

BETWEEN:

McMURRAY MONTESSORI ACADEMY INC.,

Applicant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Application heard on February 28, 2023, at Calgary, Alberta

Before: The Honourable Justice Joanna Hill

Appearances:

Agent for the Applicant: Indu Paul

Counsel for the Respondent: Levi Smith

JUDGMENT

The application for an extension of time to file an appeal with respect to assessments issued under the *Canada Pension Plan* is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Toronto, Ontario, this 18th day of July 2023.

“Joanna Hill”

Hill J.

Citation: 2023TCC101
Date: 20230718
Docket: 2022-2063(CPP)APP

BETWEEN:

McMURRAY MONTESSORI ACADEMY INC.,
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REASONS FOR JUDGMENT

Hill J.

I. Introduction

[1] Although the Minister of National Revenue assessed the Applicant for amounts owing under the *Canada Pension Plan*, the *Employment Insurance Act*, and the *Income Tax Act* for 2015, 2018 and 2019, the present application for extension of time to appeal was filed only with respect to the *Canada Pension Plan*.

[2] The Minister responded to the application accordingly, tendering affidavit evidence and making submissions specifically with respect to assessments issued to the Applicant under the *Canada Pension Plan*.

[3] As outlined below, I cannot grant the application because the preconditions to appeal for 2015 and 2018 were not met, and the deadline after which this Court cannot grant an extension of time to appeal for 2019 has expired.

II. Background

A. Insufficient evidence provided by the Applicant

[4] Mr. Indu Paul, the Applicant's accountant, representative, and sole witness, was unable to provide credible or reliable evidence to assist the Court in identifying the assessments or decisions at issue. He lacked sufficient knowledge of events that occurred before he was hired by the Applicant in 2021 and did not prepare himself for the hearing accordingly.

[5] At the outset of his testimony, Mr. Paul explained that the Applicant did not have the resources to respond to the "arbitrary" payroll assessments issued by the Canada Revenue Agency because of staffing shortages and Covid-related issues. He acknowledged that the Applicant should have responded in time, but did not. He further stated that he filed notices of objection through the CRA website, as indicated in printouts confirming that objections were filed online in June 2022.

[6] The printouts included "Dispute Summaries" with information fields completed by Mr. Paul, and each objection was assigned a case number once the online filing was accepted by the CRA, as follows:

1. The 2015 objection, received June 12, 2022, case number GB221631439581

Subject area for your dispute: Appeal of a CPP/EI Ruling or CPP/EI Assessment
Date of assessment/decision: 2021-06-01
Year in dispute: 2015

2. The 2018 objection, received June 15, 2022, case number GB221661933408

Subject area for your dispute: Appeal of a CPP/EI Ruling or CPP/EI Assessment
Date of assessment/decision: 2021-06-02
Year in dispute: 2018

3. The 2019 objection, received June 10, 2022, case number GB221611509010

Subject area for your dispute: Appeal of a CPP/EI Ruling or CPP/EI Assessment

Date of assessment/decision: 2021-06-14

Year in dispute: 2019

[7] Mr. Paul did not provide the Court with copies of any CPP/EI assessments or decisions he listed as dated June 1, 2, or 14, 2021 in those online objections.

[8] Instead, Mr. Paul relied on two pieces of correspondence from the CRA.

[9] The first was a letter dated July 27, 2022 with respect to the Applicant's "Notice of objection for the tax years ending December 31, 2018, and December 31, 2019". In the letter, the CRA stated that it could not consider the Applicant's correspondence dated June 15, 2022 as a valid objection on the basis that the Applicant had already filed an objection on February 28, 2020, to which the Minister responded by Notice of Confirmation dated June 14, 2021.

[10] The second piece of correspondence Mr. Paul relied on was that June 14, 2021 Notice of Confirmation. That notice was issued in response to the Applicant's objection to late-remitting penalty assessments for the tax years ending December 31, 2018, and December 31, 2019. It listed a case number of GB200721427592.

[11] Unfortunately, Mr. Paul was unable to account for the gaps and inconsistencies in his evidence or identify the particular assessments from which the Applicant seeks to appeal. He was still unable to do so after reviewing the information contained in the Affidavit of Emma Lew-Kowal, filed on behalf of the Respondent.¹

B. The Respondent's evidence

[12] The Lew-Kowal Affidavit provided some information regarding the assessments and decisions at issue. Unfortunately, the affidavit did not provide dates for all the objections filed by the Applicant, or attach complete copies of the

¹ Mr. Paul initially stated that he left his copy of the Reply and Respondent's Affidavit at his office. He then later claimed that he had not received either document because they were mailed to the wrong address. The Court took a short recess to allow Mr. Paul time to review the documents.

assessments. However, a review of the affidavit and attached exhibits provided the following information.

(a) 2015

[13] The Minister issued a Notice of Assessment dated February 12, 2016, for the Applicant's failure to remit CPP contributions and EI premiums for 2015.

[14] A letter from the CPP/EI Appeals Division dated July 12, 2022, indicates that:

- The CRA considered the online objection filed by Mr. Paul in June 2022 as an appeal under the *Canada Pension Plan*.
- The appeal had the same case number, GB221631439581, assigned to the 2015 online objection.
- The appeal was filed beyond the 90-day deadline from the notice of assessment.
- Although the *Canada Pension Plan* does not provide for an extension of time, the CPP/EI Appeals Division was willing to accept information regarding the delay, if provided within 30 days.

[15] The appeal was closed without the Minister issuing a decision because the Applicant did not provide a response regarding its delay.

(b) 2018

[16] The Minister issued a Notice of Assessment dated December 10, 2019 for the Applicant's failure to remit tax source deductions for 2018. The Applicant was not assessed for failure to remit CPP contributions or EI premiums for that year.

[17] By letter dated July 12, 2022, the CRA responded to the online objection filed by Mr. Paul on June 15, 2022 (case number GB221661933408) indicating that there was no CPP/EI assessment that could be reviewed by the CPP/EI Appeals Division. The appeal was therefore forwarded to the Tax Objections Division for review.

(c) 2019

[18] The Minister issued a Notice of Assessment dated December 10, 2019 for the Applicant’s failure to remit CPP contributions and EI premiums for 2019. The Minister confirmed the assessment, by decision dated May 19, 2021.

[19] That May 19, 2021 decision pre-dates the online objections filed by Mr. Paul in June 2022. It listed a different case number, GB200771452178, and did not refer to the date the prior objection/appeal was filed. The decision informed the Applicant that if it disagreed with the decision, it could file an appeal to the Tax Court of Canada, and referred to an enclosed information sheet “How to file a CPP/EI appeal to the Tax Court of Canada”.

[20] The “Notice of Details/Assessment details” page from the December 10, 2019 Notice of Assessment indicates that the Applicant was also assessed federal tax and was “charged” for a failure to remit for 2019.

C. The assessments and decisions issued to the Applicant

[21] Based on the totality of the evidence provided by the parties, I have determined that the assessments, objections/appeals, and decisions/confirmations for the three years at issue are as follows:

Year	Assessment	Objection/Appeal	Decision/Confirmation
2015	CPP & EI, dated February 12, 2016	GB221631439581, dated June 12, 2022	n/a – closed because appeal filed past 90-day deadline
2018	ITA failure to remit tax source deductions / late-remitting penalty, dated December 10, 2019	(i) GB200721427592, dated February 28, 2020	(i) June 14, 2021
		(ii) GB221661933408, dated June 15, 2022	(ii) n/a – closed because no CPP/EI assessment

2019	(a) CPP & EI, dated December 10, 2019	GB200771452178, date unknown	May 19, 2021
	(b) ITA failure to remit tax source deductions / late-remitting penalty, dated Dec 10, 2019	(i) GB200721427592, dated February 28, 2020	(i) June 14, 2021
		(ii) GB221611509010, dated June 10, 2022	(ii) n/a - closed because of issuance of June 14, 2021 confirmation

D. The application for extension of time to appeal

[22] On August 12, 2022, the Applicant filed the present application for an extension of time to file a notice of appeal under the *Canada Pension Plan*.

[23] The Lew-Kowal Affidavit indicates that the Applicant also filed an application for an extension of time to file a notice of appeal under the *Employment Insurance Act* on November 14, 2022, in court file 2022-2831(EI)APP. That EI application was not scheduled to be heard with the present application. As a result, I will not address this matter.

[24] The Applicant did not file an application for an extension of time to file a notice of appeal under the *Income Tax Act*.

III. Analysis

[25] Clarification of the assessments and decisions issued by the Minister is essential to disposing of this application. This information establishes whether the preconditions to appeal have been met, and serves as the starting point for the relevant deadline to file an application for an extension of time to appeal.

[26] This Court cannot grant an extension of time if the Minister has not issued an assessment or a decision that could be subject to an appeal, or if the deadline to apply has expired.

[27] The right to appeal to this Court is found in subsection 28(1) of the *Canada Pension Plan*. That provision refers to a decision being issued in response to an appeal filed with respect to an assessment.

[28] The relevant provisions of the *Canada Pension Plan* are as follows:

Appeal of assessments

27.1 An employer who has been assessed under section 22 may appeal to the Minister for a reconsideration of the assessment, either as to whether an amount should be assessed as payable or as to the amount assessed, within 90 days after being notified of the assessment.

...

Decision

27.2 (3) The Minister shall decide the appeal within a reasonable time after receiving it and shall notify the affected persons of the decision in any manner that the Minister considers adequate.

...

Appeal to Tax Court of Canada

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.

[29] Subsection 28(1) also provides a deadline of a total of 180 days from the Minister's decision to file an application for an extension of time to appeal.² This Court does not have the jurisdiction to grant an extension of time if that deadline has passed.

[30] The present application cannot succeed because these statutory preconditions and deadlines were not met.

² See also paragraph 6(3)(a) of the *Tax Court of Canada Rules of Procedure respecting the Canada Pension Plan*.

[31] For 2015, the Minister did not issue a decision that can be appealed to this Court. The appeal was closed because the Applicant did not appeal the February 12, 2016 CPP assessment to the Minister within 90 days, as required by section 27.1 of the *Canada Pension Plan*.

[32] For 2018, an appeal under the *Canada Pension Plan* is not necessary, or permitted, because the assessment issued to the Applicant did not include amounts for unpaid CPP contributions.

[33] For 2019, I cannot grant the application to extend the deadline to appeal because the Applicant filed it beyond the 180-day deadline. The Minister confirmed the 2019 CPP assessment on May 19, 2021. The Applicant filed this application for an extension of time on August 12, 2022, more than a year after the decision was issued.

Income tax assessments

[34] As outlined above, the Applicant did not file an application for an extension of time to appeal under the *Income Tax Act* with respect to any of the years at issue. Furthermore, when pressed by the Court to clarify the Applicant's position in this regard, Mr. Paul did not specify that the Applicant also intended to file an application for an extension of time to appeal from the December 10, 2019 assessments for failure to remit income tax source deductions in 2018 and 2019. I am therefore not required to address this issue. In any event, the deadline to file an application for an extension of time in this regard expired on September 12, 2022. Pursuant to paragraph 167(5)(a) of the *Income Tax Act*, the Applicant had 90 days plus one year from the June 14, 2021 Notice of Confirmation to apply for an extension of time to appeal.

[35] The application is dismissed, without costs, accordingly.

Signed at Toronto, Ontario, this 18th day of July 2023.

“Joanna Hill”

Hill J.

CITATION: 2023 TCC 101

COURT FILE NO.: 2022-2063(CPP)APP

STYLE OF CAUSE: McMurray Montessori Academy Inc. v.
The Minister of National Revenue

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: February 28, 2023

REASONS FOR JUDGMENT BY: The Honourable Justice Joanna Hill

DATE OF JUDGMENT: July 18, 2023

APPEARANCES:

Agent for the Applicant: Indu Paul

Counsel for the Respondent: Levi Smith

COUNSEL OF RECORD:

For the Applicant:

Name: N/A

Firm: N/A

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