

Federal Court of Appeal



Cour d'appel fédérale

Date: 20070104

Docket: A-168-06
A-453-06

Citation: 2007 FCA 5

Present: SHARLOW J.A.

BETWEEN:

HUGH MERRINS

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on January 4, 2007.

REASONS FOR ORDER BY:

SHARLOW J.A.

Federal Court of Appeal



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REASONS FOR ORDER

SHARLOW J.A.

[1] The appellant Hugh Merrins has appealed two separate judgments of the Tax Court of Canada dismissing his income tax appeals. The first appeal (A-168-06) is a decision of Chief Justice Bowman dated July 28, 2005 in relation to 2000 and 2001 (2005 TCC 470). That appeal is ready for hearing. The second appeal (A-453-06) is a decision of Justice Paris dated June 27, 2006 in relation to 2002 and 2003 (2006 TCC 392). It is not yet ready for hearing. The appeal books are not filed.

[2] The Crown has filed a motion to seek an order that the appeals be consolidated or heard together, or alternatively that the second appeal be stayed until the disposition of the first appeal.

Mr. Merrins opposes the Crown's motion. The motion to consolidate the appeals will be granted, for the following reasons.

[3] There is a sound basis for joining the two appeals. The facts are not in dispute and are the same for all years under appeal. The relevant statutory provisions have not changed. The applicable tax treaty, the *Canada-Ireland Income Tax Agreement, 1967*, has not changed. The Tax Court decisions that are under appeal reach the same conclusion.

[4] If the two appeals are joined, the first appeal will necessarily be delayed. Mr. Merrins does not suggest that he will be prejudiced by that delay.

[5] Mr. Merrins has indicated that he proposes to make a constitutional argument in the second appeal, and he argues that this is a reason to dismiss the Crown's motion. However, joining of the two appeals will not preclude him from raising his constitutional argument.

[6] Mr. Merrins argues that the Crown is seeking to have the two appeals joined because it wishes to have a chance to revise the contents of the memorandum of fact and law filed for the Crown in the first appeal. The material on file does not support the assertion of Mr. Merrins that the Crown wishes to improve on its memorandum, but even if he is correct, a desire on the part of the Crown to present a better memorandum is not a sound reason for keeping the appeals separate.

[7] Mr. Merrins also argues that because the two decisions were rendered by different judges, the arguments on appeal are slightly different. In my view, this does not weigh against joining the appeals. While the reasons in each case may differ slightly, the outcome is the same, and the appeal in each case is aimed primarily at determining whether that outcome reflects the correct interpretation of the law.

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-168-06

A-453-06

STYLE OF CAUSE:

Hugh Merrins v. Her Majesty The
Queen

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:

SHARLOW J.A.

DATED:

January 4, 2007

WRITTEN REPRESENTATIONS BY:

Hugh Merrins

ON HIS OWN BEHALF

Michael Ezri

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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

FOR THE RESPONDENT