Docket: 2007-3474(IT)G

BETWEEN:

MICHAEL EDWARDS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on July 11, 2012 at Toronto, Ontario

By: The Honourable Justice J.M. Woods

Appearances:

Counsel for the Appellant:	Ian S. MacGregor, Q.C. Pooja Samtani David Mollica
Counsel for the Respondent:	V. Lynn W. Gillis Martin Hickey Devon E. Peavoy

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ORDER

Upon application by the appellant for an order adjourning the hearing of the appeal, the application is denied. Each party shall bear their own costs.

Signed at Toronto, Ontario this 23rd day of July 2012.

"J.W. Woods"

Woods J.

Citation: 2012 TCC 264
Date: 20120723
Docket: 2007-3474(IT)G

BETWEEN:

MICHAEL EDWARDS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Woods J.

[1] The appellant, Michael Edwards, seeks an adjournment of the appeal in order to take advantage of proposed retroactive legislation affecting charitable donations. A one year adjournment is requested. The application is opposed by the respondent, who submits that the application continues a pattern of delay.

Background

a) The dispute

[2] The appellant was assessed under the *Income Tax Act* for the 2003 taxation year to disallow a charitable donation in the amount of $10,000. The donation was made pursuant to leveraged donation program marketed as the "ParkLane Charitable Donation Program."

[3] According to information provided by the respondent, approximately 18,000 taxpayers participated in this or similar programs and 8,000 have been reassessed to date. It is estimated that the total donations are approximately $500,000,000.

[4] This is a lead case for nine appeals which have been filed to date, which are under case management by the Chief Justice. Although the outcome in this appeal is not binding on others, the other appeals have been held in abeyance pending this case. It would appear that thousands of other taxpayers are waiting in the wings.

b) Setting trial dates

[5] The trial was initially scheduled for seven days commencing February 8, 2010.

[6] A few weeks prior to the scheduled hearing, the appellant requested that the appeal be held in abeyance pending the outcome of an appeal to the Federal Court of Appeal relating to another leveraged donation program: *Maréchaux v The Queen*, 2010 FCA 287, 2010 DTC 5174, aff'g 2009 TCC 587, 2009 DTC 1379. The respondent objected to the request, but the adjournment was granted by Chief Justice Rip. The appeal was further held in abeyance until *Maréchaux* was finally disposed of by the Supreme Court of Canada when the taxpayer's application for leave to appeal was dismissed on June 9, 2011.

[7] The outcome in *Maréchaux* was to disallow the charitable donation in its entirety. Following the conclusion of the case, the parties to this appeal entertained settlement discussions but these were not successful.

[8] At a teleconference in February 2012, Chief Justice Rip pressed the appellant to set the matter down for trial and a hearing was scheduled for five days commencing November 26, 2012. Also at the teleconference, the appellant advised of his intention to bring this motion and it was scheduled for July, well in advance of the trial date.

c) The proposed legislation

[9] On December 20, 2002, the Government of Canada announced proposed amendments to the *Act* which are commonly referred to as "split receipting rules." The legislation is to be retroactive to the announcement date and the Canada Revenue Agency have since been administering the provisions as if they were enacted.

[10] In the most the recent federal budget, the government announced its intention to proceed with several pieces of outstanding legislation, which includes these proposals. This type of statement has typically been made in recent federal budgets.

[11] The appellant submits that the proposed legislation would provide partial relief for approximately 30 percent of the donation in the event that it is found that the donation does not qualify in total.

[12] The respondent takes the position that the proposed legislation would not provide relief because the appellant lacked the requisite donative intent.

Discussion

[13] A wide range of factors have been recognized as being relevant in considering adjournment requests. In *Ariston Realty Corp. v Elcarim Inc.* (2007), 51 CPC (6th) 326 (Ont. S.C.), several of these were referred to:

> [34] Depending on the circumstances of each case, to judicially exercise the discretion to grant or refuse an adjournment, a judge or master may need to weigh many relevant factors including:
>
> - the overall objective of a determination of the matter on its substantive merits;
> - the principles of natural justice;
> - that justice not only be done but appear to be done;
> - the particular circumstances of the request for an adjournment and the reasons and justification for the request;
> - the practical effect or consequences of an adjournment on both substantive and procedural justice;
> - the competing interests of the parties in advancing or delaying the progress of the litigation;
> - the prejudice not compensable in costs, if any, suffered by a party by the granting or the refusing of the adjournment;
> - whether the ability of the party requesting the adjournment to fully and adequately prosecute or defend the proceeding would be significantly compromised if the adjournment were refused;

> ▪ the need of the administration of justice to orderly process civil proceedings; and
>
> ▪ the need of the administration of justice to effectively enforce court orders.

[14] As for adjournments in the context of legislative proposals, counsel for the appellant referred me to an oral decision of the Federal Court of Appeal in which adjournments of this nature were generally frowned upon. In *Johnson & Johnson Inc. v Boston Scientific Ltd.*, 2004 FCA 354, it was stated at para. 3:

> […] it is a rare circumstance where the Court will decline to proceed because of anticipated legislative changes.

[15] The appellant submits that this is the rare case where an adjournment should be granted. He requests an adjournment of 12 months from November 26, 2012, or less if the legislative proposals are enacted sooner. He also undertakes not to seek a further adjournment provided that circumstances do not change.

[16] The appellant submits that he is seriously prejudiced by not having the benefit of the enactment of the legislation. He notes that the CRA has been administering the *Act* as if the proposals were law, but he is not able to challenge their interpretation of the provisions. He also submits that the respondent would more likely be receptive to settlement if the proposals were in force.

[17] I acknowledge prejudice to the appellant in the event that the adjournment request is denied. It is possible that an adjournment may enable the appellant to benefit from the proposed legislation, either by way of settlement or otherwise. It is also possible that a denial of an adjournment would necessitate further litigation for other taxpayers, which may be avoided if the adjournment is granted.

[18] In my view, there are compelling reasons why this appeal should not be further delayed which outweigh the competing interests of the appellant and other participants in the program and who may also benefit from an adjournment.

[19] Generally speaking, it is important for the administration of justice that tax litigation proceed in a timely manner. This is a particularly pressing consideration here where tax deductions relating to donations in the range of $500,000,000 are potentially affected. Delay is not a trifling matter.

[20] I would also note that this appeal relates to transactions that were undertaken almost nine years ago and this appeal was first set down for hearing over two years ago.

[21] The respondent submits that there has been a pattern of delay. This may well be the case, but I do not have the background on this matter to make this determination. I am troubled, however, by a statement made by the appellant to Chief Justice Rip in support of the prior adjournment request that the appellant would proceed expeditiously after *Maréchaux* was decided.

[22] I would also comment that this motion is not necessarily the end of the road for the appellant because the trial judge has discretion to provide some delay if the circumstances warrant it. At the present time, for example, there is very little indication that the legislation will be enacted soon.

[23] The interest that the appellant has in an adjournment is greatly outweighed by the public interest in having a resolution of this matter as soon as practicable. The adjournment request will be denied. Each party shall bear their own costs of this motion.

Signed at Toronto, Ontario this 23rd day of July 2012.

"J. M. Woods"

Woods J.

CITATION:	2012 TCC 264
COURT FILE NO.:	2007-3474(IT)G
STYLE OF CAUSE:	MICHAEL EDWARDS v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	July 11, 2012
REASONS FOR ORDER BY:	The Honourable Justice J.M. Woods
DATE OF ORDER:	July 23, 2012

APPEARANCES:

Counsel for the Appellant:	Ian S. MacGregor, Q.C. Pooja Samtani David Mollica
Counsel for the Respondent:	V. Lynn W. Gillis Martin Hickey Devon E. Peavoy

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