

Federal Court of Appeal



Cour d'appel fédérale

Date: 20210128

Docket: A-444-14

Citation: 2021 FCA 15

**CORAM: RENNIE J.A.
DE MONTIGNY J.A.
GLEASON J.A.**

BETWEEN:

EMMERSON DENNEY

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Dealt with in writing without appearance of the parties.

Judgment delivered at Ottawa, Ontario, on January 28, 2021.

REASONS FOR JUDGMENT BY:

GLEASON J.A.

CONCURRED IN BY:

**RENNIE J.A.
DE MONTIGNY J.A.**

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REASONS FOR JUDGMENT

GLEASON J.A.

[1] The appellant appeals from the unreported decision of the Tax Court of Canada rendered orally on September 4, 2014 in file 2014-1647(IT)APP in which the Tax Court dismissed the appellant's applications for orders extending the time within which to commence appeals from the reassessments made under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) [the *ITA*] for the

2004 and 2005 taxation years because the applications were made outside the one-year time limit in subsection 167(5) of the *ITA*.

[2] Pursuant to the Orders of this Court issued by the Chief Justice on December 8, 2020 and January 18, 2021, unless the panel feels that additional submissions are required, this appeal is to be disposed of in writing, based on the materials filed. Given the points in issue, there is no need for further submissions from either party.

[3] In his written materials, the appellant submits that the Tax Court erred in denying him the extensions he sought. I disagree.

[4] The one-year time limit contained in subsection 167(5) of the *ITA* and similar time limits set out in analogous provisions in the *ITA* are mandatory. Accordingly, it matters not why the time limit was missed if a taxpayer seeks to commence an appeal more than one year after the expiration of the time for appealing set out in the relevant section, here, section 169 of the *ITA* (see, for example, *Canada v. Carlson*, 2002 FCA 145 at paras. 12-13; *O'Byrne v. Canada*, 2015 FCA 239 at paras. 9-15; *Dutka v. The Queen*, 2020 TCC 21 at paras. 17-26 and 32; *Odebala-Fregene v. The Queen*, 2015 TCC 44 at para. 11; *Edgelow v. The Queen*, 2011 TCC 255 at para. 8; *Moon v. The Queen*, 2010 TCC 393 at para. 11; *Chu v. The Queen*, 2009 TCC 444 at para. 27; *Michaud v. The Queen*, 2011 TCC 573 at paras. 13-14). Since the evidence demonstrated that the appellant's applications for the extension were made outside this requisite one-year period, the Tax Court was correct in dismissing the appellant's request as it had no authority to grant the requested extensions.

[5] Contrary to what the appellant asserts, there was no violation of natural justice or procedural fairness by the Tax Court. Indeed, the appellant has failed to allege any conduct of the Tax Court that might amount to such a violation. Moreover, it is evident from the reasons he delivered, that the Tax Court judge went to significant pains to explain to the appellant why his extension requests had to be refused.

[6] As for the appellant's suggestion that the provisions in issue violate his rights under sections 7 and 11 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.), 1982, c. 11* [the Charter], the appellant seeks to raise these Charter arguments for the first time before this Court. I agree with the respondent that this Court should not entertain these arguments as they are raised in a factual vacuum. In addition, allowing these arguments to proceed would unfairly prejudice the respondent, who would have sought to cross-examine the appellant on his reasons for missing the appeal deadlines if the appellant had raised the Charter arguments before the Tax Court.

[7] I would accordingly dismiss this appeal, with costs.

“Mary J.L. Gleason”

J.A.

“I agree.

Donald J. Rennie J.A.”

“I agree.

Yves de Montigny J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-444-14

STYLE OF CAUSE: EMMERSON DENNEY v. HER
MAJESTY THE QUEEN

DEALT WITH IN WRITING WITHOUT APPEARANCE OF THE PARTIES

REASONS FOR JUDGMENT BY: GLEASON J.A.

CONCURRED IN BY: RENNIE J.A.
DE MONTIGNY J.A.

DATED: JANUARY 28, 2021

WRITTEN REPRESENTATIONS BY:

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