

CANADA / JUDGMENT

John Doe v. The King

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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 .

Status hearing held on April 17 and June 5, 2026, at Vancouver, British Columbia

Before: The Honourable Justice Sylvain Ouimet

Appearances :

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Nadine Taylor Pickering

ORDER

In accordance with the attached Reasons, Josh Schmidt of Vancouver, British Columbia, is hereby appointed as amicus curiae for the purposes of these appeals.

Signed at Ottawa, Canada, this 4th day of September 2026.

“Sylvain Ouimet”

Ouimet J.

Citation: 2026 TCC 163

Date: 20260908

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2015-3261(IT)G

2019-3239(IT)G

2019-4191(IT)G

BETWEEN:

JOHN DOE,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

AMENDED REASONS FOR ORDER

Ouimet J.

I. BACKGROUND [1] John Doe has been involved in four appeals before the Tax Court since 2013. During those proceedings, the Court received medical evidence indicating that John Doe suffers from bipolar disorder, has been an involuntary patient under the Mental Health Act [1] of British Columbia since 2013, and has experienced repeated hospitalizations and significant difficulty managing his affairs and participating in the litigation. These circumstances have led to numerous adjournments and extensive case management by the Court.

[2] Concerned that John Doe might be under a legal disability , the Court explored various means of providing assistance, including inquiries with his treating psychiatrist, attempts to involve family members, and engagement with the Public Guardian and Trustee of British Columbia (“PGT”). The PGT ultimately declined to intervene, advising that there was insufficient evidence to warrant its involvement and that John Doe appeared unable to fund representation. The Court

was therefore required to consider alternative means to ensure that the appeals could proceed.

[3] On January 22, 2026, this Court issued an order determining that John Doe is under a legal disability, and, as a result, pursuant to section 29.1 and subsections 30(1) and 30(3) of the Tax Court of Canada Rules (General Procedure) , [2] he must be represented by counsel for the purposes of his appeals.

[4] Following that determination, the Court held a hearing on April 17, 2026, to obtain evidence regarding the availability of and funding for an amicus curiae , and to consider the proposed scope of the amicus curiae 's role in advancing John Doe's appeals.

[5] On June 5, 2026, the Court held another hearing to consider the appointment of Josh Schmidt ("Mr. Schmidt") as amicus curiae and to define the scope of his proposed mandate.

II. HEARINGS OF APRIL 17 AND JUNE 5, 2026 A. April 17, 2026, Hearing [6] Ian Mackenzie Cordial Binnie ("Mr. Binnie") testified regarding the funding of the amicus curiae . Mr. Binnie is Senior Counsel and Team Lead in the Programs Branch within the Policy Sector of the Department of Justice. Among other responsibilities, he oversees aspects of the State-Funded Counsel Program, which provides funding for counsel appointed by courts as amici curiae . [3]

[7] Mr. Binnie stated that the State-Funded Counsel Program operates as follows:

- 1- The Court independently selects and appoints an amicus curiae by issuing a formal order;
- 2- The order is transmitted to the State-Funded Counsel Program; and
- 3- The Program then contacts the appointed lawyer and arranges funding. [4]

[8] Funding for the amicus curiae continues for the duration of the proceedings and cannot be unilaterally terminated because of budgetary constraints. The Program's role is strictly administrative and financial; it neither selects the amicus curiae nor defines the scope of the mandate, both of which remain entirely within the Court's discretion. [5]

B. June 5, 2026, Hearing [9] According to his testimony, Mr. Schmidt has a strong academic and professional background in law with a particular focus on tax litigation. He obtained a Bachelor of Commerce from the University of Victoria in 1997 and a law degree from the same institution in 2006. He was called to the Bar of British Columbia in May 2007 and has remained a member in good standing of the Law Society of British Columbia since that time. [6]

[10] After his call to the Bar, Mr. Schmidt articulated with Lang Michener, where he practised securities law for approximately one year. In 2008, he joined Thorsteinssons LLP, a leading Canadian tax law firm, and began practising tax law. He remained there for approximately four years. He subsequently practised corporate and tax law with Sangra Moller before joining Moodys Gartner Tax Law, where his practice focused on tax planning and tax litigation. [7]

[11] In 2016, Mr. Schmidt and a partner established their own firm devoted exclusively to tax litigation. Since that time, his practice has been focused entirely on litigating tax disputes. Mr. Schmidt testified that he has more than a decade of experience practising exclusively in tax law, including approximately ten years devoted solely to tax litigation. [8]

[12] Mr. Schmidt has significant experience before the Tax Court of Canada. He testified that he has conducted approximately six Tax Court trials and has acted as litigation counsel in numerous tax disputes throughout his career. His experience is directly relevant to the issues raised in these appeals. [9]

III. HMTK's Position [13] His Majesty the King ("HMTK") does not oppose Mr. Schmidt's appointment as amicus curiae . Counsel for HMTK advised that, having reviewed the relevant authorities, she accepts that the appointment is warranted in the present circumstances, given the Court's prior finding that John Doe is under a legal disability and the need to ensure that the proceedings are conducted fairly and efficiently. [10]

[14] Counsel further acknowledged that, in exceptional cases, an amicus curiae may be entrusted with functions that closely resemble those of counsel and submitted that the scope of the appointment lies within the Court's discretion. [11]

IV. DISCUSSION A. The Law

1. Court's Jurisdiction to Appoint an Amicus Curiae [15] Canadian courts possess inherent jurisdiction to appoint amici curiae . This inherent jurisdiction is rooted in their authority to control their own process and to function effectively as courts of law. [12]

[16] The courts' capacities in this respect are grounded in their authority to call upon their officers, especially lawyers to whom the court afforded exclusive rights of audience, to assist in the court's deliberative process. [13]

[17] The Supreme Court of Canada has recognized that there is ample authority for judges to appoint amici curiae where this is necessary to permit a particular proceeding to be justly and effectively adjudicated. [14] The trial judge is best positioned to determine what type of help is required and has wide discretion to tailor the appointment to the exigencies of a case. [15]

[18] Judges appoint amici curiae most commonly where a party is unrepresented or self-represented. They are employed where relevant interests would otherwise go unrepresented. [16]

[19] Although the Tax Court, as a statutory court, does not possess inherent jurisdiction, it may exercise powers under the doctrine of jurisdiction by necessary implication: [17]

[36] The power to appoint amicus curiae flows from the inherent jurisdiction of superior courts to manage their own procedure to ensure a fair trial (CLAO , at para. 46; I. H. Jacob, "The Inherent Jurisdiction of the Court" (1970), 23 Curr. Legal Probs. 23, at pp. 27-28). This jurisdiction empowers a superior court judge to appoint amicus when the judge believes doing so is required for the just adjudication of a case. The power of a statutory court to appoint amicus is necessarily implied from the court's authority to control its own process and function as a court of law (CLAO , at paras. 12 and 112) . The discretionary power to appoint amicus should be used "sparingly and with caution, in response to specific and exceptional circumstances" that arise (para. 47). [18]

[Emphasis added.]

2. Principles Governing the Appointment of an Amicus Curiae [20] With respect to situations in which the Court has determined that a person is not mentally present in the proceedings, or where a person displays symptoms of mental health challenges, the Ontario Court of Appeal has observed that proceeding against a person who is not mentally present is akin to

proceeding against a person who is not physically present, as it effectively excludes that person from the process. [19] Moreover, the Supreme Court of Canada has recognized that the appointment of an amicus curiae with adversarial functions may be required where an unrepresented accused displays symptoms of mental health challenges. [20]

[21] In determining whether the appointment of an amicus curiae is warranted, the Court must apply the governing legal principles. Those principles are as follows: [21]

1- The assistance of an amicus curiae must be essential to the adequate discharge of the judicial functions in the case. The stakes must be high enough to warrant an amicus curiae . [22]

2- A party has a right to self-represent. Nevertheless, an amicus curiae 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 adamant about conducting the case personally but is hopelessly incompetent to do so, risking real injustice. [23]

3- The Court should also consider the availability of alternatives to appointing an amicus curiae . These might include the availability of legal aid or the possibility of appointing the PGT or the Children's Lawyer in a case involving a child. But the Court may also balance against these potential alternatives because invoking them might create more delay. [24]

4- 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. [25]

3. Role of an Amicus Curiae [22] An amicus curiae has no client other than the Court. Their role is to provide the Court with a perspective they consider necessary, and all actions taken by the amicus are in the public interest to assist the Court in the proper disposition of the case. [26]

[23] Courts have discretion to define the roles assigned to an amicus curiae . Although the traditional approach within the common law system was to appoint a neutral amicus curiae , the law has evolved to the point where Canadian courts may now appoint partisan amici and give them new roles. Therefore, amici curiae may play a blended role. Although their primary duty remains to the court, they may, in assisting the court, be required to advance the position of an unrepresented party. [27]

[24] Consequently, amici may be tasked not only with making submissions on questions of law but also with assisting the court in relation to both factual and legal issues.

[25] In rare circumstances, and only where necessary, an amicus curiae may be entrusted with duties approaching those of counsel for a party. The role of an amicus curiae is highly adaptable and can encompass a broad spectrum of functions, including adversarial functions. In the present case, the Court is satisfied that there is no reasonable alternative but to appoint a partisan amicus curiae . [28]

[26] Where a partisan amicus curiae is appointed to perform functions that closely resemble those of traditional counsel, careful consideration must be given to issues of confidentiality and privilege. [29] The trial judge should assess whether the scope of the amicus curiae's mandate requires a confidentiality order to enable the amicus to effectively carry out their role. While solicitor-client privilege would not be available, a confidentiality order can provide legal protection for communications between the amicus curiae and the litigant. [30]

B. Analysis [27] In the present case, the Court may appoint an amicus curiae to help ensure that John Doe's rights to appeal the Minister's assessments are protected. Furthermore, the Court's opinion is that such an appointment is also necessary to maintain the orderly conduct of the proceedings and to prevent further delays .

[28] The Court must therefore apply the principles governing the appointment of an amicus curiae , as outlined above, to determine whether such an appointment is warranted in these appeals.

1- The assistance of an amicus curiae must be essential to the adequate discharge of the judicial functions in the case. The stakes must be high enough to warrant an amicus curia e .

[29] Having explored and exhausted all other available avenues, the Court considers the appointment of an amicus curiae essential to the proper discharge of its judicial functions in this case. In addition, the amounts at stake in the appeals are significant for John Doe.

2- A party has a right to self-represent. Nevertheless, an amicus curiae 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 adamant about conducting the case personally but is hopelessly incompetent to do so, risking real injustice.

[30] In this case, John Doe is under a legal disability and is therefore unable to represent himself, as required by Rule 30(3) of the Tax Court of Canada Rules (General Procedure). [31]

3- The Court should also consider the availability of alternatives to appointing an amicus curiae . These might include the availability of legal aid or the possibility of appointing the Children's Lawyer in a case involving a child. But the Court may also balance against these potential alternatives because invoking them might create more delay.

[31] The Court has granted multiple adjournments to allow John Doe time to recover and to retain counsel. It also directed HMTK to communicate with John Doe's psychiatrist, requested that the psychiatrist contact John Doe's brother to explore possible assistance, and ordered HMTK to refer John Doe to the PGT. In addition, counsel for HMTK contacted the Community Legal Assistance Society, Access Pro Bono, and the B.C. Centre for Elder Advocacy and Support, and made repeated efforts to reach John Doe's brother.

[32] On the basis of the foregoing, the Court has concluded that there is no available alternative other than the appointment of an amicus curiae .

V. 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. [33] In this case, the Court has provided sustained guidance over nearly ten years to assist John Doe in advancing his appeals. Despite these efforts, John Doe has remained non-responsive to the Court's directions and has been unable to obtain the assistance required to ensure a fair and orderly trial.

A. Conclusion [34] The Court has concluded that, in the circumstances, the appointment of an amicus curiae is the only viable option available to the Court.

[35] The conditions governing such an appointment, as established in the case law, have been met. Consequently, the Court has concluded that the appointment of an amicus curiae is necessary to ensure the fair and proper administration of justice and is therefore warranted in the circumstances.

[36] Because John Doe has mental health challenges, the appointment of an amicus curiae with adversarial functions is required.

[37] Given that the Court is satisfied that Mr. Schmidt possesses the education, professional qualifications, litigation experience, and specialized expertise in tax law necessary to assist the Court and to discharge the duties associated with this appointment, the Court further concludes that Mr. Schmidt should be appointed as amicus curiae .

VI. ORDER [38] In accordance with the above Reasons, the Court orders that:

Josh Schmidt of Vancouver, British Columbia, is appointed as amicus curiae for the following purposes:

furthering John Doe's interests in this proceeding; and
assisting in the fair and orderly conduct of his appeals.

Mr. Schmidt may take any steps reasonably necessary to carry out the mandate ordered by the Court, including, but not limited to, making submissions and examining or cross-examining witnesses.

Mr. Schmidt shall not act as counsel for John Doe and is not required to follow John Doe's instructions.

John Doe shall have no authority to dismiss or replace Mr. Schmidt.

Mr. Schmidt owes an overriding duty to the Court and shall act independently in the discharge of that mandate.

The Amended Confidentiality Order issued on June 21, 2023, will be amended to include Mr. Schmidt among the persons authorized to access the sealed Court files to allow him to carry out his duties.

These Amended Reasons for Order are issued in substitution of the Reasons for Order dated September 4, 2026, in order to correct paragraph numbering.

Signed at Ottawa, Canada, this 8th day of September 2026.

“Sylvain Ouimet”

Ouimet J.

CITATION:

2026 TCC 163

COURT FILE NOS.:

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

STYLE OF CAUSE:

JOHN DOE AND HIS MAJESTY THE KING

PLACE OF HEARING:

Vancouver, British Columbia

DATE OF HEARING:

April 17 and June 5, 2026

AMENDED REASONS FOR ORDER BY:

The Honourable Justice Sylvain Ouimet

DATE OF ORDER:

September 4, 2026

DATE OF AMENDED REASONS:

September 8, 2026

APPEARANCES:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Nadine Taylor Pickering

COUNSEL OF RECORD:

For the Appellant:

Name:

N /A

Firm:

N/A

For the Respondent:

Marie-Josée Hogue

Deputy Attorney General of Canada

Ottawa, Canada

[1] RSBC 1996, c 288.

[2] SOR/90-688a [TCC Rules].

[3] Transcript of proceedings dated April 17, 2026, pages 36–39.

[4] Ibid at page 46.

[5] Ibid at pages 45, 53–54.

[6] Transcript of proceedings dated June 5, 2026, pages 34–35.

[7] Ibid at page 35.

[8] Ibid at pages 35, 37.

[9] Ibid at pages 36–37.

[10] Ibid at pages 6–7.

[11] Ibid .

[12] Macy Mirsane, “The Roles of Amicus Curiae (Friend of the Court) in Judicial Systems with Emphasis on Canada and Alberta” (2022) 59:3 Alta L Rev 669 at 680.

[13] Ibid .

[14] Ontario v Criminal Lawyers’ Association of Ontario , 2013 SCC 43 at para 44 [CLA].

[15] R v Kahsai , 2023 SCC 20 at paras 38, 50, 59 [Kahsai] .

[16] Séverine Menétrey, “L’immixtion de tiers amicaux dans le mécanisme juridictionnel” (2004) 45:4 C de D 729 at 737.

[17] CLA , supra note NOTEREF _Ref233203282 \h * MERGEFORMAT 14 08D0C9EA79F9BACE118C8200AA004BA90B02000000080000000E0000005F005200650066003200330033003200300033003200380032000000 at paras 16, 61–63, 77, 84.

- [18] Kahsai , supra note NOTEREF _Ref233111250 \h * MERGEFORMAT 15 08D0C9EA79F9BACE118C8200AA004BA90B02000000080000000E0000005F005200650066003200330033003100310031003200350030000000 at para 36.
- [19] R v Walker , 2019 ONCA 765 at para 44.
- [20] Kahsai , supra note NOTEREF _Ref233111250 \h * MERGEFORMAT 15 08D0C9EA79F9BACE118C8200AA004BA90B02000000080000000E0000005F005200650066003200330033003100310031003200350030000000 at paras 57, 59.
- [21] Morwald-Benevides v Benevides , 2019 ONCA 1023 at paras 26–40 [Benevides].
- [22] Ibid at para 27.
- [23] Ibid at para 28.
- [24] Ibid at paras 30–31.
- [25] Ibid at para 33.
- [26] CLA , supra note NOTEREF _Ref233203282 \h * MERGEFORMAT 14 08D0C9EA79F9BACE118C8200AA004BA90B02000000080000000E0000005F005200650066003200330033003200300033003200380032000000 at para 118.
- [27] Mirsane , supra note NOTEREF _Ref233204320 \h * MERGEFORMAT 12 08D0C9EA79F9BACE118C8200AA004BA90B02000000080000000E0000005F005200650066003200330033003200300034003300320030000000 at 683 .
- [28] Kahsai , supra note NOTEREF _Ref233111250 \h * MERGEFORMAT 15 08D0C9EA79F9BACE118C8200AA004BA90B02000000080000000E0000005F005200650066003200330033003100310031003200350030000000 at paras 38–39; Benevides , supra note 21 at para 38.
- [29] Benevides , supra note 21 at para 38.
- [30] Kahsai , supra note NOTEREF _Ref233111250 \h * MERGEFORMAT 15 08D0C9EA79F9BACE118C8200AA004BA90B02000000080000000E0000005F005200650066003200330033003100310031003200350030000000 at para 66.
- [31] TCC Rules , supra note 2.

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