

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20230517**

**Docket: A-33-22**

**Citation: 2023 FCA 107**

**CORAM: RENNIE J.A.  
LASKIN J.A.  
MONAGHAN J.A.**

**BETWEEN:**

**DAVE SHULL**

**Appellant**

**and**

**HIS MAJESTY THE KING**

**Respondent**

Dealt with in writing without appearance of parties.

Judgment delivered at Ottawa, Ontario, on May 17, 2023.

**REASONS FOR JUDGMENT BY:**

**RENNIE J.A.**

**CONCURRED IN BY:**

**LASKIN J.A.  
MONAGHAN J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT**

**RENNIE J.A.**

[1] The appellant appealed the Minister's reassessments of his taxation years 2009-2014 to the Tax Court of Canada under that Court's informal procedure. The appellant moved to strike the respondent's reply to his amended notice of appeal. In reasons delivered from the bench, the Tax Court dismissed the appellant's motion (2019-243(IT)I, *per* D'Arcy J.). The appellant now seeks to appeal to this Court the Tax Court's order dismissing his motion to strike. However, no appeal to this Court lies from the Tax Court's order.

[2] Subsection 27(1.2) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 (the Act) is clear: only a final judgment of the Tax Court in informal proceedings may be appealed to this Court. Subsection 2(1) of the Act defines a “final judgment” as “any judgment or other decision that determines in whole or in part any substantive right of any of the parties in controversy in any judicial proceeding.” The word “proceeding” in this definition refers to the very matter that is before the court, rather than a component of the matter, such as a motion (*Ontario Federation of Anglers and Hunters v. Alderville Indian Band*, 2014 FCA 145, 461 N.R. 327 at para. 21, leave to appeal to SCC refused, 36035 (12 March 2015) [*Alderville*]).

[3] The order appealed from is not a final judgment. It does not determine any substantive right of either party, nor does it dispose of a “proceeding” as defined by this Court; for these reasons, the order falls outside the scope of subsection 27(1.2) of the Act, and the appeal is outside the scope of this Court’s jurisdiction. To elaborate, the order determines only a collateral, procedural right (the appellant’s right to have portions of the respondent’s pleadings excluded) without determining the substantive right that the underlying appeal seeks to assert (the appellant’s right to have the respondent’s reassessments vacated). Similarly, the motion at issue is not a “proceeding” for the purposes of this appeal, and is instead only a component of the appellant’s appeal from the respondent’s reassessments.

[4] This Court has confirmed that an order of the Tax Court with these effects is interlocutory, as opposed to final, in nature (*National Benefit Authority Corporation v. Canada*, 2022 FCA 17, 2022 D.T.C. 5011 at paras. 10-11, leave to appeal to SCC refused, 40137 (18 August 2022), applying *Alderville* at paras. 21-24). I add that this Court has also repeatedly

characterized orders resulting from motions to strike portions of the Crown’s reply as interlocutory (*Heron v. Canada*, 2017 FCA 229, 2017 D.T.C. 5130 at para. 1; *Tuccaro v. Canada*, 2016 FCA 259, 2016 D.T.C. 5117 at paras. 1 and 27; *Cameco Corporation v. Canada*, 2015 FCA 143, 474 N.R. 333 at para. 1).

[5] The timing of the order further supports its characterization as interlocutory. Interlocutory decisions are typically made before the hearing of the matter as part of the resolution of a pre-hearing dispute; they are ordinarily not argued together, or otherwise intertwined, with the hearing on the merits which determines a party’s substantive rights (*Sweet Productions Inc. v. Licensing LP International S.À.R.L.*, 2022 FCA 111, 2022 CarswellNat 2036 (WL Can) at paras. 27-28). The motion in this case was brought before the appeal on the merits in a step entirely separate from any determination of the appellant’s substantive rights. This degree of separation from the appellant’s original appeal simply confirms the conclusion that the order in issue is not a final judgment of the Tax Court.

[6] I would therefore dismiss the appeal with costs.

“Donald J. Rennie”

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J.A.

“I agree.  
Laskin J.A.”

“I agree.  
Monaghan J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:**

A-33-22

**STYLE OF CAUSE:**

DAVE SHULL v. HIS MAJESTY  
THE KING

**DEALT WITH IN WRITING WITHOUT APPEARANCE OF THE PARTIES.**

**REASONS FOR JUDGMENT BY:**

RENNIE J.A.

**CONCURRED IN BY:**

LASKIN J.A.  
MONAGHAN J.A.

**DATED:**

MAY 17, 2023

**WRITTEN REPRESENTATIONS BY:**

Dave Shull

ON HIS OWN BEHALF

Spencer Landsiedel

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Shalene Curtis-Micallef  
Deputy Attorney General of Canada

FOR THE RESPONDENT