Docket: 2005-1930(IT)G

BETWEEN:

LLOYD M. TEELUCKSINGH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Applications determined pursuant to *Rule* 69 of the
Tax Court of Canada Rules (General Procedure)

by: The Honourable Justice Campbell J. Miller

Counsel for the Appellant:	Christina A. Tari and Cindy Chiu
Counsel for the Respondent:	Roger Leclaire and George Boyd Aitken

---

ORDER

UPON applications brought by the appellant and by the respondent for reconsideration of the award of costs herein;

AND UPON having read the material filed by both parties;

IT IS HEREBGY ORDERED THAT the Appellant is awarded costs including disbursements in the amount of $359,073.23 in accordance with the attached Reasons.

Signed at Ottawa, Canada, this 9th day of May, 2011.

"Campbell J. Miller"

Miller J.

Citation: 2011 TCC 253
Date: 20110509
Docket: 2005-1930(IT)G

BETWEEN:

LLOYD M. TEELUCKSINGH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

C. Miller J.

[1] Mr. Teelucksingh, the Appellant, seeks costs in the amount of $783,132.77 (including disbursements of $38,199.99). The Respondent acknowledges the Appellant is entitled to costs, but such costs to be determined in accordance with the Tax Court of Canada Tariff, which the Respondent claims is $24,000 plus disbursements of $25,028.52 for a total of $49,028.52. The exercise of determining costs can be loosely described as an attempt to marry art and science: imprecision made to appear precise.

[2] The Respondent argues that there are no special circumstances, including any misconduct on the part of the Respondent, that would justify special costs beyond the Tariff. This Court has moved away from a position of limiting costs beyond Tariff to situations of malfeasance or misconduct (see for example recent decisions of Justice Hogan in *General Electric Capital Canada Inc*. v. *Her Majesty the Queen*,[1] and Justice Campbell in *Campbell v. Her Majesty the Queen*).[2]

[3] The *Rules* of the Court give me wide discretion in setting costs, taking into account those factors set out in *Rule 147(3),* including "any other matter relevant to

---

1 2010 TCC 490.

2 2010 TCC 323.

the question of costs". The appropriate course in the determination of costs is to consider all these factors and reach a reasoned, balanced result, which, as the Respondent reminded me, quoting from the case of *Bland v. National Capital Commission*,[3]

> … must render justice: their function is not to reform the public services.

[4] So, I shall address each factor in assessing whether the circumstances justify a movement beyond the Tariff.

(i) Result of the proceedings

[5] The Appellant was successful on all issues other than with respect to the valuation of the horses, which was, however, the most significant issue. With respect to the valuation, the Respondent assumed the total fair market value did not exceed $300,000. The Appellant reported on the basis of a fair market value for the horses of one million dollars. In my Reasons for Judgment of January 13, 2011, I concluded the value was $650,000, though not until this very moment appreciating that that is halfway between the two values.

[6] This factor certainly supports the Appellant's entitlement to costs, as although the valuation was a split decision, all other issues were in the Appellant's favour. Nothing though suggests that the result was so overwhelming or such a clear winner that costs beyond Tariff are warranted on this basis alone.

(ii) Amount in issue

[7] While the amount of tax in issue in Mr. Teelucksingh's case is relatively small (though no doubt not to him), the case stands as a test case for approximately 800 other Montebello-related appeals. I have received different figures from the Appellant and the Respondent as to how many other Arabian horse investment assessments, other than Montebello-related, are yet to be determined. The number ranges from 1,000 to 3,000.

[8] The Respondent estimates the Montebello-related tax in issue for those cases, for which the Respondent agreed to be bound by this case, is approximately four and half million dollars. The Appellant estimates the tax involved with all Arabian horse

---

[3] [1993] 1 F.C. 541.

investments, not just Montebello-related, under assessment is one hundred and eight million dollars. This huge discrepancy is indicative of the parties' ongoing disagreement on pretty much everything.

[9] Frankly, it is unnecessary for me to even attempt to guess at what tax might be at stake, and what might have some chance of being resolved as a result of this case. I have been provided with considerable documentation between the parties going back many years as to how they should handle this litigation specifically, and also generally how to handle all horse investment partnership assessments. There are several beyond just Montebello – Shiloh, Seah, Heritage, and Edwards- though I am satisfied the Respondent has only committed to relying on this case as the test case for the Montebello partnerships. It was made clear to me at the outset of the trial that the parties expected guidelines from me in the reasons for my decision that would be appropriate for resolving all other assessments. I had hoped I had done so.

[10] I am satisfied that this case was indeed a test case and the amount in issue is exponentially greater than the tax involved in this one case. The possible savings in time and expense from having to pursue hundreds, if not thousands, of other cases to trial is, indeed, significant and worthy of consideration of costs in excess of what this one taxpayer might otherwise be entitled to, notwithstanding the other taxpayers individually would likely qualify to be heard in the informal procedure.

(iii) Importance of the issue

[11] In a similar vein, the resolution of the issue in this matter is important to the extent that it is likely to impact hundreds or thousands of other Arabian horse investors. As far as the legal significance or importance of the issues, there is nothing novel or that has the tax community holding its breath in anticipation.

(iv) Any offer of settlement made in writing

[12] An offer was made by the Appellant in August 2010 (the "2010 offer") in which the Appellant was prepared to settle at a valuation of 70% of the costs of the horses. I found a value of 65% - close. The Respondent's analysis is that my judgment was about $5,400 (in income inclusion) less favourable to the Appellant than the 2010 offer, and consequently, the offer should not be considered in determining costs. The Appellant argues, without accepting the Respondent's financial analysis, that the difference is not substantial. Again, I feel no compulsion to turn this stage of the analysis into a mathematical equation; that may come later. The fact is, an offer was made that is relatively close to the judgment. Some effort by

the Respondent in August 2010 to seriously address the 2010 offer could have, and should have, avoided the significance costs that followed.

[13] While there are new *Rules* pending in this Court addressing this very issue of the impact of settlement offers on costs, I share Justice Boyle's view, expressed in *Langille v. The Queen*:[4]

> 10 As I noted in *Jolly Farmer Products Inc. v. The Queen*, 2008 TCC 693, 2009 DTC 1040, the Rules of this Court on costs do not specify, as those of several jurisdictions do, that if an unsuccessful party has not accepted a settlement offer at least as favourable as the outcome of the trial, that party is responsible for substantial indemnity or solicitor-client costs from the date of the offer through to the end of the trial. In *Jolly Farmer* I awarded an amount in excess of the Tariff amount on account of such a settlement offer. I restate my comments therein that parties should take seriously their obligations to consider settlement offers carefully or run the risk of increased costs if they are not more successful at trial.
>
> 11 Rule 147 specifically refers to settlement offers as a matter to be considered in deciding costs awards. Logically, in most cases, this could only have been intended to justify an increase in the amount of costs awarded beyond the Tariff.
>
> 12 I do not believe that the absence of an express rule permitting substantial indemnity costs awards where an at least as favourable settlement offer is rejected leaves this Court unable, as a matter of law or jurisdiction, to choose to exercise its discretion with respect to costs by making such an award in appropriate circumstances

[14] In dealing with costs, even with the new pending *Rules*, *Rules* are to assist the judge in the exercise of his or her discretion, not to robotically replace the exercise of such discretion. In the circumstances of this case, I am influenced by the Appellant's 2010 offer, and believe that it does justify costs above Tariff for the period since August 2010.

(v) Volume of work

[15] It is evident the Appellant's counsel put in considerable time and effort in this matter; indeed, her dockets show fees of approximately $380,000 even before the

---

[4] 2009 TCC 540.

filing of the Notice of Appeal and over $700,000 thereafter. I note that the years in question were 13 to 15 years before trial and that Montebello had been out of business for 13 years before the trial began. No doubt this creates some logistical hurdles for the Appellant, especially as the Appellant was the investor and not the mover and shaker behind the arrangement of all these horse partnership investments. I conclude this creates some additional work beyond what might be considered the norm of civil litigation, though not so significant as to justify substantial costs.

(vi) Complexity of the issue

[16] With respect to Appellant's counsel's view to the contrary, the issues were not complex. The determination of whether the partnership was carrying on business and the valuation of the horses were the key issues, neither of which were novel nor requiring any lengthy research to grapple to the ground.

(vii) Conduct of any party that attempted to lengthen or shorten unnecessarily the duration of the proceeding

[17] These were lengthy proceedings which Justice Bowie case managed over a number of years. My impression from a review of the history of this litigation is that, while there were delays and possibly some unnecessary tactical manoeuvres, I cannot with any degree of confidence lay all that at the feet of just one side. This is not therefore a factor in my costs' consideration.

(viii) Denial or neglect or refusal of any party to admit anything that should have been admitted

[18] The Appellant maintains the Respondent unreasonably relied on the result of the earlier informal procedure case of *Khaira v. Her Majesty the Queen*[5] in digging in its heels on all issues before me in this case. I did find that *Khaira* could not serve any precedential purpose, especially in light of the circumstances of the presentation of that case. However, I am not satisfied the Respondent would have conceded any issues even without the finding in their favour in *Khaira*. It is inappropriate to suggest that because one side lost on an issue that it should never have pursued that issue. The issues were not, to use the vernacular, slam dunk. I see no justification in this regard for substantial costs.

---

5 2004 TCC 118.

(xi) Any other relevant matter

[19] The Appellant maintains the Respondent displayed "a careless disregard for the taxpayer and the time required to effectively prepare for the hearing and meet the Crown's demands regarding evidence." While I observed the behaviour of counsel at trial, on which I commented in my judgment, and reviewed the Court's file with respect to the management of this case, I simply cannot reach the same conclusion of a "careless disregard."

[20] The Appellant goes on to make the point that only a substantial costs award will send the appropriate signal to the Crown that this case ought to be used as a precedent to settle all outstanding assessments and deter the Crown from proceeding with further appeals. With respect, this strikes me as an improper motive for a substantial costs award – a sort of peremptory punishment. It is one thing to take into account the fact this is a test case, and I certainly do consider in this case that is a significant factor in making a costs award, but it is quite another to impose costs to compel future behaviour.

[21] In summary, I find the following factors justify an award of costs beyond Tariff.

> (i) The large number of taxpayers who have anticipated the outcome of this case, over 800 of whom are assured of similar treatment from the Respondent. Even acknowledging that individually the claims may have qualified for the informal procedure, collectively the amounts are impressive.
>
> (ii) The 2010 offer was not far from the result of my decision. Had serious *bona fide* negotiations ensued, the parties might have saved considerable time and effort.

[22] Having concluded that costs are justified in excess of Tariff, I hasten to add that the substantial costs sought by the Appellant are beyond what I consider appropriate given my review of the salient factors. The Appellant seeks solicitor-client costs from the date of the 2010 offer of approximately $300,000, plus HST, plus partial indemnity for costs prior to that at 60% of the solicitor-client costs of $675,000, being approximately $400,000 plus $38,200.00 in disbursements for a total of $783,000. Appellant's counsel has suggested other options ranging from $647,000 to $715,000, all including the disbursements of approximately $38,200.

[23] I agree that the Respondent is responsible for some significant costs since the 2010 offer, notwithstanding the offer was better than the result obtained by Mr. Teelucksingh pursuant to my judgment. Yet the only difference was with respect to the valuation of the horses: all other issues I found in the Appellant's favour, as was contemplated by the offer – and the valuation was close. I am prepared to allow costs since the 2010 offer in these circumstances at a rate of 75%, being 75% of $300,000 or $225,000.

[24] With respect to costs before the 2010 offer, I tackle this from the perspective of the number of taxpayers who may have considered this as a test case. At a minimum, 800 taxpayers can expect similar treatment from the Respondent as a result of this case. The Respondent's draft Bill of Costs suggests that costs prior to the 2010 offer (i.e. prior to trial preparation and trial) were approximately $7,000, based on Class A, or just under one-third of the total Tariff. Had each of the 800 taxpayers brought 800 informal procedure appeals, a reasonable possible costs award would be in the $300 range for each of such informal procedures. Presuming, however, similar circumstances of recovery of costs post-settlement offer, the remaining costs would be one-third of the total costs (to be in line with this case), and therefore an average of approximately $100 for each informal procedure case or roughly $80,000. I recognize this is a very rough and ready formulation, but it accords more with my sense of a fair determination of the pre-settlement offer costs than the Appellant's request for substantial costs of over $400,000 for that period. In my view, the circumstances do not justify such a substantial award.

[25] The Appellant seeks, as part of the substantial indemnity portion of the award, the inclusion of 13% HST, that would have been paid by the payers of the legal fees. This is somewhat problematic as I am concerned that there may be some doubling up of the indemnity if the Appellant claimed input tax credits. Our *Rules* address this concern:

> 157(4) The taxing officer may allow all services, sales, use or consumption taxes and other like taxes paid or payable on any counsel fees and disbursements allowed if it is established that such taxes have been paid or are payable and are not otherwise reimbursed or reimbursable in any manner whatever, including, without restriction, by means of claims for input tax credits in respect of such taxes.

[26] My difficulty is that Mr. Teelucksingh was not alone bearing the onerous burden of many hundreds of thousands of dollars in legal costs in the pursuit of this lawsuit. Is it even possible to track down the GST returns, if any, of any of the investors who contributed towards legal costs to determine whether input tax credits

were claimed. How did they deal with the HST on their legal costs in connection with a short-lived business many years prior to incurring those costs? My answer is to recognize that it is unlikely input tax credits were claimed and that some recognition should be given to the fact that HST was paid. But it is, again, just a factor: nothing requires me in making a lump sum award to be so specific in my allocation. The 75% figure I have used, for example, served solely as a guide, as does the rough and ready determination of the savings of hundreds of informal procedure appeals. I simply add some consideration of HST into the mix and conclude that total costs of $325,000 are in order.

[27] I will now address the disbursements. The Appellant seeks disbursements in the amount of $38,200, while the Respondent accepts only $25,028. The difference relates to approximately $7,000 in transcripts costs and approximately $6,000 in transportation, fax, long distance, research and meals. The Appellant provided supporting information for the latter amounts and I therefore allow them.

[28] With respect to the transcripts, I have a concern regarding the trial transcripts (costs incurred by the Appellant of $4,126.76). My recollection is that I discussed these costs with counsel and we agreed that the costs would be borne three ways amongst the Court, the Appellant and the Respondent. Given this acceptable arrangement, (although the Tax Court bore the largest brunt of such costs), I had not contemplated such costs would be subject to further scrutiny in any costs award. I am not prepared to now order the Respondent responsible for such expense and therefore deduct the $4,126.76 from the Appellant's claim for disbursements, reducing it to $34,073.23.

[29] The Appellant is entitled to costs, including disbursements, of $359,073.23.

Signed at Ottawa, Canada, this 9th day of May, 2011.

"Campbell J. Miller"

C. Miller J.

CITATION:	2011 TCC 253
COURT FILE NO.:	2005-1930(IT)G
STYLE OF CAUSE:	LLOYD M. TEELUCKSINGH and HER MAJESTY THE QUEEN
PLACE OF HEARING:	N/A
DATE OF HEARING:	N/A
REASONS FOR ORDER BY:	The Honourable Justice Campbell J. Miller
DATE OF ORDER:	May 9th, 2011
PARTICIPANTS:	N/A

COUNSEL OF RECORD:

For the Appellant:	
Name:	A. Christina Tari
Firm:	Richler and Tari
For the Respondent:	Myles J. Kirvan Deputy Attorney General of Canada Ottawa, Canada