

Docket: 2004-367(IT)G

BETWEEN:

DIETER HARDTKE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Before: The Honourable Justice G. A. Sheridan

Counsel for the Appellant: Jason Dutrizac

Counsel for the Respondent: Daniel Bourgeois

ORDER

Upon the adjournment *sine die* of the hearing of the Appellant's motion of March 30, 2009 to permit the Appellant to submit to the Court for its consideration a draft of proposed questions in respect of the document produced by the Respondent and referred to in submissions as the "Discussion Paper" and attached as Tab "B" to the Motion Record of the Appellant;

And upon the Appellant having submitted his proposed questions;

And upon the Respondent having provided, at the Court's request, its position in respect of the proposed questions;

And having read the materials submitted by the parties, the Appellant's motion for an order for directions with respect to the continuation of the Examination for Discovery of the Respondent's nominee and/or limiting its scope is dismissed, with costs to follow the cause, in accordance with the attached Reasons for Order.

Signed at Ottawa, Canada, this 4th day of May, 2009.

“G. A. Sheridan”

Sheridan J.

Citation: 2009TCC240
Date: 20090504
Docket: 2004-367(IT)G

BETWEEN:

DIETER HARDTKE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Sheridan, J.

[1] The Appellant brings a motion for an order for directions with respect to the continuation of the Examination for Discovery of the Respondent's nominee and/or limiting its scope. I adjourned the hearing of the motion on March 30, 2009 to permit counsel for the Appellant to submit to the Court the questions that he proposed to ask before making my decision.

[2] Having now had the opportunity to consider the submissions of counsel at the hearing of the motion on March 30, 2009 in light of the proposed questions and the Respondent's argument opposing them, I am not persuaded that there is any basis for the proposed questions to be asked.

[3] I agree with the submissions of counsel for the Respondent that questions 1-5 have to do with the conduct of the Canada Revenue Agency officials and as such, are not relevant to the issue in the appeal, namely, the correctness of the assessment. This issue has already been decided by Lamarre J. by her Order of April 21, 2005.

[4] As for the remaining questions, the March 30, 2009 hearing was adjourned on the footing that the Appellant was not seeking to reopen discoveries in general; and that any further questions would be focused on the Respondent's document referred to at the hearing as the "Discussion Paper" and attached as Tab "B" to the Motion Record of the Appellant. Notwithstanding that limitation, the queries in proposed

questions 6-22 all have to do with the Minister's basis for the assessment itself. I agree with the Respondent that such questions are beyond the parameters of the Appellant's motion. Having chosen to terminate its Examination for Discovery of the Respondent's agent, the Appellant cannot now compel answers to questions not within the scope of his motion.

[5] The Appellant's motion is dismissed, with costs to follow the cause.

Signed at Ottawa, Canada, this 4th day of May, 2009.

"G. A. Sheridan"

Sheridan J.

CITATION: 2009TCC240
COURT FILE NO.: 2004-367(IT)G
STYLE OF CAUSE: DIETER HARDTKE AND
HER MAJESTY THE QUEEN
PLACE OF HEARING: Ottawa, Canada
DATE OF HEARING: March 30, 2009
REASONS FOR ORDER BY: The Honourable Justice G. A. Sheridan
DATE OF ORDER: May 4, 2009
APPEARANCES:

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Counsel for the Respondent: Daniel Bourgeois

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