Docket: 2017-1252(IT)G

BETWEEN:

HUSKY ENERGY INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Written Submissions Regarding Costs

Before: The Honourable Justice John R. Owen

Participants:

Counsel for the Appellant:	Nicolas X. Cloutier Al-Nawaz Nanji Robert Celac
Counsel for the Respondent:	Pascal Tétrault Montano Cabezas

ORDER

UPON reading the parties' written submissions on costs and disbursements;

IN ACCORDANCE with the attached Reasons for Order the Respondent is awarded the amount of $300,000 in respect of legal fees incurred and the amount of $11,812.37 in respect of disbursements incurred.

Signed at Ottawa, Canada, this 23rd day of May 2024.

"J.R. Owen"

Owen J.

Citation: 2024 TCC 73
Date: 20240523
Docket: 2017-1252(IT)G

BETWEEN:

HUSKY ENERGY INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Owen J.

I. Background

[1] On October 1, 2003, Husky Energy Inc. ("Husky") paid a quarterly dividend of $0.10 and a special dividend of $1.00 on each of its common shares outstanding at that time (collectively, the "Dividends").

[2] Two of Husky's registered common shareholders at the time the Dividends were paid by Husky were Hutchison Whampoa Europe Investments S.à.r.l. ("HWEI") and L.F. Luxembourg S.à.r.l. ("LFLS"), both of which were resident in Luxembourg. Husky paid each of HWEI and LFLS its proportionate share of the Dividends.

[3] Husky did not pay any portion of the Dividends to Hutchison Whampoa Luxembourg Holdings S.à.r.l. ("HWLH") or to L.F. Management and Investment S.a.r.l. ("LFMI"). Husky did not pay any portion of the Dividends to a predecessor of HWLH or to a predecessor of LFMI.

[4] Husky withheld and remitted tax under Part XIII of the *Income Tax Act* (the "ITA") equal to 5% of the portion of the Dividends paid to HWEI and LFLS. The 5% rate is the lower of the two rates provided under Article 10(2) of the *Canada–Luxembourg Income Tax Convention* (the "Luxembourg Treaty").

[5] The Minister of National Revenue (the "Minister") assessed Husky for tax under Part XIII of the ITA on the portion of the Dividends paid to HWEI and LFLS at the rate of 15% (the "Assessment"). Husky appealed the Assessment.

[6] Husky's appeal was heard at the same time as the appeals of HWLH and LFMI on common evidence. I dismissed the appeal of Husky with costs to the Respondent.

[7] In my judgment, I gave the Respondent and Husky time to settle on costs failing which each party could make submissions on costs within the stipulated time periods. The parties did not settle on costs, and each party provided submissions to the Court.

[8] The Respondent asks for a lump sum award of $538,351, which the Respondent says is 75% of all legal fees and disbursements incurred by the Respondent.

[9] Husky submits that the award requested by the Respondent is unreasonable. Husky submits that based on the Respondent's affidavit in respect of costs affirmed by Jessica Vallati on March 12, 2024 (the "Respondent's Affidavit"), the award represents 92% of the legal fees incurred by the Respondent plus disbursements for two expert witnesses of $18,012.37.[1]

[10] Husky submits that a reasonable lump-sum award for costs and disbursements is $271,812.37, comprised of $260,000 for legal fees and $11,812.37 for disbursements. Husky submits that this represents 46% of the Respondent's legal fees of $520,338.58[2] and one-third of the fee for the expert witness that submitted an expert report to the Court and testified at the hearing of the appeals.[3]

[1] The Respondent's Affidavit states in paragraphs 29 and 30 that the total amount paid by the Respondent for expert witnesses was comprised of $35,437.12 for the expert witness who submitted an expert report to the Court and who testified and $18,600 for an expert witness who did not submit an expert report to the Court and who did not testify. The Respondent allocated one-third of the total of these two amounts ($54,037.12) to the Husky appeal and one third to each of the other two appeals heard at the same time on common evidence.

[2] Paragraphs 25 and 32 and Exhibit N of the Respondent's Affidavit.

[3] I note that $260,000 is just under 50% of the amount of the Respondent's legal fees of $520,338.58 stated in paragraph 25 of the Respondent's Affidavit.

II. **Analysis**

[11] Section 147 of the *Tax Court of Canada Rules (General Procedure)* (the "Rules") addresses costs in General Procedure income tax appeals. It has long been accepted that section 147 affords the Tax Court of Canada discretion in awarding costs.[4] Indeed, fettering this discretion constitutes an error of law.[5]

[12] The Court's discretion regarding costs is, however, subject to the requirements that the parties be given an opportunity to make submissions on costs[6] and that the discretion be exercised on a principled, rather than an arbitrary, basis.[7]

[13] Unless the circumstances dictate otherwise, an award of costs is not intended to fully compensate the actual costs incurred by a party, nor is an award of costs intended to punish a party.[8]

[14] A question for the Court in any award of costs is whether the award of costs to the party entitled to costs should be determined in accordance with the Tariff, on a reasonable partial indemnity basis or on a full indemnity basis.

[15] In this case, neither party suggested that the Respondent's costs should be determined in accordance with the Tariff or on a full indemnity basis although the costs requested by the Respondent do approach full indemnification. I agree that neither costs in accordance with the Tariff nor full indemnity-based costs is appropriate in the circumstances. Consequently, the following addresses the

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[4] See, for example, *R. v. Lau*, 2004 FCA 10 ("*Lau*") at paragraphs 3 and 5, *R. v. Landry*, 2010 FCA 135 ("*Landry*") at paragraphs 22 and 54 and *Guibord v. R.*, 2011 FCA 346 ("*Guibord*") at paragraphs 9 and 10. The discretion of the Court is reinforced by subsections 147(4) and (5) of the Rules, which state:

> (4) The Court **may** fix all or part of the costs with or without reference to Schedule II, Tariff B and, further, it **may** award a lump sum in lieu of or in addition to any taxed costs.
>
> (5) Notwithstanding any other provision in these rules, **the Court has the discretionary power**,
>
> (a) to award or refuse costs in respect of a particular issue or part of a proceeding,
>
> (b) to award a percentage of taxed costs or award taxed costs up to and for a particular stage of a proceeding, or
>
> (c) to award all or part of the costs on a solicitor and client basis. [Emphasis added.]

[5] *R. v. Bowker*, 2023 FCA 133 ("*Bowker*") at paragraph 25.

[6] *Mand v. R.*, 2023 FCA 94 at paragraphs 5 and 6.

[7] *Lau* at paragraph 5, *Landry* at paragraphs 22 and 54, *Guibord* at paragraph 10 and *Bowker* at paragraph 27.

[8] *Consorzio del Prosciutto di Parma v. Maple Leaf Meats Inc.*, 2002 FCA 417 at paragraph 8, *Otteson v. R.*, 2014 TCC 362 at paragraph 17, *Martin v. R.*, 2014 TCC 50 at paragraph 14, *MacDonald v. R.*, 2018 TCC 55 at paragraph 44, *Applewood Holdings Inc. v. R.*, 2019 TCC 34 at paragraph 19 and *Burlington Resources Finance Company v. R.*, 2020 TCC 32 ("*Burlington Resources*") at paragraph 116. For an example of circumstances that dictate otherwise, see *Levy v. R.*, 2021 FCA 93.

determination on a reasonable partial indemnity basis of the costs awarded to the Respondent.

[16] In *Damis Properties Inc. v. R.*,[9] I make the following observations regarding this Court's approach to determining an award of costs:

> . . . I note with respect to these factors that while it is necessary to address whether and why a relevant factor supports or does not support an award of costs to a particular party, the quantum of the award should be determined based on an assessment of all the relevant factors (including, if necessary, factors not listed) viewed collectively. An individual factor may be a positive or negative influence on the decision to award costs to a party and on the quantum of such award. However, attempting to parse the degree of influence of each factor runs counter to the objectives of saving the parties time and money and securing the just, most expeditious and least expensive determination of proceedings. [Footnote: *Nova Chemicals Corporation v. Dow Chemical Company*, 2017 FCA 25 at paragraphs 10 to 13]. Further, as stated by Rothstein JA (as he then was) in *Consorzio del Prosciutto di Parma v. Maple Leaf Meats Inc. (C.A.)*, 2002 FCA 417 at paragraph 8:
>
> > An award of party-party costs is not an exercise in exact science. It is only an estimate of the amount the Court considers appropriate as a contribution towards the successful party's solicitor-client costs (or, in unusual circumstances, the unsuccessful party's solicitor-client costs). . . .
>
> Identifying whether and why a particular factor supports or does not support an award of costs to a particular party is sufficient to make such a determination based on a collective view of the relevant factors.[10]

[17] A similar approach is taken by the Ontario Superior Court of Justice. In *Deluca v. R.*,[11] Justice Dunphy summarized the object and process of determining costs under the Ontario *Rules of Civil Procedure* as follows:

> . . . I do concur with the plaintiff that the process of assessing costs is not confined to a simple mechanical exercise of counting hours and determining the relevant rate to multiply them by. The criteria listed in Rule 57.01 of the Rules of Civil Procedure make this quite clear. **If there is a golden rule in costs it is that the result must be one that appears <u>fair and reasonable in all of the circumstances</u>**. When s. 131 of the CJA places costs in the discretion of the court, that is what is intended. **The**

[9] *Damis Properties Inc. v. R.*, 2021 TCC 44.
[10] Ibid., paragraph 6. See, also, *Bowker* at paragraph 31 and *Velcro Canada Inc. v. R.*, 2012 TCC 273.
[11] *Deluca v. R.*, 2016 ONSC 6982 ("*Deluca*").

> **criteria in Rule 57.01(1) of the Rules of Civil Procedure are something of a checklist to be reviewed in making <u>that overall assessment</u>**. The reasonable expectations of the losing party are but one of the criteria to be consulted in searching for that elusive answer, albeit an important one.[12]
>
> [Emphasis and double emphasis added.]

[18] This general approach is also accepted by other Courts and in other contexts. In *Ontario Federation of Anglers and Hunters v. Ontario (Minister of Natural Resources and Forestry*,[13] the Registrar of the Supreme Court of Canada states:

> The case law is settled that costs awarded on a solicitor and client scale shall be assessed on the basis of *quantum meruit*: [citations omitted]. A non-exhaustive list of criteria set out in *Cohen v. Kealy & Blaney* (1985), 26 C.P.C. (2d) 211 (Ont. C.A.), cited with approval by this Court in *Bhatnager v. Canada (Minister of Employment and Immigration)*, [1991] 3 S.C.R. 317, constitutes the framework within which *quantum meruit* should be gauged: [citations omitted].[14]

[19] Paragraphs 147(3)(a) to (i.1) of the Rules describe a list of specific factors that the Court may consider when exercising its discretion to award costs. Paragraph 147(3)(j) provides that the Court may also consider any other matter relevant to the question of costs.

[20] Although consideration of the specific factors is itself within the discretion of the Court,[15] no doubt addressing the specific factors and any other factors considered relevant by the Court significantly mitigates the risk that an award of costs would be perceived as arbitrary.

[21] The positions of the Respondent and Husky on the factors listed in paragraphs 147(3)(a) to (i.1) are as follows:

1. Paragraph 147(3)(a) - The Result of the Proceeding

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[12] Ibid. at paragraph 7.

[13] *Ontario Federation of Anglers and Hunters v. Ontario (Minister of Natural Resources and Forestry*, [2017] SCCA No. 369 ("*OFAH*"), which addresses the taxation of costs in the Supreme Court of Canada.

[14] *OFAH* at paragraph 8. See, also, the decision of the Assessment Officer in *Hutton v. Sayat*, 2022 FCA 30.

[15] The introductory words of subsection 147(3) state:

> In exercising its discretionary power pursuant to subsection (1) the Court **may** consider . . . [Emphasis added.]

[22] In *Bowker*, the Federal Court of Appeal held that in a case where there are only two possible outcomes (i.e., success or failure) this factor could be taken into consideration by the Court only on the issue of a party's entitlement to costs and not on the issue of the quantum of costs as the inclusion of the latter consideration would amount to double counting.[16]

[23] In other words, once a party's entitlement to costs is determined, the role of this factor is to address situations where the party achieves less than 100% success. In such a case, it is for the Tax Court judge to determine the impact of this factor on the award of costs.

[24] Husky accepts that the Respondent was completely successful. The success of the Respondent warrants an appropriate award of costs to the Respondent as determined by consideration of all other factors relevant to the quantum of costs.

2. Paragraph 147(3)(b) - The Amounts in Issue

[25] The amount in issue for Husky was $32,898,696. Husky acknowledges that this amount "seems" large but submits that "it must be contextualized for a particular taxpayer". In my view, regardless of the context, the amount in issue was substantial and supports an appropriate award of costs to the Respondent.

3. Paragraph 147(3)(c) - The Importance of the Issues

[26] The Respondent submits that the decision in these appeals addresses treaty shopping issues that are important to Organisation for Economic Co-operation and Development ("OECD") member countries such as Canada.

[27] I accept that reasons for judgment addressing, both generally and in the context of the GAAR, the fundamental elements of the regime in Part XIII of the ITA and the dividend articles of OECD based tax treaties that modify the application of that regime may be of importance to corporations resident in Canada that pay or credit (or are deemed to pay or credit) dividends to non-resident persons, as well as to the non-resident persons to which such dividends are paid. Such reasons for

[16] *Bowker* at paragraphs 33 to 36 citing the decision of Graham J. in *Lux Operating Limited Partnership v. R.*, 2018 TCC 214.

judgment may also be of importance to persons that enter securities lending arrangements in respect of shares issued by corporations resident in Canada.

[28] Accordingly, I find that this factor supports an appropriate award of costs to the Respondent.

4. Paragraph 147(3)(d) - Any Offer of Settlement Made in Writing

[29] The parties agree that there were no settlement offers. Consequently, this factor plays no role in the award of costs.

5. Paragraph 147(3)(e) - The Volume of Work

[30] The Respondent submits that the appeal involved a significant amount of work. The Respondent states that three main counsel spent over 1,700 hours on the appeal and that other lawyers and paralegals spent an additional 500 hours.

[31] Husky accepts that the volume of work was substantial for both parties but submits that where the volume of work is correlated with the complexity of the issues, it is not appropriate to effectively double count the same factor.[17]

[32] With respect, I do not agree with this proposition. Unless the circumstances suggest otherwise, the volume of work is objectively reflected in the time spent by counsel on the appeal, and this is in turn reflected in the total legal and related costs incurred by a party. Consequently, regardless of the complexity of the matter, a determination of an appropriate contribution to the costs of a party must necessarily consider this factor since it is baked into the total costs incurred by that party.

[33] Of course, the complexity of an appeal may support or call into question the quantum of time spent on an appeal (i.e., may call into question the volume of work). As well, other related factors, such as the rate(s) charged by counsel and the differences between in-house counsel and private law firm counsel, may also come into play in considering the implications of the volume of work and the Court is free

[17] Husky cites *Bank of Montreal v. R.*, 2021 TCC 3 at paragraph 18.

to consider those factors in determining an appropriate award for costs,[18] which I have done.

[34] In this case, the volume of work resulted in legal costs for the Respondent of $520,338.58[19] and there is nothing I am aware of that calls into question the need for that volume of work, or the costs incurred by the Respondent to conduct that volume of work. Accordingly, I find that this factor supports an appropriate award of costs to the Respondent.

6. Paragraph 147(3)(f) - The Complexity of the Issues

[35] The Respondent submit that the issues raised by the appeal were complex "because beneficial ownership requires a minute appreciation of the underlying facts".

[36] Husky agrees that "beneficial ownership" requires a factual context but states that most of the facts were outside of Husky's knowledge and that the parties agreed upon a comprehensive partial agreed statement of facts (the "PASF").

[37] I agree with the Respondent that the phrase "beneficial ownership", as used in the Luxembourg Treaty, is not a simple concept to either understand or apply even with the assistance of the jurisprudence of the Federal Court of Appeal and the Tax Court of Canada. In particular, as each fact situation is different, the jurisprudence does not diminish the complexities associated with a determination of whether a particular person is the beneficial owner of a dividend in a particular set of circumstances.

[38] As well, while I commend the parties for the PASF, which was of great assistance to the Court, I accept that developing arguments and analysis which address the application of the concept of beneficial ownership to a particular set of facts is a task fraught with complexity and subtlety.

[39] Accordingly, I find that this factor supports an appropriate award of costs to the Respondent.

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[18] See, for example, *Deluca* at paragraph 8 and *Sun Life Assurance Company of Canada v. R.*, 2015 TCC 171 at paragraphs 23 and 24.

[19] Paragraphs 25 and 32 and Exhibit N of the Respondent's Affidavit.

7. Paragraph 147(3)(g) - The Conduct of any Party that Tended to Shorten or to Lengthen Unnecessarily the Duration of the Proceeding

[40] Neither party made submissions regarding this factor.

[41] As already stated, the efforts of counsel for the Respondent and Husky to shorten the proceedings by agreeing to the PASF are commendable but since such efforts benefitted all parties it is not a factor in determining the quantum of costs in this appeal.

8. Paragraph 147(3)(h) - The Denial or the Neglect or Refusal of any Party to Admit Anything that should have been Admitted

[42] Neither party made submissions regarding this factor, and I am not aware of anything that suggests that this factor is relevant to determining the quantum of costs in this appeal.

9. Paragraph 147(3)(i) - Whether any Stage in the Proceedings was Improper, Vexatious, or Unnecessary, or Taken through Negligence, Mistake or Excessive Caution

[43] The Respondent submits that Husky's actions required the Respondent to take three unnecessary procedural steps.

[44] First, Husky did not agree to full documentary disclosure under subsection 82(1) of the Rules and the Respondent was required to bring a successful motion for full documentary disclosure. Second, Husky did not provide a suitable nominee for oral discovery and the Respondent was required to bring a successful motion for another nominee. Third, Husky did not agree to the Respondent's request to amend its Reply and the Respondent was required to bring a successful motion to amend its Reply.

[45] Husky submits that none of these motions are relevant to the award of costs to the Respondent as the Respondent was awarded costs on each of the motions and this cost award should not penalize Husky again. Husky goes on to address each of the motions as follows:

> 32. With respect to the Rule 82 motion, the Rules require the Crown to convince the Court that a Rule 82 list of documents is warranted. It is not an unnecessary

> procedural step. In this case, the Crown was successful and obtained an award of costs as set out in Exhibit B to the Crown's Affidavit. Even the Crown agrees that the time for this motion should be excluded from the legal fees (Crown's Affidavit at ¶23).
>
> 33. With respect to the refusal motion, the Crown was successful on the motion and obtained an award of costs of $10,000, as set out in Exhibit D to the Crown's Affidavit. Thus, the Crown has already been awarded costs for this motion. Even the Crown agrees that the time for this motion should be excluded from the legal fees (Crown's Affidavit at ¶23).
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> 34. With respect to the motion to amend its pleadings, Husky consented to the motion on a no-cost basis. If the Crown was seeking costs for the withdrawal of the motion, it should have done so as part of the consent.[20]

[46] I agree with Husky that costs in respect of these motions have already been addressed and that the motions play no part in the determination of the costs to be awarded to the Respondent in this appeal. However, to be complete, I will address each of the motions that the Respondent submits were unnecessary.

[47] The factor in paragraph 147(3)(i) of the Rules addresses (among other things) whether any stage in a proceeding was "improper, vexatious, or unnecessary". The word "unnecessary" read in isolation is neutral. However, the word "unnecessary" must be read in context, which necessarily includes the immediately preceding words "improper, vexatious, or".

[48] Read in this context, the word "unnecessary" suggests to me that to be considered in an award of costs in respect of an appeal, the stage in issue must be completely unnecessary and without merit.

[49] The Respondent submits that its own motions were unnecessary because Husky rejected actions requested by the Respondent or failed to provide a suitable nominee for discovery. The failure of Husky to accede to the Respondent's requests or to provide a nominee acceptable to the Respondent does not cause the Respondent's own motions to fall within the ambit of paragraph 147(3)(i) of the Rules.

[50] Subsection 82(1) of the Rules contemplates that a party may not agree to full documentary discovery and provides a means for the other party to obtain such

[20] Paragraphs 32 to 34 of Husky's Response to Crown's Cost Submissions ("Husky's cost submissions").

discovery, which is an application to the Court. The application is necessary if a party wishes full documentary discovery and the other party refuses.

[51] Subsection 93(2) of the Rules requires a party that is not an individual to select a knowledgeable current or former officer, director, member or employee, to be examined on behalf of that party. If the other party is not satisfied with that person, the examining party may apply to the Court to name some other person. The application is necessary if a party wishes a different person for oral discovery than presented by the opposing party.

[52] I recognize that in his oral reasons addressing the Respondent's application under subsection 93(2),[21] my colleague Justice D'Arcy, the case management judge, made it quite clear that he was not impressed with Husky's behaviour during oral discovery. In the result, Justice D'Arcy required questions to be answered by Husky and appointed a different person for oral discovery. However, Justice D'Arcy also addressed Husky's behaviour by awarding costs of $10,000 to the Respondent payable forthwith.

[53] Section 54 of the Rules states that a pleading may be amended by the party filing it at any time either on consent or with the leave of the Court. Husky did not consent to the Respondent amending the Reply and it was necessary for the Respondent to apply to the Court for leave. Husky then consented to the Respondent's motion prior to the hearing of the motion.

[54] I accept that it is not uncommon for a party to consent to the filing of an amended pleading by the other party. However, a party is fully entitled to withhold consent if the party does not agree with the proposed amendments to the other party's pleadings.

[55] In this case, Husky did not consent to the Respondent amending the Reply and then relented in the face of a motion stating the reasons in support of the amendments. I see nothing in this sequence of events to suggest that the filing of the motion under section 54 of the Rules by the Respondent was an unnecessary stage in the proceeding.

[21] Exhibit C to the Respondent's Affidavit.

[56] For the foregoing reasons, none of the three motions were unnecessary but rather were necessary under the Rules for the Respondent to achieve its objectives.

10. Paragraph 147(3)(i.1) - Whether the Expense Required to have an Expert Witness give Evidence was Justified

[57] Husky does not dispute the Respondent's claim for a disbursement of $11,812.37 for the expert witness that tendered an expert report and testified at the hearing of the appeal. Husky did contest the expert report, and I allowed only portions of the report into evidence. However, as Husky does not contest the disbursement on this basis and because the amount of the disbursement is reasonable, I will allow the disbursement of $11,812.37.

[58] Husky does dispute the disbursement claimed by the Respondent for an expert witness that did not tender an expert report to the Court and did not testify. If a party does not submit an expert report in accordance with section 145 of the Rules, then there is no basis for that party to claim a disbursement for an expert witness. Consequently, I disallow the Respondent's claim for this disbursement.

11. Paragraph 147(3)(j) - Any Other Matter Relevant to the Question of Costs

[59] The Respondent identifies total legal costs of $520,338.58 for 2,224 hours of work, of which "over" 1700 hours was performed by three main counsel.[22] If I divide $520,338.58 by 2,224, this works out to an average hourly rate of $233.97 per hour. I have taken into consideration these figures in determining my award of costs to the Respondent.

[60] I am not aware of any other factor that requires consideration.

III. **Conclusion Regarding the Award of Costs**

[61] The factors in favour of an award of costs to the Respondent are the complete success of the Respondent, the material amounts in issue, the importance of the issues, the volume of work and the complexity of the issues. There are no factors

[22] Paragraph 17 of the Respondent's cost submissions.

suggesting a reduction in the costs that would otherwise be awarded but for those factors.

[62] Notwithstanding that the Respondent calculates its legal fees based on the higher of two possible rates, the total legal fees incurred by the Respondent of $520,338.58 are relatively modest in comparison to the fees that would be calculated at the rates charged by HWLH's and LFMI's counsel.[23] Nevertheless, a reasonable contribution to the costs of the Respondent must be based on the actual legal fees incurred by the Respondent of $520,338.58.

[63] I am not however convinced that the cost award requested by the Respondent represents a fair and reasonable contribution to the costs of the Respondent taking into consideration the positive factors identified above and the reasonable expectations of any appellant appearing in Tax Court of Canada. Absent considerations that support an award of costs approaching a full indemnity basis,[24] an award of 92% of fees incurred is simply not fair to Husky or reasonable.

[64] The Respondent cites *Alta Energy Luxembourg S.A.R.L.* v. R,[25] as a comparative but the appellant in that case was awarded costs representing approximately 50% of its legal fees plus disbursements.[26] Husky submits that $260,000, or 49.97% of $520,338.58, is reasonable in this case. Husky's position is in line with the Respondent's own comparative.[27]

[65] I have considered the positive factors in the context of the appeal as a whole and the quantum of legal fees claimed by the Respondent and I conclude that a reasonable and fair contribution to the legal fees of the Respondent is the amount of $300,000. The fact that the dollar amount is lower than in *Alta Energy* reflects the actual cost of counsel in this case as compared to in *Alta Energy*. The percentage is somewhat higher but that reflects the modest quantum of fees incurred by the Respondent when viewed in the light of the positive factors identified above.

[66] As previously stated, in addition to the award of $300,000 for legal fees incurred, I will allow the Respondent's claim for a disbursement of $11,812.37 for

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[23] Paragraphs 6 to 10 of the Respondent's Affidavit.
[24] Typically, full indemnity costs require reprehensible, scandalous, or outrageous conduct by a party: *Blackmore v. R.*, 2011 FCA 335 and *Burlington Resources* at paragraph 125.
[25] *Alta Energy Luxembourg S.A.R.L. v. R.*, 2018 TCC 235 ("*Alta Energy*").
[26] *Alta Energy* at paragraph 44.
[27] See paragraph 30 of the Respondent's costs submissions.

the expert witness that submitted an expert report to the Court and testified at the hearing.

Signed at Ottawa, Canada, this 23rd day of May 2024.

"J.R. Owen"

Owen J.

CITATION:	2024 TCC 73
COURT FILE NO:	2017-1252(IT)G
STYLE OF CAUSE:	HUSKY ENERGY INC. AND HIS MAJESTY THE KING
REASONS FOR COSTS ORDER BY:	The Honourable Justice John R. Owen
DATE OF COSTS ORDER:	May 23, 2024

PARTICIPANTS:

Counsel for the Appellant:	Nicolas X. Cloutier Al-Nawaz Nanji and Robert Celac
Counsel for the Respondent:	Pascal Tétrault and Montano Cabezas

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