

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20240419**

**Docket: A-118-21  
A-202-21**

**Citation: 2024 FCA 73**

**Present: AUDREY BLANCHET, Assessment Officer**

**Docket: A-118-21**

**BETWEEN:**

**HESAMEDDIN ABBASPOUR TAZEHKAND**

**Appellant**

**and**

**BANK OF CANADA**

**Respondent**

**Docket: A-202-21**

**BETWEEN:**

**HESAMEDDIN ABBASPOUR TAZEHKAND**

**Appellant**

**and**

**BANK OF CANADA**

**Respondent**

Assessment of costs without appearance of the parties.

**REASONS FOR ASSESSMENT BY: AUDREY BLANCHET, Assessment Officer**

Federal Court of Appeal



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REASONS FOR ASSESSMENT

AUDREY BLANCHET, Assessment Officer

[1] On April 10, 2024, the Respondent Bank of Canada requested an assessment of costs following the order of the Court dated March 12, 2024, [Order] which states that: “[t]he motion to hold this matter in abeyance is dismissed, with costs.”

[2] Along with its request for assessment, the Respondent filed a bill of costs [Bill of Costs] which entirely relates to the assessable services and disbursements incurred in relation to the Appellant’s interlocutory motion to hold this matter in abeyance [Motion].

[3] Although the Court awarded costs in favour of the Respondent for said Motion, the costs of interlocutory proceedings are not payable until the conclusion of the trial, unless ordered payable forthwith under subsection 401(2) of the *Federal Courts Rules*, SOR/98-106 [Rules] (*John Stagliano, Inc. v. Elmaleh*, 2006 FC 1096; *Waterfurnace Inc. v. 803943 Ontario Ltd.*, [1991] F.C.J. No. 912).

[4] For the sake of clarity, subsection 401(2) of the Rules reads as follows :

**Costs payable forthwith**

**401 (2)** Where the Court is satisfied that a motion should not have been brought or opposed, the Court shall order that the costs of the motion be payable forthwith.

**Paiement sans délai**

**401 (2)** Si la Cour est convaincue qu’une requête n’aurait pas dû être présentée ou contestée, elle ordonne que les dépens afférents à la requête soient payés sans délai.

[5] First, from my review of court file A-118-21 (consolidated with A-202-21), it appears that the substantive issues of this litigation remain outstanding, and no final decision has yet been made.

[6] Second, for an assessment officer to have authority to proceed with an assessment of costs before final determination of the matter, an order under subsection 401(2) of the Rules for costs payable forthwith must be clear (*Buck v. Canada (Attorney General)*, 2022 FC 352 at paras. 15-19). The absence of a “forthwith” provision in the Order indicates that Rule 401(2) is not applicable and therefore, the assessment of the Respondent’s Bill of Costs is premature at this time of the litigation (*Culhane v. ATP Aero Training Products Inc.*, 2004 FCA 367 at para. 7). In the absence of clear directions from the Court for disposition forthwith, I cannot address it at this stage.

[7] Faced with the prematurity of this request for assessment, I did not issue a timetable to the parties to be making submissions on costs that, in the end, are not necessary at this time.

[8] Under the circumstances, the assessment of the Respondent’s Bill of Costs filed on April 10, 2024, will not take place at this stage of the proceedings. The Respondent may serve and file another request for assessment of costs in relation with the Motion once a final determination is made in this litigation.

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“Audrey Blanchet”  
Assessment Officer

Ottawa, Ontario  
April 19, 2024

**FEDERAL COURT OF APPEAL**  
**SOLICITORS OF RECORD**

**DOCKET:** A-118-21 AND A-202-21

**STYLE OF CAUSE:** HESAMEDDIN ABBASPOUR TAZEHKAND v.  
BANK OF CANADA

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

**REASONS FOR ASSESSMENT BY:** AUDREY BLANCHET, Assessment Officer

**DATED:** APRIL 19, 2024

**WRITTEN SUBMISSIONS BY:**

N/A

FOR THE APPELLANT

Kyle Shimon

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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FOR THE RESPONDENT