

Affidavits in Tax Court Practice - Reasonable Reliability

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Hamer v The Queen, [2014 TCC 218](#)

This was an application for an order to extend the time to file a Notice of Objection to an assessment. In granting the order, Justice Woods provided some guidance as to content requirements for affidavit evidence so as to meet reliability standards.

The Minister was required only to prove that the Notice of Assessment was mailed to the taxpayer for the time for objection to run. It does not matter whether or not the taxpayer receives the NoA, whether due to his own fault or the fault of a third party. However, when the taxpayer requires the Minister to prove the mailing of the NoA, the Minister must do so on the balance of probabilities. In considering the evidence, the Court must inquire whether it has a reasonable basis for believing that the evidence is reliable (para 10).

With respect to Affidavit evidence:

1. The best evidence must be presented, meaning that the person swearing the affidavit ought to be the person within whose knowledge the facts sworn to are. Swearing to facts on the basis of information provided by third parties affects the reliability assessment - "What is the point of having a sworn affidavit if the people with the information are not required to swear the accuracy of their statements?" (para 13)
2. The affidavit ought to do more than provide bare-bones descriptions, but ought to seek to provide details of all important aspects of the facts, the manner in which conclusions are reached, what materials were reviewed, what these materials show or don't show, etc. Bare-bones descriptions and brief conclusions undermine the court's confidence in the statement's accuracy.
3. Affidavits based on standard forms are problematic (see para 16) - see also [Nicholls v The Queen, 2011 TCC 39](#).
4. Where the reliability of the facts in the Affidavit cannot be properly assessed on the basis of the Affidavit, it is best to have the relevant CRA officials available for cross-examination (see para 18).

The Court contrasted the Affidavit in this case to the level of detail provided in the Affidavit in [Abraham v The Queen, 2004 TCC 380](#). The level of detail need not always reach the *Abraham* standard, but it must be sufficient to show knowledge of truth, accuracy, and diligence.

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