

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110609

Docket: A-93-10

Citation: 2011 FCA 197

**CORAM: NOËL J.A.
PELLETIER J.A.
MAINVILLE J.A.**

BETWEEN:

2786885 CANADA INC.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on June 8, 2011.

Judgment delivered at Montréal, Quebec, on June 9, 2011.

REASONS FOR JUDGMENT BY:

NOËL J.A.

CONCURRED IN BY

PELLETIER J.A.
MAINVILLE J.A.

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REASONS FOR JUDGMENT

NOËL J.A.

[1] This is an appeal from a decision of Favreau J. of the Tax Court of Canada (the Tax Court Judge) who dismissed the corporate taxpayer's appeal from assessments made under Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (ETA), on the basis that it was filed out of time, and that he did not have the authority for extending the time period within which the appeal could be filed.

[2] The facts are not controversial. For present purposes, we need only note that the decision confirming the assessments was made on January 21, 1998 and the notice of appeal was filed on June 18, 2009, some eleven (11) years later.

[3] Pursuant to section 306 of the ETA, the appellant had a period of 90 days from the date of the confirmation (*i.e.* January 21, 1998) to file his notice of appeal. While the appellant could have sought an extension of time, subsection 305(5) of the ETA provides that no such order can be made unless the application is brought “within one year after the expiration of the time otherwise limited ... for appealing;”. It follows that the Tax Court Judge had no authority to extend the time and that he properly dismissed the appeal.

[4] I would dismiss the appeal with costs.

“Marc Noël”

J.A.

“I agree.

J.D. Denis Pelletier J.A.”

“I agree.

Robert M. Mainville J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-93-10

(APPEAL FROM A JUDGMENT OF FAVREAU J. OF THE TAX COURT OF CANADA DATED JANUARY 19, 2010, DOCKET NUMBER 2009-2035(GST)I).

STYLE OF CAUSE: 2786885 CANADA INC. and
HER MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: June 8, 2011

REASONS FOR JUDGMENT BY: NOËL J.A.

CONCURRED IN BY: PELLETIER J.A.
MAINVILLE J.A.

DATED: June 9, 2011

APPEARANCES:

Stephen M. Byer FOR THE APPELLANT

Danny Galarneau FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stephen M. Byer FOR THE APPELLANT
Verdun, Quebec

Larivière Meunier FOR THE RESPONDENT
Québec, Quebec