

Docket: 2012-2127(IT)G
2012-2129(GST)G

BETWEEN:

ROBERT H. KEENAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Dockets: 2012-2120(IT)G
2012-2134(GST)G

AND BETWEEN:

WILLIAM E. ADAMS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Dockets: 2012-2117(IT)G
2012-2135(GST)G

AND BETWEEN:

640950 B.C. LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Dockets: 2012-2123(IT)G
2012-2128(GST)G

AND BETWEEN:

WORLD WIDE GOLF (CANADA) LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Dockets: 2012-2124(IT)G
2012-2132(GST)G

AND BETWEEN:

LANDMARK CAPITAL PARTNERS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Dockets: 2012-2125(IT)G
2012-2131(GST)G

AND BETWEEN:

LANDMARK OIL & GAS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Dockets: 2012-2126(IT)G
2012-2130(GST)G

AND BETWEEN:

PREFERRED CHOICE ACCOUNTING
SERVICES LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Case Management Conference held on May 28, 2019 at Ottawa (Ontario)
and Motions of March 18, 2019 and May 28, 2019 disposed of on the
basis of written representations

Before: The Honourable Justice Guy R. Smith

Appearances:

Agent for the Appellant: Robert H. Keenan
William E. Adams

Counsel for the Respondent: Max Matas
Victor Caux
Olinda Samuel

ORDER

WHEREAS at the conclusion of the Case Management Conference, the Appellants' addressed the issue of an outstanding Motion filed on March 18, 2019 as well as another Motion filed on May 28, 2019;

AND WHEREAS the Court ordered that these motions would be dealt with on the basis of written representations;

AND IN ACCORDANCE with the attached Common Reasons for Order;

THE COURT ORDERS as follows:

1. The Appellants' motions of March 18, 2019 and May 28, 2019, be and the same are hereby dismissed with costs in favour of the Respondent fixed in the amount of \$7,500 as against Robert E. Keenan and \$7,500 as against William E. Adams, for a total of \$15,000, payable forthwith;

Signed at Ottawa, Canada, this 21st day of November 2019.

“Guy R. Smith”

Smith, J.

Citation: 2019 TCC 259
Date: November 21, 2019

Docket: 2012-2127(IT)G
2012-2129(GST)G

BETWEEN:

ROBERT H. KEENAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Dockets: 2012-2120(IT)G
2012-2134(GST)G

AND BETWEEN:

WILLIAM E. ADAMS,

Appellant,

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AND BETWEEN:

PREFERRED CHOICE ACCOUNTING
SERVICES LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

COMMON REASONS FOR ORDER

Smith, J.

[1] This matter follows a Case Management Conference (“CMC”) held on May 28, 2019 at which time the Appellants, by their representatives, Robert H. Keenan (“Mr. Keenan”) and William E. Adams (“Mr. Adams”), raised the matter of a motion dated March 18, 2019 (“Motion #1”) and informed the Court of the filing of another motion dated May 28, 2019 (“Motion #2”).

[2] The Court indicated that these motions would be dealt with in writing on the basis of written representations and this was confirmed in the Order and Common Reasons for Order of August 8, 2019 which dealt with two prior motions filed by the Appellants.

Motion #1

[3] Motion #1 is attached hereto as Annex A. It refers to section 170.1 of the *Tax Court of Canada Rules (General Procedure)* (the “Rules”) and seeks an order to amend the notices of appeal herein “to include constitutional questions and other material facts supporting a section 24(1) invalidating remedy”.

[4] The motion continues with an iteration of “previously stated allegations” including i) breach of procedural fairness ii) breach of administrative good faith and impartiality iii) breach of trust in public office and iv) breach of “Charter Rights and Freedoms, Sections 7, 8 and otherwise...”

[5] The Affidavit of Robert Harold Keenan dated March 18, 2019 is filed in support of the motion. He indicates that it is sworn “in support of the related Motions to the Form 61.1 Notice of Constitutional Questions”

[6] Exhibits “A”, “B” and “C” to the Affidavit consist of various documents including copies of Canada Revenue Agency (“CRA”) audit notes and reports, correspondence, affidavits of various auditors, requests for information to third parties, CRA penalty recommendation reports, notices of objections, confirmations and correspondence from Appellants’ former counsel.

[7] Section 170.1 of the Rules reads as follows:

170.1 A party may, at any stage of a proceeding, apply for judgment in respect of any matter

(a) upon any admission in the pleadings or other documents filed in the Court, or in the examination of another party, or

(b) in respect of which the only evidence consists of documents and such affidavits as are necessary to prove the execution or identity of the documents, without waiting for the determination of any other question between the parties.

[8] This provision is intended to allow a party to seek an order to resolve one or more issues before trial “without waiting for the determination of any question between the parties”. It is in essence a summary judgment provision similar to that found in the various provincial rules of civil procedure referred to by the Supreme Court of Canada in *Hryniak v. Mauldin*, [2014] 1 S.C.R. 87.

[9] If the Appellants seek to rely on the documents attached to the Affidavit of Mr. Keenan, it is not clear to what admission or document they are referring to.

[10] In *Potash Corporation of Saskatchewan Inc., v. The Queen*, 2003 TCC 588 (“*Potash*”), Mogan J. reviewed section 170.1 of the Rules and took a restrictive approach, indicating that where there were complex issues of law, it was not appropriate to seek a judgement under that provision. He added that:

[22] (...) It seems to me that Rule 170.1 is better saved for a case in which there is one (or more) simple question of fact which might be answered by admissions in the pleadings or on discovery which, in turn, might permit a final disposition through hearing argument on the applicable law.

[11] Since the Appellants have not clearly identified the admission or document they seek to rely on, it follows that they cannot engage the summary judgment procedure set out in section 170.1 of the Rules, let alone rely on that provision to amend their pleadings.

[12] Even if the Court considers that the Appellants actually intended to rely on section 54 of the Rules to amend their pleadings but sought to do so in a summary or expedited fashion relying on section 170.1, the more substantive difficulty is that they are attempting, once again, to amend their pleadings to include various allegations of CRA conduct including, *inter alia*, sections 7, 8 and 24 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”).

[13] In *Brooks v. The Queen*, 2019 TCC 47 (“*Brooks*”), Campbell J. dealt with a motion to strike a taxpayer’s appeal that referenced sections 7, 8 and 24 of the *Charter*. The position of the parties was explained as follows:

8. The Appellant’s pleadings focus on the conduct of CRA officials and whether exercise of the Minister’s civil audit powers, used to gather oral and documentary evidence, violated the Appellant’s rights under sections 7 and 8 of the *Charter*. The Appellant submits that this evidence can be excluded and the assessment vacated pursuant to section 24 of the *Charter*.

9. The Respondent argues that these matters fall outside the jurisdiction of this Court and have no chance of succeeding as they are frivolous, abusive and could cause delay in the conduct of the proceedings.

[14] Campbell J. then reviewed the “plain and obvious” test to strike pleadings pursuant to section 53 of the Rules before turning to the jurisdiction of the Tax Court of Canada and explaining that :

13. This Court has exclusive jurisdiction to determine the validity of tax assessments. However, its jurisdiction is limited by the statutory provisions set out in the *Act*. Specifically, section 171 of the *Act* sets out the parameters of this Court in dealing with a taxpayer’s appeal under the *Act*. In this regard, the Court may dismiss an appeal or allow it and vacate an assessment or vary it or refer it back to the Minister for reconsideration and reassessment.

14. There is a long line of jurisprudence both in this Court and the Federal Court of Appeal to support the Respondent’s position that the conduct of the Minister and CRA officials is irrelevant in determining the validity and correctness of an assessment. The Federal Court of Appeal confirmed this principle in both *Main Rehabilitation Co. Ltd. v. The Queen*, 2004 FCA 403, and *Ereiser*. Sharlow J.A. in *Ereiser*, at paragraph 40, concluded that:

[40] ... The fact that a seizure of documents is unlawful may affect the admissibility of evidence obtained as a result of the seizure, but wrongful conduct unrelated to an evidentiary matter generally is not relevant to the admissibility of evidence. ...

This Court has no jurisdiction to vacate an assessment on the basis of reprehensible conduct involved in the process leading up to that assessment. The Federal Court of Appeal in *M.N.R. and C.R.A. v. J.P. Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, at paragraph 83, stated this principle succinctly:

[83]... If an assessment is correct on the facts and the law, the taxpayer is liable for the tax.

Recently, Webb J.A. in *Johnson v. The Queen*, 2015 FCA 52, [2015] FCJ No. 216, at para. 4, reiterated the approach that the Courts have taken:

[4] ... The motivation of the Minister in issuing such assessments or any collection action taken by the Minister in relation to such assessments is not relevant to this inquiry.

(My emphasis)

[15] As noted by the Respondents, all of these fundamental concepts of law were explained to the Appellants by the previous Case Management Judge (notably in Paris J.'s oral reasons for judgment of February 25, 2014), as more fully described in paragraphs 37 to 43 of my Common Reasons for Order of August 8, 2019.

[16] It follows from the above, that Motion #1 must be dismissed.

Motion #2

[17] Motion #2 is attached hereto as Annex B. It seeks to strike the Respondent's Replies pursuant to section 53 of the Rules. More specifically, it seeks to "strike, quash, impugn or invalidate, void ab initio, the Respondent's Replies (...) & vacate the corresponding re-assessments under appeal".

[18] The motion then sets out the various "grounds" relied upon by the Appellants as a basis for the request, that may be summarized as follows:

- i. The CRA officials who confirmed the reassessments in 2012 were "*not impartial, fair or in good faith*" and the "*Team Leader*" throughout the audit process, had knowledge, as early as 2003, of a criminal investigation involving the Appellants;
- ii. The Replies suggest that CRA commenced an audit of the Appellants' affairs in 2008 when in reality it had commenced a "*full-scale criminal investigation*" as early as 2001 and as such the assertion in the Replies constitutes a "*misrepresentation of the start date*";

- iii. CRA misconduct described as a breach of the “*principles of fundamental justice and fairness, good faith, respect for self-assessment system of taxation and Canada’s free and democratic society*”

[19] The Affidavit of Robert Harold Keenan dated May 28, 2019 is attached to the motion and it includes Exhibits “A” and “B”.

[20] Exhibit “A” includes numerous documents including newspaper clippings, CRA audit notes (indicating that a GST audit was carried out in 2002), records, correspondence, notices of reassessments and copies of prior interlocutory proceedings including the Respondent’s motion to strike the Appellant’s notice of appeal and Order of Paris J. dated March 10, 2014.

[21] Similarly, Exhibit “B” contains numerous documents including CRA audit notes, records and correspondence, audit questionnaires and correspondence from the Appellants’ former lawyer. This list is not exhaustive.

Preliminary issues

[22] The motion refers to section 231.4 of the *Income Tax Act*, 1985, c. 1 (5th Supp.) (“ITA”) and to subsection 18.1(1) of the *Federal Courts Act*, R.S.C., 1985 (“Federal Courts Act”) in support of the motion to strike.

- i. The section 231.4 de facto inquiry

[23] Section 231.4 of the ITA is located in Part XV entitled “Administration and Enforcement”. It provides as follows:

231.4 (1) The Minister may, for any purpose related to the administration or enforcement of this Act, authorize any person, whether or not the person is an officer of the Canada Revenue Agency, to make such inquiry as the person may deem necessary with reference to anything relating to the administration or enforcement of this Act.

(2) Where the Minister, pursuant to subsection 231.4(1), authorizes a person to make an inquiry, the Minister shall forthwith apply to the Tax Court of Canada for an order appointing a hearing officer before whom the inquiry will be held.

(...)

[24] This provision is fairly explicit in that it provides that the Minister may “for any purpose related to the administration of this Act” appoint any person to conduct an inquiry “with reference to anything relating to the administration or enforcement of this Act”. Subsection 231.4(2) then provides that the Minister shall apply to the Tax Court of Canada for an order “appointing a hearing officer before whom the inquiry will take place”.

[25] There is no need to reproduce the entire provision. It suffices to mention that the inquiry is to take place in accordance with the terms of the *Inquiries Act*, R.S.C., 1985, c. I-11. Witnesses are entitled to legal representation and persons whose affairs are being investigated are entitled to be present and to be represented by legal counsel.

[26] The Appellants contend that the Respondent undertook a “de facto” inquiry under section 231.4 “with or without the authorization of a Tax Court judge as required to afford various inherent protections to the Appellants”.

[27] I find that those allegations are unsubstantiated and conspiratorial. There is certainly no evidence of an inquiry as that term is described in section 231.4 of the *ITA* and very little if any evidence of a “de facto” inquiry.

[28] The documents submitted as exhibits to Mr. Keenan’s Affidavit simply indicate that CRA had undertaken an audit which included a very standard request for books, records and documentation, a request to complete standard questionnaires and requests for information from third parties.

[29] Without further details, there is nothing extraordinary or unusual about the CRA audit that lead to the notices of reassessment in question though there appears to be some controversy as to whether the audit commenced in 2002 or 2008. The evidence suggests that steps taken in 2002 involved a GST audit.

[30] As a result, I attach no weight to the suggestion that the Respondent may have undertaken a “de facto” inquiry pursuant to section 231.4 of the *ITA*.

ii. Subsection 18.1(1) judicial review

[31] Secondly, the motion refers to subsection 18.1(1) of the *Federal Courts Act*, R.S.C., 1985, c. F-7 that establishes the basic judicial review jurisdiction of the Federal Court with respect to decisions made by “a federal board, commission or other tribunal” on the basis of certain “grounds of review”. There is little doubt that CRA can be characterized as “a federal board or tribunal” and that its decisions are subject to the judicial review jurisdiction of the Federal Court.

[32] However, the judicial review jurisdiction of the Federal Court does not include matters that have otherwise been specifically assigned by Parliament.

[33] In these appeals, the issue is the validity of the notices of reassessments and the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2, being an Act of Parliament, provides that this Court “has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising” under various taxing statutes including the *Excise Tax Act*, in particular.

[34] The grounds for the motion herein include a reference to a criminal investigation that allegedly had commenced as early as 2001. The Court has no direct knowledge of such criminal proceedings and in any event, it is not entirely clear how this may be relevant to the reassessments at issue.

[35] As noted by Campbell J. in *Brooks*, the decisions of *The Queen v. Jarvis*, [2002] 3 S.C.R. 757, 2002 SCC 73 (“*Jarvis*”) and *The Queen, v. Ling*, [2002] 3 S.C.R. 814, 2002 SCC 74 (“*Ling*”) were referred to by the Federal Court of Appeal in *Romanuk v. Canada*, 2013 FCA 133 (“*Romanuk*”), where Webb J.A. indicated as follows:

[7] In paragraph 103 of *Jarvis*, the Supreme Court also confirmed that “...it is clear that, although an investigation has been commenced, the audit powers may continue to be used, though the results of the audit cannot be used in pursuance of the investigation or prosecution”. Since the audit powers may continue to be used, even though the results cannot be used in relation to an investigation or prosecution, the results can be used in relation to an administrative matter, such as a reassessment.

[8] The use of such information or documents in administering the Act and reassessing the appellant does not violate her rights under either section 7 or 8 of the Charter because the CRA has the right to continue to use its audit powers provided that the information or documents are only used for the purposes of

administering the Act. If the information or documents are to be used in an investigation or prosecution of an offence under section 239 of the *Act*, the issue for the particular court dealing with the prosecution of the offence under section 239 of the *Act*, will be whether the predominant purpose of the exercise of such powers was to gather information or documents for such investigation or prosecution.

(My emphasis)

[36] Thus, even if there was a criminal investigation, *Jarvis, Ling and Romanuk* all stand for the proposition that CRA may continue to use its audit powers and use “such information or documentation” as may be gathered “for the purposes of administering the Act” and establishing assessment or reassessments. This is not to be confused with the role of a “particular court dealing with the prosecution of” an offence. That is an entirely different matter. While the *Income Tax Act* does describe “offences” in sections 238 and 239, these are criminal in nature and are typically prosecuted in the provincial courts.

[37] To conclude, the judicial review jurisdiction described in subsection 18.1(1) of the *Federal Courts Act* is within the exclusive domain of the Federal Court. It is not within the jurisdiction of the Tax Court of Canada.

Motion #2 (continued)

[38] On the basis of the Court’s conclusions reached above, it is not necessary to consider section 231.4 of the *ITA*, nor subsection 18.1(1) of the *Federal Courts Act* in the context of the motion to strike.

[39] The Appellants refer to section 53 of the Rules which provide as follows:

53 (1) The Court may, on its own initiative or on application by a party, strike out or expunge all or part of a pleading or other document with or without leave to amend, on the ground that the pleading or other document

(a) may prejudice or delay the fair hearing of the appeal;

(b) is scandalous, frivolous or vexatious;

(c) is an abuse of the process of the Court; or

(d) discloses no reasonable grounds for appeal or opposing the appeal.

(2) No evidence is admissible on an application under paragraph (1)(d).

[40] The Appellants have not referred to any of the provisions set out in paragraphs 53(1)(a) to (d), such that the Court can only speculate that the motion seeks to strike the Replies on the basis that they are either “scandalous, frivolous or vexatious” or are “an abuse of the process of the Court”.

[41] The test for striking pleadings has been restated on numerous occasions and the Court has repeatedly adopted the “plain and obvious” test: *Gramiak v. The Queen*, 2013 TCC 383 and, more recently, *Brooks*. The Court may ask, is it “plain and obvious” that the Replies should be struck on the basis of the grounds set out in the motion itself as summarized above.

[42] In other words, should the allegations that i) the CRA officials who confirmed the reassessments were “not impartial, fair or in good faith” or that ii) a criminal investigation preceded the CRA audits that lead to the reassessments or that iii) there was CRA misconduct – lead the Court to conclude that it is “plain and obvious” that the Replies are not a full answer to the Notices of Appeal or are deficient and should be struck. The answer is clearly and unequivocally no.

[43] In its Written Submissions, the Respondent argues that:

“The Appellants’ motion contains unfounded, meritless allegations regarding the conduct of the Minister of National Revenue (the “Minister”) which this Court has repeatedly told the Appellants is irrelevant to the issues under appeal”;

“The Appellants’ motion contains irrelevant and inappropriate attacks on the Minister that are unsupported by facts and are not within the jurisdiction of this Court”; and

“The Appellant’s motion in its entirety amounts to yet another delay in these proceedings and an abuse of this Court’s process”;

[44] The Court agrees with these submissions and concludes that there is no basis to strike the Replies and as such, Motion #2 should also be dismissed.

Conclusion

[45] The Court agrees with the submission of the Respondent, that “[s]ince these appeals were instituted in 2012, the Appellants have repeatedly attempted to raise the conduct of the Minister as an issue before the Court”.

[46] A review of the Court Record indicates that Notices of Appeal were initially filed on May 23, 2012 followed by the Amended Notices of Appeal, the Second Amended Notices of Appeal, the New Second Amended Notices of Appeal and finally, following the Respondent’s motion to strike all allegations or references to CRA conduct and the Court Order of March 10, 2014, the Further Amended Notices of Appeal were filed on March 14, 2014.

[47] The Appellants then filed a motion pursuant to section 58 of the Rules for the determination of 11 questions of law, fact or mixed law and fact in an attempt to re-introduce arguments of CRA conduct and Charter issues. That motion was dismissed by Graham J. in his Order of June 14, 2016.

[48] The Appellants then sought to amend their pleadings once again to support a Notice of Constitutional Question. That motion was dismissed by reason of the Appellants’ failure to appear. No attempt was made to appeal or to have the Order set aside and an attempt to re-introduce that motion on July 4, 2018, was dismissed by Order and Common Reasons for Order of August 8, 2019.

[49] Moreover, as noted by the Respondents, the Appellants’ have listed by name, 27 individuals who either are or were CRA officials, including legal counsel with the Department of Justice, all referred to as “crown employees” suggesting that they were engaged in “alleged fraudulent acts” or “material misrepresentation of facts”.

[50] The Court finds that the allegations noted above are consistent with a pattern of unsubstantiated and conspiratorial claims or contentions made by the Appellants against CRA officials as well as judges of the Tax Court of Canada who have been involved with this litigation from the beginning. These allegations are serious. They are also reprehensible and worthy of serious reprimand.

[51] As confirmed by section 147 of the Rules, costs can be awarded by the Court at any point in the proceedings in the exercise of its discretionary powers.

[52] These motions have done nothing to address the assessments and have achieved nothing to advance the appeals. Considering paragraph 147(3)(g) of the Rules, the Court is of the view that by filing these motions, the Appellants have undertaken steps that have tended “to lengthen unnecessarily the duration of the proceedings” and that they are an abuse process and, in the words of paragraph 147(1)(i), were “improper, vexatious or unnecessary”.

[53] As a result of the foregoing, the Court hereby dismisses both motions and awards costs in favour of the Respondent fixed in the amount of \$7,500 as against Robert H. Keenan and \$7,500 as against William E. Adams.

[54] The costs awarded herein are payable forthwith.

Signed at Ottawa, Canada, this 21st day of November 2019.

“Guy R. Smith”

Smith, J.

Annex A

SERVICE OF A TRUE COPY
HEREOF ADMITTED AA

MAR 18 2019

IN THE TAX COURT OF CANADA

IN RE: *The Income Tax Act & The Excise Tax Act* NATHALIE G. DROUIN
Solicitor for A.G.C.

BETWEEN:

ROBERT H. KEENAN ("KEENAN"): 2012-2127(IT)G & 2012-2129(GST)G; WILLIAM E. ADAMS ("ADAMS"): 2012-2120(IT)G & 2012-2134(GST)G; LANDMARK CAPITAL PARTNERS LTD. ("LCPL"): 2012-2124(IT)G & 2012-2132(GST)G; LANDMARK OIL & GAS LTD. ("LOGL"): 2012-2125(IT)G & 2012-2131(GST)G; 640950 B.C. LTD. ("640BCL"): 2012-2117(IT)G & 2012-2135(GST)G; PREFERRED CHOICE ACCOUNTING SERVICES LTD. ("PCASL"): 2012-2126(IT)G & 2012-2130(GST)G; and WORLD WIDE GOLF (CANADA) LTD. ("WWGCL"): 2012-2123(IT)G & 2012-2128(GST)G;

Appellants'

AND:

HER MAJESTY THE QUEEN

Respondent

NOTICE OF MOTION: to further amend, by way of a Rule 170.1 Application for Judgment in favour of the remaining Appellants in respect of clarifying matters affecting Validity, Correctness and Fundamental Justice, which would be supplemental to the Appellants' ("Keenan & Adams et al") pleadings in each of the above fourteen ("14") notice of appeals, to include constitutional questions and other material facts supporting a Sec. 24(1) invalidating remedy directly related to the previously stated allegations, which we have provided in a summarized format, as follows: (1) Breach of Procedural Fairness (Standards of Reasonable Expectations & Due Dispatch); (2) Breach of Administrative Good Faith and Impartiality (Biased Decision Making); (3) Breach of Trust in Public Office (False Affidavits & Fraudulent Misrepresentation); and (4) Breach of Charter Rights and Freedoms, Sections 7, 8 and otherwise (Subterfuge using Undercover Investigators as GST Auditors, Privacy Laws, Illegal Search and Seizure).

TAKE NOTICE THAT: the Appellants', in response to Justice Paris's paraphrased comments in August 23, 2013, "*If this is a Charter Case, then we're in the wrong court*" and further per Justice Graham's paraphrased comments in June 3, 2016, (i) "*The Appellants' representative (Keenan) is Pigheaded*"; (ii) "*Where in the Pleadings do you (the Appellants') show Allegations of Criminal Wrongdoing by the CRA*"; and (iii) "*If you (DOJ Max Matas, Counsel for the Respondent) had asked, I would have granted higher costs requested (\$2,000 forthwith)*", had previously filed and served Federally, Provincially and with the Territories, Notice of Constitutional Questions to the Court, pursuant to Section 19.2 of the Tax Court of Canada Rules (General Procedure), SOR/90-688a (the "TC Rules"), by way of Affidavits, Addendums, Exhibits or Schedules, including documents and written representations, in support as required under Form 61.1 Notice of Constitutional Questions, as Notice additions.

IN FURTHERANCE OF: the request by Justice Paris for the Appellants', who are self-represented litigants, to amend thru supplemental or additional pleadings by way of a motion to deal with the various constitutional questions and the totality of the factual circumstances previously presented to the Court, as Addendums, Documents, Affidavits or otherwise, in these legal proceedings in order to outright win these Appeals sooner than later.

THE FOLLOWING DOCUMENTARY EVIDENCE: will be used and referenced at the hearing of the motion:

- (1) All affidavits (concurrently or previously-filed) of Keenan, including Addendums with Exhibits, documents attached thereto. Additional materials, if necessary, will be filed with the Tax Court of Canada when available.
- (2) For five ("5") years, Keenan has made several ATIP requests to the CRA/DOJ which have been rebuffed for reasons given of solicitor-client privilege, immateriality and other issues, such as Para. 16, ATIP, criminal investigation matters. Keenan alleges this is obstruction of justice and lacking in integrity.

THE GROUNDS FOR THE MOTION ARE: that the CRA's decision to confirm the 2010 (re) Assessments was biased, unfair and not in good faith, these allegations are supported by various other material facts documented or presented by way of Affidavits, as follows:

- (1) The Appellants' were reassessed by the CRA in 2010 for the most part on a Statute-barred basis. The Appellants' filed Notices of Objections.
- (2) The Confirmations of Assessments were issued by the CRA in 2012 by CRA's Cal Anderson, Appeals. The Appellants' believe Anderson was 100% biased.
- (3) The Respondent opened with a Motion to Dismiss or Quash the Appellants' Appeals and failing that, Strike various Pleadings. The Respondent's Quashing/Striking Motion "FACTUM" purports the so-called Audit started in 2008, when the evidence in support of this Motion confirms that the CRA initiated an Investigation only from as early as April 2001.

DATED IN WHITE ROCK, BC,
this 18th day of March, 2019



Robert H. Keenan, Tax Accountant,
Appellant & Corporate Representative

Annex B

019/2015

SERVICE OF A TRUE COPY
HEREOF ADMITTED

MAY 28 2019

IN THE TAX COURT OF CANADA

NATHALIE G. DROUIN ^{AA}
Solicitor for A.G.C.

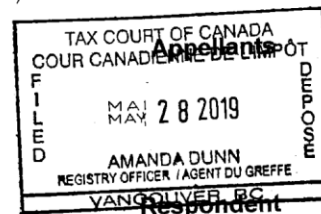
IN RE: *The Income Tax Act & The Excise Tax Act*

BETWEEN:

LANDMARK CAPITAL PARTNERS LTD.: 2012-2124(IT)G & 2012-2132(GST)G; LANDMARK OIL & GAS LTD.: 2012-2125(IT)G & 2012-2131(GST)G; 640950 B.C. LTD.: 2012-2117(IT)G & 2012-2135(GST)G; PREFERRED CHOICE ACCOUNTING SERVICES LTD.: 2012-2126(IT)G & 2012-2130(GST)G; WORLD WIDE GOLF (CANADA) LTD.: 2012-2123(IT)G & 2012-2128(GST)G; ROBERT H. KEENAN: 2012-2127(IT)G & 2012-2129(GST)G; AND WILLIAM E. ADAMS: 2012-2120(IT)G & 2012-2134(GST)G

AND:

HER MAJESTY THE QUEEN



NOTICE OF MOTION ("SECTION 53") TO STRIKE, QUASH, IMPUGN OR INVALIDATE, VOID AB INITIO, THE RESPONDENT'S REPLIES (LATEST VERSION) & THE VACATE THE CORRESPONDING (RE) ASSESSMENTS UNDER APPEAL, SUPPORTED BY THE FEDERAL COURT ACT, SECTION 18.1 ("JUDICIAL REVIEW") REQUIREMENT IN CASES OF PROVEN OR PROBABLE CRA & DOJ FRAUD, INCLUDING BREACHES OF PRIVACY, CHARTER & BILL OF RIGHTS, ("ABUSE OF TRUST IN PUBLIC OFFICE") IMPARTIALLY CARRYING OUT A DEFACTO SECTION 231.4 INQUIRY, ("CRIMINAL INQUIRY") WITH OR WITHOUT THE AUTHORIZATION OF A TAX COURT OF CANADA JUSTICE AS REQUIRED TO AFFORD VARIOUS INHERENT PROTECTIONS TO THE APPELLANTS AS OUTLINED ABOVE FROM SERIOUS CROWN CRIMINAL WRONGDOING

TAKE NOTICE THAT, the Appellants in all fourteen ("14") remaining cases listed above, by this Notice of Motion, under Rule 53 or otherwise, TCC (General) procedures, for the reason of expediency, are hereby making a joint application for the granting of separate orders of the Court, to Strike, Quash, Impugn or Invalidate, "Void ab Initio", the Respondent's Replies and Vacate, the remaining **2010 (RE)ASSESSMENTS** against the Appellants, of over eight

million dollars (“\$8,000,000.00”), including *De Facto Criminal Proceedings*, Gross Negligence Penalties and Interest, on the basis of alleged biased decision-making, not in the interests of justice, good faith & the rule of law, in what is alleged by the Appellants to be serious Charter Rights Abuse, Criminal Wrongdoing and Obstruction of Justice, starting in or around April 2001 in a scheme or co-conspiracy targeted against Robert H. Keenan and William E. Adams, by the Crown and its Agents, by altering dates and misrepresenting information on Receipts for Books and Records and Other Internal Reports, such as the Prosecution Reports and Letters, including alleged False Affidavits in October 2008 to the Department of Justice recommending of multiple Criminal Charges against the Appellants in October 2008 misrepresenting or fabricating reasonable grounds Teams of Federal Agents & Lawyers, acting as Defacto Hearings Officers.

Inquiry

- **231.4 (1)** The Minister may, for any purpose related to the administration or enforcement of this Act, authorize any person, whether or not the person is an officer of the Canada Revenue Agency, to make such inquiry as the person may deem necessary with reference to anything relating to the administration or enforcement of this Act.
- **Marginal note: Appointment of hearing officer**

(2) Where the Minister, pursuant to subsection 231.4(1), authorizes a person to make an inquiry, the Minister shall forthwith apply to the Tax Court of Canada for an order appointing a hearing officer before whom the inquiry will be held.
- **Marginal note: Powers of hearing officer**

(3) For the purposes of an inquiry authorized under subsection 231.4(1), a hearing officer appointed under subsection 231.4(2) in relation thereto has all the powers conferred on a commissioner by sections 4 and 5 of the *Inquiries Act* and that may be conferred on a commissioner under section 11 thereof.
- **Marginal note: When powers to be exercised**

(4) A hearing officer appointed under subsection 231.4(2) in relation to an inquiry shall exercise the powers conferred on a commissioner by section 4 of the *Inquiries Act* in relation to such persons as the person authorized to make the inquiry considers appropriate for the conduct thereof but the hearing officer shall

not exercise the power to punish any person unless, on application by the hearing officer, a judge of a superior or county court certifies that the power may be exercised in the matter disclosed in the application and the applicant has given to the person in respect of whom the applicant proposes to exercise the power 24 hours notice of the hearing of the application or such shorter notice as the judge considers reasonable.

- **Marginal note: Rights of witness at inquiry**

(5) Any person who gives evidence in an inquiry authorized under subsection 231.4(1) is entitled to be represented by counsel and, on request made by the person to the Minister, to receive a transcript of the evidence given by the person.

- **Marginal note: Rights of person whose affairs are investigated**

(6) Any person whose affairs are investigated in the course of an inquiry authorized under subsection 231.4(1) is entitled to be present and to be represented by counsel throughout the inquiry unless the hearing officer appointed under subsection 231.4(2) in relation to the inquiry, on application by the Minister or a person giving evidence, orders otherwise in relation to the whole or any part of the inquiry on the ground that the presence of the person and the person's counsel, or either of them, would be prejudicial to the effective conduct of the inquiry.

ALLEGED FRAUDULENT ACTS, MATERIAL MISREPRESENTATIONS OF FACTS & ASSUMPTIONS CARRIED OUT BY DEFACTO HEARINGS OFFICERS & OR OTHER DOJ/PPSC/CCCRA/CRA OFFICERS, EMPLOYEES OR AGENTS, (referred to as "Crown Employees"), INCLUDING FIRST KNOWN DATE OF INVOLVEMENT:

1. Dennis Rau, CRA Section Manager, Kelowna, Aug. 8, 2002 (A.3)
2. Sue Moser, CRA GST Team, Kelowna, Sept. 17, 2002 (A.3)
3. Cynthia Stevenson, CRA Officer, Kelowna, May 28, 2003 (A.6)
4. Cal Anderson, CRA Team Leader, Kelowna, July 4, 2003 (A.7 & A.8)
5. Glenn Nicholls, CRA Team Leader, Kelowna, July 7, 2003 (A.7)
6. Penny Seeley, CRA Officer, Penticton, Sept. 21, 2004 (A.19 thru A.24)
7. Simone Zobatar, CRA officer, Penticton, June 1, 2005 (A.24)

8. Unknown CRA Officers, issued Landmark Oil & Gas Ltd. ("LOGL") a Requirement for Information, ("RFI") on Jan. 11, 2006 (per Oct. 2008, Prosecution s. 238 Charge Approval for four ("4") counts, ITA & ETA)
9. Jeff Orlik, CRA Workload Dev. Officer, Penticton, June 22, 2006 (A.30)
10. Denise Gauthier, CRA Officer, Penticton, Oct. 27, 2006 (A.24 & A.31)
11. Gwilym Walters, CRA Officer, Kelowna, Oct. 29, 2007 (A.32)
12. Arlene Bunce, CRA Team Leader, Feb. 4, 2008 (Memo to File)
13. Tim Gahagan, CRA Asst. Director, July 2, 2008 (Per multiple RFIs')
14. Darren Dingwall, CRA Officer, Aug. – Sept. 30, 2008 (Memo to File)
15. Brian Landry, CRA Officer, Affidavit Commissioner, Oct. 8, 2008 (Per multiple Affidavit's of Failure to Comply)
16. Phillip W. McCutchan, CRA Director, Oct. 17, 2008, (Per letter to DOJ Vancouver, "*We propose to lay two charges...*" which contradicts the four charges listed on each of the multiple Prosecution recommendations)
17. Christine N. Matthews, DOJ Lawyer, Dec. 12, 2008, (B.4) (Memo to File)
Walters is alleged to have falsified a Fax in the ATIP release, which purports that Matthews was assigned conduct of these multiple cases on Oct. 31, 2008, Fax "Sent to and From" is the same person, (B.53 & B.54), it is further alleged that Walters has changed the stamped date on the Fax to reflect DOJ Vancouver's true Fax number. In so doing, Walters is alleged to be rewriting the timeframe of Matthews involvement which the Memo to File, states: "*she said that she was in charge of working file, and wanted me to provide her a listing of information that I had received from the taxpayer, in order to determine clearly how the taxpayer has not complied with our request information.*" What was Matthews true involvement on these multiple cases for s. 238 penal charges? The ATIP

records are alleged to have been fraudulently altered to somehow pretend that Matthews matters were simply trying to get multiple Compliance Orders under s. 231.7 and not a s. 238 prosecution. At some point in time Matthews became aware of the alleged use of False Affidavits to create "*Reasonable grounds to believe...*" for the purposes of prior Judicial Authorization requirements for personal Banking records.

18. Annick Rocca, CRA Officer, Feb. 16, 2009, (B.5) (Memo to File)
19. Tom Jacobson, CRA Officer, Penticton, Mar. 30, 2009, (B.7) (Memo to File) Matthews alleged RFI do-over scheme, "*it was decided that it was best to serve the information personally...*"
20. Angelo Bertolas, CRA Officer, July 9, 2009, (Memo to File) Walters alleged Privacy breach request of Banking Specialist, "*as I was having problems getting requested information from bank in one of my files...*"
21. George F. Body, DOJ Lawyer, Edmonton, Oct. 9, 2009, Legal Advice sought by Stevenson to have Landmark Oil & Gas Ltd. ("LOGL") reinstated, if necessary, do to the fact that LOGL has been struck on March 31, 2009. Note TCC Justice Kathleen Lyons was DOJ Director in Edmonton prior to her appointment to the Tax Court of Canada.
22. Barbara Carlaw, CRA Complex Case and Resource Officer, Oct. 22, 2010, (A.50) Third Party Demand to Pay, GST \$201,583,19, Debtor: Preferred Choice Accounting Services Ltd., ("PCASL")
23. Andrea Jackett, DOJ Lawyer, Toronto, Aug. 10, 2012
24. Victor Caux, DOJ Lawyer, Vancouver, May 30, 2013
25. Whitney Dunn, DOJ Lawyer, Vancouver, June 12, 2013
26. Laura Zumpano, DOJ Lawyer, Vancouver, Sept. 11, 2013
27. Max Matas, DOJ Lawyer, Vancouver, May 13, 2014

TAX COURT OF CANADA (GENERAL PROCEDURE) RULES

Striking out a Pleading or other Document

- **53 (1)** The Court may, on its own initiative or on application by a party, strike out or expunge all or part of a pleading or other document with or without leave to amend, on the ground that the pleading or other document **(a)** may prejudice or delay the fair hearing of the appeal; **(b)** is scandalous, frivolous or vexatious; **(c)** is an abuse of the process of the Court; or **(d)** discloses no reasonable grounds for appeal or opposing the appeal.
- **(2)** No evidence is admissible on an application under paragraph (1)(d).
- **(3)** On application by the respondent, the Court may quash an appeal if **(a)** the Court has no jurisdiction over the subject matter of the appeal; **(b)** a condition precedent to instituting an appeal has not been met; or **(c)** the appellant is without legal capacity to commence or continue the proceeding.

OTHER MATERIAL RULES:

Setting Aside, Varying or Amending Accidental Errors in Judgments — General

- **172 (1)** A judgment that, **(a)** contains an error arising from an accidental slip or omission, or **(b)** requires amendment in any matter on which the Court did not adjudicate, may be amended by the Court on application or of its own motion.
- **(2)** A party who seeks to, **(a)** have a judgment set aside or varied on the ground of fraud or of facts arising or discovered after it was made, **(b)** suspend the operation of a judgment, or **(c)** obtain other relief than that originally directed, may make a motion for the relief claimed.

The GROUNDS FOR THE APPELLANTS' MOTION ARE:

- (a) The key decision-maker who issued the Confirmation of the (RE) Assessments in or about 2012, and thereby turned down each of the Appellants' Notices of Objection was not impartial, fair or in good faith, as a reasonable expectation by taxpayers. Cal Anderson was the Team Leader throughout this whole process, actively involved from the beginning on or about April 2001. (see Stanfield et al, 2004, 2005, RFI Charter breaches). Anderson's email on July 3, 2003 confirms his knowledge of s. 16(1)(c) ATIP Criminal Investigation which was written to Dennis Rau after speaking with the Appellants. Anderson approved Penalty Reports, Audit Reports, and Statute Barred breach for "Wilful Default" purposes sighted.
- (b) The Respondent's Rule 62 Factum (excerpts at A.56 thru A.58) under FACTS, para 3: "*In 2008, the CRA commenced an audit of the appellant's T2 returns...*" The Replies have asserted this to be the truth. In fact, the Appellants' allege that based upon Stanfield et al, 2004 and 2005, RFI Charter rights abuse confirmed, carrying out a

criminal investigation and quashing Questionnaires under the pretense of the predominant purpose of "Routine Audit" tools, the Courts confirm that on or about April 2001, the CCRA was engaged in a full-scale criminal investigation. The Appellants' were "green lighted" as so-called promoters or accountants under Stanfield by Gahagan, Anderson, Rau and others, which may include Gord Hartford, CRA Officer, Penticton, on or about April 2001. The alleged purposeful misrepresentation of the start date, per the Factum and other documents, is serious enough to call the CRA and DOJ to task for unnecessarily extending these proceedings.

- (c) Principles of Fundamental Justice and Fairness, Good Faith, Respect for Self-Assessment System of Taxation in Canada's free and democratic society.

OTHER MATERIAL INFORMATION (CASES FILED PREVIOUSLY)

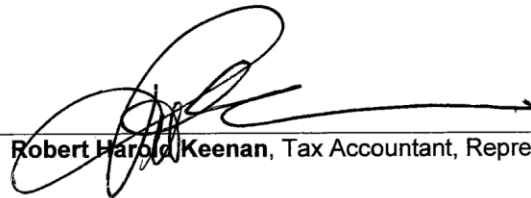
Application for judicial review

- **18.1 (1)** An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.
- **Powers of Federal Court**
 - (3) On an application for judicial review, the Federal Court may
 - (a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or
 - (b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.
- **Grounds of review**
 - (4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal
 - (a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
 - (b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
 - (c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;
 - (d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;
 - (e) acted, or failed to act, by reason of fraud or perjured evidence; or
 - (f) acted in any other way that was contrary to law.

THE MOTION IS FOR THE GRANTING OF AN ORDER OF THE COURT:

- (i) To Strike, Quash, Impugn or Invalidate, Void ab Initio, the Respondent's Replies (latest version) & Vacate the corresponding (RE)Assessments under Appeal, as per above;
- (ii) To order costs payable forthwith in favour of Robert H. Keenan, representative in a lump sum at the discretion of the Court;
- (iii) Any other direction that the Court considers appropriate.

DATED IN VANCOUVER, BC, this 28th day of May, 2019


Robert Harold Keenan, Tax Accountant, Representative

CITATION: 2019 TCC 259

COURT FILE NO.: 2012-2127(IT)G, 2012-2129(GST)G, 2012-2120(IT)G, 2012-2134(GST)G, 2012-2117(IT)G, 2012-2135(GST)G, 2012-2123(IT)G, 2012-2128(GST)G, 2012-2124(IT)G, 2012-2132(GST)G, 2012-2125(IT)G, 2012-2131(GST)G, 2012-2126(IT)G, 2012-2130(GST)G

STYLE OF CAUSE: ROBERT H. KEENAN, WILLIAM E. ADAMS, 640950 B.C. LTD., WORLD WIDE GOLF (CANADA) LTD., LANDMARK CAPITAL PARTNERS LTD., LANDMARK OIL & GAS LTD., PREFERRED CHOICE ACCOUNTING SERVICES LTD., AND THE QUEEN

PLACE OF HEARING: Ottawa, Canada

DATE OF HEARING: May 28, 2019

REASONS FOR ORDER BY: The Honourable Guy R. Smith

DATE OF ORDER: November 21, 2019

APPEARANCES:

Agent for the Appellants: Robert Harold Keenan
William E. Adams

Counsel for the Respondent: Max Matas
Victor Caux
Olinda Samuel

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

Nathalie G. Drouin
Deputy Attorney General of Canada
Ottawa, Canada