

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260227

Docket: A-83-24

Citation: 2026 FCA 44

Present: KARINE TURGEON, Assessment Officer

BETWEEN:

MUHAMMAD EJAZ ASLAM

Appellant

and

HIS MAJESTY THE KING

Respondent

Assessment of costs without appearance of the parties.
Certificate of Assessment delivered at Ottawa, Ontario, on February 27, 2026.

REASONS FOR ASSESSMENT BY: KARINE TURGEON, Assessment Officer

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REASONS FOR ASSESSMENT

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I. Overview

[1] By way of Judgment and Reasons for Judgment rendered on November 20, 2024 [Judgment], the Court dismissed the appeal in this file, with costs to the respondent.

[2] The respondent initiated this assessment following section 406 of the *Federal Courts Rules*, SOR/98-106 [Rules], by filing a bill of costs and the affidavit of Linda Plitt, sworn on June 26, 2025, with Exhibits A to D, on July 3, 2025.

[3] On July 9, 2025, a direction was issued to the parties regarding the conduct and filing of costs materials for this assessment. On July 23, 2025, the respondent served and filed written representations, and the appellant submitted written representations in response on September 5, 2025. The respondent filed written representations in reply on October 1, 2025.

[4] Because the Judgment was rendered before the amended Tariff B came into force on December 21, 2025, Tariff B as it read on December 20, 2025, applies to this assessment (section 13 of the *Rules Amending the Federal Courts Rules and the Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/2025-232).

[5] Given the materials received, the preliminary issues of the assessment officer jurisdiction, the factors relevant for this assessment of costs, and whether the appellant's contentions regarding the respondent's affidavit will have an impact on this assessment must be examined.

II. Preliminary Issues

A. *What is the jurisdiction of an assessment officer?*

[6] The appellant contends that for various reasons, the Court should exercise its discretion to award costs based on Column I (written representations in response, para. 2).

[7] In addition, he proposes that except for Item 22, the Court should inquire into which services were rendered by counsel and which were rendered by a law clerk or a paralegal, with a

view to apportioning the claims accordingly. To support this request, the appellant puts forward that the respondent's affidavit lacks details including a timesheet signed by the person rendering the legal services (written representations, paras. 6, 12–14).

[8] The respondent submits in reply that there would be no basis to depart from assessing costs based on Column III as established by Rule 407. He adds that the appellant's written representations "conflate the use of Tariff B units of costs with hours of work by counsel, and the selection of a column for costs as a discretionary choice by the respondent," and underlines that the claims were formulated within the lower end of the ranges available under Column III (written representations in reply, paras. 2–3).

[9] For the following reasons, considering the jurisdiction of an assessment officer, Column III must be used for this assessment pursuant to Rule 407, as ordered by the Court. In addition, the respondent lawfully formulated its claims as services rendered by counsel.

[10] The jurisdiction of an assessment officer is to assess costs based on Tariff B pursuant to Rule 405. Assessment officers and the Court are distinct entities. Subsection 5(1) of the *Federal Courts Act* states that "[t]he Federal Court of Appeal consists of a chief justice [...] and 14 other judges," whereas I am an officer of the Registry, appointed as assessment officer by the Court (definition of "assessment officer" under Rule 2).

[11] Assessment officers are empowered to issue reasons for assessment and certificates of assessment but not to vary a decision of the Court (*Iris Technologies Inc. v. Canada (National*

Revenue), 2024 FC 906 at para. 9; *Canada (Attorney General) v. Iris Technologies Inc.*, 2024 FCA 118 at para. 6). As an assessment officer, I am not a member of the Court and cannot go beyond, or contradict, the Judgment rendered by the Court (*Pelletier v. Canada (Attorney General)*), 2006 FCA 418 at para. 7).

[12] Acceding to the appellant's request to intervene and correct certain claims so that they are assessed under Item 28 for services provided by non-lawyers would lead to a reduction. However, such reduction is not warranted.

[13] Even if some activities, often called overheads, may have been delegated to administrative staff, the Judgment authorises indemnification at counsel rate under Items 1 to 27 and 29 of Tariff B since the Court file and the costs materials indicate that the lawyer remained responsible for all the assessable services claimed (*AlliedSignal Inc. v. DuPont Canada Inc.*, [1998] F.C.J. No. 625 at para. 130, 1998 CanLII 7795 (FC) [*AlliedSignal*] at para. 124). It is worth noting that, since no claim was made under Item 28 for non-lawyer services, any double indemnification for the same service rendered by a lawyer and a non-lawyer is therefore excluded (*Air Canada v. Canada (Minister of Transport)*, [2000] F.C.J. No. 101 at para. 15; *Hoffman-La Roche Limited v. Apotex Inc.*, 2013 FC 1265 at para. 23).

[14] Besides, unlike for Item 22(a), Tariff B does not contemplate indemnification of the assessable services found under Items 19, 20, 25, 26, 27 and 28 per hour of work performed by counsel, nor as characterized by the appellant, per hour of work accomplished by lawyers and

non-lawyers (subsection 1(2) of Tariff B). Nonetheless, it will be considered that the “amount of work” factor was raised by the appellant (Rule 409 and paragraph 400(3)(g) of the Rules).

B. *Which factors are relevant for this assessment of costs?*

[15] An assessment officer may consider factors referred to in subsection 400(3) of the Rules, where found relevant (Rule 409). At the outset, in light of the Judgment, a weighing of the relevant factors cannot lead to an allowance for a number of units outside the ranges set out in Column III.

[16] Considering the amount of work factor raised by the appellant will have no significant impact on this assessment, as the respondent has already selected units within the middle-to-lower ranges of Column III, and, in some cases, at the minimum level. In addition, the result of the proceeding will be considered in favour of the respondent (written representations, para. 13; written representations in reply, para. 3).

[17] The appellant states that the low complexity of the appeal, together with the financial and power imbalance between the parties, should weigh in his favour. He further relies on paragraph 26 of the decision in *Carlile v. Canada*, [1997] F.C.J. No. 885 [*Carlile*], which he says is relevant to equitable costs assessment (written representations in response, para. 2).

[18] While I agree that the complexity of the appeal is a relevant factor under paragraph 400(3)(c) of the Rules, and that the general principles stated in the decision *Carlile* applies to this

assessment, I cannot accept the alleged imbalance between the parties as a relevant factor in this assessment. Costs were granted to the respondent in the Judgment, and therefore, the limited resources of the appellant should not be considered as another factor relevant under paragraph 400(3)(o) of the Rules (*Latham v. Canada*, 2007 FCA 179 at para. 8). As stated by the Federal Court of Appeal in *Leuthold v. Canadian Broadcasting Corporation*, 2014 FCA 174 at paragraph 12:

[12] [...] once a matter has proceeded to trial and judgment has been rendered, a party's impecuniosity is not a relevant factor in the assessment of costs. The person entitled to costs has had to incur the costs of proceeding to trial and has the right to be compensated within the limits prescribed by the Rules of Court.

[19] The analysis will now turn to the assessable services and disbursements claimed.

C. *Will the appellant's contentions regarding the respondent's affidavit have any impact on this assessment?*

[20] The appellant's written submissions challenge the evidence set out in the affidavit of Linda Plitt. They raise the following issues: that the affidavit does not address the accuracy of the bill of costs; that it incorrectly states that counsel effected service; and that the affiant may not be a paralegal in good standing (written representations in response, paras. 3–8).

[21] In reply, the respondent points out that decision such as *Carlile*, at paragraph 26, support the proposition that even where less than exhaustive proof is provided, the Court record, the parties' submissions, the Rules and the jurisprudence may be sufficient to establish the reasonableness and necessity of a claim made for assessable services. The respondent also

submits that claims for assessable services were made only in respect of steps that were undertaken, were necessary for the conduct of the appeal, and are itemized in Tariff B (written representations in response, paras. 4–5).

[22] Regardless of the respondent’s affidavit, I am satisfied that, in the circumstances of this file, the Court file, the parties’ submissions, and Tariff B are sufficient to assess whether the claims made for assessable services meet the criteria of necessity and reasonableness.

[23] With respect to disbursements, while subsection 1(4) of Tariff B provides for the filing of an affidavit to establish that disbursements were incurred, such evidence may also be adduced by the solicitor appearing at the assessment. Moreover, at paragraph 26 of the *Carlile* decision, it is stated that an assessment officer should “not penalize successful litigants by denial of indemnification when it is apparent that real costs were indeed incurred.” Accordingly, the absence of an affidavit does not necessarily preclude recovery of all disbursements claimed if it can otherwise be established that real disbursements were incurred.

[24] Nonetheless, there are no grounds to question the validity or veracity of the respondent’s affidavit in this case, given that paralegals do not appear to fall under the authority of a regulatory body in Alberta. With respect to the activities conducted by counsel as stated in the affidavit, certain tasks, such as serving documents, may lawfully be performed on behalf of counsel when carried out under their supervision.

[25] As a result, the appellant's contentions regarding the respondent's affidavit will have no bearing on this assessment.

III. Assessable Services

[26] Regarding assessable services, Column III of Tariff B applies to this assessment pursuant to Rule 407, as previously concluded. The minimum number of units, or the lower end of the ranges available under Column III, is claimed throughout, except for Item 27, for which the midpoint is claimed.

[27] As it will be explained below, the claims made under Items 19, 20, 22(a), 25 and 26 will be allowed in full, while the claim made under Item 27 will be disallowed.

- A. *Item 19 – Memorandum of Fact and law*
- Item 20 – Requisition for Hearing*
- Item 22(a) – Counsel fee on hearing of appeal: to first counsel, per hour*
- Item 25 – Services after judgment not otherwise specified*
- Item 26 – Assessment of costs*

[28] The 14 units claimed under Items 19 (5 units), 20 (1 unit), 22(a) (4 units), 25 (1 unit) and 26 (3 units) are allowed in full.

[29] Column III provides for a range of 4 to 7 units for Item 19. In paragraph 22 of the appellant's written submissions, it is contended that no more than 3 units should be allowed for this item. Allowing such a number of units would fall outside my jurisdiction because the

Judgment requires the use of the numbers set out in Column III. Given the result and the complexity of the proceeding, the 5 units claimed are allowed.

[30] The appellant opposes the allowance of 1 unit for each of Items 20 and 25. Regarding Item 20, the costs materials received, as well as the Court record, support the fact that the respondent provided its periods of unavailability to the appellant, which justifies this claim. Concerning Item 25, the fact that the decision was rendered orally does not preclude an allowance for reviewing the Judgment with the client and its implications, and the respondent's materials support this claim. Considering the result of the proceeding, both claims are allowed.

[31] Column III provides for a range of 2 to 3 units for Item 22(a), for appearance at the appeal hearing. The appellant does not contest that counsel attended for 2 hours, and allowing fewer than 2 units for each hour is not permitted by the Judgment. Therefore, the 4 units claimed by the respondent are allowed, given the result and complexity of the proceeding factors (2 units multiplied by 2 hours).

[32] The appellant does not oppose the allowance of 1 unit under Item 26 for the work performed in this assessment of costs, although the Judgment warrants a minimum of 2 units. In consideration of the amount of work factor, the 3 units claimed by the respondent are allowed.

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

[33] For the following reasons, the 2 units claimed under Item 27 are disallowed.

[34] The appellant puts forward that pursuant to the decision in *D'Souza v. Canada*, [2010] F.C.J. No. 1229 [*D'Souza*], at paragraph 4, this claim should be disallowed, as no specifications were provided concerning the nature of the services that were performed (written representations in response, at para. 11). In reply, the respondent indicates that both Items 26 and 27 were claimed with respect to this assessment of costs, and submits the decisions in *Boroumend v. Canada*, 2021 FCA 48 [*Boroumend*] at paragraph 9, and *Keenan v. Canada*, 2023 FCA 80 [*Keenan*] at paragraph 6, in support of these claims (written representations in reply, at para. 5).

[35] Upon verification, Item 27 was not claimed in the cases *Boroumend* and *Keenan*. In addition, as noted in *Halford v. Seed Hawk Inc.*, 2006 FC 422 at paragraph 131, “[...] Item 27 only comes into play for services not otherwise addressed by Items 1 to 26.” Allowing an additional unit under Item 27 for this assessment of costs would result in double indemnification, which is not permitted in taxation. As sated in *D'Souza*, assessment officer will generally not allow units under this item without an acceptable explanation as to the nature of the services claimed.

[36] Given that Item 27 cannot be used to compensate again for services rendered with respect to this assessment of costs, and that no other specific submissions were made in support of this claim, no unit is therefore allowed.

[37] In total, 14 units are allowed for assessable services, amounting to \$2,520.

IV. Disbursements

[38] The respondent claims \$746.67 for disbursements, more specifically \$724 for photocopies made internally and \$22.67 for courier fees. No tax claims are tied to these disbursements. The appellant takes the position that the claims for disbursements ought to be disallowed or limited to \$10 for photocopies (written representations in response, at paras. 16–23).

[39] As set out above, subsection 1(4) of Tariff B establishes the standard of proof regarding disbursements. The jurisprudence holds that disbursements must be shown to have been necessary for the conduct of the proceeding (*Merck & Co. Inc. v. Apotex Inc.*, 2006 FC 631 [*Merck*] at para. 3).

[40] The appellant maintains that the courier and printing expenses were completely unnecessary, given that electronic service and filing were permitted, and that a litigant acting to minimize costs would have opted for electronic service and reviewed the documents electronically. In support of these contentions, the appellant submits the case *Dobson v. Winton and Robbins Ltd.*, 1959 CanLII 19 (SCC) [*Dobson*], page 783 (written representations in response, at paras. 17–18). He adds that he should not have to bear the costs arising from the respondent's inefficiency.

[41] In reply, the respondent indicates that the printing expenses were incurred in anticipation of the appeal hearing, which was held before three members of the Court, and were justified for

the litigation of an appeal (written representations in response, at para. 6). The affidavit of Linda Platt also provides evidence that the expenses claimed were incurred.

[42] While I do find the decision in *Dobson* to be of assistance in this assessment, given that it concerns a real property action, I agree with the appellant that certain expenses were not reasonable and necessary for the conduct of the proceedings.

[43] As detailed below, a reduced amount will be allowed for courier and photocopies expenses.

A. *Courier*

[44] Considering the opposition of the appellant and after a careful review of the file, the courier fees of \$7.64 claimed for service of the condensed book will be allowed, while those of \$7.23 and \$7.80 claimed for service of the notice of appearance and the respondent's factum will not be allowed.

[45] Exhibit B to the affidavit of service of the notice of appearance, filed in the Court record on March 1, 2024, confirms that the appellant acknowledged receipt of this document upon service without delay. Notwithstanding, the notice of appearance was also served by courier. Rule 146 requires only that a valid proof of service be filed and does not mandate additional methods of service where such proof has been established. Accordingly, the service of the notice

of appearance by courier was unnecessary, and the appellant should not be required to bear this expense.

[46] Regarding the respondent's factum, on the one hand, Exhibits A and B to the affidavit of service of this document filed on the Court file on August 29, 2024, establishes that it was sent by courier at the same time as it was served by email. On the other hand, Exhibit B to the affidavit of service of the notice of appearance indicates that the respondent had previously advised the appellant that all upcoming documents not requiring personal service, such as the respondent's factum, would be served electronically. In these circumstances, the appellant should not have to support this expense.

[47] Finally, courier fees are claimed for delivering a hard copy of the condensed book to the appellant. I note that the solicitor certificate of service indicates that electronic service of this document was effected on November 13, 2024. Nonetheless, paragraph 61 of Federal Court of Appeal Consolidated Practice Direction provides that a hard copy of a condensed book must be provided to all parties before an in-person appeal hearing. Such requirement was also found in the Consolidated Practice Direction dated August 2, 2024, that was in effect when the condensed book was served. Therefore, I find that there was a reasonable justification for using a courier in these circumstances.

B. *In-house photocopies*

[48] The respondent claims \$724 for photocopies and printing expenses. The appellant contends that this claim should either be disallowed entirely or limited to \$10, based on his estimate of real costs incurred and on the decision in *Diversity Product Corp. v. Tye-Sil Corp.*, [1990] F.C.J. No. 1056, at paragraph 35, 1990 CanLII 13732 (FC).

[49] From the outset, this claim will not be disallowed in its entirety, as it was reasonable for the respondent to print one set of each document for its own use to ensure the proper conduct of the matter (*Carlile* at para. 26; *Merck* at para. 3). For this reason, one printed copy of each factum will be allowed, as well as for the appeal book, the joint book of authorities, and the condensed book. In addition, as previously discussed, it was also necessary and reasonable for the respondent to print four additional copies of the condensed book for the members of the Court and for the appellant's use at the hearing.

[50] However, the second copy claimed for the appellant's factum and for the appeal book will not be permitted, since these documents were served and filed by the appellant and there was no particular reason for the respondent to print a second set. Similarly, there was no reason for printing a second copy of the respondent's factum for service purposes or for the Court. The second set claimed for the joint book of authorities will not be allowed, given that the Court file indicates that this document was served and filed electronically. A question still arises regarding the reasonableness of the \$0.25 per page rate claimed by the respondent.

[51] The appellant's estimate of the real costs of photocopies in this matter appears to omit expenses such as paper costs. Disbursements for in-house photocopies have been allowed at a rate of \$0.25 per page in many recent decisions (*Clorox Company of Canada, Ltd. v. Chloretech S.E.C.*, 2023 FC 174 at para. 20). Consequently, this rate is appropriate and reasonable.

[52] To summarize, after subtraction of the disallowed claims, \$7.64 is allowed for courier fees, and \$488.25 is allowed for photocopies and printing expenses, for a total amount of \$495.89 allowed for disbursements.

V. Conclusion

[53] For the above reasons, the respondent's bill of costs is assessed and allowed in the amount of \$3,015.89 payable by the appellant to the respondent. A Certificate of Assessment will be issued.

“Karine Turgeon”
Assessment Officer

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-83-24

STYLE OF CAUSE: MUHAMMAD EJAZ ASLAM v. HIS MAJESTY
THE KING

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

REASONS FOR ASSESSMENT BY: KARINE TURGEON, Assessment Officer

DATED: FEBRUARY 27, 2026

WRITTEN SUBMISSIONS BY:

Muhammad Ejaz Aslam ON HIS OWN BEHALF

Jeffrey Z.H. Tran FOR THE RESPONDENT

SOLICITORS OF RECORD:

Marie-Josée Hogue FOR THE RESPONDENT
Deputy Attorney General of Canada