

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260626

Docket: A-235-24

Citation: 2026 FCA 120

Present: Stéphanie St-Pierre Babin, Assessment Officer

BETWEEN:

RICHARD FEARING

Applicant

and

**GARDAWORLD CASH SERVICES CANADA
CORPORATION**

Respondent

Assessment of costs without appearance of the parties.
Certificate of Assessment delivered at Ottawa, Ontario, on June 26, 2026.

REASONS FOR ASSESSMENT BY:

**STÉPHANIE ST-PIERRE BABIN,
ASSESSMENT OFFICER**

Federal Court of Appeal



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REASONS FOR ASSESSMENT

Stéphanie St-Pierre Babin, Assessment Officer

I. Overview

[1] By way of Judgment and Reasons for Judgment of the Court dated September 17, 2025, the Court dismissed the application for judicial review with costs in favour of the respondent,

GardaWorld Cash Services Canada Corporation (GardaWorld) (*Fearing v. Gardaworld Cash Services Canada Corporation*, 2025 FCA 168 (Judgment)).

[2] On November 20, 2025, GardaWorld filed a bill of costs to initiate an assessment of costs process pursuant to Rule 406 of the *Federal Courts Rules*, SOR/98-106 (the Rules). On, November 25, 2025, a direction was sent to inform the parties that the assessment of costs would proceed in writing and to provide deadlines to file their respective costs materials.

[3] Following the issuance of the direction the parties filed the following:

- Written representations on assessment of costs of the respondent GardaWorld filed on December 18, 2025;
- Written representations of the applicant, Mr. Fearing, filed on January 12, 2026;
- Written reply representations on assessment of costs and affidavit of disbursements of the respondent, GardaWorld, filed on February 5, 2026.

[4] Before reviewing the assessable services and the disbursements claimed, I must address three preliminary issues.

II. Preliminary Issues

A. *Which column of the table to Tariff B applies to this assessment?*

[5] As an alternative to an assessment pursuant to column III to Tariff B, GardaWorld seeks that I exercise my discretion under subsection 400(1) of the Rules to assess its costs in accordance with column V and award the maximum number of units available within the range of the applicable items. It contends that column III may be inadequate in cases involving complexity, importance and significant work. I cannot accede to such a request.

[6] Rule 407 provides that “[u]nless the Court orders otherwise, party-and-party costs shall be assessed in accordance with column III of the table to Tariff B.” The Judgment awarding costs on September 17, 2025, contains no reference to any column of Tariff B that would permit costs to be assessed other than in accordance with Rule 407. Rather, the operative portion of the Judgment simply provides that the application is dismissed with costs. In the absence of an order to the contrary, costs will therefore be assessed pursuant to column III of Tariff B.

[7] Answering the argument that column III risks under-indemnifying for the work required to respond to the extensive and unfocused materials, one must keep in mind the oft-cited principle that column III intends to provide partial indemnity as opposed to substantial or full indemnification (*Allergan Inc. v. Sandoz Canada Inc.*, 2021 FC 186 at para. 25). It must represent “a compromise between compensating the successful party and burdening the unsuccessful party” (*Canadian Pacific Railway Company v. Canada*, 2022 FC 392 at para. 23;

M.K. Plastics Corporation v. Plasticair Inc., 2007 FC 1029 at para. 20; *Sherman v. Canada (Minister of National Revenue)*, 2004 FCA 29 at para. 8).

B. *Can an assessment officer award a lump sum?*

[8] As another alternative to an assessment of costs according to column III to the table to Tariff B, GardaWorld requests in reply a lump sum award of \$10,000 pursuant to subsection 400(4) of the Rules. It essentially submits that the Federal Court of Appeal has confirmed that lump sums save time and money while supporting Rule 3's goal of expeditious and least expensive determination (*Nova Chemicals Corporation v. Dow Chemical Company*, 2017 FCA 25 at para. 11). It is also argued that fixing a lump sum based on a percentage of reasonably incurred fees is an appropriate methodology with adjustments made to reflect Mr. Fearing's conduct that tended to lengthen the proceeding and the amount of work performed to conduct the litigation (*AGI Suretrack, LLC v. Farmers Edge Inc.*, 2024 FC 1887 at para. 9).

[9] Notwithstanding all the arguments advanced by GardaWorld, I cannot accede to this request. Assessment officers and the Court are two different entities; only the Court is vested with the discretion to award a lump sum. Subsection 400(4) of the Rules states: "[t]he Court may fix all or part of any costs by reference to Tariff B and may award a lump sum in lieu of, or in addition to, any assessed costs." Subsection 5(1) of the *Federal Courts Act*, R.S.C., 1985, c. F-7, (the Act) provides that: "the Court consists of a chief justice [...] and 14 other judges." This definition does not include assessment officers who are officers of the registry according to Rule 2.

[10] Indeed, consistent case law confirms that assessment officers lack jurisdiction to award lump sums (*International Name Plate Supplies Limited v. Marks & Clerk Canada*, 2023 FCA 136 at para. 9; *Cabral v. Canada (Citizenship and Immigration)*, 2021 FCA 32 at paras. 19–20). Ultimately, their role is to assess costs in the context of an assessment of costs, not to award them (*Pelletier v. Canada (Attorney General)*, 2006 FCA 418 at para. 7).

[11] Had the Court intended to award a lump sum, it would have so provided in the operative part of its Judgment. Instead, it opted for the framework set out in Rule 407 to be calculated in accordance with column III to Tariff B.

C. *Which version of Tariff B applies to this assessment?*

[12] GardaWorld rightly submits the pre-amendment Tariff B governs this assessment because costs were ordered on September 17, 2025, and the amendments came into force on December 21, 2025, according to section 13 of the *Rules Amending the Federal Courts Rules and the Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/2025-232 (*Rules Amending the Federal Courts Rules*) which reads as follows:

Transitional Provision

13 Tariff B to the *Federal Courts Rules*, as it read immediately before the day on which these Rules come into force, continues to apply in respect of costs that are awarded in an order that is made by the *Court*, as defined in rule 2 of those Rules, before that day.

(emphasis added)

Disposition transitoire

13 Le tarif B des *Règles des Cours fédérales*, dans sa version antérieure à la date d'entrée en vigueur des présentes règles, continue de s'appliquer aux dépens adjugés dans une ordonnance rendue avant cette date par la *Cour* au sens de la règle 2 de ces règles.

(soulignement ajouté)

[13] On the other hand, I cannot consider GardaWorld's contention that for the purposes of the assessment, it is illustrative to consider the result under the revised Tariff B to bridge the gap between the former and the amended Tariff B. Upon reading section 13 of the *Rules Amending the Federal Courts Rules*, it is evident the transitional provision is not retroactive. It is rather prospective because the *Rules Amending the Federal Courts Rules* governs the future; i.e. "the period following its commencement" (Pier-André Côté, *The Interpretation of Legislation in Canada*, 4th ed. (Toronto: Carswell, 2011) at p. 117). The transitional provision, as stated, precludes me from applying the amended Tariff B in these Reasons and therefore, strictly the version of Tariff B, i.e., the *Rules Federal Courts Rules* in effect from January 13, 2022, to December 20, 2025, will be considered.

III. Assessment of Costs

A. *Assessable Services*

[14] GardaWorld seeks a total of 170.8 units in the bill of costs without initially including item numbers but rather a description of each of them. I will address these services in turn.

(1) Drafting, preparing and filing the memorandum of fact and law

[15] GardaWorld first claims 140.8 units for the filing of a memorandum of fact and law on January 2, 2025. It submits the requested time was required to thoroughly review the extensive 1,600-page application record and to properly address complex novel arguments, including those involving procedural fairness, the standard of review and the statutory interpretation. In response, the Mr. Fearing challenges GardaWorld's claim based on a number of hours, arguing that the principle of multiplying units by a number of hours applies only when Tariff B explicitly specifies, "per hour." GardaWorld finally concedes in its reply that for non-hourly items, Tariff B provides fixed units rather than a per-hour unit conversion.

[16] As a matter of fact, subsection 1(2) of Tariff B states the "bill of costs shall indicate the assessable service, the column and the number of units sought in accordance with the table to this Tariff and, where the service is based on a number of hours, shall indicate the number of hours claimed" (emphasis added). This wording clarifies that some items require their units to be multiplied by a number of hours, while others do not. As stated at paragraph 8 of *East Coast*

Hydraulics & Machinery (2009) Limited v. International Longshoremen's Association, Local 1976, 2025 FCA 208 (*East Coast Hydraulics*), the assessable services calculated as a function of a number of hours and specifically indicating “per hour” are Items 6, 9, 11, 14, 16(b), 21(b), 22 and 23 of the table to Tariff B.

[17] At the reply stage, GardaWorld finally claimed 7 units under Item 19 for the memorandum of fact and law which is subsumed in the respondent’s record, adding that the corresponding units may be transferred to the appropriate item without reduction. As correctly put forward by Mr. Fearing, the units should indeed have been submitted under Item 2 rather than Item 19 of Tariff B.

[18] Item 19 is located under subheading *F, Appeals to the Federal Court of Appeal*, of the table to Tariff B. The assessable services located under that subheading compensate for the procedural steps of an appeal proceeding. However, this matter concerns a judicial review filed on July 8, 2024, pursuant to paragraph 28(1)(h), and (2) of the Act. It is rather subheadings *A* to *E* of the table to Tariff B that are applicable (*East Coast Hydraulics* at paras. 14–15).

[19] All that remains is to determine the number of units to be allowed from the available range of 4 to 7 units under column III for Item 2. First, I agree with the respondent that a considerable workload was required to respond to the applicant’s record. Conversely, I note that the memorandum of fact and law was 26 pages, 10 references were provided and no affidavit was filed. In the circumstances of this case and considering Rule 409 and the factor set out in paragraph 400(3)(g) of the Rules, 6 units are allowed.

(2) Preparation for hearing

[20] GardaWorld claims 21 units – 3 units under column III of Tariff B multiplied by 7 hours – in counsel fees for the preparation of the judicial review hearing held on September 17, 2025. It is argued that counsel dedicated 7 hours of preparation to reviewing and distilling the issues from the voluminous application record, while also ensuring concise oral arguments. In its reply, GardaWorld corrected its initial bill of costs to claim 5 units pursuant to Item 13(a).

[21] With respect to the number of units under column III for Item 13(a), the available range is 4 to 6 units. Mr. Fearing asserts this claim should be allowed for 2 units given that the hearing lasted only 20 to 30 minutes with no witnesses or motions, and that the research required will be compensated by Item 2. The duration of the hearing does not diminish the substantial preparation time required as counsel must dedicate time to prepare ahead regardless of the ultimate length. Regarding the contention that part of the research and preparation is indemnified under item 2, reviewing the voluminous application record prior to the hearing remained necessary given the considerable length of time that had elapsed between its filing and the hearing. Following my review of the arguments put forward by both parties, I find it reasonable to allow the 5 units as claimed (Rule 409; paragraph 400(3)(g) of the Rules).

(3) Attendance at hearing

[22] In its bill of costs, GardaWorld claims 9 units – 3 units under column III of Tariff B multiplied by 3 hours – in fees for the counsel’s presence at the hearing held on

September 17, 2025. Attendance was necessary to address any questions regarding Mr. Fearing's procedural fairness and limitations arguments according to GardaWorld.

[23] From the outset, GardaWorld's contention that counsel's commute time should be included in the duration of the hearing is incorrect, as such compensation would fall under Item 24 and is recoverable only where expressly authorized by the Court. In addition, Mr. Fearing's assertion that the hearing lasted only 20 to 30 minutes is not quite accurate, according to the file.

[24] The audio recording and the entries made in the Court's record by the registry officer in attendance indicates the hearing started at 1:47 p.m. and concluded at 3:37 p.m., for a total duration of 1 hour and 50 minutes. Although the audio recording reveals there was a mid-afternoon break during the hearing, it must be included in the calculation since the parties are generally required to remain in or near the courtroom (*Guest Tek Interactive Entertainment Ltd. v. Nomadix, Inc.*, 2021 FC 848 (*Guest Tek*) at paras. 37, 51; *Estensen Estate v. Canada (Attorney General)*, 2009 FC 152, [2009] F.C.J. No. 197 (QL) at para. 15). Also considering that Item 14(a) includes some time before the scheduled start of the hearing for preparation and after its conclusion for any post-hearing discussions, I will round up the duration to 2 hours (*Guest Tek* at para. 51; *Zara Natural Stones Inc. v. Industria de Diseno Textil, S.A.*, 2023 FCA 86 at para. 33).

[25] With regard to the number of units to allow under column III for Item 14(a), the available range is 2 to 3 units. Having considered the complexity of the issues discussed at the hearing, I find it is reasonable to allow 2 units (Rule 409; paragraph 400(3)(c) of the Rules). Considering

the foregoing, 4 units are allowed under Item 14(a). This total was obtained by multiplying the 2 units allowed by 2 hours.

(4) Items 24, 26 and 27

[26] GardaWorld claims Item 24 (travel by counsel to attend the hearing), Item 26 (assessment of costs) and Item 27 (such other services) in the reply filed on February 5, 2026. A careful review of the costs materials reveals these items were claimed for the first time at the reply stage in the assessment process, without any explanation for their late filing. Unfortunately, because they were invoked in the reply (i.e., the last stage before the file is perfected and ready for assessment), Mr. Fearing did not have an opportunity to respond to these new claims advanced for Items 24, 26 and 27.

[27] The general principle is that a party may file an amended bill of costs at any stage, provided, however, that the other party is given sufficient opportunity to defend against any changes made (*Seiveright v. D & A's Pet Food'n More Ltd.*, 2005 FC 849 at para. 2). In this instance, rather than requesting a direction from the assessment officer to file an amended bill of costs, GardaWorld simply introduced new claims in its reply. Had a proper request been made, the assessment officer would have issued a direction offering both parties the opportunity to provide written representations regarding the new items (*Church of Atheism of Central Canada v. Canada (National Revenue)*, 2021 FCA 207 (*Church of Atheism*) at paras. 29–30). Adopting this approach would have prevented a breach of procedural fairness.

[28] For all the above reasons, and similarly as in *Butterfield v. Canada (Attorney General)*, 2008 FCA 315 at paragraph 17 and *Church of Atheism* at paragraphs 30 and 39, the claims presented for Items 24, 26 and 27 are denied.

IV. Disbursements

[29] GardaWorld claims \$136 for photocopying and binding in the bill of costs. It argues this amount is reasonable given the immense size of the applicant's record. Mr. Fearing objects to this amount for lack of evidence, as no disbursements may be accepted without an affidavit pursuant to subsection 1(4) of Tariff B, and no receipt, invoice or affidavit was filed. In reply, GardaWorld filed the affidavit of Quinn Hartwig sworn on February 5, 2026, supported by Annex A. The affidavit states that on or about November 17, 2024, the amount of \$136 was incurred in the ordinary course of the firm's practice management and accounting systems.

[30] After a review of the Court file, I conclude the photocopies were necessary expenses to the conduct of the litigation, and that the amount claimed is reasonable considering the volume of the application record as stated initially by the respondent at paragraph 14 of its written representations filed on November 20, 2025 (*Merck & Co. Inc. v. Apotex Inc.*, 2006 FC 631 at para. 3). Moreover, completely disallowing the claim, as contended by Mr. Fearing, would not be warranted because actual fees were clearly incurred (*Carlile v. Canada (Minister of National Revenue – M.N.R.)*, [1997] F.C.J. No. 885 at para. 26).

V. Conclusion

[31] For all the above reasons, GardaWorld's bill of costs is assessed and allowed in the amount of \$ 2,836.00. A certificate of assessment will be issued accordingly, payable by Mr. Fearing.

"Stéphanie St-Pierre Babin"
Assessment Officer

Ottawa, Ontario
June 26, 2026

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-235-24

STYLE OF CAUSE:

RICHARD FEARING v. GARDAWORLD
CASH SERVICES CANADA
CORPORATION

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

REASONS FOR ASSESSMENT BY:

STÉPHANIE ST-PIERRE BABIN,
ASSESSMENT OFFICER

DATED:

JUNE 26, 2026

WRITTEN SUBMISSIONS BY:

Richard Fearing

FOR THE APPLICANT
(UNREPRESENTED)

Gerald Griffiths

FOR THE RESPONDENT

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FOR THE RESPONDENT