Federal Court  Cour fédérale

Date: 20100825

Docket: T-990-09

Citation: 2010 FC 839

Ottawa, Ontario, August 25, 2010

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

TELE-MOBILE COMPANY PARTNERSHIP,
TELUS COMMUNICATIONS COMPANY PARTNERSHIP,
TELUS COMMUNICATIONS INC.,
1219723 ALBERTA LTD. and MTS ALLSTREAM INC.

Applicants

and

CANADA REVENUE AGENCY

Respondent

REASONS FOR ORDER AND ORDER

[1] Canada Revenue Agency (CRA) is seeking to strike the application of the applicants (collectively, TELUS) who are seeking a writ of prohibition to prevent the CRA from assessing TELUS for goods and services tax (GST) on the international roaming fees charged by TELUS to its customers from October 2004. In the alternative, the CRA appeals the Order of Prothonotary

Aalto, dated December 29, 2009, of Prothonotary Aalto, whereby he ordered that the CRA's affiant, Alyson Trattner, inform herself and provide answers in writing to a series of questions put to her on cross-examination, and to provide TELUS with a number of documents, to the extent that they are available.

Background

[2] In 2006, the Rulings Directorate of the CRA in Edmonton, Alberta, informed TELUS that the CRA was of the view that fees for international roaming services were subject to GST. Central to that view was its determination that roaming charges were treated in the industry as a single supply of telecommunications services. This determination, in turn, was based on the finding that one major mobile provider, Bell Canada, treated international roaming services as a single supply of telecommunications services.

[3] In response, TELUS contacted the Compliance Programs Branch at CRA Headquarters in Ottawa, Ontario, and requested, *inter alia*, that any assessment with respect to international roaming services be conducted starting only from January 1, 2006. By letter dated May 13, 2009, under the signature of Jean-Jacques Lefebvre, the Compliance Programs Branch confirmed the Rulings Directorate position, and rejected the request for a January 1, 2006 start date.

[4] TELUS filed its Notice of Application on June 19, 2009. It provides, in relevant part, as follows:

> This is an application for an Order of prohibition prohibiting the Respondent, the Canada Revenue Agency (the "CRA"), from proceeding with assessments or reassessments against the Applicants for goods and services tax ("GST") on "roaming fees" under the

> provisions of Part IX of the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended (the "ETA") for any periods ending prior to the date of this Application (the "Proposed Reassessments").

In its application, TELUS submits that the CRA had relied on irrelevant factors and erroneous assumptions in exercising its discretionary power to reassess it and that the CRA was applying the *Excise Tax Act*, R.S.C., 1985, c. E-15 (ETA) in a manner that prejudiced TELUS.

[5] As part of the respondent's materials, the CRA filed the affidavit of Alyson Trattner, who is a manager in the Rulings Directorate. On cross-examination, Ms. Trattner was unable to answer a series of questions regarding the decision that was conveyed in the letter of Mr. Lefebvre. On advice of counsel, Ms. Trattner refused to inform herself of answers to these questions. TELUS brought a motion to compel Ms. Trattner to inform herself and answer these questions, as well as to provide a series of relevant documents.

[6] The Prothonotary accepted the general proposition submitted by the CRA that an affiant "has no obligation to inform herself." However, the Prothonotary then held that "there are circumstances where this general proposition should not be applied." The Prothonotary relied on the decision in *Stanfield v. Minister of National Revenue*, 2004 FC 584, for the proposition "that to allow one lower echelon witness to be the only affiant in a case where several levels of administrative action are engaged and where different directorates are involved is not proper." The Prothonotary held that Ms. Trattner was such a lower echelon witness and that *Stanfield*, as well as *Merck & Co. v. Apotex* (1996), 110 F.T.R. 155 (T.D.), supported the decision to compel her to inform herself and to provide written answers.

[7] The Prothonotary stated that "the main ground of attack in this judicial review is whether the process followed by CRA and the factors it considered in making its decision were consistent with the proper exercise of discretion under the ETA." The Prothonotary held that the unanswered questions on cross-examination were relevant to this main ground of attack and therefore ought to be provided. The Prothonotary therefore ordered that Ms. Trattner inform herself and provide answers in writing to the specified questions, and that she produce a series of documents where possible.

Issues

[8] There are two issues before the Court – the first arises from a motion to dismiss the application and the second from an appeal of the Order of the Prothonotary. The issues are as follows:

(1) Whether the application for prohibition should be struck on the basis that the Court cannot grant the relief sought; and

(2) Whether the Prothonotary based his decision on wrong principles or upon a misapprehension of the facts and, if so, whether his Order requiring the respondent's affiant to further inform herself, to provide additional answers in writing, and to produce additional documents, ought to be reversed.

[9] The parties dealt with these discrete issues separately, as shall I in these reasons.

Analysis

Whether the application for prohibition should be struck.

[10] The test on a motion to strike is onerous. The moving party must prove that it is "plain and obvious" that the application or action in question will not succeed: *Inuit Tapirisat of Canada v. Canada (Attorney General)*, [1980] 2 S.C.R. 735 at 740; see also *Sweet v. Canada*, [1999] F.C.J. No. 1539 (F.C.A.) (QL). Put another way, the application must be "so clearly improper as to be bereft of any possibility of success:" *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, [1995] 1 F.C. 588 at para. 15. Is this one of those cases?

[11] TELUS contends that the timing of the CRA's motion to strike should be considered by the Court as a factor militating against granting the motion. While the timing of such a motion is a relevant consideration in most circumstances, in these circumstances I am of the view that the timing is not a matter that weighs in favour of refusing to strike if the test is otherwise met.

[12] The Court of Appeal has instructed in *David Bull Laboratories* that motions to strike in the context of judicial review applications are to be avoided even though a party may bring a motion to strike at any time: see also *Coca-Cola Ltd. v. Pardhan (c.o.b. as Universal Exporters)*, [1999] F.C.J. No. 484 (F.C.A.) (QL). The CRA explained that but for the Order of the Prothonotary, it would not have brought this motion:

> The underlying rationale for the Federal Court of Appeal's words of restraint in *David Bull Laboratories* is that, unlike an action, judicial review is intended to be a swift procedure, not involving discovery or trial and that entertaining preliminary motions in an application is not generally the most efficient use of the court's resources. This application is not the "summary judicial proceeding" contemplated in *David Bull Laboratories*. Rather, if further enquiries must be

> undertaken, additional questions answered and documents produced with the potential for further questions arising from those answers and documents, the cross-examination is effectively an examination for discovery, and one with no clear end in sight. This matter is not moving swiftly towards hearing and, given these circumstances, a motion to strike brought at this juncture is appropriate. (Respondent's Written Representations, para. 31 – footnotes omitted)

[13] In my view, the explanation offered by the CRA for bringing the motion at this stage rings true. The result of the Order of the Prothonotary has arguably changed the nature of this application into something more complex. Accordingly, in my view, it makes sense to bring the motion now, rather than occupy the time of the parties and Court with what is claimed to be an application doomed to fail.

[14] There is a dispute between these parties as to whether the obligations of the Minister under the ETA are mandatory or discretionary. The CRA says that the Minister must assess TELUS in accordance with the law, that TELUS must exhaust the statutory appeal procedures before seeking judicial review, and that "a denial of 'procedural and substantive fairness' is not a ground to challenge an assessment."

[15] TELUS responds by submitting that the use of the word "may" in subsection 296(1) of the ETA indicates that the Minister has discretion and is not obligated to reassess taxpayers. TELUS further responds by saying that the statutory appeal process is irrelevant until the CRA actually assesses the taxpayer - an event TELUS is seeking to prevent.

[16] The provisions of the ETA that are relevant to the motions before the Court are reproduced in Annex A. These provisions set out the following regime with respect to GST.

[17] Pursuant to the ETA the "Minister may assess" the net tax of a person for a reporting period "and may reassess or make an additional assessment of tax… (s. 296(1), emphasis added)." An assessment, "subject to being reassessed or vacated as a result of an objection or appeal [is] deemed to be valid and binding, notwithstanding any error, defect or omission therein… (s. 299(4))." A taxpayer has 30 days following an assessment to file an objection with the Minister, who will either reconsider the assessment or confirm it (s. 301(1.1)). A taxpayer, after receiving notification of the Minister's action, and within specified time periods, may appeal the assessment to the Tax Court (s. 306).

[18] CRA submits that the facts before this Court parallel those before the Court of Appeal in *Webster v. Canada*, 2003 FCA 388, where the Court of Appeal quashed an application for judicial review of a decision of the Minister to confirm tax reassessments. TELUS submits that this authority, which is based on the *Income Tax Act*, R.S.C. 1985, c.1 (5th supp.) is distinguishable. TELUS submits that s. 152(1) of the *Income Tax Act*, unlike the ETA, uses the mandatory word "shall" in describing the duties and obligations of the Minister to assess or reassess a taxpayer and not the permissive word "may" that is used in the ETA.

[19] I agree with TELUS that these statutory provisions, on their face, differ. Section 152(1) of the *Income Tax Act* stipulates that "The Minister shall, with all due dispatch, examine a taxpayer's return of income for a taxation year, assess the tax for the year, the interest and penalties, if any, payable and determine [any refund owing or tax payable]" (emphasis added). This is to be contrasted with section 296(1) of the ETA which stipulates that the "Minister may assess" the tax payable (emphasis added). I agree with TELUS that *Webster* is therefore not determinative of this

application. In any event, the decision of the Federal Court of Appeal in *Webster* was not based on mandatory language setting out the Minister's duties, but rather was based on section 18.5 of the *Federal Courts Act*, R.S.C. 1985, c. F-7. The jurisdiction of this Court to judicially review a decision is limited by section 18.5 of the *Federal Courts Act*, which provides as follows:

18.5 Despite sections 18 and 18.1, if an Act of Parliament expressly provides for an appeal to the Federal Court, the Federal Court of Appeal, the Supreme Court of Canada, the Court Martial Appeal Court, the Tax Court of Canada, the Governor in Council or the Treasury Board from a decision or an order of a federal board, commission or other tribunal made by or in the course of proceedings before that board, commission or tribunal, that decision or order is not, to the extent that it may be so appealed, subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with, except in accordance with that Act.	**18.5** Par dérogation aux articles 18 et 18.1, lorsqu'une loi fédérale prévoit expressément qu'il peut être interjeté appel, devant la Cour fédérale, la Cour d'appel fédérale, la Cour suprême du Canada, la Cour d'appel de la cour martiale, la Cour canadienne de l'impôt, le gouverneur en conseil ou le Conseil du Trésor, d'une décision ou d'une ordonnance d'un office fédéral, rendue à tout stade des procédures, cette décision ou cette ordonnance ne peut, dans la mesure où elle est susceptible d'un tel appel, faire l'objet de contrôle, de restriction, de prohibition, d'évocation, d'annulation ni d'aucune autre intervention, sauf en conformité avec cette loi.

[20] Pursuant to section 306 of the ETA, the assessment or reassessment made by the Minister under section 296(1) of the ETA may be appealed to the Tax Court of Canada. Therefore, the decision of the Minister that TELUS seeks to prevent him from making cannot be subject to an application for judicial review in this Court. However, that does not answer the question as to

whether the Minister may be prevented, by Order of this Court, from making the decision in the first place.

[21] Neither party was able to assist the Court by pointing to any authority directly on point. The Court has identified three decisions that address the availability of prerogative writs such as prohibition in the context of CRA (re)assessments. Two of these may support the availability of remedies such as prohibition.

[22] In *McCaffrey v. Canada*, [1993] 1 C.T.C. 15 (F.C.T.D), a taxpayer sought to dispute assessments made by the CRA and brought a motion in the Federal Court claiming *certiorari* and prohibition. The respondent attempted to have these claims struck out. The Court struck out the claim for *certiorari*, holding that allowing such a claim would be tantamount to setting aside the assessments. However, the Court declined to strike out the part of the motion seeking prohibition because the applicant made "serious allegations" regarding the Minister's exercise of his authority to conduct audits.

[23] In *Cambridge Leasing Ltd. v. Canada (Minister of National Revenue – M.N.R.)*, 2003 FCT 112, the taxpayer brought an application for *mandamus* which was ultimately dismissed because the CRA had acted by the time the matter came on for hearing. However, Justice MacKay considered the statutory scheme under the ETA and concluded at para. 11 that the objection and appeal procedure did not remove the remedy of *mandamus* from the Federal Court's jurisdiction:

> My reading of those various statutory provisions leads me to conclude that they do not expressly provide, as required by s. 18.5 of the Federal Court Act, that an application for mandamus is removed from this Court's jurisdiction, which would otherwise be heard in

> appropriate circumstances to require the Minister to perform a public duty under the Excise Tax Act.

[24] Lastly, in *Walsh v. Canada (Minister of National Revenue – M.N.R.)*, 2006 FC 56, the taxpayer sought *certiorari* and prohibition quashing the CRA's decision to reassess and preventing further reassessments. Counsel for the applicant conceded at the hearing that these remedies were outside the Federal Court's jurisdiction. At para. 4, Justice Hugessen cited a number of cases supporting this lack of jurisdiction. However, the authorities cited by Justice Hugessen all appear to address the lack of jurisdiction over judicial reviews that seek to vacate or review an assessment – not the decision to issue the assessment itself, which TELUS is seeking to prohibit in this application.

[25] These limited authorities, in my view, support the position of TELUS that its application is not clearly bereft of any chance of success.

[26] The CRA submits that the application is bereft of any chance of success because it would defy common sense to allow taxpayers to prevent the Minister from assessing their tax obligations simply by seeking a writ of prohibition. The CRA cites *Canada v. Addison & Leyen Ltd.*, 2007 SCC 33 and *Morris v. Canada* (*Minister of National Revenue – M.N.R.)*, 2009 FCA 373, for the proposition that "courts should be very cautious in authorizing judicial review in such circumstances."

[27] TELUS submits that the remedy of prohibition is available to prevent "administrative authorities from exceeding or misusing their powers," and that the application is not bereft of any chance of success such that a motion to strike is warranted.

[28] At the hearing, CRA took the position that no decision of the Minister to assess or reassess a taxpayer is ever open to an order of prohibition, even if the Minister's decision to assess is discretionary and even if the Minister acted in bad faith or ignored relevant evidence in making the decision. When pressed, counsel agreed that the *bona fides* of the decision to assess is not a matter within the jurisdiction of the Tax Court and offered that perhaps the remedy of the taxpayer in those circumstances was to commence an action for damages.

[29] No jurisprudence was offered in support of that position. The submission was described by counsel for the applicants as an "extraordinary proposition."

[30] Simply because a party raises a novel issue does not dictate that it is bereft of any chance of success. Writs of prohibition are available to prevent authorities from acting beyond their jurisdiction or to prevent unfairness. In this application, TELUS acknowledges that the Minister has the jurisdiction to make the proposed assessments but asserts that it would be unfair to do so. While I acknowledge that TELUS will have a steep hill to climb to convince a Court that the Minister has a duty of fairness in these circumstances and that it was not met, I cannot, at this early stage, say that it is not possible that they may succeed in that climb. Accordingly, the respondent has not met the stringent test required to strike the application at this stage without a full hearing and its motion to strike is dismissed.

Whether the Prothonotary based his decision on wrong principles or upon a misapprehension of the facts.

[31] The CRA submits that the Prothonotary was clearly wrong in compelling their affiant to inform herself, to answer the questions in dispute, and to provide the requested documents. The CRA argues that the Prothonotary mischaracterized the basis for the judicial review application, and therefore compelled their affiant to provide answers to questions that were not relevant to the writ of prohibition sought, particularly as these questions relate to fairness. The CRA further argues that the Prothonotary erred in stating that the position of the CRA was that it has discretion to assess as opposed to an obligation to assess. The CRA contends that their affiant was not a "lower echelon witness;" rather, she was properly informed and the Prothonotary erred in finding to the contrary. The CRA further contends that the case of *Simpson Strong-Tie Co. v. Peak Innovations Inc.*, 2009 FCA 266, is contrary to the conclusion reached by the Prothonotary. Finally, the CRA argues that the Prothonotary could not order documentary disclosure given that Rule 91 of the *Federal Courts Rules* was not complied with by TELUS. The CRA asks that if the Court finds the Prothonotary not to be clearly wrong that the Court conduct an assessment of the questions *de novo* and remove any inappropriate questions from the Prothonotary's Order.

[32] The Court of Appeal in *Merck & Co. v. Apotex Inc.*, 2003 FCA 488 at para. 17, has instructed that discretionary orders of a Prothonotary are only to be disturbed on appeal where:

(a) they are clearly wrong, in the sense that the exercise of discretion by the Prothonotary was based upon a wrong principle or upon a misapprehension of the facts, or

(b) in making them, the Prothonotary improperly exercised his discretion on a question vital to the final issue of the case.

[33] The issues in the case at bar are not related to a question vital to the final issue, therefore this Court may only exercise its discretion *de novo* if the Prothonotary's decision is shown to be clearly wrong. In my view, the respondent has not met this test.

[34] After a careful and complete reading of the Prothonotary's decision, I have concluded that he did not err in his characterization of the underlying application. The CRA has not shown that the Prothonotary was clearly wrong in issuing the Order that he did, even if the Prothonotary did mischaracterize the CRA's submissions in some parts. In this regard, I note that counsel for the respondent informed the Court that she had no recollection of having said to the Prothonotary that the Minister's decision was discretionary and further stated that she could not believe that she would say such a thing. This must be weighed against the statement of the Prothonotary to the contrary. Absent direct evidence under oath that the statement was not made, I have no reason to doubt the accuracy of the Prothonotary's statement.

[35] The Federal Court of Appeal in *Simpson Strong-Tie Co.* did not address the cases Prothonotary Aalto relied on in concluding "that to allow one lower echelon witness to be the only affiant in a case where several levels of administrative action are engaged and where different directorates are involved is not proper." In my view, *Simpson Strong-Tie Co.* is not contrary to *Stanfield*. The Prothonotary's finding that the CRA's affiant was a "lower echelon witness" was not clearly wrong and should not be disturbed.

[36] The CRA states that Rule 91 was not complied with in that TELUS' further request for documents was not given with sufficient notice as it was made only during the cross-examination. The CRA submits that the Prothonotary erred in ordering production of these documents despite Rule 91.

[37] The CRA is technically correct that the request for further documents was not made in accordance with Rule 91. At the same time, it seems to me that if an issue arises during cross-examination, parties are to be encouraged to make their requests at that time with the hope and, in most situations, with the expectation that the opposing side will be willing to provide the documents. It would be extremely inefficient and not in keeping with the practices this Court encourages if, in such circumstances, the party questioning had to submit a direction to re-attend with a new list of documents sought, given that the opposing side may have been willing to provide the documents in the first place. While litigation is adversarial, there is no reason that counsel cannot be collegial and accommodating.

[38] Prothonotaries are to be given some flexibility to apply the Rules in a manner that is efficient, practical, and just. If a situation such as this one arises, and the Prothonotary is of the view that production of documents is warranted, then a technical reading of Rule 91 should not invalidate the Order.

[39] The Court will not re-weigh the questions that the Prothonotary ordered answered as doing so, in my opinion, would effectively be a *de novo* assessment of the propriety of the questions in the

first instance. Since the Prothonotary was not clearly wrong, this Court cannot review the matter *de novo*.

[40] For these reasons, the appeal of the Prothonotary's Order is dismissed.

Conclusion

[41] The respondent's motion to strike is dismissed with costs as is the appeal of the Order of the Prothonotary. The parties were canvassed as to the appropriate award of costs. The respondent proposed an award of $3,000 for both whereas the applicants proposed an award of $5,000 for the motion to strike and $5,000 for the appeal. In my view, an award of $4,000, inclusive of fees, disbursements and taxes for both matters is an appropriate award of costs.

ORDER

THIS COURT ORDERS that:

1. The motion to strike the application is dismissed;
2. The appeal of the Order of Prothonotary Aalto dated December 29, 2009, is dismissed; and
3. The applicants are awarded costs fixed at $4,000, inclusive of fees, disbursements and taxes.

"Russel W. Zinn"
Judge

Docket: T-990-09

Citation: 2010 FC 839

ANNEX "A"

Excise Tax Act (R.S., 1985, c. E-15)
Loi sur la taxe d'accise (L.R., 1985, ch. E-15)

296. (1) The Minister may assess	**296. (1)** Le ministre peut établir une cotisation, une nouvelle cotisation ou une cotisation supplémentaire pour déterminer :
(a) the net tax of a person under Division V for a reporting period of the person,	a) la taxe nette d'une personne, prévue à la section V, pour une période de déclaration;
(b) any tax payable by a person under Division II, IV or IV.1,	b) la taxe payable par une personne en application des sections II, IV ou IV.1;
(c) any penalty or interest payable by a person under this Part,	c) les pénalités et intérêts payables par une personne en application de la présente partie;
(d) any amount payable by a person under any of paragraphs 228(2.1)(b) and (2.3)(d) and section 230.1, and	d) un montant payable par une personne en application des alinéas 228(2.1)b) ou (2.3)d) ou de l'article 230.1;
(e) any amount which a person is liable to pay or remit under subsection 177(1.1) or Subdivision a or b.1 of Division VII,	e) un montant qu'une personne est tenue de payer ou de verser en vertu du paragraphe 177(1.1) ou des sous-sections a ou b.1 de la section VII.
and may reassess or make an additional assessment of tax, net tax, penalty, interest or an amount referred to in paragraph (d) or (e).	
...	…
299. (1) The Minister is not bound by any return, application or information	**299. (1)** Le ministre n'est pas lié par quelque déclaration, demande ou renseignement livré par une

provided by or on behalf of any person and may make an assessment, notwithstanding any return, application or information so provided or that no return, application or information has been provided.

personne ou en son nom; il peut établir une cotisation indépendamment du fait que quelque déclaration, demande ou renseignement ait été livré ou non.

Liability not affected

Obligation inchangée

(2) Liability under this Part to pay or remit any tax, penalty, interest or other amount is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(2) L'inexactitude, l'insuffisance ou l'absence d'une cotisation ne change rien aux taxes, pénalités, intérêts ou autres montants dont une personne est redevable aux termes de la présente partie.

(3) An assessment, subject to being vacated on an objection or appeal under this Part and subject to a reassessment, shall be deemed to be valid and binding.

(3) Sous réserve d'une nouvelle cotisation et d'une annulation prononcée par suite d'une opposition ou d'un appel fait selon la présente partie, une cotisation est réputée valide et exécutoire.

(3.1) Where a person (referred to in this subsection as the "body") that is not an individual or a corporation is assessed in respect of any matter,

(3.1) Dans le cas où une cotisation est établie à l'égard d'une personne (appelée « entité » au présent paragraphe) qui n'est ni un particulier ni une personne morale, les règles suivantes s'appliquent :

(a) the assessment is not invalid only because one or more other persons (each of which is referred to in this subsection as a "representative") who are liable for obligations of the body did not receive a notice of the assessment;

a) la cotisation n'est pas invalide du seul fait qu'une ou plusieurs autres personnes (chacune étant appelée « représentant » au présent paragraphe) qui sont responsables des obligations de l'entité n'ont pas reçu d'avis de cotisation;

(b) the assessment is binding on each representative of the body, subject to a reassessment of the

b) la cotisation lie chaque représentant de l'entité, sous réserve d'une nouvelle cotisation

body and the rights of the body to object to or appeal from the assessment under this Part; and

établie à l'égard de celle-ci et de son droit de faire opposition à la cotisation, ou d'interjeter appel, en vertu de la présente partie;

(c) an assessment of a representative in respect of the same matter is binding on the representative subject only to a reassessment of the representative and the rights of the representative to object to or appeal from the assessment of the representative under this Part on the grounds that the representative is not a person who is liable to pay or remit an amount to which the assessment of the body relates, the body has been reassessed in respect of that matter or the assessment of the body in respect of that matter has been vacated.

c) une cotisation établie à l'égard d'un représentant et portant sur la même question que la cotisation établie à l'égard de l'entité lie le représentant, sous réserve seulement d'une nouvelle cotisation établie à son égard et de son droit de faire opposition à la cotisation, ou d'interjeter appel, en vertu de la présente partie, pour le motif qu'il n'est pas une personne tenue de payer ou de verser un montant visé par la cotisation établie à l'égard de l'entité, qu'une nouvelle cotisation portant sur cette question a été établie à l'égard de l'entité ou que la cotisation initiale établie à l'égard de l'entité a été annulée.

(4) An assessment shall, subject to being reassessed or vacated as a result of an objection or appeal under this Part, be deemed to be valid and binding, notwithstanding any error, defect or omission therein or in any proceeding under this Part relating thereto.

(4) Sous réserve d'une nouvelle cotisation et d'une annulation prononcée lors d'une opposition ou d'un appel fait selon la présente partie, une cotisation est réputée valide et exécutoire malgré les erreurs, vices de forme ou omissions dans la cotisation ou dans une procédure y afférent en vertu de la présente partie.

(5) An appeal from an assessment shall not be allowed by reasons only of an irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Part.

(5) L'appel d'une cotisation ne peut être accueilli pour cause seulement d'irrégularité, de vice de forme, d'omission ou d'erreur de la part d'une personne dans le respect d'une disposition directrice de la présente partie.

...

301. (1) Where an assessment is issued to a person in respect of net tax for a reporting period of the person, an amount (other than net tax) that became payable or remittable by the person during a reporting period of the person or a rebate of an amount paid or remitted by the person during a reporting period of the person, for the purposes of this section, the person is a "specified person" in respect of the assessment or a notice of objection to the assessment if

(a) the person was a listed financial institution described in any of subparagraphs 149(1)(a)(i) to (x) during that reporting period; or
(b) the person was not a charity during that reporting period and the person's threshold amounts, determined in accordance with subsection 249(1), exceed $6 million for both the person's fiscal year that includes the reporting period and the person's previous fiscal year.

(1.1) Any person who has been assessed and who objects to the assessment may, within ninety days after the day notice of the assessment is sent to the person, file with the Minister a notice of objection in the prescribed form and manner setting out the reasons for the objection and all relevant facts.

…

301. (1) Pour l'application du présent article, la personne à l'égard de laquelle est établie une cotisation au titre de la taxe nette pour sa période de déclaration, d'un montant (autre que la taxe nette) qui est devenu à payer ou à verser par elle au cours d'une telle période ou du remboursement d'un montant qu'elle a payé ou versé au cours d'une telle période est une personne déterminée relativement à la cotisation ou à un avis d'opposition à celle-ci si, selon le cas :
a) elle est une institution financière désignée visée à l'un des sous-alinéas 149(1)a)(i) à (x) au cours de la période en question;
b) elle n'était pas un organisme de bienfaisance au cours de la période en question et le montant déterminant qui lui est applicable, déterminé en conformité avec le paragraphe 249(1), dépasse 6 000 000 $ pour son exercice qui comprend cette période ainsi que pour son exercice précédent.

(1.1) La personne qui fait opposition à la cotisation établie à son égard peut, dans les 90 jours suivant le jour où l'avis de cotisation lui est envoyé, présenter au ministre un avis d'opposition, en la forme et selon les modalités déterminées par celui-ci, exposant les motifs de son opposition et tous les faits pertinents.

(1.2) Where a person objects to an assessment in respect of which the person is a specified person, the notice of objection shall

(a) reasonably describe each issue to be decided;
(b) specify in respect of each issue the relief sought, expressed as the change in any amount that is relevant for the purposes of the assessment; and
(c) provide the facts and reasons relied on by the person in respect of each issue.

(1.2) L'avis d'opposition que produit une personne qui est une personne déterminée relativement à une cotisation doit contenir les éléments suivants pour chaque question à trancher :

a) une description suffisante;
b) le redressement demandé, sous la forme du montant qui représente le changement apporté à un montant à prendre en compte aux fins de la cotisation;

c) les motifs et les faits sur lesquels se fonde la personne.

(1.3) Notwithstanding subsection (1.2), where a notice of objection filed by a person to whom that subsection applies does not include the information required by paragraph (1.2)(b) or (c) in respect of an issue to be decided that is described in the notice, the Minister may in writing request the person to provide the information, and those paragraphs shall be deemed to be complied with in respect of the issue if, within 60 days after the request is made, the person submits the information in writing to the Minister.

(1.3) Malgré le paragraphe (1.2), dans le cas où un avis d'opposition produit par une personne à laquelle ce paragraphe s'applique ne contient pas les renseignements requis selon les alinéas (1.2)b) ou c) relativement à une question à trancher qui est décrite dans l'avis, le ministre peut demander par écrit à la personne de fournir ces renseignements. La personne est réputée s'être conformée à ces alinéas relativement à la question à trancher si, dans les 60 jours suivant la date de la demande par le ministre, elle communique par écrit les renseignements requis au ministre.

(1.4) Notwithstanding subsection (1.1), where a person has filed a notice of objection to an assessment (in this subsection referred to as the

(1.4) Malgré le paragraphe (1.1), lorsqu'une personne a produit un avis d'opposition à une cotisation (appelée « cotisation antérieure » au présent paragraphe)

"earlier assessment") in respect of which the person is a specified person and the Minister makes a particular assessment under subsection (3) pursuant to the notice of objection, except where the earlier assessment was made under subsection 274(8) or in accordance with an order of a court vacating, varying or restoring an assessment or referring an assessment back to the Minister for reconsideration and reassessment, the person may object to the particular assessment in respect of an issue

relativement à laquelle elle est une personne déterminée et que le ministre établit, en application du paragraphe (3), une cotisation donnée par suite de l'avis, sauf si la cotisation antérieure a été établie en application du paragraphe 274(8) ou en conformité avec l'ordonnance d'un tribunal qui annule, modifie ou rétablit une cotisation ou renvoie une cotisation au ministre pour nouvel examen et nouvelle cotisation, la personne peut faire opposition à la cotisation donnée relativement à une question à trancher :

(a) only if the person complied with subsection (1.2) in the notice with respect to that issue; and

a) seulement si, relativement à cette question, elle s'est conformée au paragraphe (1.2) dans l'avis;

(b) only with respect to the relief sought in respect of that issue as specified by the person in the notice.

b) seulement à l'égard du redressement, tel qu'il est exposé dans l'avis, qu'elle demande relativement à cette question.

Application of subsection (1.4)

Application du paragraphe (1.4)

(1.5) Where a person has filed a notice of objection to an assessment (in this subsection referred to as the "earlier assessment") and the Minister makes a particular assessment under subsection (3) pursuant to the notice of objection, subsection (1.4) does not limit the right of the person to object to the particular assessment in respect of an issue that was part of the particular assessment and not part of the earlier assessment.

(1.5) Lorsqu'une personne a produit un avis d'opposition à une cotisation (appelée « cotisation antérieure » au présent paragraphe) et que le ministre établit, en application du paragraphe (3), une cotisation donnée par suite de l'avis, le paragraphe (1.4) n'a pas pour effet de limiter le droit de la personne de s'opposer à la cotisation donnée relativement à une question sur laquelle porte cette cotisation mais non la cotisation antérieure.

(1.6) Notwithstanding subsection (1.1), no objection may be made by a person in respect of an issue for which the right of objection has been waived in writing by the person.

(1.6) Malgré le paragraphe (1.1), aucune opposition ne peut être faite par une personne relativement à une question pour laquelle elle a renoncé par écrit à son droit d'opposition.

(2) The Minister may accept a notice of objection notwithstanding that it was not filed in the prescribed manner.

(2) Le ministre peut accepter l'avis d'opposition qui n'a pas été produit selon les modalités qu'il détermine.

(3) On receipt of a notice of objection, the Minister shall, with all due dispatch, reconsider the assessment and vacate or confirm the assessment or make a reassessment.

(3) Sur réception d'un avis d'opposition, le ministre doit, avec diligence, examiner la cotisation de nouveau et l'annuler ou la confirmer ou établir une nouvelle cotisation.

(4) Where, in a notice of objection, a person who wishes to appeal directly to the Tax Court requests the Minister not to reconsider the assessment objected to, the Minister may confirm the assessment without reconsideration.

(4) Le ministre peut confirmer une cotisation sans l'examiner de nouveau sur demande de la personne qui lui fait part, dans son avis d'opposition, de son intention d'en appeler directement à la Cour canadienne de l'impôt.

(5) After reconsidering an assessment under subsection (3) or confirming an assessment under subsection (4), the Minister shall send to the person objecting notice of the Minister's decision by registered or certified mail.

(5) Après avoir examiné de nouveau ou confirmé une cotisation, le ministre fait part de sa décision par avis envoyé par courrier recommandé ou certifié à la personne qui a fait opposition à la cotisation.

...

…

306. A person who has filed a notice of objection to an

306. La personne qui a produit un avis d'opposition à une cotisation

assessment under this Subdivision may appeal to the Tax Court to have the assessment vacated or a reassessment made after either

(a) the Minister has confirmed the assessment or has reassessed, or
(b) one hundred and eighty days have elapsed after the filing of the notice of objection and the Minister has not notified the person that the Minister has vacated or confirmed the assessment or has reassessed,
but no appeal under this section may be instituted after the expiration of ninety days after the day notice is sent to the person under section 301 that the Minister has confirmed the assessment or has reassessed.

...

309. (1) The Tax Court may dispose of an appeal from an assessment by
(a) dismissing it; or
(b) allowing it and
(i) vacating the assessment, or

(ii) referring the assessment back to the Minister for reconsideration and reassessment.

aux termes de la présente sous-section peut interjeter appel à la Cour canadienne de l'impôt pour faire annuler la cotisation ou en faire établir une nouvelle lorsque, selon le cas :
a) la cotisation est confirmée par le ministre ou une nouvelle cotisation est établie;
b) un délai de 180 jours suivant la production de l'avis est expiré sans que le ministre n'ait notifié la personne du fait qu'il a annulé ou confirmé la cotisation ou procédé à une nouvelle cotisation.
Toutefois, nul appel ne peut être interjeté après l'expiration d'un délai de 90 jours suivant l'envoi à la personne, aux termes de l'article 301, d'un avis portant que le ministre a confirmé la cotisation ou procédé à une nouvelle cotisation.
…

309. (1) La Cour canadienne de l'impôt peut statuer sur un appel concernant une cotisation en le rejetant ou en l'accueillant. Dans ce dernier cas, elle peut annuler la cotisation ou la renvoyer au ministre pour nouvel examen et nouvelle cotisation.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-990-09
STYLE OF CAUSE:	TELE-MOBILE COMPANY PARTNERSHIP, TELUS COMMUNICATIONS COMPANY PARTNERSHIP, TELUS COMMUNICATIONS INC., 1219723 ALBERTA LTD. and MTS ALLSTREAM INC. v. CANADA REVENUE AGENCY
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	May 26, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	ZINN J.
DATED:	August 25, 2010

APPEARANCES:

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