Federal Court of Appeal

Cour d'appel fédérale

2026 FCA 70 (CanLII)

Date: 20260410

Docket: A-264-23

Citation: 2026 FCA 70

CORAM: WEBB J.A.
BIRINGER J.A.
DAWSON D.J.C.A.

BETWEEN:

HIS MAJESTY THE KING

Appellant/
Respondent on cross-appeal

and

VEFGHI HOLDING CORPORATION and
S.O.N.S. ENVIRONMENTAL LTD.

Respondents/
Appellants on cross-appeal

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on April 10, 2026.

REASONS FOR ORDER BY: WEBB J.A.

CONCURRED IN BY: BIRINGER J.A.
DAWSON D.J.C.A.

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REASONS FOR ORDER

WEBB J.A.

[1] Following the Judgment rendered in this appeal and cross-appeal (2025 FCA 143), the parties filed written submissions on costs. The Crown is seeking costs equal to 45% of solicitor-client costs for the proceeding before the Tax Court of Canada and tariff costs for this appeal. Vefghi Holding Corporation (Vefghi Holding) and S.O.N.S. Environmental Ltd.

(S.O.N.S.) submit that no costs should be awarded in this Court or at the Tax Court. In the alternative, Vefghi Holding and S.O.N.S. submit that the issue of the costs to be awarded in relation to the proceeding before the Tax Court should be remitted to the Tax Court.

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[2] This appeal and cross-appeal arose as a result of a question that was raised in an application under Rule 58 of the *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a (the General Procedure Rules). The question related to the timing of the determination of whether two corporations are connected for the purposes of Part IV of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act) when a dividend is paid from one corporation to a trust and then designated by the trust as provided in subsection 104(19) of the Act in respect of the other corporation. In rendering his decision on the answer to the Rule 58 question, the Tax Court Judge ordered each party to bear their own costs.

[3] The appeal from the decision of the Tax Court Judge was allowed, and this Court provided its answer to the Rule 58 question. Although this Court did not adopt the response as proposed by the Crown, the answer was significantly more aligned with the Crown's proposed response than with the response as proposed by Vefghi Holding and S.O.N.S.

[4] Costs are a discretionary matter. Rule 147(1) of the General Procedure Rules provides that the Court may determine the amount of costs. Rule 147(3) sets out the factors that the Court may consider in awarding costs. Although the Crown referred to some decisions of the Tax Court where that Court has awarded enhanced costs, the Crown does not refer to any decision of this Court where, as a result of allowing an appeal from a decision of the Tax Court, this Court

awarded enhanced costs for the Tax Court hearing, taking into account the factors as set out in Rule 147(3).

[5] In the matter that is before us, the Crown submitted that the issue of the amount of costs at the Tax Court should be determined by this Court and not remitted to the Tax Court because the Tax Court Judge who rendered the decision in this matter has since retired. Since it would not be possible to remit the matter to the same judge who rendered the decision on the Rule 58 question, in my view, the question of the amount of costs for the Tax Court hearing should be determined by this Court.

[6] In seeking enhanced costs for the Tax Court hearing, the Crown, as set out in its written submissions, is asking this Court to exercise its discretion to consider the factors as set out in Rule 147(3)(b), (c), (e) and (f):

147(3) In exercising its discretionary power pursuant to subsection (1) the Court may consider,	**147(3)** En exerçant sa discrétion conformément au paragraphe (1), la Cour peut tenir compte :
[…]	[…]
(b) the amounts in issue,	**b)** des sommes en cause;
(c) the importance of the issues,	**c)** de l'importance des questions en litige;
[…]	[…]
(e) the volume of work,	**e)** de la charge de travail;
(f) the complexity of the issues,	**f)** de la complexité des questions en litige;

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[7] The Crown notes that the total federal tax in dispute in the appeals for Vefghi Holding and S.O.N.S. was $1,110,338. This is a tax imposed under Part IV of the Act. This tax is refundable as provided in section 129 of the Act, provided the corporation pays dividends to its shareholders. Neither the Crown nor the taxpayers provided any submissions on the relevance of a possible refund of this tax in relation to determining the "amounts in issue" for the purposes of Rule 147(3)(b).

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[8] In any event, the Crown submits that there are several other appeals that were held in abeyance pending this appeal and the amounts at issue in these appeals should be considered for the purposes of Rule 147(3)(b):

> 9. Considering the aggregate amount at issue in all bound appeals is appropriate when fixing costs for a lead case to encourage the prudent and efficient use of public resources through lead cases.

[9] The Crown cites 3 decisions of the Tax Court in support of this proposition: *Applewood Holdings Inc. v. The Queen*, 2019 TCC 34 (*Applewood*); *Spruce Credit Union v. The Queen*, 2014 TCC 42 (*Spruce Credit Union*); and *Madison Pacific Properties Inc. v. The King*, 2024 TCC 47 (*Madison*). In both *Applewood* and *Spruce Credit Union*, the taxpayers were successful and, therefore, costs were payable by the Crown.

[10] In *Spruce Credit Union*, the Tax Court Judge noted:

> [35] It is appropriate in a lead case appeal such as this to consider the aggregate amount being contested by all bound taxpayers when fixing costs. It is equally appropriate to consider that each taxpayer generally has the right to pursue its

> own appeal to the Court, and that if each other taxpayer pursued an appeal and were successful, they would generally expect to be entitled to a costs award. The prudent and efficient use of public resources through lead cases or otherwise in resolving tax disputes is to be generally encouraged, not discouraged in any way.

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[11] The reference to the "prudent and efficient use of public resources through lead cases" was made in relation to appeals where a number of taxpayers could be entitled to costs payable by the Crown, if each taxpayer successfully pursued an appeal to the Tax Court. In every tax appeal before the Tax Court, the Crown is a party. Therefore, the Crown would have a direct benefit from having a lead case when the Crown is the party paying costs.

[12] However, neither Vefghi Holding nor S.O.N.S. is a party in any of the appeals that the Crown has identified as being held in abeyance. There is also no indication of any relationship or connection between either Vefghi Holding or S.O.N.S. and the appellants in the other appeals. The Crown has not established why it would be appropriate to require Vefghi Holding and S.O.N.S. to pay enhanced costs when neither Vefghi Holding nor S.O.N.S. is a party to these other appeals. The only amount in issue for Vefghi Holding is the amount for which it was assessed ($454,428 of Part IV tax (2023 TCC 135, paragraph 5) and, likewise, the only amount in issue for S.O.N.S. is the amount for which it was assessed ($655,910 of Part IV tax (2023 TCC 135, paragraph 6). There is no indication that Vefghi Holding would have any liability for the tax assessed against S.O.N.S., or vice versa, or that Vefghi Holding or S.O.N.S. would have any liability for the amounts assessed against any of the other taxpayers listed in the Crown's written submissions.

[13] In *Madison*, the Crown was awarded costs. The references to taking into account the amounts at issue in other appeals in assessing whether to award enhanced costs are in paragraphs 6 and 7:

> [6] There was $2,188,839 in federal tax in issue in the Appeal. The Appellant has two other tax years in issue that are currently sitting at CRA Appeals involving the same losses. In addition, there is a further $10 million in federal tax in dispute in a number of related appeals.
>
> [7] The Respondent submits that the additional tax from these disputes should be taken into account as the outcome of the Appeal will have a significant impact on the related appeals. I agree. This factor argues for increased costs.
>
> [emphasis added]

[14] The footnote reference to "related appeals", in paragraph 6 above, cites the following appeals: "Appeal numbers 2013-3885(IT)G, 2013-3888(IT)G and 2018-540(IT)G". In a decision of the Tax Court dated May 18, 2017, *MP Western Properties Inc. v. The Queen*, 2017 TCC 82, the appeal number 2013-3885(IT)G is identified as the appeal of MP Western Properties Inc., and the appeal number 2013-3888(IT)G is identified as the appeal of 1073774 Properties Inc. In paragraph 2 of that decision, the Tax Court notes that "MP Western Properties Inc. ("Western"), 1073774 Properties Inc. ("107") and Madison Pacific Properties Ltd. ("Madison") are part of the same corporate group". In *Madison Pacific Properties Inc.* v. *His Majesty the King*, 2023 TCC 180, the Tax Court Judge in footnote 28 confirmed that the appeal number 2018-540(IT)G was an appeal of Madison Pacific Properties Inc.

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[15] As a result, the reference to *Madison* does not assist the Crown. The related appeals that were considered in determining the amounts in issue in *Madison* were other appeals of the same taxpayer or members of the same corporate group.

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[16] In my view, in the matter that is before this Court, the amounts in issue are only the amounts that are in issue in the appeals of Vefghi Holding and S.O.N.S. The amounts in issue in these appeals do not support a finding that costs in excess of the tariff should be awarded.

[17] In support of its submission on the importance of the issues, the Crown again refers to the appeals held in abeyance without indicating that there is any connection or link to Vefghi Holding or S.O.N.S., other than having the same issue concerning the imposition of Part IV tax when a dividend passes through a trust. The importance of the issues does not, in this matter, support a finding that the Court should exercise its discretion to find that Vefghi Holding and S.O.N.S. should pay enhanced costs.

[18] With respect to the volume of work and the complexity of the issues, as noted by Justice Boyle in *Jolly Farmer Products Inc. v. The Queen*, 2008 TCC 693:

> [8] The Court need not slavishly adhere to the tariff. However, the Court must exercise its discretion on proper principles, such as the considerations enumerated in Rule 147(3), and not capriciously. The mere fact that a case is novel, unique, complex, difficult, or involves a large sum of money is not reason for departing from the tariff: see *McGorman et al. v. HMQ*, 99 DTC 591, at paragraph 13 per Bowman J. as he then was. Nor is the mere fact that the party's actual legal fees greatly exceed the tariff amount reason to award costs in excess of tariff. In *Continental Bank of Canada et al. v. HMQ*, 94 DTC 1858, Bowman ACJ wrote:
>
> > It is obvious that the amounts provided in the tariff were never intended to compensate a litigant fully for the legal expenses

> incurred in prosecuting an appeal. The fact that the amounts set out in the tariff appear to be inordinately low in relation to a party's actual costs is not a reason for increasing the costs awarded beyond those provided in the tariff. I do not think it is appropriate that every time a large and complex tax case comes before this court we should exercise our discretion to increase the costs awarded to an amount that is more commensurate with what the taxpayers' lawyers are likely to charge. It must have been obvious to the members of the Rules Committee who prepared the tariff that the party and party costs recoverable are small in relation to a litigant's actual costs. Many cases that come before this court are large and complex. Tax litigation is a complex and specialized area of the law and the drafters of our Rules must be taken to have known that.

Similarly, as stated by Justice Layden-Stevenson in *Aird v. Country Park Village Property (Mainland) Ltd.*, [2004] F.C.J. No. 1153 (QL):

> Costs should be neither punitive nor extravagant. It is a fundamental principle that an award of costs represents a compromise between compensating a successful party and not unduly burdening an unsuccessful party...

[19] In my view, the Crown has not established that the volume of work and the complexity of the issues in these appeals would warrant the exercise by this Court of its discretion to increase the award of costs above the tariff for the Tax Court hearing.

[20] As a result, based on the factors identified by the Crown in its written submissions, I would not award enhanced costs to the Crown.

[21] With respect to the position of Vefghi Holding and S.O.N.S. that no costs should be awarded, they do not provide any support for this position. There is, therefore, no reason to depart from the general rule that the successful party is entitled to costs. Since the arguments

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were the same in the appeals related to Vefghi Holding and S.O.N.S., I would award only one set of costs at the Tax Court and in this Court.

[22] I would therefore award the Crown one set of costs at the Tax Court and one set of costs in this Court to be determined in accordance with the applicable tariffs, with each of Vefghi Holding and S.O.N.S. to be responsible for one-half of such costs.

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"Wyman W. Webb"
J.A.

"I agree.
Monica Biringer J.A."

"I agree.
Eleanor R. Dawson D.J.C.A."

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FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-264-23
STYLE OF CAUSE:	HIS MAJESTY THE KING v. VEFGHI HOLDING CORPORATION and S.O.N.S. ENVIRONMENTAL LTD.

DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	WEBB J.A.
CONCURRED IN BY:	BIRINGER J.A. DAWSON D.J.C.A.
DATED:	APRIL 10, 2026

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