

Federal Court of Appeal	 CANADA	Cour d'appel fédérale
-------------------------	---	-----------------------

Date: 20100127

Docket: A-37-09

Citation: 2010 FCA 30

**CORAM: NOËL J.A.
PELLETIER J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

PATRICK NICHOLLS

Appellant

and

**CANADA (REVENUE AGENCY) &
MINISTER OF NATIONAL REVENUE**

Respondents

Heard at Toronto, Ontario, on January 26, 2010.

Judgment delivered at Toronto, Ontario, on January 27, 2010.

REASONS FOR JUDGMENT BY:

NOËL J.A.

CONCURRED IN BY:

**PELLETIER J.A.
LAYDEN-STEVENSON J.A.**

Date: 20100127

Docket: A-37-09

Citation: 2010 FCA 30

**CORAM: NOËL J.A.
PELLETIER J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

PATRICK NICHOLLS

Appellant

and

**CANADA (REVENUE AGENCY) &
MINISTER OF NATIONAL REVENUE**

Respondents

REASONS FOR JUDGMENT

NOËL J.A.

[1] This is an appeal from a decision of Barnes J. (the Federal Court Judge) dismissing the appellant's judicial review application against a decision of the Minister of National Revenue (the Minister) dated March 28, 2008, refusing to reassess the appellant's 1995 taxation year, on the ground that the request for a reassessment was received beyond the 10-year period set out in subsection 152(4.2) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act).

[2] The appellant contends that the Federal Court Judge misconstrued subsection 152(4.2) when he held that his request to reassess was out of time. The appellant further maintains that the Federal Court Judge erred in refusing to address other issues which he raised in support of his application.

[3] Dealing with the first issue, the appellant maintains that the effective limitation took effect on December 31, 2006 rather than December 31, 2005 (memorandum of the appellant, paras. 45 to 50).

[4] Subsection 152(4.2) insofar as it is relevant to the dispute, reads:

(4.2) ..., for the purpose of determining, at any time after the end of the normal reassessment period of a taxpayer who is an individual (other than a trust) or a testamentary trust in respect of a taxation year, the amount of any refund to which the taxpayer is entitled at that time for the year, or a reduction of an amount payable under this Part by the taxpayer for the year, the Minister may, if the taxpayer makes an application for that determination on or before the day that is ten calendar years after the end of that taxation year,

(a) reassess tax, interest or penalties payable under this Part by the taxpayer in respect of that year;

...

(4.2) [...], pour déterminer, à un moment donné après la fin de la période normale de nouvelle cotisation applicable à un contribuable — particulier, autre qu'une fiducie, ou fiducie testamentaire — pour une année d'imposition le remboursement auquel le contribuable a droit à ce moment pour l'année ou la réduction d'un montant payable par le contribuable pour l'année en vertu de la présente partie, le ministre peut, si le contribuable demande pareille détermination au plus tard le jour qui suit de dix années civiles la fin de cette année d'imposition, à la fois :

a) établir de nouvelles cotisations concernant l'impôt, les intérêts ou les pénalités payables par le contribuable pour l'année en vertu de la présente partie;

[...]

[Emphasis added by the respondent]

[5] Being an individual, the appellant's taxation year is a calendar year (subsection 249(1)). Pursuant to paragraph 37(1)(a) of the *Interpretation Act*, R.S.C. 1985, c. I-21, a calendar year is defined as any period of twelve consecutive months commencing on January 1. It follows that the appellant's 1995 taxation year began on January 1, 1995 and ended on December 31, 1995.

[6] In order for the Minister to be empowered to reassess the appellant's 1995 taxation year, the appellant would have had to make his request "on or before the day that is ten calendar years after the end of that taxation year", that is on or before January 1, 2006. The appellant filed his request in September 2006.

[7] It follows that the Federal Court Judge correctly held that his request was out of time.

[8] As to the other issues which the Federal Court Judge refused to consider, the appellant relies on various provisions of the Act, to demonstrate that they are not statute barred and can still be entertained by the Minister. However, the reason why the Federal Court Judge refused to consider these issues has nothing to do with the workings of the Act. Rather, the Federal Court Judge held that these issues relate to distinct decisions made by the Minister (i.e., CCRA objection confirmation November 10, 2005; CRA objection confirmation November 16, 2006; CRA letter - denial of Allowable Business Investment Loss (ABIL) January 16, 2007; CRA last refund denial February 12, 2008), and that the time for seeking judicial review of these decisions has expired. I can see no error in this regard.

[9] I would dismiss the appeal with costs.

“Marc Noël”

J.A.

“I agree

J.D. Denis Pelletier J.A.”

“I agree

Carolyn Layden-Stevenson J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-37-09

**(APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE BARNES OF THE
FEDERAL COURT DATED DECEMBER 19, 2008, DOCKET NO. T-660-08.)**

STYLE OF CAUSE: PATRICK NICHOLLS and
CANADA (REVENUE AGENCY) &
MINISTER OF NATIONAL
REVENUE

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 26, 2010

REASONS FOR JUDGMENT BY: Noël J.A.

CONCURRED IN BY: Pelletier J.A.
Layden-Stevenson J.A.

DATED: January 27, 2010

APPEARANCES:

Patrick Nicholls FOR THE APPELLANT (ON HIS
OWN BEHALF)

P. Tamara Sugunasiri FOR THE RESPONDENTS
Iris Kingston

SOLICITORS OF RECORD:

No Solicitor FOR THE APPELLANT (ON HIS
OWN BEHALF)

John H. Sims, Q.C. FOR THE RESPONDENTS
Deputy Attorney General of Canada