

Docket: 2003-1066(GST)G

BETWEEN:

TELUS COMMUNICATIONS (EDMONTON) INC.,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on July 24, 2003 at Calgary, Alberta

Before: The Honourable Justice B. Paris

Appearances:

Counsel for the Applicant: Michel Bourque

Counsel for the Respondent: William L. Softley

ORDER

Upon motion by counsel for the Appellant for an Order allowing its appeal on the basis that the Respondent has not filed a Reply to the Notice of Appeal and that the facts alleged in the Notice of Appeal entitle it to this relief;

And upon hearing what was alleged by the parties;

The Appellant's motion is dismissed, without costs, in accordance with the attached Reasons for Order.

Signed at Ottawa, Canada, this 5th day of December 2003.

"B. Paris"

Paris, J.

Citation: 2003TCC907
Date: 20031205
Docket: 2003-1066(GST)G

BETWEEN:

TELUS COMMUNICATIONS (EDMONTON) INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Paris, J.

[1] The Appellant has filed a motion before the Court seeking an Order allowing its appeal pursuant to subsection 63(1) and paragraph 63(2)(b) of the *Tax Court Rules (General Procedure)* (the "*Rules*") on the basis that the Respondent has not filed a Reply to the Notice of Appeal, and on the basis that the facts alleged in the Notice of Appeal entitle it to this relief.

[2] Alternatively, the Appellant asks for an Order that the facts alleged in the Notice of Appeal be presumed true for the purpose of the appeal pursuant to subsection 44(2) of the *Rules* and that the matter be set for hearing.

[3] This motion was heard along with the Respondent's motion for an Order extending the time to file a Reply to the Notice of Appeal. At the hearing the Appellant withdrew that part of its Motion requesting that its appeal be allowed.

[4] In light of my Order extending the time for the Respondent to file a Reply, there is no basis for granting the alternative relief sought by the Appellant, namely that the facts in the Notice of Appeal be presumed to be true.

Subsections 44(1) and (2) of the *Rules* read:

44. (1) A reply shall be filed in the Registry within 60 days after service of the notice of appeal unless

(a) the appellant consents, before or after the expiration of the 60-day period, to the filing of that reply after the 60-day period within a specified time; or

(b) the Court allows, on application made before or after the expiration of the 60-day period, the filing of that reply after the 60-day period within a specified time.

(2) If a reply is not filed within an applicable period specified under subsection (1), the allegations of fact contained in the notice of appeal are presumed to be true for purposes of the appeal.

[5] The reference in Subsection 44(2) to "an applicable period specified under subsection (1)" relates to any one of three periods, namely: within 60 days after the service of the reply, within the period specified in a consent given by the Appellant, or within the period allowed by the Court for the filing of the Reply.

[6] This means that Subsection 44(2) only applies if a Reply is filed outside the sixty-day period and the Appellant does not consent or where there is no order of the Court extending that period. Given my order extending the time period for filing a Reply, subsection 44(2) does not apply.

[7] Finally, I am not persuaded that it is necessary for me to fix the hearing date for this appeal. The Respondent's failure to file the Reply within the original time limit came about as a result of an error and not because of any effort to delay proceedings.

[8] The Appellant's motion is therefore dismissed, without costs.

Signed at Ottawa, Canada, this 5th day of December 2003.

"B. Paris"

Paris, J.

CITATION: 2003TCC907

COURT FILE NO.: 2003-1066(GST)G

STYLE OF CAUSE: Telus Communications (Edmonton)
Inc. and H.M.Q.

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: July 24, 2003

REASONS FOR ORDER BY: The Honourable Justice B. Paris

DATE OF ORDER: December 5, 2003

APPEARANCES:

Counsel for the Appellant: Michel Bourque

Counsel for the Respondent: William L. Softley

COUNSEL OF RECORD:

For the Appellant:

Name: Michel Bourque

Firm: Bennett Jones
Calgary, Alberta

For the Respondent: Morris Rosenberg
Deputy Attorney General of Canada
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