

# Fixed Cost Awards in the Tax Court of Canada - Spruce Credit

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*Spruce Credit Union v The Queen*, [2014 TCC 42](#)

This cost decision was in relation to [Spruce Credit Union v The Queen, 2012 TCC 357](#), which was decided wholly in favour of the taxpayer (Minister's appeal to the FCA not yet decided). The TCC, following Rule 147, determined that the tariff amounts were "inappropriate, insufficient, and unsatisfactory" (para 51), and ordered fixed costs (50% of fees of \$820,000), disbursements, and \$2,500 fixed costs for submission and hearing on costs.

In this decision, [Mr Justice Patrick Boyle](#) thoroughly reviewed the law in relation to cost awards at the TCC.

The appeal involved 4 days of hearing, the involvement of 3-4 counsel, two rounds of submissions, several examinations for discovery, and two contested motions. This was also a lead case on behalf of all BC credit union hat elected to pursue their objection and appeal rights. The Appellant asked for lump sum costs equal to 75% of its actual legal costs, while the Respondent supported tariff costs at the highest tariff. The TCC wondered by the Appellant was not seeking costs for preparing and filing a Notice of Appeal.

The TCC reviewed the relevant words of Rule 147 (General Procedure) and noted that it "may fix all or part of the costs with or without reference to" the tariff schedule. Next, the TCC referred to the FCA decision in [Lau v. The Queen, 2004 FCA 10](#), where it was stated that the TCC has full discretionary power over the payment of costs - though the power must be exercised on a principled basis (see also [Landry v. The Queen, 2010 FCA 135](#)). The court then referred to the FCA decision in [Conorzio Del Prosciutto Di Parma v. Maple Leaf Meats Inc., 2002 FCA 417](#), where some circumstances justifying increased cost awards were outlined:

- there were numerous issues raised on appeal
- the issues involved complex facts
- the issues involved expert evidence

In [Conorzio](#), the court awarded party-party costs which do not indemnify the successfully party (as solicitor-client costs would) and are not intended to punish the unsuccessful party for inappropriate conduct. A cost awards is what the court considered to be an appropriate contribution towards the successful party's solicitor-client costs, and not adherence to the arbitrary tariff amounts. When the Court doesn't make a specific order, costs will be assessed in accordance with Column III of Tariff B. When tariff amounts are seen by the court as unsatisfactory, a different amount may be ordered. The actual solicitor-client costs may be taken into account if the court considers it appropriate.

The TCC then referred to the TCC's own decisions in relation to costs, including:

- [\*Velcro Canada Inc. v. The Queen\*, 2012 TCC 273](#) - no need for exceptional circumstances in order for the TCC to deviate from tariff schedules, the TCC has full discretion as to cost awards;
- [\*General Electric Capital Canada Inc. v. The Queen\*, 2010 TCC 490](#) - costs ought not be punitive or extravagant;
- *Sommerer v. The Queen* 2007-2583(IT)G (July 14, 2011, unreported) - Rule 147 gives the TCC wide discretion to come to a reasoned decision. There is no threshold for granting increased costs, though full solicitor client costs are reserved for cases that are egregious;
- [\*Teelucksingh v. The Queen\*, 2011 TCC 253](#) - costs beyond the tariffs are not limited to situations of malfeasance or misconduct;
- [\*Jolly Farmer Products Inc. v. The Queen\*, 2008 TCC 693](#) - the court must exercise its discretion based on proper principles like those found in Rule 147(3). The mere fact that a case is complex, involved a large sum of money, or that actual legal fees exceed tariff amount is not necessarily reason for departing from tariff amounts;
- [\*Blackburn Radio Inc. v. The Queen\*, 2013 TCC 98](#) - work involved in the litigation and the complexity of a case are properly considered in cost awards;
- [\*Daishowa-Marubeni International Ltd v The Queen\*, 2013 TCC 275](#) - costs must be what is appropriate when taking a principled and balances view of Rule 147
- [\*Scavuzzo v. The Queen\*, 2006 TCC 90](#) - fixed costs can be awarded considering the amounts involved, the complexity, difficulty, and importance of the case, and other relevant factors;
- [\*Zeller Estate v. The Queen\*, 2009 TCC 135](#) - traditionally partial indemnity costs varies between 50% and 75% of solicitor-and-client or substantial indemnity costs;
- [\*Dickie v. The Queen\*, 2012 TCC 327](#) - relevant considerations include the clear victory of the appellant, the amounts of tax in dispute in this and other years (test case nature), the complexity of the issues in light of the respondent's position, the amount of work generated as a result of the respondent's position, and the propriety of conceding issues prior to trial;

The TCC then reviewed the considerations in Rule 147(3):

- **The Result of the proceeding** - the outcome including the likelihood of success of the losing party's position are relevant;
- **The amounts in issue** - is the amount, in aggregate, significant enough that it requires a thorough and well prepared defence? In lead cases its appropriate to consider the aggregate amounts at issue;
- **The importance of the issue** - the level of importance to the taxpayer, the number of persons to whom it is important, and the importance of the issues to future litigants are relevant
- **Any offer of settlement made in writing** - none in this case
- **The volume of work** - work needed in preparation for hearings, in communication with the opposing party, in keeping other parties informed, and in creating submissions are relevant;
- **The complexity of the issues** - both the complexity of the facts and the law are relevant;

- **The conduct of any party that tended to shorten or lengthen unnecessarily the duration of the proceeding**
- **The denial or the Neglect or Refusal of any party to admit anything that should have been admitted**
- **whether any stage in the proceedings was improper, vexatious or unnecessary, or was taken through negligence, mistake or excessive caution**

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