

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20120307**

**Docket: A-192-11**

**Citation: 2012 FCA 77**

**CORAM: BLAIS C.J.  
EVANS J.A.  
LAYDEN-STEVENSON J.A.**

**BETWEEN:**

**KEITH DAVID LAWSON,  
a natural person**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE,  
as the minister responsible for the CANADA REVENUE AGENCY**

**Respondent**

Heard at Vancouver, British Columbia, on March 7, 2012.

Judgment delivered from the Bench at Vancouver, British Columbia, on March 7, 2012.

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

**LAYDEN-STEVENSON J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Vancouver, British Columbia, on March 7, 2012)**

**LAYDEN-STEVENSON J.A.**

[1] The appellant moved to amend his notice of application. Prothonotary Lafrenière (the prothonotary) dismissed the motion. The appellant appealed the prothonotary's decision to the Federal Court. Justice Pinard (the judge) dismissed the appeal and determined that the prothonotary's decision was correct. The judge's reasons are reported as 2011 FC 529. The appellant appeals to this Court from the judge's order. We are of the view that the appeal must be dismissed.

[2] The Canada Revenue Agency (CRA) investigated the appellant for a variety of offences under the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) and the *Excise Tax Act*, R.S.C., 1985, c. E-15 (the Acts). In the course of its investigation, CRA applied for and obtained, in the British Columbia Provincial Court, a search warrant pursuant to section 487 of the *Criminal Code*, R.S.C. 1985, c. C-46 (the Code).

[3] In his notice of application, the appellant challenged his tax liability, the warrant's validity and the CRA's decision to apply for the warrant under the Code rather than the Acts. He subsequently sought to amend his notice of application.

[4] The prothonotary correctly stated the applicable law regarding the amendment of pleadings and concluded:

- the proposed amendments directed toward challenging the appellant's tax liabilities relate to matters within the exclusive jurisdiction of the Tax Court of Canada;
- the decisions taken by CRA to apply for the issuance of a search warrant were administrative and procedural steps and as such not reviewable; and
- the validity of the search warrant could be attacked only in the courts of British Columbia.

[5] In dismissing the appellant's appeal, the judge held that the proposed amendments constituted a collateral attack on the warrant, challenged primarily administrative investigatory steps, had no hope of success and were not in the interests of justice.

[6] In this Court, the appellant's arguments were significantly refined and focussed. The appellant acknowledges that the Federal Court lacks jurisdiction to adjudicate with respect to the validity of the warrant or challenges to tax liability. According to the appellant, what he truly seeks to address in his notice of application is the CRA's policy of obtaining a warrant under the Code rather than the Acts. He maintains that the dispute will be confined to this ground. The basis for his challenge to the CRA policy is that it is illegal because the procedure under the Code is more permissive than that under the Acts.

[7] Discretionary rulings should not be disturbed lightly. In *Lundbeck Canada Inc. v. Canada (Minister of Health)*, 2008 FCA 265, at paragraphs 5 and 6, this Court stated:

Appellate courts, including courts of first instance when exercising an appellate function are well advised not to interfere with discretionary rulings in interlocutory matters unless satisfied that the issues in dispute are clearly material to the just disposition of the litigation and the ruling in question is fundamentally flawed. [...] The fact that the *Federal Courts Act* provides for appeals as of right in interlocutory matters from a Prothonotary to a Judge of the Federal Court is not an open invitation to subject discretionary decisions to close scrutiny.

[8] The difficulty confronting the appellant is that the proposed amendments (appeal book, tab 8) do not generally relate to the discrete issue which the appellant now says constitutes the crux of his complaint.

[9] In our view, the original notice of application (appeal book, tab 3), specifically paragraphs 2, 18 and 19 of the grounds of review for the application, puts the appellant's refined challenge squarely in play. The proposed amendments, to the extent that they may peripherally touch on the warrant application issue, are superfluous. Put another way, the appellant's challenge to CRA's policy of obtaining warrants under the Code, rather than under the Acts, is on the table by virtue of the original notice of application.

[10] For these reasons, neither the prothonotary nor the judge erred in denying the appellant leave to amend his notice of application.

[11] The appeal will be dismissed with costs.

"Carolyn Layden-Stevenson"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-192-11

**APPEAL FROM A DECISION OF THE HONOURABLE MR. JUSTICE YVON PINARD,  
DATED MAY 6, 2011, DOCKET NUMBER T-1558-10, CITATION NUMBER 2011 FC 529**

**STYLE OF CAUSE:** Keith David Lawson v. The Minister  
of National Revenue

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** March 7, 2012

**REASONS FOR JUDGMENT OF THE COURT BY:** BLAIS C.J., EVANS AND  
LAYDEN-STEVENSON J.J.A.

**DELIVERED FROM THE BENCH BY:** LAYDEN-STEVENSON J.A.

**APPEARANCES:**

Mr. Keith Lawson

ON HIS OWN BEHALF

Mr. David Everett  
Ms. Holly Popenia

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Myles J. Kirvan  
Deputy Attorney General of Canada

FOR THE RESPONDENT