Docket: 2016-4561(GST)APP

BETWEEN:

RICK HORSEMAN,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on March 29, 2017 at Edmonton, Alberta

Before: The Honourable Justice B. Russell

Appearances:

Counsel for the Applicant:	Priscilla Kennedy
Counsel for the Respondent:	E. Ian Wiebe

JUDGMENT

The application for an extension of time in which to file a notice of appeal pertaining to the reassessment dated March 28, 2011 and raised under the *Excise Tax Act* is dismissed without costs in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 29th day of September 2017.

"B. Russell"

Russell J.

Citation: 2017TCC198
Date: 20170929
Docket: 2016-4561(GST)APP

BETWEEN:

RICK HORSEMAN,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Russell J.

[1] Mr. Rick Horseman applies for an order granting an extension of time to file a notice of appeal with this Court in respect of a goods and services tax (GST) assessment under the *Excise Tax Act* (Canada) (Act). According to the application notice the pertinent notice of (re)assessment, "purportedly [had been] sent in 2011". This application, commenced October 18, 2016, is brought pursuant to section 305 of the Act, as indicated in paragraph 6 of the intended notice of appeal appended to the application notice.

[2] For purposes of this application the Respondent accepts the facts set out in paragraphs 1 through 6 of the Applicant's initial written argument. They include that the Applicant is an Indian living on a reserve, he is a former band councillor and chief, he carried out work grading roads on reserves, he owned a company named R&R Grading Services Ltd. which was struck by the Alberta Register of Corporations in 1999 and in 2015 he, "accepted temporary work on the Blueberry First Nation and on the Halfway River First Nation (both *Treaty No. 8* First Nations)." And, all monies earned were seized by the Receiver General under Requirements to Pay, plus Canada Revenue Agency seized his 2016 tax refund.

[3] The application notice states that GST cannot be owed, "for monies earned on Reserve by an Indian", citing the *Constitution Act, 1982*, section 87 of the *Indian Act* and paragraph 81(1)(a) of the federal *Income Tax Act* (ITA).

[4] The notice additionally asserts that Canada Revenue Agency (CRA) engaged in unconstitutional actions in initiating the Requirements to Pay garnishees, and that "[statutory] limitations do not apply to unconstitutional actions". It further states that it, "is just and equitable to grant an extension of time to appeal actions of [CRA] which are without statutory authority". It concludes, stating that the Applicant, "took immediate steps to dispute the [garnishee] Requirements to Pay and is within one year of the dismissal of his notice of objection. He has exhibited his intention throughout to appeal."

Facts:

[5] Pertinent facts from the parties' filed materials and oral submissions in Court:

a) On March 28, 2011 the Minister of National Revenue (Minister) assessed the Applicant under the Act for GST liabilities. The Applicant states that he did not receive the pertinent notice of (re)assessment. He states he first knew of this assessment in mid or late summer of 2015, and then was provided a copy of the pertinent notice of (re)assessment which shows a mailing date of March 28, 2011.

b) In July 2015, pursuant to subsections 317(1) and (2) of the Act, the Minister served Requirements to Pay upon two corporations requiring them to pay to the Receiver General monies owing to the Applicant on account of the Applicant's tax debt.

c) On July 23, 2015 the Minister mailed the Applicant a statement of the latter's GST arrears, dated July 23, 2015. On or about September 24, 2015 the Applicant by his counsel sent to the CRA Chief of Appeals in Winnipeg a single page notification dated September 24, 2015 headed "Facts and Reasons for Objection", stated as being in relation to a "Notice" dated July 23, 2015.

d) By this time approximately, if not prior, the Applicant had a copy of the above-mentioned March 28, 2011 notice of (re)assessment.

e) By letter dated October 7, 2015 to the Applicant the Minister informed that the Applicant's "Notice of Objection" could not be recognized as valid as it

disputed a Statement of Arrears dated 2015-07-23, and that a statement of arrears is not a notice of (re)assessment. (I parenthetically add that however there was no response to this from the Applicant, such as for instance advising the Minister he had just recently received the March 28, 2011 notice of (re)assessment and that it was that assessment he intended to object to.)

f) Rather, on October 30, 2015 the Applicant commenced by way of statement of claim an action in Federal Court against the Respondent, seeking damages in respect of the above-referenced garnishees, asserting that as an Indian he was not liable for taxation under the Act. A list of documents filed by the Applicant in that action included as item 8 the above-referenced notice of (re)assessment issued under the Act, dated March 28, 2011.

g) On March 7, 2016 the Federal Court struck the aforementioned statement of claim, without leave to amend, as the claim disclosed no reasonable cause of action. The Applicant's appeal of this decision to the Federal Court of Appeal was dismissed October 17, 2016, with that Court concluding (2016 FCA 252), that the Applicant's claim was "… nothing but a challenge to the validity of the [March 25, 2011] tax re-assessment." It was the Tax Court of Canada, not the Federal Court, that had sole jurisdiction to adjudicate federal tax assessments. The following day, October 18, 2016, the Applicant filed with this Court the herein application for an order to extend time to file a notice of appeal.

h) Several months later, on February 23, 2017 the Applicant filed a notice of constitutional question in respect of this matter (ostensibly *per* section 19.2 of the federal *Tax Court of Canada Act*), and served that notice upon the federal Attorney General and all provincial Attorneys General. The notice notifies of the Applicant's intent to question, "…the constitutional applicability or effect of the provisions of the [Act] and *Income Tax Act* to an Indian living on Reserve as provided in the *Indian Act*, R.S.C. 1985, c. I-5, section 87 and *Treaty No. 8* as well as the *Constitution Act."*

i) At the March 29, 2017 return of this application the only parties appearing were the Applicant and Respondent. At the conclusion of the short hearing the matter was adjourned to give the parties time to file additional written representations.

Issue:

[6] The issues are:

i. whether the Act's prerequisite provisions for the filing of a notice of appeal, including temporal limitations, apply notwithstanding that the prospective appellant's intended argument is that the Act is unconstitutional in its application to Indians; and

ii. if yes, does the Applicant meet the requirements *per* section 305 of the Act so as to permit an order extending time for him to file a notice of appeal in this Court.

Applicant's Position:

[7] In initial written submissions the Applicant asserted (paragraph 23) simply that he, "…has reasonable grounds to appeal and that it is just and equitable to grant the extension of time to file his Notice of Appeal." There was no reference to any underlying facts that made the filing of a notice of appeal out of time in the first place, so as to necessitate this application for a time extension to so file.

[8] In oral submissions the Applicant's position was that no provisions of the Act governing filing of a notice of appeal could apply here where the Applicant was asserting, *per* section 87 of the *Indian Act*, infringement of his constitutional right not to be taxed in respect of property on a reserve.

[9] In addition to section 87 of the *Indian Act*, the Applicant cited *Fred Kelly v Her Majesty*, 2013 FCA 171 and *Her Majesty v Robertson et al*, 2012 FCA 94, which decisions interpreted and applied the seminal Supreme Court of Canada (SCC) decision, *Williams v Canada*, [1992] 1 SCR 877, and follow-up SCC decisions, *Bastien Estate v Canada*, 2011 SCC 38 and *Dubé v Canada*, 2011 SCC 39. These decisions each address the test for application of section 87 of the *Indian Act*, being identification of factors of a factual nature relevant in determining, in any given case, an Indian claim for exemption from taxation.

[10] The Applicant in reply to the Respondent's submissions asserted that none of the Respondent's cited authorities establishes that statutory limitation periods continue to apply notwithstanding a claim of unconstitutionality.

[11] Also, the Applicant cited *Manitoba Métis Federation Inc v Canada*, [2013] 1 SCR 623, at paragraphs 133-144 and 150, submitting that in *Métis* the SCC majority held that the law of limitations does not preclude a declaration that a statute was unconstitutional.

Respondent's Position:

[12] The Respondent's position is that this application has been brought incurably out of time. This is in light of the Applicant's non-observance of limitation and other prerequisite provisions in the Act pertaining to the filing of a notice of appeal in this Court. Fundamentally such provisions require that a valid notice of objection previously have been filed. These provisions do not cease to apply simply because the prospective appellant asserts unconstitutionality of the underlying statute, here the Act. The Respondent cites *Papaschase Indian Band No. 136* (aka, *Lameman*) *v Canada*, 2008 SCC 14, *Wewaykum Indian Band v Canada*, 2002 SCC 79, *Samson Indian Nation v Canada*, 2015 FC 836 and *Ermineskin Indian Band v Canada*, 2016 FCA 223.

Analysis:

A. Issue (i) – whether the Act's prerequisite provisions for the filing of a notice of appeal, including temporal limitations, apply notwithstanding the prospective appellant's intended argument that the Act is unconstitutional in its application to Indians:

[13] This application for extension of time to file a notice of appeal in this Court is brought pursuant to section 305 of the Act, which provides:

> **Extension of time to appeal**
>
> **305 (1)** Where no appeal to the Tax Court under section 306 has been instituted within the time limited by that provision for doing so, a person may make an application to the Tax Court for an order extending the time within which an appeal may be instituted, and the Court may make an order extending the time for appealing and may impose such terms as it deems just.
>
> **(2)** An application made under subsection (1) shall set out the reasons why the appeal to the Tax Court was not instituted within the time otherwise limited by this Part for doing so.

> **(3)** An application made under subsection (1) shall be made by filing in the Registry of the Tax Court, in accordance with the provisions of the *Tax Court of Canada Act*, three copies of the application accompanied by three copies of the notice of appeal.
>
> **(4)** After receiving an application made under this section, the Tax Court shall send a copy of the application to the office of the Deputy Attorney General of Canada.
>
> **(5)** No order shall be made under this section unless
>
> > **(a)** the application is made within one year after the expiration of the time otherwise limited by this Part for appealing; and
> >
> > **(b)** the person demonstrates that
> >
> > > **(i)** within the time otherwise limited by this Part for appealing,
> > >
> > > > **(A)** the person was unable to act or to give a mandate to act in the person's name, or
> > > >
> > > > **(B)** the person had a bona fide intention to appeal,
> > >
> > > **(ii)** given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application,
> > >
> > > **(iii)** the application was made as soon as circumstances permitted it to be made, and
> > >
> > > **(iv)** there are reasonable grounds for appealing from the assessment.

[14] The Applicant's application notice does not specify any particular provisions of the Act that he may consider unconstitutional in light of section 87 of the *Indian Act*, which provision he approvingly cites.

[15] As noted by the Respondent the Act itself was found constitutional by the SCC in *Reference re Excise Tax Act (Canada)*, [1992] 2 SCR 445.

[16] I have reviewed the parties' cited authorities. In my view the first issue as set out above is wholly answered by the Supreme Court of Canada's 2013 decision in *Manitoba Métis*, cited above.

[17] In *Manitoba Métis* the appellants brought an action against the federal and Manitoba governments asserting that they had failed in exercise of fiduciary obligations claimed to have been owed to the Métis in carrying out land division and allocation to Métis children *per* provisions of the federal *Manitoba Act, 1870*.

The specific constitutional claim was that five Manitoba statutes subsequently passed and ancillary to the said federal statute were unconstitutional; and a declaration to that effect was sought. These five Manitoba statutes were now long repealed.

[18] A majority of the SCC affirmed that there had been no fiduciary obligation, and in any event none breached. Also, the SCC would not now, in 2013, consider the constitutionality of the particular five Manitoba statutes – repealed 44 years earlier, in 1969. But, the majority went on to find that a constitutional duty was owed, under the head of the "honour of the Crown", and that the conduct of government officials a century and more ago in respect of the land allocation provided for in the *Manitoba Act, 1870*, had been so non-diligent as to fail to uphold the honour of the Crown.

[19] The majority then considered whether a Manitoba statutory general limitation provision should apply here, noting the constitutional context. There is a juristically-developed principle that a claim for declaratory relief in respect of legislative constitutionality may proceed notwithstanding an otherwise applicable limitation provision. The majority chose to extend this principle to the *Manitoba Métis* appellants, in the context of the declaratory relief they sought as to breach of the government's constitutional duty to uphold the honour of the Crown.

[20] In this regard, in the majority decision of *Manitoba Métis*, *per* the Chief Justice and Karakatsansis, J, paragraphs 132 to 137 read in relevant part (underlining added for emphasis):

> [132] These [five Manitoba] statutes have long been out of force. They can have no future impact. Their only significance is as part of the historic matrix of the Métis' claims. In short, they are moot. To consider their constitutionality would be a misuse of the Court's time. We therefore need not address this issue.
>
> E. Is the Claim for a Declaration Barred by Limitations?
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> [133] We have concluded that Canada did not act diligently to fulfill the specific obligation to the Métis contained in s. 31 of the *Manitoba Act*, as required by the honour of the Crown. For the reasons below, we conclude that the law of limitations does not preclude a declaration to this effect.
>
> [134] This Court has held that although claims for personal remedies flowing from the striking down of an unconstitutional statute are barred by the running of

> a limitation period, courts retain the power to rule on the constitutionality of the underlying statute: *Kingstreet Investments Ltd. v. New Brunswick (Finance)*, 2007 SCC 1, [2007] 1 S.C.R. 3; *Ravndahl v. Saskatchewan*, 2009 SCC 7, [2009] 1 S.C.R. 181. The constitutionality of legislation has always been a justiciable question: *Thorson v. Attorney General of Canada*, [1975] 1 S.C.R. 138, at p. 151. The "right of the citizenry to *constitutional* behaviour by Parliament" can be vindicated by a declaration that legislation is invalid, or that a public act is *ultra vires*: *Canadian Bar Assn. v. British Columbia*, 2006 BCSC 1342, 59 B.C.L.R. (4th) 38, at paras. 23 and 91, citing *Thorson*, at p. 163 (emphasis added). An "issue [that is] constitutional is always justiciable": *Waddell v. Schreyer* (1981), 126 D.L.R. (3d) 431 (B.C.S.C.), at p. 437, aff'd (1982), 142 D.L.R. (3d) 177 (B.C.C.A.), leave to appeal refused, [1982] 2 S.C.R. vii (*sub nom. Foothills Pipe Lines (Yukon) Ltd. v. Waddell*).
>
> [135] Thus, this Court has found that limitations of actions statutes cannot prevent the courts, as guardians of the Constitution, from issuing declarations on the constitutionality of legislation. By extension, limitations acts cannot prevent the courts from issuing a declaration on the constitutionality of the Crown's conduct.
>
> [136] In this case, the Métis seek a declaration that a provision of the *Manitoba Act* – given constitutional authority by the *Constitution Act, 1871* – was not implemented in accordance with the honour of the Crown, itself a "constitutional principle": *Little Salmon*, at para. 42.
>
> [137] Furthermore, the Métis seek no personal relief and make no claim for damages or for land. Nor do they seek restoration of the title their descendants might have inherited had the Crown acted honourably. Rather, they seek a declaration that a specific obligation set out in the Constitution was not fulfilled in the manner demanded by the Crown's honour. They seek this declaratory relief in order to assist them in extra-judicial negotiations with the Crown in pursuit of the overarching constitutional goal of reconciliation that is reflected in s. 35 of the *Constitution Act, 1982*.

[21] In the *Manitoba Métis* minority decision of Rothstein and Moldaver JJ, *per* Rothstein, J, the matter of limitations in the context of constitutional claims was spoken to even more directly. Their paragraphs 224 to 227 under the heading "Limitations and Constitutional Claims" reads:

> (3) Limitations and Constitutional Claims
>
> [224] My colleagues assert that limitations legislation cannot apply to declarations on the constitutionality of Crown conduct. They also state that

limitations acts cannot bar claims that the Crown did not act honourably in implementing a constitutional obligation. With respect, these statements are novel. This Court has never recognized a general exception from limitations legislation for constitutionally derived claims. Rather, this Court has consistently held that limitations periods apply to factual claims with constitutional elements.

[225] The majority notes that limitations periods do not apply to prevent a court from declaring a statute unconstitutional, citing *Kingstreet Investments Ltd. v. New Brunswick (Finance)*, 2007 SCC 1, [2007] 1 S.C.R. 3; *Ravndahl v. Saskatchewan*, 2009 SCC 7, [2009] 1 S.C.R. 181; and *Thorson v. Attorney General of Canada*, [1975] 1 S.C.R. 138. While I agree, the constitutional validity of statutes is not at issue in this case. Instead, this is a case about factual issues and alleged breaches of obligations which have always been subject to limitations periods, including on the facts of *Ravndahl* and *Kingstreet*.

[226] *Kingstreet* and *Ravndahl* make clear that there is an exception to the application of limitations periods where a party seeks a declaration that a statute is constitutionally invalid. Here, my colleagues have concluded that the Métis' claim about unconstitutional statutes is moot. The remaining declaration sought by the Métis has nothing to do with the constitutional validity of a statute.

[227] Instead, what the Métis seek in this case is like the personal remedies that the applicants sought in *Kingstreet* and *Ravndahl*. The Métis are asking this Court to rule on a factual dispute about how lands were distributed over 130 years ago. While they are not asking for a monetary remedy, they are asking for their circumstances and the specific facts of the land grants to be assessed. As this Court said in *Ravndahl*:

> Personal claims for constitutional relief are claims brought as an individual *qua* individual for a personal remedy. As will be discussed below, personal claims in this sense must be distinguished from claims which may enure to affected persons generally under an action for a declaration that a law is unconstitutional. [para. 16]

These claims are made by individual Métis and their organized representatives. The claims do not arise from a law which is unconstitutional. Rather, they arise from individual factual circumstances. As a result, the rule in *Kingstreet* and *Ravndahl* that individual factual claims are barred by limitations periods applies to bar suit in this case.
[underlining added for emphasis]

[22] These extracts from the SCC majority and minority decisions of *Manitoba Métis* make clear that limitation provisions apply in considering claims for

personal remedies, regardless that the claims have a constitutional basis. Limitation provisions do not apply when a declaration as to unconstitutionality is sought, but they do apply if the claim of statutory unconstitutionality is raised in the context of a private claim. (The Federal Court reached a conclusion consistent with this view in *Samson Indian Nation* (*supra*), affirmed by the FCA in *Ermineskin Indian Band* (*supra*).)

[23] That is the case here – this appeal is a private claim of an individual, seeking monetary relief in respect of his personal tax situation.

[24] Thus, the answer to the first issue is yes, the Act's prerequisite provisions for filing a notice of appeal *do* continue to apply, regardless that the Appellant's intended argument is based on constitutional grounds.

B. Issue (ii) - as the answer to issue (i) is yes the Act's prerequisite provisions for filing a notice of appeal *do* continue to apply, the remaining issue is whether the Applicant meets the requirements of section 305, to permit issuance of an order extending time for the filing of a notice of appeal in this Court.

[25] The first requirement of section 305 is expressed in subsection 305(2) - provide reasons for why no appeal under section 306 had been instituted within the time limited by that section. Section 306 provides as follows:

> 306 A person who has filed a notice of objection to an assessment under this Subdivision may appeal to the Tax Court to have the assessment vacated or a reassessment made after either
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> (a) the Minister has confirmed the assessment or has reassessed, or
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> (b) one hundred and eighty days have elapsed after the filing of the notice of objection and the Minister has not notified the person that the Minister has vacated or confirmed the assessment or has reassessed,
>
> but no appeal under this section may be instituted after the expiration of ninety days after the day notice is sent to the person under section 301 that the Minister has confirmed the assessment or has reassessed.

[26] The times limited by section 306 for filing a notice of appeal are: (1) on or before 90 days after, in response to a notice of objection, the date of the Minister's confirmation of the objected-to assessment or the Minister's issuance of a

reassessment; and (2) 180 days or more following the filing of a notice of objection, while in the meantime the Minister has not advised the objector that the Minister has vacated or confirmed the objected–to assessment, or has reassessed.

[27] In the case at bar, neither of these time limits has been commenced, the simple reason being that no notice of objection has ever been filed. Note that subsection 301(1.1) requires that a notice of objection express objection to an assessment (which term includes a reassessment). Subsection 301(1.1) provides:

> Any person who has been assessed and who objects to the assessment [who] may, within 90 days after the day the notice of assessment is sent to the person, file with the Minster a notice of objection. [underlining added for emphasis]

[28] Here, the assessment to be objected to is the assessment raised March 28, 2011. The 90 days plus the one year period for that assessment passed June 27, 2012 (the extra day as the initial period of 90 days ended on a Sunday). That time period passes without any proposed or attempted filing of either a notice of objection or an application for extension of time to file a notice of objection.

[29] The Applicant's submitted reason for not filing a notice of appeal within the permissible period is that he never received the notice of (re)assessment ostensibly issued March 28, 2011, being the date on the notice of (re)assessment. He further submits he only subsequently became aware of it in mid-summer, 2015.

[30] Whether the Applicant received the notice of (re)assessment showing date of March 28, 2011 only shortly after that date, as would have been normal as to when the notice would have been sent, or only during the summer of 2015, he was aware of it at least by that latter time period. Thereafter, the said notice appeared on his list of documents filed in the Federal Court action. The Applicant did not, even then, seek to file any notice of objection in relation to that assessment, raised March 28, 2011.

[31] In late September 2015 the Applicant mailed to the Minister a purported notice of objection but it referenced a statement of GST arrears the Minister had sent to him in July 2015. The Minister promptly responded by letter in early October 2015 advising the Appellant this was not a valid notice of objection as it did not express objection to any assessment. Notably, the Applicant did not respond to this, either then or later; such as by writing to the Minister and advising

he wished or intended to file a valid notice of objection pertaining to the March 28, 2011 assessment, and explaining that he had only first received the notice of (re)assessment pertaining to that March 28, 2011 assessment in July or August of 2015.

[32] Instead, the Applicant then chose to commence in Federal Court the above referenced ill-fated action for damages. This led to the Federal Court of Appeal determination a year later that effectively the Applicant was seeking to appeal the March 28, 2011 assessment and for that he had to go to this Court, being the court with jurisdiction over tax assessments.

[33] The next section 305 requirement is expressed in paragraph 305(5)(a) - no application for extension of time can be granted, ".. unless … made within one year after the expiration of the time otherwise limited by this Part for appealing".

[34] The phrase, "the time otherwise limited by this Part for appealing" makes relevant both sections 302 and 306 of the Act. Section 306 is set out above and discussed. Section 302 reads as follows:

> 302 Where a person files a notice of objection to an assessment and the Minister sends to the person a notice of a reassessment or an additional assessment, in respect of any matter dealt with in the notice of objection, the person may, within ninety days after the day the notice of reassessment or additional assessment was sent by the Minister,
>
> (a) appeal therefrom to the Tax Court; or
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> (b) where an appeal has already been instituted in respect of the matter, amend the appeal by joining thereto an appeal in respect of the reassessment or additional assessment in such manner and on such terms as the Tax Court directs.

[35] As can be seen, section 302 provides for appeal of a reassessment or additional assessment directly to Tax Court within 90 days of the notice of reassessment or additional assessment having been sent by the Minister in response to a notice of objection to an assessment. And, as noted above, paragraphs 306(a) and (b) together provide that a person who has earlier filed a notice of objection to an assessment may appeal to the Court within 90 days following the Minister's confirmation or reassessment of the objected-to assessment, or any time after 180

days have passed since the filing of the notice of objection of an assessment, when in the meantime the Minister has not vacated or confirmed the objected-to assessment, or reassessed.

[36] In each of these situations a statutory prerequisite for filing a notice of appeal in the Tax Court is that a notice of objection have been filed, on a timely basis.

[37] I need not here go farther as to the section 305 requirements for an order extending time to file a notice of appeal. Neither of the first two of these compulsory requirements that I have now discussed can be met. The fundamental problem is that no valid notice of objection pertaining to the March 28, 2011 assessment has been filed. No appeal gets to Tax Court without a notice of objection having been filed with the Minister at an earlier stage.

[38] The Applicant claims that he did not receive the March 28, 2011 notice of (re)assessment when it normally would have been sent on March 28, 2011, and thus had no reason to consider he should file a notice of objection.

[39] Assuming this is so, he at least knew of the notice of (re)assessment by approximately mid-summer of 2015, as noticed above. He then would have received the Minister's October 7, 2015 letter shortly later, advising that to be a valid notice of objection the notice had to express objection in respect of an assessment or reassessment.

[40] Yet, even in the late summer of 2015 and remainder of that year and extending through 2016 there is no evidence or indication of any communication or effort by the Applicant to file or seek to file any notice of objection to the March 28, 2011 assessment, or an application to extend time to do so.

[41] There is a real purpose in Parliament requiring the filing of a valid notice of objection. It is to give the Minister an opportunity to reconsider the particular assessment or reassessment in light of the taxpayer's objection, and then to adjust or even withdraw the assessment or reassessment as thought fit by the Minister, without the matter having to move forward to Tax Court through the filing in that Court of a notice of appeal.

[42] Therefore, in the absence of a valid notice of objection having been filed, or even an application having been filed for an extension to file a notice of objection, this section 305 application to extend time to file a notice of appeal must fail. The opening words of subsection 305(5), that "[n]o order shall be made under this section unless…" admit of no discretion to conclude otherwise.

[43] Accordingly this application is denied, although without costs.

Signed at Ottawa, Canada, this 29th day of September 2017.

"B. Russell"

Russell J.

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APPEARANCES:

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