

Dockets: 2023-345(IT)G
2023-61(IT)G

BETWEEN:

AMY WASHINGTON,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

Dockets: 2023-348(IT)G
2023-62(IT)G

AND BETWEEN:

EDISON WASHINGTON,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Status Hearing and Motion heard on May 5, 2025
at Vancouver, British Columbia

Before: The Honourable Justice Edward (Ted) Cook

Appearances:

Counsel for the Appellant: Richard B. Wong
Tyler Berg

Counsel for the Respondent: Cindy Mah
Kristina Mansveld

ORDER

UPON conducting a status hearing;

AND UPON motion made by the Respondent for security for costs; and,

In accordance with the attached Reasons for Order:

THIS COURT ORDERS THAT:

- The parties are no longer required to comply with paragraphs 2, 3 and 4 of the litigation timetable order dated July 29, 2024.
- The Appellants shall both be made available at Vancouver, British Columbia for examinations for discovery.
- The parties shall complete examinations for discovery on or before December 31, 2025.
- A party that has provided undertakings at an examination for discovery shall satisfy those undertakings on or before February 27, 2026.
- On or before March 31, 2026, the parties shall file one of the following with the Court:
 - a joint application to fix a time and place for the hearing using Form 123;
 - a letter requesting a settlement conference (refer to Practice Note 21); or,
 - a letter confirming that the appeal will settle and the anticipated date of settlement.
- The Appellants shall jointly pay \$35,000 into the Court as security for costs no later than 30 days after the date of this order.

- The Respondent is awarded \$700 in costs for its motion, payable in any event of the cause.

Signed on this 22nd day of July 2025.

“Ted Cook”

Cook J.

Citation: 2025 TCC 97
Date: 2025/07/22
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Dockets: 2023-348(IT)G
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AND BETWEEN:

EDISON WASHINGTON,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Cook J.

[1] The Respondent requested this status hearing. The examinations for discovery of the Appellants were originally scheduled to take place in June 2024, but they could not proceed because the Appellants, Amy Washington and Edison Washington, were in China. Since April 2024, an order has prohibited the Appellants from leaving China due to their suspected involvement in an offence (i.e., contract fraud).

[2] Previous timetable orders for these appeals were amended on March 15, 2024 and July 29, 2024. The most recent amended timetable order required examinations

for discovery to be completed by December 27, 2024. This was not done because of the prohibition on the Appellants from leaving China.

[3] Appellants' counsel successfully contacted the Appellants shortly before this status hearing but was unable to receive instructions. As well, the Appellants did not provide any indication as to when the prohibition might end.

[4] Given the lack of clarity as to when the prohibition might end and to ensure that these appeals are dealt with in a reasonably timely fashion, my order provides that the Appellants must both be made available in Vancouver, British Columbia for examinations for discovery to be completed on or before December 31, 2025. Any related undertakings must be satisfied on or before February 27, 2026.

[5] The Respondent also requested that my order provide that the Respondent may make a motion for dismissal for failure to prosecute should the Appellants not be available for examinations for discovery. In my view, it is unnecessary to include that in my order because the Respondent may, of its own volition, make a motion under section 64 of the *Tax Court of Canada Rules (General Procedure)* ("Rules").

[6] In addition, by March 31, 2026, the parties must file with the Court a joint application to fix a time and place for a hearing, a letter requesting a settlement conference or a letter confirming that the appeal will settle.

[7] The Respondent also made a motion for security for costs in the amount of \$35,000. Section 160 of the Rules states:

[w]here it appears that the appellant is resident outside of Canada, the Court on application by the respondent may give such direction regarding security for costs as is just.

[8] There are two mandatory conditions before the Court may exercise its discretion to require security for costs. The first condition deals with the residency of the Appellants – that is, it must appear that the Appellants are resident outside of Canada. Appellants' counsel submits that the Appellants are resident in Canada. It is just that they are currently prohibited from leaving China. They intend to return to Canada. As well, the Appellants pleaded in their notices of appeal that they are residents of Canada.

[9] I do not need to make a definitive determination of the residency of the Appellants. Instead, I need only determine if the Appellants “appear” to be resident outside of Canada. The Appellants have been prohibited from leaving China since April 2024. They have not been in Canada in over a year. Moreover, no evidence was provided to the Court relating to the types of connections, such as housing and relatives, that the Appellants currently have with Canada. Consequently, I find that it appears that the Appellants are resident outside of Canada.

[10] The second mandatory condition is that the Respondent has filed a reply (see section 161 of the Rules). That has been done for all four appeals.

[11] Several of the criteria that the Court might consider in determining whether to exercise its discretion are set out in *Sweetman v The Queen*, 2020 TCC 36. Since neither party spoke to the likelihood of success for the Appellants, I did not consider it as a criterion. Of the criteria used in *Sweetman*, the following are relevant in this instance:

- a. the Respondent’s ability to enforce a costs award;
- b. the Appellants’ ability to pay; and,
- c. the reasonableness of the costs estimate.

[12] I accept that there is a legitimate concern as to whether the Respondent would be able to enforce an order for costs. There is nothing in the record to suggest that it would not be difficult to enforce a costs award. The Appellants are currently prohibited from leaving China and there is no indication as to when that prohibition might end or what assets the Appellants have available in Canada to satisfy an order for costs.

[13] Regarding the Appellants ability to pay security for costs, Appellants’ counsel stated that the Appellants had indicated that they do not have the funds to pay security for costs. However, no evidence was presented to support the contention that the Appellants are impecunious.

[14] With respect to the reasonableness of the requested costs, the total estimated costs were calculated in accordance with the Tariff and the only thing that the

Appellants pointed out was that the Respondent had an excess amount for the fee allowable for second counsel. Even taking that adjustment into account, the costs sought by the Respondent are less than the Respondent's total estimated costs. Therefore, I accept the requested costs of \$35,000 as being reasonable.

[15] Appellants' counsel had no instructions from the Appellants regarding the timing of the payment of security for costs or the form of security. Therefore, I see no reason not to require payment into Court no later than 30 days after the date of my order. Given the Respondent's success in this motion, I award \$700 in costs to the Respondent, payable in any event of the cause.

Disposition

[16] The Appellants must both be made available in Vancouver, British Columbia for examinations for discovery to be completed on or before December 31, 2025. Any related undertakings must be satisfied on or before February 27, 2026. The parties must report to the Court by March 31, 2026.

[17] The Respondent's motion is granted. The Appellants shall jointly pay \$35,000 into the Court as security for costs no later than 30 days after the date of this order.

[18] The Respondent is awarded \$700 in costs for its motion, payable in any event of the cause.

Motion granted, with costs.

Signed on this 22nd day of July 2025.

"Ted Cook"

Cook J.

CITATION:	2025 TCC 97
COURT FILE NOS.:	2023-345(IT)G 2023-61(IT)G 2023-348(IT)G 2023-62(IT)G
STYLE OF CAUSE:	AMY WASHINGTON AND HIS MAJESTY THE KING EDISON WASHINGTON AND HIS MAJESTY THE KING
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	May 5, 2025
REASONS FOR ORDER BY:	The Honourable Justice Edward (Ted) Cook
DATE OF ORDER:	July 22, 2025
APPEARANCES:	
Counsel for the Appellant:	Richard B. Wong Tyler Berg
Counsel for the Respondent:	Cindy Mah Kristina Mansveld
COUNSEL OF RECORD:	
For the Respondent:	Shalene Curtis-Micallef Deputy Attorney General of Canada Ottawa, Canada