IN THE MATTER OF THE *FOREST ACT*, R.S.B.C. 1996,
CHAPTER 157, TIMBER HARVESTING CONTRACT AND
SUB-CONTRACT REGULATION, B.C. REGULATION 259-91
(REVISED 22-96) AND
COMMERCIAL ARBITRATION ACT,
R.S.B.C. 1996, CHAPTER 55

AND

IN THE MATTER OF A DISPUTE CONCERNING THE
RATE TO BE PAID BY
CARRIER LUMBER LTD. TO
JOE MARTIN & SONS LTD.
IN RESPECT OF 1999 SUMMER LOGGING ON CP 611 BLOCKS 1-4
IN TAKO CREEK, BLACKWATER REGION OF THE
PRINCE GEORGE TIMBER SUPPLY AREA

DECISION ON COSTS OF THE ARBITRATION PROCEEDINGS

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COUNSEL FOR JOE MARTIN & SONS LTD.	ROY J. STEWART, Q.C.
ARBITRATOR	PAUL D.K. FRASER, Q.C.

I INTRODUCTION AND BACKGROUND INFORMATION

1. This decision deals with the issue of costs in these protracted arbitration proceedings, which are the result of a rate dispute between a licence holder, Carrier Lumber Ltd. ("**Carrier**") and its replaceable contractor Joe Martin & Sons Ltd. ("**JM&S**") for the 1999 summer logging of CP 611 in the Prince George timber supply area.

2. On or about June 30, 1999 Carrier filed a notice of a dispute with JM&S under the then Timber Harvesting Contract and Subcontract Regulation, BC Reg. 22/96, seeking to determine a rate for the aforesaid summer logging.

3. After a failed attempt at compulsory mediation in September, 1999, the parties appointed me as the sole arbitrator to decide the dispute. A full hearing was held from March 6 through March 12, 2000 in Prince George. Several witnesses were called and voluminous documentary evidence was filed.

4. In an Arbitration Award (the "**Award**") dated July 18, 2000 I decided that the appropriate base rate for the logging should be $19.50 per ton. In addition to this base rate, I decided that JM&S was entitled to payment of any "additives" which Carrier previously paid in addition to the base rate negotiated between the parties for other logging work. I retained jurisdiction to deal with the amount of the additives, costs of these proceedings and interest.

5. Four months after the Award, the parties raised two issues: the first was a claim by Carrier for a negative adjustment of "additives". The second was costs.

6. A hearing was arranged for November 24, 2000. On the day before the hearing, counsel for JM&S obtained an affidavit sworn that day by Mr. Brad Six, a logging contractor in Prince George. Mr. Six had not been called as a witness in the proceedings that took place in March, 2000. However, his signed tender price for doing the logging on CP 611 was introduced as part of Carrier's case and as comparison to rate sought by JM&S.

7. Broadly speaking, Mr. Six's affidavit alleged that his tender price had been suggested by Carrier "for the purpose of showing that other logging contractors had rates that were substantially less than the rates proposed by JM&S". Mr. Six alleged that Carrier held out the prospect of logging work to him in exchange for the tender letter.

8. JM&S intended to rely on the affidavit as material on the issue of costs. Given its late delivery, the parties agreed that the issue of costs could not be dealt with at the November 24th hearing, and it was, therefore, adjourned generally.

9. Thereafter, there were a variety of applications including a successful application by JM&S to re-open or continue the hearing for the purpose of determining whether punitive damages could be awarded; and an unsuccessful application by Carrier to cross-examine Mr. Six on his affidavit in advance of the continuation of the proceedings.

10. Along the way, my jurisdiction to potentially award punitive damages was raised by Carrier. My decision that I had jurisdiction was overruled by the British Columbia Supreme Court in the context of the Court deciding three other cases where a similar issue had arisen, with conflicting results.

11. The award itself was successfully appealed by Carrier to the Supreme Court of British Columbia. However, on appeal to the British Columbia Court of Appeal, the award was restored in January 2004. Legal fees associated with the various appeals have already been dealt with as court costs and do not form part of the claims for costs in these arbitration proceedings. The costs arising from the failed mediation have, pursuant to the regulation, been paid equally by the parties.

12. The end result of all of this is that the only remaining issue to be decided is costs of these proceedings. JM&S seeks an award that Carrier pay its actual legal fees and disbursements, including the arbitrator's fees, expert witness fees, prejudgment interest and the expenses incurred for holding the hearing, inclusive of all of the matters dealt with from the date of the initiation of the dispute on June 30, 1999, through to and including the holding of a five day hearing with respect to costs.

13. Carrier's position is that JMS ought not to be entitled to any of its costs. Carrier seeks costs, or a proportion of its costs, given what it submits is its greater degree of success in this arbitration, particularly with respect to the lengthy hearing on costs and the jurisdiction issue regarding punitive damages. Carrier does not claim for full indemnity of its legal costs and disbursements, but rather, something akin to party and party court costs. Alternatively, as I understood him, counsel for Carrier submits that as success in these proceedings was divided, the parties should each bear their own costs.

II RELEVANT STATUTORY PROVISIONS

14. The material portions of the *Commercial Arbitration Act* [R.S.B.C. 1966] Chapter 55 (the "**Act**") with respect to costs are as follows:

> **Costs**
>
> 11(1) The costs of an arbitration are in the discretion of the arbitrator who, in making an order for costs, may specify any or all of the following:
>
> (a) the persons entitled to costs;
>
> (b) the persons who must pay the costs;
>
> (c) the amount of the costs or how that amount is to be determined;
>
> (d) how all or part of the costs must be paid.
>
> (2) In specifying the amount of costs under subsection (1)(c), the arbitrator may specify that the costs include:
>
> (a) actual reasonable legal fees, and
>
> (b) disbursements, including the arbitrator's fees, expert witness fees and the expenses incurred for holding the hearing.
>
> (3) In specifying how costs are to be determined, the arbitrator may refer the matter to a registrar of the Supreme Court for assessment.
>
> (4) The registrar is not to assess the costs referred under subsection (3) as though they were costs in a proceeding in the Supreme Court but must assess them in the manner specified by the arbitrator.
>
> **International Commercial Arbitration Centre rules**
>
> 22(1) Unless the parties to an arbitration otherwise agree, the rules of the British Columbia International Commercial Arbitration Centre for the conduct of domestic commercial arbitrations apply to that arbitration.

(2) If the rules referred to in subsection (1) are inconsistent with or contrary to the provisions in an enactment governing an arbitration to which this Act applies, the provisions of that enactment prevail.

(3) If the rules referred to in subsection (1) are inconsistent with or contrary to this Act, this Act prevails.

15. The material portions of the Domestic Commercial Arbitration, Rules of Procedures of the British Columbia Commercial Arbitration Centre (the "**Rules**") are:

Conduct of the Arbitration

19(1) Subject to these Rules, the arbitration tribunal may conduct the arbitration in the manner it considers appropriate but each party shall be treated fairly and shall be given full opportunity to present its case.

(2) The arbitration tribunal shall strive to achieve a just, speedy and economical determination of the proceeding on its merits.

Costs

38(1) The arbitration tribunal shall determine liability for costs and may apportion costs between the parties.

(2) In awarding costs, the arbitration tribunal shall take into account the principles set out in Rule 19(2), and the failure of any party to comply with these Rules or the orders of the tribunal. The tribunal shall provide reasons in the event it departs from the principle that costs follow the event.

(3) In the event the arbitration tribunal awards costs, it shall specify the amounts of the fees and expenses so awarded or the method for the determination of those amounts.

(4) Costs include:

(a) the fees of the arbitration tribunal which shall be separately determined and stated for each member of the tribunal, together with reasonable travel and other expenses incurred by the tribunal;

(b) the fees of any expert appointed by the arbitration tribunal, including travel and other reasonable expenses incurred;

(c) the legal and other expenses reasonably incurred in relation to the arbitration by a party determined by the arbitration tribunal to be entitled to recover such costs; and

(d) the commencement fee, administration fees, and the expenses incurred by the Centre.

(5) The liability of parties for the tribunal's fees and expenses is joint and several between the arbitration tribunal and the parties.

16. The material portion of the Timber Harvesting Contract and Subcontract Regulation, B.C. Regulation 259-91 (revised 22-96) (the "**Regulation**") that has relevance to the question of arbitration costs is:

> Regulation 25(1)
> ...if a rate dispute is referred to arbitration, the arbitrator must determine the rate according to what a licence holder and a contractor *acting reasonably in similar circumstances* would agree is a rate that
>
> (a) is competitive by industry standards, and
>
> (b) would permit a contractor operating in a manner that is reasonably efficient in the circumstances in terms of costs and productivity to earn a reasonable profit.
>
> [emphasis added]

III AUTHORITIES

17. The arbitral authority interpreting the costs provisions of the Act and the Rules are valuable as a guide for the basis on which "actual reasonable legal fees" and disbursements may be awarded. In *International Forest Products Limited v. Hayes Forest Services Limited* (Wood) (July 18, 1999) the arbitrator concluded that the awarding of such expenses "is a matter which is expressly left to the discretion of the arbitrator" in accordance with the principles set out Rule 19(2). He went on to decide that an award "for actual legal fees" under section 11(2)(a) of the Act or "the legal and other expenses reasonably incurred in relation to the arbitration" under Rule 38(4)(c) of the Rules was not "automatically recoverable by the successful party to an arbitration".

18. The arbitrator went on to say:

> While I would not conclude that an award of costs which includes "actual reasonable legal fees" of, or "the legal and other expenses reasonably incurred in relation to the arbitration" by, the successful party must necessarily be limited to cases in which the unsuccessful party has been guilty of some reprehensible conduct, I am of the view that such an award ought to be based upon some circumstances that could reasonably be said to justify giving the successful party to an arbitration a full indemnity for all costs attendant upon the conduct of the arbitration proceedings.
>
> [emphasis added] (Pages 8 and 9)

19. In December, 1999 the arbitrator in *International Forest Products Limited v. Lineham Logging Ltd.* (Taylor) (the "**Lineham Decision**") the arbitrator in a rate dispute dealt with a situation where each of the parties was successful in advancing "their claim and defending their respective positions". The arbitrator concluded, however, that in the rate dispute before him, success should not be "the dominant consideration". He concluded that the contractor was "substantially successful" and that the unreasonable conduct of the licensee in the unsuccessful negotiations that preceded the arbitration, warranted an award of "actual reasonable legal fees...and disbursements, including the arbitrator's fees, expert witness fees and the expenses incurred for holding the hearings", under section 11 of the Act.

20. In January 2001 in *International Forest Products Limited v. Hayes Forest Services Limited* (MacIntosh), the arbitrator awarded actual reasonable legal costs to a contractor who had been wholly successful in a rate dispute. The arbitrator had this to say:

> My reading of section 11 of the *Commercial Arbitration Act*, and in particular subsection 11(2), leads me to conclude there is something close to a presumption that actual reasonable legal fees will be awarded. It is probably not a presumption as a matter of law. It is instead probably the legislation simply advising arbitrators not to be bound by the regime for costs prevalent in our courts. Nonetheless, the only example of costs the legislature chose to discuss in subsection 11(2) was actual reasonable legal fees.
>
> (Page 3)

21. Absent any special circumstances and where success had apparently been evenly divided, where liability issues of entitlement and determination were the subject of the

proceedings, each party was ordered to bear their own costs of the arbitration: see, *Little Mountain Contracting Ltd. v. Ross Fillion Trucking Ltd.* (Pearlman) (August 10, 2001).

22. Another factor influencing the issue of costs can be misconduct by parties in the course of arbitration proceedings. If misconduct is found, it can have an impact on the issue of costs and can be taken into consideration in the exercise of the arbitrator's discretion with respect to costs. That discretion in this case would be exercised under the provisions of section 11(2)(a) of the Act and section 19(2) of the Rules.

23. Counsel for the parties in this proceeding agree that a finding of misconduct is not a condition precedent to an award of full or partial indemnity of costs in this proceedings.

24. I agree with Arbitrator Wood in *International Forest Products Limited v. Hayes Forest Services Limited* (*supra*) that in considering a claim for "actual reasonable legal fees" or "the legal or other expenses reasonably incurred in relation to the arbitration" there ought to be some circumstances that could reasonably be said to justify such an award. It is on that basis that I consider the claims for costs being advanced in this arbitration.

IV THE CONDUCT OF CARRIER IN THE NEGOTIATION PROCESS

25. On all of the evidence, I find that over the course of the years that these parties worked with one another, JM&S was constantly seeking more work and higher volume from Carrier. Both parties knew that logging rates are significantly affected by volume production. Given the size of JM&S' operation, its number of employees and its inventory of equipment, it was clear that the very future of JM&S would be materially affected by the volume of work it received from Carrier. JM&S was Carrier's only replacement contractor.

26. The sense I have from the whole of the evidence is that the parties approached the negotiations for the 1999 summer logging rate for CP611 from entirely different perspectives. That is perhaps not uncommon in rate negotiations. What was different about these negotiations, however, is that Carrier, while aware of JM&S' long standing campaign to obtain more volume, had come to its own conclusion that it wanted to have two replaceable contractors working for it, rather than JM&S alone. That reality was formally conveyed to JM&S at a pivotal meeting that

took place on April 30, 1999. It compromised the course of all discussions (actual or potential) thereafter.

27. I find on all of the evidence that Carrier insistence on $16.52 as a base rate effectively put an end to any meaningful further discussion. In my view that was unreasonable and against the spirit of the Regulation. While Carrier submits that it was always ready to negotiate, I respectfully disagree and find that Carrier was determined to achieve not only a significant reduction in the base rate, but adamant that it achieve a base rate at the amount of $16.52. In reality, Carrier's position was not negotiable. It re-enforced its position by suggesting that one of JM&S' options was to consider selling or giving up half of its contractual cut with Carrier. In making that suggestion, Carrier must have known that JM&S would have to seriously consider its future. I conclude that Carrier well knew that the negotiations were doomed and that failing acceptance of the $16.52 base rate by JM&S, any resolution of the dispute would only be achieved through the arbitration machinery created by the *Forest Act*.

28. The Regulation contemplates a rate determination on the basis that the parties are "acting reasonably". As I said on page 25 of the Award, a party is not acting reasonably and with the fairness contemplated by the Regulation if it wants all advantage. With the negotiations truncated by Carrier's intransigence on the base rate amount, there was no opportunity for JM&S to demonstrate its potential willingness to compromise.

29. In the Lineham Decision (*supra*) Arbitrator Taylor made the following comments about the reasonableness of the parties in the course of the negotiations that lead to that arbitration:

> To require, as Interfor suggests, that Lineham pay part of its costs, thereby presumably reducing the "profit and risk" portion of its rate, does not in the present circumstances appear consistent with the spirit of the Regulation.
>
> Where the contractor has been substantially successful but has been submitted to a sufficiently protracted and expensive arbitration proceeding, the result of requiring the contractor to bear part of the costs of the arbitration could well be to defeat the primary purpose of the Regulation, by denying the contractor a proper return. <u>While in a case in which a licensee makes a reasonable proposal it may be proper that the contractor, even though successful in obtaining more, bear a portion of the costs involved, that does not appear to be the case here.</u> The proposed

rate of $36.70 at which Interfor opened the arbitration is in my view well below the "range of reasonableness"; one would, indeed, have to go back some nine years to find such a rate paid for work at an equivalent distance from the Spring Creek Camp (see Table I, p. 65), and during this period there have, of course, been very substantial increases in logging costs. It seems to me that this arbitration was not caused by reasonable difference of opinion between the parties, but that Lineham was obliged to incur the expense of the arbitration in order to resist an unreasonable proposal, and, indeed, to stay in business. The costs so incurred should, in my view, be recoverable under s. 11 of the *Commercial Arbitration Act*.

Counsel for Interfor points out, of course, that Lineham's position was not fully accepted, and for this reason argues that Lineham should bear its own costs and 50% of those of the arbitration, referring particularly to the decision to that effect in *Pacific Forest Products Ltd. v. Hayes Forest Services Ltd.*[August 15, 1997], in which the Arbitrator noted (at page 32) that "each party has been successful in part in advancing their claim and defending their respective positions". While that can, of course, also be said here, I do not think that this should, in the present case, be the dominant consideration. Faced with the unrealistically low proposal advanced by Interfor, it seems to me natural, having in mind the highly judgmental manner in which the matter would have to be resolved under the present system, that Lineham would feel obliged to put forward the highest figure for which it could honestly contend. It seems to me that Interfor "set the pace" in the proceedings.

In the circumstances I view the fact that Lineham obtained less than it sought as no more significant than would a court in a case in which a generally successful plaintiff obtains a somewhat lower award than sought.

Lineham will therefore have the costs of the arbitration as specified in section 11(2) of the [Act], that is to say "actual reasonable legal fees" and "disbursements, including the arbitrator's fees, expert witness fees and the expenses incurred for holding the hearings", such costs are to be assessed, if necessary, by a Master or Registrar of the Supreme Court of British Columbia, pursuant to section 11(3).

[emphasis added]

30. What Arbitrator Taylor had to say in the emphasized portions above is applicable to the circumstances as I find them in these proceedings. The failure of Carrier to negotiate

within what Arbitrator Taylor calls the "range of reasonableness" is the circumstance in these proceedings that can "reasonably" be said to justify at least a partial indemnification of actual legal fees, disbursements and arbitration expenses.

V RELATIVE SUCCESS OF THE PARTIES IN THE ACTUAL RATE DISPUTE

31. My comments and findings contained in the original arbitration award of July 18, 2000 are incorporated by reference into this award. On pages 18 and 19 I indicated that the parties had negotiated three logging rates in their operating history prior to the dispute with respect to CP611 that resulted in these proceedings. The rate for the winter logging season 1997/1998 was $20.77 per tonne for 80,820 tonnes. The rate for spring logging in 1998 was $19.00 for 22,592 tonnes. The last rate negotiated by the parties was in October 1998 for $20.54 per tonne for winter logging of 17,755 tonnes. The estimated volume of CP611 was 43,600 tonnes.

32. At page 19 of the award I observed:

> Generally speaking, the costs of summer logging to any contractor are greater than the costs involved in winter logging. None of the rates negotiated between JM&S and Carrier and described above was for summer logging.

33. At page 20 of the award I said:

> JM&S had not received a base rate of less than $19.00 per tonne for the work it had done for Carrier.

34. At pages 26 and 27 of the award I made the following comments on the three rates that the parties had been able to negotiate:

> The reasons for the agreements on rates differed with each operation. Certainly present and potential volume was a factor together with operating conditions. It is significant in the view that I have of the evidence that the base rate utilized by the parties in 1997 and 1998 was $19.00 a tonne. The sense that I have from all of the evidence is that that base rate reflected the differing conditions that would reasonably be encountered by logging

> operations within Carrier's licence. It also reflected the fact that because Carrier had a relatively small allowable cut in comparison with other licence holders in the area, it was not in the same position as other licence holders to offer volume incentives to JM&S.
>
> With respect to JM&S's costs and productivity for these prior timber harvesting services, there was no evidence to indicate that the costs were received as unreasonable either before or after the completion of the work and all of the harvesting services were apparently carried out to Carrier's satisfaction. I conclude from the evidence that JM&S despite its larger than usual supervisory staff, is an efficient and productive logger.

35. In a rate dispute arbitration, the degree of success on both a direct and comparative basis is one of the relevant factors in a determination of costs. Both parties claim to have been either successful or partially successful as a result of my award of $19.50 per tonne. The pure numerical history is that with respect to CP611, Carrier proposed a rate of $16.52 per tonne. JM&S then proposed a rate of $23.02. Carrier made no counter offer and ultimately filed a notice of dispute to trigger these proceedings.

36. In the course of the March 2000 hearing leading to the original award, I invited the parties to participate in a final offer selection wherein I would choose one or the other of the rates they suggested. This process is similar to the process that has now been put into the regulation. The parties declined. I then invited each of them to consider revising their rate estimates in the light of all of the evidence that had been presented in these proceedings. Carrier declined. JM&S responded with a rate of $21.50.

37. Under the rate review system that was in effect the course of in these proceedings, success was usually relative and only infrequently complete. Carrier was well within its rights to decline my invitations at the hearing to propose a new rate. However, the reality is that by the end of the hearing, the rate proposed by JM&S was closer to the actual award than Carrier's. More importantly perhaps, JM&S had, in the result, succeeded in moving a base rate that Carrier had insisted was, in effect, immovable. Relatively speaking, JM&S was the more successful party. It was also successful in moving the base rate up substantially.

38. There were some wins and losses on both sides with respect to the various motions and other events in the proceedings, but in my view JM&S was, for the reasons given, substantially successful in the rate dispute itself.

VI ALLEGED MISCONDUCT IN THE PROCEEDINGS

39. Much of the time at the five day costs hearing was devoted to the evidence of Mr. Six and the assertion that his evidence disclosed misconduct by Carrier with the intention of misleading the arbitrator on the issue of comparative logging rates for CP611. Mr. Six testified at length. His credibility was vigorously challenged both in the cross-examination and through witnesses called by Carrier to refute portions of his evidence.

40. Reference was made in the evidence to litigation arising from Mr. Six's affidavit sworn November 23, 2000 and filed in these proceedings. Mr. Terry Kuzma, Carrier's woodlands manager, commenced action in the Supreme Court of British Columbia in December, 2000 against Mr. Six for defamation based on publication of information contained in Mr. Six's November 23, 2000 affidavit. Some steps involving preliminary matters were taken in the action in the first few months of 2001. Since then, the litigation appears to have been dormant, but remains extant. Mr. Six decided to wind-up his logging and silviculture business in the Prince George area in 2001 and then became involved negotiations with Carrier with respect to various operating cost items for which he claimed payment.

41. As I indicated on page 28 of the award, the weight which I attached to the comparative rates for 1999 summer logging in CP611 was marginal. The comparative material included Mr. Six's price tender of $16.10 per tonne. At the costs hearing, the integrity of that number was discussed, given Mr. Six's assertion that Mr. Kuzma had suggested that number to him and had gone so far as coming over his house to wait for Mr. Six to prepare and sign a letter confirming that tender price. Significantly, Mr. Six said in cross-examination that he would actually have been prepared to do the work for that price.

42. Given the existence of the defamation action, I do not intend to embark on a detailed exposition of Mr. Six's sworn affidavit evidence or the viva voce he gave at the costs hearing. Suffice to say, that on balance and having considered carefully all of the evidence given at the costs hearing, I do not consider Mr. Six's evidence to have reached the level of reliability necessary for me to conclude that Carrier was involved in taking steps and arranging for the creation of material in an attempt to mislead the arbitration board.

43. It is important that the material aspects of Mr. Six's evidence were uncorroborated either by witnesses who were called (Shawna Kortz) or ostensibly could have been called (Mr. Six's wife who, on Mr. Six's version of events was present when Mr. Kuzma came to his house seeking the written tender). Mr. Six was unable to refresh his memory from any notes or material he had contemporaneously prepared when the events actually occurred. Most importantly, Mr. Six candidly admitted to Bill Kordyban, the president of Carrier in a conversation that took place three months after his affidavit was sworn, that it was "overstated", that he was "not thinking clearly" when he made the affidavit and that he would "withdraw parts of the affidavit".

44. In the result, I am not persuaded that Carrier misconducted itself with respect to Mr. Six's involvement in these proceedings.

45. Counsel for Carrier submits that I should award costs to Carrier for the costs hearing if I conclude that there was no misconduct by Carrier in the course of the arbitration proceedings. In my view, JM&S was entitled to rely on the gratuitous evidence provided to it on November 23, 2000 by Mr. Six. The assertions contained in his affidavit were certainly relevant to the issue of the costs of these proceedings. I take that into account in my global consideration of an appropriate determination with respect to awarding costs of these proceedings.

VII DECISION

46. I have found that the proposal made by Carrier in the negotiations was, in all of the circumstances previously discussed, unreasonable and that JM&S was brought into these proceedings in order to resist that proposal. JM&S was, as I have found, substantially successful in these protracted and expensive proceedings. I have concluded that it is entitled to a portion of the costs relief and indemnity it seeks.

47. In the course of these protracted proceedings, the rate dispute was eclipsed from time to time by other issues that were unique and arose quite unexpectedly. Success with respect to these issues was divided. Given the multiplicity of the various motions and their complexity, it seems to me that a global award that takes into account all that has occurred is most sensible and appropriate. To do otherwise and attempt to deal with the costs issue on the basis of a multiplicity of different results would be, to some extent, like trying to unscramble an omelette.

48. After giving these matters the best consideration I can, I have concluded that after Assessment, JM&S should receive 40% of its actual reasonable legal fees and disbursements, incurred after June 30, 1999 to October 7, 2005, including any expert witness fees and prejudgment interest. In addition, Carrier will pay all of the arbitrator's fees, disbursements and expenses for holding the hearings, except for the arbitrator's fees and hearing expenses incurred with respect to the costs hearing. The parties will share those fees and expenses equally.

49. While it is open to me to refer the Assessment to an officer of the Supreme Court, it makes more practical sense for me to conduct the Assessment, given the length of time that these proceedings have been extant. To do that is also consistent with the imperatives recorded in section 19(1) of the Act. To refer the assessment to someone else would be to impose an unnecessary additional burden on the parties to this proceeding. In the course of argument, I indicated to counsel that I would be available to conduct the Assessment, if one was ordered. I understood them to support that suggestion.

50 I will retain jurisdiction to deal with both the implementation of this award and any clarifications that may be necessary.

DATED at Vancouver, British Columbia, this 6th day of November, 2006.

Paul D.K. Fraser, Q.C.
Arbitrator