

Federal Court of Appeal



Cour d'appel fédérale

Date: 20250327

Docket: A-60-24

Citation: 2025 FCA 73

**CORAM: LASKIN J.A.
ROUSSEL J.A.
PAMEL J.A.**

BETWEEN:

**THE ESTATE OF TERRY URBANOWSKI
and 78 related appeals as set out in Schedule A**

Appellants

and

HIS MAJESTY THE KING

Respondent

Heard at Winnipeg, Manitoba, on March 27, 2025.
Judgment delivered from the Bench at Winnipeg, Manitoba, on March 27, 2025.

REASONS FOR JUDGMENT OF THE COURT BY:

ROUSSEL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Winnipeg, Manitoba, on March 27, 2025).

ROUSSEL J.A.

[1] The appellants appeal an order of the Tax Court of Canada (2024 TCC 6) dated January 31, 2024, dismissing their motion to have the appeals of each of the 79 appellants named in the motion allowed on the basis of delay. They are disputing the assessments of gross negligence penalties imposed by the Minister of National Revenue under section 163 of the

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.) (ITA), for their participation in tax schemes involving fictitious business losses. We are advised that seven of the appeals that are listed in Schedule A are no longer relevant to this appeal.

[2] In their motion before the Tax Court, the appellants alleged that the respondent's conduct in the informal lead cases, *Choptiany et al. v. The King*, 2022 TCC 112, had delayed the hearing of their appeals and constituted an abuse of the court's process. In *Choptiany*, the Tax Court found that the respondent's continuing failure to comply with the court's orders during examination for discovery was an abuse of process and allowed the appeals.

[3] The Tax Court concluded that the respondent's conduct in the *Choptiany* appeals did not constitute an abuse of process with respect to the appeals of the appellants. In dismissing the appellants' motion, the Tax Court found that the conduct at issue in the informal lead cases was factually related to the discovery process in the *Choptiany* appeals and was not relevant to the appeals before it, in part because most had not yet reached the discovery stage. The Tax Court also found that the appellants had produced no evidence to support their claim that there was an unjustified and prejudicial delay in the hearing of their appeals or that a decision in the informal lead cases would have negated the need to proceed in their own appeals. In this regard, the Tax Court noted that the appellants had chosen to proceed with the informal lead cases and to hold their appeals in abeyance. It equally noted that the respondent had clearly indicated, prior to the appeals being held in abeyance, that it did not agree to be bound by the court's decision in the informal lead cases since a determination under subsection 163(2) of the ITA was dependent on the facts in each particular appeal.

[4] The appellate standard of review applies to this appeal (*Housen v. Nikolaisen*, 2002 SCC 33). The determination of whether there has been an abuse of process is a question of law reviewable on the correctness standard (*Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 at para. 30). The underlying findings of mixed fact and law are reviewable on the standard of palpable and overriding error.

[5] After reviewing the record and considering the submissions of the parties, we are not persuaded that the Tax Court made a reviewable error in concluding there was no abuse of process.

[6] First, the assertion that the abeyance of the appeals was made by order of the Tax Court, and not the appellants, is somewhat incomplete. As the Tax Court noted, the appeals were held in abeyance at the request of the appellants' counsel. Such a request inherently involves delay and therefore, it cannot be said the delay is solely attributable to the respondent's conduct. Moreover, the respondent was also unequivocally clear during the 2016 status hearing that it did not agree to be bound by the outcome of the informal lead cases. The appellants have likewise failed to demonstrate that they were prevented from moving their appeals forward, had they wished to do so.

[7] Second, there is no merit to the appellants' argument that the Tax Court repudiated the findings in the *Choptiany* decision or the principles upon which it is based. In the absence of evidence from the appellants to support their allegations, the Tax Court could find that the respondent's conduct at the discovery stage of the *Choptiany* appeals did not constitute abuse of

process in the appeals of the appellants. The appellants also argued at the hearing that the findings of abuse in *Choptiany* constituted the evidentiary basis to establish abuse of process in their appeals and that further evidence of prejudice was not necessary. The appellants have failed to provide any support for this argument.

[8] Third, the Tax Court correctly found that the Supreme Court of Canada's decision in *R. v. Jordan*, 2016 SCC 27 did not apply to these appeals (*Abrametz* at para. 47). The Tax Court nonetheless considered whether the respondent had caused an unjustified and prejudicial delay in the hearing of the appeals and whether this delay constituted an abuse of process. It found that there was insufficient evidence to support an allegation of abuse of process.

[9] The appellants have not demonstrated an error in the Tax Court's consideration of the principles relating to abuse of process. Likewise, they have failed to demonstrate a palpable and overriding error in the Tax Court's determination that the appellants did not provide evidence to support their allegations of abuse of process.

[10] For these reasons, we will dismiss the appeal with costs fixed in the agreed-upon sum of \$2,523.17.

"Sylvie E. Roussel"

J.A.

SCHEDULE A

	Appeal	Appellant Name (Last name, first name)
1.	2012-4997(IT)G	Sachs, Harald
2.	2013-1179(IT)G	Hunt, Eamonn
3.	2013-1184(IT)G	Vassallo, Rita
4.	2013-1667(IT)G	Duczman, John
5.	2013-175(IT)G	Wood, James
6.	2013-1915(IT)G	Kowalski, Richard
7.	2013-1916(IT)G	Kowalski, Athena
8.	2013-2022(IT)G	Larouche, April
9.	2013-3587(IT)G	Gaspari, Peter
10.	2013-4037(IT)G	Bigness, Robert
11.	2013-4052(IT)G	Hergott, Jeffrey
12.	2013-4053(IT)G	Caro, Joseph
13.	2013-4055(IT)G	Blair, Paul
14.	2013-4058(IT)G	Blair, Deborah
15.	2013-4176(IT)G	Farough, Charles
16.	2013-4226(IT)G	Masse, Alan
17.	2013-4227(IT)G	Egglezos, Bill
18.	2013-4228(IT)G	Bastien, Thomas
19.	2013-4229(IT)G	Brouwer, Michael
20.	2013-4235(IT)G	Scholey, Debra
21.	2013-4243(IT)G	Hwong, Peter
22.	2013-4268(IT)G	Piper, Brian
23.	2013-4322(IT)G	Laporte, Dan
24.	2013-4325(IT)G	Dupuis, Rachelle
25.	2013-4395(IT)G	O'Connor, Jack
26.	2013-4396(IT)G	Leiper, William
27.	2013-4445(IT)G	Chin, Vun Kuan
28.	2013-4446(IT)G	Wong, Jacob
29.	2013-4447(IT)G	Marling, David
30.	2013-4454(IT)G	Predhomme, Michael
31.	<u>2013-4458(IT)G</u>	Thibert, Pauline

32.	2013-4498(IT)G	Marling, Angela
33.	2013-4515(IT)G	Adams, Michael
34.	20a13-4656(IT)G	Marontate, Robert
35.	2013-4657(IT)G	Christianson, Darla
36.	2013-4703(IT)G	Readner, Jordan
37.	2014-125(IT)G	Turner, Martin
38.	2014-148(IT)G	Bertozzi, Marcello
39.	2014-1665(IT)G	Chin, Vun Kuan
40.	2014-1784(IT)G	Isaacs, Mark
41.	2014-1785(IT)G	Morin, Cody
42.	2014-2070(IT)G	Marling, Angela
43.	2014-2199(IT)G	Urbanowski, Terry
44.	2014-3403(IT)G	Van Tankeren, Erik
45.	2014-3720(IT)G	Kreutz, Justin
46.	2014-3904(IT)G	Tankeren, Sarai Van
47.	2014-4025(IT)G	Hwong, Peter
48.	2014-4056(IT)G	Ursulan, Judith
49.	2014-4073(IT)G	MacDonald, Todd
50.	2014-4074(IT)G	Jackson, Alysa
51.	2014-433(IT)G	Tavares, Eulin
52.	2014-436(IT)G	Tavares, Frank
53.	2014-4361(IT)G	Neaves, Aaron
54.	2014-649(IT)G	Cail, James
55.	2014-722(IT)G	Hybschmann, Nick
56.	2014-956(IT)G	Scanlan, Tracey
57.	2014-957(IT)G	De Boon, Henry
58.	2014-958(IT)G	Wilson, James
59.	2014-959(IT)G	Nellis, Mark
60.	2014-977(IT)G	Marontate, Denise
61.	2014-997(IT)G	Wong, Agnes
62.	2014-998(IT)G	Wong, Peter
63.	2016-1608(IT)G	Cail, Hazel
64.	2016-1701(IT)G	Davey, Judy
65.	2016-3530(IT)G	Van Tankeren, Erik
66.	2016-3988(IT)G	Mantei, Armin
67.	2016-5256(IT)G	Avery, Heath

68.	2016-667(IT)G	Urbanowski, Nicholas
69.	2016-668(IT)G	Mazur, Jonathan Robert
70.	2016-771(IT)G	Ursulan, Bryan
71.	2016-774(IT)G	Ursulan, Judith
72.	2016-789(IT)G	Wong, Agnes
73.	2016-790(IT)G	Wong, Jacob
74.	2016-793(IT)G	Toyad, Policarp
75.	2016-877(IT)G	Isaacs, Mark
76.	2016-879(IT)G	Mantei, Armin
77.	2018-4215(IT)G	Richter, Wayne
78.	<u>2019-614(IT)G</u>	Brouwer, Michael

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-60-24

STYLE OF CAUSE:

THE ESTATE OF TERRY
URBANOWSKI AND 78
RELATED APPEALS AS SET
OUT IN SCHEDULE A v. HIS
MAJESTY THE KING

PLACE OF HEARING:

WINNIPEG, MANITOBA

DATE OF HEARING:

MARCH 27, 2025

**REASONS FOR JUDGMENT OF THE COURT
BY:**

LASKIN J.A.
ROUSSEL J.A.
PAMEL J.A.

DELIVERED FROM THE BENCH BY:

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