

Federal Court of Appeal



Cour d'appel fédérale

Date: 20210121

Docket: A-48-20

Citation: 2021 FCA 9

[ENGLISH TRANSLATION]

**CORAM: BOIVIN J.A.
LOCKE J.A.
LEBLANC J.A.**

BETWEEN:

ALEXANDRE BERGEVIN

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard by online videoconference organized by the registry

on January 21, 2021.

Judgment delivered from the bench at Ottawa, Ontario, on January 21, 2021.

REASONS FOR JUDGMENT OF THE COURT BY:

BOIVIN J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Ottawa, Ontario, on January 21, 2021.)

BOIVIN J.A.

[1] This is an appeal from an order made by Justice St-Hilaire of the Tax Court of Canada (the TCC judge) on February 4, 2020 (2019-1439(GST)APP). The TCC judge dismissed the appellant's application for an extension of time to serve a notice of appeal from an assessment made under the *Excise Tax Act*, R.S.C. 1985 c. E-15 (the ETA).

[2] The standard of review in this case is that of palpable and overriding error for the questions of fact and questions of mixed fact and law and of correctness for the questions of law (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

[3] The appellant argues that the TCC judge erred in law in interpreting the provisions of subsection 305(5) of the ETA, which sets out the conditions for obtaining an extension of time to appeal to the TCC. Specifically, the appellant submits that fairness and justice militate in favour of granting an extension of time to appeal.

[4] We are all of the opinion that the appeal cannot succeed.

[5] The TCC judge analyzed the cumulative criteria of subsection 305(5) of the ETA and concluded that on the basis of the evidence submitted, the appellant did not meet the criteria for an extension. The appellant is asking us to reweigh the evidence, which is not the role of this Court. In light of the evidence in the record and the arguments presented before the TCC judge, we cannot find, as requested by the appellant, that by deciding the application as she did, the TCC judge committed an error that would warrant our intervention.

[6] The appeal will therefore be dismissed with costs.

“Richard Boivin”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-48-20

STYLE OF CAUSE: ALEXANDRE BERGEVIN v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: BY ONLINE
VIDEOCONFERENCE

DATE OF HEARING: JANUARY 21, 2021

**REASONS FOR JUDGMENT OF THE COURT
BY:** BOIVIN J.A.
LOCKE J.A.
LEBLANC J.A.

DELIVERED FROM THE BENCH BY: BOIVIN J.A.

APPEARANCES:

Daniel Martin Bellemare FOR THE APPELLANT

Bruno Di Dodo FOR THE RESPONDENT
Christian Lemay

SOLICITORS OF RECORD:

Daniel Martin Bellemare FOR THE APPELLANT
Montreal, Quebec

Nathalie G. Drouin FOR THE RESPONDENT
Deputy Attorney General of Canada