Federal Court of Appeal

Cour d'appel fédérale

Date: 20251104

Docket: A-352-23

Citation: 2025 FCA 196

2025 FCA 196 (CanLII)

Present: KARINE TURGEON, Assessment Officer

BETWEEN:

SEISMOTECH IP HOLDINGS INC.
SEISMOTECH SAFETY SYSTEMS INC.

Appellants

and

ECOBEE TECHNOLOGIES ULC
APPLE CANADA INC.
APPLE INC.

Respondents

Assessment of costs without appearance of the parties.
Certificate of Assessment delivered at Ottawa, Ontario, on November 4, 2025.

REASONS FOR ASSESSMENT BY: KARINE TURGEON, Assessment Officer

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REASONS FOR ASSESSMENT

KARINE TURGEON, Assessment Officer

I. Overview

[1] By way of Judgment and Reasons for Judgment rendered on December 2, 2024 [Judgment], the Court dismissed the appeal in this file, with costs to the Respondent Ecobee Technologies ULC, and the Respondents Apple Canada Inc. and Apple Inc., to be calculated in accordance with column III of the table to Tariff B of the *Federal Courts Rules,* SOR/98-106 [Rules].

[2] The Respondents Apple Canada Inc. and Apple Inc. [Respondents] initiated this assessment following Rule 406 by filing a letter and a Bill of Costs on April 30, 2025. The Appellants filed a letter on May 1, 2025, regarding timelines for filing costs materials.

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[3] On May 15, 2025, a direction [Direction] was issued to the parties regarding the conduct and filing of costs materials. On June 9, 2025, the Respondents served and filed an Affidavit from Christina Vincent, affirmed on the same day, attaching Exhibits A to M, along with authorities. On June 30, 2025, the Appellants submitted an Affidavit of Brittany Dieno, affirmed on the same day, attaching Exhibits A to T, along with written representations and authorities, in response to the assessment of costs. The Respondents filed reply materials comprised of an Affidavit of Christina Vincent, affirmed on July 21, 2025, attaching Exhibits A to H, along with written representations and authorities. On August 5, 2025, the Appellants filed written representations in sur-reply, as permitted by the Direction.

[4] Given the materials received, the questions of which factors will be considered relevant for this assessment and whether the Respondents can claim taxes must be examined as preliminary issues.

II. Preliminary Issues

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

[5] An assessment officer may consider factors referred to in subsection 400(3) of the Rules, where found relevant (Rule 409). The Respondents and the Appellants refer to various points that could impact this assessment.

[6] The Respondents highlight that the Judgment found that various arguments raised by the Appellants were “ill founded on law” and “lacking any basis or merit”. They submit that the Appellants refused to answer the Respondents’ emails regarding costs granted in this matter and refused to pay the lump sum costs awarded by the Federal Court in the underlying matters (Files T-1147-23 and T-1148-23). They also point out that no separate costs are sought by each Apple Canada Inc. and Apple Inc. in this matter (written representations, paras. 2, 12, 14 and 16).

[7] The Appellants submit in response that the Respondents created the need for an assessment by claiming unsupported and excessive costs contrary to jurisprudence. They also argue that the Respondents cannot “shift […] the debate to the enforcement of costs award made by the Federal Court in a separate file” (written representations in response, paras. 1 and 2).

[8] First, the findings found in the Judgment will be taken into consideration, as they clearly pertain to the outcome of the proceeding (Rule 409; paragraph 400(3)(g) of the Rules).

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[9] Second, the attempts to recover costs granted in the Judgment and the position taken by the parties when attempting to conclude an agreement as to the quantum of costs will not be regarded as a factor that generally favours one party to the detriment of the other following Rule 409 and paragraph 400(3)(g) of the Rules, as this phase pertains to the process that took place between the parties and no provisions are found in the Rules regarding it (*Vesuna v. Canada*, 2023 FCA 99 at para. 19; *Kohlenberg v. Canada (Attorney General)*, 2023 FC 648 at para. 19; *Quinn v. Canada (Attorney General)*, 2021 FC 470 at para. 19). Nonetheless, as it will be examined later, the step involving efforts to settle the quantum of costs falls within the assessable services category.

[10] Third, the present file is distinct from the underlying Federal Court files, and whether costs have been recovered on those files is not relevant for this assessment, in the absence of application of subsection 408(2) of the Rules.

[11] Fourth, Apple Canada Inc. and Apple Inc. were represented by the same counsel and could not be allowed to receive two separate sets of costs, since double indemnification cannot be permitted and the costs of the litigation were shared.

[12] Finally, I will intervene on a case-by-case basis should I agree with the Appellants that a claim is unsupported, excessive or unlawful.

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B. *Can the amounts claimed by the Respondents for various taxes be allowed?*

[13] In the Bill of Costs, the Respondents claim HST at a rate of 13% on all assessable services and disbursements, understood to be the Ontario HST rate. The Affidavit of Christina Vincent, affirmed on June 9, 2025, was filed in support of some amounts of taxes claimed on disbursements. No specific submissions were made by the Respondents regarding HST.

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[14] The Appellants submit that the Respondents could seek full input tax credits on the HST, and therefore, claims for HST should be disallowed (written representations in response, paras. 65–66). No reply was provided to this argument.

[15] I agree with the Appellants that the Respondents' costs record shows some incompleteness or contradictions in the following two aspects.

[16] No submissions or evidence were provided about taxes claimed on the assessable services listed in the Bill of Costs. In the absence of submissions or evidence directly supporting that taxes were paid on legal services and that no credits were sought, and given that the Appellants' contestation was known, no taxes will be allowed on the assessable services.

[17] Regarding the disbursements incurred in Vancouver, the invoices prove that taxes were paid, although at the rate applicable to British Columbia. Therefore, where applicable, my intervention will be required to correct and adjust the claimed amounts to reflect the British

Columbia rate. Additionally, amounts of HST paid claimed on certain disbursements are not substantiated by the record and will not be allowed.

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

III. Assessable Services

[19] The Respondents indicate that the claims for assessable services are based on column III of the table to Tariff B of the Rules, in accordance with the Judgment (written representations, paras. 17–18). I note that the midpoint zone of the range available for each item was used, which corresponds to the default level of costs for a file of average complexity (*Allergan Inc. v. Sandoz Canada Inc.*, 2021 FC 186 [*Allergan*] at para. 25).

[20] The Appellants rightfully submit in response that as stated in the decision *Clorox Company of Canada, Ltd. v. Chloretec S.E.C.*, 2023 FCA 25 [*Clorox*] at paragraph 3, “Costs are generally assessed around the mid-point of Column III, [and] an assessment officer may allow costs at a higher or at a lower level where particular circumstances of an item warrant” (written representations in response, para. 6). Except for one of the claims made under Item 25, the Appellants contest either the legitimacy of all the claims or the number of units sought.

[21] As it will be explained below, the claims made under Items 18, 19, and 20 will be allowed in full. The claims made under Items 22, 25 and 27 will be partially allowed, and a set-off will be applied to the claim made under Item 26. The claim made under Item 24 will be disallowed.

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A. *Item 18 – Preparation of Appeal Book*
Item 19 – Memorandum of Fact and Law
Item 20 – Requisition for Hearing

[22] Items 18, 19 and 20 will be allowed in light of the following.

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[23] The Respondents claim 1 unit for Item 18. The Appellants mainly allege that this claim cannot be allowed because the evidence submitted by the Respondents supports participation in the preparation of the Appeal Book agreement but not in the Appeal Book (written representations in response, paras. 8–11). This argument is unpersuasive, as the cases in *Gauthier c. Bacon St-Onge*, 2025 CAF 111 (CanLII) at paragraphs 20–23, *Déziel v. Canada*, 2004 FCA 276 at paragraph 7, and *Gebele v. Canada*, 2009 FCA 160 at paragraph 6, cited in its support, involve circumstances that are distinguishable from those in the present matter.

[24] Negotiating and proposing revisions to the Appeal Book agreement are meaningful activities subsumed in Item 18 that were performed by the Respondents (Reply Affidavit of Christina Vincent affirmed on July 21, 2025, paras. 3–4). I agree with the Respondents that the case in *Double Diamond Distribution Ltd. v. Crocs Canada, Inc.*, 2021 FCA 47 [*Double Diamond*], at paragraph 14, supports the claim as formulated and will allow the requested unit.

[25] The Respondents contend that the amount of work required to prepare the Memorandum of Fact and Law justifies an allocation of 6 units under Item 19, given the important public interest questions that had to be addressed (reply written representations, para. 4). The Appellants concede that an allocation of 5 units would be justified (sur-reply written representations, at para. 4). The range of units found at Column III for Item 19 is 4 to 7, with a

midpoint at either 5 or 6, which must be rounded up or down (subsection 2(2) of Tariff B; *Miller Thomson LLP v. Hilton Worldwide Holding LLP*, 2020 FCA 134 at para. 162). Considering the factor "the importance and complexity of the issues", I find it appropriate to round up the number of units following Rule 409 and paragraph 400(3)(g) of the Rules, and will allow 6 units.

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[26] The unit claimed for the preparation of the Requisition for hearing is contested. Although the Appellants acknowledge "that Item 20 can be awarded to respondents depending on the circumstances of a case" and recognize that they were engaged in some discussions with the Respondents, they submit that it was "solely to avoid creating more unnecessary animosity" (sur-reply written representations, para. 7). I find that the costs materials received from both parties, including the email thread attached as Exhibit D to the Affidavit of Christina Vincent, affirmed on July 21, 2025, support that there was involvement of the Respondents in the preparation of the Requisition for hearing, which justifies the allocation of the unit (Reply Affidavit of Christina Vincent affirmed on July 21, 2025, para. 6).

B. *Item 22 – Counsel fee on hearing of appeal (a) to first counsel, per hour*

[27] The Respondents claim 15 units (3 units x 5 hrs) for the appearance of Mr. Lizius at the appeal hearing. This claim will be partially allowed for 8 units.

[28] Turning first to the duration of the hearing, the Respondents recognize that the hearing lasted approximately 3.5 hours, but that their claim includes "some sensible approximation" for attending the hearing of the other Appeal file (A-22-23) (written representations, para. 21). The Appellants submit that the hearing lasted 2.5 hours, and that Tariff B does not permit the

Respondents to seek costs for time relating to the other appeal hearing (written representations in response, paras. 19–22).

[29] The minutes of hearing found in the Court file indicate that the hearing in the present matter lasted 4h29 minutes, inclusive of a lunch recess of approximately 1 hour. In the absence of submissions from the Respondents supporting the inclusion of the lunch recess, it will be excluded. The recording of the hearing confirms that the Court was informed of the order of preference as to which appeal be heard first at the outset of the hearing. The Appellants submit that it was solely the Respondents' choice "to remain in the courtroom when it was not required" (sur-reply written representations, para. 8).

[30] I agree that allowing the total 1.5 hours of additional time sought to observe the other hearing would be contrary to the Judgment and Tariff B. Nonetheless, I find it reasonable to allow 30 minutes to account for the time the Respondents were unable to work on other matters remotely and needed to be readily available to make the best use of the Court time.

[31] The Appellants note that no specific submissions were made to substantiate the 3 units claimed per hour (written representations in response, para. 19). Since I consider that the amount of work performed by the Respondents at the hearing was moderated by the simultaneous appearance of counsel for the other Respondent Ecobee Technologies ULC, 2 units per hour are allowed (Rule 409; paragraph 400(3)(g) of the Rules).

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[32] After adjustment, a total of 8 units, corresponding to 2 units multiplied by 4 hours, is allowed for this item.

C. *Item 24 – Travel by counsel to attend a trial, hearing, motion, examination or analogous procedure, at the discretion of the Court*

[33] The Respondents claim 3 units under Item 24, for the time counsel spent travelling between Toronto and Vancouver. They submit that the trip was undertaken at the request of the Appellants, and that notice had been given as to related additional costs (written representations, para. 22). This claim will not be allowed for the following reason.

[34] The Appellants correctly point out that "it is beyond the jurisdiction of an Assessment Officer to award costs under Item 24 without a prior direction from the Court" and submit the decision in *Double Diamond* at paragraph 16, in support of this argument (written representations in response, para. 24). Assessment officers are not members of the Court, and the discretion referenced in Item 24 does not extend to them (*Double Diamond* at para. 16). Subsection 5(1) of the *Federal Courts Act,* R.S.C., 1985, c F-7 [the Act] states that the 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).

[35] As it will be discussed in the disbursements section, assessment officers although have jurisdiction to assess expenses incurred while travelling, in the absence of specific instructions of

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the Court (*Almecon Industries Ltd. v. Anchortek Ltd.*, 2003 FC 1298 at para. 22; *Abbott v. Canada*, 2004 FC 739 at para. 7).

D. *Item 25 – Services after judgment not otherwise specified*

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[36] Two separate claims of 1 unit each are found in the Bill of Costs under Item 25, the first being for reviewing the judgment and its implications to the client, and the second for attempting to settle the issue of costs. The first claim is not contested and will be allowed as submitted. I will intervene regarding the second claim.

[37] The Respondents submit that attempting to settle qualifies as an assessable service under Item 25 (written representations, para. 24). The Appellants agree that it qualifies as an assessable service, but argue that it is subsumed under Item 26, which covers all preparation related to costs, and therefore cannot be claimed under Item 25 (written representations in response, para. 28).

[38] Rule 3 provides that the “Rules shall be interpreted and applied (a) as to secure the just, most expeditious and least expensive outcome of every proceeding […]”, and the Assessment Officer stated in *Mitchell v. Canada*, 2003 FCA 386 [*Mitchell*] at paragraph 12, “Consistent with Rule 3, […] 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 […]”.

[39] I note from the costs materials that significant work was performed by the Respondents to settle the costs matter, and that the Respondents did not indicate having considered this activity in the number of units sought under Item 26 (Reply Affidavit of Christina Vincent, para. 11).

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[40] According to the jurisprudence submitted by the parties, an attempt to settle the issue of costs has sometimes been found to be an assessable service qualifying under Item 25, and at other times under Item 26. I also note from the jurisprudence, such as the case in *Nova-Biorubber Green Technologies, Inc. v. Sustainable Development Technology Canada*, 2021 FC 102 at paragraph 26, cited by the Respondents, that Item 25 is generally claimed and permitted only once, except special circumstances (*Clorox* at para. 12; *Canada (Attorney General) v. Iris Technologies Inc.*, 2024 FCA 118 [*Iris*] at para. 12). In *Georgetown Rail Equipment Company v. Tetra Tech Eba Inc.*, 2023 FC 347 [*Georgetown*] at paragraphs 81 and 82, a complex intellectual property case cited by the Appellants, special circumstances were present, and the multiple claims advanced under Item 25 were not disputed.

[41] Given Rule 3 and the *Mitchell* case, I will move the unit claimed under Item 25 for attempting to settle the issue of costs under Item 26, to not penalize the Respondents "by denial of indemnification when it is apparent that real costs were indeed incurred" (*Carlile v. Canada (Minister of National Revenue – M.N.R.)*, [1997] F.C.J. No. 885 [*Carlile*] at para. 26).

[42] After adjustment, 1 unit is allowed for reviewing the Judgment under Item 25.

E. *Item 26 – Assessment of costs*

[43] The Respondents claim a total of 5 units under Item 26, including the unit transferred from Item 25.

[44] The Respondents highlight that an additional round of arguments and evidence required their attention (written representations, para. 25). The Appellants submit in response that the costs of this assessment should also be allowed to them and set off against the costs allowed to the Respondents for this assessment under subsection 408(2) of the Rules. Alternatively, the Appellants submit that costs should not be allowed to the Respondents, primarily on the basis that certain claims and materials lack legitimacy (written representations in response, paras. 30–32). The Respondents reply that entirely refusing their claim or permitting a set-off would be unreasonable, as the assessment was necessary after the Appellants ignored attempts to settle (reply written representations, para. 8). The Appellants submitted in sur-reply that the attempt to settle costs amounted to nothing since the amounts sought were exaggerated and unsupported (sur-reply written representations, para. 12).

[45] I find that it would be unreasonable to refuse the Respondents' claim while it is obvious that costs relating to this assessment were incurred and given the result of the proceeding (*Carlile* at para. 26; Rule 409; paragraph 400(3)(a) of the Rules). Given that some claims were less compelling, partially disallowed or disallowed, I also find that the Appellants were required to undertake additional work, to a somewhat limited degree, in connection with this assessment compared to other assessments (Rule 409; paragraph 400(3)(g) of the Rules).

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[46] Therefore, 2 units are allowed to the Appellants, and 5 units are allowed to the Respondents under Item 26. After set-off, 3 units are allowed to the Respondents.

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

[47] The Bill of Costs indicates that 2 units are sought under Item 27 for a Notice of Appearance, although the Respondents' submissions mention that costs are sought under this item by means of 2 separate claims, one being for reviewing the Notice of Appeal and the other for preparing the Notice of Appearance (written representations, para. 26; reply written representations, para. 9). The Appellants do not oppose the allowance of 1 unit for the Notice of Appearance but oppose permitting the Respondents to amend their claim to split it in two through their submissions (written representations in response, paras. 33–35; sur-reply written representations, paras. 13–14).

[48] One unit will be allowed for the Notice of Appearance given that the Respondents' costs materials do not support an allowance of 2 units under Item 27. The Bill of Costs refers solely to a claim for a Notice of Appearance made under Item 27, for 2 units, and was not amended to split this claim in two. In addition, I do not find that the jurisprudence submitted by the Respondents supports the argument that a claim should be allowed under Item 27 for reviewing a Notice of Appeal.

[49] A total of 21 units amounting to $3,780 is allowed for assessable services. Taxes are disallowed on assessable services, as previously explained.

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IV. Disbursements

[50] The Respondents submit that “disbursements are typically assessed in full, provided they are reasonable”, as stated in *Allergan,* at paragraph 36, and contend that all the disbursements claimed are justified and proportionate (written representations, paras. 27–28; reply written representations, para. 1). The Appellants take the position that a partial compensation of expenses should be allowed and that some disbursements claimed are unsupported, excessive, or contrary to jurisprudence.

[51] The Appellants also contend that all travel expenses regarding Ms. Levasseur, considered second counsel by the Appellants, should be disallowed for lack of jurisdiction of the assessment officer to assess them in the absence of instructions from the Court. In addition, they maintain that booking for second counsel was an afterthought, because it was done subsequently to the booking of first counsel, and was therefore not a necessary expense (written representations in response, paras. 1, 6 and 36–40). The Respondents submit that, as held in *Truehope Nutritional Support Limited v. Canada (Attorney General)*, 2013 FC 1153 [*Truehope*], at paragraph 106, assessment officers have the jurisdiction to allow second counsel disbursements in the absence of a Court direction. They add that the Appellants acknowledge that second counsel appeared and made submissions at the appeal, and that the assertion that Ms. Levasseur’s attendance was an afterthought is unsubstantiated (reply written representations, para. 11).

[52] On the point of the admissibility and standard of proof, Tariff B does not prohibit categories of disbursements (*Desloges v. Canada (Attorney General)*, 2001 FCT 1142

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[*Desloges*] at para. 6). Although Tariff B provides a party-to-party partial indemnification for assessable services, “disbursements are typically assessed in full, provided they are reasonable” (*Allergan* at paragraph 36). However, the decision in *Allergan* must be read in light of Tariff B, which provides that “no disbursement, other than fees paid to the Registry, shall be assessed, unless […] it is established by affidavit or by the solicitor appearing on the assessment that the disbursement was made or is payable by the party” (emphasis added) (subsection 1(4) of Tariff B). Therefore, the costs materials must also support that a disbursement was incurred. The jurisprudence also established that a disbursement must have been necessary for the conduct of the proceeding (*Merck & Co. Inc. v. Apotex Inc.*, 2006 FC 631 [*Merck*] at para. 3).

[53] On the point regarding second counsel disbursements, I am of the view that the jurisdiction to assess disbursements for second counsel is vested in the assessment officer pursuant to Rule 405. As stated in *Truehope* at paragraph 106, “Assessment Officers have the jurisdiction to allow reasonable and necessary travel expenses for second counsel, when justified by the evidence presented, even when the Court has not made a direction pursuant to Item 14(b)” (reply written representation, para. 11). The same rationale would logically apply to an Appeal case, such as the present one, in the absence of a direction regarding second counsel under Item 22(b). Similarly, an assessment officer has the jurisdiction to allow travel disbursements in the absence of any direction relating to the assessable service found under Item 24 for travel by counsel (*Marshall v. Canada*, 2006 FC 1017 at para. 6; *Desloges* at para. 5).

[54] The Appellants also submit that the most recent decision from an assessment officer regarding second counsel disbursements is *Iris* and should take precedence. Second counsel

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disbursements were disallowed in this case (written representations in response, para. 38). I agree that a recent decision may take precedence in comparable cases, but it is not binding. In any event, the unreported decision rendered by Blanchet, A.O. in File A-65-22 on December 6, 2024, is an even more recent case in which disbursement for a second counsel were allowed.

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[55] For the above reasons, I find that the Rules give me the jurisdiction to assess the disbursements claimed for Ms. Levasseur. The minutes and recording of hearing confirm that she attended the hearing and made oral submissions. The orders under appeal and the Memorandum of Fact and Law filed by the Respondents involved questions pertaining to public interest that could have impacted hundreds of thousands of consumers (reply written representations, para. 4). As a first stage, I find that the appearance of a second counsel was reasonable and necessary for the conduct of the proceeding given the importance and complexity of the issues and any other matter an assessment officer may consider relevant (Rule 409; paragraph 400(3)(c) and (o) of the Rules). The reasonableness and necessity of each expense claimed for Ms. Levasseur will be examined at a second stage in the next sections.

[56] The Respondents claim a total of $4,701.15 for disbursements, including taxes, consisting of travel expenses incurred for 2 lawyers to attend the hearing in Vancouver, and for printing and online research.

[57] Considering the above framework and the costs materials submitted, disbursements pertaining to each category claimed will be allowed, with some reductions, as detailed below.

A. *Travel – Air and Ground*

[58] In the Bill of Costs, the Respondents claim $1,556.77, before Ontario HST, for two round-trip plane tickets, for a total of $1,759.15. However, as the evidence substantiates a claim of $551.49 and $597.99 for each ticket before applicable taxes, and an extra charge of $43 applied on each ticket for travel agency fees, amounting to the significantly lower amount of $1,235.48, before taxes, and $1,570.45 including taxes, this discrepancy will be addressed by accepting the latter, a smaller amount, for this assessment (Exhibit B to the Affidavit of Christina Vincent, affirmed on June 9, 2025). The amount of $51.65, including taxes and gratuities, is also claimed for a taxi ride to the Vancouver airport (Exhibit D to the Affidavit of Christina Vincent, affirmed on June 9, 2025).

[59] Regarding the plane tickets, the Appellants allege that the materials filed by the Respondents are inconclusive as to whether these amounts were actually paid, that the prices paid are unreasonable compared to others tracked online, and that they are higher due to delays taken for booking. They also argue that incurring travel agency fees was wholly unnecessary. It is also submitted that the taxi fee was unnecessary and unreasonable, as taking a train at a lower cost was possible (written representations in response, paras. 47–53; sur-reply written representations, p. 6). The Respondents reply that incurred airfares are reasonable and established by affidavit. They also maintain that using a travel agency is in the ordinary course, and that booking was made shortly after the appeal date was set down (reply written representations, para. 13).

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[60] Air and ground travel disbursements will be allowed, except for the travel agency fees and associated taxes.

[61] I am satisfied that the affidavit substantiates all claims pertaining to transportation, and that the plane tickets were purchased within a reasonable timeframe. I agree with the Respondents that the Porter airline document submitted by the Appellants does not constitute an official receipt (Exhibit O to the Affidavit in response of Brittany Dieno, affirmed on June 30, 2025). Except for the travel agency fees, I find that transportation expenses comply with the guidance offered by the National Joint Council Travel Directive [NJC Directive], a tool used by the Federal Government, which was found relevant as a guideline for determining the reasonableness and necessity of travel disbursements (*Gemby v. Canada (Human Resources)*, [2000] F.C.J. No. 723, 2000 CanLII 15462 (FC) at para. 7; *Halford v. Seed Hawk Inc.*, 2006 FC 422 at para. 108; *Robert Mclaughlin v. The Attorney General of Canada*, [2010] F.C.J. No. 1029 [*Mclaughlin*] at para. 24).

[62] Economy class plane tickets were purchased, which is the standard provided in the NJC Directive for travel within Canada with an overnight stay. However, I do not find an indication in the NJC Directive that a fee paid to a travel agency would be considered a necessity or reasonable, especially for popular flights. As for the taxi expense claimed, the direction provides that taxis can be used for short local trips, and that gratuities such as the one claimed are permissible.

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[63] After the exclusion of the travel agency fees, $597.99 and the associated amount of $164.92 charged for taxes, for a total of $762.91, are allowed for first counsel's plane ticket. The sum of $551.59 and the associated amount of $158.87 charged for taxes, for a total of $710.46, are allowed for second counsel's plane ticket. Before taxes, the amount of $1,149.58 is allowed for the two plane tickets, for a grand total of $1,473.37 including taxes allowed for plane tickets. The taxi expense is fully allowed for a total of $51.65, corresponding to $39.57 plus $10 in gratuities and $2.08 in taxes.

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B. *Travel – Hotel*

[64] In the Bill of Costs, the total amount of $1,686.87 is claimed for a hotel room booked for two nights for first counsel Mr. Lizius and for a room booked for one night for second counsel Ms. Levasseur, plus additional HST claimed at the Ontario rate of 13% for a total of $1,906.16. However, as the submissions and evidence of the Respondents substantiate the lower amount of $1,771.27, inclusive of the British Columbia taxes, this discrepancy will be addressed by accepting the latter, a smaller amount, for this assessment (written representations, para. 27; Exhibit C to the Affidavit of Christina Vincent affirmed on June 9, 2025). This claim will be allowed, but for a reduced amount.

[65] The Appellants do not contest the first night claimed for Mr. Lizius but contest the reasonableness and necessity of the second one, on the basis that staying for a second night would have been a preference (written representations in response, at paras. 54–56; sur-reply written representations, p. 7). The Respondents reply that it is unreasonable for the Appellants to

submit that Mr. Lizius should have left on a red-eye flight after the hearing, as Ms. Levasseur did (reply written representations, para. 14).

[66] The NJC Directive indicates that itineraries shall be arranged to provide for a suitable rest period, and that a suitable rest period shall not be unreasonably denied. Hence, I find that it was reasonable and necessary to book a room for a second night for Mr. Lizius, given the time at which the hearing in this matter concluded, and that an evening flight would have resulted in an arrival in Toronto after midnight. The Appellants' opposition will although be considered with respect to the reasonableness of the amount claimed for this second night.

[67] The price actually paid for the second night amounted to a grand total of $677.91, which is the highest of the three nights. The travel agency documents dated August 19, 2024, indicate that the estimated price for Mr. Lizius' stay was $1,201.97 for two nights (Exhibit B to the Affidavit of Christina Vincent affirmed on June 9, 2025). Looking into less expensive, safe environment, and conveniently located accommodation would have been possible at the time this estimate became available. The costs materials do not support that such additional verification was performed. Therefore, the expense relating to the second night will be reduced to equal the expense incurred for the first night, corresponding to $439.72, plus $84.33 in taxes, for a total of $524.05.

[68] Ms. Levasseur's hotel room expense will be allowed based on the amounts shown on the hotel invoice, as no argument other than the previously set-aside jurisdiction objection has been advanced by the Appellants to disallow it.

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[69] In summary, the amount of $439.72, plus $84.33 in associated taxes for each night, totalling $1,048.10, is allowed for Mr. Lizius' stay. The amount of $569.31, corresponding to $477.69 and $91.62 in associated taxes, is allowed for the hotel room expense incurred by Ms. Levasseur. Before taxes, the amount of $1,357.13 is allowed for all hotel room expenses, for a grand total of $1,617.41 allowed for hotel room expenses including taxes.

C. *Travel – Meals*

[70] The amount of $169.62 plus associated taxes was claimed in the Bill of Costs under the miscellaneous item for travel expenses relating to meals (written representations, para. 27). The Respondents reduced this claim by withdrawing the disputed amount of $53.76 spent at a restaurant, the "Black and Blue" (reply written representations, para. 12).

[71] The Appellants submit that the claim for $53.76 should formally be disallowed instead of withdrawn, since Rule 75 regarding amendments to a document would have required leave of the Court before proceeding with such withdrawal. They also contend that subsection 410(1) of the Rules would mandate that the Respondents bear the costs of this amendment (sur-reply written representations, para. 15). I am unable to accept this position on its face, the Respondents having simply conceded that their claim should not be allowed. Moreover, no amended Bill of Costs was filed. The withdrawal is accepted, but in return, the work performed by the Appellants in relation with the withdrawn amount was taken into consideration for the allocation of units to the Appellants under Item 26.

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[72] As for the remaining meals, one breakfast is claimed for the entire itinerary of Ms. Levasseur, and two dinners are claimed for the entire itinerary of Mr. Lizius. Given that the argument of the Appellants regarding my jurisdiction to assess the breakfast taken by Ms. Levasseur was not accepted, the amount of $17.75 before gratuities and taxes is allowed. The remaining argument is that the two receipts for the in-room dining meals taken by Mr. Lizius, respectively in the amount of $48.23 and $48.99 before taxes, did not include a breakdown of what was ordered and may have included alcoholic beverages (written representations in response, para. 45). The Respondents reply that this argument is speculative (written representations in response, para. 12). The expenses incurred for these two meals will be allowed, since eating these two meals was necessary given the duration of the trip. Moreover, I accept that moderate amounts such as $48.23 and $48.99 may be spent solely on food, excluding alcohol.

[73] Finally, the three remaining amounts claimed for meals are significantly below $28.40 and $57.70, which were the maximum amounts reimbursable for breakfasts and dinners following the version of the NJC Directive in force at the time the request for assessment was filed (*Mclaughlin* at para. 24).

[74] The amounts of $17.75, plus $0.89 in associated taxes and $3.36 in gratuities showing on the receipt are allowed for Ms. Levasseur’s breakfast. The amounts of $48.23 and $48.99, plus associated taxes of $3.96, are allowed for Mr. Lizius’ dinners. In summary, the amount of $118.33 is allowed for all meals, for a grand total of $123.18 including taxes.

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D. *Printing and Online Research*

[75] In the Bill of Costs, the Respondents claim $653.16 and associated Ontario HST for printing hundreds of pages in preparation for the appeal hearing, including the Appeal Book, the Joint Book of Authorities and Memoranda of Fact and Law.They also claim $48, and associated Ontario HST for online research (written representations, para. 27).

(1) Printing

[76] The Appellants submit that this claim should be entirely refused or that only $100 should be allowed, given that the documents were available electronically, and that based on the decisions in *Key First Nation v. Lavallee*, 2023 FCA 6 [*Key First Nation*], at paragraph 26 and *Soulliere v. Canada*, 2023 FCA 142, at paragraph 19, in-house printing requires detailed evidence of what was essential and of the actual out-of-pocket costs (written representations in response, paras. 57–60). A copy of the amounts invoiced by counsel to the Respondents was provided in reply, and it was pointed out in sur-reply that some of these amounts were actually charged for scanning, assembling, tabs, binders and printing room binding supplies (Exhibit G to the Reply Affidavit of Christina Vincent affirmed on July 21, 2025; sur-reply written representations, para. 15).

[77] For the reasons set out below, a reduced amount will be allowed for printing and related expenses.

[78] From the outset, entirely disallowing this claim would be unreasonable given that the Respondents had to print documents for the proper conduct of the matter (*Carlile* at para. 26; *Merck* at para. 3). The present case must also be distinguished from the *Key First Nation* case at paragraph 26, where part of the claim was allowed regardless, and where the amount claimed per page was significantly higher than in the present case.

[79] However, the amount of $83.25 claimed for scanning will be deducted, as it relates to a different activity, which leaves $569.91 claimed for printing, assembling and office supply expenses. Upon review of the file, since one copy of the Appeal Book, Joint Book of Authorities and Memoranda of Fact and Law totals more than 7,000 pages, a claim of approximately $0.08 per printed page was made by the Respondents. This appears reasonable given that disbursements for in-house photocopies have recently been allowed at $0.25 per page (*Clorox Company of Canada, Ltd. v. Chloretech S.E.C.*, 2023 FC 174 at para. 20).

[80] The evidence supports that the Respondents were charged $362.66 for office supplies and assembling charges, and I accept that the printed documents necessarily had to be assembled in an intelligible manner. I find that allowing 50% of the amount claimed for office supplies and assembling charges will reasonably compensate the Respondents without unreasonably burdening the Appellants (*Carlile* at para. 26).

[81] To summarize, the Respondents are entitled to a total of $388.58 for printing and associated expenses, after subtraction of the disallowed claimed amounts of $83.25 for scanning

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and $181.33 for office supplies and assembly fees. As previously explained, given the absence of evidence that taxes were actually paid, no taxes are allowed.

(2) Online Research

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[82] The Appellants contend that this claim should be entirely disallowed for lack of evidence of necessity, absence of invoice from the service provider, and because part of overhead (written representations in response, paras. 61–64). A copy of the charges invoiced to the Respondents was provided in reply (Exhibit H to the Reply Affidavit of Christina Vincent affirmed on July 21, 2025). The Respondents also replied that expenses such as printing and online research would have to be assessed even in the absence of an invoice, in light of the decision in *Georgetown* at paragraph 98 (reply written representations, para. 15).

[83] In the *Truehope* case cited by the Appellants, at paragraph 125, it is stated that "it is important to note that, despite the need for proof, the cost of proving the expenditures for computer research should not exceed the amount claimed". In addition, entirely disallowing the claim would be unreasonable given that the Respondents had to carry out research online (*Apotex Inc. v. Lundbeck Canada Inc.*, 2009 FCA 130 at para. 12, citing *Englander v. Telus Communications Inc.*, 2004 FC 276 at para. 24). In view of the modest amount claimed, I am satisfied that it should be allowed in full for $48, but without taxes, given the absence of evidence that any were paid.

[84] In summary, with respect to disbursements, $1,473.37 (corresponding to $1,149.58 plus 323,79 in taxes) is allowed for airfares, $51.65 (corresponding to $39.57 plus $10 in gratuities

and $2.08 in taxes) for ground transportation, $1,617.41 (corresponding to $1,357.13 plus $260.28 in taxes) for hotel rooms, and $123.18 (corresponding to $118.33 plus $4.85 in taxes) for meals. The amounts of $388.58 and $48 are allowed for photocopies and online research, without taxes. A grand total of $3,702.19 (corresponding to $3,111.19 and $591 in taxes) is allowed for all disbursements.

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V. Post-Judgment Interest

[85] In their submissions, the Respondents claim post judgment interest to be assessed in the amount of $1.59 per day, based on a rate of 5% per annum, following section 3 of the *Interest Act*, R.S.C., 1985, c. I-15 [Interest Act], although no mention of a request for post-judgment interest was formulated in the Bill of Costs. The Respondents also submit that following the decision in *Wilson v. Canada*, [2000] F.C.J. No. 1783, 2000 CanLII 16367 (FC) [*Wilson*] at paragraphs 46–47 and 60, “in the absence of an order made by the Federal Court of Appeal to the contrary, Apple is entitled to post-judgment interest calculated as provided by the Federal Courts Act” (written representations, paras. 29–31).

[86] The Appellants take the position that awarding interest is not within the jurisdiction of an assessment officer (written representations in response, paras. 67–72; sur-reply written representations, para. 17).

[87] The following analysis will explain why no interest or interest rate will be included in this decision and in the certificate of assessment.

[88] First, the decision in *Wilson* clarified that in the absence of different instructions from the Court, an assessment officer is bound by section 37 of the Act. Second, since the causes of action in this matter presumably arose outside a province or in more than one province, they would more precisely trigger subsection 37(2) of the Act.

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[89] In *Seedlings Life Science Ventures, LLC v. Pfizer Canada ULC*, 2020 FC 505 [*Seedlings*] at paragraphs 35 and 38–39, the Court concluded that granting post-judgment interest according to subsection 37(2) of the Act was a discretionary power vested in the Court that cannot have been rendered nugatory by section 3 of the Interest Act.

[90] Utilizing the decisions in *Wilson* and *Seedlings* as guidelines, I find that I do not have the "discretionary power" to determine a post-judgment interest rate based on the Interest Act or subsection 37(2) of the Act because I am not a member of the Court but rather an officer of the Registry. Pursuant to the *Wilson* and *Seedlings* cases and subsection 37(2) of the Act, it is within the Court's discretion to select an interest rate that is considered "reasonable in the circumstances" in this matter.

[91] In *Bristol-Myers Squibb Canada Co. v. Pharmascience Inc.*, 2023 FC 1023, a decision submitted by the Appellants, Garnet, A.O., mentioned at paragraph 31 that Part 11 of the Rules and subsection 37(2) of the Act do not seem to preclude a moving party "from seeking instructions from the Court regarding the post-judgment interest that can be applied." The Appellants submitted their position on the mechanisms that were used following this decision to seek post-judgment interest. For the purposes of this analysis, it will fall on a moving party to

determine the appropriate procedural vehicle to use, should it choose to bring the matter before the Court.

VI. Conclusion

[92] For the above reasons, the Respondents Apple Canada Inc. and Apple Inc.'s Bill of Costs is assessed and allowed in the amount of $7,482.19, payable by the Appellants to the Respondents [Apple Canada Inc. and Apple Inc.]. A Certificate of Assessment will be issued.

"Karine Turgeon"
Assessment Officer

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FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-352-23
STYLE OF CAUSE:	SEISMOTECH IP HOLDINGS INC., SEISMOTECH SAFETY SYSTEMS INC. v. ECOBEE TECHNOLOGIES ULC, APPLE CANADA INC., APPLE INC.

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

REASONS FOR ASSESSMENT BY:	KARINE TURGEON, Assessment Officer
DATED:	NOVEMBER 4, 2025

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