

Docket: 2020-2352(IT)G

BETWEEN:

VIKASH DATTA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Appeal heard on May 21 and 22, 2024, and decision rendered orally from  
the bench on May 23, 2024, at Toronto, Ontario

Before: The Honourable Justice Susan Wong

Appearances:

Counsel for the Appellant: Osborne Barnwell

Counsel for the Respondent: Amin Nur

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**ORDER**

In accordance with my Reasons for Order, costs shall be awarded to the  
appellant in the amount of \$4,970, being \$4,300 in fees plus disbursements of \$670.

Signed this 27th day of May 2025.

“Susan Wong”

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Wong J.

Citation: 2025TCC79  
Date: 20250527  
Docket: 2020-2352(IT)G

BETWEEN:

VIKASH DATTA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

### **REASONS FOR ORDER**

Wong J.

#### **Introduction/Overview**

[1] My May 23, 2024 oral decision (followed by my May 28, 2024 order for judgment) allowed this appeal with costs. I 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 appellant according to Tariff B.

[2] The parties did not reach an agreement as to costs so they have provided written submissions. The appellant seeks costs based on a combined partial/substantial indemnity basis, resulting in fees of \$42,061.25 and disbursements of \$955.00. The respondent says that tariff costs are appropriate and that the appellant's disbursements should be reduced to \$670.

#### **Procedural history**

[3] The hearing of these matters took place on May 21 and 22, 2024, and I rendered my oral decision on May 23<sup>rd</sup>. The issues were whether: (a) the appellant earned \$105,190 in unreported business income in 2016, and (b) his omission should be subject to gross negligence penalties. Simply put, it is the amount of federal tax and penalties which determine the class of proceeding.<sup>1</sup> Here, the federal tax and

penalties totalled \$19,342 and \$12,255, respectively,<sup>2</sup> making this matter a Class A proceeding.

### **Legal framework**

[4] 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.

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

- k. the Court has broad discretion which must be exercised on a principled basis and not arbitrarily;<sup>3</sup>

- l. none of the factors in subsection 147(3) are determinative and all relevant factors should be considered;<sup>4</sup>
- m. 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;<sup>5</sup>
- n. 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;<sup>6</sup>
- o. there must be egregious circumstances for the court to consider awarding solicitor-client costs, which remain discretionary;<sup>7</sup>
- p. increased (partial indemnity) costs generally vary between 50 to 75 percent of solicitor-costs<sup>8</sup> but it is not settled law;<sup>9</sup> and
- q. exceptional circumstances are not needed for a costs award above the tariff.<sup>10</sup>

### **Analysis and discussion**

#### *(a) The result of the proceeding*

[6] The appellant was wholly successful in that I found the unreported income should not have been attributed to him and as a result, he was also not grossly negligent. It was open for me to find that the income should have been attributed to him while also finding him not to have been grossly negligent. Therefore, this was not an all-or-nothing situation.

[7] As a result, this factor favours increased costs.

#### *(b) The amounts in issue*

[8] The significance of the amounts in issue must be considered contextually and in relative terms.<sup>11</sup> In this instance, the amounts might have been significant to the appellant but they are not significant in the context of appeals before this court.

[9] Therefore, this factor is neutral.

*(c) The importance of the issues*

[10] The issues of unreported business income arising from the sale of real property and gross negligence penalties are commonly litigated before this court. In addition, I made credibility findings which is a regular function for the trier of fact.

[11] Therefore, this factor is neutral.

*(d) Any offer of settlement in writing*

[12] No written offers were made in compliance with subsections 147(3.1) and (3.3) to support substantial indemnity. Counsel for the appellant sent multiple emails to respondent's counsel asking that the Crown consider settling by conceding the appeal. A request to capitulate is not a settlement offer, as any party can capitulate without the opposing party extending an offer to do so.

[13] Therefore, this factor is neutral.

*(e) The volume of work*

[14] The alleged unreported business income in issue arose from the sale of a residential property. The matter was straightforward and should not have required a high volume of work.

[15] Therefore, this factor is neutral.

*(f) The complexity of the issues*

[16] 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*

[17] With respect to the procedural history, the appellant amended the notice of appeal twice, both parties requested time extensions to the litigation timetable, the appellant waived discovery of the respondent, and the respondent conducted written discoveries of the appellant. There is nothing atypical in either party's conduct in the ordinary course of a litigation matter.

[18] Therefore, this factor is neutral.

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

[19] The parties held opposing views on how the documentary evidence should be interpreted but did not unnecessarily obstruct the proceeding by denying, neglecting, or refusing to admit anything that should have been admitted.

[20] Therefore, this factor is neutral.

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

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

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

[22] This matter turned on credibility and it would have been open to another trier of fact to find otherwise. While the appellant may understandably feel a sense of vindication with respect to the outcome of this appeal, his appropriate recourse is not to be found in an increased costs award against the respondent.

*(k) Disbursements*

[23] The appellant claims a disbursement of \$256.51 for the rush service of a subpoena on the appellant's mother on the first day of hearing. The hearing date was fixed by order in October 2023 and the appellant's mother would have been a predictably necessary witness from the outset. Therefore, there was no need for service on a rush basis and claimed disbursements must be reasonable in the circumstances.

[24] The appellant also claimed the cost of photocopies at a rate of 30 cents per page. Absent proof to the contrary, the presumed cost of copies is 20 cents per page.<sup>12</sup> There was no justification provided by the appellant for the increased disbursement.

## **Conclusion**

[25] Based on the above, I am of the view that the appropriate costs award is \$4,970 (being \$4,300 in fees plus disbursements of \$670). This lump-sum amount represents tariff costs for a Class A proceeding, before disbursements.

Signed this 27th day of May 2025.

“Susan Wong”

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Wong J.

CITATION: 2025 TCC 79

COURT FILE NO.: 2020-2352(IT)G

STYLE OF CAUSE: Vikash Datta v. His Majesty The King

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 21 and 22, 2024

REASONS FOR ORDER BY: The Honourable Justice Susan Wong

DATE OF ORDER: May 27, 2025

APPEARANCES:

Counsel for the Appellant: Osborne Barnwell

Counsel for the Respondent: Amin Nur

COUNSEL OF RECORD:

For the Appellant:

Name: Osborne Barnwell

Firm: OGB Law  
Toronto, Ontario

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

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<sup>1</sup> *Tax Court of Canada Act*, sections 2.1 and 2.2; *Tax Court of Canada Rules (General Procedure)*, Schedule II

<sup>2</sup> Respondent's written representations filed August 26, 2024, at paragraph 5

<sup>3</sup> *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

<sup>4</sup> *MacDonald v. The Queen*, 2018 TCC 55 at paragraph 43



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<sup>5</sup> *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

<sup>6</sup> *Invesco Canada Ltd v. The Queen*, 2015 TCC 92 at paragraph 5

<sup>7</sup> *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

<sup>8</sup> *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

<sup>9</sup> *Grenon v. The Queen*, 2021 TCC 89 at paragraphs 16 and 19

<sup>10</sup> *Invesco Canada Ltd v. The Queen*, 2015 TCC 92 at paragraph 5; *MacDonald v. The Queen*, 2018 TCC 55 at paragraph 46

<sup>11</sup> 9196-7448 *Québec Inc v. The Queen*, 2017 TCC 50 at paragraphs 24 and 25

<sup>12</sup> *Tax Court of Canada Rules (General Procedure)*, Schedule II, Tariff B, section 1(2)