

Federal Court  
of Appeal



CANADA

Cour d'appel  
fédérale

**Date: 20090527**

**Docket: A-455-08**

**Citation: 2009 FCA 170**

**CORAM: NADON J.A.  
PELLETIER J.A.  
TRUDEL J.A.**

**BETWEEN:**

**DENNIS A. KEAY**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Halifax, Nova Scotia, on May 26, 2009.

Judgment delivered at Halifax, Nova Scotia, on May 27, 2009.

REASONS FOR JUDGMENT BY:

TRUDEL J.A.

CONCURRED IN BY:

NADON J.A.  
PELLETIER J.A.

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**REASONS FOR JUDGMENT**

**TRUDEL J.A.**

[1] In computing his business income for his taxation year 2004, the appellant claimed a deduction for legal expenses incurred during the period between April 2002 and September 2004 in the context of divorce proceedings commenced by his then spouse. In 2007, the Minister reassessed the appellant for the 2003 and 2004 taxation years and disallowed the deduction. The appellant appealed the Minister's decisions to the Tax Court of Canada.

[2] Webb J. (the judge) (*Keay v. The Queen*, 2008 TCC 481) dismissed the appeal of the Minister's reassessments finding that the appellant had failed to establish that the legal expenses in question were incurred primarily to earn income, as required by subsection 18(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.). Hence, the present appeal.

[3] On the basis of the record before us, I have not been persuaded that the judge made a palpable and overriding error justifying this Court's intervention. In light of the appellant's testimony, documentary evidence and the arguments of the parties, it was open to the judge to conclude as he did.

[4] Therefore, this appeal will be dismissed but, in the circumstances, without costs.

“Johanne Trudel”

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J.A.

“I agree.

M. Nadon J.A.”

“I agree.

J.D. Pelletier J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-455-08

**STYLE OF CAUSE:** Dennis A. Keay v. Her Majesty  
the Queen

**PLACE OF HEARING:** Halifax, Nova Scotia

**DATE OF HEARING:** May 26, 2009

**REASONS FOR JUDGMENT BY:** TRUDEL J.A.

**CONCURRED IN BY:** NADON J.A.  
PELLETIER J.A.

**DATED:** May 27, 2009

**APPEARANCES:**

Dennis A. Keay ON HIS OWN BEHALF

Sandra L. Doucette FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

John H. Sims, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada