Docket: 2015-4114(IT)G

BETWEEN:

ALBERT JAMES ODDI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on February 19, 2016, at Hamilton, Ontario.

Before: The Honourable Justice Dominique Lafleur

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Sheherazade Ghorashy

ORDER

Upon reading the Notice of Motion dated December 9, 2015, filed on behalf of the Respondent pursuant to section 69 of the *Tax Court of Canada Rules (General Procedure)* (the "*Rules*"), and other materials seeking:

1. an order striking the Notice of Appeal filed on April 15, 2015 and the Amended Notice of Appeal filed on August 20, 2015 (the "Notices of Appeal") **without** leave to further amend;

2. in the alternative, an order striking the Notices of Appeal **with** leave to amend;

3. in the further alternative, an order granting the Respondent 60 days from the date of the order to serve and file a Reply; and

4. an order for costs of this motion.

And upon hearing the submissions of the parties;

With respect to the 2002, 2003, 2004, 2005 and 2006 taxation years, in accordance with the attached Reasons for Order, this Court decides as follows:

1. The Respondent's motion to strike the Notices of Appeal with leave to amend is granted. The Appellant shall have 60 days from the date of this Order to amend the Notices of Appeal in conformity with Form 21(1)(*a*) (Notice of Appeal – General Procedure), in order to comply with paragraph 21(1)(*a*) of the *Rules* and file and serve a fresh Notice of Appeal. More specifically, the Appellant shall describe the material facts relied on, allowing the Respondent to file a Reply, and shall clearly describe the issues raised and the assessment under appeal;

2. The Respondent shall file the Reply to the Notice of Appeal with this Court within 60 days after the service of the fresh Notice of Appeal;

With respect to the 2010 taxation year, in accordance with the attached Reasons for Order, this Court grants the Respondent's motion to strike the Notices of Appeal without leave to further amend.

The whole without costs.

Signed at Ottawa, Canada, this 20th day of April 2016.

"Dominique Lafleur"

Lafleur J.

Citation: 2016 TCC 102
Date: 20160420
Docket: 2015-4114(IT)G

BETWEEN:

ALBERT JAMES ODDI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Lafleur J.

[1] The Respondent filed a Notice of Motion with this Court on December 9, 2015 (the "Motion"); she is seeking:

1. an order striking the Notice of Appeal filed on April 15, 2015 and the Amended Notice of Appeal filed on August 20, 2015 (the "Notices of Appeal") **without** leave to further amend;

2. in the alternative, an order striking the Notices of Appeal **with** leave to amend;

3. in the further alternative, an order granting the Respondent 60 days from the date of the order to serve and file a Reply;

4. the costs to this motion.

[2] The Respondent stated the following grounds in support of the Motion:

1. The Notices of Appeal do not clearly identify the assessment under appeal and otherwise does not comply with the *Tax Court of Canada Rules (General Procedures)* (the "*Rules*") since the Notices of Appeal do not comply with section 21 of the *Rules* and do not refer to any statutory provisions, as required by Form 21(1)(*a*);

2. The relief sought by the Appellant is not within this Court's jurisdiction.

In addition to the foregoing grounds for the Motion, the Respondent added that:

3. If the Appellant means to appeal as to taxation years 2002 to 2006, the Notices of Appeal were filed beyond the time period provided for in the *Income Tax Act*, R.S.C., 1985, c. 1 (5th supp.), as amended (the "*Act*") since the Notices of Appeal were filed more than 4 years after the reassessments.

4. If the appeal concerns the 2010 taxation year, no Notice of Objection was filed in respect of the assessment for the 2010 taxation year and furthermore, the said assessment was a nil assessment that cannot be appealed from to this Court.

A. THE AFFIDAVIT

[3] In support of the Motion, the Respondent filed an affidavit (the "Affidavit") sworn by Bruce Costigan, a Litigation Officer with the Canada Revenue Agency (the "CRA"), which sets out the following facts:

a) The Appellant's 2002, 2003, 2004, 2005 and 2006 taxation years were initially assessed on April 19, 2006 (for 2002, 2003, 2004), on March 16, 2006 (for 2005), on May 20, 2008 (for 2006) and on July 18, 2011 (for 2010);

b) The Notice of Assessment for the 2010 taxation year is a nil assessment and no Notice of Reassessment was issued for the 2010 taxation year;

c) Notices of Reassessment dated January 30, 2009 were issued for each of taxation years 2002, 2003, 2004, 2005 and 2006;

d) A Notice of Objection dated March 14, 2009 was filed in respect of the Notices of Reassessment dated January 30, 2009;

e) No Notice of Objection was filed in respect of the assessment for the 2010 taxation year;

f) The Appellant's 2002, 2003, 2004, 2005 and 2006 taxation years were further reassessed on November 1, 2010. In support of this affirmation,

Exhibit "B" was attached: a letter dated November 1, 2010 to the Appellant from the CRA with copies of T7W-Cs and T99(E) forms attached relating to the 2002, 2003, 2004, 2005 and 2006 taxation years;

g) No further Notices of Reassessment has been made for the 2002, 2003, 2004, 2005 and 2006 taxation years;

h) No Notices of Objection were filed in relation to the November 1, 2010 Notices of Reassessment for the 2002, 2003, 2004, 2005 and 2006 taxation years;

i) No Notice of Appeal for the 2002, 2003, 2004, 2005 and 2006 taxation years was received on or before January 30, 2012;

j) No application for an extension of time to file a Notice of Appeal with respect to the reassessments for 2002, 2003, 2004, 2005 and 2006 taxation years was received on or before January 30, 2013.

[4] The letter dated November 1, 2010 (Exhibit "B" of the Affidavit) states that the assessments for the 2002, 2003, 2004, 2005, 2006 and 2007 taxation years are varied and the Notices of Reassessment giving effect to the Minister's decision will be issued under a separate cover. Copies of T7W-Cs and T99(E) forms attached relating to the 2002, 2003, 2004, 2005 and 2006 taxation years state that changes are made to net business income and revised taxable income and that penalties under subsection 163(2) of the *Act* are to be applied.

B. **THE NOTICES OF APPEAL**

[5] The Notices of Appeal state that the Appellant was involved in the business of growing marijuana on his farm. In 2007, some, or all, of the properties and equipment of the Appellant used in the business of growing marijuana was seized by the Attorney General of Canada under the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, and the *Criminal Code*, R.S.C., 1985, c. C-46.

[6] The Appellant has paid legal fees and interests on amounts borrowed to pay forfeiture amounts and legal expenses and submits that these amounts, as well as the capital losses resulting from the disposition of equipment and properties seized by the authorities, should be deducted in the calculation of his income from the business.

[7] The Notices of Appeal state that a T1 Adjustment Request dated July 4, 2014 was made by the Appellant in respect of the 2002, 2003, 2004, 2005, 2006 and 2010 taxation years. However, at the hearing, the Respondent confirmed to the Court that the CRA has no record of a T1 Adjustment Request having been made by the Appellant as stated in the Notices of Appeal.

[8] The relief sought by the Appellant in the Notices of Appeal is as follows:

- An order to expeditiously reassess the Request for Re-adjustment;

- An order recognizing the Appellant's legal and other business expenses not previously claimed including loss of equipment identified in Appendix A of Justice Watson's Order dated April 11, 2007;

- A declaration that the CRA intentionally delayed the resolution of the Request for Re-adjustment, thus causing irreparable harm to the Appellant;

- An order to vacate any order garnishing one hundred percent of the Appellant's Old Age Supplements and benefits and clawing back any overpayments or improper collections, payable forthwith;

- In the event that the CRA has abused its power to enforce overpayments, and/or was negligent in delaying any responses to the Request for Re-adjustment, the Appellant seeks punitive damages against the CRA in the amount of one million dollars.

[9] Attached to the Notices of Appeal are portions of various letters addressed to the CRA from Adam J. Stelmaszynski who is helping the Appellant with the filing of the Notices of Appeal to this Court. The first page of the letter dated March 15, 2013 refers to Notices of Reassessment dated January 30, 2009 for the taxation years 2002, 2003, 2004, 2005 and 2006 and seems to imply that the Notices of Reassessment dated January 30, 2009 are the last Notices of Reassessment received by the Appellant for those years. After the hearing, the Appellant provided to the Court the missing parts of that letter. I will return to this issue below.

C. **THE HEARING**

[10] At the hearing, the Appellant represented himself. He is not a sophisticated man and seems to have difficulty in understanding the procedures followed in this

court. That being said, I found his testimony credible. The Appellant declared before this Court that Adam J. Stelmaszynski was helping him throughout the proceedings but was not able to attend the hearing today, being in Saskatchewan. Adam J. Stelmaszynski was hired by the Appellant five or six years ago.

[11] The Appellant confirmed at the hearing that the letter dated November 1, 2010 from the CRA (Exhibit "B" of the Affidavit) stated his address. However, the Appellant declared that he had not received the Notices of Reassessment dated November 1, 2010 for the taxation years 2002, 2003, 2004, 2005 and 2006. He remembered having served a Notice of Objection in 2009 and having been in touch with various offices of the CRA for many years in trying to solve the issues raised with the calculation of his business income. The Appellant also declared that he had had discussions with the CRA in the period from 2009 to 2015 and that there had been many follow-ups with the CRA during that period.

[12] The Respondent did not call any witness.

D. DISCUSSION

[13] Since I have no record before me as to taxation years other than 2002, 2003, 2004, 2005, 2006 and 2010, this Order pertains strictly to those taxation years.

(1) 2002, 2003, 2004, 2005 AND 2006 TAXATION YEARS

[14] The Respondent argued that if the Notices of Appeal are in respect of the 2002, 2003, 2004, 2005 and 2006 taxation years, they have been filed with this Court beyond the time limit prescribed by the *Act*. Since Notices of Reassessment in respect of these years are dated November 1, 2010, and no further reassessment were made, the Respondent argued that the Appellant had until January 30, 2011 to file an appeal under section 169 of the *Act*, i.e., 90 days following November 1, 2010. Furthermore, the Respondent argued that since the Appellant had not filed an application for an extension of time to appeal within the time limit prescribed by paragraph 167(5)(*a*) of the *Act*, i.e., at the latest on January 30, 2012, he is precluded from filing an appeal for those years.

[15] If the Notices of Reassessment dated November 1, 2010 were sent to the Appellant, the Appellant had until January 31, 2011 to file an appeal (since January 30, 2011 was a Sunday), and until January 31, 2012 to file an application with this Court for an extension of time to appeal.

[16] As mentioned above, I found that the testimony of the Appellant was credible. He declared at the hearing that he did not receive the Notices of Reassessment dated November 1, 2010. He also declared that he had had discussions with the CRA throughout the period from 2009 to 2015 in order to settle various issues. I have no reason not to believe the Appellant.

[17] Furthermore, the letter from Adam J. Stelmaszynski dated March 15, 2013 refers to Notices of Reassessment dated January 30, 2009 for taxation years 2002, 2003, 2004, 2005 and 2006; it seems to imply that the Notices of Reassessment dated January 30, 2009 are the last Notices of Reassessment received by the Appellant for those years.

[18] Since I find the allegation of the Appellant that he did not receive the Notices of Reassessment dated November 1, 2010 credible, the Respondent has the onus to prove that they were actually sent. As Justice Valerie Miller held in *Nicholls v The Queen*, 2011 TCC 39, 2011 DTC 1063, a case where an applicant had filed an application for an extension of time to appeal, the Crown "only has the onus to prove that the assessments were sent if the Applicant alleges that he has not received the assessments and that allegation is credible."

[19] In *Kovacevic v Canada*, 2003 FCA 293**,** the Federal Court of Appeal cited with approval Justice Bowman's comments in *Schafer (A) v Canada (TCC)*, [1998] G.S.T.C. 60, with respect to the kind of proof that is satisfactory in cases where legislation requires that documents be sent by a government department. Quoting the trial decision of *Schafer*, the Federal Court of Appeal stated as follows:

> [10] In respect of the policy and practice of the Agency, the Tax Court Judge relied on the *obiter* statement of Bowman J. (as he then was) in *Schafer v. The Queen*, [1998] G.S.T.C. 60 (reversed [2000] G.S.T.C. 82 (F.C.A.)), that when documents are to be sent by ordinary mail that:
>
> In a large organization, such as a government department, a law or accounting firm or a corporation, where many pieces of mail are sent out every day it is virtually impossible to find a witness who can swear that he or she put an envelope addressed to a particular person in the post office. The best that can be done is to set out in detail the procedures followed, such as addressing the envelopes, putting mail in them, taking them to the mail room and delivering the mail to the post office.
>
> . . .

> [16] I accept that when legislation requires that documents be sent by a large organization such as a government department by ordinary mail, but does not require registered or certified mail or evidence of a more formal means of sending, the observation of Bowman J. in *Schafer* is reasonable. Generally, it would be sufficient to set out in an affidavit, from the last individual in authority who dealt with the document before it entered the normal mailing procedures of the office, what those procedures were. . . .
>
> [Emphasis added]

[20] No witness testified for the Respondent. The only evidence offered by the Respondent in support of the Motion is the Affidavit. The relevant portions of the Affidavit addressing the Notices of Reassessment dated November 1, 2010 are paragraphs 8 and 12:

> 8. The Appellant's 2002, 2003, 2004, 2005 and 2006 taxation years were further reassessed on November 1, 2010. Attached as **Exhibit "B"** are a letter dated November 1, 2010 to the Appellant from CRA with copies of T7W-Cs and T99(E) forms attached relating to the 2002, 2003, 2004, 2005 and 2006 taxation years.
>
> . . .
>
> 12. No further reassessment of the Appellant's 2002, 2003, 2004, 2005 and 2006 taxation years has been made since the Notices of Reassessment dated November 1, 2010 were issued.

[21] The Affidavit does not describe the mailing procedures followed by the CRA. At the hearing, Counsel for the Respondent declared that the CRA is not in a position to prove that the Notices of Reassessment dated November 1, 2010 have actually been sent to the Appellant. As the Federal Court of Appeal has ruled in *Aztec Industries Inc. v Canada*, [1995] 1 CTC 327, the onus is then on the Respondent to prove that the Notice of Reassessment was actually issued and mailed.

[22] Since the Respondent has not met the onus of proving that the Notices of Reassessment dated November 1, 2010 have actually been sent to the Appellant, it is clear that the Appellant, in accordance with paragraph 169(1)(*b*) of the *Act*, can still file an appeal to this Court for the taxation years 2002, 2003, 2004, 2005 and 2006 as I have found that the Minister has not yet notified the Appellant of its decision following the service of a Notice of Objection by the Appellant on March 14, 2009. Accordingly, having filed the Notices of Appeal in 2015, the

Appellant is within the delay to file an appeal in respect of these years pursuant to section 169 of the *Act* and no application to extend the time to file a notice of appeal is required.

(2) 2010 TAXATION YEAR

[23] As per the Affidavit, the Notice of Assessment in respect of the 2010 taxation year is a so-called nil assessment: it states that no tax is payable for that year.

[24] As the Federal Court of Appeal has stated in *Canada v Interior Savings Credit Union*, 2007 FCA 151, 2007 DTC 5342 (para 17), it is not possible to appeal from a nil assessment to this Court.

[25] For these reasons, the Appellant cannot appeal to this Court from the assessment for the 2010 taxation year.

(3) FORMAT OF THE NOTICES OF APPEAL

[26] Pursuant to section 17.2 of the *Tax Court of Canada Act*, R.S.C., 1985, c. T-2 (the "*TCC Act*"), the *Rules* are to be followed for anyone wishing to make an appeal to this Court under the General Procedure.

[27] The relevant provisions of the *Rules* read as follows:

21 (1) Filing — Every proceeding to which the general procedure in the Act applies shall be instituted by filing an originating document in the Registry	**21 (1) Dépôt** — Toute instance régie par la procédure générale prévue dans la Loi s'introduit par dépôt au greffe d'un acte introductif d'instance établi selon l'une des formules suivantes :
(*a*) in Form 21(1)(*a*) in the case of an appeal from an assessment under the *Income Tax Act*. . .	*a*) formule 21(1)*a*) en cas d'appel formé contre une cotisation établie en application de la *Loi de l'impôt sur le revenu* […]
. . .	[…]
48 Rules of Pleadings — Applicable to Notice of Appeal —Every notice of appeal shall be in Form 21(1)(*a*), (*d*), (*e*) or (*f*).	**48 Règles applicables à l'avis d'appel** — L'avis d'appel doit se conformer aux formules 21(1)*a*), *d*), *e*) ou *f*).

[28] As this Court has stated in *Kondur v The Queen*, 2015 TCC 318: "It is a mandatory requirement of pleading in the General Procedure that the notice of appeal or any amended version of it contain all of the specifications of Form 21(1)(a). . . This is not just a formality. The purpose of these requirements is to ensure that the issues are properly defined for discovery and trial so that the Respondent will know what arguments she must meet: *Bibby v The Queen*, 2009 TCC 588."

[29] Form 21(1)(*a*) applies for the purposes of an appeal under the *Act* and is reproduced hereunder:

FORM 21(1)(*a*) — Notice of Appeal — General Procedure

TAX COURT OF CANADA

BETWEEN:

(name)

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

NOTICE OF APPEAL

(*a*) In the case of an individual state home address in full and in the case of a corporation state address in full of principal place of business in the province in which the appeal is being instituted,

(*b*) Identify the assessment(s) under appeal: include date of assessment(s) and, if the appeal is under the *Income Tax Act*, include taxation year(s). . .

(*c*) Relate the material facts relied on,

(*d*) Specify the issues to be decided,

(*e*) Refer to the statutory provisions relied on,

(*f*) Set forth the reasons the appellant intends to rely on,

(*g*) Indicate the relief sought, and

(*h*) Date of notice.

(Name of appellant or appellant's counsel)

(Address for service, telephone number, fax number, if any, of appellant's counsel or, if appellant is appearing in person, state telephone number or fax number, if any)

[30] It is clear that the Notices of Appeal do not meet the requirements of the *TCC Act* and the *Rules* for the following reasons:

(i) There is no indication in the Notices of Appeal as to the assessments under appeal, including the date of assessment, and the taxation years in issue.

(ii) There is no clear reference to the statutory provisions relied upon by the Appellant. The Respondent is left to infer from the various cases cited by the Appellant that the latter wishes to rely on the provisions cited therein.

(iii) The issues to be decided, as described by the Appellant, are vague. For example, the Appellant does not clearly states the amount of the deduction sought and does not specify under which section of the *Act* said deduction should be allowed. The Respondent is not in a position to file a Reply, not knowing exactly the issues raised by the Appellant in the Notices of Appeal.

(iv) The facts as described in the Notices of Appeal do not enable the Respondent to easily determine the cause of action in this case and, consequently, the Respondent is not in position to file a Reply.

[31] However, improper pleadings constitute an irregularity within the meaning of Section 7 of the *Rules* (see *Okoroze v The Queen*, 2012 TCC 360, 2012 DTC 1296, and *Kossow v The Queen*, 2008 TCC 422, 2008 DTC 4408) which reads as follows:

7 Effect of Non-compliance — 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,	**7 Effet de l'inobservation** — L'inobservation des présentes règles constitue une irrégularité et n'est pas cause de nullité de l'instance ni d'une mesure prise, d'un document donné ou d'une directive rendue dans le cadre de celle-ci. La Cour peut :
(*a*) may grant all necessary amendments or other relief, on such terms as are just, to secure the just	*a*) soit autoriser les modifications ou accorder les conclusions recherchées, à des conditions

determination of the real matters in dispute, or	appropriées, afin d'assurer une résolution équitable des véritables questions en litige;
(*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.	*b*) soit annuler l'instance ou une mesure prise, un document donné ou une directive rendue dans le cadre de celle-ci, en tout ou en partie, seulement si cela est nécessaire dans l'intérêt de la justice.

[32] The *Rules* also specifically provide at section 53 for the striking out of pleadings. I will now turn to that section.

(4) STRIKING OUT OF PLEADINGS AND JURISDICTION OF THIS COURT

[33] Section 53 of the Rules reads as follows:

53 (1) Striking out a Pleading or other Document — The Court may, on its own initiative or on application by a party, strike out or expunge all or part of a pleading or other document with or without leave to amend, on the ground that the pleading or other document	**53 (1) Radiation d'un acte de procédure ou d'un autre document** — La Cour peut, de son propre chef ou à la demande d'une partie, radier un acte de procédure ou tout autre document ou en supprimer des passages, en tout ou en partie, avec ou sans autorisation de le modifier parce que l'acte ou le document :
(*a*) may prejudice or delay the fair hearing of the appeal;	*a*) peut compromettre ou retarder l'instruction équitable de l'appel;
(*b*) is scandalous, frivolous or vexatious;	*b*) est scandaleux, frivole ou vexatoire;
(*c*) is an abuse of the process of the Court; or	*c*) constitue un recours abusif à la Cour;
(*d*) discloses no reasonable grounds for appeal or opposing the appeal.	*d*) ne révèle aucun moyen raisonnable d'appel ou de contestation de l'appel.
(2) No evidence is admissible on an application under paragraph (1)(*d*).	**(2)** Aucune preuve n'est admissible à l'égard d'une demande présentée en

(3) On application by the respondent, the Court may quash an appeal if	vertu de l'alinéa (1)*d*).
(*a*) the Court has no jurisdiction over the subject matter of the appeal;	**(3)** À la demande de l'intimé, la Cour peut casser un appel si :
(*b*) a condition precedent to instituting an appeal has not been met; or	*a*) elle n'a pas compétence sur l'objet de l'appel;
(*c*) the appellant is without legal capacity to commence or continue the proceeding.	*b*) une condition préalable pour interjeter appel n'a pas été satisfaite;
	c) l'appelant n'a pas la capacité juridique d'introduire ou de continuer l'instance.

[34] The test to be applied for the striking out of pleadings is whether it is plain and obvious that a notice of appeal to the Tax Court discloses no reasonable claim (*Main Rehabilitation Co. v Canada*, 2004 FCA 403, 2004 DTC 6762).

[35] In *Sentinel Hill Productions (1999) Corporation v The Queen*, 2007 TCC 742, 2008 DTC 2544, (paragraph 4), Bowman C.J. (as he then was) propounded the well-established principles to be applied in a motion to strike under section 53 of the *Rules*:

> [4] . . . There are many cases in which the matter has been considered both in this court and the Federal Court of Appeal. It is not necessary to quote from them all as the principles are well-established.
>
> (a) The facts as alleged in the impugned pleading must be taken as true subject to the limitations stated in *Operation Dismantle Inc. v. Canada*, [1985] 1 S.C.R. 441 at 455. It is not open to a party attacking a pleading under Rule 53 to challenge assertions of fact.
>
> (b) To strike out a pleading or part of a pleading under Rule 53 it must be plain and obvious that the position has no hope of succeeding. The test is a stringent one and the power to strike out a pleading must be exercised with great care.
>
> (c) A motions judge should avoid usurping the function of the trial judge in making determinations of fact or relevancy. Such matters should be left to the judge who hears the evidence.
>
> . . .

[36] Furthermore, the jurisdiction of this Court is statutory, limited and specific. Section 12 of the *TCC Act* reads as follows:

12(1) Jurisdiction — The Court has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under the *Air Travellers Security Charge Act*, the *Canada Pension Plan*, the *Cultural Property Export and Import Act*, Part V.1 of the *Customs Act*, the *Employment Insurance Act*, the *Excise Act, 2001*, Part IX of the *Excise Tax Act*, the *Income Tax Act*, *the Old Age Security Act, the Petroleum and Gas Revenue Tax Act* and the *Softwood Lumber Products Export Charge Act, 2006* when references or appeals to the Court are provided for in those Acts.	**12(1) Compétence** — La Cour a compétence exclusive pour entendre les renvois et les appels portés devant elle sur les questions découlant de l'application de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, du *Régime de pensions du Canada*, de la *Loi sur l'exportation et l'importation de biens culturels*, de la partie V.1 de la *Loi sur les douanes*, de la *Loi sur l'assurance-emploi*, de la *Loi de 2001 sur l'accise*, de la partie IX de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur la sécurité de la vieillesse*, de la *Loi de l'impôt sur les revenus pétroliers* et de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, dans la mesure où ces lois prévoient un droit de renvoi ou d'appel devant elle.
(2) Jurisdiction — The Court has exclusive original jurisdiction to hear and determine appeals on matters arising under the *War Veterans Allowance Act* and the *Civilian War-related Benefits Act* and referred to in section 33 of the *Veterans Review and Appeal Board Act*.	**(2) Compétence** — La Cour a compétence exclusive pour entendre les appels portés devant elle sur les questions découlant de l'application de la *Loi sur les allocations aux anciens combattants* et de la *Loi sur les prestations de guerre pour les civils* et visées à l'article 33 de la *Loi sur le Tribunal des anciens combattants (révision et appel)*.
(3) Further jurisdiction — The Court has exclusive original jurisdiction to hear and determine questions referred to it under section 51 or 52 of the *Air Travellers Security Charge Act*, section 97.58 of the Customs Act, section 204 or 205 of the Excise Act, 2001, section 310 or 311 of *the Excise Tax Act*, section 173 or 174 of the	**(3) Autre compétence** — La Cour a compétence exclusive pour entendre les questions qui sont portées devant elle en vertu des articles 51 ou 52 de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de l'article 97.58 de la *Loi sur les douanes*, des articles 204 ou 205 de la *Loi de 2001 sur l'accise*, des

Income Tax Act or section 62 or 63 of the *Softwood Lumber Products Export Charge Act, 2006*.

articles 310 ou 311 de la *Loi sur la taxe d'accise*, des articles 173 ou 174 de la *Loi de l'impôt sur le revenu* ou des articles 62 ou 63 de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*.

(4) Extensions of time — The Court has exclusive original jurisdiction to hear and determine applications for extensions of time under section 45 or 47 of the *Air Travellers Security Charge Act*, subsection 28(1) of the *Canada Pension Plan*, section 33.2 of the *Cultural Property Export and Import Act*, section 97.51 or 97.52 of the *Customs Act*, subsection 103(1) of the *Employment Insurance Act*, section 197 or 199 of the *Excise Act, 2001*, section 304 or 305 of the *Excise Tax Act*, or section 166.2 or 167 of the *Income Tax Act*.

(4) Prorogation des délais — La Cour a compétence exclusive pour entendre toute demande de prorogation de délai présentée en vertu des articles 45 et 47 de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, du paragraphe 28(1) du *Régime de pensions du Canada*, de l'article 33.2 de la *Loi sur l'exportation et l'importation de biens culturels*, des articles 97.51 et 97.52 de la *Loi sur les douanes*, du paragraphe 103(1) de la *Loi sur l'assurance-emploi*, des articles 197 et 199 de la *Loi de 2001 sur l'accise*, des articles 304 et 305 de la *Loi sur la taxe d'accise* ou des articles 166.2 et 167 de la *Loi de l'impôt sur le revenu*.

(5) Postponements of suspensions to issue tax receipts — The Court has exclusive original jurisdiction to hear and determine applications referred to in subsection 188.2(4) of the *Income Tax Act* by a registered charity for a postponement of a period of suspension of the authority of the charity to issue official receipts referred to in Part XXXV of the *Income Tax Regulations*.

(5) Report de la suspension du pouvoir de délivrer des reçus d'impôt — La Cour a compétence exclusive pour entendre toute demande qu'un organisme de bienfaisance enregistré présente, en vertu du paragraphe 188.2(4) de la *Loi de l'impôt sur le revenu*, en vue de faire reporter une période de suspension de son pouvoir de délivrer des reçus officiels, au sens de la partie XXXV du *Règlement de l'impôt sur le revenu*.

[37] In *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, 2014 DTC 5001, the Federal Court of Appeal held that:

> [83] The Tax Court does not have jurisdiction on an appeal to set aside an assessment on the basis of reprehensible conduct by the Minister leading up to the assessment, such as abuse of power or unfairness . . . If an assessment is correct on the facts and the law, the taxpayer is liable for the tax. . . .

[38] Also, in *Ereiser v Canada*, 2013 FCA 20, 2013 DTC 5036, Justice Sharlow stated that:

> [31] [T]he role of the Tax Court of Canada in an appeal of an income tax assessment is to determine the validity and correctness of the assessment based on the relevant provisions of the *Income Tax Act* and the facts giving rise to the taxpayer's statutory liability. Logically, the conduct of a tax official who authorizes an assessment is not relevant to the determination of that statutory liability. . . . [Emphasis added]

[39] Furthermore, section 171 of the *Act* provides that the Court may dispose of an appeal by dismissing it, or allowing it and vacating the assessment, varying the assessment, or referring the assessment back to the Minister for reconsideration and reassessment.

[40] In part, the relief sought by the Appellant as described in the Notices of Appeal is clearly not within the jurisdiction of this Court:

- An order to expeditiously reassess the Request for Re-adjustment;

- A declaration that the CRA intentionally delayed the resolution of the Request for Re-adjustment, thus causing irreparable harm to the Appellant;

- In the event that the CRA has abused its power to enforce overpayments, and/or was negligent in delaying any responses to the Request for Re-adjustment, the Appellant seeks punitive damages against the CRA in the amount of one million dollars.

[41] I am of the view that the deficiencies in the Notices of Appeal are very extensive. In my view, the adequate remedy is to strike the Notices of Appeal and allow the Appellant to file a fresh Notice of Appeal that meets the requirements of Form 21(1)(*a*) of the *Rules*. The Appellant shall not seek in his fresh Notice of Appeal relief that is not within this Court's jurisdiction. Furthermore, the Appellant shall describe the material facts allowing the Respondent to file a Reply and shall clearly describe the issues raised and the assessment under appeal.

[42] With respect to the 2002, 2003, 2004, 2005 and 2006 taxation years, I will grant the motion of the Respondent to strike the Notices of Appeal with leave to amend in accordance with these Reasons. The Appellant shall have 60 days from the date of this Order to amend the Notices of Appeal in conformity with Form 21(1)(*a*) (Notice of Appeal – General Procedure), in order to comply with paragraph 21(1)(*a*) of the *Rules* and file and serve a fresh Notice of Appeal. More specifically, the Appellant shall describe the material facts relied on, allowing the Respondent to file a Reply, and shall clearly describe the issues raised and the assessment under appeal. The Respondent shall file the Reply to the Notice of Appeal with this Court within 60 days after the service of the fresh Notice of Appeal.

[43] With respect to the 2010 taxation year, in accordance with the attached Reasons for Order, this Court grants the Respondent's motion to strike the Notices of Appeal without leave to further amend.

[44] The whole without costs.

Signed at Ottawa, Canada, this 20th day of April 2016.

"Dominique Lafleur"

Lafleur J.

CITATION:	2016 TCC 102
COURT FILE No.:	2015-4114(IT)G
STYLE OF CAUSE:	ALBERT JAMES ODDI AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Hamilton, Ontario
DATE OF HEARING:	February 19, 2016
REASONS FOR ORDER BY:	The Honourable Justice Dominique Lafleur
DATE OF ORDER:	April 20, 2016

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Sheherazade Ghorashy

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada