

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120125

Docket: A-169-11

Citation: 2012 FCA 28

**CORAM: DAWSON J.A.
GAUTHIER J.A.
TRUDEL J.A.**

BETWEEN:

HUGH DOIG

Appellant

and

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA
(MINISTER OF NATIONAL REVENUE)**

Respondent

Heard at Ottawa, Ontario, on January 25, 2012.

Judgment delivered from the Bench at Ottawa, Ontario, on January 25, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

TRUDEL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on January 25, 2012)

TRUDEL J.A.

[1] In January 2009, Mr. Doig (the appellant) introduced a Notice of Application in the Federal Court seeking a declaration that he had no debt for taxes for the 1971 to 1984 taxation years. He argued below that he had paid his tax debts in full for the years 1971-1973 and 1974-1979 and had no tax debts for the 1980-1984 taxation years.

[2] Moreover, the appellant argued that his application was brought within the ten-year limitation period prescribed by subsection 222(4) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (ITA) extending, in his case, to March 2014.

[3] The appellant was unsuccessful in his attempt. In a comprehensive set of reasons, the Federal Court Judge (the Judge) dismissed his application (2011 FC 371, March 28, 2011).

[4] As a result, Mr. Doig appeals to this Court from the decision below. At issue are the Judge's finding that the appellant's application was statute-barred pursuant to section 32 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 (CLP) and the doctrine of laches, as well as credibility and factual findings made by him.

[5] The Judge found, at paragraph 58 of his reasons, that irrespective of any limitation period or laches, the appellant "has failed to establish on the balance of probabilities that he made the necessary payments on account of tax arrears" for the period in question.

[6] Consequently, it becomes unnecessary to examine the arguments made by counsel regarding the limitation period that could apply, whether that of the CLP or of the ITA or the theory of laches. Even if the appellant succeeded in convincing this Court that the ten-year time limitation pursuant to section 222 of the ITA applies to his application, he would still have to meet his onus of establishing on a balance of probabilities that he paid his tax debts.

[7] As a result, absent a demonstration by the appellant that the Judge committed errors of law or palpable and overriding errors in coming to his factual conclusions, this appeal will fail.

[8] The appellant alleges that the Judge erred in law in the application of the burden of proof in respect of the 1971-1973 taxation years. We disagree. The Judge dealt with this period at paragraphs 42 to 44 of his reasons. In view of the evidentiary record in front of him, we find no error in the Judge's application of the burden of proof.

[9] We also note that the Judge's factual findings and his assessment of the appellant's credibility are solidly grounded on the evidence. As a result, we are of the view that the appellant has failed to establish that the Judge committed reviewable errors of fact warranting our intervention.

[10] Therefore, this appeal will be dismissed with costs.

"Johanne Trudel"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-169-11

STYLE OF CAUSE: HUGH DOIG v. HER MAJESTY
THE QUEEN IN RIGHT OF
CANADA (MINISTER OF
NATIONAL REVENUE)

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JANUARY 25, 2012

REASONS FOR JUDGMENT OF THE COURT BY: (DAWSON, GAUTHIER, TRUDEL
J.J.A.)

DELIVERED FROM THE BENCH BY: TRUDEL J.A.

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