

Docket: 2006-2434(IT)G

BETWEEN:

PETRA KION,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Motion heard together with *Michael Kion* 2006-2430(IT)G and *Michael and Petra Kion* 2006-2427(GST)G on August 28, 2008 at Vancouver, British Columbia.

Before: The Honourable Justice B. Paris

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	David Everett

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**ORDER**

Upon motion by the Appellant for an Order vacating the reassessments under appeal;

Upon reading the affidavits of Kitty Wong, Michael and Petra Kion, filed, and upon hearing what was alleged by the parties;

The motion is dismissed in accordance with the attached Reasons for Order and one set of cost is awarded to the Respondent.

Signed at Ottawa, Canada, this 17th day of September 2008.

“B.Paris”

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Paris J.

BETWEEN:

MICHAEL KION

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Motion heard together with *Petra Kion* 2006-2434(IT)G and *Michael and Petra Kion* 2006-2427(GST)G on August 28, 2008  
at Vancouver, British Columbia.

Before: The Honourable Justice B. Paris

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	David Everett

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**ORDER**

Upon motion by the Appellant for an Order vacating the reassessments under appeal;

Upon reading the affidavits of Kitty Wong, Michael and Petra Kion, filed, and upon hearing what was alleged by the parties;

The motion is dismissed in accordance with the attached Reasons for Order and one set of cost is awarded to the Respondent.

Signed at Ottawa, Canada, this 17th day of September 2008.

“B.Paris”

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Paris J.

Docket: 2006-2427(GST)G

BETWEEN:

MICHAEL KION AND PETRA KION,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Motion heard together with *Michael Kion* 2006-2430(IT)G and *Petra Kion*  
2006-2434(IT)G on August 28, 2008  
at Vancouver, British Columbia.

Before: The Honourable Justice B. Paris

Appearances:

Agent for the Appellant: Michael Kion  
Counsel for the Respondent: David Everett

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**ORDER**

Upon motion by the Appellant for an Order vacating the reassessments under appeal;

Upon reading the affidavits of Kitty Wong, Michael and Petra Kion, filed, and upon hearing what was alleged by the parties;

The motion is dismissed in accordance with the attached Reasons for Order and one set of cost is awarded to the Respondent.

Signed at Ottawa, Canada, this 17th day of September 2008.

“B.Paris”

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Paris J.

Citation: 2008 TCC 516  
Date: 20080917  
Dockets: 2006-2434(IT)G  
2006-2430(IT)G  
2006-2427(GST)G

BETWEEN:

PETRA KION  
MICHAEL KION  
MICHAEL KION AND PETRA KION,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR ORDER**

Paris, J.

[1] These reasons will apply to each of the motions brought by the Appellants in these three appeals. In each case the Appellants are seeking a determination of the issues set out in paragraph b) of each Amended Notice of Motion, as follows:

- i) whether or not persons employed by CCRA as an Auditor or as an Appeals Officer are required by law to have a valid oath of office;
- ii) where a person claiming to be an Auditor or an Appeals Officer is found to have been lacking a valid oath of office while dealing with a particular taxpayer purportedly as a CCRA Auditor or Appeals Officer, whether or not the lack of an oath of office affects that person's immunity from civil liability to a taxpayer for any damages suffered by the taxpayer as a result of actions taken by that person, and if so, how and to what extent;

- iii) upon discovery of the fact that a particular employee of CCRA who claimed to have been an Auditor or an Appeals Officer lacks a valid oath or office when such a person was required to have taken such an oath, what is the legal effect of that discovery in respect of their past actions taken under the pretense that the person was duly authorized to exercise, administer, or enforce various statutory powers, provisions, and obligations upon other persons and individuals;
- iv) where circumstantial or contested information is obtained by CCRA and is presumed to be that of a particular taxpayer by a person lacking a valid oath of office, is the Minister of National Revenue entitled to retain and rely upon such information after it is discovered that the person who obtained it lacked a valid oath of office (i.e. was the information improperly obtained?);
- v) where a person lacking a valid oath of office uses circumstantial or contested information, which that person presumed to be that of a particular taxpayer, to make conclusions of law and/or mixed fact and law under various sections of the Income Tax Act and the Excise Tax Act, Part IX (GST), to impose financial penalties and obligations on a particular taxpayer, is the Minister of National Revenue entitled to continue to rely upon such conclusions and to maintain that the financial obligations and penalties continue to apply after it is discovered that the person who made said conclusions lacked a valid oath of office;

[2] Based on that determination, they ask for an Order vacating the reassessments under appeal and an Order for the removal of liens placed by the Canada Revenue Agency (“CRA”) against properties presumably belonging to the Appellants. Alternatively the Appellants ask the Court for an Order to provide the Appellants with any remedy that is equitable under the circumstances. In the Amended Notices of Motion, the Appellants also raised the issue of further discoveries of CRA officers, but this claim for relief was abandoned at the hearing of the motion.

[3] The Respondent opposes the motions on the grounds that the Court lacks jurisdiction to grant the relief sought either because the Court cannot grant declaratory relief or because the Court may only order that assessments be vacated or varied after consideration of the correctness of the assessments.

[4] Central to the Appellants’ position in these motions, it is their contention that certain persons employed by the CRA, who were involved in the audit leading up to the reassessments, in issue or in the review of the Appellants’ objection to those reassessments lacked authority to carry out any official duties on behalf of the Minister of National Revenue (“Minister”) because they had not sworn an oath of office as required by federal statute.

[5] The facts underlying this position are not admitted and would require determination by this Court. Likewise any consequence of the individuals' alleged lack of oath of office would also need to be determined by the Court in order to rule on the relief sought by the Appellants.

[6] In my view, the proper procedure for seeking a determination of these questions of fact and law would be by application under subsection 58(1) of the *Tax Court of Canada Rules (General Procedure)* for determining or determinations of questions of fact, law or mixed fact and law.

[7] That provision reads as follows:

*Question of Law, Fact or Mixed Law and Fact*

58. (1) A party may apply to the Court,

(a) for the determination, before hearing, of a question of law, a question of fact or a question of mixed law and fact raised by a pleading in a proceeding where the determination of the question may dispose of all or part of the proceeding, substantially shorten the hearing or result in a substantial saving of costs, or

(b) to strike out a pleading because it discloses no reasonable grounds for appeal or for opposing the appeal,

And the Court may grant judgment accordingly.

[8] The Appellants, who are self-represented, have not framed their applications in terms of subsection 58(1) of the *Rules* but this alone should not be a bar to a consideration of the motions where it is apparent which section of the *Rules* is properly applicable.

[9] However, in this instance the requirements of subsection 58(1) have not been met since the questions that the Appellants seek to have determined are not ones that are raised in the pleadings of either party.

[10] According to the Federal Court of Appeal decision in *The Queen v. Norman Jurchison and Norway Insulation Inc.*, 2001 DTC 5301, at para. 9, this Court does not have authority pursuant to section 58 of the *Rules* to determine questions of fact or law that are not raised in the pleadings of either party.

[11] I am unable to find any other specific provision in the *Rules* that would permit me to make the determinations sought by the Appellants. Given that the matter of

determinations of fact and law are dealt with explicitly in section 58, I do not believe it is appropriate to have recourse to the inherent jurisdiction of the Court. In any event, no basis for doing so in this case has been suggested.

[12] The Appellants referred the Court to section 12 of the *Tax Court Canada Act* as conferring authority on the Court to make the determinations of fact and law that they seek.

[13] That provision gives the Court exclusive original jurisdiction to hear and determine references and appeals to the Court under a number of Federal Acts including the *Income Tax Act* and the *Excise Tax Act*. However, the hearing and determination of appeals in the general procedure are to be carried out in accordance with the *Rules*, which again in this case make specific provision for determinations of fact and law.

[14] Given that the relief sought by the Appellants is predicated entirely upon the Court making the determinations described in paragraph b) of the Amended Notice of Motion and given my finding that I do not have authority to make those determinations, I am unable to grant the Appellants' motion.

[15] Furthermore, to the extent that the CRA officers alleged lack of authority would affect the admissibility evidence in these appeals, the matter is something better dealt with at the hearing of the appeals. In *Jurchison*, the Federal Court of Appeal said at paragraph 10:

[10] Normally, the admissibility of evidence is a matter best left to the Trial Judge who, having all the circumstances and evidence before him can make the most informed decision. Of course, there are situations such as that before Bowman J. in *O'Neill Motors Ltd. v. The Queen*, 96 DTC 1486, which particularly lend themselves to such determination before trial. It must be kept in mind, however, that in that case, the question to be determined came before the Court by agreement of the parties under section 173 of the *Income Tax Act* which provides for determination of questions of law, fact or mixed law and fact upon agreement between the Minister and the taxpayer. Unlike the present case, there was an agreed statement of fact by the parties.

[16] It is also clear that the Court does not have the power to grant part of the relief sought, being an Order that the Minister remove liens placed on the Appellants' property. Collection matters are outside the jurisdiction conferred by section 12 of the *Tax Court of Canada Act*.

[17] The motions are therefore dismissed with one set of costs to the Respondent, in any event of the cause.

Signed at Ottawa, Canada, this 17th day of September 2008.

“B.Paris”

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Paris J.



CITATION: 2008 TCC 516

COURT FILE NOs.: 2006-2434(IT)G, 2006-2430(IT)G and  
2006-2427(GST)G

STYLE OF CAUSE: PETRA KION, MICHAEL KION,  
MICHAEL KION AND PETRA KION v.  
HER MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: August 28, 2008

REASONS FOR ORDER BY: The Honourable Justice B. Paris

DATE OF ORDER: September 17, 2008

APPEARANCES:

For the Appellants:	The Appellants themselves
Counsel for the Respondent:	David Everett

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada