

BETWEEN:

ELIZABETH COLE,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Motion heard in writing

Before: The Honourable Justice Joanna Hill

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Terence Katerynych

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**JUDGMENT**

In accordance with the attached Reasons:

1. The Appellant's motion is dismissed, without costs.
2. The Respondent's motion is granted, without costs, and the Appellant's appeal from the Notice of Reassessment dated September 21, 2020 for the 2011 taxation year is quashed, pursuant to paragraph 53(3)(a) of the *Tax Court of Canada Rules (General Procedure)*.

Signed at Ottawa, Canada, this 10th day of May 2024.

“Joanna Hill”

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Hill J.

Citation: 2024TCC64  
Date: 20240510  
Docket: 2021-2000(IT)G

BETWEEN:

ELIZABETH COLE,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

## **REASONS FOR JUDGMENT**

Hill J.

### **I. Introduction**

[1] The Appellant spent the better part of ten years trying to convince the Minister of National Revenue to remove over \$240,000 added to her taxable income for the 2011 taxation year. Due to the passage of time, the Minister began treating the Appellant's efforts as taxpayer relief requests to reassess beyond the statutory deadline. Unfortunately, the Minister did so without fully explaining the shift to the Appellant.

[2] The Minister partially granted the Appellant's requests for adjustments and issued three reassessments accordingly. The first reassessment explicitly informed the Appellant that she had no right to object to a reassessment issued beyond the normal reassessment period. However, the other two reassessments erroneously contained the standard information that the Appellant could file objections. The Minister compounded these errors by issuing a Notice of Confirmation indicating that the Appellant could appeal to this Court.

[3] When the Appellant filed her appeal, the Respondent filed a motion to quash on the basis that this Court does not have the jurisdiction to hear an appeal from an assessment issued under the taxpayer relief provisions of the *Income Tax Act*.

[4] The Appellant disagrees on the basis that she did not make taxpayer relief requests asking the Minister to reassess her beyond the normal reassessment period. While the Appellant's position in this regard is factually accurate, the Respondent's position is technically correct in law. Once the normal reassessment period for the 2011 taxation year expired, the Minister could not reassess the Appellant unless she treated the Appellant's efforts as taxpayer relief requests under paragraph 152(4.2)(a) of the Act.

[5] There is no right of objection or appeal from reassessments issued as a result of the Minister's exercise of discretion in this regard. This remains the case even though the Canada Revenue Agency mistakenly directed the Appellant to follow the normal objection and appeal procedures.

[6] The Respondent properly determined that the correct course of action was to ask the Court to quash the appeal, instead of filing a Reply to the Appellant's Notice of Appeal. Contrary to the Appellant's position in her own motion, the Respondent has not failed to comply with the applicable deadlines under the *Tax Court of Canada Rules (General Procedure)*.

## **II. Background**

[7] The procedural history of this matter is difficult because: (a) the Appellant filed numerous objections, T1 adjustment requests, and taxpayer relief requests with respect to interest and penalties; (b) the Minister issued five reassessments; and (c) at times, the CRA provided unclear, inconsistent or erroneous information to the Appellant.

[8] The following recitation of that procedural history is necessary because neither the Appellant nor the Respondent accurately summarized the sequence of events.<sup>1</sup> The Appellant understandably failed to appreciate the nuances and implications of certain events in that procedural history, and denies that she made taxpayer relief requests for reassessments beyond the normal reassessment period.

[9] However, the inaccuracies in the Respondent's Motion Record are less understandable. The Respondent's affidavit and written representations contain

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<sup>1</sup> Only the facts relevant to the motions are included in the summary.

inaccuracies or omissions regarding relevant facts that would be apparent on a proper reading of the documents attached as exhibits to its own affidavit.<sup>2</sup> The biggest omission is the failure to acknowledge that the Appellant did not explicitly make a taxpayer relief request under paragraph 152(4.2)(a) of the Act.

[10] While the Appellant's multiple requests and filings are partly responsible for the confusion, it is no wonder that she does not trust what she has been told by the CRA or the Respondent, and is seeking a resolution from this Court.

### **A. The procedural history with the Canada Revenue Agency**

[11] The Appellant filed her 2011 income tax return on February 23, 2012, and the Minister issued a Notice of Assessment on March 5, 2012.<sup>3</sup>

[12] By Notice of Reassessment dated November 5, 2012, the Minister reassessed the Appellant to add net business income of \$247,143, resulting in a significant tax liability for the Appellant (**Reassessment #1**).<sup>4</sup>

[13] The Minister reassessed the Appellant soon after, by Notice of Reassessment dated November 26, 2012, to make minor adjustments unrelated to the additional business income (**Reassessment #2**).<sup>5</sup>

[14] On October 23, 2013, the Appellant filed a Request for Taxpayer Relief for cancellation or waiver of interest and penalties (**Taxpayer Relief Request #1**).<sup>6</sup>

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<sup>2</sup> I will be referring to the exhibits in the Affidavit of Aicha Barry, sworn September 6, 2023 (**Barry Affidavit**) in these Reasons because it includes the same documentation relied on by the Appellant in her various submissions since the Respondent filed its motion to quash, but in a more clear, chronological order.

<sup>3</sup> Barry Affidavit, Exhibit A: Copy of the Income Tax Return Information for the 2011 taxation year that sets out the initial and subsequent reassessments. The Appellant objected to this first assessment and the Minister confirmed the assessment on October 26, 2012 (Exhibit E). There are no details regarding this objection and Notice of Confirmation in either party's motion materials or submissions.

<sup>4</sup> Barry Affidavit, Exhibit A.

<sup>5</sup> Barry Affidavit, Exhibit A.

<sup>6</sup> Barry Affidavit, Exhibit B.

The Appellant also asked the CRA to “correct their error in assessment for 2010 and 2011 by performing an immediate written audit”.<sup>7</sup> But she did not tick the box for a “Refund or reduction in amounts payable beyond the normal three year period (individual and testamentary trust accounts)” on the Request for Taxpayer Relief form.

[15] On February 19, 2015, the Appellant filed a T1 Adjustment Request on the basis that the CRA incorrectly added \$247,143 of net business income from her husband’s business to her personal taxable income.<sup>8</sup>

[16] By letter dated March 10, 2015, the CRA denied the Appellant’s Taxpayer Relief Request #1.<sup>9</sup>

[17] By letter dated October 13, 2015, the CRA denied the Appellant’s T1 Adjustment Request on the basis that no adjustments were warranted.<sup>10</sup>

[18] By letter dated December 19, 2016, the CRA issued a decision denying what it referred to as the Appellant’s request for a “refund beyond the normal three-year reassessment period, under the taxpayer relief provisions”.<sup>11</sup> The decision did not specify whether it was in response to a specific request made by the Appellant or explain why the CRA was now considering the Appellant’s requests under this separate type of taxpayer relief.

[19] Instead, the decision informed the Appellant that additional records were required and, if she supplied a complete application supporting her request in the future, the CRA would reopen her case and consider those documents at that time.<sup>12</sup>

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<sup>7</sup> Barry Affidavit, Exhibit B.

<sup>8</sup> Barry Affidavit, Exhibit C.

<sup>9</sup> Barry Affidavit, Exhibit D.

<sup>10</sup> Barry Affidavit, Exhibit E.

<sup>11</sup> Barry Affidavit, Exhibit F.

<sup>12</sup> Documents attached to Exhibit G, the Appellant’s 2017 Tax Court of Canada Application for an extension of time to object, has copies of Appellant’s correspondence with CRA in this regard dated July 6, 2016.

[20] On June 18, 2018, the Appellant made a second request for relief from interest and penalties (**Taxpayer Relief Request #2**).<sup>13</sup> In the attachments to the request, the Appellant also asked for the assessment to be vacated in full.

[21] By decision dated June 18, 2019, the CRA partially granted the Appellant's "request regarding a refund beyond the normal three-year reassessment period, under the taxpayer relief provisions", presumably in response to Taxpayer Relief Request #2.<sup>14</sup> The decision specifically stated that the Appellant would not have a right to object to the reassessment issued under the taxpayer relief provisions:

When we have issued a notice of reassessment beyond the normal reassessment period, there is no right of objection for a taxpayer to dispute a decision under the taxpayer relief provisions. However, if you believe that we have not exercised discretion in a fair and reasonable manner, you may request in writing that the Assistant Director, Audit Division, of the Nova Scotia Tax Services Office review the situation.

[22] A Notice of Reassessment was subsequently issued on September 6, 2019, to reduce the Appellant's net business income by \$70,865 (**Reassessment #3**).<sup>15</sup> Consistent with the June 18, 2019 decision, the notice stated that the Appellant did not have a right to object to the assessment because it was made under the taxpayer relief provisions of the Act.

[23] The Appellant was not satisfied with her remaining tax liability and requested a review, as provided for in the June 18, 2019 decision.<sup>16</sup>

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<sup>13</sup> Barry Affidavit, Exhibit I: Request for Taxpayer Relief – Cancel or Waive Penalties or Interest

<sup>14</sup> Barry Affidavit, Exhibit J.

<sup>15</sup> Barry Affidavit, Exhibit K.

<sup>16</sup> Barry Affidavit, Exhibit L. This CRA decision letter refers to the Appellant's "2nd Level Taxpayer Relief Request". Contrary to paragraph 4 of the Respondent's Amended Written Representations, the Appellant did not file an objection to the September 6, 2019 Notice of Reassessment. Instead, she requested a second level review as instructed by the CRA decision letter dated June 18, 2019. The CRA decision in response to that review led to the September 21, 2020 Reassessment.

[24] By decision dated November 12, 2019, the CRA allowed a further adjustment to account for an additional expense of \$653.<sup>17</sup> The letter informed the Appellant that she could challenge the decision in the Federal Court:

If you feel that discretion was not properly exercised during my review of your request for relief, you can apply to the Federal Court of Canada for a judicial review within thirty (30) days of the date of this letter.

[25] This adjustment was processed by Notice of Reassessment issued on February 10, 2020 (**Reassessment #4**).<sup>18</sup> Notwithstanding the information provided in the decision letter, the notice contained standard form information on filing an objection to the reassessment.

[26] The Appellant followed that information and filed a Notice of Objection on March 13, 2020.<sup>19</sup>

[27] By letter dated September 8, 2020, CRA Appeals informed the Appellant that a further adjustment would be made in response to her objection.<sup>20</sup> Although it was characterized as allowing her objection “in full”, the adjustment corrected an error, resulting in only a reduction of \$1,306 from her net business income.

[28] By Notice of Reassessment dated September 21, 2020, the CRA adjusted the Appellant’s taxable income accordingly (**Reassessment #5**).<sup>21</sup> This notice also contained the standard form information on filing an objection if the Appellant did not agree with the reassessment. Since she still disagreed with the result, the Appellant filed another objection, by notice dated October 7, 2020.<sup>22</sup>

[29] By letter dated December 9, 2020, the CRA indicated that the objection would be disallowed, but provided the Appellant thirty days to submit any additional

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<sup>17</sup> Barry Affidavit, Exhibit L.

<sup>18</sup> Barry Affidavit, Exhibit M.

<sup>19</sup> Barry Affidavit, Exhibit N.

<sup>20</sup> Barry Affidavit, Exhibit O.

<sup>21</sup> Barry Affidavit, Exhibit P.

<sup>22</sup> Barry Affidavit, Exhibit Q.

documents or explanations.<sup>23</sup> The Appellant made further submissions on January 28, 2021, February 1, 2021, and February 8, 2021.<sup>24</sup> The CRA confirmed the September 21, 2020 reassessment by notice dated February 9, 2021.<sup>25</sup> The Notice of Confirmation contained the standard paragraph indicating that the Appellant could appeal to this Court within 90 days, if she disagreed with the decision.

[30] The Appellant filed the herein appeal on May 6, 2021 with a copy of the February 9, 2021 Notice of Confirmation attached.

### **B. The proceedings in this Court**

[31] After being contacted by the Court regarding the payment of the required filing fee, the Appellant filed a new Notice of Appeal and a request to waive the filing fee on September 14, 2021. On September 20, 2021, the Court issued an Order waiving the filing fee. The Registry served the Respondent with the Notice of Appeal on September 23, 2021.<sup>26</sup>

[32] On November 9, 2021, the Respondent sent the Appellant a conduct letter (copied to the Court) outlining its position that the appeal could not proceed and indicating that it would be filing a motion in that regard.

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<sup>23</sup> Barry Affidavit, Exhibit R.

<sup>24</sup> See the text of the Appellant's letter dated February 8, 2021, Barry Affidavit, Exhibit S. Contrary to paragraph 22 of the Barry Affidavit, this document is not a Notice of Objection. Rather the Appellant was responding directly to the author of the CRA's December 9, 2020 letter with reference to the same case number.

<sup>25</sup> Barry Affidavit, Exhibit T. By letter dated March 11, 2021 (Barry Affidavit, Exhibit U), the CRA informed the Appellant that her correspondence dated February 8, 2021 could not be accepted as a valid objection because CRA Appeals had already reviewed and confirmed the October 7, 2020 objection. It is not clear why the CRA considered the February 8, 2021 letter as a separate objection in light of the entire chain of communication and the contents of the letter.

<sup>26</sup> Tax Court of Canada Certificate of Service, Court file.

[33] Instead of filing a reply, the Respondent filed a motion in writing to quash the appeal, on November 17, 2021. In response, the Appellant asked that the motion be heard in person.<sup>27</sup>

[34] On April 12, 2022, the Appellant filed her own motion seeking relief with respect to the late or non-service of the Respondent's motion to quash.

[35] The Court made several attempts to accommodate the Appellant's request that the motions be heard in person, culminating in the matters being scheduled for hearing in Halifax on August 24, 2023. The Appellant failed to appear at the hearing due to her husband's ongoing medical condition. As a result, I ordered that the motion proceed in writing and provided the parties with time to file any additional written materials.<sup>28</sup>

### **III. Analysis**

[36] There are two motions to be decided. As outlined below, the Appellant's motion is dismissed and the Respondent's motion is granted.<sup>29</sup>

#### **A. The Appellant's Motion**

[37] The Appellant argues that the Respondent failed to meet deadlines under the *Tax Court of Canada Rules (General Procedure)*. The Appellant's argument fails for a few reasons.

[38] First, there was no deadline for the Respondent to serve its motion record, because it asked for the motion to be heard in writing, under Rule 69.<sup>30</sup> That Rule

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<sup>27</sup> Appellant's correspondence dated January 26, 2022, Court file.

<sup>28</sup> Order dated August 28, 2023.

<sup>29</sup> Since the substantive issue regarding the correctness of the assessment was not properly at issue in these motions, I did not consider the Appellant's arguments and evidence in support of her claim for further reductions to her taxable income for 2011.

<sup>30</sup> Respondent's Notice of Motion, dated November 17, 2021. Relevant excerpts of the *Tax Court of Canada Rules (General Procedure)* are attached as Appendix A to these Reasons.

does not specify a deadline for service of a motion record. Instead, it set a twenty day-deadline for the Appellant to respond after being served.

[39] Second, Rule 67 does not require personal service of the motion record. As a result, the Respondent was entitled to send the motion record by courier to the Appellant's address. The Respondent similarly was entitled to rely on the Purolator confirmation indicating that the motion record was left at the Appellant's front door on November 19, 2021.

[40] Third, the Respondent served the Appellant a second time, when the Appellant stated that she not receive the package by courier. The Respondent engaged a process server who directly provided a copy to the Appellant's husband on January 18, 2022.<sup>31</sup> As a result, service occurred well in advance of the first hearing date of February 9, 2023, as required by Rule 67(6).<sup>32</sup>

[41] Finally, in the event that the Appellant also takes issue with the November 22, 2021 deadline for the Respondent to file a reply to the Notice of Appeal, that deadline is currently at issue before Court.<sup>33</sup> In its Notice of Motion, the Respondent has asked for an extension of time to file a reply, in the event that its motion to quash the appeal is dismissed. Rule 44 allows the Respondent to ask the Court for an extension before or after the deadline to file a reply has expired. As outlined below, that extension of time is not required because the appeal cannot proceed.

## **B. The Respondent's Motion to Quash**

[42] The Respondent argues that the appeal should be quashed pursuant to Rule 53(3)(a) on the basis that the Court does not have the jurisdiction to hear the appeal. Although I have taken issue with certain aspects of the Respondent's recitation of the relevant facts, I agree that it has accurately set out the applicable

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<sup>31</sup> Affidavit of Service, sworn January 19, 2022. Court file.

<sup>32</sup> Once the Court agreed that the motions should be heard in person, Rule 67(6) imposed a service deadline of seven days prior to the eventual hearing date. However, the Court also set specific deadlines in a Case Management Order dated July 26, 2022.

<sup>33</sup> Pursuant to Rule 44(1).

law. The interaction of various provisions of the Act removed the Appellant's right to appeal in the present case.<sup>34</sup>

1. No right to appeal from reassessments issued beyond the normal reassessment period

[43] With the definition of a “normal reassessment period”, paragraph 152(3.1)(b) of the Act effectively provides a three-year deadline from the date of an original notice of assessment for the Minister to reassess a taxpayer. Since the deadline is imposed under the Act, the taxation year at issue is sometimes characterized as being “statute-barred”.

[44] Once that deadline expires, the Minister cannot reassess a taxpayer except in the limited circumstances permitted under specific provisions in the Act.<sup>35</sup> Paragraph 152(4.2)(a) allows a taxpayer to request a reassessment beyond the normal reassessment period, but does not require the Minister to grant the request. It is a discretionary decision, under one of the taxpayer relief provisions in the Act.

[45] This distinction is important because a taxpayer's appeal rights change when the Minister exercises her discretion in this regard. If the Minister grants a taxpayer's request, subsection 165(1.2) of the Act does not allow the taxpayer to object to reassessment subsequently issued.

[46] If there is no right to object, there also is no right to appeal to this Court. Under subsection 169(1) of the Act, a taxpayer cannot appeal to the Tax Court of Canada unless they have served a notice of objection under section 165.<sup>36</sup>

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<sup>34</sup> Excerpts of the relevant provisions of the *Income Tax Act* are attached as Appendix B to these Reasons.

<sup>35</sup> Subsection 152(4.1).

<sup>36</sup> *Reyes v HMTK*, 2023 TCC 31, paras 20-22. *Groulx v HMTQ*, 2009 FCA 10, paras 2 & 5.

[47] For the 2011 taxation year, the Appellant's "normal reassessment period" ended on March 5, 2015, three years after the day the Notice of Assessment issued on March 5, 2012.<sup>37</sup>

[48] Once that deadline expired, the Minister treated the Appellant's requests for adjustments as taxpayer relief requests under paragraph 152(4.2)(a). This shift was first indicated in the December 19, 2016 letter from the CRA.<sup>38</sup>

We are responding to your request, regarding a refund beyond the normal three-year reassessment period, under the taxpayer relief provisions, for the above years.

The taxpayer relief provisions give the Canada Revenue Agency (CRA) discretion to refund or reduce the amount owed beyond the normal three-year period if the request had been made on time, and provided that the necessary assessment is correct in law and has not already been allowed.

[49] Unfortunately, the CRA did not expressly inform the Appellant that the normal reassessment period had expired and that her requests for adjustments would be considered as a taxpayer relief request under paragraph 152(4.2)(a) of the Act.

[50] As outlined in the procedural history above, the Appellant did not explicitly make such a request.

[51] However, to be fair to the Respondent, the shift allowed the Minister to reconsider the Appellant's adjustment requests and ultimately issue reassessments that otherwise would have been prohibited under the Act.

[52] The following reassessments were therefore issued further to the exercise of discretion under paragraph 152(4.2)(a), after the March 5, 2015 normal reassessment deadline expired:

- Reassessment #3, issued on September 6, 2019;<sup>39</sup>

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<sup>37</sup> The Respondent neglected to outline this important starting point, and instead simply stated that the 2011 taxation year was statute-barred (Amended Written Representations, para 7).

<sup>38</sup> Barry Affidavit, Exhibit F.

<sup>39</sup> Barry Affidavit, Exhibit K.

- Reassessment #4, issued on February 10, 2020;<sup>40</sup> and
- Reassessment #5, issued on September 21, 2020.<sup>41</sup>

[53] The three-year normal reassessment period did not restart with each subsequent reassessment. The deadline was fixed from the date of the original Notice of Assessment.

[54] Based on the facts outlined and the applicable law, those three reassessments were issued further to repeated discretionary decisions to reassess beyond the normal reassessment period under paragraph 152(4.2). To conclude otherwise would invalidate the those reassessments and restore the Appellant's tax liability to Reassessment #2, issued on November 26, 2012.

[55] As a result, this Court does not have the power to hear the Appellant's appeal.

## 2. CRA errors do not change the applicable law

[56] The above-referenced sections of the Act apply even though the CRA erroneously informed the Appellant that she could object and appeal. The law does not change even if the CRA errors led to the filing of the appeal.<sup>42</sup>

[57] Reassessment #3 and the related decision indicated that the Appellant would not have a right to object because the reassessment was issued under the taxpayer relief provisions:

As we explained in our recent letter, we changed your return. Before, you had to ask for a change within three years of the date we mailed you the notice of assessment for that return. But now, the taxpayer relief provisions of the Income Tax Act lets us make changes past the usual three years. Since we allowed the change under these provisions, you cannot file an objection to this reassessment.<sup>43</sup>

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<sup>40</sup> Barry Affidavit, Exhibit M.

<sup>41</sup> Barry Affidavit, Exhibit P.

<sup>42</sup> See the various cases relied on by the Respondent in paragraphs 14-16 of its Amended Written Representations.

<sup>43</sup> Notice of Reassessment dated September 6, 2019, Barry Affidavit, Exhibit K. The June 18, 2019 decision letter, Barry Affidavit, Exhibit J, stated: "When we have issued a notice of reassessment

[58] Unfortunately, Reassessment #4 did not contain a similar statement and erroneously contained the standard form information on filing an objection. It was the third option under the heading “If you do not agree with this reassessment”:

**3. You can object to this reassessment**

If you do not agree with this notice, you can object to it. You can do this by going to [canada.ca/guide-my-cra-account](http://canada.ca/guide-my-cra-account), or by sending either Form T400A, Objection – Income tax Act, or a signed letter to the Chief of Appeals. You can find the address in Appendix B in Pamphlet P148, Resolving Your Dispute: Objections and Appeal Rights under the Income Tax Act.<sup>44</sup>

[59] I will refer to this information as “CRA Error #1”.

[60] The CRA compounded this error by accepting the Appellant’s subsequent Notice of Objection, dated March 13, 2020.<sup>45</sup> This was CRA Error #2.

[61] Reassessment #5, issued on September 21, 2020 to make a minor adjustment contained CRA Error #3 in that it again included the standard form information on filing an objection.<sup>46</sup>

[62] CRA Error #4 occurred when the agency accepted the Appellant’s subsequent Notice of Objection dated October 7, 2020, and invited her to make submissions in support of further adjustments.<sup>47</sup>

[63] CRA Error #5 occurred when the agency issued the Notice of Confirmation, dated February 9, 2021, with instructions on appealing to the Tax Court of Canada within 90 days, if the Appellant disagreed with the decision.<sup>48</sup>

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beyond the normal reassessment period, there is no right of objection for a taxpayer to dispute a decision under the taxpayer relief provisions.”

<sup>44</sup> Barry Affidavit, Exhibit M, emphasis in original.

<sup>45</sup> Letter dated September 8, 2020, Barry Affidavit, Exhibit O.

<sup>46</sup> Barry Affidavit, Exhibit P.

<sup>47</sup> Letter dated December 9, 2020, Barry Affidavit, Exhibit R.

<sup>48</sup> Barry Affidavit, Exhibit T.

According to section 169 of the Income Tax Act, if you disagree with this decision, you may appeal to the Tax Court of Canada within 90 days from the date of this notice of confirmation. For information on how to file an appeal, see the publication RC4443-2. You can also get up to date information by going to the Tax Court of Canada website at [tcc-cci.gc.ca](http://tcc-cci.gc.ca).

[64] That information was repeated in a letter dated March 11, 2021 (CRA Error #6).<sup>49</sup> Unsurprisingly, the Appellant filed the herein appeal on May 6, 2021, with respect to Reassessment #5.

[65] The Respondent acknowledges that the CRA erred in considering the Notice of Objection and issuing the Notice of Confirmation.<sup>50</sup> While this acknowledgment understates the number of errors and failures to properly communicate with the Appellant, the outcome of this motion does not change.

[66] As recently outlined by this Court in *Dutka*, even when incorrect information is provided by the CRA, I am required to apply the provisions of the Act.<sup>51</sup> This principle has been applied in several cases where the end result is that a taxpayer is prevented from objecting to, or appealing from, a reassessment.

[67] As a result, the appeal cannot proceed.

[68] As outlined in the CRA's decision dated November 12, 2019, the Appellant's proper recourse is to challenge the taxpayer relief decisions, rather than the reassessments subsequently issued. This is done by way of application for judicial review in the Federal Court rather than an appeal to this Court. This Court does not have the power to hear challenges to the Minister's exercise of discretion under the taxpayer relief provisions of the Act.<sup>52</sup>

#### **IV. Conclusion**

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<sup>49</sup> Barry Affidavit, Exhibit U.

<sup>50</sup> Respondent's Amended Written Representations, para 13.

<sup>51</sup> *Dutka v HMTQ*, 2020 TCC 21, para 30. See also paras 27-32.

<sup>52</sup> *The Minister of National Revenue v Sifto Canada Corp*, 2014 FCA 140, para 23.

[69] The Appellant followed guidance provided by the CRA in various decisions and notices. Because the CRA re-characterized her requests and provided unclear and inconsistent information, she did not understand that she was challenging the Minister's decisions in the wrong court.

[70] While the Respondent properly moved to quash the appeal before any further unnecessary steps were taken in the proceeding, counsel could have taken more care to provide a clear explanation to the Appellant. This was particularly important considering that, contrary to the most recent information provided to the Appellant by the CRA, she has no right to appeal to this Court.

[71] The Appellant's motion is dismissed and the Respondent's motion is granted, both without costs. The Appellant's appeal from the Notice of Reassessment dated September 21, 2020 for the 2011 taxation year is quashed.

Signed at Ottawa, Canada, this 10th day of May 2024.

“Joanna Hill”

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Hill J.

**Appendix A**

***Tax Court of Canada Rules (General Procedure), SOR/90-688a***

**Service of Documents**

**35 (1)** No document need be served personally, unless these rules or a direction require personal service.

**(2)** Any document that is not required to be served personally, may be served at the address for service of the party.

**Service at Address for Service**

**38 (1)** The address for service of a party shall be,

...

**(c)** in the case of any other party, where there is no counsel of record, the address of the party as shown on the last document filed by the party that shows his or her address, being a place within Canada, or

...

**(2)** Service of a document at an address for service may be made,

**(a)** by mailing the document to the address for service, or

**(b)** by leaving the document at the address for service.

**Time for Delivery of Reply to Notice of Appeal**

**44 (1)** A reply shall be filed in the Registry within 60 days after service of the notice of appeal unless

...

**(b)** the Court allows, on application made before or after the expiration of the 60-day period, the filing of that reply after the 60-day period within a specified time.

...

**(3)** A reply shall be served

**(a)** within five days after the 60-day period prescribed under subsection (1);

**(b)** within the time specified in a consent given by the appellant under subsection (1); or

**(c)** within the time specified in an extension of time granted by the Court under subsection (1).

### **Striking out a Pleading or other Document**

**53 (3)** On application by the respondent, the Court may quash an appeal if

**(a)** the Court has no jurisdiction over the subject matter of the appeal;

**(b)** a condition precedent to instituting an appeal has not been met; or

**(c)** the appellant is without legal capacity to commence or continue the proceeding.

### **Notice of Motion**

**65** All interlocutory or other applications shall be made by a notice of motion.  
(Form 65)

### **Service of Notice**

**67 (1)** The notice of motion together with the affidavits or other documentary material to be used at the hearing of the motion shall be served on any person or party who will be affected by the direction sought.

...

...

...

...

**(6)** Where a motion is made on notice, the notice of motion together with the affidavits or other documentary material to be used at the hearing of the motion shall be filed and served at least seven days before the date on which the motion is to be heard.

**(7)** Proof of service of the notice of motion shall be filed with the Court at least three days before the date on which the motion is to be heard.

### **Written Representations**

**69 (1)** A party filing a notice of motion may, at the same time, or subsequently, file a written request that the motion be disposed of upon consideration of written representations and without appearance by the parties.

**(2)** A copy of the request and of the written representations shall be served on all parties served with the notice of motion.

**(3)** A party served with a request shall within twenty days,

**(a)** file and serve written representations in opposition to the motion, or

**(b)** file and serve a written request for a hearing.

**(4)** When all parties served with the request have replied to it or the time for doing so has expired, the Court may,

**(a)** grant judgment without a hearing,

**(b)** direct a hearing, or

**(c)** direct that written representations be filed.

## **Appendix B**

### ***Income Tax Act, RSC 1985, c 1 (5<sup>th</sup> Supp) as amended.***

#### **Definition of *normal reassessment period***

**152(3.1)** For the purposes of subsections (4), (4.01), (4.2), (4.3), (5) and (9), the normal reassessment period for a taxpayer in respect of a taxation year is

**(a)** if at the end of the year the taxpayer is a mutual fund trust or a corporation other than a Canadian-controlled private corporation, the period that ends four years after the earlier of the day of sending of a notice of an original assessment under this Part in respect of the taxpayer for the year and the day of sending of an original notification that no tax is payable by the taxpayer for the year; and

**(b)** in any other case, the period that ends three years after the earlier of the day of sending of a notice of an original assessment under this Part in respect of the taxpayer for the year and the day of sending of an original notification that no tax is payable by the taxpayer for the year.

#### **Assessment and reassessment**

**152(4)** The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect of the year only if

...

#### **Reassessment with taxpayer's consent**

**152(4.2)** Notwithstanding subsections (4), (4.1) and (5), for the purpose of determining — at any time after the end of the normal reassessment period, of a taxpayer who is an individual (other than a trust) or a graduated rate estate, in respect of a taxation year — the amount of any refund to which the taxpayer is entitled at that time for the year, or a reduction of an amount payable under this Part by the taxpayer for the year, the Minister may, if the taxpayer makes an

application for that determination on or before the day that is 10 calendar years after the end of that taxation year,

(a) reassess tax, interest or penalties payable under this Part by the taxpayer in respect of that year; and

...

### **Limitation on objections**

**165(1.2)** Notwithstanding subsections (1) and (1.1), no objection may be made by a taxpayer to an assessment made under subsection 118.1(11), 152(4.2), 169(3) or 220(3.1) nor, for greater certainty, in respect of an issue for which the right of objection has been waived in writing by the taxpayer.

### **Appeal**

**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 sent to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

CITATION: 2024 TCC 64  
COURT FILE NO.: 2021-2000(IT)G  
STYLE OF CAUSE: Elizabeth Cole v. His Majesty The King  
REASONS FOR JUDGMENT BY: The Honourable Justice Joanna Hill  
DATE OF JUDGMENT: May 10, 2024

APPEARANCES:

For the Appellant: The Appellant herself  
Counsel for the Respondent: Terence Katerynych

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm: N/A

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