Docket: 2025-31(IT)G

BETWEEN:

ALLAN ALBERT FE VIRREY,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Motion disposed of upon consideration of written representations without appearance of the parties

Before: Associate Judge Sophie Matte

For the Appellant:	Allan Albert Fe Virrey
Counsel for the Respondent:	Emma Kerkonian

ORDER

THE COURT ORDERS THAT:

1. The Answer entitled "Reply to the Respondent's Reply" is set aside in whole.
2. The Appellant shall have until February 27, 2026, to file and serve an Amended Notice of Appeal.
3. The Respondent shall have 60 days from the service of the Amended Notice of Appeal to file and serve a Reply to the Amended Notice of Appeal.

4. Costs in the amount of $250 are awarded to the Respondent.

Signed this 18th day of December 2025.

"Sophie Matte"

Matte A.J.

Citation: 2025 TCC 191
Date: 20251218
Docket: 2025-31(IT)G

BETWEEN:

ALLAN ALBERT FE VIRREY,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Matte A.J.

[1] The Respondent brings a motion to strike the Appellant's pleading filed in response to the Respondent's Reply for failure to comply with the *Tax Court of Canada Rules (General Procedure)* (*"Rules"*). The Appellant disputes that his pleading is not compliant.

I. Background

[2] Mr. Fe Virrey is appealing the reassessment of his 2022 taxation year on the basis that the income he earned as an employee of the International Committee of the Red Cross ("ICRC") is exempt from taxation.

[3] Mr. Fe Virrey filed a Notice of Appeal entitled "Statement of Issues and Reasons of Appeal" on December 19, 2024. Attached to this Notice of Appeal were fifteen supporting documents, mainly letters and documents exchanged between Mr. Fe Virrey and the Canada Revenue Agency ("CRA") during the objection process.

[4] On December 23, 2024, a registry officer of the Court advised Mr. Fe Virrey by phone that should he wish to proceed under the General Procedure as selected when he filed his Notice of Appeal, a Notice of Appeal in form 21(1)(a) of the *Rules* had to be filed. Mr. Fe Virrey was also told that the documents attached to the Notice of Appeal would be shredded, and that he would have to file them in accordance with the rules of evidence at the hearing of the appeal if he wanted to rely on them. This telephone conversation was recorded in a memorandum to file dated December 23, 2024.

[5] Mr. Fe Virrey therefore filed a Notice of Appeal in form 21(1)(a) later in the day on December 23, 2024. This Notice of Appeal does not contain as many details as the first Notice of Appeal filed on December 19, 2024. It does however comply with form 21(1)(a). It is unclear to me whether the registry told Mr. Fe Virrey if a Notice of Appeal in form 21(1)(a) would replace the initial document filed on December 19 or if it would complete it, in which case it could explain why this latest Notice of Appeal, the only valid one before the Court, is less detailed than the first.

[6] On March 13, 2025, the Respondent filed a Reply to the Notice of Appeal. In the introduction, the Reply states "In reply to the Appellant's Notice of Appeal in form 21(1)(a) dated December 23, 2024, with respect to the Appellant's 2022 taxation year, the Attorney General of Canada says:".[1] In addition, paragraph 7 of the Reply specifies that the material facts contained in the Notice of Appeal titled Statement of Issues and Reasons for Appeal filed on December 19, 2024, did not form part of the Notice of Appeal.

[7] In its Reply, the Respondent replied to the only valid Notice of Appeal filed by the Appellant, the one filed on December 23, 2024, and that uses Form 21(1)(a) as required by the *Rules*.

[8] On March 14, 2025, Mr. Fe Virrey filed an answer to the Reply entitled "Appellant's Reply to Respondent's Reply" ("Answer").

[9] The Respondent moves to have the Answer set aside, in whole, pursuant to section 7 of the *Rules*, because it does not comply with the *Rules*.

[10] Alternatively, the Respondent asks that all 17 paragraphs of the Answer and their subparagraphs, except for a few, be stricken without leave to amend pursuant

[1] In its motion, the Respondent states that on January 17, 2025, the Registry of the Court transmitted both Notices of Appeal to the Respondent, as well as the memorandum recounting the Registry Officer's conversation with the Appellant.

to subsection 53(1) of the *Rules*, on the ground that they may prejudice or delay the fair hearing of the appeal, are an abuse of process of the Court, and/or disclose no reasonable grounds for appeal.

II. **Does the Answer comply with the rules applicable to pleadings?**

[11] The Respondent argues that the Answer should be set aside in whole pursuant to section 7 of the *Rules* because it fails to comply with subsections 50(1) and 51(3) of the *Rules*.

[12] Subsection 50(1) sets out the requirements to be met regarding an answer to a reply to a notice of appeal. It reads:

> **50 (1)** Every answer shall state,
>
> **(a)** the new facts raised in the reply that are admitted,
>
> **(b)** the new facts raised in the reply that are denied,
>
> **(c)** the new facts raised in the reply of which the appellant has no knowledge and puts in issue,
>
> **(d)** any facts material to the facts pleaded in the reply which have not already been pleaded in the notice of appeal,
>
> **(e)** any further statutory provisions relied on, and
>
> **(f)** any other reasons the appellant intends to rely on.

[13] In addition, subsection 51(3) states that an allegation "that raises a new ground of claim shall not be made in a subsequent pleading but by way of amendment of the previous pleading".

[14] The Respondent first submits that the Answer does not state the new facts raised in the Reply that are admitted, denied, and of which the Appellant has no knowledge and puts in issue. I agree.

[15] The Respondent also submits that the Answer newly introduces subsection 126(3) of the *Income Tax Act* (*"ITA")* which provides a tax credit to Canadian residents who are employed with an "international organization", as defined in section 2 of the *Foreign Missions and International Organizations Act* (*"FMIOA"*). The Respondent claims that almost all paragraphs of the Answer advance new

statements of fact and mixed fact and law[2], reasons[3], and ground of claim[4] that rely on these provisions. According to the Respondent, the new statements were not pleaded in the Notice of Appeal and are not related to facts pleaded in the Reply.

[16] Self-represented litigants must reasonably comply with the *Rules* to ensure that the litigation proceeds in an orderly, efficient and fair manner.[5] This includes complying with the *Rules* regarding pleadings, which are found at sections 43 to 53.

[17] Mr. Fe Virrey submits that the Answer complies with section 50(1) in both form and spirit. He says the Answer responds to new allegations raised in the Respondent's Reply, without specifying the allegations in question. He also says that the answer clarifies facts and expands on issues already disclosed to the CRA during the objection process.

[18] I agree with the Respondent that the Answer does not comply with the *Rules*.

[19] In his Notice of Appeal, Mr. Fe Virrey states a few material facts relied on as follows:

> 1. The Appellant was employed by the ICRC, a globally recognized humanitarian organization.
>
> 2. The CRA assessed the Appellant's 2022 income tax, denying a tax exemption for income earned.
>
> 3. The CRA asserts the ICRC is not a prescribed international organization under the *ITA*.
>
> 4. The Appellant disputes this assertion and asserts that the ICRC's recognized international status qualifies it for tax exemption under the Canadian and international law.

[20] Mr. Fe Virrey then reproduces a timeline of key events, which recount his exchanges with the CRA from the time his 2022 taxation year was reassessed to the time the Notice of Confirmation was issued.

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[2] Paragraph 2, the second, third, fourth, fifth and sixth subparagraphs of paragraph 2, the first sentence of paragraph 3, as well as paragraphs 7, 9, 11, 12 and 13.
[3] The first subparagraph of paragraph 2, the second sentence of paragraph 3, the second sentence of paragraph 4, as well as paragraphs 5, 10, 14 and 15.
[4] Paragraph 6, the third sentence of paragraph 16 and the first subparagraph of paragraph 17.
[5] *Okorose v. R.*, 2012 TCC 360.

[21] For example, at paragraph 5 of the Notice of Appeal, Mr. Fe Virrey states:

> 5. **August 14, 2024** – The Appellant provides additional evidence, referencing UN Resolution 45/6 and legal arguments based on the Geneva Conventions.

[22] Unfortunately, the Notice of Appeal contains no further facts detailing what information the Appellant had and may have relayed to the CRA. As I said earlier, the events listed in the timeline were explained in more detail in the Statement of Issues and Reasons for Appeal that Mr. Fe Virrey filed on December 19, 2024. This document is not part of the Notice of Appeal. In addition, the excluded supporting documents to the timeline are not part of the Notice of Appeal. The additional facts, arguments and reasons on which Mr. Fe Virrey wishes to rely in his Answer may have been found or deduced from those documents, but they no longer form part of the Notice of Appeal.

[23] Also, it should be noted that the information and documents shared with the CRA during the objection process do not form part of the Court file.

[24] This could explain why Mr. Fe Virrey feels that the facts, issues and reasons that are introduced in the Answer are not new, when they are in fact new to his Notice of Appeal.

[25] I find there is no reference to subsection 126(3) of the *ITA*, nor to section 2 of the *FMIOA* in the Notice of Appeal. There are also no facts pleaded that support the allegation that the ICRC is an organization that meets the definition of "international organization" of the *FMIOA*. The statements of fact and mixed fact and law, reasons and ground of claim that rely on these provisions were all introduced for the first time in the Answer.

[26] The only way new facts can be allowed in an Answer is if they are material to facts pleaded in the Reply. In this case, the new facts introduced in the Answer are not related to new facts alleged in the Reply.

[27] The Reply filed by the Respondent is limited to facts and arguments that relate to the definition of "prescribed international organization" and the status of the ICRC and the Appellant with respect to the United Nations. The Reply does not advance any other facts.

[28] I therefore find that the Answer, except for paragraph 1, the first sentence of paragraph 4 and the first and second sentence of paragraph 16, newly advances statements of fact and of mixed fact and law, reasons and a ground of claim that are contrary to subsection 50(1) and 51(3) of the *Rules*.

III. **The Remedy**

[29] As the Answer is contrary to the *Rules*, it is an improper pleading. This Court has held that improper pleadings are an irregularity within the meaning of section 7 of the *Rules*.[6]

[30] Section 7 reads:

> **(7)** A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or direction in a proceeding a nullity, and the Court,
>
> > **(a)** may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute, or
> >
> > **(b)** only where and as necessary in the interests of justice, may set aside the proceeding or a step, document or direction in the proceeding in whole or in part.

[31] The interest of justice is broad and allows a court to consider not only its interests but also those of the parties involved in the litigation. [7]

[32] The rules on pleadings allow for the parties to know the opposing party's case and to respond to it.[8] It would be unfair to the Respondent to allow Mr. Fe Virrey to introduce new facts, new issues and new reasons in his Answer when the Respondent does not have an opportunity to respond. This is exactly what section 51(3) seeks to prevent.

[33] Mr. Fe Virrey submits that he filed the Answer with the intention of clarifying facts, the legal context and the basis for his appeal, not to disrupt procedure or introduce new issues. Mr. Fe Virrey asks that the Court grant him leave to amend his Notice of Appeal if it is of the view that his Answer exceeds the proper scope of

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[6] *Kossow v. R.*, 2008 TCC 422, confirmed by the Federal Court of Appeal, 2009 FCA 83. See also *Okoroze,* note 5.
[7] *Sport Maska Inc. v. Bauer Hockey Corp*, 2016 FCA 44 at para. 43.
[8] *Martineau c. Le Roi*, 2023 CCI 25.,

an answer or introduces elements that should have been part of his original Notice of Appeal.

IV. **Conclusion**

[34] I find that the improper Answer should be set aside, in whole. However, I will allow Mr. Fe Virrey to amend his Notice of Appeal. As I stated earlier, Mr. Fe Virrey first filed a more comprehensive Notice of Appeal with supporting documents. I am of the view that it is in the best interest of justice to give Mr. Fe Virrey the opportunity to amend his Notice of Appeal at this stage of the litigation process and reintroduce the material facts that may have been lost between the two Notices of Appeal and the ones that were included in the Answer. The Respondent will also be given a chance to reply. This way, all material facts, issues and reasons will be known to the parties prior to the start of the discovery process.

[35] I would like to draw Mr. Fe Virrey's attention to the teachings of this Court concerning pleadings at paragraphs 4 and 5 in *Zelinski v. R.*[9], and what constitutes material facts. It should guide him in the amendment of his Notice of Appeal.

[36] As I have reached the conclusion that the Answer should be set aside, there is no need to discuss the alternative ground raised in the Respondent's motion.

V. **Costs**

[37] In his reply to the motion, Mr. Fe Virrey stated that the Respondent wrote to him prior to filing the motion and gave him an opportunity to amend his Notice of Appeal, under the condition that he would allow the Respondent to amend its reply. Mr. Fe Virrey felt that it was more appropriate and fairer to all parties to maintain communications with the Court's formal process. Although I can understand Mr. Fe Virrey's reticence to communicate with counsel, I find it unfortunate that it resulted in a motion being filed with the Court. It is common and encouraged for parties to discuss and resolve such issues between themselves. Had Mr. Fe Virrey agreed to speak to counsel for the Respondent, this motion may have been avoided.

[38] I will award costs for the motion in the amount of $250 to the Respondent.

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[9] *Zelinski v. R.*, 2001 CarswellNat 2582.

Signed this 18th day of December 2025.

"Sophie Matte"

Matte A.J.

CITATION:	2025 TCC 191
COURT FILE NO.:	2025-31(IT)G
STYLE OF CAUSE:	ALLAN ALBERT FE VIRREY AND HIS MAJESTY THE KING
REASONS FOR ORDER BY:	Associate Judge Sophie Matte
DATE OF ORDER:	December 18, 2025

APPEARANCES:

For the Appellant:	Allan Albert Fe Virrey
Counsel for the Respondent:	Emma Kerkonian

COUNSEL OF RECORD:

For the Appellant:

Name:	N/A
Firm:	N/A

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