

Federal Court of Appeal



Cour d'appel fédérale

Date: 20161020

Docket: A-545-15

Citation: 2016 FCA 256

**CORAM: NADON J.A.
RENNIE J.A.
WOODS J.A.**

BETWEEN:

V. ROSS MORRISON

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on October 12, 2016.

Judgment delivered at Ottawa, Ontario, on October 20, 2016.

REASONS FOR JUDGMENT BY:

WOODS J.A.

CONCURRED IN BY:

**NADON J.A.
RENNIE J.A.**

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REASONS FOR JUDGMENT

WOODS J.A.

[1] The appellant, V. Ross Morrison, has outstanding appeals in the Tax Court of Canada relating to the disallowance of charitable donation tax credits claimed by him under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act). A large number of other taxpayers were similarly reassessed.

[2] The appeals by Mr. Morrison, a litigation lawyer, have been designated by a Tax Court judge as lead cases under section 146.1 of the *Tax Court of Canada Rules (General Procedure)* (the Rules). The effect of this designation is that Mr. Morrison's appeals will proceed to trial with other lead cases in advance of other taxpayers' appeals which are held in abeyance.

[3] Mr. Morrison brought a motion in the Tax Court for various types of relief, including that the Crown provide him with the names and contact information of taxpayers who received similar reassessments and who have outstanding objections with the Canada Revenue Agency (CRA).

[4] By way of an order of Justice Pizzitelli (the motions judge), the motion was dismissed in its entirety (2015 TCC 319; 2015 D.T.C. 1238). This is an appeal from that order.

Background

[5] In reassessments issued for Mr. Morrison's 2003, 2004, and 2005 taxation years, the Minister of National Revenue disallowed tax credits claimed by Mr. Morrison in relation to his participation in donation programs referred to as the Canadian Humanitarian Trust and the Canadian Gift Initiatives donation programs.

[6] A large number of taxpayers received reassessments relating to the same donation programs. A relatively small number have appealed to the Tax Court, and many more have objections pending with the CRA.

[7] With respect to the outstanding objections, if the CRA has not dealt with an objection within 90 days, a taxpayer has the option to pre-empt the objections process and institute an appeal in the Tax Court. It appears that most of the taxpayers with outstanding objections have not chosen this route to date.

[8] For several years, Mr. Morrison's appeals in the Tax Court were held in abeyance while other appeals proceeded as lead cases. Recently, the case management judge ordered that Mr. Morrison's appeals no longer be held in abeyance and that they be added to the list of lead cases. This prompted Mr. Morrison to bring the motion that is at issue in this appeal.

Discussion

[9] Mr. Morrison submits that the motions judge erred in rejecting the following submissions:

- (a) he is entitled to the names and contact information of taxpayers who have outstanding objections. For clarity, Mr. Morrison already has the names of taxpayers with appeals in the Tax Court and he is only seeking the names of the objectors;
- (b) taxpayers with outstanding objections should be informed as to the status of outstanding appeals in the Tax Court. In particular, the objectors should be

informed that a law firm which had carriage of some of the lead cases has withdrawn and that his own appeals are now lead cases; and

- (c) he is entitled to a copy of the transcripts of the examinations for discovery of the Crown that were held in connection with other appeals that have now settled.

[10] I do not agree that the motions judge erred in rejecting these submissions, and substantially for the reasons that the motions judge gave. I would comment in particular on some of the arguments that were raised in this appeal.

[11] Mr. Morrison submits that the motions judge erred by relying on the prohibition against third party disclosure in section 241 of the Act. He submits that his appeals are exempt from this prohibition because they are legal proceedings relating to the administration or enforcement of the Act (paragraph 241(3)(b) of the Act).

[12] Mr. Morrison also submits that the relief sought is proper pursuant to the lead case rule in section 146.1 of the Rules.

[13] Further, Mr. Morrison submits that the motions judge should have provided a remedy for the Minister's failure to deal with objections "with all due dispatch," as required by subsection 165(3) of the Act. As I understand the argument, Mr. Morrison submits that he is prejudiced by this breach of the Act by the Minister because many of the objectors likely would have filed

appeals in the Tax Court if their objections had been dealt with on a timely basis. This would have enabled Mr. Morrison to contact these individuals, it is suggested.

[14] I reject these submissions because they fail to address the principle that disclosure is limited to relevant information and the fact that the Tax Court does not have jurisdiction over objections.

[15] In an appeal to the Tax Court, a taxpayer is entitled to information from the Crown only if it is relevant to the taxpayer's appeal (*The Queen v. 9005-6342 Québec Inc.*, 2011 FCA 196; 2011 G.T.C. 2037). In this case, the motions judge determined that the contact information sought by Mr. Morrison was not relevant to his appeals (paragraph 11). Since there is no reason to disturb this finding, Mr. Morrison has no entitlement to the contact information.

[16] Second, Mr. Morrison's reliance on the lead case rule is misplaced. Section 146.1 of the Rules is intended to assist in the case management of groups of similar appeals in the Tax Court. The provision has no application to taxpayers who have outstanding objections with the CRA, which reflects the fact that the Tax Court's jurisdiction is limited to appeals in that Court.

[17] Accordingly, I agree with the disposition of the motion by the motions judge and would dismiss this appeal with costs.

"Judith M. Woods"

J.A.

"I agree
M. Nadon J.A."

"I agree
Donald J. Rennie J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-545-15

**APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE PIZZITELLI
DATED DECEMBER 9, 2015, NOS. 2008-2759(IT)G, 2008-2779(IT)G and 2014-3231(IT)G**

STYLE OF CAUSE: V. ROSS MORRISON v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 12, 2016

REASONS FOR JUDGMENT BY: WOODS J.A.

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

DATED: OCTOBER 20, 2016

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