

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110308

Docket: A-311-10

Citation: 2011 FCA 89

**CORAM: BLAIS C.J.
SHARLOW J.A.
STRATAS J.A.**

BETWEEN:

CANADA REVENUE AGENCY

Appellant

and

**TELE-MOBILE COMPANY PARTNERSHIP,
TELUS COMMUNICATIONS COMPANY PARTNERSHIP,
TELUS COMMUNICATIONS INC., 1219723 ALBERTA LTD.
AND MTS ALLSTREAM INC.**

Respondents

Heard at Toronto, Ontario, on March 8, 2011.

Judgment delivered from the Bench at Toronto, Ontario, on March 8, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

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AND MTS ALLSTREAM INC.**

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on March 8, 2011)

STRATAS J.A.

[1] This is an appeal from an order of Justice Zinn of the Federal Court: 2010 FC 839.

[2] The Federal Court judge dismissed a motion brought by the Canada Revenue Agency (“CRA”). In its motion, CRA moved to strike an application brought by the respondents (collectively “TELUS”) on the ground that it is plain and obvious that the application has no possibility of success.

[3] In its application, TELUS seeks to prohibit the CRA from issuing assessments against TELUS for goods and services tax (“GST”) on the international roaming fees charged by TELUS to its customers from October 2004. TELUS asserts that if it is assessed for GST, unfair and onerous obligations and financial hardships would be visited upon it.

[4] We note that if prohibition is granted because of these alleged consequences, the Minister cannot issue an assessment – in effect, as a matter of law, the Minister will be obligated to forgive a tax liability that he believes is present, solely because of alleged hardships that the taxpayer will suffer.

[5] In our view, that cannot be. The Court cannot stop the Minister from carrying out his statutory duty under the *Excise Tax Act*, R.S.C. 1985, c. E-15, subsection 275(1) to assess GST payable by law merely because doing so will impose unfair and onerous obligations and financial hardships upon the taxpayer.

[6] To the extent that CRA has exercised its discretion in a manner that has improperly caused TELUS damage, TELUS may have other recourses available to it. To the extent that the exercise of discretion affects the amount of tax owing, TELUS may challenge the assessment in accordance with Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15. Alternatively, it may apply for a remission

order under section 23 of the *Financial Administration Act*, R.S.C. 1985, c. F-11. Further, it may be able to bring an action in tort to obtain compensation for any damages that were caused by CRA.

[7] In our view, for the foregoing reasons, it is plain and obvious on the facts alleged in the notice of application that TELUS's application for prohibition cannot succeed.

[8] Therefore, the appeal will be allowed, the order of the Federal Court will be set aside and the application for prohibition will be struck out, all with costs to the CRA both here and below.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-311-10

(APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE ZINN, DATED AUGUST 25, 2010, IN FEDERAL COURT FILE NO. T-990-09)

STYLE OF CAUSE: CANADA REVENUE AGENCY v.
TELE-MOBILE COMPANY
PARTNERSHIP, TELUS
COMMUNICATIONS COMPANY
PARTNERSHIP, TELUS
COMMUNICATIONS INC.,
1219723 ALBERTA LTD. AND
MTS ALLSTREAM INC.

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 8, 2011

**REASONS FOR JUDGMENT
OF THE COURT BY:** (BLAIS C.J., SHARLOW &
STRATAS JJ.A.)

DELIVERED FROM THE BENCH BY: STRATAS J.A.

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