Citation: 2008TCC288
Date: 20080513
Docket: 2005-236(IT)G

BETWEEN:

KEVIN MCKINNEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on April 28, 2008 at Kelowna, British Columbia

Before: The Honourable D.W. Beaubier, Deputy Judge

Appearances:

Counsel for the Appellant:	Timothy W. Clarke
Counsel for the Respondent:	Johanna Russell

REASONS FOR ORDER AND ORDER

Beaubier, D.J.

[1] This appeal opened for hearing at Kelowna, British Columbia on April 28, 2008; the Notice of Appeal having been filed on January 19, 2005. An agreement as to a timetable was filed by Appellant's counsel by letter dated November 9, 2005. That timetable was extended by Order of the Chief Justice dated November 14, 2005, and further extended by my Order dated April 12, 2006.

[2] On July 31, 2007 by joint application of counsel, a hearing date was fixed for February 27, 2008 in Kelowna by Order dated October 26, 2007.

[3] On February 23, 2008 the Appellant filed a Notice of Intention to Act in Person.

[4] On February 26, 2008 Timothy W. Clarke of Bull, Housser, Vancouver, notified this Court by letter that:

> We have agreed to assume conduct if this matter is adjourned.

[5] On February 27, 2008, Miller, J. opened Court and, that day, fixed a hearing "peremptorily" to occur in Kelowna on April 28, 2008. The formal Order was dated March 6, 2008 and mailed by registered mail March 10, 2008. In the hearing with Mr. McKinney, Miller, J. said at pages 40 and 41 of the transcript:

> I am going to set a trial date of April 28th. Frankly, sir, if you've got holiday plans or Mr. Clarke has holiday plans or whatever, that's simply too bad. I want you back her [sic] on April 28th, with or without counsel. And your trial will proceed on that day.

[6] On April 23, 2008, Timothy W. Clarke filed a Motion to Amend the Notice of Appeal and to adjourn this hearing. The Affidavit of his fellow counsel, Michael Welters, dated April 23, 2008, states that the firm was formally appointed counsel of record on April 21, 2008 and states that it was "impossible … to finalize the Amended Notice of Appeal before today's date."

[7] The foregoing facts are not exceptional. In the Court's view, Mr. Clarke was committed to this case by his letter of February 26, 2008. He chose not to attend the hearing of February 27, 2008, but both Mr. McKinney and Miller, J. relied on Mr. Clarke, as can be seen from the transcript. Nor did Mr. Clarke complain of the date of hearing until April 23, 2008.

[8] Respondent's counsel objects to the proposed amendments. Indeed, based on the original Notice of Appeal, it may be that many or all of the facts described therein are admissible in any event and are already within the knowledge of the Respondent. For these reasons, the application at this late date to amend is denied.

[9] In *Sidhu v. Canada (Minister of National Revenue - M.N.R.)*, [1994] F.C.J. No. 2028, Isaac C.J. stated at paragraphs 9 and 10:

> 9 Here, the hearing was fixed peremptorily. And, as the learned Tax Court Judge correctly observed, this implied that, barring exceptional circumstances, the applicant should be prepared to proceed. He reviewed the circumstances and was satisfied that they were not exceptional. He was informed by counsel for the applicant in unequivocal terms that he was not ready to proceed. We are all of the view that the learned Tax Court Judge exercised his discretion properly in those circumstances and that he committed no error that would justify our interference. We are also of the view that it is nihil ad rem that counsel for the Minister did not oppose the request for the adjournment. The discretion to adjourn is invested in the Court, and although the position taken by counsel for the Minister was a factor to be considered in its exercise, that fact cannot be determinative.
>
> 10 As this Court has observed in Adams v. The Commissioner of the Royal Canadian Mounted Police et al (October 7, 1994), A-634-93, (F.C.A.) [unreported [Please see [1994] F.C.J. No. 1480]]:
>
> … 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 public 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.

[10] Based on the foregoing facts, the application to adjourn is denied.

Signed at Saskatoon, Saskatchewan this 13th day of May, 2008.

"D.W. Beaubier"

Beaubier, D.J.

CITATION:	2008TCC288
COURT FILE NO.:	2005-236(IT)G
STYLE OF CAUSE:	Kevin McKinney v. The Queen
PLACE OF HEARING:	Kelowna, British Columbia
DATE OF HEARING:	April 28, 2008
REASONS FOR ORDER AND ORDER BY:	The Honourable Justice D.W. Beaubier, Deputy Judge
DATE OF REASONS FOR ORDER AND ORDER:	May 13, 2008

APPEARANCES:

Counsel for the Appellant:	Timothy W. Clarke
Counsel for the Respondent:	Johanna Russell

COUNSEL OF RECORD:

For the Appellant:

Name:	Timothy W. Clarke
Firm:	Bull, Housser & Tupper LLP Vancouver, British Columbia

For the Respondent:	John H. Sims, Q.C. Deputy Attorney General of Canada Ottawa, Canada