

CANADA

Canada's Tax Court Is Staging a Comeback

by Amanda Athanasiou

After adjourning over 1,000 appeal hearings and missing hundreds of sitting weeks because of the coronavirus pandemic, the Tax Court of Canada is gearing back up and planning to make up for lost time.

While other federal and provincial courts in Canada — including the Supreme Court and Federal Court of Appeal — have continued to release decisions under modified protocols that have included video-conferenced hearings, remotely sworn affidavits, and suspended deadlines, the tax court's last posted judgment is dated March 13. That was the day the court announced a two-week cancellation of sittings. By the end of the month, even conference calls had been canceled until May 1, and that date has been extended repeatedly.

Now staff are returning to work and the court is targeting July 20 for resuming in-person hearings in some cities. Chief Justice Eugene Rossiter outlined an ambitious plan to deal with the pandemic-related backlog during a June 25 webinar hosted by the Canadian Tax Foundation.

Almost 1,200 appeal hearings were adjourned and roughly 210 conference calls concerning case management, pretrial conferences, status hearings, and similar matters were canceled between March 16 and June 30, Rossiter said during the webcast. Fifty-two appeals that were ongoing when the court closed mid-March must be continued, and the court has lost approximately 202 sitting weeks, he said.

To deal with its backlog, the court added 78 new sitting weeks in addition to the normal weeks that have been scheduled and assigned, Rossiter said. "Some judges will be sitting back-to-back, some judges will be sitting possibly three or four weeks in a row," he added. The court is planning to sit during its four-week summer recess, according to a May 27 notice. But this schedule isn't a long-term arrangement. "We simply cannot keep up this intense schedule," he said.

The tax court is not the only trial court in Canada that shut down, according to Roy Berg of Roy Berg International Tax Law, who was slated to participate in a May trial that was put on hold. There have been other challenges, Berg added. Some pleadings can't be electronically filed with the tax court, and hard-copy pleadings have been returned as undeliverable, he said.

Trials that had already begun will continue as soon as possible, Rossiter said June 25. "We are looking at October, November, and December 2020," he said. To limit the travel of court staff, the tax court will divide its sittings into western, central, Quebec, and Atlantic regions for the rest of the year, Rossiter said. Judges have been working on decisions during the closure, and on June 22 staff began downloading over 3,000 documents that have accumulated during the closure, he said.

In addition to delayed trials, practitioners are grappling with uncertainty regarding earlier court processes. Jennifer Leve of Dickinson Wright LLP said she was negotiating pretrial timelines when the court shut down and will have to restart the process with counsel at the tax court. Things have been pushed back six months to a year, she said. "For a taxpayer, that can really be a pain," especially if the contested tax is already out of pocket, she said.

Even settlements have been put on hold because Canada Revenue Agency officers who work with the Department of Justice to approve the settlements are away, said Drew Gilmour of Schmidt & Gilmour Tax Law LLP. The CRA isn't very responsive right now, which has been difficult, Leve said. On the other hand, the agency doesn't seem to be taking collection action to the degree that it was before the pandemic, she said.

In light of the COVID-19 pandemic, the relaxation of CRA security protocols has sparked concern that taxpayers are more vulnerable to scams. Agents working from home make calls from blocked personal phone numbers and provide online access security codes over the phone or via email, rather than waiting for regular mail, Gilmour said.

On June 16 the CRA released a final update to its national business continuity plan, announcing that the agency would “transition from operating under a critical services mode to a business resumption mode on June 26.” Most employees will continue to work remotely, the agency said.

The CRA has considered temporary exemptions from security requirements so that the agency can continue its programs in light of the pandemic’s limitations, the CRA told *Tax Notes*. The agency weighed the increased risk to taxpayer confidentiality against the benefit of its ability to continue to offer services, it said.

When CRA employees use cellular phones, they tell the taxpayer of the cell phone use at the outset and warn of the increased risk to the information discussed, the CRA said. Taxpayers are asked to consent to continue or opt for a more secure method of communication, it said. “Many Canadians are choosing to receive their security code by email in order to quickly and easily interact with the CRA,” it said.

Rossiter addressed legislation called the Time Limits and Other Periods Act (COVID-19), that was proposed by the government this spring to suspend or relax time limits in light of pandemic-related challenges that make it difficult or impossible to meet existing deadlines. “The proposed legislation has apparently passed first reading but requires unanimous party consent to move forward,” Rossiter said. “It appears the legislation will not be passed before September 2020, though it is possible it could move forward over the summer.” ■