

Federal Court of Appeal	 CANADA	Cour d'appel fédérale
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Date: 20100309

Docket: A-552-07

Citation: 2010 FCA 71

**CORAM: NOËL J.A.
LAYDEN-STEVENSON J.A.
STRATAS J.A.**

BETWEEN:

GEORGE ALBERTO DEMARCHI

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on March 9, 2010.

Judgment delivered from the Bench at Toronto, Ontario, on March 9, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

LAYDEN-STEVENSON J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on March 9, 2010)

LAYDEN-STEVENSON J.A.

[1] This appeal is from the judgment of Justice McArthur of the Tax Court of Canada (the judge) dismissing the appellant's appeal from reassessments of the Minister of National Revenue (the Minister) under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act) for the 1999 and 2000 taxation years. The Minister disallowed the business expenses and reduced the employment expenses claimed by the appellant.

[2] The respondent (the Crown), as a preliminary issue, submits that the appellant has failed to comply with the orders of Justices Létourneau and Sharlow of this Court with respect to the composition and completeness of the appeal book. The orders are dated April 8, 2008 and February 10, 2009 respectively. The Crown requests that the appeal be dismissed on that basis. While we are of the view that the deficiency in the record, which is incomplete, is fatal to the appeal, we will comment, nonetheless, on the merits.

[3] The appellant's argument turns on the judge's findings of fact and credibility. To succeed, he must demonstrate palpable and overriding error on the judge's part. Our review of the record leads us to conclude that the judge did not err in concluding as he did. The judge was not satisfied that the claimed expenses could be lawfully claimed or deducted under the Act. We can see no reason to interfere with that finding.

[4] The appellant's allegation of unfairness was raised for the first time during oral argument. The appellant was provided a full opportunity to present evidence, cross-examine witnesses and make submissions before the judge. Consequently, he cannot succeed on this new ground.

[5] The appeal will be dismissed with costs.

“Carolyn Layden-Stevenson”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-552-07

(AN APPEAL FROM THE TAX COURT OF CANADA, FROM THE REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE C. H. MCARTHUR, DATED NOVEMBER 13, 2007, IN TAX COURT FILE NO.: 2004-3538(IT)G)

STYLE OF CAUSE: GEORGE ALBERTO DEMARCHI.
v. HER MAJESTY THE QUEEN

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 9, 2010

REASONS FOR JUDGMENT OF THE COURT BY: (NOËL, LAYDEN-STEVENSON & STRATAS JJ.A.)

DELIVERED FROM THE BENCH BY: LAYDEN-STEVENSON J.A.

APPEARANCES:

George DeMarchi FOR THE APPELLANT (SELF-REPRESENTED)

Bobby Sood FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A FOR THE APPELLANT (SELF-REPRESENTED)

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