

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20111130**

**Docket: A-233-11**

**Citation: 2011 FCA 335**

**CORAM: NADON J.A.  
SHARLOW J.A.  
MAINVILLE J.A.**

**BETWEEN:**

**WINSTON BLACKMORE**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Vancouver, British Columbia, on November 30, 2011.

Judgment delivered from the Bench at Vancouver, British Columbia, on November 30, 2011.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NADON J.A.**

Federal Court  
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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Vancouver, British Columbia, on November 30, 2011)**

**NADON J.A.**

[1] Before us is an appeal from a decision of Campbell Miller J. (the “judge”) of the Tax Court of Canada dated June 3, 2011, wherein the judge allowed the respondent’s “costs thrown away” in the sum of \$50,000 plus disbursements in the sum of \$3,494 payable within three months of his Judgment.

[2] We are all agreed that the judge erred in principle in allowing \$50,000 to the respondent in respect of the “thrown away costs” resulting from the adjournment of the trial following the late

presentation of a motion by the appellant seeking a publication ban and an order precluding the use in future criminal prosecutions of the appellant's witnesses' evidence adduced at trial.

[3] There can be no doubt that the \$50,000 – representing the respondent's legal fees for trial preparation calculated on an hourly basis – clearly constitutes an award of costs on a solicitor/client basis for which there is, in our respectful view, no basis on the record before us. The appellant's conduct in bringing the motion was not found by the judge to be either reprehensible, scandalous or outrageous.

[4] With respect to the disbursements of \$3,494 allowed by the judge, a sum of \$2,400 was attributable to a fee paid to a non-expert witness in respect of preparation for trial. That amount is one that is clearly not allowable under the relevant tariff.

[5] For these reasons, the appeal will be allowed with costs, the Judgment of the Tax Court will be set aside and the matter will be returned to the Tax Court for redetermination in the light of these Reasons.

"M. Nadon"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-233-11

**APPEAL FROM THE ORDER OF THE HONORABLE MR. JUSTICE CAMPBELL J. MILLER OF THE TAX COURT OF CANADA, DATED JUNE 7, 2011, DOCKET NUMBER 2008-101(IT)G**

**STYLE OF CAUSE:** Winston Blackmore v.  
Her Majesty The Queen

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** November 30, 2011

**REASONS FOR JUDGMENT OF THE COURT BY:** NADON, SHARLOW,  
MAINVILLE J.J.A.

**DELIVERED FROM THE BENCH BY:** NADON J.A.

**APPEARANCES:**

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