

Litigation Update

December 2, 2013

Following the Tax Court's decision on or about August 27, 2013, counsel for Sentinel Hill, Heenan Blaikie, contacted Crown counsel to discuss dates for the continuation of discoveries. The discoveries (which had begun in January of 2013) had been held in abeyance pending the Court's decision concerning Sentinel Hill's application to have the so-called "Proposed Question" determined in a Tax Court hearing pursuant to section 58(1)(a) of the *Tax Court of Canada Rules (General Procedure)*. (Please refer to the earlier updates in this respect.)

Crown counsel was unwilling to discuss further discovery dates. Mr. Carvalho, on behalf of the Crown, stated his view that the abeyance should continue until either the determination of the appeal before the Federal Court of Appeal or the discontinuation of that appeal. On September 23, 2013, Heenan Blaikie (on Sentinel Hill's instructions) wrote to the Tax Court for directions.

Essentially, Heenan Blaikie's view is that the abeyance is at an end since the Tax Court has made its decision on the Appellants' application, regardless of the appeal filed at the Federal Court of Appeal. While it continues to be Sentinel Hill's and its counsel's belief that the Proposed Question has the potential to dispose of all of the Tax Court proceedings, that determination may take a considerable amount of time. Meanwhile, further delay in the Tax Court appeals is, Heenan Blaikie argued, not desirable for either of the parties, and would lead to the further deterioration of the evidence sought to be obtained in the examinations for discovery.

In response to Heenan Blaikie's letter of September 23, 2013, Mr. Carvalho wrote to the Tax Court on November 27, 2013, expressing Respondent's views that the abeyance should continue until the Federal Court of Appeal has made its decision, or until the Rule 58 question has been determined by the Tax Court, whichever may be applicable. The parties are now waiting for the Tax Court to respond to Heenan Blaikie's September letter.

Meanwhile, Heenan Blaikie has filed its Appeal Book and Factum with the Federal Court of Appeal and now awaits the Respondent's filing in return, which likely will be made in January of 2014.

We will post further updates as those become available.