

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20130626**

**Dockets: A-303-12  
A-304-12**

**Citation: 2013 FCA 173**

**CORAM: SHARLOW J.A.  
DAWSON J.A.  
STRATAS J.A.**

**A-303-12**

**BETWEEN:**

**A&E PRECISION FABRICATING AND MACHINE SHOP INC.**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

**AND**

**A-304-12**

**BETWEEN:**

**CENTRAL SPRINGS LIMITED**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at St. John's, Newfoundland and Labrador, on June 26, 2013.

Judgment delivered from the Bench at St. John's, Newfoundland and Labrador, on June 26, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20130626**

**Dockets: A-303-12  
A-304-12**

**Citation: 2013 FCA 173**

**CORAM: SHARLOW J.A.  
DAWSON J.A.  
STRATAS J.A.**

**A-303-12**

**BETWEEN:**

**A&E PRECISION FABRICATING AND MACHINE SHOP INC.**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

**AND**

**A-304-12**

**BETWEEN:**

**CENTRAL SPRINGS LIMITED**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at St. John's, Newfoundland and Labrador, on June 26, 2013)

**DAWSON J.A.**

[1] These are appeals from two judgments of the Tax Court of Canada. For reasons delivered orally the Court dismissed the appellants' appeals from two certificates issued by a taxing officer (2012 TCC 260). These reasons deal with both appeals, and a copy of these reasons shall be placed on each court file.

[2] The facts necessary to understand the issues raised on these appeals may be briefly stated:

1. The appellants appealed to the Tax Court from assessments made under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (Act) in respect of their 2001, 2002 and 2003 taxation years.
2. The appeals were heard on common evidence by Justice Boyle of the Tax Court. For reasons cited as 2010 TCC 543, Justice Boyle issued amended judgments allowing the appeals and ordering the respondent to reconsider and reassess in accordance with the reasons for judgment. Costs were to be dealt with separately.
3. Justice Boyle issued an order on costs in which he allowed costs to the appellants to be computed in accordance with the Tax Court's "Informal Rules 10 through 11", together with all reasonable disbursements.
4. A taxing officer issued a taxing certificate in the amount of \$16,145.50 in respect of both appeals.
5. The appellants appealed from the taxation of costs.

6. In the judgments under appeal, Justice Campbell of the Tax Court dismissed without costs the appeals brought by the appellants.

[3] On these appeals the appellants argue that Justice Campbell erred by:

1. Failing to correct the taxation officer's error in applying Rule 12 and Rule 12(1.1) of the *Tax Court of Canada Rules (Informal Procedure)* to the assessments. Justice Boyle is said to have been express that only Rules 10 and 11 were to be considered by the taxation officer.
2. Failing to order the respondent to pay the costs as taxed.

[4] If successful, the appellants seeks their costs here and below.

[5] For the following reasons, we have not been persuaded that Justice Campbell erred as alleged.

[6] To turn first to the taxation officer's reliance on Rule 12 and Rule 12(1.1), the officer limited the witness fees payable in respect of the appellants' witness Mr. Farrell because he did not testify as an expert witness and did not allow witness fees in respect of the appellants' witness Mr. Humby who attended as a director of the appellants. Rule 12 limits the fees to be paid to non-expert witnesses. Mr. Farrell did not testify as an expert. Rule 12(1.1) permits witness fees to be paid in respect of an appellant's witness only if the witness was called to testify by the respondent, which Mr. Humby was not. In Justice Campbell's view, the taxation officer did not err in principle by

relying upon Rule 12 and Rule 12(1.1), even if not specifically referenced by Justice Boyle, because the existence of the rules could not be ignored.

[7] We agree. In the absence of an order by Justice Boyle specifically ousting the application of Rule 12 or Rule 12(1.1), the taxation officer made no error in principle by relying upon them.

[8] Next, the Judge found that the respondent had set off its obligation to pay the taxed costs against the appellants' tax debts, and that the Tax Court had no jurisdiction to review such set off.

[9] We agree that the Tax Court had no jurisdiction to review the respondent's set off. In the present cases, the jurisdiction of the Tax Court was limited to hearing and determining the appeals brought under the Act (subsection 12(1) of the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2). This does not include the power to review collection procedures employed by the respondent. Jurisdiction with respect to collection procedures lies with the Federal Court.

[10] For these reasons, these appeals will be dismissed with one set of costs. Therefore, the judgment in A-303-12 will state that the appeal is dismissed with costs, and judgment in A-304-12 will state that the appeal is dismissed without costs.

“Eleanor R. Dawson”

---

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKETS:**

A-303-12

**STYLE OF CAUSE:**

A&E PRECISION FABRICATING  
AND MACHINE SHOP INC. v.  
HMTQ

**PLACE OF HEARING:**

St. John's, Newfoundland and  
Labrador

**DATE OF HEARING:**

June 26, 2013

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

(SHARLOW, DAWSON, STRATAS  
JJ.A.)

**DELIVERED FROM THE BENCH BY:**

DAWSON J.A.

**APPEARANCES:**

Robert B. Anstey

FOR THE APPELLANTS

Jill Chisholm

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Robert B. Anstey  
St. John's, Newfoundland and Labrador

FOR THE APPELLANTS

William F. Pentney  
Deputy Attorney General of Canada

FOR THE RESPONDENT

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKETS:** A-304-12

**STYLE OF CAUSE:** CENTRAL SPRINGS LIMITED v.  
HMTQ

**PLACE OF HEARING:** St. John's, Newfoundland and  
Labrador

**DATE OF HEARING:** June 26, 2013

**REASONS FOR JUDGMENT OF THE COURT BY:** (SHARLOW, DAWSON, STRATAS  
JJ.A.)

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

**APPEARANCES:**

Robert B. Anstey FOR THE APPELLANTS

Jill Chisholm FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Robert B. Anstey FOR THE APPELLANTS  
St. John's, Newfoundland and Labrador

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada