

Docket: 2004-1415(IT)G

BETWEEN:

HUGH STANFIELD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Motion heard on September 8, 2005 at Vancouver, British Columbia  
Before: The Honourable Justice Gerald J. Rip

Appearances:

Counsel for the Appellant: Edwin Kroft  
Counsel for the Respondent: Lynn Burch

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**ORDER**

Upon application by the appellant for an Order:

- a) directing the respondent to file and serve a list of documents;
- b) directing that the respondent provide the name of the respondent's nominee for discovery; and
- c) that the Court to set a date for a status hearing and/or pre-trial conference;

And upon hearing what was alleged by the parties;

It is ordered that:

- a) the respondent file and deliver to the appellant her list of documents in the appeal of Hugh Stanfield by January 16, 2006;
- b) that the respondent produce the documents in her list of documents for inspection to counsel for Mr. Stanfield within 16 days of filing and delivering the list of documents;
- c) the respondent and Hugh Stanfield complete discoveries and undertakings arising from the discoveries by June 30, 2006 or some other date as the parties jointly agree and the Court approves or directs; and,
- d) within 30 days after discoveries in the Hugh Stanfield appeal are complete counsel shall inform the Court whether they require further directions with respect to the appeal of Hugh Stanfield; and
- e) Costs in the cause.

Signed at Ottawa, Canada this 24<sup>th</sup> day of November 2005.

"Gerald J. Rip"

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Rip J.

Docket: 2005-1016(IT)G  
BETWEEN:  
DONALD APOLCZER,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

Docket: 2005-1017(IT)G  
BETWEEN:  
CAROL APOLCZER,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

Docket: 2005-1125(IT)G  
BETWEEN:  
DAVID HACKETT,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

Docket: 2005-1337(IT)G  
BETWEEN:  
LUC ROBERGE,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2005-1356(IT)G  
DENNIS MOORE,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2005-1358(IT)G  
MARLENE MOORE,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2005-1359(IT)G  
NEIL REINHART,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2005-1360(IT)G  
PHILIP SCOTT,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

Docket: 2005-1365(IT)G

BETWEEN:

GARY REIMER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2005-1381(IT)G

BETWEEN:

MARY TROJNER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2005-1382(IT)G

BETWEEN:

JIM TROJNER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2005-1451(IT)G

BETWEEN:

ED MACINTOSH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

BETWEEN: Docket: 2005-1550(IT)G  
WAYNE GARRY MARTIN,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2005-1554(IT)G  
PATRICIA CARPENTER,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2005-1797(IT)G  
CHRISTINE BANVILLE,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2005-1798(IT)G  
JULIA CUNDLIFFE,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2005-1799(IT)G  
JOE KULIASA,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2005-1896(IT)G  
BRENT BEYAK,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2005-1900(IT)G  
DAVID ZEVICK,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2005-1901(IT)G  
JOHN A. HIGGINS,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2005-1902(IT)G  
GLENN PARKER,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2005-1976(IT)G  
DANNY PAWLACHUK,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2005-1980(IT)G  
PAUL PEACOCK,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2005-2106(IT)G  
ROBERT MCGINN,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,



Docket: 2005-2107(IT)G

BETWEEN:

EARL WILKES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2005-1015(IT)G

BETWEEN:

CANDICE STANFIELD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Motion heard on September 8, 2005 at Vancouver, British Columbia  
Before: The Honourable Justice Gerald J. Rip

Appearances:

Counsel for the Appellant: Edwin Kroft  
Counsel for the Respondent: Lynn Burch

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**ORDER**

Upon application by the appellant for an Order pursuant to paragraph 26(d) of the *Tax Court of Canada Rules (General Procedure)* ("Rules") directing the appeals of Donald Apolczer, Carol Apolczer, David Hackett, Luc Roberge, Dennis Moore, Marlene Moore, Neil Reinhart, Philip Scott, Gary Reimer, Mary Trojner, Jim Trojner, Ed MacIntosh, Wayne Garry Martin, Patricia Carpenter, Christine Banville, Julia Cundliffe, Joe Kuliassa, Brent Beyak, David Zevick, John A. Higgins, Glenn Parker, Danny Pawlachuk, Paul Peacock, Robert McGinn, Earl Wilkes and Candice Stanfield ("Other Appellants") be stayed pending the determination of *Hugh Stanfield v. Her Majesty the Queen*, (2004-1415(IT)G);

It is ordered that:

- a) the appeals of the Other Appellants be stayed until 60 days after discoveries, including undertakings for discoveries, are completed in the appeal of *Hugh Stanfield v. Her Majesty the Queen*, (2004-1415(IT)G);
- b) the parties shall inform the Court within the said period of 60 days as to the proposed actions in the appeals of the Other Appellants and if they wish further directions with respect to the appeals of the Other Appellants; and
- c) Costs in the cause.

Signed at Ottawa, Canada this 24<sup>th</sup> day of November 2005.

"Gerald J. Rip"

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Rip J.

Citation: 2005TCC759  
Date: 20051124  
Docket: 2005-1016(IT)G

BETWEEN:

DONALD APOLCZER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2005-1017(IT)G

BETWEEN:

CAROL APOLCZER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2005-1125(IT)G

BETWEEN:

DAVID HACKETT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2005-1337(IT)G

BETWEEN:

LUC ROBERGE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2005-1356(IT)G

BETWEEN:

DENNIS MOORE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2005-1358(IT)G

BETWEEN:

MARLENE MOORE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2005-1359(IT)G

BETWEEN:

NEIL REINHART,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2005-1360(IT)G

BETWEEN:

PHILIP SCOTT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2005-1365(IT)G

BETWEEN:

GARY REIMER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2005-1381(IT)G

BETWEEN:

MARY TROJNER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2005-1382(IT)G

BETWEEN:

JIM TROJNER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

BETWEEN: Docket: 2005-1451(IT)G  
ED MACINTOSH,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2005-1550(IT)G  
WAYNE GARRY MARTIN,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2005-1554(IT)G  
PATRICIA CARPENTER,  
Appellant,  
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BETWEEN: Docket: 2005-1797(IT)G  
CHRISTINE BANVILLE,  
Appellant,  
and  
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BETWEEN: Docket: 2005-1798(IT)G  
JULIA CUNDLIFFE,  
Appellant,  
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HER MAJESTY THE QUEEN,  
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BETWEEN: Docket: 2005-1799(IT)G  
JOE KULIASA,  
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BETWEEN: Docket: 2005-1896(IT)G  
BRENT BEYAK,  
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BETWEEN: Docket: 2005-1900(IT)G  
DAVID ZEVICK,  
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BETWEEN: Docket: 2005-1901(IT)G  
JOHN A. HIGGINS,  
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HER MAJESTY THE QUEEN,  
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BETWEEN: Docket: 2005-1902(IT)G  
GLENN PARKER,  
Appellant,  
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BETWEEN: Docket: 2005-1976(IT)G  
DANNY PAWLACHUK,  
Appellant,  
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HER MAJESTY THE QUEEN,  
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BETWEEN: Docket: 2005-1980(IT)G  
PAUL PEACOCK,  
Appellant,  
and  
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Respondent,



BETWEEN: Docket: 2005-2106(IT)G  
ROBERT MCGINN,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2005-2107(IT)G  
EARL WILKES,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2005-1015(IT)G  
CANDICE STANFIELD,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

BETWEEN: Docket: 2004-1415(IT)G  
HUGH STANFIELD,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent.

**REASONS FOR ORDER**

Rip, J.

[1] Appellants Donald Apolczer, Carol Apolczer, David Hackett, Luc Roberge, Dennis Moore, Marlene Moore, Neil Reinhart, Philip Scott, Gary Reimer, Mary Trojner, Jim Trojner, Ed MacIntosh, Wayne Garry Martin, Patricia Carpenter, Christine Banville, Julia Cundliffe, Joe Kuliassa, Brent Beyak, David Zevick, John A. Higgins, Glenn Parker, Danny Pawlachuk, Paul Peacock, Robert McGinn, Earl Wilkes and Candice Stanfield ("Other Appellants"), all of whom have retained Mr. Edwin Kroft of McCarthy Tétrault LLP as counsel,<sup>1</sup> have filed separate appeals for one or more years claiming losses from their respective participations in joint ventures. There are approximately six separate joint ventures and I am informed that they are all similar. Most appellants, including Mr. Stanfield, invested in the joint venture called the Union CAL Trading Joint Venture ("Union CAL"). Some other appellants invested in other joint ventures. The Other Appellants also appeal from penalties assessed under subsection 163(2) of the *Income Tax Act* ("Act").

[2] On April 6, 2004 Hugh Stanfield filed a notice of appeal for 1998 claiming a loss from the Union CAL joint venture and denying liability for a subsection 163(2) penalty. Mr. Stanfield is the largest investor in the Union CAL joint venture. Mr. Stanfield's appeal has progressed quicker than those of the Other Appellants. According to the affidavit of Elizabeth A. Junkin, a counsel with McCarthy, Tétrault LLP, a reply to the notice of appeal was filed on July 19, 2004 pursuant to an order of this Court dated July 2, 2004. Mr. Stanfield has filed his list of documents; the respondent has not yet filed hers. On August 8, 2005, Mr. Stanfield's counsel, Edwin G. Kroft, proposed to respondent's counsel that discoveries be scheduled and proposed certain weeks.

[3] In his affidavit Mr. Stanfield stated that the Minister of National Revenue's audit of his 1998 tax return took two and a half years. He was reassessed on July 17, 2002. Mr. Stanfield objected to the reassessment on August 30, 2002. Within a week of filing the objection, the Minister advised that consideration of the objection was being held in abeyance. Mr. Stanfield filed a notice of appeal to this Court on April 7, 2004, prior to the Minister confirming the reassessment. In a letter dated January 5, 2005 from Ms. Annabelle Luke of the Appeals Division of the Canada Customs and Revenue Agency ("CCRA") advised that the objections

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<sup>1</sup> These are not all the taxpayers who have appealed assessments on similar matters; these are appellants represented by McCarthy Tétrault LLP. Several other taxpayers are represented by other lawyers, including McCarthy Tétrault, and are not parties to this application.

of the Other Appellants had been held in abeyance until that time<sup>2</sup> and in January 2005, Ms. Junkin stated, the CCRA started issuing notices of confirmation to the Other Appellants. The Other Appellants, by their counsel, filed notices of appeal and amended notices of appeal beginning in April 2005.

[4] On September 8, 2005 the Other Appellants brought a motion seeking an order pursuant to paragraph 26(d) of the *Tax Court of Canada Rules (General Procedure)* ("*Rules*") directing that their appeals be stayed pending the determination of the appeal of Hugh Stanfield. The appellants' grounds for their motion are as follows:

1. Mr. Stanfield's appeal and those of the Other Appellants are pending in this Court.
2. Mr. Stanfield's appeal is the most advanced procedurally.
3. The Other Appellants agree that the determination of Mr. Stanfield's appeal will be determinative of their appeals.
4. Mr. Stanfield's appeal and the appeals of the Other Appellants have in common questions of mixed fact and law, namely, whether each of the appellants is entitled to deduct the loss with respect to the joint venture or alleged business as the case may be (as defined in the pleadings filed in Mr. Stanfield's appeal and the appeals of the Other Appellants pursuant to subsection 9(2) of the *Act*).
5. It would be an abuse of the Court's process to have heard all of the Other Appellants' appeals as well as any pre-hearing motions, due to the duplication of issues with Mr. Stanfield's appeal. Further it would be harmful to the appellants because of the related costs.
6. Staying the appeals of the Other Appellants would not cause harm or prejudice to the respondent.
7. Mr. Stanfield is prepared to prosecute his appeal expeditiously, or according to a schedule acceptable to the parties.

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<sup>2</sup> Exhibit "E" of Ms. Junkin's affidavit.

8. The affidavit is voluminous and includes information applicable to all the appeals. It would be costly and wasteful to duplicate the affidavit an additional 25 times to serve the respondent and 50 times for the Court files.

[5] During the hearing Mr. Kroft informed me that the Other Appellants have agreed to be bound by the Court's decision with respect to the joint ventures in Mr. Stanfield's appeal but he had not received instructions with respect to the penalties.

[6] Paragraph 26 of the *Rules* provides that:

Where two or more proceedings are pending in the Court and

(a) they have in common a question of law or fact or mixed law and fact arising out of one and the same transaction or occurrence or series of transactions or occurrences, or

(b) for any other reason, a direction ought to be made under this section,

the Court may direct that,

(c) the proceedings be consolidated or heard at the same time or one immediately after the other, or

(d) any of the proceedings be stayed until the determination of any other of them.

[7] Upon completion of argument in the Other Appellants' motion, I informed counsel that I would not be able to immediately deal with the motion. No doubt, at least partly due to my information to counsel, on September 16, 2005 Mr. Stanfield by his counsel, Mr Kroft, initiated measures to expedite Mr. Stanfield's appeal by seeking an order a) directing the respondent pursuant to paragraph 91(a) of the *Rules* to file and serve a list of documents pursuant to subsection 81(1) of the *Rules*; b) directing the respondent, pursuant to paragraph 91(b) of the *Rules*, to produce the documents listed on the respondent's list of documents for inspection and copying within 16 days of serving the respondent's list of documents; c) directing the respondent to provide the name of the respondent's nominee for discovery; and d) to set a date for a status hearing pursuant to subsection 125(1) of the *Rules* or a pre-hearing conference pursuant to subsection 126(1) of the *Rules*.

[8] In her written submissions, respondent's counsel, Ms. Lynn M. Burch, advised that the respondent does not oppose Mr. Stanfield's request for a date by which a list of documents be filed and proposed that the respondent file her list of documents within 60 days of the orders in respect of the Other Appellants. The respondent also agrees to produce the documents described in the list of documents for inspection and copying within 16 days of serving the respondent's list of documents. I assume that the respondent has been assembling the documentation at least since Ms. Burch's submissions.

[9] However, respondent's counsel states that there is no support either in the *Rules* or jurisprudence to require the respondent to provide the name of its nominee for discovery. Subparagraph 93(3) of the *Rules* requires the Crown to select a "knowledgeable officer, servant or employee". If the examining party is not satisfied with the person produced, application may be made to name some other person but only after the examining party has examined and found the person produced to lack the required knowledge. However, the respondent did agree to advise appellant's counsel of its nominee "within" 10 days of the commencement of the discoveries.

[10] Respondent's counsel views the request for a status hearing redundant; the resulting order from this motion will serve the same purpose. As far as a pre-trial date is concerned, she states the demand is premature since only once discoveries are completed will the parties be in a position to consider the elements outlined in paragraphs 126(1)(a) to (e) of the *Rules* concerning a pre-hearing conference and dates for the conference.

[11] The relevant portions of paragraph 91 of the *Rules* state:

Where a person or party who is required to make discovery of documents under sections 78 to 91 fails or refuses without reasonable excuse to make a list or affidavit of documents or to disclose a document in a list or affidavit of documents or to produce a document for inspection and copying, or to comply with a judgment of the Court in relation to the production or inspection of documents, the Court may,

(a) direct or permit the person or party to make a list or affidavit of documents, or a further list or affidavit of documents,

(b) direct the person or party to produce a document for inspection and copying,

...

(e) give such other direction as is just.

[12] The parties subsequently agreed that the motions by the Other Appellants and Mr. Stanfield be considered together.

a) Stay Application

[13] Respondent's counsel opposed the application to stay the appeals of the Other Appellants. She explained that the pleadings in Mr. Hugh Stanfield's appeal differ in some respect to those of the Other Appellants. In Mr. Stanfield's notice of appeal it is alleged that he is a geophysicist and "an experienced businessman specializing in the areas of oil and gas exploration, high performance computing and international high technology" and that he has "extensive experience buying and selling securities and has been involved in currency and commodities trading since 1970". These allegations are absent from the notices of appeal of the Other Appellants. I have no idea as to what relevance or importance the facts so alleged may have to the merits of his appeal or the appeals of the Other Appellants but they may be significant and ought to be noted.

[14] Also, respondent's counsel stated, all of the appellants have been assessed penalties under subsection 163(2). The respondent has the onus of proving the facts justifying the assessments of the penalty and she may want to examine each of the Other Appellants to assist in defending the assessments of the penalties. If Mr. Stanfield succeeds in proving his entitlement to deduct the losses from the joint venture, the penalty assessed against him will fall. However, if he is not successful in establishing his right to deduct the losses, the penalty issue must be determined. A finding that Mr. Stanfield was or was not liable for the penalty may or may not have any weight in considering the validity of penalties assessed against the Other Appellants.

[15] Also, Mr. Stanfield's notice of appeal is concerned specifically with the Union CAL joint venture. There are other joint ventures as well that are subject to appeals by some of the Other Appellants. The parties informed Noel J. in an earlier proceeding that "Mr. Stanfield's situation could be used as an example of the trading investments and activities engaged in by all of the appellants"<sup>3</sup>.

[16] It may well be, as respondent's counsel argues, that there are differences in the pleadings of Mr. Stanfield and the Other Appellants and in their various joint

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<sup>3</sup> *Hugh Stanfield et al.v. M.N.R.*, 2005 DTC 5455, 2005 F.C. 1010, at paragraph 6.

ventures. Also, a section 163(2) penalty is of a personal nature, since knowledge or gross negligence is a key component of the penalty, and therefore each appellant's action or intention with respect to the facts leading to the individual's penalty must be considered separately.

[17] However, the Crown has been reviewing, or has had the opportunity to review, the tax returns of all of the appellants for about five years and has not been inclined to move on with the appeals; for example, it has yet to file a list of documents in Mr. Stanfield's appeal although its reply to the notice of appeal was filed on July 19, 2004.

[18] The Other Appellants live in five different provinces and one appellant resides outside of Canada. Their costs in preparing lists of documents and attending at discovery, among other matters, will be substantial.

[19] Accordingly, I shall order the appeals of the Other Appellants be held in abeyance until 60 days after discoveries, including delivery of undertakings, have been completed in the appeal of *Hugh Stanfield* (2004-1415(IT)G). I do not know the reason the Minister opposes the application. The CCRA has complained that the legal issues involved are complex and that there are about 18,000 pages of documents.<sup>4</sup> The Minister has taken over two years to audit some of the appellants and once their assessments were confirmed left them in abeyance. The Minister suffers no prejudice in the appeals of the Other Appellants being held in abeyance. The Other Appellants should not at this stage be forced into reviewing or preparing voluminous material that the Minister may have had in his possession years ago. They do not have the facilities of the Minister.

[20] Once the discoveries of Mr. Stanfield are completed, counsel for the respondent and for the appellants will have the opportunity to review the evidence from the discoveries and consider what evidence, if any, from the discoveries may be applied to the appeals of the Other Appellants. Counsel are directed to inform the Court within 60 days after completion of discoveries in the appeal of Hugh Stanfield as to the proposed actions in the appeals of the Other Appellants and if they wish further directions with respect to the appeals of the Other Appellants.

b) Stanfield Application

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*Hugh Stanfield v. The Queen*, 2004 DTC 2923, per Bell J., confirmed, 2005 DTC 5211 (F.C.A.)

[21] As far as Mr. Stanfield's application is concerned I agree with respondent's counsel that she is not required to provide to the appellant the name of her nominee for discovery. I do not agree with appellant's argument that "without the name of the respondent's nominee, the appellant cannot serve a notice to attend pursuant to subsection 103(2) of the *Rules*." Any such notice may be served on the respondent's counsel of record: paragraph 103(2)(a) of the *Rules*. Subsections 93(1) and (3) of the *Rules* provide that:

- (1) A party to a proceeding may examine for discovery an adverse party once, and may examine that party more than once only with leave of the Court.

...

- (3) The Crown, when it is the party to be examined, shall select a knowledgeable officer, servant or employee, nominated by the Deputy Attorney General of Canada, to be examined on behalf of that party, but if the examining party is not satisfied with that person, the examining party may apply to the Court to name some other person.

[22] There is no requirement that the Crown advise Mr. Stanfield who will be examined for the Crown but the Deputy Attorney General must select a knowledgeable person. If Mr. Stanfield is concerned at the time of discovery that the person put forward by the Crown is not adequately informed, is not knowledgeable, his remedy is to seek an adjournment so that the nominee could become better informed or the Court could nominate another person if it is in the interest of justice to do so.<sup>5</sup> As an aside, however, I suggest that appellant's counsel provide the name of the respondent's nominee not "within" 10 days but at least 10 days from commencement of the discoveries.

[23] Mr. Stanfield was assessed by the Minister of National Revenue for the year in issue, 1998, on July 17, 2002. Since that time a notice of objection has been filed and the objection has been confirmed. There are numerous taxpayers who invested in the Union CAL and other joint ventures. The Minister's officials have been reviewing Mr. Stanfield's activity and those of the Other Appellants with respect to the joint ventures since before 2002. The Crown has had lots of time to get its act together. Indeed, according to subsection 81(1) of the *Rules*, the respondent ought to have filed and served on Mr. Stanfield's counsel its list of

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<sup>5</sup> *Standard Mortgage Investment Corp. v. The Queen*, 2000 DTC 1451 (T.C.C.), *Smith v. The Queen*, 81 DTC 5351 (F.C.T.D.) and *Westaim Corp. v. Royal Canadian Mint*, [1998] F.C.J No. 1929, (1998) 161 F.T.R. 261 (F.C.T.D.)



documents within 30 days of filing her reply to the notice of appeal. However, since the issues are complex and the documents are voluminous the respondent was granted an extension of time to file her reply to the notice of appeal late. The respondent has not argued that she had a reasonable excuse to file the list late: section 91 of the *Rules*. In a letter dated September 12, 2005, respondent's counsel advised appellant's counsel that:

At this time it is difficult to determine exactly what the scope of the List of Documents and the Examinations for Discovery will be, as Mr. Justice Rip has not yet tendered his decision in the motion brought by the twenty-six Applicants on September 8, 2005. It possible, that Mr. Justice Rip's Order will contextualize this litigation and we are of the view that it would be premature to file our List or proceed to discovery prior to receiving the benefit of Mr. Justice Rip's decision.

[24] Mr. Stanfield filed a notice of appeal and list of documents on time. He is the appellant and has the right to prosecute his appeal in an efficient manner. His appeal may or may not be tied in (or tied up) with those of the Other Appellants. Respondent's counsel was aggressive in her view that the appeals of the Other Appellants not be stayed because, among other things, Mr. Stanfield's appeal may not be representative of the other appeals. This is all the more reason that Mr. Stanfield not be prejudiced by any further delays.

[25] There is no need for me to set the date for a status hearing. I shall deal with matters usually dealt with in a status hearing. As far as an order for a pre-trial is concerned, I do not agree with respondent's counsel that a pre-trial hearing necessarily must be preceded by discovery. Subsection 126(1) accords the Court the initiative to schedule a pre-trial conference. In most cases the pre-trial will take place after the parties have discovered each other but there may be situations where a pre-trial conference may precede the discovery.

[26] I am therefore making the following order:

- a) the respondent will file and deliver to the appellant her list of documents in the appeal of Hugh Stanfield by January 16, 2006;
- b) that the respondent will produce the documents in her list of documents for inspection to counsel for Mr. Stanfield within 16 days of filing and delivering the list of documents;
- c) the respondent and Hugh Stanfield shall complete discoveries and undertakings arising from the discoveries by June 30, 2006 or some other date as the parties jointly agree and the Court approves or directs; and,
- d) within 60 days after discoveries in the Hugh Stanfield appeal are complete counsel shall inform the Court whether they require further directions with respect to the appeal of Hugh Stanfield, in particular, if and when they wish to have a pre-trial conference.

[27] I share the view of counsel that not all the appeals of the Other Appellants and Mr. Stanfield will see the Courtroom. Some short time after the discoveries in the Stanfield appeal counsel and their clients will have to address their minds as to which appeals will go ahead as test cases.

Signed at Ottawa, Canada this 24<sup>th</sup> day of November 2005.

"Gerald J. Rip"

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Rip J.

CITATION: 2005TCC759  
COURT FILE NO.: 2005-1016(IT)G  
STYLE OF CAUSE: DONALD APOLCZER AND THE QUEEN  
PLACE OF HEARING: Vancouver, British Columbia  
DATE OF HEARING: September 8, 2005  
REASONS FOR JUDGEMENT BY: The Honourable Justice Gerald J. Rip  
DATE OF JUDGMENT: November 24, 2005

APPEARANCES:

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Counsel for the Respondent: Lynn Burch

COUNSEL OF RECORD:

For the Appellant:

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Firm:

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