Docket: 2007-748(IT)I

BETWEEN:

SARASWATI P. SINGH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on October 20, 2008, at Edmonton, Alberta
Before: The Honourable Justice Wyman W. Webb

Appearances:

Counsel for the Appellant:	M. L. Engelking
Counsel for the Respondent:	Valerie D. Meier and Darcie Charlton

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JUDGMENT

Based upon the Partial Consent to Judgment that was filed in this matter and based upon my findings on the issues as presented at the hearing:

(a) The Appellant's appeal, with respect to the 2005 taxation year, is quashed, without costs;

(b) The appeals, with respect to the 2000 and 2001 taxation years, are allowed in part and without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that:

1. The Appellant's cost of goods sold for the 2000 taxation year be increased by $7,094;

2. The Appellant's non-capital losses from his 1994 taxation year be carried-forward to his 2000 taxation year;

3. The business income for 2000 be reduced by $1,054 as a result of a till shortage of this amount for 2000; and

4. The Appellant be allowed an additional deduction for capital cost allowance in relation to his rental properties in the following amounts:

Taxation Year	**Amount**
2000	$3,633.00
2001	$2,608.79

Signed at Halifax, Nova Scotia, this 19th day of November 2008.

"Wyman W. Webb"

Webb J.

Citation: 2008TCC629
Date: 20081119
Docket: 2007-748(IT)I

BETWEEN:

SARASWATI P. SINGH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb J.

[1] The Appellant, in his Notice of Appeal, raised a number of issues related to the reassessment of his tax liability for 2000, 2001, and 2005. Prior to the hearing of these appeals, the Respondent filed a Motion to Quash the parts of the Appellant's Notice of Appeal related to the 2005 taxation year on the basis that the Appellant had not filed a Notice of Objection to the assessment of his tax liability for 2005. Also prior to this hearing, the Appellant and the Respondent filed a Partial Consent to Judgment in which the parties agreed to the following:

A: that the Appellant's appeal, with respect to the 2005 taxation year, should be quashed, without costs;

B: that the following amounts should be allowed in relation to 2000 and 2001:

1. The Appellant's cost of goods sold for the 2000 taxation year should be increased by $7,094;

2. The Appellant’s non-capital losses from his 1994 taxation year should be carried-forward to his 2000 taxation year; and

3. The Appellant should be allowed an additional deduction for capital cost allowance in relation to his rental properties in the following amounts:

Taxation Year	Amount
2000	$3,633.00
2001	$2,608.79

[2] In the Partial Consent to Judgment there were a number of issues that remained unresolved. At the commencement of the hearing, counsel for the Appellant noted that the number of issues that will be dealt with at the hearing was reduced to four and these were as follows:

1. Whether the $25,000 that the Appellant had received from NCE Petrofund Corp. (“NCE”) was properly included in the Appellant's income for the 2001 taxation year;

2. Whether the Appellant is entitled to deduct any further expenses in 2000 or 2001 as set out in the appendix attached to the Partial Consent to Judgment;

3. Whether the Appellant's net business income should be reduced by $1,054 in 2000 as a result of a till shortage (The Respondent agreed that the income should be reduced by $254 and therefore only $800 of the amount of $1,054 was in dispute); and

4. Whether the Appellant should be allowed to argue that he should be allowed to claim additional capital cost allowance with respect to the Dodge Caravan in 2000 and 2001 and, if the Appellant is allowed to make such argument, whether the Appellant is entitled to claim additional capital cost allowance with respect to the Dodge Caravan in 2000 and 2001, and if so how much is he entitled to claim.

Amount received from NCE

[3] The Appellant owns a parcel of land on the west side of Edmonton at 184th Street at about 25th Avenue. There were three operating oil wells on this property and an existing underground pipeline. The Appellant was approached by someone acting on behalf of NCE as NCE wanted to replace the existing pipeline. When he was first approached, he indicated he would not consent to NCE accessing his

property to replace the pipeline. The Appellant described his contact with the person representing NCE as follows:

> Q: And what did he convey to you was the purpose of the visit?
>
> A: He told me that he would like to excavate the area where the pipeline was located, change the pipe, would take some additional land and would - after replacing the pipe would - would fill it.
>
> Q: And what was your response to that request?
>
> A: My response was quite negative in the sense that that pipeline was fairly close to a number of houses that had been in place for some time, and there is always a little likelihood that pipe could burst and also that we would not be able to build on that. And there may be some emissions, the emissions coming of the well itself, but if something happens from the pipeline to and also would be something that one would not be able to use it as if it were the land -- say, for example, you will not be able to build on that part of the land, and if he wanted to do something in the area, then you had to locate the pipe, and for the number of adverse effects that were likely to arise, and my reaction to him was very briefly that no, I wouldn't like.

[4] In relation to the issue of whether any additional land was taken by NCE, the following exchange took place between the counsel for the Appellant and the Appellant:

> Q Well, in any event, sir, was any additional land taken?
>
> A No. I mean from the diagram that they have shown here, it seems they have not, but my agreement with them was that they would take this additional amount of land that they are saying, .25 acres, and I am still not quite sure whether or not they have taken this additional land. Maybe that they did. Because they are showing it here .25 acres so -- but they are saying it as work space which they release the land later, but I'm not quite sure of that.

[5] There was no evidence that any additional land was taken by NCE and because the Appellant’s testimony was vague on this point, I find that no additional land was taken by NCE.

[6] The Appellant signed two separate documents with NCE. Each document consisted of only a few paragraphs. One document, which was dated July 10, 2001, provided as follows:

> I (We), Saraswati Prasad Singh of Edmonton, in the province of Alberta, being the registered owner (s) of the following land:
>
> Portion of SW ¼ 4-52-25-W4M
>
> hereby consent to the Grantee, NCE Petrofund Corp. to enter upon and use those portions of the said land as shown outlined in green on the plan attached hereto for the purpose of a Work Space to be used on a temporary basis for construction operations.
>
> This consent is granted on the understanding that the Operator shall clean up and restore the Work Space area following construction.
>
> CONSIDERATION for the granting of this Consent shall be Two Hundred Fifty ($250) Dollars.

[7] The other document, which is dated the same date as the first document (July 10, 2001) stated as follows:

> NCE Petrofund Corp. agrees to pay the undersigned a total of Twenty-four Thousand Seven Hundred Fifty ($24,750) Dollars. Payment acknowledges time and trouble to execute a Work Space Agreement, associated Routing Consent and Not-Objection to the EUB issuing NCE Petrofund Corp. a permit to construct the subject pipelines.
>
> Payment also represents value to NCE Petrofund Corp. for avoiding time delays and hearing costs for your titled interest in the subject lands.

The following hand written part was added:

> Payment to be made as soon as permit issued [for] the [construction].

[8] The position of the Appellant is that the amount of $25,000 received from NCE was received on account of capital. Counsel for the Appellant, in his closing argument, stated that the evidence showed that the new pipeline was larger than the old pipeline. However, the evidence did not disclose that there was to be any change in the size of the pipeline. The only reference by the Appellant, in his direct examination, in relation to the changes made to the pipeline was in the part that is quoted in paragraph 3 above. In cross-examination, the following exchange took place:

Q So they dug up a pipeline that was already there and they replaced it with a new pipeline and then they covered it back up?

A That -- that -- that's correct.

[9] There was no evidence that was presented to indicate that the size of the pipeline had changed from the pipeline that was there before.

[10] The only cases that were referred to by either counsel were cases from 1954 -- 1956. These cases were decided prior to the introduction of a tax on capital gains in 1972. With the introduction of the tax on capital gains, the definitions of disposition and proceeds of disposition were added to the *Income Tax Act*. These definitions are, in part, as follows:

248(1) In this Act

…

"disposition" of any property, except as expressly otherwise provided, includes

(a) any transaction or event entitling a taxpayer to proceeds of disposition of the property,

54. In this subdivision

"proceeds of disposition" of property includes,

(a) the sale price of property that has been sold,

(b) compensation for property unlawfully taken,

(c) compensation for property destroyed, and any amount payable under a policy of insurance in respect of loss or destruction of property,

(d) compensation for property taken under statutory authority or the sale price of property sold to a person by whom notice of an intention to take it under statutory authority was given,

(e) compensation for property injuriously affected, whether lawfully or unlawfully or under statutory authority or otherwise,

> (f) compensation for property damaged and any amount payable under a policy of insurance in respect of damage to property, except to the extent that such compensation or amount, as the case may be, has within a reasonable time after the damage been expended on repairing the damage,
>
> …

[11] A property does not have to be sold in order for an amount received to be included in proceeds of disposition. The definition of proceeds of disposition includes compensation for property injuriously affected or damaged. It seems to me that in order for the amount received to be treated as proceeds of disposition (and hence received on account of capital) it must be an amount included in this definition.

[12] However, in this case, prior to 2001 there was an existing pipeline on the property. Therefore the Appellant's comments with respect to not being able to build on the property or having to locate the pipeline first before any work could be done on the property were equally applicable before this work was done in 2001. Since there already was a pipeline on this property prior to 2001, any restrictions on building on the property and the necessity to locate the pipeline would be applicable whether the work was done in 2001 to replace the pipeline or not. As noted there was no evidence that the new pipeline was any larger than the old pipeline and therefore there is no reason to suggest that the restrictions on how close a building could be built to the pipeline would be any different than before the pipeline was replaced.

[13] The Appellant’s concerns with respect to leaks would presumably be with respect to leaks during construction since it would seem logical that a new pipeline should be less prone to leaks than an older pipeline.

[14] It seems to me that the amount that the Appellant received in 2001 was simply an amount that he received to allow NCE to have access to the property to do the necessary work. This is also consistent with the written documents that were signed and in particular the written document related to the payment of $24,750 which stated that:

> Payment acknowledges time and trouble to execute a Work Space Agreement, associated Routing Consent and Not-Objection to the EUB issuing NCE Petrofund Corp. a permit to construct the subject pipelines.

There is no reference to any part of the payment being made for any injurious affection or damage to the property.

[15] The $25,000 that the Appellant received in 2001 was not compensation for property that was injuriously affected or damaged. The work that was done was simply to replace the pipeline that was already there. The amount received was simply to obtain the consent of the Appellant to enter the property to do the work without requiring NCE to make an application to the EUB for a permit without the consent of the Appellant which could have resulted in a hearing as provided in subsection 15(5) of the *Surface Rights Act* (Alberta) (and hence delays and additional costs for NCE). As a result, I find that the $25,000 that the Appellant received in 2001 from NCE should have been included in the Appellant's income in 2001.

Additional Expenses

[16] In preparing for this appeal, the Appellant has determined that he incurred additional expenditures and he is seeking to claim these as expenses in computing his income for 2000 and 2001 from his liquor store business that he operated in Devon, Alberta as a sole proprietorship. The additional expenses that the Appellant is claiming for 2000 and 2001 are as follows:

2000

Item	Percentage Claimed	Amount Claimed
DVD R & M (for liquor store)	100%	$460
TV (for liquor store)	50%	$967
DVD (for liquor store)	50%	$295
Monitor & cameras for liquor store	100%	$800
Mike Terry – house repairs	30%	$135
		$2,657

2001

Item	**Percentage Claimed**	**Amount Claimed**
Office Drapes	30%	$71
Irene Sonsen – cleaning	30%	$11
Doug Adams – snow removal	30%	$20
Eva Bowing – cleaning	30%	$13
Doug Adams – cleaning	30%	$20
Winnifred Stewart	30%	$6
Mike Terry – car repairs	55%	$143
Susan Nguyen – for Graymac cleaning	100%	$260
Doug Adams – snow removal	30%	$20
		$564

[17] The "DVDs", TV, and monitoring cameras were items that the Appellant acquired to monitor the liquor store business he was operating in Devon. One "DVD" was presumably a DVD recorder that was at the store premises and the other "DVD" was presumably a DVD player that was kept at the Appellant's house so that the Appellant could review the DVDs that were recorded. The Appellant stated that he was having problems with theft from the store so he wanted to monitor the operations.

[18] However, the DVD recorder, the DVD player, the TV and the monitoring cameras are all capital assets as they are assets of an enduring value. Therefore the cost of acquiring these assets is a capital expenditure and not deductible in computing his income (paragraph 18(1)(b) of the *Income Tax Act*), except to the extent that the Appellant chooses to claim capital cost allowance in relation to these assets based on the extent to which such assets were acquired for the purpose of earning income and subject to the limitations imposed by the *Income Tax Act* and the *Income Tax Regulations* on claiming capital cost allowance. Justice Abbott of the Supreme Court of Canada in *Minister of National Revenue v. Haddon Hall Realty Inc.*, [1962] S.C.R. 109, [1961] C.T.C. 509, 62 DTC 1001, 31 D.L.R. (2d) 201 stated that:

> 6 The general principles to be applied in determining whether a given expenditure is of a capital nature are fairly well established: *Montreal Light Heat and Power Consolidated v. Minister of National Revenue; British Columbia Electric Railway Company Limited v. Minister of National Revenue*. Among the tests which may be used in order to determine whether an expenditure is an income expense or a capital outlay, it has been held that an

> expenditure made once and for all with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade is of a capital nature.

[19] The only submission made by the Appellant in relation to these items is that they should be allowed as expenses. The Appellant did not make any alternative argument that he should be allowed to claim capital cost allowance on these items. Therefore the only issue in these appeals is whether the Appellant is entitled to deduct the full cost of these items in computing his income for 2000. Since the DVD recorder, the DVD player, the TV and the monitoring cameras are assets of an enduring value, to the extent that the Appellant incurred costs to acquire these assets for his business, such costs would be on account of capital and the full amount of the cost would not be deductible in 2000.

[20] Since the only issue raised was whether the full amount that was allocated to the business use could be deducted in 2000, there is no need to consider whether the percentages of business use were reasonable. I would note that since the DVD recorder and the monitoring cameras were only used for the purposes of monitoring the business premises, it seems that the full cost of these assets could have been added to the appropriate class of depreciable property for the purpose of claiming capital cost allowance (subject to the provisions of paragraph 1100(2) of the *Income Tax Regulations* (the "half-year rule")). Since the assets were used in 2000, a claim for capital cost allowance in relation to these assets would not have been subject to the restrictions imposed by subsection 13(26) of the *Income Tax Act* in relation to the amount that can be added to the undepreciated capital cost of assets of a prescribed class for assets that are not available for use.

[21] The allocation of 50% to the TV and the DVD player located at the house appears excessive. The Appellant was unable to provide any detailed information concerning the amount of time that the TV and the DVD player were used for personal viewing and the amount of time that they were used to monitor the operations in the store. To say that an equal amount of time would have been spent watching the store operations as watching regular programs or DVDs does not seem reasonable. If the business use portion of the amounts spent to acquire the TV and the DVD player were to be added to the appropriate prescribed class of depreciable property (subject to the half-year rule), I would only have allowed 10% of the cost for the TV and 20% of the cost for the DVD player as the portion for business use.

[22] There are several items for which the Appellant is claiming business use of 30%. These items relate to the office that was located in the Appellant's home. The Appellant's evidence was that his office in his house was mainly used in relation to the liquor store business. Subsection 18(12) of the *Income Tax Act* provides as follows:

> (12) Notwithstanding any other provision of this Act, in computing an individual's income from a business for a taxation year,
>
> (a) no amount shall be deducted in respect of an otherwise deductible amount for any part (in this subsection referred to as the "work space") of a self-contained domestic establishment in which the individual resides, except to the extent that the work space is either
>
> (i) the individual's principal place of business, or
>
> (ii) used exclusively for the purpose of earning income from business and used on a regular and continuous basis for meeting clients, customers or patients of the individual in respect of the business;
>
> (b) where the conditions set out in subparagraph (a)(i) or (ii) are met, the amount for the work space that is deductible in computing the individual's income for the year from the business shall not exceed the individual's income for the year from the business, computed without reference to the amount and sections 34.1 and 34.2; and
>
> (c) any amount not deductible by reason only of paragraph (b) in computing the individual's income from the business for the immediately preceding taxation year shall be deemed to be an amount otherwise deductible that, subject to paragraphs (a) and (b), may be deducted for the year for the work space in respect of the business.

[23] Since the principal place of business of the liquor store was not the Appellant's home and since there was no evidence that he regularly met clients or customers at his house, these expenses will be not be deductible as a result of the provisions of subsection 18(12) of the *Income Tax Act*.

[24] The Appellant is claiming $143 for the amount paid to Mike Terry for "car repairs". This was 55% of the total amount paid for "car repairs", excluding GST. The Appellant had also submitted a claim for an amount paid to Mike Terry for house repairs so Mike Terry must repair houses and cars. The Appellant had two vehicles -- a van and a car. He indicated that the car was used for personal use and the van was used for business use. The Appellant consistently referred to the van as either the Caravan or the van. Since the only evidence related to the vehicle that was

repaired by Mike Terry is the notation on the cheque which is “car repairs”, it seems to me that this amount was probably spent on repairs to the car and not the van. No invoice was submitted to establish that it was the van and not the car that was being repaired. As a result, this amount will not be allowed as a deduction in computing the Appellant’s income for 2001.

[25] For 2001 the Appellant is claiming $260 for Susan Nguyen for Graymac cleaning. The Appellant owned a rental building in Edmonton that was referred to as the Graymac building. A copy of the cheque for this payment was introduced into evidence. The notation on the cheque is “Loan to Graymac Cleaning”. No explanation was provided to clarify why the notation on the cheque referred to a “loan”. As a result the Appellant has failed to establish that this amount was paid for the purpose of earning income and not as a loan.

Till shortage

[26] The Respondent had conceded that $254 of the amount claimed as till shortage should be allowed as a reduction in business income and therefore the only issue in this case is whether his business income should be reduced by an additional amount of $800. The Appellant indicated that this additional claim for $800 related to a robbery that occurred at the liquor store in March of 2000 when $800 in cash was stolen. The position of the Respondent is that the Appellant did not satisfy the onus that was on him to prove that his amount was stolen. The onus of proof that is on the Appellant is to establish, on a balance of probabilities, that this amount was stolen.

[27] The Appellant stated that the robbery occurred at the end of the day and therefore the amount taken would have reflected the amount received in cash for that day, plus the cash float from the beginning of the day. In the Reply, it is stated the Appellant’s gross income from the liquor store business in 2000 was $307,858. Assuming that the liquor store was open 365 days per year (the number of days that the liquor store was open was not in evidence), this would yield daily sales of $843 per day. If the liquor store was open fewer days in the year, then obviously the daily sales would be a greater number. Since this daily sales number (using 365 days) is very close to the amount that the Appellant claimed was stolen, I find that the Appellant has established on a balance of probabilities that the amount of $800 was stolen in 2000 and therefore his business income for 2000 should be reduced by $254 as agreed upon by the Respondent and by the additional amount of $800 for a total reduction of business income for 2000 of $1,054.

Additional Capital Cost Allowance

[28] The Appellant, in filing his income tax return for 2000, had claimed capital cost allowance in relation to the van. However at the hearing he wanted to increase the amount of the capital cost allowance that would be claimed in relation to the van based on a higher percentage business use than he had claimed when filing his tax return. When he filed his tax return he only claimed capital cost allowance on the basis that the van was used approximately 8.3% in relation to the liquor store business and approximately 0.83% for the purpose of earning income from the rental of the Graymac building. At the hearing he was claiming that the van was used 50% for the liquor store business and 5% for the purpose of earning income from the rental of the Graymac building.

[29] The testimony of the Appellant was that his wife would drive the van from their home in Edmonton to the liquor store in Devon. His wife was managing the liquor store for him, and she would be at the store on a regular basis. The store was operated as a sole proprietorship and the Appellant's spouse was an employee.

[30] Counsel for the Appellant had argued that this was part of the arrangement between the Appellant and his wife and hence part of her compensation as an employee was that she would be allowed to drive the van to work and back home. The following exchange took place on cross-examination of the Appellant:

> Q Did you have any kind of contract with your wife with respect to the work she was doing at the liquor store?
>
> A Yes, she was an employee, yes.
>
> Q She was an employee? Did her employment contract say anything about paying for her transport to work?
>
> A You mean if the -- if the -- no, would you -- would you please reword it what exactly you are asking?
>
> Q Did you have an agreement with your wife about her transportation from home to work?
>
> A No, we didn't because this -- this van we used to use for business. And -- and she was using it for business purposes, so we didn't have any agreement as such that -- that she -- let me put it -- let me put it this way. She was not supposed to use the personal vehicle for business purposes, so she did not use the Oldsmobile Cutlass '88 for business purposes. She used this -- this Caravan for business purposes.

> And for that, she was -- and there were no separate payment to her for -- for -- for any transportation. This was -- this vehicle belonged to the business and she used it.

[31] Therefore there was no agreement between the Appellant and his spouse that this would be part of her employment and there was no indication that any amount had been included in the income of the Appellant's spouse as a benefit from employment for the use of the van to transport herself to her place of employment. Rather, it appears that the Appellant was assuming that this use of the van would qualify as business use of this vehicle.

[32] In my opinion this use of the van by the Appellant's spouse would not qualify as business use unless the Appellant's spouse recognized the benefit from employment related to this personal use by her of the van to transport herself from her home to her place of employment and back again. This benefit would consist of a stand-by charge determined pursuant to paragraph 6(1)(e) and subsection 6(2) of the *Income Tax Act* and an operating expense benefit determined pursuant to paragraph 6(1)(k) of the *Income Tax Act*.

[33] Since the Appellant was carrying on business as a sole proprietor, the other alternative would be to treat the use of the van by the Appellant's spouse as personal use with no deduction for capital cost allowance (and no deduction for operating costs) in relation to the use by the Appellant's spouse and no benefit from employment. If the use of the van, to the extent that it was used by Appellant's spouse, is treated as personal use, then there would be no benefit from employment as she would simply be using the family vehicle to travel to work (that was provided to her by the Appellant as her spouse and not as her employer) and no deduction in relation to this use would be claimed in computing the Appellant's income for the purposes of the *Income Tax Act*. Without any evidence that the Appellant's spouse was including a benefit from employment in her income, it seems more likely than not that this was how the parties were treating this and therefore the use by the Appellant's spouse in commuting to work would not be a business use of the van.

[34] As a result I find that the Appellant has not established that the van was used in the liquor store business to any greater extent than the amount that he had claimed in filing his tax return for 2000. Although the Partial Consent to Judgment had referred to a claim for additional capital cost allowance in relation to the van for 2000 and 2001, the evidence only related to a claim for 2000 and at the hearing the Appellant restricted this claim to only the 2000 taxation year.

[35] With respect to the proposed increase in claim for capital cost allowance in relation to the use of the van for the purpose of earning income from the rental of the Graymac building, no explanation was provided for the claim based on a percentage usage of only 0.83% that was made when he filed his tax return for 2000. Presumably, since an amount was claimed in this tax return, a determination must have been made at that time of the appropriate percentage that the van was used for the purpose of earning income form the Graymac rental building. The evidence at the hearing in relation to this use of the van was limited and vague. The main focus of the Appellant was in relation to the liquor store business. The Appellant failed to establish that the van was used for the purpose of earning income from the Graymac rental building to any greater extent than the percentage that was used when he filed his tax return.

[36] As a result no adjustment will be made to the amount of capital cost allowance that will be allowed in relation to the van.

Conclusion

[37] As a result, based upon the Partial Consent to Judgment and based upon my findings on the issues as presented at the hearing:

(a) The Appellant's appeal, with respect to the 2005 taxation year, is quashed, without costs;

(b) The appeals, with respect to the 2000 and 2001 taxation years, are allowed in part and without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that:

1. The Appellant's cost of goods sold for the 2000 taxation year be increased by $7,094;

2. The Appellant’s non-capital losses from his 1994 taxation year be carried-forward to his 2000 taxation year;

3. The business income for 2000 be reduced by $1,054 as a result of a till shortage of this amount for 2000; and

4. The Appellant be allowed an additional deduction for capital cost allowance in relation to his rental properties in the following amounts:

Taxation Year	**Amount**
2000	$3,633.00
2001	$2,608.79

Signed at Halifax, Nova Scotia, this 19th day of November 2008.

"Wyman W. Webb"

Webb J.

CITATION:	2008TCC629
COURT FILE NO.:	2007-748(IT)I
STYLE OF CAUSE:	SARASWATI P. SINGH AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Edmonton, Alberta
DATE OF HEARING:	October 20, 2008
REASONS FOR JUDGMENT BY:	The Honourable Justice Wyman W. Webb
DATE OF JUDGMENT:	November 19, 2008

APPEARANCES:

Counsel for the Appellant:	M. L. Engelking
Counsel for the Respondent:	Valerie D. Meier and Darcie Charlton

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