Docket: 2012-3416(GST)APP

BETWEEN:

JACQUES BOLDUC,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Application for extension of time heard on January 25, 2013,
in Québec, Quebec.

Before: The Honourable Justice B. Paris

Appearances:

For the applicant:	The applicant himself
Counsel for the respondent:	Pier-Olivier Julien

ORDER

The application for extension of time filed pursuant to the *Excise Tax Act* is granted, in accordance with the attached Reasons for Order.

Signed at Ottawa, Canada, this 6th day of March 2013.

"B. Paris"

Paris J.

Translation certified true
on this 10th day of April 2013.
Elizabeth Tan, Translator

Citation: 2013 TCC 77
Date: 20130306
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REASONS FOR ORDER

Paris J.

[1] This is an application for extension of time to object to a reassessment made November 18, 2010, pursuant to the *Excise Tax Act* (the ETA).

[2] This case is unusual because of the discrepancy between the English and French wording of paragraph 304(5)(*b*) of the ETA, which lists the conditions an applicant must meet in order to obtain an extension of time to object. The French version states:

> (5) Acceptation de la demande — Il n'est fait droit à la demande que si les conditions suivantes sont réunies :
>
> > *a*) la demande a été présentée en application du paragraphe 303(1) dans l'année suivant l'expiration du délai par ailleurs imparti pour faire opposition ou présenter la requête en application du paragraphe 274(6);
> >
> > *b*) la personne démontre ce qui suit :

> (i) dans le délai d'opposition par ailleurs imparti, elle n'a pu ni agir ni mandater quelqu'un pour agir en son nom, ou avait véritablement l'intention de faire opposition à la cotisation ou de présenter la requête,
>
> (ii) compte tenu des raisons indiquées dans la demande et des circonstances de l'espèce, il est juste et équitable de faire droit à la demande,
>
> (iii) la demande a été présentée dès que les circonstances le permettaient,
>
> (iv) l'opposition est raisonnablement fondée.

[3] The English version states:

> (5) When application to be granted — No application shall be granted under this section unless
>
> > (*a*) the application was made under subsection 303(1) within one year after the expiration of the time otherwise limited by this Part for objecting or making a request under subsection 274(6), as the case may be; and
> >
> > (*b*) the person demonstrates that
> >
> > > (i) within the time otherwise limited by this Act for objecting,
> > >
> > > > (A) the person was unable to act or to give a mandate to act in the person's name, or
> > > >
> > > > (B) the person had a *bona fide* intention to object to the assessment or make the request,
> > >
> > > (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, and
> > >
> > > (iii) the application was made under subsection 303(1) as soon as circumstances permitted it to be made.

[4] The French version of paragraph 304(5)(*b*) includes a condition in subparagraph (iv) that is not found in the English version. This is important because the respondent's main argument in this case is that the applicant did not demonstrate that there were reasonable grounds for his objection.

[5] This discrepancy only became clear to me when I began drafting these reasons. The parties did not raise the issue and I believe they were not aware of it. Since the procedure to resolve the interpretive issue this discrepancy raises is clear, I did not ask the parties to submit arguments on the subject.

[6] In *Canada v. Daoust*,[1] the Supreme Court of Canada explained the procedure for interpreting bilingual statutes:

> **27** There is, therefore, a specific procedure to be followed when interpreting bilingual statutes. The first step is to determine whether there is discordance. If the two versions are irreconcilable, we must rely on other principles: see Côté, *supra*, at p. 327. A purposive and contextual approach is favoured: see, for example, *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, 2002 SCC 42, at para. 26; *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84, 2002 SCC 3, at para. 27; *R. v. Sharpe*, [2001] 1 S.C.R. 45, 2001 SCC 2, at para. 33.
>
> **28** We must determine whether there is an ambiguity, that is, whether one or both versions of the statute are "reasonably capable of more than one meaning": *Bell ExpressVu*, *supra*, at para. 29. If there is an ambiguity in one version but not the other, the two versions must be reconciled, that is, we must look for the meaning that is common to both versions: Côté, *supra*, at p. 327. The common meaning is the version that is plain and not ambiguous: Côté, *supra*, at p. 327; see *Goodyear Tire and Rubber Co. of Canada v. T. Eaton Co.*, [1956] S.C.R. 610, at p. 614; *Kwiatkowsky v. Minister of Employment and Immigration*, [1982] 2 S.C.R. 856, at p. 863.
>
> **29** If neither version is ambiguous, or if they both are, the common meaning is normally the narrower version: *Gravel v. City of St-Léonard*, [1978] 1 S.C.R. 660, at p. 669; *Pfizer Co. v. Deputy Minister of National Revenue For Customs and Excise*, [1977] 1 S.C.R. 456, at pp. 464-65. Professor Côté illustrates this point as follows, at p. 327:
>
> > There is a third possibility: one version may have a broader meaning than another, in which case the shared meaning is the more narrow of the two.
>
> **30** The second step is to determine whether the common or dominant meaning is, according to the ordinary rules of statutory interpretation, consistent with Parliament's intent: Côté, *supra*, at pp. 328-329. At this stage, the words of Lamer J. in *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038, at p. 1071, are instructive:

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[1] 2004 SCC 6, [2004] 1 S.C.R. 217.

> First of all, therefore, these two versions have to be reconciled if possible. To do this, an attempt must be made to get from the two versions of the provision the meaning common to them both and ascertain whether this appears to be consistent with the purpose and general scheme of the Code.
>
> **31** Finally, we must also bear in mind that some principles of interpretation may only be applied in cases where there is an ambiguity in an enactment. As Iacobucci J. wrote in *Bell ExpressVu*, *supra*, at para. 28: "Other principles of interpretation — such as the strict construction of penal statutes and the '*Charter* values' presumption — only receive application where there is ambiguity as to the meaning of a provision."

[7] In this case the conditions in both versions are clear and unambiguous. As a result, according to paragraph 29 of *Daoust*, *supra,* it is the more restrictive version that applies. Obviously, the English version of paragraph 304(5)(*b*) has the more narrow meaning.

[8] As for the second step in interpreting paragraph 304(5)(*b*), in my opinion, the English version is consistent with Parliament's intent. In the parallel provision regarding applications for extensions of time to object addressed to the Minister of National Revenue, section 303 of the ETA, the conditions for granting the application listed at paragraph 303(7)(*b*) are all but identical to the three conditions listed at subparagraphs 304(5)(*b*)(i), (ii) and (iii) in both the English and French versions of subsection 304(5). Moreover, in the English and French versions of sections 166.1 and 166.2 of the *Income Tax Act*, (the ITA) on applications for extensions of time to object to an assessment made pursuant to that Act addressed to the Minister (section 166.1) or to the Tax Court of Canada (section 166.2), the conditions for granting the application are the same as those found at subparagraphs 304(5)(*b*)(i), (ii) and (iii) and paragraph 303(7)(*b*) of the ETA. In other words, the fourth condition, that the objection must have reasonable grounds, is not found in any of the parallel provisions of the ETA or the ITA. This leads me to conclude that Parliament did not intend to add this fourth condition for cases of extensions of time to object addressed to the Court.

[9] I also note that such a condition appears in both English and French versions of the provisions regarding applications for extension of time to file a notice of appeal to the Court, namely subsections 305(5) of the ETA and 167(5) of the ITA; both versions of these provisions are consistent on this issue.

[10] For these reasons, I find that the applicant is not required to demonstrate reasonable grounds for his objection.

[11] Moreover, I am convinced that the applicant meets the other conditions at subsection 304(5). The time for objecting to an assessment made pursuant to the ETA is 90 days. The applicant testified at the hearing of his application that he could not file his objection in the 90 days following the issuance of the notice of assessment (deadline that expired on February 15, 2012) because he travelled frequently for his work and was only home on weekends. At some times during the year, he could be away from home for periods of up to two weeks. He said he took care of the paperwork related to his job on weekends, but it was difficult to stay up to date because of his workload. However, he always had the intention to object to the assessment. This intention is sufficient to meet the condition at subparagraph 304(5)(*b*)(i). I also accept that the application addressed to the Court, submitted 31 days after the Minister's refusal to allow an extension of time, was submitted as soon as circumstances allowed. As such, the applicant met the condition at subparagraph 304(5)(*b*)(iii). In the circumstances, I also find that it would be just and equitable to grant the application.

[12] For these reasons, the application for extension of time is allowed.

Signed at Ottawa, Canada, this 6th day of March 2013.

"B. Paris"

Paris J.

Translation certified true
on this 10th day of April 2013.
Elizabeth Tan, Translator

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COURT FILE NO.:	2012-3416(GST)APP
STYLE OF CAUSE:	JACQUES BOLDUC AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Québec, Quebec
DATE OF HEARING:	January 25, 2013
REASONS FOR JUDGMENT BY:	The Honourable Justice B. Paris
DATE OF JUDGMENT:	March 6, 2013

APPEARANCES:

For the applicant:	The applicant himself
Counsel for the respondent:	Pier-Olivier Julien

COUNSEL OF RECORD:

For the applicant:

Name:

Firm:

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