

BETWEEN:

CONNIE O'BYRNE,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application and Motion heard on May 5, 2014 at Brandon, Manitoba.

Before: The Honourable Justice Patrick Boyle

Appearances:

For the Applicant:	The Applicant herself
Counsel for the Respondent:	Paul Klippenstein

AMENDED ORDER

Having heard the application for an Order extending the time within which Notices of Objection from the assessments made under the *Income Tax Act* for the 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997 and 1998 taxation years may be served;

And having heard the Applicant's motion brought by her to compel production of certain documents;

And having heard what was alleged and argued by the parties;

IT IS ORDERED THAT the application and related motion are dismissed, without costs, in accordance with the attached **Amended** Reasons for Order.

This Amended Order is issued in substitution of the Order dated May 12, 2014.

Signed at Ottawa, Canada, this 1st day of **August** 2014.

“Patrick Boyle”

Boyle J.

Citation: 2014 TCC 136

Date: 20140801

Docket: 2013-3666(IT)APP

BETWEEN:

CONNIE O'BYRNE,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR ORDER

Boyle J.

[1] The Applicant, Connie O'Byrne, has applied to the Tax Court of Canada to be allowed to late file Notices of Objection for her 1986 through 1998 tax years. She had first applied to the CRA to late file objections for these years. Canada Revenue Agency ("CRA") did not grant her application. This Court must also dismiss her applications. The first reason is that she acknowledges that she is well beyond the mandatory maximum one year and 90 day period within which such late filing applications must be made as provided for in the *Income Tax Act* (the "Act"). The second reason is that she acknowledges that she does not in fact wish to dispute the underlying tax assessments for these years. (Further, she can not object to 1998 since she never filed a 1998 tax return and CRA has never assessed her for that year).

[2] The related motion brought by her to compel production of certain documents must therefore also fail.

[3] It appears that Ms. O'Byrne in good faith set down the wrong path to pursue the tax concern she now has with CRA. Her complaint is not with the underlying 1986 through 1997 taxes assessed. She does not complain that any amounts were included in her income that should not have been; nor does she claim to have been denied any deductions or credits to which she was entitled in those years.

[4] Ms. O'Byrne's complaint is that she was unaware of the existence of these tax debts of more than 15 years ago, which total more than \$40,000, until she more

recently made a Canada Pension Plan application. **She had apparently received a letter from CRA that no collection steps would be taken by CRA after February 2005 beyond set-off of her old tax debts against future tax refunds or similar entitlements.** She believes that does not properly or fully reflect the impact of the 10 year limitation period for collection actions in section 222 of the *Act*. She seeks a remedy akin to a declaration from the Court that CRA can not set off her old tax debts against her CPP and similar entitlements, and/or a direction from the Court to CRA to return any amounts already set off.

[5] The Tax Court of Canada simply does not have the jurisdiction or power to grant such remedies. These concerns of Ms. O'Byrne may need to be pursued by her with the CRA and perhaps the Federal Court as appropriate. Based upon the materials she filed with this Court or referred to at the hearing, the precise nature of her concerns may not have been very clear to them.

[6] Apparently, Ms. O'Byrne also made a so called Fairness application to CRA in 2012 in respect of her old tax debts. As explained to the Court, her application was based upon financial hardship. CRA decided her Fairness application in 2013. She is not satisfied with CRA's decision. Ms. O'Byrne said she has yet to take steps to have CRA's decision further reviewed by CRA, or by the Federal Court as appropriate. She may wish to reconsider this, although Fairness relief based upon financial hardship would be quite distinct from her limitation period concern.

[7] Ms. O'Byrne also explained in her filed materials and at the hearing that she apparently understood and believed that these old tax debts of hers had long ago been settled by her late ex-husband, either under the terms of their separation agreement, a court order issued in their civil family dispute, or perhaps as part of a voluntary disclosure made to CRA by him. As explained to Ms. O'Byrne, this Court does not have any jurisdiction to deal with the enforcement or breach of a separation agreement or a court order issued by the court of a province in family law matters. Any recourse would have to be to the courts of the relevant province (whether Saskatchewan, Manitoba or Ontario). Neither the scope of, nor interpretation or enforcement of CRA's voluntary disclosure program or voluntary disclosure agreements are generally subject to review by the Tax Court of Canada. Such matters may be reviewable by the Federal Court.

[8] The Application and related motion are dismissed, without costs.

[9] **This Amended Reasons for Order is issued in substitution of the Reasons for Order dated May 12, 2014.**

Signed at Ottawa, Canada, this **1st** day of **August** 2014.

“Patrick Boyle”

Boyle J.

CITATION: 2014 TCC 136

COURT FILE NO.: 2013-3666(IT)APP

STYLE OF CAUSE: CONNIE O'BYRNE AND THE QUEEN

PLACE OF HEARING: Brandon, Manitoba

DATE OF HEARING: May 5, 2014

AMENDED REASONS FOR ORDER BY: The Honourable Justice Patrick Boyle

DATE OF ORDER: **August 1, 2014**

APPEARANCES:

For the Applicant: The Applicant herself
Counsel for the Respondent: Paul Klippenstein

COUNSEL OF RECORD:

For the Applicant:

Name:

Firm:

For the Respondent:

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada