Federal Court of Appeal | Cour d'appel fédérale

Date: 20150223

Docket: A-370-13

Citation: 2015 FCA 51

CORAM: **NADON J.A.**
WEBB J.A.
BOIVIN J.A.

BETWEEN:

PAUL MATTHEW JOHNSON

Appellant

and

HER MAJESTY THE QUEEN
(MINISTER OF NATIONAL REVENUE)

Respondent

Heard at Vancouver, British Columbia, on November 27, 2014.

Judgment delivered at Ottawa, Ontario, on February 23, 2015.

REASONS FOR JUDGMENT BY: WEBB J.A.

CONCURRED IN BY: NADON J.A.
BOIVIN J.A.

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REASONS FOR JUDGMENT

WEBB J.A.

[1] This appeal raises issues related to the conduct of the Minister of National Revenue (Minister) in assessing and collecting net tax under Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the Act), and the jurisdiction of the Federal Court and the Tax Court of Canada in relation to these matters.

[2] Paul Johnson has appealed the decision of the Federal Court (2013 FC 1032) dismissing his application for judicial review of the decisions of the Minister related to the assessment and collection taken actions against him. He has also appealed the order of the Tax Court of Canada striking the paragraphs of his notice of appeal to that court related to the alleged purpose of the Minister in issuing the assessment, the conduct of the Minister in relation to the assessment and the collection of amounts under that assessment, and the delay in addressing Mr. Johnson's notice of objection (Tax Court of Canada Docket: 2012-4902(GST)G). The citation for the Judgment and reasons in relation to the appeal from the decision of the Tax Court Judge is 2015 FCA 52.

Background

[3] In August 2011, the RCMP began an investigation into whether Mr. Johnson and others were involved in the trafficking of cocaine and other substances. The investigation ultimately led to a search of Mr. Johnson's vehicle and house on April 9, 2012. Approximately $13,000 in cash was seized from the residence of Mr. Johnson. He was not charged with any offence at that time.

[4] On the same day, the police arrested Danny Le and conducted searches of his vehicle and the residence occupied by Mr. Le and his spouse, Rachel Laing. Approximately $71,000 in cash was seized from the residence and 5 kilograms of cocaine was seized from Mr. Le's vehicle.

[5] On April 17, 2012, the RCMP provided to the Minister a summary of their investigation and items seized. The summary identified nine individuals, including Mr. Johnson, and included details of observed transactions during the period from January 2012 to April 2012.

[6] Following the receipt of this information from the RCMP, on April 18, 2012 an auditor with the Canada Revenue Agency (CRA) opened a GST/HST account for a partnership. The auditor identified Mr. Johnson, Mr. Le and Ms. Laing as the three partners of this partnership. The effective date of registration was January 1, 2011. The estimated annual revenue was stated to be $3 million from a business activity described as "cocaine distribution". The address for the partnership was stated to be the address for the CRA.

[7] On April 19, 2012, the auditor referred the matter to a Collections/Enforcement Liaison Officer with the CRA who, on the same day, "took steps to initiate the creation of the Partnership Assessment by entering the necessary data into the CRA's computer system to generate the Partnership Assessment" (Affidavit of Mandeep Gill, paragraph 14, page 468 of the Appeal Book). The following day, the liability for the GST/HST was posted on the CRA's computer system.

[8] On April 20, 2012, a Requirement to Pay Restorable Money (RTP) was issued under subsection 320(1) of the Act against Mr. Le, Ms. Laing and Mr. Johnson on the basis that they were each jointly and severally liable for the GST/HST liability of the partnership under subsection 272.1(5) of the Act. The maximum amount payable under this RTP was $292,700. The RTP was sent by fax to the RCMP together with a covering letter also dated April 20, 2012.

[9] On April 24, 2012, the Minister issued a notice of assessment for the net tax, interest and penalty of the partnership of Mr. Le, Ms. Laing and Mr. Johnson for the following amounts:

Reporting Period	Net Tax	Interest and Penalty	Total Amount
July 1, 2011 to September 30, 2011	$141,120	$6,690	$147,810
October 1, 2011 to December 31, 2011	$141,120	$3,770	$144,890
			$292,700

[10] This notice of assessment was addressed to Mr. Le, Ms. Laing and Mr. Johnson, c/o the CRA auditor at the address for the CRA in Surrey, BC. Also on April 24, 2012, a notice of assessment was issued under subsection 272.1(5) of the Act in respect of the joint and several liability of each of the three identified partners for the unremitted net tax, interest and penalties of the partnership. This notice of assessment was sent to Mr. Johnson at his last known address on the same day. These assessments were referred to in the reasons of the Federal Court Judge as the First Assessments.

[11] On April 26, 2012, the notice of assessment that had been issued in relation to the joint and several liability of Mr. Johnson "was registered in Federal Court and a Writ of Seizure and Sale was obtained by the Minister" (paragraph 10 of the reasons of the Federal Court Judge).

[12] On May 3, 2012, the Minister hand delivered the RTP to the RCMP and received the cash that the police had seized from the residence of Mr. Johnson.

[13] On May 15, 2012, personal property and vehicles of Mr. Johnson were seized. On May 24, 2012, a certificate of title was registered against Mr. Johnson's property. Mandeep Gill, in his affidavit, stated that he had issued a Requirement to Pay, pursuant to subsection 317(3) of the Act, to Mr. Johnson's bank on May 28, 2012. However, the Requirement to Pay that is included in the Appeal Book is not dated.

[14] On January 23, 2013, the CRA auditor received additional information from the RCMP related to alleged drug trafficking activities of the partnership. Upon reviewing this information, the CRA auditor concluded that only Mr. Le and Mr. Johnson were members of the partnership.

[15] On April 19, 2013, the assessment that had been issued for the net tax, interest and penalties of the partnership for the period ending September 30, 2011 was vacated.

[16] On April 24, 2013, notices of (re)assessment were issued for the net tax, interest and penalties of the partnership consisting of Mr. Le and Mr. Johnson (under the same Business Number as the partnership that was registered on April 18, 2012) for the following amounts:

Reporting Period	Net Tax	Interest and Penalty	Total Amount
October 1, 2011 to December 31, 2011	$215,460	$22,803	$238,263
January 1, 2012 to March 31, 2012	$96,390	$8,646	$105,036
			$343,299

[17] On May 3, 2013, a notice of (re)assessment was issued under subsection 272.1(5) of the Act in respect of the joint and several liability of Mr. Johnson for the unremitted net tax, interest and penalties of the partnership. The amount owing as stated in this Notice of Assessment was $253,178. The (re)assessments issued on April 24, 2013 and May 3, 2013 were referred to as Second Assessments in the reasons of the Federal Court Judge.

Decision of the Federal Court

[18] The Federal Court Judge concluded that Mr. Johnson's application for judicial review, in relation to the assessments that were issued, was a collateral attack on the validity of the assessments and therefore was a matter that was not within the jurisdiction of the Federal Court (paragraph 31 of the reasons). The Federal Court Judge also concluded that the Tax Court of Canada had exclusive jurisdiction to address the issue of whether the RTP was properly issued. Notwithstanding this finding in relation to the RTP, he noted that even if the Federal Court did have jurisdiction, he would have found that the RTP was properly issued under the Act.

[19] In addition, the Federal Court Judge rejected Mr. Johnson's arguments that:

- the First Assessments and the Second Assessments were not made for a proper purpose;
- the Second Assessments gave rise to a reasonable apprehension of bias;
- the Minister was *functus officio* when he issued the Second Assessments; and
- a stay should be granted in respect of the CRA's collection action pending the outcome of the appeal of the assessments to the Tax Court of Canada.

Issues

[20] In this appeal, Mr. Johnson raises the following issues:

a) Does the Federal Court have jurisdiction to review the actions of the Minister in relation to the First Assessments and the Second Assessments?

i. If the Federal Court has such jurisdiction, does the conduct or motive of the Minister, in this case, warrant a declaration that the assessments should not have been issued?

b) Does the Federal Court have the jurisdiction to review the collection actions of the Minister?

ii. If the Federal Court has such jurisdiction, was the Minister's action in issuing the RTP in this case unlawful?

Jurisdiction of the Federal Court Jurisdiction of the Federal Court in Relation to the Assessments

[21] In *Canada (Minister of National Revenue) v. JP Morgan Asset Management (Canada) Inc.* 2013 FCA 250; [2013] F.C.J. No. 1155, (*JP Morgan*) Stratas J.A. provided a detailed analysis of the law with respect to judicial review applications related to questions arising under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). The analysis is equally applicable to the GST provisions of the Act since subsection 12(1) of the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2, provides that the Tax Court of Canada "has exclusive original jurisdiction to hear and determine references and appeals to the [Tax Court of Canada] on matters arising under […] Part IX of" the Act.

[22] In paragraph 82 of *JP Morgan*, Stratas J.A. noted that:

> 82 In each of the following situations, an appeal to the Tax Court is available, adequate and effective in giving the taxpayer the relief sought, and so judicial review to the Federal Court is not available:
>
> > *Validity of assessments.* The Tax Court has exclusive jurisdiction to review the correctness of assessments by way of appeal to that Court. Sections 165 and 169 of the *Income Tax Act* constitute a complete appeal procedure that allows taxpayers to raise in the Tax Court all issues relating to the correctness of the assessments, *i.e.*, whether the assessment is supported by the facts of the case and the applicable law […] Therefore, it is not possible to bring a judicial review in the Federal Court raising the substantive acceptability of an assessment.

[23] The applicable objection and appeal provisions are contained in sections 301, 302 and 306 of the Act, and these sections also "constitute a complete appeal procedure that allows taxpayers to raise in the Tax Court all issues relating to the correctness of the assessments". Therefore, judicial review in the Federal Court is not available if Mr. Johnson, under the guise of seeking judicial review of the decision of the Minister to assess him, is in reality challenging the correctness of the assessments.

[24] Mr. Johnson submits that the Minister did not have sufficient information to support the First Assessments. In particular, Mr. Johnson noted that first the CRA concluded that there was a partnership with three partners and then later determined that there were only two partners. He also argued that there was very little, if any, information to support any assessment for the period from July 1, 2011 to September 30, 2011, which was confirmed when the assessment for this reporting period was subsequently vacated by the Minister. He also submitted that the assessments issued for the other reporting periods were not supported by the facts provided by the RCMP.

[25] However, all of these submissions are matters that could be addressed before the Tax Court of Canada. These arguments relate to the correctness of the assessments. Do the facts support the amounts assessed? This is a matter for the Tax Court of Canada – not the Federal Court.

[26] The Second Assessments relate to the change in the composition of the partnership, a change in the amount assessed for the reporting period ending December 31, 2011, and an additional assessment for the reporting period ending March 31, 2012. Whether the assessments could have been issued as they were (first with Ms. Laing as a member of the partnership and then without her as a member), is also a matter for the Tax Court of Canada, as it relates to the validity or correctness of the assessments that were issued.

[27] Mr. Johnson also argues that the Minister had an improper motive in assessing him. He states that the Federal Court has the jurisdiction to review the Minister's purpose for assessing him and determine if such purpose was improper. If such purpose was improper, Mr. Johnson submits that the Federal Court would have the jurisdiction to issue a declaration that the assessment should not have been issued.

[28] In this case, Mr. Johnson alleges that the Minister issued the First Assessments for the sole purpose of seizing the funds that the RCMP had found in Mr. Johnson's residence before the RCMP released the money to someone else.

[29] Assuming without deciding that the Federal Court would have the jurisdiction to review the Minister's motivation or purpose for issuing an assessment and, if appropriate, issue a declaration that such assessment should not have been issued, this is not a case where I would find that such a declaration should have been issued. The Minister is responsible for enforcing the provisions of the Act, which include the collection of net taxes owing under the Act. The fulfillment of the Minister's statutory responsibilities under the Act cannot be an improper motive for the Minister to issue an assessment.

[30] The CRA auditor received information from the RCMP that indicated that Mr. Johnson may have been involved in making taxable supplies. Mr. Johnson, as acknowledged by his counsel, did not file GST returns or remit any net tax for the reporting periods in question. Whether Ms. Laing was involved would only appear to affect the amount for which Mr. Johnson would be liable under the Act, not whether he would be liable to remit amounts under the Act. Presumably if particular supplies are made by a partnership of two persons instead of three, the amount allocated to each of the two partners would be greater. As noted, whether there was a partnership, who were the members of that partnership (if there was a partnership), and the amount of any taxable supplies made in any particular reporting period are all issues that relate to the validity or correctness of the assessments and, therefore, are issues that are within the exclusive jurisdiction of the Tax Court of Canada.

[31] Mr. Johnson also argues that the Federal Court should have jurisdiction to address his application for judicial review because of the delays that he has experienced in being able to commence his appeal to the Tax Court of Canada. Mr. Johnson filed a notice of objection on

June 19, 2012. In order to commence an appeal to the Tax Court of Canada, a person must either have a decision of the Minister (reflected in a reassessment or notice of confirmation) or wait 180 days after filing the notice of objection (sections 302 and 306 of the Act). As Mr. Johnson did not want to wait to commence his appeal, his counsel, in the covering letter that accompanied his notice of objection, submitted a request that the Minister confirm the assessment without reconsideration as provided for in subsection 301(4) of the Act.

[32] When the requested confirmation was not forthcoming, Mr. Johnson brought an application in the Federal Court for an order to compel the Minister to deal with his notice of objection. On November 30, 2012, the Minister issued a notice of confirmation and Mr. Johnson then discontinued that application in Federal Court. With the notice of confirmation, he was then able to commence his appeal to the Tax Court of Canada, which gave rise to the motion of the Crown to strike certain parts of the notice of appeal referred to above.

[33] The time limits in relation to the appeal process are set out in the Act. The Federal Court cannot acquire jurisdiction to judicially review the decision to assess Mr. Johnson under the Act simply because he was not able to commence his appeal to the Tax Court of Canada as quickly as he would have liked. He was able to commence his appeal as provided in the Act, and therefore the Tax Court of Canada retains the exclusive original jurisdiction to deal with the validity and correctness of the assessments.

[34] It should also be noted that there is another impediment to Mr. Johnson's application for judicial review in relation to the assessments. In *JP Morgan*, Stratas J.A. stated that:

> 66 Administrative law authorities from this Court and the Supreme Court of Canada - including the Supreme Court's decision in *Addison & Leyen*, [2007 SCC 33] - show that any of the following qualifies as an obvious, fatal flaw warranting the striking out of a notice of application:
>
> > (a) the notice of application fails to state a cognizable administrative law claim which can be brought in the Federal Court;
> >
> > (b) the Federal Court is not able to deal with the administrative law claim by virtue of section 18.5 of the *Federal Courts Act* or some other legal principle; or
> >
> > (c) the Federal Court cannot grant the relief sought.

[35] If any of these flaws would warrant "the striking out of a notice of application", then they would also warrant the dismissal of an application for judicial review.

[36] In the Consolidated Amended Notice of Application, Mr. Johnson indicated that he was seeking, in relation to the assessments, a declaration that the Minister's act of issuing such assessments was "an invalid and unlawful exercise of a statutory power under section 296 and contrary to law, or alternatively, an abuse of power or an abuse of process" (page 4, paragraph (a)(iii), page 5 paragraphs (b)(i) and (iii)). Mr. Johnson also sought an order "quashing or setting aside" the assessments (page 4, paragraph (iv), page 5 paragraphs (ii) and (iv)). These requests were repeated in the notice of appeal to this court (paragraphs (a)(viii) and (ix)).

[37] Subsections 299(3) and (4) of the Act provide that an assessment is valid subject to it being vacated as a result of an objection or appeal under the Act or another reassessment being issued, either as a result of an objection or appeal under the Act or otherwise under the Act. Since the appeal rights under the Act lead to the Tax Court of Canada and not the Federal Court,

the Tax Court of Canada has the exclusive jurisdiction to vacate an assessment (*Obonsawin v. The Queen*, 2004 TCC 3, [2004] T.C.J. No. 68, at paragraph 8). Therefore, the remedy that Mr. Johnson was seeking in relation to quashing or setting aside the assessments is not a remedy that could have been granted by the Federal Court. Although counsel for Mr. Johnson in their memorandum of fact and law stated that he was only seeking a declaration from the Federal Court, the determination of whether the Federal Court Judge should have dismissed his application for judicial review should be based on his application to that Court, not on his application as only modified in his memorandum of fact and law submitted on appeal to this Court.

[38] Although Mr. Johnson also asked for a declaration of invalidity, it would not be possible to separate this declaration from the question of the correctness of the assessments since the basis for this request for declaratory relief is essentially that the Minister did not have sufficient information to warrant the assessments that were issued. This is effectively arguing that the assessments are not correct. In *The Queen v. Roitman*, 2006 FCA 266, [2006] F.C.J. No. 1177, Décary J.A. stated that:

> 25 Counsel for Mr. Roitman alleges abuse of process on the part of the Minister in issuing the notice of assessment. The alleged abuse is that of a deliberate incorrect interpretation of the law. The allegation assumes that the law has been incorrectly interpreted, which in turn assumes that the reassessment is invalid, a determination that can only be made by the Tax Court of Canada. To paraphrase the words of Hugessen J. in *Walsh* (supra, at paragraph 5), the relief based on the alleged deliberate actions of the Minister or of the Agency "would be a meaningless exercise when divorced, as is [*sic*] must be, from the substantial question as to the validity of the assessment itself". It is remarkable that the very question the Judge ordered to be decided prior to trial by the Federal Court is precisely the type of legal question that would normally fall within the very expertise and domain of the Tax Court of Canada. It is clear in the end that the claim for damages can only succeed if the reassessment is first found to be invalid. The Statement of Claim is, at best, premature.

[39] In *Roitman*, the alleged abuse related to a question of law. In the present appeal, the alleged abuse relates to questions of fact and whether there was a factual basis for the assessments as issued. Just as in *Roitman*, the declaration sought by Mr. Johnson would be a meaningless declaration separated from the real question of whether the assessments that were issued were valid assessments under the Act.

[40] As noted by the Supreme Court of Canada in *Terrasses Zarolega Inc. v. Québec (Régie des installations olympiques)*, [1981] 1 S.C.R. 94, 124 D.L.R. (3d) 204:

> Finally, a declaratory judgment will not be rendered when it will serve little or no purpose.

[41] Issuing a declaratory judgment that could not quash or vacate the assessments would serve little or no purpose. As noted, the Federal Court does not have the jurisdiction to quash or vacate the assessments that were issued under the Act. Mr. Johnson would still have to pursue his appeal to the Tax Court of Canada even if such declaratory judgment would have been rendered. As noted by C. Miller J. in *Obonsawin*, at paragraphs 15 and 16, it does not necessarily follow that the Tax Court of Canada would automatically vacate the assessments if such a declaration is issued.

[42] As a result, I would dismiss the appeal in relation to the judicial review of the Minister's actions in issuing the assessments.

Jurisdiction of the Federal Court in Relation to the Collection Action

[43] In Mr. Johnson's memorandum of fact and law and in the oral submissions in this appeal, his counsel focused on the issue of whether the RTP was validly issued. Since no arguments were submitted in relation to any of the other collection actions, only the validity of the RTP will be addressed.

[44] Mr. Johnson's argument in relation to the RTP is that it was issued before he was assessed and, therefore, it was not validly issued under the Act. The Federal Court Judge, as noted above, first concluded that the Tax Court of Canada (and not the Federal Court) had the jurisdiction to deal with this issue. I am unable to agree with this conclusion.

[45] To address this issue, it is not necessary to determine if the First Assessments were validly issued. The issue is whether the RTP was validly issued, based on the timing of the First Assessments and the issuance of the RTP. Rather than a collateral attack on the First Assessments, this question assumes that the First Assessments were validly issued.

[46] As noted by this Court in *Walker v. The Queen,* 2005 FCA 393, [2005] F.C.J. No. 1952:

> 15 An application for judicial review may be made to the Federal Court to challenge the legality of collection measures taken by the Minister to collect taxes allegedly due.

[47] This was reaffirmed by this Court in *JP Morgan* at paragraph 96.

[48] As a result, the Federal Court does have the jurisdiction to judicially review the collection action of the Minister in issuing the RTP in this case.

Validity of the RTP

[49] The collection actions that the Minister may pursue under the Act are set out in sections 316 to 321 of the Act. However, section 315 of the Act provides a limitation on such collection actions:

315.(1) The Minister may not take any collection action under sections 316 to 321 in respect of any amount payable or remittable by a person that may be assessed under this Part, other than interest, unless the amount has been assessed.	315.(1) Le ministre ne peut, outre exiger des intérêts, prendre des mesures de recouvrement aux termes des articles 316 à 321 relativement à un montant susceptible de cotisation selon la présente partie que si le montant a fait l'objet d'une cotisation.

[50] Before the Minister can take any collection action (which would include the RTP that was issued under section 320 of the Act) against any person for any amount payable or remittable under the Act, that person must first be assessed for such amount. The Federal Court Judge concluded that there were two separate processes under the Act – the assessment of Mr. Johnson and the sending of the notice of assessment to him. The Federal Court Judge determined that the assessment of Mr. Johnson had been completed before the RTP was issued. As a result, he determined that the RTP had been validly issued under the Act. However, I am unable to agree that the RTP had been validly issued under the Act.

[51] The Supreme Court of Canada addressed the issue of statutory interpretation in *The Queen v. Canada Trustco Mortgage Company*, 2005 SCC 54, [2005] 2 S.C.R. 601:

> 10 It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see *65302 British Columbia Ltd. v. R.*, [1999] 3 S.C.R. 804 (S.C.C.), at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

[52] In deciding how to interpret subsection 315(1) of the Act, it is necessary to examine the context of the Act and to find a meaning that is harmonious with the Act as a whole.

[53] Subsection 300(1) of the Act provides that:

300.(1) After making an assessment, the Minister shall send to the person assessed a notice of the assessment.	300.(1) Une fois une cotisation établie à l'égard d'une personne, le ministre lui envoie un avis de cotisation.

[54] This confirms that there are two separate processes – the assessment of a person and the sending of notice of the assessment to that person.

[55] However, in this case there is no indication that the Federal Court Judge considered subsection 335(11) of the Act in reaching his decision on the interpretation of the Act. This subsection provides that:

335 (11) If a notice of assessment has been sent by the Minister as required under this Part, the assessment is deemed to have been made on the day of sending of the notice of assessment.	335 (11) Lorsqu'un avis de cotisation a été envoyé par le ministre de la manière prévue à la présente partie, la cotisation est réputée établie à la date d'envoi de l'avis.

[56] Since subsection 315(1) of the Act provides that an amount must be assessed before collection action can be taken, the date that such assessment is deemed to have been made is critical. By deeming the assessment to have been made on the date that it is sent, the date that the information is entered into the CRA's computer system and the assessment is processed by that system is not relevant. Sending the notice of assessment to the person assessed is the relevant act that determines the date of the assessment.

[57] The Crown argued that subsection 335(11) of the Act only provides the date of assessment for the purposes of determining the time within which an appeal may be commenced. I am unable to agree with this interpretation. There are no limiting words in subsection 335(11) of the Act. Therefore, the deemed date of the assessment, as determined pursuant to subsection 335(11) of the Act, will be the date of the assessment for any provision of the Act which requires the determination of such date. Subsection 315(1) of the Act is such a provision. It is necessary to determine when a person has been assessed so that the collection action could then commence. Parliament would not have intended that collection action under the Act could commence before the notice of assessment is sent to the person.

[58] Using the address of the CRA to send a notice of assessment to a person does not satisfy the requirements of subsection 300(1) of the Act. This subsection provides that the Minister is obligated to send the notice of assessment to the person assessed. Using the address of the CRA as the mailing address of the person assessed is inappropriate and does not satisfy the requirement that the notice of assessment be sent *to the person assessed*.

[59] As a result, the First Assessment of the partnership, which was "sent" to the CRA at its address in Surrey, BC, was not sent to the partnership as required by subsection 300(1) of the Act. Although subsection 335(11) of the Act only applies "if a notice of assessment has been sent by the Minister as required under this Part", the failure of the Minister to satisfy the statutory obligation to send the notice of assessment to the partnership should not give the Minister the right to commence collection action against the partnership. My interpretation of subsections 300(1), 315(1) and 335(11) of the Act is that the right to commence collection action only commences once the Minister has fulfilled the statutory obligation to send the notice of assessment to the person assessed. Otherwise, the Minister could assess a person and then commence collection action without ever sending the notice of assessment to the person assessed. This could not have been the intention of Parliament.

[60] In this case, the collection action was taken against Mr. Johnson as a member of the partnership and not against the partnership. The notice of assessment (assessing him as a partner of the partnership) was sent to him at his last known address on April 24, 2012 and, therefore, this assessment, as a result of the provisions of subsection 335(11) of the Act, is deemed to have been made on that day. Subsection 272.1(5) of the Act provides that partners of a partnership are jointly and severally liable to pay all amounts that the partnership is required to pay or remit, and subsection 299(2) of the Act provides that liability under the Act "is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made". Therefore, Mr. Johnson's liability as a partner is not affected by the incomplete First Assessment of the partnership.

[61] As noted above, the assessment of Mr. Johnson was deemed to have been made on April 24, 2012 but the RTP was issued four days earlier on April 20, 2012. Since the RTP was issued before Mr. Johnson was assessed for the purposes of the Act, it was not validly issued under the Act. The Crown argued that, since the RTP was not personally served on the RCMP until after the notice of assessment was sent to Mr. Johnson, it should be considered to be valid. However, this simply means that an invalid RTP was served on the RCMP. This delivery of the RTP after the First Assessment was sent to Mr. Johnson does not change the fact that the RTP was issued before he was assessed and does not cure the defect.

[62] Mr. Johnson asked for a number of remedies in his notice of appeal. However, this is an application for judicial review. The remedies that may be awarded on a successful application for judicial review are restricted by subsection 18.1(3) of the *Federal Courts Act*, R.S.C. 1985, c. F-7:

(3) On an application for judicial review, the Federal Court may	(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :
(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or	a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;
(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.	b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

[63] Therefore the remedies that may be granted in relation to the issuance of the RTP are limited to a declaration of invalidity or quashing the RTP.

[64] As a result, I would allow the appeal of Mr. Johnson in relation to the issuance of the RTP, issue a declaration that the RTP was not validly issued under the Act and quash the RTP. Since, as noted above, I would dismiss the appeal in relation to the decisions of the Minister to issue the assessments, I would not award any costs.

"Wyman W. Webb"
J.A.

“I agree

M. Nadon J.A.”

“I agree

Richard Boivin J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-370-13
STYLE OF CAUSE:	PAUL MATTHEW JOHNSON v. HER MAJESTY THE QUEEN, (MINISTER OF NATIONAL REVENUE)
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