

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20200127**

**Dockets: A-81-19 (lead), A-82-19, A-412-19,  
A-80-19, A-83-19 A-411-19**

**Citation: 2020 FCA 27**

**CORAM: NADON J.A.  
WEBB J.A.  
BOIVIN J.A.**

**Dockets: A-81-19  
A-82-19  
A-412-19**

**BETWEEN:**

**PIYUSH PATEL**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

**AND**

**Dockets: A-80-19  
A-83-19  
A-411-19**

**BETWEEN:**

**PAUL BENNINGER**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Ottawa, Ontario, on January 27, 2020.

Judgment delivered from the Bench at Ottawa, Ontario, on January 27, 2020.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20200127**

**Dockets: A-81-19 (lead), A-82-19, A-412-19,  
A-80-19, A-83-19, A-411-19**

**Citation: 2020 FCA 27**

**CORAM: NADON J.A.  
WEBB J.A.  
BOIVIN J.A.**

**Dockets: A-81-19  
A-82-19  
A-412-19**

**BETWEEN:**

**PIYUSH PATEL**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

**AND**

**Dockets: A-81-19  
A-82-19  
A-411-19**

**BETWEEN:**

**PAUL BENNINGER**

**Appellant**

and

**HER MAJESTY THE QUEEN**

**Respondent**

**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Ottawa, Ontario, on January 27, 2020).**

**NADON J.A.**

[1] We are all agreed that the Tax Court of Canada’s judge (the Judge) erred in concluding that subsection 171(2) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Suppl.) (the Act), “cannot be applied to the appeal of Mr. Patel and Benninger...” (Transcript of oral reasons, February 15, 2019 in files (2016-4750 (IT) G, 2016-4571 (IT) G, AB, Tab 6, p. 27).

[2] In our view, the provision clearly allowed the judge, if he was so inclined in the exercise of his discretion, to give effect to the parties’ request to bifurcate the issues, as per their letter to the Tax Court of November 19, 2018.

[3] We also wish to say that considering that subsection 171(2) of the Act is applicable and thus not a bar to the parties’ request, the fact that the parties are in agreement with respect to the manner in which their tax appeals should proceed, is a highly relevant, although not determinative, consideration in the exercise of the discretion to allow or not the parties’ request.

[4] The appeals will therefore be allowed, the Tax Court of Canada's decision of February 18, 2019, as amended by his Order of October 24, 2019, will be set aside and the matter will be returned to the Judge for reconsideration of the parties' request in the light of these reasons;

[5] Copy of these reasons will be filed also in appeals A-82-19, A-412-19, A-80-19, A-83-19 and A-411-19 as reasons therein.

"M. Nadon"

---

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKETS:** A-81-19 (lead), A-82-19, A-412-19,  
A-80-19, A-83-19, A-411-19

**DOCKETS:** A-81-19  
A-82-19  
A-412-19

**STYLE OF CAUSE:** PIYUSH PATEL v. HER  
MAJESTY THE QUEEN

**DOCKETS:** A-80-19  
A-83-19  
A-411-19

**STYLE OF CAUSE:** PAUL BENNINGER v. HER  
MAJESTY THE QUEEN

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** JANUARY 27, 2020

**REASONS FOR JUDGMENT OF THE COURT BY:** NADON J.A.  
WEBB J.A.  
BOIVIN J.A.

**DELIVERED FROM THE BENCH BY:** NADON J.A.

**APPEARANCES:**

Gordon Bourgard  
Kristen Duerhammer

FOR THE APPELLANTS  
PIYUSH PATEL AND  
PAUL BENNINGER

Natalie Goulard  
Simon Vincent

FOR THE RESPONDENT  
HER MAJESTY THE QUEEN

**SOLICITORS OF RECORD:**

KPMG Law LLP

FOR THE APPELLANTS

Toronto, Ontario

PIYUSH PATEL AND PAUL  
BENNINGER

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

FOR THE RESPONDENT  
HER MAJESTY THE QUEEN