

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20260601**

**Docket: A-247-23**

**Citation: 2026 FCA 108**

**Present: Stéphanie St-Pierre Babin, Assessment Officer**

**BETWEEN:**

**1048547 ONTARIO INC.**

**Appellant/  
Respondent on the Cross-Appeal**

**and**

**FROMFROID S.A.**

**Respondent/  
Appellant on the Cross-Appeal**

Assessment of costs without appearance of the parties.  
Certificate of Assessment delivered at Ottawa, Ontario, on June 1, 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 dated August 25, 2025, the Court dismissed the appeal with costs in favour of the respondent and dismissed the cross-appeal on a without costs basis (*1048547 Ontario Inc. v. Fromfroid S.A.*, 2025 FCA 151) (Judgment).

[2] On September 18, 2025, the respondent filed a bill of costs in accordance with subsection 406(1) of the *Federal Courts Rules*, SOR/98-106 (Rules) to request an assessment of its costs. On September 23, 2025, a direction was issued to inform the parties that the assessment of costs would proceed in writing and to provide deadlines to file written representations.

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

- Respondent's written representations and the affidavit of Martin Laprade, affirmed on September 17, 2025, in support of the assessment of costs on October 21, 2025 (Respondent's written representations).
- Appellant, 1048547 Ontario Inc.'s written representations regarding assessment of costs on November 18, 2025 (Appellant's response).
- Respondent's written representations in reply filed on December 16, 2025 (Respondent's reply).

[4] Having reviewed the documentation filed on behalf of both parties, I will now determine what level of costs of column III will apply to this assessment and discuss the effect of the settlement offer made by the respondent. Thereafter, I will address the assessable services claimed to finally determine the amount of costs allowed to the respondent.

## II. Preliminary Issue

### A. *At what level of costs the bill of costs shall be assessed?*

[5] Both parties agree that the respondent's bill of costs shall be assessed in accordance with column III of the table to Tariff B pursuant to Rule 407, but they disagree as to the level of costs to be applied within that range.

[6] Essentially, counsel for the respondent submits that it is entitled to the upper end of column III, more specifically the maximum number of units allowable for each item. It is also argued that this claim is justified in light of the particular attributes of intellectual property proceedings, and that it is common for increased costs to be awarded in such proceedings (Respondent's Written Representations at para. 10). It is finally contended that the appeal was without merit, several issues raised by the appellant were without merit and the appellant attempted to mislead the Court with its version of the events (Respondent's reply at paras. 3–5).

[7] In response, counsel for the appellant argues that the amount of costs shall be based on the mid-point of column III to Tariff B. It is submitted that this case “does not include any of the attributes of intellectual property proceedings justifying” the reliance on the upper end of column III. Counsel put forwards that the proceeding is of average or usual complexity because the matter does not concern intellectual property given the infringement of the patent was not appealed. Rather, it raised issues relating to the weighting of the evidence, the assessment of compensatory damages and the award of punitive damages before the Federal Court (Appellant's response at paras. 7–9).

[8] It is firmly established in the case law that the “default” level of costs is the mid-point of column III (*Allergan Inc. v. Sandoz Canada Inc.*, 2021 FC 186 (*Allergan*) at para. 25).

Notwithstanding the foregoing, assessment officers may allow costs at a lower or higher level than the mid-point when specific circumstances dictate otherwise (*Soprema Inc. v. Canada (Attorney General)*, 2023 FC 522 at para. 4; *Truehope Nutritional Support Limited v. Canada (Attorney General)*, 2013 FC 1153 at para. 14). This depends on their analysis of the materials filed and the factors set forth under subsection 400(3) that they may consider (Rule 409).

[9] Having regard to the nature and the particular circumstances of this matter, I conclude that the upper end of column III is the appropriate level of costs to be applied in consideration of the following factors.

[10] First, the respondent was successful in defending the appeal as the Court was not convinced there was any overriding and palpable error on the part of the trial judge in the issues raised by the appellant (paragraph 400(3)(a) of the Rules).

[11] Second, the importance and complexity of the issues weigh in favour of an assessment pursuant to the upper end of column III (paragraph 400(3)(c) of the Rules). As a matter of fact, the jurisprudence recognized particular attributes of intellectual properties proceedings which include “greater than average complexity, sophisticated parties, legal bills far in excess of what is contemplated by Column III of Tariff B and ‘giving parties an incentive to litigate efficiently’” (*Guest Tek Interactive Entertainment Ltd. v. Nomadix, Inc.*, 2021 FC 848 at para. 18 (*Guest Tek*); *Allergan* at para. 26).

[12] Furthermore, it is important to note that “it is legal significance and complexity, including the number of issues, that are to be considered and not the factual subject matter” (emphasis added) (*Bertrand v. Acho Dene Koe First Nation*, 2022 FC 1632 at para. 11; *Balfour v. Norway House Cree Nation*, 2006 FC 616 at para. 15). In the case at hand, a considerable number of five issues were raised by the appellant, and I agree that although the comments on mootness at paragraph 6 of the Judgment only apply to one of them, the respondent was still obligated to draft written representations regarding the other four issues on appeal (Respondent’s reply at paras. 3, 5). It also had to prepare oral arguments for the appeal hearing in response to the five issues raised.

[13] Lastly, I hold the view that the respondent’s written settlement offer sent to the appellant in an attempt to settle the dispute, which will result in the doubling of the respondent’s costs later in the next section, also weighs in favour of an allowance at the upper end of column III (paragraph 400(3)(e) of the Rules).

B. *Is the respondent entitled to its costs at double the rate they are assessed at?*

[14] On January 18, 2024, counsel for the respondent sent a letter to the appellant containing a settlement offer which is attached as exhibit ML-1 to the affidavit of Martin Laprade filed on October 21, 2025. Consequently, it is requested that all the assessable services rendered after that date be doubled pursuant to Rule 420. The doubling of costs was not contested. In fact, both parties have doubled the units listed in their respective versions of the bill of costs. I am satisfied that the settlement offer complies with Rule 420 and I will allow the doubling of costs within the parameters set out in Rule 420 for the reasons that follow.

[15] With respect to Rule 420, it sets forth the various conditions that a settlement offer must satisfy in order to trigger the doubling of costs. Here, the offer must have been made in writing by the respondent, and the appellant must not subsequently have obtained a judgment (paragraph 420(2)(b) of the Rules). Furthermore, it must have been made at least 14 days before the commencement of the hearing and must have remained valid until that time (subsection 420(3) of the Rules). The jurisprudence finally adds that the offer must be clear and unequivocal, contain an element of compromise and bring the litigation to an end (*Venngo Inc. v. Concierge Connection Inc. (Perkopolis)*, 2017 FCA 96 at para. 87; *M.K. Plastics Corporation v. Plasticair Inc.*, 2007 FC 1029 (*M.K. Plastics*) at para. 39).

[16] The relevant paragraphs of the letter dated January 18, 2024, read as follows:

This settlement offer is being made on behalf of the Respondent FROMFROID S.A. (“Fromfroid”), pursuant to Rule 420 of the *Federal Courts Rules* in the above appeal. Fromfroid hereby offers to settle the appeal based on the following terms:

(a) Fromfroid agrees that the amount of compensatory damages awarded at the second conclusion of the judgment of the Honourable Mr. Justice Sebastien Grammond dated July 6, 2023 (the “Judgment”), be varied from \$149,270 to \$108,097 (with prejudgment and postjudgment interest remaining the same as ordered in the Judgment).

(b) All other grounds of the appeal are dismissed.

Please note that this written offer to settle does not provide for the settlement of the issue of costs.

The above offer is open for acceptance until the commencement of the hearing on the appeal, and expires immediately thereafter.

[17] From that letter, I first note that the respondent has presented the settlement offer to the appellant at least 14 days before the commencement of the hearing held on December 12, 2024,

and was not revoked until then. It also shows that the offer was clear, unequivocal and would have brought the litigation to an end. Finally, the offer presents an element of compromise as in exchange for the appeal being dismissed, the amount of compensatory damages awarded by the Federal Court to the respondent would have been reduced.

[18] For all of the above reasons and pursuant to paragraph 420(2)(b) of the Rules, I will allow the doubling of costs of the assessable services rendered from January 18, 2024, to August 25, 2025, the date of the Judgment.

### III. Assessment of Costs

#### A. *Assessable Services*

##### (1) Items 18, 19, 20 and 26

[19] After a careful review of the bill of costs and the Court record, I consider the uncontested claims for the following assessable services to be in accordance with the authority of the Judgment, the Tariff B as well as the applicable jurisprudence. In accordance with the upper end of column III, a total of 15 units are allowed for the following items:

- Item 18: Preparation of the appeal book filed on February 12, 2024 (1 unit).
- Item 19: Memorandum of fact and law filed on August 21, 2024 (7 units).
- Item 20: Requisition for hearing filed on August 21, 2024 (1 unit).
- Item 26: Assessment of Costs (6 units).

[20] Notwithstanding the foregoing, Items 21(a), 22(a) and (b) must be discussed separately.

(2) Item 21(a) – Counsel fee on a motion

[21] In its bill of costs, the respondent claims 3 units for filing a motion for confidentiality order and to allow confidential electronic documents to be filed electronically in writing on March 19, 2024. In a confidentiality order dated April 23, 2024, the Court concluded by stating, “[t]here shall be no costs of [sic] this motion.” According to this excerpt, it is abundantly clear that the Court intended not to award costs in respect of this motion. I therefore have no alternative but to deny the 3 units claimed with respect to Item 21(a).

(3) Item 22(a) – Counsel fee on hearing of appeal to first counsel

[22] With regards to Item 22(a) claimed for counsel’s attendance at the hearing of the appeal held on December 12, 2024, 12.13 units were claimed. This total was calculated by multiplying a duration of 3 hours and 2 minutes by a rate of 4 units per hour, notwithstanding that the units prescribed for Item 22(a) under column III range from 2 to 3 units. I will adjust this claim and allow a rate per hour of 3 units accordingly.

[23] Turning to the duration of the hearing, to recognize that counsel’s presence is required before the start of a hearing to prepare and after it ends for any post-hearing discussions, I will round up the duration of the hearing to 3.5 hours (*Zara Natural Stones Inc. v. Industria de Diseno Textil, S.A.*, 2023 FCA 86 (*Zara Natural Stones*) at para. 33; *Guest Tek* at para. 51). As a

result, 10.5 units are allowed under Item 22(a). This number of units was calculated by multiplying the 3 units allowed under column III by 3.5 hours.

(4) Item 22(b) – Counsel fee on hearing of appeal to second counsel

[24] The respondent claims 6.06 units under Item 22(b) for the presence of a second counsel at the appeal hearing held on December 12, 2024. Counsel for the respondent submits that units should be allowed because second counsel's presence was warranted at the hearing, and both the respondent and the appellant had two counsel in attendance. I cannot allow this claim for the following reasons.

[25] Item 22(b) compensates for the presence of a second counsel where Court directs. Subsection 5(1) of the *Federal Courts Act*, RSC, 1985, c F-7 states: "the Court consists of a chief justice...and 14 other judges." This definition does not include assessment officers who are officers of the registry (Rule 2). As an assessment officer, I solely have the discretion to allow Item 22(b) where the Court has so directed. Although the minutes of hearing show that two counsel did appear on behalf of the respondent at the appeal hearing, there is no order or directions given by the Court in the Judgment awarding costs for the attendance of the second counsel. Therefore, Item 22 (b) is disallowed.

(5) Doubling of Costs

[26] It has already been established at paragraphs 14 to 18 of these Reasons that the respondent is entitled to double its costs. All that remains is to determine which items are eligible

for doubling. Paragraph 420(2)(b) of the Rules states that the respondent “shall be entitled to party-and-party costs to the date of the service of the offer and to costs calculated at double that rate [...] from that date to the date of judgment.” Considering the assessable services under Items 18, 19, 20 and 22(a) were performed during that period, a total of 19.5 units will be allowed for these items as a result of the doubling of costs (paragraph 420(2)(b) of the Rules). With regard to Item 26, it is not doubled because the assessment of costs process occurred after the Judgment was rendered (*Levreault v. Canada*, 2003 FC 1328 at para. 7; *Zara Natural Stones* at paras. 49–50).

[27] As a result, a total of 45 units, amounting to \$8,100.00, are allowed for assessable services.

#### IV. Disbursements

##### A. *GST and PST*

[28] Pursuant to subsection 1(2) to Tariff B, the respondent claims \$651.42 as GST (5%) and \$1299.58 as PST (9.975%) on counsel fees and justified the choice of these percentages by explaining that the appeal was heard in Montréal and all the related work was carried out there (Respondent’s written representations at para. 16). In the province of Quebec, legal fees are generally subject to GST and QST, and they are routinely awarded by the federal courts (*Teksavvy Solutions Inc. v. Bell Media Inc.*, 2021 FCA 181, Annex “Amended Bill of Costs”; *Leo Pharma Inc v. Teva Canada Limited*, 2016 FC 107, Annex A).

[29] However, taxes are defined as disbursements by paragraph 1(3)(b) of Tariff B and paragraph 420(2)(b) of the Rules does not permit to double disbursements (*Zara Natural Stones* at para. 51). Accordingly, the taxes are only allowed on the permitted assessable services prior to their doubling which represents 25.5 units. The additional amounts of \$229.50 (GST at 5%) and \$457.85 (PST at 9.975%) are allowed as disbursements.

V. Additional Remark

In its Written Representations, the respondent submitted that the amount claimed in the bill of costs is reasonable as it approximately represents 30% of its legal fees incurred for the appeal which is on the lower end of the “25–50 percent range that is typically used when granting lump sum awards in intellectual property proceedings” (*Allergan* at paras. 38–39). However, the amount allowed for this assessment will represent a lower percentage than what was originally claimed in the bill of costs. It is important to note that the percentage range is applicable to lump sums. Here, the Court did not award a lump sum and chose to award costs pursuant to column III to Tariff B which intends to provide partial compensation as opposed to substantial or full indemnification. Such indemnification 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* at para. 20; *Sherman v. Canada (Minister of National Revenue)*, 2004 FCA 29 at para. 8; *Apotex Inc. v. Wellcome Foundation Ltd.*, 1998 CanLII 8792 (FC) (*Apotex*) at para. 7). Finally, these costs should “neither be punitive nor extravagant” (*Apotex* at para. 7).

VI. Conclusion

[30] For all the above reasons, the respondent's bill of costs is assessed and allowed for a total amount of \$8,787.35, including taxes. A certificate of assessment will be issued accordingly, payable by the appellant, 1048547 Ontario Inc., to the respondent, Fromfroid S.A.

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"Stéphanie St-Pierre Babin"  
Assessment Officer

Ottawa, Ontario  
June 1, 2026

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:**

A-247-23

**STYLE OF CAUSE:**

1048547 ONTARIO INC. v. FROMFROID  
S.A.

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

**REASONS FOR ASSESSMENT BY:**

STÉPHANIE ST-PIERRE BABIN,  
ASSESSMENT OFFICER

**DATED:**

JUNE 1, 2026

**WRITTEN SUBMISSIONS BY:**

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