

Tax Court of Canada



Ottawa, Canada
K1A 0K1

Cour canadienne de l'impôt

The Honourable Eugene H. Rossiter
Chief Justice

L'honorable Eugene H. Rossiter
Juge en chef

June 24, 2020

Christopher Mostovac
President Comité de liaison avec la CCI

Dear Mr. Mostovac:

Further to our discussion last week, enclosed are the points reviewed and that you asked for.

Thank you.


Eugene H. Rossiter
Chief Justice


Lucie Lamarre
Associate Chief Justice

Encl.

The following is a summary of some of the information provided to the Barreau de Montreal at a conference call meeting on June 18, 2020 by Chief Justice Eugene P. Rossiter.

The decisions referred to herein in terms of judicial administration were as of June 18, 2020 and are subject to change depending upon the circumstances as the situation progresses with respect to dealing with the COVID-19 pandemic.

1. There will be two (2) Duty Judges weekly in the Tax Court of Canada until the New Year, one bilingual and one unilingual in order to deal with the backlog.
2. Additional sitting weeks will be added to the docket from September to December, 2020 and longer if necessary to deal with the backlog.
3. Sittings for the immediate future to at least the New Year will be limited to the largest volume centers:

Vancouver
Calgary
Edmonton
Toronto
Hamilton
Ottawa
Montreal
Quebec City
Halifax.

Every sitting week is subject to courtroom availability. The biggest facility in terms of sitting space is Toronto. If necessary, parties will be offered other sites in one of the locations named above to have their trial by way of consent if facilities are not otherwise available in their preferred location.

4. Scheduling for Judges will involve back-to-back sittings and if necessary, three (3) to four (4) weeks in a row.
5. Sittings will take place throughout the entire summer. There is no Court closure from July 15th to August 15th however, there is a requirement that there be sufficient staff back to work in order to schedule and operate the sittings.

6. Sittings will take priority over all planned holidays, judicial, staff, parties, counsel and litigants.
7. When sittings resume, in doing the schedule, the following will be the priority:
 - a) hearings already commenced will continue;
 - b) Generals adjourned during the closure in the order in which they were adjourned;
 - c) Generals preferably over Informals;
 - d) Informals dealing with independent contractor versus employee; child tax benefits; GST credits; R&D investment tax credits; disability tax credits will be given priority;
 - e) availability of the counsel or the litigants will not be a priority except in exceptional circumstances. The time for getting a mutually convenient date has passed until we get through the crisis and the backlog that has built up.
8. Motion dates will be suspended. Motions will be heard in writing with consent of the parties. If the parties do not consent to the motion being dealt with in writing, then the motion will be put in the queue for hearing.
9. A list of all case management conferences, pre-trial conferences, conference calls, status hearings etc that have been adjourned will be provided to each Judge and when the Court resumes operations the Judge will be responsible for scheduling the calls immediately.
10. Judges are working on their reserves and when JA staff returns reserves will be the priority so that Judgments may be rendered and sent out to the litigants with the oldest reserves being dealt with first.
11. Practice Directions and Notices to the Public and Profession will continue to be posted and be as informative as possible.

12. Expect amendments to the *Income Tax Act* and the *Excise Tax Act* plus possibly other statutes of which the Tax Court of Canada has jurisdiction which may adjust some hard deadlines contained in the applicable statutes.

13. Assignment of sittings. Sittings will be assigned to the Judges to effect the least possible travel. The Court will be divided until the New Year to four (4) regions:

West: Vancouver, Calgary and Edmonton
Central: Toronto, Hamilton and Ottawa
Quebec: Montreal, Quebec City and Ottawa
East: Halifax

14. Procedures for handling prior to trial of exhibits and documents during the trials will be provided by the Court when it resumes sittings. The guidelines may have to be adjusted but we will just have to wait and see how they work for real in the interest of health and safety for all attendees.

15. All courtrooms will be reconfigured for protection of the health and safety of all and will include plexiglass screens and a variety of other courtroom aspects.

16. In the future, the Court will hold videoconferences and virtual hearings when possible for case management conferences, pre-trial conferences, status hearings, applications and motions without witnesses, if the parties want to be heard as opposed to in writing. If witnesses are required, the hearings will be in person.

17. The Tax Court of Canada will aggressively move forward to digitizing all active files and hopefully this will be done within a period of six (6) to eight (8) months.

18. The timelines with respect to the return to operations is as follows:

- a) On June 22, 2020, some staff will begin to return to the Tax Court of Canada. This will include the Chief Justice Chambers staff, law clerks, jurilinguists, JAs and some staff in the Registry representing approximately 25% of all staff for the Tax Court of Canada.

- b) During the two-week period commencing June 22, 2020, the registry staff will enter into the ASP system all file materials that have not been entered since March 16, 2020 to bring the active files totally up-to-date.
- c) On July 6, 2020 and for the two-week period thereafter, the Hearing Coordinators will, on the basis of the priorities referred to earlier, load up the sittings weeks which will commence July 20, 2020 and onward through to October 1, 2020.

19. There will be new sitting weeks added to the docket from July 20, 2020 through to October 1, 2020 during the period which would normally be the summer break but also additional sittings. From July 20, 2020 to the end of September, 2020 sittings not already in existence will be loaded up as soon as possible on the basis previously mentioned.

20. All sittings in major centers already set, assigned and loaded will not be changed or altered.

21. In terms of exhibits for General trials, the parties will be required to file with the Court, at least 7 days prior to the date of hearing, four (4) copies of all their exhibits, indexed, paginated and bound. For Informals, there will be two (2) Informals scheduled daily, one commencing at 9:30, one commencing at 1:30. For the trial to commence at 9:30, the litigants will have to attend Court at 8:00 a.m., provide to the registrar of the Court the exhibits they wish to introduce at trial, the registrar will then make copies sufficient for the parties and the witnesses etc so that they will be available for the parties at 9:30 a.m. or in the case of the 1:30 trial, they will have to be in attendance at the Court by 12:00 noon for the same purpose.

22. Court protocols and procedures for when litigants, counsel, witnesses come to Court will be put on the Tax Court of Canada website. These protocols and procedures will deal with social distancing, personal protective equipment and the like.

23. The Court will be offering a Fast-Track Settlement Conference, particulars of which are attached.

24. If parties want some other venue for their trial because facilities may not be available in their particular location, they are to advise the Court and we will attempt to ensure that their trial is heard in the venue desired as soon as possible.

APPENDIX

The following are the basic concepts with respect to Fast-Track Settlement Conferences.

1. The parties would jointly present to the Court, in written form, a brief request for settlement conference. The brief would contain reference to the pleadings; the key issues; what is the key issue of concern and the parties' position with respect to each issue plus a brief summary of why that is the parties' position. The amount of tax at issue should also be referenced. The parties would both sign the brief which is addressed to the Chief Justice and the Associate Chief Justice in the language that the conference is desired to be held in.
2. The Fast-Track Settlement Conferences would be available in Montreal, Toronto and Vancouver.
3. The appeal would be assigned to one of the handful of Judges picked to do these types of conferences in these special circumstances.
4. The Judge would review the brief, the entire file and focus on the issues outstanding and determine if he or she feels the appeal is appropriate at that time for the settlement conference process. The Judge that is assigned may talk to the parties, if he or she feels necessary, before making a determination if the file is appropriate for this process. If the file is not appropriate for the process at this time, then the parties will be so advised.
5. If the appeal is to proceed in this settlement process, then it will be handled by that Judge and conference dates for the settlement conference will be fixed as soon as possible and the parties notified – no date shopping.
6. The Judge may contact the parties separately by telephone similar to a breakout session in a settlement conference to discuss the file and other matters as to how the Judge wishes to proceed in terms of a brief, settlement preparation and who must attend etc.

7. The Judge would prepare for the settlement conference in his or her own manner including bringing all necessary research to the table.
8. The settlement conference Judge would not be the trial Judge.