
CANADA / JUDGMENT

Russell v. The King

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Docket: 2019-3583(IT)G

BETWEEN:

BRETT RUSSELL,

Appellant,

and

HIS MAJESTY THE KING,

Respondent .

Motion to Strike heard on June 25, 2026 at Toronto, Ontario

Before: The Honourable Justice Bruce Russell

Appearances :

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Mike Chen

ORDER

The Respondent's motion, pursuant to section 53 of the Tax Court of Canada Rules (General Procedure) , seeking an order striking out, without leave to amend, specified paragraphs and subparagraphs of the Amended Notice of Appeal, on the basis that they disclose no reasonable grounds for appeal.

In accordance with the accompanying Reasons for Order, the Respondent's motion is granted in full.

Accordingly, it is hereby ordered pursuant to section 53 of the Tax Court of Canada Rules (General Procedure) that paragraphs 14, 15, 16 and 26 and subparagraphs 2(b), 2(c), 2(d), 31(b) and 31(c) of the Amended Notice of Appeal are each struck out, without leave to appeal, on the basis that they disclose no reasonable grounds for appeal. The resultant pleading will be identified as the Further Amended Notice of Appeal.

The Appellant is ordered to file and serve such Further Amended Notice of Appeal (so titled and striking out the herein struck provisions, and with no new provisions) within 15 days of the date of this Order, if he intends to proceed with this appeal.

If the Appellant does not intend to proceed with this appeal, then he is requested to, within 15 days of the date of this Order, so inform in writing both the Court Registry and Respondent's counsel.

No costs will be awarded to the Respondent for success in this motion, unless the Appellant fails to comply with either of the foregoing two provisions of this Order and the Respondent so requests.

Signed this 11 th day of September 2026.

"B. Russell"

Russell J.

Citation: 2026 TCC 169

Date: 20260911

Docket: 2019-3583(IT)G

BETWEEN:

BRETT RUSSELL,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Russell J.

[1] The Respondent has brought a motion pursuant to section 53 of the Tax Court of Canada Rules (General Procedure) (Rule(s)) seeking an Order striking out certain paragraphs and subparagraphs of the Amended Notice of Appeal without leave to amend on the ground that those paragraphs and subparagraphs disclose no reasonable grounds for appeal.

[2] By way of background this motion follows a motion brought by the Respondent for an order striking the Appellant's Notice of Appeal with leave to amend, heard October 31, 2024. By Order of the Court dated November 1, 2024 the motion was granted and the Appellant was permitted leave to file an amended Notice of Appeal, which he did. That is the Amended Notice of Appeal now here at issue.

[3] The Amended Notice of Appeal paragraphs and subparagraphs the Respondent seeks to strike out are paragraphs 14, 15, 16 and 26 and subparagraphs 2(b), 2(c), 2(d), 31(b) and 31(c).

[4] The Respondent's Notice of Motion states that the grounds for the motion are:

The impugned paragraphs of the Amended Notice of Appeal should be struck on the basis that they, even if assumed to be true, disclosed no reasonable grounds for appeal and include subject matters that are not within the jurisdiction of this Court;

This Court's role in a tax appeal is to consider the validity and correctness of the assessment and not the process by which it is established;

It is well-established that wrongful conduct by tax officials is not relevant to the determination by this Court of the validity or correctness of an assessment;

Furthermore, this Court's authority to dispose of an appeal commenced under the federal Income Tax Act (Act) is expressly set out in subsection 171(1) of the Act, which does not include the issuance of declarations on the Minister's alleged conduct or recommendations over collections matters;

In any event, subsection 222(2) of the Act expressly grants the jurisdiction over collections matters to the Federal Court of Canada. The Tax Court of Canada is not a court of competent jurisdiction contemplated by subsection 222(2) of the Act;

With respect to the Appellant's allegations that the actions of the Canada Revenue Agency (CRA) violated his rights afforded under section 7 of the Canadian Charter of Rights and Freedoms (Charter), it is plain and obvious that an order vacating or varying an assessment of tax cannot be justified by section 7 of the Charter because an assessment under the Act is not an accusation and the Appellant is not being charged with an offence;

With respect to the Appellant's allegations that the actions of CRA violated his rights afforded under section 15 of the Charter, this Court does not have the jurisdiction to grant a subsection 24(1) remedy on the grounds of a breach of section 15 of the Charter by the Minister in his/her administrative capacity as tax collector since this Court does not have jurisdiction over that subject matter;

In any event the Appellant has not pleaded material facts alleging a breach of his rights under sections 7 and 15 of the Charter.

[5] I turn to paragraphs 14, 15, 16 and 26 of the Amended Notice of Appeal, pleaded by the Appellant, that the Respondent seeks be struck. Paragraph 14 states:

14. The CRA failed to exercise its discretionary powers in a fair and reasonable manner, and its enforcement actions have undermined the Appellant's access to justice.

[6] In response to this paragraph the Respondent cites 881751 Ontario Limited v. HMQ , 2021 TCC 9, of which paras. 19 - 21 state (underlining added):

19. The Court's jurisdiction is limited to the validity of the assessment . In other words, the Court can only examine whether the Minister of National Revenue correctly assessed the amount of taxes owed by a taxpayer. The conduct of the officials of the CRA is irrelevant in determining the amount of taxes owed by a taxpayer.
20. This point is clearly made by the Federal Court of Appeal in Main Rehabilitation Co. v. R ., 2004 FCA 403 . Sharlow J. there stated that the Tax Court role on a tax appeal is to consider the validity of the assessment and not the process by which it is established. At paragraph 8 of her reasons for judgment Justice Sharlow explained why this Court does not have jurisdiction with respect to the actions taken by CRA officials:
- [8] This is because what is an issue in an appeal pursuant to section 169 [of the federal Income Tax Act] is the validity of the assessment and not the process by which it is established (see for instance R. v. Consumers' Gas Company Ltd. , 87 D.T.C. 5008 (FCA) at p. 5012 .) Put another way, the question is not whether the CRA officials exercised their powers properly, but whether the amounts assessed can be shown to be properly owing under the Act (Ludco Enterprises Ltd. v. R . [1996] 3 C.T.C. 74 (FCA) at p. 84).
21. The principle enunciated in Main Rehabilitation was reaffirmed by the Federal Court of Appeal in Ereiser v. The Queen , 2013 FCA 20. The Court of Appeal again clearly stated that wrongful conduct by a tax official is not relevant to the determination by the Tax Court of the validity or correctness of an assessment and that allegations of wrongful conduct of CRA officials have no place in the pleadings and should be struck.

[7] The Appellant cited no authority and made no oral submissions opposing that this Court has no jurisdiction as to conduct of the CRA.

[8] I conclude that paragraph 14 of the Amended Notice of Appeal should be struck.

[9] The Respondent also seeks that paragraph 15 of the Amended Notice of Appeal be struck. Paragraph 15 states:

15. The Appellant's good faith efforts to rectify the situation by reviving the Corporation were not taken into account. Instead, the CRA proceeded with extreme enforcement tactics, including contacting the Appellant's spouse, seizing numerous bank accounts and balances, and freezing personal assets, causing undue hardship and impairing the Appellant's ability to defend [sic] the assessment.

[10] Again, this paragraph focuses on CRA conduct, which as already noted is not within the jurisdiction of this Court. The jurisdiction of this Court is confined to addressing whether the basis for the appealed assessment is valid and if so whether the actual amount assessed is right or wrong. The Appellant had no specific submissions otherwise.

[11] I find that paragraph 15 should be struck as well.

[12] Paragraph 16 of the Amended Notice of Appeal also is sought by the Respondent to be struck. It reads:

16. The CRA's conduct constitutes a breach of procedural fairness and may amount to an abuse of process.

[13] This paragraph too addresses conduct rather than validity and/or correctness of the assessment appealed.

[14] I therefore conclude that this paragraph is to be struck as well.

[15] The remaining full paragraph sought to be struck is paragraph 26 of the Amended Notice of Appeal. It reads:

26. The CRA's actions infringed the Appellant's rights under the Canadian Charter of Rights and Freedoms , including: (a) section 7 (right to life, liberty and security of the person); (b) section 15 (equality rights), insofar as the Appellant was treated unequally relative to similarly situated taxpayers.

[16] As stated by Respondent's counsel, this Court's jurisdiction is correctness; not behaviour; as indicated, above. Additionally, the Appellant cited no authority indicating otherwise, including as to the Canadian Charter of Rights and Freedoms (Charter) and human rights protected thereby. As Respondent's counsel noted, the issue here is not that the legislation reflects inequality; rather, it is as to the Appellant's claims as to how he was treated. Jurisdiction for that is found with the Federal Court; not the Tax Court.

[17] Further, in 881751 Ontario at para. 27, D'Auray J. of this Court wrote as follows regarding applicability of section 7 of the Charter in a tax context:

[27] In *Gratl v. HMQ* , 2010 TCC 491, Bowie J. of this Court held that section 7 of the Charter did not apply to a tax audit and struck a paragraph and a consequential reference to section 7 in Ms. Gralt's notice of appeal. Justice Bowie wrote:

3. ... It is, however, plain and obvious that her reliance on sections 7, 12 and 15 of the Charter is foreclosed by authority. In *Tyler v. M.N.R.*, 91 DTC 5022 the Federal Court of Appeal noted the distinction between criminal proceedings and a tax audit and held that in the case of a tax audit, which is purely an administrative proceeding, there is no suspect and no accused; see also *Kaulius v. The Queen* [2003 DTC 564 (FCA)]. Section 7 simply does not apply to the tax audit process.

[28] Bowie J.'s decision in *Gratl* was upheld by the Federal Court of Appeal (2012 FCA 88). Sharlow J. for the Court of Appeal concluded that an income tax assessment is a civil matter involving only economic interests. It does not deprive the assessed person of life, liberty or security of the person within the meaning of section 7 of the Charter. She reasoned as follows:

[6] The appellant argues that the Tax Court has the jurisdiction to grant remedies based on the Charter . We agree that the Tax Court has the legal authority to grant a Charter remedy. However, we also agree with Justice Bowie's conclusion that it is plain and obvious that an order vacating or varying an assessment of tax, administrative penalties and interest cannot be justified by Section 7 or 12 of the Charter . In other words, even if it is assumed that the facts alleged in paragraph 5 of the third amended notice of appeal are true, they disclose no breach of section 7 or 12 of the Charter

[8] Under the Income Tax Act as it now reads, and as it read in 2001 and 2002, an income tax assessment is a civil matter involving only economic interests. It does not deprive the assessed person of life, liberty or security of the person within the meaning of section 7 of the Charter , and it does not place the assessed person under state control in a manner that could possibly be considered treatment or punishment within the meaning of section 12 of the Charter .

[18] I thus conclude that paragraph 26 in the Amended Notice of Appeal should be struck.

[19] Now also, as noted, the Respondent further seeks that subparagraphs 2(b), 2(c), 2(d), 31(b) and 31(c) of the Amended Notice of Appeal be struck. Paragraph 2 (including its subsections (b), (c) and (d)), reads in whole as follows:

2. The Appellant seeks to have the assessment vacated or reduced on the grounds that:
 - (a) the conditions required for a valid section 160 assessment were not met;
 - (b) the Canada Revenue Agency acted unfairly, and in a manner inconsistent with the principles of procedural fairness and natural justice;
 - (c) the Appellant has been denied effective recourse and ability to address the underlying corporate tax liability due to the complex and obstructive nature of the corporate revival process and the actions of the CRA;
 - (d) the Appellant's Charter and common law rights were infringed due to the disproportionate enforcement measures taken by the CRA.

[20] Subparagraphs 2(b) and (c) are answered by *Main Rehabilitation* , cited above, wherein Justice Sharlow of the Federal Court of Appeal stated (per paragraph 8 of that decision) that the Tax Court does not have jurisdiction respecting actions taken by CRA officials. Thus, those two subparagraphs will be struck.

[21] Subparagraph 2(d) of the Amended Notice of Appeal, also sought by the Respondent to be struck, alleges breaches of rights in the Charter and common law.

[22] In response, Respondent's counsel cites 881751 Ontario Ltd ., noted above, at paragraph 25 (underlining added):

25. In Klundert v. HMQ , 2013 TCC 208...my colleague Pizzitelli J. faced a similar argument. He held that an appellant must make more than broad statements in his or her pleadings. The allegations in a notice of appeal must set out a concise statement of the material facts that an appellant is relying on in sufficient detail to allow the respondent and the Court to know and properly address each cause of action in issue . The following passages from the reasons of Pizzitelli J. in Klundert are applicable to the motions at bar: ...

[23] There is no evidence in the pleadings that would allow the Court to come to the conclusion the Appellant's Charter rights were violated . Unlike in O'Neill Motors above, here there is no admission of the Respondent that evidence was illegally obtained nor do we have a finding from the Ontario Superior Court of Justice as to the same notwithstanding that the Appellant had multiple opportunities to plead such issue before both trial and appellate courts . In short, there is no evidence, finding or pleading that would permit this Court to find that the pleadings are sufficient to establish any cause of action. All we have is conjecture, speculation and innuendo. These are not enough to meet the threshold that the Appellant has any chance whatsoever to succeed in his claim.

[23] I concur that, given this jurisprudence, subparagraph 2(d) should be struck.

[24] Lastly, I turn to subparagraphs 31(b) and (c) of the Amended Notice of Appeal, that the Respondent seeks be struck. These two provisions read as follow:

31. [The Appellant seeks]:

- (b) A declaration that the CRA's actions were procedurally unfair and a breach of natural justice;
- (c) In the event that this Honourable Court declines to vacate or vary the assessment, or the Appellant's Amended [Notice of] Appeal is struck, the Appellant respectfully requests: (i) A recommendation from this Honourable Court that enforcement of any resulting liability be stayed for a period of up to 18 months to allow the Appellant to negotiate structured payment terms with the CRA; (ii) That any payments made under such terms be applied interest-free, in recognition of the Minister's prolonged delay and procedural unfairness in the conduct of these proceedings; (iii) That the Appellant be granted leave to bring a motion for directions or further relief respecting payment arrangements if necessary;

[25] In response to this, the jurisdiction of the Tax Court in granting taxpayer relief in disposing of an appeal is governed by subsection 171(1) of the Act (which is the applicable tax statute for the Appellant's appeal). Subsection 171(1) states:

171 (1) Disposal of appeal - The Tax Court may dispose of an appeal by (a) dismissing it; or

(b) allowing it and

(i) vacating the assessment,

(ii) varying the assessment, or

(iii) referring the assessment back to the Minister for reconsideration and reassessment.

[26] Thus, the Minister has no authority to order, as sought by the Appellant in his subparagraphs 31(b) and (c), such remedies as issuance of a declaration, recommendation, etc. Thus, I concur that also these two subparagraphs should be struck out.

[27] In conclusion, the Respondent's motion to strike out the said paragraphs and subparagraphs will be granted in full, per my accompanying Order, as they disclose no reasonable grounds for appeal within the jurisdiction of this Court.

Signed this 11 th day of September 2026.

"B. Russell"

Russell J.

CITATION:

2026 TCC 169

COURT FILE NO.:

2019-3583(IT)G

STYLE OF CAUSE:

BRETT RUSSELL AND HIS MAJESTY THE KING

PLACE OF HEARING:

Toronto, Ontario

DATE OF HEARING:

June 25, 2026

REASONS FOR ORDER BY:

The Honourable Justice Bruce Russell

DATE OF ORDER:

September 11, 2026

APPEARANCES:

For the Appellant:

The Appellant himself

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