Docket: 2011-1872(GST)G

BETWEEN:

SALAISON LÉVESQUE INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Motion heard on May 27, 2015, at Montréal, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the appellant:	Louis Tassé
Counsel for the respondent:	Éric Labbé

ORDER

The motion is allowed on the basis that the respondent must pay the appellant a fixed amount of $36,200 in addition evidently to the costs established in accordance with the tariff.

Signed at Ottawa, Canada, this 21st day of October 2015.

"Alain Tardif"

Tardif J.

Translation certified true
on this 20th day of January 2016.

François Brunet, Revisor

Citation: 2015 TCC 247
Date: 20151021
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REASONS FOR ORDER

Tardif J.

[1] This is a motion by the appellant to obtain a higher lump sum than what is provided for in this Court's principles on costs, as it was successful.

[2] Following the appeal, a judgment was rendered in favour of the appellant. Appealed from by the respondent, the Federal Court of Appeal upheld my judgment. However, the Court of Appeal ordered that I re-hear the parties on the issue of costs in accordance with the oral motion that the appellant filed at the hearing; the appellant asked this Court's permission to make additional and specific arguments to obtain higher costs than those provided for in the tariff in the event that its appeal was allowed, which was the case.

[3] In the appeal on the merits, this Court had to determine whether Salaison Lévesque Inc. (Salaison) was entitled to an amount of $12,443.35, which represented the input tax credits disallowed by Quebec's Minister of Revenue on the ground that Salaison supposedly participated in a scheme of invoices of convenience. Given the absence of a preponderance of evidence of such a scheme and the absence of collusion with the employment agencies that failed to remit to the Minister the GST/QST collected, the judgment was as follows:

> The appeal from the assessment made under Part IX of the *Excise Tax Act* (R.S.C. 1985, c. E-15) for the period from August 7, 2006, to August 29, 2009, notice of

> which is dated April 13, 2010, is allowed, and the assessment is vacated, with costs in favour of the appellant.

[4] At the time of the judgment, I did not consider the request by counsel for the appellant to hold a hearing to allow it to make additional arguments regarding the granting of higher costs than those provided for in the tariff.

[5] On the respondent's appeal, the Federal Court of Appeal's finding was as follows:

> [40] For the above reasons, I propose that the main appeal be dismissed, except with regard to the $2,348.29 and $855.09, amounts which Salaison never disputed. Salaison should be entitled to costs on appeal.
>
> [41] The matter should also be referred back to the judge so that he can redetermine the amount of costs to be awarded to Salaison.
>
> [Emphasis added.]

[6] The hearing of the parties in accordance with the instructions of the Federal Court of Appeal on the issue of costs took place at Montréal on May 27, 2015.

[7] The parties made the following arguments:

The appellant's submissions

[8] As to costs, Salaison is seeking a lump sum of $50,000, representing 80% of the fees paid, plus disbursements of $1,200. It submits to the Court that that amount is justified given the settlement offer to the respondent and the criteria listed in subsection 147(3) of the *Tax Court of Canada Rules (General Procedure)* (Rules).

[9] The appellant also referred to the considerable impact on the financial patrimonies of the individuals associated with it. The following table is also very telling to that effect:

ASSESSMENTS	ASSESSMENT TOTALS ($)
Goods and Services Tax (GST)	20,430.32
Quebec Sales Tax (QST)	41,114.10
Corporate tax (provincial)	75,224.90
Corporate tax (federal)	265,315.41
Deductions at source (provincial)	87,364.80
Régis Lévesque personal tax (provincial)	287,402.21
Régis Lévesque personal tax (federal)	497,474.28
Annie Lévesque personal tax (provincial)	201,068.59
Annie Lévesque personal tax (federal)	513,201.29
TOTAL	1,988,595.90

[10] Finally, the appellant stressed the poor quality of the work performed by the auditors. To that effect, I do not see the relevance of reproducing the various passages of the judgment other than to agree with that entirely appropriate assessment.

The respondent's submissions

[11] The respondent, at the outset, submitted that it was a completely ordinary case that created no precedent because, in particular, it was essentially an unimportant case that turns on its facts.

[12] The respondent also maintained that only the assessment amount had to be taken into consideration adding that the file could have been heard under the informal procedure had it not been for the appellant's request to be subject to the general procedure rules.

[13] The respondent stated that the Court cannot take into account the settlement offer since it did not meet the very precise criteria set out in subsection 147(3.1) of the practice note:[1]

> 147(3.1) Settlement offers
>
> . . .
>
> (*c*) Paragraphs (*a*) and (*b*) do not apply unless the offer to settle
>
> [Conditions that must be met.]
>
> (i) is a written offer of settlement;
>
> . . .
>
> (iii) is not withdrawn; and
>
> (iv) does not expire earlier than 30 days before the commencement of the hearing.

[14] To summarize the respondent's position with respect to the other grounds for her assessment, I find it helpful and relevant to reproduce certain excerpts of the transcript:

> [TRANSLATION]
>
> . . . the case before us, before the Tax Court of Canada represents an amount of $20,800.
>
> . . .
>
> Therefore, this is a significant case—that is significant for Salaison Lévesque but does not have the significance that my friend seems to give to other types of cases.
>
> . . .
>
> . . . I submit that this is a case that has required a considerable amount of work but that has not required more work than other tax cases as a whole. The hearings lasted only a day and a half. . . .

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[1] *Proposed amendments to Rule 147 with respect to settlement offers — Practice Note No. 18 (Amended February 10th, 2011)*, Court Web site.

> There were no experts; there were no expert witnesses heard in this case. There was no specific issue, specific tax issue. It is a question of fact, Mr. Justice.
>
> The issue was whether employment agencies rendered service. That is the only issue to determine . . . .
>
> . . .
>
> . . . the issue was simple and also the facts surrounding it were not complex . . . .

[15] Counsel for the respondent also raised the following:

> [TRANSLATION]
>
> The auditor even—so I think the costs have nothing to do with the work that the auditor performed or did not perform. Really it is in the course of the proceedings, were there any problems identified by counsel for the respondent? There were not, Mr. Justice. The proceedings went smoothly. There were not any unnecessary objections. It went well.

Analysis

[16] The respondent focused mainly on the issue that it was essentially an inconsequential case that turns on its facts adding that the appellant itself had taken the initiative to ensure that the matter be subject to the general procedure instead of the less demanding, more flexible, less restrictive and less costly informal procedure.

[17] At first, it appears that the settlement offer issue does not meet the established criteria. However, I am of the view that that is a somewhat relevant element.

[18] The trial revealed evidence of the poor quality of and the lack of seriousness of the audit work performed; in fact, I noted a serious lack of rigour to the point of finding that the work that led to the assessments had quite simply been botched.

[19] However, I stated that the respondent was justified in objecting to the appellant's notice of appeal and bringing it before the court given the state of the

case law. Based on that determination, I concluded that it was not an abusive, unreasonable or frivolous position.[2]

[20] Clearly, counsel for the respondent relied on the findings of the investigative work and validated it by the proceedings that led to the trial.

[21] The fundamental issue that arises in the case is whether the quality of the audit work performed in the context of a reassessment may be considered for the purposes of granting additional costs.

[22] It is important to remember that audit work is complex and fraught with many challenges that generally come from the ignorance, carelessness, negligence of the person being audited; the degree of difficulty and constraints may vary significantly from one file to another.

[23] The passage of time is one of those constraints, along with the inability to locate certain players, the poor quality or even lack of documents, the willingness or unwillingness of interveners, etc.

[24] When faced with these countless problems, difficulties and the high complexity of files, Parliament set out a whole series of powerful and restrictive measures to remedy the various obstacles, difficulties and refusals to cooperate. Such powers generally make the completion of audit work possible; moreover, they contribute to the development of the work, the findings of which are generally reliable or at least probative.

[25] With such authority and powers, it is essential and completely fundamental that the quality of the audit work be impeccable and above reproach. In other words, there is no reason or justification that can explain or support work that is incomplete, botched, or shaped by any kind of bias particularly since any reassessment may be the subject of severe penalties with interest. Given the complexity of tax obligations, and given that all natural and legal persons are subject to them, it is normal that all persons can be the subject of spot tax audits. Such audits must be carried out with respect and a great deal of rigour, without being botched under the pretext that the burden of proof is on the shoulders of the person being audited.

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[2] That conclusion still holds; however, in the light of the appellant's submissions, I feel authorized to consider the quality of the work that led to the assessments.

[26] A trial must not be a fishing expedition allowing auditors to validate their intuition and/or perception. A tax trial requires exorbitant fees and disbursements. That reality often results in dissuading a reasonable person with limited means from challenging a possibly unjustified assessment.

[27] The issue of higher costs than those provided for in the tariff is a very important and increasingly topical issue that is raised more and more.

[28] It is an issue with multiple consequences in several respects. Already, it is common knowledge that access to the courts has become prohibitive with respect to costs, without regard to the outcome.

[29] In other words, it is very rarely possible to be successful in a judicial experience except when a matter of principle is at issue. However, today, matters of principle generally involve the very wealthy.

[30] Originally, the purpose of awarding costs was undoubtedly to reach some sort of balance. Over the years, although improved, bills of costs remain overall fairly marginal in relation to the actual costs that must be invested in a trial.

[31] With time, things have improved slightly in that Parliament has passed several new provisions; I am particularly refering to the possible sanctions in civil law that arise from abuse of process, SLAPP suits, etc.

[32] Other initiatives are moving in the same direction; I am refering to informal proceedings, small claims, mediation, settlement conferences, etc.

[33] The possibility of obtaining higher costs than those provided for in the tariff is an effective action that can re-establish the balance between the opposing forces in a tax dispute. That possibility may be a very helpful tool for sanctioning abuses of authority by tax authorities.

[34] The Rules on costs include the following general provisions:

COSTS
GENERAL PRINCIPLES

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.

(2) Costs may be awarded to or against the Crown.

(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,
(*i.1*) whether the expense required to have an expert witness give evidence was justified given
(i) the nature of the proceeding, its public significance and any need to clarify the law,
(ii) the number, complexity or technical nature of the issues in dispute, or
(iii) the amount in dispute; and
(*j*) any other matter relevant to the question of costs.

(3.1) Unless otherwise ordered by the Court, if an appellant makes an offer of settlement and obtains a judgment as favourable as or more favourable than the terms of the offer of settlement, the appellant is entitled to party and party costs to the date of service of the offer and substantial indemnity costs after that date, as determined by the Court, plus reasonable disbursements and applicable taxes.

(3.2) Unless otherwise ordered by the Court, if a respondent makes an offer of settlement and the appellant obtains a judgment as favourable as or less favourable than the terms of the offer of settlement or fails to obtain judgment, the respondent is entitled to party and party costs to the date of service of the offer

and substantial indemnity costs after that date, as determined by the Court, plus reasonable disbursements and applicable taxes.

(3.3) Subsections (3.1) and (3.2) do not apply unless the offer of settlement

(*a*) is in writing;
(*b*) is served no earlier than 30 days after the close of pleadings and at least 90 days before the commencement of the hearing;
(*c*) is not withdrawn; and
(*d*) does not expire earlier than 30 days before the commencement of the hearing.

(3.4) A party who is relying on subsection (3.1) or (3.2) has the burden of proving that

(*a*) there is a relationship between the terms of the offer of settlement and the judgment; and

(*b*) the judgment is as favourable as or more favourable than the terms of the offer of settlement, or as favourable or less favourable, as the case may be.

(3.5) For the purposes of this section, "substantial indemnity costs" means 80% of solicitor and client costs.

(3.6) In ascertaining whether the judgment granted is as favourable as or more favourable than the offer of settlement for the purposes of applying subsection (3.1) or as favourable as or less favourable than the offer of settlement for the purposes of applying subsection (3.2), the Court shall not have regard to costs awarded in the judgment or that would otherwise be awarded, if an offer of settlement does not provide for the settlement of the issue of costs.

(3.7) For greater certainty, if an offer of settlement that does not provide for the settlement of the issue of costs is accepted, a party to the offer may apply to the Court for an order determining the amount of costs.

(3.8) No communication respecting an offer of settlement shall be made to the Court, other than to a judge in a litigation process conference who is not the judge at the hearing, until all of the issues, other than costs, have been determined.

(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.

(5) 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.
>
> (6) The Court may give directions to the taxing officer and, without limiting the generality of the foregoing, the Court in any particular proceeding may give directions,
>
> > (*a*) respecting increases over the amounts specified for the items in Schedule II, Tariff B,
> > (*b*) respecting services rendered or disbursements incurred that are not included in Schedule II, Tariff B, and
> > (*c*) to permit the taxing officer to consider factors other than those specified in section 154 when the costs are taxed.
>
> (7) Any party may,
>
> > (*a*) within thirty days after the party has knowledge of the judgment, or
> > (*b*) after the Court has reached a conclusion as to the judgment to be pronounced, at the time of the return of the motion for judgment,
>
> whether or not the judgment included any direction concerning costs, apply to the Court to request that directions be given to the taxing officer respecting any matter referred to in this section or in sections 148 to 152 or that the Court reconsider its award of costs.

[35] The restrictive criteria, such as reprehensible, scandalous and outrageous conduct by one of the parties that had to be demonstrated to obtain higher costs than those provided for in the tariff, are now clearly outdated.

[36] Indeed, the case law now takes into account many new elements such as the significance of the case in terms of the amount involved, its complexity and its consequences. The work required for preparation and the importance of the precedent established by the new judgment are also considered.

[37] The Honourable Chief Justice Rossiter summarized the state of the law on the matter in *Velcro Canada Inc. v. The Queen*, 2012 TCC 273:

> [11] 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).
>
> [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. 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, 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.

[20] Reference may also be made to *Ontario's Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 ("*Ontario Rules*"), in particular Rule 57.01 and the Tariffs. Rule 57.01(3) states:

> Fixing Costs: Tariffs
>
> (3) When the court awards costs, it shall fix them in accordance with subrule (1) and the Tariffs.
>
> [emphasis added]

The Tax Court of Canada *Rules* have no similar provision such as Rule 57.01(3) of the *Ontario Rules* – nothing even remotely suggesting the Court shall fix costs according to the Tariff.

> [21] Although Rule 57.01(3) of the Ontario *Rules* seems to provide the Court with little discretion, it is interesting to note that recent amendments have actually increased the Court's discretionary power in awarding costs. Previously, the *Ontario Rules* included a "costs grid" in Tariff A (Part I). The Court needed to follow the costs grid, and their only discretion available was to refer exceptional cases for assessment as described in Rule 57.01(3.1). On July 1, 2005, the costs grid was repealed. While the Tariffs continue to address amounts for disbursements (Tariff A, Part II) and lawyer fees for accounts passed without a hearing (Tariff C), they no longer include set rates for lawyer fees. The Court now relies on s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and the discretionary factors listed in Rule 57.01(1). Parties seeking costs must bring a "costs outline" (using Form 57B) to the hearing. The Costs Subcommittee of the Civil Rules Committee also published a list of the maximum rates per hour that the Court will normally consider for partial indemnity costs. [See Professor Garry D. Watson, Q.C. and Michael McGowan, *Ontario Civil Practice 2012* (Toronto: Carswell, 2011) at 1200–1203; James J. Carthy, W.A. Derry Millar, & Jeffrey G. Cowan, *Ontario Annual Practice* (Aurora, Ontario: Thomson Reuters, 2011) at 1197-1198.]

[38] Paragraph 28 of the same decision is also very interesting:

> [28] Costs should reflect the efforts within reason of a litigant during the litigation. Accordingly, the complexity or the volume of the litigation or the amount at issue will and do play a role in the effort put into litigation and as such, the costs awarded must be something which reflects the realities of tax litigation in the context of each case.
>
> [Emphasis added.]

[39] There is an increasing number of tax disputes.

[40] Over the years, Parliament and several interveners with better management and access to justice at heart have invested in various reforms to improve access and efficiency. One of the initial objectives of those reforms was to reduce the prohibitive costs that are unfortunately incurred mainly by taxpayers because the ability to pay in a tax dispute is very often disproportionate, as the state can draw on unlimited financial and human resources.

[41] For the respondent, this matter is handled by true specialists who benefit from all the human and financial resources required and very broad enforcement powers. There is absolutely nothing that justifies audit work that is superficial, incomplete, or that produces conclusions that are based on intuition or unfounded bias.

[42] Taxpayers are entitled to obtain and expect work that is serious, impeccable and very thorough on the part of tax auditors to ensure that the basis of an assessment is precise, serious and complete to the extent that relevant documents and information were made available and that the persons being audited cooperated.

[43] It is well known that, in tax matters, many taxpayers do not meet their fundamental responsibility when it comes to their obligations to have all of the helpful, necessary and reliable documents and information available at all times to allow for a complete and reliable audit of all of their income, and/or when it comes to other obligations, particulary those related to GST and QST matters.

[44] If they fail to meet those obligations, they risk having to deal with notices of assessment, the basis of which is inevitably arbitrary, hypothetical and even intuitive in some cases. Still, audits must be carried out with seriousness and professionalism, and render hypothetical conclusions probative.

[45] The fact that a tax assessment is made using legal provisions that are often very difficult to understand or even identify must be added to that reality. Auditors or those analyzing the files to make reassessments are generally specialized in the subject area of the reassessment. A great imbalance between the opposing forces often results.

[46] In response to a motion to obtain higher costs than those provided for in the tariff for the class level involved, the grounds of opposition or objection may generally be summarized by the argument that unusual and exceptional circumstances must be present to justify an award of costs higher than those provided for in the tariff. This case is distinct in that way.

[47] Indeed, I have pointed out that some auditors responsible for the appellant's file clearly broke the basic rules of rigour. There is no reason, in similar circumstances, for exorbitant financial costs to be incurred primarily by the appellant.

[48] At trial, the respondent stressed the appellant's failure to call upon various interveners to substantiate its claims. According to the respondent, that was a minimum duty given that the burden of proof rested on its shoulders. However, if the testimony of those persons was so important, even essential, why did the auditors themselves not take that initiative as part of their audit work?

[49] I am far from trying to reduce or dilute the duties of those associated with the appellant with respect to their burden, since they act as agents or trustees for the amounts owing. They have duties and a great deal of responsibility; to meet those duties, they must be able to account for their management in a reliable and credible manner validated by appropriate documentary evidence or face severe sanctions such as interest and penalties.

[50] The other side of the coin means that tax authorities, which have exceptional financial and human resources, must carry out audits by way of an investigation in a manner that is irreproachable and above all complete; in other words, audits must not be a fishing expedition guided essentially by intuition, bias and/or speculation with the intent to make a notice of reassessment at any price.

[51] In this case, even though the assessment may be of little importance, the case had direct and considerable impact on all of the tax liabilities of the appellant and the individuals associated with it.

[52] The issue here is an element that was the subject of a very different appreciation, as the respondent argued that this is essentially a case with no importance or consequence with respect to both precedent and the amounts involved.

[53] The appellant argues precedent, but also the important issue of the direct and indirect amounts in question. In this regard, I accept the appellant's position, adding that this is a factor that could have been brought to my attention if I had allowed the request by counsel for the appellant to hold a specific investigation into the costs in the event of a victory.

[54] All tax audits are important and consequential. When an audit leads auditors to find that the taxpayer was very negligent, dishonest and/or indifferent and careless with respect to his or her tax obligations, they generally have suspicious reflexes, even negative perceptions in carrying out the full audit work with respect to compliance with all of the other tax obligations. Put another way, the conclusions drawn in a case may greatly influence and shape the objectivity of an audit of the same taxpayer with respect to other tax segments.

[55] The motion raised awareness about certain elements that the appellant had undoubtedly retained at the time of the trial for the potential hearing on the request for higher costs in the event that its appeal was allowed. In particular, I refer to the

consequences and/or implications of the judgment with respect to the other tax matters affecting the appellant, which were minimized by the respondent.

[56] At the time of the hearing of the case on the merits, I admit that I addressed the case as a whole with respect to costs; however, I am of the opinion that it is relevant to make a distinction between the quality of the preparation of the assessment by the auditors and that of the presentation at the trial. Put differently, I make a distinction between the quality of the work of counsel for the respondent and the quality of the audit work that led to the notices of assessment at the heart of the appeal.

[57] It seems clear to me that the auditors assumed that they could draw hasty conclusions from doubtful, incomplete facts on the basis that, in any event, the burden of proof was on the appellant.

[58] It is completely unreasonable that taxpayers must bear the financial consequences of botched audit work; the grounds for an audit should be serious, objective and justified and must not come from intuition, bias, hypotheses and/or speculation particularly when the audited file provided all of the relevant information.

[59] Unfortunately, too often, assessments must be made on hypothetical bases. These are cases where the persons concerned are negligent, careless and/or dishonest. In such matters, reasonableness, good faith and the competence of the auditors shape the quality of the basis of an assessment.

[60] In this case, the evidence has shown that the appellant acted in accordance with the customs and practices and cooperated fully. It need not, in the face of this reality, bear all of the financial consequences that resulted from the many assessments that totalled approximately $2,000,000.

[61] Given the specifics in the case, the granting of a lump sum of $35,000 plus $1,200 in disbursements as costs in addition to those provided for in the tariff seems to me to be appropriate, justified and reasonable.

[62] For these reasons, the motion is allowed on the basis that the respondent must pay the appellant a fixed amount of $35,000 plus $1,200 in disbursements in addition evidently to the costs established in accordance with the tariff.

Signed at Ottawa, Canada, this 21st day of October 2015.

"Alain Tardif"

Tardif J.

Translation certified true
on this 20th day of January 2016.

François Brunet, Revisor

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COURT FILE NO.:	2011-1872(GST)G
STYLE OF CAUSE:	SALAISON LÉVESQUE INC. AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	May 27, 2015
REASONS FOR ORDER BY:	The Honourable Justice Alain Tardif
DATE OF ORDER:	October 21, 2015

APPEARANCES:

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