Date: 20060914

Docket: T-2096-04

Citation: 2006 FC 1097

[ENGLISH TRANSLATION]

Montréal, Québec, September 14, 2006

PRESENT: The Honourable Madam Justice Johanne Gauthier

BETWEEN:

RICHARD ANGELL, DOUGLAS ATHERTON,
GUY AUGER, CLAUDE BASTIEN,
MADELEINE BASTIEN, GEORGES BÉDARD,
ANDRÉ BERGERON, DENIS BLAIS,
IRÈNE BLETON, RAYMOND BOUCHER,
ROBERT CATUDAL, DIANE COALLIER
PIERRE COLLETTE, ANDRÉ DESJARDINS,
MARCEL DONTIGNY, MEDELEINE DUFORD-BÉDARD,
MARGUERITE DUMAIS, LARRY ELLIOT,
MAURICE FOUCAULT, PIERRE GRAVEL,
ANDREA GUGLIANDOLO, ROBERT S. JUDE,
JERRY KUZYK, LIETTE LAFOND, MICHEL LAFRAMBOISE,
CLAUDE LANDRY, ROBERT LAURIN,
CHRISTIAN LAVOIE, YVES LEMAY, GÉRARD LEMIEUX,
LILIANE LUPIEN, MICHEL LYMAN,
GAÉTAN MAILHOT, JOHN MCALLISTER, RÉJEAN MCKEOWN,
DENIS MCNAMARA, NORMAND MÉNARD,
RICHARD MIGAS, MARIO NANTEL,
ROMAIN PAQUETTE, FRANÇOIS PICHÉ,
JEAN-GUY PROTEAU, LILLY RAHMANN,
RÉJEAN ROUGEAU, CLAUDE ROULX, JACQUES SAMSON,
MARCEL SAMSON, JULIO SEIZ, GENEVIÈVE SPINEDI,
DUC-THIEU VU AND BRIAN WHEELER

Applicants

and

MINISTER OF NATIONAL REVENUE,
CANADA CUSTOMS AND REVENUE AGENCY,
HER MAJESTY IN RIGHT OF CANADA,
AND ATTORNEY GENERAL OF CANADA

Respondents

REASONS FOR ORDER AND ORDER

[1] This is an appeal by the applicants of prothonotary Richard Morneau's decision allowing with costs the respondents' application and dismissing their application for judicial review. In so doing, the prothonotary also dismissed the applicants' motion to amend.

[2] They argue that their application for judicial review raises a new, complex and difficult issue that justifies granting them the right to complete their evidence and be heard on the merits. The issue is the Federal Courts' jurisdiction to intervene in a judicial review when the Minister of National Revenue fails to promptly process an objection to an assessment as required by subsection 165(3)[1] of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act), and non-compliance with this statutory duty and Minister's duty of fairness prejudicially affects the applicants' right to a fair and equitable hearing on the merits of the assessment before the Tax Court of Canada (TCC). In this context, the Court will have to consider, in particular, the remedies that it has the jurisdiction to award.

[3] The applicants are also asking the Court to allow the motion to amend that was before the prothonotary, as well as the new motion to re-amend their notice of application that they filed at the same time as their appeal. According to the applicants, the Court must consider these new amendments to decide their appeal.

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[1] All of the relevant statutory provisions are reproduced in Appendix 1.

[4] For the reasons that follow, the Court has determined that the appeal should be dismissed. The striking of the motion is confirmed. The motions to amend are dismissed.

Background

[5] The fifty-one applicants all became partners of Système A.L.H. Enr. (ALH) in the 1988 tax year.[2] ALH is a commercial partnership established under the laws of Ontario that is involved in commercial activities and scientific research and experimental development in the fields of information technology, electronics and training.

[6] Following this investment, in 1988 all of the applicants claimed their share of ALH's scientific research and experimental development expenses and the corresponding amount of the investment tax credit. In 1989, they received a notice of assessment accepting this tax treatment. Subsequently, in 1992, the Minister issued notices of reassessment to each of the applicants. The tax credit applications were rejected. However, the ALH expenses could be deducted as business expenses. In addition to the capital claimed, the notices of assessment included interest.

[7] The applicants filed a notice of objection[3] with the Minister between

[2] There were originally 216 partners in ALH.

[3] In the motion before the prothonotary, the respondents argued that Ms. Dumais, an applicant, did not file a notice of objection. This issue was not raised in the appeal. It is quite obvious that if Ms. Dumais did not file a notice of appeal, she does not have any right in this case because the applicant is based on the absence of a decision on an objection.

July and November 1992 against these notices of reassessment.

[8] Since the deductions and tax credits were denied due to the unscientific nature of ALH's research and development, on June 7, 1993, the Revenue Canada appeals officer sought the opinion of a second scientific advisor. He received this report on May 17, 1994.

[9] In October 1994, a moratorium was ordered with respect to decisions affecting scientific research and experimental development by Revenue Canada's headquarters, which then chose to take over all of these files. At this time, Revenue Canada had reassessed the partners of ZUNIK group's twelve (12) companies, including ALH.

[10] In June 1995, Revenue Canada made a settlement offer that applied only to ZUNIK group companies that were formed after 1989. Therefore, this offer did not apply to the applicants.

[11] In September 1996, due to a heavy workload resulting from notices of appeal received from other files, the Revenue Canada's headquarters asked the person in charge of reviewing these objections to delay the issuance of letters confirming the Minister's intention to confirm the reassessments.

[12] In his affidavit filed in support of his application, Douglas Atherton stated that throughout the delay in processing the notices of objection, the applicants' representative emphatically and repeatedly asked the Minister and his employees to expedite the processing of the objections and

take a position, but without success. In support of this assertion, Mr. Atherton filed various letters that he sent to the Minister and the Appeals Branch between August 1995 and February 1996.

[13] It should be noted that in September 1995, one month after the first letter from the applicants noted at paragraph 11 above, Revenue Canada advised counsel for the applicants that since over ninety (90) days had elapsed since the notice of objection was served, they could, if they so desired, appeal to the TCC without having to wait for the findings of the departmental assessment (Exhibit 6(g)).

[14] In a letter to the Minister dated February 6, 1996, (Exhibit P-12(a)), the applicants' representative stated that acting on this recommendation to apply to the courts would considerably congest the legal system without contributing in any way to solve the issues in these files. He also specifically referred to the duty of care provided for under subsection 165(3) of the Act.

[15] In a letter dated July 10, 1996, (Exhibit P-12(b)), the applicants' representative told the Minister that an additional delay [TRANSLATION] "'would not fail to exacerbate" two problems, namely (1) debating the state of scientific knowledge circulating in the circles in question some ten years earlier, with all the issues involving evidence and inaccuracy caused by such a time gap, and (2) keeping up to date the objectors' contact information. On July 26, 1996, the Minister's office informed the applicants that a response was imminent (Exhibit P-12(c)).

[16] Since the Minister neither confirmed, set aside nor amended the reassessment in October 1998, the applicants filed their notice of appeal with the TCC.[4]

[17] In paragraphs 47 and 48 of his affidavit, Mr. Atherton notes that as a result of the long period of time elapsed since the 1988 taxation year, by the time the notices of appeal were filed it had become impossible for the applicants to discharge the burden of proof imposed on them by the Act. In his view, this constitutes a serious breach of procedural fairness and has cause and continues to cause significant moral and material harm to the applicants.

[18] Although no evidence was filed in the record in this regard, the applicants notified the Court at the hearing that they had filed a conditional discontinuance to the TCC and had been granted a remission. Their counsel also noted that approximately 550 similar cases involving partners from other companies were outstanding before the TCC.

[19] As the prothonotary notes, the Court must normally allow applicants to amend their notice of application unless it is clear and obvious that these amendments are certain to fail. He therefore decided to examine the merits of the motion to strike on the assumption that the amendments put forward by the applicants were in fact in the notice of application.

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[4] Almost all of the notices of appeal are dated October 30, 1998, and the others are, respectively, dated December 18, 19 and 20, 2003, and January 8 and 12, 2004. No reason was given as to why some of the applicants waited until 2003 or 2004 to file their notice of appeal. Nor did the parties explain why the application for judicial review is not out of time. Indeed, although the subject of the application is the absence of a decision, the Court notes that when a notice of appeal is filed, the Minister appears to no longer have jurisdiction to review the correctness of the assessments, with this issue now falling within the jurisdiction of the TCC. If such is the case, it may be thought that the 30-day period provided for in section 18.1 of the *Federal Courts Rules* began when the notice to appeal was filed. Given that this point was not subject to a debate before me, it does not have to be decided in the context of this motion.

[20] The prothonotary examined the following remedies put forward by the applicants (paragraph 11 of the decision):

> a. a definitive end to the assessment and collection process in regard to the applicants for the 1988 taxation year and other years concerned following the investment by the applicants, in 1988, in the company Système ALH Enr. (ALH);
> b. the vacating of the notices of reassessment issued to the applicants for the 1988 taxation year and other years concerned following the investment by the applicants in ALH;
> c. the extinction by prescription of the amounts claimed from the applicants under the notices of reassessment for the 1988 taxation year and other years concerned following the investment by the applicants in ALH;
> d. an award of damages to the applicants for the harm caused by the failure of the Minister and the CCRA to make a decision;
> e. a declaration to the respondents that the blatant failure of the respondents to comply with their due diligence under 165(3) ITA bars any suit or measure to recover the amounts payable under the notices of reassessment and, for the purpose of treating all of the applicants equally, the repayment with interest, where applicable, of any sum paid by the applicants in satisfaction of the notices of reassessment;
> f. leave for the applicants to seek any other appropriate relief;
> g. in the alternative, and without limitation of the foregoing, an order enjoining the respondents to cancel any interest running from the date of filing of the notices of objection;
> h. an award to the applicants of any further relief that this Court considers just and appropriate.
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> [The amendments that were before the prothonotary are underlined.]

[21] In this regard, he examined the following reasons set out in the notice of application (paragraph 12 of the decision):

> a. the respondents have failed to comply with the duty to act with diligence set out in section 165(3) of the ITA and their duty to act fairly under the principles of Canadian administrative law;
> b. the respondents have breached the applicants' rights to security of the person and protection against any cruel and unusual treatment,

recognized by sections 7 and 12 of the *Canadian Charter of Rights and Freedoms* (Canadian Charter);

c. section 50 of the *Budget Implementation Act, 2004*, S.C. 2004, c. 22, stating that section 222 of the ITA, which establishes the ten-year limitation period on federal tax debts payable under the ITA, is without retroactive effect;
d. even if section 50, above, were retroactive, section 222 of the ITA, as drafted, is discriminatory and breaches the applicants' right to equality under section 15 of the Canadian Charter.

[22] Essentially, the prothonotary allowed the motion to strike because he found that the Court did not have the jurisdiction to grant the relief outlined at paragraphs 20(a), (b) and (e) above.

[23] With respect to the extinction by prescription (paragraph 20(c)), the prothonotary found that "this plainly and obviously discloses no reasonable cause of action." This finding was not disputed on appeal by the applicants, who confirmed in writing that they were abandoning their findings regarding prescription (paragraphs 20(c) and 21(c) and (d) above).

[24] With respect to the award of damages for the alleged harm, the prothonotary also found that the Court did not have this jurisdiction in the context of an application for judicial review. The applicants confirmed at the hearing that they were not challenging this finding.

[25] At the hearing, the Court asked the parties to consider the possibility of entering into an arrangement to convert the application for judicial review into an action in order to allow the applicants to obtain the damages that they were claiming. The applicants then indicated that after careful consideration they had decided to bring an application for judicial review instead of an action. The respondents further stated that such a conversion would raise an issue of prescription even if the action had the filing date of the notice of application.

[26] The prothonotary determined that the Court could not exercise the Minister's discretion under subsection 220(3.1) of the Act in order to cancel the interest accrued on tax debts. The finding outlined in paragraph 20(g) therefore constituted, in his view, an abuse of the process of the Court and did not disclose any cause of action.

[27] Finally, given that the remedies outlined in paragraph 20(f) and (h) would be the only ones remaining, since the other relief was struck, the prothonotary found that they could not disclose reasonable cause of action and that they constituted in this sense an abuse of process. In his view, they did not meet the requirements of section 301 of the *Federal Courts Rules,* SOR/98-106 (the *Rules*).

[28] As noted, the applicants filed an application to re-amend their notice of application to add the following grounds:

> [TRANSLATION]
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> e. The respondents, by their actions, deprived the applicants of their right to appeal under section 169 of the ITA, and will thereby deprive the applicants of the enjoyment of their property, under circumstances in which this deprivation did not result from the due process of the law under paragraph 1(a) of the *Canadian Bill of Rights* 8-9 Elizabeth II, c. 44 (Canada) in R.S.C. (1985), App III.
>
> f. Sections 165 and 160 of the ITA, and 18.5 of the *Federal Courts Rules* should not be interpreted or applied so as to deprive the applicants of their right to the enjoyment of their property and to a fair hearing of their case, nor be interpreted and applied in such a way as to deprive the applicants of a useful remedy should they be deprived of those rights set out in paragraphs 1(a) and 2(e) of the *Canadian Bill of Rights*.

[29] The parties have also asked the Court to suspend its deliberation until the Federal Court of Appeal has made a decision in *Addison & Leyen Ltd. et al. v. Her Majesty*, 2006 FCA 107, [2006] F.C.J. No. 489 (CA) (QL), and the parties have had the opportunity to make additional submissions in respect of that decision.

Issues

[30] Since the parties agree that the Court must review this case *de novo*, they submitted arguments on the following issues:

i) Can the Court consider the amendments put forward by the applicants in its analysis of the motion to strike and the appeal of Prothonotary Morneau's decision?

ii) Is it plain and obvious from the wording of the notice of application for judicial review, including the amendments and/or the re-amendments, that the applicants have no chance of success?

Analysis

[31] The Court agrees with the parties that the issues raised in the respondents' motion to strike are determinative to the outcome of the case. The Court must therefore conduct a hearing *de novo* and exercise its discretion by re-hearing the case (*Canada v. Aqua-Gem Investments Ltd.*, [1993] 2 FC 425 and *Merck & Co. v. Apotex Inc.*, [2003] F.C.J No. 1925 (CA) (QL), 2003 FCA 291 at paras 19, 25).

i) Motion to amend

[32] The application of this standard does not mean that the Court is free to consider new evidence or new facts. In fact, the case law clearly states that the Court must exercise its own discretion on the basis of the record as it existed or was constituted before the prothonotary.

[33] In this case, the applicants argue that they are not attempting to introduce new evidence or new facts[5] and that leave to amend, under section 75 of the *Rules*, will only allow them to add a new legal argument. This argument will support their position that their application is based on a reasonable cause of action that is supported by evidence that is already in the record, namely Mr. Atherton's affidavit, and in particular the assertions as to the impact of the delay on the ability of the applicants to have a fair and impartial hearing before the TCC.

[34] The respondents submit that the notice of application is itself a material fact that is part of the evidence in the record that cannot be amended for the purposes of this appeal.

[35] The parties have not submitted any precedent in which the Court has had to consider such an issue.

[36] Normally, when there is no indication from the parties that there is a lack of relevant evidence to decide a question of law and the other party does not suffer any prejudice, the Court must consider legal arguments that are new to the appeal (*Athey v. Leonati*, [1996] 3 S.C.R. 458 at para 51 and *671905 Alberta Inc. v. Q'Max Solutions Inc*, [2003] F.C.J. No. 873 (C.A.) (QL), 2002 FCT 1293 at para 35).

[37] It is clear that even if the applicants also sought leave to file an additional affidavit, the facts already in the record, which the Court must take as proved, must be sufficient to decide the issue. If this was not the case, the Court would necessarily have to refuse to consider the new issue and, by analogy here, refuse to consider the new proposed amendments.

[38] The Court is not satisfied that the applicants are not attempting to add a new ground such as, for example, that the Minister, in addition to not having considered the notice of objection with all due diligence, prevented them from making submissions or submitting evidence to him. For all practical purposes, the applicants added a reference to an additional statutory provision that supports the interpretation of subsection 165(3) of the Act that they had already included in their notice of application and, as I said, they are not attempting to introduce a reference to new facts, acts or actions.[6]

[39] In this context, it is clear that the amendment sought would make it possible establish the real issues between the parties and would not result in prejudice that cannot be offset by costs on the motion at first instance and the appeal. Furthermore, the respondents have had the opportunity in their memorandum to present their case on the merits with respect to possible application of sections 1(a) and 2(e) of the *Canadian Bill of Rights*.

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[5] See paragraph 9 of the written submissions of the applicants, who also confirmed this position at the hearing.
[6] Although at paragraph 28 of their written submissions the applicants appear to say that the actions referred to in section 4(e) that they propose to add differ from those outlined in the notice of application before the prothonotary and in Mr. Atherton's affidavit, they did not take this position at the hearing (see also the argument profile). As I mentioned earlier, they instead have clearly indicated that this new paragraph does not refer to anything new factually.

[40] In any event, it is only appropriate to decide this issue if the new amendments truly add to the debate. Having analyzed the merits of the motion to strike, in light of these new amendments the Court found that they did not have that effect. It is therefore not necessary to decide the issue of whether the applicants can re-amend the notice of application for the purposes of the appeal.

ii) Motion to strike

[41] Although the parties agree on this point, it is important to recall the test that the Court must apply to establish whether the application should be struck out. A notice of application will not be struck out without a hearing on the merits unless it is plain and obvious that there is no chance of success: *David Bull Laboratories Canada Inc. v. Pharmacia Inc.,* [1995] 1 FC 588 (FCA).

[42] As Karen Sharlow J. noted in *Addison & Leyen,* above, the test is severe because it is generally more efficient for the Court to rule on such arguments at the hearing on the merits than on a motion. If a motion to strike is dismissed, then the interlocutory proceedings will have been a waste of time.

[43] Moreover, by analogy with a motion to strike out a statement, the facts set out in the notice of application, if any, and in Mr. Atherton's affidavit, are presumed to be true[7] (*Hunt v. Carey Canada Inc*., [1990] 2 S.C.R. 1959 at para 979 and *Addison & Leyen*, above, at para 6).

[44] The parties clearly put a great deal of effort in preparing their cases. They submitted extensive case law and debated a considerable number of principles that are not all of equal importance for deciding the issue in dispute.

[45] Although the Court has carefully considered each and every one of the arguments and the case law put forward by the applicants, it will not be necessary to comment on them all in detail.

[46] Before analyzing the arguments, it is useful to describe the various principles that arise from the case law submitted by the parties, several of which were adopted and confirmed by the Federal Court of Appeal in *Addison* & *Leyen,* above.

[7] The presumption does not apply to legal allegations.

[47] First, the Act is quite specific about the manner in which a taxpayer's primary tax liability is established: *Addison & Leyen*, above, at paras 36 and 39. The Act also provides for how taxpayers can challenge these assessments.

[48] Once assessed, a taxpayer has two ways of challenging the merits of that decision. The taxpayer must first request an administrative review through a notice of objection. Ninety (90) days after serving the notice of objection, regardless of whether the administrative review has been completed, the taxpayer may request a judicial review of the assessment by filing a notice of appeal with the TCC.

[49] By enacting paragraph 169(1)(*b*) of the Act and section 18.5 of the *Federal Courts Act*, Parliament granted exclusive jurisdiction to the TCC to consider the merits of an assessment (*Walker v. Canada*, [2005] F.C.J. No. 1957 (FCA) (QL), *Addison & Leyen*, above, at para 48). Once the Minister has made a decision with respect to an objection, it can no longer be subject to judicial review (*Webster v. Canada*, 2003 FCT 296, [2003] F.C.J. No. 1569 at para 20 (CA) (QL)).

[50] Although Parliament specifically states that the Minister must review notices of objection with all due diligence, it does not provide for specific consequences in the Act should the Minister fail to do so (*Addison & Leyen*, above, at para 41).

[51] Indeed, although taxpayers can appeal to the TCC as to the merits, that court cannot consider a breach by the Minister of his duty under subsection 165(3) of the Act when it considered

the merits of the assessment, or a decision by the Minister with respect to an objection (*Addison & Leyen*, above, at para 44).

[52] Before a decision is made by the Minister, the Federal Court has jurisdiction to review the legality of the administrative review process under section 18.1 of the *Federal Courts Act*. It can issue a writ of *mandamus* forcing the Minister to make a decision or issue a declaratory judgment that the Minister breached his duty of care. In this regard, *Hillier v. Canada*, [2001] F.C.J. No. 197 (CA) (QL), the Federal Court of Appeal stated that such a breach should be considered by the Minister if a request was made to waive interest and penalties under subsection 220(3.) of the Act (see also *Cole v. Canada (Attorney General)*[8], 2005 FC 1445, [2005] F.C.J. 1764 (QL) and *Addison & Leyen*, above, at para 41). In this context, a declaratory judgment could be useful for the taxpayer.

[53] The Federal Court retains jurisdiction to review other reviewable errors or breaches of the Minister's duty to act fairly (see, for example, *Scott Slipp Nissan Ltd. v. Canada (Attorney General)*, 2004 FC 1096, [2004] F.C.J. No. 1327 (QL)).

[54] However, even if the Federal Court has jurisdiction to review the legality of this administrative process, setting aside the assessment or reassessments is not an appropriate remedy for undue delay in dealing with an objection (*Bolton v. Canada*, [1996] 200 N.R. 303 (FCA); *James v. Canada (Minister of National Revenue) – MNR)*, [2000] F.C.J. No 2135 (CA) (QL), specifically paragraphs 11–21). It appears from these decisions and from *Addison & Leyen*, above, that this arises mainly from the fact that Parliament has provided taxpayers with the necessary tools to

control the time limits with which the Minister must comply, including appealing to the TCC and the writ of *mandamus*.

[55] The Court understands from these decisions that if taxpayers decide that it is important to obtain an administrative decision, they have the opportunity to wait more than 90 days before applying to the TCC. However, they must ensure that this delay in exercising their right to appeal does not cause them undue hardship. In this respect, they are also in a better position than the Minister because they normally have all of the elements to determine whether a delay can cause them harm. In such a case, because the taxpayer is managing these remedies, he may request a writ of *mandamus* or simply appeal to the TCC under paragraph 169(1)(*a*) of the Act.

[56] The legislative scheme therefore provides a great deal of flexibility. To the remedies mentioned above, general law also adds the possibility for taxpayers to seek damages that could be equal to the amount for which they were assessed in cases where the Minister's conduct constitutes an abuse of power (see *Obonsawin v. Canada*, 2004 TCC 3, [2004] T.C.J. No. 68 (QL)).

Particular circumstances of this case

[57] The applicants argue that their application does not concern the merits of the assessments issued against them but rather the legality of the administrative review process given that the Minister has still not made a decision on their objections. They therefore conclude that the Court has jurisdiction to consider their application.

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[8] In this decision, Justice Michael Phelan stated that it is not because the taxpayer had the choice to appeal instead of awaiting a decision by the Minister that the Minister did not comply with his due diligence obligation in accordance with

[58] To support this position, they submit that the Federal Court of Appeal's decisions in *Bolton* and *James*, above, at paragraph 51 above, and in *Canada v. Ginsberg*, [1996] 3 FC 334 (FCA), (on which the Court's decision in *Bolton* relied in part) do not apply or should not bind the Court in this case for the following reasons:

i) These decisions were made before the Federal Court of Appeal developed in *Society Promoting Environmental Conservation v. Canada (Attorney General),* 2003 FCA 239, [2003] F.C.J. 861 (CA) (QL) (hereinafter *SPEC*) the pragmatic and functional approach that should now be applied to determine the legal consequences of non-compliance with a duty such as the one provided for in subsection 165(3) of the Act. According to the applicants, when such an approach is applied, it becomes clear that in appropriate cases the Federal Court may set aside an assessment as well as other subsequent decisions by the Minister vitiated by such non-compliance with the Act.

ii) The Federal Court of Appeal has never had to rule on the impact of sections 7 and 12 of the *Charter* or paragraph 1(a) and 2(e) of the *Canadian Bill of Rights* or of the concept of estoppel (section 1457 of the *Civil Code of Quebec*) where the consequence of non-compliance of the duty under subsection 165(3) of the Act is to deprive the taxpayer of his right to appeal and his right to a fair and impartial hearing before the TCC. Here, according to the applicants, the Minister's conduct rendered this right to appeal meaningless. His delay in acting made this right purely academic and rendered their appeals moot.

iii) The Federal Court of Appeals in *Addison & Leyen*, above, represents a major step towards redefining the Federal Court's powers to scrutinize and control how the Minister and his representatives exercise their discretion. Furthermore, the Federal

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subsection 165(3) of the Act when he exercised the discretion conferred on him by subsection 220(3.1) of the Act.

Court of Appeal noted at paragraph 73 that, insofar as the Minister's discretion is subject to judicial review, there is no law or legal principle that would preclude the Federal Court from granting an analogous remedy to the vacation of an assessment. According to the applicants, it is precisely the exercise of such discretion that is at issue in this application because under subsection 165(3) of the Act, the Minister has limited discretion to make his decision on the objection with all due diligence. Finally, according to the applicants, in *Addison & Leyen* the Federal Court of Appeal addressed the issue of adequate remedy and alternative remedies and noted that the Federal Court is not required to decline jurisdiction on the basis that there is a right to appeal to the TCC or a right to seek a discretionary waiver of the interest and penalties or even a right to bring an action for damages. It also confirmed that a challenge to an administrative decision must first be done through an application for judicial review (*Canada v. Grenier*, [2006] 2 R.C.F. 287 (FCA)).

iv) The alternative remedies in this case are unsatisfactory because they cannot, for all practical purposes, appeal to the TCC, and a writ of *mandamus* in this case would not remedy the harm that has been caused by the delay in reviewing their objections.

[59] It is easy to see that the allegation that the Minister, by his conduct, irremediably prejudiced the applicants' right to appeal the merits of their assessments before the TCC and to receive a fair and impartial hearing, is central to almost all of the applicants' arguments.

[60] Therefore, this premise will be considered first. In this regard, the applicants submit that the prothonotary erred by ignoring that that the allegations had been proven contained in paragraphs 47

and 48 of Mr. Atherton's affidavit as well as the Minister's failure alleged in paragraph 4(a) of the notice of application.

[61] For the purposes of this appeal, the Court accepts as fact that as a result of the time elapsed between the filing of the notice of objection and the filing of the notices of appeal, the applicants lost the opportunity to prepare a case to adequately defend themselves. In his affidavit, Mr. Atherton does not provide any details on what prevents the applicants from defending themselves. However, Exhibit 12(b) of his affidavit provides some insight in this regard, since it mentions that the evidence of the scientific knowledge of 1988 that is central to the issue. And this is likely only one aspect of the problem described by Mr. Atherton.

[62] Naturally, this allegation of fact presupposes that the applicants had access to this evidence or whatever they needed to defend themselves at some point and that they lost this access following a reasonable delay after filing their notices of objection in 1992. The applicants did not argue that the Minister could have made a decision prior to the expiration of the first 90 days after their notices of objection were received. In his affidavit, Mr. Atherton stated that the Minister was in fact in a position to make his decision as early as 1994.

[63] There is no allegation that the applicants lost their ability to defend the merits of their objection and appeal prior to the expiration of this 90-day period.

[64] Even if some of the exhibits in the affidavit partly contradict the assertion in paragraph 46[9] and that it is unclear whether it is a fact or an assertion of mixed fact and law, the Court also accepts as fact that the Minister alone is responsible for the long delay in dealing with the objections. However, such an assertion concerns only the administrative review process. Mr. Atherton does not provide any facts indicating or implying that the Minister and his representatives in any way prevented the applicants from filing, prior to 1998, a notice of appeal, a right directly conferred on them by the Act (paragraph 169(1)(*a*)). Paragraph 4(a) of the notice of application is of no assistance in this regard.

[65] As I have already indicated in describing the context, some of the exhibits filed by the affiant (Exhibits 6(b) and 12) actually indicate that the Minister specifically pointed out to the applicants that they did not have wait for his decision before pursuing an appeal and that it was with full knowledge that they decided to wait. At the time they were duly represented by counsel, and it is clear from the correspondence that counsel was fully aware that the time elapsed affected access to the evidence necessary to support the applicants' arguments before the TCC.

[66] In his affidavit, Mr. Athertone does not even address what prevented the applicants from exercising the remedies at their disposal, namely to request a writ of *mandamus* or to file an appeal to the TCC in a timely manner, i.e., before their ability to defend themselves on appeal was affected.

[67] The Court cannot presume that such an impediment existed.

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[9] In her examination, Sonia Borin stated that during a meeting on February 27, 1997, the Minister's representative told the taxpayers' representative that he was ready to confirm the assessment and deny their request to cancel the interest. The applicants' representative then reportedly asked the Minister to grant him an extension until November 14, 1997,

[68] Since they were entitled to exercise these remedies at any time upon expiration of the time limit provided under paragraph 169(1)(b), it appears that the applicants decided to rely on the administrative review instead of the judicial review.

[69] In any event, the Court cannot consider as fact that the applicants could not appeal the merit of their assessments before the TCC or obtain a writ of *mandamus* in a timely manner, i.e., before they suffered the prejudice described in Mr. Atherton's affidavit.

[70] That said, I will now consider the applicants' legal arguments.

[71] First, they submit that the Court is not bound by the decisions in *Bolton* and *James* because the facts in this application differ on one essential point, namely that they were unable to appeal to the TCC.

[72] In *Bolton*, confirmed by *James*, the Federal Court of Appeal found the following:

> [3] In the case of The Queen v. Ginsberg (Court file A-242-94) decided last week, we held that Parliament did not intend that the Minister's failure to examine a return and assess tax "with all due dispatch", as required by subsection 152(1)[1], did not deprive him of the statutory power to issue an assessment. The reasoning in that case applies with even greater force here: Parliament clearly did not intend that the Minister's failure to reconsider an assessment with all due dispatch should have the effect of vacating such assessment. If the Minister does not act, the taxpayer's recourse is to appeal pursuant to s. 169. […] [Emphasis added]

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before official confirming the assessment. On this point, see also the timeline filed as Exhibit P-4 in Mr. Atherton's affidavit.

[73] The applicants do not dispute that the analysis for determining the consequences of non-compliance with a statutory duty is based on Parliament's intent. I shall return to their argument based on the Federal Court of Appeal's decision in *SPEC*.

[74] In their view, even though they were clearly entitled to appeal under paragraph 169(1) of the Act and had the right to seek a writ of *mandamus* well before 1998, the Court must establish the consequences of the Minister's failure by taking into account not these rights but rather that, in fact, when they finally decided to exercise their right to appeal it was too late because this remedy had become moot. Consequently, they were never able to challenge the merit of their assessments.

[75] If it adopted this reasoning, the Court should find that Parliament intended that taxpayers who act diligently in the face of the same failure by the Minister will necessarily have to debate the merits of their assessment before having it set aside, while taxpayers who remain passive and do not avail themselves of the tools at their disposal in the Act[10] will be able to have their assessment set aside regardless of its merits and thus deprive their fellow citizens of their contribution to the tax burden.

[76] In my opinion, it is plain and obvious that such a conclusion is illogical. The Court cannot, based on the facts put forward by the applicants, refuse to apply the case law of the Federal Court of Appeal that binds it.

[10] For example, by letting their right to appeal become prescribed or delaying exercising it.

[77] On this point, the applicants also submitted that the Court is not bound by *Bolton*, *Ginsberg* and *James* because these decisions are quite "dated" when one considers the new functional and pragmatic approach adopted in *SPEC*.

[78] It is true that in that case, Justice Evans describes, in a more elaborate and systematic manner, the approach for establishing whether non-compliance with a statutory duty implies that the administrative measure thus affected must be set aside.

[79] However, a careful reading of this decision reveals that the approach described by the learned judge is not new; it is based on principles set out several years before that the Federal Court of Appeal considered and essentially applied in *Ginsberg* and *Bolton*[11]. As in *SPEC*, the Federal Court of Appeal in *Ginsberg* and *Bolton* based its analysis on Parliament's intent, and there is nothing in the approach adopted in *SPEC* that allows the Court to set aside the findings in these cases and that the Federal Court of Appeal more recently confirmed in *James*, below.

[80] However, it is true that some of the applicants' arguments were not analyzed in those decisions (see para 57(ii)). Does this necessarily imply, as the applicants argue, that it is not plain and obvious that they cannot have their assessments set aside and obtain the other remedies sought?

[81] It is indeed tempting to adopt this simple conclusion, which avoids considering the merits of the applicants' arguments. However, novelty and complexity are not synonymous with chance of

[11] Recently in *Breslaw v. Canada*, [2005] F.C.J. No. 1781, the Federal Court of Appeal referred to its decision in *Ginsberg* (see paragraphs 32 and 33).

success, and the Court cannot find on this basis alone that it is not plain and obvious that the application does not have any chance of success.

[82] First, with respect to the impact of section 7 (deprivation of life and the security of the person) and section 12 (protection against any cruel and unusual treatment of punishment) of the *Charter*, the applicants relied entirely on the written submissions supporting their motion before the prothonotary. These submissions were brief and general. Like prothonotary Morneau, the Court is satisfied that there is no doubt that these provisions do not apply in this case and that the application based on a breach in this regard does not have any chance of success. Section 7 of the *Charter* does not protect an individual's economic interests, and it is clear that the facts in this case do not involve conduct that is incompatible with human dignity, a necessary element for section 12 to apply. It is not necessary to say more on this point.

[83] What about the reference to subsections 2(a) and 2(b) of the *Canadian Bill of Rights* that the applicants wish to add at this stage (see the wording in Appendix 1)?

[84] For the purposes of this motion, the Court is prepared to assume without deciding that these two provisions apply to the circumstances in this case. Section 1(a) protects their right to enjoy property without due process of law (rules of natural justice), and section 2(e) protects their right to a fair hearing before any civil court called upon to define their rights (*Air Canada v. Canada (Procureure Générale*), [2003] R.J.Q. 322 (CAQ), at para 47, and *Canadian Committee for the Tel-Aviv Foundation c. R.*, 2002 FCA 72, at para 21).

[85] The applicants acknowledge that the Act as it reads does not violate the principles set out in sections 1(a) and 2(e) of the *Canadian Bill of Rights* since it is clear that Parliament has provided a right to a fair hearing. As stated by the respondents under subsection 169(1) of the Act and sections 3 and 12 of the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2, the applicants were entitled to a fair hearing before a tribunal appointed in a superior court of record providing the highest guarantee of procedural fairness.

[86] Thus, it is in the application of the Act that the problem actually lies.

[87] In this respect, the applicants state that they have a reasonable cause of action to argue in claiming that the combined effect of the Minister's failure to confirm the assessments at issue with all due diligence and the overly strict interpretation of the limitation set out in section 18.5 of the *Federal Courts Act* directly result in the removal of this right protected by the *Canadian Bill of Rights.*

[88] First, as I noted at paragraph 52 and 53 of these reasons, it is common ground that the Court has the jurisdiction to review the legality of the objection process in the absence of a decision by the Minister. The applicants' sophisticated argumentation therefore does not add anything in this regard.[12]. The obstacle that the applicants face has nothing to do with the interpretation of section 18.5 of the *Federal Courts Act*, which gives exclusive jurisdiction to the TCC to decide the merits of an assessment.

[12] See paragraphs 55–59 of the applicants' written submissions.

[89] The applicants also add that based on the *Canadian Bill of Rights*, Parliament cannot have intended to allow the Minister to interfere with their quasi-constitutional rights without this leading to the nullity of their assessments or the possibility for the Court to grant the other remedies listed in their notice of application. Here, the argument based on sections articles 1(a) and 2(e) of the *Canadian Bill of Rights* is mixed with the argument based on the functional and pragmatic analysis advocated in *SPEC*.

[90] The *Canadian Bill of Rights* protects the right to a fair hearing before the Tax Court of Canada, but it does not protect the applicants against the loss of this right from their failure to exercise this right in a timely manner.

[91] As I explained in paragraphs 59 to 69 of these reasons, in this case the Court cannot take as fact that the applicants were unable to exercise their right to appeal before 1998. In the specific context of this application and on the basis of the facts put forward by the applicants, the reference to these new provisions cannot alter the Federal Court of Appeal's finding in *Ginsberg* and *James.* This new argument has no more chance of success than the argument based on the "new" approach adopted in *SPEC* (para 77 to 79 above).

[92] The applicants submit that they may request a stay in the collection process on the basis of the civil law principle of estoppel (*Banque canadienne nationale c. Soucisse*, [1981] 2 R.C.S. 339; *Pintendre Autos Inc. v. Canada.*, 2003 TCC 818, para 16–19). They indicate that it is not a question here of invoking promissory estoppel or another similar common law concept. The concept of estoppel on which the applicants rely arises from the application of the rule of liability (s. 1457 of

the *Civil Code of Quebec*). They submit that since it is based on civil liability, such a concept can only be raised in courts that have jurisdiction to decide claims for damages, in this case the Federal Court[13].

[93] At the hearing, the applicants stated that the Court may not have had the necessary information to find that Quebec law applied in this case. Without deciding, and only for the purposes of this application, the Court is prepared to assume that this law is applicable to this case.

[94] This application seeks to verify the legality of the administrative objection process. It is not a question of determining whether there was civil fault; such a question of civil liability has no place in a judicial review. Furthermore, the estoppel invoked by the applicants is normally raised in defence of an action in the same manner as limitation or compensation. Here, the applicants are attempting to use it as a sword instead of a shield, with the Minister not having taken any collection action.

[95] As I indicated, under administrative law principles, breach of the duty under section 165 of the Act does not have the effect of setting aside assessments that were issued well before this failure. Preventing the collection of this claim in the context of a judicial review would simply amount to doing indirectly what cannot be done directly.

[96] With respect to the other remedies the Court agrees with Prothonotary Morneau's reasons at paragraphs 44 to 49 of his decision. The Court notes that there is no evidence that the Minister

[13] See paragraph 22 of the applicants' written submissions before the prothonotary.

assessed the applicants for any penalties or interest relating to the period after 1992. Nor does it appear that the applicants asked him to exercise his discretion in their favour in this regard.

[97] The Minister's decision may be subject to a judicial review when he exercises his discretion under subsection 220(3.1) of the Act. The applicants will then have the opportunity to put forward their argument with respect to non-compliance with duty of care under section 165 of the Act. Of course, it would also be appropriate for them to ensure that this issue is before the Minister before he makes his decision whether to assess the applicants in this respect.

[98] Before concluding, it is useful to deal more specifically with the recent decision by the Federal Court of Appeal in *Addison & Leyen*, since the applicants argued that this was a major step forward in redefining the scrutiny and control of the Federal Court over the Minister in the context of reviewing tax assessments.

[99] As the Federal Court of Appeal stated at paragraph 49 of its decision, the issue raised in *Addison & Leyen* was entirely new, namely whether section 18.5 of the *Federal Courts Act* prevented the Court from reviewing the legality of the Minister's decision to impose tax liability on a third party in order to collect amounts owing by another taxpayer under section 160 of the Act.

[100] Contrary to the situation before me, where the undue delay claimed by the applicants occurred long after the assessment was issued, in *Addison & Leyen*, the Minister was faulted for unduly delaying the decision to use the mechanism provided under section 160 of the Act in order to issue an assessment.

[101] As the analysis in paragraph 65 of the decision indicates, the Court does not change its approach to assessments issued under section 152. It does not question the principles that I summarized at paragraphs 46 to 56 in these reasons. On the contrary, it is the differences between the statutory regime that applies to assessments issued under section 152 and that which applies to assessments issued under section 160 that warrants its decision in that case. Furthermore, it should be noted that the Act does not provide any mechanism for a third party to challenge the Minister's decision to use the mechanism provided in section 160, or to force him to take a position in this regard.

[102] It is in this very specific and very different context from the one in this case that the Court notes that vacating an assessment issued under section 160 is not a wholly excluded remedy, even if it is evident according to the Federal Court of Appeal that it can only be used in the most serious cases.

[103] As this was an appeal of a decision on a motion to strike the notice of application, the Federal Court of Appeal did not conduct a substantive analysis to determine the appropriate remedy if the Court found that the Minister committed a reviewable error in exercising his discretion to assess under section 160.

[104] Finally, the Court's comments with respect to the utility of alternative remedies available to a third party do not apply here because it is clear, for example, that the reference to the Court's decision in *Grenier*, above, was necessary because this was a separate decision by the Minister and

not simply a breach of a statutory duty to act with all due diligence, as in this case. To draw a parallel, the notice of application here refers to the decision resulting from the process vitiated by the delay, such as, for example, a decision by the Minister on the objection.

[105] As I indicated before, there is no doubt in my mind at this point that the Court has jurisdiction to here this application for judicial review. In this regard, the decision in *Addison & Leyen* adds nothing. There is therefore nothing in that case that supports the applicants' position.

[106] For all these reasons, the Court finds that the appeal should be dismissed and there is no reason to allow the motion to re-amend the notice of appeal, the whole with costs.

ORDER

THIS COURT ORDERS that:

1. The appeal is dismissed with costs as well as the motion to re-amend the notice of application.

"Johanne Gauthier"
Judge

APPENDIX 1

Income Tax Act	*Loi de l'impôt sur le revenu*
165. (3) On receipt of a notice of objection under this section, the Minister shall, with all due dispatch, reconsider the assessment and vacate, confirm or vary the assessment or reassess, and shall thereupon notify the taxpayer in writing of the Minister's action.	165. (3) Sur réception de l'avis d'opposition, le ministre, avec diligence, examine de nouveau la cotisation et l'annule, la ratifie ou la modifie ou établit une nouvelle cotisation. Dès lors, il avise le contribuable de sa décision par écrit.
166. An assessment shall not be vacated or varied on appeal by reason only of any irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Act.	166. Une cotisation ne peut être annulée ni modifiée lors d'un appel uniquement par suite d'irrégularité, de vice de forme, d'omission ou d'erreur de la part de qui que ce soit dans l'observation d'une disposition simplement directrice de la présente loi.
169. (1) Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied after either (*a*) the Minister has confirmed the assessment or reassessed, or (*b*) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed, but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.	169. (1) Lorsqu'un contribuable a signifié un avis d'opposition à une cotisation, prévu à l'article 165, il peut interjeter appel auprès de la Cour canadienne de l'impôt pour faire annuler ou modifier la cotisation: *a*) après que le ministre a ratifié la cotisation ou procédé à une nouvelle cotisation; *b*) après l'expiration des 90 jours qui suivent la signification de l'avis d'opposition sans que le ministre ait notifié au contribuable le fait qu'il a annulé ou ratifié la cotisation ou procédé à une nouvelle cotisation; toutefois, nul appel prévu au présent article ne peut être interjeté après l'expiration des 90 jours qui suivent la date où avis a été expédié par la poste au contribuable, en vertu de l'article 165, portant que le ministre a ratifié la cotisation ou procédé à une nouvelle cotisation.
220(3.1) The Minister may at any time waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by a taxpayer or partnership and, notwithstanding subsections 152(4) to 152(5),	220(3.1) Le ministre peut, à tout moment, renoncer à tout ou partie de quelque pénalité ou intérêt payable par ailleurs par un contribuable ou une société de personnes en application de la présente loi, ou l'annuler en tout ou en partie.

such assessment of the interest and penalties payable by the taxpayer or partnership shall be made as is necessary to take into account the cancellation of the penalty or interest.

Malgré les paragraphes 152(4) à (5), le ministre établit les cotisations voulues concernant les intérêts et pénalités payables par le contribuable ou la société de personnes pour tenir compte de pareille annulation.

Canadian Charter of Rights and Freedoms

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Charte canadienne des droits et libertés

7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

12. Chacun a droit à la protection contre tous traitements ou peines cruels et inusités.

15. (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.

(2) Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques.

Canadian Bill of Rights

1**.** It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

(*a*) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;

Déclaration canadienne des droits

1. Il est par les présentes reconnu et déclaré que les droits de l’homme et les libertés fondamentales ci-après énoncés ont existé et continueront à exister pour tout individu au Canada quels que soient sa race, son origine nationale, sa couleur, sa religion ou son sexe :

a) le droit de l’individu à la vie, à la liberté, à la sécurité de la personne ainsi qu’à la jouissance de ses biens, et le droit de ne s’en voir privé que par l’application régulière de

(*b*) the right of the individual to equality before the law and the protection of the law;

(*c*) freedom of religion;

(*d*) freedom of speech;

(*e*) freedom of assembly and association; and

(*f*) freedom of the press

Federal Courts Act

18. (1) Subject to section 28, the Federal Court has exclusive original jurisdiction

(*a*) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and

(*b*) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (*a*), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

18.5 Despite sections 18 and 18.1, if an Act of Parliament expressly provides for an appeal to the Federal Court, the Federal Court of Appeal, the Supreme Court of Canada, the Court Martial Appeal Court, the Tax Court of Canada, the Governor in Council or the Treasury Board from a decision or an order of a federal board, commission or other tribunal made by or in the course of proceedings before that board, commission or tribunal, that decision or order is not, to the extent that it may be so appealed, subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with, except in accordance with that Act.

la loi;

b) le droit de l'individu à l'égalité devant la loi et à la protection de la loi;

c) la liberté de religion;

d) la liberté de parole;

e) la liberté de réunion et d'association;

f) la liberté de la presse.

Loi sur les Cours fédérales

18. (1) Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour :

a) décerner une injonction, un bref de *certiorari*, de *mandamus*, de prohibition ou de *quo warranto*, ou pour rendre un jugement déclaratoire contre tout office fédéral;

b) connaître de toute demande de réparation de la nature visée par l'alinéa *a*), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral.

18.5 Par dérogation aux articles 18 et 18.1, lorsqu'une loi fédérale prévoit expressément qu'il peut être interjeté appel, devant la Cour fédérale, la Cour d'appel fédérale, la Cour suprême du Canada, la Cour d'appel de la cour martiale, la Cour canadienne de l'impôt, le gouverneur en conseil ou le Conseil du Trésor, d'une décision ou d'une ordonnance d'un office fédéral, rendue à tout stade des procédures, cette décision ou cette ordonnance ne peut, dans la mesure où elle est susceptible d'un tel appel, faire l'objet de contrôle, de restriction, de prohibition, d'évocation, d'annulation ni d'aucune autre intervention, sauf en conformité avec cette loi.

Federal Courts Rules

75. (1) Subject to subsection (2) and rule 76, the Court may, on motion, at any time, allow a party to amend a document, on such terms as will protect the rights of all parties.

Limitation

(2) No amendment shall be allowed under subsection (1) during or after a hearing unless

(*a*) the purpose is to make the document accord with the issues at the hearing;

(*b*) a new hearing is ordered; or

(*c*) the other parties are given an opportunity for any preparation necessary to meet any new or amended allegations.

301**.** An application shall be commenced by a notice of application in Form 301, setting out

(*a*) the name of the court to which the application is addressed;

(*b*) the names of the applicant and respondent;

(*c*) where the application is an application for judicial review,

(i) the tribunal in respect of which the application is made, and

(ii) the date and details of any order in respect of which judicial review is sought and the date on which it was first communicated to the applicant;

(*d*) a precise statement of the relief sought;

(*e*) a complete and concise statement of the grounds intended to be argued, including a reference to any statutory provision or rule to be relied on; and

(*f*) a list of the documentary evidence to be

Règles des Cours fédérales

75. (1) Sous réserve du paragraphe (2) et de la règle 76, la Cour peut à tout moment, sur requête, autoriser une partie à modifier un document, aux conditions qui permettent de protéger les droits de toutes les parties.

Conditions

(2) L'autorisation visée au paragraphe (1) ne peut être accordée pendant ou après une audience que si, selon le cas :

a) l'objet de la modification est de faire concorder le document avec les questions en litige à l'audience;

b) une nouvelle audience est ordonnée;

c) les autres parties se voient accorder l'occasion de prendre les mesures préparatoires nécessaires pour donner suite aux prétentions nouvelles ou révisées.

301. La demande est introduite par un avis de demande, établi selon la formule 301, qui contient les renseignements suivants :

a) le nom de la cour à laquelle la demande est adressée;

b) les noms du demandeur et du défendeur;

c) s'il s'agit d'une demande de contrôle judiciaire :

(i) le nom de l'office fédéral visé par la demande,

(ii) le cas échéant, la date et les particularités de l'ordonnance qui fait l'objet de la demande ainsi que la date de la première communication de l'ordonnance au demandeur;

d) un énoncé précis de la réparation

used at the hearing of the application.

demandée;

e) un énoncé complet et concis des motifs invoqués, avec mention de toute disposition législative ou règle applicable;

f) la liste des documents qui seront utilisés en preuve à l'audition de la demande.

Civil Code of Québec

1457. Every person has a duty to abide by the rules of conduct which lie upon him, according to the circumstances, usage or law, so as not to cause injury to another.

Where he is endowed with reason and fails in this duty, he is responsible for any injury he causes to another person by such fault and is liable to reparation for the injury, whether it be bodily, moral or material in nature.

He is also liable, in certain cases, to reparation for injury caused to another by the act or fault of another person or by the act of things in his custody.

Code civil du Québec

1457. Toute personne a le devoir de respecter les règles de conduite qui, suivant les circonstances, les usages ou la loi, s'imposent à elle, de manière à ne pas causer de préjudice à autrui.

Elle est, lorsqu'elle est douée de raison et qu'elle manque à ce devoir, responsable du préjudice qu'elle cause par cette faute à autrui et tenue de réparer ce préjudice, qu'il soit corporel, moral ou matériel.

Elle est aussi tenue, en certains cas, de réparer le préjudice causé à autrui par le fait ou la faute d'une autre personne ou par le fait des biens qu'elle a sous sa garde.

REASONS FOR DECISION

SOLICITORS OF RECORD

DOCKET:	T-2096-04
STYLE OF CAUSE:	RICHARD ANGELL ET AL. v. MINISTER OF NATIONAL REVENUE ET AL.
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	NOVEMBER 14, 2005
REASONS FOR ORDER: AND ORDER	GAUTHIER J.
DATED:	SEPTEMBER 14, 2006

APPEARANCES:

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Pierre Cossette Philippe Dupuis	FOR THE RESPONDENTS

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