

Federal Court  
of Appeal



CANADA

Cour d'appel  
fédérale

**Date: 20091005**

**Docket: A-552-08**

**Citation: 2009 FCA 287**

**CORAM: EVANS J.A.  
LAYDEN-STEVENSON J.A.  
TRUDEL J.A.**

**BETWEEN:**

**HER MAJESTY THE QUEEN  
IN RIGHT OF CANADA**

**Appellant**

**and**

**ROY G. QUIGLEY**

**Respondent**

Heard at Edmonton, Alberta, on October 5, 2009.

Judgment delivered from the Bench at Edmonton, Alberta, on October 5, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS J.A.

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**REASONS FOR JUDGMENT**

**EVANS J.A.**

[1] This is an appeal by Her Majesty the Queen from the part of an Order of the Tax Court of Canada, dated October 23, 2008, in which Justice Valerie Miller dismissed the Crown's motion to quash the appeal of Roy G. Quigley against his reassessments under the *Income Tax Act* for the 2004 and 2005 taxation years. The Judge also gave leave to Mr Quigley to amend his Notice of Appeal by including the issue of the northern resident deduction. In the same Order, the Judge allowed the Crown's motion to quash Mr Quigley's appeal with respect to the 2002 and 2003 taxation years.

[2] Mr Quigley filed no Notice of Appearance in response to the Crown's Notice of Appeal from the Judge's Order and has not submitted a memorandum of fact or law, nor any other documents, in connection with the appeal. On September 9, 2009, the Court was advised by counsel for the Crown that she had received an e-mail communication on August 24, 2009, from Mr Quigley's spouse stating that Mr Quigley would not attend the hearing of the Crown's appeal on October 5, 2009, because he had suffered a "massive heart attack while at work in Abu Dhabi", where he would remain until he is strong enough to return to Canada.

[3] Although Mr Quigley is unable to appear today because of his serious illness and has not retained counsel, the Court did not adjourn the matter: he did not participate in the appeal before he became ill, no adjournment has been requested, and the Court is satisfied that it can dispose fairly of the appeal without hearing from Mr Quigley.

[4] Counsel for the Crown states that the Judge erred in dismissing the motion to quash Mr Quigley's appeal against the Minister's reassessments for the 2004 and 2005 taxation years, and in allowing him to amend his Notice of Appeal in order to include the issue of the northern resident deduction. The basis of the reassessments for those years, counsel says, was that, for the purpose of calculating his liability for provincial income tax, the Minister found Mr Quigley to be a resident of Newfoundland and Labrador, not Alberta as he claimed on his tax return.

[5] The Tax Court of Canada has no jurisdiction to hear appeals relating to provincial income tax legislation unless the province in question has conferred jurisdiction upon it: *Gardner v. Canada*

2001 FCA 401, 286 N.R. 314 at para. 16. Newfoundland and Labrador has reserved to itself jurisdiction to determine a person's residence for the purpose of the province's income tax statute: *Income Tax Act, 2000*, S.N.L. 2000, c. I-1.1, subparagraph 62(2)(a)(i). Accordingly, since Mr Quigley was reassessed as a resident of Newfoundland and Labrador, counsel submits, he should have appealed the Minister's determination of his province of residence to the Trial Division of the Supreme Court of Newfoundland and Labrador. Further, counsel argues that since the Minister allowed the northern resident deduction claimed by Mr Quigley for the taxation years 2004 and 2005 there is no dispute about his federal income tax liability, the Judge erred in not quashing the appeal and permitting him to amend his Notice of Appeal to include that issue.

[6] The Judge provided no reasons for her written Order. However, the fact that she gave Mr Quigley leave to amend his Notice of Appeal "to include the issue of the northern resident deduction" suggests that she thought that the dispute over his province of residence may be relevant to that issue, and hence could affect his federal income liability. There are two other reasons for concluding that this was the basis of the Judge's decision.

[7] First, during argument in the Tax Court on October 7, 2008, the Judge herself raised the case of *Hiscock v. Her Majesty*, 2007 FCA 382, [2008] 2 C.T.C. 177 ("*Hiscock*"), where this Court held that, although the case involved issues of residence, the Tax Court had jurisdiction over the appeal because the taxpayer had claimed a northern resident deduction against his federal tax. Second, in her oral reasons and decision, delivered in Court on October 8, 2008, the Judge stated that "the appellant has sought the northern resident deduction in his income tax returns" for 2004 and 2005.

On the basis of this claim, and *Hiscock*, she decided to dismiss the Crown's motion to quash Mr Quigley's appeal of the reassessments for those years.

[8] In our respectful view, the Judge erred in dismissing the Crown's motion with respect to the taxation years 2004 and 2005. It is true that Mr Quigley claimed a northern resident deduction against his federal tax for those years, and had not claimed it in 2002 and 2003. However, since the amounts that he had claimed in 2004 and 2005 were not altered by the Minister on the reassessments, the fact that he had claimed this deduction on his returns could not affect his federal income tax liability.

[9] Thus, for 2004, Mr Quigley claimed a northern resident deduction of \$2,817.11 (Appeal Book, p. 120), and was allowed this amount on the reassessment (Appeal Book, p. 155). His return for that year showed a net federal tax of \$13,113.85 (Appeal Book p. 122); on reassessment, the amount was 85 cents more, namely, \$13,114.70 (Appeal Book p. 155). For 2005, Mr Quigley claimed a northern resident deduction of \$2,593.85 (Appeal Book, p. 161), and calculated net federal tax for that year as \$40,900.02 (Appeal Book, p. 169). The Minister rounded the northern resident deduction down by 85 cents to \$2,593 (Appeal Book, p. 203), and increased the net federal tax by 68 cents to \$40,900.70 (Appeal Book, p. 203).

[10] Accordingly, since the Minister allowed the northern resident deduction as claimed by Mr Quigley, the Judge made a palpable and overriding error in concluding that his claim for the deduction could affect his federal tax liability. The only issue in dispute in Mr Quigley's appeal to

the Tax Court was whether the Minister had erred in determining that he was resident in Newfoundland and Labrador for the taxation years 2004 and 2005 for the purpose of provincial income tax. As we have already noted, this is a matter within the jurisdiction of the Supreme Court of Newfoundland and Labrador, not the Tax Court of Canada.

[11] For these reasons, the appeal will be allowed, the order of the Tax Court set aside with respect to the taxation years 2004 and 2005, and the Crown's motion to quash Mr Quigley's appeal of his income tax reassessments for the taxation years 2004 and 2005 allowed. Mr Quigley will be awarded any reasonable and proper costs that he has incurred in respect of this appeal.

“John M. Evans”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-552-08

**(APPEAL FROM A JUDGMENT OF THE HONOURABLE V. MILLER DATED  
OCTOBER 23, 2008, NO. 2007-3860(IT)APP.)**

**STYLE OF CAUSE:** HER MAJESTY THE QUEEN  
IN RIGHT OF CANADA

and

ROY G. QUIGLEY

**PLACE OF HEARING:** Edmonton, Alberta

**DATE OF HEARING:** October 5, 2009

**REASONS FOR JUDGMENT  
OF THE COURT BY:** Evans, Layden-Stevenson and  
Trudel J.J.A.

**DELIVERED FROM THE BENCH BY:** Evans J.A.

**DATED:** October 5, 2009

**APPEARANCES:**

Elena Sacluti  
Gregory F. Perlinski

FOR THE APPELLANT

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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

FOR THE APPELLANT

ON HIS OWN BEHALF