Docket: 2021-3156(IT)G

BETWEEN:

ORDIA KELLY,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

Docket: 2022-1610(IT)G

AND BETWEEN:

PETER WOOD,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

Docket: 2021-2320(IT)G

AND BETWEEN:

WALTER FURLAN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

Docket: 2022-1822(IT)G

AND BETWEEN:

ERNEST FRASER,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

Docket: 2022-759(IT)G

AND BETWEEN:

TINA CASSIDY,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

Docket: 2022-3149(IT)G

AND BETWEEN:

FRANCIS SCHMEICHEL,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

Docket: 2022-893(IT)I

AND BETWEEN:

BRENDA REES,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

Docket: 2022-1109(IT)G

AND BETWEEN:

JOHN HASSALL,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

Docket: 2025-894(IT)G

AND BETWEEN:

GORDON DENNING,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

Docket: 2022-75(IT)G

AND BETWEEN:

JOE McLEAN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

Docket: 2022-551(IT)I

AND BETWEEN:

ROBERT P. WARREN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

ORDER

BACKGROUND

A. These appeals are part of the GLGI group of appeals.

B. For the reasons set out in the attached Reasons for Order, I am concerned that allowing the appeals to continue may lead to an abuse of the Court's process.

ORDER

THE COURT ORDERS THAT:

1. Each Appellant shall have until April 24, 2026 to file written submissions explaining why their appeal should not be struck for abuse of process without leave to amend.

2. If an Appellant fails to file written submissions on or before April 24, 2026, their appeal will be struck without further hearing.

3. If, after reviewing an Appellant's written submissions, the Respondent wants to file written submissions in response, the Respondent may do so on or before May 15, 2026.

4. Written submissions filed pursuant to this Order shall not exceed 10 pages.

Signed this 19th day of March 2026.

"David E. Graham"

Graham J.

Citation: 2026 TCC 53
Date: 20260319
Docket: 2021-3156(IT)G

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Respondent.

REASONS FOR ORDER

Graham J.

[1] This Order covers a number of different Appellants who participated in the Global Learning and Gifting Initiative donation program ("GLGI"). I am going to give each of them a chance to explain why their appeal should not be struck without leave to amend for abusing this Court's process.

A. History of Failure

[2] As Justice Bocock summarized in *Malone v. The King*,[1] "GLGI likely competes for the title of most litigated charitable donation program/initiative/scheme/sham (depending on one's perspective) before the Tax Court. The program's longevity is notable as well; the seminal lead case concerning GLGI was heard and decided a decade ago by Justice Pizzitelli in *Mariano v. The Queen*."

[3] The appellants in the *Mariano* test case[2] were represented by counsel. The trial lasted 25 days. Justice Pizzitelli was presented with extensive evidence about the GLGI program. He heard testimony, not just from the appellants, but also from program insiders and expert witnesses. In dismissing the appeals he relied on multiple different flaws in the program.

[4] The principles set out in *Mariano* have been applied and upheld again and again both by this Court and the Federal Court of Appeal.[3]

[5] I have been case managing the GLGI group of appeals for about seven years. In that time, the Court has dealt with approximately 1,500 GLGI appeals. None of

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1 2025 TCC 43, at para 2.

2 2015 TCC 43.

3 Most GLGI decisions are unreported as the trial judges gave oral reasons for judgment. The key reported cases are: *Mariano*; *Tudora v. The Queen* (2020 TCC 11); *Aslam v. The King* (2024 FCA 193); *Bacchus v. The King* (2024 TCC 62); and *Malone v. The King* (2025 TCC 43).

those appeals has been allowed. Each of them has been dismissed, quashed or discontinued.

[6] Approximately 700 of the 1,500 GLGI appellants retained counsel to pursue the one legal issue that was not dealt with in *Mariano*. They asserted that they should be allowed to claim a donation credit for the cash that they put into the scheme. They lost in this Court (*Walby v. The Queen*[4]) and at the Federal Court of Appeal.[5] On February 19, 2026, the Supreme Court of Canada denied leave to appeal.[6]

[7] And yet, a small number of appellants persists. They present no new grounds for appeal, no new facts, no new arguments, nothing. Just the stale recitation of a string of arguments that have failed time and again.

B. The Problem With Group Appeals

[8] Group appeals, like GLGI, are a unique feature of tax litigation.[7] They arise when a promoter develops and markets a tax scheme to members of the public. They can involve hundreds or thousands of different taxpayers. Typically, the participants have nothing in common other than their participation in the scheme.

[9] The problem with group appeals is that, too often, the Court ends up having to repeatedly hear trials with the same facts and same issues and, as a result, the same outcome. The only thing that changes is the appellant.

[10] One would think that, once the first or maybe second appeal was decided, the remaining appellants would either discontinue their appeals or agree to settle on the same basis as those first cases. Unfortunately, that is rarely what happens.

[11] There is no viable method to force appellants into a single action. Section 174 of the *Income Tax Act* provides for the possibility of asking the Court to determine

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4 2023 TCC 164.

5 2025 FCA 94.

6 2026 CanLII 11877 (SCC).

7 The name "group appeal" is somewhat misleading. It suggests that a group of appellants has a single appeal. That is, however, not the case. Each appellant has their own appeal. The Court groups them together and refers to them as a "group" because they all participated in the same tax scheme.

a common question but the provision is unworkable with anything other than a small number of taxpayers.

[12] Section 146.1 of the *Tax Court of Canada Rule (General Procedure)* (the "Rules") provides a mechanism for establishing a lead case for a group of appeals. However, while appellants can agree to be bound by the outcome of a lead case, there is no mechanism to force them to be bound. Similarly, there is no mechanism to encourage them to agree to be bound by, for example, imposing cost consequences on appellants who refuse to be bound and later either discontinue their appeal or do no better than the lead case at trial.

[13] Furthermore, the collection restrictions in section 225.1 of the *Income Tax Act* provide a perverse incentive for financially-strapped appellants to string their appeals out as long as possible in order to defer the collection of tax (albeit at the cost of incurring significant interest charges).

[14] So what is the Court to do with appellants who first refuse to be bound by a lead case and then refuse to see the writing on the wall when that case is decided?

C. Abuse of Process

[15] Under section 53(1)(c) of the Rules, the Court may strike a pleading without leave to amend if the Court finds that the pleading is an abuse of the process of the Court. Although an allegation of abuse of process is usually raised by the opposing party, section 53(1) allows the Court to raise it on its own initiative.

[16] While abuse of process often refers to something that one party or the other has done in an appeal, it can also be about protecting the judicial process. Relitigating the same issue over and over wastes judicial resources and, more importantly, risks undermining the credibility of the judicial process.

[17] The Federal Court of Appeal described abuse of process by relitigation as follows in *Csak v. The King*:[8]

[8] 2025 FCA 60, at para. 18. These same principles were re-emphasized by the Supreme Court of Canada in *Government of Saskatchewan (Minister of Environment) v. Métis Nation – Saskatchewan et. al.* (2025 SCC 4).

> The doctrine of abuse of process is rooted in a court's inherent jurisdiction to prevent misuse of its process that would be unfair to a party or otherwise bring the administration of justice into disrepute. It is a discretionary remedy, characterized by its flexibility and unencumbered by the specific requirements of concepts such as issue estoppel: *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 at para. 35; *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at paras. 35 and 37 (C.U.P.E.).
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> Abuse of process by relitigation may exist where the parties are not the same (which is required to establish issue estoppel) but the litigation is found to be, in essence, an attempt to revisit the "same issue" as in a prior proceeding: *C.U.P.E.* at para. 37. Allowing the litigation to proceed may be considered to violate important principles such as judicial economy, consistency, finality and the integrity of the administration of justice: *C.U.P.E.* at para. 37.

[18] I will apply these factors to the GLGI appeals.

Consistency

[19] The primary ground on which Justice Pizzitelli dismissed the appeals in *Mariano* was that the appellants lacked donative intent. Justice Pizzitelli did not simply reach his conclusion based on the individual subjective intentions of the appellants before him. Rather, he conducted an extensive analysis of how the GLGI program worked and concluded that no GLGI participant could have had donative intent:

> In the end, I cannot see how any person participating in such a scheme … can argue, based on the manner in which the scheme was marketed and in the makeup and integration of the Transactional Documents that deliver it, that he or she expected none other than to profit from, be enriched or not be impoverished by, such participation, and thus not have the requisite donative intent.

[20] Substantially all of the GLGI appeals that have been dismissed on their merits since *Mariano* have been dismissed because the appellant failed to demonstrate that they had donative intent.[9] Time after time, appellants professed their deep beliefs in the good work of whatever charity received their purported donation. Time after time they asserted that they only participated out of a desire to help. Time after time, the

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[9] A small number of appeals were dismissed for other reasons such as that the appellant was seeking relief that the Court did not have jurisdiction to grant (e.g. *Wiegers v. The Queen* 2019 TCC 260).

Court found that, given the structure of the program, the appellants could not have had donative intent.

[21] This is hardly surprising. As Justice Bocock observed in *Malone*, "[s]implistically, … each donor expected to receive, in return for their cash donation, software licences having an expected value of three to eight times greater than the cash donation … resulting in a tax receipt that entitles the taxpayer to claim an inflated tax credit."[10]

[22] In, *Tudora v. The Queen*, one of the first GLGI cases post-*Mariano*, Justice MacPhee addressed the importance of judicial comity on the question of donative intent. In following Justice Pizzitelli's lead, he emphasized that similar cases should receive the same treatment.[11]

[23] As the Supreme Court warned in *Toronto (City) v. C.U.P.E., Local 79*, "[i]f the result in [a] subsequent proceeding is different from the conclusion reached in the first on the very same issue, the inconsistency, in and of itself, will undermine the credibility of the entire judicial process, thereby diminishing its authority, its credibility and its aim of finality."[12]

[24] If, in the face of all of the prior GLGI decisions, a judge were now to somehow find that one of the Appellants had donative intent, this inconsistent result could seriously undermine the credibility of the judicial process. This argues strongly in favour of striking the appeals.

[25] Before moving on, I want to emphasize that it is not necessary for the Court to wait as long as I have before acting to protect the credibility of the judicial process from potentially inconsistent decisions being issued on the same facts and issues. The risk to the judicial process from abuse of process by relitigation does not arise because a large number of cases have already been decided. On the contrary, each new case heard increases the risk of an inconsistent decision. In my view, the risk arises as soon as all potential issues of law and fact have been thoroughly canvassed

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10 At para. 4.

11 2020 TCC 11, at paras. 38-43 (relying on *Kossow v. The Queen* (2013 FCA 283 at para. 29).

12 2003 SCC 63, at para. 51.

by the Court. If not for the long delay occasioned by the appeal of the *Walby* decision, I would have issued this order years (and hundreds of appeals) ago.

There Is No Subjective Element to GLGI Appeals

[26] Generally speaking, it would be inappropriate to strike an appeal for abuse of process if the issues to be relitigated had important subjective elements. If an appellant's knowledge, state of mind or actions could distinguish them from others, they should have their day in court.

[27] For example, the Fiscal Arbitrators group appeal involves nothing but gross negligence penalties. As a result, each Fiscal Arbitrators case needs to be considered on its merits to determine whether the false statements made by that specific appellant were made knowingly or under circumstances amounting to gross negligence.

[28] There is a subjective component to donative intent. However, given Justice Pizzitelli's conclusive statement in *Mariano* and Justice Bocock's observations in *Malone*, that subjective component will not make any difference to the outcome of a GLGI appeal. The GLGI program was structured in such a way that, regardless of an appellant's charitable intentions, they were still going to profit. As the Federal Court of Appeal clearly stated in *Markou v. The Queen*, "where a person anticipates receiving tax benefits that exceed the amount or value of an alleged gift, the donative intent is necessarily lacking."[13]

[29] Other than donative intent, there has been no subjective element to any of the GLGI appeals - no way in which one appellant has been able to distinguish their participation in the program from another. The amount donated has been irrelevant. The cash-to-courseware multiplier has been irrelevant. The specific charities involved have been irrelevant. The year in which the donation was made has been irrelevant. Most importantly, since the Minister neither assessed beyond the normal

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13 2019 FCA 299, at para. 60.

reassessment period nor assessed gross negligence penalties, the appellants' individual actions, beliefs and knowledge have been irrelevant.[14]

[30] All of this argues in favour of striking the appeals without leave to amend.

Judicial Economy

[31] Managing and hearing GLGI appeals has put a huge burden on judicial and registry resources. Far too often, those resources have been expended for no reason. GLGI appellants routinely fail to appear for their trials or withdraw their appeals at the last minute. In either case, the scheduled trial time is wasted.

[32] At the peak of GLGI litigation, the registry was scheduling entire sitting weeks full of nothing but GLGI appeals. Of the 20-25 appeals scheduled before a given judge, it was common that only one or two of them actually went ahead.

[33] Nine of the Appellants' appeals have already been scheduled for trial. Collectively, those appeals represent eight trial days that could better be utilized hearing the appeals of other taxpayers.

[34] Based on all of the foregoing, I find that judicial economy argues in favour of striking the appeals without leave to amend.

Finality

[35] The Respondent has been a party to each of the 1,500 GLGI appeals. Despite the significant work that the Respondent put into litigating *Mariano*, he has been forced again and again to relitigate the same issues. The Respondent's, and by extension the public's, interest in finding finality in the process favours a finding of abuse of process.

Motives or Status of the Parties

[14] Many GLGI appellants have mistakenly asserted that they were assessed penalties or that they were assessed beyond the normal reassessment period but there has not been a single case where this actually occurred.

[36] As the Supreme Court stated in *Toronto (City)*, "[r]ather than focus on the motive or status of the parties, the doctrine of abuse of process concentrates on the integrity of the adjudicative process."[15]

[37] Even if I were to consider the motives of the parties, given that the issue of abuse of process was raised by me, not in a motion from one of the parties, their motives are largely irrelevant. I will, however, make the following observation. Had the Respondent brought this motion, his motives would likely be aligned with the judicial economy concerns raised above. The Respondent expends far too many resources preparing for GLGI appeals that do not proceed.

Fraud, Dishonesty, New Evidence and Fairness

[38] In *Toronto (City)*, the Supreme Court observed that "[t]here may be instances where relitigation will enhance, rather than impeach, the integrity of the judicial system, for example: (1) when the first proceeding is tainted by fraud or dishonesty; (2) when fresh, new evidence, previously unavailable, conclusively impeaches the original results; or (3) when fairness dictates that the original result should not be binding in the new context."[16]

[39] There is no indication that any of those factors are present in the Appellants' appeals. There are no allegations that *Mariano* was tainted by fraud or dishonesty. None of the Appellants appears to offer fresh new evidence let alone evidence that would impeach the original result. There is no apparent reason why fairness would dictate that *Mariano* should not be binding in the Appellants' appeals.

[40] My view on fairness would likely be different if *Mariano* and *Walby* had been unbalanced wins for the Respondent against a single self-represented taxpayer rather than fully-litigated, seemingly well-funded appeals with the benefit of counsel.

[41] Some might argue that, because the Appellants are self-represented, it would be unfair to impose such a technical procedural hurdle on them. I disagree. It appears to be precisely because the Appellants are self-represented that they continue their appeals in the face of clear case law. While their inexperience or lack of understanding of the law may explain their actions, it cannot be a reason to allow

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15 At para. 51.

16 At para. 52.

those actions to continue at the expense of consistency, judicial economy and finality.

[42] Others might argue that the Appellants' right to their day in court should trump everything else. In *Morel v. The Queen*,[17] the Federal Court of Appeal wrestled with the question of whether abuse of process by relitigation could ever be used against someone who was not a party to the previous litigation.

[43] *Morel* involved limited partnership losses claimed by investors. The promoters of the scheme were convicted of fraud. The Respondent sought to use those convictions to prevent the investors from arguing, among other things, that the limited partnership had carried on business or incurred the expenses in question. The investors argued that, because they were not parties to the criminal matter, applying abuse of process by relitigation would deprive them of their right to be heard.

[44] Because the criminal trial was a trial by jury, the FCA found it was almost impossible to know what factual conclusions the jury had reached. Therefore, it was hard for the FCA to see what factual conclusions the investors could be precluded from challenging. Furthermore, the criminal trial did not decide the question that gave rise to the reassessments, namely whether the investors had incurred business expenses for tax purposes. As a result, the FCA held that abuse of process should not be applied.

[45] In a concurring decision, Justice Nadon argued that a bright-line test should be established to prevent abuse of process being used against a non-party to the previous litigation. Justice Sexton (Justice Pelletier concurring) held that it was inappropriate to create such a test. He noted that "it is not possible to foresee all potential fact situations. It would be unwise for this Court to lay down such a rule, only to have to revoke or revise it because of an unforeseen situation. The balancing test as outlined by Justice Arbour [in CUPE] is sufficiently flexible to accommodate changing situations by keeping the focus of the analysis on the integrity of the judicial system."[18]

[46] In my view, the GLGI appeals are just such an unforeseen situation. The facts in the appeals are identical. The issues are identical. They have been extensively

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17 2008 FCA 53.

18 At para. 55.

litigated. There is nothing left to litigate. In the circumstances, the fact that the Appellants have not personally had a chance to make those same arguments about those same facts is far outweighed by the potential risks to the integrity of the judicial system. If abuse of process by relitigation cannot apply in these circumstances, it is difficult to imagine when it could ever apply to a non-party to the underlying litigation.

Summary

[47] Consistency, judicial economy and finality all indicate that it would be appropriate to strike the Appellants' appeals for abuse of process without leave to amend. There is no assertion that fraud, dishonesty, new evidence or fairness require the appeals to proceed. In summary, there is no indication that relitigation would enhance, rather than impeach, the judicial system.

[48] All that said, because I am not intimately familiar with each Appellant's appeal, I need to give each Appellant the chance to explain why they think their appeal should not be struck for abuse of process. If they can satisfy me that they will be raising new facts or new arguments that can somehow overcome the donative intent problem or that their appeal involves some other issue over which the Court has jurisdiction, then their appeals should be heard.

D. Opportunity for Submissions

[49] Each Appellant may, on or before, April 24, 2026 file and serve written submissions not exceeding 10 pages, explaining why their appeal should not be struck for abuse of process.

[50] If an Appellant fails to file written submissions on or before April 24, 2026, I will strike their appeal for abuse of process without leave to amend.

[51] If, after reviewing an Appellant's written submissions, the Respondent wants to file written submissions not exceeding 10 pages in response, the Respondent may do so on or before May 15, 2026.

[52] I will decide whether or not to strike each Appellant's appeal, with or without leave to amend, based solely on the written submissions. There will not be hearings on this issue.

E. Other Issues Under Appeal

[53] Some of the Appellants have also appealed issues unrelated to GLGI.

Francis Schmeichel

[54] One of the Appellants, Francis Schmeichel, has appealed two different tax schemes: GLGI and the Relief Lending Group. This order only covers his involvement in GLGI. It does not apply to his involvement in the Relief Lending Group. If I strike his appeal, I will only strike the appeals of his 2007, 2008, 2011 and 2012 tax years and the bifurcated portion of the appeal of his 2010 tax year relating to GLGI. The appeal of his 2009 tax year and the bifurcated portion of the appeal of his 2010 tax year relating to Relief Lending Group will remain.

Gordon Denning

[55] Another Appellant, Gordon Denning, has also appealed two different tax schemes: GLGI and Royal Crown Gold. Unlike Mr. Schmeichel, Mr. Denning's appeal has not yet been bifurcated.

[56] The Respondent has separately brought a motion to strike Mr. Denning's Fresh As Amended Notice of Appeal on the basis that it discloses no reasonable grounds for appealing either the GLGI or the Royal Crown Gold issues. I will hold that motion in abeyance until I have decided whether to strike the GLGI portions of Mr. Denning's appeal for abuse of process.

Kelly Ordia

[57] It appears that a third Appellant, Kelly Ordia, was also involved in two different schemes: GLGI and the Universal Donation Program.[19] However, Ms. Ordia's Notice of Appeal only refers to GLGI. Other than a comment in a footnote, the Reply makes no reference to the Universal Donation Program. Based on the foregoing, unless the parties tell me otherwise, I will assume that the Universal Donation Program is not in issue in Ms. Ordia's appeal.

[19] This information comes from Footnote 1 to the Reply in Ms. Ordia's appeal.

Signed this 19th day of March 2026.

"David E. Graham"

Graham J.

CITATION:	2026 TCC 53
COURT FILE NOS.:	2021-3156(IT)G 2022-1610(IT)G 2021-2320(IT)G 2022-1822(IT)G 2022-759(IT)G 2022-3149(IT)G 2022-893(IT)I 2022-1109(IT)G 2025-894(IT)G 2022-74(IT)G 2022-551(IT)I
STYLES OF CAUSE:	ORDIA KELLY PETER WOOD WALTER FURLAN ERNEST FRASER TINA CASSIDY FINACIA SCHMEICHEL BRENDA REES JOHN HASSALL GORDON DENNING JOE McLEAN ROBERT P. WARREN v. HIS MAJESTY THE KING
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	February 26, 2026
REASONS FOR ORDER BY:	The Honourable Justice David E. Graham
DATE OF ORDER:	March 19, 2026

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