

**Date: 20090317**

**Docket: A-453-07**

**Citation: 2009 FCA 89**

**CORAM: EVANS J.A.  
RYER J.A.  
TRUDEL J.A.**

**BETWEEN:**

**DONALD NEIL MACIVER**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Winnipeg, Manitoba, on March 17, 2009.

Judgment delivered from the Bench at Winnipeg, Manitoba, on March 17, 2009.

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

**TRUDEL J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Winnipeg, Manitoba, on March 17, 2009)**

**TRUDEL J.A.**

[1] *The Tax Court of Canada Rules (General Procedure)*, SOR/90-688a (the Rules) provide for summary disposals of appeals when a party fails to cooperate at the discovery stage of the proceedings. Although this rule may seem drastic, there are circumstances where an appeal may be either dismissed or granted to sanction one of the parties' repeated breaches of the Rules or an apparent intent to delay and abuse the process.

[2] Faced with such a case, Campbell J. (the Motions Judge), relying on Rules 85, 91 and 110, granted the respondent's motion for summary judgment and dismissed Mr. MacIver's appeal of an assessment made by the respondent following the appellant's conviction for tax evasion.

[3] This is the appeal of her judgment (2007TCC554; 2003-3065 (IT)G, September 25, 2007). After an extensive review of the record, including a full transcript of the discovery, the Motions Judge found that the appellant "clearly intended to avoid" or simply refused to answer "pertinent and relevant questions" related to "entire subject areas." The appellant's "deliberate obstructive behavior" was noted by the Motions Judge in relation to portions of the Reply to the Notice of Appeal that he had unsuccessfully attempted to have struck (*ibid.* at paragraphs 18 and 20).

[4] The Motions Judge also found that some of the appellant's answers were antagonistic, abusive and scandalous, in that they suggested impropriety on the part of members of the courts, the practising bar, and government officials.

[5] The appellant's defiant misconduct was compounded by the fact that, although a self-represented litigant, he is an experienced lawyer and has been a member of the Law Society of Manitoba since 1953. Moreover, the record showed that the appellant had also been convicted of four counts of perjury and two counts of obstruction of justice in reference to a related lawsuit in which he had provided false testimony before the Manitoba Superior Court by swearing false affidavits, giving false testimony on examination under oath and writing an intentionally misleading letter to a judge of that Court. Finally, the record showed that the appellant continued to assert the

veracity of statements made in those affidavits, despite his conviction. This was the background against which the Motions Judge dismissed the appellant's appeal. Ultimately, the importance of protecting the integrity of the judicial process outweighed all of the appellant's submissions.

[6] The only question at issue before this Court is whether the Motions Judge committed a reviewable error in the exercise of her discretion when dismissing Mr. MacIver's appeal. In his memorandum, the appellant attacked the Motions Judge's decision because it was not based on affidavit evidence subject to cross-examination. He also submitted that she erred by not considering the substantive issues of his appeal, by allowing the fact of his previous convictions to influence her decision on the motion, and by ignoring favourable character evidence. At the hearing of this appeal, however, he admitted the inappropriate conduct and insisted on the fact that the Motions Judge's conclusion was too harsh and that he should be given a second chance by this Court because the Motions Judge was wrong in predicting his future conduct.

[7] This Court will be free to substitute its discretion for that of the Motions Judge's if the Motions Judge has given insufficient weight to relevant factors or has made an error of law (*Morel v. Canada*, 2008 FCA 53 at paragraph 17; *Elders Grain Co. v. M/V Ralph Misener (The)*, 2005 FCA 139 at paragraph 13).

[8] We are of the view that this appeal is without merit. The Motions Judge properly considered that the use of her dismissal power under section 110(b) and section 91(c) of the Rules should only be exercised where the violations of the Rules are multiple, egregious, and intentional.

The record showed the appellant's lack of efforts in answering questions or fulfilling undertakings. It was replete with contradictions and inconsistencies, not to mention deceitful information and disrespectful conduct.

[9] The appellant's arguments amounted to assertions that he should not be held responsible for his actions because they were due to mistakes, misunderstandings, or his mental state at the time of the discovery. These factors and the gravity of dismissing the appellant's appeal were duly considered by the Motions Judge who finally concluded that the appellant's deliberate pattern of conduct intended to frustrate the discovery process of the Tax Court was likely to continue.

[10] This pattern continued before this Court. The appellant has blatantly disregarded an order of this Court setting the contents of the appeal book and filed an "appellant's addendum" containing the materials which had been excluded.

[11] Although we are sympathetic to the appellant's state of health and that of his wife, which seem to have deteriorated following the impugned judgment, still the appellant has failed to persuade us that the intervention of this Court is warranted. Therefore, this appeal will be dismissed with costs.

"Johanne Trudel"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-453-07

**(APPEAL OF THE JUDGMENT RENDERED BY THE HONOURABLE MADAM JUSTICE CAMPBELL OF THE TAX COURT OF CANADA, DATED SEPTEMBER 25, 2007, (2007TCC554) DOCKET NO. 2003-3065 (IT)G.**

**STYLE OF CAUSE:** DONALD NEIL MACIVER v.  
HER MAJESTY THE QUEEN

**PLACE OF HEARING:** Winnipeg, Manitoba

**DATE OF HEARING:** March 17, 2009

**REASONS FOR JUDGMENT OF THE COURT BY:** (EVANS, RYER, TRUDEL J.J.A.)

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

**APPEARANCES:**

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SELF-REPRESENTED

Tracey Pniowsky

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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