

BETWEEN:

10038555 CANADA LIMITED,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Considered by way of written submissions by the parties.

Before: The Honourable Justice Ted (Edward) Cook

Appearances:

Counsel for the Appellant: Paul DioGuardi

Counsel for the Respondent: Warwick Walton

ORDER

Upon considering the written submissions by the parties; and

In accordance with the attached reasons;

THIS COURT ORDERS THAT:

1. The Respondent's motion is granted.
2. The Appellant's Notice of Appeal is struck, with leave to amend.
3. The Appellant may file a Fresh as Amended Notice of Appeal that relates the material facts upon which the Appellant relies.
4. The Fresh as Amended Notice of Appeal shall be filed on or before the day that is 60 days after the day on which this Order is signed.

5. The Respondent shall file its Reply on or before the day that is 60 days after the day on which the Fresh as Amended Notice of Appeal is filed.
6. Costs are awarded to the Respondent in any event of the cause.

Signed this 21st day of August 2026.

“Ted Cook”

Cook J.

BETWEEN:

10038555 CANADA LIMITED,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Cook J.

[1] The Respondent applies under section 53 of the *Tax Court of Canada Rules (General Procedure)* to have the Appellant's Notice of Appeal struck, with leave to amend. Pursuant to section 69 of the Rules, this motion proceeds on the basis of written submissions. The grounds for the motion are that the Notice of Appeal lacks specificity in its material facts and that it either will prejudice or delay the fair hearing of the appeal, or is scandalous, frivolous or vexatious.

[2] The Appellant submits the Notice of Appeal is sufficiently clear and concise to allow the Respondent to reply. It is neither scandalous, frivolous or vexatious, nor an abuse of the Court's process.

[3] The facts section of the Notice of Appeal is reproduced in full below:

THE FACTS

1. The Appellant is in the business of manufacturing custom stairs and stair railings.
2. The assessments at issue were raised arbitrarily by the Canada Revenue Agency.
3. The assessments overstate the Appellant's sales and GST/HST collectable.

4. The assessments understate the Appellant's input tax credits for each of the periods.
5. The net tax for each of the reporting periods is overstated.

[4] The Appellant asserts these facts clearly and concisely state that the input tax credits for each year were understated, and that sales and net tax were overstated, resulting in arbitrary assessments.

[5] Sections 21 and 48 of the Rules require a Notice of Appeal to be in Form 21(1)(a) for a general-procedure appeal of an assessment under the *Excise Tax Act*. That form requires the Appellant to relate the material facts relied on.

[6] The purpose of pleadings was set out in *Zelinski v The Queen*, 2002 DTC 1204, [2002] 1 CTC 2422 (TCC) at paras 4 and 5:

[4] The purpose of pleadings is to define the issues in dispute between the parties for the purpose 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 she 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. ...**

[5] The applicable principle is stated in *Holmsted and Watson*:

This is *the* rule of pleading; all of the other pleading rules are essentially corollaries or qualifications to this basic rule that **the pleader must state the material facts relied upon for his or her claim or defence**. The rule involves four separate elements: (1) **every pleading must state material facts, not mere conclusions of law**; (2) it must state material facts and not facts that are immaterial; (3) it must state facts and not the evidence by which they are proved; (4) it must state facts concisely in a summary form.

[emphasis added]

[7] In *Klundert v The Queen*, 2013 TCC 208 at paras 20 and 21, the Court held that appellants must make more than broad statements in their pleadings. A Notice of Appeal must contain a concise statement of the material facts that an appellant relies upon, and the statement must be in sufficient detail to allow the respondent, and the court, to know and properly address each cause of action in issue. The Court

referred to *Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184, which confirmed that where a pleading “contains a set of conclusions, but does not provide any material facts for the conclusions”, then “[t]he bare assertion of a conclusion upon which the court is called to pronounce is not an allegation of material fact.”

[8] The Appellant’s Notice of Appeal does not contain a statement of material facts in sufficient detail so as to allow the Respondent to prepare its Reply. It sets out only one material fact: the Appellant is in the business of manufacturing custom stairs and stair railings. This fact states the Appellant’s business and nothing more. The purported facts relating to input tax credits and GST/HST liability are not material facts. They are conclusions for a court to make.

[9] It is no answer for the Appellant to say the discovery process will allow for a review of documents. See *Mancuso v Canada (Minister of National Health and Welfare)*, 2015 FCA 227 at para 17:

The latter part of this requirement -- sufficient material facts -- is the foundation of a proper pleading. If a court allowed parties to plead bald allegations of fact, or mere conclusory statements of law, the pleadings would fail to perform their role in identifying the issues. The proper pleading of a statement of claim is necessary for a defendant to prepare a statement of defence. Material facts frame the discovery process and allow counsel to advise their clients, to prepare their case and to map a trial strategy. Importantly, the pleadings establish the parameters of relevancy of evidence at discovery and trial.

[10] The Appellant relies on *Hunt v. Carey Canada Inc.*, [1990] 2 SCR 959 to argue that there is no basis for striking the Notice of Appeal. At page 980, the Supreme Court held that a claim will only be dismissed if it is plain and obvious that the plaintiff’s statement of claim discloses no reasonable cause of action. This test was applied in the tax context in *Sentinel Hill Productions (1999) Corporation v The Queen*, 2007 TCC 742 at paras 10 and 11.

[11] A court, however, may also strike out a pleading if it is so deficient in material facts that the respondent cannot know how to answer—see *Gauthier v The Queen*, 2006 TCC 290 at para 7. Such is the case here. I find that the Appellant’s Notice of Appeal may prejudice or delay the fair hearing of the appeal because it is so devoid of material facts that the Respondent cannot know how to answer.

[12] The Notice of Appeal will be struck with leave to amend. If a pleading has extensive deficiencies, the proper remedy is to set the pleadings aside with leave to file a new pleading. See, for example, *Okoroze v The Queen*, 2012 TCC 360 and *Oddi v The Queen*, 2016 TCC 102.

[13] The Respondent's motion is granted with costs in any event of the cause. The Appellant's Notice of Appeal is struck, and the Appellant may file a Fresh as Amended Notice of Appeal that relates the material facts upon which the Appellant relies. The Fresh as Amended Notice of Appeal shall be filed on or before the day that is 60 days after the day on which my order is signed. The Respondent shall file its Reply on or before the day that is 60 days after the day on which the Fresh as Amended Notice of Appeal is filed.

Signed this 21st day of August 2026.

"Ted Cook"

Cook J.

CITATION: 2026 TCC 156

COURT FILE NO.: 2026-752(GST)G

STYLE OF CAUSE: 10038555 CANADA LIMITED AND HIS
MAJESTY THE KING

REASONS FOR ORDER BY: The Honourable Justice Edward (Ted)
Cook

DATE OF ORDER: August 21, 2026

APPEARANCES:

Counsel for the Appellant: Paul DioGuardi

Counsel for the Respondent: Warwick Walton

COUNSEL OF RECORD:

For the Appellant:

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Firm: DioGuardi Law

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