units being doubled, for a total of 16 units, which is a total dollar amount of $2,688.00, inclusive of taxes.

[43] The total dollar amount allowed for Awesense's claims submitted under Items 15 and 27 is $7,224.00, inclusive of taxes.

H. *Item 27 – Such other services as may be allowed by the assessment officer or ordered by the Court.*

[44] Awesense has submitted multiple claims under Item 27 for various services performed by counsel prior to the trial, such as the preparation of a Brief of Documents, preparation of a Trial Record, preparation of a list of witnesses, and the review and answering of undertakings. At paragraph 39 of the Plaintiff's Written Representations it is submitted that "[t]he claimed matters numbered 32 – 40 are not assessable as Item 27, as they are each subsumed in preparation or discovery." In reply, at paragraph 12 of Awesense's Reply Submissions it is submitted that Item 27 may be claimed more than once for professional services not covered under other Items, including answers to undertakings and cited the decisions, *Shields Fuels Inc. v More Marine Ltd.*, 2010 FC 228, at paragraph 23, and *Canadian Private Copying Collective v Fuzion Technology Corp.*, 2010 FC 626, at paragraph 16, in support of the submissions.

[45] Further to my review of the parties' costs documents, I have found that many of Awesense's claims submitted under Item 27 are similar to claims that were submitted by BC

Hydro under Item 13(a) in the first assessment of costs that I dealt with for this file. In my decision dated May 11, 2022, I determined that depending on the facts pertaining to a particular trial or hearing that it may be reasonable to allow multiple claims under Item 13(a), and the factors reviewed in BC Hydro's assessment of costs are parallel to Awesense's assessment of costs. I will rely on paragraphs 40 to 44 of my decision dated May 11, 2022, and the *Mitchell* decision *(supra)*, for the exercising of my discretion to allow Awesense's claims numbered 32 to 38 in the Bill of Costs, which were submitted under Item 27 for services performed prior to the trial commencing.

[46] With regards to Awesense's claims related to undertakings, the two cases cited by Awesense support the allowance of multiple claims submitted under Item 27, and also for the allowance of claims submitted under Item 27 for services related to undertakings. In addition, in *Belmonte v Canadian Union of Public Employees, Local 365 (Longshoremen's Union)*, 2004 FCA 266, at paragraph 3, the Assessment Officer allowed partial costs for undertakings under Item 27 and stated the following:

> 3. In light of the above, the Union's fees calculated under Column III of Tariff B are allowed in the amount of $6,326.38 ($5,500 + GST/QST) for the following reasons:
>
> […]
>
> - item 27, no units are allowed for establishing the list of undertakings following the examinations of February 12 and 20. I agree with Mr. Astell that there would be duplication with item 9 if I were to allow compensation under this item. As for whether the undertakings were respected, that is not an argument that I can consider.
>
> - item 27, 3 units ($330) are nevertheless allowed for the undertakings made during the examination of Daniel Tremblay, since the documents and/or information required colossal research

> work. According to Ms. Oliveira, this information was old and very difficult to obtain.
>
> […]

[47] My review of the decisions related to undertakings indicates that depending on the facts pertaining to a particular file that it may be reasonable to allow individual claims for services performed for undertakings. In addition, I find that the descriptions of Items 7 and 8 in Tariff B, which pertain to the discoveries and examinations, include some examples of the types of services that could be claimed under these Items but it is not a closed list of services that can be claimed. As there is some ambiguity with regards to claims for undertakings, I find it reasonable that these claims could also be submitted and allowed by an Assessment Officer under Item 27, as has been done in previous assessments of costs. As I stated earlier in these Reasons, a substantial amount of work was done by Awesense for this particular file, and I find that facts pertaining to this file support the separate allowance of costs for services performed for undertakings, found at numbers 39 and 40 of the Bill of Costs. Lastly, I also find it reasonable to allow Awesense's claim submitted under Item 27, number 41 in the Bill of Costs, for the review of the Court's confidential Reasons for this file, as this claim is supported by the court record.

[48] Concerning the quantum of costs for Awesense's claims submitted under Item 27, further to the Court's Order and Reasons dated April 22, 2021, there are 8 claims that fall within the timeframe for the doubling of costs. Specifically, 56 units are allowed for first counsel's services, with 32 of the units being doubled, for a total of 88 units, which is a total dollar amount of $14,784.00, inclusive of taxes.

I. *The cumulative total for Awesense's assessable services.*

[49] The cumulative dollar amount allowed for Awesense's claims for assessable services is $287,335.20, inclusive of taxes.

III. Disbursements

[50] Awesense has claimed $41,991.00 for disbursements, inclusive of any taxes that may have been paid.

[51] I have reviewed the parties' costs documents, including the Plaintiff's submissions in relation to the claims for disbursements made by BC Hydro, in conjunction with the court record, the *FCR* and any relevant jurisprudence, including my costs decision for BC Hydro's assessment of costs, and the *Dahl* and *Carlile* decisions *(supra)*, and I did not find that Awesense's claims for courier expenses, court reporting, expert fees, litigation search, taxi charges, and travel expenses (airfare), required my intervention. I found the aforementioned claims to be supported by the court record, were for reasonable amounts, and also align satisfactorily with the evidence requirements for disbursements found at section 1(4) of Tariff B of the *FCR*, and the federal government's approved travel rates for government business. The amounts allowed for the disbursements are: $31.66 for courier expenses; $2,744.24 for court reporting; $5,150.00 for expert expenses; $95.00 for litigation search; $344.54 for taxi expenses; and $1,662.17 for travel expenses, for a total dollar amount of $10,027.61, which is inclusive of any taxes that may have been paid for these disbursements.

[52] The remaining claims for accommodation, agent's fees and expenses, meal expenses, on-line database services, and telecommunications have some issues to look into and as a result,they will be individually reviewed below in these Reasons.

A. *Accommodation*

[53] At paragraph 40 of the Plaintiff's Written Representations it is submitted that Awesense's "room charges incurred were for Fairmont hotels, lavish accommodation and at least in the case of the Palliser in Calgary not really proximate to the place of discovery." In reply, at paragraph 13 of Awesense's Reply Submissions it is submitted that:

> 13. In regards to paragraph 40 of dTechs' submissions, Awesense's accommodation expenses are reasonable in view of prevailing market rates. The disbursement at issue is for a total of $662.38 for accommodation for two nights, inclusive of Alberta's Tourism Levy and all applicable taxes. This amount equals to approximately $331.19 per night. In 2008, over ten years ago, the Federal Court permitted $275 per day for accommodation. Awesense's accommodation expenses were reasonable, not "lavish" as claimed by dTechs, in view of the accommodation allowance set by the Court over ten years ago.

[54] In support of Awesense's submissions, the decision *Research in Motion v Visto Corp.*, 2008 FC 618, at paragraph 28, was cited, wherein the Court capped the hotel accommodation costs for that file (T-1105-06) at $275.00 a day. My review of the court file for T-1105-06 shows that the assessment of costs documents filed by the parties were confidential and that the parties eventually settled the issue of costs, so the actual cost of the hotel accommodations are not available. In addition, I find that the Court's decision was pertaining to the facts for that particular file. This being noted, I do find that the dollar amount provided by the Court for the

upper limit for hotel accommodation costs to be a useful guide though, as the decision was rendered almost 14 years ago and it pertained to the hotel costs in Canada.

[55] I have reviewed the claims submitted for the hotel accommodations in Calgary, Alberta and Vancouver, British Columbia, and I find that Awesense's explanation regarding the prevailing market prices for the hotel accommodations to be reasonable. The hotel reservations were in May 2019 for Calgary and in July 2019 for Vancouver, which were prior to the Covid-19 pandemic and were during the spring and summer tourist seasons. Concerning the hotel in Calgary not being in close proximity to the discovery location, the Plaintiff did not advise what geographical area and/or hotel may have been a more suitable location. Further to my review of the parties' costs documents in conjunction with the court record and the *Research in Motion* decision, I have determined that considering the time of year of the hotel bookings and also that the bookings were prior to the Covid-19 pandemic, that it does not demonstrate a pattern of Awesense booking lavish accommodations and that it is reasonable to allow these claims as they have been submitted. Therefore, the accommodation expenses are allowed as claimed for a total dollar amount of $1,459.02, inclusive of taxes.

B. *Agent's Fees and Expenses*

[56] Awesense has claimed $23,486.00 for agent's fees and expenses and at paragraph 35 of Awesense's Written Representations it is submitted that the services of an e-discovery and litigation consultant company were engaged to provide the "electronic processing and hosting of documents produced during discovery" and that the outsourcing "was crucial in conducting a litigation of this magnitude." In response, at paragraph 41 of the Plaintiff's Written

Representations it is submitted that "Summation technology (document management) is overhead and not recoverable" and that this claim would "double with the claim for counsel fees for document discovery." In support of this argument, the decision *Sanofi-Aventis Canada Inc v Apotex Inc*, 2009 FC 1138, at paragraph 19, was cited. In reply, at paragraph 14 of Awesense's Written Representations it is submitted that the document management fees are recoverable and that the Court has stated that "electronic document management technology is useful, if not essential, in complex modern litigation and that such amount as the officer finds reasonable and necessary is a recoverable disbursement." The decision *Research in Motion* decision *(supra)*, at paragraph 25, was cited in support this argument.

[57] My review of the two decisions cited by the parties has revealed that the Court has had deferring views regarding claims for the use of electronic document management technology. In the *Sanofi-Aventis Canada Inc.* decision, the Court had the view that the costs for Summation technology are a "part of the normal overhead costs of litigation" and no costs were awarded. In the *Research in Motion* decision, the Court stated that "electronic document management is useful and perhaps almost essential" but also stated that more information was required to determine if the services claimed in the Bill of Costs "reflects what was truly reasonable and necessary." The issue of costs was left to the parties to resolve or for an Assessment Officer to determine what was reasonable and necessary. The court record shows that the parties settled the issue of costs, with each party bearing its own costs.

[58] In addition to the decisions cited by the parties, in *MediaTube Corp. v Bell Canada*, 2017 FC 495, at paragraphs 49 and 50, the Court stated the following regarding electronic document management technology and costs:

> 49. I do not consider Epiq's services to be overhead in the way that Justice Judith Snider considered Summation technology to be in Sanofi-Aventis Canada Inc v Apotex Inc, 2009 FC 1138 at para 19. I understand Summation to be a tool that most law firms dealing with patent litigation, and some sophisticated parties, have regardless of any particular litigation. That does not appear to be the case for Epiq, which I understand provided services to Bell that it would not have used but for the present litigation.
>
> 50. Though I lack sufficient information to be precise in revising the figures claimed by Bell in relation to Epiq, I am satisfied that some amount is appropriate. In my view, the amount allowable in relation to the Infringement Case should be limited to $125,000. For the Punitive Damages Case, Bell is less constrained in its claim for costs relating to legal services. In my view, $275,000 is appropriate.

[59] In *ADIR v Apotex Inc*, 2008 FC 1070, at paragraph 17, the Court stated the following regarding the use of Summation technology during pre-trial procedures and costs:

> 17. The Plaintiffs seek recovery of costs for the services of students-at-law and paralegals. Normally, I would agree with the Defendants that such costs are not recoverable. However, this trial presented an unusual situation with respect to one paralegal, Ms. Denise Pope. The parties agreed, prior to the trial, to use Summation software. The Defendants do not object to reasonable disbursements relating to the cost of Summation technology during pre-trial procedures and trial but object to fees for Ms. Pope. The Defendants were aware that Ms. Pope would be the coordinator of this valuable tool for the efficient management of the trial. Ms. Pope was called on, by both parties, from time to time to assist in the loading of documents into the database and the management of the database. Her services, in my view, extended beyond those normally associated with non-legal staff. Accordingly, I am prepared to allow a portion of the fees for her services; recovery of 50% of her fees is appropriate in the circumstances.

[60] Further to my review of all of the aforementioned decisions, I find that the Court has had differing views regarding the use of electronic document management technology and the issue of costs. What I have gleaned from these decisions though, is that claims for the use of electronic document management technology may be allowed depending on the facts pertaining to a particular file, the evidence provided by a party in support of the claims submitted, and the reasonableness of those claims. It is not clear from my review of Awesense's costs documents if there was an in-house electronic document management alternative to using the services of UnitedLex Corporation, which could have kept the costs down or eliminated the costs altogether. This being noted, the Court's Order and Reasons dated April 22, 2021, at paragraph 34, stated that "the issues and their complexity justified both Defendants in expending commensurate resources to defend their respective interests", with regards to the litigation of this file. This decision also states at paragraph 48, that Awesense is entitled to costs for reasonable disbursements. I find that the evidence presented by Awesense only supports a partial allowance of costs. It was not clear from Awesense's submissions if the outsourcing of the electronic document management for this file was a standard practice for the law firm, or an exception for this file, and what, if any, electronic document management may have been done in-house to reduce the costs. More fulsome submissions explaining the reasoning for outsourcing, other than the magnitude of the litigation, may have justified a full allowance of costs for this disbursement. Having considered all of the aforementioned facts and jurisprudence, including *Carlile (supra)*, and I find it reasonable to allow 50% of the costs for agent's fees and expenses, for a total dollar amount of $11,743.00.

C. *Meal Expenses*

[61] Further to my review of Awesense's claims for meals, there was one claim that required a more in-depth review. Concerning the purchase of alcohol, I am in agreement with the Plaintiff that the reimbursement for alcohol is not a reasonable meal expense, as it is not an essential component of a meal. Therefore, all of these purchases should be subtracted from any meal invoices submitted. For the meal invoice dated May 28, 2019, it appears that an alcoholic beverage was purchased and there is also a $10.00 charge for the opening of a bottle of wine, which also falls under the umbrella of alcoholic beverage charges. Only the alcoholic beverage was subtracted from the invoice but not the charge for the opening of a bottle of wine. I have subtracted this charge from the invoice and have allowed $37.00 for this claim. The remaining claims for meals did not require my intervention and will be allowed as claimed. The total dollar amount allowed for meal expenses is $84.30, inclusive of taxes.

D. *On-Line Database Services*

[62] Awesense has claimed $3,247.00 for on-line database services and at paragraph 38 of Awesense's Written Representations it is submitted that the expenses for on-line computer assisted research was mainly incurred during the trial. In response, at paragraph 42 of the Plaintiff's Written Representations it is submitted that for computer legal research "that there must be evidence of its necessity and how the cost was attributed where flat fees are paid by the firm". In reply, at paragraphs 15 and 16 of Awesense's Reply Submissions it is submitted that online research is allowable if it is "shown to be relevant and necessary with evidence as to how the charges were allocated to a particular file."

[63] I find that Awesense's claim for online database services could be considered to be part of office overhead in a modern law practice, as online research tools are commonly used in law firms. Awesense's Written Representations and the Affidavit of Rachel Marcus, sworn on September 16, 2021, at Exhibit "AA", did not provide any details regarding what online services were purchased from WestlawNext Canada or Lexis Advance Quicklaw, which may have been different from any online services already subscribed to by the law firm. This being noted, I have reviewed the decision *Truehope Nutritional Support Limited v Canada (Attorney General)*, 2013 FC 1153, at paragraph 124, which was cited by both parties, and also *Condo v Canada*, 2006 FCA 286, at paragraph 9, which discusses the "paucity of evidence" related to a claim for online research. Further to my review of both decisions, they indicate that costs may be allowed depending on the evidence provided for the claim, which was only partially provided for this file. 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 from Awesense that it is reasonable to allow 50% of the claim for online database services for a total dollar amount of $1,623.50, inclusive of any tax that may have been paid.

E. *Telecommunications*

[64] Awesense has claimed $135.00 for telecommunications and at paragraph 40, it is submitted that this claim is "recognized to be reasonable expenses in litigation". In response, at paragraph 43 of the Plaintiff's Written Representations it is submitted that telecommunications expenses are considered office overhead. In reply, at paragraph 16 of Awesense's Reply Submissions it is submitted that the Court "has characterized telecommunication charges as

being recoverable disbursements" and cited the decision *Girocredit Bank AG Der Sparkassen v Bader*, 1999 BCCA 58, at paragraph 45, in support of this argument, wherein costs were allowed for telecommunications.

[65] Further to my review the counsel dockets at Exhibit "E" and the list of external communication expenses at Exhibit "CC" of the Affidavit of Rachel Marcus, sworn on September 16, 2021, they provide limited detail regarding the telecommunications charges that have been claimed. My review of Exhibit "CC" indicates that the telecommunication charges are for Bell conference calls, and my review of Exhibit "E" has shown that some of these conference calls may have been with opposing counsel or witnesses. This being noted, many of the counsel docket entries that correspond with the dates of the conference calls are either partially or fully redacted, so it is unclear what some of the conference calls were for, as they did not correspond with any of the hearing dates on the court record.

[66] I do find that the requisitioning of conference call services could be a service purchased outside of the common telecommunications services subscribed to by a party, which could then be eligible for reimbursement. I have considered the aforementioned facts and the cited jurisprudence, which is a decision of the Court of Appeal of British Columbia, and I have determined that it is reasonable to allow the conference calls for the following dates: July 30, 2020, August 11, 2020, August 25, 2020 and November 19, 2020, which appear to be conference calls with opposing counsel or witnesses, for a total dollar amount of $52.44 for telecommunications.

F. *The cumulative total for Awesense's disbursements.*

[67] The cumulative dollar amount allowed for Awesense's claims for disbursements is $24,989.87, which is inclusive of any taxes that may have been paid.

IV. Conclusion

[68] For the above Reasons, Awesense Wireless Inc.'s Bill of Costs is assessed and allowed in the total dollar amount of $312,325.07, with post-judgment interest calculated on a simple basis at a rate of 2.5% *per annum*, payable by the Plaintiff to Awesense Wireless Inc. A Certificate of Assessment will also be issued.

"Garnet Morgan"
Assessment Officer

Toronto, Ontario
November 1, 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:	NOVEMBER 1, 2023

WRITTEN SUBMISSIONS BY:

Christian J. Popowich	FOR THE PLAINTIFF DEFENDANT BY COUNTERCLAIM
Vincent de Grandpré Kenza Salah	FOR THE DEFENDANTS PLAINTIFFS BY COUNTERCLAIM (AWESENSE WIRELESS INC.)

SOLICITORS OF RECORD:

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