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Tax Collection Limitations

The SCC in *Markevich* underscores an important argument in a taxpayer's arsenal and clarifies how federal and provincial limitation periods can be mobilized to avoid tax collection. The Crown was prohibited from collecting 1990 and prior years' tax debts because of non-tax statutes of limitation.

The taxpayer did not pay federal and provincial income taxes for the 1980 to 1985 taxation years; an assessment for \$234,136.04 in 1986 went unchallenged and unpaid. The CCRA wrote off the amount internally without formally extinguishing the debt, and from 1987 to 1998 made no effort to collect the debt; it issued statements to the taxpayer exclusive of the 1986 balance. In 1998, almost 12 years after the assessment, the CCRA sent a statement of account to the taxpayer showing a \$770,583.42 balance payable, including the 1986 amount and accrued interest. The FCTD dismissed an application for a declaration that the Crown was prohibited from collection. On appeal, the FCA held that the Crown was statute-barred from collecting the old debt: the Income Tax Act was not a complete code, and the provincial statute of limitations barred collection.

On appeal, the SCC easily concluded that the ITA was not a complete code. Section 222 authorized broad collection powers related to the federal tax debt, but section 32 of the Crown Liability and Proceedings Act (CLPA) limited collections to six years on the federal debt and to the prescribed period under provincial legislation for the provincial debt. Section 32 of the CLPA presumptively applied on a residual basis to all Crown proceedings: the ITA did not contain limitation periods for its collection powers, and thus did not oust the CLPA rule. General federal and provincial rules limited possible collection actions after certain defined periods. As a matter of broad tax policy, the minister was obliged to act diligently in collecting tax debts. The SCC also observed that "[i]n light of the significant effect that collection of tax debts has upon the financial security of Canadian citizens, it is contrary to the public interest for the department to sleep on its rights in enforcing collection. It is evident that the rationales which justify the existence of limitation periods apply to the collection of tax debts."

A seven-judge majority concluded that the federal debt was subject to a six-

year limitation period in CLPA section 32, but that the provincial debt was governed by provincial legislation. The minority said that the provincial rules applied to both. In the result, two separate statute-of-limitations rules may apply to combined federal and provincial assessments and to assessments under other federal and provincial legislation, such as GST and PST. The SCC offered a template for amendment: include the words "at any time." It will be interesting to see whether Finance follows up on this prescription.

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