BETWEEN:

BRANDON OSADCHUCK,

Applicant,

and

HIS MAJESTY THE KING,

Respondent.

For the applicant: The Applicant himself

Agent for the respondent: Boma Jumbo

ORDER AND REASONS FOR ORDER

The applicant seeks an order to extend the time to file a notice of appeal with respect to the 2007 taxation year. The representative of the respondent has written to the court to say that the minister does not oppose the application.

Time extension applications are governed by section 167 of the *Income Tax Act* and subsection 167(5) sets out the requirements for making an order. That subsection reads:

(5) When order to be made — No order shall be made under this section unless

   (a) the application is made within one year after the expiration of the time limited by section 169 for appealing; and

 (b) **the taxpayer demonstrates that**

    (i) within the time otherwise limited by section 169 for appealing the taxpayer

      (A) was unable to act or to instruct another to act in the taxpayer's name, or
      (B) had a bona fide intention to appeal,

    (ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application,

(iii) the application was made as soon as circumstances permitted, and
(iv) **there are reasonable grounds for the appeal**.

(Emphasis added.)

Generally, where an application is not opposed and on the face of the application, it would appear that the conditions are met, the court will grant the time extension.

However, it is well settled that the parties cannot extend the jurisdiction of the court and it is ultimately this court that must be satisfied that that the conditions are met.

Justice Webb, as he then was, stated In *Johnston v. R*[1]:

> In my opinion, the statutory requirement that an applicant demonstrate that there are reasonable grounds for the appeal is a condition that must be satisfied in order for this Court to have the jurisdiction to issue the order extending the time within which an appeal may be instituted and it is not a requirement that can be waived by the Respondent. It is not a requirement that is imposed solely for the benefit of the Respondent. The requirement that an applicant demonstrate that there are reasonable grounds for the appeal is a condition precedent to this Court issuing the requested order.

I agree.

Not including the signature page, the proposed notice of appeal attached contains eight pages with few facts and much argument. Among other things, it invokes the *Constitution Act, 1982*, the *International Covenant on Civil and Political Rights* and *the International Covenant on Economic, Social and Cultural Rights* as well as a number of legal decisions.

The gist of the applicant's position appears to be that:
He is unlawfully being forced to accept the status of a legal person. Further, he has the right to only be recognized as a human being.

Although expressed somewhat differently, this has a striking resemblance to what has often been referred to as "natural persons" arguments.

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[1]   2009 TCC 327 at paragraph 26.

The threshold for "reasonable grounds of appeal" is not high. See, for example the comments of Justice Smith in *Ross Johnson v. HMTQ*. [2]

However, there must be at least some possibility of success.

On its face, the proposed notice of appeal in this application appears to be without merit and does not demonstrate reasonable grounds for the appeal.[3]

Accordingly, the Application should proceed to hearing.

IT IS ORDERED THAT THIS APPLICATION BE SET DOWN FOR HEARING.

Signed at Ottawa, Canada, this 2nd day of February 2023.

"Gaston Jorré"
Jorré D.J.

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[2] 2019 TCC 13 at paragraph 23.

[3] The apparent merits are not strengthened by a letter to the court from the appellant dated December 13, 2022 in which the appellant advises that he intends to oppose the application for an extension of time. Nor is it strengthened by a document dated January 23, 2023 filed by the applicant that is entitled "Notice of Application of Writ of Habeas Corpus".