Federal Court  Cour fédérale

Date: 20140310

Dockets: T-1725-13
T-1744-13
T-1834-13

Citation: 2014 FC 233

Ottawa, Ontario, March 10, 2014

PRESENT: The Honourable Madam Justice Kane

Docket: T-1725-13

BETWEEN:

HAROLD COOMBS & JOAN COOMBS

Appicants

and

ATTORNEY GENERAL OF CANADA

Respondent

Docket: T-1744-13

AND BETWEEN:

HAROLD COOMBS & JOAN COOMBS

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondents

Docket: T-1834-13

AND BETWEEN:

**OLEG VOLOCHKOV & ANNE VOLOCHKOV &
JOHN F. COOMBS & HAROLD COOMBS**

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] This Order deals with three related applications brought by the applicants seeking judicial review and with the respondent's motion to strike the application for lack of jurisdiction and because they are frivolous and an abuse of process. The applications all arise from a common set of facts.

[2] A related Order of this Court dated March 10, 2014 dismissed the applicant's appeal of the decision of Prothonotary Aalto dated July 2, 2013, which struck the applicants application for judicial review in T-441-13 because it was bereft of any chance of success. That application was based on the same set of facts relied on in the present applications.

[3] At the outset, it is helpful to situate each of the related applications, all of which were heard on February 24, 2014.

T- 441-13

[4] On March 3, 2013, the applicants Harold Coombs, Joan Coombs and Percy Mossop brought an application for judicial review seeking relief from an illegal search and seizure conducted on September 20, 2006 on the grounds that "John Gargos", who was not named on the search warrant, had seized documents on that day. The applicants allege that the search violated their section 8 and 15 rights under the *Canadian Charter of Rights and Freedoms* and seek a remedy under section 24 of the *Charter*. The applicants also seek a declaration from this Court that the appeals heard on common evidence by the Tax Court of Canada ["TCC"] violated their section 8 and 15 Charter rights.

[5] As noted, on July 2, 2013, Prothonotary Aalto granted the respondent's motion and struck the application without leave to amend on the basis that the application is bereft of success and that the application amounts to an abuse of process, being frivolous and vexatious. By my Order dated March 10, 2014, the appeal of the Prothonotary's Order was dismissed.

T 1744- 13

[6] On October 21, 2013, Harold Coombs and Joan Coombs brought an application (T-1744-13) for judicial review seeking relief for, among other things, an alleged breach of sections 8 and 15 of the *Charter* and section 231 of the *Income Tax Act* and seeking to have documents seized by the Canada Revenue Agency ["CRA"] returned.

[7] By order of Justice Hughes dated November 27, 2013, the application in T-1744-13 was consolidated with T-441-13.

T-1725- 13

[8] On October 18, 2013, Harold Coombs and Joan Coombs brought an application for judicial review seeking to quash a decision of the CRA Appeals Division, which confirmed the reassessments for taxation years between 2001 and 2007 of Select Travel Inc, a company in which Harold Coombs and Joan Coombs are majority shareholders.

T-1834-13

[9] On November 7, 2013, the applicants, Oleg Volochkov, Anne Volochkov, John F Coombs and Harold Coombs brought an application for judicial review seeking relief under section 24 of the *Charter* for breach of their *Charter* rights and seeking to quash a decision of the CRA Appeals Division, which confirmed the reassessment for certain taxation years between 1997 and 2008 of these individuals and Sun Air Travel Inc, a company in which Harold Coombs is president, sole director and a shareholder.

[10] Pursuant to the Direction of Prothontary Aalto, T-441-13, an appeal of the Prothonotary's Order was heard on February 24, 2014 together with the application for judicial review in T-1744-13 and with the respondent's motion to strike the applications in T-1744-13, T-1725-13 and T-1834-13.

[11] The following background will provide a summary for the purpose of the applicants' applications and for the respondent's motions to strike.

Background

[12] The CRA sent a team to conduct a search at 660 Eglinton Avenue East in Toronto on September 20, 2006 pursuant to a search warrant issued under the *Criminal Code* by the Ontario Court of Justice on September 14, 2006 (the "Search Warrant"). The applicants allege and the respondent has acknowledged and the TCC has previously found that one of the members of the team that executed the Search Warrant, John Legros, was not named on the Search Warrant. John Legros assisted in the search and seizure by physically moving boxes. The applicants allege that Mr Legros seized documents that have been unaccounted for in the inventory of documents provided by the CRA. The CRA has provided a full inventory to the applicants. The applicants allege that documents they assert are now missing from their offices are not accounted for in the CRA's inventory, these documents must have been taken by John Legros and that this constitutes an illegal seizure. The CRA's affiant, Lynn Watson, who is the lead investigator and was responsible for the search of the applicants' premises, has attested that all of the documents seized were transported to the offices of the CRA and all are accounted for in the inventory.

[13] On April 16, 2007, Harold Coombs launched an application (T-742-07) in this Court seeking to quash the Search Warrant and to regain possession of all the documents and property seized at 660 Eglinton Avenue East. On June 18, 2007, Prothonotary Aalto struck T-742-07 on the basis that the Court has no jurisdiction to set aside the Search Warrant or to order the return of any materials seized pursuant to it.

[14] On or about March 30, 2009, Mr Justice Gans of the Superior Court of Justice issued an Order instructing the CRA to retain the seized documents until such time as "the appeal period for any civil tax court proceedings" expired. On October 10, 2013, the CRA sent a letter to Harold Coombs advising him that it would, in the near future, make an application to the Superior Court of Justice for an Order to return the seized documents. This letter includes an inventory of the seized documents and the name of the person who seized each individual item.

[15] At the hearing on February 24, 2014 of T- 441-13, T-1744-13, T-1725-13 and T-1834-13, Mr Coombs acknowledged that the CRA had made efforts to have the documents returned to him through the appropriate Court proceedings. However, he indicated that this would only result in the return of documents noted on the CRA inventory and not the documents he alleges are missing and, therefore, he was not interested in having the inventoried documents returned.

[16] The issues raised by the applicants, which arise out of the search and seizure of certain documents at 660 Eglinton Avenue East by the CRA, as described above, have been the subject of five previous proceedings, all of which were dismissed. The respondent provided evidence that Harold Coombs, together with others, has to date commenced a total of 14 applications and two actions against various entities and agencies of the Federal Government.

The Issues

[17] The following issues are addressed in the consolidated proceedings:

1. Whether the applicants' application for judicial review in T-1744-14 should be granted in light of its similarity to T-441-13, which has been struck as bereft of any chance of success and as an abuse of process?
2. Alternatively, should the respondent's motion to strike the application for judicial review in T-1744-13 be granted?
3. Should the respondent's motion to strike the applications for judicial review in T-1725-13 and T-1834-13 be granted?

[18] The applicants also raised the following two preliminary issues at the oral hearing:

1. Did the Prothonotary demonstrate bias in directing that the proceedings in T-1725-13 and T-1834-13 be heard together with T-441-13 and T-1744-13 and in directing that the respondent's motions to strike be heard at the same time?
2. Should the affidavits of Maria Vujnovic and Joselito Fournier, filed by the respondent, be struck due to lack of conformity with Rules 81 and 82 of the *Federal Courts Rules*?

Preliminary Issues

The Prothonotary did not demonstrate bias in directing that the proceedings in T-1725-13 and T-1834-13 be heard together with T-441-13 and T-1744-13 and in directing that the respondent's motions to strike be heard at the same time.

[19] The applicants wrote to the Court on February 14, 2014 regarding Prothonotary Aalto's Directions and asserted that the Prothonotary should decline to make directions because he had dismissed the application in T-441-13, which was under appeal. The applicants noted, "[i]n our

view, the directions are prejudicial and appear to be a tad biased." At the hearing on February 24, the applicant renewed these submissions and clarified that they were indeed alleging bias.

[20] The applicants did not refer to the test for bias nor did Mr Coombs, on behalf of the applicants, provide any evidence to support the allegations that the Prothonotary was "a tad biased" other than the Directions of Prothonotary Aalto regarding these proceedings.

[21] The test for bias is that set out by Justice de Grandpré, writing in dissent, in *Committee for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369 at 394, 68 DLR (3d) 716:

> […] the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information […] [T]hat test is "what would a [*sic*] informed person, viewing the matter realistically and practically--and having thought the matter through--conclude. Would he think that it is mor [*sic*] likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.

[22] As stated in *R v RDS*, [1997] 3 SCR 484 at para 113, 151 DLR (4th) 193 by Justices L'Heureux- Dubé and McLachlin, referring to the above noted test:

> 113 Regardless of the precise words used to describe the test, the object of the different formulations is to emphasize that the threshold for a finding of real or perceived bias is high. It is a finding that must be carefully considered since it calls into question an element of judicial integrity. Indeed an allegation of reasonable apprehension of bias calls into question not simply the personal integrity of the judge, but the integrity of the entire administration of justice. See *Stark*, *supra*, at paras. 19-20. Where reasonable grounds to make such an allegation arise, counsel must be free to fearlessly raise such allegations. Yet, this is a serious step that should not be undertaken lightly.

[23] As I noted at the hearing, allegations of bias are serious and should be made carefully.

[24] There is no evidence on the record to suggest that an informed person would have a reasonable apprehension of bias; i.e., that the Prothonotary did not decide or act fairly. The Prothonotary issued Directions to have the two applications and the respondent's motions to strike, in the event that the respondent intended to bring a motion to strike, heard on the same date as the other matters brought by Mr Coombs. This Direction arose from previous correspondence from the respondent. The respondent wrote to the Registry of the Federal Court on January 9, 2014, in response to Mr Coombs' letter of January 7, 2014, clarifying the respondent's intention to seek to consolidate the applications in order to bring one motion to strike. A copy of this letter was sent to the applicants. The applicants had also previously been served with the respondent's motion seeking consolidation and the appointment of one case management judge for T- 441-13, T-1744-13, T-1834-13 and T-1725-13.

[25] Contrary to the position asserted by the applicants, the Prothonotary did not propose to the respondent to bring a motion to strike, nor did he provide legal advice to the respondent. The Prothonotary's Direction was intended to promote efficiency and access to justice so that the identical issues could be dealt with together. The Prothonotary had ordered that the application in T-441-13 be struck and was aware that the issues in the other applications were identical.

[26] There is absolutely no support for the applicants' allegations of bias against the Prothonotary.

[27] The applicants also argued that they were prejudiced by the short notice or late receipt of the respondent's motion to strike. I do not accept that the applicants were prejudiced given that the respondent's intention was made known much earlier and that the applicants had been served with the motion for consolidation early in January. In addition, the Order of Prothonotary Aalto striking the application in T-441-13 had been made in July 2013 and addressed the same issues. The same material has been relied on in all the related applications, all of which was known to the applicants.

The affidavits of Maria Vujnovic and Joselito Fournier, filed by the respondent, comply with Rules 81 and 82 of the Federal Courts Rules

[28] The applicants argued that the affidavits of Maria Vujnovic and Joselito Fournier, submitted by the respondents, should be struck because these are affidavits of solicitors and are argumentative.

[29] The applicants referred to Rules 81 and 82, which are set out below.

81. (1) Affidavits shall be confined to facts within the deponent's personal knowledge except on motions, other than motions for summary judgment or summary trial, in which statements as to the deponent's belief, with the grounds for it, may be included.	81. (1) Les affidavits se limitent aux faits dont le déclarant a une connaissance personnelle, sauf s'ils sont présentés à l'appui d'une requête – autre qu'une requête en jugement sommaire ou en procès sommaire – auquel cas ils peuvent contenir des déclarations fondées sur ce que le déclarant croit être les faits, avec motifs à l'appui.
(2) Where an affidavit is made on belief, an adverse inference may be drawn from the failure of a party to provide evidence of persons having personal knowledge of material facts.	(2) Lorsqu'un affidavit contient des déclarations fondées sur ce que croit le déclarant, le fait de ne pas offrir le témoignage de personnes ayant une connaissance personnelle des faits substantiels peut donner lieu à des conclusions défavorables.

[…]	[…]
82. Except with leave of the Court, a solicitor shall not both depose to an affidavit and present argument to the Court based on that affidavit.	82. Sauf avec l'autorisation de la Cour, un avocat ne peut à la fois être l'auteur d'un affidavit et présenter à la Cour des arguments fondés sur cet affidavit.

[30] The applicants misunderstand Rule 82. That rule addresses the situation where the lawyer making the argument to the Court relies on his or her own affidavit.

[31] In the present case, Ms Singh is the lawyer for the respondent in these applications. Ms Singh did not rely on her own affidavit.

[32] The affidavits in question were those of another lawyer, Maria Vujnovic at the Department of Justice and Joselito Fournier, a legal assistant at the Department of Justice. Those affidavits were for the sole purpose of putting necessary documents before the Court and did not contain any arguments. Rule 82, relied on by the applicant would not apply to the affidavit of Joselito Fournier, and in the present circumstances does not apply to the affidavit of Maria Vujnovic.

[33] The affidavit of Ms Vujnovic simply provided the Court with the reported cases dealing with the applicants' previous applications before this Court. These reported cases are matters of public record. The fact that these reported cases were referred to in support of the respondent's submissions that the applications are frivolous, vexatious and an abuse of process, does not make the affidavit argumentative.

[34] The affidavit of Joselito Fournier, a legal assistant at the Department of Justice, was based on his personal knowledge of the current applications and the several other proceedings the applicants have been engaged in. His affidavit and the exhibits attached thereto provided a chronology of events and presented relevant records before the Court.

[35] Mr Coombs argued that the affidavit of Mr Fournier offered argument on matters that are in dispute and are controversial. Mr Coombs referred to paragraph 3 of the affidavit, which indicates that Mr Coombs, together with other individuals, has initiated 14 judicial review applications and two actions against the Minister of National Revenue, the Canada Revenue Agency, the Minister of Justice, Attorney General of Canada and others.

[36] I do not agree that this is argumentative or controversial. Rather it is a fact.

[37] The applicants' submission that the affidavits did not comply with Rule 82 and should be disregarded is without merit.

[38] The case law is clear that the use of affidavits of another solicitor is not improper.

[39] In *Poitras v Sawridge Band*, 2011 FCA 310 at para 8, 428 NR 219, Justice Stratas of the Court of Appeal noted that where a lawyer must give evidence, another lawyer should act as counsel.

> [8] The portions of the affidavit based on the lawyer's "advice" are inadmissible. A person cannot act as a witness and a lawyer at the same time: *Federal Court Rules*, SOR/98-106, Rule 82. The proper practice for a lawyer who has to give evidence is to have another

> lawyer act as counsel on the motion. Often it is acceptable for another lawyer in the firm to serve as counsel on the motion: *Polaris Industries Inc v Victory Cycle Ltd*, 2007 FCA 259, (2007), 60 CPR (4th) 194. After the motion, it is usually the case that the lawyer who swore the affidavit for the motion can represent the client in future motions and the hearing on the merits: *Viacom Ha! Holding Co v Jane Doe*, 2002 FCT 13 at paragraph 10. [Emphasis added]

[40] In *Polaris v Victory Cycle*, 2007 FCA 259 at para 8, 60 CPR (4th) 194, Justice Sharlow confirmed that there is nothing improper where an affidavit of the associate of the solicitor of record attests to uncontested facts.

> [8] Before dealing with the stay motion, I must address the request of Polaris to disregard the response of Victory to the stay motion because it is supported by an affidavit of a lawyer who practices in association with Victory's solicitor of record, and is based in part on information and belief where the source of the information is Victory's solicitor of record. Polaris argues, on the basis of *Cross-Canada Auto Body Supply (Windsor) Limited et al. v. Hyundai Auto Canada*, 2006 FCA 133, that the affidavit is improper and should be disregarded, and also suggests that new counsel should be appointed for Victory. The affidavit to which Polaris objects states only uncontested facts about the proceedings in the Federal Court and is appropriate in all respects. It bears no resemblance to the affidavits in the *Cross-Canada* case, which were affidavits of counsel or employees of counsel dealing with contentious facts in the substantive dispute between the parties. I will not disregard the affidavit or entertain the suggestion that new counsel should be appointed for Victory.

[41] The lawyers in the Department of Justice are analogous to associates in a law firm. In the present circumstances, neither the affidavit of Ms Vujnovic, a lawyer at the Department of Justice who did not argue these applications, or Mr Fournier, a legal assistant, not a lawyer, should be disregarded.

[42] I would also observe that Mr Coombs, who spoke on behalf of the applicants, all self-represented, made arguments based on his own affidavit, which set out his own opinions, arguments and views, which he relied on as factual. Mr Coombs was given some lattitude and the respondent did not object given that he was self-represented, but this would not have been permitted of a member of the bar. This is in essence the very issue he objects to on the part of the respondent, although the respondent's affidavits put matters before the Court which had been previously established.

Should the applicants' motion in T-1744-13 be granted?

[43] The applicants argue that the CRA breached the *Income Tax Act* and sections 7 and 8 of the *Charter* by allowing John Legros to seize documents from 660 Eglinton Avenue East. In addition, the applicants submit that provisions of the *Income Tax Act* are to be construed strictly (*Burrows v The Queen*, 2005 TCC 761 at para 45, 2006 DTC 2172 [*Burrows*]) and that, in the present case, the CRA violated section 231.2 of the *Income Tax Act* by failing to serve a notice personally or by registered or certified mail. The applicants also allege a breach of section 15 of the *Charter* on the basis that the CRA is not treating them as it would treat other taxpayers in similar situations. The applicants further submit that the CRA acted recklessly, secretly and under false pretenses.

[44] The applicants submit that once it is found that documents had been seized in breach of section 8 of the *Charter*, the appropriate remedy is to order the return of the documents to the rightful owner and lawful possessor (*Harkat (Re)*, 2009 FC 659 at paras 73-76, [2010] 3 FCR 169 [*Harkat*]).

[45] The applicants argue that the issues in T-1744-13 are not the same as in T-441-13 or the other proceedings commenced in this Court and in the TCC. The applicants argue that this is not simply about quashing the Search Warrant or ordering the return of documents. The applicants continue to argue that documents were removed from their premises during the search which have not been accounted for on the CRA inventory. The applicants seek the return of these missing documents, not the other documents which the CRA has more recently sought to return to him, and submit that this Court has the jurisdiction to order the return of the allegedly missing documents.

[46] The applicants argue that the Federal Court should take jurisdiction to order the return of these documents due to the unlawful actions of the CRA in violation of the *Income Tax Act* and asserts that this Court has some supervisory role over the CRA pursuant to section 18 of the *Federal Courts Act*.

[47] The applicants also argue that an adverse inference should be drawn against the respondents because the affiant, Lynn Watson was not an eye witness to the search and seizure of documents from the applicants' premises.

[48] The respondent submits that the legality of the search and seizure at 660 Eglinton Ave East has already been adjudicated on. In any event, it is settled law that persons who are not peace officers and who are not named in a search warrant may assist in a search provided that the named officers remain in control and are accountable for the search (*R v Strachan*, [1988] 2 SCR 980 at paras 24-26, 56 DLR (4th) 673 [*Strachan*]).

[49] Moreover, the respondent submits that this Court does not have the jurisdiction to order the return of the seized documents, since to do so would require this Court to quash the Search Warrant, which was issued by the Ontario Superior Court of Justice.

[50] The respondent submits that the CRA has attested that there are no documents unaccounted for and that this has been confirmed by the decision of the TCC in *Coombs v The Queen*, 2008 TCC 289 at para 104, 2008 DTC 4004 [*Coombs TTC*] as affirmed in *Coombs v Canada (Attorney General)*, 2009 FCA 74 at para 10, 387 NR 361, [*Coombs FCA*].

[51] The respondent further submits that the relief sought by the applicants is moot, because the CRA has already communicated its intention to make an application to the Superior Court of Justice for an order to return the seized property or to destroy it if the person ordered to receive the property refuses to receive it and has made efforts to further such an intention. Although Mr Coombs contends that he does not want the inventoried documents but wants the "missing documents", the respondent reiterates that there are no missing documents.

[52] The respondent also noted that its affiant, Lynn Watson, was the lead investigator and was the officer in control of the search and hence is best placed to attest to the circumstances of the search. Lynn Watson attested that the documents are all accounted for, that John Legros' role was only to move boxes and that he did not seize anything.

The applicants' motion in T-1744-13 is dismissed

[53] The applicants' motion in T-1744-13 can not succeed.

[54] The principles cited by the applicants, as articulated in *Burrows* and *Harkat*, are not in dispute. However, the legality of the search and seizure at 660 Eglinton Ave East has already been adjudicated on in *Coombs TTC* and *Coombs FCA*. In T-1275-07, Justice Dawson struck the applicants' attempt to obtain an Order to quash all aspects of the Search Warrant, on the grounds that the application had no reasonable chance of success.

[55] In any event, it is settled law that persons who are not named in a search warrant may assist in a search provided that the named officers remain in control and are accountable for the search. In *Stratchan, supra* at paras 24-26, the Supreme Court held:

> 24 It is not necessary in this case to decide whether a justice can amend a warrant in the way attempted by the justice in this case. The warrant was executed by two of the four named officers. The question is whether or not those two officers could rely on the assistance of other officers, not named in the warrant, to carry out the search. If named officers can be assisted by unnamed officers, it matters not whether the purported substitution was valid.
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> 25 Two provincial courts of appeal have considered whether a named officer can be assisted by unnamed officers; both have concluded that assistance is permitted. In *R. v. Fekete* (1985), 44 C.R. (3d) 92, the Ontario Court of Appeal (Martin, Zuber and Goodman JJ.A.) held that while a named officer cannot delegate the execution of the warrant to anyone else, he or she can execute the search with the assistance of unnamed officers. Zuber J.A. for the court pointed out that s. 10(4) of the *Narcotic Control Act* expressly authorizes the named officer to call for assistance to break open anything necessary to be searched. Zuber J.A. held that this subsection simply illustrates the power of the named officer to rely on assistants.
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> 26 The Alberta Court of Appeal considered the same issue in *R. v. Heikel* and MacKay (1984), 57 A.R. 221, in connection with a search warrant issued under the *Food and Drugs Act*, R.S.C. 1970, c. F-27. Section 37(2) of that Act is equivalent to s. 10(2) of the *Narcotic Control Act* and requires that the officer be named in the warrant.

> Kerans J.A., speaking for himself, McClung and Harradence JJ.A., held that the requirement of a named officer is to ensure there is some specified person or persons responsible and accountable for the search. So long as the search and seizures are carried out under the supervision and control of the named officers the purpose of the requirement is met without undermining the rule. Mere assistance by people not named in the warrant does not make the search unlawful. See also R. v. Lerocq (1984), 35 Alta. L.R. (2d) 184 (Alta. Q.B.).

[56] Moreover, there is no jurisdiction in the Federal Court to order the return of the allegedly "missing" documents. Contrary to the applicants' belief, the jurisdiction of the Federal Court pursuant to section 18 is not that of a general supervisory function over the actions of employees of federal departments and agencies.

[57] I also note that the affidavit of Mr Coombs, filed in support of T-1744-13, indicates that he has brought two notices of appeal in the TCC seeking the same relief he seeks in this Court in the related applications, T-1725-13 and T-1834-13.

Should the respondent's motion to strike T-1744-13 be granted?

[58] The respondent submits that the application in T-1744-13 should be struck because the issues raised are moot and the multiple applications are an abuse of process.

[59] Although the respondent's motion was heard at the same time as the applicants' application for judicial review, I permitted the applicants to make their submissions on their application and also to reply to the respondent's motion to strike.

[60] Due to my decision that the application for judicial review should be dismissed for lack of jurisdiction, it is not necessary to address the respondent's motion to strike the application in T-1744-13. However, because the proceedings were heard together and similar arguments relate to all, I have set out the submissions.

[61] The respondent submits that the Court has authority to strike out an application for judicial review where it is "so clearly improper as to be bereft of any possibility of success" (*JP Morgan Asset Management (Canada) Inc v Minister of National Revenue*, 2013 FCA 250 at para 47, 2014 DTC 5001 [*JP Morgan*]). The respondent notes that these applications are virtually identical to the application in T-441-13 and relies on the same arguments made in its submissions therein.

[62] The applicants argue that striking out an application for judicial review is exceptional and that because they have raised debatable issues, being the *Charter* remedies they seek, the application should be heard on its merits.

[63] The application was heard on its merits, but not because the applicants had raised debatable issues.

[64] Even if I had not dealt with the application in T-1744-13 on its merits, I would have struck the application for the same reasons as found by Prothonotary Aalto in T-441-13, for which the applicant's appeal was dismissed.

[65] The Prothonotary considered the same arguments that have been raised by the applicants in T-1744-13 and found that the applicants' claim amounts to a collateral attack on *Coombs TTC*, which falls outside the jurisdiction of this Court. The Prothonotary concluded that the application is bereft of any chance of success, is vexatious and frivolous, and amounts to an abuse of process.

[66] As noted in my Order in T-441-13, *Coombs v Canada (Attorney General)*, 2014 FC 232, which dismissed the applicant's appeal of the Order of the Prothonotary:

> [49] Although motions to strike an application for judicial review should not be made except in the most exceptional circumstances, I disagree with the applicants that no such exceptional circumstances exist in the present case. The circumstances are indeed exceptional given the multiplicity of proceedings brought by the applicants all arising from the same set of facts, all with various nuances in an attempt to package the applications as new and different. These circumstances clearly justify the exercise of the Prothonotary's discretion to strike the application. The applicant relied on *Amnesty* in which Justice Mactavish summarised the principles governing motions to strike. Those principles are not in dispute and were applied correctly by the Prothonotary. It is true that different considerations are at play when considering whether to strike out a Notice of Application for Judicial review than a statement of claim.
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> [50] In *Amnesty*, *supra* at paras 26-27, Justice Mactavish noted:
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> > [26] As a result, the Federal Court of Appeal determined that applications for judicial review should not be struck out prior to a hearing on the merits of the application, unless the application is "so clearly improper as to be bereft of any possibility of success".
> >
> > [27] The Federal Court of Appeal further teaches that "Such cases must be very exceptional and cannot include cases ... where there is simply a debatable issue as to the adequacy of the allegations in the notice of motion": *David Bull*, at ¶15.

> [51] The Prothonotary reached the conclusion that the merits of the application were "so clearly improper as to be bereft of any possibility of success".

[67] The current application, T-1744-13, is dismissed for the reasons noted above and is equally frivolous, vexatious and an abuse of process as T-441-13.

Should the respondent's motion to strike in T-1725-13 and T-1834-13 be granted?

[68] The respondent submits, as with T-441-13 and T-1744-13, that these applications should be struck because the issues raised are moot and the multiple applications are an abuse of process. The applications all arise from the same circumstances, which have already been adjudicated upon.

[69] The respondent further submits that the applications should be struck because the relief sought cannot be granted by the Court. This Court does not have jurisdiction to vacate or review tax assessments or reassessments (*Jus d'Or Inc v Canada (Customs and Revenue Agency)*, 2007 FC 754 at para 8, 2007 DTC 5451); the relief sought lies within the exclusive jurisdiction of the TCC (*Tax Court of Canada Act*, RSC 1985, c T-2, s 2). The respondent notes that, according to subsection 152(8) of the *Income Tax Act*, a tax assessment is deemed to be valid unless varied or vacated by the Minister of National Revenue or by the TCC on appeal. The respondent further notes that the statutory scheme under the *Income Tax Act* for objecting to an appeal from assessments is a complete code (*Walker v Canada*, 2005 FCA 393 at para 11, 344 NR 169) and that judicial review should not be used as a mechanism to circumvent the jurisdiction of the TCC with respect to the determination of the validity of a tax assessment (*Canada v Addison & Leyen Ltd*, 2007 SCC 33 at para 11, [2007] 2 SCR 793).

[70] The respondent submits that although the applicants allege wrongful acts by the CRA, and now claim that they are not attacking the Order of the Court that issued the Search Warrant, the applicants have sought judicial review and not *mandamus* for the return of documents nor have they brought an action in tort for the alleged wrongful acts. However, these submissions are not intended to encourage another application by the applicants because the issues remain bereft of success, given that they arise from the facts already adjudicated upon. The applicants were provided with an inventory and no documents are shown missing. The TCC has so found and has found that the search was not illegal.

[71] The applicants argue that they are not seeking to set aside the assessments of the CRA Appeals Division, but are rather seeking a remedy for *Charter* relief which was not previously claimed in the TCC. In the alternative, the applicants also proposed that the Court should ignore or strike out portions of their Notice of Application seeking to quash the decisions of the CRA Appeals division confirming their reassessments for specific taxation years and should consider only the relief sought pursuant to section 24 of the *Charter* for violation of their *Charter* rights.

The motion to strike the applications for judicial review in T-1725-13 and T-1834-13 is granted

[72] In T-1725-13 the applicants seek only an Order to quash the Notice of Confirmation of the CRA Appeals Division regarding reassessment for 2001-2007 taxation years. The relief sought is clearly beyond the jurisdiction of the Court. As the applicants are aware from previous Orders of this Court, and as the respondent has correctly submitted with reliance on the aforementioned case law, the issues raised are within the exclusive jurisdiction of the TCC.

[73] In T-1834-13, the applicants also seek an Order for relief pursuant to section 24 of the *Charter* for violation of their Charter rights and alternatively for an Order quashing the reassessments of the CRA Appeals Division for specific taxation years.

[74] Despite asking this Court to focus only on the *Charter* relief and not on the request to quash the Notice of Confirmation of re-assessments, the circumstances underlying the allegations of breach of *Charter* rights are the identical circumstances that the applicants have relied on in several other proceedings to assert that the search was illegal. These issues have been adjudicated upon, and despite characterising the action as a remedy pursuant to the *Charter*, the TCC has found that the search was not illegal and as a result, the *Charter* issue has been decided. Similarly the same arguments have been considered and addressed in T-441-13, and T-1744-13.

[75] The applicants remain of the view that their rights have been breached and that allegedly missing documents have been withheld. However, there is no evidence to support this view and the Courts have so found.

[76] I have again considered the applicants' argument that their applications for judicial review should not be struck because this is not an exceptional case to justify this result. The applicants assert that they have raised debatable issues and, therefore, the applications must proceed on their merits.

[77] I do not agree. The applicants would prefer to debate the same issues that have been raised in the past and adjudicated upon over and again. The allegations of an illegal search and the

allegations of missing documents are not debatable issues; nor does the attempt of the applicants to characterise the relief sought as a *Charter* remedy create a new or debatable issue.

[78] The applications for judicial review in T-1725-13 and T-1834-13 are struck as they are "so clearly improper as to be bereft of any possibility of success" (*JP Morgan, supra* at para 47).

[79] I recognise that the applicants hold the belief that some of their documents are missing and unaccounted for and that they are without any remedy to have the allegedly missing documents returned. However, these issues have been repeatedly decided by the various Courts and have all the hallmarks of proceedings that are vexatious and an abuse of process.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review in T-1744-13 is dismissed.

2. The respondent's motion to strike the applications for judicial review in T-1725-13 and T-1834-13 is granted.

3. The respondent is awarded nominal costs in the amount of $2000.

"Catherine M. Kane"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1725-13
STYLE OF CAUSE:	HAROLD COOMBS & JOAN COOMBS v ATTORNEY GENERAL OF CANADA
AND DOCKET:	T-1744-13
STYLE OF CAUSE:	HAROLD COOMBS & JOAN COOMBS v ATTORNEY GENERAL OF CANADA
AND DOCKET:	T-1834-13
STYLE OF CAUSE:	OLEG VOLOCHKOV & ANNE VOLOCHKOV & JOHN F. COOMBS & HAROLD COOMBS v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 24, 2014
REASONS FOR ORDER AND ORDER:	KANE J.
DATED:	MARCH 10, 2014

APPEARANCES:

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Sonia Singh	FOR THE RESPONDENT

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