

Docket: 2023-1686(IT)I

BETWEEN:

ANTONY VEZINA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Motion made and disposed of upon consideration of written
representations and without appearance by the parties
on October 28, 2024, at Ottawa, Canada

Before: Associate Judge Sophie Matte

Agent for the appellant: Robert Dufour

Counsel for the respondent: Audrey Turcotte

ORDER

UPON motion by the appellant to set aside the discontinuance filed on August 13, 2024;

AND UPON reading the notice of motion and affidavit in support of the motion;

AND UPON reading the respondent's written representations opposing the motion and the appellant's reply;

THE COURT dismisses the motion, without costs, for the attached reasons.

Signed at Ottawa, Canada, this 28th day of October 2024.

“Sophie Matte”

Matte A.J.

Translation certified true
on this 25th day of March 2025.

Vera Roy, Senior Jurilinguist

Citation: 2024 TCC 140

Date: 20241028

Docket: 2023-168(IT)I

BETWEEN:

ANTONY VEZINA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR ORDER

Matte A.J.

I. BACKGROUND

[1] By way of a motion, the appellant moves to set aside the discontinuance that he filed on March 4, 2024. The grounds in the notice of motion and in the affidavit of Robert Dufour, the agent for the appellant, essentially indicate that new events have occurred or have been discovered since the discontinuance was filed.

[2] The respondent formally opposes the motion to set aside the discontinuance on the basis that neither the motion nor the affidavit of the agent for the appellant demonstrates any fraud or new fact.

II. FACTS

[3] On March 4, 2024, the agent for the appellant filed, by fax, a discontinuance of the case set down for hearing on March 19, 2024. The wording of the letter was clear; he discontinued his appeal.

[4] The next day, March 5, 2024, the agent for the appellant faxed the Court a message indicating, [TRANSLATION] “urgent—please set aside the application for discontinuance; new facts”.

[5] On March 6, 2024, the agent for the appellant faxed a letter to the Court reiterating his application to set aside the discontinuance of the case because of important information. This time, he added a paragraph in which he stated, [TRANSLATION] “Line 30400 of Revenue Canada’s Schedule 5 describes the situation for a person whose marital status (common-law partner) changes during the year. By checking YES, the status becomes ‘single parent’.”

[6] In a letter to the Court filed on March 7, 2024, the respondent indicated that, under subsection 16.2(2) of the *Tax Court of Canada Act* (the “Act”), where a proceeding is discontinued under subsection (1), it is deemed to be dismissed as of the day on which the Court receives the written notice. The respondent argues that if the appellant wishes to apply to have the discontinuance filed on March 4, 2024, set aside, he must file a motion under paragraph 172(2)(a) of the *Tax Court of Canada Rules (General Procedure)* (the “Rules”).

[7] On March 8, 2024, the agent for the appellant filed a letter in which he asked the Court [TRANSLATION] “to set the case down again because very important information that has been provided to Ms. Turcotte should be submitted to the Court”.

[8] Lastly, on March 15, 2024, the Registry sent a letter to the agent for the appellant, advising him that, as a result of the notice of discontinuance filed on March 4, 2024, the appeal was dismissed in accordance with subsection 16.2(2) of the Act and the case was closed. The Registry notified the agent for the appellant that a motion had to be filed if he wanted to apply to set aside the dismissal of the proceeding or discontinuance.

[9] The agent for the appellant filed the motion before this Court on August 13, 2024. The respondent submitted written representations to the Court on August 20, 2024, and the agent for the appellant submitted a reply on August 22, 2024.

III. DISCUSSION

[10] As mentioned above, section 16.2 of the Act provides that a party who instituted a proceeding in the Court may, at any time, discontinue that proceeding by

written notice. Where a proceeding is so discontinued, it is deemed to be dismissed as of the day on which the Court receives the written notice.

[11] In this case, the notice of discontinuance filed on March 4, 2024, is therefore deemed to be a judgment of the Court setting aside the appellant's appeal.

[12] Under paragraph 172(2)(a) of the Rules, a party may make a motion seeking to have a judgment set aside or varied on the ground of fraud or of facts arising or discovered after it was made.

[13] In *Supavititpatana v. The Queen*, 2020 TCC 46, the Court explained the exceptional nature of such an application:

Thus, the Court has the authority to set aside a judgment (including a notice of discontinuance) where the conditions described in Rule 172 are met. However, regardless of how sympathetic a taxpayer's circumstances might be, this Court should not exercise this power lightly. As the Federal Court of Appeal has said, "there is more at stake here on this issue than sympathy: finality of decisions and efficiency of the administration of justice. I believe these fundamental concerns relating to a proper administration of justice are reflected in section 16.2 of the Act" (*Canada (Attorney General) v. Scarola*, 2003 FCA 157 at paragraph 13)—and, I would add, are reflected in Rule 172. In other words, setting aside a judgment is an exceptional measure (*Sixgraph Informatique Ltée. v. The Queen*, 97-440-IT-G and 97-462-IT-I (October 27, 2000, TCC)) because the finality of litigation is desirable and fundamental to the efficient and proper administration of justice. [Paragraph 11.]

[14] The onus is on the applicant to show that new facts have arisen or been discovered since the judgment (*Supavititpatana* at paragraph 12). The applicant must also demonstrate that the new facts could not with reasonable diligence have been discovered before the judgment and that these facts would probably have resulted in a different judgment had they initially been brought forward (*Supavititpatana* at paragraph 17).

[15] In the affidavit filed in support of the motion, the agent for the appellant merely stated that he was making a motion to set aside the discontinuance [TRANSLATION] "following new events such as the appellant's 90 days of separation from his spouse and the end of the couple's relationship, as set out in a judgment". According to the agent, these elements would enable the appellant to obtain the credit for a person who is separated from their spouse and caring for a child under 18 years of age, which was an issue in the appeal filed in this case.

[16] While no date was provided regarding the appellant's separation, the judgment or the discovery of these new facts, the Court cannot believe that they arose or were discovered after the judgment was issued, i.e. after March 4, 2024, the date on which the Court received the discontinuance.

[17] In his written representations, the respondent referred to a judgment of separation dated September 24, 2019. This judgment was not entered into evidence by the parties. Even if it had been, the Court is of the view that it must have been known to the appellant at the time the discontinuance was filed and does not constitute a new fact or the discovery of a new fact that would allow the dismissal of the appeal to be set aside.

[18] The appellant raises other evidence in his motion. These are submissions regarding the applicable law in this case, which, even if it was not, should have been known to the appellant or his agent at the time the discontinuance was filed.

IV. CONCLUSION

[19] For these reasons, the appellant's motion is dismissed, without costs.

Signed at Ottawa, Canada, this 28th day of October 2024.

"Sophie Matte"

Matte A.J.

Translation certified true
on this 25th day of March 2025.

Vera Roy, Senior Jurilinguist

CITATION:	2024 TCC 140
COURT FILE NO.:	2023-1686(IT)I
STYLE OF CAUSE:	ANTONY VEZINA AND HIS MAJESTY THE KING
PLACE OF HEARING:	Ottawa, Canada
MOTION IN WRITING:	August 13, 2024
REASONS FOR ORDER BY:	Associate Judge Sophie Matte
DATE OF ORDER:	October 28, 2024

Agent for the appellant:	Robert Dufour
Counsel for the respondent:	Audrey Turcotte

COUNSEL OF RECORD:

For the appellant:

Name:	n/a
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Firm:	n/a
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For the respondent:	Shalene Curtis-Micallef Deputy Attorney General of Canada Ottawa, Canada
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