Docket: 2006-1524(CPP)

BETWEEN:

4528957 MANITOBA LTD.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on January 21, 2009, at Winnipeg, Manitoba.

Before: The Honourable Justice C.H. McArthur

Appearances:

Agent for the Appellant:	Carlos Guevara
Counsel for the Respondent:	Julien Bédard

JUDGMENT

The appeal from the assessment of February 11, 2005, is allowed, with costs, and the assessment is vacated, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 2nd day of June 2009.

"C.H. McArthur"

McArthur J.

Translation certified true
on this 15th day of June 2009.
Daniela Possamai, Translator

Citation: 2009 TCC 298
Date: 20090602
Docket: 2006-1524(CPP)

BETWEEN:

4528957 MANITOBA LTD.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS OF JUDGMENT

McArthur J.

[1] This unfortunate situation has gone on for far too long.

[2] The following facts are some of the most fundamental factors. Mr. Guevara is the owner and director of the company 4528957 Manitoba Ltd. (the Appellant). The latter received a Notice of Reassessment in the amount of $6,131.72. Despite several attempts to find out what the assessment was for, the Appellant still does not know why it received said assessment. The Appellant believes it is an employment insurance issue, that the amount has already been paid, and that the reassessment would be a double payment.

[3] The Minister of National Revenue (the Minister) brought a motion to strike out the appeal, as the appeal is under the wrong procedure. The assessment was made under the *Income Tax Act* (the Act*)*, whereas the Appellant filed its appeal under the *Canada Pension Plan* (the Plan).

[4] In my order issued on July 24, 2007, I dismissed the motion. Subsequently, the Minister repeated his procedural position, while continuing to ignore requests for an explanation as to what the amount of the assessment was for.

[5] The Appellant made an effort to comply with the Minister's position and to proceed under tax procedures, but its three attempts were thwarted by the administration of the Tax Court of Canada (the Court). The Appellant is rightly perplexed and is seeking not only an explanation, but also to be heard by an office of the Court other than the Winnipeg office.

[6] The Appellant's efforts to comply with the Minister's request to file its appeal under the Act instead of the Plan were denied. It is not surprising that the Appellant is completely confused.

[7] I consider that the Appellant is fully entitled to an explanation from the Minister, which seems unlikely any time soon. Requests for the reasons for the assessment and the Appellant's conviction that the amount in question has already been paid demonstrate a *prima facie* case and puts the burden of proof back on the Minister. The Minister did not meet his burden of proof and did not take it into account either. The appeal is allowed. More specific facts and the reasoning process follow.

Facts

[8] On February 11, 2005, the Minister mailed out a Notice of Assessment to be paid by the Appellant under subsection 153(1) of the Act for the taxation period beginning December 31, 2003, and ending September 30, 2004. The notice indicated that the balance owing was $6,131.72. Most of the amount owing was under line item "Total deductions and client's obligation."

[9] On March 22, 2005, the Appellant filed a Notice of Objection to the assessment, indicating that it had already made payments that were not taken into account.

[10] On January 16, 2006, the Minister issued a Notice of Confirmation indicating that the Appellant did not make the deductions required by subsection 153(1) of the Act.

[11] On April 30, 2006, the Appellant filed a Notice of Appeal pursuant to the informal procedure and also paid the $100 filing fee. The Appellant elected "*Canada Pension Plan*" on the electronic appeal form.

[12] The Registry officer accepted the Notice of Appeal filed on April 30, 2006, because it was received in due form. Nevertheless, the appeal was classified as appeal under the Plan and the $100 filing fee was reimbursed to the Appellant.

[13] On July 27, 2006, the Respondent wrote to the Court to indicate that the Appellant had chosen the informal procedure for questions concerning the Plan, but that there was no issue pertaining to that statute. No reason was given to support that statement. Furthermore, the Respondent indicated that the Appellant did not file its appeal within the prescribed time limits and that it should therefore apply for an extension of time to ensure compliance with the Court's procedures. Therefore, with the Appellant's consent, the Respondent applied for an order to extend the time limit for replying to the Notice of Appeal to allow the Appellant to take the necessary steps to ensure its appeal would be heard under the appropriate procedure, that is, the informal procedure, for tax matters.

[14] On August 4, 2006, the Court informed the Appellant of the available choices to obtain an order to extend the time limit for filing the Notice of Appeal, as the Appellant appealed its assessment more than 90 days after the mailing date of the Notice of Confirmation. In addition, the Court asked the Appellant to repay the $100 filing fee to allow the appeal to proceed.

[15] On August 8, 2006, the Appellant wrote to the Court and indicated that it did not agree with counsel for the Respondent and that the dispute involved rather a decision rendered under the Plan. The Appellant indicated that the nature of the amount appealed was unknown and that the documents of the Canada Revenue Agency (CRA) were too vague and general to allow it to determine under which specific procedure to file the appeal.

[16] On August 9, 2006, the Court indicated to the parties that no changes would be made to the Appellant's appeal.

[17] On October 19, 2006, the Respondent sent a letter to the Appellant repeating that the appeal filed by the Appellant had deficiencies and that it had to correct them, failing which, the Respondent would ask the Court to dismiss these appeals.

[18] On October 27, 2006, the Respondent filed a notice of motion to strike the appeal, stating that the Court did not have the jurisdiction to hear the appeal as the assessment did not involve sections 27.1 and 27.2 of the Plan and that no decision was rendered under the provisions of the Plan. According to the Respondent, the 2005 assessment involved subsection 153(1) of the Act only.

[19] In a letter received by the Registry of the Court on November 13, 2006, in reference to the Court's letter of August 4, 2006, the Appellant asked the Court for an extension of time pursuant to subsection 18.1(1) of the *Tax Court of Canada Rules (Informal Procedure)* (the Rules). Schedule 18.1. was attached to the letter, pursuant to the Rules. The Appellant indicated that it had always intended to appeal the Minister's decision. The $100 filing fee was received on November 20, 2006.

[20] The motion was heard on January 30, 2007, and on July 24, 2007, I dismissed the motion and requested that a Reply to the Notice of Appeal be filed, as the Appellant satisfied the conditions for an extension of time to appeal.

[21] On September 21, 2007, the Respondent filed his Reply to the Notice of Appeal.

[22] On August 21, 2008, the Court reimbursed the $100 filing fee that the Appellant had submitted with its application for an extension of time, indicating that the appeal remained subject to the Plan.

Analysis

[23] At issue is whether the Appellant, who is not represented by counsel and who has had to face a series of deplorable procedural circumstances over the course of this case, discharged its duty to disprove, on a balance of probabilities, the basis for the Minister's decision.

[24] At first blush, there seems to be no issue with respect to the Plan. However, in the auditor's account statement of November 1, 2004, the auditor recorded the amount of $6,131.72 in line item "Total deductions and client's obligation." There is no way of knowing what that amount related to.

[25] In his confirmation, the Minister cited section 153 of the Act to explain the nature of the amount and did not provide any other detail regarding the amount of the assessment.

[26] In its letter of August 8, 2006, the Appellant itself said that the nature of the amount in question is unknown and that the documents of the CRA are vague and general.

[27] The Respondent attempted to assist the Appellant in choosing another procedure for the appeal, but despite this act of good faith, the Respondent failed to provide even the smallest amount of additional information on the merits of the case. Such information would have helped the Appellant to understand why the Respondent wanted a change in procedure.

[28] For the purposes of this dispute, the procedure chosen to appeal is of little relevance. An appeal may be instituted under subsection 28(1) of the Plan despite the fact that the Minister did not render a decision under section 27.1 of the Plan.

[29] As Bowman J. states in *Holmes v. The Queen*, [2000] 3 C.T.C. 2235, it would be unconscionable if the taxpayer could not likewise notify the Minister of his objection to the assessments and of his appeal by sending a single notice of objection or appeal:

> 6 No form is prescribed for an appeal to the Minister for reconsideration of an assessment under subsection 61(2) of the *UI Act* and I should think that a notice of objection to an assessment that purports in one document to assess tax under three federal statutes would be sufficient compliance with the three statutes particularly where, as here, the notice of objection refers to the assessment by date and number. The same is true of a notice of appeal to this court. I note that Joyal J. in a trial *de novo* from a judgment of Rip J. held that a piece of paper emanating from the Department of National Revenue listing four statutes and one global amount was a valid notice of assessment (*The Queen v. Leung*, 93 DTC 5467).
>
> 7 If the Minister can fulfil his statutory obligation under four statutes to notify a taxpayer of his assessments with one piece of paper it would be unconscionable if the taxpayer could not likewise notify the Minister of his objection to the assessments and of his appeal by sending a single notice of objection or appeal. Although under the rules of this court there are prescribed forms for appealing from an *EI* assessment or *CPP* assessment, under section 32 of the *Interpretation Act* substantial compliance is sufficient. Otherwise the objection and appeal process under these omnibus assessments could become a minefield for the unwary.

[30] Even though the Rules prescribe a form for an appeal of a decision under the Plan, under section 32 of the *Interpretation Act* substantial compliance is sufficient. In other words, the Appellant has the right to appeal from the Minister's decision under the procedure it chose.

[31] In the case at bar, the Appellant represents itself and, for more than three years, it had to answer questions of procedure of this Court without, however, having the chance to examine the substance of the Minister's decision.

[32] Notwithstanding the procedural issues that continue to be raised by the Respondent, I have already concluded that the Appellant met the requirements of the Rules to file its Notice of Appeal when the previous motion was brought. For all practical purposes, the time limits were complied with and the merits of the appeal must be weighed.

[33] Unfortunately, it is difficult to weigh the merits of the appeal when the Respondent does not put forth any assumptions of fact that the Minister relies on to assess the Appellant. The Respondent's Reply to the Notice of Appeal does not in any way clarify the nature of the total amount indicated in the assessment.

[34] The Respondent did not provide any findings and assumptions of fact on which the Minister relied in assessing the Appellant as required by subsection 6(1)(*d*) of the Rules.

[35] Alternatively, the Respondent's reply did not contain a statement of any further allegations of fact on which the Minister intended to rely as required by subsection 12(3)(*b*) of the *Tax Court of Canada Rules of Procedure respecting the Canada Pension Plan.*

[36] Nevertheless, the Respondent was aware that the merits of this case had to be examined. It appears to me that the Respondent could have compiled a list of the facts on which the Minister relied in making the assessment, regardless of the procedure chosen, to support his assumption that the Appellant was liable to pay the amount of $6,131.72 in accordance with subsection 153(1) of the Act.

[37] In *Spensieri v. The Queen*, 2001 D.T.C. 787, Bowman J. indicates that the Rules must not be used as a trap to keep the appellant from having her day in court:

> 10 I do not mean to be either dismissive or disrespectful of the Crown's submission, but I cannot help thinking that the respondent is being rather technical in mounting a major campaign to keep the appellant from having her day in court because of a rather minor slip-up. It is not surprising, if a person has to manoeuvre through two acts (the *Income Tax Act* and the *Tax Court of Canada Act*) and two sets of rules, informal and general, that he or she might make a mistake. The rules are not intended to be a trap for the unwary or to create a minefield of obstacles for litigants. Rather they are supposed to facilitate the resolution of substantive disputes.

[38] In *The Queen v. Anchor Pointe Energy Ltd.*, 2007 FCA 188, Létourneau J. stated as follows:

> 27 In our self-reporting system of taxation, the Minister makes assumptions of fact in determining the tax liability of a taxpayer. As Rothstein J.A., as he then was, said in *Canada v. Anchor Pointe Energy Ltd.*, *supra*, "the practice is for the Crown to disclose in its pleadings assumptions of fact made by the Minister upon which his determination of the tax owing is based"; see paragraph 2. In the words of Bowman A.C.J.T.C., as he then was, these assumptions "are supposed to be a full and honest disclosure of the facts upon which the Minister of National Revenue relied in making the assessment": *Holm et al. v. The Queen* 2003 DTC 755, at paragraph 9.
>
> 28 When pleaded, assumptions of fact place on the taxpayers the initial onus of disproving, on a balance of probabilities, the facts that the Minister assumed: see *Canada v. Anchor Pointe Energy Ltd.*, *supra*, at paragraph 2, *Hickman Motors Ltd. v. Canada* [1997] 2 S.C.R. 336, at paragraph 92. Unpleaded assumptions have no effect on the burden of proof one way or the other: see *The Queen v. Bowens* 96 DTC 6128, at page 6129, *Pollock v. The Queen* 94 DTC 6050, at page 6053.
>
> 29 Fairness requires that the facts pleaded as assumptions be complete, precise, accurate and honestly and truthfully stated so that the taxpayer knows exactly the case and the burden that he or she has to meet: *Canada v. Anchor Pointe Energy Ltd., supra*, at paragraph 23, *Holm et al. v. The Queen*, *supra*, *Canada v. Lowen* [2004] 4 F.C.R. 3, at paragraph 9. (F.C.A), *Grant v. The Queen* et al. 2003 DTC 5160, at page 5163, *First Fund Genesis Corporation v. Her Majesty the Queen* 90 DTC 6337, at page 6340, *Shaughnessy v. Her Majesty the Queen* 2002 DTC 1272, at paragraph 13, *Stephen v. Canada* [2001] T.C.J. No. 250, at paragraph 6.

[39] In the case at bar, the unpleaded assumption is simply that the Appellant has to pay an amount pursuant to subsection 153(1) of the Act. No explanation was given as to the facts on which the Minister relied in assessing the Appellant, either in the reply or during the hearing.

[40] Taxpayers who appear in person play a key role in the Court. Mr. Guevara has the right to appear in person or represent a company, as is the case here, before the Court under the informal procedure. The Appellant must be treated with courtesy and respect, and the issues must be presented clearly and with enough detail so that the Appellant can understand them.

[41] In our case, the Appellant was treated with insolence and disrespect. For more than three years, the Appellant patiently met all the requirements of this Court. It paid the $100 filing fee when it filed its Notice of Appeal in April 2006, had the $100 fee reimbursed with confirmation that the procedure it chose did not require a filing fee, repaid the filing fee in August 2006 and the fee was reimbursed again in August 2008

for the same reason. On numerous occasions, the Appellant had to explain that the Minister's documents were too vague for it to be able to choose a procedure other than the one it had already chosen. The Respondent's reply did not help clarify the reasons for which the Appellant was being assessed. In short, even to this day, neither the Appellant nor this Court can even begin to understand the assumptions of fact on which the Minister relied in this case. To this day, the reasons supporting the assessment remain a secret that is being kept from the Appellant and this Court.

[42] As indicated above, the Crown has a duty to disclose in its pleadings assumptions of fact made by the Minister upon which his determination of the tax owing is based. When assumptions are pleaded, the burden of proof is reversed and the onus is then cast on the taxpayer to disprove the assumptions. Considering that the Respondent did not plead any other assumptions of fact, the Appellant was unable to reverse the burden of proof. The Appellant had no information on what basis it was being assessed and, therefore, had nothing to disprove.

[43] The appeal from the assessment of February 11, 2005, is allowed, with costs, and the assessment is vacated.

Signed at Ottawa, Canada, this 2nd day of June 2009.

"C.H. McArthur"

McArthur J.

Translation certified true

on this 15th day of June 2009.

Daniela Possamai, Translator

CITATION:	2009 TCC 298
COURT FILE NO.:	2006-1524(CPP)
STYLE OF CAUSE:	4528957 MANITOBA LTD. AND THE MINISTER OF NATIONAL REVENUE
PLACE OF HEARING:	Winnipeg, Manitoba
DATE OF HEARING:	January 21, 2009
REASONS FOR JUDGMENT BY:	The Honourable Justice C.H. McArthur
DATE OF JUDGMENT:	June 2, 2009

APPEARANCES:

Agent for the Appellant:	Carlos Guevara
Counsel for the Respondent:	Julien Bédard

COUNSEL OF RECORD:

For the Appellant:	
Name:	
Firm:	
For the Respondent:	John H. Sims, Q.C. Deputy Attorney General of Canada Ottawa, Canada