

BETWEEN:

WEB LISTINGS INC.,

Applicant,

and

HIS MAJESTY THE KING,

Respondent.

Application heard on May 6, 2025, October 10, 2025, April 27, 2026,
and May 1, 2026, at Toronto, Ontario

Before: The Honourable Justice Perry Derksen

Appearances:

Counsel for the Applicant: Matthew Pollock
Jeffrey Liu

Counsel for the Respondent: Eric Myles

ORDER

In accordance with the attached reasons for order:

The application for an Order extending the time within which a Notice of Objection may be served with respect to assessments made under the *Excise Tax Act* for the Applicant's quarterly reporting periods ending March 31, 2018, June 30, 2018, September 30, 2018, December 31, 2018, March 31, 2019, June 30, 2019,

September 30, 2019, December 31, 2019, June 30, 2020, and December 31, 2020 is dismissed, without costs.

Signed this 22nd day of May 2026.

“Perry Derksen”

Derksen J.

BETWEEN:

WEB LISTINGS INC.,

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HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Derksen J.

I. Introduction

[1] This is an application under s. 304 of the *Excise Tax Act*, R.S.C., 1985, c. E-15 (ETA) for an extension of time to file a notice of objection to assessments. Although the applicant, Web Listings Inc., wishes to have the correctness of the assessments determined on their merits, there are questions about whether this Court has jurisdiction and, if so, whether it is nonetheless too late to object.

[2] The notice of application mentions reporting periods in 2019 and, therefore, on its face concerns notices of assessment dated May 14, 2021, and a notice of reassessment dated July 28, 2021, as follows:

Reporting Period	Notice of Assessment/Reassessment
(i) January 1 to March 31, 2019	July 28, 2021 — reassessment
(ii) April 1 to June 30, 2019	May 14, 2021 — initial assessment
(iii) July 1 to September 30, 2019	
(iv) October 1 to Dec. 31, 2019	

[3] But the Minister of National Revenue also reassessed the applicant for other reporting periods by the assessment notice dated July 28, 2021. And so, additional context will be needed later. (I will use the expression “assessment notices” to simplify matters.)

[4] The Canada Revenue Agency’s Appeals Division, on behalf of the Minister, issued a decision letter dated September 13, 2023 (Decision Letter) advising that a notice of objection submitted on July 24, 2023, could not be accepted because the applicant did not file it within 90 days from the date of the assessment notice dated July 28, 2021. Inexplicably, the Decision Letter referred to reporting periods from January 1, 2018, through to December 31, 2020, but failed to mention the assessment notices dated May 14, 2021.

[5] The Appeals Division also pre-emptively stated in the Decision Letter that an extension of time could not be granted because, under s. 303(7)(a), the applicant had to request an extension within one year of the due date for filing an objection.

[6] The application was filed on January 22, 2024. Since the Decision Letter was dated September 13, 2023, it became apparent that the Court may not have jurisdiction because an application under s. 304(1) cannot be made more than 30 days after the day the Minister’s decision was mailed to the person under s. 303(5).

[7] During the first day of the hearing, I asked the principal of the applicant, Marc Carter, whether he accepted that the September 13, 2023, letter from the CRA was received. Mr. Carter said that his representative had “made him aware of that, yes.” Granted, Mr. Carter was present to request an adjournment so that counsel who were recently retained, but not on the record, could take over. I also gave Mr. Carter time to review an affidavit filed by the Crown and after he mentioned that he had never received the assessment notices. In the end, I adjourned the application.

[8] Soon after, counsel for the applicant, Mr. Pollock, came on record. The application was rescheduled, and I issued a direction advising counsel that they should address the preliminary issue of whether the Court had jurisdiction.

[9] When the application was next before me, Mr. Pollock advised this Court that the applicant’s position had changed: there was no receipt of the Decision Letter. In fairness, Mr. Pollock had written to the Court to advise that the applicant would argue that the Decision Letter and assessment notices were never properly mailed by the Minister. This resulted in the Crown requesting an adjournment to consider

the availability of evidence about the sending of the Decision Letter. And so, I adjourned the matter again.

[10] When the application was before me for the third time, the Crown was now relying on five affidavits. All the affiants were cross-examined.

[11] I turn now to the question of whether this Court has jurisdiction.

II. Jurisdiction under s. 304(1)

A. The Conditions Precedent

[12] Three conditions must be satisfied for this Court to have jurisdiction under s. 304(1). In *Amador v. The King*, 2025 TCC 143 (*Amador*), at para. 6, Justice Graham described these as “conditions precedent” and—with slight rephrasing for clarity—they are as follows:

- the person must have first applied to the Minister under s. 303 for an extension of time to object (s. 304(1));
- either,
 - (i) the Minister must have refused that application (s. 304(1)(a)); or
 - (ii) 90 days must have passed since the application was served under s. 303(1) and the Minister must not yet have notified the person of the Minister’s decision (s. 304(1)(b)); and
- if the Minister refused the application, the person must have made the application to the Court within 30 days of the date the Minister mailed the notification of that decision to the person under s. 303(5) (see s. 304(1)).

[13] From the beginning, the Crown’s position has been that the application was made more than 30 days after the Decision Letter was mailed and, as such, this Court has no jurisdiction.

[14] When the hearing resumed for the third time, I asked counsel whether they had considered the text of s. 303(5), and specifically that the Minister, on receipt of an application for an extension of time under s. 303(1), is required to notify the person of the decision by “registered or certified mail”. Neither counsel had considered this. My question was prompted by the fact that the relevant affidavits revealed that the Decision Letter was sent by regular “metered mail.”

[15] Although the applicant intended to argue that the Crown's evidence does not prove mailing at all, in the end the applicant argued that the Decision Letter was not sent by registered or certified mail, as required by s. 303(5), with the result that more than 90 days had passed since the application to the Minister and the Minister had not notified the applicant of the Minister's decision such that this Court had jurisdiction under s. 304(1)(b).

[16] And out of the ashes of this contention, the Crown argued that the applicant had not made an application to the Minister for an extension of time under s. 303; a precondition for an application to this Court under s. 304(1).

[17] Apart from these jurisdictional issues, in closing submissions, the applicant also argued that this Court should treat the application as relating to the reporting periods from January 1, 2018, through to December 31, 2020, because the Decision Letter referred to that expanded period. For context, I note that the evidence is that the Minister assessed or reassessed the applicant as follows:

Return Filed	Reporting Period	Notice of Assessment/Reassessment
Unclear	2018: qtly. periods ending Mar. 31, June 30, Sept. 30, & Dec. 31	July 28, 2021 — reassessments
June 19, 2019	2019: qtly. period ending Mar. 31	July 28, 2021 — reassessment
December 9, 2020	2019: qtly. periods ending June 30, Sept. 30, & Dec. 31	May 14, 2021 — initial assessments
Likely February 2020	2020: qtly. periods ending June 30, & Dec. 31	July 28, 2021 — initial assessments

[18] As such, there is no explicit reference in the affidavit evidence that the Minister assessed or reassessed the applicant for the quarterly reporting periods ending March 31, 2020, and September 30, 2020.¹

[19] The Crown argued that the applicant should not be able to expand the reporting periods beyond those in 2019 because it would prejudice the Crown.

¹ Exhibit "C" to the affidavit of Ms. Colasante implies that the Minister assessed the applicant for these periods, but she was not cross-examined on that point.

[20] Added to this mix is that the Minister's Decision Letter referred only to the assessment notices dated July 28, 2021; as stated, there was no mention of the assessment notices dated May 14, 2021.

[21] Considering the perfunctory approach of both the CRA and the applicant, I will restrict the reporting periods in issue to only those specifically addressed in the evidence. This avoids prejudice to the Crown and, at the same, time recognizes the preference to have a person's issues decided on their merits. To be clear, the quarterly reporting periods ending March 31, 2020, and September 30, 2020, will be excluded from the application.

[22] The steps to be considered where a person alleges that the Minister did not send a notice of assessment or a notice of decision are well-established. These steps require modification depending on whether the matter concerns the ETA or the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (the ITA).

[23] The first step is that the person must assert that a notice was not sent, either by asserting that it was not received or that a notice was sent to the wrong address through no fault of the person and was thus, in effect, not mailed. If the assertion is not credible, there is no need to proceed to the next step: *Mpamugo v. Canada*, 2016 TCC 215 (*Mpamugo*), aff'd at 2017 FCA 136 (*Mpamugo FCA*); *Siam v. Canada*, 2026 FCA 91 (*Siam*) at para. 4; *DaSilva v. The Queen*, 2018 TCC 74 (*DaSilva*) at para. 4; and *Boroumend v. The Queen*, 2016 TCC 256 (*Boroumend*) at para. 3.

[24] Under the second step, if the person asserts that the notice was not sent, the Crown must introduce sufficient evidence to prove, on a balance of probabilities, that the notice was indeed sent or, if the person asserted that it was sent to the wrong address, that it was sent to the address that the CRA properly had on file: *Mpamugo*, *DaSilva*, and *Boroumend*.

[25] I do not need to address steps 3 and 4 of the *Mpamugo* analysis unless they are relevant here.

B. Conclusions on Jurisdiction

[26] On the issues of jurisdiction—i.e., the conditions precedent—I have concluded as follows:

- First, it is appropriate to consider the applicant to have made an application to the Minister under s. 303(1), as required by s. 304(1).

- Second, the Decision Letter was not properly mailed to the applicant as required by s. 303(5) and so the 30-day time limit making an application to this Court under s. 304(1) does not apply.
- Third, when the application was filed in this Court on January 22, 2024, more than 90 days had elapsed after the service of the application under s. 303(1) and the Minister had not properly notified the applicant of the Minister's decision and so this Court has jurisdiction under s. 304(1)(b).

[27] My analysis is set out below.

C. Analysis and Findings Relevant to Jurisdiction

[28] The 90-day period to file notices of objection under s. 301(1.1) and the further one-year period to apply to the Minister for an extension of time to file notices of objection under s. 303(1) ended as follows:

Assessment Notice	90-Day Period: s. 301(1.1)	1-year Period: s. 303(7)(a)
May 14, 2021	August 12, 2021	August 12, 2022
July 28, 2021	October 26, 2021	October 26, 2022

[29] The applicant missed these deadlines. Instead, the applicant's representative, Ms. Candace McIver, filed an electronic E-Objection on July 24, 2023.

[30] In the Decision Letter, the Appeals Division stated that the objection could not be accepted because it was not filed within 90 days from the date of the assessment notices dated July 28, 2021. The Decision Letter also stated, "we cannot grant you an extension of time for filing your objection", along with the following:

Paragraph 303(7)(a) of the Excise Tax Act states that you have to request an extension within one year of the due date for filing the objection. Your request for an extension of time was due before October 26, 2022.

[31] Since the Appeals Division pre-emptively considered whether an extension of time could be granted under s. 303, I do not accept the Crown's argument that no application was made under s. 303.

[32] If I accepted that argument, I would have to quash the application and the applicant would have to go back to the Appeals Division to make a formal

application under s. 303, only to be confronted with the same refusal, and then make another application to this Court. Plus, any arguments about actual or constructive receipt of the assessment notices would seemingly put the applicant in a worse position in circumstances where it is alleged that the assessments notices were not sent. This would be far too like the classic board game of snakes and ladders.

[33] My view is reinforced by s. 303(4), which allows the Minister to accept an application notwithstanding that it does not conform to the requirements in s. 303(3), which sets out how an application is to be made under s. 303(1).

[34] It seems that the Appeals Division has adopted a practice of pre-emptively considering whether an extension of time can or cannot be granted under s. 303, even though the person has not made a formal application.

[35] From an administrative perspective, it is readily apparent why the Appeals Division would do so: on top of efficiencies, any delay in considering whether a notice of objection was filed within the 90-day time limit in s. 301(1.1) would mean that the clock continued ticking on the additional one-year period for seeking an extension. If the Appeals Division pre-emptively concluded that an extension can be granted, the person concerned is happy. But where an objection is considered invalid because it was filed after the 90-day time limit, it is easy to conjure up examples of the additional one-year period expiring if the Appeals Division instead insisted that a formal application was needed under s. 303(1).

[36] That said, administrative efficiency has resulted in some problems here. One is that no information was provided about the 30-day time limit for making an application under s. 304(1). And so, it is not surprising then that the 30-day time limit trips people up, as Justice Graham noted in *Amador*. I am not invoking any sort of estoppel; I am focused on a pre-emptive decision in a specific context.

[37] There is a more significant issue, which concerns the mailing of the Decision Letter, which I turn to next.

[38] Mr. Carter initially told this Court that his representative, Ms. McIver, had made him aware of the Decision Letter. But he maintains that he never received the Decision Letter sent to the applicant's post office box in Sydenham, Ontario (the PO Box).

[39] The affidavit evidence confirms that the Decision Letter was sent on September 13, 2023, to the applicant's PO Box by regular "metered mail" (affidavit

of A. Guy). On January 26, 2024, the mail sent to the applicant's PO Box was returned, which is four days after the application was filed in this Court (affidavit of L. Bedard).

[40] The PO Box was not located at the applicant's street address, and I suspect that Mr. Carter was not checking it regularly. But I do not need to make a finding about that.

[41] Moreover, I suspect that Ms. McIver received a copy of the Decision Letter since the affidavit of Ms. Far Soares confirms that a printed copy was sent to her too. But there is no evidence as to when Ms. McIver received the Decision Letter and no evidence that she provided a copy to Mr. Carter. I only know that Ms. McIver filed the application to this Court on January 22, 2024.

[42] Importantly, when the Minister considers an application for an extension of time to file an objection, the Minister must grant or refuse it and shall thereupon notify the person of the decision by registered or certified mail: s. 303(5).

[43] Here, the affidavit evidence confirms that the Decision Letter was not sent by registered or certified mail as required.

[44] Consequently, the Crown is now unable to look to s. 335(1) to establish proof of service by registered or certified mail, which states that an affidavit evidencing proof of service of sending by mail is to have the post office certificate of registration attached as an exhibit, or the relevant portion thereof. The provision reads as follows:

Proof of service by mail

335(1) Where, under this Part or a regulation made under this Part, provision is made for sending by mail a request for information, a notice or a demand, an affidavit of an officer of the Canada Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has knowledge of the facts in the particular case, that such a request, notice or demand was sent by registered or certified mail on a named day to the person to whom it was addressed (indicating the address), and that the officer identifies as exhibits attached to the affidavit the post office certificate of registration of the letter or a true copy of the relevant portion thereof and a true copy of the request, notice or demand, is evidence of the sending and of the request, notice or demand.

[Underlining added]

[45] Subsections 303(5) and 335(1) establish a higher standard for proof of mailing than in a case where no formal requirements for mailing are provided: *Kovacevic v. Canada*, 2003 FCA 293 (*Kovacevic*) at para. 18.

[46] Moreover, in requiring the Minister to notify a person of a decision by registered or certified mail under s. 303(5)—and also in respect of a decision after considering an objection under s. 301(5)—Parliament must have placed increased importance on the need for proof of sending. I make this observation for two reasons.

[47] First, both ss. 301(5) and 303(5) can be contrasted to the parallel provisions in the ITA, which were long ago amended to remove the requirement to use registered mail to send a notice of confirmation or a decision on a request for an extension of time under s. 165(3) and s. 166.1(5) of the ITA (S.C. 1994, c. 7, Sch VIII (1993, c. 24), s. 98(3) and s. 99).

[48] Second, in 2010, the Department of Finance decided to not amend the specific provisions in the ETA that require notices to be served by registered or certified mail when other amendments were introduced to provide for the electronic communication of notices (see Department of Finance, Explanatory Notes in Respect of Legislative Proposals Relating to the Income Tax Act and Related Acts and Regulations, September 2010, at p. 274).

[49] Perhaps there are vastly more objections to assessments under the ITA that involve modest amounts and the costs associated with registered mail are viewed as unwarranted. Nonetheless, it is for Parliament, and not the Courts, to decide whether s. 303(5) should be amended so that it reads like the parallel ITA provisions.

[50] Non-compliance with s. 303(5) or s. 335(1) is not necessarily fatal.

[51] Where a notice is required to be sent by registered mail, and the Minister's official does not attach a post office certificate of registration or a true copy of the relevant portion thereof, equivalent reliable evidence may also be sufficient: *Kovacevic* at para. 17.

[52] In *Kovacevic*, the unavailability of the post office certificate of registration and the absence of equivalent evidence of registered mailing taking place was fatal in circumstances where the Minister's decision disallowing an objection and confirming an assessment needed to be sent by registered mail under s. 301(5) (at para. 21). In the result, the Crown's motion to dismiss the appeal on the ground that it was filed out of time was unsuccessful.

[53] Where a provision requires the Minister to notify a person of a decision by registered or certified mail, but the Minister uses another means such as “effective” personal service then that notice can also start the clock ticking: see *Grunwald v. Canada*, 2005 FCA 421 (*Grunwald*) at paras. 14, 31, 35 and 39.

[54] Moreover, in my view, if a notice was required to be sent to a person by registered mail, but it was for whatever reason sent by regular mail and received that too could start the clock ticking since it would be absurd to fixate on the failure to use registered mail if the notice is in fact received. This is sufficiently anchored in the approach in *Grunwald* (see also *Boroumend* at para. 22).

[55] Returning to the evidence here, Ms. Far Soares testified that, as far as she was aware, the Decision Letter was not sent by registered mail because the matter did not involve an application for an extension of time; the Appeals Division said the objection was late and did not deny an extension of time. Ms. Far Soares added that if the Appeals Division had denied an extension of time, a completely different letter would have been used, and it would have contained additional information about seeking an extension of time in this Court.

[56] In my view, if the Appeals Division, on behalf of the Minister, pre-emptively considers whether an extension of time can be granted under s. 303 and concludes that it is too late—in effect the Appeals Division applies s. 303(7)(a) and refuses an extension—then there is no reason why the Minister should not be obligated to notify the person as required under s. 303(5); the Minister does not get a free pass.

[57] Based on the forgoing, I conclude that the Minister’s decision to refuse the extension of time was not properly mailed to the applicant under s. 303(5). The evidence further confirms that the Decision Letter sent to the PO Box by regular mail was returned. And there is no evidence as to when Ms. McIver received a copy and no evidence that she provided a copy to Mr. Carter. In the absence of evidence or an admission of actual receipt by the applicant, the 30-day time limit in s. 304(1) is not triggered here.

[58] In the circumstances, this Court has jurisdiction under s. 304(1)(b) because when the application to this Court was filed more than 90 days had elapsed after the service of the application under s. 303(1) and the Minister had not properly notified the applicant of the Minister’s decision.

[59] I turn next to the assertion that the assessment notices dated May 14, 2021, and July 28, 2021, were not sent.

III. Whether the Assessment Notices were Sent

[60] The act of assessment is not complete until the notice has been sent: *Aztec Industries Inc. v. Canada*, [1995] 1 CTC 327 at p. 330; and *Scott v. MNR*, [1961] Ex CR 120 (Ex. Ct.) 120 (*Scott*) at p. 123. Accordingly, the time for the filing of an objection does not run until the assessment notices are sent.

[61] Moreover, if the Minister sent an assessment notice to the wrong address through no fault of the person or taxpayer concerned, this leads to the conclusion that the assessment was not issued at all: *Canada v. 236130 British Columbia Ltd.*, 2006 FCA 352 at para. 20. Thurlow J. made this clear in *Scott* where he wrote at p. 135:

... Parliament never intended that such a notice could be given effectively by the “mailing” of it to the taxpayer at some wrong or fictitious address and I find nothing in the statute to suggest that Parliament intended that a taxpayer should be bound by an assessment or fixed with notice of an assessment upon the posting of a notice thereof addressed to him elsewhere than at his actual address or at an address which he has in some manner authorized or adopted as his address for that purpose.

[62] Once again, steps 1 and 2 under the *Mpamugo* framework must be applied. Moreover, in *Mpamugo FCA*, the Federal Court of Appeal emphasized that this Court is to assess the credibility of an applicant’s assertion that assessment notices were not sent at step 1: *Mpamugo FCA* at para 12; and *Siam* at para 4.

[63] Accordingly, my conclusion at step 1 may or may not bring into question whether the assessment notices were sent. If an applicant credibly asserts that the assessment notices were not sent, then the Court turns to step 2 and considers whether the Crown has introduced sufficient evidence to prove, on a balance of probabilities, that the assessment notices were indeed sent, or where an applicant asserts that the assessment notices were sent to the wrong address, that they were sent to the address that the CRA properly had on file: *Mpamugo* at para. 6, and *DaSilva* at para 4.

A. Conclusion on Sending

[64] I have concluded that Mr. Carter has made a credible assertion that he did not personally receive the assessment notices on or shortly after the relevant dates, specifically May 14, 2021, and July 28, 2021. But my decision on “sending” does not turn on that. Rather, what is key is that I am satisfied that the assessment notices

were sent to the applicant in a manner authorized by the applicant, as explained below.

B. Analysis and Findings on Sending

[65] Mr. Carter described the applicant's business as involving search engine optimization. He said that Ms. McIver became the applicant's representative for tax matters roughly in 2016 after another firm stopped providing bookkeeping and accounting services to the applicant.

[66] For context, I note that the applicant's GST/HST returns for the quarterly reporting periods ending June 30, 2019, September 30, 2019, and December 31, 2019, appear to have been filed on December 9, 2020 (see the assessment notices dated May 14, 2021).

[67] Soon after an examiner with the GST/HST Refund Integrity Program in the Audit Division of the CRA wrote to the applicant by letter dated February 10, 2021, advising that an examination was being undertaken for the returns filed for these three quarterly reporting periods. The examiner further advised that the returns would not be processed until the supporting documents requested were reviewed. Mr. Carter initially testified that he did not recognize the letter and did not recall receiving it.

[68] This brings me to an email that Ms. McIver sent to Mr. Carter on March 1, 2021. In this email, Ms. McIver advised that all the HST had been filed for 2020, and that Mr. Carter was now up to date until April 30, 2021, when the next HST return needed to be filed. In response to a question later posed by Mr. Carter, she sent another email on March 2, 2021, asking him to send a notice from the CRA about an audit as it was not showing in the online account. Later that same day, Mr. Carter sent an email to Ms. McIver attaching a copy of a CRA audit letter with a file name of "CRA Audit of 3 HST_Periods.pdf."

[69] I am satisfied that the document attached to Mr. Carter's email was a copy of the CRA's letter dated February 10, 2021, which was addressed to the applicant's PO Box, and that it was received by Mr. Carter.

[70] The affidavit of Ms. Colasante establishes that the applicant registered to receive email notifications from the CRA starting on February 18, 2021, using Ms. MacIver's email address. I am also satisfied that the email address used is the same address that Ms. McIver used to correspond with Mr. Carter by email.

[71] Moreover, I infer from the whole of the evidence that Ms. McIver authorized and registered the applicant to receive CRA notices electronically, probably when she filed the remaining GST/HST returns that were mentioned in her email to Mr. Carter on March 1, 2021.

[72] In any event, the CRA examiner next wrote to the applicant by a letter dated April 7, 2021, advising that adjustments were proposed and giving the applicant 30 days to respond. Ms. McIver sent a copy of this letter to Mr. Carter by email on April 13, 2021. A series of email exchanged between Ms. McIver and Mr. Carter throughout the remainder of April and early May concerned their efforts to assemble backup documentation. On May 6, 2021, Ms. McIver told Mr. Carter that the deadline was “tomorrow”.

[73] Two further letters from the CRA examiner, both dated May 12, 2021, followed. One letter confirmed receipt of representations dated May 6, 2021, and advised that notices of assessment would be sent separately for the GST/HST returns for the period April 1 to December 31, 2019. That letter also indicated that the applicant would have 90 days to object to the assessments. The second letter advised that the CRA expanded its review to include the four quarterly periods in 2018, the quarterly period ending March 31, 2019, and the four quarterly periods in 2020. As well, additional documents were requested by June 14, 2021.

[74] After an email between Ms. McIver and Mr. Carter on June 29, 2021, there is a significant break in the communications, although I am not satisfied that I have the entire record of communications. The June 29, 2021, email suggests that Ms. McIver was working on issues related to the GST/HST returns. In a subsequent email from Ms. McIver on November 16, 2021, she referred to what seems likely to be the CRA letter dated February 10, 2021. Then there is another break in communications for about 10 months, until September 2022.

[75] On December 8, 2022, Mr. Carter sent Ms. McIver an email and stated, “I again hope everything is alright, seriously, I am concerned since you haven’t replied to any of the emails or voicemails.”

[76] Next, there is a reply from Ms. McIver on July 18, 2023, in which she stated, “Not sure if you got my previous responses. I just got another call from the CRA and there is a large balance outstanding and they are trying to get in touch with you...” Ms. McIver continued:

It looks like they need corporate returns for Web Listings for a few years, HST returns for a few years and there was more than one audit that was sent to me. It looks like they reversed refunds from 2018 and 2019 and have filed returns on your behalf for any periods that are missing. I told them I would try and get in touch with you, but they are looking for an update as to what is going on and have sent numerous letters and messages. (July 18, 2023, at 4:53 PM)

[Underlining added]

[77] Mr. Carter replied, stating he had been trying to contact Ms. McIver for almost a year; he had gone to her house, called her work and left many voicemails.

[78] Mr. Carter testified that he was unable to reach Ms. McIver for about a year, and that he sent countless emails and made hundreds of phone calls to her.

[79] I find that the evidence establishes that Mr. Carter knew that Ms. McIver had set up an online account for the applicant with the CRA. He testified that he had no clue on how to begin with a CRA My Business Account.

[80] Under cross-examination, Mr. Carter confirmed that Ms. McIver was the sole person in charge of the applicant's CRA account. He agreed that Ms. McIver was expected to do everything required to satisfy the CRA, including the accounting and filing GST/HST returns. He also agreed that Ms. McIver was empowered to do everything and said that he had signed a document giving her full access and rights to the applicant's CRA account. He also agreed that authorization had been provided so that Ms. McIver would receive notices of assessment and correspondence from the CRA and that this fell within the scope of what had been authorized.

[81] Under re-examination, Mr. Carter tried to pull back his evidence and said that he had not authorized Ms. McIver to create a CRA My Business Account for the applicant. I do not accept that evidence considering his earlier testimony.

[82] Ms. Colasante stated in her affidavit that the assessment notices dated May 14, 2021, and July 28, 2021, were made available in the applicant's My Business Account, and specifically that the assessment notices:

- for the reporting periods ending June 30, 2019, September 30, 2019, and December 31, 2019, were made available in the applicant's My Business Account on May 14, 2021; and

- for the reporting periods ending March 31, 2018, June 30, 2018, September 30, 2018, December 31, 2018, March 31, 2019, June 30, 2020, and December 31, 2020, were made available in the applicant's My Business Account on July 28, 2021.

[83] Ms. Colasante also stated that email notifications were sent on May 14, 2021, and July 28, 2021, to Ms. McIver's email address (i.e., the applicant's email address on file) "informing them that there was new Eligible Agency Correspondence available for view in View Mail in the Agency's My Business Account portal of their online account."

[84] Ms. Colasante also attached as Exhibit "C" a screenshot of the applicant's account, and in particular, the CRA's Enterprise Correspondence History relevant to the assessments. Moreover, a printout of a screenshot of the applicant's Correspondence Notification History Results between May 14, 2021, and October 4, 2021, was attached as Exhibit "D" to her affidavit.

[85] Exhibit "C" is analogous to metadata; it contains a summary of key data that is available in the CRA's electronic records, including the applicant's name, a description of the item, the effective date, activity status, activity status effective date, medium type, archive status, and period/tax year.

[86] The data in Exhibit "C" indicates that the assessment notices dated May 14, 2021, for the three reporting periods ending June 30, 2019, September 30, 2019, and December 31, 2019, were sent electronically with an effective date of May 14, 2021, and an activity status date of May 11, 2021.

[87] Regarding the assessment notices dated July 28, 2021, they were combined in an eight-page document. Exhibit "C" indicates that an assessment notice dated July 28, 2021, was sent electronically with an effective date of July 28, 2021, an activity status date of July 23, 2021, and a period ending date of December 31, 2020. I infer that the data applicable for the period ending December 31, 2020, captures all the periods assessed relevant to the eight-page notice of reassessment dated July 28, 2021. I make this inference because there is no separate record for the assessment notice for the period ending March 31, 2019.

[88] Important is that the data in Exhibit "C" indicates that the assessment notices dated May 14, 2021, and July 28, 2021, were viewed online at different times from July 18 to 24, 2023. I infer that Ms. McIver viewed the assessment notices after logging into the account several times during that period. My finding is consistent

with the email that Ms. McIver sent to Mr. Carter on July 23, 2023, and it is consistent with the steps she took on July 24, 2023, to submit an E-Objection.

[89] Where does the whole of the evidence leave me under step 1 in assessing the assertion that the applicant did not receive the assessment notices?

[90] As stated, I accept that Mr. Carter did not personally receive the assessment notices on or shortly after the relevant dates, specifically May 14, 2021, and July 28, 2021.

[91] The difficulty is that Ms. McIver was not called by the applicant as a witness, and whether I consider this under step 1 or on my way into step 2 of the *Mpamugo* analysis does not really matter. The applicant has not introduced credible and reliable evidence to establish that Ms. McIver could not testify.

[92] She is the one person who could confirm whether email notifications were received from the CRA on May 14, 2021, and July 28, 2021, at her email address advising that new correspondence was available in the CRA's My Business Account portal for the applicant. I have already found that Ms. McIver was authorized to set up online services for the applicant; this was clearly something Mr. Carter was uninterested in managing.

[93] I cannot ignore the fact that Ms. McIver was not subpoenaed to attend and give evidence. The applicant cannot, in effect, take a benefit by not calling Ms. McIver as a witness so that it can jump to step 2 and seek to place the burden on the Crown to prove sending. If the applicant had introduced compelling evidence that Ms. McIver was unavailable, I would be far more circumspect about these concerns.

[94] I also note that the evidence suggests that the applicant was awaiting refunds on account of ITCs that were claimed. Assuming that to be so and considering Mr. Carter's evidence that he tried to reach Ms. McIver hundreds of times after the break in their communications starting around mid-November 2021, it raises the question of why Mr. Carter did not seek other professional advice. But only he can answer that question.

[95] In the absence of Ms. McIver's testimony, I make the adverse inference that she received the email notifications that were sent by the CRA to the applicant at Ms. McIver's email address on May 14, 2021, and July 28, 2021.

[96] I am satisfied that the CRA posted the assessment notices to the applicant's online account as of May 14, 2021, and July 28, 2021. There is also sufficient evidence to conclude that Ms. McIver was able to and did view the assessment notices in the online account in July 2023.

[97] It seems possible that Ms. McIver may have ignored the CRA's email notifications. But the consequences of her ignoring them should not be laid at the feet of the Minister.

[98] At this point, I could conclude my analysis; the application must be dismissed because the application to the Minister for an extension of time to object under s. 303 was not made within one year after the 90-day period for objecting to the assessment notices: s. 304(5)(a).

[99] But since the parties made argument on whether the assessment notices were properly sent, I have a few additional comments about s. 335, the evidence and the relevant procedural provisions.

[100] I first refer to s. 335(2.1) since the applicant cited it in argument. Subsection 335(2.1) was enacted in 2021: S.C., 2021, c. 23, s. 71, in force on June 29, 2021. The provision operates where provision is made (under Part IX or a regulation thereto) for sending a notice to a person electronically. The technical notes for s. 335(2.1) indicate that the provision was enacted to accommodate the introduction of electronic delivery of notices under ss. 289(1) and 292(2) (see Department of Finance, Explanatory Notes Relating to the Income Tax Act and Other Legislation, May 2021, at p. 109).

[101] Where s. 335(2.1) applies, evidence of the notice and of its sending may be given by an affidavit of a CRA officer. The provision sets out certain elements that such an affidavit must contain, including that a copy of the electronic message confirming that the notice has been sent to the person be attached as an exhibit to the affidavit. Given the specific circumstances under which s. 335(2.1) seems to operate and recognizing that a statutory interpretation of the provision should be left for another day, I make only an observation that the text of s. 303(5) is not like the electronic notice provisions in ss. 289(1.1)(c) or 292(3.1)(c).

[102] I next turn to s. 335(10.1), which was amended in 2023 and, at the same time, s. 335(10.2) was enacted: see S.C., c. 26, s. 84, in force on June 22, 2023.

[103] Subsections 335(10.1) and (10.2) set out certain presumptions for sending electronic notices: s. 335(10.2) concerns electronic notices that refer to a business number of a person and amended s. 335(10.1) concerns electronic communications other than those that refer to a business number.

[104] Since amended s. 335(10.1) came into force on June 22, 2023, this means that I would have needed to look to former s. 335(10.1) if I had concluded that the Crown had a burden to meet under to step 2 of the *Mpamugo* analysis. Neither party referred to former s. 335(10.1) in argument.

[105] Former s. 335(10.1) reads as follows:

Date electronic notice sent

335(10.1) For the purposes of this Part, if a notice or other communication in respect of a person is made available in electronic format such that it can be read or perceived by a person or a computer system or other similar device, the notice or other communication is presumed to be sent to the person and received by the person on the date that an electronic message is sent, to the electronic address most recently provided before that date by the person to the Minister for the purposes of this subsection, informing the person that a notice or other communication requiring the person's immediate attention is available in the person's secure electronic account. A notice or other communication is considered to be made available if it is posted by the Minister in the person's secure electronic account and the person has authorized that notices or other communications may be made available in this manner and has not before that date revoked that authorization in a manner specified by the Minister.

[Underlining added]

[106] Ms. Colasante testified that the CRA did not keep a copy of the email notification that was sent to the applicant. She explained, however, that the text in the email notification is based on a template. Exhibit “D” to her affidavit also shows the delivery date, template ID number, template description, and Ms. McIver’s email address. Ms. Colasante was unable to tell me, however, what specific text was contained in the template used for the electronic notifications.

[107] Former s. 335(10.1) refers, in part, to an electronic communication informing the person that a notice or other communication requiring the person’s immediate attention is available in the person’s secure electronic account. Those words do not appear in Ms. Colasante’s affidavit.

[108] Where the other conditions in former s. 335(10.1) are also met (which importantly concern authorization), the notice is presumed to be sent to the person and received by the person on the date that an electronic message is sent to the electronic address most recently provided before that date by the person to the Minister for the purposes of this provision. Moreover, under s. 335(11), if a notice of assessment is sent by the Minister as required by Part IX, the assessment is deemed to have been made on the day of sending of the notice of assessment.

[109] The applicant argued that Ms. Colasante's affidavit was deficient for other reasons that I do not need to get into. Nonetheless, in the absence of a copy of the actual email notification that was sent or evidence of the specific templated text that the notification contained, I would have pondered over whether Ms. Colasante's affidavit was sufficient to establish the conditions in former s. 335(10.1) to prove electronic sending.

[110] Finally, I recognize that the outcome is unfavourable to the applicant. The applicant only sought to have the validity of the assessments decided on their merits through an objection and potentially an appeal. That will not happen now.

[111] Parliament has so far concluded that the goal of finality favours a limited one-year period for seeking an extension of time to object to an assessment. I also note that when the amendment introducing s. 335(10.1) was before Parliament in 2010 as part of Bill C-47, the Minister of Finance, told the standing Committee on Finance that it was a "red tape" provision that provided the CRA with authority to issue notices online, if the taxpayer requests, for notices that could then only be sent by ordinary mail, and that this would decrease the volume of paperwork and reduce the burden on businesses (Canada, House of Commons, *Standing Committee on Finance*, Evidence, No. 47, 3rd Sess., 40th Parl., November 23, 2010, p. 8.).

[112] Nonetheless, today—and recognizing the CRA's increased reliance on and preference for sending electronic notifications—it seems likely that notifications could go unnoticed until it is too late to seek an extension of time.

[113] What if an email notification goes unnoticed, for whatever reason, and it slips into the ether until a CRA collections officer calls and it is too late to seek an extension of time? Years ago, that person would have had a piece of paper as a constant reminder. Technology has changed things and the risk that an important email could go unnoticed exists, and likely more so than when Sharlow J.A. acknowledged the possibility, however remote, that a person may miss the deadline

for objecting because of a failure of the postal system (see *Canada v. Schafer*, 2000 CanLII 16118, 54 DTC 6542 (FCA) at para. 24).

[114] Important here is that this Court does not make policy; I must apply the law as written. And only Parliament can amend s. 303 to allow for a longer period for seeking an extension of time or to enact a provision that gives the Minister some limited discretion.

IV. **Conclusion**

[115] For the forgoing reasons, the application must be dismissed. No costs are awarded.

Signed this 22nd day of May 2026.

“Perry Derksen”

Derksen J.

CITATION: 2026 TCC 101

COURT FILE NO.: 2024-423(GST)APP

STYLE OF CAUSE: WEB LISTINGS INC.v. HIS MAJESTY
THE KING

PLACE OF HEARING: Toronto, Ontario

DATES OF HEARING: May 6, 2025, October 10, 2025,
April 27, 2026 and May 1, 2026

REASONS FOR ORDER BY: The Honourable Justice Perry Derksen

DATE OF ORDER: May 22, 2026

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