

Federal Court of Appeal



Cour d'appel fédérale

**Date: 20160412**

**Docket: A-439-15**

**Citation: 2016 FCA 112**

[ENGLISH TRANSLATION]

**CORAM: GAUTHIER J.A.  
SCOTT J.A.  
DE MONTIGNY J.A.**

**BETWEEN:**

**9162-4676 QUÉBEC INC.**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Montréal, Quebec, on April 12, 2016.

Judgment delivered from the Bench at Montréal, Quebec, on April 12, 2016.

REASONS FOR JUDGMENT OF THE  
COURT BY:

DE MONTIGNY J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160412

Docket: A-439-15

Citation: 2016 FCA 112

**CORAM: GAUTHIER J.A.  
SCOTT J.A.  
DE MONTIGNY J.A.**

**BETWEEN:**

**9162-4676 QUÉBEC INC.**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Montréal, Quebec, on April 12, 2016.)**

**DE MONTIGNY J.A.:**

[1] This is an appeal from a judgment rendered by Madam Justice Lafleur, of the Tax Court of Canada, ordering that paragraphs 8, 9 and 10, as well as sub-paragraphs 10(a), (b) and (c), be struck out from the Notice of Appeal from the assessment issued by the respondent for the period from April 1, 2008, to April 30, 2011.

[2] After reviewing the record, and following representations from counsel, this Court is of the opinion that there is no reason to intervene in this case. The law is well settled : an appeal from an assessment must address the validity of the assessment itself and not the possible underlying process or motivations: *Main Rehabilitation Co. v. Canada*, 2004 FCA 403, at paragraphs 7-8; *Johnson v. Canada*, 2015 FCA 52, at paragraph 4; *Ereiser v. Canada*, 2013 FCA 20, at paragraphs 31 and 33.

[3] Therefore, regardless of the applicable standard of review before us, the judge did not err in concluding that paragraphs 8, 9 and 10, as well as subparagraphs 10(a), (b) and (c), should have been struck from the Notice of Appeal, in accordance with subsection 53(1) of the *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a. To the extent that the allegations struck out relate to the behaviour or conduct of the Minister's representatives, they are not relevant for the purposes of assessing the validity and correctness of the assessment under the legislation. That decision does not bar the appellant from using statements that may have been made by auditors for the purposes of attacking their credibility and on the basis of trying to demolish the assumptions upon which the Minister based his assessment.

[4] In its Notice of Motion filed on July 21, 2015, the respondent explicitly applied for an order for an extension of time, an order which the Tax Court of Canada granted when it provided that the Response should be produced within 10 days of the appellant's Amended Notice of Appeal. In our view, the respondent did not fail to deliver its Reply to Notice of Appeal within the time for delivery set out in subsection 44(1) of the *Tax Court of Canada Rules*. Moreover, the appellant did not strongly press this submission at the hearing.

[5] For these reasons, the appeal is dismissed with costs, fixed in the amount of \$500 (all-inclusive).

“Yves de Montigny”

---

J.A.

Certified true translation François Brunet, Revisor
--

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-439-15  
**STYLE OF CAUSE:** 9162-4676 QUÉBEC INC. v. HER  
MAJESTY THE QUEEN  
**PLACE OF HEARING:** MONTRÉAL, QUEBEC  
**DATE OF HEARING:** APRIL 12, 2016  
**REASONS FOR JUDGMENT OF THE COURT BY:** GAUTHIER J.A.  
SCOTT J.A.  
DE MONTIGNY J.A.  
**DELIVERED FROM THE BENCH BY:** DE MONTIGNY J.A.

**APPEARANCES:**

CHRISTOPHER R. MOSTOVAC FOR THE APPELLANT  
ANDY NOROOZI  
DANNY GALARNEAU FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

STARNINO MOSTOVAC S.E.N.C. FOR THE APPELLANT  
Montréal, Quebec  
LARIVIÈRE, MEUNIER FOR THE RESPONDENT  
Québec, Quebec