



Greetings from the Executive and Board of the IATJ.

Dear Colleagues:

The IATJ has continued its organizing efforts towards another successful annual Assembly, this being the 9th Assembly to be held in Ottawa, Canada on September 28 and 29, 2018.

Registration particulars are attached, as well as information on suggested accommodations. I am sure you will find the attached program of interest and I solicit your early registration so that the organizers can plan accordingly.

The Assembly will be held at the Lord Elgin Hotel, 100 Elgin Street, Ottawa, ON, conveniently located in the centre of downtown Ottawa, well within walking distance of various visitor sites and amenities. A block of rooms at preferred rates has been held for IATJ attendees. Contact information for the Lord Elgin Hotel as well as several other nearby hotel options are also attached.

We look forward to welcoming both new and old members to Canada for the 9th Assembly.

I attach for your information an interesting article by Dr. Christopher McNall of the First-tier Tribunal (Tax Chamber), Manchester, England entitled “In praise of brevity: a British view”

Thank you for your continued support of the IATJ.

E.P. Rossiter, President

The 2017-2018 executive for the IATJ is:

Chief Justice Eugene Rossiter (Canada), President; eugene.rossiter@tcc-cci.gc.ca
Judge Philippe Martin (France), 1st Vice-President; philippe.martin@conseil-etat.fr
Judge Michael Beusch (Switzerland, 2nd Vice-President; michael.beusch@bvger.admin.ch
Judge Friederike Grube (Germany), Secretary-General; Friederike.Grube@bfh.bund.de
Judge Willem Wijnen (Netherlands), Treasurer; W.Wijnen@ibfd.org

Executive members at large include:

Judge Malcolm Gammie (U.K.) mgammie@oeclaw.co.uk,
Judge Peter Panuthos (U.S.A.) stipanuthos@ustaxcourt.gov,
Judge Fabio Prieto Souza (Brazil) fabio.prieto@uol.com.br,
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Judge Vesa-Pekka Nuotio (Finland) vesa-pekka.nuotio@oikeus.fi
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Judge Peter Darak (Hungary) international@kuria.birosag.hu
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Justice Jennifer Davies (Australia) justice.davies@fedcourt.gov.au,
President Massimo Scuffi (Italy) massimo.scuffi@giustizia.it
Chairman Anthony Gafoor (Trinidad & Tobago) adjg1@yahoo.com

In praise of brevity: a British view.

Dear Reader: Be warned! This note aims to be a little provocative. I am writing it after collegial discussions at our conference in Helsinki revealed strikingly divergent approaches to procedural rules between different common law jurisdictions. Some of us (for example, the United States, and Canada) have very long and detailed sets of rules. Others (for example, the United Kingdom, and Hong Kong) do not.

I was quite surprised by this. I had assumed (without any evidence at all) that all lawyers from all common law traditions would regard rule-making in the same way. Having made that assumption, I had gone on to assume that, when it came to procedure, we would all have travelled the same route, and (a third successive assumption) would have arrived at the same destination - that is to say, the peak of perfection represented by the rules of the Tax Tribunal in the United Kingdom. How wrong I was!

With that background in mind, I hope that this note can do at least two things. Firstly, it can try to explore a little what these different approaches might tell us. Secondly, it might encourage colleagues from other traditions (and especially non common law traditions) to give their views.

My ambitions are extremely modest. It is not for me to suggest that there might (even in theory) be a 'pan-global' set of procedural rules which could be applied to all tax disputes. But is this a discussion at least worth having? We could certainly have some fun trying to find out!

I should set out the path which we have travelled in this country. For about 800 years - from the Norman Conquest in 1066 to the great reforms of the mid-nineteenth century - the English substantive law of rights and wrongs *was* procedure. Procedure was just so dominant that it was not possible to speak intelligibly of one without the other. Then, about 150 or so years ago, a process of reform began which has seen the substantive importance of procedure decline radically. When using the word 'reform' we should always remember the words (attributed to several British judges over the centuries): 'Reform? Aren't things bad enough already?'

We can (probably) all agree that procedure is important. We need procedural rules because, without them, we cannot do our jobs. That is to say, without them, we are in a world without rules of play. For example, without rules of disclosure, we have 'trial by ambush', where a party which keeps its cards up its sleeve secures an unfair advantage over a party which does not. Rules also give consistency and predictability: we do not need to have to reinvent the wheel for each and every case.

But that does not explain why some sets of rules are long and some are short. Here, we get into the deeper waters of what matters rules should deal with, and what matters rules can (or should) avoid. To take a simple example. It is possible for rules to permit (but not to compel) the admission of documents which are filed late into evidence if they happen to assist fair resolution of the case, even though they are late. That rule could well emanate from a system which put the interests of substantive justice above those of procedural justice (I must add a fail-safe of a customary kind: 'in an appropriate case'; or 'wherever reasonable'; or 'according to the circumstances of the case').

Another view is that *substantive* justice cannot realistically be accomplished without *procedural* justice. This can produce the opposite result: documents which are filed late are not admitted into evidence, even if doing so would assist fair resolution of the case, simply *because* they are filed late. In that sort of system, procedural default in an individual case may well be productive of unfairness or injustice in that

particular case. A party may end up not being able to put forward its true case. However, the fairness of the overall system, involving all litigants in all cases, requires that time-limits be kept.

In England and Wales, since 2013, civil courts have expressly adopted the latter model (which was colloquially - and perhaps inaccurately - referred to as 'the Singapore experience'). In short: procedural rules are there for good reasons. Directions given pursuant to those Rules must be complied with. Not complying with such directions is a bad thing and attracts serious sanctions, including being struck out or barred from further participation in the case. The Supreme Court has recently endorsed the application of that strict approach to the Tax Tribunal, even though the Tribunal has a rule that we should adopt procedures which are informal and flexible.

In the United Kingdom, we have 42 rules, set out in the (predictably named) The First-tier Tribunal (Tax Chamber) (Procedure) Rules 2009. The document is 20 pages long. Printed on A4, and folded lengthwise, it fits comfortably in my inside pocket when I travel to hearings. I should add that we seem to have a tradition of short rules. The 2009 rules, which govern and regulate all first instance proceedings, replace rules from 1994 which were even shorter.

The reductionist in me would perhaps argue that we only actually need one rule: Rule 2 (for the alert reader. Yes, it should really be Rule 1, but Rule 1 is definitional, which should really be at the end and not at the beginning. But never mind).

Rule 2 reads:

Overriding objective and parties' obligation to co-operate with the Tribunal

- (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
- (2) Dealing with a case fairly and justly includes—
 - (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
 - (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
 - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
 - (d) using any special expertise of the Tribunal effectively; and
 - (e) avoiding delay, so far as compatible with proper consideration of the issues.
- (3) The Tribunal must seek to give effect to the overriding objective when it—
 - (a) exercises any power under these Rules; or
 - (b) interprets any rule or practice direction.
- (4) Parties must—

- (a) help the Tribunal to further the overriding objective; and
- (b) co-operate with the Tribunal generally.

The 'overriding objective' is modelled on that which appeared in civil courts for the first time in 1999 (as 'Rule 1' of the Civil Procedure Rules).

The *ueber*-reductionist in me is minded to ask why we need any rule other than Rule 2(1) (although there is an interesting discussion to be had as to the difference between 'fairness' (to whom; when; and in what circumstances?) and 'justice'). The *ultra*-reductionist in me asks whether '*dealing with cases fairly and justly*' is just so obvious that it does not need saying in a modern dispute resolution system. After all, until 2009, the UK system of resolving disputes between taxpayers and the Revenue had managed to function for several hundred years without serious mishap! But am I now arguing that we do not need any rules at all? A true *reductio ab absurdum* - how silly of me!

In the UK, the Tax Chamber is a creature of statute. So, unlike the High Court, we have no 'inherent' jurisdiction. All our cases must be resolved within the four corners of our rules. We cannot lawfully stray beyond them. We cannot create new procedural rights for ourselves. However, there are some potential avenues of escape. For example, we have the power "to regulate our own procedure" (Rule 5) which is suggestive (to put it no more highly than that) that the Tribunal can adapt, or perhaps can even fashion, a rule to suit the circumstances of an individual case. That is not something which I have ever done (at least, not knowingly), and I have not been able to locate any reported decision in which any of my colleagues has done that either. In 2013, and when appearing before the Tribunal as Counsel for the taxpayer, I made a determined attempt to tempt a Judge to use this rule to bar the tax authorities from further participation in the appeal. That attempt was politely but firmly rebuffed. We have interpreted Rule 5 conservatively, simply treating it as a mandate to apply our detailed case management powers in a flexible way.

In the Tax Tribunal, we do not have a lot by way of procedural jurisprudence. We do not have a book containing both the rules, and a commentary on those rules, including descriptions of the cases in which those rules have been considered, applied, distinguished, or departed from. Maybe that is a good thing: the Civil Procedure Rules do have such a handbook, and it is now over 3,000 pages long (and comes in at just under 6kg/13lbs!).

The position in the UK contrasts sharply with that in other common law jurisdictions. For example, the US Tax Court has 189 Rules of Practice and Procedure, which are gathered under 33 Titles. Unsurprisingly, they make a fairly big book (which Chief Judge Marvel was kind enough to bring to our panel discussion). It is certainly too big to put in your inside pocket (although I am prepared to accept that some persons may keep it in their heads).

In our discussion in Helsinki, Chief Judge Marvel referred to one rule - Rule 91: Stipulations for Trial:

"(a) Stipulations Required:

(1) *General*: The parties are required to stipulate, to the fullest extent to which complete or qualified agreement can or fairly should be reached, all matters not privileged which are relevant to the pending case, regardless of whether such matters involve fact or opinion or the application of law to fact."

That is only part of the rule. Moreover, even this part of a rule throws up all sorts of intriguing and difficult questions: for example, what is 'the fullest extent to which complete or qualified agreement can

be reached'? What is the extent of privilege? Or, even more fundamentally, 'what is a stipulation?' Are there different kinds of stipulation?'

The industrious and well-organised litigant before the US Tax Court can seek out the answer to these questions by searching (as I have done) its online database. There is a volume of case-law which is simply overwhelming from a UK standpoint. It is a lawyers' playground! As a part-time practitioner; part-time judge I am envious of my American colleagues, and the wonderful opportunities which these rules must offer for exploration and argument!

Incidentally, and in case anyone thinks I am taking deliberate aim at the United States, I am not. Canada is not much different, with 178 Rules and 3 Schedules.

A British colleague (a judge of the court system, and not the Tribunal system) described our Civil Procedure Rules (of which there are now 84), which were designed in 1999 to allow for a more streamlined, cheaper, system of dispute resolution, as 'instruments of warfare'. I am inclined to agree. The volume of case-law which has built up around the Civil Procedure Rules is truly enormous. But the cases are like barnacles on the hull of an ocean tanker: they end up slowing it down, increasing the amount of fuel which is needed to push it along; and they are expensive and time-consuming to remove.

I come to the conclusion that short sets of rules really are much better than long sets of rules. I come to that conclusion notwithstanding my acceptance that fostering order, and not chaos, is extremely desirable - particularly in systems (like the UK, and like the US) with a very large proportion of self-representing litigants / litigants in person.

But, in fluid, adversarial, systems, it seems to me that there is a tendency towards shorter sets of rules.

For example, the self-styled 'beautiful game' of football (soccer) - invented and regulated by the English, and played in every country of the world - has only 17 'Laws of the Game'.

It is perhaps no coincidence that the Tax Tribunal has the exact same number of Rules - 42 - as the Laws' of that most English of games - cricket. As readers of the Hitchhiker's Guide to the Universe will recall, 42 is also the meaning of life.

The Rules of Cricket are preceded by a 'Preamble' about the 'Spirit of the Game'. The key exhortations to participants are:

Play hard and play fair. Accept the umpire's decision.

Do we ever really need any other rules apart from those?

C McNall*

*I am grateful to Judges John Owen, Elaine Liu and Paige Marvel for their comments in Helsinki. I am especially grateful to Chief Judge Paige Marvel for her comments on an earlier draft of this article. But, for the avoidance of doubt, the views expressed are mine, as is responsibility for any errors which remain.



**IATJ 9th Assembly
September 28/29, 2018**

Ottawa, Canada

AGENDA

Thursday 27 September 2018

[Tax Court of Canada, 200 Kent Street, 3rd Floor, Ottawa, ON K1A 0M1]

12:00 p.m. to 14:00 p.m.	Meeting of the Executive
14:00 p.m. to 17:00 p.m.	Meeting of the Board Directors

Friday, 28 September 2018

[Lord Elgin Hotel, Pearson Room, 100 Elgin Street, Ottawa, ON K1P 5K8]

8:00 a.m. to 9:00 a.m.	Registration
9:00 a.m. to 9:10 a.m.	Welcome by Eugene Rossiter President IATJ
9:10 a.m. to 9:15 a.m.	Presentation Agenda by Wim Wijnen Chairman PPC
9:15 a.m. to 10:30 a.m.	Substantive Session on GAAR under BEPS and MLI Chair: Philippe Martin (France) Guest speaker: Jacques Sasseville Panel:
10:30 a.m. to 11:00 a.m.	Health Break– coffee/tea
11:00 a.m. to 12:00 p.m.	Substantive Session on GAAR under BEPS and MLI Continued
12:00 p.m. to 14:00 p.m.	Lunch <i>[Lord Elgin Hotel]</i>

- 14:00 p.m. to 15:30 p.m. **Substantive Session on Precedent: stare decisis v. change of case law**
Chair: Peter Wattel (Netherlands)
Panel:
- 15:30 p.m. to 15:45 p.m. Health Break– coffee/tea
- 15:45 p.m. to 17:15 p.m. **Substantive Session on Tax Procedures in Canada**
Chair: Clement Endresen (Norway)
Panel: (Canada)
- 18:30 p.m. **Cocktail Reception**
[Lord Elgin Hotel, Lady Elgin Room]

Saturday, 29 September 2018

[Lord Elgin Hotel, Pearson Room, 100 Elgin Street, Ottawa, ON K1P 5K8]

- 09:00 a.m. to 10:30 a.m. **Substantive Session on Recent Case Law on** (general topic)
Chair:
Panel:
- 10:30 a.m. to 10:45 a.m. Health Break– coffee/tea
- 10:45 a.m. to 12:00 a.m. **Substantive Session on Recent Case Law on Tax Fraud in VAT**
Chair: Friederike Grube
Panel:
- 12:00 p.m. to 14:00 p.m. Lunch
[Lord Elgin Hotel]
- 14:00 p.m. to 15:00 p.m. **Substantive Session on Transparency of Court Proceedings**
Chair: Manuel Hallivis Pelayo (Mexico)
Panel:
- 15:00 p.m. to 15:15 p.m. Health Break– coffee/tea
- 15:15 p.m. to 17:00 p.m. **Substantive Session on Transparency of Court Proceedings**
Continued

17:00 p.m. to 17:15 p.m.

Exotic topic (Canada)

16:45 p.m. to 17:15 p.m.

IATJ Business Meeting

20:00.....

Closing Dinner

[Rideau Club, 99 Bank Street, Ottawa, ON K1P 6B9]

Guest speaker: (Canada)

Conference Coordinator

Mary Doran

[Tax Court of Canada

200 Kent Street, Ottawa, ON K1A 0M1(Canada)]

Sunday, 30 September 2018

Business:

09:00-12:00:

Meeting of the Executive and Board Directors

[Tax Court of Canada, 200 Kent St., 3rd Floor, Ottawa, ON K1A 0M1]

Excursion

Permanent Program Committee

Friederike Grube (Germany)

Manuel Hallivis Pelayo (Mexico)

Philippe Martin (France)

John Owen (Canada)

Peter Panuthos (United States)

Wim Wijnen (Netherlands)

Ottawa, Canada 2018

The IATJ 9th Assembly will be held in Ottawa Canada on September 28 and 29, 2018 at Lord Elgin Hotel, 100 Elgin Street, Ottawa, Ontario, Canada K1P 5K8.



Excursions for spouses/guests are being planned for Friday, September 28 and Saturday, September 29, 2018. An optional excursion for attendees and guests is also being planned for Sunday, September 30, 2018.

The Assembly Registration Fee is \$250.00 USD per attendee. Attendees must be Tax Judges which as per the IATJ Statutes includes Courts, Tribunals or Administrative bodies, judges or retired judges which or who irrespective of their official title, are or were, nevertheless empowered to adjudicate in tax disputes.

[Note: Registration Fee is for the 9th Assembly Conference only and does not include the Closing Dinner on September 29, 2018. The fee for the Closing Dinner on September 29, 2018 is approximately \$100.00 Cdn per person. Participants will be responsible for payment of their dinner and that of their guest, which we would ask participants provide at the morning registration on September 28, 2018.

Please complete the form below and submit **on or before July 30, 2018**. Registration is complete upon confirmation of payment of the registration fee and Closing Dinner fee, if attending.

By cheque/money order or credit card:

Please print, fill out the form and send it together with your payment by cheque or money order to the order of the *International Association of Tax Judges*; or in the alternative, please submit your Visa/Mastercard number, expiry date and three digit security code directly to Mary Doran. Any questions regarding registration or the payment of registration fees should be directed to Ms. Mary Doran, Tax Court of Canada, 200 Kent Street, ON, Canada K1A 0M1 or at iatj.net@gmail.com.

If submitting the Registration form by mail, e-mail or fax, please also include arrangements regarding payment and forward to:

IATJ
c/o Mary Doran
Tax Court of Canada
200 Kent Street, Ottawa, Ontario
Canada K1A 0M1
Fax: 613.996.5863
iatj.net@gmail.com

Registration for the conference is a two step procedure:

1. submission of registration form with payment; and
2. the hotel reservation.

Hotel reservations must be made directly with the hotel in order that you may be guaranteed a room at the best rate available at the time. It is strongly recommended that you register as soon as possible to ensure that you obtain a room as rooms are limited in availability.

A list of recommended hotels follows.

Lord Elgin Hotel

100 Elgin Street, Ottawa, ON K1P 5K8

Tel: [613-235-3333](tel:613-235-3333)

E-mail: groups@lordelgin.ca or www.lordelginhotel.ca

Group rate starting at \$219/night. Use group code: 170928TCOC.

Delta Hotel

101 Lyon Street, Ottawa, ON K1R 5T9

Tel: [613-237-3600](tel:613-237-3600)

www.marriott.com

Group rate of \$175/night. Reference IATJ Meeting Reference #M-BGFGT49

Sheraton

150 Albert Street, Ottawa, ON K1P 5G2

Tel: [613-238-1500](tel:613-238-1500)

www.sheratonottawa.com

Rates starting at \$251/night.

Best Western

377 O'Connor Street, Ottawa, ON K2P 2M2

Tel: 613-567-7275

www.bestwestern.com

Rates starting from \$200/night

Cartier Place Suite Hotel

180 Cooper Street, Ottawa, ON K2P 2L5

Tel: 613-236-5000

www.suitedreams.com

Rates starting from \$179/night



International Association of Tax Judges

9th Annual Assembly
September 28 and 29, 2018
Ottawa, Canada

Registration Form

Cost of registration is \$250.00 USD. Please complete the form and submit **on or before July 30, 2018**. Registration is complete upon confirmation of payment of the registration fee. This form may also be printed and sent by mail, e-mail or fax to:

Mary Doran
Tax Court of Canada
200 Kent Street
Ottawa, Ontario
Canada K1A 0M1

Fax: 613.996.5863

iatj.net@gmail.com

Name of Registrant:

Title of Registrant: Justice Judge
 Chairman Chairwoman
 Mr. Ms. Mrs. Dr. Prof.

Name to Appear on Nametag:

Affiliate Court / Tribunal:

Country:

Address:

Street:
City:
Country:
Postal Code:

Phone Number:

Fax:

E-mail:

Area of Fiscal Interest or Expertise:

Will be attending cocktail reception on September 28, 2018? Yes No

If yes, number of persons:

Will be attending closing dinner reception on September 29, 2018? Yes No

If yes, number of persons:

Special Dietary requirements: (please check your choices)

None Vegetarian No beef No pork No sea food

Other:

[Note: Registration Fee is for the 9th Assembly Conference only and does not include the Closing Dinner on September 29, 2018. The fee for the Closing Dinner on September 29, 2018 is approximately \$100 Cdn per person (to be confirmed). Participants will be responsible for payment of their dinner and that of their guest.

Guest of Registrant:

Title of Registrant: Mr. Ms. Mrs. Dr.

Special Dietary requirements: (please check your choices)

None Vegetarian No beef No pork No sea food

Other:

Payment Options:

By cheque/money order or credit card:

Please print, fill out the form and send it together with your payment by cheque or money order to the order of the *International Association of Tax Judges*; or in the alternative, please submit your Visa/Mastercard number, expiry date and three digit security code directly to Mary Doran. Any questions regarding registration or the payment of registration fees should be directed to Ms. Mary Doran, Tax Court of Canada, 200 Kent Street, ON, Canada K1A 0M1 or at iatj.net@gmail.com