

Docket: 2011-924(IT)G

BETWEEN:

IRENE MOLL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Motion dealt with by Written Representations

Before: The Honourable Justice Wyman W. Webb

For the Appellant:	The Appellant Herself
Counsel for the Respondent:	Margaret Irving Donna Tomljanovic

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**ORDER**

Upon motion by the Appellant for an Order entitling Lino Mastromonaco to represent the Appellant in this appeal;

And upon reading the submissions made by the parties;

The Motion is dismissed, with costs payable forthwith in any event of the cause.

Signed at Ottawa, Canada, this 15<sup>th</sup> day of September 2011.

“Wyman W. Webb”

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Webb J.

Citation: 2011TCC432  
Date: 20110915  
Docket: 2011-924(IT)G

BETWEEN:

IRENE MOLL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR ORDER**

Webb J.

[1] The Appellant brought a Motion to request that Lino Mastromonaco, who is not a lawyer, be permitted to represent the Appellant in her appeal. Subsection 30(1) of the *Tax Court of Canada Rules (General Procedure)* ("*Rules*") provides as follows:

30. (1) Subject to subsection (3), a party to a proceeding who is an individual may act in person or be represented by counsel.

[2] The Appellant submits that compliance with this provision of the *Rules* should be waived in this case because the Appellant is required to use a hearing aid to assist her hearing and as a result she is unable, from time to time, to fully understand or hear telephone conversations. Paragraph 9 of the *Rules* provides that:

9. The Court may, where and as necessary in the interests of justice, dispense with compliance with any rule at any time.

[3] However, section 17.1 of the *Tax Court of Canada Act* provides that:

17.1 (1) A party to a proceeding in respect of which this section applies may appear in person or be represented by counsel, but where the party wishes to be represented

by counsel, only a person who is referred to in subsection (2) shall represent the party.

(2) Every person who may practise as a barrister, advocate, attorney or solicitor in any of the provinces may so practise in the Court and is an officer of the Court.

[4] While paragraph 9 of the *Rules* allows the Court to dispense with compliance with any *rule*, it does not allow a Court to dispense with the requirements of the *Tax Court of Canada Act* nor can this court change this *Act*. Section 17.1 of the *Tax Court of Canada Act* is clear and the Appellant may either appear in person or be represented by counsel. Since Lino Mastromonaco is not a person referred to in subsection 17.1(2) of the *Tax Court of Canada Act*, he cannot represent the Appellant in this Appeal.

[5] The motion by the Appellant for an Order entitling Lino Mastromonaco to represent the Appellant in this Appeal is dismissed with costs payable forthwith in any event of the cause.

Signed at Ottawa, Canada, this 15<sup>th</sup> day of September 2011.

“Wyman W. Webb”

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Webb J.

CITATION: 2011TCC432  
COURT FILE NO.: 2011-924(IT)G  
STYLE OF CAUSE: IRENE MOLL AND  
HER MAJESTY THE QUEEN  
PLACE OF HEARING:  
DATE OF HEARING:  
REASONS FOR ORDER BY: The Honourable Justice Wyman W. Webb  
DATE OF ORDER: September 15, 2011

For the Appellant: The Appellant Herself  
Counsel for the Respondent: Margaret Irving  
Donna Tomljanovic

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

Myles J. Kirvan  
Deputy Attorney General of Canada  
Ottawa, Canada