

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20120314**

**Docket: A-405-10**

**Citation: 2012 FCA 88**

**CORAM: BLAIS C.J.  
SHARLOW J.A.  
MAINVILLE J.A.**

**BETWEEN:**

**BRIGITTE GRATL**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Toronto, Ontario, on March 14, 2012.

Judgment delivered from the Bench at Toronto, Ontario, on March 14, 2012.

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

**SHARLOW J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Toronto, Ontario, on March 14, 2012)**

**SHARLOW J.A.**

[1] The appellant was assessed under the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.) for 2001 and 2002. She appealed those assessments to the Tax Court of Canada. The Crown filed a notice of motion in the Tax Court to strike out certain parts of the third amended notice of appeal. In an order dated October 6, 2010, Justice Bowie granted the Crown's motion in part (2010 TCC 491). The appellant now appeals to this Court.

[2] The appeal relates primarily to paragraph 5 of the third amended notice of appeal, which reads as follows:

5. The Appellant contends that her constitutional rights have been infringed on the following basis:

- a. The Appellant contends that she is being discriminated against vis-à-vis other lawyers by the department's insistence that she receive clients at her satellite office in the middle of the night contrary to the provisions of s. 7 and s. 15 of the Charter. The taxpayer has offered her daily dockets and given sufficient explanations to demonstrate that nightly work at the home office is a necessary part of the law practice. The taxpayer spends her daytime hours at court, and her evening hours seeing clients at the regular office, so that the only time during which necessary Notices of Application, Notices of Appeal, Notices of Motion to vary final Orders, Affidavits, Case Conference Briefs and many other documents which require a quiet environment can be prepared is available after the taxpayer returns home and uses the midnight and early morning hours for such preparations.
- b. The taxpayer respectfully submits that the imposition of penalties is unjustified given the taxpayer's inexperience as a lawyer, and as such amounts to cruel and unusual punishment contrary to s. 12 of the Canadian Charter of Rights and Freedoms, should some of the expenses charged against income be adjudged as inappropriate.
- c. The taxpayer further respectfully submits that the failure of the tax department to disclose the interest charged violates her entitlement to full disclosure contrary to s. 7 of the Charter. Without such disclosure, the taxpayer is in no position to ascertain whether the interest charged has been properly calculated.
- d. Interest accrual on a daily basis amounts to cruel and unusual punishment contrary to s. 12 of the Charter, specifically in the light of the fact that the tax department benefits from the delay for which it alone is responsible in reviewing the taxpayer's tax returns.
- e. Insofar as the delay represents unfair treatment of the taxpayer, the provisions of s. 7 of the Charter are also engaged.

[3] Justice Bowie's order strikes out paragraph 5 (with leave to amend to contest the disallowance of expenses, the imposition of penalties and the computation of assessed interest without reference to the *Charter*), and also strikes out consequential *Charter* references elsewhere in the third amended notice of appeal.

[4] The appellant takes the position that Justice Bowie erred in striking out paragraph 5 and the consequential references to sections 7 and 12 of the *Charter* (she concedes that the reference to subsection 15(1) of the *Charter* was properly struck out). The Appellant wishes to be able to argue in the Tax Court, based on section 7 and 12 of the *Charter*, that: (1) she should be entitled to deduct what she has claimed for office and other expenses, (2) she should be relieved of administrative penalties, and (3) she should be relieved in part of the obligation to pay interest.

[5] Sections 7 and 12 of the *Charter* read as follows:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[...]

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

[...]

12. Chacun a droit à la protection contre tous traitements ou peines cruels et inusités.

[6] The appellant argues that the Tax Court has the jurisdiction to grant remedies based on the *Charter*. We agree that the Tax Court has the legal authority to grant a *Charter* remedy.

However, we also agree with Justice Bowie's conclusion that it is plain and obvious that an order vacating or varying an assessment of tax, administrative penalties and interest cannot be justified by section 7 or 12 of the *Charter*. In other words, even if it is assumed that the facts alleged in paragraph 5 of the third amended notice of appeal are true, they disclose no breach of section 7 or 12 of the *Charter*.

[7] There is ample jurisprudence in support of Justice Bowie's conclusion. We need not cite all of the cases, but we refer in particular to the decisions of the Federal Court of Appeal in *Main Rehabilitation Co. v. Canada*, 2004 FCA 403, and *Kaulius v. Canada*, 2003 FCA 371 (affirmed 2005 SCC 55, [2005] 2 S.C.R. 643), and the decision of the Supreme Court of Canada in *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519.

[8] Under the *Income Tax Act* as it now reads, and as it read in 2001 and 2002, an income tax assessment is a civil matter involving only economic interests. It does not deprive the assessed person of life, liberty or security of the person within the meaning of section 7 of the *Charter*, and it does not place the assessed person under state control in a manner that could possibly be considered treatment or punishment within the meaning of section 12 of the *Charter*.

[9] For these reasons, the appeal will be dismissed with costs.

“K. Sharlow”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-405-10

**(APPEAL FROM AN ORDER OF THE HON. MR. JUSTICE BOWIE, DATED OCTOBER 6, 2010, IN THE TAX COURT OF CANADA, IN TAX COURT FILE NO.: 2009-3311 (IT) G.**

**STYLE OF CAUSE:** *BRIGITTE GRATL v. HMQ*

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 14, 2012

**REASONS FOR JUDGMENT  
OF THE COURT BY:** BLAIS, SHARLOW, MAINVILLE  
JJ.A.)

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

**APPEARANCES:**

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