

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110210

Docket: A-46-08

Citation: 2011 FCA 53

**Coram: NOËL J.A.
TRUDEL J.A.
MAINVILLE J.A.**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Appellant

and

THE RIGHT HONOURABLE JEAN CHRÉTIEN

Respondent

and

**THE HONOURABLE JOHN H. GOMERY, IN HIS QUALITY AS
EX-COMMISSIONER OF THE COMMISSION OF INQUIRY INTO
THE SPONSORSHIP PROGRAM AND ADVERTISING ACTIVITIES**

Mis en cause

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on February 10, 2011.

**REASONS FOR ORDER BY:
CONCURRED IN BY:**

**MAINVILLE J.A.
NOËL J.A.
TRUDEL J.A.**

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REASONS FOR ORDER

MAINVILLE J.A.

[1] On October 26, 2010, this Court dismissed the appeal with costs in favour of the respondent.

The respondent now submits a motion pursuant to sections 369, 400 and 403 of the *Federal Courts*

Rules, SOR/98-106 (“Rules”) seeking that his costs and disbursements be fixed at a lump sum of \$70,000, including all applicable taxes.

[2] The appellant agrees to a lump sum award as to costs, but would base this award on Tariff B of the Rules, thus providing for a lump sum of \$11,282.70 exclusive of disbursements but including taxes.

[3] The principles applicable to increased cost awards have been previously canvassed by our Court and can be summarized as follows:

- a. An award of party-and-party costs is normally determined in accordance with column III of the table to Tariff B and does not seek to compensate a party for the legal costs it incurred, but rather represents a contribution towards a successful party’s legal costs.
- b. However, in its discretion, the Court may increase these costs in order to provide appropriate party-and-party costs if circumstances warrant such an award.
- c. In exercising its discretion, the Court may consider the factors set out under section 400 of the Rules, including notably the amounts claimed and recovered, the importance and complexity of the issues, the amount of work involved, the conduct of a party, and whether the public interest in having the proceeding litigated justifies a particular award of costs.
- d. The increased costs are also to be awarded as party-and-party costs, as they do not indemnify the successful party for its solicitor-and-client costs.

- e. Solicitor-and-client costs are only awarded in exceptional circumstances such as where a party has shown bad faith or inappropriate, reprehensible, scandalous or outrageous conduct; reasons of public interest may also justify solicitor-and-client costs.
- f. An award of costs is not an exact science and is rather a matter of discretion based on good judgment and common sense.

(Sections 400 and 407 of the Rules, *Consorzio del Prosciutto di Parma v. Maple Leaf Meats Inc.*, 2002 FCA 417, [2003] 2 F.C. 451; *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 157, 325 N.R. 134; *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 FCA 278, 243 D.L.R. (4th) 759; *Mackin v. New Brunswick (Minister of Finance)*; *Rice v. New Brunswick*, 2002 SCC 13, [2002] 1 S.C.R. 405 at paragraph 86.)

[4] The respondent justifies his request for additional costs on the basis of the results of the proceeding, the importance of the issues, the public interest in having the proceeding litigated and the conduct of the appellant.

[5] The results of the proceeding alone are not a factor justifying increased costs. Moreover, the conduct of the appellant in pursuing this appeal was not reprehensible and also does not justify an increase in costs.

[6] However, I recognize that the importance of the issues decided in the appeal, as well as the public interest in pursuing the appeal, justify an increase in costs. The appeal concerned the reputation of a former Prime Minister of Canada and the proper conduct of federal commissions of

public inquiry. These were important and complex issues of public importance. Consequently the appellant will be awarded costs in addition to those set out in Tariff B.

[7] As to the quantum of costs, this is a matter of discretion based on the factors set out above. The respondent seeks \$70,000 being almost the equivalent of his solicitor-and-client costs. There is no justification here for an award on a solicitor-and-client basis. On the other hand, the appellant proposes to apply Tariff B for an award of \$11,282.70 exclusive of disbursements (which the respondent estimates at \$4,475.91) but including taxes. As I have already noted, an increased award of costs beyond the amounts provided in Tariff B is justified in this case, and I cannot therefore accept the appellant's position limiting costs to the tariff.

[8] Taking into account the time spent by the respondent's counsel to prepare the appeal and the importance and complexity of the issues raised, an award of \$25,000 plus all disbursements and applicable taxes appears to me appropriate in this case. Though this amount is insufficient to compensate the respondent fully for the legal costs incurred in this appeal, it constitutes nevertheless a significant contribution towards these costs while remaining within acceptable standards of party-and-party costs awards. It represents a compromise between compensating the successful party while not unduly burdening the unsuccessful party.

[9] I would consequently award the respondent, for the appeal and all related motions, including this motion, party-and-party costs of \$25,000 plus disbursements incurred and applicable taxes on

these costs and the disbursements. The assessing officer should be directed to assess costs accordingly.

"Robert M. Mainville"

J.A.

"I agree.
Marc Noël"

"I agree.
Johanne Trudel"

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

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STYLE OF CAUSE:

**THE ATTORNEY GENERAL OF
CANADA v. THE RIGHT
HONOURABLE JEAN CHRÉTIEN and
THE HONOURABLE JOHN H.
GOMERY, IN HIS QUALITY AS EX-
COMMISSIONER
OF THE COMMISSION OF INQUIRY
INTO THE SPONSORSHIP PROGRAM
AND ADVERTISING ACTIVITIES
(Mis en cause)**

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

**REASONS FOR ORDER BY:
CONCURRED IN BY:**

MAINVILLE J.A.
NOËL J.A.
TRUDEL J.A.

DATED:

February 10, 2011

WRITTEN REPRESENTATIONS BY:

Jacques Savary

FOR THE APPELLANT

David W. Scott, Q.C.
Peter K. Doody

FOR THE RESPONDENT

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