

Docket: 2006-1524(CPP)

BETWEEN:

4528957 MANITOBA LTD.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

---

Motion heard on January 30, 2007, at Winnipeg, Manitoba.

Before: The Honourable Justice C.H. McArthur

Appearances:

For the Appellant:	Carlos Guevara
Counsel for the Respondent:	Julien Bédard

---

**ORDER**

Upon the motion by the Respondent concerning the taxation period starting December 31, 2003, and ending September 30, 2004, and seeking to obtain:

- (a) dismissal of the Appeal;
- (b) alternatively, a period of 60 days to file the Minister's Reply to the Notice of Appeal;
- (c) any reparation requested by the Respondent or that the Tax Court of Canada (the "Court") finds appropriate and just in the circumstances;

And upon filing of the affidavit by René Davidson and the allegations of the parties;

The Court dismisses the motion in accordance with the attached Reasons for Order.

Counsel for the Respondent has 60 days to file the Minister's Reply to the Notice of Appeal.

Signed at Ottawa, Canada, this 24th day of July 2007.

“C.H. McArthur”

---

McArthur J.

Translation certified true  
on this 28th day of August 2007.  
Gibson Boyd, Translator

Citation: 2007TCC432  
Date: 20070724  
Docket: 2006-1524(CPP)

BETWEEN:

4528957 MANITOBA LTD.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

### **REASONS FOR ORDER**

McArthur J.

#### **Facts**

[1] On February 11, 2005, the Minister of National Revenue (the “Minister”) mailed a reassessment of tax to be paid by the Appellant under subsection 153(1) of the *Income Tax Act* (the “Act”) for the taxation period starting December 31, 2003, and ending September 30, 2004.

[2] On March 22, 2005, the Appellant filed a notice of objection to this assessment.

[3] On January 16, 2006, the Minister issued a Notice of Confirmation, which was delivered by mail to 264 Eugenie St., Winnipeg, Manitoba, R2H 0Y4.

[4] On April 30, 2006, the Appellant filed with the Court a Notice of Appeal pursuant to the Informal Procedure. The registry officer accepted the Notice of Appeal filed on April 30, 2006, because it was received in the prescribed form.

[5] On July 27, 2006, the Respondent wrote to the Court to indicate that the Appellant had chosen the Informal Procedure for questions concerning the *Canada Pension Plan* (the “Plan”), but that there was no issue pertaining to that statute. He therefore asked, with the Appellant’s consent, for an extension of the time limit for replying to the Notice of Appeal in order to allow the Appellant to take the necessary measures so that its appeal would be heard under the appropriate procedure, i.e. the informal procedure, for tax matters.

[6] On August 4, 2006, the Court informed the Appellant that, if it wished to be heard under the informal procedure for a tax matter, it would have to advise the Court.

[7] On August 8, 2006, the Appellant wrote to the Court indicating that it did not agree with counsel for the Respondent that it was a tax dispute, stating rather that it was a dispute pertaining to a decision rendered under the Plan.

[8] On August 9, 2006, the Court replied that no changes would be made to the Appellant’s appeals.

[9] On October 19, 2006, the Respondent sent a letter to the Appellant, repeating that the appeals filed by the Appellant had deficiencies and that it had to correct them, failing which, the Respondent would ask the Court to dismiss these appeals.

[10] On October 27, 2006, the Respondent filed his notice of motion.

[11] In an undated letter referring to the Court’s letter of August 4, 2006, the Appellant asked the Court for an extension of time pursuant to subsection 18.1(1) of the Rules. Schedule 18.1. was attached to the letter, pursuant to the Rules. The Appellant indicated that it had always intended to appeal the Minister’s decision.<sup>1</sup>

[12] The date indicated on Schedule 18.1 signed by the Appellant is November 13, 2006, and it was received by the Court registry on November 20, 2006.

### **Reasons for the motion**

[13] Counsel for the Respondent submitted that:

---

<sup>1</sup> See undated letter addressed to Lucie Pilon of the Court.

- (a) The Court does not have jurisdiction on the subject of the appeal;
- (b) An appeal cannot be made under subsection 28(1) of the Plan because the Minister did not render a decision under section 27.1 of the Plan.

## **Provisions**

### **Canada Pension Plan**

#### **Appeal of assessments**

**27.1** An employer who has been assessed under section 22 may appeal to the Minister for a reconsideration of the assessment, either as to whether an amount should be assessed as payable or as to the amount assessed, within 90 days after being notified of the assessment.

#### **Appeal to the Tax Court of Canada**

**28. (1)** A person affected by a decision on an appeal to the Minister under section 27 or 27.1, or the person's representative, may, within 90 days after the decision is communicated to the person, or within any longer time that the Tax Court of Canada on application made to it within 90 days after the expiration of those 90 days allows, appeal from the decision to that Court in accordance with the *Tax Court of Canada Act* and the applicable rules of court made thereunder.

### **Tax Court of Canada Rules (Informal Procedure)**

18.1 (1) An application for an order extending the time within which an appeal may be instituted may be in the form set out in Schedule 18.1.

(2) An application under subsection (1) shall be made by filing with the Registrar, in the same manner as appeals are filed under.

(3) No application shall be granted under this section to a person unless:

(a) the application is made within one year after the expiration of 90 days after the day on which the notice was mailed to the person informing the person that the Minister has confirmed the assessment or has reassessed; and;

(b) the person demonstrates that:

(i) within the 90-day period specified in paragraph (a) the person

- (A) was unable to act or to instruct another to act in the person's name, or
- (B) 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.

**Income Tax Act**

**167. (1) Extension of time to appeal** -- Where an appeal to the Tax Court of Canada has not been instituted by a taxpayer under section 169 within the time limited by that section for doing so, the taxpayer may make an application to the Court for an order extending the time within which the 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) Contents of application** -- An application made under subsection 167(1) shall set out the reasons why the appeal was not instituted within the time limited by section 169 for doing so.

**(3) How application made** -- An application made under subsection (1) shall be made by filing in the Registry of the Tax Court of Canada, 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) Copy to Deputy Attorney General** -- The Tax Court of Canada shall send a copy of each application made under this section to the office of the Deputy Attorney General of Canada.

**(5) When order to be made** No order shall be made under this section unless

(a) the application is made within one year after the expiration of the time limited by section 169 for appealing; and

(b) the taxpayer demonstrates that

(i) within the time otherwise limited by section 169 for appealing the taxpayer,

(A) was unable to act or to instruct another to act in the taxpayer's name, or

(B) 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, and

(iv) there are reasonable grounds for the 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 mailed to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

## **Analysis**

[14] René Davidson works as a designated bilingual officer for the Winnipeg Tax Services Office of the Canada Revenue Agency (the “Agency”). He indicated in his affidavit that he was unable to confirm that the Appellant had served the Minister with a notice of objection concerning the assessment under section 27.1 of the Plan or that the Minister had rendered a decision under section 27.2 of the Plan concerning the assessment.

[15] The Notice of Confirmation by the Minister was sent to the Appellant on January 16, 2006.<sup>2</sup> In the letter reproduced below, John Wiebe confirmed the Minister’s confirmation:

[TRANSLATION]

...

January 16, 2006

Dear Sir,

Subject: Notice of objection  
Evaluation of source deductions as of November 1, 2004

Please find attached the Notice of Confirmation by the Minister, which confirms that the evaluation of source deductions as of November 1, 2004, was duly established in accordance with the *Income Tax Act*.

We have not received the required payroll documents for the periods of 2003 and 2004 as determined on November 1, 2004.  
You have not justified your claims.

If you wish to take other action with regard to this, you must file an appeal with the Tax Court of Canada. Instructions for filing an appeal are attached hereto.

[16] Pursuant to subsection 169(1) of the Act, the Appellant had 90 days after January 16, 2006, to file an appeal with the Court and, therefore, the last day to do so was April 18, 2006.

[17] The Appellant filed a Notice of Appeal with the Court registry on April 30, 2006.

[18] The reason why the Court accepted the filing of the Notice of Appeal after April 18, 2006, is that it was received in the prescribed form. The registry officer therefore accepted the filing of this document.<sup>3</sup>

[19] In his letter of July 27, 2006, addressed to the Court, counsel for the Respondent invited the Appellant to rectify the defects in its Notice of Appeal. In particular, counsel for the Respondent consented to the Appellant presenting an application to the Court in the year following expiry of the time set out in section 169 to file an appeal. The letter is reproduced below:

[TRANSLATION]

July 27, 2006

...

---

<sup>2</sup> Letter of January 16, 2006, from John F. Wiebe of the Canada Customs and Revenue Agency.

<sup>3</sup> See the memorandum of May 25, 2006, signed by François Cournoyer, Registry Officer.



Rather than set aside these appeals, which have procedural defects, the Respondent asks this Court to grant an extension of time to file its Reply to Notice of Appeal in order to allow the Appellant to ask the Court for an amendment to matter 957 so that it can be heard under the appropriate procedure. The Appellant could then make an application for extension of time to file these two appeals.

The Respondent will not object to such an application in the matter 957 since the application will have been filed within the year following expiry of the time prescribed under section 169 to file an appeal. However, the Respondent cannot consent to an application for extension of the time in the Guevara matter since more than one year has passed since the expiry of this same time limit.

[20] On August 4, 2006, the director of the Registry Services Division informed the Appellant of the available options to obtain an extension of the time within which the appeal could be filed under subsection 18.1(1) of the *Tax Court of Canada Rules (Informal Procedure)* (the “Rules”). The letter is reproduced below:

[TRANSLATION]

August 4, 2006

Carlos Guevara  
4528957 Manitoba Ltd.  
264 Eugenie Street  
St-Boniface, Manitoba R2H 0Y4

OBJET: 4528957 Manitoba Ltd.  
v. the Minister of National Revenue  
2006-1524(CPP)

Dear Sir:

This letter is concerning the above-mentioned appeal to the Tax Court of Canada filed on April 30, 2006. In response to the letter of Mr. Bédard of July 27, 2006 (copy attached), the above-mentioned appeal should have been filed under the *Income Tax Act* (Informal Procedure). If you wish to be heard under the informal procedure, you must notify the Tax Court of Canada.

The Notice of Confirmation by the Minister was sent on January 16, 2006, Please note that the taxpayer has 90 days after the mailing date of the Notice of

Confirmation from Revenue Canada to institute an appeal before the Tax Court of Canada. Therefore, the last day to institute an appeal before this Court was April 18, 2006. The received date of the appeal was April 30, 2006.

However, under subsection 18.1(1) of the *Tax Court of Canada Rules (Informal Procedure)* it is still possible to apply to the Court for an extension of the time within which the Notice of Appeal can be filed. Please find attached, for information, a copy of the *Tax Court of Canada Rules*.

Since November 1, 1998, a person wishing to appeal to the Tax Court of Canada decisions concerning income tax and the GST under the informal procedure must pay a filing fee of \$100.00.

The Court cannot proceed with your appeal as long as the filing fee has not been received. If you wish to continue with your appeal, please submit a cheque or money order to the order of the Receiver General for Canada in the next 30 days.

The Court may waive the filing fee if you so request in your Notice of Appeal and if the Court is convinced that paying these fees would cause you serious financial difficulties.

...

[21] In this case, the Appellant had until September 4, 2006, to pay the fee in accordance with the letter sent by the Court on August 4, 2006.

[22] The Appellant testified that its deposit of \$100 was returned to it in the mail. The Appellant did not explain why the \$100 had been returned to it.

**Mr. GUEVARA:** [TRANSLATION] I had even deposited the \$100 requested for the normal procedure. Unfortunately, the \$100 was returned in the mail.

...

[23] In an undated letter referring to the Court's letter of August 4, 2006, the Appellant applied to the Court for an extension of time under subsection 18.1(1) of the Rules. It attached Schedule 18.1 to the letter pursuant to the Rules and indicated that it had always intended to appeal the Minister's decision.<sup>4</sup>

[24] The date indicated on Schedule 18.1 signed by the Appellant is November 13, 2006, and the Schedule was received by the Court registry on November 20, 2006.

---

<sup>4</sup> See the undated letter addressed to Lucie Pilon of the Court.

[25] In my opinion, the Appellant meets the requirements of subsection 18.1(1) of the Rules because it filed the application in accordance with the form set out in Schedule 18.1.

[26] The Appellant also meets the requirements of paragraph 18.1(3)(a). The mailing date of the Notice of Confirmation was January 16, 2006. The time limit of 90 days expired on April 16, 2006, and the Appellant filed the application on November 20, 2006, i.e. within the year following expiry of the 90 days after the mailing date of the Notice of Confirmation.

[27] In addition, I believe that the Appellant meets the criteria of provision 18.1(3)(b)(i)(B) because it filed a Notice of Appeal on April 30, 2006, and confirmed its intention to appeal the decision in its letter addressed to the Court, as indicated in paragraph 21 of these Reasons.

[28] Finally, in my opinion, the Appellant meets the conditions of subparagraphs 18.1(3)(b)(ii) and 18.1(3)(b)(iii). Subparagraph 18.1(3)(b)(ii) requires that I consider the reasons indicated in the application and the circumstances of the case. In its letter of August 8, 2006, the Appellant explained why its Notice of Appeal had been filed on April 30, 2006. It explained that there had been confusion concerning the date when the Notice of Confirmation was mailed by the Minister. The Appellant's position is that the Notice of Confirmation was filed on February 2, 2006. Therefore, by filing a notice of appeal on April 30, 2006, the Appellant was on time.<sup>5</sup>

[29] At the hearing, counsel for the Respondent confirmed that there had been problems with Mr. Guevara receiving the Notice of Confirmation:

**Mr. Bédard:** [TRANSLATION] . . . Mr. Guevara indicated that he had not received it following January 16. So I checked the files and what happened is that the envelope had the confirmation, it was sent to Mr. Guevara.

I assume that he was not at home, so a note was left for him to pick up the envelope at the post office. The envelope was not picked up and was sent back to the Agency. So, we see the confirmation that Mr. Guevara provided, with the stamp "February 2, 2006". And that was sent by registered mail, I believe. This time, Mr. Guevara received the confirmation . . .

[30] Thus, the Appellant also meets the conditions of subparagraph 18.1(3)(b)(iii) of the Rules. In this case, the Appellant is acting on its own behalf. I will grant the Appellant the benefit of the doubt because, after the Court contacted it on August 4,

---

<sup>5</sup> See letter of August 8, 2006, addressed to Lucie Pilon of the Court.

2006, to explain the options available to it, the Appellant filed its application on November 20, 2006, in accordance with subsection 18.1(1) of the Rules.

[31] Finally, I am of the opinion that the appeal filed against the assessment is based on reasonable grounds in accordance with subparagraph 18.1(3)(b)(iv) of the Rules.

[32] I believe that the Appellant meets the conditions of subsection 18.1(3) of the Rules and its application is therefore granted.

[33] Section 169 of the Act provides that an appeal must be filed within 90 days following the date of the Notice of Confirmation.

[34] The Notice of Confirmation for the period at issue in this case was dated January 16, 2006. Therefore, the Appellant should have filed a Notice of Appeal with the Tax Court of Canada before April 18, 2006. The Appellant did not meet this deadline. In fact, it did not file the Notice of Appeal with the Court before April 30, 2006.

[35] Under subsection 167(1) of the Act, the Appellant could have filed an application for extension of time to institute an appeal if it had met all the requirements set out in this subsection. The Appellant had to make its application in the year following expiry of the time limit prescribed in section 169 of the Act. The Appellant therefore had to file its application for extension of time with the Tax Court of Canada no later than April 16, 2007. At the hearing of January 30, 2007, the Appellant had not presented anything to the Court concerning the requirements set out in section 167 of the Act. Considering that the decision relating to this motion was not received before June 2007, in my opinion, the Appellant could be penalized if the motion were allowed under paragraph 167(5)(a) of the Act.

[36] Furthermore, I am of the opinion that the Appellant could meet the conditions set out under paragraph 167(5)(b) of the Act.

[37] The motion, accordingly, is dismissed and the Appellant may make an application to the Court for extension of time in accordance with subsections 167(1) to 167(4) of the Act.

[38] Counsel for the Respondent has 60 days to file a Reply to the Notice of Appeal.

Signed at Ottawa, Canada, this 24th day of July 2007.

“C.H. McArthur”

---

McArthur J.

Translation certified true  
on this 28th day of August 2007.  
Gibson Boyd, Translator

CITATION: 2007TCC432  
COURT FILE NUMBER: 2006-1524(CPP)  
STYLE OF CAUSE: 4528957 MANITOBA LTD. AND  
THE MINISTER OF NATIONAL  
REVENUE

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: January 30, 2007

REASONS FOR ORDER BY: The Honourable Justice C.H. McArthur

DATE OF ORDER: July 24, 2007

APPEARANCES:

For the Appellant: Carlos Guevara  
Counsel for the Respondent: Julien Bédard

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada