

CASE LAW UPDATE

Mandy Seidenberg

Grand River Enterprises Six Nations Ltd. v. Canada (Attorney General)

2010 ONSC 2911, released 18 May 2010

Interlocutory Motions – Temporary Stay – Related Proceedings

The Attorney General moved for a temporary stay of the plaintiffs' proceeding pending determination of the plaintiff GRE's appeals at the Tax Court of Canada. The plaintiffs' civil action challenged the conduct of the Minister of National Revenue respecting assessment of excise duties against GRE, particularly the requirement that GRE be incorporated as a precondition to the issue of an excise licence, rather than continue to operate as a partnership. It also challenged the failure of the Government of Canada to combat the problem of contraband and counterfeit tobacco products on the Grand River Reserve, including its failure to properly implement or administer an anti-smuggling initiative. The plaintiffs argued that the Tax Court had no jurisdiction to decide the matters in the action and that it would be unfair and prejudicial to grant the temporary stay.

The motions judge agreed with the Attorney General that the action should be temporarily stayed until final determination of the tax appeals, pursuant to the court's jurisdiction to stay any proceeding on such terms as it considered just. The court was satisfied that determination by the Tax Court of the validity of the assessments would have a major impact on the plaintiffs' claim for damages in the action, and would have a bearing on the forced incorporation issue. While the Attorney General did not necessarily meet the test for obtaining a temporary stay set out in recent case law, the *Courts of Justice Act* gives the court broad discretion unfettered by any specific test to grant a stay.