

Dockets: 2000-458(IT)G  
2000-956(IT)G  
2000-964(IT)G  
2000-965(IT)G

BETWEEN:

GHASSAN KIWAN,  
ZIAD HANNA,  
RAMZI SALAMÉ,  
MAY NASSAR,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

**CERTIFICATE OF COSTS**

I CERTIFY that I have taxed the Respondent's costs between parties in this proceeding pursuant to subsection 153(1) of the *Tax Court of Canada Rules (General Procedure)* and I ALLOW THE SUM OF \$17,095.07.

Signed at Ottawa, Canada, this 10th day of May 2007.

"Alan Ritchie"

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Taxing Officer

Translation certified true  
on this 17th day of March 2009.

Brian McCordick, Translator

Citation: 2007TCC279  
Date: 20070510  
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**REASONS FOR TAXATION**

**Alan Ritchie, Taxing Officer**

[1] The taxation hearing was held by conference call on Wednesday, April 4, 2007. It followed on a judgment made by Dussault J. of this Court on August 18, 2004, in which he dismissed the appeals and awarded costs to the Respondent. The Appellants were represented by Yves Ouellette, and the Respondent by Nathalie Lessard.

[2] The only item in the Respondent's bill of costs that is disputed is the sum of \$3,000 requested for the services of a second counsel at trial. Both parties presented written representations to the taxing officer prior to the conference call, and during the conference they essentially reiterated the positions set forth in those representations.

[3] Counsel for the Respondent noted that the appeals were part of a larger group of appeals in this Court (Ordre antonien libanais des Maronites) and that the Crown agreed that these four appeals would be heard on common evidence. During the six-day hearing of the appeals, six persons testified and were cross-examined and numerous exhibits were presented. Counsel stated that the Appellants raised an issue related to the *Canadian Charter of Rights and Freedoms* (the "Charter") for the purpose of excluding most of the evidence, an issue that therefore had to be addressed by the Crown at the hearing.

[4] Counsel for the Appellants produced a list of some 15 other decisions pertaining to appeals heard by the Court under the informal procedure. These appeals dealt basically with the same issue and involved the same kind of evidence. At least one of these decisions, *Nesrallah v. The Queen*, 2003 DTC 1283, related to appeals heard on common evidence, and counsel noted that no sum was requested for a second counsel in that case. He said that in most of the cases cited, the Crown attorneys were the same ones as in this case. The position of the Appellants' counsel was that the present four appeals differed only in the details, that the Charter question was raised on cross-examination, and that it should have no impact on the issue of taxation. The cases were all audited by the same auditor of the Canada Revenue Agency.

[5] Counsel for the Respondent said the *Nesrallah* decision and the other decisions referred to by her colleague were all in relation to appeals that were heard under the informal procedure and were not as important as these appeals. She said that in this case a greater number of taxation years were involved, the disputed amounts were larger, a Charter issue was raised, the hearing was longer, a larger number of witnesses testified and the cross-examination was longer. She also took the position that the evidence in this case was very different from the evidence in the appeals heard under the informal procedure.

[6] There is little or no case law to which I can refer on this issue. In *McGorman v. Canada*, [1999] T.C.J. No. 219 (QL), [1999] 3 C.T.C. 2024, 99 DTC 591, where costs were awarded for the services of an additional counsel, the case was much more complex and the costs were awarded by the trial judge and not by the taxing officer.

[7] Although the hearing was long and complex, the appeals were nevertheless part of a larger group of appeals that dealt with the same issue, even if the details differed from one appeal to another. The Respondent has the onus of justifying the requested additional amount. I am not satisfied that in this case the sum requested for

the second counsel is warranted, given the number of similar cases previously pleaded by the same two counsel for the Crown.

[8] I will therefore not award the sum of \$3,000 requested for the second counsel. I will award the sum of \$17,095.07 as costs.

Signed at Ottawa, Canada, this 10th day of May 2007.

"Alan Ritchie"

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Taxing Officer

Translation certified true  
on this 17th day of March 2009.

Brian McCordick, Translator