

Dockets: 2012-3460(IT)G
2012-3462(GST)G

BETWEEN:

RUSSELL ANTHONY PORISKY

Appellant

and

HIS MAJESTY THE KING

Respondent

Docket: 2012-3459(IT)G

AND BETWEEN:

ELAINE LOUISE GOULD

Appellant

and

HIS MAJESTY THE KING

Respondent

Docket: 2012-3461(GST)

AND BETWEEN:

ELAINE LOUISE MADELINE GOULD

Appellant

and

HIS MAJESTY THE KING

Respondent

AND BETWEEN:

RUSSELL ANTHONY PORISKY, ELAINE LOUISE GOULD

Appellants

and

HIS MAJESTY THE KING

Respondent

Written submissions received on November 1, 2024

By: The Honourable Justice Susan Wong

Appearances:

For the Appellants:

The Appellants themselves

Counsel for the Respondent:

Mark Shearer

ORDER

In accordance with my Reasons for Order, costs shall be awarded to the respondent in the amount of \$90,424.04, being \$85,227.43 in fees plus disbursements of \$5,196.61.

Signed this 1st day of May 2025.

“Susan Wong”

Wong J.

Citation: 2025TCC66
Date: 20250501
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Appellants

and

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Respondent

REASONS FOR ORDER

Wong J.

Introduction/Overview

[1] My June 7, 2024 judgment allowed the appeal numbered 2012-3780(IT)G, as conceded by the respondent, quashed the appeal numbered 2012-3782(IT)G, and dismissed the remaining five appeals with costs. I amended my judgment on July 18, 2024 because two appeal numbers were omitted from the style of cause in the June 7th version of the reasons.

[2] I awarded costs to the respondent and gave the parties time to reach an agreement on costs, failing which they were directed to file written submissions for my consideration. I also directed that if I did not hear from the parties with respect to costs, then costs would be awarded to the respondent according to Tariff B.¹

[3] The parties did not reach an agreement as to costs and the respondent provided written submissions. The respondent proposes that they are entitled to costs of \$85,227.43 (being 50% of their solicitor-client costs) plus disbursements of \$5,196.61. The appellants did not file submissions regarding costs, stating that they have appealed my decision to the Federal Court of Appeal.

[4] As neither party has asked that this costs decision be held in abeyance pending the outcome at the Federal Court of Appeal, I am obliged to render it in the interim.

Procedural history

[5] The three-day hearing of these matters took place in November 2022. The issues were whether: (a) the appellants earned unreported income from 2004 to 2008, (b) they were liable for penalties for failure to file returns, (c) Mr. Porisky was grossly negligent with respect to 2004, and (d) with respect to GST, they failed as a partnership to collect and remit tax, file returns.

[6] The assessed amounts are set out in my reasons for judgment² and simply put, it is the amount of federal tax and penalties which determine the class of proceeding.³ Based on these amounts as well as the respondent's draft bill of tariff costs,⁴ the matters seem to properly fall within Class B.

[7] At the commencement of hearing, the respondent conceded Ms. Gould's appeal numbered 2012-3780(IT)G which was a section 160 assessment for an alleged non-arm's length transfer from Mr. Porisky to her. I also granted the respondent's motion to quash Mr. Porisky's appeal numbered 2012-3782(IT)G because it was an appeal of the same section 160 assessment of Ms. Gould.

[8] These matters have a lengthy procedural history in that the appeals were commenced in 2012 and then held in abeyance from about June 2013 to October 2019, to enable the appellants to focus on the criminal charges against them. They were both convicted of income tax evasion while Mr. Porisky was additionally convicted of counseling fraud and GST evasion. Both were fined and sentenced to periods of incarceration, after which the present appeals were reactivated and a litigation timetable order issued.⁵

Legal framework

[9] Subsection 147(3) of the *Tax Court of Canada Rules (General Procedure)* sets out the factors which may be considered by this Court in determining costs. In this instance, no expert witnesses testified so the relevant factors are as follows:

- 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; and
- j. any other matter relevant to the question of costs.

[10] Some key principles for determining a costs award include the following:

- a. the Court has broad discretion which must be exercised on a principled basis and not arbitrarily;⁶
- b. none of the factors in subsection 147(3) are determinative and all relevant factors should be considered;⁷
- c. costs are intended to be compensatory and contributory rather than punitive or extravagant, with the proper question being what the losing party's appropriate contribution to the successful party's costs should be;⁸
- d. a lump sum may be awarded after considering the amounts at issue, the complexity and importance of those issues, the work generated, and a party's success;⁹
- e. there must be egregious circumstances for the court to consider awarding solicitor-client costs, which remain discretionary;¹⁰
- f. increased (partial indemnity) costs generally vary between 50 to 75 percent of solicitor-costs¹¹ but it is not settled law;¹² and
- g. exceptional circumstances are not needed for a costs award above the tariff.¹³

Analysis and discussion

(a) The result of the proceeding

[11] The respondent was wholly successful with respect to the five appeals dismissed and one quashed. The section 160 appeal which was conceded did not increase the appellants' overall tax liability and essentially served as an alternative basis of assessment, i.e. a non-arm's length transfer to Ms. Gould versus a direct attribution of business/partnership income to her.¹⁴

[12] Given the respondent's complete success, this factor favours increased costs.

(b) The amounts in issue

[13] During the five-year period under appeal, the appellants earned gross revenue from their Paradigm Education Group activities totalling over \$1.4M, resulting in net partnership income of \$569, 276 each.¹⁵ Mr. Porisky filed his 2004 return reporting no income and did not file returns for the other four years; Ms. Gould did not file returns for any of the five years.¹⁶ The appellants were also liable for unremitted GST in the amount of \$67,165.¹⁷

[14] The significance of the amounts in issue must be considered contextually and in relative terms.¹⁸ In this instance, the amounts are significant relative to the appellants' assertion that they earned no income in those years and in light of the context that the monies were derived from criminally fraudulent activities for which the appellants were found to be culpable.¹⁹

[15] Therefore, this factor favours increased costs.

(c) The importance of the issues

[16] Mr. Porisky founded the Paradigm Education Group and with his partner Ms. Gould, they organized/presented seminars plus sold training materials to students and prospective educators interested in promoting Paradigm's approach to taxation.²⁰ Paradigm's approach to taxation was based on a perceived distinction between the natural versus artificial person which supported an illogical reading of the definitions of "business" and "commercial activity", which in turn led to the illogical conclusion that a person could recharacterize their business activities as not-for-profit and therefore not attract income tax.²¹

[17] Interested individuals paid Paradigm for training to become educators, at which point they would in turn begin training other interested students.²² Paradigm had a cascading compensation system for educators in which educators leading study groups would receive most of the fees paid by attending students, while Paradigm and Mr. Porisky received the balance.²³

[18] As mentioned under the heading “Procedural history and the subheading “The amounts in issue”, Mr. Porisky was convicted of counselling others to commit fraud and both appellants were convicted of tax evasion with respect to their Paradigm activities. The context makes the substantive tax issues more important than they would otherwise be, because the appellants’ unreported income and penalties resulted from their criminal activities and representations made to people drawn to Paradigm’s false promise of freedom from taxation.

[19] Therefore, this factor favours increased costs.

(d) Any offer of settlement in writing

[20] The respondent made a written settlement offer to the appellants a few weeks before trial, proposing to concede the section 160 appeal numbered 2012-3780(IT)G and vacate the gross negligence penalties on the three GST appeals.²⁴

[21] This factor refers to a settlement offer made at any time over the course of a litigation, which parties are encouraged to do.²⁵ The timing of the offer does not attract substantial indemnity costs under section 147(3.2) of the Rules. However, the proposed settlement was ultimately better than the actual result, in which the three GST appeals were dismissed and the penalties upheld.

[22] Therefore, this factor favours increased costs.

(e) The volume of work

[23] The five appeals which were ultimately heard on their merits spanned five taxation years. It is noteworthy that even after the convictions for tax evasion and counselling fraud as well as serving their sentences, the appellants wholly maintained their position on all of the taxation issues by the time their matters came before this Court for hearing. Their commitment to these questionable views on taxation had the impractical effect of requiring the respondent to fully prepare to address all issues under appeal.

[24] The volume of work has been recognized as an important factor when determining costs,²⁶ which makes sense as it is the most direct measurement of effort expended. Based on the protracted nature of the hearing itself, it is quite plausible that the Crown recorded 767.67 hours of which they are claiming for 688.33. In my view, this number of hours spent represents a high volume of work in these circumstances.²⁷

[25] Therefore, this factor favours increased costs.

(f) The complexity of the issues

[26] The substantive issues were not complex so this factor is neutral.

(g) The conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding

[27] In the circumstances, this factor ties in with the volume of work. As discussed above, the appellants' decision to wholly maintain their position on the taxation issues before this court after being criminally convicted in another court increased the volume of work. It follows that the increased volume of work resulting from this course of conduct unnecessarily lengthened the duration of the proceeding.

[28] I am also mindful of the fact that the appellants declined to answer undertakings at one point in the proceedings, necessitating a case management conference and a direction from the court.²⁸

[29] Therefore, this factor favours increased costs.

(h) The denial or the neglect or refusal of any party to admit anything that should have been admitted

[30] In the circumstances, there is some conceptual overlap between this factor and volume of work as well as conduct unnecessarily lengthening the proceeding. The appellants remained within their rights to deny or refuse to admit the allegations of fact before this court but this factor asks whether something should have been admitted.

[31] In light of the fact that Paradigm's protester approach to taxation was fundamentally incorrect in law and the appellants were criminally convicted for

promoting these views, they should have admitted certain allegations of fact in order to focus on quantum during the hearing.

[32] Therefore, this factor favours increased costs.

(i) Whether any stage in the proceeding was (i) improper, vexatious, or unnecessary, or (ii) taken through negligence, mistake or excessive caution

[33] There is no evidence of this type of conduct so this factor is neutral.

(j) Any other matter relevant to the question of costs

[34] I am not of the view that there are any other relevant matters to consider in terms of costs.

Conclusion

[35] Based on the above, I am of the view that the respondent's proposed costs award of \$90,424.04 (being \$85,227.43 in fees plus disbursements of \$5,196.61) is appropriate. This lump-sum amount represents 50% partial indemnity based on total counsel fees of \$170,454.86, before disbursements.²⁹

Signed this 1st day of May 2025.

"Susan Wong"

Wong J.

CITATION: 2025 TCC 66

COURT FILE NOS.: 2012-3459(IT)G
2012-3460(IT)G
2012-3461(GST)G
2012-3462(GST)G
2012-3463(GST)G

STYLE OF CAUSE: RUSSELL ANTHONY PORISKY ET
AL. AND HIS MAJESTY THE KING

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: November 22 to 24, 2022

REASONS FOR JUDGMENT BY: The Honourable Justice Susan Wong

DATE OF ORDER: May 1, 2025

DATE OF REASONS FOR ORDER May 1, 2025

APPEARANCES:

For the Appellants: The Appellants themselves

Counsel for the Respondent: Mark Shearer

COUNSEL OF RECORD:

For the Respondent: Shalene Curtis-Micallef
Deputy Attorney General of Canada
Ottawa, Canada

¹ Schedule II, Tariff B, *Tax Court of Canada Rules (General Procedure)*

² *Porisky v. The King*, 2024 TCC 84 at paragraph 31

³ *Tax Court of Canada Act*, sections 2.1 and 2.2; *Tax Court of Canada Rules (General Procedure)*, Schedule II

⁴ Affidavit of Linda Aiello filed on November 1, 2024, Exhibit 7

⁵ *Porisky v. The King*, 2024 TCC 84 at paragraph 34; Respondent's written submissions on costs filed November 1, 2024 at paragraph 28

⁶ *MacDonald v. The Queen*, 2018 TCC 55 at paragraph 42; *Alta Energy Luxembourg S.A.R.L. v. The Queen*, 2018 TCC 235 at paragraph 13

⁷ *MacDonald v. The Queen*, 2018 TCC 55 at paragraph 43

⁸ *MacDonald v. The Queen*, 2018 TCC 55 at paragraphs 44 and 45; *Ford Motor Company of Canada Limited v. The Queen*, 2015 TCC 185 at paragraph 7

⁹ *Invesco Canada Ltd v. The Queen*, 2015 TCC 92 at paragraph 5

¹⁰ *Invesco Canada Ltd v. The Queen*, 2015 TCC 92 at paragraph 5; *Ford Motor Company of Canada Limited v. The Queen*, 2015 TCC 185 at paragraph 7

¹¹ *Invesco Canada Ltd v. The Queen*, 2015 TCC 92 at paragraph 5; *Ford Motor Company of Canada Limited v. The Queen*, 2015 TCC 185 at paragraph 7

¹² *Grenon v. The Queen*, 2021 TCC 89 at paragraphs 16 and 19

¹³ *Invesco Canada Ltd v. The Queen*, 2015 TCC 92 at paragraph 5; *MacDonald v. The Queen*, 2018 TCC 55 at paragraph 46

¹⁴ Respondent's written submissions on costs filed November 1, 2024 at paragraph 12

¹⁵ *Porisky v. The King*, 2024 TCC 84 at paragraphs 31 and 39

¹⁶ *Porisky v. The King*, 2024 TCC 84 at paragraphs 59 and 63

¹⁷ *Porisky v. The King*, 2024 TCC 84 at paragraphs 31, 68, 69, and 70

¹⁸ 9196-7448 Québec Inc v. The Queen, 2017 TCC 50 at paragraphs

¹⁹ *Porisky v. The King*, 2024 TCC 84 at paragraph 34

²⁰ *Porisky v. The King*, 2024 TCC 84 at paragraphs 11, and 17 to 20

²¹ *Porisky v. The King*, 2024 TCC 84 at paragraphs 12 and 13

²² *Porisky v. The King*, 2024 TCC 84 at paragraph 14

²³ *Porisky v. The King*, 2024 TCC 84 at paragraph 26

²⁴ Affidavit of Linda Aiello filed on November 1, 2024, Exhibit 3

²⁵ *Grenon v. The Queen*, 2021 TCC 89 at paragraph 41

²⁶ *MacDonald v. The Queen*, 2018 TCC 55 at paragraph 81

²⁷ *MacDonald v. The Queen*, 2018 TCC 55 at paragraph 83

²⁸ Respondent's written submissions on costs filed November 1, 2024 at paragraph 29

²⁹ Affidavit of Linda Aiello filed on November 1, 2024 at paragraphs 24, 25, and Exhibit 6