Docket: 2019-3319(IT)G

BETWEEN:

JOHN DAVID ROMANCHUK,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Written submissions on costs dated July 9, 2025.

Before: The Honourable Justice Dominique Lafleur

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Jonathan Cooper

ORDER

In accordance with the attached Reasons for Order;

IT IS ORDERED that:

1. The Appellant is awarded costs in the lump sum amount of $3,000 (inclusive of all disbursements) payable forthwith, in respect of the Appeal that was heard on March 11 and 12, 2025; and

2. Each party shall bear their own costs in respect of these costs submissions.

Signed this 27th day of August 2025.

"Dominique Lafleur"

Lafleur J.

Citation: 2025 TCC 119
Date: 20250827
Docket: 2019-3319(IT)G

BETWEEN:

JOHN DAVID ROMANCHUK,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Lafleur J.

I. OVERVIEW

[1] These Reasons are in respect of a costs award regarding the Appeal by Mr. John David Romanchuk of a reassessment made by the Minister of National Revenue (the "Minister") under the *Income Tax Act* (the "Act") for the 2012 taxation year beyond the normal reassessment period, to include in the calculation of Mr. Romanchuk's income an amount of $76,883 as a capital gain from the sale of a property located at 2586 Big Eddy Road, Revelstoke, British Columbia (the "Property"). The Minister also assessed gross negligence penalties under subsection 163(2) of the Act.

[2] The hearing of the Appeal took place on March 11 and 12, 2025. Mr. Romanchuk was self-represented, and the sole witness called. At the start of the hearing, Counsel for the Respondent conceded that no penalties under subsection 163(2) of the Act shall be assessed. Further, during the first day of the hearing, after Mr. Romanchuk started his testimony, Counsel for the Respondent conceded that the Property was held on income account, as part of an inventory for Mr. Romanchuk, and not on capital account. Moreover, Counsel for the Respondent conceded that the Property was owned in equal shares by Mr. Romanchuk and his spouse, Ms. Romanchuk, and not only by Mr. Romanchuk. Given the Respondent's concessions, the sole remaining issue was the Appellant's cost of the Property. More particularly, the sole issue was whether interest paid on a line of credit used for

development and for other investment activities should be included in the cost of the Property.

[3] At the hearing of the Appeal on March 12, 2025, I encouraged the parties to explore the possibility of settlement. The Respondent attempted to settle the matter by consent, recognizing that the Appellant's share of the business loss realized on the sale of the Property amounted to $64,150. However, the Appellant rejected that offer because it did not contain a provision for costs incurred.

[4] Ultimately, after written submissions were provided by the parties in March and April 2025, the Court agreed with the Respondent's position on interest expenses calculations.

[5] In accordance with reasons delivered orally on June 6, 2025, and judgment dated June 9, 2025, I allowed the Appeal and referred the matter back to the Minister for reconsideration and reassessment on the following basis:

1. To give effect to the Respondent's concessions, penalties assessed under subsection 163(2) of the Act are vacated;

2. To give effect to the Respondent's concessions, Mr. Romanchuk held a half interest in the Property (and not the totality) on income account, and not on capital account; hence, Mr. Romanchuk did not realize any capital gain nor any capital loss on the sale of the Property;

3. The business loss realized by Mr. Romanchuk resulting from the sale of the Property was equal to $44,780.03.

[6] I also awarded costs to the Appellant, giving the parties 30 days to agree on costs. As the parties did not agree on costs, they filed written submissions.

[7] The Appellant is seeking costs and disbursements totalling $11,090.94. The costs sought by the Appellant equal $7,725, which costs include $4,000 for attending the hearing for 2 days, as well as $450 for preparing the costs submissions. The balance of costs sought by the Appellant includes costs for the preparation of the notice of appeal and the list of documents, the discovery of the Respondent's documents, the examination for discovery, preparation for a pre-hearing conference, a status hearing, and the hearing itself, and the preparation of an agreed statements

of facts. The Appellant is also seeking to obtain the reimbursement of disbursements totalling $3,365.94, including filing fees, copies of documents hand-delivered twice to Counsel for the Respondent, and the air travel charges from Florida to Canada.

[8] According to the Appellant, the Respondent's conduct was unreasonable and vexatious, resulting in the Appellant expending more than a hundred hours dealing with matters to which the Respondent conceded, both before and during the hearing. Further, the Appellant was substantially successful in the Appeal.

[9] The Respondent is of the view that an award of costs to the Appellant should be limited to costs calculated in accordance with Schedule II, Tariff B of the *Tax Court of Canada Rules (General Procedure)* (the "Rules"), that is costs of $400 representing the filing fee for this Class B matter. According to the Respondent, the Appellant did not provide evidence of any legal costs incurred, nor any lost opportunity costs, and hence, the Appellant is not entitled to additional costs.

II. **THE RULES AND THE LEGAL PRINCIPLES**

[10] Section 147 of the Rules gives the Court broad discretion in awarding costs.

[11] The general rule is that costs should be "*compensatory and contributory*" and "*not punitive*" (*Grenon v. The Queen*, 2021 TCC 89, at para 12; emphasis added). Further, an award of costs is generally not intended to fully compensate the actual costs incurred by a party (*Velcro Canada Inc. v. The Queen*, 2012 TCC 273, [*Velcro*], at para 29).

[12] An exception to that rule is costs established on a solicitor-client basis, which are intended to provide full indemnification of legal costs in exceptional circumstances where a party displays "*reprehensible, scandalous or outrageous conduct*" (emphasis added). This Court has discretion to award costs on a solicitor-client basis (*Ford Motor Company of Canada Limited v. The Queen*, 2015 TCC 185 [*Ford Motor*], at para 7).

[13] The relevant parts of the Rules read as follows:

147 (1) The Court may determine the amount of the costs of all parties involved in any	**147 (1)** La Cour peut fixer les frais et dépens, les répartir et désigner

proceeding, the allocation of those costs and the persons required to pay them.

…

(3) In exercising its discretionary power pursuant to subsection (1) the Court may consider,

(a) the result of the proceeding,

(b) the amounts in issue,

(c) the importance of the issues,

(d) any offer of settlement made in writing,

(e) the volume of work,

(f) the complexity of the issues,

(g) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding,

(h) the denial or the neglect or refusal of any party to admit anything that should have been admitted,

(i) whether any stage in the proceedings was,

(i) improper, vexatious, or unnecessary, or

les personnes qui doivent les supporter.

…

(3) En exerçant sa discrétion conformément au paragraphe (1), la Cour peut tenir compte:

a) du résultat de l'instance;

b) des sommes en cause;

c) de l'importance des questions en litige;

d) de toute offre de règlement présentée par écrit;

e) de la charge de travail;

f) de la complexité des questions en litige;

g) de la conduite d'une partie qui aurait abrégé ou prolongé inutilement la durée de l'instance;

h) de la dénégation d'un fait par une partie ou de sa négligence ou de son refus de l'admettre, lorsque ce fait aurait dû être admis;

i) de la question de savoir si une étape de l'instance,

(i) était inappropriée, vexatoire ou inutile,

(ii) a été accomplie de manière négligente,

(ii) taken through negligence, mistake or excessive caution,	par erreur ou avec trop de circonspection;
(i.1) whether the expense required to have an expert witness give evidence was justified given	**i.1)** de la question de savoir si les dépenses engagées pour la déposition d'un témoin expert étaient justifiées compte tenu de l'un ou l'autre des facteurs suivants:
(i) the nature of the proceeding, its public significance and any need to clarify the law,	**(i)** la nature du litige, son importance pour le public et la nécessité de clarifier le droit,
(ii) the number, complexity or technical nature of the issues in dispute, or	**(ii)** le nombre, la complexité ou la nature des questions en litige,
(iii) the amount in dispute; and	**(i**ii) la somme en litige;
(j) any other matter relevant to the question of costs.	**j)** de toute autre question pouvant influer sur la détermination des dépens.

[14] This Court is not limited to applying the Tariff. Subsection 147(4) of the Rules provides that the Court "*may fix all or part of the costs with or without reference to Schedule II, Tariff B and, further, it may award a lump sum in lieu of or in addition to any taxed costs*" (emphasis added).

[15] The broad discretion of the Court to award costs should not be exercised in an arbitrary manner but must be exercised on a principled basis; further, the quantum of costs must be reasonable and also determined on a principled basis (*The Queen v. Lau*, 2004 FCA 10, at para 5; *The Queen v. Landry*, 2010 FCA 135, at paras 22 and 54; *Guibord v. Canada*, 2011 FCA 346, at para 10; *The King v. Bowker*, 2023 FCA 133, at para 32).

[16] Subsection 147(3) of the Rules provides a list of factors the Court should consider in exercising its discretion to award costs pursuant to subsection 147(1) of

the Rules. However, none of the factors listed in subsection 147(3) of the Rules are determinative and as such, the Court should consider all relevant factors in exercising its discretion (*Velcro*, *supra*, at paras 12-13). As indicated by this Court in *Velcro*, the Tariff is "*a reference point only should the Court wish to rely upon it*" (at para 8; emphasis added).

[17] The case law provides that "*increased costs beyond the Tariff are not tied to exceptional circumstances, such as misconduct, malfeasance or undue delay*" (*Duffy v. The Queen*, 2020 TCC 135 [*Duffy*], at para 21 (emphasis added); *Daishowa-Marubeni International Ltd. v. The Queen*, 2013 TCC 275, at para 4; *Ford Motor*, *supra*, at para 7). Indeed, recent case law held that a greater recognition of the work involved in tax litigation should be a factor to consider in awarding costs (*Duffy*, *supra*, at para 21; *Blackburn Radio Inc. v. the Queen*, 2013 TCC 98, at paras 14-15; *Invesco Canada Ltd. v. The Queen*, 2015 TCC 92, at paras 17 and 25; *Spruce Credit Union v. The Queen*, 2014 TCC 42, at para 52; *Univar Holdco Canada ULC v. The Queen*, 2020 TCC 15, at para 33).

III. **ANALYSIS**

[18] For the following reasons, I find that the Appellant, who was self-represented at the hearing, shall be awarded costs in a lump sum amount of $3,000 (inclusive of all disbursements) in respect of the Appeal. No costs are awarded to either party in respect of their costs submissions.

[19] In reaching my decision, I considered all the factors set out in subsection 147(3) of the Rules, which factors favour enhanced costs, as well as the fact that the Tariff is inadequate in the present case. As the Appellant was not represented by Counsel in this matter, and did not incur legal fees, costs as per the Tariff would be nominal.

[20] The Appellant was largely successful in this matter (para 147(3)(a) of the Rules). However, the Appellant was unsuccessful in arguing that development costs of the Property should include interest paid on a line of credit, which was used both for the Property as well as for other purposes. According to the Respondent, that factor slightly favours enhanced costs. However, because the Appellant was largely successful in this Appeal, I find that this factor still favours enhanced costs.

[21] The amounts in issue would also favour enhanced costs (para 147(3)(b) of the Rules). I do not agree with the Respondent that this factor is neutral.

[22] The importance of the issues (para 147(3)(c) of the Rules) is a neutral factor in this matter, as the issues raised in this Appeal are not novel but fact specific.

[23] With respect to any offer of settlement (para 147(3)(d) of the Rules), I find that this factor favours enhanced costs. I do not agree with the Respondent that this factor does not favour enhanced costs. The Respondent argues that they first attempted to settle the Appeal in October 2023, as shown in a settlement offer dated October 12, 2023, made in accordance with paragraph 147(3)(d) of the Rules, and subsection 147(3.2) of the Rules. The Respondent offered to settle the matter by only waiving the penalties assessed under subsection 163(2) of the Act. The Appellant rejected that offer. Further, during the second day of the hearing, the Respondent offered to settle the matter by including interest expenses in the calculation of the cost of the Property in an amount exceeding the amount I finally found in this matter. However, as this second offer was made at trial after the commencement of the hearing, I do not find that it is relevant in determining costs to be awarded to the Appellant. Accordingly, I only considered the first offer made by the Respondent in this matter to find that this factor favours enhanced costs.

[24] The volume of work (para 147(3)(e) of the Rules) and the complexity of the issues (para 147(3)(f) of the Rules) are neutral factors in this costs award, as submitted by the Respondent. The substantive issues were not complex issues. Moreover, contrary to what was indicated by the Appellant in his submissions, the parties did not attend any pre-trial conference, motion or any pre-trial matter; further, the Appellant did not conduct examination for discovery, while the Respondent conducted a written examination for discovery and the parties did not prepare any agreed statement of facts.

[25] With respect to the factor being whether the conduct of any party tended to shorten or to lengthen unnecessarily the duration of the proceeding, I find that this factor favours enhanced costs, although slightly. However, according to the Respondent, this factor is neutral. The Respondent argues that the afternoon of the second day of the hearing was lengthened due to the Appellant's suggestion that interest paid on a line of credit used for both the Property and other purposes should be included in the calculation of the cost of the Property. The parties filed written submissions on that issue. In this matter, I find that the Respondent should have

made concessions as to penalties and the nature of the loss incurred by Mr. Romanchuk on the disposition of the Property a long time before the hearing, as discoveries were conducted by the Respondent. Further, I do not find that the Appellant's position taken at trial with respect to interest expenses is sufficient to support a conclusion that this factor is neutral.

[26] With respect to the factor being the denial or the neglect or refusal of any party to admit anything that should have been admitted (para 147(3)(h) of the Rules), I find that this factor is neutral, as submitted by the Respondent.

[27] The Respondent submits that the factor of whether any stage in the proceeding was (i) improper, vexatious, or unnecessary or (ii) taken through negligence, mistake or excessive caution, is neutral in this matter. On the other hand, the Appellant argues that the Respondent's conduct was unreasonable and vexatious. I do not agree with the Appellant that the Respondent's conduct was unreasonable or vexatious, or that the Respondent's conduct in this matter was reprehensible, scandalous or outrageous. The Federal Court stated in *Microsoft Corporation v. 9038-3746 Québec Inc.*, 2007 FC 659:

> [16] "Reprehensible" behaviour is that deserving of censure or rebuke; blameworthy. "Scandalous" comes from scandal which may describe a person, thing, event or circumstance causing general public outrage or indignation. Among other things, "outrageous" behaviour is deeply shocking, unacceptable, immoral and offensive (see: *Oxford Canadian Dictionary*).

[28] In the course of the hearing as well as before and after the hearing, I find that the Respondent's conduct was always proper and professional. I agree with the Respondent that this factor is neutral.

[29] Finally, the Respondent argues that Mr. Romanchuk, who was self-represented throughout the proceedings, should not be compensated for his time spent dealing with his Appeal.

[30] The Respondent referred to the decision of this Court in *M.N.R. v. McMahon*, 2020 TCC 104 [*McMahon*] (at para 61) where the Court stated that "[t]he awarding of costs to self-represented litigants in respect of their own time is neither automatic nor routine but rather something that is left to the discretion of the judge." In *McMahon*, the Court decided not to award costs to the self-represented litigant

because it determined that the litigant did not provide any particular assistance to the Court, nor any particular expertise; further, the litigant did not adduce evidence showing she lost out on remunerative activity (at para 65).

[31] In *McMahon*, the Court referred to two decisions of the Federal Court of Appeal in *Sherman v. Canada (Minister of National Revenue)*, 2003 FCA 202 [*Sherman* 2003] and *Sherman v. Canada (Minister of National Revenue)*, 2004 FCA 29, as leading cases for the awarding of costs to a self-represented litigant, who was a lawyer in these cases. The Federal Court of Appeal held that any such costs awarded to a self-represented litigant should generally be less than the costs that would have been awarded to counsel and should never exceed the Tariff. The Federal Court of Appeal allowed a moderate allowance in such a case, on proof that the self-represented litigant, in so preparing and presenting the case, incurred an opportunity cost by foregoing remunerative activities (*Sherman* 2003, at para 52).

[32] In the case at bar, the Respondent takes the view that I should come to the same conclusion as in *McMahon*, and allow costs of $400, representing the filing fee for this matter.

[33] As reiterated recently by the Court of Appeal of Ontario in *Girao v. Cunningham*, 2021 ONCA 18, fee allowances should only be awarded to lay litigants who can demonstrate that (i) they devoted time and effort on work ordinarily done by a lawyer retained to conduct the litigation and (ii) as a result, the lay-litigants incurred an opportunity cost by foregoing remunerative activity (para 9). The Court also noted that the principle is that self-represented litigants should not be awarded costs for time they would ordinarily be attending Court hearing (at para 10).

[34] I acknowledge that the Appellant devoted time and effort on work which would have ordinarily been done by a lawyer for the conduct of the litigation in this Appeal, if he had retained one. However, the Appellant provided little evidence of lost opportunity costs, even though the Appellant testified that he was still working on a regular basis. Hence, any award of costs in respect of work which would have been done by a lawyer, if Mr. Romanchuk had retained one, should only be of a nominal amount, but I should also take into account the fact that Mr. Romanchuk had incurred some opportunity costs by foregoing remunerative activities.

[35] Further, the Appellant is seeking to obtain costs of $2,000 per day for the hearing, which amount is not appropriate and not in accordance with the above-cited principle that a self-represented litigant should not be compensated for attending a Court hearing.

[36] Finally, in respect of disbursements claimed by the Appellant, I find that disbursements for air travelling charges are not appropriate. Further, I was not provided with evidence of any of the disbursements the Appellant claimed he had incurred. However, I acknowledge, and I will take into account in awarding costs that, in addition to the filing fees for the Appeal, the Appellant must still have incurred expenses for photocopying and sending relevant documents to the Respondent, which had to be done twice because of a change of Respondent's Counsel.

IV. **CONCLUSION**

[37] For all these reasons, I find that the Appellant should be awarded costs in a lump sum amount of $3,000 (inclusive of all disbursements) in respect of the Appeal.

Signed this 27th day of August 2025.

"Dominique Lafleur"

Lafleur J.

CITATION:	2025 TCC 119
COURT FILE NO.:	2019-3319(IT)G
STYLE OF CAUSE:	JOHN DAVID ROMANCHUK v. HIS MAJESTY THE KING
DATE OF WRITTEN SUBMISSIONS:	July 9, 2025
REASONS FOR ORDER BY:	The Honourable Justice Dominique Lafleur
DATE OF ORDER:	August 27, 2025

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Jonathan Cooper

COUNSEL OF RECORD:

For the Appellant:

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Firm:	N/A
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