

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20220516**

**Docket: A-103-20**

**Citation: 2022 FCA 85**

**CORAM: STRATAS J.A.  
BOIVIN J.A.  
DE MONTIGNY J.A.**

**BETWEEN:**

**EDWARD STRACHAN**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard by online video conference hosted by the Registry

on May 16, 2022.

Judgment delivered from the Bench at Ottawa, Ontario, on May 16, 2022.

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

**BOIVIN J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Ottawa, Ontario, on May 16, 2022).**

**BOIVIN J.A.**

[1] Mr. Strachan, the appellant, appeals the judgment of Justice Wong of the Tax Court of Canada (the Tax Court judge) dated March 12, 2020 (2020 TCC 37). The Tax Court judge dismissed the majority of Mr. Strachan's appeal from the reassessments made under the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (the ITA) for the appellant's 2006, 2007, 2008, 2012 and 2013 taxation years. In addition, the Tax Court judge upheld the penalties imposed on the

appellant under subsection 163(2) of the ITA. Before this Court, the appellant appeals the decision with respect to the years 2006, 2007 and 2008.

[2] At the outset of this appeal, we heard the appellant on his motion to adjourn and to add evidence to the Appeal Book. The appellant informed the Court that he waived his request for an adjournment. Therefore, we heard the appellant on the portion of his motion with respect to adding evidence. However, we are all of the view that the appellant has failed to satisfy the test in *Palmer v. The Queen*, [1980] 1 S.C.R. 759, 106 D.L.R. (3d) 212. The appellant's motion shall therefore be dismissed. Thus, we have considered the appellant's appeal on the basis of the Appeal Book filed before the Court.

[3] In the present case, the applicable standard for questions of law is correctness and the applicable standard for questions of mixed fact and law is palpable and overriding error (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235). With respect to procedural fairness and natural justice, if there is a breach, the Court must intervene (*Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69, [2019] 1 F.C.R. 121).

[4] After reviewing the record and hearing the appellant's submissions, we are of the opinion that the appeal cannot succeed.

[5] The appellant made a number of arguments, oral and written, in support of his appeal. We find no basis for the argument that the Tax Court judge breached procedural fairness and the principles of natural justice. Indeed, the Record demonstrates that during the trial, the Tax Court

judge explained the rules of the Court, the rules of evidence to the appellant and the ways the hearing would proceed, including the procedure for entering documents as exhibits. Contrary to the appellant's claim, the appellant was provided with the opportunity to present his evidence fully and no prejudice resulted from the Tax Court judge's direction to provide written submissions (see for example, Transcript of Proceedings, Supplementary Appeal Book, pp. 168-178; pp. 285-292; pp. 294-301).

[6] With respect to the assessment of the evidence, we see no palpable and overriding error in the Tax Court judge's identification and application of the burden of proof. Further, the Tax Court judge made no error in her gross negligence analysis pursuant to subsection 163(2) of the ITA (*Venne v. Her Majesty the Queen*, [1984] C.T.C. 223, 84 D.T.C. 6247 at para. 16 (F.C.T.D.)). Overall, we all agree that the Tax Court judge, as the trial judge, was best placed to assess the testimony and documentary evidence and that she was entitled to make the findings she did on the basis of the record. The appellant is essentially asking us to reassess the evidence in a new light in order to come to a conclusion that is favourable to him, which is not the role of this Court (*Nova Chemicals Corporation v. Dow Chemical Company*, 2016 FCA 216, 487 N.R. 230 at para. 14).

[7] The appellant suggests that the Tax Court judge considered him dishonest. That is not the case. In a finding key to the matter, the Tax Court judge merely criticized his lack of record keeping and found his explanations implausible or inaccurate (Tax Court judge's decision at para 51). We salute the appellant for his manner of argument today but find that he has been

unsuccessful in persuading us that there is any reversible error on the part of the Tax Court judge.

[8] Therefore, the appeal will be dismissed with costs.

"Richard Boivin"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-103-20

**STYLE OF CAUSE:** EDWARD STRACHAN v. HER  
MAJESTY THE QUEEN

**PLACE OF HEARING:** BY ONLINE VIDEO  
CONFERENCE

**DATE OF HEARING:** MAY 16, 2022

**REASONS FOR JUDGMENT OF THE COURT  
BY:** STRATAS J.A.  
BOIVIN J.A.  
DE MONTIGNY J.A.

**DELIVERED FROM THE BENCH BY:** BOIVIN J.A.

**APPEARANCES:**

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