

Docket: 2023-172(IT)G

BETWEEN:

IDEAL SUPPLY HOLDINGS CORPORATION,

Appellant,

and

HIS MAJESTY THE KING,

Respondent,

Docket: 2023-174(IT)G

AND BETWEEN:

1088858 B.C. LTD.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Respondent's Motion heard by teleconference on
October 27, 2025, at Ottawa, Ontario

Before: The Honourable Justice Bruce Russell

Appearances:

Counsel for the Appellant: Joel Nitikman

Counsel for the Respondent: Ron Wilhelm
Eric Brown

ORDER

IT IS ORDERED THAT:

- a) the motion is allowed with its costs to the Respondent in the cause;
- b) the Respondent is granted leave to file the proposed Amended Replies,

attached as Appendices A and B to the Notice of Motion;

- c) the Appellants are permitted 30 days from the date of this Order to file Amended Answers if desired.

Signed this 7th day of October 2026.

“B. Russell”

Russell J.

Citation: 2026 TCC 175

Date: 20261007

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REASONS FOR ORDER

Russell J.

[1] In these related two appeals, the Respondent Crown has brought a motion seeking leave to amend its two Replies in various respects, including pleading certain additional facts emanating from discovery examinations of the Appellants.

[2] The motion is brought pursuant to Rule 54 of the *Tax Court of Canada Rules (General Procedure)*. Rule 54 addresses “when amendments to pleadings may be made”, and states:

A pleading may be amended by the party filing it, at any time before the close of pleadings, and thereafter either on filing the consent of all other parties, or with leave of the Court, and the Court in granting leave may impose such terms as are just.

[3] Also cited is subsection 152(9) of the federal *Income Tax Act* (Act) which provides:

(9) Alternative basis for assessment - At any time after the normal reassessment period, the Minister may advance an alternative basis or argument - including that all or any portion of the income to which an amount relates was from a different source - in support of all or any portion of the total amount determined on assessment to be payable or remittable by a taxpayer under this Act, unless, on an appeal under this Act

(a) there is relevant evidence that the taxpayer is no longer able to adduce without the leave of the court; and

(b) it is not appropriate in the circumstances for the court to order that the evidence be adduced.

[4] By way of background, these two related appeals are brought by Appellants 1088858 B.C. Ltd. (108) and Ideal Supply Holdings Corporation (Ideal Holdco). 108 was previously named Ideal Supply Company Limited (Ideal Opco). It sold mostly auto parts to retail stores. Three siblings owned the Ideal Opco shares. In 2008, those siblings sold their Ideal Opco shares to three holding companies - one for each sibling (the Sibling Holdcos). In 2015, the Sibling Holdcos sold their respective Ideal Opco shares to the other Appellant, Ideal Supply Holdings Corporation (Ideal Holdco), in return for Ideal Holdco shares.

[5] In 2014, Ideal Holdco and Ideal Opco co-purchased two joint, last-to-die life insurance policies (the Policies). One Policy covered one sibling and the siblings' mother. The other covered another sibling and again the siblings' mother.

[6] Each Policy was governed by an agreement (Co-owner Agreements) between Ideal Holdco and Ideal Opco, establishing which of those two companies was to pay what portion of the insurance premiums and which was to receive what benefit under the Policies. One benefit, referenced in the Co-owner Agreements, was the cash surrender value (CSVs) of the two Policies.

[7] The Minister of National Revenue (Minister) reassessed Ideal Holdco for a shareholder benefit per subsection 15(1) of the Act, based on three pleaded ministerial assumptions - (1) per the Co-owner Agreements, Ideal Holdco was entitled to the CSVs of the two Policies, and (2) Ideal Opco paid more than its share of the premiums, and (3) accordingly Ideal Opco bestowed a shareholder benefit on Ideal Holdco by increasing its CSVs.

[8] This CSV issue is pleaded in the 108 (i.e., Ideal Holdco) appeal.

[9] Now, the proposed amendments include identification of two additional alleged shareholder benefits; one conferred by Ideal Holdco (indirectly through the Sibling Holdcos) on the siblings by allowing them to use Ideal Holdco's CSVs as security for their personal loan (borrowed from BMO to repay \$1 million indebtedness of sibling Timothy and to make payments to support their mother). The other additional benefit is one conferred indirectly by Ideal Opco upon Ideal Holdco, for the same thing.

[10] The Appellants consent to all the Respondent's proposed amendments - excepting however six clauses that identically appear in both proposed Amended Replies under the heading "additional facts". They appear as clauses 15(ppp) to 15(uuu) in the proposed Amended Reply for the 108 appeal; and as clauses 18(j) to 18(o) in the proposed Amended Reply for the Ideal Holdings appeal.

[11] These disputed six clauses read:

The Attorney General relies on the following additional facts:

15(ppp)/18(j): also in 2015, Timothy MacDonald, John MacDonald and Joan Waechter borrowed funds from BMO under a loan agreement allowing for borrowings up to \$1.54 million (the Personal Loan), for the purpose of repaying indebtedness owed by Timothy MacDonald and for making payments to their mother to support her personal living expenses;

15(qqq)/18(k): repayment of the Personal Loan to BMO was secured by Holdco pledging the cash surrender value of the Co-operators Policies;

15(rrr)/18(l): no payments were ever made to Holdco to compensate it for having pledged the cash surrender value of the Co-operators Policies as security for repayment of the Personal Loan;

15(sss)/18(m): but for the premiums paid by Opco respecting the Co-operators Policies, there would not have been sufficient equity in the cash surrender value of the Co-operators Policies for them to have acted as sufficient collateral for the Personal Loan and the BMO Borrowings;

15(ttt)/18(n): no payments were ever made to Opco to compensate it for having made the premium payments to increase the cash surrender value of the Co-operators Policies;

15(uuu)/18(o): Holdco realized an additional benefit arising from the Premiums Benefit insofar as its indirect shareholders, being Timothy MacDonald, John MacDonald and Joan Waechter, were able to borrow the Personal Loan on the strength of the cash surrender value of the Co-operators Policies.

[12] As for these two apparent shareholder benefits, neither Ideal Holdco nor any sibling has been assessed for same, and neither of these alleged shareholder benefits is at issue in either appeal.

[13] It is undisputed that the facts establishing these two alleged additional shareholder benefits were disclosed in discovery examination of the Appellants.

[14] The Respondent Crown cites *Pomeroy Acquireco Ltd.*, 2021 FCA 187 at paragraph 4, stating that the Court should allow amendments at any stage of the proceeding if it: (i) assists the tribunal in determining the real questions in controversy, (ii) does not result in an injustice to the other party not compensable by costs, and (iii) serves the interests of justice. See also *Baffinland Iron Mines Corporation*, 2025 TCC 73, para. 69.

[15] The Appellants decline to consent to these proposed amended pleadings, asserting that the identified “additional facts” are not “material facts”. Material facts are, per Rule 49(1)(e), the nature of facts to be pleaded in a Reply. The Appellants cite *Leonard v. The Queen*, 2022 FCA 195, which affirmed that, “[m]aterial facts are those facts which, if established at the trial, will tend to show that the party pleading is entitled to the relief sought.”

[16] The Appellants assert that the two further alleged benefits arising from the Appellants’ discovery examination do not prove the existence of the shareholder benefit that is in issue in these appeals.

[17] My view is that the underlying facts of these appeals are of some complexity - many players and many moving parts. Consequently, the additional facts established through discovery examination that the Respondent wishes to include in its Amended Replies should be permitted to be put before the Court hearing these appeals, to enhance understanding of the relevant factual circumstances.

[18] And that would assist the Court in its adjudication of these fact-intensive appeals. Per *Pomeroy*, it would assist the Court in determining the real questions in controversy. As well, it is not apparent that injustice to the Appellants would result. After all this information is sourced through discovery examination of the Appellants.

[19] Accordingly, I perceive that the interests of justice would be served by not shutting the judicial door to the pleading of these further facts, learned only at the discovery stage.

[20] Also, this is consistent with the utility of discovery examinations - enabling a clearer, more accurate and complete judicial comprehension of the factual circumstances before the Court in accordingly rendering its decision.

[21] For these reasons I also view these “additional facts” as material; not just relevant.

[22] The Respondent Crown’s motion will, by order, be allowed with costs in the cause. Leave will be granted to file the proposed Amended Replies and the Appellants will be granted 30 days within which to file Amended Answers if desired.

Signed this 7th day of October 2026.

“B. Russell”

Russell J.

CITATION: 2026 TCC 175

COURT FILE NO.: 2023-172(IT)G
2023-174(IT)G

STYLE OF CAUSE: IDEAL SUPPLY HOLDINGS
CORPORATION AND HIS MAJESTY
THE KING

1088858 B.C. LTD. AND HIS MAJESTY
THE KING

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: October 27, 2025

REASONS FOR ORDER BY: The Honourable Justice Bruce Russell

DATE OF ORDER: October 7, 2026

APPEARANCES:

Counsel for the Appellant: Joel Nitikman

Counsel for the Respondent: Ron Wilhelm
Eric Brown

COUNSEL OF RECORD:

For the Appellant:

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