

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140625

Docket: A-345-13

Citation: 2014 FCA 168

**CORAM: SHARLOW J.A.
DAWSON J.A.
STRATAS J.A.**

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

**EXXONMOBIL CANADA HIBERNIA
COMPANY LTD.**

Respondent

Heard at Toronto, Ontario, on June 25, 2014.
Judgment delivered from the Bench at Toronto, Ontario, on June 25, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on June 25, 2014).

STRATAS J.A.

[1] The Crown appeals the order dated September 30, 2013 of the Tax Court of Canada (*per* Justice Paris) (file 2012-1389(IT)G). On the basis of the issues set out in the pleadings before it, the Tax Court ordered the Crown's representative to answer four questions posed to him at the examination for discovery.

[2] In our view, there is no basis upon which we can interfere with the Tax Court's order. The Tax Court identified and applied correct legal principles, namely section 95 of the *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a and related jurisprudence. In applying the legal principles to the case before it and in finding that the questions were relevant on the pleadings and were not otherwise objectionable, the Tax Court did not make any error warranting our intervention.

[3] The Crown submits, as it did before the Tax Court, that the discovery questions relate to an issue the Crown is conceding and, if necessary, it would amend its pleadings to reflect the concession. This, it says, would render the questions irrelevant. In its memorandum, the taxpayer submits, as it did before the Tax Court, that even if the Crown were allowed to amend its pleadings, the issue would still be in play and be the proper subject of discovery questions. The taxpayer invokes the Court's discretion in the interests of justice to hear a moot issue, its obligation to determine tax disputes based on the actual facts and the law, and its power to address an abuse of process.

[4] The Tax Court declined to rule definitively upon these submissions. In its view, as the Crown had not moved to amend its pleadings, the matter was premature. The Court could have dealt with those submissions to take a potential issue off the table but declined to do so. Both of these options were discretionary and were open to the Tax Court in these circumstances.

[5] For the foregoing reasons, we shall dismiss the appeal with costs in this Court.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-345-13

APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE PARIS OF THE TAX COURT OF CANADA, DATED SEPTEMBER 30, 2013, DOCKET NO. 2012-1389(IT)G

STYLE OF CAUSE: HER MAJESTY THE QUEEN v.
EXXONMOBIL CANADA
HIBERNIA COMPANY LTD.

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: JUNE 25, 2014

REASONS FOR JUDGMENT OF THE COURT BY: SHARLOW J.A.
DAWSON J.A.
STRATAS J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

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Brynne Harding

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