

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20220328**

**Docket: A-90-18**

**Citation: 2022 FCA 51**

**CORAM: RENNIE J.A.  
LASKIN J.A.  
MONAGHAN J.A.**

**BETWEEN:**

**DENISE C. NAGEL**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Halifax, Nova Scotia, on March 22, 2022.

Judgment delivered at Ottawa, Ontario, on March 28, 2022.

**REASONS FOR JUDGMENT BY:**

**MONAGHAN J.A.**

**CONCURRED IN BY:**

**RENNIE J.A.  
LASKIN J.A.**

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**REASONS FOR JUDGMENT**

**MONAGHAN J.A.**

[1] The appellant, Denise Nagel, appeals a decision of the Tax Court of Canada reported as *Nagel v. The Queen*, 2018 TCC 32 (*per* Lafleur J.). That decision dismissed Ms. Nagel's application for an extension of time to file a notice of appeal and quashed Ms. Nagel's appeal in respect of her 2013 taxation year.

[2] Ms. Nagel submits that the Tax Court made errors of law and that she was denied procedural fairness before the Tax Court.

[3] The relevant standard of review for questions of law is correctness: *Housen v. Nikolaisen*, 2002 SCC 33. Questions of procedural fairness are legal questions; the Court must be satisfied the duty of procedural fairness is met: *Lipskaia v. Canada (Attorney General)*, 2019 FCA 267, at para. 14. The focus is on whether a fair and just process was followed having regard to all the circumstances: *Canadian Pacific Railway v. Canada (Attorney General)*, 2018 FCA 69, at para. 54.

[4] For the reasons that follow, I would dismiss Ms. Nagel's appeal.

I. What is the underlying complaint?

[5] Ms. Nagel takes the position she is a resident of Saskatchewan, not Nova Scotia. That is, she is located in Nova Scotia, but is not resident there. Where she is resident within Canada does not affect her liability for tax under the *Income Tax Act (Canada)*, R.S.C. 1985, c. 1 (5th Supp.) (the Income Tax Act), but does affect her liability for provincial income taxes. Where she is resident also may affect her eligibility for provincial credits or programs.

[6] The federal government administers the provincial income tax for Saskatchewan and Nova Scotia, as it does for most provinces. This is facilitated by agreements authorized by the provinces and the federal government. Individuals file an income tax return package with the Canada Revenue Agency (CRA) that includes information relevant for purposes of computing

liability under both the Income Tax Act and the relevant provincial income tax statutes. As a result, when the CRA sends a notice of assessment or notice no tax is payable to an individual, that notice addresses liabilities under the Income Tax Act and under the relevant provincial income tax legislation.

[7] When filing her 2013 federal income tax return, Ms. Nagel filed the Saskatchewan income tax forms, not the Nova Scotia forms, with her federal income tax return. Her first notice of assessment for 2013—a notice that no tax is payable—accepted that she was resident in Saskatchewan. This notice addressed both federal and provincial (i.e., Saskatchewan) tax liability. Although this notice treated her as resident in Saskatchewan, she nonetheless filed a notice of objection because she did not agree with some statements concerning tuition tax credits.

[8] Ms. Nagel later received another notice of assessment for 2013—again indicating no tax payable—but changing her province of residence to Nova Scotia. Thus, this notice addressed both federal and provincial tax liability (in this case, Nova Scotia).

[9] Ms. Nagel disagrees she is resident in Nova Scotia; she wants to be assessed on the basis that she is resident in Saskatchewan. This led Ms. Nagel to commence the proceeding in the Tax Court of Canada. She commenced that proceeding within 90 days of the second notice of assessment she received, but it was treated as an application to extend time.

[10] Ms. Nagel’s goal in commencing the proceeding was to challenge the conclusion she was resident in Nova Scotia, challenge tuition and education tax credit balances (including those balances for provincial purposes), and obtain credits under section 122.5 of the Income Tax Act (GST credits). However, she wants no credits based on residence in Nova Scotia.

## II. The Tax Court’s Decision To Quash the Appeal

[11] An appeal to the Tax Court lies from an assessment or reassessment of tax, interest or penalties imposed under the Income Tax Act and from certain determinations made under the Income Tax Act, including a determination of eligibility for GST credits. Although a notice no tax is payable is frequently sent on a document labelled “notice of assessment”, it is not an assessment. The Income Tax Act distinguishes between an assessment and a notice no tax is payable. No appeal lies from a notice no tax is payable—often referred to as a nil assessment: *Canada v. Interior Savings Credit Union*, 2007 FCA 151, at para. 15.

[12] Ms. Nagel did not receive an assessment for her 2013 taxation year. Rather, she received a notice that no tax was payable. Because in her return Ms. Nagel expressly indicated that she was not applying for the GST credit, the Tax Court found the Minister did not determine her entitlement to that credit.

[13] The Tax Court quashed Ms. Nagel’s appeal because she had neither an assessment of tax, interest or penalties under the Income Tax Act nor any determination of her entitlement to GST credits to appeal.

[14] Before this Court, Ms. Nagel asserted that the Minister did make a determination of her entitlement to GST credits, although that determination was not provided to her. This, she said, must be the case because the Nova Scotia government sent her cheques under certain of its income assistance programs—amounts she suggests she could be entitled to only if she was entitled to the GST credits.

[15] I can find no support for this position. From Ms. Nagel’s materials, it appears that Nova Scotia asks applicants to its income assistance programs for access to their income tax information, and for copies of their notices of assessment. However, it appears the purpose is to confirm an applicant’s income for purposes of determining eligibility for income assistance. Regulations under the *Employment Support and Income Assistance Act*, S.N.S. 2000, c. 27, expressly exclude the GST credit from “chargeable income”—the amount that reduces entitlement to assistance. Ms. Nagel did not demonstrate that entitlement to a GST credit is relevant to entitlement to provincial assistance.

[16] I find no error in the Tax Court’s conclusion Ms. Nagel did not receive a determination of GST credits or in its decision to quash her appeal.

### III. Tax Court Comments on Jurisdiction

[17] Having concluded that Ms. Nagel’s appeal should be quashed, the Tax Court might have said no more. However, the Tax Court went on to explain the limits on the Tax Court’s jurisdiction. In particular, in the context of income tax appeals, the Tax Court has exclusive original jurisdiction to hear appeals of an assessment under the Income Tax Act and certain

determinations under the Income Tax Act—but it has no jurisdiction to determine issues concerning provincial income tax matters. In other words, even if Ms. Nagel’s appeal was not quashed, the Tax Court could not determine where she resided on December 31, 2013 for provincial income tax purposes.

[18] As the Tax Court itself observed, its comments about its jurisdiction were not necessary—it was trying to assist Ms. Nagel’s understanding of how she might appeal the residence issue had she received an assessment rather than a notice no tax is payable. While those comments had no effect on the outcome of Ms. Nagel’s proceeding before the Tax Court, I do not disagree with them.

[19] Provincial income taxes are imposed under provincial income tax legislation—of relevance to Ms. Nagel, Nova Scotia’s *Income Tax Act*, R.S.N.S .1989, c. 217 (the NS Tax Act) and Saskatchewan’s *Income Tax Act, 2000*, S.S. 2000, c. I-2.01 (the Sask Tax Act). Those provincial income tax statutes expressly make many provisions from the Income Tax Act—including sections 165 (objections) and 169 (appeals of assessments)—applicable as if they were a part of the provincial statute. However, it does not mean that the Income Tax Act rather than the provincial income tax legislation applies. The provincial income tax statutes tell us how any Income Tax Act provisions made applicable are to be read when they are being applied for provincial income tax purposes: see s. 2(10) of the NS Tax Act and s. 3 of the Sask Tax Act.

[20] As the Tax Court noted, the Supreme Court of Nova Scotia has jurisdiction to hear appeals of assessments under the NS Tax Act: section 64 of the NS Tax Act; the Court of Queen's Bench of Saskatchewan has jurisdiction to hear appeals of assessments under the Sask Tax Act: section 98 of the Sask Tax Act. These statutes state that on such an appeal the relevant provincial court can determine an individual's residence for the purposes of the statute. However, it appears that the provincial statutes—like the Income Tax Act—permit an assessment to be appealed, but not a notice no provincial tax is payable.

[21] While the CRA may administer the provincial income tax legislation for the provinces, I agree the Tax Court has no jurisdiction to determine Ms. Nagel's residence for provincial tax purposes.

#### IV. Were Ms. Nagel's rights to procedural fairness breached?

[22] Ms. Nagel raised a number of concerns about procedural fairness. I listened to Ms. Nagel's oral submissions, and reviewed her written submissions, the Tax Court's reasons, and the transcripts of the Tax Court hearing. While I need not address all of Ms. Nagel's submissions, I will address two.

[23] Ms. Nagel alleges the respondent breached the obligation under the Income Tax Act to keep taxpayer information private by providing her tax information to the Tax Court. However, that obligation does not apply when the information is provided in the context of legal proceedings related to the administration or enforcement of the Income Tax Act: paragraph 241(3)(b) of the Income Tax Act.



[24] Secondly, Ms. Nagel alleges the respondent provided evidentiary documents to the Tax Court without providing copies to Ms. Nagel. I have reviewed the transcripts from the hearing. The exchanges between the Tax Court judge and respondent's counsel referenced by Ms. Nagel do not concern documents filed by the respondent. Rather they concern two affidavits filed by Ms. Nagel—one found at page 90 of Volume I of the Appeal Book (Affidavit to Introduce Evidence) and the other at page 182 of Volume I of the Appeal Book (Affidavit). While Ms. Nagel questioned the discussion of a two-page document, I am satisfied that the discussion was about the Affidavit (i.e., the second document), excluding the exhibits.

[25] Similarly, the provision by respondent's counsel of material from the NS Tax Act and Sask Tax Act to the Tax Court, at its request, was not providing the Tax Court with evidence to "prove its case". First, the provincial legislation is not evidence: it is law. Secondly, that information was not relevant to the Tax Court's decision to quash the appeal. Its only relevance was to the unnecessary comments the Tax Court made regarding the appropriate courts to address provincial income tax issues.

[26] I see no breach of Ms. Nagel's rights to procedural fairness.

## V. Conclusion

[27] I have sympathy for Ms. Nagel. Navigating the system for appealing provincial and federal tax assessments can be challenging. However, I see no reason to interfere with the Tax Court's decision.

[28] At the hearing, the respondent withdrew its request for costs. Therefore, I would dismiss the appeal, without costs.

"K.A. Siobhan Monaghan"

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J.A.

"I agree  
Donald J. Rennie J.A."

"I agree  
J.B. Laskin J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:**

A-90-18

**APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE DOMINIQUE LAFLEUR DATED FEBRUARY 18, 2018, NO. 2017-401(IT)APP**

**STYLE OF CAUSE:**

DENISE C. NAGEL v. HER  
MAJESTY THE QUEEN

**PLACE OF HEARING:**

HALIFAX, NOVA SCOTIA

**DATE OF HEARING:**

MARCH 22, 2022

**REASONS FOR JUDGMENT BY:**

MONAGHAN J.A.

**CONCURRED IN BY:**

RENNIE J.A.  
LASKIN J.A.

**DATED:**

MARCH 28, 2022

**APPEARANCES:**

Denise C. Nagel

FOR THE APPELLANT  
ON HER OWN BEHALF

Rhoda Lemphers  
Grace Jothiraj

FOR THE RESPONDENT

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