

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20110901**

**Dockets: A-209-11  
and A-210-11**

**Citation: 2011 FCA 240**

**Present: SHARLOW J.A.**

**BETWEEN:**

**PATRICK E. NICHOLLS**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on September 1, 2011.

**REASONS FOR ORDER BY:**

**SHARLOW J.A.**

Federal Court  
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**REASONS FOR ORDER**

**SHARLOW J.A.**

[1] The appellant Mr. Nicholls has appealed two judgments of the Tax Court of Canada. In both appeals, the steps required to have the appeals made ready for a hearing have stalled because the parties have not agreed on the contents of the appeal books.

[2] The first appeal (A-209-11) relates to Tax Court File No. 2010-1587(IT)G, which is an appeal by Mr. Nicholls relating to the 1998 taxation year. Mr. Nicholls moved for a determination on a point of law and for certain other relief. The Crown opposed Mr. Nicholls' motions and filed its own motion for an extension of time for serving its pleadings. In an order dated January 21,

2011, Justice V. Miller dismissed Mr. Nicholls' motion and allowed the Crown's motion (2011 TCC 40). Mr. Nicholls did not appeal that order. Instead, he applied to the Tax Court for an order setting Justice Miller's order aside and allowing the underlying appeal. That motion was dismissed by Justice Woods in a judgment dated May 19, 2011 (2011 TCC 279). It is Justice Woods' judgment that is under appeal in A-209-11.

[3] The second appeal (A-210-11) relates to Tax Court File No. 2010-2433(IT)APP. That proceeding was commenced by Mr. Nicholls by the filing of a notice of appeal of income assessments for the 1990, 1991, 1992, 1993, 1994, and 1995 taxation years. The Tax Court treated those notices as an application to extend the time for commencing appeals for those years. After a hearing, which included consideration of a number of motions filed by Mr. Nicholls, Justice Miller made an order dated January 21, 2011 dismissing the application to extend the time for appealing. Again, Mr. Nicholls did not appeal that order but applied to the Tax Court for reconsideration and for certain other relief. Those motions were dismissed by Justice Little in a judgment dated May 19, 2011 (2011 TCC 272). It is Justice Little's judgment that is under appeal in A-210-11.

[4] In both A-209-11 and A-210-11, Mr. Nicholls has filed a motion for an order determining the contents of the appeal books. He has also asked that consideration of those motions be adjourned pending the determination of two actions against the Crown for damages. Those actions were commenced by Mr. Nicholls in the Ontario Superior Court of Justice on August 8, 2011 (CV-11-432346 and CV-11-432349).

[5] Mr. Nicholls' claims for damages are based on allegations of fraud on the part of certain Crown officials. In both cases Mr. Nicholls appears to be alleging that, but for the fraud, he would not be subject to certain tax liabilities. The factual allegations are not completely clear, but I assume that the tax liabilities referred to in the statements of claim are (or include) the tax liabilities in issue in the judgments under appeal to this Court in A-209-11 and A-210-11.

[6] Having reviewed the material submitted by Mr. Nicholls, I am unable to conclude that any useful purpose would be served by adjourning his motions to determine the contents of the appeal books in A-209-10 and A-210-11 pending the outcome of Mr. Nicholls' claims for damages. On the contrary, it would appear that his claims for damages cannot be fully assessed while there is litigation pending in this Court or the Tax Court that could finally determine the amount of the tax liabilities referred to in the statements of claim. For that reason, I will dismiss the motion to adjourn the motion to determine the contents of the appeal book.

[7] As to the contents of the appeal books, it seems to me that at this stage the parties agree on most of the appeal book contents. There remains disagreement on relatively minor points. Considering the grounds for appeal asserted by Mr. Nicholls, it seems prudent to ensure that the appeal book includes all items currently proposed for inclusion by either party. On that basis, the contents of the appeal book will be as set out in the orders released concurrently with these reasons.

[8] Mr. Nicholls has asked that certain documents to be included in the appeal books be provided at the cost of the Crown. I see no basis for departing from the normal rule that the

appellant is responsible for producing and serving the appeal books, and filing the required number of copies.

[9] Costs of these motions are costs in the cause. These reasons will be filed in both A-209-11 and A-210-11.

“K. Sharlow”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-209-11

**STYLE OF CAUSE:** PATRICK E. NICHOLLS v. HER  
MAJESTY THE QUEEN

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** SHARLOW J.A.

**DATED:** September 1, 2011

**WRITTEN REPRESENTATIONS BY:**

Patrick E. Nicholls

FOR THE APPELLANT  
(SELF REPRESENTED)

Thang Trieu

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

N/A

FOR THE APPELLANT  
(SELF REPRESENTED)

Myles J. Kirvan  
Deputy Attorney General of Canada

FOR THE RESPONDENT

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-210-11

**STYLE OF CAUSE:** PATRICK E. NICHOLLS v. HER  
MAJESTY THE QUEEN

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** SHARLOW J.A.

**DATED:** September 1, 2011

**WRITTEN REPRESENTATIONS BY:**

Patrick E. Nicholls

FOR THE APPELLANT  
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Thang Trieu

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

N/A

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