

Docket: 2006-3768(GST)G

BETWEEN:

1010034 ONTARIO LIMITED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Motion heard together with the Motion in  
*4059654 Canada Limited* (2006-3769(GST)G)  
on February 17, 2009 at Toronto, Ontario  
Before: The Honourable Justice Theodore E. Margeson

Appearances:

Counsel for the Appellant: Eli Pullan  
Counsel for the Respondent: Margaret J. Nott

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**ORDER**

Upon reading the Notice of Motion and other supporting material;

And upon hearing from counsel for the Appellant and counsel for the Respondent;

The motion is granted with respect to the consolidation order and it is hereby ordered that these matters be consolidated under section 26 of the *Tax Court of Canada Rules (General Procedure)*.

In all other respects the motion is dismissed.

There will be no costs on the motion.

Signed at Vancouver, British Columbia, this 3<sup>rd</sup> day of March 2009.

“T. E. Margeson”

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Margeson J.

Docket: 2006-3769(GST)G

BETWEEN:

4059654 CANADA LIMITED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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*1010034 Ontario Limited (2006-3768(GST)G)*  
on February 17, 2009 at Toronto, Ontario  
Before: The Honourable Justice Theodore E. Margeson

Appearances:

Counsel for the Appellant: Eli Pullan  
Counsel for the Respondent: Margaret J. Nott

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**ORDER**

Upon reading the Notice of Motion and other supporting material;

And upon hearing from counsel for the Appellant and counsel for the Respondent;

The motion is granted with respect to the consolidation order and it is hereby ordered that these matters be consolidated under section 26 of the *Tax Court of Canada Rules (General Procedure)*.

In all other respects the motion is dismissed.

There will be no costs on the motion.

Signed at Vancouver, British Columbia, this 3<sup>rd</sup> day of March 2009.

“T. E. Margeson”

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Margeson J.

Citation: 2009TCC123  
Date: 20090303  
Docket: 2006-3768(GST)G

BETWEEN:

1010034 ONTARIO LIMITED,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent,

Docket: 2006-3769(GST)G

AND BETWEEN:

4059654 CANADA LIMITED,  
Appellant,  
and  
HER MAJESTY THE QUEEN,  
Respondent.

**REASONS FOR ORDER**

Margeson J.

[1] The Appellants by way of Notice of Motion dated January 20, 2009 asked for the following relief:

1. an Order under section 26 of the *Tax Court of Canada Rules (General Procedure)* (“*Rules*”) consolidating the appeals herein;
2. an Order under section 58 of the *Rules* setting down the appeals herein for a hearing to determine four questions of law, fact or mixed law and fact raised by the pleadings in these matters (the Rule 58 Hearing);

3. an Order under section 67 of the *Rules* directing the Respondent to answer proper questions asked at the examination for discovery of its nominee, and to answer proper questions arising from answers previously provided; and
4. an Order under section 82 of the *Rules* directing that the Respondent shall file and serve on the Appellants a list of all the documents which are or have been in the Respondent's possession, control or power relating to any matter in question between or among them in the appeal (full disclosure).

[2] After hearing argument by both counsel, the Court is satisfied that these two matters should be consolidated, the motion in that regard is granted and the appeals are consolidated under section 26 of the *Rules*.

[3] With respect to the application for an order under section 58 of the *Rules* the Court is not satisfied that the Appellant has satisfied the requirements of that *Rule*.

[4] The Court is satisfied that the matter is going to proceed to trial in any event and there are a number of matters that would require the giving of evidence before a Court would be in position to answer the questions posed. This Court is not convinced that the proceeding would be substantially shortened if the Appellant were to succeed in obtaining an order under section 58 of the *Rules*. The motion in that regard is dismissed.

[5] With respect to the application for an order under section 97 of the *Rules* directing the Respondent to answer certain questions arising out of the examinations of discovery, the Court is not satisfied that the Appellant has made out a proper case for such an order. At first blush it would appear to the Court that the Respondent has complied with the rules of discovery.

[6] The motion in that regard is dismissed.

[7] With respect to the motion, regarding section 82 of the *Rules*, the Court is not satisfied that an order for full disclosure is necessary. Some of the matters referred to by counsel for the Appellant would raise the prospect of him "going on a fishing trip" so to speak. The Court is satisfied that only relevant documents need be disclosed and that appears to have been done.

[8] The motion in that regard is dismissed.

[9] Both parties have been somewhat successful so there will be no costs on the motions.

Signed at Vancouver, British Columbia, this 3<sup>rd</sup> day of March 2009.

“T. E. Margeson”

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Margeson J.

CITATION: 2009TCC123

COURT FILE NO.: 2006-3768(GST)G, 2006-3769(GST)G

STYLE OF CAUSE: 1010034 ONTARIO LIMITED AND THE QUEEN, 4059654 CANADA LIMITED

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 17, 2009

REASONS FOR ORDER BY: The Honourable Justice T. E. Margeson

DATE OF ORDER: March 3, 2009

APPEARANCES:

Counsel for the Appellant: Eli Pullan  
Counsel for the Respondent: Margaret J. Nott

COUNSEL OF RECORD:

For the Appellant:

Name: Eli Pullan  
Firm: Benson Percival Brown LLP

For the Respondent:

John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada