

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140512

Docket: A-556-12

Citation: 2014 FCA 122

**CORAM: DAWSON J.A.
GAUTHIER J.A.
TRUDEL J.A.**

BETWEEN:

DAVID BRACE

Appellant

And

HER MAJESTY THE QUEEN

Respondent

Heard at Edmonton, Alberta, on May 7, 2014.

Judgment delivered at Ottawa, Ontario, on May 12, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

THE COURT

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140512

Docket: A-556-12

Citation: 2014 FCA 122

CORAM: DAWSON J.A.
GAUTHIER J.A.
TRUDEL J.A.

BETWEEN:

DAVID BRACE

Appellant

And

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT OF THE COURT

[1] Mr. Brace appeals the order of Campbell J. of the Tax Court of Canada (the judge) dismissing his appeal following an *ex parte* status hearing during which the respondent made an oral motion for dismissal pursuant to Rule 64 of the *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a.

[2] The record before us shows that Mr. Brace was unaware of this status hearing held on June 13, 2012, that is a mere two days after the issuance of the scheduling order dated June 11, 2012.

[3] Moreover, Mr. Brace was not notified of the respondent's intent to move for a dismissal of his appeal. It also appears from the transcript that the judge was not informed by counsel for the respondent that he had agreed with Chief Justice Rip at the April 30, 2012 status hearing that if Mr. Brace could not be contacted before the end of June 2012, his appeal would simply be scheduled for hearing without further notice.

[4] Considering these irregularities, we are of the view that Mr. Brace's right to procedural fairness was breached. Our Court's intervention is thus warranted.

[5] The appeal will be allowed and the order of Campbell J. set aside. The file will be returned to the Tax Court of Canada to set a date for hearing of Mr. Brace's appeal in accordance with this Court's judgment dated April 11, 2011 in *Brace v. Canada*, 2011 FCA 131.

"Eleanor R. Dawson"

J.A.

"Johanne Gauthier"

J.A.

"Johanne Trudel"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-556-12

STYLE OF CAUSE: DAVID BRACE v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: MAY 7, 2014

REASONS FOR JUDGMENT OF THE COURT BY: DAWSON J.A.
GAUTHIER J.A.
TRUDEL J.A.

REASONS DATED: MAY 12, 2014

APPEARANCES:

David Brace ON HIS OWN BEHALF

Tokudo Omisade FOR THE RESPONDENT

SOLICITORS OF RECORD:

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