

Dissolved Corporation Standing to Appeal - Sas Ansari

Author : admin

Dissolved Corporation Standing to Appeal

1455257 Ontario Inc v The Queen, [2016 FCA 100](#)

[Application for leave to appeal to the Supreme Court of Canada [dismissed](#)]

At issue in this appeal was whether a dissolved corporation had standing to initiate an appeal to the Tax Court of Canada on an assessment made after the dissolution of the corporation. The Tax Court had held that the corporation must be reinstated ([2015 TCC 173](#)).

The Federal Court of Appeal reached the same conclusion but with different reasoning.

NOTE: *With respect, the reasoning and conclusion of the FCA is less than satisfactory - see [HERE](#) for comment.*

```
medianet_width = "160"; medianet_height = "90"; medianet_crid = "749795932";  
medianet_versionId = "111299"; (function() { var isSSL = 'https:' == document.location.protocol;  
var mnSrc = (isSSL ? 'https:' : 'http:') + '//contextual.media.net/nmedianet.js?cid=8CUW8XQ2I' +  
(isSSL ? '&https=1' : ''); document.write(""); })();
```

The Ontario [Business Corporations Act](#), subsection 242(1), stated that despite a corporation being dissolved, *inter alia*, (a) proceedings commenced by or against the corporation before its dissolution may be continued, and (b) proceedings may be brought against the corporation as if it had not been dissolved.

The court had to determine the correct interpretation of paragraph 242(1)(b). The Tax Court considered the FCA decision in *495187 Ontario Ltd. v. Canada (Minister of National Revenue)*, 94 DTC 6229 (F.C.A.), where the FCA had held that a dissolved corporation could purpose the appeal, for reasons given in *460354 Ontario Inc. v. Canada (Minister of National Revenue)*, 92 DTC 6534(F.C.T.D.). The courts in those decisions held that a dissolved corporation not being able to defend itself against proceedings was an untenable interpretation (para 10), concluding that an appeal was not the initiation of a proceeding but the continuation of a process started by the issuance of a Notice of Reassessment. A dissolved corporation was held to have sufficient capacity to conduct an action challenging an assessment or reassessment issued by the Minister (para 11).

The Tax Court distinguished these decisions on the basis that the Act was later amended to provide that a corporation, upon revival, shall be deemed for all purposes to have never been dissolved (para 13) and preferred the line of authority that a dissolved corporation lacked capacity to pursue an appeal of an assessment to the Tax Court .

The FCA, after comparing the wording of the provision before and after amendment, held that the Tax Court's assessment of the impact of the amendment was wrong as there was no distinction of substance (para 18). The Tax Court should have stated that it was bound to follow the FCA precedent but explained why it was problematic leaving it for the FCA to decide the matter - *Canada v. Craig*, [2012 SCC 43](#). The FCA can depart from its previous decisions where special circumstances warrant, though this is a serious matter. To protect the values of certainty and consistency, a court will depart from a prior decision only if satisfied the prior decision is manifestly wrong - *Miller v. Canada (Attorney General)*, [2002 FCA 370](#) (para 21).

The old decisions of the FCA were held to no longer be good law (para 22), because the reasoning that an appeal was not the initiation of proceedings but the final stage of an appeal procedure commenced by filing a Notice of Objection was wrong because the FCA misapplied the SCC decision it relied on (*Johnson v. Canada (Minister of National Revenue)*, [1948 CanLII 1 \(SCC\)](#)). The SCC decision was an interpretation of the procedure and rights under the *Income War Tax Act*, which was significantly different than the current legislative landscape (para 27). The Tax Court of Canada Act refers to a proceeding being instituted by filing an originating document and, unlike the old provisions the Minister plays no role in commencing the proceedings and there is no provision that deems the matter to be an action or proceeding (para 30).

The filing of a Notice of Appeal in the TCC is the initiation of a legal proceeding. The Ontario BCA does not grant the power to initiate proceedings to a dissolved corporation. Such a corporation must be reinstated before it can initiate civil proceedings, including an appeal to the Tax Court.

The FCA dealt with the argument that corporations that are voluntarily dissolved cannot be revised by the administrative provisions of the Ontario BCA, but felt this was not a problem because the corporation could be revived by a private act of the Ontario Legislature. This is not an illusory right as the Ontario Legislature hears private acts to revive corporations on a regular basis.

- Sas Ansari, BSc BEd PC JD LLM PhD (exp) CPA In-Depth Tax 1, 2 & 3

Sas Ansari, BSc BEd PC JD LLM PhD (exp) CPA In-Depth Tax 1, 2 & 3

[If you like this website, please share it with others.](#)

[Back To Top OR Home](#)

```
medianet_width = "160"; medianet_height = "90"; medianet_crid = "749795932";
medianet_versionId = "111299"; (function() { var isSSL = 'https:' == document.location.protocol;
var mnSrc = (isSSL ? 'https:' : 'http:') + '//contextual.media.net/nmedianet.js?cid=8CUW8XQ2I' +
(isSSL ? '&https=1' : ''); document.write(""); })();
```