

**SUPREME COURT OF CANADA**

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| **Citation :** Kuwait Airways Corp. *v.* Iraq,  2011 SCC 41, [2011] 3 S.C.R. 42 | **Date** : 20110728  **Docket** : 33145 |

Between:

Kuwait Airways Corporation

Appellant/Respondent on motion

and

Republic of Iraq

Respondent/Respondent on motion

and

**Bombardier Aerospace**

Respondent/Applicant on motion

**Official English Translation**

**Coram** : LeBel J.

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| **Reasons for Judgment** :  (motion for revision of costs order and for extension of time to serve and file)  (paras. 1 to 5) | LeBel J. |

Kuwait Airways Corp. *v*. Iraq, 2011 SCC 41, [2011] 3 S.C.R. 42

Kuwait Airways Corporation *Appellant/Respondent on motion*

v.

Republic of Iraq  *Respondent/Respondent on motion*

and

Bombardier Aerospace *Respondent/Applicant on motion*

**Indexed as:  Kuwait Airways Corp. *v*. Iraq**

2011 SCC 41

File No.:  33145.

2011:  July 28.

Present:  LeBel J.

motion for revision of costs order and for extension of time to serve and file

*Courts — Supreme Court of Canada — Costs — Appeal allowed with costs throughout — Whether costs award applied to respondent, mis en cause in lower court, which did not participate in proceedings before Court — Rules of the Supreme Court of Canada, SOR/2002-156, r. 47.*

**Cases Cited**

**Referred to:** *Kuwait Airways Corp. v. Iraq*, 2010 SCC 40, [2010] 2 S.C.R. 571.

**Statutes and Regulations Cited**

*Rules of the Supreme Court of Canada*, SOR/2002-156, r. 47.

MOTION for revision of costs order and for extension of time to serve and file. Motion granted in part.

Written submissions by Laurent G. Fortier, for Kuwait Airways Corporation.

Written submissions by Michel G. Sylvestre and *Mercedes Glockseisen*, for Bombardier Aerospace.

No submissions made by the Republic of Iraq.

English version of the order delivered by

1. LeBel J. — The respondent, *mis en cause*, Bombardier Aerospace has made a motion under r. 47 of the *Rules of the Supreme Court of Canada*, SOR/2002-156, to resolve an issue relating to the taxation of costs in the appeal. It also asks for an extension of time to serve and make this motion. The appellant, Kuwait Airways Corporation, which succeeded in this appeal (see *Kuwait Airways Corp. v. Iraq*, 2010 SCC 40, [2010] 2 S.C.R. 571), takes no position on this motion and defers to this Court’s decision.
2. In its judgment, this Court allowed the appeal of Kuwait Airways Corporation with costs throughout. The appellant’s bill of costs was filed for taxation against the Republic of Iraq and Bombardier Aerospace, both of which were respondents in this Court. Prior to the Court’s judgment, Bombardier Aerospace had made no representations with respect either to its status in this Court or to the conclusions that might be granted in a judgment of the Court, which would have been an appropriate precaution to take.
3. Nevertheless, although Bombardier Aerospace was designated a respondent under this Court’s rules of procedure, it did not participate in the proceedings before the Court. In these circumstances, to infer that the Court intended to also award costs against Bombardier Aerospace would be to unduly expand the scope of its conclusion. The Court awarded costs to the appellant without specifying that the award was against all the respondents. Its judgment necessarily concerned the Republic of Iraq alone, and not Bombardier Aerospace, which did not participate in the proceedings before it, and the Court had no reason to award costs against Bombardier Aerospace in the circumstances.
4. Bombardier Aerospace could of course have exercised greater diligence regarding this issue of costs. However, discussions about it have been under way for several months in various forms and with various people at the Court. What is more, the appellant has not raised the lateness of this proceeding. It would accordingly be inappropriate to deny the extension of time sought by Bombardier Aerospace.
5. For these reasons, the motion of the respondent, *mis en cause*, Bombardier Aerospace is granted in part in order to extend the time to serve and file the motion and to declare that the award of costs does not apply to the respondent, *mis en cause*, Bombardier Aerospace and that the bill of costs may not be taxed against it. Costs will not be awarded on this motion.

*Order accordingly.*

Solicitors for Kuwait Airways Corporation:  Stikeman Elliott, Montreal.

Solicitors for Bombardier Aerospace:  Norton Rose OR, Montreal.