

Dockets: 2013-954(IT)G  
2015-3261(IT)G  
2019-3239(IT)G  
2019-4191(IT)G

BETWEEN:

JOHN DOE\*,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Motion heard on September 13, 2022 at Vancouver, British Columbia.

Before: The Honourable Justice Sylvain Ouimet

Appearances:

Counsel for the Appellant: The Appellant himself  
Counsel for the Respondent: Nadine Taylor Pickering

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**ORDER**

In accordance with the attached Reasons for Order, the Court orders that:

- counsel for the Respondent shall serve the Public Guardian and Trustee of British Columbia (the “PGT”) by registered mail redacted and unredacted copies of this Order and of the Confidentiality Order issued by this Court with respect to John Doe’s appeals;
- if required by the PGT, counsel for the Respondent shall file a referral form;
- counsel for the Respondent shall serve John Doe by registered mail redacted and unredacted copies of this Order and of the Confidentiality Order and;

- counsel for the Respondent shall request by letter, served by registered mail, a status update from the PGT 90 days after the orders will have been served on the PGT.

Signed at Ottawa, Canada, this 31<sup>st</sup> day of May 2023.

“Sylvain Ouimet”

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Ouimet J

Citation: 2023 TCC 80  
Date: 20230531  
Dockets: 2013-954(IT)G  
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### **REASONS FOR ORDER**

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#### I. INTRODUCTION

##### A. Context

[1] The Appellant (“John Doe”) worked for RBC Dominion Securities in Vancouver, British Columbia until July 9, 2015.<sup>1</sup>

[2] On December 13, 2013, John Doe filed an appeal in respect of his 2005 and 2006 taxation years. The Minister reassessed John Doe to deny business and employment expenses claimed by John Doe in both taxation years. The total amount of expenses at issue for 2005 and 2006 are \$250,813.33 and \$178,602.92, respectively.

[3] On July 16, 2015, John Doe filed an appeal in respect of his 2009, 2010 and 2011 taxation years. The Minister assessed John Doe on the basis that he did not file his income tax returns for 2009, 2010 or 2011. The Minister assessed John Doe for owing federal and provincial taxes, penalties and arrears totalling \$124,850.55,

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<sup>1</sup> Letter from John Doe to Jodi Gibson, Hearings Coordinator (12 July 2015).

\$117,759.90 and \$112,107.35 for his 2009, 2010 and 2011 taxation years, respectively.

[4] On August 30, 2019, John Doe filed an appeal in respect of his 2014 taxation year. The notice of appeal does not provide any details on the issue(s) in dispute or the facts that John Doe intends to rely on. The Court is not aware of the amount of tax at issue for the 2014 taxation year.

[5] On November 21, 2019, John Doe filed an appeal in respect of his 2015 and 2016 taxation years. The notice of appeal does not provide any details on the issue(s) in dispute or the facts that John Doe intends to rely on. The Court is not aware of the amount of tax at issue for the 2015 and 2016 taxation years.

B. Proceedings on Behalf of a Party Under Legal Disability in the Tax Court of Canada

[6] Pursuant to section 29.1 of the *Tax Court of Canada Rules (General Procedure)*<sup>2</sup> (the “*Tax Court Rules*”), unless the Court orders otherwise, the representative of a party under a legal disability shall institute or continue a proceeding on behalf of that party.

[7] Pursuant to section 30 of the *Tax Court Rules*, unless the Court orders otherwise, a person who is the representative of a party under a legal disability in a proceeding shall be represented by counsel, except where that person is also counsel acting in such a capacity.

[8] Consequently, pursuant to the *Tax Court Rules*, if John Doe is under a legal disability, he should be represented by counsel in all proceedings related to his appeals in the Tax Court of Canada.

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<sup>2</sup> *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a.

C. The Issue

[9] The Court believes that John Doe might be under a legal disability based on numerous facts. These facts are the following:

- John Doe has struggled with his mental health since at least 2012.<sup>3</sup> Since March 2013, John Doe has been receiving treatment for bipolar affective disorder from Dr. Babra Rana (“Dr. Rana”), a psychiatrist at Burnaby Mental Health and Substance Use Services.<sup>4</sup>
- Since 2013, John Doe has been an involuntary patient under the *Mental Health Act*<sup>5</sup> of British Columbia.
- John Doe lives in the community but has been hospitalized several times since 2012.<sup>6</sup>
- Since 2013, John Doe has instituted four appeals with this Court with respect to the 2005, 2006, 2009 to 2011 and 2014 to 2016 taxation years. John Doe filed his first appeal in this Court on December 13, 2013. He has represented himself in all four appeals.
- Since 2013, the progress of John Doe’s appeals has been impeded by a number of factors, which include John Doe’s numerous adjournment requests for medical reasons and adjournments because of the COVID-19 pandemic. All of the adjournment requests for medical reasons were made by John Doe, by Dr. Rana or by a member of her team at Burnaby Mental Health and Substance Use Services.

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<sup>3</sup> Letter from Dr. Rana and Ms. Isley, Burnaby Mental Health and Substance Use Services, to Jodi Gibson, Hearings Coordinator (28 June 2016).

<sup>4</sup> Letter from Dr. Rana and Ms. Isley, Burnaby Mental Health and Substance Use Services, to Jodi Gibson, Hearings Coordinator (28 June 2016), and Letter from Dr. Rana and Ms. Isley (15 April 2016), attached to the Letter from John Doe to the Court (20 May 2016).

<sup>5</sup> RSBC 1996, c 288.

<sup>6</sup> Letter from Dr. Rana and Ms. Isley, Burnaby Mental Health and Substance Use Services, to Jodi Gibson, Hearings Coordinator (28 June 2016).

- Prior to January 2016, John Doe had informed the Court that he had been hospitalized, but he did not say why.<sup>7</sup> As a result, there was no reason for the Court to question John Doe’s capacity to handle his appeals before then.
- It was in January 2016 that the Court first became aware of John Doe’s diagnosis and hospitalizations. During the following years, the Court received a total of ten letters from Dr. Rana and her team. These letters explained John Doe’s diagnosis and symptoms and were always submitted in support of a request for an adjournment. The adjournment requests were made because John Doe was not well and/or because John Doe needed time to recover, leading the Court to believe that he would recover eventually and therefore be able to represent himself in all of his appeals. Over the years, the content of these letters allowed the Court to gradually obtain more details on the nature and severity of John Doe’s condition and on the impact that it may have on his ability to carry on his appeals.
- Despite the numerous adjournment requests, the Court was able to hold status hearings, in person, in order to monitor the progress of John Doe’s appeals. John Doe appeared at five of those hearings. He did not appear at two of them and on at least one occasion, it was because he was hospitalized. When he did appear, John Doe’s participation was minimal and at times, he was barely responsive.

[10] On the basis of these facts, the Court has concluded that if John Doe’s appeals are to proceed, the Court must first determine whether he is under a legal disability.

## II. THE RELEVANT LEGISLATIVE PROVISIONS

[11] The relevant statutory provisions are as follows:

***Tax Court of Canada Rules (General Procedure), SOR/90-688a***

**Proceeding on Behalf of Party Under Legal Disability**

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<sup>7</sup> Letter from John Doe to Ms. Fairbridge (23 February 2015) and Notice of Motion to the Court (23 February 2015).

**29.1** Unless the Court orders otherwise, the representative of a party under a legal disability shall institute or continue a proceeding on behalf of that party.

### **Representation by Counsel**

**30(1)** Subject to subsection (3), a party to a proceeding who is an individual may act in person or be represented by counsel.

**(2)** Where a party to a proceeding is not an individual, that party shall be represented by counsel except with leave of the Court and on any conditions that it may determine.

**(3)** Unless the Court orders otherwise, a person who is the representative of a party under a legal disability in a proceeding shall be represented by counsel, except where that person is also counsel acting in such a capacity.

### **Supreme Court Civil Rules, BC Reg 168/2009**

#### **Rule 20-2 — Persons under Disability**

##### **1. Interpretation**

**(1)** In this rule, “committee” means the committee, appointed under the *Patients Property Act*, of the estate of a patient.

##### **Start of proceedings by person under disability**

**(2)** A proceeding brought by or against a person under legal disability must be started or defended by his or her litigation guardian.

##### **Role of litigation guardian**

**(3)** Unless a rule otherwise provides, anything that is required or authorized by these Supreme Court Civil Rules to be done by or invoked against a party under disability must

**(a)** be done on the party’s behalf by his or her litigation guardian, or

**(b)** be invoked against the party by invoking the same against the party’s litigation guardian.

**Lawyer must be involved**

(4) A litigation guardian must act by a lawyer unless the litigation guardian is the Public Guardian and Trustee.

**Litigation guardian**

(5) Unless the court otherwise orders or an enactment otherwise provides, a person ordinarily resident in British Columbia may be a litigation guardian of a person under disability without being appointed by the court.

**Committee as litigation guardian**

(6) If a person is appointed committee, that person must be the litigation guardian of the patient in any proceeding unless the court otherwise orders.

**Consent of litigation guardian**

(7) Before the name of a person is used in a proceeding as a litigation guardian, that person's consent, signed by the person or his or her lawyer, must be filed, unless the person

(a) has been appointed by the court, or

(b) is the litigation guardian under section 35 (1) of the *Representation Agreement Act* of a party to that proceeding.

**Certificate of fitness**

(8) Unless a committee has been appointed, the lawyer for a person under disability, before acting in a proceeding, must, unless subrule (9) applies, file a certificate that he or she knows or believes that

(a) the person to whom the certificate relates is an infant or mentally incompetent person, giving the grounds of that knowledge or belief, and if the person to whom the certificate relates is a mentally incompetent person, that a committee has not been appointed for the person, and

(b) the proposed litigation guardian of the person under disability has no interest in the proceeding adverse to that person.



### **Certificate for a litigation guardian**

(9) The lawyer for a person who, under section 35 (1) of the *Representation Agreement Act*, has a litigation guardian must, before acting in a proceeding to which the person is a party, file a certificate certifying that the lawyer knows or believes that

- (a) the person has entered into a representation agreement,
- (b) the litigation guardian is a representative under that representation agreement and is authorized under section 7 (1) (d) of the *Representation Agreement Act* in relation to the proceeding, and
- (c) the litigation guardian has no interest in the proceeding adverse to the person.

### **Party becoming incompetent**

(10) If a party to a proceeding becomes a mentally incompetent person, the court must appoint a litigation guardian for him or her unless

- (a) a committee has been appointed for the party, or
- (b) the party has a litigation guardian under section 35 (1) of the *Representation Agreement Act*.

### **Removal of litigation guardian**

(11) If it is in the interest of a party who is under disability, the court may remove, appoint or substitute a litigation guardian.

...

### ***Patients Property Act, RSBC 1996, c 349***

1 In this Act:

“**committee**” means the following persons:

- (a) a person appointed as committee under section 6 (1);
- (b) the Public Guardian and Trustee under section 6 (3);
- (c) a statutory property guardian under Part 2.1 of the *Adult Guardianship Act*;

...

**Adult Guardianship Act, RSBC 1996, c 6**

**Part 1 — Introductory Provisions**

**Definitions**

**1** In this Act:

...

“**financial affairs**” includes an adult’s business and property, and the conduct of the adult’s legal affairs;

...

“**statutory property guardian**” means a person who, under Part 2.1, may make decisions regarding an adult’s financial affairs.

...

**Part 2.1 — Statutory Property Guardians**

**Obtaining a statutory property guardian**

**32 (1)** If a person has reason to believe that an adult may be incapable of managing the adult’s financial affairs, the person may

(a) if the person is a health care provider, request a qualified health care provider to assess the adult’s incapability, or

(b) in any case, notify the Public Guardian and Trustee of the person’s belief, and the Public Guardian and Trustee may request a qualified health care provider to assess the adult’s incapability.

(2) If, after assessing the adult according to prescribed procedures, the qualified health care provider determines that the adult is incapable of managing that adult’s financial affairs, the qualified health care provider may, using the prescribed form, report the adult’s incapability to a health authority designate.

(3) If a health authority designate receives a report under subsection (2) of an adult’s incapability, the health authority designate may issue a certificate of incapability in respect of the adult, if satisfied that, based on the report and any additional information the designate receives,

(a) the adult needs to make decisions about the adult’s financial affairs,

- (b) the adult is incapable of making those decisions,
- (c) the adult needs, and will benefit from, the assistance and protection of a statutory property guardian,
- (d) the needs of the adult would not be sufficiently met by alternative means of assistance, and
- (e) either
  - (i) the adult has not granted power over all of the adult's financial affairs to an attorney under an enduring power of attorney, or
  - (ii) an attorney has been granted power as described in subparagraph (i) but is not complying with the attorney's duties under the *Power of Attorney Act* or the enduring power of attorney, as applicable.

**(3.1)** A health authority designate must not issue a certificate of incapability unless the health authority designate has first

- (a) consulted with the Public Guardian and Trustee,
- (b) notified the adult, and, if contact information is known to the health authority designate, the adult's spouse or a near relative of the adult, of the intention to issue the certificate and the reasons for issuing it, and
- (c) given each person who received notice under paragraph (b) a reasonable opportunity to respond.

**(3.2)** Despite subsection (3.1) (b), notification need not be given to the adult, to another person referred to in that subsection, or to either the adult or another person referred to in that subsection, if the health authority designate has reason to believe that notification may result in

- (a) serious physical or mental harm to the adult, or
- (b) significant damage or loss to the adult's property.

**(4)** If the health authority designate issues a certificate of incapability, the health authority designate must do all of the following:

- (a) forward the certificate to the Public Guardian and Trustee;

(b) advise the adult, and, if contact information is known to the health authority designate, the adult's spouse or a near relative of the adult, that a certificate of incapability in respect of the adult has been issued, and provide each of them with a copy of the certificate.

(5) The Public Guardian and Trustee is the adult's statutory property guardian as of the date on which the certificate of incapability was signed by the health authority designate who issued it.

(6) [Repealed 2014-9-1.]

(7) This section does not apply if the adult has a committee, appointed under the *Patients Property Act*, responsible for managing the adult's affairs.

### III. THE FACTS

#### A. Summary of the Proceedings

[12] The facts summarized below were taken into consideration by the Court for issuing this Order.

#### 2016

[13] On January 5, 2016, the Respondent filed a motion to quash John Doe's appeal with respect to the 2009, 2010 and 2011 taxation years on the basis that John Doe had not met the requirements in order to file a valid appeal.<sup>8</sup> The hearing of the motion was scheduled for January 29, 2016, in Vancouver.

[14] On January 22, 2016, the Court was made aware of the nature of John Doe's hospitalization. Counsel for the Respondent advised the Court that John Doe had left her a voicemail indicating that he was under the influence of medicine and had sent her a completed "Notification to Involuntary Patient of Rights under the Mental Health Act" form dated December 24, 2015.<sup>9</sup> Counsel for the Respondent stated that John Doe did not appear to be in the hospital at the time. The Court decided to proceed with the scheduled hearing. At the hearing, John Doe repeatedly told the Court that he was mentally disabled and on extended leave from Burnaby Mental Health and Substance Use Services. He described his condition as "bipolar", "crazy"

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<sup>8</sup> Notice of Motion (5 January 2016).

<sup>9</sup> Letter from Ms. Fairbridge to Jodi Gibson (22 January 2016).

and “mania” and told the Court that he had been admitted to a mental hospital at leave five times since 2012 for his mental illnesses. He also expressed his desire to hire counsel to assist him with his appeals. The Court adjourned the hearing for 90 days to give John Doe an opportunity to retain counsel.

[15] On February 19, 2016, John Doe informed the Court that he was not capable of proceeding with his appeals because of his health and requested a three-month adjournment. John Doe provided the Court a letter from Dr. Rana and Wendy Isley (“Ms. Isley”), Case Manager at Burnaby Mental Health and Substance Use Services, which stated the following:

We are writing at the request of the above named client. He has been hospitalized from Dec. 1/15 until Dec. 18/15 and then released on extended leave. He is now being closely followed and monitored at our outpatient department every two weeks. His condition is not yet at his baseline; and we recommend that he have a further three month adjournment from any court or legal procedure.<sup>10</sup>

Given the circumstances, the Court granted John Doe an adjournment and scheduled a status hearing for May 30, 2016 in order to assess whether there had been any progress with respect to John Doe’s health and whether he had hired counsel.

[16] On May 20, 2016, John Doe wrote to the Court and requested a three-month adjournment to give him time to recover.<sup>11</sup> He submitted a letter signed by Dr. Rana and Ms. Isley dated April 15, 2016, which stated:

John Doe been [*sic*] followed by us for several years now, regarding his BiPolar Affective Disorder. He has had difficulty adjusting to his medications causing decreased concentration and focus; and increased hours of sleep to 14 per night. Once he is up he remains sedated for much of the day. He also has decreased motivation and is very anxious. This leaves him little time or ability to attend to his affairs regarding preparation for his pending court case related to his lawsuit with the Canada Revenue Agency.

We have requested one extension; and now we are supporting our client’s request to extend same again due to his current cognitive/mental status. We have also

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<sup>10</sup> Letter from Dr. Rana and Ms. Isley (19 February 2016), attached to the Letter from John Doe to the Court (19 February 2016).

<sup>11</sup> Letter from John Doe to the Court (20 May 2016).

commenced a recent medication change; which will increase the time required for him to stabilize even more.<sup>12</sup>

[17] On May 25, 2016, counsel for the Respondent advised the Court that she did not oppose John Doe's adjournment request. Counsel acknowledged that it appeared that John Doe may be unable to act on his own behalf because of his medical condition under section 29.1 and subsection 30(3) of the *Tax Court Rules*.<sup>13</sup> Counsel also acknowledged that John Doe's medical condition seems to be preventing him from taking concrete steps to advance his appeals, and requested that the Court require John Doe to take steps to obtain representation so that the appeals could be dealt with in a timely manner.<sup>14</sup> Given the circumstances, the Court adjourned the status hearing scheduled for May 30, 2016 and asked John Doe to obtain a letter from his doctor by June 30, 2016 explaining to the Court when he would be able to retain counsel and to attend to his affairs.<sup>15</sup>

[18] On June 28, 2016, Ms. Isley wrote to the Court on behalf of Dr. Rana. In her letter, she explained in general terms that John Doe may never recover to the point where he could handle his legal affairs. She stated the following:

John Doe has been followed by us since early March of 2013. He has had a severe mental illness, since 2012, and possible [*sic*] prior to that but his first known hospitalization was in 2012. Since then, he has not had any reasonable period of time when he was well. Due to his impaired judgement, and very poor insight, he has also stopped his medications at times. As a result he has had repeated hospitalizations and subsequently he has not been able to handle his affairs as his condition severely impairs his judgement, motivation, energy and insight.

John Doe was seen this afternoon, and we are very concerned about his mental health and well being. He is at risk of possible self-harm. We are unable to provide you with a date that this client will be able to retain counsel as he has no income and is still unwell. Would it be possible for a complete adjournment of this case.<sup>16</sup>

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<sup>12</sup> Letter from Dr. Rana and Ms. Isley (15 April 2016), attached to the Letter from John Doe to the Court (20 May 2016).

<sup>13</sup> Letter from Ms. Fairbridge to the Court (25 May 2016).

<sup>14</sup> Letter from Ms. Fairbridge to the Court (25 May 2016).

<sup>15</sup> Letter from Jodi Gibson to John Doe (30 May 2016).

<sup>16</sup> Letter from Dr. Rana and Ms. Isley to Jodi Gibson (28 June 2016).

[19] On August 30, 2016, the Court wrote to Dr. Rana and Ms. Isley to inform them that the Court was unable to simply order a complete adjournment as requested. The Court asked Dr. Rana to answer the following questions by September 26, 2016:

1. Is John Doe legally disabled? If so, who is authorized to represent John Doe and in what capacity?

...

2. If John Doe is not legally disabled, is John Doe able to retain counsel and give instructions to counsel in the near future?

3. If John Doe is not legally disabled and is unable to represent himself or retain counsel, who is authorized to retain counsel on his behalf?<sup>17</sup>

[20] On September 6, 2016, Dr. Rana replied the following:

John Doe is a person with a mental illness which is cyclical in nature and can recur. During times of recurrence, John Doe's functioning has been greatly impaired; requiring several hospitalizations during the past three to four years. These have caused him financial hardship.

John Doe may have suffered with this illness for quite some time prior to being diagnosed. This illness frequently causes people to demonstrate poor financial judgement, which often leads them to have significant debts.

I am not clear on what is meant by legally disabled. John Doe is currently handling his own affairs. He has disclosed that he has no income at this time; and cannot afford to retain counsel.

John Doe would be able to give instructions to counsel when he is well, but he would not be able to give instructions to counsel when he is not well.

John Doe continues to have residual symptoms, and is under significant stress; both of which leave him vulnerable to relapsing.<sup>18</sup>

2017

[21] The Court scheduled a status hearing for February 21, 2017.

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<sup>17</sup> Letter from Dominique Lamoureux to Dr. Rana and Ms. Isley (30 August 2016).

<sup>18</sup> Letter from Dr. Rana to the Court (6 September 2016).

[22] On January 13, 2017, Dr. Rana wrote to the Court requesting an adjournment of the February 21, 2017 status hearing. Dr. Rana wrote the following:

At this time, John Doe continues to be mentally ill. Due to his mental illness John Doe has memory problems, and his judgment is very poor. He is sleeping long hours; and his energy is low. His mood has been depressed with increased anxiety. In addition to this he has very limited money and no income with which to obtain legal assistance.

Even if he were to obtain Legal Advice or Legal Aid, his thought processing is slowed and disorganized. Overall, at this time I cannot advise as to how long before his condition improves, or if it will improve.<sup>19</sup>

[23] The Court denied the request to adjourn the status hearing.

[24] At the February 21, 2017 status hearing, John Doe advised the Court that he had not retained counsel, citing lack of funds,<sup>20</sup> and that he did not have any family member or friend who could assist him in hiring counsel.<sup>21</sup> John Doe knew of Dr. Rana's letter of January 13, 2017, though he did not seem to understand the substance or consequence of that letter. He did not seem to fully appreciate that his capacity may be an obstacle to his appeals moving forward.<sup>22</sup> At the hearing, counsel for the Respondent submitted to the Court that she was aware of the issue regarding John Doe potentially being under a legal disability, but that she was uncertain about what actions she was authorized to take as counsel for the Respondent.<sup>23</sup> She admitted that, like the Court, she had not encountered this situation before.<sup>24</sup> The Court requested that counsel research the matter and provide the Respondent's position on how to proceed in light of the fact that the Court believed that John Doe might be legally disabled.<sup>25</sup> The Court suggested that counsel contact the Public Guardian and Trustee of British Columbia ("PGT") and gather information on how to proceed<sup>26</sup> and urged the Respondent, as a party in these proceedings, to be

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<sup>19</sup> Letter from Dr. Rana to the Court (13 January 2017).

<sup>20</sup> Status Hearing Transcript (21 February 2017), page 2, line 14.

<sup>21</sup> Status Hearing Transcript (21 February 2017), page 7, lines 24–28; page 8, line 1.

<sup>22</sup> Status Hearing Transcript (21 February 2017), page 3, lines 12–15; page 4, line 1; page 6, lines 2–3.

<sup>23</sup> Status Hearing Transcript (21 February 2017), page 4, lines 10–19.

<sup>24</sup> Status Hearing Transcript (21 February 2017), page 4, lines 10–19.

<sup>25</sup> Status Hearing Transcript (21 February 2017), page 11, lines 2–5.

<sup>26</sup> Status Hearing Transcript (21 February 2017), page 7, lines 6–10.



proactive in assisting John Doe to move these appeals forward.<sup>27</sup> A status hearing was scheduled for March 13, 2017 in order to give counsel sufficient time to make the necessary inquiries and report to the Court at the hearing.

[25] On March 13, 2017, John Doe appeared at the status hearing and was only able to answer “yes” or “no” to a few of the Court’s questions. Otherwise, John Doe did not appear to understand the discussions between the Court and counsel. He repeated to the Court that he needed time to recover.<sup>28</sup> Counsel for the Respondent informed the Court that she had looked into the process set out by the PGT for having a legal guardian appointed for John Doe.<sup>29</sup> Counsel understood that anyone could notify the PGT that a person may be incapable of managing his financial affairs, though often that person was the person’s doctor.<sup>30</sup> Counsel told the Court that she had not had any contact with Dr. Rana to ask whether she was prepared to make the referral.<sup>31</sup> She repeated her concerns regarding counsel for the Respondent being involved in this matter since these were not the Respondent’s appeals and the Respondent was the opposite party.<sup>32</sup> Counsel also did not believe that she was in a position to make a referral to the PGT because she did not have all the relevant details with respect to John Doe’s medical condition.<sup>33</sup> The Court asked counsel to contact Dr. Rana in the hope that she could initiate this process and John Doe acknowledged that he understood that this would be done.<sup>34</sup> The Court scheduled another status hearing for May 30, 2017.

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<sup>27</sup> Status Hearing Transcript (21 February 2017), page 8, lines 22–26.

<sup>28</sup> Status Hearing Transcript (13 March 2017), page 18, lines 18–21, 26; page 19 lines 2, 23– 25.

<sup>29</sup> Status Hearing Transcript (13 March 2017), page 4, lines 1–24.

<sup>30</sup> Status Hearing Transcript (13 March 2017), page 5, lines 9–11.

<sup>31</sup> Status Hearing Transcript (13 March 2017), page 8, lines 4–11.

<sup>32</sup> Status Hearing Transcript (13 March 2017), page 5, lines 26–28; page 6, lines 3–5; page 12, lines 4–21.

<sup>33</sup> Status Hearing Transcript (13 March 2017), page 6, lines 22–28; page 7, lines 1–28.

<sup>34</sup> Status Hearing Transcript (13 March 2017), page 19, lines 26–28; page 20, lines 1–11.

[26] By letter dated April 3, 2017, Dr. Rana sent a letter to the Court requesting a 12-month adjournment:

It is to my understanding that John Doe has his next hearing on May 30<sup>th</sup> 2017. This is a letter outlining John Doe's [*sic*] mental health diagnosis and the limitations he is currently facing at this stage in his recovery.

John Doe is suffering from a diagnosis of bipolar disorder, where he is in early stages of recovery. Due to the number of hospitalizations he has had, the amount of time required for him to stabilize is much greater than if he has had only one acute episode.

At this point, John Doe continues to suffer with residual symptoms including poor concentration, decreased energy and slowed thought process. These symptoms impact his ability to focus on what he wants to achieve and significantly decrease his motivation.

John Doe is not at his baseline functioning at this point in time and his current legal affairs are increasing his stress and vulnerabilities to a relapse. After discussion with John Doe, it is my recommendation that he would benefit from 12 months to focus on his own recovery before adequately representing himself in court, as he has declined options for alternative representation. Please consider a 12 month delay in proceeding with this hearing for John Doe to progress in his recovery.

I am willing to attend his hearing and further answer questions regarding his mental health diagnosis and functional ability at this time if needed.<sup>35</sup>

[27] Given this letter's contents, the Court adjourned the scheduled hearing for 12 months. The Court scheduled a status hearing for June 22, 2018.

## 2018

[28] On June 19, 2018, Dr. Rana wrote to counsel for the Respondent to request a further six-month adjournment. This letter was forwarded to the Court and states the following:

John Doe is suffering from a diagnosis of bipolar disorder. While John Doe's condition has improved over the past year, he continues to suffer with residual symptoms, such as impaired concentration, social isolation, and sleep disturbances. In particular, John Doe is significantly distressed by the upcoming Status Hearing, and reports losing sleep, increased anxiety, and poor concentration. His ability to

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<sup>35</sup> Letter from Dr. Rana to the Court (3 April 2017).

tolerate stress is significantly reduced by his diagnosis, and he remains vulnerable to a relapse.

It is my recommendation that John Doe would benefit from a further six month deferral on his appeal in order to continue to work on improving his wellness and mental health.<sup>36</sup>

[29] The adjournment request was denied by the Court.

[30] On June 22, 2018, John Doe attended the scheduled status hearing. The Court was not satisfied that John Doe's condition had improved enough to the point that he could manage his legal affairs. The Court asked counsel for the Respondent to report to the Court with an update in October of 2018 and scheduled another status hearing for January 8, 2019.<sup>37</sup>

[31] On [REDACTED], counsel for the Respondent wrote to inform the Court that John Doe was the plaintiff in [REDACTED] and had retained and instructed counsel in that matter for nearly two and a half years.<sup>38</sup> Counsel informed the Court that the trial in the [REDACTED] was scheduled [REDACTED], that it was expected [REDACTED] in duration, and that John Doe was expected to testify for at least six hours.<sup>39</sup>

[32] Counsel for the Respondent informed the Court that she had reached out to Dr. Rana to inquire into John Doe's ability to conduct the [REDACTED]. She provided part of a letter that Dr. Rana sent her, which states the following:

We have contacted [REDACTED] [John Doe's lawyer in the [REDACTED]], and obtained the update that this matter [the [REDACTED]] has been adjourned [REDACTED], which I support as John Doe is not yet ready to proceed with a matter at that level of stress and complexity. ... It is my opinion that at this time, John Doe is not yet functioning at a level to be able to proceed with his matters in Tax Court, and would benefit from a further deferral.<sup>40</sup>

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<sup>36</sup> Letter from Dr. Rana to Ms. Taylor Pickering (19 June 2018).

<sup>37</sup> Status Hearing Minutes (22 June 2018).

<sup>38</sup> Letter from Ms. Taylor Pickering to Jodi Gibson (1 October 2018).

<sup>39</sup> Letter from Ms. Taylor Pickering to Jodi Gibson (1 October 2018).

<sup>40</sup> Letter from Ms. Taylor Pickering to Jodi Gibson (1 October 2018), citing the Letter from Dr. Rana (26 September 2018).

Counsel took the position that since John Doe could instruct counsel and arrange to testify in the [REDACTED], he could participate in his appeals in the Tax Court.<sup>41</sup>

## 2019

[33] On January 8, 2019, the Court proceeded with the status hearing as scheduled. John Doe did not appear. Counsel for the Respondent brought a motion at the hearing to have the 2013 and 2015 appeals dismissed because of John Doe's failure to appear. The Court granted the motion, having been informed of the existence of the [REDACTED] and because of the absence of John Doe at the hearing, which was a first, despite his medical condition.

[34] On February 25, 2019, John Doe filed with the Court a notice of motion to have the judgment dismissing the 2013 and 2015 appeals set aside (the 2013 appeal was for the 2005 and 2006 taxation years, and the 2015 appeal was for the 2009, 2010, and 2011 taxation years). He stated that he was sick, that he had not had the mental capacity to attend that status hearing, and that he was an involuntary patient of the Burnaby mental health facility.<sup>42</sup>

[35] On May 31, 2019, at the Court's request, Dr. Rana submitted a letter in order to assist John Doe and the Court in determining whether the judgment should be set aside and whether John Doe had a valid reason for not attending the status hearing of January 8, 2019. The medical report took the form of a letter from Dr. Rana:

John Doe has a diagnosis of bipolar disorder. While John Doe's condition has improved with medication management and case management, he continues to be symptomatic, experiencing difficulty with concentration, disorganized thinking, anxiety, low mood, poor insight, and social isolation. John Doe was last hospitalized in December of 2015, and remains an involuntary patient of the hospital on Extended Leave under the Mental Health Act. John Doe's certificate under the Mental Health Act was most recently renewed on April 26, 2019. John Doe remains vulnerable to relapse, especially given his multiple psychosocial stressors and his current limited insight into his illness.

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<sup>41</sup> Letter from Ms. Taylor Pickering to Jodi Gibson (1 October 2018).

<sup>42</sup> Affidavit of John Doe (25 February 2019).

John Doe's diagnosis and current active symptoms are significant contributing factors in his recent failure to appear in Court.<sup>43</sup>

[36] On June 27, 2019, the Court issued an order setting aside the judgment. The 2013 and 2015 appeals were therefore reinstated.

[37] On August 30, 2019, John Doe filed an appeal with respect to the 2014 taxation year.

[38] On November 21, 2019, John Doe filed an appeal with respect to the 2015 and 2016 taxation years. As previously mentioned, neither of the notices of appeal provides details or information regarding the issues on appeal or the facts relied upon by John Doe.

[39] On November 26, 2019, the Court wrote to the parties to obtain their availability for a status hearing.<sup>44</sup> John Doe replied to the Court on the same day and stated that he needed more time to recover and that he would be out of town for some time attending to a family member who was sick.<sup>45</sup> He requested six months' time to recover.<sup>46</sup>

[40] On December 18, 2019, John Doe wrote to the Court and reiterated that he was sick and would be physically unable to attend Court in January and requested a further six-month adjournment.<sup>47</sup>

#### 2020–2021

[41] The Court scheduled a status hearing for January 16, 2020. John Doe did not attend this hearing.

[42] On January 22, 2020, Marnie Smith, a social worker at the Burnaby Hospital, wrote to the Court regarding John Doe's absence from the status hearing:

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<sup>43</sup> Letter from Dr. Rana to Ayesha Dawood, Registry Officer (31 May 2019).

<sup>44</sup> Letter from Jodi Gibson to John Doe (26 November 2019).

<sup>45</sup> Letter from John Doe to Jodi Gibson (26 November 2019).

<sup>46</sup> Letter from John Doe to Jodi Gibson (26 November 2019).

<sup>47</sup> Letter from John Doe to Jodi Gibson (18 December 2019).

The purpose of this letter is to confirm that John Doe ... has been admitted to Burnaby Hospital since January 13, 2020 for treatment of a medical condition.

I have been informed by [John Doe] that he had a court date scheduled for January 16, 2020 that he unfortunately had to miss due to his admission to hospital. Any assistance you could provide John Doe in rescheduling his court date would be greatly appreciated.<sup>48</sup>

[43] The Court adjourned the status hearing and directed that another status hearing be held on January 19, 2021.

[44] In the spring of 2020, the COVID-19 pandemic significantly curtailed the Court's operations. Because of the pandemic, the Court had to adjourn the status hearing scheduled for January 19, 2021.

## 2022

[45] The Court scheduled a status hearing for May 9, 2022. In preparation for the hearing, counsel for the Respondent had by then issued subpoenas to Dr. Rana and to [REDACTED] so that both could provide evidence regarding John Doe's medical condition and his ability to conduct his legal affairs.

[46] On April 4, 2022, Dr. Rana wrote to the Court regarding the upcoming status hearing:

This letter is behalf [*sic*] of John Doe. He is unable to participate in the upcoming court proceedings on May 9, 2022 due to mental health concerns.<sup>49</sup>

[47] The Court denied the adjournment request and the hearing proceeded as scheduled.

[48] John Doe attended the May 9, 2022 status hearing. He appeared generally unable to understand or participate in the Court proceedings. The Court observed that John Doe remained seated in the same position from approximately 9:30 a.m., when the hearing began, until 1:30 p.m., when the hearing concluded. On very few

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<sup>48</sup> Letter from Marnie Smith, Registered Social Worker, to the Court (22 January 2020).

<sup>49</sup> Letter from Dr. Rana to the Court (4 April 2022).

occasions, he gave short answers to the Court's questions. During the hearing, John Doe told Dr. Rana that he had a headache that day due to stress.<sup>50</sup>

[49] At the hearing, ██████████ testified to John Doe's participation in the conduct of the ██████████, including his ability to give him instructions in respect of the court process. ██████████ told the Court that he represented John Doe in the ██████████ which began in ██████████<sup>51</sup> and was resolved out of court by ██████████.<sup>52</sup> He told the Court that John Doe was able to give him instructions at various points during that period.<sup>53</sup> He acknowledged that frequently John Doe had appeared depressed and that they were unable to discuss the case on those occasions.<sup>54</sup> He also stated that he did not constantly seek John Doe's instructions throughout ██████████ because many of the steps that he took during the ██████████ did not require John Doe's guidance.<sup>55</sup> He explained that he mainly sought and received instructions from John Doe one towards ██████████, when he was attempting to resolve the case.<sup>56</sup>

[50] At the hearing, Dr. Rana also testified. Dr. Rana provided the same information that she had previously provided to the Court in her numerous letters. She added that John Doe has been an involuntary patient of the hospital since 2020, but that he lives in the community on extended leave.<sup>57</sup> She explained that he was currently "quite depressed" and "hasn't been functioning at all".<sup>58</sup> She also explained that each time she had submitted a letter to the Court indicating that John Doe was not well enough to attend court, she had previously assessed John Doe and had formed her opinion on his ability to participate.<sup>59</sup> Dr. Rana stated that she did not think that John Doe's condition would ever change or get better and that, in fact, his condition was getting worse.<sup>60</sup> She explained that John Doe's condition was cyclical

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<sup>50</sup> Status Hearing Transcript (9 May 2022), page 83, lines 21–28; page 84, lines 1–6.

<sup>51</sup> Status Hearing Transcript (9 May 2022), page 12, lines 9–11.

<sup>52</sup> Status Hearing Transcript (9 May 2022), page 12, lines 12–20.

<sup>53</sup> Status Hearing Transcript (9 May 2022), page 28, lines 13–15.

<sup>54</sup> Status Hearing Transcript (9 May 2022), page 49, lines 16–19; page 50, lines 2–4 and 10.

<sup>55</sup> Status Hearing Transcript (9 May 2022), page 19, lines 24–28; page 20, lines 1–3.

<sup>56</sup> Status Hearing Transcript (9 May 2022), page 21, lines 18–20.

<sup>57</sup> Status Hearing Transcript (9 May 2022), page 69, lines 24–28; page 70, lines 6–8, 10–12.

<sup>58</sup> Status Hearing Transcript (9 May 2022), page 73, lines 19–26.

<sup>59</sup> Status Hearing Transcript (9 May 2022), page 73, lines 9–12.

<sup>60</sup> Status Hearing Transcript (9 May 2022), page 86, lines 5–7.

and that his ability to understand or participate in court would depend on his stability on that particular day.<sup>61</sup>

[51] On June 9, 2022, counsel for the Respondent sent a letter to Dr. Rana. The letter contained a summary of the steps that Dr. Rana had agreed to take at the status hearing of May 9, 2022. The letter stated that Dr. Rana had told the Court that she would do the following:

- Speak to John Doe’s brother to see if he could assist with hiring a lawyer for John Doe for his appeals and;
- Have her office look into completing an assessment of whether or not John Doe is incompetent.<sup>62</sup>

[52] In the letter, counsel for the Respondent asked Dr. Rana if she or her office had made a referral to the PGT in respect of John Doe. If a referral had not been made, counsel asked Dr. Rana whether she or her office intended to make a referral, and if not, the reason why.<sup>63</sup>

[53] On June 28 or 29, 2022, counsel for the Respondent received a voicemail from Dr. Rana. In the voicemail, Dr. Rana stated that she had tried to have a psychiatrist from her hospital perform a confidential assessment of John Doe, but that nobody had been available. She indicated that the assessment would have to be done privately. She suggested that the Minister hire a private psychiatrist to do the assessment.<sup>64</sup>

[54] On June 29, 2022, counsel for the Respondent left a voicemail for Dr. Rana in which she stated the following:

- She explained that she represented the Respondent and not the Appellant;

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<sup>61</sup> Status Hearing Transcript (9 May 2022), page 87, lines 15–22.

<sup>62</sup> Letter from Ms. Taylor Pickering to Dr. Rana (9 June 2022), attached as Ex. A to the Affidavit of Ms. Joan Toth, Legal Assistant (14 September 2022).

<sup>63</sup> Letter from Ms. Taylor Pickering to Dr. Rana (9 June 2022), attached as Ex. A to the Affidavit of Ms. Toth (12 September 2022).

<sup>64</sup> Affidavit of Ms. Toth (12 September 2022) at para 4.



- She asked if there was somebody at Burnaby Mental Health who could be made available to do the assessment at some point;
- She asked whether Dr. Rana could contact someone at another location to do the confidential assessment;
- She asked whether Dr. Rana had contacted John Doe’s brother; and
- She asked Dr. Rana to provide the Court with updates on the foregoing.<sup>65</sup>

[55] On July 13, 2022, counsel for the Respondent sent a letter to Dr. Rana that included a summary of her voicemail of June 29, 2022.<sup>66</sup>

[56] On July 19, 2022, counsel for the Respondent received a letter. In the letter, Dr. Rana wrote:

I tried to arrange for psychiatrist [sic] to see him for competency assessment [sic] at Burnaby Psychiatric Services. Unfortunately, we do not provide this service and therefore it will not be available to John Doe. It has been suggested that he can be seen by a private psychiatrist to do the capacity assessment. His family physician can refer him to private psychiatrist [sic] to obtain recommended assessment.

We attempted to contact his brother regarding hiring a lawyer for John Doe, and he agreed to the same. The case manager talked to John Doe’s brother and I have advised her to send the information regarding her conversation to [sic] John Doe’s brother to you.<sup>67</sup>

[57] On July 25, 2022, the legal assistant helping counsel for the Respondent in these appeals (the “Legal Assistant”) contacted Dr. Rana’s office to obtain the telephone number of [REDACTED] (“[REDACTED]”), John Doe’s brother, and provided the number to counsel for the Respondent.<sup>68</sup>

[58] On August 3, 2022, counsel for the Respondent, after having obtained [REDACTED] phone number from Dr. Rana’s office, called him numerous times but there

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<sup>65</sup> Affidavit of Ms. Toth (12 September 2022) at para 5.

<sup>66</sup> Affidavit of Ms. Toth (12 September 2022) at para 6.

<sup>67</sup> Letter from Dr. Rana to Ms. Taylor Pickering (18 July 2022), attached as Ex. C to the Affidavit of Ms. Toth (12 September 2022).

<sup>68</sup> Affidavit of Ms. Toth (12 September 2022) at para 8.

was no answer each time.<sup>69</sup> Counsel for the Respondent left a voicemail for [REDACTED] in which she asked him to attend John Doe's status hearing on September 13, 2022. Counsel also asked him whether he had retained the services of a lawyer or had a psychiatric consult done by a private psychiatrist for a competency assessment, as Dr. Rana had requested of him. Counsel left follow-up voicemails [REDACTED] on August 22 and September 2, 2022. She called him again on September 6, 2022, but did not leave a voicemail.<sup>70</sup>

[59] On August 25, 2022, the Legal Assistant called [REDACTED] and left a voicemail to follow up on the voicemails left on August 3 and 22, 2022 by counsel for the Respondent.<sup>71</sup>

[60] On September 6, 2022, the Legal Assistant spoke with Dr. Rana's assistant about whether Dr. Rana was aware of any actions taken by [REDACTED]. Dr. Rana's assistant informed the Legal Assistant that she had just spoken to John Doe's case manager and that the case manager would call counsel for the Respondent. To the Court's knowledge, as of the date of this Order, counsel for the Respondent has not received a call back from John Doe's case manager.<sup>72</sup>

[61] On September 13, 2022, a status hearing took place. John Doe was present and he was by himself. He told the Court that his brother would not help him and that he wanted to retain counsel but he did not have any money. He also told the Court that he would like to get a psychiatric evaluation but that he did not know how to proceed and questioned whether he would be able to pay for it.<sup>73</sup>

[62] Unfortunately, the letters from Dr. Rana, John Doe's doctor, and her testimony at the 2022 status hearing, are not sufficient to enable the Court to conclude that John Doe is under a legal disability.

#### IV. THE ISSUE

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<sup>69</sup> Affidavit of Ms. Toth (12 September 2022) at para 9.

<sup>70</sup> Affidavit of Ms. Toth (12 September 2022) at para 9.

<sup>71</sup> Affidavit of Ms. Toth (12 September 2022) at para 10.

<sup>72</sup> Affidavit of Ms. Toth (12 September 2022) at para 11.

<sup>73</sup> Status Hearing Transcript (13 September 2022), page 21, lines 9–20; page 30, lines 10–14; page 33, lines 1–6.

[63] The issue is as follows:

- Is John Doe under a legal disability pursuant to section 29.1 of the *Tax Court Rules*?

## V. ANALYSIS

### A. Rules Applying to an Appeal before the Tax Court of Canada when a Taxpayer is Under a Legal Disability

[64] Pursuant to section 29.1 of the *Tax Court Rules*, the representative of a party under a legal disability shall institute or continue a proceeding on behalf of that party. Therefore, a taxpayer under a legal disability must have a representative for any proceeding before this Court. Section 29.1 reads as follows:

**29.1** Unless the Court orders otherwise, the representative of a party under a legal disability shall institute or continue a proceeding on behalf of that party.

[65] Pursuant to subsections 30(1) and 30(3) of the *Tax Court Rules*, a party to a proceeding who is an individual may act in person or be represented by counsel. Unless the Court orders otherwise, a person who is the representative of a party under a legal disability in a proceeding shall be represented by counsel, except where that person is also counsel acting in such a capacity.

[66] Section 30 reads as follows:

**30(1)** Subject to subsection (3), a party to a proceeding who is an individual may act in person or be represented by counsel.

**(2)** Where a party to a proceeding is not an individual, that party shall be represented by counsel except with leave of the Court and on any conditions that it may determine.

**(3)** Unless the Court orders otherwise, a person who is the representative of a party under a legal disability in a proceeding shall be represented by counsel, except where that person is also counsel acting in such a capacity.

[67] Consequently, pursuant to section 29.1 and subsections 30(1) and 30(3) of the *Tax Court Rules*, unless this Court decides otherwise, the representative of a taxpayer under a legal disability has to be represented by counsel, unless the

representative is acting in such capacity. Therefore, a taxpayer under a legal disability cannot represent herself or himself in any proceeding before this Court.

[68] In this case, after numerous status hearings where John Doe was not represented, this Court has serious reasons to believe that he might be under a legal disability. Consequently, in order for John Doe's appeals to proceed, this Court must determine whether John Doe is under a legal disability pursuant to the *Tax Court Rules*.

[69] After a review of the jurisprudence under section 29.1 of the *Tax Court Rules*, it appears that this Court has never been faced with a situation similar to that of John Doe. If it has, no written reasons have been issued to my knowledge.

[70] In cases where the *Tax Court Rules* and the case law do not provide the necessary direction, such as in this case, this Court has turned to the local rules of civil procedure for guidance.<sup>74</sup> John Doe resides in the province of British Columbia and his appeals are scheduled to be heard in British Columbia.

[71] Consequently, in my view, the determination of whether John Doe is under a legal disability under the *Tax Court Rules* has to be made according to the law of the province of British Columbia.

#### B. Rules Applying to Proceedings Before the Supreme Court of British Columbia When a Person is Under a Legal Disability

[72] British Columbia's *Supreme Court Civil Rules* (the "*BC Rules*"),<sup>75</sup> contain a rule that is very similar to section 29.1 and subsection 30(3) of the *Tax Court Rules*. Rule 20-2 of the *BC Rules* governs proceedings instituted or carried on by a person under "legal disability". Pursuant to rule 20-2(8)(a) of the *BC Rules*, section 29 of the *Interpretation Act*<sup>76</sup>, and section 1 of the *Mental Health Act*<sup>77</sup>, a person under a "legal disability" is a "person with a mental disorder", meaning a person who has a

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<sup>74</sup> See, for example, *Merchant Law Group v Canada*, 2008 TCC 49 at para 7.

<sup>75</sup> BC Reg 168/2009.

<sup>76</sup> RSBC 1996, c 238.

<sup>77</sup> RSBC 1996, c 288.

disorder of the mind that requires treatment and seriously impairs the person's ability to react appropriately to the person's environment, or to associate with others.

[73] In *Rai v Rai*,<sup>78</sup> the Supreme Court of British Columbia stated the following on the subject:

I note that Rule 20-2(2) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 restricts the appointment of a litigation guardian to those suffering from a legal disability. The court has inherent jurisdiction to order a medical examination for the purposes of Rule 20-2: *Boury v. Iten*, 2019 BCCA 81 (B.C. C.A.) at para. 65.

According to Rule 20-2(8)(a), persons under legal disability are infants or "mentally incompetent" persons. The phrase "mentally incompetent person" is defined in the *Interpretation Act*, R.S.B.C. 1996, c. 238, s. 29, to mean "a person with a mental disorder as defined by s. 1 in the *Mental Health Act*".

The following definition appears in the *Mental Health Act*, R.S.B.C. 1996, c. 288:

"person with a mental disorder" means a person who has a disorder of the mind that requires treatment and seriously impairs the person's ability to react appropriately to the person's environment, or to associate with others.<sup>79</sup>

### C. Question to be Answered by the Tax Court of Canada to Determine Whether a Taxpayer is Under a Legal Disability in British Columbia

[74] In my view, if the appeal is heard in British Columbia, for this Court to conclude that a taxpayer is under a legal disability pursuant to the *Tax Court Rules*, this Court has to determine whether the person has a mental disorder, whether the disorder requires treatment and if so, whether the disorder seriously impairs the person's ability to react appropriately to the person's environment, or to associate with others. If the Court is provided with such evidence, the taxpayer will be legally disabled under the *Tax Court Rules* and therefore will have to be represented by counsel.

[75] Therefore, it is this Court's view that in order for John Doe's appeals to proceed further, this Court must first determine whether he is a person who has a

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<sup>78</sup> *Rai v Rai*, 2019 [REDACTED] 606.

<sup>79</sup> *Ibid* at paras 3–5.

disorder of the mind that requires treatment and seriously impairs his ability to react appropriately to his environment, or to associate with others.

D. Options Available to the Tax Court of Canada to have a Taxpayer's Medical Condition Assessed

[76] In my view, when a taxpayer is not represented and the appeal is heard in British Columbia, in order to determine whether the taxpayer is under a legal disability under the *Tax Court Rules*, this Court has an implied jurisdiction and therefore the power to do the following:

- Issue an order in which the taxpayer must provide a medical report advising whether the taxpayer is under a legal disability;
- Issue an order to appoint a lawyer as an *amicus curiae* to represent the taxpayer, and then request that the *amicus curiae* obtain a medical report advising whether the taxpayer is under a legal disability; or
- Issue an order that counsel for the Respondent notify the PGT. The PGT can determine whether it should represent the taxpayer. If the PGT determines that it should represent the taxpayer, order the PGT to obtain a medical report advising whether the taxpayer is under a legal disability.

[77] This Court is of the opinion that it has the implied jurisdiction to issue these orders based on the Federal Court of Appeal of Canada decision in *Canada v Dow Chemical Canada ULC*.<sup>80</sup> In that decision, the Federal Court of Appeal described the Tax Court of Canada's jurisdiction by necessary implication as follows:

In *Windsor (City) v. Canadian Transit Co.*, 2016 SCC 54, at paragraph 33, the Supreme Court of Canada found that **the Federal Court does not have any inherent jurisdiction**, but rather only the jurisdiction conferred on it by statute. Since the Tax Court is also a statutory court, **this finding applies equally to the Tax Court. ...**

Although the Tax Court does not have any inherent jurisdiction, **it does have an implied jurisdiction by necessary implication**. In *R. v. Cunningham*, 2010 SCC 10, at paragraph 19, the Supreme Court of Canada confirmed that statutory courts have an implied jurisdiction by necessary implication to carry out the functions of a court. Since the Tax Court is a statutory court, it also has this implied jurisdiction.

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<sup>80</sup> *Canada v Dow Chemical Canada ULC*, 2022 FCA 70 [*Dow Chemical*].

Therefore, "... the powers conferred by an enabling statute are construed to include not only those expressly granted but also, by implication, **all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime ...**" (*ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4, at paragraph 51).<sup>81</sup>

[Emphasis added.]

[78] Consequently, even if this Court does not have the inherent jurisdiction of superior courts, that is, the authority to control its process, prevent abuses of process, and ensure that the machinery of the court functions in an orderly and effective manner,<sup>82</sup> it has the implied jurisdiction by necessary implication to carry out the function of a court. For that reason, in my view, this Court has the power to issue an order to obtain a medical report from a taxpayer, to appoint an *amicus curiae* to assist the Court or to direct counsel for the Respondent to notify the PGT if the Court believes that the taxpayer might be under a legal disability.

(1) Issue an Order in Which the Taxpayer Must Provide a Medical Report Advising Whether He or She is Under a Legal Disability

[79] The first option available to the Court is to order a taxpayer to provide a medical report advising whether he or she is under a legal disability. This option is not appropriate in the circumstances simply because it would not be fair to John Doe.

[80] In the circumstances, more specifically because of John Doe's medical condition, the information provided by Dr. Rana with respect to the medical system, and the Court's interactions with John Doe during the course of the proceedings, the Court is of the view that it cannot ask John Doe to provide evidence that he is under a legal disability for the following reasons:

- John Doe told the Court that he wants to get an assessment from a qualified health care provider to determine whether he is under a legal disability. He also told the Court that he does not know how to do it or who to ask for it;

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<sup>81</sup> *Dow Chemical* at paras 79–80.

<sup>82</sup> *Cunningham v Lilles*, 2010 SCC 10 at para 18.

- John Doe told the Court that even if he was able to find a qualified health care provider who could do the assessment, he does not have the financial capacity to pay for the service;
- John Doe’s psychiatrist, Dr. Rana, has not been able to have John Doe assessed by a qualified health care professional. I have serious doubts that John Doe, on his own, would be able to find a qualified health care professional who could do an assessment in the circumstances; and
- If John Doe was able to find a health care professional to do the assessment, the Court is of the view that he would not be able to give the necessary instructions to the professional for the assessment to be useful to this Court.

[81] For all these reasons, this Court has concluded that the first option is not appropriate in the circumstances.

(2) Issue an Order to Appoint a Lawyer as an *Amicus Curiae*

[82] The second option is for the Court to appoint a lawyer as an *amicus curiae*, that is, a “friend of the court”, to assist the Court. This can be done only in exceptional circumstances after certain conditions are met.<sup>83</sup> In *Imona-Russell*, the Supreme Court of Canada explained the source of a court’s inherent jurisdiction to appoint an *amicus curiae* as follows:

A court’s inherent jurisdiction to appoint *amicus* in criminal trials is grounded in its authority to control its own process and function as a court of law. Much like the jurisdiction to exercise control over counsel when necessary to protect the court’s process that was recognized in *Cunningham v. Lilles*, 2010 SCC 10, [2010] 1 S.C.R. 331 (S.C.C.), at para. 18, the ability to appoint *amici* is linked to the court’s authority to “request its officers, particularly the lawyers to whom the court afforded exclusive rights of audience, to assist its deliberations” (B. M. Dickens, “A Canadian Development: Non-Party Intervention” (1977), 40 *Mod. L. Rev.* 666, at p. 671).<sup>84</sup>

[83] Although the above quotation refers to a court’s inherent jurisdiction, which, as previously stated, the Tax Court lacks as a statutory court,<sup>85</sup> it is clear from the

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<sup>83</sup> *R v Imona-Russell*, 2013 SCC 43 [*Imona-Russell*] at para 2.

<sup>84</sup> *Ibid* at para 46.

<sup>85</sup> *Dow Chemical* at paras 79–80.



decision that statutory courts also have the power to appoint an *amicus curiae* through the doctrine of jurisdiction by necessary implication.<sup>86</sup> Furthermore, on this issue, in *Imona-Russell*, the minority of the Supreme Court stated the following:

In the case of statutory courts, the power to appoint an *amicus* derives from the court's authority to control its own process in order to administer justice fully and effectively. Their authority to appoint *amici* is necessarily implied in the power to function as a court of law: *Ontario v. 974649 Ontario Inc.*, 2001 SCC 81, [2001] 3 S.C.R. 575 (S.C.C.), at paras. 70-71; *Cunningham*, at para. 19.<sup>87</sup>

[84] In the *Morwald-Benevides* decision,<sup>88</sup> the Ontario Court of Appeal applied the principles enunciated in *Imona-Russell* in the context of a private family law case. The Court took the principles found in *Imona-Russell* and applied them with the necessary modifications.<sup>89</sup> These principles, as summarized in *WAC v CAF*, 2021 ONSC 5140, are the following:

(a) The appointment of *amicus* is “exceptional” or “rare”. Trial judges routinely resolve family law disputes without counsel on one or even both sides. Self-representation, on its own, is an insufficient reason to appoint *amicus*;

(b) Trial judges must consider whether they can personally provide sufficient guidance to an unrepresented party, in the circumstances of the case, to permit a fair and orderly trial;

(c) The Court should also consider the availability of alternatives to appointing *amicus*. These might include the availability of legal aid or appointing the Children's Lawyer in a case involving a child. But the Court may also balance against these potential alternatives, how invoking them might create more delay;

(d) *Amicus* may be appointed in rare or exceptional circumstances, when a judge requires assistance to ensure “the orderly conduct of proceedings”, and “the availability of relevant submissions”;

(e) A party has a right to self-represent. Nevertheless, *amicus* might be warranted where the self-represented party is “ungovernable or contumelious”, where the party refuses to participate or disrupts trial proceedings, or where the party is

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<sup>86</sup> See, for example, *Imona-Russell*, *supra* note 83 at paras 16, 55, 61–63, 69, 77, and 84.

<sup>87</sup> *Imona-Russell*, *supra* note 83 at para 112.

<sup>88</sup> *Morwald-Benevides v Benevides*, 2019 ONCA 1023 [*Morwald-Benevides*].

<sup>89</sup> *Ibid* at para 26.

adamant about conducting the case personally but is “hopelessly incompetent to do so, risking real injustice”;

(f) The assistance of *amicus* must be essential to the adequate discharge of the judicial functions in the case. The stakes must be high enough to warrant *amicus*;

(g) *Amicus* may assist in the presentation of evidence, but cannot control a party’s litigation strategy;

(h) “Very rarely”, *amicus* may mirror the duties of traditional counsel;

(i) However it is defined, the role of *amicus* must be clear, detailed and precise. During the trial, the Court must monitor the *amicus*, to ensure that he or she stays on course and remains within the limits of the role;

(j) The role may change or be refined as circumstances change during trial;

(k) Once appointed, the *amicus* is bound by a duty of loyalty and integrity to the Court, not to any of the parties to the proceedings; and

(l) A party may not discharge *amicus*; only the Court may do so.<sup>90</sup>

[85] On the basis of these principles, the Court has concluded that it is too early to proceed with this option because there is an alternative option. The alternative option available to the Court in the circumstances is to report the situation to the PGT and if necessary, make a referral. While pursuing the alternative option might create more delay, given the information available to the Court, it is the appropriate option to pursue at this stage.

### (3) Order Counsel for the Respondent to Notify the PGT

[86] In British Columbia, the PGT is the default statutory representative of a person declared to be under a legal disability.<sup>91</sup> The PGT can act as an adult’s statutory

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<sup>90</sup> *WAC v CAF*, 2021 ONSC 5140 at para 20, citing *Morwald-Benevides*, *supra* note 88.

<sup>91</sup> Section 32 of the *Adult Guardianship Act* sets out the process for appointing a statutory property guardian. Under subsection 32(5), the PGT becomes the statutory property guardian when a certificate of incapability is issued. Subsection 32(7) states that section 32 does not apply if the person has a committee appointed under the *Patients Property Act*. Furthermore, the *Patients Property Act* defines “patient” in section 1 to include a person with a statutory property guardian under the *Adult Guardianship Act*, and section 6 provides that the “committee” of a patient is the PGT unless someone else has been appointed. Lastly, under rule 20-2(6) of the *Supreme Court Civil Rules*, the committee is the patient’s legal guardian unless the court orders otherwise.

property guardian under the *Adult Guardianship Act*. As statutory property guardian, the PGT may make decisions regarding an adult's financial affairs.<sup>92</sup> The expression "financial affairs" is defined in section 1 of the *Adult Guardianship Act* and pursuant to that definition, an adult's financial affairs includes the adult's legal affairs.<sup>93</sup>

[87] Pursuant to paragraph 32(1)(a) of the *Adult Guardianship Act*, a health care provider who believes that an adult is incapable of managing his or her financial affairs can request that a qualified health care provider assess the adult's incapability. In this case, Dr. Rana told counsel for the Respondent that she could not have John Doe's medical condition assessed.<sup>94</sup> Consequently, and in any event, paragraph 32(1)(b) of the *Adult Guardianship Act* finds application in the circumstances.

[88] Pursuant to paragraph 32(1)(b) of the *Adult Guardianship Act*, in any case, a person who believes that John Doe is incapable of managing his legal affairs can notify the PGT of their belief, and the PGT may then request a qualified health care provider to assess the adult's incapability.

[89] Subsection 32(1) reads as follows:

Obtaining a statutory property guardian

32 (1) If a person has reason to believe that an adult may be incapable of managing the adult's financial affairs, the person may

(a) if the person is a health care provider, request a qualified health care provider to assess the adult's incapability, or

(b) in any case, notify the Public Guardian and Trustee of the person's belief, and the Public Guardian and Trustee may request a qualified health care provider to assess the adult's incapability.

[Emphasis added.]

[90] Given the circumstances, the Court is of the opinion that the only person who can notify the PGT of the Court's belief that John Doe is incapable of managing his legal affairs is counsel for the Respondent. To the Court's knowledge, John Doe does not have any family member or any other person, including his psychiatrist it seems,

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<sup>92</sup> *Adult Guardianship Act*, s 1, "statutory property guardian".

<sup>93</sup> *Adult Guardianship Act*, s 1, "financial affairs".

<sup>94</sup> See para 56 of this Order.

who can or is willing to notify the PGT of this Court's belief that he might be incapable of managing his legal affairs.

[91] Pursuant to section 32 of the *Adult Guardianship Act*, an adult assessment is a four-step process.

[92] In step one, after being notified, the PGT may request that a qualified health care provider assess the adult's incapability.<sup>95</sup>

[93] In step two, the qualified health care provider assesses the adult to determine whether he or she is incapable of managing his or her legal affairs. If this is the case, the qualified health care provider may report the adult's incapability to a health authority designate.<sup>96</sup>

[94] In step three, if the health authority designate issues a certificate of incapability, the health authority designate will forward the certificate to the PGT.<sup>97</sup>

[95] In step four, if the PGT is forwarded a certificate, it becomes the adult's statutory property guardian as of the date on which the certificate of incapability was signed by the health authority designate. Afterwards, the PGT will be able to make decisions regarding the adult's legal affairs.<sup>98</sup>

[96] Consequently, after the PGT is notified by counsel for the Respondent, the PGT will become the representative of John Doe and in such case, represent John Doe in his Tax Court proceedings.

## VI. CONCLUSION

[97] The Court orders that:

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<sup>95</sup> *Adult Guardianship Act*, s 32(1).

<sup>96</sup> *Adult Guardianship Act*, s 32(2).

<sup>97</sup> *Adult Guardianship Act*, s 32(3) and 32(4).

<sup>98</sup> *Adult Guardianship Act*, s 32(5).

- counsel for the Respondent shall serve the PGT by registered mail redacted and unredacted copies of this Order and of the Confidentiality Order issued by this Court with respect to John Doe’s appeals.
- if required by the PGT, counsel for the Respondent shall file a referral form;
- counsel for the Respondent shall serve John Doe by registered mail redacted and unredacted copies of this Order and of the Confidentiality Order and;
- counsel for the Respondent shall request by letter, served by registered mail, a status update from the PGT 90 days after the orders will have been served on the PGT.

Signed at Ottawa, Canada, this 31<sup>st</sup> day of May 2023.

“Sylvain Ouimet”

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Ouimet J

CITATION: 2023 TCC 80

COURT FILE NOS.: 2013-954(IT)G, 2015-3261(IT)G,  
2019-3239(IT)G, 2019-4191(IT)G

STYLE OF CAUSE: JOHN DOE v  
HIS MAJESTY THE KING

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: September 13, 2022

REASONS FOR ORDER BY: The Honourable Justice Sylvain Ouimet

DATE OF ORDER: May 31, 2023

APPEARANCES:

    Counsel for the Appellant: The Appellant himself

    Counsel for the Respondent: Nadine Taylor Pickering

COUNSEL OF RECORD:

    For the Appellant:

        Name:

        Firm:

    For the Respondent: Shalene Curtis-Micallef  
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\* Pseudonym for appellant

\* Pseudonym for appellant