

Docket: 2004-3645(IT)G

BETWEEN:

MIKE R. STEVENSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Before: The Honourable Justice B. Paris

Counsel for the Appellant: David Muha  
Counsel for the Respondent: Elizabeth Chasson

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**ORDER**

Upon reading the motion of the Respondent for an order requiring the Appellant to pay security for costs in this appeal pursuant to section 160 of the *Tax Court of Canada Rules (General Procedure)*;

And upon reading the Affidavit and Supplementary Affidavits of Louis L'Heureux, filed with the motion;

And upon reading the written submissions of both parties;

It is ordered that the Appellant pay the amount of \$7,325 by certified cheque into Court no later than February 19, 2008, together with the prescribed form No. 166.1, "Tender of Payment into Court".

Signed at Ottawa, Canada, this 4th day of February 2008.

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"B.Paris"

Paris J.

Citation: 2008TCC76  
Date: 20080204  
Docket: 2004-3645(IT)G

BETWEEN:

MIKE R. STEVENSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

**REASONS FOR ORDER**

Paris, J.

[1] This is an application by the Respondent pursuant to section 160 of the *Tax Court of Canada Rules (General Procedure)* for an order that the Appellant provide security for costs in the amount of \$8,825. At the request of the Respondent the application is being dealt with on the basis of written submissions pursuant to section 69(1) of the *Rules*.

[2] Section 160 of the *Rules* reads:

Where it appears that the appellant is resident outside of Canada, the Court on application by the respondent may give such direction regarding security for costs as is just.

[3] The Respondent has filed affidavits setting out that the Appellant has sold his home in Canada, is now resident outside of Canada and has insufficient assets in Canada to meet an award of costs in this matter. This evidence was not challenged by the Appellant.

[4] The Appellant argues, however, that it would be unfair to require him to provide security for costs because his prospects of success in this appeal are very strong.

[5] While the strength of the Appellant's prospects for success in this appeal might be a relevant factor in considering an application of this kind, there is insufficient evidence here to enable me to determine either party's prospects in that regard. The Appellant did not file any affidavits and his submission regarding the strength of his case is unsubstantiated. Nothing in the pleadings would allow me to draw a conclusion on this point.

[6] The Appellant also challenges the Respondent's calculation of the potential award of costs. Firstly, the Appellant says that the complexity of the issues and the amounts involved in the appeal would not warrant an award of costs in respect of two counsel at the hearing, as claimed by the Respondent. Secondly, the Appellant submits that he should not be required to provide security for costs already incurred by the Respondent.

[7] The Respondent's estimated costs for fees and disbursements for this appeal are \$8,825. The Respondent bears the onus of proving the amount of its costs for which the Appellant should provide security. The Respondent has not, in my view, met this onus in respect of the costs anticipated for the conduct of the hearing which includes a fee for second counsel. No evidence has been provided to support the claim for the second counsel fee, and the issues raised in the appeal do not on their face appear to be a complexity that would require second counsel at the hearing. In the absence of such evidence, the amount that the Respondent seeks to have the Appellant pay into court will be reduced by \$1,500.

[8] Finally I do not agree that an Order for security for costs should not cover costs already incurred by the other party. In a situation where a party leaves the country after instituting an appeal, and after the opposing party has already incurred costs, there does not appear to be any reason in restricting security for costs to future costs.

[9] For all these reasons, I find that the Appellant should be required to pay the amount of \$7,325 into Court by February 19, 2008 as security for costs.

Signed at Ottawa, Canada, this 4th day of February 2008.

“B.Paris”

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Paris J.

CITATION: 2008TCC76  
COURT FILE NO.: 2004-3645(IT)G  
STYLE OF CAUSE: MIKE R. STEVENSON V. HER MAJESTY  
THE QUEEN

PLACE OF HEARING:

DATE OF HEARING:

REASONS FOR JUDGEMENT BY: The Honourable Justice B. Paris

DATE OF JUDGMENT: February 4, 2008

APPEARANCES:

Counsel for the Appellant: David Muha  
Counsel for the Respondent: Elizabeth Chasson

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada