

**Date: 20061117**

**Docket: A-454-06**

**Citation: 2006 FCA 377**

**Present: THE HONOURABLE MR. JUSTICE LÉTOURNEAU**

**BETWEEN:**

**BERNARD BROUSSEAU**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Motion in writing decided without appearance by the parties.

Order rendered at Ottawa, Ontario, on November 17, 2006.

**REASONS FOR ORDER BY:**

**LÉTOURNEAU J.A.**

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**REASONS FOR ORDER**

**LÉTOURNEAU J.A.**

[1] The appellant, who is self-represented, is asking that his appeal file, which is in its very early stages, be held in abeyance until May 1, 2007, because he will be out of the country until then. This is a significant delay since as of this moment the appeal file is still not at the stage of the notice of appeal and the respondent's appearance.

[2] Furthermore, the appellant's motion contains some ambiguities. In fact, the grounds in support of the motion to suspend are vague and not necessarily justified.

[3] First, the appellant alleges as a ground for the suspension that the new assessment by the Minister of National Revenue [TRANSLATION] “does not correspond to the *Income Tax Act*”. This is an argument that goes to the merits of the appeal, not the motion to suspend, and it is too vague to be of any use for any purpose.

[4] Second, the appellant submits that he will provide evidence that Standard Life Assurance Company’s calculation, which appears to be the basis of the new assessment, is wrong. It is not clear whether this position will be based on evidence already in the record that was before the Tax Court of Canada or whether he will adduce fresh evidence on appeal.

[5] For the benefit of the appellant, I note that an appeal is decided on the basis of the record as constituted at the trial. The admission of fresh evidence on appeal is subject to strict criteria. It requires leave from the Court on a motion to introduce fresh evidence. The evidence must not have been discoverable at the time of the trial or could not have been discovered prior to the appeal through reasonable diligence and, if the evidence is admitted, it must be conclusive of the dispute or the issue in dispute (see section 351 of the *Federal Courts Rules*; see also *Amchem Products Inc. v. British Columbia (Workers’ Compensation Bd.)* (1992), 70 B.C.A.C. 309, 192 N.R. (S.C.C.)). Nonetheless, the Court retains discretion to admit evidence even where these criteria are not met (*BC Tel v. Seabird Island Indian Band (Assessor of)* 2002 F.C.A. 288).

[6] The final reason for a suspension is the fact that the appellant, without providing further details, will be out of the country until May 1, 2007.

[7] Under the circumstances, given the inadequate justification for the motion to suspend, I do not believe that it is in the interests of justice to grant it.

[8] For these reasons, I would dismiss the motion to suspend, without prejudice to the appellant's right to bring a new adequately supported motion, particularly considering the early stage of the file and the length of the requested suspension.

“Gilles Létourneau”

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J.A.

Certified true translation  
Mary Jo Egan, LLB

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-454-06

**STYLE OF CAUSE:** BERNARD BROUSSEAU v.  
HER MAJESTY THE QUEEN

**MOTION IN WRITING DECIDED WITHOUT APPEARANCE OF THE PARTIES**

**REASONS FOR ORDER BY:** LÉTOURNEAU J.A.

**DATED:** November 17, 2006

**WRITTEN REPRESENTATIONS:**

Bernard Brousseau

FOR THE APPELLANT

Nathalie Lessard

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

John H. Sims, Q.C.  
Deputy Attorney General of Canada

FOR THE RESPONDENT