

Federal Court of Appeal



Cour d'appel fédérale

Date: 20241113

Docket: A-244-23

Citation: 2024 FCA 189

**CORAM: BOIVIN J.A.
LOCKE J.A.
LEBLANC J.A.**

BETWEEN:

DENISE C. NAGEL

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Halifax, Nova Scotia, on November 13, 2024.
Judgment delivered from the Bench at Halifax, Nova Scotia, on November 13, 2024.

REASONS FOR JUDGMENT OF THE COURT BY:

LOCKE J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Halifax, Nova Scotia, on November 13, 2024).

LOCKE J.A.

[1] Denise Nagel appeals a decision of the Tax Court of Canada (dated May 29, 2023, *per* Deputy Justice Gilles Renaud) that (i) dismissed her motion to strike the amended replies of the respondent, His Majesty the King, in her appeals before that court, and (ii) quashed those appeals.

[2] The appeals before the Tax Court concerned nil assessments and notices of determination issued by the Canada Revenue Agency (CRA) concerning Ms. Nagel's 2016, 2017 and 2018 tax years, and a re-determination concerning her 2018 tax year. Ms. Nagel also takes issue with the CRA's refusal to issue re-determinations in respect of previous tax years.

[3] With regard to the respondent's amended replies, the Tax Court had discretion as to whether or not it would accept the amendments. In order for this Court to intervene on this aspect of the Tax Court's decision, Ms. Nagel must convince us either that the exercise of discretion was procedurally unfair, or that the Tax Court made a reviewable error as contemplated in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 8, 10, 36 (*Housen*): an error on a question of law, or a palpable and overriding error on a question of fact or of mixed fact and law, from which no question of law is extricable. This is a high threshold.

[4] At the hearing, Ms. Nagel insisted that the second nil assessment concerning her 2013 tax year was invalid, and should not have been allowed to be included in the amended replies. However, the Tax Court made no finding concerning the validity of the second nil assessment. Therefore, Ms. Nagel has given us no reason to intervene in that regard. Further, we are not convinced that the Tax Court erred in its exercise of discretion to accept the amended replies.

[5] Ms. Nagel also cites the lateness of the original replies in her underlying Tax Court appeals. However, in view of the six-month suspension of deadlines provided for in subsection 6(1) of the *Time Limits and Other Periods Act (COVID-19)*, S.C. 2020, c. 11, s. 11, we are not convinced that the original replies were filed late.

[6] The standards of review set out in *Housen* also apply to Ms. Nagel's argument that the Tax Court erred in quashing her appeals before that court. In that regard, we note that the Tax Court lacks jurisdiction to entertain an appeal of a nil assessment: see *Nagel v. Canada*, 2022 FCA 51, 2022 D.T.C. 5039 at para. 11 (*Nagel 2022*).

[7] Turning to the notices of determination in issue, they concern Ms. Nagel's eligibility with respect to the Nova Scotia Affordable Living Tax Credit (NSALTC) and the Goods and Services/Harmonized Sales Tax Credit (GSTC) in view of her province of residence. Though Ms. Nagel lives in Nova Scotia, she claims residency in Saskatchewan. As indicated in *Nagel 2022* at paras. 17 and following, the Tax Court has no jurisdiction to determine issues concerning provincial income tax matters, like the NSALTC. Moreover, we are not convinced that the Tax Court erred in concluding that a change to Ms. Nagel's province of residency would have no impact on either her entitlement to GSTC or her income tax liability in the relevant years, and therefore the Tax Court lacked jurisdiction in that regard.

[8] With regard to the CRA's refusal to issue re-determinations of previous tax years, Ms. Nagel's requests for such re-determinations were made pursuant to subsection 152(4.2) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). The CRA's decisions on such requests are not subject to appeal before the Tax Court: *Groulx v. Canada*, 2009 FCA 10, 2009 D.T.C. 5052.

[9] With regard to the issues raised in Ms. Nagel's notice of constitutional question, we are of the view that they are not relevant and need not be considered for the purposes of this appeal.

[10] Finally, we are not convinced that Ms. Nagel was denied procedural fairness before the Tax Court.

[11] For the foregoing reasons, we conclude that this appeal will be dismissed with costs in the all-inclusive amount of \$200.

"George R. Locke"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-244-23

STYLE OF CAUSE: DENISE C. NAGEL v. HIS
MAJESTY THE KING

PLACE OF HEARING: HALIFAX, NOVA SCOTIA

DATE OF HEARING: NOVEMBER 13, 2024

**REASONS FOR JUDGMENT OF THE COURT
BY:** BOIVIN J.A.
LOCKE J.A.
LEBLANC J.A.

DELIVERED FROM THE BENCH BY: LOCKE J.A.

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