

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20210921**

**Docket: A-290-20**

**Citation: 2021 FCA 189**

**CORAM: NOËL C.J.  
STRATAS J.A.  
MONAGHAN J.A.**

**BETWEEN:**

**BANK OF MONTREAL**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard by online video conference hosted by the Registry on September 21, 2021.  
Judgment delivered from the Bench at Ottawa, Ontario, on September 21, 2021.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NOËL C.J.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Ottawa, Ontario, on September 21, 2021).**

**NOËL C.J.**

[1] This is an appeal from a decision of the Federal Court reported at 2020 FC 1014 (*per* Walker J.) dismissing a judicial review application brought by the Bank of Montreal against a decision by the Minister of National Revenue denying the use of a proposed methodology in computing its input tax credits pursuant to subsection 141.02(18) of the *Excise Tax Act*, R.S.C. 1985, c. E-15.

[2] Applying a standard of reasonableness, the Federal Court dismissed the judicial review application brought by the Bank on the basis that the Minister's decision was reasonable.

[3] In its memorandum of fact and law, the Bank reiterates the arguments made before the Federal Court without attempting to respond to any of the extensive reasons given by the Federal Court in rejecting them.

[4] In an appeal from a judicial review before the Federal Court, this Court "steps into the shoes" of the Federal Court and determines whether the correct standard of review was identified and properly applied: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, at para. 46. However, this does not mean that the appellant can or should ignore the reasons given by the Federal Court in rejecting its application. Where, as is the case here, the Federal Court appears to have given a complete answer to all the arguments that it advances, an appellant bears a strong tactical burden to show on appeal that the Federal Court's reasoning is flawed.

[5] During the hearing, the Court repeatedly put to the appellant portions of the Federal Court's reasons for response.

[6] Focusing on the administrative decision itself and assessing the matter afresh in light of the arguments made by the appellant both oral and written, we come to the conclusion that the Federal Court identified the correct standard of review and applied it properly. In order to

explain why we come to this view, we can do no better than adopt as our own the reasons of the Federal Court.

[7] The appeal will be dismissed with costs.

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“Marc Noël”  
Chief Justice

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-290-20

**APPEAL FROM A JUDGMENT OF THE HONOURABLE ELIZABETH WALKER  
DATED OCTOBER 29, 2020 (CONFIDENTIAL REASONS) AND NOVEMBER 26, 2020  
(PUBLIC REASONS), DOCKET NO. T-901-19.**

**STYLE OF CAUSE:** BANK OF MONTREAL v.  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** HEARD BY ONLINE  
VIDEOCONFERENCE

**DATE OF HEARING:** SEPTEMBER 21, 2021

**REASONS FOR JUDGMENT OF THE COURT  
BY:** NOËL C.J.  
STRATAS J.A.  
MONAGHAN J.A.

**DELIVERED FROM THE BENCH BY:** NOËL C.J.

**APPEARANCES:**

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ATTORNEY GENERAL OF  
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