

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20240321**

**Docket: A-101-22**

**Citation: 2024 FCA 60**

**CORAM: LASKIN J.A.  
MACTAVISH J.A.  
MONAGHAN J.A.**

**BETWEEN:**

**JOSEPH PILARSKI**

**Appellant**

**and**

**HIS MAJESTY THE KING**

**Respondent**

Heard at Toronto, Ontario, on March 20, 2024 with the participation remotely of one member of the panel.

Judgment delivered at Ottawa, Ontario, on March 21, 2024.

**REASONS FOR JUDGMENT BY:**

**MONAGHAN J.A.**

**CONCURRED IN BY:**

**LASKIN J.A.  
MACTAVISH J.A.**

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**REASONS FOR JUDGMENT**

**MONAGHAN J.A.**

[1] The appellant, Joseph Pilarski, appeals the Tax Court of Canada's April 28, 2022 procedural order (*per* Boccock, J) in Tax Court File 2015-355(IT)G. That order adjourned the oral hearing of the respondent's motion to quash the appellant's appeal, and ordered that the motion be determined based on written representations. That is, the Tax Court's order changed the oral hearing to a written hearing.

[2] The Tax Court’s order is discretionary, meaning that the Tax Court can decide. When an appellant appeals a discretionary order, such as this one, this Court reviews the order on the appellate standards from *Housen v. Nikolaisen*, 2002 SCC 33; *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras. 66, 79; *Canada v. Preston*, 2023 FCA 178 at para. 12. Accordingly, we can interfere with the Tax Court’s order only if it made an error of law or a palpable and overriding error on a question of fact or mixed fact and law. A “palpable” error is one that is obvious; an “overriding error” is an error that goes to the core of the outcome: *Benhaim v. St-Germain*, 2016 SCC 48 at para. 38, citing *South Yukon Forest Corp. v. R.*, 2012 FCA 165 at para. 46.

[3] The appellant says that, when it adjourned the hearing of the motion, the Tax Court could not order the motion to be determined based on written representations without his consent.

[4] I disagree. The Tax Court did not err in changing the manner in which it would hear the motion.

[5] The Tax Court scheduled an in-person hearing twice at the appellant’s request. However, each time, the appellant asked for and was granted an adjournment because of medical conditions. After the first adjournment, the parties agreed to have the motion decided based on written representations. However, the appellant later changed his mind, seeking an oral hearing. While the Tax Court offered a hearing by teleconference, the appellant insisted on an in-person hearing. The Tax Court scheduled one, but again, at the appellant’s request, the Tax Court

adjourned it and issued the order under appeal, noting that the motion was suitable for decision based on written representations.

[6] There is no right to an oral hearing for a motion. The *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a expressly permit motions to be determined based on written representations and without appearance of the parties in person: Rule 69. What is important is that the parties have an opportunity to put their submissions before the decision maker. Here, the parties previously made written submissions, and the Tax Court expressly invited them to file further written materials before it decided the motion.

[7] Before us, the appellant said the Tax Court's decision to decide the motion in writing prejudiced him because his health conditions limit his ability to deal with written material.

[8] Both the Tax Court and this Court have a duty to ensure that litigants with disabilities are accommodated, to ensure that they receive the same level of procedurally fair justice as that accorded to other Canadians: *Haynes v. Canada (Attorney General)*, 2023 FCA 158 at paras. 18-32. That said, individuals with disabilities have an obligation to help secure appropriate accommodation: *Haynes* at para. 30; *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970, 95 D.L.R. (4th) 577 at 994. There is no evidence before us that the appellant ever advised the Tax Court that it would be difficult for him to process and respond to, or to provide, written representations and other written material.

[9] The Tax Court also has an obligation to act in a manner that secures the just, most expeditious and least expensive determination of every proceeding on its merits: Rule 4(1). When the Tax Court made its order, the respondent's motion had been before the Court for seven years. It merits a decision. Satisfied the motion was suitable to be decided in writing, and after repeated, but unsuccessful, efforts to hold an in-person hearing, the Tax Court's decision was well within its discretion. I see no error that would permit us to interfere with it.

[10] At the hearing of this appeal, the respondent withdrew the request for costs. Accordingly, I would dismiss the appeal without costs.

"K.A. Siobhan Monaghan"

J.A.

"I agree.  
John B. Laskin J.A."

"I agree.  
Anne L. Mactavish J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-101-22

**STYLE OF CAUSE:** JOSEPH PILARSKI v. HIS  
MAJESTY THE KING

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 20, 2024

**REASONS FOR JUDGMENT BY:** MONAGHAN J.A.

**CONCURRED IN BY:** LASKIN J.A.  
MACTAVISH J.A.

**DATED:** MARCH 21, 2024

**APPEARANCES:**

Joseph Pilarski FOR THE APPELLANT  
On his own behalf

Carrie Calabrese FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Shalene Curtis-Micallef FOR THE RESPONDENT  
Deputy Attorney General of Canada