

## Post Pandemic: The New Normal for Tax Litigation

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With the closure of the Tax Court of Canada due to the COVID-19 pandemic, the progress of most proceedings slowed, while others were brought to a halt. Although other Canadian courts had similarly restricted operations during this time, some resorted to the use of technology to address outstanding matters, including through video and teleconferencing. The Tax Court did not take such measures. The Tax Court was not viewed as providing essential services and did not have the technological capability to operate remotely. As a result, it was closed for business in all respects.

On June 25, 2020, Chief Justice Rossiter and Associate Chief Justice Lamarre provided an update on the reopening of the Court and outlined new procedures that the Court intends to implement to address the backlog created by the pandemic.

### Timelines and Protocols for Reopening

The Tax Court expects to reopen for business on July 6, 2020. Highlights of the reopening process include:

- increasing the number of judicial sittings and scheduling them back to back (including throughout the summer);
- scheduling hearings by region (Western, Central, Québec, Atlantic) and only in select cities with the highest volumes;
- proceeding with hearings already scheduled for a date after the Court reopens;
- giving priority to rescheduling trials that were in progress and other hearings that were adjourned as a result of the pandemic;
- dealing with all motions in writing unless the parties request otherwise, in which case they will have to wait for a hearing date;
- prioritizing the release of decisions that are currently under reserve;
- reconfiguring all courtrooms to ensure the health and safety of attendees; and
- holding video conferences and virtual hearings in the future, where possible, for case management conferences, status hearings, applications and motions where there are no witnesses.

### **New Fast-Track Settlement Conference Initiative**

The Tax Court has also announced a new initiative to encourage settlement. More particularly, the Court is implementing a fast-track settlement conference system for general procedure appeals. This will be a temporary measure, affording the Court an opportunity to assess its effectiveness. It is anticipated that, on July 20, 2020, parties will be able to submit requests and hearings will be scheduled beginning in October and November 2020.

Key features of the new procedure are as follows:

- It will be available only if both parties agree to it.
- Parties who are interested will file a joint conference request brief to which they will attach the pleadings, and in which they will identify the key issue(s), their respective positions, the basis for their positions and the amount of tax at issue. The brief will be written in the official language in which the parties will want the settlement conference to be conducted.
- If the appeal is considered suitable, the judge will contact the parties, provide them with a date for the conference, indicate who will need to attend the conference and make any other request deemed necessary to ensure that the conference proceeds efficiently.
- The judge will also determine whether the conference will be held virtually or in person in Vancouver, Montreal or Toronto.
- Should the matter fail to settle, the judge who presides the settlement conference will not preside over the trial.

### **Concluding Observations**

Litigants with appeals that are underway, and those on the verge of commencing litigation in the Tax Court, may fear that the bottleneck created by the pandemic will have a cascading effect on the system, causing further delay once the Court returns to full service. Although the current crisis has no doubt disrupted court proceedings, there may be a silver lining.

The Court is conscious of the financial difficulties being experienced by individuals and businesses. It remains committed to clearing the backlog as quickly as circumstances will allow. Despite the Court's best efforts, there will inevitably be delays in getting matters to trial. However, as the Court adapts to new realities, it is considering different methods of operating and other new initiatives, potentially resulting in greater efficiencies for all involved.