

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260318

Docket: A-93-24

Citation: 2026 FCA 55

**CORAM: WEBB J.A.
BIRINGER J.A.
WALKER J.A.**

BETWEEN:

LOUIS ZACHARY

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Montréal, Quebec, on March 12, 2026.

Judgment delivered at Ottawa, Ontario, on March 18, 2026.

REASONS FOR JUDGMENT BY:

BIRINGER J.A.

CONCURRED IN BY:

**WEBB J.A.
WALKER J.A.**

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BETWEEN:

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REASONS FOR JUDGMENT

BIRINGER J.A.

[1] This is an appeal from an order of the Tax Court of Canada (*per* MacPhee J.) dismissing the appellant's application for an extension of time to file a notice of objection to assessments issued under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) for the 2014, 2015, 2016 and 2017 taxation years: 2024 TCC 8 (Decision).

[2] The appellant had late-filed a notice of objection for the 2014 taxation year and had not sought an extension of time from the Minister of National Revenue. The appellant filed no notices of objection (or requests for an extension of time) for the 2015, 2016 and 2017 taxation years. The Tax Court concluded that the statutory pre-conditions for granting an extension of time had not been satisfied and dismissed the application: *Income Tax Act*, ss. 165, 166.1, 166.2.

[3] In dismissing the application, the Tax Court also addressed the appellant's main argument—that as a registered Indian under subsection 2(1) of the *Indian Act*, R.S.C. 1985, c. I-5, he was not required to pay income tax or bound by the procedural rules in the *Income Tax Act*. The appellant is a non-treaty Amikwa Matawasibi Anishinaabe.

[4] The Tax Court determined that it could not address the appellant's argument that the *Income Tax Act* did not apply to him by virtue of section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11, because the argument had been raised without the necessary notice of constitutional question. The Tax Court noted that, in any event, no supporting evidence had been offered. The Tax Court considered but rejected the appellant's alternative argument that, as an Indigenous person and based on constitutional and treaty rights, he was not a citizen or resident of Canada and was therefore not subject to income tax or the procedural rules in the *Income Tax Act*. Only the application of procedural rules was relevant to the Tax Court's reasons.

[5] The appellant does not dispute the Tax Court's conclusion that he did not comply with the procedural requirements under the *Income Tax Act* for an extension of time to file a notice of

objection. However, the appellant submits that the Tax Court erred in applying the *Income Tax Act* procedural rules to him, based on the arguments he made at the Tax Court regarding his status as a registered Indian. These are legal issues, reviewable for correctness: *Dumas v. Canada*, 2022 FCA 174 at para. 6; *Antrobus v. Canada*, 2024 FCA 143 at para. 11; *Housen v. Nikolaisen*, 2002 SCC 33 at para. 8.

[6] At the hearing, the appellant made additional submissions on not being subject to income tax because of his status. As explained at the hearing, however, the issue of whether the appellant is subject to taxation was not before the Tax Court and is not before this Court. The only issue being considered is whether the appellant was required to comply with the procedural rules in the *Income Tax Act* in order to proceed with his tax refund requests.

[7] The appeal must be dismissed, substantially for the reasons given by the Tax Court. The appellant has not identified an error in the Tax Court's reasons warranting this Court's intervention.

[8] As the Tax Court judge noted, to seek a finding that legislation is constitutionally invalid, inoperable or inapplicable, the appellant must have served a notice of constitutional question on the Attorney General of Canada and the attorney general of each province. The appellant did not complete this essential step and thus the constitutional issues he raised could not be considered: *Tax Court of Canada Act*, R.S.C. 1985, c. T-2; *Bekker v. Canada*, 2004 FCA 186 at para. 8; *Guindon v. Canada*, 2013 FCA 153 at paras. 22–32, *aff'd* 2015 SCC 41 at para. 15.

[9] In any event, the statutory time limits to file a notice of objection to a tax assessment apply even where the constitutional and treaty rights of Indigenous peoples are asserted: *Horseman v. Canada*, 2018 FCA 119 at para. 4 [*Horseman*], citing in particular *Canada (Attorney General) v. Lameman*, 2008 SCC 14 at para. 13; see also *Shot Both Sides v. Canada*, 2024 SCC 12 at para. 60. The appellant was required but failed to comply with the procedural rules in the *Income Tax Act* relating to filing notices of objection and requests for extensions of time. Neither the Tax Court nor this Court can grant the appellant the relief he seeks: *Horseman* at para. 7.

[10] Therefore, the appeal must be dismissed. As the respondent does not seek costs, none will be awarded.

“Monica Biringer”

J.A.

“I agree.
Wyman W. Webb J.A.”

“I agree.
Elizabeth Walker J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-93-24

STYLE OF CAUSE: LOUIS ZACHARY v. HIS
MAJESTY THE KING

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MARCH 12, 2026

REASONS FOR JUDGMENT BY: BIRINGER J.A.

CONCURRED IN BY: WEBB J.A.
WALKER J.A.

DATED: MARCH 18, 2026

APPEARANCES:

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THEIR OWN BEHALF

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