Docket: 2007-3006(IT)G

BETWEEN:

LONG HA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeal of
Long Ha (2007-3007(GST)I))
on November 15-19, 2010, at Victoria, British Columbia

Before: The Honourable Justice Valerie Miller

Appearances:

Counsel for the Appellant:	B. Rory Morahan
Counsel for the Respondent:	Raj Grewal
	Andrew Majawa

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* for the 1999, 2000, 2001, 2002, 2003 and 2004 taxation years is allowed and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the unreported income is to be reduced by the following amounts:

2000 taxation year

(a) Transfer of $6,200 from the Appellant's spouse;

(b) Loan received from Binh A. Mac in the amount of $13,000;

(c) The RRSP in the amount of $9,043.87 which was withdrawn pursuant to the Home Buyer's Plan;
(d) The amounts of $956.13 and $8,000 which were duplicated in the net worth calculations;
(e) The Visa advance of $681.

2001 taxation year
(a) Transfer of $1,400 from the Appellant's spouse;

2003 taxation year
(a) The insurance proceeds of $32,824.85.

The Respondent was substantially successful in these appeals and it is entitled to its costs.

Signed at Halifax, Nova Scotia, this 6th day of June 2011.

"V.A. Miller"

V.A. Miller J.

Docket: 2007-3007(GST)I

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LONG HA,

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Appeal heard on common evidence with the appeal of
Long Ha (2007-3006(IT)G))
on November 15-19, 2010, at Victoria, British Columbia

Before: The Honourable Justice Valerie Miller

Appearances:

Counsel for the Appellant:	B. Rory Morahan
Counsel for the Respondent:	Raj Grewal
	Andrew Majawa

JUDGMENT

The appeal from the reassessment made under the *Excise Tax Act* for the period January 1, 2000 to December 31, 2003 is allowed and the reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached reasons.

Signed at Halifax, Nova Scotia, this 6th day of June 2011.

"V.A. Miller"

V.A. Miller J.

Citation: 2011TCC271
Date: 20110606
Docket: 2007-3006(IT)G
2007-3007(GST)I

BETWEEN:

LONG HA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

V.A. Miller J.

[1] The Minister of National Revenue (the "Minister") reassessed the Appellant's income tax liability on a net worth basis to include in income the amounts of $91,232, $50,125, $64,540 and $66,596 for 2000, 2001, 2002 and 2003, respectively. The Appellant's 2004 taxation year was reassessed to include interest income of $1,920 and his 1999, 2000, 2002, 2003 and 2004 taxation years were reassessed to disallow a non-capital loss carry forward of $2,499, $11,694, $2,296, $9,740 and $11,068 respectively. The Appellant's 2000 and 2001 taxation years were reassessed beyond the normal reassessment period pursuant to subparagraph 152(4)(*a*)(i) of the *Income Tax Act* (the "Act").

[2] The Appellant was also assessed for failure to remit GST in the amount of $19,074.51 for the period January 1, 2000 to December 31, 2003 in accordance with the *Excise Tax Act* (the "ETA").

[3] Both counsel agreed that the focus of the hearing would be the net worth calculations in the income tax appeal and the decision in that appeal would inform the decision in the GST appeal. Both counsel agreed that the Appellant underreported his business income each year and the issue is the quantum of that unreported income.

[4] On June 8, 2002, the Appellant was stopped and questioned by the security personnel in the Vancouver International Airport. He had $40,000 cash in his possession. The matter was referred to the Royal Canadian Mounted Police ("RCMP") and although they did not have enough information to seize the cash, they were not satisfied with the Appellant's explanation for the source of the cash. They sent a referral to the Canada Revenue Agency ("CRA") who reviewed the Appellant's income tax returns and concluded that the amounts of income reported were likely not enough to support oneself and to save the $40,000 which the Appellant possessed. No records were available and the result was that the Appellant was reassessed on a net worth basis.

[5] The net worth calculations were based on a bank deposit analysis, bank statements, mortgage applications and mortgage statements. The schedule for personal expenditures was calculated using Statistics Canada information to estimate the costs for a single individual.

[6] During the period, the Appellant reported total income as follows:

Taxation Year	1999	2000	2001	2002	2003	2004
Net Rental Income			$1,755	$1,720	$1,717	$1,714
Net Fishing/Business Income		$16,712		4,817		
Employment Income				3,800	9,000	11,000
Employment Insurance Benefits	$9,499	3,645	4,202		7,020	6,955
Interest Income					219	
Total	$9,499	$20,357	$5,957	$10,337	$17,956	$19,669

[7] During the years in issue, the Appellant was a salal picker and a fisherman. He conceded that he did not report all of his income in these years; but, he stated that the unreported income was much less than the amount reassessed by the Minister. In the Answer filed with the court, the Appellant stated that the unreported income was $7,255, $21,733, $16,703, and $10,297.26 in 2000, 2001, 2002 and 2003 respectively. At the hearing of these appeals, counsel for the Appellant stated that the unreported income was $3,668, $6,609, $3,469 and $6,915 in the consecutive disputed years. It was his position that the net worth calculations were incorrect for a number of reasons which include:

(a) The cultural differences between the method of living adopted by the Appellant and his family;

(b) The net worth assessment was actually that of two people (Long Ha and his wife);

(c) The Appellant received many loans from friends and family during the years in issue. These should be deducted from the net worth calculations.

(d) The Appellant's wife held a constructive or resulting trust on all accounts and assets used in the net worth calculations. Therefore, after completing the calculation in paragraph (c) above, the remainder should be divided in half.

(e) The Appellant's education and his ability to earn money were inconsistent with the income alleged by the Minister.

(f) The assets acquired before 2000 should not be considered in the net worth calculations as they are not reflective of the income earned in 2000.

(g) The cost of the appliances and furniture purchased by the Appellant was not excessive. Their costs were consistent with his income.

[8] It was the Respondent's position that the net worth assessment was too low because the Appellant did not disclose assets and expenditures which would have increased the total unreported income by $39,741.06. It was only at the objection and discovery stage of this appeal that these assets and expenditures were revealed. In furtherance of its position, the Respondent submitted a net worth analysis which included the additional assets and expenditures[1]. Counsel for the Respondent further argued that, at the hearing of this appeal, the Appellant disclosed another $35,000 in assets and $10,000 in expenditures which amounts would have increased the assessment by $45,000. Although counsel for the Respondent recognized that the court cannot increase the amount of the assessment, he submitted that the Appellant must show errors or non-taxable sources greater than $84,741.06 before there is any reduction in the assessment.

[9] The Respondent's position with respect to the $84,741.06 is incorrect. A review of the net worth calculations revealed that a portion of the $84,741.06 was contained in the Schedule of Personal Expenditures as "Unidentified Bank Withdrawals". The total amount of the "Unidentified Bank Withdrawals" in the net worth calculations was $141,904.07. As a result, I cannot rely on the Respondent's statements that $84,741.06 is not contained in the net worth calculations.

[10] Counsel for the Respondent is correct that the court cannot increase the amount of an assessment. However, to accede to counsel's submission would be to increase the assessment and to allow the Minister to appeal his own assessment. The principle stated by Thurlow, J. in *Harris v The Minister of National Revenue*[2], that the Minister cannot appeal his own assessment, is applicable. At paragraph 17 Thurlow, J. stated:

> On a taxpayer's appeal to the Court the matter for determination is basically whether the assessment is too high. This may depend on what deductions are allowable in computing income and what are not but as I see it the determination of these questions is involved only for the purpose of reaching a conclusion on the basic question. No appeal to this Court from the assessment is given by the statute to the Minister and since in the circumstances of this case the disallowance of the $775.02 while allowing $525 would result in an increase in the assessment the effect of referring the matter back to the Minister for that purpose would be to increase the assessment and thus in substance allow an appeal by him to this Court.

[11] The Appellant has raised several reasons why the net worth assessment is incorrect. I will address each of those points.

[12] The Appellant hired Janice Cross, a bookkeeper, to summarize the various bank documents. I have given no weight to exhibit A2 which was the bank account summaries prepared by her. In cross examination, Ms. Cross admitted that her summaries contained inaccuracies. As well, I have not referred to the bank account records of the Appellant's spouse as these documents were not accepted as evidence at the hearing of these appeals. These records had been requested by the Respondent at the examination for discovery but they were never produced.

[13] Counsel for the Appellant has asserted that the cultural differences between the method of living adopted by the Appellant and his family are not accounted for in the net worth calculations. There was no documentary evidence submitted by the Appellant to support this assertion.

[14] Counsel for the Appellant has argued that the net worth statements actually pertained to the Appellant and his spouse. However, Ms. Cathy Sundberg, an auditor

with the Canada Revenue Agency ("CRA") stated that the net worth assessment did not relate to the Appellant and his spouse because the Appellant had reported on his income tax returns that he was single. It was only some time after the reassessments were issued that the Minister discovered that the Appellant was married and had resided with his spouse and three children during the years at issue.

[15] It is the Appellant's position that his spouse contributed to the personal expenditures and the acquisition of assets. However, he failed to call his spouse to testify at the hearing of these appeals and I draw a negative inference from this failure[3]. In addition, the evidence has shown that the Appellant's spouse received social assistance from 1994 to 2001. On her applications for social assistance, she declared that her income was nil; that she was single; and that she paid rent to her landlord. While the true situation was that she was living with the Appellant and in 2000 and 2001 he owned the house.

[16] Michael Aldridge, a manager with the British Columbia Ministry of Social Development, testified that the misrepresentation made by the Appellant's spouse enabled her to double her social assistance payments.

[17] Regardless, there was evidence[4] that the Appellant's spouse transferred $6,200 and $1,400 into his Toronto Dominion account in 2000 and 2001 respectively. These amounts will be deducted from the calculations of the net worth assessments. I note that the transfers stopped at approximately the same time that the spouse stopped receiving social assistance payments.

[18] It is the Appellant's further position that assets acquired prior to 2000 should not be used in the net worth calculations. However, a net worth analysis in tax appeals is used to estimate an Appellant's income. It is necessary that he be given credit for those assets owned prior to the years in issue. In *Ramey v. R.*[5], Bowman T.C.C.J. described how a net worth assessment is calculated. At paragraph 6 he stated:

> The net worth method of estimating income is an unsatisfactory and imprecise way of determining a taxpayer's income for the year. It is a blunt instrument of which the Minister must avail himself as a last resort. A net worth assessment involves a comparison of a taxpayer's net worth, i.e., the cost of his assets less his liabilities, at the beginning of a year, with his net worth at the end of the year. To the difference so determined there are added his expenditures in the year. The resulting figure is assumed to be his income unless the taxpayer establishes the contrary. Such assessments may be inaccurate within a range of indeterminate magnitude but unless they are shown to be wrong they stand. It is almost impossible to challenge such assessments piecemeal. The only truly effective way of disputing them is by means

> of a complete reconstruction of a taxpayer's income for a year. A taxpayer whose business records and method of reporting income are in such a state of disarray that a net worth assessment is required is frequently the author of his or her own misfortunes.

[19] The net worth assessment included only two assets and one liability - a home which the Appellant purchased in 2000 and the mortgage on that home and the year end balances in the Appellant's bank accounts. The Appellant agreed with the amounts listed under assets and liabilities. However, it was his position that the down payment of $68,795.17 which was used to purchase the home was acquired by the Appellant from loans and savings.

[20] The Appellant called six witnesses who testified that they either gave or loaned money to the Appellant during the relevant years. There were inconsistencies in their evidence and that of the Appellant; and, as a result, whether I accept the evidence as trustworthy depends on my finding of credibility. In making a decision based on credibility, I am mindful of the statements made, at paragraph 13, by Bowman C.J. in *Faulkner v MNR*[6]*:*

> The power and obligation that a trial judge has to assess credibility is one of the heaviest responsibilities that a judge has. It is a responsibility that should be exercised with care and reflection because an adverse finding of credibility implies that someone is lying under oath. It is a power that should not be misused as an excuse for expeditiously getting rid of a case. The responsibility that rests on a trial judge to exercise extreme care in making findings of credibility is particularly onerous when one considers that a finding of credibility is virtually unappealable.

[21] In considering the evidence adduced, I may accept all, some or none of the evidence of a witness or accept parts of a witness' evidence and reject other parts. In assessing credibility, I can consider inconsistencies or weaknesses in the evidence of witnesses. I can consider the overall sense of the evidence. That is, when common sense is applied to the testimony, does it suggest that the evidence is impossible or highly improbable[7].

[22] I have found that the Appellant was not credible. His story changed each time he told it. When he was stopped in the Vancouver International Airport, he told the authorities that the $40,000 in his possession was from his employment as a fisherman and from a restaurant business. On December 12, 2004, he was interviewed by Brad Anderson, an auditor with the CRA, and he said that the $40,000 was from his savings, salal picking and a few hundred dollars from friends. At the hearing of the appeal, it was the Appellant's position that $35,300 of the $40,000 was loans or gifts given to him.

[23] On April 14, 2000, the Appellant purchased a home in Campbell River for the amount of $159,000. He effected the purchase by making a down payment of $68,795.17 and financing the balance. During his interview with Brad Anderson on December 12, 2004, the Appellant stated that the source of the funds for the down payment were his RRSP and his savings. He stated that he had worked from 1980 to 2000 and saved a lot of money. He said that he did not borrow any money for this purchase nor did he have any inheritances or lottery winnings. At the hearing of this appeal, it was the Appellant's position that most of the down payment was comprised of loans from friends, money from his wife and gambling winnings. There were many other inconsistencies in the Appellant's evidence and I will discuss them later in my decision.

Appellants' Witnesses

[24] The witnesses called by the Appellant were Binh A. Mac, Phat Minh Ly, Hung Kiev Giang, Huong Thuy Nguyen, Manh Van Vu and Tran Thi Van.

[25] Binh A. Mac testified that she loaned the Appellant $13,000 in March 2000. It was her evidence that she lent the money based on her parents' friendship with the Appellant. She did not know why he needed the money and she had no documentation to support that the money she had given him was in fact a loan. However, the Appellant submitted microfiche copies of the front and back of cheques made payable to him by Binh A. Mac on March 7, 9 and 12, 2000. The amount of the cheques totalled $13,000. Binh A. Mac stated that the Appellant visited at her home on three separate occasions to pick up the cheques. She said that she wrote each cheque on the date that is recorded on the cheque. Whereas, the Appellant stated that all three cheques were given to him on one occasion.

[26] It was Binh A. Mac's evidence that she personally gave the cheques to the Appellant and he had agreed to repay the loan in six months or one year. At the hearing, both Binh A. Mac and the Appellant agreed that he has not repaid the loan. Whereas at the examination for discovery, the Appellant stated that he had repaid Binh A. Mac in 2005.

[27] Contrary to the Respondent's submissions, there was no evidence tendered at the hearing that would allow me to find that Binh A. Mac was holding the Appellant's money or that the Appellant controlled the account in Binh A. Mac's name. Although there were inconsistencies between the evidence given by Binh A. Mac and that given by the Appellant, Binh A. Mac's evidence was not shaken on

cross examination. I am satisfied that the Appellant has established that he received a loan of $13,000 from Binh A. Mac in 2000.

[28] Phat Minh Ly and the Appellant testified that, in August 2003, Phat Minh Ly loaned the Appellant $10,000 to purchase a condominium in Burnaby, B.C. However, I have given no weight to Phat Minh Ly's evidence. There was no documentation to support his testimony. It was inconsistent with the evidence given by the Appellant at the examination for discovery where he stated that the $10,000 was his own money which he used to make a down payment on the condominium:

> 592 Q So this is like a certified cheque or a bank draft and that's your $10,000?
>
> A I remember that's my $10,000. Because I remember I had a few thousand dollars, and I won the rest from the casino on that day and I brought that.

[29] The $10,000 deposit on the condominium was not disclosed to the CRA auditors and it does not form part of the net worth assessment. However, I have referred to this evidence only to show the inconsistencies in the Appellant's evidence. I have found that the Appellant's evidence was totally untrustworthy.

[30] Hung Kiev Giang and the Appellant met in Calgary where they worked together in a pizza restaurant for 5 or 6 years. The witness is a pizza maker and has worked for a pizza restaurant for 18 years. It was his evidence that, in August 2002, he gave the Appellant $20,000 cash in 20 bundles containing $1,000 each. In cross examination, the Appellant admitted that this was the only time he received such a large amount of cash. He said that it was given to him in two bundles in June, 2002. On discovery, the Appellant stated that the $20,000 cash was given to him in 4 bundles each containing $5,000. (This $20,000 was allegedly part of the $40,000 which the Appellant had when he was stopped in the Vancouver International Airport).

[31] The implausibility of Hung Kiev Giang's testimony is compounded by the fact that, in 2002, he lived with his wife and three children and he reported income of $19,580. He supposedly borrowed the $20,000 from his various credit cards and yet he had no documentation to substantiate his testimony.

[32] In 2001, the Appellant purchased a new Honda Prelude for approximately $32,000. At the examination for discovery, he stated that the money he used to purchase the Honda Prelude was all his money. He did not borrow any money from friends for the purchase price. It was his evidence that he paid the purchase price with

a cheque for $15,000, cash of $5,000 or $6,000 (which he always had on hand), and he put the balance on his credit card.

[33] At trial, the Appellant stated that he borrowed $8,000 cash from Manh Van Vu to purchase the Honda Prelude. Mr. Vu agreed with this evidence but got the story confused. He said he lent the $8,000 cash in March or April 2002.

[34] Mr. Vu's reported income from 1998 to 2002 was minimal so counsel for the Appellant asked him if any of the money which he lent to the Appellant was from unreported income. Mr. Vu said that he saved his money and he "made his tax return every year". I found that Mr Vu was not credible and I do not believe that he lent the Appellant $8,000. His reported income was $809, $4,496, $13,980, $7,014, and $10,953 in the chronological years from 1998 to 2002.

[35] Although the Honda Prelude was not disclosed to the CRA during the audit and is not listed as an asset in the net worth calculations, a portion of its cost ($15,006.75) is included in the Summary of Personal Expenditures under Unidentified Bank Withdrawals in 2001.

[36] Huong Thuy Nguyen is the Appellant's stepdaughter. It was her evidence that in 2002, when she was 14 or 15, she lent the Appellant $500 cash. No documentation exists to support that she had $500 much less that she lent it to the Appellant.

[37] Tran Thi Van is the Appellant's sister-in-law and it was her evidence that she gave him $500 in cash as a gift in either May or June 2002. The gift was allegedly from her savings and given to help the Appellant purchase medication for his mother in China.

[38] There was no persuasive corroborative evidence to support Tran Thi Van's evidence. Her reported income was minimal. During the period 1998 to 2002, inclusive, her only reported income was social assistance which did not exceed $13,000 annually. She allegedly remembered giving $500 to the Appellant but had problems remembering other events which happened in 2002 or 2003. On discovery, the Appellant stated that his sister-in-law raised the money by collecting amounts from friends and family.

Other Loans

[39] The Appellant alleged that he received a loan of $10,000 from Van Cong Nguyen and gambling winnings from Pham Du Xuan in March 2000. There were no documents to support that there was a loan. The evidence showed a transfer from the account of Van Cong Nguyen to the Appellant's account. The reason for the transfer

is not known; neither Van Cong Nguyen nor Pham Du Xuan was called as a witness. I have only the Appellant's self serving testimony with respect to these transactions and I have already found that his evidence was not reliable.

RRSP

[40] In March 2000 the Appellant made an application pursuant to the Home Buyers' Plan to withdraw $9,043.87 from his RRSP. The evidence showed that his application was granted. This amount is to be deducted from the unreported income in 2000.

Duplicate Amounts

[41] Likewise the amount of $956.13 is to be deducted from the unreported income in 2000 as it is a duplicate amount. It was contained as part of the $10,000 bank draft from the Appellant's CIBC account and the amount deposited to his Toronto Dominion (TD) account on March 9, 2000.

[42] On March 3, 2000, the Appellant withdrew $8,000 from his CIBC account and deposited it into his TD account. This amount has been duplicated in the net worth calculations.

Visa Advance

[43] On March 3, 2000 the Appellant received a credit advance of $681 on his credit card. This is not income earned in the year and is to be deducted from the unreported income for 2000.

Insurance Proceeds

[44] In October 2003, the Appellant received the amount of $32,824.85 from the Insurance Corporation of British Columbia as settlement for the total loss of the Honda Prelude. This amount was not a taxable receipt and should not have been included in the net worth calculations for 2003. It is to be deleted from Schedule 4.

Constructive Trust

[45] Counsel for the Appellant has submitted that the Appellant's spouse held a constructive or resulting trust on all accounts and assets in the net worth calculations. That may or may not be true. However, through the constructive trust argument, the Appellant is attempting to split his income with that of his spouse. This is not a matrimonial or an unjust enrichment proceeding. The net worth assessment was not

based on who ultimately owned the assets on the dissolution of the marriage but upon whose income funded their acquisition.

Personal Expenditures

[46] Aside from the amount that has already been allowed, the Appellant has not been able to persuade me that the estimation of personal expenditures was incorrect. It was Ms. Cathy Sundberg's evidence that the Statistics Canada averages which were used for personal expenditures were for a one person household whereas the Appellant supported his wife and three children during the years under appeal.

[47] Helen Uren, an Investigative Officer with the Ministry of Social Development, visited the Appellant's home in 2001. It was her evidence that the Appellant and his spouse had a big screen television, leather sofas and stainless steel appliances. The Appellant's lifestyle was not one of austerity as he would have this court believe.

[48] The amounts used for shelter, truck payments and payments on loans were actual amounts.

Non-Capital Losses

[49] The Appellant operated a restaurant called the Shanghai Restaurant in 1997 and 1998. In his Notice of Appeal, he stated that he had incurred non-capital losses of $35,786 and $19,875 in 1997 and 1998. At the hearing, the Appellant testified that he did not lose any money in the operation of his restaurant. He stated that he broke even.

[50] In the Reply to Notice of Appeal, the Respondent conceded that the Appellant was entitled to non-capital losses in 1999 and 2000. This concession is contrary to the evidence tendered at the hearing and I am not bound by this admission[8]. In the circumstances of these appeals, the relevant evidence was tendered by the Appellant himself. The non-capital losses were properly disallowed by the Minister.

Section 152(4)

[51] Based on the evidence which was before me, I have no difficulty in reaching the conclusion that the Minister was justified in opening the two statute-barred years for the Appellant. The Appellant earned income in 2000 and 2001 which he did not report on his income tax returns. He has not provided a credible explanation for the discrepancy between the income he reported on his 2000 and 2001 income tax returns and the income as shown by the net worth analysis.

[52] The Appellant had an accountant prepare his tax returns for each of the years under appeal. In cross examination, he admitted that he did not give his accountant any information with respect the income that he earned from salal picking. I find that the Appellant made a misrepresentation that was attributable to wilful default in filing his 2000 and 2001 income tax returns.

Conclusion

[53] The appeals are allowed and the unreported income is to be reduced by the following amounts:

2000 taxation year

(a) Transfer of $6,200 from the Appellant's spouse;
(b) Loan received from Binh A. Mac in the amount of $13,000;
(c) The RRSP in the amount of $9,043.87 which was withdrawn pursuant to the Home Buyer's Plan;
(d) The amounts of $956.13 and $8,000 which were duplicated in the net worth calculations;
(e) The Visa advance of $681.

2001 taxation year

(a) Transfer of $1,400 from the Appellant's spouse;

2003 taxation year

(a) The insurance proceeds of $32,824.85.

[54] The appeal under the ETA is allowed in accordance with these reasons.

[55] The Respondent was substantially successful in these appeals and she is entitled to her costs.

Signed at Halifax, Nova Scotia, this 6th day of June 2011.

"V.A. Miller"

V.A. Miller J.

[1] Exhibit R-2
[2] [1964] C.T.C. 562 (Ex.Ct.)
[3] *Ohayon v. The Queen*, 2010 TCC 25 at paragraph 29
[4] Exhibit A-4, tab 3
[5] [1993] 2 C.T.C. 2119 (TCC)
[6] 2006 TCC 239
[7] *Nichols v R*, 2009 TCC 334 at paragraphs 22 and 23
[8] *Hammill v The Queen*, 2005 FCA 252 at paragraph 31

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STYLE OF CAUSE:	LONG HA AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	November 15-19, 2010
REASONS FOR JUDGMENT BY:	The Honourable Justice Valerie Miller
DATE OF JUDGMENT:	June 6, 2011

APPEARANCES:

Counsel for the Appellant:	B. Rory Morahan
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