

The Plan to Reopen the Tax Court and the New Fast Track Settlement Conference System

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On June 4, 2020, in a special virtual meeting held with the Tax Court of Canada Bench & Bar Liaison Committee, the Tax Court of Canada outlined its tentative plan to resume operations and introduce a new, but temporary, Fast Track Settlement Conference System.

Details of the Tax Court's announcement are set out in the Bench & Bar Committee's communiqué posted on the CBA's website at:

<https://cba.org/Sections/Tax-Court-Bench-and-Bar/Resources/Resources/2020/Tax-Court-plans-to-resume-operations> (English)

<https://cba.org/Sections/Tax-Court-Bench-and-Bar/Resources/Resources/2020/Tax-Court-plans-to-resume-operations?lang=fr-ca> (French).

Resumption of the Tax Court's Operations

While the dates for reopening are subject to change based on the lifting of federal and provincial government restrictions relating to the COVID-19 pandemic, the plan to resume operations is welcome news. In short, it is planned that:

- Hearings of general procedure appeals will resume on July 27, 2020, and informal procedure appeals on August 17, 2020.
- Appeals, motions and other matters presently scheduled to be heard on or after August 17, 2020 will proceed as scheduled.
- Additional sittings will be scheduled starting July 27, 2020 in order to address hearings that were adjourned or cancelled due to the Court's closure. Priority will be given to the continuation of appeals that were interrupted and general procedure appeals that were adjourned on a "first case adjourned/cancelled, first case rescheduled" basis.
- The period beginning on March 16, 2020, and ending on the day that is 60 days after the Court and its offices reopen for business is excluded from the computation of time under the *Tax Court of Canada Rules (General Procedure)*, all other rules made under the *Tax Court of Canada Act* as well as Orders and Directions from the Court. Parties should factor this suspension into the computation of the time period within which they must complete litigation steps.

Of particular interest is the new Fast Track Settlement Conference System ("**Fast Track**"). No doubt Fast Track is intended to assist with the backlog of appeals arising as a result of the closure of the Tax Court since March 16th, including rescheduling of postponed hearings and scheduling of hearings for appeals ready to be set down. In addition, the Tax Court must also address the high volume of new appeals filed by taxpayers online since the closure and an expected wave of appeals that will be filed on reopening.

The Department of Justice will also be addressing its own backlog and we anticipate that its client, the Canada Revenue Agency, will be interested (perhaps more so than usual), along with taxpayers, to avail themselves of Fast Track to resolve tax disputes without the need for a hearing.

Where appropriate, Fast Track presents a meaningful opportunity to resolve appeals on an expedited and more economical basis for the limited time that it is available.

Fast Track Settlement Conference System

The key features of Fast Track will be more precisely set out in a forthcoming Practice Note from the Court, but can be summarized as follows:

- It will be a temporary system for general procedure appeals only;
- It will be available only if both parties (*i.e.* the taxpayer and the Department of Justice) agree;
- Parties who are interested will file a joint conference request brief to which they will attach the pleadings, and in which they will outline the key issues, their respective positions, the basis for their position and the amount of tax at issue;
- A judge will determine whether the appeal is suitable for Fast Track;
- If the appeal is considered suitable, the judge will contact the parties, provide them with a date for the conference, indicate who will need to attend and make any other request deemed necessary to ensure that the conference proceeds efficiently;
- The judge will also determine whether the conference will be held virtually or in person in Vancouver, Montreal or Toronto;
- Settlement conferences under this system will take place in October and November 2020;
- Should the matter fail to settle, the judge who presides over the settlement conference will not preside over the trial; and
- The Court is aiming to accept requests for this system in late July.

The Tax Court is to be commended for its efforts in these uncertain times.

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