

**Date: 20081023**

**Docket: A-448-07**

**Citation: 2008 FCA 324**

**CORAM: NOËL J.A.  
NADON J.A.  
TRUDEL J.A.**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant**

**and**

**SPORT COLLECTION PARIS INC.**

**Respondent**

Hearing held at Montréal, Quebec, on October 23, 2008.

Judgment delivered from the bench at Montréal, Quebec, on October 23, 2008.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**TRUDEL J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the bench at Montréal, Quebec, on October 23, 2008)**

**TRUDEL J.A.**

[1] This is an appeal from the Order as to costs of the Tax Court of Canada, rendered by Justice Lucie Lamarre on September 6, 2007, allowing the motion to review the certificate of costs dated April 10, 2007.

[2] The taxing officer awarded the amount of \$16,626.50, to which counsel for the appellant had agreed. The taxing officer declined jurisdiction with respect to the respondent's request for

costs on a solicitor–client basis because the initial decision that allowed costs did not contain any direction by the Court on this point.

[3] In her Order, the judge relies on section 159 of the *Tax Court of Canada Rules (General Procedure)* (SOR/90-688, October 1, 1990, (1990) 124 Can. Gaz. II, 4376 (Rules) and [TRANSLATION] “to compensate for the respondent’s somewhat indolent attitude in this case” (reasons for order, at paragraph 13) awards an additional amount of \$6,000, hence the present appeal.

[4] We are of the opinion that the judge could not rely on section 159 of the Rules to intervene in this way.

[5] Section 159 concerns the revision of an assessment. It is trite law that the Court will intervene in a taxing officer’s decision only if he or she has made an error in principle (*R. v. Munro*) [1998] 4 C.T.C. 89 (FCA) or if his or her decision is so unreasonable that it is contrary to applicable principles.

[6] The taxing officer wrote the following at paragraph 8 of his reasons for assessment:

[8] I would suggest that in seeking costs on a solicitor-client basis, the Appellant [here the respondent] should have made a request under subsection 147(7) following the decision of Justice Lamarre.

[7] However, the respondent did not do so. We agree with the taxing officer. When the respondent filed its notice of motion on May 9, 2007, it relied on sections 147 and 154 of the Rules,

which it could no longer do, being out of time. With respect, the judge could not allow this motion on the basis of section 159 of the Rules, for want of jurisdiction.

[8] Accordingly, the appeal will be allowed without costs, the order as to costs of the Tax Court of Canada will be reversed and, rendering the order that should have been rendered, the motion to review the certificate of costs dated April 10, 2007 will be dismissed.

“Johanne Trudel”

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J.A.

Certified true translation  
Michael Palles

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-448-07

**(APPEAL FROM AN ORDER OF JUSTICE LUCIE LAMARRE OF THE TAX COURT OF CANADA DATED SEPTEMBER 6, 2007)**

**STYLE OF CAUSE:** Her Majesty the Queen v. Sport Collection Paris Inc.

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** October 23, 2008

**REASONS FOR JUDGMENT OF THE COURT BY:** NOËL J.A.  
NADON J.A.  
TRUDEL J.A.

**DELIVERED FROM THE BENCH BY:** TRUDEL J.A.

**APPEARANCES:**

Benoît Denis FOR THE APPELLANT

**SOLICITORS OF RECORD:**

Veillette, Larivière FOR THE APPELLANT  
Montréal, Quebec