

BETWEEN:

STRAUSS ENTERPRISES LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Motion heard on July 6, 2004 at Belleville, Ontario

Before: The Honourable Justice T. O'Connor

Appearances:

Agent for the Appellant: Trueman Tuck

Counsel for the Respondent: Richard Gobeil

---

**ORDER**

Upon Motion by the Respondent that this appeal be heard under the *Tax Court of Canada Rules (General Procedure)*;

This Motion is granted and the following Order is issued:

- (a) an Order ordering that sections 17.1, 17.2 and 17.4 to 17.8 of the *Tax Court of Canada Act* apply in respect of this appeal in respect of which sections 18.3003 and 18.3007 to 18.302 would otherwise apply;
- (b) an Order ordering the Appellant to file on or before June 20, 2005, an amended Notice of Appeal in conformity with rule 48 and Form 21(1)(a) of the *Tax Court of Canada Rules (General Procedure)*; and

- (c) an Order extending the time for the Respondent to file a Reply to the Appellant's Amended Notice of Appeal by 60 days from the date of the filing of the Amended Notice of Appeal.

There shall be no costs on this Motion.

Signed at Ottawa, Canada this 19th day of April, 2005.

T. O'Connor

---

O'Connor, J.

Citation: 2005TCC262  
Date: 20050419  
Docket: 2004-448(GST)I

BETWEEN:

STRAUSS ENTERPRISES LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR ORDER**

**O'Connor, J.**

[1] The Respondent makes a Motion essentially for an Order that the appeal in this matter be moved up to the *Tax Court of Canada Rules (General Procedure)* and thus be removed from the *Tax Court of Canada Rules (Informal Procedure)*.

[2] The basic facts as well as the applicable law are best set forth in the Respondent's written submissions. These written submissions read as follows:

#### **PART I – STATEMENT OF FACTS**

1. The Appellant has filed an appeal with the Tax Court of Canada disputing \$427,800.00 in Net Tax, plus interest and penalties, assessed under Part IX of the *Excise Tax Act* by the Minister of National Revenue (the "Minister") for the reporting periods from March 1, 1999 to June 30, 2002.
2. The Appellant's Notice of Appeal was transmitted to the Minister on February 10, 2004.
3. The Appellant's Notice of Appeal filed on January 30, 2004 is not in Form 21(1)(a) as required by Rule 48 of *Tax Court of Canada Rules (General Procedure)*.

#### **PART II – POINTS IN ISSUE**

4. Should the Appeal proceed under this Court's General Procedure?
5. Should the Appellant's Notice of Appeal be amended to be in Form 21(1)(a)?

### **PART III - SUBMISSIONS**

6. Section 18.3002 of the *Tax Court of Canada Act* (the "Act") provides that on the request of the Attorney General, the Court shall order that sections 17.1, 17.2 and 17.4 to 17.8 of the *Act* apply to an appeal that would otherwise be governed by sections 18.3003 and 18.3007 to 18.302 of the *Act*. The request must be made not later than 60 days after the Tax Court of Canada transmits the Appellant's Notice of Appeal to the Minister.
7. The Respondent's request in this case has been made within the 60 day period specified by section 18.3002 of the *Act*.
8. The amount that would be in dispute in this appeal is \$427,800.00. As a consequence, neither of the special cost rules for cases in which the amount in dispute is less than \$7,000.00 in section 18.3002 or \$50,000 in 18.3007 of the *Act*, apply.
9. It is therefore submitted that the conditions for having this case adjudicated under the General Procedure have been satisfied.
10. Justice Bowie explained the purpose of pleadings in *Zelinski v. Her Majesty the Queen*: "The purpose of pleadings is to define the issues in dispute between the parties for the purposes of production, discovery and trial. What is required of a party pleading is to set forth a concise statement of the material facts upon which he relies. Material facts are those facts, which, if established at trial, will tend to show that the party pleading is entitled to the relief sought".
11. Rule 48 of the *Tax Court of Canada Rules (General Procedure)* provides that:
  48. Every notice of appeal shall be in Form 21(1)(a).
  48. L'avis d'appel doit se conformer à la formule 21(1)a).
12. Form 21(1)(a) provides that the Appellant states its address in full, identifies the assessment under appeal, relates the material facts relied on, specifies the issues to be decided, refers to the statutory provisions relied on, sets forth the reasons the Appellant intends to rely on and indicates the relief sought (see attached Form 21(1)(a)).

13. The Notice of Appeal as drafted makes it difficult for the Respondent to admit, deny or put in issue the facts.
14. It is therefore submitted that this Court should order that the Notice of Appeal be amended to reflect the *Tax Court of Canada Rules (General Procedure)*.

**PART IV – ORDER SOUGHT**

15. The Respondent seeks the following relief:
  - (a) an Order ordering that sections 17.1, 17.2 and 17.4 to 17.8 of the *Tax Court of Canada Act* apply in respect of this appeal in respect of which sections 18.3003 and 18.3007 to 18.302 would otherwise apply;
  - (b) an Order ordering the Appellant to file an amended Notice of Appeal in conformity with rule 48 and Form 21(1)(a) of the *Tax Court of Canada Rules (General Procedure)*; and
  - (c) an Order extending the time for the Respondent to file a Reply to the Appellant's Amended Notice of Appeal by 60 days from the date of the filing of the Amended Notice of Appeal;
    - (i) in the alternative an Order extending the time for the Respondent to file a Reply to the Appellant's Notice of Appeal by 60 days from the date of the Order.

[3] In my opinion the Submissions of the Respondent are well founded and for the reasons set forth therein the Motion is granted and the Order sought for is issued.

Signed at Ottawa, Canada, this 19th day of April 2005.

T. O'Connor  
\_\_\_\_\_  
O'Connor, J.

CITATION: 2005TCC262  
COURT FILE NO.: 2004-448(GST)I  
STYLE OF CAUSE: Strauss Enterprises Ltd. v. H.M.Q.  
PLACE OF HEARING: Belleville, Ontario  
DATE OF HEARING: July 6, 2004  
REASONS FOR ORDER BY: The Honourable Justice T. O'Connor  
DATE OF ORDER: April 19, 2005

APPEARANCES:

Agent for the Appellant: Trueman Tuck

Counsel for the Respondent: Richard Gobeil

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Ontario