

Federal Court of Appeal



Cour d'appel fédérale

Date: 20141209

Docket: A-50-14

Citation: 2014 FCA 289

**CORAM: DAWSON J.A.
WEBB J.A.
NEAR J.A.**

BETWEEN:

PATRICK A. GOUVEIA

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on December 9, 2014.

Judgment delivered from the Bench at Toronto, Ontario, on December 9, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20141209

Docket: A-50-14

Citation: 2014 FCA 289

**CORAM: DAWSON J.A.
WEBB J.A.
NEAR J.A.**

BETWEEN:

PATRICK A. GOUVEIA

Appellant

and

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on December 9, 2014).

DAWSON J.A.

[1] This is an appeal from a decision of the Tax Court of Canada. The issue before the Tax Court was whether the Minister of National Revenue properly disallowed the appellant's deduction of legal fees from income in the 2004 through 2007 taxation years. The legal fees were incurred in the defense of charges brought by the Ontario Securities Commission and a class action civil lawsuit.

[2] For reasons cited in 2013 TCC 414, a judge of the Tax Court dismissed the appellant's appeal. The Judge found that the legal fees were not incurred to gain or produce income from a business. The Judge also found that the legal fees were incurred to protect the appellant's reputation and his capacity to earn future income. As such, the legal fees were capital in nature.

[3] It follows that to succeed on this appeal the appellant must establish that both findings were in error.

[4] We are all of the view that this appeal must fail. The appellant has not demonstrated any error of law nor has he demonstrated any palpable and overriding error by the Judge in his finding that the fees were expended on account of capital and therefore were not deductible as a current expense because of the operation of paragraph 18(1)(b) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

[5] Therefore, the appeal will be dismissed with costs.

"Eleanor R. Dawson"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-50-14

**(APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE FAVREAU
OF THE TAX COURT, DATED DECEMBER 20, 2014, DOCKET NO. 2009-3370(IT)G.**

STYLE OF CAUSE: PATRICK A. GOUVEIA v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: DECEMBER 9, 2014

REASONS FOR JUDGMENT OF THE COURT BY: DAWSON J.A.
WEBB J.A.
NEAR J.A.

DELIVERED FROM THE BENCH BY: DAWSON J.A.

APPEARANCES:

Vern Krishna
Isabella Mentina

FOR THE APPELLANT

Brooke Sittler

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Borden Ladner Gervais LLP
100 Queen Street, Suite 1100
Ottawa, Ontario

FOR THE APPELLANT

William F. Pentney
Deputy Attorney General of Canada

FOR THE RESPONDENT