



A-192-96

QUÉBEC, QUEBEC, THE 12th DAY OF FEBRUARY, 1997

CORAM: THE HONOURABLE MR. JUSTICE MARCEAU
THE HONOURABLE MR. JUSTICE HUGESSEN
THE HONOURABLE MADAM JUSTICE DESJARDINS

BETWEEN: THE ATTORNEY GENERAL OF CANADA

Applicant

- AND -

JEAN-GILLES CRÊTE

Respondent

J U D G M E N T

This application for judicial review is allowed; the impugned decision is set aside; the preliminary motion by the respondent-appellant for the immediate upholding of his appeal against the Minister's assessment is dismissed and the matter is returned to the Tax Court of Canada to take its normal course.

The costs are allowed in accordance with the requirements of section 18.25 of the *Tax Court of Canada Act*.

Louis Marceau

J.A.

Certified true translation

A handwritten signature in cursive script, appearing to read "Christiane Delon".

Christiane Delon, LL.L.

Federal Court of Appeal



Cour d'appel fédérale

A-192-96

CORAM: MARCEAU
HUGESSEN
DESJARDINS, J.A.

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

JEAN-GILLES CRÊTE

Respondent

Hearing held in Québec, Quebec, Wednesday, February 12, 1997.

Judgment pronounced at the hearing, February 12, 1997.

REASONS FOR JUDGMENT OF THE COURT BY: HUGESSEN, J.A.



A-192-96

CORAM: MARCEAU
HUGESSEN
DESJARDINS, J.J.A.

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

JEAN-GILLES CRÊTE

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Pronounced at Québec, Quebec,
Wednesday, February 12, 1997)

HUGESSEN J.A.

This is an application for judicial review of a decision of the Tax Court of Canada which allowed the taxpayer's appeal. The trial judge did not hear any evidence but simply allowed a preliminary oral motion presented by the taxpayer for the immediate upholding of his appeal on the ground that the notice of reassessment by the Minister was dated subsequent to the expiration of the period prescribed in subsection 152(4) of the Act.¹

¹ *Income Tax Act*, S.C. 1970-71-72, c. 63, as amended.

It is clear that the judge erred. He criticizes the Minister for not alleging in the reply to the notice of appeal some facts to show that the reassessment was not out of time. But the Minister, like any other litigant, is never required to reply to an allegation that has not been made and, however you read the taxpayer's notice of appeal, it contains no allegation that the notice of assessment was void for being out of time.

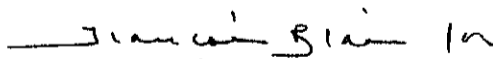
We are clearly not required to rule on the merits of the decision of the Tax Court of Canada in the *Ruppert*² case, on which the trial judge relied. The present case is in no way comparable to the one in *Ruppert*, where, it seems, there was a complete absence of allegations to support a finding of neglect, carelessness, wilful default or fraud on the part of the taxpayer. It is enough to read paragraphs 8, 9, 10, 13 and 15 of the reply to the notice of appeal in this case to realize that the Minister certainly intends to rely on the items listed in subparagraphs 152(4)(a)(i)³ and that the facts alleged, if proved, may enable the trial judge to rule in his favour.

The application for judicial review will be allowed, the decision will be quashed and the matter will be returned to the Tax Court of Canada for proof and hearing. Costs shall follow section 18.25 of the *Tax Court of Canada Act*.

James K. Hugessen

J.A.

Certified true translation



Christiane Delon, LL.L.

² *Ruppert (L.H.) v. Canada*, [1994] 1 C.T.C. 2065.

³ 152. (4) The Minister may at any time assess tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the taxation year, and may

(a) at any time, if the taxpayer or person filing the return

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act,

FEDERAL COURT OF APPEAL

A-192-96

BETWEEN:

**THE ATTORNEY GENERAL
OF CANADA**

Applicant

- and -

JEAN-GILLES CRÉTE

Respondent

REASONS FOR JUDGMENT OF THE COURT

**FEDERAL COURT OF CANADA
APPEAL DIVISION**

NAMES OF COUNSEL AND SOLICITORS OF RECORD

FILE NO.: A-192-96

STYLE: Attorney General of Canada v. Jean-Gilles Crête

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: February 12, 1997

REASONS FOR JUDGMENT OF THE COURT: (Marceau, Hugessen & Desjardins JJ.A.)

RENDERED AT THE HEARING BY: Hugessen, J.A.

APPEARANCES:

Daniel Marecki FOR THE APPLICANT

André Lareau FOR THE RESPONDENT

SOLICITORS OF RECORD:

Valère M. Gagné
Rimouski, Quebec FOR THE APPLICANT

George Thomson
Deputy Attorney General of Canada
Ottawa, Ontario FOR THE RESPONDENT