

Docket: 2012-2468(IT)I

BETWEEN:

ROLANDO DAVID,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 26, 2013 at Winnipeg, Manitoba

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Ainslie Schroeder

JUDGMENT

The appeal with respect to an assessment made under the *Income Tax Act* for the 2006 taxation year is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that: (1) the appellant is entitled to a tax credit based on a charitable gift equal to ten percent of the face amount of the charitable receipt(s) provided by CanAfrica International Foundation, and (2) penalties, if any, should be deleted. The parties shall bear their own costs in respect of the appeal.

Signed at Ottawa, Ontario this 15th day of April 2014.

“J.M. Woods”

Woods J.

Docket: 2012-2469(IT)I

BETWEEN:

DANILO MAGARRO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 26, 2013 at Winnipeg, Manitoba

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Ainslie Schroeder

JUDGMENT

The appeal with respect to an assessment made under the *Income Tax Act* for the 2006 taxation year is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that: (1) the appellant is entitled to a tax credit based on a charitable gift equal to ten percent of the face amount of the charitable receipt(s) provided by CanAfrica International Foundation, and (2) penalties, if any, should be deleted. The parties shall bear their own costs in respect of the appeal.

Signed at Ottawa, Ontario this 15th day of April 2014.

“J.M. Woods”

Woods J.

Docket: 2012-2484(IT)I

BETWEEN:

RAY CASTRO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 26, 2013 at Winnipeg, Manitoba

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Ainslie Schroeder

JUDGMENT

The appeal with respect to an assessment made under the *Income Tax Act* for the 2006 taxation year is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that: (1) the appellant is entitled to a tax credit based on a charitable gift equal to ten percent of the face amount of the charitable receipt(s) provided by CanAfrica International Foundation, and (2) penalties, if any, should be deleted. The parties shall bear their own costs in respect of the appeal.

Signed at Ottawa, Ontario this 15th day of April 2014.

“J.M. Woods”

Woods J.

Docket: 2012-2575(IT)I

BETWEEN:

MARIA S. GRANDE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 26, 2013 at Winnipeg, Manitoba

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Ainslie Schroeder

JUDGMENT

The appeal with respect to an assessment made under the *Income Tax Act* for the 2006 taxation year is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that: (1) the appellant is entitled to a tax credit based on a charitable gift equal to ten percent of the face amount of the charitable receipt(s) provided by CanAfrica International Foundation, and (2) penalties, if any, should be deleted. The parties shall bear their own costs in respect of the appeal.

Signed at Ottawa, Ontario this 15th day of April 2014.

“J.M. Woods”

Woods J.

Docket: 2012-2467(IT)I

BETWEEN:

RUBIROSA TIROY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 26, 2013 at Winnipeg, Manitoba

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Ainslie Schroeder

JUDGMENT

The appeal with respect to an assessment made under the *Income Tax Act* for the 2006 taxation year is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that: (1) the appellant is entitled to a tax credit based on a charitable gift equal to ten percent of the face amount of the charitable receipt(s) provided by CanAfrica International Foundation, and (2) penalties, if any, should be deleted. The parties shall bear their own costs in respect of the appeal.

Signed at Ottawa, Ontario this 15th day of April 2014.

“J.M. Woods”

Woods J.

Docket: 2012-2483(IT)I

BETWEEN:

ARIS N. ANI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 26, 2013 at Winnipeg, Manitoba

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Ainslie Schroeder

JUDGMENT

The appeal with respect to an assessment made under the *Income Tax Act* for the 2006 taxation year is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that: (1) the appellant is entitled to a tax credit based on a charitable gift equal to ten percent of the face amount of the charitable receipt(s) provided by CanAfrica International Foundation, and (2) penalties, if any, should be deleted. The parties shall bear their own costs in respect of the appeal.

Signed at Ottawa, Ontario this 15th day of April 2014.

“J.M. Woods”

Woods J.

Citation: 2014 TCC 117
Date: 20140415
Docket: 2012-2468(IT)I

BETWEEN:

ROLANDO DAVID,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2012-2469(IT)I

AND BETWEEN:

DANILO MAGARRO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2012-2484(IT)I

AND BETWEEN:

RAY CASTRO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2012-2575(IT)I

AND BETWEEN:

MARIA S. GRANDE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2012-2467(IT)I

AND BETWEEN:

RUBIROSA TIROY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2012-2483(IT)I

AND BETWEEN:

ARIS N. ANI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] These reasons relate to six separate appeals which concern the disallowance of a tax credit for a purported charitable gift to CanAfrica International Foundation (“CanAfrica”). The appeals were heard consecutively on one day, and one set of reasons is being issued for all.

[2] CanAfrica issued to each of the appellants (or a spouse) a donation tax receipt which formed the basis for tax credits claimed in the appellants’ income tax returns. In reassessments issued under the *Income Tax Act* for the 2006 taxation year, the credits were disallowed in their entirety.

[3] The amount of the donations as listed on the receipts is set out below.

APPELLANT	RECEIPT AMOUNT
Rubirosa Tiroy	\$ 2,500
Rolando David	\$10,000
Danilo Magarro	\$ 5,000

Ray Castro	\$15,000
Maria S. Grande	\$20,000
Aris N. Ani	\$ 5,000

Background

[4] In 2006, the appellants or their spouses were independently solicited by a tax return preparer, Rodigo Layco, to make donations to CanAfrica. At the time, CanAfrica was registered as a charity under the *Act*, which enabled it to issue valid donation tax receipts.

[5] Although CanAfrica had charitable status in 2006, the Canada Revenue Agency (CRA) was also in the midst of an investigation of CanAfrica, which led to a revocation of its registration as a charity in 2007. In addition, the president of CanAfrica, Ambrose Danso-Dapaah, pled guilty to selling false donation receipts for the 2005 and prior taxation years.

[6] Many of the appellants appear to acknowledge that the tax receipts issued to them were false, and they seek relief on the basis that the CRA should bear some responsibility. It was wrong, it is suggested, for the CRA to list CanAfrica as a registered charity on its website without warning taxpayers of the concerns that the CRA had at the time.

[7] If the CRA had issued a warning, the appellants suggest, they would not have entered into these transactions. The appellants generally seek to have at least a portion of the tax credit allowed, as well as a waiver of interest and penalties.

[8] The respondent did not address this argument in the replies. Instead, the respondent submitted that the tax credits should be disallowed on the basis that no gifts were made.

[9] The respondent submits that to be a true gift, the donation must be made without a benefit in return. It is suggested that the tax receipts issued by CanAfrica were inflated and that the appellants expected to benefit by receiving inflated tax credits as a result. These benefits negate any gift, it is suggested.

Amounts paid as a donation to CanAfrica

[10] The first question to be considered is what amounts were given as a donation to CanAfrica.

[11] The starting point for the analysis is to consider what the Minister assumed in making the assessments because the appellants have the initial burden of proof to demolish these assumptions, at least on a *prima facie* basis. The assumption that is relevant to this issue is reproduced below from one of the replies.

[T]he Appellant was involved in a scheme with her tax preparer where the Appellant, in consideration for a charitable receipt from CanAfrica, would pay 10% of the face value of the receipt amount, plus a commission, to her tax preparer.

[12] The Minister assumed that the appellants paid 10 percent of the face amount of the tax receipts, and an additional unspecified amount as a commission. This assumption will be considered to be true unless an appellant establishes otherwise.

[13] I would make a few preliminary comments before considering the evidence.

[14] First, the appellants all relied almost exclusively on their own self-interested testimony, or the self-interested testimony of a spouse, to satisfy this burden of proof. None of the appellants had contemporaneous documentation, such as copies of cheques, to support that they donated more than 10 percent of the receipts.

[15] The lack of supporting documentation is a problem for the appellants. In this regard, I agree with the comment of Sheridan J. in another case involving CanAfrica, *Patel v The Queen*, 2011 TCC 555, at paragraph 16.

[16] The Appellant pointed out to me that there was nothing illegal about making a donation in cash. This is quite true: paragraph 3501(1)(e) of the Regulations specifically contemplates that possibility. However, when a taxpayer chooses to deal only in cash, whether for charitable donations or any other matters likely to come under the scrutiny of the Minister of National Revenue, she imposes on herself the burden of having some means of verifying the otherwise untraceable transactions. [...]

[16] Further, if self-interested testimony is to be convincing, it must be detailed and cogent. If the evidence is implausible, it should be viewed with additional skepticism. This is also a factor in these appeals which involve very large donations and a charity involved in issuing false donation receipts.

[17] Second, some of the appellants testified that the tax receipts were based on a cash donation plus a valuation of donated household goods. However, none of the appellants provided evidence in support of the valuation of the non-cash items. If

any goods had been donated by appellants, the evidence is not sufficient for me to ascribe any value to them.

[18] Third, some of the appellants testified that they gave approximately 16 percent of the face amount of the tax receipts in cash, and also household goods.

[19] Assuming that I accept that some appellants gave 16 percent to Mr. Layco, this is not sufficient to overcome the 10 percent assumption made by the Minister because the Minister assumed that the appellants gave 10 percent plus an unspecified commission. A part of the 16 percent should be attributed to the commission.

[20] I turn now to the testimony of the appellants. The respondent did not call any witnesses.

[21] *Rubirosa Tiroy* – Ms. Tiroy was issued a tax receipt in the amount of \$2,500.

[22] At the hearing, Ms. Tiroy testified that she gave only cash, and that she gave either \$400 or \$800. However, this testimony changed on cross-examination after Ms. Tiroy was shown a letter that she had given to the CRA. In the letter, Ms. Tiroy stated that she gave \$400 cash and some goods (Ex. R-2).

[23] Overall, I found Ms. Tiroy's testimony to be too vague to be reliable and there were troubling inconsistencies. Further, Ms. Tiroy did not provide any breakdown of the amount paid between commission and a donation.

[24] I conclude that the amount given by Ms. Tiroy as a donation to CanAfrica was \$250, which was the amount assumed by the Minister.

[25] *Rolando David* – Mr. David was issued a tax receipt in the amount of \$10,000.

[26] Mr. David testified that he gave cash of approximately \$2,500 and some clothing and household goods. This testimony was too brief to be convincing, and no contemporaneous supporting documentation was provided.

[27] I would also note that Mr. David did not provide a detailed description of the non-cash donation, and he had no estimate of its value. He also did not provide a breakdown of the amount paid between commission and a donation.

[28] I conclude that the amount given by Mr. David as a donation to CanAfrica was \$1,000, which was the amount assumed by the Minister.

[29] *Danilo Magarro* – A tax receipt was issued to Mr. Magarro's spouse, Elisa Magarro, in the amount of \$5,000, which was claimed as a donation on Mr. Magarro's income tax return. The respondent does not take issue with the transfer of the tax credit to the spouse.

[30] Ms. Magarro testified that she attended at Mr. Layco's office to deliver a letter on behalf of a friend. While she was there, Mr. Layco asked her whether she wished to make a charitable donation to CanAfrica for which she would receive a tax credit equal to one-half of the amount given. She stated that she paid cash to Mr. Layco in the amount of \$5,000 as the charitable gift.

[31] Mr. Magarro testified that his spouse did not tell him about the details of the donation.

[32] I do not find the testimony of Mr. and Ms. Magarro to be convincing. If their testimony is to be believed, I would have to find that the following improbable events took place.

- (a) Ms. Magarro made a large donation at a time when she had been laid off from work. Her spouse's income was approximately \$58,000.
- (b) Ms. Magarro gave the donation based on a solicitation from a tax return preparer without her being provided detailed information about the charity.
- (c) Ms. Magarro paid \$5,000 by means of a bag of bills that she kept at her house.
- (d) Ms. Magarro told her spouse almost nothing about the donation, even up to the day of the hearing of his appeal.
- (e) Ms. Magarro donated the funds without making any inquiries about CanAfrica's activities. Ms. Magarro testified that she checked the website of the CRA with respect to the registration of CanAfrica, but she did not check the website of CanAfrica itself.

[33] Taken together, the circumstances above are highly improbable. I conclude that the amount given by Ms. Magarro as a donation to CanAfrica was \$500.

[34] *Aris Ani* – A tax receipt was issued by CanAfrica to Mr. Ani in the amount of \$5,000.

[35] According to Mr. Ani's testimony, he paid cash of approximately \$2,200 to \$2,700 as well as making a donation of clothing and other household items. He did not provide a detailed description of the goods.

[36] Mr. Ani's testimony as a whole is implausible. Mr. Ani and his spouse have four children and they have a net family income of \$53,000. Mr. Ani testified that he had to finance part of the donation through an advance on his credit card. In the absence of further explanation as to why Mr. Ani would donate such a large amount to CanAfrica, I find it unlikely that Mr. Ani would have given such a large amount to this charity.

[37] Mr. Ani also testified that he did not really care about the tax refund. I do not believe this.

[38] Mr. Ani's testimony is too implausible to be believed. I find that the amount given by Mr. Ani as a donation to CanAfrica was \$500, which is the amount assumed by the Minister.

[39] *Ray Castro* - Mr. Castro and his spouse were issued tax receipts in the aggregate amount of \$15,000. The explanation for receipts given to both spouses was that there was a limit of \$10,000 for a receipt to any individual.

[40] Mr. Castro testified that he paid cash in the amount of \$2,600 in respect of these transactions.

[41] I would note that the cash that Mr. Castro claims to have paid is close to the 16 percent that other appellants testified to giving. Since Mr. Castro could not establish a breakdown of the amount paid between a donation and commission, he has not overcome the assumption of the Minister that only 10 percent was provided as a donation.

[42] I conclude that Mr. Castro paid \$1,500 as a donation to CanAfrica.

[43] *Maria Grande* - Ms. Grande and her spouse were issued tax receipts in the aggregate amount of \$20,000.

[44] Ms. Grande testified that her understanding of the arrangement was that a \$5,000 donation receipt would be issued for every \$800 that was given. This equates to 16 percent and is consistent with a 10 percent donation assumed by the Minister and a 6 percent commission.

[45] Ms. Grande also claims a tax credit for goods provided by others. She has not established that she donated any goods.

[46] During argument, the Crown submitted that no tax credit should be allowed because Ms. Grande did not make this payment until January of the following year. Although there is evidence to support this argument, I do not think that it would be fair to decide the appeal on this basis because the argument was not mentioned in the Reply.

[47] I would conclude that Ms. Grande paid \$2,000 as a donation to CanAfrica.

[48] *Conclusion* – In summary, my conclusion as to the amounts given to CanAfrica is that each of the appellants (or a spouse) paid 10 percent of the face amount of the tax receipts as a donation to CanAfrica in the 2006 taxation year.

Amounts eligible for tax credit

[49] Pursuant to subsection 118.1(3) of the *Act*, an individual may claim a tax credit with respect to a gift made to a registered charity. The amount of the tax credit is determined by the amount of the gift.

[50] Some of the appellants suggest that they should be allowed a tax credit based on the face amount of the tax receipt issued by CanAfrica even though this exceeds the amount of the gift. The argument is that the appellants should have been warned by the CRA regarding concerns about CanAfrica.

[51] This argument does not assist the appellants. Even if I were to agree with them that the CRA should have provided a warning, a tax credit can be claimed only to the extent provided by the applicable legislation. Since the legislation provides that the tax credit is determined by the amount of the gift, a tax credit cannot be allowed for more than this.

[52] It remains to be determined whether the amounts that were given as donations are gifts, as that term has been interpreted by judicial authorities.

[53] The respondent submits that the amounts given by the appellants as donations are not true “gifts” because they were given on the expectation of receiving a benefit in return. The benefit, the respondent suggests, is the expectation of an inflated tax credit based on an inflated donation receipt.

[54] The respondent also submits that the quantum of the benefit is not relevant, and that any benefit at all will negate the entire gift: *The Queen v Friedberg*, 92 DTC 6031 (FCA).¹

[55] The central question to be determined is whether an expectation of an inflated tax credit based on an inflated donation receipt is a benefit that negates the gift.

[56] This issue has come before the Tax Court of Canada on several occasions and no clear principle has emerged. For example, in *Berg v The Queen*, 2012 TCC 406 Justice Boccock concluded that an inflated receipt does not negate the gift (at paragraph 33), whereas a contrary conclusion was reached by Justice Webb, as he then was, in *Tu Van Le v The Queen*, 2011 TCC 292 (at paragraph 13).

[57] At the time of hearing these appeals, an appeal of the *Berg* decision was before the Federal Court of Appeal. In light of the uncertain state of the law on this point, I decided to hold these appeals in abeyance pending further guidance from *Berg*. The appellate decision was released on January 31, 2014 (2014 FCA 25), and the parties were then invited to provide submissions on the decision, either orally or in writing.

[58] The reasons of the Federal Court of Appeal in *Berg* confirm that the receipt of a benefit will negate a gift. However, the Court did not comment on the conclusion reached by the Tax Court that an inflated tax receipt is not a benefit. Instead, Near J.A. concluded that Mr. Berg had not made a gift because he had received a benefit in the form of transaction documents that were designed to mislead tax officials (*Berg*, paragraphs 27, 28). In light of this conclusion, the Federal Court of Appeal did not consider whether an inflated tax receipt is a benefit.

[59] Since this issue was not clarified by the Federal Court of Appeal in *Berg*, it is useful to consider other judicial decisions. The respondent referred to several

decisions of the Tax Court of Canada, and I have also found guidance in *The Queen v Doubinin*, 2005 FCA 298, which is a decision of a higher court.

[60] Although the facts in *Doubinin* are very different from the facts in these appeals, the Court's comments on whether an inflated tax receipt is a benefit are helpful. In this regard, Sexton J.A. writes:

[14] The Appellant argues that the receipt of the "inflated tax receipt" was a benefit. We do not agree.

[15] It was impossible for the Respondent to benefit from the inflated tax credit on the specific facts of this case because even if PPF had made the donation to ABLE, ABLE could not have validly issued a charitable receipt in the Respondent's name for the amount donated by PPF. Section 118.1 of the *Income Tax Act* does not allow one individual to claim a charitable tax credit for a gift made by some other person.

[16] Thus, it cannot be said that the Respondent received any actual benefit from the "inflated tax receipt". In fact, it might well be described as a burden. If he had not received it, he would have not experienced the difficulty he later faced in claiming a credit for the \$6,887, which he actually contributed to a registered charity.

[17] The Appellant also relies upon the case of *Webb v. The Queen*, 2004 TCC 619 where the taxpayer was denied a tax deduction in any amount. That case involved a donation to the same charity, ABLE. However, there, the Tax Court found that the taxpayer had knowingly participated in the issuance of false receipts and in addition that the taxpayer made the donation in anticipation of the future return of a large portion of the gift back to him, either from ABLE or through an indirect channel. This is not the case here. In the present case there is no evidence that the Respondent had any knowledge of any wrongdoing. Indeed, he was advised by Revenue Canada that ABLE was a registered charity at the time of his contribution. Further, there was not the expectation of a benefit which the Tax Court had found in *Webb*.

[61] Based on these comments, I would conclude that the issuance of an inflated tax receipt should not usually be considered a benefit that negates a gift.

[62] The Court in *Doubinin* seems to leave open the possibility, however, that there may be extraordinary circumstances in a particular case that should be taken into account.

[63] Are there particular circumstances in these appeals that would justify a conclusion that the inflated tax receipts are a benefit that negates the gifts? In my view there are no such circumstances.

[64] Unlike many of the cases dealing with so-called leveraged charitable donations, the transactions in these appeals are not complex and do not involve a series of inter-related transactions to which the cash is connected. The appellants simply paid cash, and perhaps household goods, as a donation to CanAfrica and received greatly inflated tax receipts. The appellants likely knew that they were claiming inflated tax credits, but this is not a sufficient reason to deny the tax credits altogether.

[65] In my view, on the facts of these appeals the appellants did not receive a benefit that negates the gifts.

[66] Before concluding on this issue, I would comment that the respondent raised another argument at the hearing that was not mentioned in the replies. It was submitted that the appellants did not establish (except perhaps Mr. David) that they had donative intent. The appellate court decision in *Berg* confirms that this is a requirement to have a valid gift (at paragraph 29).

[67] In my view, it would not be fair to decide the appeals based on this argument. The appellants did not have prior notice of it, and accordingly they did not have a chance to prepare and introduce evidence on the point.

Waiver of Interest

[68] Most of the appellants also seek a waiver of interest. This request cannot be granted because the Tax Court of Canada does not have the jurisdiction to provide this type of relief. Although this point was not mentioned in the replies, it was noted by Justice Angers in a case management hearing.

Waiver of penalties

[69] The appellants also seek a waiver of penalties, on the basis that the CRA should have provided a warning about donations to CanAfrica.

[70] The issue of penalties is troubling because the respondent submits that no penalties were imposed and most of the appellants disagree with this. Despite the

differing positions, none of the parties introduced sufficient evidence to support their position.

[71] Since this issue was clearly raised in the appellants' notices of appeal, and I do not have sufficient evidence to determine whether penalties have been imposed, the judgments in these appeals will provide that penalties, if any, should be deleted.

Conclusion

[72] The result in all the appeals is that the appellants should be allowed the charitable tax credit with respect to 10 percent of the face amount of the tax receipts, and any penalties imposed should be deleted.

Signed at Ottawa, Ontario this 15th day of April 2014.

“J.M. Woods”

Woods J.

¹ The respondent also referred to recent amendments to the *Act* dealing with partial gifts, but did not make detailed submissions with respect to the new legislation. Given the conclusions that I have reached in these appeals, it is not necessary that I consider this legislation.

CITATION: 2014 TCC 117

COURT FILE NOS.: 2012-2468(IT)I, 2012-2469(IT)I,
2012-2484(IT)I, 2012-2575(IT)I,
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STYLES OF CAUSE: ROLANDO DAVID v. HER MAJESTY
THE QUEEN and DANILO MAGARRO v.
HER MAJESTY THE QUEEN and RAY
CASTRO v. HER MAJESTY THE QUEEN
and MARIA S. GRANDE v. HER
MAJESTY THE QUEEN and RUBIROSA
TIROY v. HER MAJESTY THE QUEEN
and ARIS N. ANI v. HER MAJESTY THE
QUEEN

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: August 26, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice J.M. Woods

DATE OF JUDGMENTS: April 15, 2014

APPEARANCES:

For the Appellants: The Appellants themselves
Counsel for the Respondent: Ainslie Schroeder

COUNSEL OF RECORD:

For the Appellant: n/a

For the Respondent: William F. Pentney
Deputy Attorney General of Canada
Ottawa, Ontario