

Date: 20090209

Docket: A-564-08

Citation: 2009 FCA 37

Present: **SHARLOW J.A.**

BETWEEN:

SHERRY LEE CRONE

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on February 9, 2009.

REASONS FOR ORDER BY:

SHARLOW J.A.

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REASONS FOR ORDER

SHARLOW J.A.

[1] Before me is a motion to determine the contents of the appeal book. The appeal is from a judgment of the Tax Court of Canada dismissing an income tax appeal for the 2000 taxation year. The contents of the appeal book are agreed except for 3 items: (1) the transcript of the Tax Court hearing, (2) the book of authorities submitted to the Tax Court and (3) “expense and budget reports” for the years 2001-2002, 2002-2003, 2003-2004 and 2004-2005.

Transcript

[2] The appellant Ms. Crone wishes to exclude the transcript from the appeal book, and the Crown wishes to include it. Ms. Crone’s objection relates to cost. She says that it will cost

approximately \$600 to obtain the necessary copies of the transcript, which is nearly 25% of the amount in dispute.

[3] It is generally appropriate for an appeal book to include copies of the documentary evidence presented to the court below, as well as a transcript of the oral testimony given in the court below. Without access to both the documentary and oral evidence, it is difficult for an appellate court to understand the factual foundation for the decision under appeal, and even more difficult to determine whether the judge made any factual errors that warrant appellate intervention. I note that in this case, the notice of appeal alleges five errors of fact. It is regrettable that transcripts are so costly, but I agree with the Crown that in this case, they are necessary for a proper appellate review.

Book of authorities

[4] In an appeal, the legal authorities (statutory references and case law) are generally presented separately from the appeal book (see Rule 348). It is rarely necessary in an appeal to understand what authorities were presented to the court below, because the appellate court considers the legal issues anew. I agree with the Crown that the appeal book should not include the authorities presented to the Tax Court.

Expense and budget reports for the years 2001-2005

[5] The appellant wishes to include these documents in the appeal, but they were not in evidence in the Tax Court and their relevance to the issues on appeal is not established. It is not clear whether or not the appellant presented them and the judge ruled them to be inadmissible, but

the notice of appeal does not allege any error in refusing to admit evidence. These documents should be excluded from the appeal book.

[6] Costs of this motion will be costs in the cause.

“K. Sharlow”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-564-08

STYLE OF CAUSE: Sherry Lee Crone v.
Her Majesty the Queen

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: SHARLOW J.A.

DATED: February 9, 2009

WRITTEN REPRESENTATIONS BY:

Sherry Lee Crone ON HIS OWN BEHALF

John Shipley FOR THE RESPONDENT

SOLICITORS OF RECORD:

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