Federal Court Cour fédérale

Date: 20110328

Docket: T-97-09

Citation: 2011 FC 371

Ottawa, Ontario, March 28, 2011

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

HUGH DOIG

Applicant

and

HER MAJESTY THE QUEEN
IN RIGHT OF CANADA
[MINISTER OF NATIONAL REVENUE]

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The tax debt at issue in this application arose more than 25 years ago. While death and taxes may be certain, the collection of the latter is not.

[2] Mr. Doig seeks a declaration from this Court that he has no debt for taxes for the 1971 to 1984 taxation years. He says that he paid that debt but that Canada Revenue Agency or its

predecessor agency (collectively referred to throughout as "CRA") failed to properly give him credit for payments he made.

[3] For the reasons that follow, I am unable to issue the declaration that is sought. Mr. Doig has waited too long to bring this application, and he has failed to prove on the balance of probabilities that he paid his tax debt.

Background

[4] CRA says that as of June 16, 2009 Mr. Doig was indebted to the Crown in the amount of $323,738.31, comprised of unpaid taxes, interest and penalties "from taxation years prior to and including 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1991, 1992, and 1993."

[5] Mr. Doig does not dispute the amounts claimed by CRA to be owed with respect to taxation year 1985 and following; he disputes the claim of CRA that there is any debt owed for 1984 and prior taxation years (collectively the "prior period"). He says that he paid the tax debt of the prior period.

[6] This litigation has taken a circuitous route. The applicant initially took the position that the Notices of Assessment for the taxation years 1984 and prior had not been sent to or received by him. However, when the application came on for hearing, the position advanced by the applicant was that the debt from the prior period had been paid by him but that his payments had not been credited to his account by CRA. On consent, the hearing was adjourned and fresh records and memoranda were filed.

[7] I will follow the applicant's division of the prior period into three separate time periods: 1971-1973, 1974-1979, and 1980-1984.

1971-1973

[8] On January 21, 1975, a Certificate filed by the respondent issued from the Federal Court of Canada – Trial Division in favour of the Crown stating that Mr. Doig had an unpaid tax debt, plus interest for the taxation years 1971 to 1973, in the amount of $14,277.19. A writ of *fieri facias* was issued and the record indicates that it was paid on or about February 3, 1975. The applicant submits that he was not properly credited with the payment and that the 1971 to 1973 tax liability is included in the amount CRA claims is owed for the prior period.

[9] The respondent agrees that the debt for this period was paid but asserts that no part of the tax debt claimed for the prior period includes or relates to this period of time.

1974-1979

[10] Mr. Doig swears that he made two payments to CRA in the period from 1974 to 1979 in satisfaction of the tax debt that arose within this period.

[11] He attests that: "On March 17, 1978, my wife, Helen Doig (nee Helen Teahen) placed a mortgage on her cottage property for $5,000.00." He says that despite the high interest rate of 13%, "the mortgage was placed on the cottage so that funds could be raised to pay my income tax

arrears." He asserts that "my wife gave me the funds and I paid the proceeds to the CRA as partial payment of my outstanding taxes and interests [*sic*]."

[12] Mr. Doig then attests that in the fall of 1979, CRA in Ottawa contacted him and told him that he had outstanding tax arrears of approximately $17,000.00. Again, his wife placed a mortgage on her cottage property from which she received $16,000.00. Mr. Doig says that he contributed $1,000.00 of his own money and swears that he paid $17,000 to CRA "as payment against my outstanding taxes and interest." He says that:

> From 1979 to January 1984, no collections [*sic*] actions were taken by the CRA's Ottawa or Sudbury collections offices against me and I was not advised of any outstanding tax debt. As such, I conducted my affairs on the basis that I had no tax debt outstanding.
>
> It is my belief that when the Sudbury collections office became aware of the 1975 Certificate that it mistakenly concluded that I had never paid the tax debt.

[13] CRA submits that its records do not show that either payment was made, that the applicant has failed to prove on the balance of probabilities that these payments were made, and that the applicant's behaviour contradicts his claim that he made these payments.

1980-1984

[14] The applicant states that there were no collection steps taken by CRA and that he regularly paid his taxes in this period. He says that he only became aware of the alleged debt in 2005 when CRA withheld a small refund due to him. Following an inquiry to determine why it was withheld, he learned that CRA's records showed a balance forward from January 19, 1986, of $57,575.06.

[15] The respondent states that as a consequence of a change in its computer systems in 1986 a new statement of account was created. The system took the balance owed by the applicant on January 20, 1986 (relating to the 1984 and prior taxation years) and merged it with the tax debt owed on account of the 1985 taxation year and recorded the sum as one amount in July 1986. It states that from that date onward, the computer system labelled the merged debt as the "1985 debt"; however, it was a debt that related to the 1985 <u>and prior</u> taxation years. The respondent submits that its records filed in this proceeding show that it is comprised of debt from the 1985, 1984, 1983, 1982, and prior taxation years.

[16] CRA says that it has filed the best evidence available to prove the debt. It says that because the applicant waited more than 30 years to raise the allegation that he made payments that were not credited to his account, CRA is unable to provide statements of account from the 1970s showing the payments made and credited because all documents from that period have been destroyed.

[17] The respondent also submits that this application is time-barred under the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, s. 32 of which establishes a 6-year limitation period for launching proceedings against the Crown. CRA submits that the applicant knew or ought to have known of the debt he now disputes since at least 1986.

[18] The applicant says that the limitation period for his application is 10 years as provided for in s. 222(4) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp). He says that he was unaware of the debt at issue until, in response to his inquiry, he received correspondence from CRA dated January 5,

2006, enclosing a Statement of Account that showed a balance forward as at January 19, 1986 of $57,575.06.

[19] In addition to the limitation period, CRA further submits that this application is time-barred based on the doctrines of undue delay, laches and acquiescence.

Issues

[20] The parties addressed three questions:

a. What is the applicable limitation period prescribed for the applicant's application, and when did the limitation period commence?

b. If the application is not proscribed by a limitation period, is the applicant barred from obtaining the relief requested on the basis of the doctrines of undue delay, laches, and acquiescence?

c. Is there a debt owed by the applicant to the respondent for any of the following taxation years: (i) 1971 to 1973; (ii) 1974 to 1979; or (iii) 1980 to 1984?

Analysis

1. The Limitation Period

[21] The Supreme Court of Canada in *Markevich v Canada*, 2003 SCC 9, disagreed with the view of CRA that no limitation period applied with respect to its collection of tax debts as none was provided in the *Income Tax Act*. The Supreme Court held that s. 32 of the *Crown Liability and Proceedings Act* applied to impose a six-year limitation period on the Crown's right to collect federal tax debts of a taxpayer.

[22] Section 32 of the *Crown Liability and Proceedings Act* provides as follows:

32. Except as otherwise provided in this Act or in any other Act of Parliament, the laws relating to prescription and the limitation of actions in force in a province between subject and subject apply to any proceedings by or against the Crown in respect of any cause of action arising in that province, and proceedings by or against the Crown in respect of a cause of action arising otherwise than in a province shall be taken within six years after the cause of action arose.	32. Sauf disposition contraire de la présente loi ou de toute autre loi fédérale, les règles de droit en matière de prescription qui, dans une province, régissent les rapports entre particuliers s'appliquent lors des poursuites auxquelles l'État est partie pour tout fait générateur survenu dans la province. Lorsque ce dernier survient ailleurs que dans une province, la procédure se prescrit par six ans.

[23] In response to the decision in *Markevich* the government amended the *Income Tax Act*: SC 2004, c 22, s 50. Section 222 of the Act was amended to read, in relevant part, as follows:

222. (1) The following definitions apply in this section.	222. (1) Les définitions qui suivent s'appliquent au présent article.
"action" « action »	« action » "action"
"action" means an action to collect a tax debt of a taxpayer and includes a proceeding in a court and anything done by the Minister under subsection 129(2), 131(3), 132(2) or 164(2), section 203 or any provision of this Part.	« action » Toute action en recouvrement d'une dette fiscale d'un contribuable, y compris les procédures judiciaires et toute mesure prise par le ministre en vertu des paragraphes 129(2), 131(3), 132(2) ou 164(2), de l'article 203 ou d'une disposition de la présente partie.
"tax debt"	« dette fiscale »

« dette fiscale »

“tax debt” means any amount payable by a taxpayer under this Act.

“tax debt”

« dette fiscale » Toute somme payable par un contribuable sous le régime de la présente loi.

(2) A tax debt is a debt due to Her Majesty and is recoverable as such in the Federal Court or any other court of competent jurisdiction or in any other manner provided by this Act.

(2) La dette fiscale est une créance de Sa Majesté et est recouvrable à ce titre devant la Cour fédérale ou devant tout autre tribunal compétent ou de toute autre manière prévue par la présente loi.

(3) The Minister may not commence an action to collect a tax debt after the end of the limitation period for the collection of the tax debt.

(3) Une action en recouvrement d’une dette fiscale ne peut être entreprise par le ministre après l’expiration du délai de prescription pour le recouvrement de la dette.

(4) The limitation period for the collection of a tax debt of a taxpayer

(4) Le délai de prescription pour le recouvrement d’une dette fiscale d’un contribuable :

(a) begins
(i) if a notice of assessment, or a notice referred to in subsection 226(1), in respect of the tax debt is sent to or served on the taxpayer, after March 3, 2004, on the day that is 90 days after the day on which the last one of those notices is sent or served, and

a) commence à courir :
(i) si un avis de cotisation, ou un avis visé au paragraphe 226(1), concernant la dette est envoyé ou signifié au contribuable après le 3 mars 2004, le quatre-vingt-dixième jour suivant le jour où le dernier de ces avis est envoyé ou signifié,

(ii) if subparagraph (i) does not apply and the tax debt was payable on March 4, 2004, or would have been payable on that date but for a limitation period that otherwise applied to the collection of the tax debt, on March 4, 2004; and

(ii) si le sous-alinéa (i) ne s’applique pas et que la dette était exigible le 4 mars 2004, ou l’aurait été en l’absence de tout délai de prescription qui s’est appliqué par ailleurs au recouvrement de la dette, le 4 mars 2004;

(b) ends, subject to subsection (8), on the day that is 10 years after the day on which it begins.	b) prend fin, sous réserve du paragraphe (8), dix ans après le jour de son début.
(5) The limitation period described in subsection (4) for the collection of a tax debt of a taxpayer restarts (and ends, subject to subsection (8), on the day that is 10 years after the day on which it restarts) on any day, before it would otherwise end, on which	(5) Le délai de prescription pour le recouvrement d'une dette fiscale d'un contribuable recommence à courir — et prend fin, sous réserve du paragraphe (8), dix ans plus tard — le jour, antérieur à celui où il prendrait fin par ailleurs, où, selon le cas :
(a) the taxpayer acknowledges the tax debt in accordance with subsection (6); (b) the Minister commences an action to collect the tax debt; or	a) le contribuable reconnaît la dette conformément au paragraphe (6); b) le ministre entreprend une action en recouvrement de la dette;
(c) the Minister, under subsection 159(3) or 160(2) or paragraph 227(10)(a), assesses any person in respect of the tax debt.	c) le ministre établit, en vertu des paragraphes 159(3) ou 160(2) ou de l'alinéa 227(10)a), une cotisation à l'égard d'une personne concernant la dette.

[24] The respondent submits that there is no provision in the *Income Tax Act* setting out a limitation period for taxpayers who claim that they made payments that were not credited to their account. Therefore, it says, s. 32 of the *Crown Liability and Proceedings Act* applies and the applicant had six years from the date on which he became aware, or ought to have become aware, that the payments he now claims were made were not credited to his tax account to commence this application.

[25] The applicant submits that s. 222 of the *Income Tax Act* applies. He says that the respondent's submission that s. 222 permits the Minister to wait ten years to collect taxes but does

not permit the taxpayer to defend the Minister's actions is "innovative" but "not tenable." He relies, in part, on the following statement made by the Minister at the time s. 222 was amended:

> The Government agrees that a limitation period for the collection of taxes is needed. We believe a 10-year limitation period is appropriate and recognizes the special reporting and assessment system in federal tax acts. It provides a reasonable amount of time for the Canada Revenue Agency and taxpayers to deal with tax debts. [emphasis added] (Minister of Finance Ralph Goodale, Media Release, "March 4, 2004 Press Release: Minister of Finance Proposes Amendments to Change the Limitation Period for the Collection of Federal Tax Debts" (4 March 2004).)

[26] The approach to the correct interpretation of s. 222 of the *Income Tax Act* is set out by the Supreme Court in *Trustco Mortgage v Canada*, [2005] 2 SCR 601, at para. 10:

> It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole. [emphasis added]

[27] In my view, the words of s. 222 of the *Income Tax Act* are precise and unequivocal – the section applies to the "collection" by the Minister of a tax debt and only to that type of action. Subsection 222(3) provides: "The Minister may not commence an action to collect a tax debt after the end of the limitation period." It is beyond question that the section is directed to actions

commenced by the Minister, and, in my view, it is equally beyond question that it applies only to such actions for there is no reference to any others. Had Parliament intended the limitation period to apply equally to an application by a taxpayer claiming that the debt was paid, it could have easily said so – but it did not. The matter before this Court is an application commenced by the taxpayer, not a proceeding by the Minister to collect a tax debt, and I find that s. 222 of the *Income Tax Act* has no bearing on this application.

[28] The applicant submits that it is contrary to justice that the Minister may sue to recover a tax debt at any time within the 10 year limitation period but the taxpayer cannot raise a defence that he or she has paid the debt if that payment was made more than six years prior to the Minister's action being commenced. There is nothing in either the *Income Tax Act* or the *Crown Liability and Proceedings Act* which prevents a taxpayer from asserting as a defence to a claim that a debt is owed that the debt was paid, even in circumstances where the taxpayer is otherwise prevented by a limitation period from commencing an application seeking a declaration to that effect in anticipation of collection litigation. It is always a defence to debt collection to assert that there is no debt owed; the burden is on the debt collector to establish on the balance of probabilities that there is an unpaid debt.

[29] Having found that s. 222 of the *Income Tax Act* does not apply to this application, it follows that the limitation period set out in s. 32 of the *Crown Liability and Proceedings Act* may apply. The question to be answered is thus when, on the facts before us, this limitation period began running.

[30] A cause of action is "[a] group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person," or, more simply, "a set of facts that provides the basis for an action in court" (*Black's Law Dictionary*, 9th ed.; *Markevich*, above, at para. 27). I agree with the respondent that the facts giving rise to the applicant's cause of action consist of the assertion by the respondent of a tax debt owed by the applicant for the years 1985 and prior and the respondent's collection actions against the applicant to recover the tax debt.

[31] The limitation period provided in the *Crown Liability and Proceedings Act* begins to run when an applicant knew or ought to have known that a cause of action existed: *Central Trust v Rafuse*, [1986] 2 SCR 147, at para. 77; *Canada (Attorney General) v Lameman*, 2008 SCC 14, at para. 16. This principle, discoverability, applies to statutory limitation periods unless it is displaced by clear legislative language: *Ermineskin Indian Band and Nation v Canada*, 2006 FCA 415, at para. 333, aff'd 2009 SCC 9. Mr. Doig says that he only realized that he had an alleged tax debt when CRA retained a refund in 2005 and he investigated and was then informed by letter dated January 5, 2006, that there was a balance forward, as at January 19, 1986, of $57,575.06. He further asserts in his affidavit of January 15, 2009: "From on or about 1992 until on or about 2004, I do not recall receiving any statements relating to this alleged debt."

[32] The applicant's credibility is brought into question when one contrasts his statement with the following:

a. in July 1986 the applicant was sent a Notice of Assessment that showed taxes owed for the 1985 taxation year of $1,717.13 and a total outstanding balance of $58,798.87;

b. in each year from 1985 through 1996, the applicant received a Notice of Assessment that reflected a balance forward that far exceeded the tax incurred in the taxation year under assessment;

c. the applicant was quoted his outstanding balance forward in an amount that included the balance for the prior period 23 times from September 17, 1987 to November 17, 1988;

d. the applicant was sent 13 statements from February 23, 1989 to September 8, 1992, showing the balance owing for the prior period;

e. the applicant received 21 "legal warnings" from CRA from June 22, 1989 to November 26, 1993 about the outstanding balance owed; and

f. in the period between June 22, 1989 and January 29, 1997, the applicant made 10 promises to pay the balance owing or to make arrangements to pay it.

[33] The applicant no longer disputes that he received annual notices of assessment from CRA. The evidence in the record establishes that the applicant was aware of the claim that there was a tax debt related to the prior period at least as early as July 1986 when his 1985 Notice of Assessment reflected that debt. Accordingly, the six-year limitation period expired in July 1992, at the latest. Throughout that entire period of time notices were sent to the applicant and conversations were had with him concerning his outstanding tax debt. Indeed, the record shows that on January 29, 1997, after the expiration of the limitation period, the applicant met with a collection officer and stated

that he thought he would be able to obtain approximately $68,000 from various sources to settle his account with CRA.

[34] The evidence before the Court simply does not support the applicant's assertion that he was unaware of this tax debt during the relevant period of time. Each notice of assessment sent to him reflected the tax debt he now challenges. The first, the 1985 taxation year assessment notice, showed that there was a tax debt due with respect to the applicant's income for that taxation year of $1,717.13 and a total balance outstanding of $58,798.87. Each of the following assessment notices through to 1996 showed the outstanding debt, albeit increased due to interest charges. Further, the respondent has filed evidence of repeated attempts by CRA to recover the tax debt: see Affidavit of Brian Just, paras. 23, 27, 28, and 31 and related Exhibits at Tab 1 of Respondent's Record. Therefore, I find that throughout the 1990s the applicant had knowledge of the facts that form the basis of his application.

[35] Accordingly, the application falls under the limitation period prescribed by s. 32 of the *Crown Liability and Proceedings Act* and it is statute-barred.

2. Undue Delay, Laches and Acquiescence

[36] The same facts supporting the operation of the statutory limitation period underlie the respondent's argument that the applicant is precluded from proceeding with this application on the basis of the equitable doctrines of laches and acquiescence. In light of my holding above, it is not necessary to deal with this defence to the application, however, in the event that a higher court

should disagree with my finding regarding the limitation period, the submissions made by the parties shall be briefly addressed.

[37] The respondent relies on the equitable defence of laches, as adopted by the Supreme Court of Canada in *M. (K.) v M. (H.)*, [1992] 3 SCR 6. At para. 98, quoting R.P. Meagher *et al*, *Equity Doctrines and Remedies*, 2d ed (Sydney: Butterworths, 1984), the Supreme Court explained the conditions for the application of this defence:

> [the plaintiff has either] (a) acquiesced in the defendant's conduct or (b) caused the defendant to alter his position in reasonable reliance on the plaintiff's acceptance of the status quo, or otherwise permitted a situation to arise which it would be unjust to disturb …

[38] CRA relies on the applicant's knowledge of the tax debt, its attempts to collect the debt, and the prejudice caused to it by the delay in bringing this application – namely the destruction of records. For the same reasons the application is statute-barred, had the statutory limitation period not applied, I would find that the doctrine of laches would prevent the application from succeeding. Particularly important is the fact that the applicant has delayed for so long in bringing this application, knowing full well of the tax debt claimed by CRA. It is as a direct consequence of that delay that documents were destroyed and the respondent's ability to prove its position has been compromised. It would be unjust and unfair to permit this application to proceed in such circumstances even if it were not statute-barred.

[39] I would add that although the applicant suggested during an earlier pre-hearing motion that

the document destruction policies of CRA might provide evidence proving his position that the past debts were paid, no submissions were made in this regard at the hearing.

i. Is there a debt owed by the applicant to the respondent for any of the following taxation years: (i) 1971 to 1973; (ii) 1974 to 1979; or (iii) 1980 to 1984?

[40] It must first be noted that the Federal Court does not have jurisdiction to entertain an application questioning the validity of tax assessments; that is a matter within the exclusive jurisdiction of the Tax Court: *Optical Recording v Canada* (1990), 116 NR 200 (FCA); *Roitman v Canada*, 2006 FCA 266; *Walker v Canada*, 2005 FCA 393.

[41] Mr. Doig states that he is not questioning the validity of the assessments made nor is he suggesting that he never received those notices of assessment. Rather, he says that he paid the debts owing but was not credited with payment. The burden of proof falls squarely on him to satisfy the Court on the balance of probabilities that he paid the debts.

1971 to 1973

[42] The parties agree that the debt owed with respect to these three taxation years was paid by Mr. Doig, as evidenced by the Certificate filed in the Federal Court – Trial Division on May 21, 1976.

[43] Mr. Doig asserts that this past debt was improperly carried forward and that he was not credited with having paid it. However, there is no evidence at all to support this assertion. There is no evidence that the 1971 to 1973 debt was carried forward and now forms part of the debt that CRA claims is owed, nor is there any evidence that CRA failed to credit Mr. Doig's account with

his payment. Mr. Doig has failed to meet his burden of proof and the Court finds that no part of the debt now claimed arises from the tax once owed for the period 1971 to 1973.

[44] I agree with the submission of the respondent that "a payment made in 1975, in relation to a 1971 [to] 1973 tax debt is not sufficient evidence to contradict a statement of account which shows in January 1984, taxes were owed for years prior to 1982." The applicant's assertion that part of the debt now claimed relates to this period in the early 1970s amounts to no more than supposition and speculation. His own evidence is to that effect: "It is my belief that when the Sudbury collections office became aware of the 1975 Certificate that it mistakenly concluded that I had never paid the tax debt" [emphasis added]. The applicant fails to provide any grounds for that belief and, given that there are eight taxation years after 1973 and prior to 1982 to which the debt recorded at January 1984 could relate, much more than the applicant's belief would be required to find that the payment he made had not been credited to his tax account.

1974 to 1979

[45] The applicant attests that he made two payments to CRA in this period from funds his wife raised by placing mortgages on her cottage property. He has filed as exhibits copies of these two mortgages. He says that there were no collection efforts taken by CRA from 1979 to January 1984 and he was not advised of any outstanding tax debt. He states that he believed that he had no outstanding debt. As noted previously, the respondent has no record of the applicant having made either payment.

[46] There is no objective evidence filed by the applicant to support his assertion that the money from these mortgages was paid over to him by his wife and that he then paid the money to CRA. The applicant did not file, as one would have expected, an affidavit from his now former wife supporting his statement that she borrowed this money in order that he could satisfy the tax debt nor were any cancelled cheques provided from either the applicant or his former wife showing a payment to CRA. There was no explanation offered for why such evidence was not provided.

[47] The applicant's evidence is not consistent with the documentary record and brings into question his credibility concerning these alleged payments. In his affidavit sworn September 1, 2010, he attests: "The 1975 Certificate was lifted to allow me to make the payments from the mortgage proceeds." The 1975 Certificate related to the arrears for taxation years 1971 to 1973. A copy of the 1975 Certificate filed with the Court on May 21, 1976, shows that it was paid, and paid almost two years before the payments the applicant alleges he made from the mortgage proceeds.

[48] The record reveals that this cottage property had been owned by Mr. Doig until March 13, 1978, when he transferred title to it to Helen Teahen for $2.00 and other consideration. She took out the first mortgage on the property only five days later. The transfer of the property could not have occurred if the writ of *fieri facias* filed with the local Sherriff's office had been active.

[49] I accept that the property was mortgaged twice and for the amounts that the applicant states. However, in light of questions relating to the applicant's credibility, his assertion that he made the payments to CRA requires some objective evidence to support it. There is none. The applicant has

failed to establish, on the balance of probabilities, that he made payments of some $22,000.00 in the period 1974 to 1979 that CRA failed to credit to his tax account.

1980 to 1984

[50] Mr. Doig says that he heard nothing from CRA from 1979 to 1984 and therefore he was unaware that CRA was of the view that he owed any tax arrears. At the hearing, his counsel confirmed his position that he had paid all amounts owing as of January 1, 1984.

[51] However, the record before the Court relating to the tax situation in the early 1980s brings into serious question the applicant's statement that he was of the view that his account with CRA was current.

[52] Between January 1, 1984 and July 5, 1984, the applicant made payments to the CRA totalling $3,527.00 and the CRA seized a total of $25.88 from him. This was despite allegedly knowing that his account with the CRA was clear as of January 1, 1984.

[53] In July 1984, the applicant was assessed taxes for the 1983 taxation year of $5,677.76. Thereafter he made payments of $11,066.45 and had $1,430.41 seized from him. Accordingly, in 1984 he paid to the CRA and had seized a total amount ($12,496.86) greater than the amount he owed specifically in relation to the 1983 taxation year ($5,677.76). If Mr. Doig had not had a debt relating to years earlier than 1983, CRA would have been indebted to him for an overpayment of $6,819.10, in addition to the $3,552.88 the CRA would have owed him for the earlier excess payments and seizure. Despite having allegedly paid off all amounts owing to the CRA as of

January 1, 1984, the applicant continued to make regular payments to the CRA without ever demanding a refund of the $10,371.98 that would have been owed to him by the CRA.

[54] If one accepts the applicant's claim that he did not know that there was a debt claimed for the prior period, then one must find it reasonable that the applicant, without objection, made tax payments and permitted CRA to garnish sums from him when CRA was indebted to him and not vice versa. One would also have to find it reasonable that the applicant did not question why he did not receive a refund from CRA. I find neither to be a reasonable or expected response, particularly the latter given that in 2005 he questioned why CRA retained what he described as a "small refund" owed to him.

[55] As the respondent submits, not only did the applicant not dispute the debt from the prior period, he made promises to pay the debt on a number of occasions.

[56] I find that the conduct of the applicant, as described above, coupled with the evidence of the respondent that the notices of assessment sent to him reflected the tax owed from the prior period, puts into serious question the applicant's statement that he was led to believe that there was no tax debt from the prior period.

[57] I find that a taxpayer, in light of these facts, would have to be wilfully blind not to be aware that CRA was claiming that a debt was owed from the prior period.

Conclusion

[58] The applicant's application is statute-barred. If it were not statute-barred, then it would have been dismissed due to the applicant's undue delay and the application of the doctrine of laches. In any event, the applicant has failed to establish on the balance of probabilities that he made the necessary payments on account of tax arrears for the period prior to the 1985 taxation year. His application is dismissed.

[59] The parties are agreed that an appropriate award of costs to the successful party in this matter is $15,000.00, inclusive of fees, disbursements and taxes.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and the respondent is awarded costs fixed at $15,000.00, inclusive of fees, disbursements and taxes.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-97-09
STYLE OF CAUSE:	HUGH DOIG v. HER MAJESTY THE QUEEN IN RIGHT OF CANADA [MINISTER OF NATIONAL REVENUE]
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