

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20150617**

**Docket: A-398-14**

**Citation: 2015 FCA 147**

**CORAM: NOËL C.J.  
SCOTT J.A.  
BOIVIN J.A.**

**BETWEEN:**

**MICHEL G. DESCHÊNES**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Montréal, Quebec, on June 17, 2015.

Judgement delivered from the Bench at Montréal, Quebec, on June 17, 2015.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**SCOTT J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Montréal, Quebec, on June 17, 2015)

**SCOTT J.A.**

[1] This is an appeal from a decision rendered by Justice Jorré of the Tax Court of Canada (the TCC judge) confirming an assessment issued by the Minister of National Revenue denying the deduction of legal fees for the amount of \$21,609.00 in the computation of the appellant's income for the 2011 taxation year. The TCC judge had to determine whether the appellant could deduct the legal fees he had incurred for a Superior Court proceeding in computing his income.

[2] In his decision, the TCC judge concluded that the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), did not allow the appellant to deduct these expenses as legal fees because he incurred them to establish a right and the expenses therefore constituted a capital expenditure, which cannot be deducted under paragraph 18(1)(b) of the Act. The TCC judge also determined that these legal fees were not incurred for the purpose of gaining or producing income from property under paragraph 18(1)(a), thus also making them ineligible, especially as the appellant, in his capacity as executor, was seeking damages for another taxpayer.

[3] This appeal cannot be allowed as the appellant has failed to satisfy us that the TCC judge committed a palpable or other error in reviewing the nature of the expenses incurred in legal fees by the appellant. We have nothing to add to the reasons provided by the TCC judge. Like him, and for the same reasons, we fail to see how the claimed deduction can be considered to have been incurred to gain or produce an income for the purposes of paragraphs 18(1)(a) and (b) of the *Income Tax Act*.

[4] The appeal will be dismissed with costs.

“A.F. Scott”

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J.A.

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-398-14

**STYLE OF CAUSE:** MICHEL G. DESCHÊNES v. HER  
MAJESTY THE QUEEN

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JUNE 17, 2015

**REASONS FOR JUDGMENT OF THE COURT BY:** NOËL C.J.  
SCOTT J.A.  
BOIVIN J.A.

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

**APPEARANCES:**

Michel G. Deschênes FOR THE APPELLANT  
(on his own behalf)

Anne-Marie Boutin FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada