

Docket: 2023-666(IT)I

BETWEEN:

SUCCESSION DE GILLES BEAUREGARD,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Before: The Honourable Justice Gaston Jorré, Deputy Judge

Appearances:

Agent for the Appellant: Richard Venor  
Counsel for the Respondent: Félix Desbiens-Gravel

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**ORDER**

In accordance with the attached reasons for order,

The motion shall be set down for hearing at the first available sitting in Montréal.

Signed at Ottawa, Canada, this 17th day of July 2023.

“Gaston Jorré”

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Jorré D.J

Citation: 2023 TCC 99

Date: 20230717

Docket: 2023-666(IT)I

BETWEEN:

SUCCESSION DE GILLES BEAUREGARD,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

### **REASONS FOR ORDER**

Jorré D.J.

[1] The respondent has filed a motion seeking to have the appeal quashed. The grounds are that this court does not have the jurisdiction to deal with the subject of the appeal, the failure of the minister to provide interest relief pursuant to subsection 220(3.1) of the *Income Tax Act*. In the alternative, the respondent seeks an order extending the time to file the Reply to Notice of Appeal.

[2] The respondent also seeks to have the motion dealt with in writing.

[3] The appellant opposes the motion and asks that the motion be suspended and the matter go to hearing on the merits.

[4] This appeal has been filed under the informal procedure and the appellant is represented by an accountant.

[5] The informal procedure rules have no provision dealing with motions or motions in writing. However, that this court can decide its own practice and procedure; Rule 21(4) of the *Tax Court of Canada Rules (Informal Procedure)* says:

(4) Where matters are not provided for in these rules, the practice shall be determined by the Court, either on a motion for directions or after the event if no such motion has been made.

[6] In dealing with matters not provided for in the informal rules, it may be useful to consider the *Tax Court of Canada Rules (General Procedure)*. Rule 69 of the general procedure rules does provide for motions in writing.

[7] However, those rules are not binding in the informal procedure and it is always essential to consider the very nature of the informal procedure as reflected in Subsection 18.15(3) of the *Tax Court of Canada Act*:

(3) Notwithstanding the provisions of the Act under which the appeal arises, the Court is not bound by any legal or technical rules of evidence in conducting a hearing and the appeal shall be dealt with by the Court as informally and expeditiously as the circumstances and consideration's of fairness permit.

(Emphasis added)

[8] The informal procedure is intended to make the court and its procedures accessible as well as relatively simple, inexpensive and expeditious. This is reflected in the absence of provisions in the rules for document exchange, discovery and interlocutory proceedings. There are, of course, limits to the ability to meet these objectives given the equally important objectives of ensuring fairness and rendering factually and legally correct decisions.

[9] Accessibility has a number of dimensions. One of those dimensions is geographical access.

[10] Another is that the proceedings should be as understandable as possible for Appellants.<sup>1</sup>

[11] Most appellants in the informal procedure are unrepresented or represented by an agent. Occasionally they have legal counsel.

[12] Given the nature and objectives of the informal procedure, is it appropriate to deal with this motion in writing rather than deal with it at a hearing?

[13] In my view, it is inappropriate given the objectives of the informal procedure. Such a motion can just as easily be dealt with at the beginning of a

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<sup>1</sup> An appellant who understands what is going on is more likely to feel that they got a fair hearing, whatever the outcome.

hearing of an Appeal and a hearing allows a certain amount of flexibility that is more consistent with the nature of the informal procedure and that is more likely to keep the proceedings understandable.<sup>2</sup>

[14] Generally, motions to quash should be included towards the beginning of the Reply to Notice of Appeal and should be dealt with at the hearing. I note that this is usually the case.

[15] There may be special circumstances where it is appropriate to make such a Motion in writing. For example, if the Appellant had counsel, I might not necessarily reach the same conclusion given that counsel will be more readily in a position to deal with a written motion and to explain everything to the Appellant.

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<sup>2</sup> Although the surrounding circumstances are quite different, the comments of Justice Bowie at paragraph 7 of *Batt v. R.* 2005 TCC 565 are instructive. He said, in part:

Before leaving this matter, I wish to express my view as to the inappropriateness of this kind of motion. Parliament has made provision in the *Tax Court of Canada Act* for appeals involving small amounts of money to proceed to a hearing with dispatch. There is neither production of documents nor examinations for discovery, oral or by interrogatories. The Respondent has 60 days in which to deliver a Reply, and the hearing, barring exceptional circumstances, must be fixed for a date no more than 180 days later. Motions of this kind are the antithesis of the summary procedure that Parliament had in mind. They serve no useful purpose, except to spare the Deputy Attorney General the trouble of delivering a Reply to the Notice of Appeal. Any point that may be taken on a motion to quash may equally be taken on the hearing of the appeal. There may infrequently be cases in which the facts are complex and substantial preparation would be required before a trial on the merits, or ones where witnesses would be required to attend from a distance for a trial; in such cases, there may be some justification for the Respondent raising technical objections to the appeal before pleading. In the normal case, however, and certainly in cases such as this where there is apparently no dispute about the facts, such motions serve no useful purpose and have the effect of thwarting the clear intention of Parliament. ...

[16] Accordingly, the motion shall be set down for hearing at the first available sitting.<sup>3</sup>

Signed at Ottawa, Canada, this 17th day of July 2023.

“Gaston Jorré”

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Jorré D.J.

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<sup>3</sup> The alternate remedy sought by the Respondent will also be dealt with at the hearing of the motion.

CITATION: 2023 TCC 99

COURT FILE NO.: 2023-666(IT)I

STYLE OF CAUSE: SUCCESSION DE GILLES  
BEAUREGARD AND HIS MAJESTY  
THE KING

MOTION RECEIVED BY JUDGE  
ON OR SOON AFTER: June 26, 2023

REASONS FOR ORDER BY: The Honourable Justice Gaston Jorré,  
Deputy Judge

DATE OF ORDER: July 17, 2023

APPEARANCES:

Agent for the Appellant: Richard Venor  
Counsel for the Respondent: Félix Desbiens-Gravel

COUNSEL OF RECORD:

Name:

Firm:

For the Respondent: Shalene Curtis-Micallef  
Deputy Attorney General of Canada  
Ottawa, Canada