Docket: 2016-2397(IT)G

BETWEEN:

GREGORY P. KING,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on June 4, 2018 at Toronto, Ontario.

Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Tanis Halpape

ORDER

UPON the respondent filing a motion for an order to quash the appellant's appeal for the 1997, 1999, 2000, 2001, 2004, 2008 and 2010 taxation years and to strike portions of the appellant's Fresh Notice of Appeal;

AND UPON hearing arguments from both parties and considering the documentation submitted;

THIS COURT ORDERS THAT:

(a) the purported appeals in respect of the 1997, 1999, 2000, 2001, 2004, 2008 and 2010 taxation years are quashed pursuant to paragraph 53(3)(b) of the *Tax Court of Canada Rules* (*General Procedure*) (the "*Rules*");

(b) the following pleadings are struck from the Fresh Notice of Appeal pursuant to paragraph 53(1)(d) of the *Rules*:

i. on the first page, the inclusion of the 1999 to 2012 taxation years in the phrase "1995 to 2012 inclusive";
ii. paragraphs 13, 31 to 34, 37 to 41, 43 to 51, 54, 55 and 61 to 74;
iii. in paragraph 53, the words "Notwithstanding the taxpayer's request for an extension of time to present evidence";
iv. on page 13, paragraph 1; and
v. on page 14, paragraph 1(a).

(c) the appellant is denied leave to file a further amended pleading to his Fresh Notice of Appeal;

(d) the respondent shall file and serve a reply to the pleadings that have not been struck from the Fresh Notice of Appeal by March 11, 2019 at the latest; and

(e) costs in the amount of $1,500 are awarded to the respondent and are to be paid by February 11, 2019 at the latest.

Signed at Montreal, Quebec, this 9th day of January 2019.

"Réal Favreau"

Favreau J.

Citation: 2019 TCC 2
Date: 20190109
Docket: 2016-2397(IT)G

BETWEEN:

GREGORY P. KING,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Favreau J.

[1] The respondent brought a motion (the "Motion") to quash the appellant's appeals in respect of the 1997, 1999, 2000, 2001, 2004, 2008 and 2010 taxation years pursuant to paragraph 53(3)(b) of the *Tax Court of Canada Rules* (*General Procedure*) (the "*Rules*") and to strike portions of the Fresh Notice of Appeal filed on December 13, 2017 pursuant to paragraph 53(1)(d) of the *Rules*. The impugned pleadings are reproduced in Appendix A of these reasons.

[2] The grounds for the motion are:

- a condition precedent to instituting an appeal for the 1997, 1999, 2000, 2001, 2004, 2008 and 2010 taxation years has not been met in that notices of objection were not served on the Minister of National Revenue (the "Minister") for any of those years;
- the Fresh Notice of Appeal discloses no reasonable grounds of appeal in respect of any of the 1999 to 2012 taxation years in that no allegations of fact are made or issues raised in the Fresh Notice of Appeal that challenge the correctness or validity of an assessment or reassessment for any of those years; and

- the impugned paragraphs disclose no reasonable grounds of appeal in that they do not challenge the correctness or validity of any assessment or reassessment and include, among other things, allegations concerning the reassessment of other taxpayers.

I. Motion to Quash the Appeals in Respect of the 1997, 1999, 2000, 2001, 2004, 2008 and 2010 Taxation Years

[3] In support of the Motion to quash the purported appeals in respect of the 1997, 1999, 2000, 2001, 2004, 2008 and 2010 taxation years, the respondent filed an affidavit of Mr. Robert Prodanuk, an appeals officer of the Canada Revenue Agency (the "CRA") on November 21, 2016.

[4] Based on a review of the CRA's database as it relates to the appellant's 1995 to 2012 taxation years, the assessments or reassessments that were issued and mailed to the appellant in respect of the said years were as follows:

1995 notice of reassessment May 4, 2001
1996 notice of reassessment May 4, 2001
1997 notice of reassessment May 4, 2001
1998 notice of reassessment May 4, 2001
1999 notice of assessment June 29, 2000
2000 notice of assessment September 17, 2001
2001 notice of reassessment December 2, 2002
2002 notice of assessment July 24, 2003
2003 notice of assessment October 25, 2004
2004 notice of assessment August 8, 2005
2005 notice of assessment October 17, 2006
2006 notice of assessment April 17, 2008
2007 notice of assessment September 2, 2008
2008 notice of assessment September 8, 2009
2009 notice of assessment July 6, 2010
2010 notice of assessment August 29, 2011
2011 notice of assessment August 2, 2012
notice of reassessment November 26, 2012
2012 notice of assessment August 12, 2013

[5] An examination of the CRA's database also revealed that:

(a) in respect of the 1997, 1999, 2000, 2001, 2004, 2008 and 2010 taxation years, there were no record that the Minister had received a notice of objection for any of those years; and
(b) in respect of the 1995, 1996, 1998, 2002, 2003, 2005, 2006, 2007, 2009, 2011 and 2012 taxation years, there were records that the Minister had received a notice of objection for each of those years on or about the following dates:

1995	July 19, 2001
1996	July 19, 2001
1998	July 19, 2001
2002	October 17, 2003
2003	May 27, 2005
2005	April 18, 2007
2006	June 10, 2008
2007	June 8, 2009
2009	June 10, 2010
2011	June 10, 2013
2012	April 28, 2014

[6] Mr. Robert Prodanuk testified at the hearing and he was cross-examined by the appellant concerning his affidavit. Mr. Prodanuk stated that the affidavit was prepared by somebody else and he signed it after reviewing the CRA's computerized database. He further added that he did not personally consult the appellant's actual paper files which had not been destroyed yet because the said years were still under objection. The appellant questioned the reliability of the database system used by the CRA and referred to a correspondence from CRA dated February 22, 2016 in which three years under appeal were missing (i.e. 2003, 2009 and 2012). In any event, the appellant did not contest that in respect of the 1997, 1999 and 2000 taxation years, he did not file a notice of objection and that in respect of the 2004 and 2008 taxation years, he was not sure that he did actually file a notice of objection.

[7] Pursuant to subsection 169(1) of the *Income Tax Act*, R.S.C. 1985 c. 1 (5th supp.), as amended (the "*Act"*), a taxpayer must first file a notice of objection to an assessment or reassessment under section 165 of the *Act* before he can file an

appeal to the Tax Court of Canada. In other words, service of a notice of objection is a condition precedent to the institution of an appeal to the Tax Court of Canada. Failing to file a notice of objection to a particular assessment or reassessment will result in the taxpayer not having the right to appeal the assessment results in the taxpayer not having the right to appeal the assessment or reassessment to the Tax Court of Canada. The Federal Court of Appeal has, on many occasions, upheld this Court's determination that appeals should by quashed in cases where notices of objection have not been served on the Minister in a timely fashion (see *Bormann v. R.*, 2006 FCA 83).

[8] In this case, Mr. Robert Prodanuk stated in his affidavit that the appellant did not, at any time, serve notices of objection on the Minister in respect of his 1997, 1999, 2000, 2001, 2004, 2008 and 2010 taxation years. The appellant did not contest the absence of notices of objection in respect of the 1997, 1999 and 2000 taxation years and was not sure if notices of objection were filed in respect of the 2004 and 2008 taxation years. There is no evidence that notices of objection were actually filed by the appellant in respect of his 2001, 2004, 2008 and 2010 taxation years.

[9] In the case at bar, pursuant to subsection 165(1) of the *Act*, the appellant is out-of-time to file notices of objection in respect of the contested years and is further barred from requesting an extension of time to serve notices of objection pursuant to subsection 166.1(7) of the *Act*. Subsection 165(1) of the *Act* states that a taxpayer may object to an assessment or reassessment by serving on the Minister a notice of objection the later of the day that is one year after the taxpayer's filing due date or 90 days after the date of sending the notice of assessment or reassessment. Pursuant to subsection 166.1(7) of the *Act*, a taxpayer may apply for an extension of time to object an assessment or a reassessment but this application must be made within one year after the expiration of the time limited by the *Act*.

[10] For these reasons, the purported appeals in respect of the appellant's 1997, 1999, 2000, 2001, 2004, 2008 and 2010 are quashed pursuant to paragraph 53(3)(b) of the *Rules* on the grounds that the appellant has failed to fulfil the necessary preceding condition, that is, he did not serve on the Minister notices of objection in respect of these taxation years and therefore he does not have valid appeals before this Court pursuant to subsection 169(1) of the *Act*.

II. Motion to Strike out Parts of a Pleading

[11] Pursuant to paragraph 53(1)(d) of the *Rules*, the Court may strike out all or part of a pleading on the grounds that the pleading or other document "discloses no reasonable grounds for appeal or opposing the appeal".

[12] The Supreme Court of Canada confirmed in *Knight v. Imperial Tobacco Canada Ltd.*, [2011] 3 S.C.R. 45, the principle that a pleading or portions thereof, will only be struck if it is "plain and obvious" that the pleading discloses "no reasonable cause of action", has "no reasonable prospect of success" or has "no reasonable possibility of success". A high standard must be met. For the pleading to be struck, it must be plain and obvious that it will not succeed.

A. First page of the Fresh Notice of Appeal (the inclusion of 1999 to 2012 taxation years in the phrase "1995 to 2012 inclusive") and paragraphs 33 and 34

[13] The respondent stated that although notices of objection were filed for the 2002, 2003, 2005, 2006, 2007, 2009, 2011 and 2012 taxation years, these taxation years must be struck out because nowhere in the Fresh Notice of Appeal does the appellant challenge the validity or correctness of the assessments or reassessments of any of these years.

[14] The respondent pointed out that the appellant only referred to the basis of the reassessments for the 1995, 1996 and 1998 taxation years in his pleadings. At paragraph 29 of the Fresh Notice of Appeal under the heading "The AFS Re-assessments", the appellant makes reference to the 1995, 1996 and 1998 taxation years and states that the Minister " . . . disallowed the deduction by the taxpayer of the Partnership's losses that were allocated to the taxpayer as well as all interest expense and other carrying costs claimed by the taxpayer in connection with the acquisition of limited partnership units in the Partnership".

[15] In paragraph 33 and 34 of the Fresh Notice of Appeal, the appellant is challenging the inclusion of the penalties, instalment interest and arrears interest for the 2002, 2003, 2005, 2006, 2007, 2009, 2011 and 2012 taxation years which resulted from the deductions that were disallowed for the 1995, 1996 and 1998 taxation years and "which would not have been incurred had CCRA processed the AFS Waiver Objection".

[16] According to the respondent, the appellant is raising issues with respect to the computation of his debt which is not within the Tax Court of Canada's jurisdiction. As for the Tax Court of Canada has no jurisdiction over the computation of interest of a debt and the appellant failed to challenge the validity or correctness of any of the assessments or reassessments in respect of the 2002, 2003, 2005, 2006, 2007, 2009, 2011 and 2012 taxation years, the respondent states that the reference to these taxation years on the first page of the Fresh Notice of Appeal and that paragraphs 33 and 34 of the Fresh Notice of Appeal must be struck from the Fresh Notice of Appeal because there is no reasonable chance of success and no reasonable grounds for appeals.

[17] The appellant's argument on this issue appears to be penalties, instalment interest and arrears interest charged which were due to the AFS Re-assessment not being processed within a reasonable time. At paragraph 39 of the Fresh Notice of Appeal, the appellant refers to the fact that he "advised CCRA that a 'test case' was not a valid reason for CCRA to delay processing the taxpayer's AFS Waiver Objection . . . ".

[18] In *Cheikhezzein v. R.*, [2013] G.S.T.C. 137, at paragraph 16, this Court has clarified the jurisprudence on the relevance of the conduct of the Minister in a tax appeal in the following terms:

> To be clear, Ministerial Conduct has no bearing, given the Tax Court of Canada's jurisdiction, on the outcome of the appeal before the Court, which, by will of Parliament, must be an inquiry and determination limited to the validity and correctness of the assessment, not the methodology of how the decision to levy an assessment began, proceeded or came to be. Remedies related to that Ministerial Conduct, if same exist, do so elsewhere.

[19] As the Tax Court of Canada has no jurisdiction on the issues raised by the appellant and as he failed to challenge the validity or correctness of any of the assessments or reassessments issued in respect of the 2002, 2003, 2005, 2006, 2007, 2009, 2011 and 2012 taxation years, these taxation years must be struck out from the phrase "1995 to 2012 inclusive" on the first page of the Fresh Notice of Appeal and paragraphs 33 and 34 of the Fresh Notice of Appeal must also be struck out. These issues have no reasonable chance of success in Court and present no reasonable grounds for appeal.

B. Paragraphs 13, 31, 32, 37 to 41, 43 to 51, 54, 55, 61 to 74, the words "Notwithstanding the taxpayer's request for an extension of time to present evidence" in paragraph 53, paragraph 1 on page 13 and paragraph 1(a) on page 14

[20] In all these noted paragraphs, the appellant has pled that the assessments or reassessments should be found by the Tax Court of Canada to be invalid because the conduct of the Minister breached "basic concepts of due process, natural justice and fairness" (paragraph 50 of the Fresh Notice of Appeal) as a result of CCRA's depriving the appellant of his right to a hearing and the opportunity to present his evidence (paragraph 1 on page 13 of the Fresh Notice of Appeal).

[21] The respondent pled that the appellant cannot appeal the manner in which tax was assessed or reassessed but must restrict his appeals to the issue of whether the amounts assessed or reassessed are correct in light of the *Act*.

[22] The respondent also alleged that the facts and arguments pled by the appellant in these paragraphs relate to facts the appellant purports to have occurred after the assessments or reassessments were issued and during the appeals stage with the CRA. At no point in these paragraphs, does the appellant challenge the validity or correctness of any of the assessments or reassessments issued in respect of the litigious taxation years. Furthermore, in paragraphs 37, 38, 39 and 43 of the Fresh Notice of Appeal, the appellant makes allegations concerning the reassessments of other taxpayers which clearly does not affect or challenge the correctness of his own assessments or reassessments.

[23] The appellant pled that the CRA's denial of a hearing is not a mere procedural defect. It contravenes fundamental principles of natural justice that

rendered the reassessments invalid. At paragraph 67 of the Fresh Notice of Appeal, the appellant refers to the denial of hearing in the following terms:

> In March 2016, denying the taxpayer an opportunity to be heard on any of his appeals, CCRA concluded the taxpayer's evidence and "testimony would not affect the appeals decision" and dismissed the taxpayer's appeals.

[24] The appellant relied on a decision by Justice Le Dain in *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643 to support his position that the denial of a hearing renders the reassessments invalid and cited the following extract from paragraph 23 of that judgment:

> . . . I find it necessary to affirm that the denial of a right to a fair hearing must always render a decision invalid, whether or not it may appear to a reviewing court that the hearing would likely have resulted in a different decision. The right to a fair hearing must be regarded as an independent, unqualified right which finds its essential justification in the sense of procedural justice which any person affected by an administrative decision is entitled to have. It is not for a court to deny that right and sense of justice on the basis of speculation as to what the result might have been had there been a hearing.

[25] With respect, I do not think that Justice Le Dain's above-mentioned decision which was rendered in criminal law is applicable in tax matters.

[26] In tax matters, it is well established that the Tax Court of Canada does not have jurisdiction to set aside an assessment on the basis of abuse of process or abuse of power and that Courts have consistently held that the actions of the CRA cannot be taken into account in an appeal against assessments (see *Main Rehabilitation Co. Ltd. v. The Queen*, 2004 FCA 403).

[27] In *Ereiser v. Canada*, 2013 FCA 20, the Federal Court of Appeal held that "the role of the Tax Court of Canada in an appeal of an income tax assessment is to determine the validity and correctness of the assessment based on the relevant provisions of the *Income Tax Act* and the facts giving rise to the taxpayer's statutory liability. Logically, the conduct of a tax official who authorizes an assessment is not relevant to the determination of that statutory authority. It is axiomatic that the wrongful conduct by an income tax official is not relevant to the determination of the validity or correctness of an assessment. . . . " (see paragraph 31).

[28] Again, in *JP Morgan Asset Management (Canada) Inc. v. Minister of National Revenue*, 2013 FCA 250, the Federal Court of Appeal held that:

> [83] The Tax Court does not have jurisdiction on an appeal to set aside an assessment on the basis of reprehensible conduct by the Minister leading up to the assessment, such as abuse of power or unfairness . . . If an assessment is correct on the facts and the law, the taxpayer is liable for the tax.

[29] Based on the facts pled and the arguments advanced relating to CRA's conduct and process of review, I conclude that these points have no reasonable possibility of success at trial and that, for these reasons, these paragraphs must be struck from the Fresh Notice of Appeal pursuant to paragraph 53(1)(d) of the *Rules*.

Conclusion

[30] Based on the foregoing reasons, I conclude that it is plain and obvious that the factual allegations, issues and reasons pled in support of arguments to be advanced at trial will have no reasonable possibility of success, are abusive and if retained, will delay the hearing of the appeal.

[31] The respondent's motion is granted and the purported appeals in respect of the 1997, 1999, 2000, 2001, 2004, 2008 and 2010 taxation years are quashed. The following pleadings are struck from the Fresh Notice of Appeal:

i. on the first page, the inclusion of the 1999 to 2012 taxation years in the phrase "1995 to 2012 inclusive";
ii. paragraphs 13, 31 to 34, 37 to 41, 43 to 51, 54, 55 and 61 to 74;
iii. in paragraph 53, the words "Notwithstanding the taxpayer's request for an extension of time to present evidence";
iv. on page 13, paragraph 1; and
v. on page 14, paragraph 1(a).

[32] The appellant is denied leave to file a further amended pleading to his Fresh Notice of Appeal since he has had the opportunity to amend his pleadings before the hearing of the respondent's motion.

[33] The respondent shall file and serve a reply to the pleadings that have not been struck from the Fresh Notice of Appeal by March 11, 2019 at the latest.

[34] Costs in the amount of $1,500 are awarded to the respondent and are to be paid by February 11, 2019 at the latest.

Signed at Montreal, Quebec, this 9th day of January 2019.

"Réal Favreau"

Favreau J.

Appendix A

RE-ASSESSMENTS UNDER APPEAL

Date	Year
May 4, 2001	1995 to 2012 inclusive (the "Re-assessments")
Notice of Confirmation	March 24, 2016

13. CCRA ought to have been aware that the General Partner and Heenan Blaikie were in a conflict of interest with the taxpayer in that the General Partner, its principals and Heenan Blaikie are each associated with the Promoter of the Partnership and may be liable to the taxpayer their wrongful acts, omissions or representations, if any, in respect of the taxpayers interest in the Partnership.

31. The taxpayer's AFS Waiver Objection was individual to the taxpayer. If taxpayer's AFS Waiver Objection were successful, his AFS Objection would be unnecessary, as he would be "carved out" of the AFS Re-Assessment.

32. CCRA appeals unit did not communicate with the taxpayer with respect to his AFS Waiver Objections until November 2010.

33. In each fiscal year under appeal, CCRA re-assessed the taxpayer for penalties, installment interest and arrears interest.

34. The taxpayer objected to these Re-assessments as a part of his AFS Waiver Objections, as penalties, installment interest and arrears interest would not have been incurred had CCRA processed the AFS Waiver Objection.

37. Other Court proceedings potentially affecting the taxpayers AFS Objection took place during this period without the taxpayer being notified, served or afforded the opportunity to participate. These include a Federal Court case and appeal on privilege in which *AFS and Company Limited Partnership No. 5* (in which taxpayer was a limited partner) was the applicant (*AFS and Co. v Canada* 2001 FCT 422) and on discovery (*Status-One Investments Inc. v The Queen*).

38. In 2003, CCRA advised the taxpayer CCRA appeals division was awaiting the results of other court appeals launched by CCRA in another "test" case. The taxpayer has no knowledge of the "test" case, nor of the implications it might have on the taxpayer's appeals.

39. The taxpayer advised CCRA that a "test case" was not a valid reason for CCRA to delay processing the taxpayer's AFS Waiver Objection. This objection was personal to the taxpayer, and not available to the other AFS limited partners.

CCRA Contacts Taxpayer in November 2010

40. It was not until November 3, 2010 that CCRA appeals officer Guimmond Ringuette contacted the taxpayer concerning his AFS Waiver Objection filed in 2001.

41. After a brief discussion, Mr. Ringuette told the taxpayer he would consult with a Justice Department adviser, as he was unable to process the AFS Waiver Objections without legal advice.

The Taxpayer's File is Transferred for "Settlement"

43. No apparent action on the taxpayers AFS Waiver Objection occurred until August 14th 2013 when Mr. Ringuette told the taxpayer his file had been transferred for a"settlement" affecting all of the AFS partnerships. CCRA and Heenan Blaikie negotiated this settlement, without the taxpayer's knowledge or participation. It did not address the AFS Waiver objections.

44. On September 5th 2014 CCRA representative Walter Dobson telephoned the taxpayer. The taxpayer was told that if he was unwilling to accept the AFS Settlement "as is", CCRA would summarily dismiss his appeals, and confirm all of the Re-assessments.

45. On September 12, 2014 the taxpayer wrote to CCRA's representative Mr. Dobson asking him to re-consider this summary dismissal:

> "This statement was made towards the end of our conversation. I was very surprised. I did not know you were conducting a hearing or making a determination. I was not making representations or presenting materials supporting my position. I thought we were having a settlement discussion.
>
> CRA is subject to the rules of natural justice and procedural fairness in processing assessment appeals. I expected, consistent with CRA's pubic statements and its past practices, an assessment appeal would be conducted impartially, independently and within a reasonable time. This has not occurred.
>
> Having failed to process my initial objections for 15 years, a summary denial of my appeals offends basic concepts of due process, natural justice and fairness.
>
> As well, I do not know the tax case I now have to meet. CRA appears to have changed the basis of its re-assessment without notice to me. I have never been given the opportunity to present my evidence or be heard."

46. CCRA did not respond to the taxpayer's letter.

47. On February 23, 2016 another CCRA representative Rob Prodanuk telephoned and told the taxpayer his appeals would be dismissed if he didn't accept the AFS settlement "as is".

48. Mr. Prodanuk also stated he was instructed by his team leader not to consider the taxpayer's AFS Waiver Objections.

49. Mr. Prodanuk told the taxpayer it was too late to present his evidence, despite taxpayer's protestations that no one in CCRA had ever asked for his evidence or scheduled a hearing for his representations.

50. On February 23, 2016 the taxpayer faxed Mr. Prodanuk a letter confirming particulars of their conversation earlier that day. The taxpayer again advised CCRA that a summary denial of his appeal offended basic concepts of due process, natural justice and fairness.

CCRA requests Taxpayer to Provide Evidence

51. On February 25, 2016 Mr. Prodanuk wrote to the taxpayer asking him to provide by March 15, 2016 his evidence in support of the taxpayer's deduction for partnership losses and interest expense. At that time, Mr. Prodanuk knew the taxpayer was away from Canada and would not receive the mailed letter until his return.

53. Notwithstanding the taxpayer's request for an extension of time to present his evidence, on March 24, 2016 CCRA issued its Notice of Confirmation of the Re-Assessments.

CCRA Deprives Taxpayer of His Right to a Hearing

54. In its Notice of Confirmation, CCRA concluded it did not want the taxpayers evidence as it had already made its decision:

> "You have indicated that the evidence you had in support of your position consisted of primarily affidavits from AFS promoters and others attesting to the legitimacy of the deductions. After careful consideration of this, we have concluded that such testimony would not affect the Appeals decision, taking into account the years of analysis already given to the substantive issues involved"

55. CCRA deprived the taxpayer of his right to a hearing. He was not permitted to present the documents, the memorandum or other evidence he had to offer, nor to make representations concerning any of the Re-assessments.

61. The taxpayer had no opportunity to make representations or provide evidence on any of his objections to the Re-assessments. He was not given notice of the change in CCRA's primary assessing position. In short, CCRA deprived the taxpayer of his right to a hearing.

Reasons for Objections

Invalid re-assessments

The Taxpayer was denied a Hearing

62. The taxpayer delivered his Notices of Objection by registered mail on July 19, 2001. The objections were made on two bases: the AFS Objection, and the AFS Waiver Objection. Additional Notices of Objection were delivered for subsequent fiscal years as part of the AFS Waiver Objection.

63. CCRA Appeals did not contact the taxpayer concerning to discuss the processing of the AFS Waiver Objection until November 2010.

64. In 2012, without having processed the AFS Waiver Objection, CCRA Appeals transferred the taxpayer's file for "settlement" with the AFS Objections.

65. On two occasions, CCRA's representatives presented the taxpayer with an ultimatum: accept the settlement offer "as is", or his appeals would be dismissed.

66. The taxpayer did not accept the settlement offer. It did not deal with the AFS Waiver Objections.

67. In March 2016, denying the taxpayer an opportunity to be heard on any of his appeals, CCRA concluded the taxpayer's evidence and "testimony would not affect the Appeals decision" and dismissed the taxpayer's appeals.

68. The Tax Court has an adequate, curative remedy, and procedural rights available later can cure earlier procedural defects[1].

69. However, the taxpayer was denied a hearing.

70. CCRA's denial of a hearing is not a mere procedural defect. It contravenes fundamental principles of natural justice. It renders the Re-assessments invalid.[2]

71. The right to a fair hearing is an independent, unqualified right that finds its essential justification in the sense of procedural justice, which any person affected by an administrative decision, is entitled to have.

72. The denial of a hearing must always render a decision invalid, whether or not it may appear to a reviewing court that the hearing would likely have resulted in a different decision.

73. It is respectfully submitted that a court ought not to deny that right and sense of justice on the basis of speculation as to what the result might have been had there been a hearing.

74. It is respectfully submitted that the denial of a hearing renders the Re-assessments invalid.

ISSUES TO BE DECIDED

1. Whether the Re-assessments are invalid as a result of CCRA's depriving the taxpayer of his right to a hearing and the opportunity to present his evidence?

REASONS

1. The Appellant asserts that:

   (a) the Re-Assessments are invalid as a result of CCRA depriving the taxpayer of his right to a hearing and the opportunity to present his evidence;

CITATION:	2019 TCC 2
COURT FILE NO.:	2016-2397(IT)G
STYLE OF CAUSE:	Gregory P. King and Her Majesty the Queen
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	June 4, 2018
REASONS FOR ORDER BY:	The Honourable Justice Réal Favreau
DATE OF ORDER:	January 9, 2019

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Tanis Halpape

COUNSEL OF RECORD:

For the Respondent:

Name:

Firm:

For the Respondent: Nathalie G. Drouin
Deputy Attorney General of Canada
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