

Federal Court  
of Appeal



CANADA

Cour d'appel  
fédérale

**Date: 20110525**

**Docket: A-300-10**

**Citation: 2011 FCA 181**

**CORAM: SHARLOW J.A.  
PELLETIER J.A.  
STRATAS J.A.**

**BETWEEN:**

**OREST RUSNAK**

**Appellant**

**and**

**HER MAJESTY THE QUEEN  
IN RIGHT OF THE MINISTER OF  
NATIONAL REVENUE FOR CANADA  
and CANADA REVENUE AGENCY**

**Respondents**

Heard at Edmonton, Alberta, on May 25, 2011.

Judgment delivered from the Bench at Edmonton, Alberta, on May 25, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Edmonton, Alberta, on May 25, 2011)**

**SHARLOW J.A.**

[1] Mr. Orest Rusnak is appealing the order of Justice Hansen of the Federal Court granting the Crown's motion to quash his application for judicial review. The application was a challenge to the decisions of the Minister of National Revenue to confirm certain income tax assessments. Mr. Rusnak sought an order quashing the confirmation decisions and setting aside the assessments on the basis that he was not afforded a formal hearing or procedural fairness at the objection stage. He

also sought a declaration that in the objection process he did not receive a formal hearing as mandated by the Canadian Bill of Rights, and that the Minister did not observe the principles of natural justice and procedural fairness required by law. Despite the able submissions of counsel for Mr. Rusnak, we have concluded that this appeal must be dismissed, for the following reasons.

[2] By virtue of the combined operation of section 18.5 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, and subsection 12(1) of the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2, the Federal Court does not have the jurisdiction to entertain an application for judicial review that in substance is a collateral attack on an income tax assessment that may be the subject of an appeal to the Tax Court of Canada: *Roitman v. Canada*, 2006 FCA 266, at paragraph 20. Specifically, the Federal Court has no jurisdiction to set aside an income tax assessment on the basis of procedural flaws at the objection stage: *Webster v. Canada*, 2003 FCA 388, at paragraph 20.

[3] It follows that the Federal Court has no jurisdiction to quash the confirmation decisions in issue in this case, or to cancel the related assessments. Further, the declarations sought by Mr. Rusnak, even if granted, would have no substantive or practical effect. Therefore, Justice Hansen was justified in finding that Mr. Rusnak's application for judicial review is bereft of any possibility of success, and in striking it.

[4] The appeal will be dismissed with costs.

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"K. Sharlow"

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-300-10

**STYLE OF CAUSE:** Orest Rusnak v. Her Majesty The Queen et. al.

**PLACE OF HEARING:** Edmonton, Alberta

**DATE OF HEARING:** May 25, 2011

**REASONS FOR JUDGMENT  
OF THE COURT BY:** Sharlow J.A.  
Pelletier J.A.  
Stratas J.A.

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

**APPEARANCES:**

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Gregory Perlinski FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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