

Federal Court



Cour fédérale

Date: 20250509

Docket: T-557-25

Citation: 2025 FC 858

Ottawa, Ontario, May 9, 2025

PRESENT: The Honourable Madam Justice Conroy

BETWEEN:

ELEVATE LLP

Applicant

and

**THE MINISTER OF NATIONAL REVENUE AS REPRESENTED BY THE
ATTORNEY GENERAL OF CANADA**

Respondent

AMENDED ORDER AND REASONS

[1] On March 26, 2025, following a hearing, I granted an interlocutory injunction to the Applicant, Elevate LLP [Elevate], an accounting firm, reinstating its access to Canada Revenue Agency's [CRA] EFILE system until a decision is rendered on the Administrative Review (defined below) or until July 31, 2025, whichever is later. I also agreed to stay Elevate's underlying application for judicial review. Finally, I directed the parties file short submissions on costs if they could not agree on quantum.

[2] This is my decision on costs.

[3] A lump sum of \$10,371.63 (representing 25% of the actual legal fees incurred) is awarded to Elevate to be paid by the Minister of National Revenue [Respondent] forthwith.

I. Background

[4] On December 6, 2024, the Respondent denied Elevate access to the EFILE system following a suitability screening [Denial Decision]. The Denial Decision was grounded in an assessment of gross negligence penalties under the *Income Tax Act*, RSC 1985, c 1 (5th Supp) against one of Elevate's partners. The penalties were assessed in relation to a personal transaction by the partner and are unrelated to any work done by Elevate. The Denial Decision was imposed without notice or a warning letter to Elevate.

[5] On January 21, 2025, Elevate applied to the Respondent for an administrative review of the Denial Decision [Administrative Review] seeking: (1) "urgent interim relief" to stay the Denial Decision while the Administrative Review was pending; and, (2) a reversal of the Denial Decision. The application for an Administrative Review underlined the urgent need for a stay so that Elevate could file client tax returns on time. Elevate asked for a response on the stay request by mid-February 2025. No response was provided and Elevate thereafter filed an application for judicial review and an injunction motion.

[6] At the motion hearing the parties agreed that it was improbable that the Respondent would render a decision on the Administrative Review in advance of the April 2025 filing deadline for 2024 tax returns. Counsel for the Respondent advised the Court that the CRA was currently taking about nine months to process these types of reviews. Both counsel agreed that

the only way for Elevate to obtain relief in time to file its clients' taxes electronically was to bring a motion for an interlocutory injunction.

[7] I note that in oral argument it was apparent the Respondent did not seriously contest the injunction. The Respondent did not challenge Elevate's characterization of the injunction as prohibitory and therefore subject to a low threshold to demonstrate a serious issue. Counsel for the Respondent acknowledged that irreparable harm would flow in the absence of an injunction. The Respondent filed no evidence and did not make submissions on the balance of convenience.

[8] Further, Respondent counsel did not object to a stay of the underlying judicial review.

[9] It was in this context that I invited the parties to provide submissions on costs. In delivering the injunction decision from the bench, I observed that it was a suboptimal use of the Court's and the parties' resources to force a party to file an application for judicial review and an urgent injunction motion in order to obtain a timely decision on access to the CRA's EFILE system.

[10] Of note, no one suggested that the conduct of counsel, including Respondent counsel, was anything but "exemplary and extremely fair" (as quoted from Elevate's costs submissions).

II. Parties' Positions

[11] Elevate seeks a lump sum costs award payable forthwith in the amount of \$26,166.50, which represents about 60% of its actual legal fees, GST included.

[12] The Respondent argues that no costs should be awarded because none were sought in the Applicant's notice of motion or written argument. If costs are ordered the Respondent says there is no reason to depart from Tariff B, at the mid-point of column III, and that costs should be payable in the cause, not forthwith. The Respondent did not provide a proposed Bill of Costs in its submissions.

III. Analysis

[13] The Court has broad discretion in making costs awards and may take into account the factors listed in Rule 400(3) of the *Federal Courts Rules*, SOR/98-106, including "any other matter that it considers relevant" (Rule 400(3)(o)). While the Court's discretion is broad, it must be exercised in accordance with established principles, unless the circumstances justify a different approach: *Nova Chemicals Corporation v Dow Chemical Company*, 2017 FCA 25 at para 19; *Allergan Inc v Sandoz Canada Inc*, 2021 FC 186 at para 21.

[14] While Elevate did not seek costs in its written material, no legitimate fairness concerns arise here. Contrary to the cases cited by the Respondent (see e.g., *Exeter v Canada (Attorney General)*, 2013 FCA 134 at para 12; *Sir v Canada (Royal Mounted Police)*, 2024 FC 1469 at para 45), both parties were provided an opportunity to make written submissions on costs.

[15] Costs awards have several purposes: (1) indemnifying the successful party; (2) incentivizing the rational use of scarce judicial resources; and (3) facilitating access to justice (*Whalen v Fort McMurray No 468 First Nation*, 2019 FC 1119 at paras 3-5). A cost award here will serve all three objectives, but in particular the second objective. It is important that litigants,

including the Respondent, take into account the risk of an adverse cost award when making decisions regarding the conduct of proceedings. From the perspective of the Respondent, running an injunction motion may be routine and its costs relatively insignificant; not so for a small enterprise such as Elevate.

A. *Lump sum whenever possible*

[16] The current approach is to award lump sum costs awards “wherever possible.” As explained by Chief Justice Crampton in *Jahazi v Canada (Citizenship and Immigration)*, 2024 FC 2072 at para 30 [*Jahazi*]:

In this Court, costs may be fixed by reference to Tariff B of the FC Rules or by way of a lump sum: Rule 400(4), *FC Rules*. **In recent years, the granting of a lump sum award has become increasingly common. Indeed, it is being done “wherever possible”:** *Philip Morris Products SA v Marlboro Canada Limited*, 2015 FCA 9 at para 4. To a significant degree, this is explainable by the Court’s desire to reduce the significant time and effort typically associated with preparing and reviewing the type of detailed bill of costs that is required for the purposes of an assessment under Tariff B....

[emphasis added]

[17] In this case, forcing the parties to undergo an assessment would undermine the objective of securing “the just, most expeditious and least expensive outcome” of this proceeding (Rule 3).

B. *Quantum*

[18] According to the case law, the typical quantum for lump sum costs awards is one-quarter to one-third of the actual legal costs incurred: *Jahazi* at para 34; *Apotex Inc v Shire LLC*, 2021 FCA 54 at para 22.

[19] Contrary to some of the cases relied on by Elevate, the proceedings here did not involve anything akin to an expropriation which attracts distinct costs principles (see e.g., *Goodtrack v The Rural Municipality of Waverly No 44*, 2013 SKCA 137; *Calgary (City) v Teulon*, 2021 ABQB 501; and *Calgary (City) v Costello*, 1997 ABCA 281). Nor was there any egregious or abusive conduct by the Respondent.

[20] Given the above and the relatively straight-forward nature of the motion, I find that a lump sum in the amount of 25% of the fees incurred is suitable.

C. *Timing*

[21] In contrast to some other jurisdictions, the default in this Court is that costs for interlocutory motions are payable in the cause, unless specifically ordered as payable forthwith: *Buck v Canada (Attorney General)*, 2022 FC 352 at paras 17-18.

[22] I am mindful of the wording of Rule 401(2), which provides that “[w]here the Court is satisfied that a motion should not have been brought or opposed, the Court shall order that the costs of the motion be payable forthwith.” I do not interpret this rule as prohibiting a cost award to be paid forthwith in the absence of a finding that the motion ought not have been opposed.

[23] The Respondent’s opposition to the motion focused primarily on Elevate’s failure to exhaust all internal avenues for relief, and at the same time the Respondent acknowledged that there was no alternative avenue that would provide timely relief. I agree with Elevate that the Respondent did not seriously contest the motion. But I do not agree with Elevate’s assertion that

the Respondent's conduct in defending the motion indicates that the motion ought not to have been opposed. The conduct of counsel for the Respondent aligns with the proper role of Crown counsel in civil matters.

[24] Nevertheless, given that the underlying application for judicial review has been stayed and is unlikely to proceed on the merits, it is logical that the costs here ought to be payable forthwith.

THIS COURT'S ORDER is that the Minister of National Revenue pay Elevate LLP costs in the amount of \$10,371.63, plus GST, forthwith.

"Meaghan M. Conroy"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-557-25
STYLE OF CAUSE: ELEVATE LLP v. THE MINISTER OF NATIONAL
REVENUE

COSTS CONSIDERED AT OTTAWA, ONTARIO ON MAY 9 2025

REASONS FOR ORDER: CONROY J.

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