

Date: 20090312

**Dockets: A-182-08, A-251-08, A-253-08, A-254-08,
A-255-08, A-256-08, A-257-08, A-258-08,
A-259-08**

Citation: 2009 FCA 74

**CORAM: NADON J.A.
SHARLOW J.A.
RYER J.A.**

BETWEEN:

SABRINA RIGUTTO

and

THE ATTORNEY GENERAL OF CANADA

Docket A-182-08

Appellant

Respondent

BETWEEN:

JOAN COOMBS

and

THE ATTORNEY GENERAL OF CANADA

Docket A-251-08

Appellant

Respondent

BETWEEN:

DANIEL MUNSHAW

and

THE ATTORNEY GENERAL OF CANADA

Docket A-253-08

Appellant

Respondent

BETWEEN:

KAREN A. MUNSHAW

and

THE ATTORNEY GENERAL OF CANADA

Docket A-254-08

Appellant

Respondent

BETWEEN:

ANNE M. VOLOCHKOV

and

THE ATTORNEY GENERAL OF CANADA

Docket A-255-08

Appellant

Respondent

BETWEEN:

JEFF RUSSELL

and

THE ATTORNEY GENERAL OF CANADA

Docket A-256-08

Appellant

Respondent

BETWEEN:

CARL COOMBS

and

THE ATTORNEY GENERAL OF CANADA

Docket A-257-08

Appellant

Respondent

BETWEEN:

PERCY G. MOSSOP

and

THE ATTORNEY GENERAL OF CANADA

Docket A-258-08

Appellant

Respondent

BETWEEN:

LORNA MOSSOP

and

THE ATTORNEY GENERAL OF CANADA

Docket 259-08

Appellant

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on March 12, 2009.

REASONS FOR ORDER BY:

RYER J.A.

CONCURRED IN BY:

NADON J.A.
SHARLOW J.A.

Date: 20090312

**Dockets: A-182-08, A-251-08, A-253-08, A-254-08,
A-255-08, A-256-08, A-257-08, A-258-08,
A-259-08**

Citation: 2009 FCA 74

**CORAM: NADON J.A.
SHARLOW J.A.
RYER J.A.**

BETWEEN:

SABRINA RIGUTTO

and

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Docket A-182-08

Appellant

Respondent

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JOAN COOMBS

and

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Docket A-251-08

Appellant

Respondent

BETWEEN:

DANIEL MUNSHAW

and

THE ATTORNEY GENERAL OF CANADA

Docket A-253-08

Appellant

Respondent

BETWEEN:

KAREN A. MUNSHAW

and

THE ATTORNEY GENERAL OF CANADA

Docket A-254-08

Appellant

Respondent

BETWEEN:

ANNE M. VOLOCHKOV

and

THE ATTORNEY GENERAL OF CANADA

Docket A-255-08

Appellant

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BETWEEN:

JEFF RUSSELL

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Docket A-256-08

Appellant

Respondent

BETWEEN:

CARL COOMBS

and

THE ATTORNEY GENERAL OF CANADA

Docket A-257-08

Appellant

Respondent

BETWEEN:

PERCY G. MOSSOP

and

THE ATTORNEY GENERAL OF CANADA

Docket A-258-08

Appellant

Respondent

BETWEEN:

LORNA MOSSOP

and

THE ATTORNEY GENERAL OF CANADA

Docket A-259-08

Appellant

Respondent

REASONS FOR ORDER

RYER J.A.

[1] Sabrina Rigutto (A-182-08), Joan Coombs (A-251-08), Daniel Munshaw (A-253-08), Karen A. Munshaw (A-254-08), Anne M. Volochkov (A-255-08), Jeff Russell (A-256-08), Carl Coombs (A-257-08), Percy G. Mossop (A-258-08), Lorna Mossop (A-259-08) and Bob Wysocki (A-274-08) have launched appeals against decisions of Woods J. of the Tax Court of Canada (2008 TCC 289), in which their claims for charitable tax credits were denied.

[2] On December 4, 2008, notices of status review were issued by Sharlow J.A. to all of the appellants, other than Sabrina Rigutto and Bob Wysocki. On January 8, 2009, a notice of status review was issued by Létourneau J.A. to Sabrina Rigutto. The notices of status required their

recipients to make written representations stating reasons why their respective appeals should not be dismissed for delay.

[3] In responding to the notices of status review, each appellant must, in accordance with Rule 382.3(1) of the *Federal Courts Rules*, justify the delay in proceeding with the appeal. In addition, each appellant must provide a proposed timetable for the completion of the steps necessary to advance the appeal in an expeditious manner.

[4] All of the appellants to whom notices of status review have been issued have filed written responses in substantially the same form. In those responses, the appellants allege that the delay in proceeding with their appeals is mainly attributable to an inability to obtain certain documents that were seized by the Canada Revenue Agency under a warrant that was executed in September 20, 2006. None of the appellants has filed an agreement as to the contents of the appeal book in their respective appeals. Nonetheless, each appellant states that such documents are needed so that they can be included in the appeal book and relied upon in the appeal.

[5] In replying to the appellants' submissions, the respondent contends that the appellants have not justified the delay in proceeding with their respective appeals asserting that:

- (a) the documentation that the appellants allegedly require was not before Woods J. and, accordingly, would not be includable in the appeal book without an order of the Court;
and

- (b) the documentation in issue was considered by Woods J. in her reasons wherein she observed that the appellants were advised by Bowie J., in the course of case management that preceded the hearing in the Tax Court of Canada, that there were procedures available to the appellants that could be followed to obtain the seized documents or copies thereof.

[6] Certain of the appellants made additional submissions in relation to correspondence from the Minister of National Revenue (the “Minister”) to Mr. Harold Coombs, (the husband of Joan Coombs, father of Karen A. Munshaw, father-in-law of Daniel Munshaw, brother of Lorna Mossop, brother-in-law of Percy G. Mossop and uncle of Carl Coombs) in response to correspondence from Mr. Coombs to the Minister. Specifically, the submission of Joan Coombs, dated February 16, 2009, states:

On January 20, 2009, a letter was received from the Minister of National Revenue, Mr. Jean-Pierre Blackburn, P.C.,M.P. stating that officials of Canada Revenue Agency allowed three (3) unnamed and unauthorized persons to search and seize documents and things from my office located at 660 Eglinton Avenue, Toronto, on September 20, 2006. Prior to this acknowledgement by the Minister, Lynn Watson denied this fact for over two years. This matter was brought to the attention of Mr. William Baker, CEO Canada Revenue Agency and he refuses to become involved.

[Emphasis added]

[7] In a response to that submission, dated February 26, 2009, the respondent provided a copy of a letter, dated January 20, 2009, (the “Minister’s Letter”) from the Minister to Mr. Harold Coombs and asserted that the Minister’s Letter had been misrepresented in the submission of Joan Coombs. The Minister’s Letter states, in part:

In view of your concerns, senior CRA officials have reviewed your file. They inform me that during the execution of the search warrant at 660 Eglinton Avenue East, in Toronto, Ontario, on September 20, 2006, Ms. Lynn Watson, the CRA official in charge of the investigation, received a call from Mr. David Wood, the CRA official in charge at the search location, requesting additional officials to assist. She sent five CRA officials. Two of the officials were named on the warrant. The unnamed officials helped with the search but did not make any seizure. Canadian jurisprudence allows named officials to call on others to assist them provided that the named officials remain responsible for the search activity of the unnamed officials.

Following the search, on September 27, 2006, and again on November 14, 2006, the CRA wrote to Mr. Oleg Volochkov, a director and the general manager of Select Travel Inc., to notify him that the documents seized from the search location were available for examination at the Enforcement Office at the Toronto East Tax Services Office. I am advised that neither Mr. Volochkov nor you responded or requested to review any documents.

[Emphasis added.]

[8] In my view, the submissions of the appellants do not constitute a justification for the delay in proceeding with their appeals.

[9] This Court has held that, in general, the appeal book should contain only the material that was before the trial judge so that the appellate court can determine if the trial judge made the appropriate decision on the basis of the record that was before him (see *Paquette v. Canada (A.G.)*, 2002 FCA 441). In addition, the respondent has stated its unwillingness to have the documentation at issue included in the appeal books, thus rendering an agreement on the contents of the appeal books – the awaited next step in the appeal process – most unlikely.

[10] Also, the documentation at issue was considered by Woods J. in the hearing in the Tax Court of Canada. At paragraphs 101 to 105 of her reasons, Woods J. stated:

[101] Before concluding these reasons, I wish to make a comment about a procedural issue raised by Mr. Coombs in argument.

[102] The procedural issue has to do with a seizure of records in the course of a criminal investigation against a number of individuals, including Harold Coombs, in September of 2006. Mr. Coombs argues that the seizure has caused prejudice to the appellants in reference to these appeals because they have not had the necessary documents to properly prepare their cases.

[103] I do not think that the appellants can complain of unfairness in this regard. I would note that this issue was raised in a case management hearing before Justice Bowie on July 30, 2007.

[104] During that hearing, the judge indicated that there are court procedures available for the production of documents that would be available for the appellants who had appeals then under the general procedure. It was also mentioned by counsel for the Crown that procedures are in place under the Criminal Code to obtain the documents. The appellants had ample time to deal with this issue prior to the trial and they chose not to.

[105] Mr. Coombs argued that these steps would not have been fruitful because it appeared that some of the documents are no longer in the Crown's possession. Mr. Coombs' theory is that they were likely taken by a CRA official who, according to Mr. Coombs, illegally participated in the search and seizure. First, I note that this is an unproven allegation on which there is not a sufficient evidentiary basis to support it. I reject any notion that an official from the CRA is hiding documents in this case.

[Emphasis added]

[11] The appellants have been aware of the means to obtain access to the documents in question since the case management hearing that preceded the hearing in the Tax Court of Canada. However, the appellants have not taken any steps to procure those documents. The appellants now allege that the continued unavailability of the very documents that had not been obtained in advance of the hearing in the Tax Court of Canada, is the reason why the present appeals have not been advanced.

[12] The continued unavailability of the documents in question is a direct result of the failure of the appellants to follow the guidance that was previously provided by the case management judge in relation to the hearing in the Tax Court of Canada. In my view, this inactivity on the part of the

appellants establishes inexcusable, rather than justifiable, delay on their part in the advancement of the appeals.

[13] Furthermore, in my view, a fair reading of the portions of the Minister's Letter reproduced above is that they contradict the allegations put forward in the February 16, 2009 submission of Joan Coombs and indicate that the seized documents were available for examination by Mr. Oleg Volochkov, the spouse of one of the appellants. As such, those portions of the Minister's Letter, in my view, provide a further indication that the appellants have failed to justify the delay in proceeding with the appeal.

[14] For the foregoing reasons, I would dismiss the appeals in Court files A-182-08, A-251-08, A-253-08, A-254-08, A-255-08, A-256-08, A-257-08, A-258-08 and A-259-08 for delay. A copy of these reasons should be placed in each of those files.

“C. Michael Ryer”

J.A.

“I agree
M. Nadon J.A.”

“I agree.
K. Sharlow J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-182-08

STYLE OF CAUSE: Sabrina Rigutto v. The Attorney
General of Canada

DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: RYER J.A.

CONCURRED IN BY: NADON J.A.
SHARLOW J.A.

DATED: MARCH 12, 2009

WRITTEN REPRESENTATIONS BY:

Sabrina Rigutto

SELF-REPRESENTED
APPELLANT

Carol Calabrese

FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE APPELLANT

FOR THE RESPONDENT

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-251-08

STYLE OF CAUSE: Joan Coombs v. The Attorney
General of Canada

DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: RYER J.A.

CONCURRED IN BY: NADON J.A.
SHARLOW J.A.

DATED: MARCH 12, 2009

WRITTEN REPRESENTATIONS BY:

Joan Coombs

SELF-REPRESENTED
APPELLANT

Carol Calabrese

FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE APPELLANT

FOR THE RESPONDENT

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-253-08

STYLE OF CAUSE: Daniel Munshaw v. The Attorney
General of Canada

DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: RYER J.A.

CONCURRED IN BY: NADON J.A.
SHARLOW J.A.

DATED: MARCH 12, 2009

WRITTEN REPRESENTATIONS BY:

Daniel Munshaw

SELF-REPRESENTED
APPELLANT

Carol Calabrese

FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE APPELLANT

FOR THE RESPONDENT

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-254-08

STYLE OF CAUSE: Karen A. Munshaw v. The Attorney
General of Canada

DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: RYER J.A.

CONCURRED IN BY: NADON J.A.
SHARLOW J.A.

DATED: MARCH 12, 2009

WRITTEN REPRESENTATIONS BY:

Karen A. Munshaw

SELF-REPRESENTED
APPELLANT

Carol Calabrese

FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE APPELLANT

FOR THE RESPONDENT

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-255-08

STYLE OF CAUSE: Anne M. Volochkov v. The Attorney
General of Canada

DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: RYER J.A.

CONCURRED IN BY: NADON J.A.
SHARLOW J.A.

DATED: MARCH 12, 2009

WRITTEN REPRESENTATIONS BY:

Anne M. Volochkov

SELF-REPRESENTED
APPELLANT

Carol Calabrese

FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE APPELLANT

FOR THE RESPONDENT

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-256-08

STYLE OF CAUSE: Jeff Russell v. The Attorney General
of Canada

DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: RYER J.A.

CONCURRED IN BY: NADON J.A.
SHARLOW J.A.

DATED: MARCH 12, 2009

WRITTEN REPRESENTATIONS BY:

Jeff Russell SELF-REPRESENTED
APPELLANT

Carol Calabrese FOR THE RESPONDENT

SOLICITORS OF RECORD:

FOR THE APPELLANT

John H. Sims, Q.C.
Deputy Attorney General of Canada FOR THE RESPONDENT

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-257-08

STYLE OF CAUSE: Carl Coombs v. The Attorney General
of Canada

DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: RYER J.A.

CONCURRED IN BY: NADON J.A.
SHARLOW J.A.

DATED: MARCH 12, 2009

WRITTEN REPRESENTATIONS BY:

Carl Coombs SELF-REPRESENTED
APPELLANT

Carol Calabrese FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE APPELLANT

FOR THE RESPONDENT

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-258-08

STYLE OF CAUSE: Percy G. Mossop v. The Attorney
General of Canada

DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: RYER J.A.

CONCURRED IN BY: NADON J.A.
SHARLOW J.A.

DATED: MARCH 12, 2009

WRITTEN REPRESENTATIONS BY:

Percy G. Mossop

SELF-REPRESENTED
APPELLANT

Carol Calabrese

FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE APPELLANT

FOR THE RESPONDENT

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-259-08

STYLE OF CAUSE: Lorna Mossop v. The Attorney
General of Canada

DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: RYER J.A.

CONCURRED IN BY: NADON J.A.
SHARLOW J.A.

DATED: MARCH 12, 2009

WRITTEN REPRESENTATIONS BY:

Lorna Mossop

SELF-REPRESENTED
APPELLANT

Carol Calabrese

FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE APPELLANT

FOR THE RESPONDENT