

Docket: 2009-3311(IT)G

BETWEEN:

BRIGITTE GRATL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Motion heard on July 16, 2010 at Toronto, Ontario

By: The Honourable Justice E.A. Bowie

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Toks C. Omisade

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**ORDER**

UPON motion by the Respondent for an Order pursuant to sections 53 and 58 of the *Tax Court of Canada Rules (General Procedure)* to strike out the following portions of the Amended Amended Amended Notice of Appeal:

- a. subparagraphs 4(d) and 4(j), paragraph 5, subparagraphs 6(g) and 6(h), subparagraphs 7(d) and 7(e)
- b. reference to the Canadian *Charter of Rights and Freedoms* (the “*Charter*”) under the heading “The Statutory Provisions Relied on are as follows”; and
- c. reference to sections 7, 12 and subsection 15(1) of the *Charter* under the heading “The Statutory Provisions Relied on are as follows:

or, in the alternative, an Order granting the Respondent 60 days to file and serve the Reply to the Amended Amended Amended Notice of Appeal, pursuant to section 12 of the *Rules*, and for costs of this motion;

AND UPON reading the material filed herein;

AND UPON hearing the Appellant and counsel for the Respondent;

IT IS ORDERED THAT

1. Paragraph 5 of the Amended Amended Amended Notice of Appeal is struck out, with leave to the Appellant to amend that paragraph to contest the disallowance of the home office expense, and other expenses that the appellant seeks to deduct, the imposition of penalties and the computation of assessed interest, but without reference to the *Canadian Charter Rights and Freedoms*;
2. Subparagraphs 7(d) and (e) and the references in paragraph 8 to the *Canadian Charter of Rights and Freedoms* and to sections 7, 12 and 15 thereof, are struck out.
3. The Appellant shall file and serve a Fresh as Amended Notice of Appeal in conformity with this Order and the Reasons for Order by November 8, 2010.
4. The respondent is entitled to costs of this motion which are fixed at \$750 inclusive of disbursements and H.S.T., payable forthwith in any event of the cause.

Signed at Ottawa, Canada, this 6th day of October, 2010.

“E.A. Bowie”

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Bowie J.

Citation: 2010 TCC 491  
Date: 20101006  
Docket: 2009-3311(IT)G

BETWEEN:

BRIGITTE GRATL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR ORDER**

#### **Bowie J.**

[1] The appellant's Notice of Appeal was filed on October 16, 2010. Since then it has been attacked in at least two motions brought by the respondent, and it has been amended three times in vain attempts to remedy its obvious deficiencies. The appellant is a lawyer who apparently does not appreciate the wisdom of Clarence Darrow's well known aphorism. By the present motion I am asked to strike out numerous subparagraphs of the Amended Amended Amended Notice of Appeal. The portions of the pleading that are attacked now are the following:

- 4(d) In their second assessment, the auditors proceeded to disallow expenditures that had been previously allowed, i.e. a vehicle, the satellite home office, expenses associated with the home office, general expenses for office materials, computer expenses, in addition to those that had been previously disallowed in 2003. The appellant respectfully submits that this amounts to arbitrary treatment of the taxpayer.
- 4(j) Furthermore, the Appellant submits that she is entitled to know the interest rate which is being charged, and no such disclosure has been made.
- 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 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 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.

6 The following questions of mixed law and fact should be determined by this Honourable Court:

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- g. Is there a legal entitlement for the tax department to charge excessive amounts of interest beyond the federal rate and commercial rates?

- h. Is the tax department entitled to conceal the interest rate which is being charged?
- 7
- d. That the interest is valid.
  - e. That the Appellant be given reasonable time to pay the amount owing, after which time interest at a disclosed rate, calculated semi-annually and not in advance, be applied.
8. Statutory Provisions Relied on are as follows:

...

*Canadian Charter of Rights and Freedoms:*

*s. 7*

*s. 12*

*s. 15(1)*

I shall deal with each in turn.

*paragraph 4, subparagraphs (d) and (j)*

[2] The respondent's position appears to be that these subparagraphs allege misconduct by the Canada Revenue Agency's assessors, and so run afoul of the decision of the Federal Court of Appeal in *Main Rehabilitation Co v. The Queen*.<sup>1</sup> This is a misapplication of that judgment. While it may be inelegantly expressed, it is clearly the intention of the appellant by these subparagraphs to dispute the disallowance of certain expenses, and to dispute the computation of the interest assessed. She is entitled to do this. These subparagraphs are perhaps not a clear and concise statement of the facts that she relies on, but it seems unlikely that to require her to redraft them would result in significant improvement. The respondent will not be prejudiced if she has to wait until discovery for particulars to emerge. These subparagraphs may stand.

*paragraph 5*

[3] The appellant is entitled to advance a claim for a deduction from income in respect of a home office, and in respect of the other items referred to in subparagraph

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<sup>1</sup> 2004 FCA 403.

5 a. She also may contest the applicability of the penalty provisions of the *Income Tax Act* (the “Act”),<sup>2</sup> and challenge the computation of assessed interest within the context of her appeal to this Court. It is, however, plain and obvious that her reliance on sections 7, 12 and 15 of the *Charter* is foreclosed by authority. In *Tyler v. M.N.R.*<sup>3</sup> the Federal Court of Appeal noted the distinction between criminal proceedings and a tax audit, and held that in the case of a tax audit, which is a purely an administrative proceeding, there is no suspect and no accused; see also *Kaulius v. The Queen*.<sup>4</sup> Section 7 simply does not apply to the tax audit process.

[4] It is also plain and obvious that neither the denial of an income tax deduction<sup>5</sup> nor the imposition of an administrative penalty under a self-reporting scheme of taxation<sup>6</sup> amounts to cruel and unusual treatment or punishment. The same is true of the imposition of interest, which is simply compensation to the fisc for the late payment of taxes.

[5] In her reliance on section 15 of the *Charter* the appellant has failed to specify a provision of the legislation that she says is discriminatory, she has failed to identify a ground falling within section 15 upon which she says she is discriminated against, and she has failed to identify any comparator group. She simply advances vague claims of discrimination in the air. It is plain and obvious that such claims cannot succeed. All of paragraph 5 therefore will be struck out as it raises no arguable ground upon which the Court could grant relief.

*subparagraphs 6 (g) and (h)*

[6] Paragraph 6 is the appellant’s attempt to define the issues for trial. These two subparagraphs raise these questions:

6 (g) Is there a legal entitlement for the tax department to charge excessive amounts of interest beyond the federal rate and commercial rates?

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<sup>2</sup> R.S. 1985 c.1 (5th supp.), as amended.

<sup>3</sup> 91 DTC 5022.

<sup>4</sup> 2003 DTC 564 (FCA).

<sup>5</sup> *Schindeler v. The Queen*, 95 DTC 300 (TCC).

<sup>6</sup> *Mackenzie v. The Queen*, [2008] G.S.T.C. 30 (TCC).

- (h) Is the tax department entitled to conceal the interest rate which is being charged?

While the answers to these questions might seem obvious to many, I see no harm in letting the appellant put them into issue. The computation of interest is only one of the many things that the parties should be able to agree on before trial. Failing agreement, the Appellant can obtain particulars of the computation through the discovery process.

*subparagraphs 7 (d) and (e)*

[7] These read as follows:

- 7 d. That the interest be voided.
- e. That the Appellant be given reasonable time to pay the amount owing, after which time interest at a disclosed rate, calculated semi-annually and not in advance, be applied.

This Court's jurisdiction in disposing of an appeal from an assessment for income tax is found in subsection 171(1) of the *Act*. In allowing an appeal it may vacate the assessment, it may vary the assessment, or it may refer the assessment back to the Minister for reconsideration and reassessment, but in doing so it is limited by the provisions of the *Act*. It is trite that the Court has no power to waive interest payable under the *Act*, or to fix terms for the payment of tax due under the *Act*. The interest rates payable on outstanding tax is fixed by the *Act* and the *Regulations*. The Court has no jurisdiction to fix interest rates, although it may review the correctness of the computation.

[8] In the result, then, paragraph 5 of the Amended Amended Amended Notice of Appeal will be struck out, with leave to the appellant to amend that paragraph to contest the disallowance of the home office expense and other expenses, the imposition of penalties, and the computation of assessed interest, without reference to the *Canadian Charter of Rights and Freedoms*. Subparagraphs 7 (d) and (e), and the references in paragraph 8 to the *Canadian Charter of Rights and Freedoms*, and to sections 7, 12 and 15 thereof, will be struck out.

[9] The appellant is to serve and file a Fresh as Amended Notice of Appeal in conformity with these Reasons for Judgment within 30 days from the date of this Order. The respondent is entitled to the costs of this motion, which are hereby fixed

at \$750.00, inclusive of disbursements and H.S.T., payable forthwith in any event of the cause.

Signed at Ottawa, Canada, this 6th day of October, 2010.

“E.A. Bowie”

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Bowie J.



CITATION: 2010 TCC 491

COURT FILE NO.: 2009-3311(IT)G

STYLE OF CAUSE: BRIGITTE GRATL and  
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 16, 2010

REASONS FOR ORDER BY: The Honourable Justice E.A. Bowie

DATE OF ORDER: October 6, 2010

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Toks C. Omisade

COUNSEL OF RECORD:

For the Appellant:	
Name:	N/A
Firm:	N/A
For the Respondent:	Myles Kirvan, Q.C. Deputy Attorney General of Canada Ottawa, Canada