

**Date: 20080122**

**Docket: A-219-07**

**Citation: 2008 FCA 26**

**CORAM: DÉCARY J.A.  
NADON J.A.  
TRUDEL J.A.**

**BETWEEN:**

**NANCY LUCIANO**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Toronto, Ontario, on January 22, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on January 22, 2008.

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

**NADON J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Toronto, Ontario, on January 22, 2008)**

**NADON J.A.**

[1] This is an appeal from the Order of Mr. Justice Webb of the Tax Court of Canada who allowed, with costs, the Minister's motion to strike certain paragraphs of the Notice of Appeal filed by the appellant before the Tax Court of Canada.

[2] By her Notice of Appeal before the Tax Court, the appellant challenges an assessment made by the Minister pursuant to s. 160 of the *Income Tax Act*, S.C. 1985, c. 1 (5<sup>th</sup> Supp.). In particular,

the appellant says that the actions and conduct of the Canada Revenue Agency Appeals Officer in dealing with her Notice of Objection to the Minister's assessment, i.e. in refusing to investigate and rectify obvious errors which led to the assessment, constitute an abuse of process.

[3] The Tax Court Judge, relying principally on this Court's decision in *Main Rehabilitation Co. v. R.*, 2004 FCA 403, leave to appeal to the Supreme Court of Canada dismissed (2004) 343 N.R. 96., for the proposition that the Tax Court of Canada did not have jurisdiction to set aside an assessment "on the basis of an abuse of process at common law or in breach of section 7 of the Charter" (paragraph 16 of the Noël J.A.'s Reasons in *Main Rehabilitation Co.*, *supra*), concluded that paragraphs 8, 12(c), 13(b) and 14(e) of the Notice of Appeal should be struck because the allegations found therein stood no chance of succeeding.

[4] We have not been persuaded that in so concluding, the Tax Court Judge made a reviewable error.

[5] The appellant raises an issue as to costs. She says, and we agree with her, that the Judge awarded costs against her on the basis of an improper and irrelevant consideration, namely that "counsel of record for the appellant was the same counsel that appeared for the appellant in the *Main Rehabilitation Co.* case ..." (paragraph 16 of the Judge's Reasons). That, in our respectful view, was clearly an error on the part of the Judge.

[6] Consequently, it is open to us to exercise our own discretion with respect to the issue of costs. We are all agreed that the respondent, having succeeded completely on its motion to strike, is entitled to its costs.

[7] For these reasons, the appeal will be dismissed with costs.

“M. Nadon”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-219-07

**STYLE OF CAUSE:** NANCY LUCIANO  
Appellant  
and  
HER MAJESTY THE QUEEN  
Respondent

**PLACE OF HEARING:** Toronto, ON

**DATE OF HEARING:** January 22, 2008

**REASONS FOR JUDGMENT  
OF THE COURT BY:** (Décary, Nadon & Trudel JJ.A.)

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

**APPEARANCES:**

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