

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20190903**

**Docket: A-304-18**

**Citation: 2019 FCA 225**

**CORAM: NADON J.A.  
GLEASON J.A.  
RIVOALEN J.A.**

**BETWEEN:**

**4092325 INVESTMENTS LTD.**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Montréal, Quebec, on September 3, 2019.  
Judgment delivered from the Bench at Montréal, Quebec, on September 3, 2019.

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

**NADON J.A.**

Federal Court of Appeal



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**BETWEEN:**

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**and**

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Montréal, Quebec, on September 3, 2019).**

**NADON J.A.**

[1] Notwithstanding Mr. Whitman's forceful arguments to the effect that the Judge misconstrued Rule 146.1 of the *Tax Court of Canada Rules (General Procedure)*, S.O.R./90-688a) (the Rules), we have not been persuaded that the Judge made a palpable and overriding error in preferring to advance the appeals before him to trial, in his capacity of case management judge, by way of Rule 26 of the Rules, rather than by way of Rule 146.1 of the Rules.

[2] Even if we accepted that the Judge erred in regard to Rule 146.1, as Mr. Whitman argues, it still cannot be said that he erred in the exercise of his discretion under Rule 146.1. In other words, since choosing Rule 26, rather than Rule 146, was an option open to the Judge under the Rules, the choice he made is not one which, in the light of all the relevant circumstances, justifies intervention on our part.

[3] We also wish to say that, in concluding as we do, we are not to be taken as endorsing the Judge's understanding of Rule 146.1 and in particular as to whether the Crown needs to consent to being bound by the result of the lead case(s).

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

"Marc Nadon"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-304-18

**STYLE OF CAUSE:** 4092325 INVESTMENTS LTD. v.  
HER MAJESTY THE QUEEN

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** SEPTEMBER 3, 2019

**REASONS FOR JUDGMENT OF THE COURT BY:** NADON J.A.  
GLEASON J.A.  
RIVOALEN J.A.

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

**APPEARANCES:**

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HER MAJESTY THE QUEEN

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HER MAJESTY THE QUEEN