Docket: 2019-979(IT)APP

BETWEEN:

TERRENCE D. TOLLEY,

Applicant,

and

HIS MAJESTY THE KING,

Respondent.

Application heard on October 23, 2025, at Prince Albert, Saskatchewan

Before: The Honourable Justice J. Scott Bodie

Appearances:

For the Applicant:	The Applicant himself
Counsel for the Respondent:	Cameron Walters

ORDER

UPON hearing from the parties:

The application for an Order extending the time within which a notice of objection made under the *Income Tax Act* with respect to reassessments of the Applicant's 2011, 2012 and 2013 taxation years may be instituted is dismissed, without costs.

Signed this 15th day of January 2026.

"J. Scott Bodie"

Bodie J.

Citation: 2026 TCC 14
Date: 20260115
Docket: 2019-979(IT)APP

BETWEEN:

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REASONS FOR ORDER

Bodie J.

INTRODUCTION AND SUMMARY

[1] This is an application brought by Terrence D. Tolley under section 166.2 of the *Income Tax Act* (the "Act") to extend the time for filing a notice of objection to reassessments issued with respect to the 2011, 2012 and 2013 taxation years. All statutory references herein are to the Act, unless otherwise indicated.

[2] Although I am very sympathetic to the position in which Mr. Tolley finds himself, I have no choice but to dismiss this application.

[3] Mr. Tolley's concern arises because two levels of Government, the Government of Saskatchewan, which was his employer during the taxation years at issue, and the Minister of National Revenue (the "Minister"), on behalf of the Respondent, took competing views on the proper characterization of Mr. Tolley's employment. As is often the case with such matters between different levels of Government, it took time to resolve the issue and to determine the appropriate method for implementing that resolution. By the time a resolution was reached, under the applicable legislation, Mr. Tolley had to rely largely on the discretion of the Minister under the taxpayer relief provisions contained in subsection 152(4.2) to address his concerns arising from the fallout of such resolution.

[4] The Minister exercised such discretion with respect to Mr. Tolley's 2011 and 2012 taxation years. This Court has no jurisdiction to review the exercise of the Minister's discretion. Under subsection 165(1.2) a taxpayer is barred from objecting to an assessment made under such taxpayer relief provisions. Under subsection 169(1) the filing of a valid objection is a pre-condition to bringing an appeal before this Court.

[5] With respect to Mr. Tolley's 2013 taxation year, the Minister has already issued the relief which Mr. Tolley is seeking, rendering any objection or subsequent appeal unnecessary.

FACTS

[6] I will first review the facts out of which this application arises.

[7] In the spring of 2008, Mr. Tolley was hired as a contractor by the Ministry of Corrections, Public Safety and Policing, a ministry within the Government of Saskatchewan (the "Provincial Crown"). In the Fall of 2013, the Canada Revenue Agency (the "CRA") undertook a review of certain operations conducted by the Provincial Crown and concluded that Mr. Tolley, along with approximately 80 other individuals, did not meet the criteria to qualify as a contractor. The CRA issued a ruling in this regard on December 23, 2013, and indicated that the reclassification from contractor to employee for all affected individuals would take effect for the 2011 taxation year. As a result, the Provincial Crown began to pay Mr. Tolley as an employee in January 2014.

[8] In October 2016, the CRA advised the Provincial Crown that it needed to generate T4s for each of the 2011, 2012 and 2013 taxation years for all individuals affected by the earlier CRA ruling, including Mr. Tolley. The Provincial Crown undertook to do so and accordingly issued such T4s in January 2017.

[9] At the time that the new T4s were issued by the Provincial Crown, Mr. Tolley, together with the other impacted individuals were advised that they would have 10 years to request T1 adjustments to remove the business income they had previously reported, replace it with employment income, and receive any resulting refunds of excess Canada Pension Plan ("CCP") contributions that they had previously paid. Such excesses resulted from the fact that as part of the dealings between the Provincial Crown and the CRA, the Provincial Crown agreed to pay both the employer and the employee portions of the required CPP contributions for all impacted individuals for each of the 2011, 2012 and 2013 taxation years.

[10] To receive a refund of what turned out to be his excess CPP contributions, Mr. Tolley filed T1 adjustment requests for each of his 2011, 2012 and 2013 taxation years with the CRA in January 2017. Pursuant to these T1 adjustment requests, the CRA issued Notices of Reassessment in respect of such taxation years on July 31, 2017 (the "Notices of Reassessment").

[11] In reviewing the T1 adjustment requests, the CRA took the view that the request for the 2013 taxation year was filed within the normal reassessment period as defined in subsection 152(3.1), but that the requests for the 2011 and 2012 taxation years were filed outside of the applicable normal reassessment periods. Accordingly, the reassessments for these two years were, in the CRA's view, issued under the taxpayer relief provisions contained in subsection 152(4.2).

[12] Under the reassessments issued, the CRA processed the adjustments as Mr. Tolley requested. However, the CRA only issued the resulting refund in respect of the 2013 taxation year. The CRA said that it was unable to refund the excess contributions for the 2011 and 2012 taxation years since it did not receive Mr. Tolley's request within the four-year limitation period specified within the CPP.

[13] The four-year limitation period relied on by the CRA in refusing to refund excess contributions for the 2011 and 2012 taxation years is contained in subsection 38(4) of the CPP. This provision sets out circumstances in which a refund is discretionary and circumstances in which a refund is mandatory. Subsection 38(4) provides that if a person paid contributions in an amount in excess of the contributions required for the year in respect of the person's self-employment earnings, the Minister:

> (a) may refund that part of the amount so paid in excess of the required contributions; and
>
> (b) must make such a refund if the application is made in writing by the contributor not later than four years after the end of the year.
>
> [Emphasis added]

[14] Accordingly, the CRA issued the refund in respect of the 2013 taxation year, as it was required to do, since Mr. Tolley filed a T1 adjustment form for such year within the four-year limitation period. However, since the T1 adjustments for the 2011 and 2012 taxation years were filed outside of the applicable four-year

limitation period, the CRA exercised its discretion to deny the refunds, notwithstanding that it made the requested adjustments to Mr. Tolley's income.

[15] Mr. Tolley testified on his own behalf at the hearing of this application. I found him to be a credible and reliable witness. He testified that after receiving the Notices of Reassessment, he engaged in numerous discussions with certain officials within the Provincial Crown to resolve what he considered to be an unfair situation. In his view, in the circumstances, he should not be denied refunds to which he is entitled as it was impossible for him to meet the four-year deadline. He did not receive the T4's necessary to apply for such refunds until after the applicable limitation periods for the 2011 and 2012 taxation years had expired.

[16] Further, on October 16, 2017, Mr. Tolley sent a letter addressed to the Canada Customs and Revenue Agency, Winnipeg Tax Centre (the "Position Letter"). In the Position Letter, Mr. Tolley reviewed the above history and requested that the CRA "redo" the T1 adjustments he submitted for each of the three years, taking into account the rulings which he had been provided by the Provincial Crown.

[17] Despite the discussions which Mr. Tolley was having with Provincial Crown officials and discussions which he understood were being conducted between such Provincial Crown officials and the CRA, there was, to his increasing frustration, no progress being made with respect to him obtaining refunds of his excess CPP contributions.

[18] Finally, on November 20, 2018, Mr. Tolley was invited to participate in a conference call, which included himself and officials from both the CRA and the Provincial Crown. Mr. Tolley testified that during this call he was informed by the CRA officials, that the decision of the CRA to deny the refunds for 2011 and 2012 could not be appealed, but that he could file a Notice of Objection to the Notices of Reassessment. It was determined by all parties on the call, that such a Notice of Objection would be viewed more positively if it included a letter from the Provincial Crown explaining the history of the matter. Mr. Tolley received such a letter from an official of the Provincial Crown on December 3, 2018, and then immediately attempted to file the Notice of Objection that is at the heart of this application on December 4, 2018.

[19] On December 21, 2018, the Respondent notified Mr. Tolley that the Notice of Objection was filed beyond the time permitted by the Act to object to the Notices of Reassessment. Accordingly, the CRA could not consider the objection.

POSITIONS OF THE PARTIES

[20] The Act contains a clear and strict set of procedures and timelines which must be followed when a taxpayer objects to an assessment issued by the CRA. Under subsection 165(1), the taxpayer has 90 days from the date an assessment is sent to object to the assessment. In certain circumstances, the taxpayer may be given up to a one-year grace period where the original 90-day deadline is missed.

[21] It is Mr. Tolley's position that he should be successful in this application because the Position Letter constitutes a valid notice of objection which was duly served on the Minister within the 90-day deadline mandated by subsection 165(1).

[22] The Respondent disputes that the Position Letter constitutes a valid notice of objection, in part because in the Position Letter, Mr. Tolley does not clearly state that he objects to the Notices of Reassessment. More importantly, however, it is the Respondent's position that the Position Letter cannot be a valid notice of objection because the reassessments in respect of the 2011 and 2012 taxation years were issued by the Minister under the taxpayer relief provisions contained in subsection 152(4.2). Pursuant to subsection 165(1.2) a taxpayer may not object to assessments made under subsection 152(4.2).

ANALYSIS AND DECISION

[23] The first question then is whether the Notices of Reassessment were reassessments made under subsection 152(4.2)? Pursuant to subsection 152(4), the Minister generally has three years to assess or reassess an individual taxpayer. This "normal reassessment period" commences on the date that the original assessment is sent.

[24] Subsection 152(4.2) allows the Minister to reassess an individual taxpayer after the expiration of the normal reassessment period for the purpose of, among other things, determining a refund. Subsection 152(4.2) reads as follows:

> (4.2) Notwithstanding subsections (4), (4.1) and (5), for the purpose of determining - at any time after the end of the normal reassessment period of a taxpayer who is an individual (other than a trust) or a graduated rate estate, in respect of a taxation year - the amount of any refund to which the taxpayer is entitled at that time for the year, or a reduction of an amount payable under this Part by the taxpayer for the year, the Minister may, if the taxpayer makes an application for that determination on or before the day that is 10 calendar years after the end of the taxation year,

> (a) reassess tax, interest or penalties under this Part by the taxpayer in respect of that year: and
>
> …

[25] At the hearing of this application, the Respondent introduced into evidence the affidavit of Barry Fong, sworn on May 13, 2019. In his affidavit, Mr. Fong, who, as of the date of the affidavit was employed as a litigation officer in the Vancouver Tax Services Office of the CRA, attests that Notices of Assessment for the years in question were sent by the CRA as follows:

(a) for Mr. Tolley's 2011 taxation year – April 2, 2012;

(b) for Mr. Tolley's 2012 taxation year – March 25, 2013;

(c) for Mr. Tolley's 2013 taxation year – April 14, 2014.

[26] Mr. Tolley filed his T1 adjustment requests in January 2017. Therefore, the requests for the 2011 and 2012 taxation years were made after the end of the normal reassessment period for those taxation years. Accordingly, the first condition for the application of subsection 152(4.2) is met.

[27] Further, under subsection 152(4.2), it is the application of the taxpayer that triggers the Minister to exercise his discretion to determine whether to issue a reassessment outside of the normal reassessment period. Therefore, it is the taxpayer's purpose in making the application that must be examined to determine whether the resulting reassessment is made under the subsection.

[28] In his testimony, Mr. Tolley testified that his purpose in making the requests in January 2017 was to obtain the refunds to which he was entitled because of the reclassification of his employment status by the CRA, and the Provincial Crown agreeing to pay both the employer and the employee portions of the CPP contributions for each of the taxation years at issue. Accordingly, that is the purpose referred to in subsection 152(4.2). In my view, therefore the Notices of Reassessment in respect of each of the 2011 and 2012 taxation years were made under subsection 152(4.2).

[29] The next question is what is the impact, if any, of such Notices of Reassessment being issued under subsection 152(4.2) on an application to extend the time to object under subsection 166.2(1), as has been brought by Mr. Tolley?

[30] In *Letendre v. The Queen*, 2011 TCC 577, Justice Woods held that subsection 165(1.2) precludes a taxpayer from objecting to an assessment made under subsection 152(4.2). She concluded that this alone was enough to dismiss the application before her for an extension of time to file an objection.

[31] Similarly in *Siam v. The King*, 2025 TCC 69, Justice Gagnon, citing *Letendre*, wrote at paragraph 13:

> The Court is of the view that the Act, based on case law, is clear that subsection 165(1.2) ITA prevents taxpayers from objecting to reassessments issued under subsection 152(4.2) ITA. The Court does not have jurisdiction to hear an appeal without a valid notice of objection.

[32] It follows that if a taxpayer cannot bring a valid objection under the Act, the taxpayer is precluded from being granted an extension of time to file such an objection. It would be nonsensical to hold otherwise. A taxpayer cannot be granted an extension of time to file an objection which cannot be made.

[33] In my view the result should be no different with respect to the 2013 taxation year. Mr. Tolley filed the T1 adjustment request for such year within the normal reassessment period. Although Mr. Tolley's Notice of Objection, which is the subject of this application, included the 2013 taxation year, the Minister reassessed such year in accordance with the T1 adjustment request that Mr. Tolley filed and issued the resulting refund he sought in accordance with paragraph 38(4)(b) of the CPP. In his testimony, Mr. Tolley did not raise any specific concerns with respect to the 2013 Notice of Reassessment.

[34] I am not prepared to extend the time to object to the 2013 reassessment, which the Applicant does not challenge, and which seems to have been included in this application merely because it arises out of the same set of circumstances and was issued at the same time as the 2011 and 2012 reassessments, to which the taxpayer cannot object. In such circumstances, it would be nonsensical to extend the time to file a notice of objection.

[35] For these reasons the application is dismissed, without costs.

POSTSCRIPT

[36] Lastly, the sole issue in this application was whether this Court should grant an Order extending the time within which Mr. Tolley may file a Notice of Objection.

Consequently, it is unnecessary to consider the merits of the concerns raised by Mr. Tolley or whether this Court is the proper forum to address those concerns. I note, however, that this Court has had occasion in the past to consider the refund provisions of the CPP and has held that this Court does not have the ability or the jurisdiction to order a refund under such provisions (see for example, *Jamal v. The Queen*, 2018 TCC 196; *Freitas v. The Queen*, 2017 TCC 46 and *Tharle v. The Queen*, 2011 TCC 325).

[37] In *Tharle*, Justice Little considered a set of facts similar to those set out above, in that, for various reasons, the Appellant in that case was not in a position to apply for a refund to which the Appellant was entitled until after the four-year period mandated by paragraph 38(4)(b) had expired. Just like in this case, the Minister declined to exercise the Minister's discretion to issue a refund under paragraph 38(4)(a). Justice Little admitted that he did not know what factors the Minister considered in exercising such discretion to deny the refund, but observed that the result, on its face, appeared to be unfair. In order to address this potential unfairness, Justice Little suggested that the Appellant may wish to consider seeking a remission order by applying to the Minister pursuant to section 23 of the *Financial Administration Act*. I make no comment on the viability of this avenue to address the current situation, other than to suggest that it is an avenue that Mr. Tolley may wish to consider.

Signed this 15th day of January 2026.

"J. Scott Bodie"

Bodie J.

CITATION:	2026 TCC 14
COURT FILE NO.:	2019-979(IT)APP
STYLE OF CAUSE:	TERRENCE D. TOLLEY AND HIS MAJESTY THE KING
PLACE OF HEARING:	Prince Albert, Saskatchewan
DATE OF HEARING:	October 23, 2025
REASONS FOR ORDER BY:	The Honourable Justice J. Scott Bodie
DATE OF ORDER:	January 15, 2026

APPEARANCES:

For the Applicant:	The Applicant himself
Counsel for the Respondent:	Cameron Walters

COUNSEL OF RECORD:

For the Applicant:

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Firm:	N/A
For the Respondent:	Shalene Curtis-Micallef Deputy Attorney General of Canada Ottawa, Canada