

FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE		DÉPOSÉ
SEP 25 2023		
ADAM YOUNG		1
HALIFAX, NS		

10#1

FORM 337.1 Rule 337.1
Notice of Appeal

(Court File No.)

A-244-23

FEDERAL COURT OF APPEAL

BETWEEN:

DENISE C. NAGEL,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

(Court seal)

Notice of Appeal

(under subsection 27(1.2) of the Federal Courts Act)

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Federal Court of Appeal at a time and place to be fixed by the Judicial Administrator. Unless the court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at (*place where Federal Court of Appeal ordinarily sits*): *Halifax.*

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the Federal Courts Rules and serve it on the appellant's solicitor or, if the appellant is self-represented, on the appellant, WITHIN 10 DAYS after served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the judgment appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-996-6795) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Date)

ORIGINAL SIGNED BY
ADAM YOUNG
ORIGINAL SIGNÉ PAR
Issued by: (Registry Officer)

Address of local office:

TO: ATTORNEY GENERAL OF CANADA

Atlantic Region
National Litigation Sector
5251 Duke Street Suite 1400
Halifax, NS B3J 1P3

Fax number: (902) 426-8802

Per: Terence Katerynych
Tel: (902) 497-6723
Email: Terence.Katerynych@justice.gc.ca

Counsel for Respondent

Federal Court of Appeal
1720-1801 Hollis Street
Halifax, NS B3J 3N4

To Registrar
Tax Court of Canada
Halifax Nova Scotia

Tax Court of Canada
1720-1801 Hollis Street
Halifax, NS B3J 3N4

Appeal

THE APPELLANT APPEALS to the Federal Court of Appeal from the judgment of the Tax Court of Canada dated 23 June 2023 by which Deputy Judge Renaud:

informed the Appellant that the Court would not strike the Respondent's Amended Replies;

in accordance with oral Reasons from the Bench, *on motion*, quashed the appeals from the determinations made under the Income Tax Act in respect of the 2016, 2017, and 2018 taxation years.

THE APPELLANT ASKS that this Honourable Court

- to declare the appellant a resident of Saskatchewan;
- to reverse the refusal to strike the Respondent's amended replies filed 15 May 2023 by striking them;
- to declare the appellant's name as set out as a party;
- to dismiss the Respondent's motion to quash the Appellant's Notices of Appeal in 2020-367 (IT) 1 and 2020-1517 (IT) 1 and to restore the appeals fully;
- to consider the late filing of the Respondent's Reply contrary to 5-6 of the Tax Court of Canada Rules (Informal Procedure) objected to on 26 October 2020 but not disclosed by the Respondent.
- to recognize, given the appeals from assessments are not stated as quashed, the continued legal effect and status of the Notice of Appeal yet to be heard/decided;
- to deem the Notice of Objection served 9 October 2019, allow the one dated 12 November 2019 within time, and hear appeals together.

THE GROUNDS OF APPEAL are as follows:

(1) The hearing judge erred in law apparent on the face of the transcript of oral reasons for 2020-367 (IT)1, heard on common evidence with 2020-1517 (IT)1, without evidence, or, on conflicting evidence without resolving that conflict that the Respondent on Reply and further to section 244 (8) and (9) of the Income Tax Act contacted the Appellant's Notice of Objection:

(a) by late reply, amended or not, and by affirmation that the Notice of Objection was served and/or filed on 9 October 2019 pursuant to s. 165 (1) within time;

(b) as documented with date stamp 11 October 2019 but then failing to state its case from the date of sending known only to the Respondent who then pled over it by amending;

(2) And further, the hearing judge erred, despite that in both the Appellant's Notices of Appeal, the Notice of Objection to determinations of the Goods and Services Tax/ Harmonized Sales Tax Credit ("GST/HSTC) dated 2 August 2019 for the period July 2017 to June 2020 was faxed on 12 November 2019 but was not disclosed by the Respondent such that:

(a) the Notice of Objection in 2020-367 (IT)1, served 9 October 2019 applied also to 2020-1517 (IT)1 under s. 165(4) of the Income Tax Act including for extension pursuant to s. 166.1 (3) but not considered in 90 days;

(2) (b) contrary to the Repres, the Appeals Officer, Cathy Jackman limited to period from July 2017 to October 2019 in the Notice of Confirmation dated 28 February 2020 and failed to consider the Notice of Objection and request to extend on 12 November 2019 within the 90-day period;

(c) without adopting or reviewing the re-determination of GST/HSTC dated 9 April 2020 announced by the Minister on or about 27 March 2020, the taxing statute was less explicit and with reasonable uncertainty in objecting and jurisdiction further to s. 165(7) was not considered;

(d) found that the form of the objection dated 9 October 2019, supra, was not a focussed submission;

with the result that the Respondent showed that the exact same issues as those in the law set out by the Federal Court of Appeal, A-90-18, 2022 FCA 51 dated 28 March 2022 and Justice Lefleur cannot succeed on appeal and deprives the Court of jurisdiction pursuant to s. 12 of the Tax Court of Canada Act,

(3) The hearing judge erred in law without consideration of the evidence and relevant circumstances that the Appellant's "returns of income" and pleadings showed that the taxpayer filed to obtain refunds and credits for GST/HSTC as no taxable income, no taxable capital gain, no disposition of capital property, nor a demand to file by the Minister were at issue, such that:

(3) (a) a finding that no documentation within the knowledge of the Appellant was led to contest the TI's claimed in the Respondent's Replies for name and a "Nova Scotia" residency, to support a "Saskatchewan" one;

(b) the returns of income affirmed, claimed as TI's, changed name supra, that were assessed as filed (#9) automatically in Nova Scotia, whereas residency in Saskatchewan was reported is also contrary to the GST/HSTC re-determination, supra, dated 9 April 2020;

(c) the Appellant cannot prove a negative that the CRA is not the agent for Nova Scotia, except for the finding the Finance Minister of Ontario for determinations dated 2 August 2019, no form NS428 was filed as the taxpayer remains internally displaced in Canada; and

further to section 220 of the Income Tax Act,
(d) the taxpayer does not know what records or assumptions, what authority or officials, what delegation or sub-delegation, whether the first "nil" assessment dated 26 February 2016 continues to subsist, or what exemptions to forms in the guidelines extend to a woman who flees for safety without protection in her province, thereby questions the Minister's assumptions;

With the result that the Minister did not put forward in its reply sufficiently to permit the taxpayer to discharge the onus is susceptible to interpretation that the Minister made no assumption of facts to change name, the taxpayer's name and residency in Saskatchewan; to another province.

bcx

(4) The hearing judge erred in law apparent on the face of the transcript of oral reasons for 2020-367(1T)1, heard on common evidence with 2020-1517(1T)1, where insufficient or no weight was given to relevant considerations of poverty level social (income) assistance needed for financial survival threatened withheld unless filing with the Canada Revenue Agency; where all facts were not before the judge; or where they were misapprehended, in that, with respect to the Income Tax Act:

(a) the judge adopted the Respondent's documents affirmed, particularly the Appellant's claim to her s.7 protection for freedom guaranteed in the Canadian Charter of Rights and Freedoms (p. 20, 26);

(b) further to the Federal Provincial Fiscal Arrangements Act in Part V, supra, and jurisdiction claimed by the Respondent to change the Appellant's province of residence, the Nova Scotia Employment Support and Income Assistance Act in Regulation s.14, consistent with Part V, required only presence in the province;

(c) further to showing entitlement to a GST credit: 2022 FCA 51 (A-90-18), supra paras 15, 20, is relevant to entitlement to provincial assistance, the Appellant was compelled as affirmed, inter alia letter dated 14 May 2019, on threat of withholding assistance that the Respondents omitted - although claiming the return of income and appendices as T1's in its Replies, amended or not;

(4) (d) and, as known to the law, the s.7 liberty interest in the Canadian Charter, supra, choosing where to establish one's home falls within that narrow class of decisions ... forming part of the irreducible sphere of personal autonomy, deserving of constitutional protection;

(e) as further to Appellant's internal displacement in Canada and seeking protection from being forced into exile contrary to the Canadian Bill of Rights section 2(a) is strengthened by Article 12(1) of the International Covenant on Civil and Political Rights T.S. 1976 No 47 for the right of liberty of movement and freedom to choose his residence;

(f) as noted in the reasons, the Canada Revenue Agency has a dual or twin perspective of income tax and benefit calculated together (p. 13) that is equivocal, less explicit and with reasonable uncertainty pursuant to subsection 152(4) and para. 152(1)(b) determining the amount of tax deemed to be paid in a year for refund whereas the Respondent, inter alia, maintains an appeal cannot be filed if no tax is payable.

So that, as applied by persons on behalf of the Minister of amounts, both reported and deemed paid as tax, for sub-poverty income with a benefit of GST credit, the residence requirement imposed by the Respondent infringes the Appellant's right to liberty under s.7 of the Canadian Charter, supra, and is not in accordance with the principles of fundamental justice thus justifying a remedy under section 24.

(5) The hearing judge erred in law in making decision and judgment [in 2020-1517 (IT) 1] on common evidence [with 2020-367 (IT) 1] where insufficient or no weight to relevant considerations, where all facts were not before the judge, or where they were misapprehended in that the Appellant

(a) applied for the GST/HSTC on federal forms, supra, dated 7 June 2019 but the Respondent assessed under authority of the Commissioner of Revenue 11 July 2019 - automatically as agents federally and provincially;

(b) although able to cash the COVID-19 emergency increase of GST/HSTC by \$290.00 (two hundred ninety dollars) announced on or about 27 March 2020 for the tax year 2018, the taxpayer is unable to cash the remaining \$296.16 as it is combined with amounts issued on behalf of the Minister of Finance for Ontario;

(c) further, and alternatively, the taxpayer does not know what records or assumptions, what authority or officials changed the "nil" assessment dated 26 February 2016 from Saskatchewan to another province, or what exemptions to forms in the guidelines extend to a woman who flees for safety and does not file form NS428, thereby questioning the Minister's reply as insufficient to permit the taxpayer to discharge the onus upon the taxpayer;

maintained status as an internally displaced person in Canada who seeks protection from being forced into exile.

(6) The hearing judge erred, refusing to exercise jurisdiction on the merits or find that the Respondent failed in its duty to fully disclose precise findings of fact and rulings of law on common evidence, supra, for the Appellant's:

(a) "returns of income" filed 7 June 2019 for tax years 2016, 2017 and 2018 on federal forms for the request only for GST/HSTC, supra, further to sections 152(1)(b), 152(1.2) of the Income Tax Act statutorily required; or alternatively, reasonably regarded as Saskatchewan;

(b) previous year's appeal affirmed by the Respondent, it failed to disclose in the 64 pages, referred at 18 and 63^{of the} Form NS428 and that it must not, was not filed, to authorize those taxes on a non-resident further to its guidelines;

(c) recourse from being compelled to file for GST/HSTC was omitted by the Respondent in attached correspondence, inter alia, 14 May 2019 or income assistance would be withheld, nor could residency be considered by federal, or, provincial courts noted in A-90-18, 2022 FCA 51 (28 Mar 2022), paras 15 and 20, nor did the taxpayer have recourse on application for leave to appeal: SCC No 40259 dated 2nd February 2023, or, judicial review in Federal Court, docket 22-T-23 dated 18 May 2022; and

(d) legislated eligibility under the Employment Support and Income Assistance Regulations, NS Reg 25/2001, section 14(3) to be present in the province at the time of application is consistent with Part V - Canada Health and Social Transfer, the national standard against requiring or allowing residence in a province as a condition of eligibility for social assistance, in the Federal-Provincial Fiscal Arrangements Act

(7) The hearing judge failed to observe a principle of natural justice, procedural fairness or other procedure as was required by law to observe by permitting the Respondent to amend its replies and advising the Appellant accordingly such that:

(a) the Appellant filed her position on 26 October 2020 with the Registry, that then sent it to the Respondent's agent, was not disclosed to the Court;

(b) the 6 January 2021 letter addressed to Counsel requested adjournment of the Tax Court of Canada hearing scheduled to permit the Federal Court of Appeal in A-90-18 to decide, as it did on 28th March 2022, and to inform the current appeals;

(c) the amended replies filed 15 May 2023, particularly 2020-367 (IT)1 was filed past the time limit and pled over the delay, were refused being struck, and therefore amplified the preliminary objections that issuing the Appellant's Notices of Appeal raised the doctrines of issue estoppel and abuse of process, as filed 27 January 2020 and 28 May 2020 and applied the doctrines retroactively;

(d) the hearing judge accepted the amendment was for cases not the document from the FCA No A-90-18, supra; recognized the disadvantage to the Appellant by Department of Justice delaying appointment of counsel; finds no fault with the amended preliminary objections, - factually or legally; the form of the Notice of Objection was not a focused submission; accepted very strict interpretation that no tax payable does not include GST / HSTC or tax credits refunded.


The appellant requests that the Tax Court of Canada ("TCC") send a certified copy of the following material that is not in the possession of the appellant but is in possession of that court to the appellant and to the Registry:


- (1) The record of service by the TCC of the Notices of Appeal in 2020-367(IT)1 and 2020-1517(IT)1 upon the Respondent.
- (2) The Reply in 2020-367(IT)1 and 2020-1517(IT)1 as filed with the TCC.
- (3) The correspondence of the Appellant dated 26 October 2020, 7 December 2020 and 6 January 2021 as filed or/and served upon the Respondent by the TCC.
- (4) The response of the Respondent to request for adjournment 6 January 2021, as filed, and the carriage letter dated 25 November, as filed. (include transmittal/service).
- (5) Any other filing with the TCC that the Appellant may not have the record of filing by the TCC.

Date: 25 September 2023

day of SEP 25 2023 A.D. 20

Dated this SEP 25 2023 day of _____ 20

Signature: 
Print name: Denise C Nagel
Address: 54-3045 Olivet Street
Halifax NS B3L 4A3
Tel: none Fax: none
Email: none


Adam Young
Registry Officer
Agent du greffe

A copy of the judgment is attached

Tax Court of Canada



Cour canadienne de l'impôt

Dockets: 2020-367(IT)I
2020-1517(IT)I

BETWEEN:

DENISE C. NAGEL,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Motions and Appeals heard and decision rendered orally from the
Bench on May 29, 2023, at Halifax, Nova Scotia

Before: The Honourable Justice Gilles Renaud, Deputy Judge

Appearances:

For the Appellant:

The Appellant herself

Counsel for the Respondent:

Terence Katerynych

Kristin Clarke (Articled Clerk)

JUDGMENT

WHEREAS at the commencement of the hearing the Appellant made a request for the Court to strike the Respondent's Amended Replies;

AND UPON hearing from the counsel for the Respondent in this regard;

AND WHEREAS the Court informed the Appellant that the Court would not strike the Respondent's Amended Replies;

AND WHEREAS counsel for the Respondent brought a motion to quash the appeals with respect to the Appellant's 2016, 2017 and 2018 taxation years;

AND UPON hearing from the Appellant in this regard;

IN ACCORDANCE with the reasons for judgment delivered orally from the Bench at the conclusion of the hearing, the appeals from the determinations made under the *Income Tax Act* in respect of the 2016, 2017 and 2018 taxation years are quashed.

Signed at Cornwall, Ontario, this 23rd day of June 2023.

“Gilles Renaud”

Renaud D.J.
Deputy Judge Renaud

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the 23rd

day of June A.D. 20 23

Dated this 21st day of August 20 23

Erin McCagg

**ERIN MCCAGG
REGISTRY OFFICER
AGENT DU GREFFE**