

BETWEEN:

WILLIAM JAMES LOUGHEED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Respondent's Motion to strike part of the Notice of Appeal
heard on October 22, 2008 at St. Catharines, Ontario

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Laurent Bartleman

ORDER

Upon the Respondent having brought a motion pursuant to section 53 of the *Tax Court of Canada Rules (General Procedure)* for the striking out of certain paragraphs of the Notice of Appeal;

And having heard the submissions of the parties and read the materials filed;

In accordance with the attached Reasons for Order, it is ordered that:

1. the following paragraphs of the Notice of Appeal shall be struck out:

- (i) subparagraphs 2(c), (d), (f) and (g);
- (ii) sections B, C, D, E, F, G, H, and J under the heading "The Reasons for this Appeal are as follows"; and

- (iii) paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 37, 40 and 41.
2. the Respondent shall file its Reply to the Notice of Appeal on or before the 19th day of December, 2008.

Signed at Ottawa, Canada, this 19th day of November, 2008.

“G. A. Sheridan”

Sheridan J.

Citation: 2008TCC632
Date: 20081119
Docket: 2008-2701(IT)G

BETWEEN:

WILLIAM JAMES LOUGHEED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Sheridan, J.

[1] The Respondent brings a motion pursuant to section 53 of the *Tax Court of Canada Rules (General Procedure)* for an order striking out the following portions of the Notice of Appeal:

- (i) subparagraphs 2(c), (d), (f) and (g);
- (ii) sections B, C, D, E, F, G, H, and J under the heading “The Reasons for this Appeal are as follows”;
- (iii) paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 37, 40 and 41;

[2] The grounds for the Respondent’s motion are as follows:

1. the impugned paragraphs may prejudice or delay the fair hearing of this appeal;
2. the impugned paragraphs are scandalous, frivolous or vexatious;

3. the impugned paragraphs are an abuse of the process of the Court;
4. among the relief sought by the Appellant is seeking damages;
5. pursuant to subsection 171(1) of the *Income Tax Act*, the Court can dispose of an appeal by dismissing it, allowing it and vacating the assessment, allowing it and varying the assessment or allowing it and referring the assessment back to the Minister of National Revenue for reconsideration and reassessment;
6. this Honourable Court does not have jurisdiction to award damages;
7. the impugned paragraphs set out the Appellant's claim for damages and/or the facts which the Appellant wishes to rely on to support his claim for damages;
8. the impugned paragraphs do not address the correctness of the assessment which was issued to the Appellant in respect of his 2002 taxation year;
9. sections 12, 44 and 53 of the *Tax Court of Canada Rules (General Procedure)*; and
10. such further and other grounds as counsel may submit and the Honourable Court allow.

[3] Briefly summarized, the impugned paragraphs of the Notice of Appeal make allegations of various kinds of wrongful behaviour against several individuals ranging from Canada Revenue Agency auditors and assessment officers to the Minister of National Revenue and the Department of Justice. The relief sought by the Appellant for their alleged misconduct includes damages in the amount of \$1,000,000 for, among other things, “defamation, slander and libel” and costs “on a substantial indemnity basis for Accounting Fees, Legal Fees and other Disbursements incurred by the Appellant to mitigate Damages the Respondent’s Representatives have caused the Appellant”.

[4] In his review of the established jurisprudence, counsel cited *Superior Filter Recycling Inc. v. Canada*,¹ a decision of the Federal Court of Appeal. In that case, the

¹ 2006 FCA 248.

Court noted that “[f]undamentally the appellant wishes to assert that it is entitled to have its appeals allowed because of alleged flaws in the conduct of officials of the Canada Revenue Agency during the objection process.”² Many of the paragraphs in the Appellant’s Notice of Appeal are devoted to similar concerns. The Federal Court of Appeal went on to say:

The jurisprudence is clear that the mandate of the Tax Court is to determine the correctness of the assessments under appeal. No complaint about the conduct of tax officials during the objection process is relevant to that determination: *Main Rehabilitation Co. Ltd. v. Canada*, [2004] F.C.J. 2030, 2004 FCA 403 (leave to appeal to the Supreme Court of Canada dismissed) ...; *Webster v. R.* 2003 FCA 388 (F.C.A.) (leave to appeal to the Supreme Court of Canada dismissed).

[5] The rationale for this approach was explained by Sharlow, J.A. in the *Webster* decision cited above:

8 The authority of the Tax Court in income tax appeals is set out in subsection 171(1) of the Income Tax Act, which reads as follows:

171. (1) The Tax Court of Canada may dispose of an appeal by
- (a) dismissing it; or
 - (b) allowing it and
 - (i) vacating the assessment,
 - (ii) varying the assessment, or
 - (iii) referring the assessment back to the Minister for reconsideration and reassessment.

...

21 I would add that the right to appeal an income tax assessment to the Tax Court is a substantial one. The mandate of the Tax Court is to decide, on the basis of a trial at which both parties will have the opportunity to present documentary and oral evidence, whether the assessments under appeal are correct in law, or not. If the assessments are incorrect as a matter of law, it will not matter whether the objection process was flawed. If they are correct, they must stand even if the objection process was flawed. [Emphasis added.]

² Above, at paragraph 6.

[6] The decisions of the Federal Court of Appeal are binding on this Court. Accordingly, the following portions of the Notice of Appeal which pertain to the alleged wrongful behaviour of Canada Revenue Agency and Justice officials and the Minister himself are not relevant to the matter of the correctness of the assessment under appeal and must be struck out: sections B, C, D, E, F, G, H and J, and paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 37, 40 and 41.

[7] As for the damages sought by the Appellant, counsel for the Respondent again cited a decision of the Federal Court of Appeal, *Swift v. Canada*³, for the proposition that a claim for damages is not within the jurisdiction of the Tax Court of Canada. Accordingly, the following portions of the Notice of Appeal having to do with relief other than as set out in subsection 171(1) must be struck out: subparagraphs 2(c), (d), (f) and (g).

[8] The Respondent is also seeking an Order pursuant to sections 12 and 44 of the *Tax Court of Canada Rules (General Procedure)* for an extension of time within which to file its Reply to the Notice of Appeal. In these circumstances, such an Order is justified.

[9] For the reasons set out above, it is ordered that:

1. the following paragraphs of the Notice of Appeal shall be struck out:
 - (i) subparagraphs 2(c), (d), (f) and (g);
 - (ii) sections B, C, D, E, F, G, H, and J under the heading “The Reasons for this Appeal are as follows”; and
 - (iii) paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 37, 40 and 41.
2. the Respondent shall file its Reply to the Notice of Appeal on or before the 19th day of December, 2008.

Signed at Ottawa, Canada, this 19th day of November, 2008.

³ 2004 FCA 316 at paragraph 8.

“G.A. Sheridan”

Sheridan J.

CITATION: 2008TCC632

COURT FILE NO.: 2008-2701(IT)G

STYLE OF CAUSE: WILLIAM JAMES LOUGHEED AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: St. Catharines, Ontario

DATE OF HEARING: October 22, 2008

REASONS FOR ORDER BY: The Honourable Justice G. A. Sheridan

DATE OF ORDER: November 19, 2008

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Laurent Bartleman

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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