Docket: 2021-2557(IT)G

BETWEEN:

BRIAN ATTWOOD LANGFORD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion to Strike dealt with in writing pursuant to subsection 69(1) of the *Tax Court of Canada Rules* (General procedure)

Before: The Honourable Justice Guy R. Smith

Participants:

For the Appellant: The Appellant himself

Counsel for the Respondent: Julien Bédard

AMENDED ORDER

In accordance with the attached Reasons for Order, the notice of appeal from reassessments made by the Minister of National Revenue in respect of the 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012 and 2016 taxation years, is struck in its entirety, without leave to amend. Costs are awarded to the Respondent and fixed in the amount of $3,500, payable forthwith.

The Amended Order is issued in substitution for the Order dated May 3, 2022 to add the name of counsel of record.

Signed at Ottawa, Canada, this 7th day of June, 2022.

"Guy Smith"

Smith J.

Citation: 2022 TCC 46
Date: 20220503
Docket: 2021-2557(IT)G

BETWEEN:

BRIAN ATTWOOD LANGFORD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR ORDER

Smith J.

I – Overview

[1] The Respondent filed a motion to strike the notice of appeal in its entirety, without leave to amend, on the basis that the sole argument raised by the Appellant is that the *Income Tax Act*, R.S.C. 1985 c. 1 (5th Supp.) (the "*Income Tax Act*") is unconstitutional because direct taxation by an act of Parliament is *ultra vires*.

[2] The Respondent relies on section 53 of the *Tax Court of Canada Rules* (General Procedure) SOR/90-688(a) (the "*Rules*") and requests that the motion be dealt with in writing on the basis of written representations and without appearance of the parties. The latter request is unopposed.

[3] The Appellant has appealed from reassessments made by the Minister of National Revenue pursuant to subsection 9(1) of the *Income Tax Act* in respect to the 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012 and 2016 taxation years. The Appellant indicates that he filed a tax return for each of those years but acknowledges that he "neglected" to disclose his professional income "based on his belief that the Income Tax Act is unconstitutional."

[4] The Appellant seeks i) an order "revoking" the notices of reassessment; ii) an order that the *Income Tax Act* "was enacted in breach of the

Confederation Act, 1867" [*sic*]; iii) an order that he is "not bound by a statute enacted in breach of the *Constitution Act, 1867*" and finally iv) an order for costs of $647,789.48 being the amount of the reassessment.

[5] The Respondent maintains that the issue raised is a matter of settled law and that the notice of appeal discloses no reasonable grounds of appeal. It is argued that the same constitutional argument was raised by the Appellant during his criminal trial for tax evasion, and that the conviction and sentence were upheld on appeal.

[6] The Respondent contends that the doctrines of issue estoppel and abuse of process apply and ought to be relied upon by this Court to dismiss the appeal.

[7] For reasons set out below, the Court concludes that the notice of appeal must be struck in its entirety, without leave to amend, and with costs to the Respondent.

II - Background

[8] The Appellant practised as a lawyer in Manitoba commencing in 1980, earning professional income that is the subject matter of the reassessments herein.

[9] He filed a tax return for each of the subject taxation years but did not disclose his professional income. He was eventually charged with tax evasion pursuant to section 239 of the *Income Tax Act* and section 327 of the *Excise Tax Act*, R.S.C. 1985, c E-15, and found guilty on all counts. Reasons for judgment were issued by Carlson, P.J. on December 2, 2015 and reported as *R. v. Brian (Woody) Langford*, 2015 MBPC 58.

[10] In that proceeding, the Appellant filed a Notice of Constitutional Question seeking a declaration that the *Income Tax Act* was unconstitutional and *ultra vires* the authority of Parliament and sought a declaration that he was exempt pursuant to section 52 of the *Constitution Act, 1982*. The Attorney General of Manitoba intervened and opposed the application, requesting that it be dismissed.

[11] As explained by Carlson, P.J., the Appellant relied on sections 91 and 92, *Constitution Act, 1867* arguing that the federal government must only spend revenue raised by income tax for federal purposes and that each province must fund its own responsibilities with monies raised by provincially imposed direct taxation. She described this as the "real crux of the issue raised" (para. 19).

[12] Carlson, P. J., then proceeded with an analysis of the distinction between the legislative power to raise revenue and the spending power, explaining that:

> [20] The answer to the challenge raised by the Applicant is found in the distinction between constitutionally conferred legislative authority to make taxation laws to raise revenue, and constitutionally conferred authority, constraints and requirements relative to the spending of revenue raised by taxation legislation.
>
> [21] Section 91, *Constitution Act, 1867* sets out the legislative authority of Parliament to exclusively make laws in relation to specific matters, including section 91(3), "the raising of money by any mode [or system] of taxation."
>
> [22] Section 92, *Constitution Act, 1867* sets out the legislative authority of the provincial legislatures to exclusively make laws in relation to specific enumerated items, including at section 91(2) [*sic*], "direct taxation within the province in order to the raising of a revenue for provincial purposes."
>
> [23] While section 92 expressly requires that the revenue raised by provincial taxation legislation is for provincial purposes, section 91 does not specify any mandated purpose for which revenue raised by federal taxation legislation must be used, nor provide any constraints on the spending of monies raised by federal taxation legislation.
>
> [24] The *Constitution Act, 1867* must be considered in its entirety to determine whether there are any constitutional limitations imposed on the purposes for which federally raised income may be used.
>
> [25] In that regard, section 106 of the *Constitution Act, 1867* provides:
>
> > Subject to the several payments by this Act charged on the consolidated revenue fund of Canada the same shall be appropriated by the Parliament of Canada for the public service.
>
> [26] Section 106, when read together with sections 91(1) and 91(3), provides Parliament with authority to spend federally raised monies by sending it to the provinces by way of grants and contributions to cost shared endeavours. The Supreme Court of Canada, in *Quebec (Attorney General) v. Canada, 2011 SCC 11 (CanLII)*, [2011] 1 S.C.R. 368, endorsed that the Government of Canada was entitled to pass spending legislation, which transferred tax monies collected by the federal government to the provinces.
>
> [27] The *Constitution Act, 1867* in fact, contains provisions that require certain federal spending by payments to the provinces.

> [28] One such example is found in section 118 of the *Constitution, 1867*. That section requires the federal government to make specified yearly payments to certain provinces "for the support of their governments and Legislatures."

[13] After a detailed analysis, the trial judge concluded that the constitutional argument put forward by the Appellant had already been "considered and decided by other courts" (para. 43), noting in particular that:

> [44] It is settled law that the *Income Tax Act* is validly enacted federal legislation pursuant to section 91(3) of the *Constitution Act, 1867*, and that section 92 (giving provinces exclusive power to enact direct taxation in the provinces) does not take away Parliament's power given by section 91(3) to directly tax Canadians (*Caron v. The King*, 1924 CanLII 461 (UK JCPC), [1924] A.C. 999; and more recently *(Frank) Bruno v. Canada Customs and Revenue Agency* (24 January, 2002) Vancouver CA027674 (B.C.C.A.).
>
> [45] In *Re Anti-Inflation Act 1976 CanLII 166 (SCC)*, [1976] 2 S.C.R. 373, the Supreme Court of Canada confirmed that direct taxation is within Parliament's legislative jurisdiction.

[14] Carlson, P.J. also relied on *Winterhaven Stables Limited v. Canada (Attorney General)*, 1988 ABCA 334 (application for leave to appeal to the Supreme Court of Canada denied, [1989] 1 SCR xvi at 215), *Hoffman v. The Queen (Minister of National Revenue)*, 2004 MBQB 164 ("*Hoffman*") and *Vander Zalm v. British Columbia (Minister of Finance)*, 2010 BCSC 1320.

[15] It is not necessary to review those decisions and it is sufficient for the purposes hereof to note that Carlson, P.J. concluded that they addressed a similar constitutional argument challenging Parliament's authority to enact legislation that imposed direct taxation. During closing submissions, she asked the Appellant if he was able to advance any argument "that had not been considered by the superior courts in the cases referred to" (para. 57). The Appellant was unable to do so.

[16] The trial judge noted finally that "the very issue argued" by the Appellant had already been decided in *Hoffman*, a decision of the Manitoba Court of Queen's Bench ("MBQB") and that she was bound by that decision "given the principle of stare decisis." As a result, she concluded that "the Income Tax Act is intra vires Parliament and is constitutional" and that the Appellant is "not entitled to a constitutional exemption" (paras. 58-60).

[17] An appeal of the Appellant's conviction for tax evasion was dismissed by the MBQB on May 31, 2019 and leave to appeal was denied by the Manitoba Court of Appeal ("MBCA") on October 7, 2019. Both decisions are unreported but a copy of the transcript of the proceedings was made available to the Court.

[18] The Respondent adds that following the Appellant's conviction for tax evasion, he continued to argue that the *Income Tax Act* was unconstitutional during proceedings that led to his disbarment by The Law Society of Manitoba. The Court was provided with a copy of that decision as reported in *The Law Society of Manitoba v. Brian Attwood Langford*, 2020 MBLS 5, dated June 9, 2020.

[19] The Appellant also appealed from his disbarment, as reported in *The Law Society of Manitoba v. Brian A. Langford*, 2021 MBCA 87. The *MBCA* dismissed the appeal, observing that "in comprehensive reasons," the trial judge in the criminal proceedings had reached the conclusion "that it is 'settled law' that the ITA is validly enacted federal legislation pursuant to the Constitution Act, 1867" (para. 4). It also accepted the observations of the disciplinary panel that the Appellant had "knowingly filed false income tax returns for nine years" and "had never attempted to file a formal and legal dispute as to the constitutionality of the income tax system" (para. 16).

III – The Law

a) The Motion to Strike

[20] The Respondent relies on paragraphs 53(1)(c) and (d) of the Rules that provide as follows:

> Striking out a Pleading or other Document
>
> 53(1) The Court may, on its own initiative or on application by a party, strike out or expunge all or part of a pleading or other document with or without leave to amend, on the ground that the pleading or other document
>
> (…)
>
> (c) is an abuse of the process of the Court; or
>
> (d) discloses no reasonable grounds for appeal or opposing the appeal;
>
> 53(2) No evidence is admissible on an application under paragraph 1(d).

[21] The Respondent relies on the decision of *Hunt v. Carey Canada Inc. (sub nom T & N pic)* [1990] 2 SCR 959 ("*Hunt*") where Wilson J. indicated that the test for a motion to strike was whether the outcome of the case was "plain and obvious" or "beyond a reasonable doubt" at page 980, adding:

> Thus, the test in Canada (…) assuming that the facts as stated in the statement of claim can be proved, is it "plain and obvious" that the plaintiff's statement of claim discloses no reasonable cause of action? As in England, if there is a chance that the plaintiff might succeed, then the plaintiff should not be "driven from the judgment seat." Neither the length and complexity of the issues, the novelty of the cause of action, nor the potential for the defendant to present a strong defence should prevent the plaintiff from proceeding with his or her case. Only if the action is certain to fail because it contains a radical defect (…) should the relevant portions of a plaintiff's statement of claim be struck (…)

[22] In *Sentinel Hill Productions (1999) Corporation, Robert Strother v. The Queen*, 2007 TCC 742 (*"Sentinel Hill"*), Bowman, C.J. reviewed the application of section 53 of the Rules, noting that the principles that govern were well established. He summarized them as follows (para. 4):

> (a) **The facts as alleged in the impugned pleading must be taken as true** subject to the limitations stated in *Operation Dismantle Inc. v. Canada*, 1985 CanLII 74 (SCC), [1985] 1 S.C.R. 441 at 455. It is not open to a party attacking a pleading under Rule 53 to challenge assertions of fact.
>
> (b) **To strike out a pleading or part of a pleading under Rule 53 it must be plain and obvious that the position has no hope of succeeding**. The test is a stringent one and the power to strike out a pleading must be exercised with great care.
>
> c) **A motions judge should avoid usurping the function of the trial judge in making determinations of fact or relevancy**. Such matters should be left to the judge who hears the evidence.
>
> (d) Rule 53 and not Rule 58, is the appropriate rule on a motion to strike.
>
> [My emphasis]

[23] The Supreme Court of Canada later revisited the matter in *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, when it addressed "the test for striking out claims for failure to disclose a reasonable cause of action" (para. 16), concluding as follows:

> [25] Related to the issue of whether the motion should be refused because of the possibility of unknown evidence appearing at a future date is the issue of speculation. **The judge on a motion to strike asks if the claim has any reasonable prospect of success. In the world of abstract speculation, there is a mathematical chance that any number of things might happen. That is not what the test on a motion to strike seeks to determine**. Rather, it operates on the assumption that the claim will proceed through the court system in the usual way — in an adversarial system where judges are under a duty to apply the law as set out in (and as it may develop from) statutes and precedent. **The question is whether, considered in *the context of the law and the litigation process,* the claim has no reasonable chance of succeeding**.
>
> [My Emphasis]

[24] As later noted by the Federal Court of Appeal in *Gramiak v. Canada,* 2015 FCA 40, the 'plain and obvious' test does not mean that the issues should be "ascertained quickly without deliberation" (para. 23) and the court must "conduct a careful analysis of the issues before a conclusion can be reached" (para. 30).

b) Issue Estoppel and Abuse of Process

[25] The Respondent relies on *Golden v. The Queen*, 2008 TCC 173, (affirmed by the Federal Court of Appeal, 2009 FCA 86) (*"Golden"*) where the appellant had been convicted of tax evasion and the Crown brought a motion in the Tax Court of Canada asserting issue estoppel or abuse of process to prevent Mr. Golden from relitigating the same issues. Boyle, J. set out the preconditions for the application of issue estoppel as follows:

> [20] **It is open to this Court to apply the doctrine of issue estoppel to prevent relitigation of matters already decided in another court proceeding.** The Federal Court of Appeal has confirmed that issue estoppel can apply in a civil proceeding in the Tax Court where the issue estoppel is based on a conviction in a criminal case: *Van Rooy v. M.N.R.*, 88 DTC 6323.
>
> [21] **Issue estoppel can be decided on a motion prior to hearing the evidence at trial** (…) under Rule 58 [or] under Rule 53 (…).
>
> […]
>
> [23] The preconditions for the application of issue estoppel are:

> 1. the earlier court decision must have decided the same question that is before this Court, and the question was fundamental to the earlier court's decision;
>
> 2. the earlier court decision must be final; and
>
> 3. there must be a mutuality of parties in the proceedings, that is, the parties to the earlier judicial decision or their privies need be the same persons as the parties in this proceeding or their privies (…).
>
> [24] The doctrine of issue estoppel is not to be applied automatically or inflexibly once the preconditions are established. It remains for this Court to decide whether, as a matter of discretion, issue estoppel ought to be applied or if its application would be unfair in these particular circumstances (…).
>
> [25] **The doctrine of issue estoppel should only be applied in a tax appeal in this Court in respect of a prior criminal tax evasion conviction in clear cases. It should not be applied indiscriminately once the preconditions are met. The Court should be satisfied that the issue of quantum in each particular taxation year was decided in the criminal proceedings (…)**.
>
> [My Emphasis]

[26] Boyle J. then addressed the doctrine of abuse of process indicating that it could be applied "to prevent re-litigation of matters decided in another court proceeding" (para. 26). He indicated that the "scope and application of the doctrine of abuse of process" had been thoroughly canvassed in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, ("*Toronto (City) v. C.U.P.E.*"), explaining that:

> [29] **Abuse of process is also a doctrine that should only be applied in the Court's discretion and requires a judicial balancing with a view to deciding a question of fairness.** However, it differs somewhat from a consideration of the possible application of issue estoppel in that **the consideration is focused on preserving the integrity of the adjudicative process more so than on the status, motive or rights of the parties.**
>
> [30] **Relitigation should be avoided unless it is in fact necessary to enhance the credibility and effectiveness of the adjudicative process**. This could be the case where (1) the first proceeding is tainted by fraud or dishonesty; (2) fresh new evidence, previously unavailable, conclusively impeaches the original result; or (3) when fairness dictates that the original result should not be binding in the new context.
>
> [My Emphasis]

[27] The Federal Court of Appeal affirmed the decision, finding that Boyle J. had not "erred in applying issue estoppel and abuse of process" and that, relying on *Toronto (City) v. C.U.P.E.*, Mr. Golden had not produced "fresh, new evidence" that would have justified "re-litigation of the amounts of unreported income" (para. 6).

IV – Position of the Parties

a) Position of the Appellant

[28] The Appellant argues that the courts "are supposed to be the guardians of the Constitution and protect the Rule of Law" and that the question is "whether the Federal Government is bound by the Constitution and the Rule of Law." He maintains that the federal government has been "illegally imposing income tax (…) since 1916 [sic] when the first income tax legislation was passed."

[29] The Appellant argues that section 92 provides that "only the provinces may make laws about direct taxation" and that this "is confirmed in the preamble of section 91" which states that, as explained by him, "it shall be lawful to make laws in relation to all matters NOT exclusively assigned to the provinces." He concludes that direct taxation "is exclusively given to the Provinces under Section 92(2)."

[30] The Appellant finds support for his position in the decisions of the Judicial Committee of the Privy Council ("JCPC") reported as *Citizens' and The Queen Insurance Cos. v. Parsons*, 7 A.C. 96, 51 L.J.P.C. 11 (*"Parsons"*), and *Bank of Toronto v. Lambe*, (1887) 12 A.C. 575 (P.C.), 56 L.J.P.C. 87 (*"Lambe"*), where it was observed that it could not have been intended that the general power given to the federal government to raise "money by any mode or system of taxation," as described in section 91, could override the more particular power given to the provinces to raise money by "direct taxation within the Province" in order for the raising of revenue "for provincial purposes." He concludes that "income tax is a direct tax and therefore only the provinces can impose direct taxation."

[31] The Appellant argues that the later decision of *Caron v. The King*, [1924] A.C. 999 (*"Caron"*) relied upon by the Respondent, was wrongly decided and that the JCPC had "no authority to amend the British North American Act."

[32] The Appellant argues that *Caron* effectively amended the constitution but that this was not permissible because "the only way to change the taxation provisions of

the Constitution is to amend the Constitution and that cannot be done by passing the Income Tax Act." He relies on *Reference re Supreme Court Act, ss.5 and 6*, 2014 SCC 21 (*"Reference SCA"*).

b) Position of the Respondent

[33] The Respondent contends that it is 'plain and obvious' that the notice of appeal discloses no 'reasonable grounds of appeal' and has no chance of succeeding because the constitutional argument was considered and rejected in *Caron.*

[34] The Respondent argues that the Appellant is attempting to re-litigate the very issue described in the Notice of Constitutional Question that was considered and rejected by the trial judge in his criminal trial and then confirmed on appeal by the MBQB, with leave to appeal denied by the MBCA. It is argued that the Appellant again made the same argument before the MBCA when he sought to challenge his disbarment by the Law Society of Manitoba. That appeal was also dismissed.

[35] The Respondent asserts that all the preconditions for issue estoppel have been met in that the same fundamental issue was decided with finality in another legal proceeding involving the same party. As such, it is argued that the doctrine of issue estoppel applies and the notice of appeal should accordingly be struck.

[36] The Respondent adds that the notice of appeal should be dismissed because it is an abuse of process, relying on *Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227 (*"Mancuso"*). In that decision, the Federal Court of Appeal described the doctrine of abuse of process as "a residual and discretionary doctrine of broad application and scope." Its purpose was described as follows:

> [40] (…) **it is directed to preventing re-litigation of the same issues and the attendant mischief of inconsistent decisions by different courts which, in turn, would undermine the doctrines of finality and respect for the administration of justice** (…) It permits a judge to bar re-litigation of a criminal conviction in a different forum, as was the case in *CUPE*.
>
> [My Emphasis]

[37] The Respondent argues that there is no reason not to dismiss the appeal as an abuse of process because the Appellant is repeating the same argument made at his criminal trial and there are no new issues, no previously unavailable evidence and

no allegation that the criminal proceeding was tainted by fraud, dishonesty or unfairness. It is argued that not dismissing the appeal would adversely affect the credibility, the integrity and effectiveness of the judicial system and result in a multiplicity of proceedings on a matter that has already been considered by three levels of court in Manitoba. It is argued that permitting the appeal to proceed would be a questionable use of judicial resources and that dismissing the appeal would best serve the interests of the administration of justice.

[38] As a result of the foregoing, it is argued that the pleading should be struck as was done in *Sarraf v. Canada*, [1994] 2 C.T.C. 288, 94 D.T.C. 6553 (FCTD) (*"Sarraf"*), as well as *Bruno* and *Hoffman*, referenced above.

V – Analysis

The Constitutional Argument

[39] In *Caron*, the JCPC affirmed a decision of the Supreme Court of Canada: [1922] 64 SCR 255. Mr. Caron, a minister of agriculture, had argued that he was not required to pay income tax under the *Income Tax War Tax, 1917*, because direct taxation was *ultra vires* the federal government.

[40] Lord Phillimore wrote that the "whole matter turns on the construction and application of secs. 91 and 92" (para. 9). He noted that "money raised by an Income Tax Act is unquestionably money raised by a mode or system of taxation" (para. 11) as authorized by subsection 91(3) and that, in accordance with section 92, "each province may exclusively make laws in relation to" the subjects enumerated, including "direct Taxation within the Province in order to the Raising of a Revenue for Provincial Purposes" (para. 12).

[41] Lord Phillimore observed that "particular direct taxation is reserved to the province" such that there is "some deduction to be made from the totality of power apparently given exclusively to the Dominion Parliament to raise money for any purpose by any mode or system of taxation" (para. 13). He recognized that there was a contradiction, described as an "apparent antinomy" (para. 14) that had previously been "noticed in various decisions" including *Parsons* and *Lambe.* He stated that in the latter decision, "their Lordships had observed as follows":

> It is impossible to give exclusively to the Dominion the whole subject of raising money by any mode of taxation, and at the same time to give to the provincial

> legislatures, exclusively or at all, the power of direct taxation for provincial or any other purposes. This very conflict between the two sections was noticed by way of illustration in the case of *Parsons*.
>
> (…)
>
> Their Lordships adhere to that view, and hold that, as regards direct taxation within the province to raise revenue for provincial purposes, that subject falls wholly within the jurisdiction of the provincial legislatures.

[42] Having considered the above, Lord Phillimore found that both sections 91(3) and 92(2) "must be construed together" (para. 16.), concluding that:

> 19. Upon any view there is nothing in sec. 92 to take away the power to impose any taxation for Dominion purposes which is *prima facie* given by subsec. 3 of sec. 91. **It is not therefore *ultra vires* on the part of the Parliament of Canada to impose a Dominion income tax for Dominion purposes (…)**
>
> [My Emphasis]

[43] Lord Phillimore thus considered and rejected the narrow interpretation of subsections 91(3) and 92(2) suggested in *Parsons* and *Lambe* and now relied upon by the Appellant. The conclusion reached by the JCPC in *Caron* must therefore be understood in the context of the evolving judicial interpretation of those provisions.

[44] As the law stands today, Parliament's authority to enact legislation to raise money "by any mode or system of taxation" is to be broadly construed and interpreted to encompass both direct and indirect taxation such that it does not infringe on a province's right to impose "direct taxation" to raise "revenue for provinces purposes." Provinces are entitled to adopt such legislation.

[45] This is confirmed by Professor Peter W. Hogg in his review of federal-provincial arrangements at the time of confederation. He notes that the "new Dominion received the power to impose any new taxes, direct or indirect, that it saw fit" and "the less costly functions of the provinces were matched by the assignment to them of less extensive taxing powers" including "the power to impose only 'direct taxation' (…)." He later adds that "there is no doubt that the Federal Parliament may levy direct taxation, such as income tax" explaining that "the federal and provincial taxing powers are effectively concurrent" *Peter W. Hogg, Constitutional Law of*

Canada (Second Edition) (Toronto: Carswell, 1985), page 112 and page 602, footnote 3.

[46] Other constitutional authors have similarly explained that the jurisdiction granted to Parliament, "to raise money by any mode or system of taxation (…) includes any conceivable type of taxation, including indirect taxes such as customs and excise and direct taxation such as income taxes and license fees" *: Guy Régimbald and Dwight Newman, The Law of Canadian Constitution (First Edition) (LexisNexis, 2013), at* pages 307-308.

[47] The Appellant relies on *Reference SCA* to support his argument that Parliament could not simply amend the *Constitution Act, 1867* by adopting the *Income Tax Act*. On the peculiar facts of that case, the federal government had introduced 'declaratory legislation' to clarify the meaning of sections 5 and 6 of the *Supreme Court Act, R.S.C., 1985, c. S-26.*

[48] The significance of declaratory legislation was addressed by the Supreme Court of Canada in *Régie des rentes du Québec v. Canada Bread Company Ltd.*, 2013 SCC 46. As explained by Wagner J. (as he then was) on behalf of the majority (McLachlin C.J. and Fish J., dissenting), it is within the prerogative of the legislature to enter the domain of the courts and offer a binding interpretation of its own laws by enacting declaratory legislation. When enacted, it has immediate effect and is thus an exception to the general rule that legislation is prospective (paras. 24-32).

[49] However, the majority (Moldaver, J. dissenting) in *Reference SCA*, found that the proposed declaratory legislation was *ultra vires* Parliament because Part V of the *Constitution Act, 1982* expressly makes changes to the Supreme Court and its composition, subject to the constitutional amending procedures.

[50] The Court finds that *Reference SCA* turns on its own facts. It cannot be relied upon to suggest that the introduction of the *Income Tax Act* was effectively an amendment to the *Constitution Act 1867*.

[51] Although the Appellant argues that *Caron* was wrongly decided, the Court finds that it remains the leading case on the constitutional argument raised by him.

The Motion to Strike

[52] The facts set out in the notice of appeal can be taken to be true because they are not in dispute. The Appellant does not deny that he failed to disclose his

professional income for the subject taxation years. As such, it is not necessary to adduce any further evidence or to make any determination of fact or relevancy or to make any findings of credibility and therefore, there is no risk of "usurping the function of the trial judge," as stated by Bowman C.J. in *Sentinel Hill*.

[53] Although the Appellant clearly does not agree, the Court concludes that the notice of appeal has no reasonable chance of succeeding. Having reviewed the reasons for judgment of Carlson, P.J., the long-standing conclusion reached in *Caron*, as well as the decisions of *Bruno*, *Sarraf* and *Hoffman*, the Court finds that the issue raised by the Appellant is settled law.

[54] It is plain and obvious that the notice of appeal "discloses no reasonable grounds for appeal," thus satisfying paragraph 53(1)(d) of the Rules.

Issue Estoppel and Abuse of Process

[55] The Court also agrees with the Respondent that issue estoppel applies because the Appellant is attempting to re-litigate an argument with respect to the same taxation years, that has already been decided in another court proceeding that directly involved him. That argument was set out in the Notice of Constitutional Question and addressed by the trial judge in the criminal proceeding. The decision reached is final and binding as the Appellant has exhausted all avenues of appeal.

[56] The Court also finds that the Appellant's attempt to challenge the notices of assessment for the subject taxation years, without disputing the years at issue or the quantum of assessments, is an abuse of process that meets the requirements of paragraph 53(1)(c) of the Rules. As argued by the Respondent, there has been no suggestion by the Appellant that the criminal proceeding was somehow "tainted by fraud, dishonesty or unfairness." Consistent with the comments made in *Mancuso*, I agree that relitigating the same issue would "undermine the doctrine of finality and respect for the administration of justice" (para. 40).

[57] Even though the Appellant fundamentally disagrees with the results reached in his criminal trial for tax evasion, that decision is final and binding on him. The Court notes, moreover, that although the MBCA initially denied leave to appeal from the conviction in the criminal proceedings, it later specifically rejected the constitutional argument in the context of the appeal from his disbarment.

[58] The Court therefore agrees with the Respondent that allowing this matter to go forward would involve a questionable use of judicial resources and would not be in the best interests of the administration of justice.

VI - Conclusion

[59] Whether this Court relies exclusively on paragraphs 53(1)(c) or (d) of the Rules or turns to the doctrines of issue estoppel and abuse of process, the result is the same.

[60] The notice of appeal is struck in its entirety, without leave to amend. Costs are awarded to the Respondent and fixed in the amount of $3,500, payable forthwith.

Pursuant to section 172 of the *Tax Court of Canada Rules (General Procedure)* the Amended Reasons for Order are issued in substitution for the Reasons for Order dated May 3, 2022 in order to add the name of counsel of record.

Signed at Ottawa, Canada, this 7th day of June, 2022.

"Guy Smith"

Smith J.

CITATION:	2022 TCC 46
COURT FILE NO.:	2021-2557(IT)G
STYLE OF CAUSE:	BRIAN ATTWOOD LANGFORD AND HER MAJESTY THE QUEEN
AMENDED REASONS FOR ORDER BY:	The Honourable Justice Guy R. Smith
DATE OF ORIGINAL ORDER:	May 3rd, 2022
DATE OF AMENDED ORDER AND AMENDED REASONS FOR ORDER	June 7, 2022

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Julien Bédard

COUNSEL OF RECORD:

For the Appellant:	The Appellant
Counsel for the Respondent:	François Daigle Deputy Attorney General of Canada Ottawa, Canada