

Docket: 2008-3155(IT)I

BETWEEN:

COLIN ANTEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal called for hearing on March 24, 2010, at Calgary, Alberta

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant:	No one appeared
Counsel for the Respondent:	Cynthia Isenor

ORDER

Whereas the Appellant was not present when the matter was called for hearing and no one appeared on his behalf;

And whereas counsel for the Respondent made an application pursuant to section 18.21 of the *Tax Court of Canada Act* for a dismissal of the appeal;

The application is granted and the appeal is dismissed for the reasons as set out in the attached Reasons for Order.

Signed at Calgary, Alberta, this 26th day of March, 2010.

“Wyman W. Webb”

Webb, J.

Citation: 2010TCC176
Date: 20100326
Docket: 2008-3155(IT)I

BETWEEN:

COLIN ANTEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Webb, J.

[1] The Appellant filed a Notice of Appeal to this Court on October 3, 2008. On the page for the Statement of relevant facts and reasons, the Appellant stated as follows:

I have submit a letter of my concerns to the appeal Board and Minister office. M C Conors as explanation as forth with in this statement¹.

[2] Attached to the Notice of Appeal is a typed document which is as follows:

TO THE MINISTER OF REVENUE CANADA OCTOBER 1 2008 11.00AM
TAXATION DEPARTMENT
FROM COLIN ANTEN
RPO PO BOX 53086 MARLBOROUGH CALGARY ALBERTA

TO THE MINISTER OF TAXATION

MY NAME IS COLIN ANTEN OF CALGARY ALBERTA I HAVE A
SITUATION THAT OCURRED IN CALGARY ALBERTA WHICH VIOLATED

¹ This statement was handwritten and this appears to be what the Appellant has stated. The Appellant also appears to use both capital and small letters.

MY PRIVACY UNDER THE PRIVACY ACT AND WAS HANDLE VERY POORLY HERE IN CALGARY NO DOCUMENTS RELEASE TO OBTAIN INFO FROM A TAX PAYER FROM CALGARY ALBERTA OR EMPLOYER RELEASE

I GOT IN DECEMBER A AUDIT TO MY TAXES FOR THE YEAR OF 2006 I ALMOST FLIP OUT WHEN I FOUND OUT THE GOVERNMENT DID NOT GET MY T1 FORM AJUSTMENT FORM FOR MY TAXES I APPEAL THE IDEA AND SET UP APPOINTMENT WITH THE APPEAL BOARD I WAS TOLD THAT THE BOARD DOES NOT MAKE MISTAKES I FOUND THAT ODD I EVEN FILED A COMPLAINT ON THE MATTER BUT WAS TOLD THAT THEY DID EVERYTHING CORRECT I WENT TO H&R BLOCK TO COVERSE ON THE MATTER AND WAS TOLD AND EVEN SHOWN AS EVIDENCE THAT THEY DID FILE THE T1 FORM AND GOVERNMENT OF CANADA HAD KNEW THAT I FILED FOR THE TAX RELIEF PORTION OF THE FINE BUT THEY THE BOARD STATES I HAVE TO GO TO TAX COURT TO HEAR MY CASE SO I HAVE TO PAY THE 100.00 FOR THE START OF THIS CASE LET ALONE WHAT BURDEN THAT REVENUE CANADA HAS PUT ME THREW I AM SEEKING COMPENSATION PLUS LEGAL COST FOR THIS MIX UP THE CLERK AT THE GOVERNMENT COURT HOUSE COULD NOT UNDERSTAND WHY I WAS TO FILE AS A DEAF MUTE I FIND IT HARD TO SEE PEOPLE MUMBLE THERE WORDS WHILE HOLDING A CONVERSATION WITH THEM AT THE APPEAL BOARD I WAS TOLD BY THE COURT HOUSE OF GOVERNMENT THAT I COULD APPLIED FOR THE MINISTERS APPEAL BUT THE APPEAL BOARD STATE THERE WAS NOT ANY OTHER APPEAL PROCESS I FIND THIS VERY DISTURBING NO OTHER APPEAL STEPS COMING FROM THE APPEAL BOARD AND THE GOVERNMENT COURTS TELLS ME OTHER MY OPION IS THAT THE APPEAL BOARD IS LACK OF TRAINING FOR THE PEOPLE THEY HIRE

THANK YOU

COLIN ANTEN

JAN 3 1957

I REQUEST A INVESTIGATION ON THE MATTER

[3] The following was also attached on a separate page:

TO THE GOVERNMENT OF CANADA REVENIE OBUDSMAN
I REQUEST A INVESTIGATION IN THE MATTER OF THE APPEALS BOARD ACTION OF HANDLING MY CASE AND THE COST IT WILL ESCULATE TO WHAT DAMAGE IT WILL BRING TO THE TAX ATION FOR PUNITIVE DAMAGE FOR THE MALUS IT HAS CAUSE ME I WROTE A LETTER IN THE

MATTER OF THE CONCERN PLEASE INVESTIGATE THE MATTERS AS I
HAVE WRITTEN THE MINISTER ON THE CONCERNS I ADDRESS

THANK YOU COLIN ANTEN

ALL MY INFO IS ADDRESS ON THE MININSTER LETTER

SEPTEMBER 26TH 2008 1.00PM

[4] It is difficult to determine why the Appellant is appealing to this Court. His subsequent correspondence does little to clarify the issue and repeatedly refers to *Privacy Act* concerns.

[5] In an Appeal to this Court, an appellant is seeking either to vary or vacate an assessment under the *Income Tax Act* (the “*Act*”). Paragraph 169 of the *Act* provides as follows:

169. (1) Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied after either

(a) the Minister has confirmed the assessment or reassessed, or

(b) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed,

but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

[6] Section 171 of the *Act* provides that:

171. (1) The Tax Court of Canada may dispose of an appeal by

(a) dismissing it; or

(b) allowing it and

- (i) vacating the assessment,
- (ii) varying the assessment, or
- (iii) referring the assessment back to the Minister for reconsideration and reassessment.

[7] In the decision of the Federal Court of Appeal in the case of *Main Rehabilitation Co. v. The Queen*, ([2004] F.C.J. No. 2030, 2004 FCA 403) (leave to appeal to the Supreme Court of Canada was dismissed ([2005] S.C.C.A. No. 37, 343 N.R. 196 (note))), the Federal Court of Appeal made the following comments:

6 In any event, it is also plain and obvious that the Tax Court does not have the jurisdiction to set aside an assessment on the basis of an abuse of process at common law or in breach of section 7 of the Charter.

7 As the Tax Court Judge properly notes in her reasons, although the Tax Court has authority to stay proceedings that are an abuse of its own process (see for instance *Yacyshyn v. R.* (1999), 99 D.T.C. 5133 (Fed. C.A.)), Courts have consistently held that the actions of the CCRA cannot be taken into account in an appeal against assessments.

8 ***This is because what is in issue in an appeal pursuant to section 169 is the validity of the assessment*** and not the process by which it is established (see for instance the *Consumers' Gas Co. v. R.* (1986), 87 D.T.C. 5008 (Fed. C.A.) at p. 5012). Put another way, the question is not whether the CCRA officials exercised their powers properly, but whether the amounts assessed can be shown to be properly owing under the Act (*Ludco Enterprises Ltd./Entreprises Ludco Ltée v. R.* (1994), [1996] 3 C.T.C. 74 (Fed. C.A.) at p. 84).

(emphasis added)

[8] The only matter that can be dealt with by this Court on an appeal under section 169 of the *Act* is the validity of the assessment itself. There is nothing in the Appellant's Notice of Appeal to indicate why he claims that the assessment (or reassessment) is not correct. He does discuss some procedural matters when he refers to the government not getting his "T1 FORM ADJUSTMENT". He also refers to having "FILED FOR THE TAX RELIEF PORTION OF THE FINE", but this seems to suggest that it was a fairness application for relief from the penalty. There is no right to appeal to this Court from a decision of the Minister, rendered pursuant to subsection 220(3.1) of the *Act*, to not waive all or a portion of a penalty, as this is not an appeal of an assessment or a reassessment.

[9] This matter was first set down for hearing on March 18, 2009. At the request of the Appellant, the matter was adjourned. The matter was again set down for hearing on October 5, 2009. The Appellant again requested an adjournment which was

initially denied. However, the hearing was subsequently adjourned. The matter was then set down for hearing on March 24, 2010 by an Order dated October 29, 2009.

[10] On March 12, 2010 the Appellant requested that the hearing scheduled for March 24, 2010 be adjourned. His reasons include a statement that “the lawyers went on holiday without telling me”. There is no indication in the Court file that the Appellant is represented by counsel and counsel for the Respondent indicated that the Appellant has never identified any lawyer who is representing him.

[11] He indicated that an interpreter was not available. However, two sign language interpreters (who were the interpreters that he requested) were in attendance on March 24, 2010.

[12] He also refers to “THE GOVERNMENT TAX DEPARTMENT IS IN BREACH OF FRAUD AND TAX VIOLATION WITHIN THIS MATTER OF THE PRIVACY ACT”. This again raises the issue of whether the Appellant is appealing any matter over which this Court has jurisdiction.

[13] He also stated that he needed more time. However, his appeal was filed more than 17 months prior to the date scheduled for the hearing and the hearing scheduled for March 24, 2010 is just over one year from the first scheduled hearing date.

[14] He also indicated that he had not received a copy of the “Notice of the Hearing” by registered mail. However, the only address that the Appellant has provided to the Court is a PO Box address which is the same address that was in his Notice of Appeal and in some of his correspondence. The Appellant cannot claim that he did not receive notice by registered mail if he refuses to accept documents sent to him by registered mail. He was also notified by e-mail (using the e-mail address that he had provided). He did request an adjournment by letter dated March 12, 2010, so he was aware of the date set for the hearing.

[15] The Appellant’s request for an adjournment of the hearing scheduled for March 24, 2010 was denied. He then submitted a new request on March 17, 2010 which raised the following new ground:

I HAVE NOW HAVE TO ATTEND A EMERGENCY FAMILY SITUATION IN
THE USA THAT IS LIFE AND DEATH CRISI

[16] No details of the family emergency were provided. The Appellant’s request dated March 17, 2010 for an adjournment was also denied.

[17] Section 18.21 of the *Tax Court of Canada Act* provides as follows:

18.21 (1) Where an appellant does not appear on the day fixed for the hearing, or obtain an adjournment of the hearing, of an appeal, the Court shall, on application by the respondent and whether or not the appellant has received notice of the application, order that the appeal be dismissed, unless the Court is of the opinion that circumstances justify that the appeal be set down for hearing at a later date.

(2) An appellant whose appeal has been dismissed pursuant to subsection (1) may apply to have the order of dismissal set aside and the appeal set down for hearing.

(3) The Court may set aside an order of dismissal made under subsection (1) where

(a) it would have been unreasonable in all the circumstances for the appellant to have attended the hearing; and

(b) the appellant applied to have the order of dismissal set aside as soon as circumstances permitted the application to be brought but, in any event, not later than one hundred and eighty days after the day on which the order was mailed to the appellant.

[18] In this case I am not of the opinion that circumstances justify that the hearing should be set down for a later date. This is the third time that this matter has been set down for a hearing. The Appellant's requests for an adjournment were considered by other Judges of this Court and were denied. No additional information has been provided that would not have been considered when his requests for an adjournment were addressed. If the matter is scheduled for a later date he would effectively be granted the adjournment that has already been considered and denied, without any additional information or explanation from the Appellant. If it would have been unreasonable for the Appellant to attend the hearing scheduled for March 24, 2010, he has the right, as provided in section 18.21 of the *Tax Court of Canada Act* to apply to have this dismissal order set aside, provided that the application is brought as soon as circumstances permit and no later than 180 days after the day in which the order is mailed to him. As well it is not at all clear that he is appealing any matter that is within the jurisdiction of this Court.

[19] As a result the application by the Respondent to dismiss the Appellant's appeal is granted.

Signed at Calgary, Alberta, this 26th day of March, 2010.

“Wyman W. Webb”

Webb, J.

CITATION: 2010TCC176

COURT FILE NO.: 2008-3155(IT)I

STYLE OF CAUSE: COLIN ANTEN AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: March 24, 2010

REASONS FOR ORDER BY: The Honourable Justice Wyman W. Webb

DATE OF ORDER: March 26, 2010

APPEARANCES:

For the Appellant:	No one appeared
Counsel for the Respondent:	Cynthia Isenor

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada