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Table of Contents

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Participant Expert Evidence in Tax Litigation Proceedings

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When parties are engaged in acrimonious proceedings, jurisprudence about procedural issues is one product of the dispute. One or both of the parties force judges to decide procedural questions about which the parties cannot agree. For example, a court may need to decide, *inter alia*, whether a witness can testify as an expert, or whether any documents not previously disclosed through the discovery process can be admitted as evidence. These issues were recently discussed in *Kaul v The Queen* [*Kaul*].[1]

In *Kaul v The Queen* (the "**Motion**"),[2] the Tax Court of Canada (the "**Tax Court**") commented on proposed expert opinion evidence with regard to the rules that apply under section 145 of the *Tax Court of Canada Rules*[3] (the "**Rules**") and its accompanying *Code of Conduct* under Schedule III. The Tax Court had to reconcile common law with regard to independent expert evidence, participant expert evidence, and section 145 of the Rules to determine if the appellants' (Messrs. Kaul and Roher) proposed expert witnesses could provide expert opinion evidence. Mr. Roher was the sole appellant to appeal to the Federal Court of Appeal. The Federal Court of Appeal unanimously upheld the Tax Court's decision to allow the appellant's proposed expert witnesses to testify as participant experts and the weight given by the Tax Court to their evidence.

Several decisions from the Tax Court outline how a litigant may apply to admit expert evidence under section 145 of the Rules and clarify the necessary steps to admit documents not previously disclosed to the opposing party. Often parties agree on what evidence should be admitted at trial. However, the jurisprudence on these procedural issues was necessitated by the polarized positions of the parties in *Kaul*.

This article focuses on the decisions of the Tax Court and Federal Court of Appeal in *Kaul* with regard to the admission of evidence stemming from the trial and the series of appeals and motions that ensued in *Kaul*. The appellant, Mr Roher, applied for leave to appeal to the Supreme Court of Canada.

[1] 2019 TCC 17, aff'd *Roher v Canada*, 2019 FCA 313 [*Kaul/Roher*].
[2] 2017 TCC 55 [*Motion Decision*].
[3] (General Procedure), SOR/90-688a.

Admissibility of Opinion Evidence

The General Rule

As a general rule, opinion evidence from a witness is inadmissible. A witness may testify only to facts within his or her knowledge, observation or experience.

However, some exceptions allow opinion evidence to be admissible. For example, the use of qualified experts in complex disputes is commonplace in Canadian courtrooms. If the threshold is met, their opinion evidence may be accepted as fact, which is an exception to the general rule on opinion evidence.[4]

An Exception to the General Rule – Expert Evidence

Expert opinion evidence is just one of many exceptions to the general rule. This article focuses solely on the expert opinion evidence exception. Expert opinion is testimonial evidence that provides an opinion on facts perceived by the witness that concerns an issue that is likely outside the experience and knowledge of the trier of fact (i.e., a lay person).

Expert witnesses are not required to have firsthand knowledge of the facts which form the basis of their opinion. In *R v Abbey*,[5] Justice Dickson described the function of an expert as to provide a judge or jury with a ready-made inference which the judge or jury are unable to formulate because of the technical nature of the facts.

In order for a witness to give expert opinion evidence, the legal tests set out in *R v Mohan* [*Mohan*] must be met.[6] The witness must meet the requirement of impartiality based on the principles set out by the Supreme Court of Canada in *White Burgess Langille Inman v Abbott* and *Haliburton Co [White Burgess]*.[7]

Mohan Criteria and White Burgess

Mohan established a basic structure for the law relating to the admissibility of expert opinion evidence. The structure has two main components.

First, there are four threshold requirements that the proponent of the evidence must establish in order for the proposed expert evidence to be admissible: (1) relevance, (2)

[4] Sopinka, Lederman & Bryant, *The Law of Evidence in Canada*, 5th ed (Toronto: LexisNexis Canada, 2018) at 815.
[5] [1982] [1982] 2 SCR 24 at para 42.
[6] [1994] 2 SCR 9 [Mohan].
[7] 2015 SCC 23.

necessity in assisting the trier of fact, (3) absence of an exclusionary rule, and (4) a properly qualified expert.[8]

Furthermore, the general exclusionary rule set out by the Supreme Court of Canada in *R v Morris*[9] also applies to exclude evidence that is otherwise logically relevant. If the proposed expert opinion evidence's probative value is overborne by its prejudicial effect, if it involves an inordinate amount of time which is not commensurate with its value, or if it is misleading in the sense that its effect on the trier of fact is out of proportion to its reliability, then the proposed expert evidence is inadmissible.[10]

The *White Burgess* decision supplements the criteria set out in *Mohan*. It added an additional criterion. Further to the threshold requirements, the proponent to the expert opinion evidence must demonstrate to the court that the witness would provide independent, impartial and unbiased litigation opinions to the court and would not act as an advocate for any of the parties. Based on the decision in *White Burgess*, proposed expert evidence that may meet the *Mohan* criteria is not admissible if there appears to be a lack of independence. This has served to exclude some witnesses from providing expert opinion evidence in court.[11]

The Admissibility of Participant Expert Evidence

Civil Litigation

A participant expert witness has relevant expertise and was involved in the events that underlie the litigation. Participant experts are generally permitted to provide both fact and limited opinion evidence. Occasionally, a participant expert is also a litigant.

In *Westerhof v Gee Estate*[12] [*Westerhof*], the Ontario Court of Appeal addressed whether the Ontario *Rules of Civil Procedure*[13] relating to expert witnesses also apply to participant experts. The Court noted that participant experts include "…treating physicians, who form opinions based on their participation in the underlying events ... rather than because they were engaged by a party to the litigation to form an opinion."[14]

[8] *Mohan*, *supra* note 6 at paras 17-21.
[9] [1993] 2 SCR 398.
[10] *Mohan*, *supra* note 6 at paras 22 and 34.
[11] See *Lichtman v R*, 2017 TCC 252 at paras 55-58 and *Rouleau v Canada*, 2017 FC 534 at paras 44 and 45.
[12] 2015 ONCA 206 [*Westerhof*].
[13] *Rules of Civil Procedure*, RRO 1990, Reg 194, r 53.03.
[14] *Westerhoff*, *supra* note 12 at para 6.

According to *Westerhof*, a participant witness may give opinion evidence where:

- the opinion to be given is based on the witness' observation of or participation in the events at issue; and

- the witness formed the opinion to be given as part of the ordinary exercise of his or her skill, knowledge, training and experience while observing or participating in such events.

Under the Ontario *Rules of Court*, a witness who qualifies as an expert must certify his or her independence in writing before testifying. Before this decision, a witness who had prior professional involvement could not serve as an expert witness and provide expert opinion evidence because he or she were not independent within the meaning of the Ontario *Rules of Court* and *White Burgess*.

Not allowing a witness who otherwise qualifies to provide expert opinion evidence created an imbalance for those who could not retain "hired guns" to buttress a case. The Ontario Court of Appeal allowed non-independent expert witnesses to testify with limitations. These witnesses do not neatly fall into the *White Burgess* analysis.

Tax Litigation Proceedings

Section 145 of the Rules, and the accompanying *Code of Conduct* in Schedule III of the Rules, sets out the procedural guidelines with respect to experts and their reports. The purpose of section 145 and Schedule III of the Rules is to maintain procedural fairness. If the mandatory procedural guidelines of this Rule are not followed, then a court will exclude an expert's opinion evidence at trial.

The *Kaul* trial started in October 2016 with a group of lead litigants, including the appellants. Over the course of the hearing, the respondent challenged the admissibility of the expert reports prepared by two of the appellants' witnesses, who were retained to provide appraisals for artwork, which was ultimately donated by the litigants. For various reasons, the expert reports were excluded, and the witnesses were held not to be independent experts hired for the purposes of litigation. The parties evidently could not agree as to whether the witnesses could testify as participant experts, and therefore the appellants brought a motion to determine whether the Rules precluded the witnesses to testify as such.

Participant experts are not precluded by section 145 of the Rules from providing expert opinion evidence.[15] Although not binding, the Tax Court considered the jurisprudence on participant experts stemming from *Westerhof*.

[15] *Kaul/Roher*, *supra* note 1 at para 117.

In the Motion, the Tax Court found that the relevant sections of the Rules, when viewed as a whole, targets only independent experts hired for the purpose of litigation, but not a broader group of witnesses with expertise, i.e., participant experts.[16]

However, the Tax Court held that the Rules should be interpreted broadly to allow evidence from participant experts to be admissible. In determining that the Rules should not prevent this type of witness from testifying, the Tax Court said the following:

> Rule 4(1) of the Tax Court Rules provides the overarching principle that the rules, including the expert evidence rules, shall be given a liberal and expansive reading so as to "secure the just, most expeditious and least expensive determination of every proceeding on its merits." Consistent with that principle, participant experts should be allowed to testify to their observation of or participation in the events that later gave rise to litigation, subject to inherent limitations in the scope of their evidence.[17]

Observations of a participant expert are less likely to be subject to bias and accordingly more likely to be reliable than an observer hired by a litigant to support a particular position during litigation.[18] The Tax Court held that the opinion evidence of participant experts constitutes in many cases the best evidence available. A participant expert derives his or her opinion contemporaneously with the events as they unfold in real time. The opinion is based on his or her expertise and participation in the underlying events at issue.[19]

The Tax Court further stated that a participant expert should be qualified under the *Mohan* criteria in order for the Court to properly appreciate the weight to be attributed to his or her testimony.

Furthermore, with regard to independence and impartiality as set out in *White Burgess*, an analysis should be conducted at the qualifying expert stage in *Mohan*. If the witness is not impartial or independent, his or her expert opinion evidence may be inadmissible.[20]

Weight to be Given to Participant Expert Evidence

The judge retains his or her power to weigh the evidence from a participant expert when the evidence is admitted at trial. Any concerns with impartiality will go to the weight attributed to testimony.

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[16] *Motion Decision*, *supra* note 2 at paras 48-50.
[17] *Ibid* at para 55.
[18] *Westerhof*, *supra* note 12 at para 75; and *Kon Construction Ltd v Terranova Developments Ltd*, 2015 ABCA 249 at para 33.
[19] *Motion Decision*, *supra* note 2 at para 56.
[20] *Ibid* at para 114.

In the Motion, the Tax Court stated it had remaining concerns with the impartiality of witnesses whom the appellants proposed to call. At trial, the Tax Court did not find the testimony of the appellants' experts to be credible. Ultimately, the appellants lost their appeal.[21]

Position of the Federal Court of Appeal

Mr. Roher was the sole appellant in the Federal Court of Appeal. His counsel argued that the Trial Judge erred by rejecting the proposed experts as independent. He further submitted that, in *White Burgess*, the Supreme Court of Canada limited the rule excluding independent experts to only the clearest cases and that a mere employment relationship does not rob an expert of impartiality and independence.[22]

The Federal Court of Appeal upheld the Trial Judge's decision, stating that the Trial Judge fully understood the principles set out in *White Burgess*. This was a clear case where the Trial Judge should exercise his discretion.[23]

Mr. Roher also asked the Federal Court of Appeal to reweigh the evidence. However, the Federal Court of Appeal deferred to the Trial Judge's decision[24]. No palpable and overriding error was found to have been made in the Trial Judge.[25] Appellate courts owe deference to trial courts respecting the admission of experts, or any other evidence.[26]

Leave to the Supreme Court of Canada

Mr. Roher has sought leave to the Supreme Court of Canada. He is appealing the procedural decisions by the Tax Court, and upheld by the Federal Court of Appeal, that the witnesses could not testify as independent experts and that the working papers should be excluded at trial.[27] Mr. Roher argues that exclusion for bias should be rare and should not applicable in his case.

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[21] The Trial Judge ruled against the admissibility of the working papers created during the proposed expert witnesses' appraisals at trial. This was because the appellants claimed privilege at discovery and did not seek leave of the Tax Court before attempting to admit these documents as evidence pursuant to section 96 of the Rules. A party seeking to admit evidence not disclosed at discovery or included in his or her document list at trial, must seek leave from the court.

[22] *Kaul/Roher*, *supra* note 1 at para 23.

[23] *Ibid* at para 24.

[24] The Federal Court of Appeal upheld the Trial Judge's decision to deny the admissibility of the working papers. Mr. Roher did not establish to the Federal Court of Appeal that the exclusion of the working papers was prejudicial to his case.

[25] *Kaul/Roher*, supra note 1 at paras 45 and 46.

[26] *Ibid* at para 30.

[27] Application for Leave to Appeal at paras 43-46 (SCC).

Judicial Review of CRA Decisions After Vavilov: A Less Taxing Task?

By Hennadiy Kutsenko

On December 19, 2019, the Supreme Court of Canada released three decisions comprising the *Vavilov* trilogy[28]. The cases concerned the citizenship of a son of Russian spies (*Vavilov*) and whether American Super Bowl commercials could be broadcast in Canada (the *Bell* decisions).

The rulings reformed the *Dunsmuir*[29] framework for judicial review of administrative decisions, streamlining the law on determining the standard of review and establishing a more robust approach to the reasonableness standard. The *Vavilov* framework presents a welcome development in the eyes of many administrative law practitioners, holding administrative tribunals to a higher standard by requiring the adoption of a culture of demonstrable justification[30].

The *Vavilov* framework also has specific implications for tax practitioners, resolving a particular uncertainty in the standard of review to be applied to decisions of the Canada Revenue Agency (the "CRA") and creating additional criteria that the CRA must meet in order to be reasonable in its decision-making.

Framework Overview

Determining the Standard of Review

The revised framework adds certainty and predictability in determining the applicable standard of review, whereby a simple presumption of reasonableness now applies. This presumption is rebuttable in certain limited circumstances, the first of which is where the legislature has expressed an intention for correctness review to apply, either by expressly stating so or by providing a statutory right of appeal.

Importantly, the SCC noted that not all legislative provisions that contemplate a Court's review of an administrative decision actually provide a right of appeal, citing as an example sections 18 to 18.2 , 18.4 and 28 of the *Federal Courts Act*[31]. Accordingly, the right to apply for judicial review of a decision by the CRA does not rebut the reasonableness presumption.

The second general means of rebutting the reasonableness standard presumption is where the rule of law requires a "correctness" standard of review by the court. This is stated to generally occur in three distinct situations (1) constitutional questions; (2) general questions of law of

[28] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (***Vavilov***) and its companion cases, *Bell Canada v. Canada (Attorney General)*, 2019 SCC 66 and *National Football League v. Canada (Attorney General)*, 2019 SCC 66 (jointly, the ***Bell*** decisions)
[29] *Dunsmuir v. New Brunswick*, 2008 SCC 9 (***Dunsmuir***)
[30] *Vavilov*, at para. 14
[31] *Federal Courts Act* R.S.C., 1985, c. F-7

central importance to the legal system as a whole; and (3) questions of jurisdictional boundaries between different tribunals.

In addition, so-called "contextual" factors in identifying the standard of review have now been eliminated, including the question of the expertise of the decision-maker.

Applying the Reasonableness Standard of Review

The *Vavilov* framework provides for a more robust standard of reasonableness, requiring that an administrative decision be based on internally coherent reasoning that is both rational and logical[32]. The Court stated the following:

> Reasons that "simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion" will rarely assist a reviewing court in understanding the rationale underlying a decision and "are no substitute for statements of fact, analysis, inference and judgment" …[33]

While judicial deference, of course, remains key, the Court stated that a decision must be justified in relation to the relevant factual and legal constraints. The Court outlined the following non-exhaustive list of factors that must be examined in considering whether a decision is reasonable:

1. the governing statutory scheme;
2. other relevant statutory or common law;
3. the principles of statutory interpretation and the textual, contextual and purposive approach in particular;
4. the evidence before the decision-maker and facts of which the decision-maker may take notice;
5. the submissions of the parties;
6. the past practices, policies and decisions of the administrative body; and
7. the potential impact of the decision on the individual to whom it applies.

The Court emphasized the importance of the reasons provided for the decision under review. If neither the duty of procedural fairness nor the statutory scheme requires an administrative decision-maker to provide reasons, the reviewing court must then look to the record as a whole to determine whether the decision was reasonable. If the decision-maker has not provided reasons, the analysis will then focus on the outcome rather than on the decision maker's reasoning process. Importantly however, although a reviewing court may focus on an outcome

[32] *Vavilov*, at paras 102-104
[33] *Vavilov*, at para. 102

in the absence of reasons, the Court held that reviewing courts should not fashion their own reasons to fill in the gaps.

The Tax Context

Resolving Federal Court of Appeal Uncertainty

In its 2011 decision in *Bozzer*[34], the Federal Court of Appeal was tasked with reviewing the Minister's interpretation of how the ten year limitation period applies in subsection 220(3.1) of the Act. In 2005, the taxpayer applied for a waiver of interest accrued on tax debts arising in the 1989 and 1990 years. The Minister denied the application, stating that the ten year period expired in the 1999 and 2000 taxation years, respectively.

The taxpayer sought judicial review, arguing that the words “interest...payable...in respect of [a] taxation year” mean any interest accrued in that taxation year on a tax debt. Accordingly, argued the taxpayer, subsection 220(3.1) permits the Minister to exercise her discretion to cancel interest accrued in any taxation year ending within ten years before the taxpayer’s application for relief, regardless of when the underlying tax debt arose[35]. In other words, as interest accrues every year, the taxpayer could apply to cancel the interest on every taxation year dating back to 1995.

The Federal Court of Appeal agreed with the taxpayers interpretation, finding that the standard of review was that of correctness as this was a legal issue regarding the proper interpretation of subsection 220(3.1). The Court relied on its finding in *Redeemer Foundation*[36] that statutory interpretation is a matter in which the CRA has no relative expertise vis-à-vis the courts[37].

However, *Redemeer Foundation* was decided in 2006, before the *Dunsmuir* decision. There, the SCC stated that the presumption is that of a standard of reasonableness when it is the decision makers "home statute" being interpreted[38]. *Bozzer* was decided afterward but did not seem to apply this particular principle. Accordingly, in 2018, the Federal Court of Appeal in *Bonnybrook*[39] noted that it is likely that the Court in *Bozzer* relied on the exception in paragraph 62 in *Dunsmuir*, where if a pre-*Dunsmuir* authority has satisfactorily settled the standard of review, the reviewing court should simply adopt that standard of review[40].

[34] *Bozzer v. Minister of National Revenue,* 2011 FCA 186 (***Bozzer***)
[35] *Bozzer,* at para. 12
[36] *Redeemer Foundation v. Minister of National Revenue,* 2006 FCA 325 (F.C.A.)(***Redeemer Foundation***)
[37] *Redeemer Foundation,* at para. 24
[38] *Dunsmuir,* at para. 62
[39] *Bonnybrook Park Industrial Development Co. Ltd. v. Canada (National Revenue)*, 2018 FCA 136 F.C.A.)(***Bonnybrook***)
[40] *Bonnybrook*, para. 24

The Federal Court of Appeal in *Bonnybrook*, however, seemed to find it unnecessary to settle whether the standard of review was that of reasonableness or correctness when interpretation of the Act is at issue. The question was whether the CRA could extend the three year deadline to file a return (or waive the requirement to file returns) so that the taxpayer could receive a dividend refund pursuant to 129(1). At issue was the Minister's authority under subsections 220(2.1) and 220(3). In finding for the taxpayer, the Federal Court of Appeal stated that "nothing turns on the difference between reasonableness and correctness in this particular case"[41] and found that in any event, the Ministers decision was both unreasonable and incorrect[42].

Accordingly, it appears that the Court in *Bonnybrook* seems to have left open as to whether *Bozzer* and *Redeemer* may continue to apply to impose a standard of correctness when the issue is interpretation of the Act.

In the 2019 decision in *Connolly*[43], the Federal Court Appeal seems to affirm that this is indeed an unsettled issue. In that particular case, the taxpayer sought judicial review when the Minister denied relief regarding RRSP over-contributions. The Federal Court of Appeal stated the following:

> I agree with Mr. Connolly that the first aspect of the delegate's consideration of the subsection 204.1(4) analysis, involving delineation of the applicable test enshrined in the subsection, raises a question of law and that, to date, this Court has reviewed legal interpretations made by the Minister or a ministerial delegate of provisions in the *ITA* for correctness, even though under the *Dunsmuir*… framework such questions are normally subject to review on a reasonableness standard: see, e.g., *Redeemer Foundation* at para. 24; *Bozzer* at para. 3; …
>
> That said, given significant developments in the common law of judicial review in recent years, it may well be that this approach is no longer correct as my colleague, Woods J.A., recently noted in *Bonnybrook* … [44]

Dismissing the taxpayers appeal, the Court again found that there was no need to settle whether the appropriate standard of review on a question of law in interpreting the Act is that of reasonableness or correctness[45]. Therefore, it was still unclear as to which standard applies.

Vavilov settles this question by providing that the presumption is that of the standard of reasonableness. It does not seem that any of the general exceptions that rebut that presumption will apply here: interpretation of the Act does not generally involve the question of jurisdiction between different administrative bodies, constitutional questions or issues of central importance to the legal system (although arguments will surely be made to the

[41] *Bonnybrook*, para. 25
[42] *Bonnybrook*, para. 64
[43] Connolly v. Canada (National Revenue), 2019 FCA 161(***Connoly***)
[44] *Connolly*, paras 54-55
[45] *Connolly*, para. 55

contrary). As well, the SCC has expressly stated that the rights to seek judicial review in sections 18 to 18.2, 18.4 and 28 of the *Federal Courts Act* do not evidence an intention of the legislature that the standard of correctness be used. Therefore, the standard of reasonableness now seems to decidedly apply to a question of law in interpreting the Act.

Past Practice vs. Legitimate Expectation

One of the key factors emphasized by *Vavilov* in applying the reasonableness standard is consideration of past practices and policies. The Court outlined that, while there is no *stare decisis*, administrative decision makers and reviewing courts alike must be concerned with the general consistency of administrative decisions[46]. The Court stated:

> Those affected by administrative decisions are entitled to expect that like cases will generally be treated alike and that outcomes will not depend merely on the identity of the individual decision maker — expectations that do not evaporate simply because the parties are not before a judge.[47]

Accordingly, where a decision maker departs from prior practice or policy, it bears the justificatory burden of explaining that departure in its reasons[48]. In addition, the Court expressly stated that failing to satisfy this burden will result in a finding of unreasonableness[49].

Prior to *Vavilov*, departing from past practice has been relied on by taxpayers in seeking judicial review of the CRA's decisions under the doctrine of legitimate expectations. The doctrine has its roots in procedural fairness and natural justice, whereby the Supreme Court of Canada outlines the basis for the doctrine in *Old St. Boniface Residents Assn. Inc. v. Winnipeg*[50]. There, the Court stated the following:

> The principle developed in these cases is simply an extension of the rules of natural justice and procedural fairness. It affords a party affected by the decision of a public official an opportunity to make representations in circumstances in which there otherwise would be no such opportunity. The court supplies the omission where, based on the conduct of the public official, a party has been led to believe that his or her rights would not be affected without consultation.[51]

The SCC later reaffirmed the doctrine in *Baker v. Canada (Minister of Citizenship & Immigration)*[52] stating:

> As applied in Canada, if a legitimate expectation is found to exist, this will affect the content of the duty of fairness owed to the individual or individuals affected by the decision. If the claimant has a legitimate expectation that a certain procedure will be followed, this procedure will be required by the duty of fairness: (...) Similarly, if a claimant has a legitimate expectation that a certain result will be reached in his or her case, fairness may require more extensive procedural rights than

[46] *Vavilov,* para 129
[47] *Ibid*
[48] *Vavilov,* para 131
[49] *Ibid*
[50] *Old St. Boniface Residents Assn. Inc. v. Winnipeg* (City), [1990] 3 S.C.R. 1170.(***Old St. Boniface***)
[51] *Old St. Boniface* at p.1204
[52] *Baker v. Canada (Minister of Citizenship & Immigration),* [1999] 2 S.C.R. 817 (S.C.C.)(***Baker***)

> would otherwise be accorded: (...). Nevertheless, the doctrine of legitimate expectations cannot lead to substantive rights outside the procedural domain. This doctrine, as applied in Canada, is based on the principle that the "circumstances" affecting procedural fairness take into account the promises or regular practices of administrative decision-makers, and that it will generally be unfair for them to act in contravention of representations as to procedure, or to backtrack on substantive promises without according significant procedural rights.

An example of this doctrine being applied in the tax context can be found in the 2001 *Edison*[53] decision of the Federal Court. In that case, the taxpayer applied to the Minister for interest and penalty relief pursuant to subsection 220(3.1). After being denied the first time, the taxpayer sought a second review. When the second review was again denied, the taxpayer sought judicial review based on procedural fairness grounds, as the original decision maker in the first review was also prominently involved in the second level review. The taxpayer argued that the CRA had created the legitimate expectations that the second level review would be impartial and made independently of the original decision maker, based on the Minister's own published policy.

The taxpayer was successful in the application for judicial review, whereby the Court found that by failing to follow her own published procedural guidelines, the Minister had breached her duty of fairness owed to the applicants under the rules of natural justice and procedural fairness[54].

Therefore, it does appear that it was possible to rely on departure from past practice or policy as a ground for judicial review of the Minister's decision. However, arguments of procedural fairness and natural justice often present a high bar and relying on the legitimate expectations doctrine requires establishing that such expectations were in fact created by the Minister. Accordingly, it appears that the SCC has in fact lowered the standard by stating that any departure from past practice or policy, unless appropriately justified by the CRA, will be grounds for a finding of unreasonableness (without needing to establish a breach of procedural fairness or the creation of legitimate expectations).

Other Factors

While the other factors generally represent principles of judicial review already established in the tax jurisprudence, such as the requirement of the Minister to apply the textual, contextual and purposive approach[55] and consider the parties submissions[56], two more factors warrant further comment.

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[53] *Edison v. R.*, [2001] 3 C.T.C. 233 (Federal Court of Canada—Trial Division) (***Edison***)
[54] *Edison*, para 38
[55] See *Revera Long Term Care Inc. v. Minister of National Revenue,* 2019 FC 239
[56] See *Dorothea Knitting Mills Ltd. v. Minister of National Revenue,* 2005 FC 318

The first is the requirement that an administrative decision maker consider any relevant statutory or common law authority. By making this a key factor, the SCC seems to effectively mandate that the Minister consider the relevant case law and justify any departure therefrom. The Court states the following:

> Where, for example, there is a relevant case in which a court considered a statutory provision, it would be unreasonable for an administrative decision maker to interpret or apply the provision without regard to that precedent. The decision maker would have to be able to explain why a different interpretation is preferable by, for example, explaining why the court's interpretation does not work in the administrative context: … There may be circumstances in which it is quite simply unreasonable for an administrative decision maker to fail to apply or interpret a statutory provision in accordance with a binding precedent. [57]

The above may have an impact on CRA's tendency to refuse to accept the result in decisions of the Tax Court (or Federal Court of Appeal) that the CRA does not appear to agree with.

Secondly, the Court also provides that the impact on the affected individual must be considered. If the impact may be severe, the reasons of the administrative decision maker must "reflect the stakes"[58]. The SCC cites as an example decision with consequences that threaten an individual's "life, liberty, dignity or livelihood"[59]. Therefore, it is plausible that if a particular decision may result in double taxation or impose particularly high interest or penalties, the CRA may have a heightened duty to explain why the particular result is nevertheless the appropriate one.

Conclusion

Vavilov appears to have injected a much higher measure of certainty and predictability into applications of judicial review. While the standard of reasonableness is now presumed on a much broader basis than under *Dunsmuir*, it does seem that the distance between reasonableness and correctness has now been shortened considerably. In particular, the CRA will now have to expressly justify any departure from prior policy or practice as well as its disagreement with the case law. However, it remains to be seen whether, and to what extent, the CRA will follow this guidance and whether taxpayers will still have to pursue judicial review applications in order to enforce these higher standards.

[57] *Vavilov*, at paras 112-113
[58] *Vavilov*, at paras 133
[59] *Ibid*

Disclosure Discouraged - The New VDP Two Years On

By *Martin Sorensen & Nicholas Arrigo*

March 1, 2020 marked two years since the new Voluntary Disclosures Program ("**VDP**") took effect. In the lead-up to the implementation of the new program, many tax practitioners thought that the revised and more restrictive rules could dissuade some taxpayers from applying for relief. To find out, we submitted a request to the Canada Revenue Agency ("**CRA**") for VDP data under the *Access to Information Act* (Canada).

Summary of New Rules

The new VDP is generally seen to be less favourable to taxpayers than the old program. Briefly, the key elements of the new rules, set out in *Information Circular IC00-1R6*, are as follows:

- Payment up front. As a new criterion for eligibility under the VDP, taxpayers must include payment of the estimated tax owing up front when they submit their VDP application.

- Limited relief. Disclosures are now administered under two separate tracks: the "General Program" and the "Limited Program". Taxpayers who qualify under the Limited Program remain liable for penalties other than gross negligence penalties and are not eligible for interest relief. Taxpayers who have exhibited "major non-compliance", as well as certain large corporations, fall under the Limited Program. Further, taxpayers may be required to waive their objection and appeal rights in relation to the matter disclosed, and any related assessments.

- Stripped down "no name" disclosure. Under the old VDP rules, taxpayers could request an initial consultation with a CRA officer on a "no-name" basis to determine whether their disclosure qualified. If so, taxpayers were given a 90-day grace period to provide full disclosure, during which CRA would take no action. Under the new VDP, taxpayers can initiate anonymous "pre-disclosure discussions", but such discussions "have no impact on CRA's ability to audit, penalize, or refer a case for criminal prosecution".

- Separate process for transfer pricing. Disclosures involving transfer pricing matters are referred to a separate Transfer Pricing Review Committee.

New Data from CRA

We asked CRA for statistics comparing the new program's first year (March 2018 to February 2019) to the old program's final year (March 2017 to February 2018). The response was as follows:

- Number of applications has declined. While the final year of the old VDP saw 18,191 applications, the new program's first year saw only 12,042, amounting to a 34% reduction. Of these applications under the new VDP, 7,935 were submitted by individuals, and 4,107 by other entities including corporations, partnerships and trusts.

- Surge leading up to the deadline. CRA received approximately 6,700 new applications between December 15, 2017 (the date of the policy change announcement) and February 28, 2018 (the last day on which the old VDP was effective), representing an increase of approximately 95% over the same period during the previous year. This explains, in part, the large difference between the number of applications before and after the rules changed. However, even accounting for this influx of applications before the deadline, there remains a clear reduction in applications overall.

- Long waits ahead. Owing partly to the surge in applications before the rules changed, CRA's turnaround time for resolving VDP applications under the new rules is now approximately 350 days on average. We asked how many applications submitted in the old VDP's final year remain unresolved, but CRA was unable to answer. We were advised that "applications are not categorized in this manner. Certain applications may come back for a second administrative review, may be referred for further review, or could be pending receipt of additional documentation from the taxpayer or their representative."

- Pre-disclosure discussions are not the norm. Taxpayers are rarely availing themselves of "pre-disclosure discussions". In the first year of the new VDP, only 412 pre-disclosure discussions took place. Recognizing that some of these pre-disclosure discussions likely did not lead to a formal application, it appears that only approximately 3% of taxpayers, at most, decided to start their disclosures anonymously. We asked CRA how this compared to the "no name" discussions under the old VDP, but were advised that CRA did not track those conversations.

- CRA does not track key data. Several of our questions went unanswered, on the basis that CRA does not track certain statistics. Most surprisingly, CRA indicated that it does not track the amount of tax or penalties that it collects under the new VDP. CRA also does not track whether the taxpayer requested relief under the General Program or the more restrictive Limited Program. Finally, CRA indicated that it does not track how many applications under the new rules have been referred to the Transfer Pricing Review Committee.

While CRA's response did not satisfy our every curiosity, it is clear that the implementation of the new rules did cause a drop in the number of applications, as was generally expected. It seems likely that this decline in applications is due in part to those taxpayers who have less to gain under the new VDP than they did before. We would venture to guess that some taxpayers who believe they would only qualify for the Limited Program would simply refrain from applying under the new rules and elect instead to play "audit roulette". In addition, taxpayers who might have "tested the waters" with a "no-name" discussion under the old rules might be reluctant to do so without 90 days of guaranteed protection following a "pre-disclosure discussion" under the new rules.

That said, pining for the good old days will not bring back the good old rules. Even in its more restrictive form, the VDP remains the principal avenue for non-compliant taxpayers to find some potential relief and correct past errors and omissions. They remain an important tool in the Canadian taxpayer's toolbox.

Tax Court of Canada  Cour canadienne de l'impôt

Practice Direction and Order

WHEREAS the Tax Court of Canada has cancelled all its judicial activities for the weeks of March 16th and March 23rd, to and including March 27, 2020;

AND WHEREAS there are extraordinary events taking place which are affecting the ability of the public to access the processes otherwise available to them under the *Tax Court of Canada Act* and other particular statutes over which the Tax Court of Canada has jurisdiction;

AND WHEREAS given the extraordinary circumstances which exist today by virtue of the spread of the COVID-19 virus it is in the interest of justice, that I act pursuant to Rule 9 of the *Tax Court of Canada Rules (General Procedure)*, the *Tax Court of Canada Rules (Informal Procedure)*, *Excise Tax Act Informal Rules*, *Canada Pension Plan Informal Rules*, *Employment Insurance Act Informal Rules*, and *Customs Act Informal Rules*. I dispense with the compliance of any Rule of the Tax Court of Canada until the 30th day of March, 2020 or until further direction is given;

PURSUANT to Rule 12 of the *Tax Court of Canada Rules (General Procedure)*, I do hereby extend and/or abridge, as the case may be, any and all timelines prescribed by the *Tax Court of Canada Rules (General Procedure)*, the *Tax Court of Canada Rules (Informal Procedure)*, *Excise Tax Act Informal Rules*, *Canada Pension Plan Informal Rules*, *Employment Insurance Act Informal Rules*, and *Customs Act Informal Rules*, from the 16th day of March, 2020 to the 30th day of March, 2020 or until otherwise ordered by this Court;

AND IT IS FURTHER ORDERED pursuant to Rule 14 of the *Tax Court of Canada Rules (General Procedure)*, the *Tax Court of Canada Rules (Informal Procedure)*, *Excise Tax Act Informal Rules*, *Canada Pension Plan Informal Rules*, *Employment Insurance Act Informal Rules*, and *Customs Act Informal Rules*, that the Tax Court of Canada including all its offices in Canada, shall not be open for the transaction of business between the period of 9:00 a.m. on the 16th day of March, 2020 to 9:00 a.m. on the 30th day of March, 2020, or until otherwise directed by the Chief Justice of the Tax Court of Canada.

DIRECTED AND ORDERED at the City of Ottawa, this 16th day of March, 2020

(original signed by Chief Justice Eugene P. Rossiter)

Eugene P. Rossiter
Chief Justice

(Official Translation to Follow)

Tax Court of Canada  Cour canadienne de l'impôt

Notice to the Public and the Profession

Further to the Notice to the Public and the Profession issued on March 13th, 2020, and in light of the exceptional circumstances evolving rapidly, the Tax Court of Canada is further restricting its judicial sittings and operations.

Cancellation of sittings

The Chief Justice has further cancelled all TCC sittings and conference calls scheduled between March 30th, 2020 and up to May 1st, 2020, inclusively. Parties affected by these cancellations will be contacted directly by the Registry staff in the coming days.

At this time, sittings that are scheduled beyond May 1st, 2020 will proceed.

The Chief Justice will continue to monitor the situation closely and reassess on April 14th, 2020, whether the judicial sittings schedule will have to be further altered.

Suspension of timelines

The period beginning on March 16th, 2020 and ending on May 1st, 2020, will be excluded from the computation of time under: the *Tax Court of Canada Rules (General Procedure);* all other Rules made under the *Tax Court of Canada Act* governing the conduct of matters that, pursuant to section 12 of the *Tax Court of Canada Act*, are under the Tax Court of Canada's jurisdiction; or an Order or Direction of this Court.

As other statutory filing deadlines over which the Tax Court of Canada has no jurisdiction continue to apply, parties faced with a statutory deadline are encouraged to file their documents, including but not limited to any application for an extension of time, before the expiry of the statutory deadline, electronically using the Tax Court of Canada on-line filing system https://apps.tcc-cci.gc.ca/appeals/jsp/appeal/disclaimer_e.html or by fax at 613-957-9034, in order to protect their rights.

Parties who file documents electronically at this time are exempted from any requirement to file paper copies.

Please note that the Registry will not process the documents filed until the Court's operations resume.

In other cases where there are no statutory deadlines, parties are asked to wait and file other documents and requests once the Court resumes its operations.

Given the exceptional circumstances, the Court will be, on a case by case basis, as flexible as reasonably possible in dealing with all requests.

Rescheduling

Given the fluidity and fast evolution of the situation, it is very difficult at this time to assess how the Court will proceed in rescheduling the hearings that have been cancelled. The Court will determine the most fair and expeditious way to do so upon resumption of operations.

Closure of Registry Offices

The Court and its Registry offices across the country remain closed for the transaction of business until further notice.

Updates and Return to Regular Operations

The Court is monitoring this situation very closely. Parties are encouraged to check the Court's website for updates and for information regarding the Court's return to regular operations and transaction of business.

Dated this 23rd day of March, 2020.

(Original signed by Eugene P. Rossiter
Chief Justice)

Eugene P. Rossiter
Chief Justice

(Official Translation to Follow)

Federal Court of Appeal  Cour d'appel fédérale

NOTICE TO THE PARTIES AND THE PROFESSION

TO: Parties and the Profession

FROM: The Honourable Marc Noël,
Chief Justice of the Federal Court of Appeal

DATE: March 16, 2020

SUBJECT: Update on Court operations in light of COVID-19

Since issuing a Notice to Parties and to the Profession with regard to Court operations in light of COVID-19 on Friday March 13, 2020, measures seeking to contain the spread of the virus have evolved significantly.

Public health officials have now advised members of the public to restrict their movements as much as possible, including travel to and from work. Court employees, like all employees of the federal government, have been asked to telework where possible and Court managers have been asked to focus their efforts on ensuring continued critical operations.

Accordingly, the Federal Court of Appeal is adjourning all hearings scheduled to be heard between now and April 17, 2020, with the exception of urgent matters that will be heard by teleconference. The Judicial Administrator will contact counsel and parties involved in matters thus adjourned for possible new dates when circumstances permit.

In the meantime, the Court will remain available to deal with urgent matters by teleconference.

Until further notice, Registry operations will continue with significantly reduced staff, both in Ottawa and in regional offices. Staff will be available to receive court filings at any of the Court's registry offices but parties and the public should expect a significantly decreased level of service.

Exceptionally and until April 13, 2020, the Court will accept electronic filing of court documents by email at Information@fca-caf.gc.ca provided that those documents are in PDF format. Please note that the Court is unable to accept electronic documents greater than 10MB. Parties that proceed in this way will be exempted from the filing of paper copies.

All filing deadlines continue to apply. Parties will be able to request an extension of time for deadlines set out in the *Federal Courts Act* or *Federal Courts Rules* if they are unable to meet the

filing deadlines in light of current circumstances but are asked to do so once Court operations return to normal.

The situation will continue to be monitored with a view to restoring normal Court operations as circumstances allow.

The Court appreciates the patience and understanding of parties and their counsel during these challenging times.

"Marc Noël"

Chief Justice,
Federal Court of Appeal

Government of Canada

Coronavirus disease (COVID-19): Collections, audits, and appeals

Collections

Collections activities on new debts will be suspended until further notice, and flexible payment arrangements will be available.

If a taxpayer is prevented from making a payment when due, filing a return on time, or otherwise complying with a tax obligation because of circumstances beyond their control, they can submit a request to cancel penalties and interest. To make a request to the CRA to have interest and/or penalties waived or cancelled, please use Form RC4288, Request for Taxpayer Relief.

Payment arrangements are also available on a case by case basis if you can't pay your taxes, child and family benefit overpayments, Canada Student Loans, or other government program overpayments in full.

Collections staff will address pre-existing situations on a case-by-case basis to prevent financial hardship.

Please note that due to measures taken surrounding the COVID-19 virus, our Debt Management Call Centre service is not currently available. We apologize for the inconvenience.

If you have concerns and require contact with a Collections Officer, please contact our toll free number 1-800-675-6184 between 8:00 a.m. and 4:00 p.m. your local time.

Audits

The CRA will not contact any small or medium (SME) businesses to initiate any post assessment GST/HST or Income Tax audits for the next four weeks.

For the vast majority of taxpayers, the CRA will temporarily suspend audit interaction with taxpayers and representatives. Interaction with taxpayers will be limited to those cases where the legal deadline to reassess a tax return is approaching, and in cases of high risk GST/HST refund claims that require some contact before they can be paid out.

Objections & appeals

Any objections related to Canadians' entitlement to benefits and credits have been identified as a critical service which will continue to be delivered during COVID-19. As a result, there should not be any delays associated with the processing of these objections.

With respect to objections related to other tax matters filed by individuals and businesses, the CRA is currently holding these accounts in abeyance. No collection action will be taken with respect to these accounts during this period of time.

With respect to appeals before the Tax Court of Canada (TCC), on March 16, 2020, the TCC has ordered the extension of all timelines prescribed by the rules of that Court while it is closed for business until March 30, 2020. More information can be obtained directly from the TCC.

Related links

- When you owe money – collections at the CRA
- Business audits
- Service feedback, objections, appeals, disputes, and relief measures

Cases of Note

***Denso Manufacturing Canada, Inc. v. The Queen* (FC)**

T-1787-18, 2020 FC 360, 2020 CF 360 -- Zinn J. -- 20/03/10 -- Tax -- Goods and Services Tax -- Administration and enforcement

The registrants, two related companies were qualified under s. 156 of *Excise Tax Act* to make joint election so that every taxable supply between them would be deemed to be made for nil consideration. An amendment to the Act required election to be made in a new prescribed form and filed with the Minister rather than merely kept with corporate records which registrants had previously done, with Minister giving notice that so long as the form was filed by Jan. 1, 2016, it would cover the entire 2015 calendar year.

The registrants failed to file the form by Jan. 1, 2016 and, after an audit in January 2016 that brought non-filing of form to the registrants' notice, they filed the form "effective January 2016". In November 2017, the registrants requested acceptance of the late-filed form for 2015 but the Minister refused to exercise discretionary authority to accept such a late filing. The registrants applied for judicial review and the application was dismissed.

The registrants' explanation made it clear that the reason the form was not filed in 2015 was because the registrants did not know of the new requirement and that it was filed with effective date of January 2016 as their tax consultants did not advise otherwise. Procedure followed was procedurally fair, as there was no need to disclose report by analyst that was not prior decision-maker. The registrants had sufficient information to know the CRA's concerns and the case it had to meet. Contrary to the registrants' submission that the Minister did exercise discretion to accept late-filed election in February 2016, this form was not late-filed on its face as it stated it was effective as of Jan. 1, 2016.

It was not credible to suggest now that this form was an application to accept it as applicable to the 2015 year or was seen by the Minister as such, there was no evidence supporting the registrants' submission that the 2016 date was placed there in error and that they intended the form to carry the effective date of 2015. It was open to the Minister to conclude that the registrants' reliance on third-party consultants was insufficient to demonstrate reasonable effort to comply with the Act and that they had not taken the adequate precautions to keep abreast of their compliance obligations.

***Sweetman, G. v. The Queen* (TCC)**

2018-1524(IT)G, 2020 TCC 36, 2020 CCI 36 -- Graham J. -- 20/03/06 -- Tax -- Income tax -- Administration and enforcement -- Practice and procedure on appeals -- Costs

The taxpayer appealed the reassessment in which the Minister of National Revenue denied donation tax credits claimed in 2004, 2005, 2006 and 2007 taxation years in relation to almost $3,000,000 in gifts. The taxpayer claimed to have made it through a promoted gifting program. The taxpayer's appeal was filed after release of the decision in another taxpayer appeal in which the Tax Court of Canada found that the program was a sham, and numerous other appeals regarding the program had since been heard and decided in the Minister's favour.

The Minister brought motion for order for security for costs and the motion was granted. Preconditions under s. 160 of the *Income Tax Act* for the order for security for costs, and that the taxpayer must reside outside of Canada and the Minister must have filed a reply, were satisfied. The Minister had a high likelihood of success on appeal. The taxpayer had not provided any evidence that suggested the Minister could collect costs without difficulty. The costs sought by the Minister were based on a reasonable estimate. While the taxpayer claimed to have a very large negative net worth and low monthly income, he had not provided any evidence by which accuracy of his claims could be assessed and therefore there was no evidence he would not be able to provide security requested.

The taxpayer should have taken advantage of s. 169(1)(a) of the Act, which allowed the taxpayer to appeal to the court 90 days after filing notices of objection, and appealed to the court quickly if he wanted to ensure that he was a Canadian resident when he filed the appeal. The Minister's lack of response to the taxpayer's request for waiver of interest was not relevant as consideration to question of security for costs. The taxpayer was to provide security for costs in amount of $19,375, payable in three installments.

***Dilalla v. Canada*, 2018 FCA 28, 2018 D.T.C. 5016 (note), 2018 CAF 28 (FCA)**

A-119-17, 2018 FCA 28, 2018 CAF 28, Woods J.A. (Pelletier and Near JJ.A. concurring) -- 18/01/30 -- Tax -- Income tax -- Administration and enforcement -- Practice and procedure on appeals -- Discovery

The Minister of National Revenue issued tax assessments against the taxpayer on the ground that he had unreported income for three years. The taxpayer appealed and brought motion to compel production of documents, including all policies and interpretations of Canada Revenue Agency (CRA) in relation to personal endeavours and hobbies, all documents relating to gross negligence penalties, and CRA's policies as to whether net worth audit should be completed.

The Tax Court of Canada judge dismissed the motion and the judge found that the first two requests were broad and vague, and that requests were abusive and a delaying tactic. The taxpayer appealed and the appeal was dismissed. The judge made no reviewable error in dismissing the motion and the taxpayer's judicial authorities were distinguishable on their facts.

***Burlington Resources Finance Company v. The Queen*, 2020 TCC 32 (TCC[General Procedure])**

2012-2683(IT)G -- 2013-2595(IT)G, 2020 TCC 32, 2020 CCI 32 -- D'Auray J. -- 20/02/20 -- Tax -- Income tax -- Administration and enforcement -- Practice and procedure on appeals

The taxpayer borrowed approximately $3 billion in American funds in 2001 and 2002 by issuing bonds guaranteed by its non-resident parent. The Minister of National Revenue reassessed the taxpayer under the *Income Tax Act* for the 2002 to 2005 taxation years, denying deductions for annual payments made to the parent company for unconditional guarantee under transfer pricing rules in s. 247(2)(a) and (c) of the Act, disallowing deductions for financing expenses, and imposing penalties.

The taxpayer appealed and the Crown wished to file proposed amended reply to the Notice of Appeal, and to make amendments in proceedings regarding CF Co. The amendments regarded whether amounts payable by the taxpayer to its parent as guarantee fees fell within ambit of s.20(1)(e.1) of the Act, and whether fee agreements were legally ineffective. The Minister brought motion to amend pleadings and the motion was granted. The taxpayer consented to amendments in proceedings regarding CF Co. It was in interests of justice to grant amendments and the Minister did not make clear and deliberate concession that the amounts paid to the parent company were guarantees fees and was not attempting to withdraw that admission.

The issue was one of mixed fact and law and could not be considered admission and the Crown was not reviving the abandoned argument that fees were legally ineffective, The Crown acted in a timely manner and the amendments would not cause delay, and dropping the pricing transfer issue would shorten the proceedings. The taxpayer was aware of the current position of the Minister through discovery. The amendments would help the court consider true substance of dispute on merits. The taxpayer would not suffer prejudice from amendments. The taxpayer had not established that the Minister's conduct was reprehensible, scandalous or outrageous, so the order for costs thrown away was not appropriate.

***Gentile Holdings Ltd. v. The Queen*, 2020 TCC 29 (TCC [General Procedure])**

Tax --- Income tax -- Administration and enforcement -- Collection of tax -- Third party assessments

The corporate taxpayer was the sole shareholder of a numbered company and they had same sole director. In June 2006, the company declared a dividend of $600,000 in favour of the taxpayer and the taxpayer agreed to loan $600,000 to the company. The Minister assessed the company under Income Tax Act for $116,754.22 in respect of the 2006 taxation year. The Minister assessed the taxpayer under s. 160(1) of Act for this amount. The taxpayer appealed and the appeal was dismissed.

It was undisputed that there was a transfer of property from the company to the taxpayer while the company had tax liability. The director, the sole decision maker for both companies, was dictating terms of bargain for both sides of this transaction. The facts did not reflect ordinary commercial dealings between two parties acting in their separate interests as it was apparent no reasonably prudent arm's length person would pay $600,000 for the opportunity to obtain a loan for the same amount.

Due to the director's control, the taxpayer and the company were deemed by s. 251(1) of the Act not to be dealing with each other at arm's length. The transactions apparently involved the company declaring dividend in favour of the taxpayer, who then agreed to loan in same amount so that the company could pay this dividend to it. The evidence did not suggest that there was an actual transfer of funds on the date of transactions. Later repayments of the loan suggested that it was an entirely separate transaction with its own consideration since, if dividend was repayment of loan, there would be no debt remaining afterward and documentary evidence showed no connection between dividend and the loan.

The dividend payment had to be considered as a separate transaction without consideration in the return. Even if the loan was consideration, fair market value of that consideration was not $600,000. The taxpayer and company were jointly and severally liable to pay amount as assessed by the Minister in respect of the 2006 taxation year.

***Prince v. Canada (National Revenue)*, 2020 FCA 32 (FCA)**

A-156-19, 2020 FCA 32, 2020 CAF 32 -- Rennie J.A. (Gauthier and Locke JJ.A. concurring) -- 20/01/31 -- Tax -- Income tax -- Administration and enforcement -- Fairness provisions -- Judicial review of Minister's discretion

When the taxpayer was advised by the CRA of the intention to reassess him for 2005 to 2014 taxation years, he filed an application under the voluntary disclosure process

(VDP). The Minister dismissed the VDP application on the basis that the taxpayer's disclosure was not voluntary. The taxpayer requested a second level VDP review. The taxpayer was advised of the CRA's intention to commence a second audit, this time for the 2007 to 2016 taxation years, to which he objected on the basis that it was premature given the pending decision on the second level VDP review.

The CRA sent the taxpayer a proposal letter, setting forth proposed reassessments arising from the audit that included penalties and interest charges. The taxpayer applied for judicial review to quash proposal letter and motion for interlocutory injunction to prevent issuance of proposed reassessments. While the application was outstanding, the Minister reassessed the taxpayer under the *Income Tax Act* and his second level VDP application was dismissed.

The taxpayer filed Notices of Objection to reassessments and applied for judicial review of the VDP decision. The taxpayer's application for judicial review of the proposal letter and motion for injunctive relief were dismissed. The taxpayer appealed and the appeal was dismissed.

Since Notices of Reassessment had been issued, the question of whether an injunction could have issued restraining their issuance pending determination of second level VDP request was moot. As a matter of law, the reassessments were valid and binding until set aside by Tax Court of Canada.

The taxpayer's argument that the reassessments must be stayed or enjoined until recourse mechanisms contemplated by VDP were exhausted, including his outstanding application for judicial review, this could not succeed as it would effectively nullify power granted to the Minister under s. 152(4) of Act to reassess "at any time". The taxpayer could not have had legitimate expectation that the reassessment process would be suspended pending final consideration of the VDP application. While the taxpayer claimed harm arising from the Minister's possible resort to enforcement powers, subsection. 225.1(1) of the Act precluded enforcement action since he had filed the notice of objection. The proposal letter was not a reviewable decision or order as, while it might foreshadow the Minister's intention to reassess, it did not determine any of taxpayer's rights.

***Lee v. Canada*, 2020 FCA 17 (FCA)**

Income tax -- Goods and Services Tax -- Civil practice and procedure -- Disposition without trial -- Stay or dismissal of action -- Grounds -- Action frivolous, vexatious or abuse of process

In the taxpayer statement of claim, the plaintiff alleged wrongdoing in manner in which he was treated by defendants relative to assessments for income tax and GST under the

Income Tax Act and the *Excise Tax Act* and sued for damages and ancillary relief. The defendants brought a successful motion to strike out his statement of claim without leave to amend on the grounds that it was scandalous, frivolous or vexatious and was abuse of process within meaning of R. 221 of Federal Court Rules.

The plaintiff's appeal from order of Prothonotary was dismissed. In his order, Prothonotary reviewed history of litigation undertaken by the plaintiff before the Ontario Court of Justice, Superior Court of Justice of Ontario, Court of Appeal for Ontario, Tax Court of Canada, Federal Court of Appeal and Supreme Court of Canada. Proceedings in Ontario Courts were related to conviction of plaintiff upon charges of filing false and misleading tax returns and proceedings before Tax Court and on appeal to Federal Court of Appeal related to assessments for payment of GST.

The plaintiff appealed and the appeal was dismissed. The plaintiff was not able to overcome the difficulty that his statement of claim was a collateral attack on final and conclusive court judgments that he was guilty of the offence under section 239 of the Income Tax Act (Canada) that confirmed the assessment of his liabilities for income tax and GST before the Prothonotary and the Federal Court judge.

The plaintiff's attempt to relitigate questions by seeking damages and other relief engaged rule against collateral attack and doctrine of abuse of process. Reading of the plaintiff's lengthy statement of claim disclosed that all material factual assertions were either inconsistent on their face with judicial determinations in prior proceedings involving plaintiff or were conclusory statements which cannot be proven except by invoking those inconsistent facts.

Determination that pleading should be struck pursuant to R. 221 was a discretionary decision reviewable on appellate standard. Neither Prothonotary nor Federal Court judge fell into palpable and overriding error in dismissing claim.

***Roher v. Canada*, 2019 FCA 313 (FCA)**

A-73-19, 2019 FCA 313, 2019 CAF 313 -- Gauthier J.A. (concurred in by Montigny J.A. and Gleason J.A.) – 19/12/16 -- Tax -- Income tax -- Tax credit -- Charitable donations -- Valuation of gift -- Tax avoidance -- Tax shelters -- Administration and Enforcement -- Practice and procedure on appeals -- Evidence

The program was conceived in which participants would invest a minimum amount of $3,500 in art get a donation receipt for $10,000 and get 43 percent return. Between taxation years 1998 and 2004, the taxpayer paid $383,937 in art donation program and claimed $2.3 million in donation tax credits. The Minister reassessed the accused determining that the taxpayer was entitled to donation tax credits based on amount paid into the program, as this was fair market value of the art.

The taxpayer was one of several taxpayers who unsuccessfully appealed the Minister's reassessment and since then, other lead litigants had either abandoned or settled their appeals. Two expert reports were entered by two art appraisers but were excluded by the trial judge. The Trial judge found one report did not meet the mandatory requirement of Rule 145 under the Tax Court of Canada Rules, and second report was excluded, because it did not meet the threshold of impartiality, objectiveness and independence.

The trial judge also found that market value of the donated art was not individual retail value of each donated art print and that the Minister's assumptions were not destroyed. The taxpayer appealed and the appeal was dismissed. The trial judge never made the finding that the donor market was identical to Sloan wholesale market. The trial judge simply concluded on evidence before him, including information extracted through cross-examination of witnesses and documents produced, that fair market value of the art was not fair market value presented by the taxpayers. The trial judge did not make the finding that stated market values assumed by the Minister were appropriate, but only stated that the taxpayer did not meet burden of destroying relevant assumptions relied upon by the Minister.

The taxpayer essentially asked the court to reweigh evidence relying, among other things, on bits of certain evidence and the trial judge did not err in rejecting the first expert report concerning Rule 145, because it was open to the trial judge to find that adjourning this matter would have prejudiced administration of justice. Further, excluding the first expert report did not cause very serious prejudice to the taxpayer, as the expert's report was substantially to the same effect as his appraisal reports, which were included in evidence. The trial judge did not err in rejecting the second expert's report, as that expert was involved in the art donating program and this was not the case of mere employment relationship.

***Univar Holdco Canada ULC v. The Queen*, 2020 TCC 15 (TCC [General Procedure])**

2013-2834(IT)G, 2020 TCC 15, 2020 CCI 15 -- Boyle J. -- 20/01/24 -- Tax -- Income tax -- Administration and enforcement -- Practice and procedure on appeals -- Costs

The taxpayer was a holding company used by a foreign company to facilitate a transaction involving stripping of surplus from a Canadian subsidiary without paying withholding tax. The Minister assessed the taxpayer under the *Income Tax Act*, finding that the transaction violated the General Anti-Avoidance Rule (GAAR) and attracted withholding tax of about $29 million plus $10 million in interest. The taxpayer’s appeal was dismissed by the Tax Court of Canada. The taxpayer’s appeal to the Federal Court of Appeal was allowed, with award of costs in both that court and in the Tax Court.

The taxpayer brought motion for determination of costs in the Tax Court and the motion was granted with the taxpayer awarded costs of $305,627. The taxpayer claimed 75 per cent of its actual costs, or $450,000 while the Minister argued for tariff award of $6,500. Even though the taxpayer was unsuccessful in its appeal to the Tax Court, result of Federal Court of Appeal decision was that the taxpayer was wholly successful in appealing its reassessment. The Minister's argument that this ultimate success should have no bearing on award of costs was nonsensical. The amount in issue was significant and the applicability of GAAR was important as it could apply to other taxpayers completing similar transactions and determination of object, spirit and intent or purpose of s. 212.1 of the Act could be of significance for many appeals.

The importance of the issue favoured an enhanced costs award and both the volume and complexity of work needed to be reflected with unenhanced costs award as well. Both parties made efforts to ensure that hearing proceeded efficiently and the Minister's pursuit of its defence and reply to appeal did not favour enhanced costs to the taxpayer. The tariff rate of $6,500 would not be a satisfactory contribution by the Minister toward the taxpayer's costs.

The appropriate award of costs was 50 per cent of the taxpayer's actual fees, or $300,000, plus disbursements of $5,627.17. The Minister's notion that there had to be some principled basis or reason for departing from the tariff was a throwback to era requiring exceptional circumstances to depart from tariff. The tariff was a default if no costs determination was made and it could be used as part of determination, but it was not required to be a starting point in costs analysis. The Minister would not be awarded costs of this motion and her stubborn cling hold to tariff amount justified higher award of costs to the taxpayer for this motion.

***Muir v. The Queen*, 2020 TCC 8 (TCC [Informal Procedure])**

2018-4085(IT)I, 2020 TCC 8, 2020 CCI 8 -- Boyle J. -- 20/01/22 -- Tax -- Income tax -- Administration and enforcement -- Collection of tax -- Third party assessments

The taxpayer was a dentist who carried on practice through a professional corporation and at least one other corporation. In January 2013, the taxpayer sold assets of the dental practice to another dentist who was at arm's length. From the amount received from purchaser corporation's law firm, she paid equipment lessor's early buyout, dental centre loan, corporate credit cards, legal fees and employee wages, vacation pay and termination pay and paid remaining amount of $124,000 to the taxpayer.

The amount of $124,000 was deposited into the taxpayer's line of credit account and then $100,000 was transferred to a new account that had been opened solely for the purpose of making payments to former patients and creditors of the corporation. All of the $124,000 was paid by the taxpayer to former patients and creditors. At this time the

taxpayer distributed $124,000, she was unaware of the tax debt of the corporation and had no reason to expect there would be one. The corporation was reassessed for amount giving rise to the tax debt in June 2014. In 2016, the taxpayer was assessed under s. 160 of the *Income Tax Act* for the tax debt of the corporation. The taxpayer appealed and the appeal was allowed. That left the taxpayer $24,000 in her line of credit, which briefly reduced her line of credit and resulted in savings to her personally of interest that otherwise would have accrued, did not effect the fact that she properly used all of $124,000 to pay patients and creditors, although it raised shareholder benefit question that was not before court and was out of time to be put before court. The amount of $124,000 was transferred by the corporation to the taxpayer subject to the requirement that it be promptly used to refund patients and pay creditors. The condition was intended and understood by the corporation and the taxpayer and was promptly and fully complied with by the taxpayer who bound herself to such arrangement.

The Canada Revenue Agency ("CRA") would have been in no different position with respect to corporation's unpaid taxes had the corporation not distributed money to the taxpayer first but had itself made distributions to creditors and former patients. It was not the intention of Parliament to have s. 160 apply in circumstances were the CRA was not and could never be, nor did transferor or transferee attempt to place the CRA, in any different position whatsoever as result of the transfer.

***Saini, G. v. The Queen* (TCC)**

2016-1836(IT)G, 2020 TCC 38, 2020 CCI 38 -- Bocock J. -- 20/03/13 -- Tax -- Income tax -- Administration and enforcement -- Assessments -- Net worth assessments -- Limitation period -- Misrepresentation -- Penalties (administrative) -- Gross negligence

The Minister reassessed the taxpayer through a net worth assessment for three years, two of which were beyond the normal reassessment period on the basis that he received undeclared income in form of shareholder benefits from the company that owned and operated the gas station, and imposed gross negligence penalties, The taxpayer appealed and the appeal was dismissed.

Documentary evidence showed that the taxpayer, through the company, purchased land, building and assets comprising the gas station for stated purchase price of $300,000, but arrangements and objectives regarding the acquisition remained foggy at best. As there were simply no books or records to allow the Minister to understand the taxpayer's finances, there was little alternative but to undertake a net worth assessment. The Minister used approximated source calculation of income, verified and validated by bank deposit and withdrawal analysis contrasted against observed lifestyle, and the taxpayer did not propose alternative method for conducting the assessment.

The taxpayer's challenge to quantum of unreported income was based on his assertion of "friendly debt" advanced for purposes of the gas station. The taxpayer acknowledged that he received amounts of $20,000 and $50,000 from the company and did not report such amounts. There was little credible, consistent or formative evidence to support the taxpayer's claim these amounts were loans while the Minister provided consistent and methodical analysis of assets, liabilities and personal expenditures.

Even if amounts were loans, they did not materially impact assessment and resulting liability for tax and if advances of $68,000 were excluded from assessment as a loan the Minister did not include other advances from the company totaling $96,200. The taxpayer's approach of "guesstimating" income without including advances and loans was careless and neglectful so as to entitle the Minister to reassess beyond the normal limitation period. The taxpayer's business experience meant that he should have understood the need for financial record keeping and he made material understatement of income. The taxpayer was the sole shareholder in the gas station and his vague, uninformed, and consistent failure to keep any reliable records was hallmark reflecting standard of gross negligence.

Appeals Tables

1. — Applications for Leave to Appeal Filed with Supreme Court of Canada

Current as at March 13, 2020 Supreme Court of Canada *Bulletin of Proceedings*

Applications for Leave to Appeal from income tax decisions of the Federal Court of Appeal and provincial Appeal Courts filed with the Supreme Court of Canada are listed alphabetically below.

Style of Cause	Citation	Date Filed	SCC File(s)
Canada North Group Inc., R. v.	2019 CarswellAlta 1815 (AB CA)	October 24, 2019	38871
Louie v. R.	2019 CarswellNat 5514 (FCA)	December 6, 2019	38946
Markou v. R.	2019 CarswellNat 7409 (FCA)	February 3, 2020	39050
Roher v. R.	2019 CarswellNat 9174 (FCA)	February 14, 2020	39059

2. — Leave to Appeal to Supreme Court of Canada Granted

Current as at March 13, 2020 Supreme Court of Canada *Bulletin of Proceedings*

Style of Cause	Citation	Date Granted	SCC File(s)	Status
British Columbia Investment Management Corp., Canada (Attorney General) v.	2018 CarswellBC 227 (BC CA)	October 11, 2018	38059	Appeal dismissed Dec. 13, 2019 (2019 SCC 63)
MacDonald v. R.	[2019] 3 C.T.C. 79 (FCA)	March 21, 2019	38320	Appeal dismissed March 13, 2020 (2020 SCC 6)

3. — Leave to Appeal to Supreme Court of Canada Refused (2016 to Present)

Current as at March 13, 2020 Supreme Court of Canada *Bulletin of Proceedings*

Style of Cause	Citation	Date Refused
Abdalla v. R.	2019 CarswellNat 18 (FCA)	June 13, 2019
Aeronautic Development Corp. v. Canada	[2018] 6 C.T.C. 159 (FCA)	March 7, 2019
Anderson v. Benson Trithardt Noren LLP	[2017] 2 C.T.C. 81 (SK CA)	February 23, 2017
Ark Angel Foundation v. Canada (National Revenue)	[2019] 4 C.T.C. 71 (FCA)	November 14, 2019
Bakorp Management Ltd. v. R.	2019 CarswellNat 3011 (FCA)	January 9, 2020

3.1 — Leave to Appeal to Supreme Court of Canada Refused (2016 to Present)

Style of Cause	Citation	Date Refused
Barejo Holdings ULC v. R.	[2017] 1 C.T.C. 181 (FCA)	June 22, 2017
Beima v. M.N.R.	2017 CarswellNat 1805 (FCA)	January 10, 2019
Bell v. R.	2018 CarswellNat 2149 (FCA)	February 14, 2019
Birchcliff Energy Ltd. v. R.	[2020] 1 C.T.C. 1 (FCA)	November 14, 2019
Bloom v. R.	[2010] 5 C.T.C. 143 (FC)	June 8, 2017
Brassard v. R.	2017 CarswellNat 5446 (FCA)	December 20, 2018
Canada Life Insurance Company of Canada v. Canada (Attorney General)	[2018] 6 C.T.C. 126 (Ont. CA)	March 7, 2019
Castro v. R.	[2016] 1 C.T.C. 245 (FCA)	April 14, 2016
Chriss v. R.	[2017] 1 C.T.C. 107 (FCA)	March 30, 2017
Davies v. R.	2019 CarswellNat 3112 (FCA)	January 16, 2020
Deschênes v. R.	2015 CarswellNat 5535 (FCA)	February 18, 2016
Dieckmann v. R.	2017 CarswellOnt 10128 (Ont. CA)	March 15, 2018
Dove v. R.	2016 CarswellNat 4557 (FCA)	June 1, 2017
Éléments chauffants Tempora inc. v. R.	2018 CarswellQue 7914 (Que. CA)	March 7, 2019
ENMAX Energy Corp. v. Alberta	[2018] 5 C.T.C. 35 (Alta. CA)	February 28, 2019
Fiducie financière Satoma v. Canada	[2019] 2 C.T.C. 33 (FCA)	March 28, 2019
Forsythe [Zoccole] v. R.	2015 CarswellNat 6396 (FCA)	April 21, 2016
Gagné v. R.	2017 CarswellQue 3160 (Que. CA)	January 11, 2018
Genetec inc. v. Agence du revenu du Québec	2018 CarswellQue 3578 (Que. CA)	June 20, 2019
Gratl v. R.	2019 CarswellNat 25 (FCA)	November 14, 2019
Grenier v. Canada (Attorney General)	2015 CarswellNat 7146 (FCA)	June 2, 2016

Grenier v. R.	2016 CarswellNat 6183 (FCA)	January 18, 2018
Grenon v. Canada Revenue Agency	2017 CarswellAlta 493 (Alta. CA)	September 21, 2017
Grenon v. R.	[2016] 4 C.T.C. 72 (FCA)	June 30, 2016
Guarantee Company of North America v. Manitoba Housing and Renewal Corp. et al.	[2018] 4 C.T.C. 105 (Man. CA)	January 17, 2019
Gunner Industries Ltd. v. R.	[2016] 2 C.T.C. 110 (Sask. QB) (Sask. CA unreported)	March 14, 2019

3.2 — Leave to Appeal to Supreme Court of Canada Refused (2016 to Present)

Style of Cause	Citation	Date Refused
Holterman v. Fish	[2018] 3 C.T.C. 55 (Ont. CA)	July 5, 2018
Humane Society of Canada v. M.N.R.	2015 CarswellNat 3605 (FCA)	March 10, 2016
Humby v. R.	[2016] 3 C.T.C. 159 (FCA)	April 20, 2017
Iggillis Holdings Inc., Canada (M.N.R.) v.	[2018] 4 C.T.C. 1 (FCA)	October 25, 2018
Jaamiah Al Uloom Al Islamiyyah Ontario v. M.N.R.	2016 CarswellNat 290 (FCA)	July 28, 2016
Karam v. Canada (Attorney General)	2016 CarswellNat 884 (FCA)	September 8, 2016
Keay v. R.	2016 CarswellNat 5816 (FCA)	May 18, 2017
Laplante v. R.	2018 CarswellNat 5955 (FCA)	May 2, 2019
Mac's Convenience Stores Inc. v. Canada (Attorney General)	[2015] 4 C.T.C. 93 (Que. CA)	March 3, 2017
Madison Pacific Properties Inc. v. Canada	[2019] 6 C.T.C. 196 (FCA)	July 11, 2019
Many Mansions Spiritual Center, Inc. v. Canada (National Revenue)	2019 CarswellNat 2984 (FCA)	January 16, 2020
Martin (L.) v. R.	2015 CarswellNat 4557 (FCA)	April 21, 2016
Mason v. R.	2016 CarswellNat 77 (FCA)	June 30, 2016
Meerman v. R.	2019 CarswellNat 2477 (FCA)	February 13, 2020
Montana v. Canada (National Revenue)	2017 CarswellNat 4882 (FCA)	June 28, 2018
Morrissey v. Canada (Attorney General)	2019 CarswellNat 856 (FCA)	September 26, 2019
Muller v. M.N.R.	2016 CarswellNat 5277 (FCA)	April 6, 2017
Orsini v. Canada (Revenue Agency)	2016 CarswellQue 8998 (Que. CA)	March 30, 2017

Oxford Properties Group Inc. v. R.	[2018] 6 C.T.C. 1 (FCA)	December 13, 2018
Pellan v. Québec (Agence du revenu)	2016 CarswellQue 673 (Que. CA)	December 22, 2016
Pong Marketing and Promotions Inc. v. Ontario Media Development Corp.	[2018] 6 C.T.C. 36 (Ont. CA)	April 25, 2019
Rice v. Canada (Attorney General)	2016 CarswellQue 4896 (Que. CA)	December 22, 2016
Rio Tinto Alcan Inc., Canada v.	[2019] 3 C.T.C. 18 (FCA)	March 21, 2019
Rona Inc. v. Canada (National Revenue)	2017 CarswellNat 2588 (FCA)	February 1, 2018
Samaroo v. Canada Revenue Agency	[2020] 1 C.T.C. 143 (BC CA)	October 10, 2019
Segura Mosquera v. R.	2018 CarswellNat 5272 (FCA)	June 20, 2019

3.3 — Leave to Appeal to Supreme Court of Canada Refused (2016 to Present)

Style of Cause	Citation	Date Refused
Truong v. R.	2018 CarswellNat 28 (FCA)	October 18, 2018
University Hill Holdings Inc. (Formerly 589918 B.C. Ltd.) v. Canada	[2018] 3 C.T.C. 63 (FCA)	August 30, 2018
Van Steenis v. R.	2019 CarswellNat 1487 (FCA)	December 5, 2019
Veracity Capital Corp., R. v.	[2017] 3 C.T.C. 104 (BC CA)	June 8, 2017
Watts v. R.	2018 CarswellOnt 2105 (Ont. CA)	September 27, 2018
594710 British Columbia Ltd. v. R.	2018 CarswellNat 5237 (FCA)	February 21, 2019
1455257 Ontario Inc. v. R.	2016 CarswellNat 869 (FCA)	September 8, 2016

4. — Notices of Appeal to Federal Court of Appeal Filed

Current as at March 13, 2020

Federal income tax cases appealed to the Federal Court of Appeal from decisions reported March 13, 2020, but not yet heard or discontinued, are listed alphabetically below. Verification of the current status of an appeal may be obtained by calling the FCA Registry at (613) 996-6795 or at http://apps.fca-caf.gc.ca/pq/IndexingQueries/infp_queries_e.php.

Style of Cause	Citation	Date Filed	FCA File(s)
AE Hospitality Ltd. v. M.N.R.	2019 CarswellNat 2079 (TCC)	July 2019	A-268-19, A-269-19
Al Saunders Contracting & Consulting Inc. v. M.N.R.	[2019] 6 C.T.C. 2028 (TCC)	May 2019	A-191-19, A-192-19

Aquilini (Estate) v. R.	2019 CarswellNat 2558 (TCC)	September 2019	A-313-19 to A-317-19
Asbfroushani v. Beach Place Ventures Ltd.	2019 CarswellNat 219 (TCC)	March 2019	A-128-19
Atlantic Packaging Products Ltd. Atlantic Produits D'Emballage Ltée v. R.	[2019] 3 C.T.C. 2121 (TCC)	October 2018	A-328-18 (judgment reserved Feb. 5, 2020)
Atlas Tube Canada ULC v. M.N.R.	[2019] 4 C.T.C. 123 (FC)	December 2018	A-396-18 (motion to intervene granted 2019 FCA 120)
BCS Group Business Services Inc. v. R.	2018 CarswellNat 3418 (TCC)	July 2018	A-204-18
Bank of Montreal, The v. R.	[2019] 5 C.T.C. 2074 (TCC)	October 2018	A-337-18 (judgment reserved Feb. 6, 2020)
Barrs v. R.	2019 CarswellNat 3718 (FC)	September 2019	A-310-19, A-359-19

4.1 — Notices of Appeal to Federal Court of Appeal Filed

Style of Cause	Citation	Date Filed	FCA File(s)
Boguski v. M.N.R.	2018 CarswellNat 8094 (TCC)	December 2018	A-392-18
Bradshaw v. R.	2018 CarswellNat 7707 (TCC)	November 2018	A-364-18
Bradwick Property Management Services Inc. v. Canada (National Revenue)	[2020] 2 C.T.C. 59 (FC)	April 2019	A-146-19
Burlington Resources Finance Co. v. R.	2020 CarswellNat 414 (TCC)	March 2020	A-72-20, A-73-20
CHR Investment Corp., R. v.	2019 CarswellNat 8741 (TCC)	December 2019	A-451-19
Cameco Corp. v. R.	[2019] 1 C.T.C. 2001 (TCC)	October 2018	A-349-18 (judgment reserved March 4, 2020)
Cameco Corp. v. R.	2019 CarswellNat 1484 (TCC)	May 2019	A-193-19 (judgment reserved March 4, 2020)
Canadian Western Trust Company as Trustee of the Fareed Ahamed TFSA v. R.	2019 CarswellNat 2253 (TCC)	June 2019	A-206-19
Cassan v. R.	[2018] 1 C.T.C. 2001 (TCC)	October 2017	A-302-17 to A-307-17
Catlos v. R.	[2018] 6 C.T.C. 2149 (TCC)	September 2018	A-295-18 to A-297-18
Chibani v. R.	2019 CarswellNat 2251 (TCC)	July 2019	A-278-19
Colitto v. R.	[2019] 5 C.T.C. 2001 (TCC)	May 2019	A-189-19 (judgment reserved Feb. 26, 2020)
CO2 Solution Technologies Inc. v. R.	2019 CarswellNat 8117 (TCC)	January 2020	A-25-20

Davis v. Canada (Prime Minister)	2019 CarswellNat 5398 (FC)	October 2019	A-406-19
De Geest v. R.	[2020] 2 C.T.C. 2001 (TCC)	March 2019	A-101-19
Deans Knight Income Corp. v. R.	[2019] 4 C.T.C. 2001 (TCC)	May 2019	A-170-19
Deegan v. Canada (Attorney General)	2019 CarswellNat 3474 (TCC)	September 2019	A-370-19
European Staffing Inc. v. M.N.R.	2019 CarswellNat 708 (TCC)	April 2019	A-144-19
Eyeball Networks Inc. v. R.	2019 CarswellNat 3504 (TCC)	September 2019	A-308-19
Fédération des Caisses Desjardins du Québec v. M.N.R.	2019 CarswellNat 5678 (TCC)	November 2019	A-438-19
Friedman v. Canada (National Revenue)	2019 CarswellNat 7695 (FC)	January 2020	A-11-20
Gladwin Realty Corp. v. R.	2019 CarswellNat 752 (TCC)	April 2019	A-138-19
Gordon v. R.	[2019] 6 C.T.C. 1 (FC)	October 2019	A-394-19

4.2 — Notices of Appeal to Federal Court of Appeal Filed

Style of Cause	Citation	Date Filed	FCA File(s)
Hillis v. Canada (Attorney General)	[2016] 1 C.T.C. 129 (FC)	September 2015	A-407-15
Hunt v. R.	2018 CarswellNat 5373 (TCC)	October 2018	A-327-18
Iberville Developments Ltd. v. R.	[2019] 2 C.T.C. 2109 (TCC)	June 2018	A-192-18
Jefferson v. R.	[2019] 4 C.T.C. 2125 (TCC)	May 2019	A-190-19
Jewett v. Canada (Attorney General)	[2019] 6 C.T.C. 187 (FC)	March 2019	A-124-19
Johnson v. M.N.R.	2018 CarswellNat 5996 (TCC)	November 2018	A-363-18
Kam-Press Metal Products Ltd. v. R.	2019 CarswellNat 5896 (FCA)	November 2019	A-442-19
Keybrand Foods Inc. v. R.	[2020] 2 C.T.C. 2024 (TCC)	September 2019	A-354-19
Krumm v. R.	2020 CarswellNat 60 (TCC)	February 2020	A-50-20
Kufsky v. R.	2019 CarswellNat 6016 (TCC)	December 2019	A-452-19
Laliberté v. R.	[2019] 6 C.T.C. 2040 (TCC)	October 2018	A-334-18 (judgment reserved Dec. 5, 2019)
Lawyers' Professional Indemnity Company v. R.	[2019] 4 C.T.C. 2038 (TCC)	October 2018	A-348-18 (judgment reserved Oct. 17, 2019)

Le Bouthillier v. R.	2019 CarswellNat 4366 (TCC)	September 2019	A-345-19
Lewin Estate v. R.	[2020] 1 C.T.C. 2103 (TCC)	February 2019	A-95-19
Lilyfield Development Inc. v. R.	2020 CarswellNat 153 (TCC)	February 2020	A-71-20
Liu v. R.	[2017] 6 C.T.C. 2193 (TCC)	September 2017	A-278-17
Loblaw Financial Holdings Inc. v. R.	[2019] 2 C.T.C. 2001 (TCC)	October 2018	A-321-18 (judgment reserved Oct. 15, 2019)
MacDonald v. R.	2018 CarswellNat 1076 (TCC)	April 2018	A-118-18
Moose Factory Restaurant Properties Ltd. v. R.	2019 CarswellNat 3715 (TCC)	August 2019	A-297-19
Morrison v. R.	2018 CarswellNat 6307 (TCC)	December 2018	A-398-18, A-404-18 (judgment reserved March 3, 2020)
Nagel v. R.	2018 CarswellNat 458 (TCC)	March 2018	A-90-18
Paletta v. R.	[2020] 2 C.T.C. 2069 (TCC)	October 2019	A-417-19, A-418-19
Peach v. R.	2020 CarswellNat 154 (TCC)	February 2020	A-68-20
Productions GFP (III) Inc. v. Canada (Attorney General)	2019 CarswellNat 7890 (FC)	January 2020	A-19-20

4.3 — Notices of Appeal to Federal Court of Appeal Filed

Style of Cause	Citation	Date Filed	FCA File(s)
Ray-Mont Logistiques Montréal Inc. v. M.N.R.	2019 CarswellNat 3255 (TCC)	July 2019	A-277-19
Roofmart Ontario Inc. v. M.N.R.	2019 CarswellNat 1596 (FC)	May 2019	A-184-19 (judgment reserved March 2, 2020)
Royal City Taxi Ltd. v. M.N.R.	2019 CarswellNat 1672 (TCC)	June 2019	A-203-19
SPE Valeur Assurable Inc. v. R.	2019 CarswellNat 4364 (TCC)	October 2019	A-391-19
Savics v. R.	2019 CarswellNat 991 (TCC)	May 2019	A-167-19
Silver Wheaton Corp. v. R.	2019 CarswellNat 4388 (TCC)	August 2019	A-304-19, A-305-19
Simard v. R.	2018 CarswellNat 7805 (TCC)	December 2018, January 2019	A-399-18 to A-403-18, A-4-19 to A-8-19
Singh v. R.	2019 CarswellNat 6874 (TCC)	December 2019	A-480-19

van der Steen v. R.	2019 CarswellNat 158 (TCC)	February 2019	A-84-19
Venti v. M.N.R.	2019 CarswellNat 3256 (TCC)	September 2019	A-344-19
Wall v. R.	2019 CarswellNat 4169 (TCC)	September 2019	A-319-19
Weinberg Family Trust v. R.	2016 CarswellNat 308 (TCC)	February 2016	A-59-16
Yellow Point Lodge Ltd. v. R.	2019 CarswellNat 4368 (TCC)	September 2019	A-377-19
632738 Alberta Ltd. v. R.	2019 CarswellNat 5918 (TCC)	October 2019	A-410-19
984274 Alberta Inc. v. R.	[2020] 1 C.T.C. 2001 (TCC)	May 2019	A-186-19
2078970 Ontario Inc. v. 2078702 Ontario Inc.	[2019] 3 C.T.C. 2047 (TCC)	July 2018	A-234-18, A-235-18
6075240 Canada Inc. v. M.N.R.	2019 CarswellNat 1994 (FC)	June 2019	A-208-19
6610048 Canada Inc. v. R.	2019 CarswellNat 6304 (TCC)	December 2019	A-460-19

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