Federal Court Cour fédérale

Date: 20100211

Docket: T-826-08

Citation: 2010 FC 139

Ottawa, Ontario, February 11, 2010

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

RONNIE LOUIS BOZZER

Applicant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
(as represented by the Minister of National Revenue in
his capacity as Minister responsible for the *Income Tax Act*)

and

CANADA REVENUE AGENCY

and

THE ATTORNEY GENERAL OF CANADA

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The Court, in its statutory interpretation role, recognizes that certain phrases used in legislation may appear ambiguous when read in isolation.

The definition of an individual, by itself, although ambiguous when read in isolation, becomes clear when its usage throughout a statutory scheme is examined in its full context.

Just as a tree in a forest, examined in isolation, loses its significance to the whole, when not understood for its part in that whole, the term, "taxation year" in the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended by S.C. 2008, c. 28 (ITA) requires a context in which to be understood.

The Applicant argues that subsection 220(3.1) of the ITA is ambiguous and therefore, it should use the residual presumption in favour of the taxpayer to construe it in favour of the taxpayer. While the residual presumption is a tool at the Court's disposal, the Court takes note of the ruling in *Québec (Communauté urbaine) v. Corporation Notre-Dame de Bon-Secours*, [1994] 3 S.C.R. 3, 50 A.C.W.S. (3d) 541 where the Supreme Court held that the residual presumption is exceptional and should only be used when a court must choose between two valid interpretations. The Supreme Court also cited the case of *Symes v. Canada*, [1993] 4 S.C.R. 695, 44 A.C.W.S. (3d) 824 and held that "[o]nly a reasonable doubt, not resolved by the ordinary rules of interpretation, will be settled by recourse to the residual presumption in favour of the taxpayer" (*Notre-Dame de Bon Secours* at p. 20).

The Court notes that "taxation year" is a term that is widely-used throughout the ITA; therefore, the Court considers that any analysis of the meaning of this phrase must examine its use throughout the legislative scheme.

II. Introduction

[2] This is an application for judicial review of orders, decisions or recommendations made on or about April 29, 2008 by the Canada Revenue Agency (CRA) to reject the Applicant's request for a waiver of interest under subsection 220(3.1) of the ITA.

III. Background

[3] On September 8, 2006, the Applicant, Mr. Ronnie Louis Bozzer, made a request to the Minister of National Revenue to have the interest in respect of a tax debt that arose in 1989-1990 waived in accordance with the discretion granted in subsection 220(3.1) of the ITA.

IV. Decision under Review

[4] The Minister denied the Applicant's request on the ground that the 2005 amendment to subsection 220(3.1) of the ITA limits the Minister's discretion to a ten year period after the relevant year of assessment. Accordingly, the Minister found the Applicant's interest was payable in respect of a year that was outside of the limitation period and the Minister lacked the authority to consider the Applicant's request.

V. Issues

[5] The Applicant's submissions can be reduced to three issues:

1) Did the Minister erroneously interpret subsection 220(3.1) of the ITA?
2) Is subsection 220(3.1) of the ITA ambiguous in respect of the limitation period applicable to the Minister's discretion to waive interest?

3) Does the Minister's current interpretation of subsection 220(3.1) of the ITA lead to arbitrary, unfair and unjust results for tax debts which arose prior to March 4, 2004?

[6] The Respondent submits there are two issues:

1) Did the Minister erroneously interpret subsection 220(3.1) of the ITA?

2) Does the Minister's decision contravene subsection 18.1(4) of the *Federal Courts Act*, R.S.C., 1985, c. F-7?

VI. Relevant Legislative Provisions

[7] Subsection 220(3.1) of the ITA reads:

Waiver of penalty or interest	Renonciation aux pénalités et aux intérêts
(3.1) The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer (or in the case of a partnership, a fiscal period of the partnership) or on application by the taxpayer or partnership on or before that day, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the taxpayer or partnership in respect of that taxation year or fiscal period, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or	(3.1) Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin de l'année d'imposition d'un contribuable ou de l'exercice d'une société de personnes ou sur demande du contribuable ou de la société de personnes faite au plus tard ce jour-là, renoncer à tout ou partie d'un montant de pénalité ou d'intérêts payable par ailleurs par le contribuable ou la société de personnes en application de la présente loi pour cette année d'imposition ou cet exercice, ou l'annuler en tout ou en partie. Malgré les paragraphes 152(4) à (5), le ministre établit les cotisations

partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.	voulues concernant les intérêts et pénalités payables par le contribuable ou la société de personnes pour tenir compte de pareille annulation.

[8] Subsection 45(4) of the *Interpretation Act*, R.S.C. 1985, c. I-21 states:

Judicial construction not adopted	Absence de confirmation de l'interprétation judiciaire
(4) A re-enactment, revision, consolidation or amendment of an enactment shall not be deemed to be or to involve an adoption of the construction that has by judicial decision or otherwise been placed on the language used in the enactment or on similar language.	(4) La nouvelle édiction d'un texte, ou sa révision, refonte, codification ou modification, n'a pas valeur de confirmation de l'interprétation donnée, par décision judiciaire ou autrement, des termes du texte ou de termes analogues.

VII. Summary of Parties' Positions

Applicant's Position

[9] The Applicant submits the Minister's interpretation of subsection 220(3.1) of the ITA, that a taxpayer has until ten years after the year of assessment to make a fairness request, relies on the case of *Montgomery v. Canada (Minister of National Revenue – M.N.R.)* (1994), 77 F.T.R. 223, 47 A.C.W.S. (3d) 1335, affirmed (1995), 89 F.T.R. 137, 521 A.C.W.S. (3d) 388 which should be viewed as obsolete for two reasons; first, the 2005 ITA amendments altered the statutory regime from the one that was interpreted in *Montgomery* and submits that decisions which interpret repealed statutory provisions should not be relied upon. Second, subsection 45(4) of the

Interpretation Act submits that legislative provisions that have been repealed should be treated as if they never existed, as is the case with subsection 127(5) of the *Income Tax Act*, S.C. 1993, c. 24.

[10] The Applicant submits the Minister has the discretion to waive any interest irrespective of the date of the original tax debt which gave rise to the interest. The Applicant submits the section refers to any taxation year in which interest accrues without regard to the year in which the tax debt initially arose. The Applicant argues this section permits a year-by-year waiver for a 10 year period. Specifically, the Applicant submits "Section 248(11) of the ITA provides for interest to accrue on an annual and compounding basis, taxation year after taxation year, irrespective of when the tax debt itself arose" (Applicant's Supplementary Memorandum of Law at para. 6).

[11] The Applicant submits that under subsection 248(11) of the ITA, interest accrues and compounds on a daily basis, irrespective of the date of the original tax debt.

[12] The Applicant submits that in order to support the Minister's interpretation of subsection 220(3.1) of the ITA, the following words must be inserted into the section:

> The Minister may, on or before the day that is ten years after the end of a taxation year **<u>in which an assessment giving rise to the interest of penalty arose</u>**, waive or cancel … any portion of any interest … in respect of that taxation year.

(Applicant's Memorandum of Fact and Law at para. 61).

[13] The Applicant cites the Supreme Court of Canada in the case of *Friesen v. Canada*, [1995] 3 S.C.R. 103, 57 A.C.W.S. (3d) 667 for the proposition that a court should only adopt an

interpretation of a statute that inserts words into a section if there is no other acceptable interpretation (Applicant's Memorandum of Fact and Law at para. 61).

[14] The Applicant submits the 2005 amendment created ambiguity in the waiver provision which did not exist at the time of *Montgomery*, above. The Applicant cites the *Practitioners ITA*, Sherman edition (Thomson, Carswell – 33rd edition) at page 1333 where Mr. David M. Sherman wrote that it is unclear whether "in respect of" refers to the year for which tax is payable, or the year during which the interest accrued. Mr. Sherman favours the latter interpretation.

[15] The Applicant cites the case of *Inland Revenue Commissioners v. Ross and Coulter* (1948), 1 All E.R. 616 (H.L.) at page 625 for the proposition that courts must prefer the meaning more favourable to the taxpayer if a revenue statute is capable of two reasonable meanings.

Respondent's Position

[16] The Respondent submits Parliament has given the Minister discretion when making decisions under the fairness legislation and the only reason for the Court to interfere with the Minister's decision is if it contravened subsection 18.1(4) of the *Federal Courts Act*.

[17] The Respondent cites *Montgomery*, above, for the ruling that "taxation year" in subsection 220(3.1) of the ITA refers to the year for which a return was filed, not the year during which the interest accrued.

[18] The Respondent cites the case of *Telfer v. Canada (Revenue Agency)*, 2008 FC 218, 164 A.C.W.S. (3d) 1079 where the Federal Court held the limitation in subsection 220(3.1) of the ITA restricts the Minister's discretion to "the ten calendar years after the end of the relevant taxation year".

[19] The Respondent submits the amendment instituting the ten year limitation period came into effect after December 31, 2004 and the Fairness Request was made on December 6, 2005, leaving the Minister with no authority to waive interest for the 1989 and 1990 taxation years.

[20] The Respondent cites the Department of Finance *Technical Notes*, which state that administrative problems can arise in verifying claims made for taxation years going as far back as 1985 and that adjustments will only be granted for taxation years that end in any of the preceding ten years for applicants made after 2004.

Applicant's Supplementary Position

[21] The Applicant submits that subsection 220(3.1) of the ITA is ambiguous with regard to the limitation period and the Court should therefore favour the taxpayer's interpretation in accordance with the case of *Notre-Dame de Bon-Secours*, above.

[22] The Applicant submits the Minister has adopted an improper limitation period in paragraph 12 of Information Circular 07-1, (May 31, 2007) by permitting the 10 year limitation period to run from the calendar year "in which the taxpayer's request" for relief is filed. The Applicant submits

this treats taxpayers differently depending on whether the application for relief was filed with the CRA before the end of the 10 year limitation period or not.

[23] The Applicant submits that the reference to "that taxation year" in subsection 220(3.1) of the ITA cannot refer back to the taxation year of the original assessment, as that concept does not appear in subsection 220(3.1) of the ITA.

[24] The Applicant notes the case of *Telfer* was overturned by the Federal Court of Appeal in the case of *Telfer v. Canada (Revenue Agency)*, 2009 FCA 23, 386 N.R. 212 on the question of unreasonableness. The Applicant admits the *Telfer* trial decision made a statement supporting the Respondent's interpretation, but submits there is no indication as to whether the issue of interpretation was properly canvassed by the Federal Court, or that the opinions of leading tax academics were put before the court; therefore, the Applicant submits it is open for this Court to not follow the *Telfer* decision.

VIII. Standard of Review

[25] The Applicant submits the case of *Tedford v. Canada (Attorney General)*, 2006 FC 1334, 302 F.T.R. 293 determined the standard of review for cases of this type is reasonableness *simpliciter*.

[26] The Respondent cites the case of *Lanno v. Canada (Customs and Revenue Agency)*, 2005 FCA 153, 139 A.C.W.S. (3d) 191 for the proposition that the standard of review to be applied to the

Minister's decisions is the old reasonableness *simpliciter*. The Respondent submits a high level of deference should be shown to the decision-maker in cases such as this. The Respondent concludes that this Court ought to apply the current standard of reasonableness to this decision as it was by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] SCC 9, [2008] 1 S.C.R. 190 (Respondent's Memorandum of Fact and Law at para. 36).

IX. Analysis

[27] The central issue before this Court is the definition of "taxation year" in subsection 220(3.1) of the ITA. Does the use of this term refer only to one particular year of assessment, or is it merely a time frame during which interest accrues on an outstanding tax debt? Does it mean ten years after the taxation year in which the original tax debt arose, or does it mean ten years after a taxation year in which interest accrued on a tax debt?

[28] In 1991, Parliament introduced into the ITA a number of sections giving the Minister the discretion to waive or cancel interest or penalties. Initially, subsection 220(3.1) of the ITA contained no limitation on the Minister's discretion; however, as was examined in *Montgomery*, above, subsection 127(5) of the ITA limited this discretion to penalties and interest that arose as a consequence of assessments made during the 1985 and subsequent taxation years.

[29] In the case of *Montgomery*, the Federal Court of Appeal interpreted "taxation years" in the now-repealed subsection 127(5) of the ITA to mean the year of assessment. At the time of *Montgomery* subsection 220(3.1) of the ITA did not contain the term "taxation year." The 2005

amendment repealed subsection 127(5) of the ITA and placed the "taxation year" time limit into subsection 220(3.1) of the ITA. The question now is whether the language used in subsection 220(3.1) of the ITA changes the interpretation of "taxation year" that was expounded in *Montgomery*.

Rules of Statutory Interpretation

[30] In the case of *Notre-Dame de Bon-Secours*, above, the Supreme Court of Canada held that tax statutes are subject to the ordinary rules of statutory interpretation (*Notre-Dame de Bon-Secours* at p. 17).

The Presumption of Consistent Expression

[31] It is noted that "taxation year" is a term that is used throughout the ITA. In *Sullivan and Driedger on the Construction of Statutes*, 4th ed (Buttersworth; Markham, 2002) at page 162, the authors write "[i]t is presumed that the legislature uses language carefully and consistently so that within a statute or other legislative instrument the same words have the same meaning and different words have different meanings. Another way of understanding this presumption is to say that the legislature is presumed to avoid stylistic variation. Once a particular way of expressing a meaning has been adopted, it is used each time that meaning is intended."

[32] The presumption of consistent expression was aptly stated by the Supreme Court of Canada in the case of *Thomson v. Canada (Deputy Minister of Agriculture)*, [1992] 1 S.C.R. 385, 89 D.L.R. (4th) 218 where it was held that "[u]nless the contrary is clearly indicated by the context, a word

should be given the same interpretation or meaning whenever it appears in an Act" (*Thomson*, at p. 243).

[33] Sullivan and Driedger state the presumption not only applies to single words, but that "[t]he presumption [of consistent expression] is also strong where the repeated words are unusual or distinctive or contribute to a noticeable pattern" (Sullivan and Driedger at p. 166).

[34] This approach was used by the Federal Court of Appeal in *Montgomery*, above, at paragraph 7. The court held that "taxation year" is defined in subsection 249(1) of the ITA and that definition "cannot be divorced from the Act as a whole but must be read with reference to the income tax consequences under the Act for taxpayers in the defined period; otherwise, the definition would make little sense".

Residual Presumption in Favour of the Taxpayer

[35] The Applicant argues that subsection 220(3.1) of the ITA is ambiguous and therefore, it should use the residual presumption in favour of the taxpayer to construe it in favour of the taxpayer. While the residual presumption is a tool at the Court's disposal, the Court takes note of the ruling in *Notre-Dame de Bons-Secours*, above, where the Supreme Court held that the residual presumption is exceptional and should only be used when a court must choose between two valid interpretations. The Supreme Court also cited the case of *Symes*, above, and held that "[o]nly a reasonable doubt, not resolved by the ordinary rules of interpretation, will be settled by recourse to the residual presumption in favour of the taxpayer" (*Notre-Dame de Bon Secours* at p. 20).

Interpretation of subsection 220(3.1) of the ITA

[36] The Court notes that "taxation year" is a term that is widely-used throughout the ITA; therefore, the Court considers that any analysis of the meaning of this phrase must examine its use throughout the legislative scheme.

[37] "Taxation year" is defined in subsection 249(1) of the ITA as follows:

Definition of "taxation year"	Sens d'« année d'imposition »
249. (1) For the purpose of this Act, a "taxation year" is	**249.** (1) Pour l'application de la présente loi, l'année d'imposition est :
(*a*) in the case of a corporation or Canadian resident partnership, a fiscal period, and	*a*) dans le cas d'une société ou d'une société de personnes résidant au Canada, l'exercice;
(*b*) in the case of an individual, a calendar year,	*b*) dans le cas d'un particulier, l'année civile.
and when a taxation year is referred to by reference to a calendar year, the reference is to the taxation year or years coinciding with, or ending in, that year.	La mention d'une année d'imposition par rapport à une année civile vise l'année ou les années d'imposition qui coïncident avec cette année civile ou se terminent au cours de cette année.

[38] The Court notes that this definition could support the case of either party, as it merely defines a time frame as a "taxation year." It is only through a reading of the other uses of this term that its definition becomes clear.

Use of "taxation year" in the context of the imposition of interest for unpaid tax debts

[39] A taxpayer is liable to pay interest on unpaid tax debts pursuant to the operation of subsection 161(1) of the ITA, which states:

General	Disposition générale
161. (1) Where at any time after a taxpayer's balance-due day for a taxation year	**161.** (1) Dans le cas où le total visé à l'alinéa *a*) excède le total visé à l'alinéa *b*) à un moment postérieur à la date d'exigibilité du solde qui est applicable à un contribuable pour une année d'imposition, le contribuable est tenu de verser au receveur général des intérêts sur l'excédent, calculés au taux prescrit pour la période au cours de laquelle cet excédent est impayé :
(*a*) the total of the taxpayer's taxes payable under this Part and Parts I.3, VI and VI.1 for the year exceeds	*a*) le total des impôts payables par le contribuable pour l'année en vertu de la présente partie et des parties I.3, VI et VI.1;
(*b*) the total of all amounts each of which is an amount paid at or before that time on account of the taxpayer's tax payable and applied as at that time by the Minister against the taxpayer's liability for an amount payable under this Part or Part I.3, VI or VI.1 for the year, the taxpayer shall pay to the Receiver General interest at the	*b*) le total des montants représentant chacun un montant payé au plus tard à ce moment au titre de l'impôt payable par le contribuable et imputé par le ministre, à compter de ce moment, sur le montant dont le contribuable est redevable pour l'année en vertu de la présente partie ou des parties I.3, VI ou VI.1.

prescribed rate on the excess, computed for the period during which that excess is outstanding.

[40] The Court notes that the term "taxation year" is used in this subsection to refer to an individual year of assessment; therefore, a taxpayer who owes more taxes than he or she has paid for two consecutive taxation years will owe interest in respect of each year of delinquency.

[41] The interest imposed by subsection 161(1) of the ITA is compounded pursuant to subsection 248(11) of the ITA, which states:

<u>Compound interest</u>	<u>Intérêts composés</u>
(11) Interest computed at a prescribed rate … shall be compounded daily and, where interest is computed on an amount under any of those provisions and is unpaid or unapplied on the day it would, but for this subsection, have ceased to be computed under that provision, interest at the prescribed rate shall be computed and compounded daily on the unpaid or unapplied interest from that day to the day it is paid or applied and shall be paid or applied as would be the case if interest had continued to be computed under that provision after that day.	(11) Les intérêts calculés au taux prescrit, [...] sont composés quotidiennement. Dans le cas où des intérêts calculés sur une somme en application d'une de ces dispositions sont impayés ou non imputés le jour où, sans le présent paragraphe, ils cesseraient d'être ainsi calculés, des intérêts au taux prescrit sont calculés et composés quotidiennement sur les intérêts impayés ou non imputés pour la période commençant le lendemain de ce jour et se terminant le jour où ces derniers sont payés ou imputés, et sont payés ou imputés comme ils le seraient s'ils continuaient à être ainsi calculés après ce jour.

[42] It is noted that Parliament chose to use the same term, "taxation year", in subsection 161(1) of the ITA, which imposes interest if a taxpayer owes additional taxes from a "taxation year", and subsection 220(3.1) of the ITA, but not in subsection 248(11) of the ITA, which dictates that interest on an outstanding balance is compounded daily and can be paid back at any time.

Other uses of "taxation year"

[43] In addition to the above provisions, which are specific to the issue at bar, there are other uses of the term "taxation year" which the Court finds instructive. For example, section 3 states that a taxpayer's income must be calculated for each "taxation year":

Income for taxation year	Revenu pour l'année d'imposition
3. The income of a taxpayer for a taxation year for the purposes of this Part is the taxpayer's income for the year determined by the following rules	**3.** Pour déterminer le revenu d'un contribuable pour une année d'imposition, pour l'application de la présente partie, les calculs suivants sont à effectuer
…	[...]

[44] Subsection 150(1) of the ITA requires taxpayers to file tax returns for each "taxation year":

Filing returns of income — general rule	Déclarations — règle générale
150. (1) Subject to subsection (1.1), a return of income that is in prescribed form and that contains prescribed information shall be filed with the Minister, without notice or demand for the return, for each taxation year of a taxpayer,	**150.** (1) Sous réserve du paragraphe (1.1), une déclaration de revenu sur le formulaire prescrit et contenant les renseignements prescrits doit être présentée au ministre, sans avis ni mise en demeure, pour chaque année d'imposition

	d'un contribuable :
…	[...]

[45] It is also significant that subsection 220(3.1) of the ITA refers to "taxation year" and then parenthetically states, "(or in the case of a partnership, a fiscal period of the partnership)". Subsection 96(1) of the ITA sheds light on the purpose behind this inclusion. Paragraph 96(1)(*b*) of the ITA states:

General Rules	Règles générales
96. (1) Where a taxpayer is a member of a partnership, the taxpayer's income, non-capital loss, net capital loss, restricted farm loss and farm loss, if any, for a taxation year, or the taxpayer's taxable income earned in Canada for a taxation year, as the case may be, shall be computed as if	**96.** (1) Lorsqu'un contribuable est un associé d'une société de personnes, son revenu, le montant de sa perte autre qu'une perte en capital, de sa perte en capital nette, de sa perte agricole restreinte et de sa perte agricole, pour une année d'imposition, ou son revenu imposable gagné au Canada pour une année d'imposition, selon le cas, est calculé comme si :
…	[...]
(*b*) the taxation year of the partnership were its fiscal period; …	*b*) l'année d'imposition de la société de personnes correspondait à son exercice; [...]

[46] Paragraph 96(1)(*b*) of the ITA shows that a "taxation year" can differ depending on the type of taxpayer being assessed. Paragraph 96(1)(*b*) of the ITA deems the taxation year of a partnership to be its fiscal period, meaning the partnership is to file a tax return for its fiscal period. The reference in subsection 220(3.1) of the ITA to the fiscal period of a partnership is an indication that

Parliament intended subsection 220(3.1) of the ITA to refer to the period of assessment, otherwise, Parliament would not have included this reference to the particular period of assessment of partnerships.

[47] It follows from the fact that income must be computed for a "taxation year" and a tax return must be filed for each "taxation year" and that different types of taxpayers file their returns based on different "taxation years" that there is special significance to the use of the term "taxation year" in subsection 220(3.1) of the ITA.

Other judicial pronouncements on the term "taxation year"

[48] The term "taxation year" was interpreted by Justice Yvon Pinard in *Montgomery* (FC), above, at paragraph 11, when he ruled "a 'taxation year' refers to a year, fiscal or calendar, for which tax is computed. Tax returns cover this period. In using the term 'the 1985 and subsequent taxation years' … Parliament must be referring to periods of time for which tax returns are submitted".

[49] More recently, the Federal Court interpreted the amended subsection 220(3.1) of the ITA in the case of *Telfer* (FC), above, at paragraph 25. In that case, the court rejected the applicant's argument that an application for interest relief should be assessed based on the date the objection was filed, not ten years after the date of assessment giving rise to the interest. The court held that "the limitation in subsection 220(3.1) is expressly laid out to restrict the Minister's discretion on the

waiver or cancellation of interest and penalties to the ten calendar years after the end of the relevant taxation year" (*Telfer* (FC), above, at para. 26).

[50] The ruling in *Telfer* (FC), above, was partially overturned in *Telfer* (FCA), above, but the ruling of the Federal Court of Appeal did not overturn the Federal Court's statements regarding subsection 220(3.1) of the ITA. The judgment of Justice John Maxwell Evans states the appellant did not allege "that the Minister committed an error of law by misinterpreting subsection 220(3.1)", but instead that the appeal was based on the argument that the Minister's decision lacked the requisite degree of "justification, transparency and intelligibility" required to be upheld when examined under the standard of reasonableness (*Telfer* (FCA), above, at para. 28. In respect of the meaning of "taxation year", an analogy is drawn to the recent Federal Court of Appeal decision, penned by Justice Marc Noël, in *Nicholls v. Canada (Revenue Agency) and M.N.R.)*, 2010 FCA 30, in respect of paras. 5, 6 and 7).

X. <u>Conclusion</u>

[51] Subsequent to the very well prepared materials and arguments of the parties, it is the Court's conclusion that Justice Yvon Pinard's definition in *Montgomery*, above, (which was affirmed by the Federal Court of Appeal) continues to be the correct interpretation of the phrase "taxation year" in the context of the taxpayer relief provisions. The Court is also in agreement with the ruling in *Telfer*, above, that the time limit in subsection 220 (3.1) of the ITA is for the ten calendar years after the relevant taxation year, namely, the year of assessment.

[52] It is the Court's conclusion that the Applicant's construction of subsection 220(3.1) of the ITA would reduce the term "taxation year" to a simple demarcation of time; however, a reading of the ITA as a whole shows that it is a phrase with a specific and meaningful definition.

[53] For all the above reasons, the application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that

1) the application for judicial review be dismissed;

2) there be no costs as it is a matter of general importance.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-826-08
STYLE OF CAUSE:	RONNIE LOUIS BOZZER v. HER MAJESTY THE QUEEN IN RIGHT OF CANADA (as represented by the Minister of National Revenue in his capacity as Minister responsible for the *Income Tax Act*) and CANADA REVENUE AGENCY and THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	February 2, 2010
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APPEARANCES:

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