

Docket: 2009-1327(EI)APP

BETWEEN:

IRENE E. WENNGATZ,

Applicant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

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Motion heard together with the Motion related to  
*Irene E. Wennatz* (2009-1328(CPP)APP)  
on August 17, 2009, at Vancouver, British Columbia

Before: The Honourable Justice Wyman W. Webb

Appearances:

Agent for the Applicant: Nick DiMambro  
Counsel for the Respondent: Zachary Froese, Student-at-law  
Matthew Canzer

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**ORDER**

The Respondent's Motion to dismiss the application made by the Applicant to extend the time within which to file an appeal to this Court under the *Employment Insurance Act* is allowed and this application made by the Applicant is dismissed.

Signed at Ottawa, Canada, this 14<sup>th</sup> day of September, 2009.

“Wyman W. Webb”

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Webb J.

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IRENE E. WENNGATZ,

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Motion heard together with the Motion related to  
*Irene E. Wenngatz* (2009-1327(EI)APP)  
on August 17, 2009, at Vancouver, British Columbia

Before: The Honourable Justice Wyman W. Webb

Appearances:

Agent for the Application:	Nick DiMambro
Counsel for the Respondent:	Zachary Froese, Student-at-law Matthew Canzer

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**ORDER**

The Respondent's Motion to dismiss the application made by the Applicant to extend the time within which to file an appeal to this Court under the *Canada Pension Plan* is allowed and this application made by the Applicant is dismissed.

Signed at Ottawa, Canada, this 14<sup>th</sup> day of September, 2009.

“Wyman W. Webb”

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Webb J.

Citation: 2009TCC454  
Date: 20090914  
Dockets: 2009-1327(EI)APP  
2009-1328(CPP)APP

BETWEEN:

IRENE E. WENNGATZ,

Applicant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

**REASONS FOR ORDER**

Webb J.

[1] The Applicant made an application to extend the time within which she may appeal to this Court under the *Employment Insurance Act* (the “*EI Act*”) and under the *Canada Pension Plan* (the “*CPP*”). The Respondent has brought a Motion to have these applications dismissed.

[2] The Applicant made a ruling request in early 2008 in relation to whether she was engaged in insurable and pensionable employment for the purposes of the *EI Act* and the *CPP*, respectively, in 2006. The Canada Revenue Agency informed the Applicant by letter dated April 2, 2008 that, since her request was not made within the period of time as set out in the *EI Act* and the *CPP*, no ruling would be issued. The Applicant submitted an application to extend the time to appeal this Court on April 27, 2009.

[3] Subsections 26.1 (1) and (2) of the *CPP* provide as follows:

26.1 (1) The Minister of Social Development, an employer, an employee or a person claiming to be an employer or an employee may request an officer of the Canada Revenue Agency authorized by the Minister of National Revenue to make a ruling on any of the following questions:

- (a) whether an employment is pensionable;
- (b) how long an employment lasts, including the dates on which it begins and ends;
- (c) what is the amount of any earnings from pensionable employment;
- (d) whether a contribution is payable;
- (e) what is the amount of a contribution that is payable; and
- (f) who is the employer of a person in pensionable employment.

(2) The Minister of Social Development may request a ruling at any time, but **a request by any other person must be made before June 30 of the year after the year in respect of which the question relates.**

(emphasis added)

[4] The Appellant's request for a ruling was in respect of 2006 and it was not submitted until January 25, 2008, which was more than six months after the deadline imposed by subsection 26.1(2) for submitting a request for a ruling.

[5] Subsections 90(1) and (2) of the *EI Act* provide as follows:

90. (1) An employer, an employee, a person claiming to be an employer or an employee or the Commission may request an officer of the Canada Revenue Agency authorized by the Minister to make a ruling on any of the following questions:

- (a) whether an employment is insurable;
- (b) how long an insurable employment lasts, including the dates on which it begins and ends;
- (c) what is the amount of any insurable earnings;
- (d) how many hours an insured person has had in insurable employment;
- (e) whether a premium is payable;
- (f) what is the amount of a premium payable;
- (g) who is the employer of an insured person;

(h) whether employers are associated employers; and

(i) what amount shall be refunded under subsections 96(4) to (10).

(2) The Commission may request a ruling at any time, but **a request by any other person must be made before the June 30 following the year to which the question relates.**

(emphasis added)

[6] The time limitation for requesting a ruling under the *EI Act* is the same as the time limitation for requesting a ruling under the *CPP* – before June 30 following the year to which the question relates. Since the question was related to 2006, the request for a ruling had to be made before June 30, 2007. The Applicant did not make her request for a ruling until January 25, 2008.

[7] Appeals to this Court are provided for in subsection 28(1) of the *CPP*, which provides as follows:

28. (1) A person affected by a decision on an appeal to the Minister under section 27 or 27.1, or the person's representative, may, within 90 days after the decision is communicated to the person, or within any longer time that the Tax Court of Canada on application made to it within 90 days after the expiration of those 90 days allows, appeal from the decision to that Court in accordance with the *Tax Court of Canada Act* and the applicable rules of court made thereunder.

[8] Subsection 103(1) of the *EI Act* provides as follows:

103. (1) The Commission or a person affected by a decision on an appeal to the Minister under section 91 or 92 may appeal from the decision to the Tax Court of Canada in accordance with the *Tax Court of Canada Act* and the applicable rules of court made thereunder within 90 days after the decision is communicated to the Commission or the person, or within such longer time as the Court allows on application made to it within 90 days after the expiration of those 90 days.

[9] Both subsections provide that an appeal to this Court must be filed within 90 days after the decision referred to in these subsections is communicated to the Applicant or an application to extend the time within which an appeal may be commenced must be made within 90 days after the expiration the first 90 day period. The decision referred to in these subsections is the decision of the Minister following an appeal to the Minister under section 27 of the *CPP* (in relation to a ruling) and section 91 of the *EI Act* (in relation to a ruling). The Applicant did not file an appeal to the Minister under section 27 of the *CPP* nor did the Applicant file an appeal to the

Minister under section 91 of the *EI Act*. As a result there is no decision of the Minister that was rendered in this case.

[10] This Court was formed by an Act of Parliament, the *Tax Court of Canada Act*. Section 12 of this *Act* provides that:

12. (1) The Court has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under the *Air Travellers Security Charge Act*, the *Canada Pension Plan*, the *Cultural Property Export and Import Act*, Part V.1 of the *Customs Act*, the *Employment Insurance Act*, the *Excise Act, 2001*, Part IX of the *Excise Tax Act*, the *Income Tax Act*, the *Old Age Security Act*, the *Petroleum and Gas Revenue Tax Act* and the *Softwood Lumber Products Export Charge Act, 2006* when references or appeals to the Court are provided for in those Acts.

(emphasis added)

[11] It seems to me that the jurisdiction of this Court to hear appeals from decisions rendered under the *EI Act* or the *CPP* is limited to situations in which an appeal is provided for in these statutes. These statutes only provide for an appeal to this Court if the person has:

- (a) first obtained a ruling under section 90 of the *EI Act* or section 26.1 of the *CPP* (following the submission of a request for a ruling within the time period specified for making such a request in these sections),
- (b) then appealed that ruling to the Minister under sections 91 and 93 of the *EI Act* or sections 27 and 27.2 of the *CPP* (within the time period for appealing to the Minister as set out in these sections) and obtained a decision of the Minister in relation to such appeal; and
- (c) then filed an appeal to this Court under section 103 of the *EI Act* or section 28 of the *CPP* within the 90 day period following the date that the decision of the Minister is communicated to the person or an application to extend the time to appeal is made within the 90 day period immediately following this appeal period.

[12] In *Power v. Minister of National Revenue*, 2005 TCC 200, Justice Bowie determined that a letter stating that the person's appeal to the Minister would not be accepted because it was not made within the time prescribed for appealing to

the Minister, is not a decision that can be appealed to this Court. He stated as follows:

4 ... The letter that the Appellants in the present case would have me consider to be a "decision" giving rise to a right of appeal, in contrast, specifically declines to consider the issue or to make any determination of the question in dispute. It simply says that no appeal to the Minister is available because of the lapse of time.

5 The Federal Court of Appeal said in *Moumdjian v. Canada (Security Intelligence Review Committee)*:<sup>6</sup>

... the term "decision or order" has no fixed or precise meaning but, rather, depends upon the statutory context in which the advisory decision is made, having regard to the effect which such decision has on the rights and liberties of those seeking judicial review.

That decision, like the decision of the Supreme Court of Canada in *Saulnier v. Québec (Police Commission)*,<sup>7</sup> certainly had the effect of broadening the categories of decisions that would be subject to judicial review. What is in issue here, however, is the scope of a statutory right of appeal, and it must be assessed in light of the language of the statute. Subsection 103(1) of the Act gives the right of appeal to:

... a person affected by a decision on an appeal to the Minister under section 91 or 92 ...

\* \* \*

... une personne que concerne une décision rendue au titre de l'article 91 ou 92 ...

I am unable to read this expression in either French or English in such a way as to mean anything other than a decision made by the Minister, or the Minister's delegate, in the exercise of the jurisdiction to review the decisions of rulings officers - in other words, the jurisdiction to consider and decide whether the ruling given was correct. If the Minister's departmental officers decline to put the matter forward to the Minister, or a delegate, because they are of the view that the appeal was filed late, neither they nor the Minister has made a decision. The remedy that lies if the appeal was in fact filed in time is a mandatory order to compel the Minister to exercise his jurisdiction. This, of course, is a remedy that this Court cannot give; as a statutory Court it has only the powers that are found in the Tax Court of Canada Act,<sup>8</sup> or in some other statute, and the power to make an order in the nature of mandamus is not one of them. [The footnote references were inserted by Justice Bowie and can be found at the end of his reported decision.]

[13] Associate Chief Justice Rossiter followed the decision of Justice Bowie in *741290 Ontario Inc. v. The Queen* 2008 TCC 55, 2008 DTC 2713.

[14] In this case, the Applicant does not have a ruling. None of the questions on which a ruling is to be made under subsection 26.1(1) of the *CPP* or subsection 90(1) of the *EI Act* are addressed in the letter from the Canada Revenue Agency dated April 2, 2008. Just as a letter stating that the appeal to the Minister was not filed in time is not a decision, a letter from the Canada Revenue Agency stating that the request for a ruling was not made within the time prescribed for such a request, is not a ruling.

[15] In this case it is clear that not only is there no ruling but also that there is no decision of the Minister. The prerequisite to appealing to this Court is that the Applicant must have obtained a decision of the Minister (which is only obtained following the appeal of a ruling). As a result, the Applicant cannot appeal to this Court.

[16] The Applicant had also requested an Order compelling the Canada Revenue Agency to process the ruling request. As noted above, the jurisdiction of this Court is limited to hearing and determining appeals under the *EI Act* and the *CPP* when appeals are provided for in those statutes. There is no power to order the Canada Revenue Agency to process the ruling request. In any event, the ruling request was made more than six months after the time period for making such a request had expired.

[17] As a result the Respondent's Motion is granted and the applications by the Applicant to extend the time within which to file an appeal to this Court under the *CPP* and the *EI Act* are dismissed.

Signed at Ottawa, Canada, this 14<sup>th</sup> day of September, 2009.

“Wyman W. Webb”

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Webb J.



CITATION: 2009TCC454  
COURT FILE NOS.: 2009-1327(EI)APP and 2009-1328(CPP)  
STYLE OF CAUSE: Irene E. Wenngatz v. M.N.R.  
PLACE OF HEARING: Vancouver, British Columbia  
DATE OF HEARING: August 17, 2009  
REASONS FOR ORDER BY: The Honourable Justice Wyman W. Webb  
DATE OF ORDER: September 14, 2009

APPEARANCES:

Agent for the Applicant: Nick DiMambro  
Counsel for the Respondent: Zachary Froese, Student-at-law  
Matthew Canzer

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