

Docket: 2005-4409(IT)G

BETWEEN:

GEORGE WOLSEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Motion heard on August 23 and 24 and September 15 and 16, 2016 at  
Vancouver, British Columbia

Before: The Honourable Justice David E. Graham

Appearances:

Counsel for the Appellant: Daniel Barker

Counsel for the Respondent: Johanna Russell  
Pavanjit Mahil-Pandher

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**ORDER**

Fixed costs of \$19,689 are awarded to the Respondent in respect of the application. These costs are payable by the Appellant immediately.

Signed at Ottawa, Canada, this 2nd day of March 2017.

“David E. Graham”

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Graham J.

Citation: 2017 TCC 34  
Date: 20170302  
Docket: 2005-4409(IT)G

BETWEEN:

GEORGE WOLSEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR ORDER**

Graham J.

[1] In my Judgment dated October 24, 2016, I denied George Wolsey's application to set aside the dismissal of his appeal of his 2000, 2001 and 2002 tax years.<sup>1</sup> Mr. Wolsey's appeal had been dismissed following his failure to appear at a status hearing. I awarded costs to the Respondent in respect of the application. I provided the parties with time to reach an agreement on costs, failing which the parties were to make written submissions regarding costs. The parties did not reach an agreement. The Respondent provided written submissions on costs. Mr. Wolsey did not provide any written submissions.

[2] The Respondent is seeking costs calculated by doubling the amount of costs determined in accordance with Schedule II, Tariff B of the *Tax Court of Canada Rules (General Procedure)* for a Class C proceeding. The Respondent calculates tariff costs as being \$6,525 and thus double costs as being \$13,050.<sup>2</sup> To this the Respondent adds disbursements of \$6,639 to reach a total of \$19,689.

[3] Subsection 147(3) of the Rules sets out factors that the Court may consider in awarding costs. I will review each of those factors. The costs that I have

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<sup>1</sup> *Wolsey v. The Queen*, 2016 TCC 236.

<sup>2</sup> The Respondent's draft Bill of Costs appears to mistakenly include a negative amount on account of a taxation of costs. That amount is not included in the Respondent's calculation of the total costs. I have ignored it.

awarded are in respect of the application, not the appeal. Thus I will review the factors from that perspective.

### **Result of the Proceeding**

[4] The Respondent was entirely successful in the application.

### **Amount in Issue**

[5] The underlying appeal involved a dispute over approximately \$1.165M in alleged unreported income, shareholder benefits and capital gains. Since the purpose of the application was to set aside a dismissal of the appeal, this same amount was effectively in issue on the application. This is a significant amount of money.

### **Importance of the Issues**

[6] None of the issues in the application was of importance to the development of tax law, to the public interest or to a broad number of people.

### **Settlement Offers**

[7] I am not aware of any settlement offers being made in the application.

### **Volume of Work**

[8] The amount of work involved in the application was not significant.

### **Complexity of the Issues**

[9] The issues in the application were not complex.

### **Conduct Affecting the Duration of the Proceeding**

[10] Mr. Wolsey was responsible both for delaying the hearing of the application and for unnecessarily extending the hearing itself.

[11] As I stated in my Reasons for Judgment, “my strong impression is that [Mr. Wolsey’s] conduct throughout this Application has unnecessarily lengthened the proceedings. Viewed collectively, the series of unfortunate events that necessitated four adjournments of this matter (each shortly before, on the eve of or during the hearing) begin to take on the appearance of intentional delay and an abuse of the Court’s goodwill. Mr. Wolsey’s surprise attempt to adjourn the hearing a fifth time before me on the morning of the hearing only reinforces that impression. Unless Mr. Wolsey is able to convince me that my impression is wrong, any decision that I am required to issue in respect of costs will reflect that view.”<sup>3</sup> As Mr. Wolsey has not made any written submissions on costs, nothing has changed my impression of his conduct.

[12] While I am not awarding costs in respect of Mr. Wolsey’s conduct during the underlying appeal, that conduct does shape my view of his conduct during the application. It strongly reinforces my impression that Mr. Wolsey was intentionally delaying the application. As I observed in my Reasons for Judgment, everything about Mr. Wolsey’s conduct both during the appeal and the application “screams not of someone who desperately wants to resolve his tax problem, but rather of someone who desperately wants to delay resolving it. Mr. Wolsey has regularly ignored Court-ordered deadlines, has failed to apply to extend those deadlines until forced to do so by either the Court or the Respondent and, both before and after the October 9 status hearing, has failed to provide the Court and his counsel with his correct contact information.”<sup>4</sup>

[13] The hearing of the application lasted four days. This is an extraordinary amount of time for the hearing of an application to set aside a dismissal for failure to appear. In my experience, such applications are generally dealt with in a half day or, at most, a day.

[14] Mr. Wolsey’s counsel was appointed in May 2016. Counsel advised the Court that Mr. Wolsey gave him no instructions between May and the first day of

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<sup>3</sup> *Wolsey* at para 32. I note that the Respondent has not sought costs for the first two adjournments.

<sup>4</sup> *Wolsey* at para 30.

the hearing of the application in late August. While Mr. Wolsey's counsel represented Mr. Wolsey very professionally in the four days of hearing that followed, counsel could not help but be unprepared due to his client's lack of communication. In turn, that lack of preparation could not help but extend the duration of the proceedings.<sup>5</sup> The responsibility for that lack of preparation falls squarely on Mr. Wolsey.

[15] Based on all of the foregoing, I find that Mr. Wolsey's conduct significantly affected the duration of the proceedings.

[16] I acknowledge that a significant portion of the hearing involved a witness called by the Respondent who was completely unprepared and frequently confused and who caused excessive delays. That said, it was Mr. Wolsey's refusal to admit receipt of certain communications that caused the Respondent to need to call the witness in the first place. The witness was Mr. Wolsey's accountant and was subpoenaed by the Respondent. I do not blame the Respondent for the resulting delays.

### **Denial or Refusal to Admit**

[17] I found Mr. Wolsey not to be credible. A great deal of hearing time was wasted proving that Mr. Wolsey had received communications that he denied receiving. Had Mr. Wolsey admitted receiving those communications and instead focused on providing a credible explanation for his failure to attend the status hearing, I am confident that the hearing would have been concluded much more quickly.

[18] I note that, in her written submissions, the Respondent submitted that Mr. Wolsey's refusal to waive solicitor-client or litigation privilege over certain communications unnecessarily lengthened the proceedings. I do not accept this position. While questions of privilege certainly lengthened the proceedings, Mr. Wolsey cannot be blamed for asserting his fundamental rights.

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<sup>5</sup> I note that counsel did not have the option of removing himself from the record as Chief Justice Rossiter had ordered, as a condition of the final adjournment, that counsel could not be removed.

**Improper, Vexatious or Unnecessary Stages**

[19] There was no evidence that would suggest that any stage in the proceeding was improper, vexatious, or, except as already discussed above, unnecessary.

**Stages Taken Through Negligence, Mistake or Excessive Caution**

[20] There was no evidence that would suggest that any stage in the proceeding was taken through negligence, mistake or excessive caution.

**Justification of Expert Witnesses**

[21] There were no expert witnesses called in the application.

**Other Relevant Matters**

[22] I am not aware of any other matters relevant to the determination of costs.

**Summary**

[23] Considering all of the above factors and, in particular, Mr. Wolsey's conduct affecting the length of the proceedings and his denial of certain key facts, I find that an award of costs in excess of the tariff is appropriate. I also find that the figure proposed by the Respondent is entirely reasonable.

[24] Fixed costs of \$19,689 are accordingly awarded to the Respondent in respect of the application. Those costs are payable immediately.

Signed at Ottawa, Canada, this 2nd day of March 2017.

“David E. Graham”

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Graham J.

CITATION: 2017 TCC 34

COURT FILE NO.: 2005-4409(IT)G

STYLE OF CAUSE: GEORGE WOLSEY v. HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: August 23 and 24 and  
September 15 and 16, 2016

REASONS FOR ORDER BY: The Honourable Justice David E. Graham

DATE OF ORDER: March 2, 2017

APPEARANCES:

Counsel for the Appellant: Daniel Barker

Counsel for the Respondent: Johanna Russell  
Pavanjit Mahil-Pandher

COUNSEL OF RECORD:

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