

Docket: 2005-1777(IT)I

BETWEEN:

COLBERT LAI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Application heard on September 23, 2005, at Calgary, Alberta

Before: The Honourable Justice Michael J. Bonner

Appearances:

Agent for the Appellant: Kitty Tang

Counsel for the Respondent: Galina M. Bining

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**ORDER**

Upon application by the Respondent for an Order quashing the appeal;

And upon reading the affidavit of Cheryl Ritchie, filed;

The application is granted and the appeal is dismissed.

Signed at Toronto, Ontario, this 28th day of September 2005.

Michael J. Bonner

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Bonner, J.

Citation: 2005TCC636  
Date: 20050928  
Docket: 2005-1777(IT)I

BETWEEN:

COLBERT LAI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR ORDER**

Bonner, J.

[1] This is an application by the Respondent for an Order quashing the appeal from an assessment of income tax for the 2000 taxation year on the basis that the Appellant did not object to the assessment within the time limits set out in paragraph 165(1)(a) of the *Income Tax Act* (the “Act”).

[2] Section 169 of the *Act* which confers the right to appeal from an assessment of income tax commences with the words “Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal...”.

[3] A taxpayer may be considered to have served notice of objection as required by section 169 only if he has served the notice within the time period set out in subsection 165(1) of the *Act*, that is to say on or before the later of

- (i) the day that is one year after the taxpayer’s filing-due date for the year, and
  - (ii) the day that is 90 days after the day of mailing of the notice of assessment;
- and ...

[4] The affidavit of Cheryl Ritchie establishes that the assessment from which the Appellant appeals was mailed on December 8, 2003 to his last known address as indicated in his return of income for the 2000 taxation year.

[5] Mr. Lai’s Notice of Objection was not served until March 21, 2005.

[6] The Notice of Appeal pleads that the Notice of Assessment was sent to the Appellant's old address in December 2003. It seems that Mr. Lai left Canada and became a non-resident in 2001 and that, although he returned to Canada in 2003, he then commenced to live at a new address. Doubtless that is why Mr. Lai's Notice of Objection was filed late. He did not receive the notice of assessment and was unaware of it.

[7] In *Schafer v. R.*, [2000] F.C.J. No. 1480, it was held in relation to analogous provisions of the *Excise Tax Act* that:

...Subsection 301(1.1) states that the limitation period begins to run ninety days after the notice is "sent". Therefore, the only requirement is that the Minister demonstrate that the notice was sent. There is no requirement that the notice be received in order to start the limitation period running. The language of subsection 301(1.1) is clear and unambiguous and must be applied regardless of its object and purpose.

[8] *Schafer* was followed in a later decision of that Court, *McLelland v. R.*, [2004] FCA 315. That decision arose under the objection and appeal provision of the *Income Tax Act*. At paragraph 4 Sexton J.A. stated:

The Appellant took the position before the Tax Court Judge that he had never received the Notice of Assessment. However, it is sufficient if CCRA proves that the Notice of Assessment was sent. It need not be proven that the Notice was received. *Schafer v. R.*, 2000 D.T.C. 6542 (Fed. C.A.).

[9] The Appellant did not seek an order extending the time for objection under section 166.1 of the *Act*. An Order will therefore be issued dismissing the appeal.

Signed at Toronto, Ontario, this 28th day of September 2005.

Michael J. Bonner

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Bonner, J.

CITATION: 2005TCC636  
COURT FILE NO.: 2005-1777(IT)I  
STYLE OF CAUSE: Colbert Lai and Her Majesty the Queen  
PLACE OF HEARING: Calgary, Alberta  
DATE OF HEARING: September 23, 2005  
REASONS FOR ORDER BY: The Honourable Justice Michael J. Bonner  
DATE OF ORDER: September 28, 2005

APPEARANCES:

Agent for the Appellant: Kitty Tang  
Counsel for the Respondent: Galina M. Bining

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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