Docket: 2009-3121(IT)G

BETWEEN:

SPRUCE CREDIT UNION,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion for Costs heard on April 26, 2013 at Vancouver, British Columbia.

Before: The Honourable Justice Patrick Boyle

Appearances:

Counsel for the Appellant:	Peter L. Rubin Robert Alan Kopstein
Counsel for the Respondent:	Robert Carvalho David Everett

ORDER

Upon receiving written submissions, hearing the parties and receiving further submissions from the parties on the subject of costs in this matter;

IT IS ORDERED THAT:

The Court fixes costs, as detailed in the attached Reasons, payable by the Respondent to the Appellant as follows:

(i) a counsel fee in the amount of $410,000 less 50% of Blake, Cassels & Graydon's fees attributable to the Amended Answer Motion and the three related discoveries computed in accordance with the Reasons;

(ii) those disbursements set out in the Reasons; and

(iii) costs of $2,500 in the aggregate in respect of the costs submissions and hearing.

Signed at Ottawa, Canada this 6th day of February 2014.

"Patrick Boyle"

Boyle J.

Citation: 2014 TCC 42
Date: 20140206
Docket: 2009-3121(IT)G

BETWEEN:

SPRUCE CREDIT UNION,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Boyle J.

[1] These Reasons are in respect of a costs award regarding the decision in *Spruce Credit Union v. The Queen*, 2012 TCC 357, decided wholly in favour of the taxpayer by judgment dated October 15, 2012. The Respondent's appeal to the Federal Court of Appeal has not yet been decided.

[2] The appeal involved a four day hearing with each side represented by three or four counsel, and two rounds of further written submissions, including one in respect of the intervening decision of the Supreme Court of Canada in *Copthorne Holdings Ltd. v. The Queen*, 2011 SCC 63. Prior to the hearing there had been two contested motions. One was to have the Appellant's case proceed as lead case for all of the credit unions in British Columbia that chose to pursue their objection and appeal rights (the "Bound Credit Unions"). The other was to permit the Appellant to file an Amended Answer thereby effectively withdrawing an admission. Both were granted and the second led to three further examinations for discovery. In the Order dealing with the Amended Answer, Associate Chief Justice Rossiter expressly dealt with the costs of the motion and the additional discoveries.

[3] The appeal involved two distinct alternative issues. The first was whether the dividend received by the Appellant from Stabilization Central Credit Union of British

Columbia ("STAB"), a British Columbia deposit insurance corporation, was a deductible intercorporate dividend under the substantive provisions of the *Income Tax Act* (the "*Act*"), including the *Act's* régime applicable to deposit insurance corporations. This required a determination of whether the dividend amount was paid as an allocation in proportion to past deposit insurance assessments, as well as a consideration of the interplay between the *Act*'*s* generally applicable provisions and the specific deposit insurance corporation régime provisions of the *Act*. The second, alternative issue was whether the *Act*'*s* General Anti-Avoidance Rule ("GAAR") applied to the receipt of the dividend to recharacterize it as other than a deductible dividend received.

[4] Written submissions were received by the Court on costs in April and May 2013.

[5] The Appellant has asked for a lump sum costs award in the range of 75% of its actual legal costs in respect of the litigation from the date the Notice of Appeal was filed to the date judgment was rendered, together with all of its disbursements. In the alternative, the Appellant asks that, if the Court decides to defer to the costs Tariff, that costs be awarded by reference to Class C of the Tariff because of the lead case nature of this appeal notwithstanding that looked at alone the amount of tax in dispute in this particular appeal would characterize it as a Class A appeal.

[6] The Respondent opposes the Appellant's request for a lump sum costs award. It is the Respondent's position that there must be unusual and exceptional circumstances to warrant an award of costs not based upon the Tariff. The Respondent agrees with the Appellant's alternative request to have a costs award based upon Class C of the counsel fee Tariff given the aggregate amount involved in all of the Bound Credit Unions' appeals.

[7] The amount of federal tax in issue in this particular appeal was less than $50,000. The amount of federal tax in issue in this appeal together with all of the Bound Credit Unions' appeals is approximately $7 million.

[8] The actual costs incurred by the Appellant in respect of the pursuit of this appeal from the date of filing the Notice of Appeal to the date of judgment therein was approximately $860,000. Seventy-five per cent of this is approximately $645,000. The disbursements incurred in that time period were approximately $19,500. Thus, the Appellant has requested a lump sum award of approximately $665,000 in the aggregate.

[9] It is not clear why the Appellant is not seeking any costs in respect of preparing and filing the Notice of Appeal.

[10] The $860,000 amount is the amount that was billed by Blake, Cassels & Graydon LLP ("Blakes") to the client. The accrued time at posted, hourly docket rates was in fact in excess of $1.1 million dollars. That is, Blakes billed its client at an effective average time of billing 'discount' or write down of approximately 23%, being more than $250,000. Appellant's counsel says this "already provided discount" is a relevant factor to be considered. I do not accept that position. There was no suggestion that Blakes' actual billings to the client did not represent what that firm believed at the time of billing to be the full value of the services provided, nor that that there was any retainer agreement providing for a deferred or success fee in respect of this difference. Considering this discount would be the equivalent of awarding disbursements for out-of-town witnesses using hotel rack rates.

[11] The $860,000 total includes the work relating to the Amended Answer Motion, the preparation and filing of that Amended Answer, and the conduct of the three resulting discoveries. The Appellant has not provided any breakdown whatsoever to the Court for those particular costs. I will not be interfering with or supplementing the costs already ordered by the Associate Chief Justice in respect of the Amended Answer and related discoveries.

[12] The $860,000 aggregate amount also includes Blakes' fees regarding advising the other Bound Credit Unions and preparing their Notices of Appeal and agreements to be bound. Subsequent to the hearing of this Costs Motion, Blakes has conservatively estimated the amount billed for its services to the other Bound Credit Unions to be approximately $40,000. This estimate was based upon identifying from the firm's docket entries all timekeepers' services for each day that referenced any of the other Bound Credit Unions, and treating all of that timekeepers' accrued time for that day as relating to the Bound Credit Unions and not the Appellant, even if it was clear from the entry that time was also spent on the Appellant's appeal that day.

[13] The disbursements claimed by the Appellant include $2,200 for filing the appeals of related Bound Credit Unions. I will not consider those disbursements in this appeal as they are properly to be dealt with (or not, depending upon the ultimate outcome) in the judgment or order disposing of each particular bound appeal.

[14] The Respondent does not take issue with any of the other disbursements claimed by the Appellant, except to the extent they relate to the Amended Answer and resulting discoveries.

[15] According to the Appellant's calculations, the counsel fee computed by reference to the Class A Tariff is $10,600 (including $700 in respect of "motion"). The counsel fee computed by reference to the Class C Tariff is $21,250 (including the $1,400 amount in respect of "motion").

1. The Law

[16] The relevant cost rules of this Court provide as follows:

> **147.** (1) The Court may determine the amount of the costs of all parties involved in any proceeding, the allocation of those costs and the persons required to pay them.
>
> […]
>
> (3) In exercising its discretionary power pursuant to subsection (1) the Court may consider,
>
> (*a*) the result of the proceeding,
> (*b*) the amounts in issue,
> (*c*) the importance of the issues,
> (*d*) any offer of settlement made in writing,
> (*e*) the volume of work,
> (*f*) the complexity of the issues,
> (*g*) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding,
> (*h*) the denial or the neglect or refusal of any party to admit anything that should have been admitted,
> (*i*) whether any stage in the proceedings was,
> (i) improper, vexatious, or unnecessary, or
> (ii) taken through negligence, mistake or excessive caution,
> (*j*) any other matter relevant to the question of costs.
>
> (4) The Court may fix all or part of the costs with or without reference to Schedule II, Tariff B and, further, it may award a lump sum in lieu of or in addition to any taxed costs.

[17] The Federal Court of Appeal in *Lau v. The Queen*, 2004 FCA 10, heard an appeal from a 2003 costs award of then Associate Chief Justice Bowman of this Court. In its reasons, the Court said:

> 3 An award of costs is governed by rule 147 of the Court's General Procedure Rules. That rule vests the Tax Court would "full discretionary power"

over payment of costs.[1] Criteria for the exercise at that discretion are set forth in subsection 147(3). Subsection (4) confers an additional power which includes the awarding of costs by way of lump sum. It reads:

> (4) The Court may fix all or part of the costs with or without reference to Schedule II, Tariff B and, further, it may award a lump sum in lieu of or in addition to any taxed costs.

4 Bowman A.C.J. rejected the awarding of costs on a solicitor and client basis. He said so explicitly. Instead, he took into account certain of the criteria set out in subsection 147(3) of the Rules as well as his discretionary power to award a lump sum pursuant to subsection 147(4). He noted that at the request of the Crown the appeals were "bumped up" from the informal to the General Procedure. The effect, in his view, was to "put a considerable burden on both appellants". He also intimated that the case against Agatha Lau was utterly without merit, and that the Crown should have been "a little more ready to accept" an offer to settle before trial. He compared the amount of party and party costs under the Court's Tariff with solicitor and client costs of more than $103,000.00 which he regarded as "rather high". In the end, he found that "a fair disposition of this matter and one that partially compensates the appellants for their ordeal of having to come to court and justify their position is $52,000.00".

5 It can be seen that the awarding of costs under rule 147 is highly discretionary although, of course, that discretion must be exercised on a principled basis. We are all of the view that it was so exercised by the Tax Court and that no basis has been shown for interfering with the judgment below.

[Emphasis added.]

[18] In its later decision in *Landry v. The Queen*, 2010 FCA 135, the Court commented on its earlier comments in *Lau* and emphasized again that the Tax Court of Canada's highly discretionary power to fix costs "must be exercised on a principled basis" (at paragraph 22). In my view, the changed wording of Rule 147(1) since the *Lau* and *Landry* decisions does not in any way affect the nature, breadth, or scope of this Court's power to fix costs provided always it is exercised on a principled basis.

[19] In the Federal Court of Appeal's decision in *Consorzio Del Prosciutto Di Parma v. Maple Leaf Meats Inc.*, 2002 FCA 417, Justice Rothstein wrote:

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[1] At that time Rule 147(1) read: "Subject to the provisions of the *Act*, the Court shall have full discretionary power over the payment of the costs of all parties involved in any proceeding, the amount and allocation of those costs and determining the persons by whom they are to be paid."

6 I am satisfied in the circumstances of this case, that the respondent should be awarded increased costs. This is an intellectual property matter involving sophisticated clients. Where, as here, numerous issues are raised on appeal and the issues involve complex facts and expert evidence, the amount of work required of respondents' counsel justifies increased costs. To the argument that the complexity of this case was no greater than that of most intellectual property cases that come before this Court, I would say that such cases frequently present complex facts and give rise to difficult issues.

7 The increased costs to be awarded are party-party costs. They do not indemnify the successful party for its solicitor-client costs and they are not intended to punish the unsuccessful party for inappropriate conduct.

8 An award of party-party costs is not an exercise in exact science. It is only an estimate of the amount the Court considers appropriate as a contribution towards the successful party's solicitor-client costs (or, in unusual circumstances, the unsuccessful party's solicitor-client costs). Under rule 407, where the parties do not seek increased costs, costs will be assessed in accordance with Column III of the table to Tariff B. Even where increased costs are sought, the Court, in its discretion, may find that costs according to Column III provide appropriate party-party compensation.

9 However, the objective is to award an appropriate contribution towards solicitor-client costs, not rigid adherence to Column III of the table to Tariff B which is, itself, arbitrary. Rule 400(1) makes it clear that the first principle in the adjudication of costs is that the Court has "full discretionary power" as to the amount of costs. In exercising its discretion, the Court may fix the costs by reference to Tariff B or may depart from it. Column III of Tariff B is a default provision. It is only when the Court does not make a specific order otherwise that costs will be assessed in accordance with Column III of Tariff B.

10 The Court, therefore, does have discretion to depart from the Tariff, especially where it considers an award of costs according to the Tariff to be unsatisfactory. Further, the amount of solicitor-client costs, while not determinative of an appropriate party-party contribution, may be taken into account when the Court considers it appropriate to do so. Discretion should be prudently exercised. However, it must be borne in mind that the award of costs is a matter of judgment as to what is appropriate and not an accounting exercise.

11 I think this approach is consistent in today's context with the observations of Nadon J. (as he then was) in *Hamilton Marine and Engineering Ltd. v. CSC Group Inc.* (1995), 99 F.T.R. 285 at paragraph 22:

> I indicated to counsel during the hearing that there was no doubt that, in most cases, the fees provided in Tariff B were not sufficient to fully compensate a successful party. I also indicated to counsel

> during the hearing that, in my view, the Tariff necessarily had to remain the rule and that an increase of tariff fee was the exception. By that I mean that the discretion given to the Court to increase the tariff amounts pursuant to rule 344(1) and (6) of the *Federal Court Rules* was not to be exercised lightly. Put another way, the fact that the successful party's legal costs were far superior to the amounts to which that party was entitled under the Tariff, was not in itself a factor for allowing an increase in those fees.
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> [Emphasis added.]

[20] The Tax Court of Canada has also had numerous occasions in recent years to address in detail the particular costs rules of the Court, including its principled approach to the costs considerations in Rule 147(3) and the role of the Tariff.

[21] In *Velcro Canada Inc. v. The Queen*, 2012 TCC 273, Associate Chief Justice Rossiter of this Court wrote as follows:

> 3 In recent years, costs have played a more significant role in tax litigation. Tax cases are becoming more complex, taking longer to prepare with detailed case management and larger amounts in dispute—all contributing to what appears to be more resources being used to litigate appeals. One issue that arises constantly is the application of the Tariff versus awards in excess of the Tariff, lump sum awards, the circumstances where the Tariff is not applied, and the analytical process in awarding and fixing costs.
>
> 4 There seems to be some confusion with respect to the Respondent's understanding of the authority of the Tax Court of Canada to award costs under the Rules. The Respondent appears to be of the view that former Chief Justice Bowman's comments in Continental Bank of Canada were meant to express that the Court is unable to award costs above Tariff barring exceptional circumstances such as misconduct or undue delay. In Continental Bank of Canada , the Appellant sought an Order for costs on a party-and-party scale, as well as for costs in excess of the amounts in Tariff B of Schedule II for services and disbursements reasonably incurred. In evaluating the Appellant's request for amounts above Tariff, former Chief Justice Bowman considered the role of the Tariff and the amounts listed there, stating in part:
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> > [9] It is obvious that the amounts provided in the tariff were never intended to compensate a litigant fully for the legal expenses incurred in prosecuting an appeal. The fact that the amounts set out in the tariff appear to be inordinately low in relation to a party's actual costs is not a reason for increasing the costs awarded beyond those provided in the tariff. I do not think it is appropriate that every time a large and complex tax case comes before this court we should exercise our discretion to increase the costs awarded to an amount that is more commensurate with what the taxpayers' lawyers are

> likely to charge. It must have been obvious to the members of the Rules Committee who prepared the tariff that the party and party costs recoverable are small in relation to a litigant's actual costs. Many cases that come before this court are large and complex. Tax litigation is a complex and specialized area of the law and the drafters of our Rules must be taken to have known that.
>
> [10] In the normal course the tariff is to be respected unless exceptional circumstances dictate a departure from it. Such circumstances could be misconduct by one of the parties, undue delay, inappropriate prolongation of the proceedings, unnecessary procedural wrangling, to mention only a few. None of these elements exists here.

5 This statement was referred to by Justice Hogan in General Electric Capital Canada Inc. v. R., 2010 TCC 490 (T.C.C. [General Procedure]) ("General Electric"). Justice Hogan also referred to the fact that lump sum costs were awarded by Associate Chief Justice Bowman, as he then was, in Lau v. R., 2003 TCC 74 (T.C.C. [General Procedure]) which was affirmed by the Federal Court of Appeal at 2004 FCA 10 (F.C.A.) . He noted that Respondent's counsel in General Electric was arguing strenuously that he should adhere to the principle that the Court should not depart from the Tariff absent special circumstances justifying solicitor-client costs relating to the conduct of the parties during the litigation. Justice Hogan again quoted Bowman, J., as he then was, in Alemu v. R. (1999), 99 D.T.C. 591 (T.C.C.) at paras. 13-14 (" McGorman ") as follows:

> [23] Counsel for the Respondent argued strenuously that I should adhere to the principle enunciated previously in some of the judgments of my current and former colleagues, namely that this Court should respect the principle that there should be no departure from the tariff, absent special circumstances justifying solicitor-client costs relating to the conduct of the parties or their counsel during the litigation. [9] As stated by Bowman J., as he then was, in McGorman et al. v. The Queen, 99 D.T.C. 591 (TCC) :
>
> > 13 I shall endeavour to set out briefly my views on how the costs should be awarded in these cases. Obviously, the court has a fairly broad discretion with respect to costs, but that discretion must be exercised on proper principles and not capriciously. For example, the mere fact that a case is novel, unique, complex or difficult, or that it involves a great deal of money is not a reason for departing from the tariff, which, generally speaking, should be respected in the absence of exceptional circumstances. I shall not repeat what I said about awarding solicitor and client

> costs in Continental Bank of Canada et al. v. The Queen, 94 D.T.C. 1858 at page 1874.
>
> 14 Do exceptional circumstances exist here that would justify an award of solicitor and client costs? It is true the cases were important and difficult and they raised a wide variety of legal and ecclesiastical questions requiring the assistance of experts. This in itself does not warrant solicitor and client costs

6 I note, as Justice Hogan did, that former Chief Justice Bowman in McGorman appears to have been dealing with solicitor-client costs, as was the Supreme Court of Canada in Young v. Young, [1993] 4 S.C.R. 3 (S.C.C.) , where Justice McLachlin (as she then was) held that there must be evidence of reprehensible, scandalous, or outrageous conduct before an award of costs could be made on a solicitor-client basis. If former Chief Justice Bowman was suggesting that the Tax Court of Canada can only deviate from the Tariff in exceptional circumstances, then I would beg to differ. The exceptional circumstances I believe he referred to in Continental Bank of Canada include circumstances that might justify solicitor-client costs which is most certainly outside the Tariff. To my mind, it does not take exceptional circumstances to justify a deviation from the Tariff—far from it. The authority of the Tax Court of Canada is quite clear.

7 The Rules are made by the Tax Court of Canada Rules Committee which is statutory in nature pursuant to section 22 of the Tax Court of Canada Act , R.S.C. 1985, c. T-2. The Rules are subject to the approval of the Governor in Council.

8 The Tariff annexed to the Rules is a reference point only should the Court wish to rely upon it. It is interesting to note that the first of two references to the Tariff in Rule 147 is subsection 147(4) which in and of itself gives extremely broad authority to the Court in the awarding of costs.

9 Notwithstanding former Chief Justice Bowman's comments in Continental Bank of Canada, supra at paragraph [9], it is my view that:

1. The Tariff was never intended to compensate a litigant fully for legal expenses incurred in an appeal;

2. The Tariff was also never intended to be so paltry as to be insignificant and play a trivial role for litigants in dealing with their litigation. The Court's discretionary power is always available to fix amounts as appropriate;

3. Costs should be awarded by the Court in its sole and absolute discretion after considering the factors of subsection 147(3);

4. The discretion of the Court must be exercised on a principled basis;

5. The factors in Rule 147(3) are the key considerations in the Court's determination of costs awards as well as the quantum and in determining if the Court should move away from the Tariff;

6. In the normal course the Court should apply the factors of Rule 147(3) on a principled basis, with submissions from the parties as to costs, and only reference the Tariff at its discretion; and

7. The manner that the Tariff is referenced in Rule 147 indicates the insignificance of the Tariff in costs considerations.

10 A close examination of the structure and wording of Rule 147 reveals why the Tariff is an item for referral only if the Court so chooses. It would appear that the Rules Committee knew exactly what it was doing in structuring the Rules the way it did.

11 Rule 147(1) provides the following:

> The Court may determine the amount of costs of all parties involved in any proceeding, the allocation of the costs and the persons required to pay them.

The discretion in 147(1) is extremely broad—it gives the Court total discretion in terms of (1) the amount of costs; (2) the allocation of costs; and (3) who must pay them.

12 Rule 147(3) provides the factors to be considered in exercising the Court's discretionary power. After enumerating a list of factors, it specifies that the Court may consider "any other matter relevant to the question of costs", thereby providing the Court with even broader discretion to consider other factors it thinks relevant on a case by case basis. Such other factors that may be relevant could include, but are not limited to:

1. the actual costs incurred by a litigant and their breakdown including the experience of counsel, rates charged, and time spent on the appeal;

2. the amount of costs an unsuccessful party could reasonably expect to pay in relation to the proceeding for which costs are being fixed; and

> 3. whether the expense incurred for an expert witness to give evidence was justified.

13 The factors to be considered by the Court in exercising its discretionary power to award costs are extremely broad, they are specific to every appeal before the Court and as noted, the Court may consider any other matter relevant to the question of costs.

14 There is no mention of the Tariff until Rule 147(4) which provides:

> The Court may fix all or part of the costs with or without reference to Schedule II, Tariff B and, further, it may award a lump sum in lieu of or in addition to any taxed costs.

15 Rule 147(5) goes even further saying:

> Notwithstanding any other provision in these rules, the Court has the discretionary power,
>
> (a) to award or refuse costs in respect of a particular issue or part of a proceeding,
>
> (b) to award a percentage of taxed costs or award taxed costs up to and for a particular stage of a proceeding, or
>
> c) to award all or part of the costs on a solicitor and client basis.

Note that there is no reference to the Tariff in Rule 147(5).

16 Under the Rules, the Tax Court of Canada does not even have to make any reference to Schedule II, Tariff B in awarding costs. The Court may fix all or part of the costs, with or without reference to Schedule II of Tariff B and it can award a lump sum in lieu of or in addition to taxed costs. The Rules do not state or even suggest that the Court follow or make reference to the Tariff. If the Tax Court of Canada Rules Committee had felt the Tariff was so significant, the Rules could easily have said that the Tariff shall be applied in all circumstances unless the Court is of the view otherwise. The Rules Committee did not do this, not even close. In fact, it is hard to imagine how the Tax Court of Canada's discretionary power could be broader for awarding costs given the wording in Rules 147(1), (3), (4) and (5). These particular provisions of Rule 147 really make reference to Schedule II, Tariff B a totally discretionary matter.

17 It is my view that in every case the Judge should consider costs in light of the factors in Rule 147(3) and only after he or she considers those factors on a principled basis should the Court look to Tariff B of Schedule II if the Court chooses to do so. The Rules Committee in their wisdom made brief mention of the Tariff but only

after giving the Tax Court of Canada very broad and significant discretion in all matters on costs. As stated by my colleague Justice Hogan in General Electric:

> [26] ... I believe that the Rules Committee was well aware of the fact that there are numerous factors which can warrant a move away from the Tariff towards a different basis for an award of party and party costs, including lump sum awards. Subsection 147(3) of the Rules confirms this by listing specific factors and adding the catch-all paragraph (j), which refers to "any other matter relevant to the question of costs". If misconduct or malfeasance was the only case in which the Court could move away from the Tariff, subsection 147(3) would be redundant. Words found in legislation are not generally considered redundant. As stated by the Supreme Court in Hills v. Canada (AG), [1988] 1 S.C.R. 513:
>
> > [106] ... In reading a statute it must be "assumed that each term, each sentence and each paragraph have been deliberately drafted with a specific result in mind. Parliament chooses its words carefully: it does not speak gratuitously" (P.-A. Côté, The Interpretation of Legislation in Canada, (1984), at p. 210). 10
>
> [27] It has been repeatedly affirmed that McLachlin J.'s comment requiring misconduct or malfeasance in Young v. Young, above, was specifically and only made in reference to the availability of solicitor-client costs. It is true that "[t]he general rule is that a successful litigant is entitled to party and party costs," in accordance with the Tariff.11 It is also true that a measure of reprehensibility is required for either party to be ordered to pay costs to the other party on a solicitor-client basis. The two rules must not be conflated, as to do so would remove all middle ground.
> [28] The Interpretation Act applies to the ITA and to this Court's *Rules*. Section 12 of the *Interpretation Act* provides that every enactment "is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects". It is reasonable to conclude that the purpose of section 147 of the *Rules* was to give a judge the discretion to move away from the Tariff in order to provide fair and reasonable relief in the circumstances—with or without reference to Schedule II, Tariff B. A restrictive interpretation of that section that would require a taxpayer to meet the same burden in order to move from the Tariff to any level of partial indemnity or to a lump sum award in lieu of or in addition to any costs as it would have to meet to obtain solicitor-client costs would defeat at least one of the purposes of the section.

18 A comparison of the discretionary power in Rule 147 of the Rules and Rule 400(4) of the Federal Court Rules, SOR/98-106 ("Federal Court Rules") provide an example of how a Rules Committee may take a different approach.

19 The Tax Court of Canada's Rule 147(4) says:

> The Court may fix all or part of the costs with or without reference to Schedule II, Tariff B and, further, it may award a lump sum in lieu of or in addition to any taxed costs.
>
> [emphasis added]

The Federal Court's Rule 400(4) says:

> The Court may fix all or part of any costs by reference to Tariff B and may award a lump sum in lieu of, or in addition to, any assessed costs.
>
> [emphasis added]

There is a significant difference in my view in the wording and the emphasis put on the Tariff in the Federal Court Rules compared to the Tax Court of Canada's Rule 147(4). Despite this distinction, the Federal Court of Appeal, when reviewing the Federal Court Rules in Consorzio del Prosciutto di Parma v. Maple Leaf Meats Inc., 2002 FCA 417 (Fed. C.A.) , concluded that those Rules nonetheless allow the Court discretion in awarding costs. As stated by the Federal Court of Appeal:

> [8] An award of party-party costs is not an exercise in exact science. It is only an estimate of the amount the Court considers appropriate as a contribution towards the successful party's solicitor-client costs (or, in unusual circumstances, the unsuccessful party's solicitor-client costs). Under rule 407, where the parties do not seek increased costs, costs will be assessed in accordance with Column III of the table to Tariff B. Even where increased costs are sought, the Court, in its discretion, may find that costs according to Column III provide appropriate party-party compensation.
>
> [9] However, the objective is to award an appropriate contribution towards solicitor-client costs, not rigid adherence to Column III of the table to Tariff B which is, itself, arbitrary. Rule 400(1) makes it clear that the first principle in the adjudication of costs is that the Court has "full discretionary power" as to the amount of costs. In exercising its discretion, the Court may fix the costs by reference to Tariff B or may depart from it. Column III of Tariff B is a default provision. It is only when the Court does not make a specific order otherwise that costs will be assessed in accordance with Column III of Tariff B.

> [10] The Court, therefore, does have discretion to depart from the Tariff, especially where it considers an award of costs according to the Tariff to be unsatisfactory. Further, the amount of solicitor-client costs, while not determinative of an appropriate party-party contribution, may be taken into account when the Court considers it appropriate to do so. Discretion should be prudently exercised. However, it must be borne in mind that the award of costs is a matter of judgment as to what is appropriate and not an accounting exercise.
>
> [Emphasis added.]

[22] In *General Electric Capital Canada Inc. v. The Queen*, 2010 TCC 490, Justice Hogan of this Court wrote (in addition to the paragraphs already quoted above by the Associate Chief Justice in *Velcro*):

> 17 Generally, as stated by the Federal Court of Canada in Apotex Inc. v. Wellcome Foundation Ltd. (1998), 84 C.P.R. (3d) 303 (Fed. T.D.) , affirmed by the Federal Court of Appeal (2001), 199 F.T.R. 320 (Fed. C.A.) , the following principle is to be noted when awarding costs:
>
> > 7 ... costs should neither be punitive nor extravagant and ... [a]n important principle underlying costs is that an award of costs represents a compromise between compensating a successful party and not unduly burdening an unsuccessful party.
>
> […]
>
> 19 In awarding lump sum costs, Rothstein J.—speaking for the majority of the Federal Court of Appeal—noted the following in Consorzio del Prosciutto di Parma v. Maple Leaf Meats Inc., 2002 FCA 417 (Fed. C.A.) :
>
> > 10 The Court, therefore, does have discretion to depart from the Tariff, especially where it considers an award of costs according to the Tariff to be unsatisfactory....
> > …
> >
> > 12 One advantage of a lump sum award of costs is the saving in costs to the parties that would otherwise be incurred in the assessment process. However, a lump sum award of costs may not be appropriate in all cases...

[23] In the reasons on the costs motion in *Sommerer v. The Queen* 2007-2583(IT)G (July 14, 2011, unreported) Mr. Justice Miller of this Court addressed the exceptional circumstances issue as follows:

19 Certainly the wording of Rule 147 suggests no threshold test but provides wide discretion to the judge to consider the factors identified in subsection (3) of Rule 147 in coming to a reasoned, balanced decision.

20 I agree with the appellant.

21 Recent cases, such as General Electric with Justice Hogan, the Campbell case with, oddly enough Justice Campbell, the Jolly Farmer case, Justice Boyle suggest there is no threshold, but that is open to the judge to take into account the 147(3) factors.

22 Clearly, cases have suggested this is an exercise that cannot be undertaken capriciously.

23 Further, cases have supported the proposition that full solicitor-client costs should only be considered in circumstances that might be found to be egregious. But for award of costs above tariff and below solicitor-client costs, it's for the parties to satisfy a judge a consideration of the Rule 147(3) factors should or should not result in costs beyond tariff.

24 This may well represent a departure from Chief Justice Bowman's comment in Continental Bank that, quote:

> In the normal course, tariff is to be respected unless exceptional circumstances dictate departure from it. Such circumstances could be misconduct by one of the parties, undue delay, inappropriate prolongation of the proceedings, unnecessary procedural wrangling, to mention only a few.

25 Interestingly, I find that these examples given by the former Chief Justice are examples of some of the very factors listed in Rule 147(3), such as: first, conduct of a party to unnecessarily lengthen the duration of the proceeding – sub (g) of 147(3); or whether any stage was improper or vexatious – sub (i) of 147(3); or refusal of a party to admit anything that should have been admitted – sub (h) of 147(3).

26 In effect, I find support, even in Continental Bank, for the proposition that the judge, in awarding costs beyond tariff, though not solicitor-client costs, simply reviews the Rule 147(3) factors to determine an appropriate award of costs beyond tariff.

27 This approach is not, as the respondent might suggest, centred on any principle of punishment. Nor do I agree that it necessarily leads to any litigation or assessment chill.

[…]

> 31 In summary, I find Justice Boyle's concluding comment in Jolly Farmer a propos.
>
> > I am confident that our court's judges can exercise their discretion appropriately, and their discretion will not be fettered by my decision in this case. Indeed, it may be that any risk that the threat of costs deters individual Canadians from pursuing tax appeals where they perceive injustice can be addressed by judges taking a separate approach to awards of costs in excess of tariff in appropriate circumstances where the parties are all well represented.
>
> 32 As pointed out by Mr. Sandler, award of costs is more art than science. And judges of this court are entrusted by the rules to practice their craft diligently, fairly and responsibly, guided by suggested considerations, but unburdened by rigid formulaic guidelines.
>
> 33 I share Justice Boyle's confidence that judges of this court are up to the task.

[24] In *Teelucksingh v. The Queen*, 2011 TCC 253, Mr. Justice Miller wrote succinctly:

> 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*, and Justice Campbell in *Campbell v. Her Majesty the Queen*).

[25] In *Jolly Farmer Products Inc. v. The Queen*, 2008 TCC 693, I heard the costs motion on an appeal heard and decided by former Chief Justice Bowman in one of his last decisions before his retirement. In *Jolly Farmer* I wrote:

> 8 The Court need not slavishly adhere to the tariff. However, the Court must exercise its discretion on proper principles, such as the considerations enumerated in Rule 147(3), and not capriciously. The mere fact that a case is novel, unique, complex, difficult, or involves a large sum of money is not reason for departing from the tariff: see *McGorman et al. v. HMQ*, 99 DTC 591, at paragraph 13 per Bowman J. as he then was. Nor is the mere fact that the party's actual legal fees greatly exceed the tariff amount reason to award costs in excess of tariff. In *Continental Bank of Canada et al. v. HMQ*, 94 DTC 1858, Bowman ACJ wrote:
>
> > It is obvious that the amounts provided in the tariff were never intended to compensate a litigant fully for the legal expenses incurred in prosecuting an appeal. The fact that the amounts set out in the tariff appear to be inordinately low in relation to a party's actual costs

> is not a reason for increasing the costs awarded beyond those provided in the tariff. I do not think it is appropriate that every time a large and complex tax case comes before this court we should exercise our discretion to increase the costs awarded to an amount that is more commensurate with what the taxpayers' lawyers are likely to charge. It must have been obvious to the members of the Rules Committee who prepared the tariff that the party and party costs recoverable are small in relation to a litigant's actual costs. Many cases that come before this court are large and complex. Tax litigation is a complex and specialized area of the law and the drafters of our Rules must be taken to have known that.

Similarly, as stated by Justice Layden-Stevenson in *Aird v. Country Park Village Property (Mainland) Ltd.*, [2004] F.C.J. No. 1153 (QL):

> Costs should be neither punitive nor extravagant. It is a fundamental principle that an award of costs represents a compromise between compensating a successful party and not unduly burdening an unsuccessful party. . .

[…]

> 27 I am mindful of the fact that one of the reasons advanced for this Court's relatively modest tariff is the prospect that individual Canadians pursuing their tax appeal who find themselves unsuccessful should not in the ordinary course find themselves subject to large costs awards as well at the same time. There is concern that if I fix costs in excess of tariff in this case, symmetry may require that in other cases where the Crown is successful, losing taxpayers should be similarly exposed to risks of increased costs awards beyond the tariff. I am confident that our Court's judges can exercise their discretion appropriately and their discretion will not be fettered by my decision in this case. Indeed, it may be that any risk that the threat of costs deters individual Canadians from pursuing tax appeals where they perceive injustice can be addressed by judges taking a separate approach to awards of costs in excess of tariff in appropriate circumstances where the parties are all well represented.

[26] In *Blackburn Radio Inc. v. The Queen*, 2013 TCC 98, Justice Woods of this Court wrote:

> 14 The work involved in tax litigation has increasingly become a factor in awarding costs. It has also been considered in intellectual property litigation: *Consorzio Del Prosciutto Di Parma v Maple Leaf Meats Inc.*, 2002 FCA 417 (*Maple Leaf Meats*).
>
> 15 The Crown submits that complexity should not be a factor and relies on the traditionally-accepted approach set out by Bowman J. (as he then was) in

> *Continental Bank of Canada v The Queen*, [1994] TCJ No. 863. The problem is that the case law has evolved since *Continental Bank* was decided. The decision of the Federal Court of Appeal in *Maple Leaf Meats* is one example of this.

[27] Most recently in *Daishowa-Marubeni International Ltd. v. The Queen*, 2013 TCC 275, Mr. Justice Miller wrote (after reproducing parts of *G.E. Capital* and *Blackburn Radio*):

> 4 A year before the Associate Chief Justice's comments in *Velcro*, I awarded costs in the case of *Peter Sommerer v Her Majesty the Queen* and indicated that in my view the Court has moved away from the position of limiting costs beyond Tariff to situations of malfeasance or misconduct. As I indicated at that time, the appropriate course in the determination of costs beyond Tariff is to consider those relevant factors found in Rule 147(3) and reach a reasoned, balanced and just result.
>
> 5 The Respondent recognizes this recent jurisprudence but argues that the law of costs is more accurately reflected in a recent decision of the Federal Court of Appeal, *The Queen v Canadian Imperial Bank of Commerce*, confirming, in the Respondent's view, the basic tenet that there must be exceptional circumstances to justify costs beyond Tariff, and that actual costs far greater than Tariff is not such a circumstance. The Respondent also raises the caution raised by the Federal Court of Appeal that fluctuation in cost awards would jeopardize the degree of uniformity and foreseeability litigants are entitled to expect.
>
> 6 With respect, litigants should not be entitled to expect uniformly low costs at the Tax Court of Canada, not appropriate when taking a principled, balanced view of the Rule 147(3) factors. It is clear the Tax Court of Canada has serious concerns about the inadequacy of its Tariff as evidenced from recent rule changes, as well as the recent jurisprudence. Consistency will follow from a principled approach of the enumerated factors, which I now turn to.
>
> [Emphasis added.]

[28] On a careful review of what former Chief Justice Bowman actually said in *Continental Bank*, it becomes clear that his comments did not ignore the way this Court's Rules are written, nor did he even suggest that the circumstances in which the Court should not defer to the Tariff were those that might justify an award of solicitor-client costs. The examples he gave included some of the Rule 147(3) considerations. Further, the former Chief Justice post *Continental Bank* regularly continued in appropriate cases to award costs fixed otherwise than by application of the Tariff after reviewing Rule 147(3) considerations; see for example his decision as trial judge in *Lau*, and his decision in *McGorman v. Canada*, 99 DTC 591 *(Alemu)* and in *Scavuzzo v. The Queen*, 2006 DTC 2311. It should be noted that in *Scavuzzo*

Chief Justice Bowman fixed lump sum costs of approximately 50% of actual costs incurred, as he had in *Lau*.

[29] In *Zeller Estate v. The Queen*, 2009 TCC 135, Mr. Justice Miller of this Court referred to Orkin's *The Law of Costs* and continued:

> 9 Traditionally, the degree of indemnification represented by partial indemnity costs has varied between 50% and 75% of solicitor-and-client or substantial indemnity costs (Mark Orkin, *The Law of Costs*, 2nd ed., vol 1 (Aurora: Canada Law Book, 2008) at 2-3).

[30] In *Dickie v. The Queen*, 2012 TCC 327, Justice Pizzitelli of the Court wrote:

> 26 In my view, having regard to the clear victory of the Appellant in this matter, the sizeable amount of taxes in dispute including for other years for which this case served as a test case, the importance of the commercial mainstream issue in particular and the complexity of the issue in light of the Respondent's position notwithstanding the Supreme Court of Canada's decisions in *Bastien Estate* and *Dubé* and the amount of work generated for the Appellant as a result of the Respondent's position on that issue and the importance it continued to give to the commercial mainstream factor as above discussed, which in my view should have been conceded before trial to shorten the trial and narrow the issues, there clearly exist special circumstances justified by the application of factors listed in Rule 147(3) to merit awarding the Appellant costs in excess of the Tariff.
>
> 27 The Appellant asked for between 50 and 75% of solicitor and client costs plus disbursements, consistent with the range of traditional awards cited by author Mark Orkin in the *Law of Costs*, 2nd ed., Vol. 1 (Aurora: Canada Law Book, 2008) at 2-3 as quoted by Campbell J. in *Re Zeller Estate* above at paragraph 9. The Appellant's costs on a solicitor and client basis claimed are $133,000 plus $10,000 in disbursements. In my opinion, the Appellant is deserving of 60% of such claim, amounting to $80,000 plus $10,000 in disbursements, for a total award of $90,000.

[31] The *Dickie* decision has been appealed to the Federal Court of Appeal but has not yet been heard.

[32] I agree with all of the principles described in the case law above. I would add to the discussion of this issue that the creation of a single tariff, even one with three classes of cases based on quantum in dispute, creates real challenges given the reality of a national court, having both Informal and General Procedures wherein even modest amounts can become subject to the General Procedure, with jurisdiction extending even to treasured Canadian social assistance programs like the Child Tax

Benefit, open and accessible to all Canadians subject to tax or receiving tax benefits, regularly seeing self-represented, under-represented and well-represented appellants in all regions of the country, where the appellant regardless of the amount in dispute or their choice of representation always faces a respondent employing well-trained, experienced and well-paid lawyers from Canada's largest law firm - the Department of Justice, where the reasonable going rates for lawyers is such that a market rate in a major centre for the expertise needed in some appeals may be two or three times more than the market rate in a smaller centre for the expertise needed in other appeals, where respondent's counsel's recording, accounting and billing practices necessarily differ from those of private sector lawyers, and all before a Court that regularly sits in approximately 70 Canadian cities and towns. These realities may also give rise to legitimate principled considerations for this Court in appropriate cases when fixing costs on a principled basis in accordance with Rule 147(3) instead of by reference to the Tariff.

2. Rule 147(3) Considerations

a) The Result of the Proceeding

[33] The Appellant was entirely successful in its appeal to this Court. Both the Respondent's principal position on the substantive deposit insurance corporation provisions, and its secondary position relying upon the GAAR, were clear and decisive failures by virtue of the Respondent wanting to quickly slide past clear requirements set out in the provisions. The deposit insurance corporation provisions expressly required a particular proportionate distribution. The GAAR expressly requires an avoidance transaction before focusing on abuse. The Respondent's case was quite weak on each of these points. The Respondent was not unaware of its weaknesses. Indeed, a long-serving and well regarded senior Ottawa CRA official advised in writing that it would likely require a legislative amendment for either position to be capable of success.

b) The Amounts in Issue

[34] The amount of federal tax in issue that was to be determined in this appeal was approximately $7,000,000. The corresponding provincial tax and assessed interest would increase that amount materially. These are significant amounts when looked at in the aggregate. While the amount would not likely have bankrupted any particular credit union, including the Appellant, it certainly required a thorough and well prepared defence be mounted by the BC Credit Unions in response to the reassessments.

[35] It is appropriate in a lead case appeal such as this to consider the aggregate amount being contested by all bound taxpayers when fixing costs. It is equally appropriate to consider that each taxpayer generally has the right to pursue its own appeal to the Court, and that if each other taxpayer pursued an appeal and were successful, they would generally expect to be entitled to a costs award. The prudent and efficient use of public resources through lead cases or otherwise in resolving tax disputes is to be generally encouraged, not discouraged in any way.

c) The Importance of the Issues

[36] The issues involved in this appeal were of considerable importance to many interests. The government of British Columbia and its provincial financial regulators needed to be able to enforce the province's statutory deposit insurance protection for BC depositors, including changing its interpretation and the application of those provisions. The BC Credit Unions needed to be able to ensure that, insofar as possible, they would not be subject to any additional or unnecessary tax as a result of any such provincial regulatory change. The Federal Government in the form of the Department of Finance appeared to share the BC Credit Unions' concern of important unintended possible adverse tax consequences and proposed a legislative amendment to the *Act* to permit transfers of deposit insurance funds tax- free between deposit insurance companies, thereby removing the clear risk of double tax.[2] The Department of Finance is not known for proposing unimportant amendments to the *Act*, rightly and wisely so.

[37] The position of the Respondent in the litigation that the deposit insurance corporation provisions constituted a complete code for financial transactions between insured financial institutions, their deposit insurance corporations and, by extension, their insured depositors, further increased the importance of this case and would affect the retail financial institutions sector across the country.

[38] The position of the Respondent on its secondary GAAR basis for supporting the reassessments is also very important as the proper interpretation and identification of an avoidance transaction is a statutory prerequisite, emphasized by the Supreme Court of Canada. It is particularly important in trying to weigh, balance and reconcile the Supreme Court of Canada's oft-stated position that the Duke of Westminster principle, that a Canadian is entitled to arrange his or her affairs to pay less tax, remains a basic principal of Canadian tax subject only to the GAAR.

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[2] For whatever reason, these proposed amendments to the *Act* were not enacted.

d) Any Offer of Settlement Made in Writing

[39] No written settlement offers were made.

e) The Volume of Work

[40] Blakes recorded approximately 2400 hours of work on this file (which included the time for the Bound Credit Unions and included the Amended Answer work, each described above) between the filing of the Notice of Appeal and the commencement of the hearing. Another 335 hours was recorded between the commencement of trial and the date of judgment. Substantially, all of the time recorded (89%) was recorded by the four lawyers substantially involved with the presentation of the Appellant's case. Substantially all of the fees billed (94%) were billed by these same four lawyers.

[41] This appears to be a significant volume of expensive work for a four day hearing. However, in the circumstances of this case it appears to have been reasonably required to respond to the assessments and to be able to present the Appellant's case to the Court.

[42] The Court is appreciative that both parties were able to agree to a Partial Agreed Statement of Facts for the Court. While it undoubtedly may have added significantly to their preparation for trial, it certainly helped to keep the actual hearing more focused and more efficient.

[43] The proper and professional presentation of a lead case, particularly within a particular sector, can be expected to create additional work for counsel as they must maintain communications with, and consider the interests of, the other bound parties.

[44] The written submissions of both parties were both helpful and necessary. There were hundreds of pages of written submissions altogether, including the two rounds of post-hearing written submissions.

f) The Complexity of the Issues

[45] Before turning to the complexity of the issues, I will begin by saying that I consider the complexity of the facts to be significant in this case. The facts required that counsel be able to inform the Court on the evolution of the statutory oversight and regulation by a province of its major retail financial institutions starting more

than 15 years before the year in issue, and more than 20 years before the hearing. The Tax Court of Canada being a national court, Appellant's counsel could not assume the judge would be at all familiar with the operating or regulatory approaches to credit unions in British Columbia. It is not that what the parties did was significantly more complex than other commercial transactions. In this case, the key background facts and pre-existing situation, and their evolution by the provincial Crown and its agencies, were complex and both reasonably and necessarily added significantly to proper trial preparation.

[46] The GAAR issue was very important but was not of its own particularly complex.

[47] The substantive issue involving the deductibility of the dividend received as a dividend was, in contrast, quite complex. This is because the Respondent's position on this point necessitated answering the question: When, if ever, is an amount legally declared and paid as a dividend, not a dividend for the purposes of the *Act* absent express language to that effect and absent GAAR? Since the Respondent's answer to this question was that this dividend was not a dividend because the series of special rules in the *Act* applicable to deposit insurance corporations constituted a complete code for the taxation of all corporate distributions, this added significant further complexities for counsel and the Court as the *Act* contains many such series of special rules applicable to certain sectors, ranging from communal organizations to banks, and agricultural corporations to mutual funds, each with tax régimes particular to them set out in Division F of Part I of the *Act* along with those applicable to deposit insurance corporations.

[48] It can be noted that on discovery the CRA official refers to the issues in this appeal as follows:

> These are very complex issues and the answer to them does not appear to you immediately. A lot of research has to be done.

g) The Conduct of Any Party that Tended to Shorten or to Lengthen Unnecessarily the Duration of the Proceeding

h) The Denial or the Neglect or Refusal of Any Party to Admit Anything that Should have been Admitted

i) Whether Any Stage in the Proceeding was Improper, Vexatious or Unnecessary or was Taken Through Negligence, Mistake or Excessive Caution

[49] The Respondent did not consent to the motion to make the Spruce Credit Union appeal the lead appeal for the Bound Credit Union dispute. While the contested motion was decided in favour of the Appellant, the Respondent's opposition to it, and its position that their should be more than one lead appeal heard together, were reasonable and wise approaches in the circumstances of this litigation.

[50] It may be that the Appellant's effective withdrawal of an admission via the Amended Answer is a relevant consideration that contributed to unnecessary delay or lengthening of the proceeding. However, the costs consequences of the Amended Answer Motion have already been addressed by the Associate Chief Justice on that motion.

3. Conclusion

[51] Based upon this Court's principled approach to generally following Rule 147 concerning costs, I am satisfied that the tariff amounts are inappropriate, insufficient, and unsatisfactory.

[52] Given the particular combination of the broad importance of the issues, the particular complexity of the facts relating to the regulatory aspects, the complexity of the Respondent's unsuccessful assertion that the specific statutory régime negated generally applicable provisions of the *Act*, and the considerable additional preparation time necessarily and reasonably entailed by this, and given the fact that the Appellant was entirely successful on both points, and given that the Respondent's case was quite weak on key points of both its primary and secondary position, I would place the appropriate counsel fee cost contribution for the Respondent to pay to the Appellant at approximately 50% of the $820,000 incurred by the Appellant (which is net of the estimated $40,000 that related to the Bound Credit Unions), that is $410,000.

[53] This award is at the lower end of the traditional range described by Orkin and others. This is appropriate. There were no particular inefficiencies, delays, inappropriate conduct or settlement offers to be considered each of which might have moved this further up the range.

[54] In recognition of the fact that this is not intended to extend to the costs relating to the Amended Answer and the three related discoveries, this award is to be reduced by 50% of all of the fees relating to that work, to be computed on the same basis as Blakes accounted for the fees relating to the Bound Credit Unions, as described above and in greater detail and in Blakes' letter to the Court dated May 7, 2013.

[55] The Appellant is also entitled to its disbursements in this appeal. This is not to include any filing fees for the appeals of the Bound Credit Unions. This is also not to include any disbursements relating to the Amended Answer and the three related discoveries. Further, only the travel and meal expenses of witnesses (not counsel) are to be accounted for as the Court was not given an itemized breakdown or other detail of this expense category.

[56] Fixed costs of $2,500 are awarded to the Appellant in respect of the submissions and hearing on costs. The Court is disappointed with the Respondent continuing to advance its position that this Court can not, or should not, depart from Tariff except in the most limited of circumstances, and this undoubtedly contributed to lengthening the time required for the costs hearing and submissions. However, as described above, cost awards are intended to be compensatory and contributory, not punitive. The Court is satisfied that $2,500 reflects the appropriate contribution on a principled basis.

[57] If there is any disagreement between the parties as to the computation of any of these amounts, the Court may be addressed in writing within 30 days hereof.

Signed at Ottawa, Canada this 6th day of February 2014.

"Patrick Boyle"

Boyle J.

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