CORAM: **STRATAS J.A.**
         WEBB J.A.
         SCOTT J.A.

BETWEEN:

RALPH MATHIAS

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Calgary, Alberta, on January 31, 2017.
Judgment delivered from the Bench at Calgary, Alberta, on January 31, 2017.

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Calgary, Alberta, on January 31, 2017).

STRATAS J.A.

[1]   Under Rule 160 of the *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a, where "it appears that the appellant is resident outside of Canada" the Tax Court of Canada may "give such direction regarding security for costs as is just." The appellant is resident outside of Canada. The respondent moved for an order requiring the appellant to pay security for costs. By order dated June 6, 2016, the Tax Court of Canada (*per* Rossiter C.J.) granted the motion and

required the appellant to pay $9,000 into court as security for costs. The appellant appeals to this

Court.

[2]   The Tax Court issued only an order. It did not provide separate reasons for it. The reasons

for the order can be discerned only by examining the wording of the order viewed in light of the

record before the Court. The order is succinct. In its entirety, it reads:

> UPON the Respondent's motion for an Order directing the Appellant to pay $13,850.00 into Court as security for costs and for an Order awarding costs in this motion;
>
> AND UPON consideration of the submissions of counsel for both parties;
>
> IT IS ORDERED that:
>
> 1. The Appellant shall deposit with the Tax Court of Canada, on or before August 4, 2016, the sum of Cdn. $9,000.00, as security for the Court's expenses.
>
> 2. Costs of this motion are fixed at $750.00, payable in favour of the Respondent, at the same time as the security sum be deposited.

[3]   In this Court, the appellant submits that the order must be quashed because the reasons

for its making are insufficient. The appellant says he cannot tell why the Tax Court ordered

security for costs over his opposition, why $9,000 was set as the amount, and why he was

ordered to pay the security as a lump sum, not in instalments as he requested.

[4]   We agree with the appellant. The reasons fall well short of the standards set out in cases

such as *R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869, *R. v. Gagnon*, 2006 SCC 17, [2006]

1 S.C.R. 621, *Hill v. Hamilton-Wentworth Police Services Board*, 2007 SCC 41, [2007] 3 S.C.R.

129, *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3, *R. v. Walker*, 2008 SCC 34, [2008] 2 S.C.R.

245 and *R. v. Dinardo*, 2008 SCC 24, [2008] 1 S.C.R. 788. A good summary of these cases

appears in *Canada v. Long Plain First Nation*, 2015 FCA 177, 388 D.L.R. (4th) 209 at para. 143.

Examining the order in light of the record before the Tax Court, we cannot discern the bases for

it.

[5]   Where, as here, the reasons are legally insufficient, this Court normally decides the

matter *de novo*: *Canada (Attorney General) v. Larkman*, 2012 FCA 204, 433 N.R. 184 at para.

60; *Plante v. Canada (Correctional Service)*, 2005 FCA 120 at para. 2; *Infonet Services Corp. v.*

Matrox Electronic Services Ltd., 2004 FCA 162 at para. 6; *Jukutavicius v. Canada (Attorney*

General), 2004 FCA 289, 327 N.R. 239 at para. 24. This we shall do.

[6]   Since the appellant does not reside in Canada, it will be difficult for the respondent to

enforce any costs award it might receive. There is nothing in the record that suggests otherwise.

The evidence offered by the appellant concerning his financial condition is too narrow and

general to be given much weight. Therefore, the respondent is entitled to an order requiring the

appellant to provide security for costs.

[7]   In its motion for security for costs, the respondent provided a bill of estimated costs. The

amount in issue is $105,000 and so, for the purposes of calculating the appellant's possible

liability in costs, this is a Class B appeal: Tariff A, paragraph 1(*b*) of the Rules. The figures for

Class B appeals are set out in section 1 of Tariff B. Following this methodology, the respondent

claims a total of $13,850, all inclusive, based on its bill of costs. Central to the respondent's

position is its estimate that the discoveries and the hearing will each take three days. The

respondent also submits that the just disposition of this matter under Rule 160 would allow the appellant to pay this amount by way of three instalments, one in the amount of $4,725 paid into court 45 days after the date of this Court's judgment, another in the amount of $4,000 paid into court 90 days after the date of this Court's judgment, and the last in the amount of $5,125 upon the filing of an application for hearing in the Tax Court.

[8]   The appellant suggests that a lower amount, $7,000, would be just in the circumstances. He points to his financial situation, as disclosed by the affidavit filed before the Tax Court. He adds that a more reasonable estimate is two days for discoveries and one day for hearing. He also submits that justice requires that the amount be paid by way of two instalments of $3,000 and $4,000.

[9]   From a review of the notice of appeal and the reply and after hearing counsel's submissions, we agree with the respondent. We consider the estimate of three days for discoveries and three days for the hearing to be reasonable given the nature, number and complexity of the issues in this case. We also consider that dividing the amount into three instalments rather than two and the timing of the instalments proposed by the respondent suitably recognizes the financial situation of the appellant. We add that the affidavit filed by the appellant in the Tax Court offers evidence only of a very general, unparticularized nature concerning his ability to pay. On the evidence, we are not persuaded that the amount of $13,850, all inclusive, is unjust in the circumstances.

[10]   We note that this amount is higher than that ordered by the Tax Court. Unusually, the appellant in this case will end up in a worse position as a result of his appeal. However, this is a consequence of the fact that, based on our jurisprudence, this appeal has had to proceed as an appeal *de novo*—*i.e.*, a complete reconsideration of the merits of the original motion for security for costs brought in the Tax Court.

[11]   Therefore, we shall allow the appeal, set aside the order of the Tax Court, grant the motion for security for costs, and order that the appellant pay into court $13,850 as security for costs in three instalments: the first in the amount of $4,725 within 45 days of the judgment of this Court, the second in the amount of $4,000 within 90 days of the judgment of this Court, and the third in the amount of $5,125 within seven days of the application for hearing under Rule 123.

[12]   Overall, the respondent has been successful on its motion and so we shall award costs here and below in the total amount of $1,000, all inclusive.

"David Stratas"
J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-216-16

APPEAL FROM AN ORDER OF THE HONOURABLE CHIEF JUSTICE ROSSITER DATED JUNE 6, 2016, DOCKET NO. 2015-4411(IT)G

STYLE OF CAUSE: RALPH MATHIAS v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: JANUARY 31, 2017

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.
WEBB J.A.
SCOTT J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

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