

**Date: 20071213**

**Docket: A-49-07**

**Citation: 2007 FCA 399**

**CORAM: RICHARD C.J.  
DÉCARY J.A.  
LÉTOURNEAU J.A.**

**BETWEEN:**

**ANDRÉ GAGNÉ**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Hearing held at Montréal, Quebec, on December 12, 2007.

Judgment delivered at Montréal, Quebec, on December 13, 2007.

**REASONS FOR JUDGMENT:**

**LÉTOURNEAU J.A.**

**CONCURRED IN BY:**

**RICHARD C.J.  
DÉCARY J.A.**

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**REASONS FOR JUDGMENT**

**LÉTOURNEAU J.A.**

[1] Through judicial review, the appellant is seeking in Federal Court a review of the discretionary power exercised by the Minister of Revenue under subsection 152(4.2) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

[2] It is not necessary to reproduce this subsection. It suffices to say that on application by the taxpayer, the Minister may reconsider the statute-barred taxation year and establish new tax

assessments. This power conferred to the Minister falls under a legislative scheme termed the “fairness package”. The scheme is a means for taxpayers to have their taxes reduced or refunded.

[3] In 2004, the appellant filed income tax returns for the years 1996 to 2000. After receiving the notice of assessment in June 2004, he requested a review of his previous returns. The 1996 taxation year was statute-barred. The Minister refused to reopen it and therefore refused to accept the business losses claimed by the appellant.

[4] Mr. Justice Beaudry of the Federal Court (judge) dismissed without costs the application for judicial review filed by the appellant, who represented himself at the hearing before the Federal Court, as is the case before us.

[5] In support of his decision, the judge referred to paragraphs 10 and 12 of Information Circular 92-3 (IC-92-3) stating that the taxpayer requesting the revision of a statute-barred taxation year must provide all of the appropriate documents. A definition and a list of the appropriate documents follow.

[6] At paragraph 24 of the reasons of his decision, he finds as follows:

[24] In my view, it was entirely reasonable for the taxation authorities to deny the applicant's requests in the absence of relevant supporting documentation that would have clearly distinguished the applicant's personal expenses from his employment expenses and from expenses claimed for the business, Force G. Furthermore, without clear evidence such as a bank account or a registration number for the business, Force G, it was not unreasonable for the respondent to disallow the business losses claimed by the applicant.

[7] The appellant is challenging this finding of the judge. At the hearing before us, he attempted to dispute the content by going over the exhibits in the record and commenting on them. The fact remains however that the appellant's explanations could not compensate for the lack of evidence in the record of an existing operational and operating business, or for the absence of an accounting system determining the revenues and expenses of the business: see the reasons of the fiscal authorities sent to the appellant by letter dated December 2, 2005, at page 56 of the appeal record.

[8] The Minister's decision involved the exercise of discretion. The judge was properly advised and directed on the law when he stated that he could not substitute his discretion for the Minister's: see paragraphs 25 and 26 of the reasons for his decision. In the absence of evidence that the ministerial discretion was exercised contrary to law, without considering relevant facts or considering irrelevant facts, the judge could not intervene to set aside the decision resulting from this exercise of discretion.

[9] For these reasons, I would dismiss the appeal with costs.

“Gilles Létourneau”

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J.A.

“I concur  
J. Richard, C.J.”

“I concur  
Robert Décary, J.A.”

Certified true translation  
Kelley A. Harvey, BCL, LLB

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-49-07

**STYLE OF CAUSE:** ANDRÉ GAGNÉ v. ATTORNEY GENERAL  
OF CANADA

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** December 12, 2007

**REASONS FOR JUDGMENT:** LÉTOURNEAU J.A.

**CONCURRED IN BY:** RICHARD C.J.  
DÉCARY J.A.

**DATE OF REASONS:** December 13, 2007

**APPEARANCES:**

André Gagné  
Montréal, Quebec

FOR THE APPELLANT  
(representing himself)

Kim Sheppard

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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FOR THE RESPONDENT