

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20110107**

**Docket: 10-A-35**

**Citation: 2011 FCA 5**

**Present: NOËL J.A.**

**BETWEEN:**

**ROBERT J. CRANSTON**

**Applicant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on January 7, 2011.

**REASONS FOR ORDER BY:**

**NOËL J.A.**

Federal Court  
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**REASONS FOR ORDER**

**NOËL J.A.**

[1] By order dated December 1, 2010, I dismissed Mr. Cranston's application for an extension of time to file an appeal against a decision of the Tax Court of Canada confirming the validity of assessments issued with respect to his 1999, 2000 and 2001 taxation years. In so holding, I gave effect to the respondent's submissions that Mr. Cranston had, *inter alia*, failed to demonstrate that he had an arguable case on appeal.

[2] I am now advised by the Registry that at the time of this dismissal, I did not have before me Mr. Cranston's representations filed in reply to the respondent's submissions. Mr. Cranston advised the Registry on November 30, 2010 that a reply was forthcoming which reply was filed the next

day. Unfortunately, this information was not conveyed to me. It follows that my original order must be reconsidered in the light of Mr. Cranston's reply.

[3] Having reviewed the reply, I am of the view that there is no basis for an extension of time.

[4] The decision of the Tax Court which Mr. Cranston seeks to challenge strikes out his appeal on the basis that a prior criminal conviction before the Ontario Court of Justice, confirmed on appeal by the Ontario Supreme Court of Justice, gave rise to issue estoppel. The conviction was based on the same net worth analysis as that which forms the basis of the assessments. As such, the Tax Court Judge held that Mr. Cranston was precluded from challenging again the validity of the net worth analysis.

[5] In his reply, Mr. Cranston does not challenge the application of the doctrine of issue estoppel on the facts of this case and I can detect no ground for doing so. However, he argues the net worth analysis is flawed on the same basis as that which was advanced during the criminal hearing (Reply submissions at para. 11). This argument does not establish the existence of an arguable case as this is the precise question which the doctrine of issue estoppel prevents him from raising.

[6] Second, Mr. Cranston submits that section 11(h) of the *Canadian Charter of Rights and Freedoms* protects him from being punished twice for the same offence. As such he submits that the

assessments or at least the penalties assessed against him cannot stand (Reply submissions at para. 8).

[7] This again does not raise an arguable case since it has long been established that the protection offered by section 11(*h*) is limited to offences which are prosecuted in a traditional criminal proceeding. Penalties extracted under subsection 163(2) of the *Income Tax Act*, such as the ones in issue in this case, do not come within this description (*R. v. Sharma*, [1987] O.J. No. 923, 3 W.C.B. (2d) 3 (Ont. S.C.); *R. v. Ferreira*, [1988] O.J. No. 2258 (Ont. C.A.); *R. v. George's Contracting Ltd.*, [1988] B.C.J. No. 359, 4 W.C.B. (2d) 145 (B.C.C.A.); *Lavers v. British Columbia (Min. of Finance)*, [1989] B.C.J. No. 2239, 64 D.L.R. (4th) 193 (B.C.C.A)).

[8] Mr. Cranston made also the point that the Tax Court Judge did not properly explain to him the implication of the decision issued against him (Reply submissions at para. 9). The suggestion, as I understand it, is that he would have resisted the respondent's motion more vigorously if he had been made aware of the implications. The difficulty with this argument is that even accepting that the Tax Court Judge had a duty to explain her decision otherwise than in the extensive reasons that she gave, Mr. Cranston has failed to put forward any serious basis on which he could have resisted the respondent's motion.

[9] The application for an extension of time is accordingly dismissed with costs.

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"Marc Noël"

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** 10-A-35

**STYLE OF CAUSE:** Robert J. Cranston v. Her Majesty the Queen

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** Noël J.A.

**DATED:** January 7, 2011

**WRITTEN REPRESENTATIONS BY:**

Robert J. Cranston

FOR THE APPLICANT  
(SELF-REPRESENTED)

Ryan R. Hall

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

N/A

FOR THE APPLICANT  
(SELF-REPRESENTED)

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FOR THE RESPONDENT