Docket: 2015-2197(IT)I

BETWEEN:

RYAN HUE,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on November 16, 2023, at Toronto, Ontario

Before: The Honourable Justice Gilles Renaud, Deputy Judge

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Robert Zsigo Mitchell Meraw

JUDGMENT

IN ACCORDANCE with the reasons for judgment delivered orally from the Bench, the appeal from the reassessment made under the *Income Tax Act* for the 2009 taxation year, is dismissed, without costs.

Signed at Toronto, Ontario, this 4th day of December 2023.

"Gilles Renaud"

Renaud D. J.

Citation: 2023 TCC 162
Date: 20231204
Docket: 2015-2197(IT)I

BETWEEN:

RYAN HUE,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Renaud D. J.

Introduction

[1] On November 16, 2023, when Appeal 2015-2197(IT)I was called by the Registrar, the Appellant submitted an oral application to adjourn the hearing of his Appeal. Mr. Hue explained that his lawyer had submitted a written application to adjourn his hearing and that to the best of his knowledge, the Chief Justice of the Tax Court of Canada had denied this Application on November 15, 2023. The Appellant did not provide a copy of whatever materials his lawyer submitted. Upon the denial of the application, his lawyer advised him to be present in Court at the time of the scheduled Appeal, and to renew this Application.

[2] It is of assistance to note that the Appellant retained this lawyer on Monday, November 13, 2023, in the evening. However, his newly retained lawyer could not be present on November 16, 2023, to represent him in support of this Application to adjourn.

[3] Counsel for the Respondent opposed the Application, submitting that the Appellant had waited far too long prior to seeking this adjournment.

[4] At the request of the Court, the matter was stood down to permit the Appellant to obtain a letter from his lawyer to clarify his retainer and his identity. A letter was presented and made an exhibit, but counsel could neither appear that morning.

[5] The Court set the matter down to permit research to be undertaken as neither party had advanced any authority on this issue, and to allow for appropriate consideration of the merits of the Application. On the resumption of the hearing, the Court dismissed the Application, with reasons to follow in order not to delay further the hearing of the matter, heard the Appeal and dismissed Mr. Hue's Appeal, with oral reasons being read from the Bench.

[6] Given the late hour, the Court indicated that written reasons would be provided before December 3, 2023. These are the written reasons.

A brief review of the case law on the merits of last-minute adjournment request

[7] I note that the cases are organized along thematic lines.

Broad, discretionary power

[8] The first judgment of interest that the Court located in the brief time available was penned by Chief Justice Rip, in the case of *Côté c. La Reine*, 2012 CCI 61, 2012 D.T.C. 1097:

> [5] C'est un lieu commun que de dire que la Cour canadienne de l'impôt a le contrôle plein et entier de sa procédure et de sa pratique. La décision d'accorder ou non un ajournement relève de la discrétion de la Cour. L'objet de la procédure informelle est d'accélérer l'audition des appels en faisant en sorte que tout se passe de la manière la plus expéditive et la plus simple possible, et les interrogatoires préalables sont extrêmement rares dans le cadre d'appels interjetés sous le régime de la procédure informelle.

[9] Noteworthy as well is the analysis of Pelletier J.A., for the Federal Court of Appeal in *Wagg v. Canada*, [2004] 1 F.C.R. 206, 2003 FCA 303:

> 19 It is trite law that the decision as to whether to grant an adjournment is a discretionary decision, which must be made fairly (see *Pierre v. Minister of Manpower and Immigration*, [1978] 2 F.C. 849 (C.A.), at page 851, cited with approval in *Prassad v. Canada* (*Minister of Employment and Immigration*), [1989] 1 S.C.R. 560, at page 569). There is no presumption that everyone is entitled to an adjournment. The Court will not interfere in the refusal to grant an adjournment unless there are exceptional circumstances (see *Siloch v. Canada* (*Minister of Employment and Immigration*) (1993), 10 Admin. L.R. (2d) 285 (F.C.A.)).

History of proceedings informs decisions touching adjournments

[10] Drawing attention away from the Court's inherent power and discretion to the history of the proceedings as they may inform subsequent decisions, Justice D'Auray began a judgment by stating: "[1] This appeal has a long history of delay occasioned by the appellant and his agent." See *Rhéaume v. The Queen*, 2012 TCC 67. Refer as well to *Katzenbach v. Canada*, 2007 TCC 693, [2007] T.C.J. No. 495, 2008 D.T.C. 215, at para. 24:

> "It is also important to note that in denying the motion, I was and am of the belief that the adjournment history of this matter simply does not warrant further delays. I am of the view that on the balance of probability, the ability of the Appellant to prosecute his appeal will not improve as years go by… 26 The adjournments requested by the Appellant have been sufficiently indulged by this Court. It is time to move forward and hear the evidence as best it can be brought forward today."

[11] No submission or fact noted by the Court indicates that this element is relevant.

Fairness as a touchstone in exercising discretion

[12] Further, Justice D'Auray added useful observations on the issue of fairness in adjudicating upon tax litigation in *Rhéaume v. The Queen*, 2012 TCC 67:

> [14] It was clear the appellant was not aware of what was going on with respect to his appeals. He did not have any documents. The appellant stated that he could not proceed without his agent, Mr. Kisondath, since he was his business partner and he was the one taking care of his tax affairs.
>
> [15] In light of this, I decided to grant an adjournment to ensure that the appellant had time to understand his case and to prepare accordingly.
>
> [Emphasis added]

[13] The Appellant did not suggest that he was unaware of his situation or of the status of the file as it was being moved forward towards his hearing date and he certainly presented his remarks with confidence. He is an eloquent and intelligent individual not struggling with issues relating to memory or other such impediments.

Respondent's position is not dispositive of decision to adjourn

[14] The case of *Rupolo v. Canada*, 2010 FCA 289, is also of great assistance in terms of the guidance it sets out about self-represented litigants. As we read at para. 2 to 5:

> SHARLOW J.A. (orally)

> 1 The appellant is appealing the judgment of Justice Woods of the Tax Court of Canada dismissing his tax appeal (2010 TCC 68). His appeal was dismissed because no case was presented for the appellant at the hearing. The appellant's representative had come to the hearing unprepared because he or the appellant, or both of them, assumed that the requested adjournment would be granted but it was not. The Crown had not opposed the request.
>
> 2 The appellant had also requested an adjournment two days before the hearing. The Crown did not oppose that request either but the Chief Justice denied it.
>
> 3 At the hearing, the appellant's representative explained that the request for adjournment was being renewed because he did not have the necessary information to present the appellant's case. However, no explanation was offered as to why the appellant had not sought the necessary information on a timely basis. The judge denied the request for adjournment essentially because of the lack of an explanation for the appellant's lack of diligence.
>
> 4 A judge is not obliged to accede to a party's request for an adjournment, even if the other party consents. Generally, once a matter is set down for hearing, the parties must be prepared to proceed at the scheduled time or risk losing their case. The decision of a trial judge to grant or deny an adjournment is discretionary. This Court will not intervene in the absence of an error of law or principle. [Emphasis added]
>
> 5 In this Court, the appellant appeared on his own behalf and explained that his problems were the result of various failures by his representatives to pursue his appeals with appropriate diligence. Unfortunately, that is not a basis upon which this Court can properly reverse the decision of the Tax Court judge. Having reviewed the record, we have been able to discern no error of law or principle that would justify appellate intervention.

[15] I pause to note that the trial judge observed: "12 … The Court has a duty to ensure the efficient operation of the judicial process. It is not sufficient for the parties to agree to an adjournment." See *Rupolo v. The Queen*, 2010 TCC 68.

[16] Several years earlier, the Federal Court of Appeal held, in *Paynter v. R.*, 1996 CanLII 21603 (Fed.), [1997] 1 C.T.C. 118, [1996] FCJ No 1416:

> 7 On the present hearing counsel for the respondent has not opposed the application for judicial review. She takes the position that the adjournment should have been granted because there are important issues involved in the appeals which may have widespread implications. She considers that the issues may be better addressed if the parties all have more preparation time. It is clear, however, that neither the Tax Court nor this Court is bound by the consent of all parties to an adjournment. [Footnote 1 reads: *Sidhu v. M.N.R.*, (1994) 176 N.R. 156, [1993] 2 C.T.C. 278, 93 D.T.C. 533, at 158 (N.R.).]

[17] In this instance, the Respondent opposed the Application to adjourn.

Legislative provisions and adjournments: s. 18.2 of the Tax Court of Canada Act – matters are not to be delayed without a compelling explanation and justification

[18] Noteworthy is this instruction of Justice Strayer in the Federal Court of Appeal held, in *Paynter v. R.*, 1996 CanLII 21603 (Fed.), [1997] 1 C.T.C. 118, [1996] FCJ No 1416:

> 8 The essential issues we most address arise out of section 18.2 of the T*ax Court of Canada Act* which provides as follows:
>
> > 18.2 (1) The Court shall adjourn the hearing of an appeal where, in the opinion of the Court, it would be impractical in all the circumstances to proceed on the day fixed for the hearing.
> >
> > (2) The Court may grant a request by a party to have the hearing of an appeal adjourned where the other partiesconsent thereto or where it would be appropriate to delay that hearing until judgment has been rendered in another case before the Court or before any other court in Canada in which the issue is the same or substantially the same as that raised in the appeal. R.S., 1985, c.51 (4th Supp.), s. 5.
>
> 9 With respect to subsection 18.2(1) we are being asked to determine that the learned Chief Judge was obliged to find that it would be "impractical" for the appeal to proceed on October 9, 1996. This appears to involve a question of law or of mixed law and fact. It must be kept in mind that the decision of the Tax Court addressed in the originating notice of motion is that of September 27, 1996, and in reviewing it we are limited to the facts as submitted to the learned Chief Judge at that time. It is clear from reading the transcript that the submission of counsel as to a hearing on October 9 being "impractical" was based solely on the fact that he had only been retained three days previously, presumably on September 24, 1996. No explanation was given for this untimely change of solicitors other than a bare statement that it "was necessary for the other lawyer to withdraw". He gave various reasons why it would be impossible for him to proceed, these being fairly common consequences flowing from such a short time for preparation. The learned Chief Judge said that the Court did not grant adjournments in informal proceedings except for "major reasons"
>
> > and the fact that you have received a mandate only three days ago … is not in the eyes of the Court a major reason.
>
> 10 Having regard to the fact that the Chief Judge was ruling extemporaneously and orally, we understand this to mean that the mere explanation that there has been a change of solicitor shortly before the hearing of an appeal does not of itself make "impractical" the hearing as scheduled. We do not understand the Chief Judge to be

> saying that a late change of solicitors could never render impractical the hearing, but that without some justification it could not be a determining factor. We are unable to say that such an interpretation of the term "impractical" is legally wrong. It obviously need not be interpreted to include every situation where a party has created the very problem causing him difficulties in proceeding. [Emphasis added]
>
> 11 With respect to the power to adjourn given to the Court in subsection 18.2(2) where, as here, the other party consents, we believe there is no basis for interfering with the exercise of the Chief Judge's discretion in refusing the adjournment. Again, he was being asked, in the proceeding now under review, to grant an adjournment for one reason: the unexplained and untimely change of solicitors and what logically flowed from that. We can see no wrong principle upon which he proceeded. He made specific reference to the approach of the Court to adjournments in informal proceedings and we consider this entirely appropriate. Section 18.2 which he was applying appears in that part of the Act dealing with the informal procedure. That procedure clearly contemplates expedition of process for taxpayers where small amounts are involved. It provides that a party may appear in person or by agent; that is, without lawyers (s.18.14) No special form of appeal is required (s.18.15). The times for the minister filing a reply, for the Court setting a date for the hearing, and for the rendering of judgment are all prescribed by the statute (ss.18.16, 18.17, 18.22). These provisions make it clear that such appeals are not intended to move along at any leisurely pace chosen by the parties but are normally to be heard and disposed of in a quick and orderly fashion. This in our view not only colours the meaning to be given to the word "impractical" in subsection 18.2(1) but indicates also the scope of the discretion given to the Court under subsection 18.2(2) to refuse adjournments even where counsel all consent. [Emphasis added]

[19] The application for judicial review was dismissed.

Self-represented litigants

[20] The Federal Court of Canada considered this question in *Dionne v. Canada*, 2003 D.T.C. 576, 2003 FCA 451. I think it wise to reproduce these paragraphs:

> 7 The Applicant is asking the Court, by way of judicial review, to set aside the judgment on the ground that his right to a fair hearing was breached. He claims, and here I quote paragraph 15 of his affidavit, that:
>
> > [TRANSLATION] The judge of the Tax Court of Canada, seeing that I did not understand how the court operated, should have postponed the hearing and allowed me to have access to a lawyer and/or a certified accountant so that I could come back to this court and start over with appropriate arguments.

> 8 The Applicant is basically bidding this Court to decide that a judge of the Tax Court of Canada has the obligation, according to the principles of natural justice, to adjourn a hearing of his or her own initiative as soon as a taxpayer who has elected not to be represented realizes that he would undoubtedly have been better off if he had retained the services of a lawyer.
>
> 9 This proposition is untenable. Litigants who elect to act as their own counsel do so at their own risk. To use the words of Pelletier J.A. in *Wagg v. Canada (Attorney General)*, 2003 FCA 303, at paragraph 25, "litigants who choose to represent themselves must accept the consequences of their choice." If a judge is free to refuse a request for adjournment (see *Schurman v. The Queen*, 2003 FCA 393), it only stands to reason that he himself is not bound to offer a litigant the opportunity for an adjournment to enable the litigant to "start over" with the case. [Emphasis added]
>
> 10 It is certain, as Pelletier J.A. indicates at paragraph 24 of his reasons in *Wagg*, that the trial judge "must be governed by considerations of fairness" if it becomes "patently obvious" that the litigant does not understand "the subject matter sufficiently to be able to proceed" and that he can then suspend or adjourn the hearing. This, however, is a matter of discretion and nothing here would indicate that the trial judge exercised his discretion in a manner that calls for our intervention.

Administrative requirements of the Court system

[21] Justice Décary of the Federal Court of Appeal quoted from *Wagg v. Canada (Attorney General)*, 2003 FCA 303, as follows, in *Schurman v. Canada*, 2003 FCA 393, at para. 6:

> …
>
> [26] While the administrative requirements of the Court system cannot be allowed to stand in the way of a fair hearing, they are not irrelevant considerations when it comes to deciding what is reasonable in the circumstances. It is not in the interests of justice to have judges idle and courtrooms empty so as to permit litigants to do that which they were bound to do before their case was called. This can only lead to delays in deciding cases which are before the Court, lengthens the time that other litigants must wait for their court date, and adds to the cost of operating the court system.

[22] I hasten to add that Justice Décary went on to state:

> 7 The following words of Hugessen J.A. in *Adams v. Canada* (*Royal Canadian Mounted Police*), (1994) 174 N.R. 314 (F.C.A.) are remarkably appropriate in the case at bar:

> The day has passed when courts could allow to litigants the luxury of being at their beck and call. Courts are public institutions for the resolution of disputes and cost substantial pubic money. Court congestion and delay is a serious public concern. Parties who launch proceedings at any level with the intention of putting them in a "holding pattern" for their own private purposes may be called to account for their waste and abuse of a public resource. They also risk having those proceedings dismissed. (p. 317, 318).

[23] Bowie J. penned several remarks in this vein in *Solomons v. Canada*, 2003 CanLII 604, [2003] 2 C.T.C. 2268:

> 5 Some adjournments are necessary in the interests of justice by reason of factors that cannot be either predicted or prevented. People become ill; witnesses are justifiably unavailable; other litigation may prevent parties or counsel from being available at the time fixed. However, this is not such a case. I understand that there may have been some settlement negotiations that continued until late last week. That often happens, but it is up to litigants, and their counsel, to be prepared to proceed with cases on the dates that have been fixed. It is a great convenience to counsel and to the parties that this Court fixes dates for trial months in advance; they do not have to be available for trial on short notice, as is the case in some other Courts. That convenience comes at a price, however; they must do what is required in order to be ready on the day fixed. Litigants who decide to conduct their own cases without counsel, hoping to achieve a settlement before trial, run the risk that they will have to proceed to trial without counsel. They cannot expect that the Court will grant them an adjournment, and thereby waste the resources of the Court for the time that has been allotted to the matter, because their settlement discussions have failed. This Court has a significant backlog of informal appeals that are waiting to have dates fixed for hearing in Toronto. Three or four of them could be disposed of in every day that goes to waste. The reason advanced by the Appellant for seeking an adjournment of this trial does not weigh very heavily in the balance, compared to the public interest in efficient use of Court resources, including providing hearings to the Appellants in the backlog of informal cases… [Emphasis added]

Conclusion

[24] This review of the cases leads to the conclusion that in many instances, the parties are held to a very strict duty to take appropriate steps in the time they possess to prepare fully and a lack of understanding resulting from inadequate care in preparation, or in failing to seek assistance early on, will be viewed rather critically. In this instance, there is no justification for the adjournment and to permit the Appellant to invoke his lack of care over the past several months as a justification would result in rewarding a litigant who failed to put his or best foot forward in a timely fashion.

[25] Costs were not sought by the Respondent, and accordingly, in light of the result, each party will bear their own costs

Signed at Toronto, Ontario, this 4th day of December 2023.

"Gilles Renaud"

Renaud D. J.

CITATION:	2023 TCC 162
COURT FILE NO.:	2015-2197(IT)I
STYLE OF CAUSE:	RYAN HUE AND HIS MAJESTY THE KING
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	November 16, 2023
REASONS FOR JUDGMENT BY:	The Honourable Justice Gilles Renaud, Deputy Judge
DATE OF JUDGMENT:	December 4, 2023

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Robert Zsigo Mitchell Meraw

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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