

BETWEEN:

GINO CORMIER,

Applicant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Application heard on February 27, 2006, at Québec, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Applicant: G. Marc Henry

Counsel for the Respondent: Claude Lamoureux

ORDER

Upon the application under subsection 103(1) of the *Employment Insurance Act* for an order extending the time within which a Notice of Appeal may be filed,

And upon hearing the evidence,

The Court hereby dismisses the application.

Signed at Ottawa, Canada, this 4th day of July 2006.

"Alain Tardif"

Tardif J.

Translation certified true
on this 5th day of July 2007.

Brian McCordick, Translator

Citation: 2006TCC382
Date: 20060704
Docket: 2005-4024(EI)APP

BETWEEN:

GINO CORMIER,

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and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

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REASONS FOR ORDER

Tardif J.

[1] This is an application for an order extending the time within which a Notice of Appeal may be filed.

[2] The Applicant submitted that there is a *prima facie* case.

[3] Secondly, he submitted that the Appellant's rights were infringed because he was unable to assert his rights, as he had never been informed of the decision of the Minister of National Revenue dated July 6, 2001 (Exhibit I-4).

[4] He stated that he was informed of the decision when he was asked, several months after the decision, to reimburse an overpayment. He was unable to remember the point in time at which he took the initiative to contact the Respondent.

[5] According to his testimony, the person with whom he communicated stated that there was no longer anything he could do and that it would be totally pointless

to contact a lawyer; thus, he did not do anything upon being informed that a decision had been made.

[6] His counsel stated that he was given the mandate to represent the Applicant because of a chance encounter, and that the main reason for his being retained was that he and his client were both from the Gaspé region.

[7] The evidence disclosed certain incontestable facts:

- The decision is dated July 6, 2001.
- The Applicant filed a signed request for review, but failed to provide his telephone number or his address in the request.
- Following the Applicant's request for review, Danielle Chouinard undertook numerous efforts to contact him, including several attempts to reach him at various phone numbers, one of which was his cell phone number as provided by the employer identified in the file. Although she left a message at that number, it was not responded to (Exhibit I-2).

[8] Counsel for the Applicant is pleading a fundamental legal rule: the *audi alteram partem* rule. Specifically, he submits that the Appellant was deprived of the fundamental right to be heard on an important issue that has grave consequences for him.

[9] In other words, a decision with serious consequences on his property was rendered in his absence without his having the opportunity to assert his rights by adducing evidence that could have led to a decision different from the one with which he is faced.

[10] The *audi alteram partem* rule must not be used to avoid a penalty imposed as a result of a reckless and careless attitude whereby negligence has fashioned the conduct that led to the violation of the fundamental right being relied upon.

[11] If a person is concerned about a consequential decision, and that decision provides for the opportunity to appeal from it or apply for a review within an allotted time, the person must obviously avail himself of that right, and is entitled to be heard.

[12] However, this right must be exercised in accordance with applicable law, procedure and regulations, in a respectful and diligent manner.

[13] The *audi alteram partem* rule simply cannot be admitted or relied upon where the facts show that the purported violation of the rule stems directly from conduct characterized by disregard, indifference and obvious carelessness.

[14] In the instant case, the Applicant expressed and communicated his objection to a decision that has a significant impact on his property. Afterwards, he did not follow up at all. He did not provide his address or telephone number, he did not contact the authorities to find out about the status of his file, and he decided — in this instance, after several years — to file an application for leave to appeal from a decision dated July 6, 2001.

[15] After admitting that his desire to be heard was in reaction to the overpayment reimbursement claim made after the determination, he was unable to provide the Court with the date of this intervention.

[16] He also claimed that he was told it would be pointless to consult with counsel, and that since he could not afford to retain a lawyer at the time, he had no motivation to believe otherwise.

[17] These explanations are particularly unpersuasive, and unquestionably do not explain the unjustified nonchalance and patent negligence. The *audi alteram partem* rule certainly cannot be relied upon in such a context, much less excuse such carelessness.

[18] The application is dismissed.

Signed at Ottawa, Canada, this 4th day of July 2006.

"Alain Tardif"

Tardif J.

Translation certified true
on this 5th day of July 2007.

Brian McCordick, Translator

CITATION: 2006TCC382

COURT FILE NO.: 2005-4024(EI)APP

STYLE OF CAUSE: GINO CORMIER AND M.N.R.

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: February 27, 2006

REASONS FOR ORDER BY: The Honourable Justice Alain Tardif

DATE OF ORDER: July 4, 2006

APPEARANCES:

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Counsel for the Respondent: Claude Lamoureux

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