Docket: 2014-1619(IT)G

BETWEEN:

J. GORDON A. IRONSIDE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on May 6, 2015 at Calgary, Alberta

Before: The Honourable Justice Diane Campbell

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Donna Tomljanovic

ORDER

UPON motion by the Respondent for an Order pursuant to Rule 58 of the *Tax Court of Canada Rules (General Procedure)* seeking the following relief:

1. Directing that the following question of law be determined before the hearing:

> Whether the Appellant is barred from litigating within proceeding 2014-1619(IT)G whether the legal and professional fees paid to defend himself in Alberta Securities Commission proceedings and the subsequent appeal are deductible as amounts incurred to gain or produce income from a business or property, on the basis that the characterization of such fees has been previously adjudicated upon and therefore the doctrines of issue estoppel and or abuse of process operate to bar re-litigation of the issue. (the "Question").

2. Directing that the evidence in respect of the determination on the Question consist of:

(a) the pleadings in Tax Court file 2009-2421(IT)G;

(b) the Tax Court of Canada's Judgment and Reasons for Judgment in *Ironside v R.*, 2013 TCC 339, 2014 DTC 1002, in respect of Tax Court file 2009-2421(IT)G;

(c) the pleadings in Tax Court file 2014-1619(IT)G; and

(d) such further and other material as counsel may advise and this Honourable Court may allow.

3. Providing direction with respect to:

(a) fixing time limits for the service and filing of facta consisting of concise statements of fact and law related to the Question to be determined;

(b) fixing the time and place for the hearing of the Question to be determined; and

(c) any other direction that the Court considers appropriate.

(Respondent's Notice of Motion)

AND UPON reading the materials and hearing the submissions of the parties;

THIS COURT ORDERS THAT:

The Question is set down for determination by a motions judge, for a duration of one day, commencing at 9:30 a.m. on September 3, 2015 at the Tax Court of Canada, Canadian Occidental Tower, 3rd Floor, 635 8th Avenue SW, Calgary, Alberta.

The evidence to be presented at the hearing shall include, but not be limited to:

(a) the pleadings in Tax Court file 2009-2421(IT)G;

(b) the pleadings in Tax Court file 2014-1619(IT)G; and

(c) the Tax Court's decision in *Ironside v The Queen*, 2013 TCC 339, 2014 DTC 1002.

The Respondent's factum shall be filed and served 30 days prior to the scheduled hearing date. The Appellant's factum shall be filed and served 15 days prior to the scheduled hearing date. The Respondent's reply to the Appellant's factum, if any, shall be filed and served 7 days prior to the scheduled hearing.

The Order of Justice Favreau, dated January 8, 2015, is vacated. The parties shall communicate with the Hearings Coordinator within 10 days of the motion judge's reasons being issued in the determination of the Respondent's question, for the purpose of establishing a new timetable for completion of any remaining steps in the litigation.

The issue of costs will be left to the discretion of the motions judge who will be hearing the determination of the Question.

Signed at Ottawa, Canada, this 8th day of May 2015.

"Diane Campbell"

Campbell J.

Citation: 2015 TCC 116
Date: 20150508
Docket: 2014-1619(IT)G

BETWEEN:

J. GORDON A. IRONSIDE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Campbell J.

[1] This is the Respondent's motion requesting an Order pursuant to Rule 58(1)(a) of the *Tax Court of Canada Rules (General Procedure)* (the "*Rules*") for a determination of a question, prior to the hearing of the appeals, which the Respondent contends will dispose of a substantial portion of the proceedings, thereby shortening the litigation process and saving costs.

[2] Rule 58 is a two-stage process. This application is the first stage, in which I must determine whether the question posed by the Respondent is an appropriate one that should be heard in a subsequent determination hearing. That is the second stage of the two-step process under Rule 58.

[3] By way of brief background, the Appellant filed his Notice of Appeal with the Court on May 9, 2014 with respect to his 2007, 2008 and 2009 taxation years. He frames his issues as follows:

> 1. Whether or not the legal and consulting fees incurred by the Taxpayer in relation to the Sanctions Decision and the Appeal are amounts incurred to gain or produce income from a business or property in the taxation year 2007 and 2008,
>
> 2. Whether the non-capital losses should have been deductible in calculation (*sic*) the Taxpayer's taxable income in 2009,

> 3. Whether the costs incurred to dispute prior reassessments are deductible in calculating the Taxpayer's income in 2007 and 2008 taxation years, and
>
> 4. Whether the Reassessments, or some of them, are statute-barred in whole or in part.
>
> (Notice of Appeal, page 4)

[4] The Respondent filed its Reply to the Notice of Appeal on July 31, 2014 and, in that Reply, the first issue raised is whether "the appeal or a portion of it is barred by application of the doctrine of issue estoppel or is otherwise an abuse of the process of the Court". The Respondent contends that the Appellant is barred by the doctrine of issue estoppel from re-litigating the question of whether the legal and professional fees paid by the Appellant to defend himself in connection with the Alberta Securities Commission are deductible as expenses. The Respondent contends that 95 percent of the issues that the Appellant intends to put before the Court are a duplication of the facts and issues that were dealt with in a prior decision of this Court in respect to appeal number 2009-2421(IT)G. That proceeding was before me and I issued those reasons on October 25, 2013. The issue was described by the Appellant, in that Notice of Appeal, in the following manner:

> 1. Whether or not the legal and consulting fees incurred by the Taxpayer in defending the claims and allegations of the ASC [Alberta Securities Commission] are amounts incurred to gain or produce income from a business or property in the taxation years 2003 and 2004;
>
> (Notice of Appeal, page 6, appeal number 2009-2421(IT)G)

I dismissed the appeal and concluded, at paragraph 45,

> [45] … that the legal and professional fees, that the Appellant paid in defending himself against allegations before the Alberta Securities Commission, were not incurred to gain or produce income from his chartered accounting business. Instead, the expenses were a direct resulting consequence of his position that he held as an officer and employee of BRCC. …
>
> (*Gordon Ironside v The Queen*, 2013 TCC 339)

I went on to conclude that the expenses were personal in nature, having been incurred to protect his reputation within the oil and gas industry, where he focussed his business activities. That decision was not appealed.

[5] The Respondent, in this motion, argues that the Appellant is attempting to re-litigate the characterization of the legal and consulting fees, which were in issue in the prior appeals and, consequently, it proposes that the following is a proper question of law that should be determined before the hearing of the present appeal:

> Whether the Appellant is barred from litigating within proceeding 2014-1619(IT)G whether the legal and professional fees paid to defend himself in Alberta Securities Commission proceedings and the subsequent appeal are deductible as amounts incurred to gain or produce income from a business or property, on the basis that the characterization of such fees has been previously adjudicated upon and therefore the doctrines of issue estoppel and or abuse of process operate to bar re-litigation of the issue. (the "Question").
>
> (Respondent's Notice of Motion)

[6] Rule 58 of the *Rules* provides, in part, that the Court may grant an Order that a question be determined prior to a hearing if it appears that the determination of that question may dispose of all or part of the proceeding, substantially shorten the hearing or result in a substantial saving of costs.

[7] At the first stage of this process, which is the proceeding that is before me today, in order to conclude that the Respondent's proposed question is a suitable one for determination, I must be satisfied that three elements exist:

1. that the question proposed by the Respondent is a question of law, fact or mixed law and fact;

2. that the Respondent has raised the proposed question in the pleadings; and

3. that a determination of the proposed question "may" (not "will" as the Respondent stated at paragraph 12 of its motion materials) dispose of all or part of the appeal, may substantially shorten the hearing or may result in a substantial cost saving.

[8] If I answer "yes" to all three of these elements, then I "may" set a hearing of the proposed question before a motions judge prior to a hearing of the appeal.

[9] It is abundantly clear that all three elements are satisfied. First, the question centers around the doctrine of issue estoppel and/or abuse of process involving issues and facts that were before this Court in a prior appeal. This is a question of law, or perhaps to a lesser extent one of mixed fact and law, but nevertheless it satisfies the first criterion. Second, the question has also been raised in the pleadings. It is the first issue raised by the Respondent and is further addressed in a number of paragraphs under the heading "GROUNDS RELIED ON AND RELIEF SOUGHT". Finally, the third criterion is also satisfied. The pleadings highlight this question as a central one to the appeals and, clearly, one that may have the potential to dispose of a substantial portion of the proceedings which would result in a shorter hearing and a cost savings.

[10] The Appellant argued that the facts are different, that there are different taxation years at issue in the present appeals and that the costs relating to legal and accounting costs in the preparation and the conduct of the prior hearing are additional amounts incurred subsequent to the reasons rendered in the prior hearing.

[11] The Respondent pointed out that paragraph 32 of the Reply to the Notice of Appeal contains the Crown's admission that, pursuant to subsection 60(o) of the *Income Tax Act*, to the extent that any of the claimed expense amounts were incurred in the years at issue in respect to fees relating to the objection or the appeal process, those amounts would be deductible. If a motions judge, in a determination of this question, concludes that issue estoppel applies because the same facts and issues are being re-litigated, that decision will apply to subsequent taxation years. It is apparent on the face of both the Notice of Appeal and the Reply that there is a potential issue respecting issue estoppel and abuse of the Court's processes.

[12] Clearly, there is the potential that a determination of this question may, according to the materials I have before me and the submissions I heard, dispose of part of the appeal and I need only be satisfied that it "may" so dispose of some of the appeal. I do not have to be absolutely convinced that it will do so in order to refer the question to a Stage Two determination prior to the hearing. If part of the

appeal is disposed of, it follows that the proceeding will be substantially shortened. This is precisely the type of question that Rule 58 is meant to target.

[13] For these reasons, I am ordering that the Respondent's question be set down for determination by a motions judge. The Respondent requested, at paragraph 21 of the motion materials, that I direct that certain evidence be presented at the hearing of a determination of the question. I am directing that the pleadings in Tax Court file 2009-2421)IT)G and the pleadings in Tax Court file 2014-1619(IT)G, as well as the Tax Court decision *Ironside v The Queen*, 2013 TCC 339, which is my previous decision, be in evidence before the motions judge. Other than these items, I am not going to bind the motions judge in any manner respecting the evidence to be presented at the Stage Two determination.

[14] The Respondent's factum shall be filed and served 30 days prior to the scheduled hearing date. The Appellant's factum shall be filed and served 15 days prior to the scheduled hearing date. The Respondent's reply to the Appellant's factum, if any, shall be filed and served 7 days prior to the scheduled hearing.

[15] The Order of Justice Favreau, dated January 8, 2015, is vacated. The parties shall communicate with the Hearings Coordinator within 10 days of the motion judge's reasons being issued in the determination of the Respondent's question, for the purpose of establishing a new timetable for completion of any remaining steps in the litigation.

[16] Although neither party made submissions orally on costs, I am leaving that issue to the discretion of the motions judge who will be hearing the motion.

Signed at Ottawa, Canada, this 8th day of May 2015.

"Diane Campbell"

Campbell J.

CITATION:	2015 TCC 116
COURT FILE NO.:	2014-1619(IT)G
STYLE OF CAUSE:	J. GORDON A. IRONSIDE and HER MAJESTY THE QUEEN
PLACE OF HEARING:	Calgary, Alberta
DATE OF HEARING:	May 6, 2015
REASONS FOR ORDER BY:	The Honourable Justice Diane Campbell
DATE OF ORDER:	May 8, 2015

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Donna Tomljanovic

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: William F. Pentney
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Ottawa, Canada