

Update
May 31, 2012
SENTINEL HILL 1998 MASTER LIMITED PARTNERSHIP
Concerning the Litigation Proceedings

- the Lists of Documents were filed on/about November 30, 2011
- Counsel (Thorsteinssons LLP) has advised that the Tax Court's Chief Justice Gerald Rip has been appointed as Case Management Judge for the litigation. In that role, he will take responsibility for progress of the appeal and all matters arising prior to the hearing to ensure that the matter proceeds to trial in a timely way. The role of a case management judge (among other things) is described in a Notice to the Public from January 2010 as follows:

NOTICE TO THE PUBLIC AND TO THE PROFESSION

The following are Explanatory Notes to proposed amended Rules 6, 125, 127 and 128 and new Rules 126.1, 126.2, 126.3, 146.1, 147(3.1), (3.2) and (3.3) with respect to settlement offers, lead cases, and litigation process conferences (status hearings, case management and trial management, and settlement conferences) annexed to a Practice Note published with this Notice. The Practice Note shall be effective January 18, 2010.

In an attempt to codify the practice, which is now ongoing in the Tax Court of Canada, and to streamline the process of hearings in litigation, it is proposed to amend the Rules to provide for Litigation Process Conferences:

1. Status Hearings. These hearings can and will continue to occur. Initial Status Hearings are ordered to take place approximately two months after the close of pleadings and could lead to an appeal or group of appeals being case managed or lead to a litigation schedule which should eventually result in a further Status Hearing or a continued Status Hearing. Further Status Hearings may be continued or initiated later in the appeal by the Court or at the request of a party to move an appeal along that has not been case managed, or in any event, for the purpose of having the appeal set down for hearing. These further Status Hearings can take place before or after a joint application for hearing is filed. The Court may canvass whether settlement has been discussed, if the issues have been properly defined, whether the appropriate pre-trial steps in the appeal have been completed, what the approximate length of hearing will be and the appropriateness or willingness to fix a date for hearing.

An initial Status Hearing is likely if a case management judge has not been appointed or no litigation schedule Order has been issued. Further Status Hearings are likely on most appeals where no case management judge has been appointed if, for no other reason, than to ensure the appeal is ready for trial and to fix a trial date.

2. Case Management. Case Management is designed to permit the Chief Justice to assign a judge to manage an appeal that is complex, or slow moving, or for some other reason requires ongoing management by a judge. The judge takes responsibility for progress of the appeal and all matters arising prior to the hearing to ensure that the matter proceeds to trial in a timely way conserving judicial resources.

Case management judge may be appointed where:

- (a) there are groups of appeals with common facts, issues or questions of law;
- (b) there is significant quantum in dispute;
- (c) there are significant or novel issues to be considered;
- (d) where an appeal is slow moving; or
- (e) when the Chief Justice is of the view that the appeal(s) ought to be case managed.

If a case management judge is appointed, then the case management judge will likely deal with all pre-trial matters.

3. Trial Management Conference. This conference will take place after the appeal hearing date has been fixed and is a conference which is presided over by the assigned trial judge. The conference is to ensure that the hearing proceeds in an orderly, organized fashion.
4. Settlement Conference. This conference may take place on the Court's own initiative or at the request of either party at any time in the litigation of the appeal.
5. Settlement Offers. The provisions of the Rules addressing offers to settle are designed to encourage parties to settle their dispute early in the litigation process. An early settlement has the added advantage of reducing the costs borne by the parties and conserving judicial resources.

Parties are entitled to make and accept offers of settlement at any time before there is a judgment and any written offer to settle will be considered by the Court in assessing costs under Rule 147. In addition to this general rule, there is a need to encourage parties to reach an early settlement, ideally before the beginning of the trial or hearing. This is the specific objective of the addition of Rule 147(3.1).

6. Lead Cases. This Rule is intended to apply where there is more than one appeal which has common or related issues of fact or law. It allows the Court to proceed with a hearing of two or more of the appeals, while others are stayed pending a decision on the appeals heard by the Court.

Dated this 13th day of January 2010.

Gerald J. Rip
Chief Justice

- Counsel advised that a request was made end of April to schedule a case management conference; once a date has been set, we will provide a further update
- the object of the case management conference is to obtain a firm deadline from the case management judge, setting a timeline for (1) the discovery process, (2) completion of undertakings in connection with the discoveries, and (3) the report back to the case management judge, typically within 30 days of the completed undertakings, concerning trial dates.
- Following the case management conference, counsel will seek an order concerning those deadlines