

**Date: 20080929**

**Docket: A-346-07**

**Citation: 2008 FCA 289**

**CORAM: LÉTOURNEAU J.A.  
NADON J.A.  
PELLETIER J.A.**

**BETWEEN:**

**LES ENTREPRISES M.A.J. INC., a legally incorporated entity  
having its head office at 1433 Talbot Street, Saint-Félicien,  
province of Quebec, G8K 1X7**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Hearing held at Québec, Quebec, on September 29, 2008.

Judgment delivered from the bench at Québec, Quebec, on September 29, 2008.

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

**PELLETIER J.A.**

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**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the bench at Québec, Quebec, on September 29, 2008)**

**PELLETIER J.A.**

[1] We were not satisfied that the motion to adduce fresh evidence should be granted.

[2] This is not a question of filing fresh evidence on a specific and determinative issue during the hearing of an appeal; rather, we have in fact before us an application for a trial *de novo*. The appellant is effectively asking us to set aside the judgment of the Tax Court of Canada and to retry the case based on affidavits that it wishes to file and on the trial transcript. Doing so would run

counter to any notion of judicial deference regarding the trial judge's findings of fact and credibility. A court of appeal may not, even must not, sit as a trial court on application by a party who is dissatisfied with the outcome of the trial. For these reasons, the motion will be dismissed without costs.

[3] As for the appeal on the merits, we are of the opinion that there is no basis for intervening.

[4] Regarding the judge's refusal to grant an adjournment to the appellant, the latter has known since May 11, 2007, that the Tax Court of Canada had denied its request for an adjournment of the hearing scheduled for May 28. There was nothing unfair in the fact that, on the morning of the hearing, Justice Paris denied it what the Court had already refused to grant two weeks earlier. There was no breach of procedural fairness.

[5] We were not satisfied that there is any basis for interfering with the finding of the judge of the Tax Court of Canada that the appellant failed to discharge its burden. The judge did not find the appellant's testimony to be very credible for the reasons he provided from the bench.

[6] It is trite law that, absent a palpable and overriding error, a court of appeal must defer to the findings of fact of the trial court. Moreover, the findings of the judge of the Tax Court of Canada, both in matters of credibility and fact, are entirely justified in light of the evidence filed at the trial. For these reasons, the appeal will be dismissed with costs.

“Denis Pelletier”

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J.A.

Certified true translation  
Tu-Quynh Trinh

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-346-07

**STYLE OF CAUSE:** LES ENTREPRISES M.A.J. INC., a legally incorporated entity having its head office at 1433 Talbot Street, Saint-Félicien, province of Quebec, G8K 1X7 v. HER MAJESTY THE QUEEN

**PLACE OF HEARING:** Québec, Quebec

**DATE OF HEARING:** September 29, 2008

**REASONS FOR JUDGMENT OF THE COURT BY:** LÉTOURNEAU J.A.  
NADON J.A.  
PELLETIER J.A.

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

**APPEARANCES:**

Martin Dallaire FOR THE APPELLANT

Roberto Clocchiatti FOR THE RESPONDENT

**SOLICITORS OF RECORD**

Caïn, Lamarre, Casgrain, Wells FOR THE APPELLANT  
Saint-Félicien, Quebec

John H. Sims, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada