

Docket: 2005-3602(IT)I

BETWEEN:

JOAN COOMBS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on common evidence with related appeals on several days  
between April 7 and 28, 2008 at Toronto, Ontario

By: The Honourable Justice Judith Woods

Appearances:

Agent for the Appellant: Harold Coombs

Counsel for the Respondent: Annie Paré  
Carol Calabrese

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**JUDGMENT**

The appeal with respect to assessments made under the *Income Tax Act* for the 1996, 1998 and 1999 taxation years is dismissed.

Signed at Toronto, Ontario this 8<sup>th</sup> day of May 2008.

“J. Woods”

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Woods J.

Docket: 2005-3606(IT)I

BETWEEN:

BOB WYSOCKI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on common evidence with related appeals on several days  
between April 7 and 28, 2008 at Toronto, Ontario

By: The Honourable Justice Judith Woods

Appearances:

Agent for the Appellant: Harold Coombs

Counsel for the Respondent: Annie Paré  
Carol Calabrese

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**JUDGMENT**

The appeal with respect to assessments made under the *Income Tax Act* for the 1996, 1997 and 1998 taxation years is dismissed.

Signed at Toronto, Ontario this 8<sup>th</sup> day of May 2008.

“J. Woods”

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Woods J.

Docket: 2005-3609(IT)I

BETWEEN:

SABRINA RIGUTTO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on common evidence with related appeals on several days  
between April 7 and 28, 2008 at Toronto, Ontario

By: The Honourable Justice Judith Woods

Appearances:

Agent for the Appellant: Harold Coombs

Counsel for the Respondent: Annie Paré  
Carol Calabrese

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**JUDGMENT**

The appeal with respect to assessments made under the *Income Tax Act* for the 1998 and 2001 taxation years is dismissed.

Signed at Toronto, Ontario this 8<sup>th</sup> day of May 2008.

“J. Woods”

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Woods J.

Dockets: 2005-3621(IT)I  
2005-4189(IT)I

BETWEEN:

ANNE M. VOLOCHKOV,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on common evidence with related appeals on several days  
between April 7 and 28, 2008 at Toronto, Ontario

By: The Honourable Justice Judith Woods

Appearances:

Agent for the Appellant: Harold Coombs

Counsel for the Respondent: Annie Paré  
Carol Calabrese

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**JUDGMENT**

The appeal with respect to assessments made under the *Income Tax Act* for the 1996, 1997, 1999 and 2001 taxation years is dismissed.

Signed at Toronto, Ontario this 8<sup>th</sup> day of May 2008.

“J. Woods”

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Woods J.

Docket: 2005-3622(IT)I

BETWEEN:

LORNA MOSSOP,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on common evidence with related appeals on several days  
between April 7 and 28, 2008 at Toronto, Ontario

By: The Honourable Justice Judith Woods

Appearances:

Agent for the Appellant: Harold Coombs

Counsel for the Respondent: Annie Paré  
Carol Calabrese

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**JUDGMENT**

The appeal with respect to assessments made under the *Income Tax Act* for the 1996 and 1997 taxation years is dismissed.

Signed at Toronto, Ontario this 8<sup>th</sup> day of May 2008.

“J. Woods”

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Woods J.

Dockets: 2005-3623(IT)I  
2005-4191(IT)I

BETWEEN:

PERCY G. MOSSOP,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on common evidence with related appeals on several days  
between April 7 and 28, 2008 at Toronto, Ontario

By: The Honourable Justice Judith Woods

Appearances:

Agent for the Appellant: Harold Coombs

Counsel for the Respondent: Annie Paré  
Carol Calabrese

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**JUDGMENT**

The appeal with respect to assessments made under the *Income Tax Act* for the 1996, 1997, 1999, 2000 and 2001 taxation years is dismissed.

Signed at Toronto, Ontario this 8<sup>th</sup> day of May 2008.

“J. Woods”

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Woods J.

Docket: 2005-4091(IT)I

BETWEEN:

CARL COOMBS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on common evidence with related appeals on several days  
between April 7 and 28, 2008 at Toronto, Ontario

By: The Honourable Justice Judith Woods

Appearances:

Agent for the Appellant: Harold Coombs

Counsel for the Respondent: Annie Paré  
Carol Calabrese

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**JUDGMENT**

The appeal with respect to an assessment made under the *Income Tax Act* for the 2001 taxation year is dismissed.

Signed at Toronto, Ontario this 8<sup>th</sup> day of May 2008.

“J. Woods”

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Woods J.

Docket: 2005-4142(IT)I

BETWEEN:

KAREN A. MUNSHAW,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on common evidence with related appeals on several days  
between April 7 and 28, 2008 at Toronto, Ontario

By: The Honourable Justice Judith Woods

Appearances:

Agent for the Appellant: Harold Coombs

Counsel for the Respondent: Annie Paré  
Carol Calabrese

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**JUDGMENT**

The appeal with respect to assessments made under the *Income Tax Act* for the 1999, 2000 and 2001 taxation years is dismissed.

Signed at Toronto, Ontario this 8<sup>th</sup> day of May 2008.

“J. Woods”

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Woods J.



Docket: 2005-4143(IT)I

BETWEEN:

DANIEL MUNSHAW,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on common evidence with related appeals on several days  
between April 7 and 28, 2008 at Toronto, Ontario

By: The Honourable Justice Judith Woods

Appearances:

Agent for the Appellant: Harold Coombs

Counsel for the Respondent: Annie Paré  
Carol Calabrese

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**JUDGMENT**

The appeal with respect to assessments made under the *Income Tax Act* for the 2000 and 2001 taxation years is dismissed.

Signed at Toronto, Ontario this 8<sup>th</sup> day of May 2008.

“J. Woods”

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Woods J.

Docket: 2005-4190(IT)I

BETWEEN:

JEFF RUSSELL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on common evidence with related appeals on several days  
between April 7 and 28, 2008 at Toronto, Ontario

By: The Honourable Justice Judith Woods

Appearances:

Agent for the Appellant: Harold Coombs

Counsel for the Respondent: Annie Paré  
Carol Calabrese

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**JUDGMENT**

The appeal with respect to assessments made under the *Income Tax Act* for the 1999, 2000 and 2001 taxation years is dismissed.

Signed at Toronto, Ontario this 8<sup>th</sup> day of May 2008.

“J. Woods”

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Woods J.

Citation: 2008TCC289  
Date: 20080508  
Docket: 2005-3602(IT)I

BETWEEN:

JOAN COOMBS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

AND BETWEEN:

Docket: 2005-3606(IT)I

BOB WYSOCKI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

AND BETWEEN:

Docket: 2005-3609(IT)I

SABRINA RIGUTTO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

AND BETWEEN:

Dockets: 2005-3621(IT)I

2005-4189(IT)I

ANNE M. VOLOCHKOV,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

AND BETWEEN:

Docket: 2005-3622(IT)I

LORNA MOSSOP,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

AND BETWEEN:

Dockets: 2005-3623(IT)I  
2005-4191(IT)I

PERCY G. MOSSOP,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

AND BETWEEN:

Docket: 2005-4091(IT)I

CARL COOMBS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

AND BETWEEN:

Docket: 2005-4142(IT)I

KAREN A. MUNSHAW,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

AND BETWEEN:

Docket: 2005-4143(IT)I

DANIEL MUNSHAW,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

AND BETWEEN:

Docket: 2005-4190(IT)I

JEFF RUSSELL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

**(Delivered orally from the Bench on May 6, 2008)**

#### **Woods J.**

[1] Before I begin this oral decision, I would note that these reasons are relatively lengthy and therefore I propose to include a copy of them with the formal judgments that will be signed within a few days.

[2] The decision relates to a number of appeals that were brought by ten individuals, all involving charitable donations allegedly made to a registered charity by the name of Rocky Ridge Ranch Inc.

[3] The purported donations were made pursuant to a scheme orchestrated by an accountant by the name of Harold Coombs. The scheme also had the assistance of the charity which issued donation receipts for all of the amounts claimed.

[4] The appellants were reassessed to disallow the charitable tax credits claimed, and in some of the assessments penalties were also levied. The taxation years at issue are different for each of the appellants but they all cover the period from 1996 to 2001.

[5] Mr. Coombs represented all of the appellants at the hearing, which was heard on common evidence over several days during a three week period. All the hearings were governed by the informal procedure although I would note that some of the appellants elected that procedure a few days before the hearing.

[6] Before delving into the substantive issues, it may be useful to note that these appeals were the subject of a fairly involved pre-trial process managed by Justice Bowie. That undoubtably was very helpful since none of the appellants had legal counsel.

[7] There were several witnesses at the hearing. All of the appellants testified on their own behalf except one, and they also called three other witnesses, Harold Coombs, Oleg Volochkov, who is the husband of one of the appellants, and John Rosenbaum, who at one time had a related appeal.

[8] The Crown called four witnesses, all of whom testified under subpoena except for the CRA auditor, Henry Brunsveld. The subpoenaed witnesses were Bruce Chapman, who was, and still is, in charge of the operations at Rocky Ridge Ranch, Kirsten Chapman, who is Mr. Chapman's daughter-in-law and who worked in the office at the charity, and a chartered accountant by the name of Gordon Ahier, who replaced Harold Coombs as the charity's accountant in 2002.

[9] It might be helpful at this point to give a bit of background. The donation scheme did not last for just a short time. The assessment period before me is six years. What is surprising is that it did last so long. The purported donations for the period from 1996 to 1998 were reassessed in 2000 and yet the scheme continued on for a few years after that.

[10] The whole affair came to a crashing halt in the fall of 2002 when Mr. Chapman contacted the charity's lawyer. This led to a very expeditious disclosure of the entire arrangement to the CRA. The charity, with the assistance of Mr. Ahier, reviewed the charity's bank statements for 1999, 2000 and 2001 and concluded that none of the amounts that are at issue here for those years were valid donations.

[11] At the CRA's suggestion, the charity issued amended donation receipts for the 1999 to 2001 taxation years which showed gifts of nil. The CRA then issued reassessments for the 1999 to 2001 taxation years, and penalties were also imposed for those years.

[12] The two issues before me are first, whether charitable donations were actually made, and second, whether penalties are appropriate. I will deal with these two issues separately, starting with whether there were any charitable donations.

[13] The relevant provision in the *Income Tax Act* is s. 118.1(3) which allows a tax credit for gifts made to a registered charity. The provision requires that the charity fill out a receipt and that the receipt be included with the tax return. The receipt requirement was satisfied in this case. Mrs. Kirsten Chapman, under the direction of Harold Coombs and with the general knowledge of Bruce Chapman, prepared the receipts which had a pre-printed signature. The only issue, then, is whether there were actually any gifts to the charity.

[14] The meaning of the word "gift" has been discussed in several judicial decisions and its meaning is fairly well understood. I will quote a succinct definition from one of the leading decisions, the Federal Court of Appeal decision in *Friedberg v. The Queen*. In that case, Linden J. A. states:

[...] A gift is a voluntary transfer of property owned by a donor to a donee, in return for which no benefit or consideration flows to the donor.

[15] It is relevant here to make note of certain elements in this definition. First, it is necessary that the gifted property be owned by the donor, second that the transfer to the charity be voluntary, third that no consideration flow to the donor in return for the gift, and fourth that the subject of the gift be property, which distinguishes it from providing services to the charity. These elements reflect the general notion that a taxpayer must have a donative intent in regards to the transfer of property to the charity.

[16] As a preliminary matter, I would note that in several instances where cheques were made out to the charity, the cheques were written by the appellants' spouses and not the appellants themselves. There may be a question in these instances as to whether the appellants transferred property at all but the Crown has not challenged the gifts on this ground. I will therefore assume that this is not a basis to disallow any part of the appeals.

[17] The only question regarding these purported gifts is whether there was any donative intent.

[18] The first comment that I would make is that the true facts here remain a mystery. The Crown was not able to provide evidence showing exactly how the scheme worked in every case. Sometimes cheques were written by the appellants in favour of the charity and were deposited. Not all of these funds could be traced back to the appellants but they were all traced out of the charity's hands.

[19] The explanations for all of this provided by Harold Coombs made no sense. Several of the appellants testified that they either did not understand the arrangements or that they did not recall the details. To the extent that the appellants agreed with Mr. Coombs' explanations, their testimony totally lacked any ring of truth.

[20] Notwithstanding that the detailed mechanics of the scheme remain a mystery in some respects, certain things are clear. In essence, the scheme involved the issuance of false donation receipts in circumstances where there was never any intent to benefit the charity.

[21] I turn now to the specific facts. Rocky Ridge Ranch Inc. is a non-profit organization that operates a ranch, primarily as a children's day camp. It has registered charitable status for purposes of the *Income Tax Act*.

[22] Before its current ownership, the ranch was operated by a church with one of the church members, Bruce Chapman, being the ranch manager. Mr. Chapman later took over the operation completely and during the relevant period the ranch was run by Mr. Chapman and his family with the assistance of volunteers. Also at this time, the real estate on which the ranch was situated was owned by the Chapmans personally and was leased to the charity.



[23] During the relevant period, the accounting and tax affairs of the charity were managed by Harold Coombs. Mr. Coombs represented at the hearing that he is a certified general accountant but some question about that status was mentioned by Mr. Ahier during his testimony. In any case, Mr. Coombs acted as an accountant and financial adviser to the charity and the Chapman family.

[24] Mr. Chapman ran the ranch under the supervision of a board of directors, which included a lawyer among its members. Although Mr. Chapman was in charge of all aspects of running the ranch, he largely delegated the accounting function to Harold Coombs, who trained Kirsten Chapman to prepare the books.

[25] Bruce Chapman permitted Mr. Coombs a pretty free rein in terms of instructing Kirsten Chapman concerning the issuance of donation receipts and papering the transactions, sometimes on a retroactive basis.

[26] During his testimony, Mr. Chapman tried to give the impression that he really had no understanding of what was going on and that he simply entrusted everything to Mr. Coombs and signed papers when necessary. It is not clear to me what Mr. Chapman really understood, and what the Chapman family stood to gain from this except that it appears that some of the family appeared to participate in the donation scheme as well.

[27] The extent to which Mr. Chapman was actively involved in the scheme does not affect the outcome of these appeals, and I make no finding on it. It is sufficient to say that Mr. Chapman allowed this to go on for over six years, even after the initial audit and the first set of assessments.

[28] I would also note that the board of directors of the charity took no action to stop the false receipts from being issued. It may be that they had no idea of what was going on until the fall of 2002 when Mr. Chapman notified one of the board members who was a lawyer of the problem. I would also note that the charity took very swift corrective action after that, and managed to not to have the charitable status of Rocky Ridge Ranch revoked.

[29] I do not know the total of the donation receipts falsely issued by Rocky Ridge Ranch at Mr. Coombs instigation, but during the period from 1999 to the middle of 2002 when the charity called a halt to the affair, the charity determined that it had falsely issued receipts for over \$500,000.

[30] I would first make a number of general observations about the transactions that occurred.

[31] First, there is no evidence that the charity earned one nickel from these schemes. The transactions seemed to involve either no transfer of property to the charity at all, or a transfer of money into the charity's bank account followed by a transfer out on or around the same day. The transfers out did not go directly to the purported donors, however. Instead they went to people with whom Harold Coombs had a close connection.

[32] The tracing of the money in and out of the charity's bank account was done by Kirsten Chapman under the instruction of Gordon Ahier and it was used as the basis for the charity issuing replacement receipts showing donations of nil. There was no real need for the CRA auditor to do an independent audit of this and it appears that he did not do so. I accept that the work done by Kirsten Chapman that was entered into evidence as Ex. R-44 is generally representative of what actually transpired.

[33] It is not possible to tell from the evidence exactly what happened to the funds once they were paid out of the charity and received by persons associated with Harold Coombs. Bruce Chapman indicated that he handed funds he received over to Harold Coombs and I accept this testimony. On some occasions the payments can be linked to an equivalent amount of money deposited to the purported donor's bank account but that is not always the case.

[34] What is clear, though, from the evidence as a whole, is that none of the appellants actually intended to contribute anything to the charity. None of them had a donative intent. Their sole intent was to achieve a tax saving.

[35] All of the appellants were fiercely supportive of Mr. Coombs at the hearing. I have no doubt that they all received what they bargained for. Perhaps the appellants paid Mr. Coombs a fee for the tax saved, but beyond that any money paid out must have been paid back to them or to someone else at their direction. One thing is clear. It did not go towards charitable purposes.

[36] I will now go into a little more detail regarding the scheme.

[37] During argument, counsel for the respondent provided a chart which divided the donations into five different types. I will briefly discuss each one.

[38] The first scheme may be described as a gifting arrangement and these transactions allegedly took place from 1994 to 1998. I say allegedly because there is no credible evidence that any transactions of any sort took place except for the issuance of false donation receipts.

[39] The plan was not sophisticated. It was described as a paper transaction in which Bruce Chapman purported to make a gift to the donors, and which the donors then instructed Mr. Chapman to contribute his gift to the charity on their behalf. No actual transfers of funds took place.

[40] The paperwork for this transaction was shoddy to say the least. Nothing was signed by the alleged donors. Mr. Chapman did sign papers documenting the scheme but Mr. Chapman's daughter-in-law, Kirsten Chapman, testified that she prepared this paperwork on the instructions of Mr. Coombs on a retroactive basis while the audit was going on. In general I found Kirsten Chapman's evidence to be credible and I accept her detailed evidence on this point.

[41] My conclusion from all of this was that there were no gifts by Bruce Chapman to the so-called donors and no gifts by the donors. The documentation created after the fact was pure fiction.

[42] These transactions were all discovered by Mr. Brunsveld of the CRA in 1999 during an audit of an associated corporation which used the charity's bank account. Assessments were issued early in 2000 to all the appellants who claimed charitable donations during the years 1996 through 1998.

[43] Following these reassessments, one would expect these shenanigans to be halted but that did not happen. Mr. Coombs changed the mechanics of the scheme, and varied it, but the scheme continued on with gusto.

[44] One technique that was used subsequently was another gifting arrangement. Unlike the prior gifting arrangement, in this case actual funds flowed to the charity and out again. This was used where the donors were relatives of Harold Coombs, namely his daughter, Karen Munshaw, and his nephew, Carl Coombs. In this case, purported gifts were made from family members to the donor, and the donor would then transfer the funds to the charity which immediately paid the funds out again.

[45] Another technique involved cheques being written on the donors' bank accounts to the charity. Often in these cases, the evidence does not trace a reimbursement of these funds back to the donors. Examples of this are transfers from

Jeff Russell, who is a businessman who has dealt with Mr. Coombs for many years, and Percy Mossop, who is Mr. Coombs' brother-in-law.

[46] It appears that in all circumstances where funds were actually deposited in the charity's bank account, the funds were paid out again from the charity. There was the odd thousand dollars that Kirsten Chapman could not trace but her review of the bank account pretty clearly shows that the scheme involved taking out everything that was put in.

[47] I would note that several techniques were used to take money out of the charity's bank account but none of these appeared to be *bona fide* transactions.

[48] One technique was to use the charity's funds to allegedly pay for a redemption of shares of an associated corporation that shared the charity's bank account.

[49] Another technique that was developed in 2001 was to have the funds paid out in payment of the purchase price of shares. The shares were allegedly purchased from Joan Coombs for \$225,000 and constituted shares of a travel agency that the Coombs' owned and operated. That corporation went insolvent after the charity called a halt to the whole thing and the travel business continued on in another form. In all likelihood the value of these shares was close to nil when they were purportedly purchased by the charity and an associated company. In fact, the appellants introduced a tax planning memo written by Harold Coombs suggesting that it was planned that Bruce Chapman's wife would claim a loss with respect to these shares on her tax return after the two year waiting period required by the *Income Tax Act*.

[50] There were many other share transactions as well. It is not necessary to go into details in these reasons but I would note that in one instance Kirsten Chapman testified that she prepared an alleged agreement for the sale of shares in 1999, which agreement was backdated to 1993. Again I find Mrs. Chapman's evidence credible in this regard.

[51] When the entire circumstances are looked at, it is pretty clear that there was a pattern of entering into share transactions which were designed not for any commercial purpose but to further the tax schemes orchestrated by Mr. Coombs, including the donation scheme that is at issue here. There is absolutely no evidence before me that would lead me to believe that any of these transactions were *bona fide*.

[52] I would also note that in none of the cases does it make any sense that the purported donors intended to make a sizable gift to Rocky Ridge Ranch. They all had very little connection with the charity, and were not so wealthy that a gift of this nature would be expected. Also, the fact that the appellants have staunchly stuck by Mr. Coombs, when many of the funds were paid out of the charity to Mr. Coombs' wife, suggests that the appellants were not victims. I find that they were participants in the scheme and that none of them had any intention of making a gift to Rocky Ridge Ranch.

[53] This deals with the schemes in which money was actually transferred to the charity. In other cases it appears that nothing was in fact transferred to the charity. This conclusion is based on Kirsten Chapman's analysis of the charity's bank account which was reviewed by Mr. Ahier which indicates several instances where nothing was deposited in the charity's bank account. In these cases, the appellants typically said they donated funds but they had very little recollection of the circumstances and they did not introduce any evidence such as cancelled cheques to prove that funds were transferred to the charity. The appellants involved in this type of arrangement are: Karen Munshaw, the daughter of Harold Coombs, Anne Volochkov, the wife of Oleg Volochkov who was intimately involved in the scheme, and Sabrina Rigutto a travel agent who works in the same office as the Coombs and Oleg Volochkov. In these cases, the evidence supports a finding that no transfers of property were made to the charity.

[54] Another situation is an isolated incident in which a gift was purportedly made by Joan Coombs, the wife of Harold Coombs, by a donation of accounting fees invoiced by Mr. Coombs. The problem that I have with this is that there is no credible evidence that this invoice is genuine. In my view, the purported invoice was likely a device to enable gifts to be documented so that tax credits could be claimed. Mr. Coombs suggested that he issued the invoice because of the extra accounting work that he did during the audit. Mr. Coombs was not a credible witness, and I reject his testimony regarding the invoice.

[55] The evidence shows that the appellants used several techniques to make it look like charitable donations were made, and in some cases it appears they did nothing at all. But in none of the instances do I find that any of the appellants or their spouses made a gift to the charity.

[56] I now turn to the issue of penalties.

[57] The question here is whether the Minister was correct to assess penalties under s. 163(2) of the *Act*.

[58] In general, subsection 163(2) imposes a penalty for making a false statement in a tax return equal to 50 percent of the tax that has been avoided. In order for the penalty to be imposed, the Crown must establish that the taxpayer made a false statement and that the false statement was made either knowingly, or under circumstances amounting to gross negligence.

[59] In this case, the Minister imposed penalties for the second series of assessments covering the taxation years 1999, 2000 and 2001. Eight of the ten appellants were assessed penalties. The two that were not were Lorna Mossop and Bob Wysocki.

[60] I have already determined that false statements were made in the tax returns of the appellants who were assessed penalties. The only remaining question is whether the Crown has established that the appellants made the statements knowing that they were false, or whether they were grossly negligent in doing so. For the reasons that follow, I have concluded that all of the penalties assessed were appropriate in the circumstances.

[61] Before discussing the circumstances of each appellant, I would first comment that the CRA auditor, Mr. Brunsveld, indicated that the penalties were imposed for the 1999 to 2001 taxation years partly because these were in essence second offences because assessments had been issued for earlier periods. For four of the appellants, there is no indication in the evidence before me that they were assessed earlier. Mr. Brunsveld's testimony on this point was very brief and he was not cross examined on it. Before accepting that all the penalties involve second offence type situations, I think the evidence should be more detailed. Accordingly, I do not find that the Crown has established that this was a so-called second offence for the appellants who have only appealed for the 1999, 2000 or 2001 taxation years.

[62] I now turn to the circumstances of each of the appellants, which will be done in the order in which they testified at the trial.

[63] The first is Carl Coombs, who is the nephew of Harold and Joan Coombs. According to Carl Coombs' tax return he was born in 1958 which would put him in his early 40s during the taxation year at issue, which is 2001.

[64] Carl Coombs claimed a tax credit in respect purported donations to Rocky Ridge Ranch in the amount of \$12,000 in the 2001 taxation year. This claim brought his federal tax down to less than \$1,000.

[65] In this case there were two cheques from Carl Coombs deposited in the charity's bank account late in 2001. The source of these funds was cheques from Mr. Coombs' father and his uncle, Harold Coombs. Carl Coombs testified that these amounts were gifts to him. Harold Coombs' alleged gift was \$7,000 and the father's was \$5,000.

[66] Carl Coombs testified that there were no strings attached to these gifts and that he wanted to donate the funds to the charity, with which he had little connection.

[67] Carl Coombs testimony makes no sense whatsoever and I do not accept it. There was no reasonable explanation for why his father and uncle would give him \$12,000 and also no reasonable explanation for why Carl Coombs would donate a large sum of money to a charity.

[68] In the circumstances of these alleged donations, I conclude that Carl Coombs knew that the tax claims were false. A taxpayer who reduces his tax burden by significant amount by claiming a large charitable donation without any real outlay of funds knows that the claims are bogus. Carl Coombs made the situation even worse by falsely testifying that there were no strings to the alleged gifts from his father and uncle. The penalty is justified in this case.

[69] The next appellant who was assessed penalties is Jeff Russell, who was a long time client of Mr. Coombs.

[70] Mr. Russell claimed charitable tax credits for each of the 1999, 2000 and 2001 taxation years. The aggregate amount of the purported donations by Mr. Russell is \$80,000.

[71] Mr. Russell had no, or very little, connection with the charity and gave no credible explanation for these very large donations. For some of these amounts, there is no credible evidence that any funds were transferred at all to the charity. In other instances, cheques were written by Mr. Russell to the charity, and in accordance with the usual pattern the amounts were paid out of the charity in short order to persons connected to Harold Coombs. In these cases, it is not clear what happened to the funds after that. There is no evidence tracing it back to Mr. Russell. That does not matter in the circumstances. Clearly Mr. Russell did not intend to make large

donations to Rocky Ridge Ranch. He was not a victim here but a very active participant. The only reasonable conclusion to take from the evidence is that Mr. Russell knew these claims to be false.

[72] I would also note that Mr. Russell's tax returns indicate that he also took large tax deductions for business losses supposedly incurred in respect of sales of shares of companies connected in some way to Harold Coombs. These losses are part of a pattern of share transactions orchestrated by Mr. Coombs and they reinforce the conclusion that Mr. Russell was fully aware of the falsity of the donation scheme, although no such reinforcement is necessary. The penalties against Mr. Russell are thoroughly justified.

[73] I now turn to Karen and Daniel Munshaw, who are the daughter and son-in-law of Harold Coombs.

[74] These two appellants will be considered together because Daniel Munshaw did not personally make any donations. The tax credits that he claimed were in respect of donations purportedly made by his wife.

[75] Mr. and Mrs. Munshaw claimed tax credits for the 1999, 2000 and 2001 taxation years in respect of purported donations to Rocky Ridge Ranch in the aggregate amount of almost \$70,000.

[76] Mrs. Munshaw testified that some of these amounts were sourced from gifts from her parents and at least one was sourced from proceeds of a sale of shares to her mother.

[77] Mrs. Munshaw was not a credible witness. As an example, her testimony as to whether there were strings attached to her parents' gifts changed over time. She started out saying that there were no strings attached but she backed down from that on cross-examination.

[78] Also Mrs. Munshaw could not tell me why she had certified some of the cheques that were issued to the charity.

[79] Mrs. Munshaw's testimony as a whole lacked a ring of truth. I find it totally unrealistic that she was not aware that she and her husband made false claims for charitable donations. Her husband in 2001 claimed federal tax credits of over \$13,000 and reduced his federal tax to just over \$100. I am satisfied that



Mrs. Munshaw was completely aware of the falsity of the claims. The penalties imposed against her are totally justified.

[80] As for her husband, Mr. Munshaw claimed not to be directly involved in the donations but he stated that he did discuss them with his wife. For such a large amount of tax saving that Mr. Munshaw obtained by claiming these tax credits, I believe that he was fully aware of the falsity of the scheme. Penalties levied against Mr. Munshaw are similarly justified.

[81] I turn now to Anne Volochkov. She is married to Oleg Volochkov, who owns a travel business located in the same office space as that used by Harold and Joan Coombs. Mr. Volochkov was intimately involved in these transactions, including being the recipient of large sums of money paid out of the charity's bank account.

[82] According to the Crown's replies in respect of Mrs. Volochkov's appeal, she claimed tax credits in respect of purported donations aggregating over \$75,000 during the period from 1996 to 2001.

[83] Mrs. Volochkov did not appear to be an active participant in the scheme but she did not emerge from the witness box unscathed. On cross-examination, she was asked whether she knew Joan Coombs. She gave the impression that she only knew her slightly as the wife of Harold Coombs and someone that her husband worked with. Crown counsel then confronted her with her tax returns in which a large loss was claimed by her in relation to a herbal business purportedly operated by Mrs. Volochkov and Joan Coombs. Now either Mrs. Volochkov was not forthright when she testified as to her limited dealings with Mrs. Coombs, or she had totally falsified her tax return in respect of the herbal business. Either explanation is damning.

[84] I find that Mrs. Volochkov knowingly made false donation claims in the 1999 and 2001 taxation years. The large amounts claimed strongly suggest that she knew full well that the entire scheme was bogus. I also note that by the time these tax returns were filed, she had already received reassessments for donations for earlier years. She brazenly plowed on, however, and increased the amount of the false claims for the later years in which penalties were assessed.

[85] I would also note that it is not necessary that a taxpayer have actual knowledge to support the imposition of penalties. Gross negligence is sufficient. This Court has said that penalties should not lightly be upheld. However, I have no hesitation in concluding that Mrs. Volochkov likely knew about the falsity of the donations. Even

if she was totally blind to the situation, this would not assist her because she certainly was willfully blind and grossly negligent in that case.

[86] Before leaving the circumstances of Mrs. Volochkov, I would comment that the Crown could not trace an outflow of \$2,000 transferred to the charity by Mr. and Mrs. Volochkov. It is possible that they intended to make this as a donation to the charity. However, I find it much more likely based on all the evidence that these funds were not intended to stay in the charity. I see no evidence of any donative intent on the part of Mr. or Mrs. Volochkov.

[87] I now turn to Joan Coombs, who is the wife of Harold Coombs. Mrs. Coombs had her own travel business and worked out the same office as her husband and Oleg Volochkov.

[88] Mrs. Coombs claimed tax credits in respect of charitable donations aggregating \$10,500 over the period from 1996 to 1999.

[89] This whole sorry affair was masterminded by Mrs. Coombs' husband. He was driving the bus but I would note that Mrs. Coombs was sitting in the front seat at least in the latter period. Mrs. Coombs was involved in the mechanics of getting the funds out of the charity, and for this purpose she signed an agreement purporting to sell shares of her travel business to Rocky Ridge entities for a purchase price of over \$200,000. She was also involved in writing large cheques to her daughter which were then transferred to the charity.

[90] The only year in which penalties were assessed against Mrs. Coombs was for 1999, and her involvement with the share transactions happened after that. However, in general I found Mrs. Coombs not to be a credible witness. For example, she testified that large sums of money received from the charity's bank account in 2001 were used by her to pay bills of the travel business. I find this extremely unlikely. I would also note that Mrs. Coombs had received an assessment for an earlier period and so was, as Mr. Brunsveld described, a second offender. In circumstances where Mrs. Coombs' testimony was generally not credible, and where false claims were made for an earlier year, I find that Mrs. Coombs either knowingly made false claims in her 1999 tax return or she was grossly negligent by being willfully blind. This conclusion is reinforced by her active participation in the scheme in later years.

[91] I also wish to mention, however, that Mrs. Coombs' alleged donation in 1999 did not fit the same mould as the others. It did not involve cash but was an alleged transfer of funds owed to Harold Coombs for accounting services rendered. The

amount of the invoice was just over \$10,000 and Mrs. Coombs' alleged donation was \$5,300 of this amount. If this was an isolated transaction, I would have no hesitation in saying that penalties would not be justified. But given the history and the continued involvement of Mrs. Coombs after this, I think that the penalty is appropriate.

[92] I now turn to Percy Mossop, who is the brother-in-law of Harold Coombs.

[93] Mr. Mossop and his wife claimed to have made donations in the aggregate amount of over \$95,000 from the period from 1996 to 2001. As such Mr. and Mrs. Mossop are large participants in this scheme, going back to 1996 when they claimed to have made donations of over \$20,000 sourced from gifts from Bruce Chapman. When they were reassessed for the earlier years, this certainly should have raised alarm bells about the propriety of the transactions but it did not have that effect on Mr. Mossop. Alleged donations of a similar amount were claimed for each of 1999, 2000, and 2001.

[94] In the case of Mr. Mossop, the large amount claimed suggests that he knowingly made false statements in his tax return. He testified that he personally used his own funds to make a number of these donations. I find that this defies common sense and is beyond belief.

[95] I find that Mr. Mossop knowingly filed false donation claims for the 1999, 2000 and 2001 taxation years and that the penalties imposed are justified.

[96] Lastly, I come to Sabrina Rigutto. Ms. Rigutto worked as a travel agent for Mr. Volochkov and was a participant in this scheme in 1998 and 2001. The aggregate donations that she claimed were about \$6,000 and there is no evidence of any transfer of these funds to the charity.

[97] Ms. Rigutto claims to have no knowledge of the details of these transactions.

[98] I find Ms. Rigutto's testimony to be unbelievable but, even if it is true, Ms. Rigutto was grossly negligent if she thought she could claim such large tax credits on her tax returns without laying out any funds of her own. I find that she either knowingly, or under circumstances amounting to gross negligence, made the donation claim in her 2001 tax return. I would also note that she also had been reassessed for an earlier year and yet she continued to be involved in 2001 which is the year in which the penalty was imposed.

[99] I think this deals with all of the penalty situations.

[100] In the result, I find that none of the donations claimed were real gifts and that all of the penalties assessed were justified.

[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.

[106] I am also not satisfied that the seizure was illegal even if someone not named in the warrant was invited to participate by the officer in charge. In this regard, I note the decision of the Supreme Court of Canada in *R. v. Strachan*, [1988] 2 S.C.R. 980 and the decision of the Nova Scotia Court of Appeal in *R. v. B.*, 52 C.C.C. (3d) 224.

[107] In my view, none of the appellants have shown any grounds to complain of unfairness. It may be that the appellants were at a disadvantage in dealing with the

seized documents because they did not have a lawyer representing them. However, that was their choice and they cannot complain of unfairness because of it. I would also note that Justice Bowie mentioned in the case management hearing that it was sometimes difficult for appellants to use the pre-trial procedures without a lawyer. The appellants had ample opportunity to hire a lawyer if they so chose.

[108] The appellants also argued that there were deficiencies in the way that the audit was conducted. Even if that were the case, that would not be a valid basis on which to allow the appeals.

[109] For all these reasons, the appeals will be dismissed, without costs.

Signed at Toronto, Ontario this 8<sup>th</sup> day of May, 2008.

“J. Woods”

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Woods J.

CITATION: 2008TCC289

COURT FILE NOS.: 2005-3602(IT)I  
2005-3606(IT)I  
2005-3609(IT)I  
2005-3621(IT)I, 2005-4189(IT)I  
2005-3622(IT)I  
2005-3623(IT)I, 2005-4191(IT)I  
2005-4091(IT)I  
2005-4142(IT)I  
2005-4143(IT)I  
2005-4190(IT)I

STYLES OF CAUSE: JOAN COOMBS AND  
HER MAJESTY THE QUEEN  
and BOB WYSOCKI AND  
HER MAJESTY THE QUEEN  
and SABRINA RIGUTTO AND  
HER MAJESTY THE QUEEN  
and ANNE M. VOLOCHKOV AND  
HER MAJESTY THE QUEEN  
and LORNA MOSSOP AND  
HER MAJESTY THE QUEEN  
and PERCY G. MOSSOP AND  
HER MAJESTY THE QUEEN  
and CARL COOMBS AND  
HER MAJESTY THE QUEEN  
and KAREN A. MUNSHAW AND  
HER MAJESTY THE QUEEN  
and DANIEL MUNSHAW AND  
HER MAJESTY THE QUEEN  
and JEFF RUSSELL AND  
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATES OF HEARING: April 7, 9, 10, 11, 14, 16, 21, 22, 23 and 28,  
2008

REASONS FOR JUDGMENT BY: The Honourable Justice Woods

DATE OF JUDGMENT: May 8, 2008

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Firm:

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