Docket: 2023-1380(IT)G

BETWEEN:

QUAN GAO,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Motions of the Respondent and Appellant decided based on written representations

Before: The Honourable Justice Ryan Rabinovitch

For the Appellant: The Appellant himself
Counsel for the Respondent: Gabriel Caron

ORDER

Respondent's Motion:

1. The parties shall no longer be required to comply with paragraphs 1-4 (Oral Examinations for Discovery) of the Order issued by the Court in this appeal on September 22, 2024.

2. The Appellant's examination for discovery (his "**Examination**") shall take place on or before April 30, 2026.

3. The Appellant shall satisfy undertakings given at his Examination on or before May 31, 2026.

4. The Respondent shall serve questions regarding undertakings given by the Appellant at his Examination on or before June 30, 2026.

5. The Appellant shall serve answers to the questions regarding undertakings given at his Examination on or before July 31, 2026.

6. The Respondent shall be entitled to specify a time and place situated in Canada (a "**Canadian Location**") for the Appellant's Examination in a notice to attend (the "**Notice to Attend**"). The Respondent shall provide the Appellant with at least 30 days' notice of his intention to serve the Appellant with a Notice to Attend so that they may agree on the Canadian Location. If the Appellant and Respondent are unable to agree to a Canadian Location within 7 days of the day the Respondent provides notice to the Appellant of his intention to serve him with a Notice to Attend, the Respondent shall have the right to select any place in Vancouver, Calgary, Toronto, Montreal or Ottawa to serve as the Canadian Location.

7. If the Appellant fails to attend his Examination at the time and Canadian Location specified in a Notice to Attend, his appeal will be dismissed.

8. Costs thrown away in connection with the Appellant's failure to attend his Examination on March 10, 2025, will be awarded to the Respondent.

9. Costs in respect of the Respondent's motion will be awarded to the Respondent. The Respondent will have 30 days from the date of this order to provide submissions regarding the amount of such costs (including the costs thrown away referred to in paragraph 8), following which the Appellant will have 30 days to provide a response to such submissions.

10. In all other respects, the Respondent's motion is dismissed.

Appellant's Motion:

11. The Appellant's motion is dismissed.

12. Costs in respect of the Appellant's motion will be awarded to the Respondent. The Respondent will have 30 days from the date of this order to provide submissions regarding the amount of such costs, following which the Appellant will have 30 days to provide a response to such submissions.

Signed this 26th day of January 2026.

"Ryan Rabinovitch"

Rabinovitch J.

Citation: 2026 TCC 16
Date: 20260126
Docket: 2023-1380(IT)G

BETWEEN:

QUAN GAO,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Rabinovitch J.

I. INTRODUCTION:

[1] These reasons concern two motions: one by the Respondent, and one by the Appellant.

[2] Before considering the merits of each motion, I shall begin by summarizing the history of the appeal and the facts that resulted in their being brought before this Court.

II. HISTORY AND FACTS:

Tax Returns, Assessments and Reassessments in Issue and Notice of Objection Filed by the Appellant

[3] In his tax return for his 2016 taxation year, the Appellant reported $503.59 of income. As this amount was less than his personal exemption for the year, his total tax payable was nil.

[4] This return was assessed as filed by the Minister on May 1, 2017.

[5] On July 2, 2021, the Minister issued a reassessment in respect of the Appellant's 2016 taxation year on the basis that the adjusted cost base ("**ACB**") of certain shares of non-resident public corporations the Appellant had disposed of that year (the "**Shares**") was nil. The Appellant appears to have reported the disposition of the Shares on Schedule 3 of his tax return and to have taken the view that their aggregate ACB exceeded the proceeds of disposition he received (i.e., that he had realized an overall loss). Both the ACB and proceeds of disposition of each investment was set out in the schedule. It appears, however, that the Minister was not satisfied that the ACB figures set out on Schedule 3 could be substantiated.[1] It should be noted that the aggregate proceeds received by the Appellant were very high: $5,519,280.

[6] On August 19, 2021, the Appellant filed a notice of objection in respect of the July 2, 2021, reassessment, in which he maintained that the ACB of the Shares was equal to the amount he had reported on his return.

[7] On March 22, 2023, and prior to addressing the issues discussed in the Appellant's notice of objection, the Respondent maintains that the Minister issued a notice of "additional assessment" in respect of the Appellant's 2016 taxation year on the basis that he was liable for $281,873 of penalties pursuant to subsections 162(7), 162(10) and 162(10.1) of the *Income Tax Act* ("**ITA**"). These provisions impose penalties on a taxpayer for failing to file Form T1135. According to the Minister, the Appellant was required to file this form for 2016 but did not do so. Box 266, on his tax return, which asked: "[d]id you own or hold specified foreign property where the total cost amount of all such property, at any time in 2016, was more than CAN$100,000,"[2] also appears to have been checked "no". The Minister evidently disagreed with this answer.

[8] On March 30, 2023, the Respondent claims that the Minister varied the notice of reassessment issued on July 2, 2021, in response to the Appellant's notice of objection by issuing a notice of reassessment in which he accepted the ACB figures reported by the Appellant on his 2016 tax return, and that an overall capital loss had indeed been realized. The result was that the Appellant's taxable income was reduced to $503, and that his federal tax payable (not including the penalties assessed

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[1] In a letter to the Appellant dated April 25, 2022, the Appeals Division of the Canada Revenue Agency ("**CRA**") indicates that the Audit Division reduced the ACB of the Shares to nil because the Appellant did not provide any supporting documentation.

[2] Appendix A-6 of the appellant's Book of Documents.

on March 22, 2023) was reduced to nil. It is not clear whether the notice of reassessment dated March 30, 2023, included the penalties levied under the March 22, 2023, additional notice of assessment, as no full copy was provided to the Court.[3]

Proceedings before this Court

[9] On June 24, 2023, the Appellant filed a notice of appeal to this Court. He indicated that he had never received a copy of the notice of reassessment dated March 30, 2023, and seemed not to be aware of the additional assessment issued on March 22, 2023.[4] The Appellant wrote that the basis for his appeal was that he had not been required to file Form T1135 in respect of his 2016 taxation year because section 233.3 of the ITA only requires "specified Canadian entities" to do so. Subparagraph (iii)(a) of the definition in subsection 233.3(1) defines a "specified Canadian entity" as excluding a person "(other than a trust) all of whose taxable income for the year is exempt from tax under Part I." The Appellant claimed that because his taxable income (i.e., $503.59) was not high enough for him to owe any tax under Part I, he was such a person. He also claimed that his 2016 taxation year was statute-barred at the time the Minister issued the reassessment under appeal.

[10] On September 26, 2023, the Appellant wrote to the Court requesting that his appeal be heard at its Montreal office.

[11] On September 28, 2023, the Court wrote to the Appellant to confirm that he would accede to the above-mentioned request.

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[3] The parties appear to have proceeded on the assumption that this was the case and that the Appellant was able to appeal the reassessment pursuant to subsection 165(7) of the ITA, or alternatively, that it was not the case and that the Appellant was able to (and did in fact) appeal both the additional assessment and reassessment in accordance with that provision. It should be noted in this regard that the Appellant applied for an extension of his deadline for filing a notice of appeal in the present case. That application was not opposed by the Respondent and was granted by the Court on August 12, 2023.

[4] The Appellant appears to have only known about the notice of reassessment dated March 23, 2023 because his CRA MyAccount profile showed that a notice of reassessment had been issued on that date. He seems to have been unable to access its contents, however, and to have assumed that the March 30, 2023 reassessment was the document which imposed penalties on him because the Appeals Division of the CRA had told him that it would be assessing such penalties in a letter dated March 9, 2023.

[12] On October 13, 2023, the Respondent filed his reply. He maintained that the Appellant was required to file Form T1135 for his 2016 taxation year pursuant to section 233 and that he was liable for penalties pursuant to subsections 162(7), 162(10) and 162(10.1). The Respondent also argued that the Appellant's 2016 taxation year was not statute-barred due to the operation of either paragraph 152(4)(b) or paragraph 152(4)(b.2) (though the Respondent has since clarified to the Court that he is no longer relying on paragraph 154(4)(b.2) in this regard). In support of the Respondent's position that paragraph 152(4)(b) applied, the reply indicated that the Minister assumed that the Appellant is an accountant with a CPA designation, files his own tax returns, is well versed in tax matters, claimed the losses made while trading shares in 2015 and 2016, and filed Form T1135 for 2015.

[13] On March 25, 2024, the Court issued a timetable order which set out the dates on which various litigation steps must be completed (the "**March 25, 2024 Order**"). This order provided that examinations for discovery must be completed on or before April 26, 2024. It did not indicate the form that the examinations should take.

[14] On April 15, 2024, the Appellant provided his written discovery questions to the Respondent. The list consisted of 44 questions grouped under five headings.

[15] On April 17, 2024, the Appellant informed the Court that the Respondent had indicated that he would not be providing his answers to the questions sent by the Appellant by the deadline set out in the March 25, 2024, Order. He therefore proposed that the order be amended so that both parties would have until June 29, 2024, to complete their examinations for discovery.

[16] On April 24, 2024, the Respondent wrote to the Court to indicate that the Appellant refused to come to Canada to be examined (the Court understands that the Appellant was in China at this time). He noted in his letter that he considered this to be a refusal to proceed with examinations for discovery, adding that "[g]iven that the Appellant is responsible for prosecuting its appeal with due dispatch, the Respondent's position is that the appellant cannot decline to be examined while at the same time wishing to examine the Respondent." The Respondent also stated that the Appellant had not sent his list of discovery questions in a timely manner and asked that the Court convene a status hearing so that an amended timetable could be discussed.

[17] On April 25, 2024, the Appellant wrote to the Court to explain that he had proposed that the Respondent conduct his examination of the Appellant in writing, but that the Respondent had refused. He also said that counsel for the Respondent

had indicated that he considered the facts to be "relatively undisputed" and that he was "quite confident" that they would be able to conduct "examination for both parties in less than a day." The Appellant concluded by offering to submit to oral examinations via videoconference from China. Attached to his letter was an e-mail exchange in which he explained to the Respondent that flights between China and Canada had not recovered to their pre-pandemic levels, and that it would be difficult for him to afford a ticket.

[18] On May 19, 2024, the Appellant wrote to the Court requesting that it allow his appeal pursuant to paragraph 116(4)(a) of the *Tax Court of Canada Rules* (General Procedure) (the "**Rules**"). He noted that more than 30 days had elapsed since he had sent his discovery questions to counsel for the Respondent and that he had not provided his responses as required by section 114 of the Rules.

[19] In response to the above communications from the parties, the Court convened a virtual status hearing which was held before Bodie. J on August 16, 2024 (the "**First Status Hearing**").

[20] The Appellant indicated at the First Status Hearing that he did not think discovery was necessary, and alternatively, that it should be conducted in writing or by teleconference or videoconference. He mentioned having family issues in China (seemingly a sick elderly relative),[5] but did not provide any details in this regard. He also repeated that it was expensive and inefficient for him to have to come to Canada.[6]

[21] Counsel for the Respondent explained that he did not wish to conduct discovery in writing unless the Appellant dropped his argument that the 2016 taxation year was statute-barred, given its highly factual nature and the need to test the Appellant's credibility on the question.[7] He also explained that he believed it was necessary for a person to be in Canada in order to swear an oath or make an affirmation for the purposes of the Rules, and that he was unsure this was possible given that the Appellant was a Canadian resident.[8] When Bodie J. suggested that he might begin with written discoveries and then revisit the idea of an oral discovery depending on the responses received, counsel for the Respondent refused, indicating

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[5] Pages 14 and 23 of Transcript of First Status Hearing.
[6] Page 14 of Transcript of First Status Hearing.
[7] Page 8 of Transcript of First Status Hearing.
[8] Page 2 of Transcript of First Status Hearing.

that this would be inefficient, since, in his experience, written discoveries always led to a need for follow-up.[9]

[22] Bodie J. explained to the Appellant that he was generally aware of concerns of the type being raised by the Respondent, including issues associated with the validity of an oath given from abroad via videoconference,[10] as well as other problems relating to the conducting of discoveries in China in particular.[11] He also indicated that it was the Respondent's right to insist on oral discoveries.[12]

[23] Prior to the conclusion of the First Status Hearing, Bodie J. said that in light of the Appellant's refusal to come to Canada and the Respondent's refusal to conduct discovery in writing, there were four options available. The Appellant could:

1. Opt for his appeal to be governed by the informal procedure rules, where there is no discovery (in which case, the relief available would be limited to the amount of $25,000);

2. Drop his statute-barring argument, in which case the Respondent seemed to be willing to proceed with written discoveries;

3. Engage legal counsel to provide assurances to the Respondent that a virtual discovery from China was feasible and/or permissible; or

4. Drop his appeal.[13]

[24] Bodie J. adjourned the hearing to give the Appellant time to consider these options.

[25] On September 18, 2024, a second follow-up status hearing was held, once again before Bodie J. (the "**Second Status Hearing**"). The discussion was unproductive. The Appellant did not appear to have given much thought to the various options Bodie J. had proposed.[14] He repeatedly brought the conversation

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[9] Page 19 of Transcript of First Status Hearing.
[10] Page 10 of Transcript of First Status Hearing.
[11] *Ibid*.
[12] Page 41 of Transcript of First Status Hearing.
[13] Pages 30 and 31 of Transcript of First Status Hearing. See also pages and 41, 45 and 52 of Transcript of First Status Hearing with respect to the third of the above options in particular.
[14] Page 9 of Transcript of Second Status Hearing.

back to the merits of his appeal (and more particularly, his position that his 2016 taxation year was statute-barred),[15] the Respondent's failure to provide a timely response to his written discovery questions[16] and the possibility of proceeding without discovery or with written discovery.[17] The Appellant also argued that it should be the Respondent's responsibility to find a way to make a virtual discovery feasible.[18] He said that based on his research, the only issue relating to conducting discoveries outside Canada were for the examining party, who might not be able to use any evidence obtained if it was gathered in breach of foreign laws.[19]

[26] Bodie J. appeared to disagree with the Appellant in this regard. He said:

> The other choice you have is to hire legal counsel that will work with Mr. Caron to address any concerns he might have with having you discovered or examined outside of Canada. But it's your responsibility to hire legal counsel, to work with Mr. Caron to -- to have -- to give him whatever comfort he needs, that whatever answers you may give are under oath, in whatever jurisdiction you might be in outside of Canada, and that he can rely on them.[20]

[27] Bodie J. also said several times that given that the Appellant refused to hire legal counsel for this purpose, he would realistically have to come to Canada for his examination.[21] The Appellant appeared either not to be listening to these comments or did not accept them, as he continued to argue that he should be able to be examined by videoconference from China until the very end of the Second Status Hearing.[22]

[28] Despite the above, it should be pointed out that no real decisions were made during the Second Status Hearing regarding the form or location of the Appellant's examination for discovery. Like the First Status Hearing, it was essentially an effort on the part of Bodie J. to get the parties to agree to a practical solution to the examination issue. Ultimately, he decided to issue a revised time-table order which would simply set out new deadlines for the completion of the parties' discovery obligations, but which would not specify what form the Appellant's examination

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[15] Pages 3, 4, 6, 7, 8, 9 and 25 of Transcript of Second Status Hearing.
[16] Pages 13, 14, 17, 19, 20, 33 and 35 Transcript of Second Status Hearing.
[17] Pages 6, 13, 19 Transcript of Second Status Hearing.
[18] Pages 11 and 22 of Transcript of Second Status Hearing.
[19] Page 37 of Transcript of Second Status Hearing.
[20] Page 11 of Transcript of Second Status Hearing.
[21] Pages 10-11 and 35, 36 and 39 of Transcript of Second Status Hearing.
[22] Pages 35 and 37-38 of Transcript of Second Status Hearing.

would take or where it must be held.[23] It should be noted that he observed that the parties could continue to work together to resolve their impasse until the date specified in his order,[24] and said he would be available if need be to discuss the matter with them.[25] On the other hand, he also warned the Appellant that a failure to comply with his order might lead the Respondent to demand a show cause hearing (the implication being that it might also lead to the dismissal of his appeal).[26]

[29] On September 22, 2024, Bodie J. issued the above-mentioned order (the "**September 22, 2024 Order**"). It indicated that oral examinations for discovery were to be completed by March 31, 2025, undertakings given at such examinations were to be satisfied on or before June 30, 2025, written questions regarding such undertakings were to be served on or before July 31, 2025, and answers to such written questions were to be served on or before August 1, 2025.[27] Similarly, any party wishing to conduct written examinations for discovery was required to serve its written questions no later than March 31, 2025, answers to such questions were to be served on or before June 30, 2025, follow-up questions to such answers were to be served on or before July 31, 2025 and answers to such follow-up questions were to be served on or before August 1, 2025.[28]

[30] On February 11, 2025, the Respondent wrote to the Appellant to inquire whether he intended to come to Canada for oral discoveries, and if so, where and when would be the most convenient time to hold such discoveries.

[31] On February 19, 2025, the Respondent served the Appellant with a notice to attend oral discoveries pursuant to sections 103 and 104 of the Rules, fixing the time and place for the examinations at March 10, 2024 at 9 a.m. in Montreal.

[32] On March 8, 2025, the Appellant sent an e-mail to the Respondent, in which he denied choosing Montreal as the place of examination (he wrote: "[w]hen did the Appellant indicate Montreal for an oral examination? Enlighten me"), but did not otherwise address the Respondent's notice to attend. Instead, he reminded the Respondent of his failure to answer the written discovery questions sent nearly a year before. He said they could continue to debate matters such as Rule 114,

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[23] Pages 21 and 25 of Transcript of Second Status Hearing.
[24] Pages 11, 12, 17 and 25 of Transcript of Second Status Hearing.
[25] Page 25 of Transcript of Second Status Hearing.
[26] Page 21 of Transcript of Second Status Hearing.
[27] I presume that this was a typo and that the intention was for this date to read "August 31, 2025".
[28] *Ibid*.

Rule 116, videoconferencing, Chinese law, and statute-barring, but ultimately the Respondent's case was doomed to fail. The Appellant then accused the Respondent of "3 million miscarriages,", 3 years of "abusive malpractice", and suggested that the Respondent avoid continuing to "paint" himself "into a corner", after having chosen the "wrong person" to pick a fight with. The Appellant concluded by suggesting that he would stop the "suing" if the Respondent agreed to vacate his assessment.

[33] On March 10, 2025, the Respondent attended at the time and place set out in his notice to attend. The Appellant did not.

[34] On March 25, 2025, the Respondent provided the Appellant with written responses to the discovery questions that he sent on April 15, 2024.

[35] On March 31, 2025, the Respondent made a motion for the Court to:

1. Dismiss the Appellant's appeal pursuant to Rule 110(b) or 126(4)(b) as a result of his failure to attend his examination and to respect the September 22, 2024, Order; or

2. In the alternative,

    a. Require the Appellant to attend oral discoveries in Canada at the date and time as ordered by the Court, or alternatively, as specified in a notice to attend issued by the Respondent; and

    b. Extend the time for the Respondent to complete the examination for discovery of the Appellant and for the Appellant to satisfy undertakings given at such examination for discovery;

3. Award him costs thrown away pursuant to Rule 110(d) of the Rules;

4. Award him costs in relation to his motion; and

5. Grant such further and other relief as this Court deems just.

[36] On May 28, 2025, the Appellant responded by making a motion for the Court to:

1. Allow his appeal in the absence of any further discovery or a trial pursuant to sections 152(2), 152(3.1), and 152(4)(b.2) of the ITA and Rules 4(1), 4(2), 12(3), 53(1), 126(3)(b), 114 and 116(4)(a);

2. Dismiss the Respondent's motion;

3. Condemn the Respondent's use of the taxation system to engage in "abusive and personal targeting" and refer him to various supervisory committees in order to prevent future "falsifications and malicious manipulations";

4. Refer Justice Canada to various supervisory committees in order to protect the integrity and reputation of taxation system from being "misled, manipulated and damaged by flagrant misconduct";

5. Award him costs thrown away, pursuant to Rules 4(1), 4(2) and 126(3);

6. Award him costs in relation to his motion; and

7. Grant such further relief and remedies as this Court deems just.

[37] On September 11, 2025, I asked the parties to provide brief submissions regarding certain questions, including whether I could order that the Appellant be examined either in person or by videoconference from China pursuant to section 112 of the Rules, whether I could do this in the exercise of the Court's implied jurisdiction to control its own process, and, assuming the answers to the first and/or second question was yes, whether it would be appropriate to make such an order in the present case.

[38] The Respondent wrote that I could only order an examination of the Appellant while in China (either in person or by videoconference) pursuant to section 112 if I was convinced that he was a non-resident of Canada and noted that the mere fact that the Appellant was not physically in Canada did not make him a non-resident under Canadian income tax principles. He then wrote that I could not order a discovery in person or by videoconference from China in the exercise of my implied jurisdiction because section 112 is a complete code in this respect. Lastly, he indicated that it would not be appropriate to order an examination by videoconference in this case, stating:

> In the present case, should the Appellant wish to establish that evidence can be

> given under particular circumstances, he should seek an order from the Court under section 112 of the Rules. The Respondent's position is that the appellant bears the burden to establish the appropriateness of such an examination and to make all necessary arrangements to ensure the process is conducted in a manner that results in a fully useable discovery transcript.
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> Furthermore, the Respondent submits that many foreign jurisdictions object to the examination of individuals within their territory, whether conducted in person or remotely, without prior authorization. In certain cases, such conduct may constitute a criminal offence under the laws of the host country. Accordingly, the Respondent's position is that the Appellant must satisfy the Court that the proposed examination complies with the legal requirements of the jurisdiction in which it is to be conducted.

[39] In the Appellant's submissions, he only provided answers to the second and third of the above questions. He said that he believed the Court had the implied jurisdiction to order that he be examined either in person or by videoconference from China, but with respect to whether the Court should do so here, his response was that "it depends on the Respondent's willingness." Although he did not agree with the Respondent's position, he ultimately did not seem to think it was worth pursuing the matter, stating, "should the Respondent feel his discovery step worthwhile, he would have done it, either written or [by] videoconference. No need to comment [on] the party's willingness or competency. We cannot wake up people who pretend to be asleep." He did not provide any substantive analysis on any of the above points.

III. RESPONDENT'S MOTION:

1. Dismissal of the Appellant's Appeal:

[40] The Respondent argues that this appeal should be dismissed pursuant to paragraphs 110(b) or 126(4)(b) of the Rules.

[41] It should be noted that Rule 126(4)(b) is not applicable in the present case. The September 22, 2024 Order was issued following a status-hearing convened under Rule 125, not a case-management conference convened under Rule 126. In addition, I have not been appointed case-management judge in this file by the Chief Justice. I expect that the provision that the Respondent intended to invoke was Rule 125(8), which is essentially the equivalent to Rule 126(4) when there has been a violation of an order made at a status hearing. Not much turns on this error, however, as the decisions regarding Rule 125(8) have applied the same principles as those

concerning Rule 110(b).[29] Having addressed this, I will now turn to those principles.

[42] Rule 110(b) states:

> 110. Where a person fails to attend at the time and place fixed for an examination in the notice to attend or subpoena, or at the time and place agreed on by the parties, or refuses to take an oath or make an affirmation, to answer any proper question, to produce a document or thing that that person is required to produce or to comply with a direction under section 108, the Court may,
>
> […]
>
> (b) where the person is a party or, on an examination for discovery, a person examined on behalf of or in place of a party, dismiss the appeal or allow the appeal as the case may be […].

[43] The Federal Court of Appeal has held on several occasions that Rule 110(b) is a "drastic" and "ultimate" remedy,[30] and not one that "can or should be given easily."[31] An excellent summary of the principles which must be considered in applying the rule was recently provided by Boyle J. in *Choptiany*.

[44] Before applying these factors, however, I wish to provide my general understanding of the Appellant's reasons for failing to comply with the Respondent's notice to attend.

[45] First, I believe that he considered his obligation to attend his examination in person to remain an open question. I cannot say I find this to be an unreasonable assumption. As judges of this Court often do, Bodie J. approached the First and Second Status Hearings essentially as a form of mediation, in which he attempted to get the parties to agree to a practical solution to the examination issue. He did not give me the impression that he was making formal decisions on points of law, and indeed, his September 22, 2024, Order did not specify what form the Appellant's

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[29] See e.g. *Dick v. R.*, [1998] 1 C.T.C. 3332 (*aff'd* by the Federal Court of Appeal at [2000] 2 C.T.C. 277) and *Lichman v. R.*, 2004 TCC 245 (*aff'd* by the Federal Court of Appeal at [2004] 3 C.T.C. 2147).

[30] *Yacyshyn v. R.* ([1999] 1 C.T.C. 139) at para. 18, Dick v. R. ([2000] 2 C.T.C. 277) at para. 7., *MacIver v. R.* (2009 FCA 89) at para. 1 and *Lynch v. Canada* (2017 FCA 248). See also the judgments of this Court in *Cameco Corp. v. R.* (2014 TCC 367) at para. 29 and *Choptiany v. R.* ([2023] 1 C.T.C. 2014, "***Choptiany***")) at para. 2.

[31] *Lichman v. R.* (2004 TCC 245, *aff'd* by the Federal Court of Appeal at 2005 FCA 226).

examination must take. He also said several times that the parties could continue to work together to resolve their dispute on the issue (though admittedly, his suggestion that the Appellant had to engage counsel and convince counsel for the Respondent that a virtual discovery was feasible appears to have fallen on deaf ears). Finally, it should be noted that the first decision of this Court I am aware of on cross-border virtual discoveries is not reported and was handed down on June 6, 2025 (i.e., three months after March 10, 2025).[32]

[46] Second, I do not believe that the Appellant understood the seriousness of his failure to attend his examination. The Appellant is self-represented. While he is a CPA, he is not a lawyer. Accordingly, although Bodie J. warned him that he might face a show cause hearing if his examination was not complete by March 31, 2025, I am not sure the Appellant knew what that meant. It must also be remembered that when the Appellant asked the Court to allow his appeal under Rule 116(4) after the Respondent failed to respond to his written discovery questions by the time specified in the March 25, 2024, Order, all that had happened was that a status hearing was convened. In addition, Bodie J. himself said that he would provide his assistance to the parties if they wanted it. Fundamentally, I believe that the Appellant expected that when he refused to come to Canada, another status hearing would be convened and he would get another opportunity to convince the Court that no discovery should be held, that his examination should proceed by videoconference from China or that his appeal should simply be allowed. There is no doubt that this was a mistake. But it was an honest one.

[47] With this in mind, I have concluded that the Appellant's appeal should not be dismissed. Regrouping the factors set out in *Choptiany* somewhat, my reasons for coming to this decision are as follows:

- Availability of less drastic remedies and likelihood that they will result in compliance: As mentioned above, the Appellant failed to attend his examination because he thought the matter remained open for discussion and did not understand that he was required to do so. I am prepared to believe that if a definitive order is issued which indicates where his examination must take

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[32] *Charles Stewart v. R.*, 2023-1944(IT)G. This Court has issued decisions regarding discoveries conducted outside of Canada (*GlaxoSmithKline Inc. v. R.*, 2005 TCC 621) and examinations before trial of a witness located outside of Canada (see *Sackman v. R.*, 2011 TCC 492), but unlike this case, these decisions concerned requests for the issuance of a commission and letters of request and did not involve a request to conduct examinations by videoconference.

place, he will, especially with the benefit of these reasons, comply with it.

- Number of defaults and degree of egregiousness and/or level of intentionality:

    a. Breach of March 25, 2024 Order: Although the Appellant did not submit to an examination for discovery before the deadline set out in the March 25, 2024 Order (i.e., April 26, 2024), this did not constitute a meaningful breach of the order. The Appellant wrote to the Court on April 17, 2024, requesting an extension of both his and the Respondent's time for completing their discoveries, and then again on April 25, 2024, to explain that the parties were unable to agree to the form his discovery would take. While no extension had been granted on April 26, 2024, it is customary in our Court to assume that an extension will be granted when it has been requested before the relevant deadline expires. In addition, by the time the new deadline the Appellant had proposed (i.e., June 29, 2025) expired, the Respondent had requested a status hearing, and the Appellant had made a motion for his appeal to be allowed pursuant to Rule 116(4). The parties were clearly waiting for guidance from the Court regarding next steps. When Rule 110(d) refers to "failures" and "refusals", this does not cover failures or refusals by a party to comply with a deadline after it has asked in good faith for the deadline to be extended and is waiting for a response from the Court. These are not "meaningful" defaults, but rather only defaults in the most technical sense of the word.

    b. Breach of notice to attend and September 22, 2024 Order: The Appellant did fail to comply with the Respondent's notice to attend and the second timetable order which had been issued by the Court. Instead of asking the Court for an extension or assistance, he simply ignored them. This was clearly a mistake. Nevertheless, in light of my comments at the beginning of this section, I do not find it to have been egregious or intentional.

- Existence of a specific court order: Neither of the timetable orders issued in this case were specific in the sense of specifying that the Appellant must come to Canada for discovery.

- Failure to be prepared, knowledgeable, informed or make inquiries: This factor is not relevant here.

- Obstructive, antagonistic, deceitful, disrespectful, evasive, dishonest, uncooperative, cavalier, complete disregard, and inaction: Having reviewed the voluminous correspondence in this file, I must admit to being troubled by the Appellant's tone when addressing the Canada Revenue Agency and Respondent. Nevertheless, I cannot say I believe it justifies the dismissal of his appeal. I note in this regard that English does not appear to be the Appellant's first language. This may make it harder for him to measure the level of aggressivity of his communications.

- Prejudice to the moving party: The dispute between the parties has undoubtedly resulted in costs being incurred by the Respondent. Once again, however, I do not believe they are sufficient to justify the dismissal of the Appellant's appeal. As mentioned further below, I will be ordering the Appellant to pay the costs thrown away by the Respondent as a result of his failure to attend his discovery and costs in respect of both the Respondent and Appellant's motions. This is a more appropriate remedy than the more "nuclear" option requested.

- Degree of knowledge of defaulting party of pre-trial discovery and Rules: It is clear to me that the Appellant has almost no experience with tax litigation. If he did, I do truly do not believe that the parties would find themselves in this situation.

- The complaining party's approach to the discovery process:

    a. Refusal to agree to written discoveries: I can understand why the Appellant feels that the Respondent has been unaccommodating in refusing to agree to examine him in writing. Nevertheless, on balance, I believe that an oral discovery was appropriate given the factual nature of some of the issues in dispute and important role credibility will likely play in determining how they are decided. It is understandable that the Respondent would want to observe the Appellant's demeanor when he responds to questions regarding such as whether he believed that he was a person "all of whose taxable income for the year is exempt from tax under Part I" when his 2016 tax return was filed, whether he conducted any research or consulted any tax professional before coming to this conclusion, why Box 266 of his return was checked "no", and whether he reviewed the return before it was

filed, for example.33 I also note that the Rules clearly state that it is the examining party that has the right to choose whether or not discoveries should be conducted in writing.34

b. Refusal to agree to discovery by videoconference from China: According to the Appellant, the Respondent has wrongly maintained throughout the proceedings that he needs to be in Canada for an oral examination for discovery. He may be right about this, or he may be wrong. I simply do not have enough information before me to answer the question. Neither the Appellant nor the Respondent has provided the Court with any information regarding the Chinese government's position regarding the conduct of a virtual examination for discovery of a person within its borders, whether or not there are any Chinese laws that prohibit it, or whether it can be arranged for a person to administer an oath or affirmation for the purposes of such an examination in compliance with Chinese law and/or the Rules. They each just said that it was the other party's responsibility to do this. I would discourage both appellants and the Respondent from adopting this approach in future cases.

c. Failure to provide a timely response to Appellant's discovery questions: The Appellant claims that the Respondent failed to comply with Rule 114 when he did not provide any response to the written questions he had sent within 30 days. I do not agree. First, I note that the 30-day deadline was changed as a result of the issuance by the Court of the March 25, 2024 Order, which brought it forward to April 26, 2024.35 Second, for the same reason the Appellant did not commit any "meaningful" breach of his

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[33] It should also be noted that until September 21, 2025, the Respondent intended to rely on paragraph 152(4)(b.2). It was reasonable, therefore, to expect that there would be discovery questions regarding whether the Appellant had really, as he claimed, not received the March 22, 2025 additional assessment and March 30, 2025 reassessment, since this would be relevant to determining whether they had been issued prior to the expiry of the additional three-year deadline provided for in this provision.

[34] Rule 92 states: "[a]n examination for discovery may take the form of an oral examination or, at the option of the examining party, an examination by written questions and answers, but the examining party is not entitled to subject a person to both forms of examination except with leave of the Court."

[35] It should be noted in this regard that Rule 12(1) permits the Court to "extend or abridge any time prescribed by these rules or a direction, on such terms as are just."

obligations under the March 25, 2024 Order, the Respondent did not either. The Respondent asked the Court for an extension prior to the relevant deadline, and more specifically, for a revised timetable order to be issued following the convening of a status hearing. This was only done on September 22, 2025, and the Respondent complied with the order issued on that date. This having been said, I do disagree with certain decisions and statements made by the Respondent in the present case, namely:

i. Waiting almost a year before responding to the Appellant's questions. While this did not constitute a meaningful breach of the March 25, 2024, Order, I do not think it was helpful in reducing the tension between the parties;

ii. The statement in his April 24, 2024 letter to the Court that "the appellant cannot decline to be examined while at the same time wishing to examine the Respondent." The fact that one party refuses to comply with its obligations is not a good reason for the other to do the same. This just exacerbates a difficult situation; and

iii. The statement in his April 24, 2024 letter that the Appellant's list of questions was not sent in a timely manner. The March 25, 2024, Order indicated that discovery was to be completed on April 26, 2024, a date agreed by both parties. It did not indicate when written questions would be served. It was not realistic to expect that the Appellant was going to provide his questions to the Respondent immediately after the March 25, 2024, Order was issued. On the other hand, I am cognizant that sending them on April 15, 2024, left the Respondent with only 11 days to respond, which was not very much time.

- Extent to which the defaulting party may be considered to be abusing the court's processes and procedures: The Appellant's e-mail to the Respondent dated March 8, 2025, gave me pause in this regard. It is possible to read it as an indication that the Appellant has been attempting to use the various motions and procedural disputes in this case as leverage to force the Respondent to drop his case against him, which would obviously be inappropriate. I have ultimately decided to give the Appellant the benefit of the doubt on the issue, however, and to accept that he genuinely believes in the soundness of the

positions he has taken up to this point.

- Importance of protecting the integrity of the judicial process and need to send strong messages in appropriate cases: If the Appellant was represented or had violated an order which clearly stated that discovery was to occur in person and in Canada, I might be willing to take the view that a "message" to the public would be warranted. He is not, however, and there was no such order.

2. Compelling Attendance in Canada and Extension:

[48] The Respondent asks that the Court compel the Appellant to attend his examination for discovery in person and in Canada, and to grant the Respondent an extension of the time for conducting that examination. It seems to me that it makes most sense to examine these points in reverse order. Obviously, it would be unnecessary for me to address these issues if I decided to allow the Appellant's appeal in the absence of any discovery or trial. As discussed below, however, I have decided not to do so.

a. Application for Extension:

[49] The factors that must be applied in determining whether to grant an extension to a deadline set out in the Rules or an order are well established, namely, whether:[36]

i. The party has had a continuing intention to complete the relevant step since it failed to complete that step;

ii. The party's position in relation to that step has merit;

iii. There is prejudice to the other party arising from the delay in completing the step;

iv. There is a reasonable explanation for this delay; and

v. Granting the extension is in the interests of justice.

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i. [36] See e.g. *Larkman v. Canada* 2012 FCA 204 and *Akanda Innovation Inc. v. R.*, 2018 FCA 200 ("***Akanda***").

[50] As indicated by the Federal Court of Appeal, not all of the factors have to favor the requesting party's position in order for an extension to be granted, and it is the interests of justice that are the "overriding consideration".[37]

[51] Applying these factors leads to the following analysis:

i. Continuing intention to complete the step: The Respondent filed its notice of motion on March 31, 2025, which was the day the deadline for holding the Appellant's examination for discovery expired. In that notice of motion, he indicates clearly that unless his motion to dismiss is granted, he wishes to arrange for the Appellant to be examined in person.

ii. Merit to party's position in relation to the step: This factor is not applicable here. It looks to whether the party has a good chance of succeeding in having its position on the merits of the relevant step accepted. There is no "winning" or "losing" a discovery.

iii. Prejudice to the other party arising from the relevant delay: I do not see any prejudice to the Appellant that arises from the granting of the requested extension.

iv. Reasonable explanation for the relevant delay: As discussed above, the Respondent played a role in the events leading to the events of March 10, 2025. Nevertheless, it was a relatively small one. Fundamentally, it is the failure of the Appellant to make himself aware of and comply with the Rules and orders of this Court which has made an extension necessary.

v. Interests of justice: It is in the interests of justice for the parties to conduct discoveries in the present case. There is a real possibility, assuming that they take an open-minded approach, that it will narrow the issues or lead to a settlement. It will certainly assist them in preparing for any trial that is ultimately held. As mentioned above, there is a significant factual element to this appeal.

[52] Accordingly, I have decided to grant the Respondent an extension until

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[37] *Akanda*, *supra* note 36 at para. 19.

July 31, 2026, to complete its discovery of the Appellant.

b. Form of Examination:

[53] It is unclear to me whether this Court has the power to compel a person outside Canada to come to the country for discovery. It certainly would not have any ability to enforce such an order from a practical point of view. Nevertheless, I do have the power to order that the Respondent shall be entitled to specify a time and place situated in Canada for the Appellant's examination for discovery in a notice to attend and that in the event that the Appellant fails to attend the examination for discovery at such time and place in Canada, his appeal will be dismissed, which is essentially the same thing.[38] The question is whether I should.

[54] In my view, there are three main provisions that are relevant to this type of determination: Rule 103(1), Rule 6, and Rule 112(1).

[55] Rule 103(1) is entitled "Manner of Requiring Attendance", and applies in respect of all oral examinations for which provision is made in the Rules, including examinations for discovery, pursuant to Rule 101(a).[39] It states:

> 103. (1) Where the person to be examined is a party to the proceeding, a notice to attend shall be served (Form 103(1)),
>
> (a) on the party's counsel of record, or
>
> (b) where the party acts in person, on the party, personally and not by an alternative to personal service.

Form 103, in turn, reads as follows:

> YOU ARE REQUIRED TO ATTEND FOR AN EXAMINATION (on your affidavit

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[38] It seems clear to me that such a power is implied by the Court's jurisdiction to control its process.

[39] Rule 101(a) reads as follows:

> "Sections 102 to 112 apply to all oral examinations for which provision is made in these rules including,
>
> (a) an oral examination for discovery, […]
>
> (b) the taking of evidence before hearing,
>
> (c) the cross-examination on an affidavit, and
>
> (d) the examination out of Court of a witness before hearing of a pending motion."

> dated (date), for discovery, on behalf (or in place) of (identify party), etc.) on (day), (date), at (time), at the office of (name, address and telephone number of examiner).

[56] Rule 6, for its part, states:

> 6. The Court may direct that any step in a proceeding be conducted by teleconference, by videoconference or by a combination of both and may specify the party responsible for establishing the communication.

[57] And Rule 112(1) provides that:

> 112. (1) Where the person to be examined resides outside of Canada the Court may determine,
>
> (a) whether the examination is to take place in or outside of Canada,
>
> (b) the time and place of the examination,
>
> (c) the minimum notice period,
>
> (d) the amount of witness fees and expenses to be paid to the person to be examined, and
> (e) any other matter respecting the holding of the examination.[40]

[58] Reading these rules together suggests to me that the legislative scheme embodied in the Rules is as follows: it is for the examining party to propose a time, place and/or manner of discovery. If the examined party objects to the method that has been proposed, he or she must ask the Court to change it by invoking Rule 6, Rule 112, or another relevant provision.

[59] The Appellant has not asked me to change the time and place of his discovery, however. The "Orders Sought" section of his representations simply asks the Court to allow his appeal, dismiss the Respondent's motion, condemn and refer the Respondent to supervisory committees, refer the Department of Justice to such committees and award him costs. He does not ask anywhere, even in the alternative, for discovery to be conducted by videoconference from China.

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[40] The remainder of Rule 112 deals with the power of the Court to issue a commission and letter of request for assistance in collecting evidence from a foreign jurisdiction "if the moving party requests it". This provision is usually invoked by the examining party for the purposes of compelling a non-resident witness to attend an examination for discovery.

[60] Despite this, I believe it would have been possible for me to grant an order for discovery to proceed by videoconference (or in person in China, though I will not provide any further discussion on this option since neither party has ever suggested that it would be appropriate here) under the "basket clause"[41] in the Appellant's notice of motion if he had demonstrated in his representations that he wanted me to do this. He did not do so though. The fact is that he no longer seems very interested in this possibility. While he refers on several occasions in his representations regarding the Respondent's motion to his disagreement with the Respondent's position that he must be in Canada for an oral examination, these represent just a handful of sentences in ten pages of representations which are, in reality, focused on explaining why his appeal should not be dismissed as the Respondent requests. In addition, in the Appellant's submission regarding whether I could or should order discovery to be held in person or via videoconference from China, he wrote that while I could do this, I should only do so if the Respondent was willing to proceed in this way. He also suggested pressing the point was futile ("[n]o need to comment the party's willingness or competency. We cannot wake up people who pretend to be asleep").

[61] The above having been said, even if I have misinterpreted the above legislative scheme and have the power to impose virtual discoveries on parties where neither of them have asked for or seem to want them, I would still conclude that this would not be a suitable case to do so. Discoveries by videoconference from a foreign country have been the subject of too little commentary by this Court, and the parties have not provided me with sufficient analysis on the subject[42] or any of the evidence I would need to decide whether conducting them in this case would be appropriate.

[62] For all of these reasons, I have decided to grant an order permitting the Respondent to specify a time and place in Canada at which the Appellant's

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[41] I refer here to the Appellant's request in his notice of motion for such further relief or remedies as the Court "deems just".

[42] I acknowledge that I specifically said in my request for submissions that they should be brief. In addition, the Respondent clearly indicated in his response that his position was that the person examined must be a non-resident (i.e., that Rule 112 is a complete code), it must be possible to produce a useable transcript, and it must be legal to conduct the discovery under the laws of the relevant jurisdiction. He also clearly said that he believed that the Appellant should have the burden of proof. I already had a fairly good idea that these were his positions, however. What I was really looking for was the legal reasoning underlying these positions (the "why"), given that none of them are, in my view, settled as a matter of law. Obviously, I would also have wanted equivalent input from the Appellant's perspective.

examination for discovery will take place and that his appeal will be dismissed if he fails to attend such examination at such time and place. I note that I do this despite the Appellant's comments that he has family issues and possibly a sick relative in China, that there are not many flights available and that he cannot afford to come to Canada. As mentioned above, he has not provided the Court with any evidence on these points. I am also somewhat skeptical of some of his claims. With respect to his financial situation in particular, I note that this appeal involves a taxation year in which he received more than $5,000,000 of proceeds. Overall, I believe it is reasonable to expect him to come to Canada for a couple of days to deal with a $281,873 reassessment.

3. Costs Thrown Away:

[63] Rule 110(d) permits the Court to direct a party that fails to comply with a notice to attend to pay personally and forthwith costs of the motion, any costs thrown away and the costs of any continuation of an examination. The Respondent has asked for such costs.

[64] The Appellant opposes the ordering of such costs. He notes the Respondent's own refusal to answer his discovery questions, and his failure to compromise on the method of discovery used.

[65] As discussed above, the Respondent's breach of the Rules or March 25, 2024, Order was purely technical. In addition, while I may not have agreed with all of the Respondent's decisions and comments in the present case, this does not justify depriving him of compensation for the costs he threw away in preparation for the discovery the Appellant wrongfully failed to attend. I have therefore decided to award such costs to the Respondent, provided they are reasonable.

IV. APPELLANT'S MOTION:

1. Motion to Allow Appellant's Appeal:

[66] As mentioned above, the Appellant made a motion for the Court to allow his appeal without any further discovery or a trial pursuant to sections 152(2), 152(3.1), and 152(4)(b.2) of the ITA and invoked Rules 4(1), 4(2), 12(3), 53(1), 126(3)(b), 114 and 116(4)(a) in support of that motion. I will consider each of these provisions of the Rules in turn, though I will address subsection 53(1) last, as I believe this makes the most sense from a conceptual standpoint.

a. Rule 4(1):

[67] Rule 4(1) provides that the Rules "shall be liberally construed to secure the just, most expeditious and least expensive determination of every proceeding on its merits." It does not, on its own, give me the power to simply allow the Appellant's appeal without the various steps involved in a general procedure appeal such as discovery being complied with. I do agree that it should be borne in mind in applying the various other Rules he has invoked, however.

b. Rule 12(3):

[68] Rule 12(3) provides that "[a] time prescribed by these rules for filing, serving or delivering a document may be extended or abridged by consent in writing." The Appellant does not elaborate on his position regarding this Rule in his representations, and I am not certain why he has cited it. In my view, it is not relevant to the issues in dispute between the parties.

c. Rule 114:

[69] As already discussed, the Respondent did not breach Rule 114 or the March 25, 2024 Order, which extended the 30-day deadline referenced therein to April 26, 2024, in anything more than a technical sense.

A. Rule 116(4)(a):

[70] Rule 116(4)(a) states that:

> Where a person refuses or fails to answer a proper question on a written examination or to produce a document which that person is required to produce, the Court may, in addition to imposing the sanctions provided in subsections (2) and (3),
>
> (a) if the person is a party or a person examined on behalf of or in place of a party, dismiss the appeal or allow the appeal as the case may be,

[71] The same analysis applicable under Rule 110(b) should be applied under Rule 116(4)(a), given that they are equivalent rules. Accordingly, applying the factors in *Choptiany*, I have decided not to allow the Appellant's appeal:

- Availability of less drastic remedies and likelihood that they will result in compliance: There is no need for any remedy at all here, as the Respondent

has at this point complied with his discovery obligations.

- Number of defaults and degree of egregiousness and/or level of intentionality: The Respondent "refused", in a literal sense, to answer the Appellant's questions until he did so on March 25, 2025. He also technically "refused" to comply with the deadline set out in the March 25, 2024 Order by requesting an extension, and then technically "failed" to meet that deadline. These are not, however, the types of behaviour contemplated by Rule 116(4)(a). Like Rule 110(d), the provision does not cover refusals or failures to comply with a deadline after a party has asked in good faith for the Court to extend it and is waiting for a response. Although I do not agree with the reasons advanced by the Respondent for requesting an extension, I am certain that his request was made in good faith.

- Existence of a specific court order: The Court's order of March 25, 2024 did indicate specifically when answers to written discovery questions were to be provided.

- Failure to be prepared, knowledgeable, informed or make inquiries: This factor is not relevant here.

- Obstructive, antagonistic, deceitful, disrespectful, evasive, dishonest, uncooperative, cavalier, complete disregard, and inaction: The Respondent's behaviour in these proceedings was not any of these things.

- Prejudice to the moving party: I am not aware of any prejudice suffered by the Appellant as a result of the Respondent's delay in providing his response to the Appellant's discovery questions.

- Degree of knowledge of defaulting party of pre-trial discovery and Rules: The Respondent is represented by counsel and appears in all proceedings before this Court. As such, he possesses a high degree of knowledge of its rules and processes.

- The complaining party's approach to the discovery process: The Appellant failed to comply with the Court's order of September 22, 2018. For the reasons discussed above, his mistake was not egregious or intentional. It was, nevertheless, a mistake.

- Extent to which the defaulting party may be considered to be abusing the court's processes and procedures: The Respondent has not taken any action that could be considered abusive.

- Importance of protecting the integrity of the judicial process and need to send strong messages in appropriate cases: The integrity of the judicial process favors the hearing of the present appeal on its merits. The Respondent's delay in responding to the Appellant's questions did not breach of Rule 114 in anything but a technical sense, let alone in a way meriting the sending of any messages.

A. Rule 126(3)(b):

[72] Rule 126(3)(b) provides a case-management judge with the power to give "any directions that are necessary for the just, most expeditious and least expensive determination of the appeal on its merits, including consolidating two or more appeals or parts of appeals that raise common issues or deal with common facts."

[73] As mentioned above, I am not a case-management judge and Rule 126(3) is not applicable in the present case. Furthermore, I do not believe that the Rules Committee intended for Rule 126(3) to permit a case-management judge to allow an appeal on its merits. The role of a case-manager is to handle the trial process, not conduct the trial itself. This is made clear by the preamble to Rule 126(3), which states: "[t]he case management judge may deal with all issues that arise prior to the hearing of the appeal […] [emphasis added]," as well as Rule 126(6), which states that a case management judge shall not preside at the hearing of an appeal except with the consent of the parties.

A. Rule 53(1):

[74] Rule 53(1) reads as follows:

> 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
>
> (a) may prejudice or delay the fair hearing of the appeal;
>
> (b) is scandalous, frivolous or vexatious;
>
> (c) is an abuse of the process of the Court; or

(d) discloses no reasonable grounds for appeal or opposing the appeal.

[75] It appears to me that the Appellant is invoking paragraphs (b), (c) and (d) of the above provision. Accordingly, I have considered each of them below.

i. Scandalous, Frivolous or Vexatious:

[76] In *Mudge v. The Queen*,[43] Russell J. defined the terms "scandalous", "frivolous" and "vexatious" in the following terms:

> Scandalous pleadings are pleadings which are offensive, do not relate to issues and are abusive or prejudicial. Also, pleadings might be struck because they were inserted for colour, or simply as they are inflammatory. Frivolous claims are pleaded claims with negligible importance and claims that are vexatious generally are usually malicious and have no cause. Pleadings should be struck for being scandalous, frivolous or vexatious only in the most obvious of cases.[44]

[77] It is clear to me that the Respondent's pleadings do not meet the standard set out in these decisions. I see nothing in the reply that is offensive, irrelevant, abusive, prejudicial, inflammatory, of negligible importance or malicious. Consequently, I do not accept the Appellant's argument that the Respondent's Reply should be struck, and his appeal allowed pursuant to Rule 53(1)(b).

ii. Abuse of the Process of the Court:

[78] According to the Supreme Court of Canada, the doctrine of "abuse of process" engages the inherent power of the court to prevent misuse of its proceedings in a way that would be manifestly unfair to a party or would bring the administration of justice into disrepute.[45]

[79] As implied by the word "process", a pleading will result in an abuse of process

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[43] 2020 TCC 77.

[44] *Ibid*. at para. 20. See also *Sentinel Hill Productions (1999) Corp. v. R*., 2007 TCC 742, in which Rossiter C.J. wrote that the expressions "scandalous, frivolous or vexatious" are strong, emotionally charged and derogatory expressions which should be reserved for the plainest and most egregiously senseless assertions.

[45] *Saskatchewan (Environment) v. Métis Nation – Saskatchewan*, 2025 SCC 4, *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77, at para. 37; *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26 at para. 39 and *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, at para. 33).

when an issue of a procedural, as opposed to substantive nature, arises in respect of that pleading and is of sufficient gravity to meet the "manifestly unfair" and "bring the administration of justice into disrepute" standard. In other words, unlike in the case of a scandalous, frivolous or vexatious pleading, or ones which disclose "no reasonable grounds", pleadings giving rise to an abuse of process do not relate to the merits of a party's position. Examples of pleadings which do are those which relitigate a point already decided,[46] contain assumptions not in fact made by the Minister,[47] are made by parties who deliberately fail to cooperate or comply with the Rules of court orders in a manner which causes undue delay and prejudice[48] or advance an argument that exceeds the Court's jurisdiction.[49]

[80] I do not find any conduct along these lines here. The only procedural issues that the Appellant has provided evidence for are that the Respondent took too long to respond to the list of questions sent on April 15, 2024 (they were only provided nearly a year later, on March 25, 2025) and that he asserted (wrongly, in his view) that it was not possible for him to be examined in writing or by videoconference. I have already addressed both of these points. They are simply nowhere near the level of gravity needed to make it "manifestly unfair" for the Respondent to continue to contest the Appellant's appeal, or to cause permitting this to bring the administration of justice into disrepute.

iii. No Reasonable Grounds for Opposing the Appeal:

[81] In *R. v. Imperial Tobacco Canada Ltd.* (*"**Imperial Tobacco**"*),[50] McLachlin C.J. wrote that a pleading should only be struck on the basis of a provision such as Rule 53(1)(d) on the basis that it discloses no reasonable cause of action if "it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action", and that put another way "it has no reasonable prospect of success."[51] She also held that the Court's approach "must be generous, and err on the side of permitting a novel but arguable claim to proceed to trial",[52] adding that the judge "cannot consider what evidence adduced in the future might or might not

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[46] See e.g. *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, 232 D.L.R. (4th) 385.
[47] See e.g. *Anchor Pointe Energy Ltd. v. The Queen*, [2002] 4 C.T.C. 2633.
[48] See e.g. *Marine Atlantic Inc. v. The Queen*, 2016 TCC 46.
[49] See e.g. *Telus Communications (Edmonton) Inc. v. The Queen*, [2005] G.S.T.C. 96.
[50] 2011 SCC 42 at para. 17.
[51] This test has been applied in the context of Rule 53(1)(d) many times (see e.g. *French v. R.* 2016 FCA 64).
[52] *Imperial Tobacco*, *supra* note 50 at para. 21.

show".[53]

[82] I do not accept that the "plain and obvious" and "no reasonable prospect of success" test has been met in the present case.

[83] The main point emphasized by the Appellant is his notice of motion and representations in support of his statute-barring argument is that the Minister failed to send him a copy of one or both of the additional assessment dated March 22, 2023 and reassessment dated March 30, 2023, until March 29, 2024, and that this was past the time permitted by paragraph 152(4)(b.2). This provision grants the Minister an additional three years to reassess a taxpayer who has failed to file Form T1135 where the taxpayer has failed to report an amount in income in respect of a "specified foreign property". Given that the Appellant's 2016 tax return was assessed as filed by the Minister on May 1, 2017, the Minister would have had to reassess under paragraph 152(4)(b.2) no later than May 1, 2023.

[84] The above having been said, and as mentioned above, the Respondent has indicated that he is no longer relying on paragraph 152(4)(b.2), but rather, only paragraph 152(4)(b). Unlike paragraph 152(4)(b.2), this provision does not impose any fixed deadline on the Minister for issuing the relevant additional assessment or reassessment.

[85] At the end of the day, it seems to me that the Respondent's position regarding the statute-barring issue is that (1) the Appellant was required to file form T1135, (2) the Appellant made a misrepresentation by either failing to file form T1135 or checking "no" in box 266, and (3) the misrepresentation was attributable to neglect, carelessness, willful default or fraud for the purposes of subsection 152(4). Accordingly, regardless of when the additional assessment and reassessment were issued in this case, the Respondent takes the view that they were issued on time.

[86] In my view, these arguments have sufficient merit to avoid the application of Rule 53(1)(d).

[87] Subsection 233.3 requires Form T1135 to be filed where the taxpayer is a "reporting entity", which is defined as a "specified Canadian entity" who held, at any time in the relevant year, "specified foreign property" with an aggregate "cost

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[53] *Ibid*. at para. 23.

amount" that exceeds $100,000:

- "Cost amount" is defined in section 248 as, in the case of capital property that is not depreciable property, the property's ACB.

- "Specified foreign property" is defined in section 233.3(1) as including "a share of the capital stock of a non-resident corporation."[54]

- Based on the amount of capital gains declared by the Appellant on Schedule 3, he disposed of shares with an aggregate ACB of more than $5,000,000. While his return is not easy to read, it appears that at least seven of the investments disposed of had, on their own, an ACB that exceeded $100,000.

- Approximately half of the names of the companies disposed of contain the word "China" or the names of places situated in China (including three of the seven investments referred to in paragraph (iv).

- The Appellant is a CPA[55] and appears to have filed form T1135 in the past.

[88] As mentioned above, the Appellant's position is that he is a person "all of whose taxable income for the year is exempt from tax under Part I," and therefore not a specified Canadian entity. This argument is interesting. The words "exempt from tax under Part I" are not defined in section 233.3 or elsewhere in the ITA, and I am not aware of any cases that have considered their scope. On the other hand, most members of the tax community would, I think, consider them to be references to persons who are exempt from tax under "Division H" of the ITA, entitled "Miscellaneous Exemptions." In addition, the purpose of section 233.3, which is undoubtedly to ensure that taxpayers with significant offshore assets make them known to the Minister so he is in a position to ensure that the income from such assets has been reported and the applicable tax paid, supports this view. If all of a person's income is non-taxable in any case due to the operation of section 149 of the ITA, for example, it is hard to see why the Minister would care where its assets are located. I would imagine that the Minister would care, however, to know what foreign assets a taxpayer who has declared little or no income for a given year has. The taxpayer may not be declaring all of the income earned in respect of his or her

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[54] See paragraph (c) of the definition of the term "specified foreign property."
[55] Page 15 of First Status Hearing Transcript.

foreign assets in the hope that the government has no way to verify it, for example.

[89] I wish to emphasize that my intention in making the above comments is not to rule on the Appellant's argument. It too, is serious. I merely wish to show that it raises sufficient questions to make the Respondent's position quite tenable.

[90] I note that I considered whether the Respondent's argument that there has been a misrepresentation attributable to neglect, carelessness, willful default or fraud can be reconciled with his decision not to rely on paragraph 152(4)(b.2) of the ITA. In other words, if the Minister accepted that the Appellant did not fail to report any income, how bad could his failure be? Ultimately, however, I do not believe that it would be appropriate to strike the Minister's allegations regarding paragraph 152(4)(b) on this basis. The fact that the Minister is no longer relying on paragraph 152(4)(b.2) does not mean he accepts that the Appellant has not failed to report any income. He has simply decided not to argue the point at trial.[56] In addition, it seems to me that determining whether or not there has been neglect, carelessness, willful default or fraud in failing to file a return or answer the question set out in Box 266 is not simply a matter of assessing whether the failure resulted in, or was intended to cover up any failure to report income. Rather, it requires an examination of whether the taxpayer knew or ought to have known whether the form had to be filed and/or that Box 266 had to be checked yes, and what steps it took to comply with its obligations.

[91] I also considered whether the recent case of *Deoram v. The King* (*"**Deoram**"*)[57] should prevent the Respondent's statute-barring argument from having a reasonable prospect of success. In that case, Graham J. held that the failure to file a form could not constitute a misrepresentation for the purposes of paragraph 152(4)(b). While I do not wish to express any disagreement with his analysis, I note that *Deoram* was an informal procedure appeal,[58] and was the first decision I am aware of to be rendered on this topic. Moreover, as mentioned at the outset of these reasons, there is also the fact that the Appellant failed to check Box 266 to consider in this regard. As a result, I do not believe that the Respondent's statute-barring

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[56] This is perhaps not surprising, since no assumption was made on this point. As such, the Respondent would have the burden of proving any failure to report *(see Eisbrenner v. Canada*, 2020 FCA 93).

[57] 2025 TCC 151.

[58] Section 18.28 of the Tax Court of Canada Act ("**TCCA**") provides that a judgment on an informal procedure appeal "shall not be treated as a precedent for any other case."

argument may be struck.

2. Condemnations and Referrals to Committees:

[92] It is clear to me that this Court does not have the power to condemn the Respondent or refer it or the Department of Justice to supervisory committees. Its jurisdiction is limited by the provisions of the ITA, TCCA, the Rules, and what is implied by these laws and regulations. It is well accepted that they focus the attention of the Court on the validity and/or correctness of an assessment, and not the behaviour of the Minister and Respondent.[59] In any event, I wish to note for the benefit of the Appellant as a neutral third party who has read the whole of his file that I do not find any evidence that would warrant such a referral. I understand that the Appellant, as a non-lawyer, is unfamiliar with this Court's usual ways of proceeding, and therefore feels that he is being treated harshly or unfairly by the Respondent. I sincerely do not believe this to be the case, however, and am convinced that the Respondent is attempting to handle his appeal in a very typical fashion.[60] Fundamentally, resisting the process a little less may be the quickest and cheapest way of resolving his appeal.

3. Costs Thrown Away:

[93] The Appellant has asked for costs thrown away pursuant to Rules 4(1), 4(2) and 126(3). In his notice of motion, the only detail he provides in this regard is a footnote reading "[t]he status hearing, oral examination are used by the respondent to stall/block and divert the prosecution away from the merits".

[94] The above provisions do not deal with costs thrown away. I suspect the Appellant asked for them because the Respondent did (pursuant to Rule 110(d)) and then attempted to identify provisions in the Rules which might support his claim. Nevertheless, given that the Respondent requested an extension before failing to comply with the March 25, 2024 Order, I would not grant such costs to the Appellant case even if they did.

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[59] See e.g. *Ereiser v. R.* (2013 FCA 20).

[60] It is very normal to seek discovery, for example, and also very normal to want it to be conducted orally. It is very unusual, on the other hand, for this Court to decide a case without allowing it to proceed to trial.

IV. CONCLUSION:

[95] For all of the above reasons:

1. The Respondent shall be granted an extension to complete his discovery of the Appellant;

2. The Respondent shall be entitled to specify a place in Canada in his notice to attend;

3. If the Respondent specifies a place in Canada in his notice to attend and the Appellant fails to comply with that notice to attend, his appeal will be dismissed.

4. The Respondent shall be entitled to costs thrown away as a result of the Appellant's failure to attend his examination on March 10, 2025.

[96] Costs in respect of both motions will be awarded to the Respondent. The Respondent will have 30 days from the date of this judgment to provide submissions regarding the amount of such costs (including the costs thrown away awarded under Rule 110(d)), following which the Appellant will have 30 days to provide a response to such submissions.

Signed this 26th day of January 2026.

"Ryan Rabinovitch"

Rabinovitch J.

CITATION:	2026 TCC 16
COURT FILE NO.:	2023-1380(IT)G
STYLE OF CAUSE:	QUAN GAO AND HIS MAJESTY THE KING
MOTIONS DECIDED ON WRITTEN REPRESENTATIONS:	Ottawa, Ontario
REASONS FOR ORDER BY:	The Honourable Justice Ryan Rabinovitch
DATE OF ORDER:	January 26, 2026

APPEARANCES:

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Counsel for the Respondent:	Gabriel Caron

COUNSEL OF RECORD:

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Firm:	N/A

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