



PRACTICE

DISCOVERY

Production of Documents

Appeal from Tax Court of Canada (T.C.C.) decision (2019 TCC 121) dismissing appellant's motion to compel respondent, as part of discovery, to provide certain documents, answers to certain questions — Motion in context of appeal before T.C.C. concerning whether trading activities of appellant constituting carrying on business so as to require payment of tax despite appellant being Tax-Free Savings Account (TFSA) trustee — Appellant alleging many errors by the T.C.C. — Appellant arguing that T.C.C. erred in its application of law to facts of this case — T.C.C. finding that certain documents sought by appellant in public domain — Such documents publicly available even if allegedly difficult to obtain — T.C.C. not erring in characterizing appellant's request as effort to have respondent do its research, in refusing to order production of such documents — Tax Court also refusing to order production of, and answers to questions about, internal Department of Finance documents — Court addressing appellant's questions regarding redacted table comparing tax characteristics of proposed TFSA, RRSP, RESP from January 2007 obtained pursuant to request under *Access to Information Act*, R.S.C., 1985, c. A-1 — Appellant asking, *inter alia*, about meaning of certain references in table, whether table reflecting "legislative intent, policy" of Department of Finance, Parliament, any changes to such policy, documents related to any such changed policy — Arguing that redacted internal Department of Finance documents relevant to statutory interpretation, should be produced in unredacted form — Respondent responding that documents must be publicly available in order to be relevant to statutory interpretation — Whether documents in question in present appeal having institutional quality such that they could represent government's position concerning legislation at issue — If not, such documents not relevant — Whether T.C.C. erring in applying law to facts — T.C.C. making no palpable, overriding error in refusing to order production of unredacted copies of internal documents in question, in refusing to order that the respondent answer questions related to such documents — T.C.C. not erring either in observing that factual assumptions matters for pleading, not discovery, or in finding that respondent has already communicated its legal position — Party may not use discovery to question opposing party as to which documents on record will be relied on for which legal arguments — Such questions essentially seeking opponent's legal argument rather than its legal position — Appeal dismissed.

AHAMED V. CANADA (A-206-19, 2020 FCA 213, Locke J.A., reasons for judgment dated December 10, 2020, 18 pp.)