

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20101110**

**Docket: 10-A-34**

**Citation: 2010 FCA 304**

**Present: PELLETIER J.A.**

**BETWEEN:**

**VITO OROFINO**

**Applicant**

**and**

**CANADA CUSTOMS AND REVENUE AGENCY**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on November 10, 2010.

**REASONS FOR ORDER BY:**

**PELLETIER J.A.**

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**REASONS FOR ORDER**

**PELLETIER J.A.**

[1] One of the criteria for the granting of an extension for the time to file a notice of appeal is that the proposed appellant must have an arguable case. The case which is advanced by Counsel for Mr. Orofino is that Mr. Orofino and his bookkeeper arrived at court thinking that they were there to deal with the issue of an extension of the time to file an appeal from the Minister's reassessment but that they were dragged, unprepared, into a trial on the merits. In short, Mr. Orofino claims that he was denied natural justice.

[2] A reading of the transcript of the hearing, which was filed by the respondent, shows that there is absolutely no merit to this argument. There had been some confusion between Mr. Orofino's income tax problems and his problems with GST. By the time the matter came on for trial on February 3, 2010, this misunderstanding had been cleared up and it was clear to all that the matter pending before the Court that day was the appeal from the Minister's reassessment of Mr. Orofino under the *Income Tax Act*, [1985, C. 1 (5<sup>th</sup> Supp.)]. The following extract from the transcript makes this abundantly clear:

MR. THEIL [Counsel for the Minister]: Your Honour, the respondent has decided to not to pursue the preliminary objection.

JUSTICE PIZZITELLI: Very well.

MR. THEIL: I wanted to let you know it is the respondent's understanding that we are only discussing an income tax matter at this stage.

JUSTICE PIZZITELLI: Is that correct?

MR. WHARTON [Mr. Orofino's bookkeeper and agent]: That is correct, that is correct.

JUSTICE PIZZITELLI: Very well, then. I have gone through the file and, of course, I can understand the confusion. In order to rectify what I think have been some administrative and other errors in the file, we are going to rule that the parties are consenting to proceed in the matter of an IT-file, and that the Crown has withdrawn its preliminary motion to have the appeal quashed for the 2001 and 2002 taxation years.

The appellant confirmed that this is not an appeal under the GST for those years, as well.

Very well. Are you gentlemen prepared to proceed at this point? Are you ready to go?

MR. WHARTON: We are. We are.

[3] The Tax Court Judge then gave Mr. Orofino and his agent a brief outline of the procedure to be followed and told them that they should feel free to ask questions as required. Mr. Wharton then made certain remarks by way of an opening statement:

MR. WHARTON: Yes. We had written to the tax office's officer about having them to have a second look at some discrepancies we found. The letter was dated May 7, 2008. We didn't hear back from them, and this is the reason for the objection filed with the Court.

[4] This was the first point which Mr. Wharton wished to raise as a preliminary objection. After some discussion with the Court, he proceeded to make his second point:

MR. WHARTON: That was the first. Secondly, which is the last paragraph in the same letter, the payroll, the auditor stated that the payrolls for 2001, it was not ... especially 2002. And it was paid by the O.V. Acoustical.

JUSTICE PIZZITELLI: All right. We understand the issues.

MR. WHARTON: Yes.

JUSTICE PIZZITELLI: Are you prepared to proceed with submitting your evidence?

MR. WHARTON: Yes, Sir.

[5] Nothing in this permits the inference that Mr. Orofino and Mr. Wharton were present in Court expecting to deal with whether Mr. Orofino would be granted an extension of time to file his appeal. It is clear that they were there to deal with the merits of the appeal. There is no arguable case that Mr. Orofino was denied natural justice.

[6] For that reason, the application for an extension of time to file a notice of appeal will be dismissed with costs.

"J.D. Denis Pelletier"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** 10-A-34

**STYLE OF CAUSE:** VITO ORIFINO and CANADA  
CUSTOMS AND REVENUE  
AGENCY

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** PELLETIER J.A.

**DATED:** NOVEMBER 10, 2010

**WRITTEN REPRESENTATIONS BY:**

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