

Date: 20081001

**Dockets: A-507-07
A-508-07**

Citation: 2008 FCA 295

**CORAM: DÉCARY J.A.
SEXTON J.A.
SHARLOW J.A.**

BETWEEN:

ABORIGINAL LEGAL SERVICES OF TORONTO

Appellant

and

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA
AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE**

Respondent

Heard at Toronto, Ontario, on October 1, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on October 1, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

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**REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on October 1, 2008)**

SHARLOW J.A.

[1] The appellant was an intervener in two actions in the Federal Court. The actions required a determination as to whether the salaries paid to certain employees of Native Leasing Services were exempt from income tax pursuant to section 87 of the *Indian Act*. In a judgment rendered on October 16, 2007 (2007 FC 1052), Justice Phelan held that the salaries in question were not exempt,

and dismissed the actions with costs. He required the intervener to pay the defendant costs of \$7,500 plus disbursements incurred solely in addressing the intervener's submissions.

[2] The intervention of the appellant had been permitted on the basis of certain conditions, one being that the intervener would not be entitled to costs but could be held liable for costs. There was no appeal from the order that set those conditions.

[3] The appellant argues that, as a party intervening in the public interest, it should not have been required to pay costs. The appellant also argues that it should have been permitted to make submissions on costs, and that Justice Phelan should have provided reasons for awarding costs as he did. The appellant does not argue that the quantum of the award is outside the normal range.

[4] We are not persuaded that the appellant should be relieved of the obligation to pay costs on the basis that it intervened in the public interest. We do not doubt that the issues involved in the case are matters of public interest, but the record establishes that the issue was also of pecuniary interest to the appellant. Indeed, counsel for the appellant conceded that there is such an interest, in that some of its own employees might have benefited if the actions had succeeded.

[5] Nor are we persuaded that the appellant was prevented from making submissions on costs. The appellant was aware that it was at risk of being held liable for costs. It could have made submissions on costs at the conclusion of the trial, or it could have specifically asked that the matter

of costs be reserved pending judgment. Having failed to take either step, it cannot now complain that it had no opportunity to make submissions on an award of costs within the normal range.

[6] Although Justice Phelan did not give reasons for awarding costs as he did, it is our view that, in the absence of evidence that the award is excessive in amount, the award is sufficiently justified on the record.

[7] An award of costs is a discretionary decision which will not be disturbed on in the absence of an error of law, or a failure to give sufficient weight to all relevant considerations. We see no basis in this case for interfering with the exercise of that discretion.

[8] These appeals will be dismissed with costs.

“K. Sharlow”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: A-507-07 and A-508-07

(APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE PHELAN DATED OCTOBER 16, 2007, DOCKET NOS. T-2241-95 AND T-2242-95.)

STYLE OF CAUSE: ABORIGINAL LEGAL SERVICES OF TORONTO v. HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 1, 2008

REASONS FOR JUDGMENT OF THE COURT BY: (DÉCARY, SEXTON & SHARLOW JJ.A.)

DELIVERED FROM THE BENCH BY: SHARLOW J.A.

APPEARANCES:

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PASCAL TÉTRAULT FOR THE RESPONDENT

SOLICITORS OF RECORD:

ABORIGINAL LEGAL SERVICES
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