

Citation: 2009 TCC 204

Docket: 2008-2308(IT)I

BETWEEN:

KEITH SAMPSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

CERTIFICATION OF TRANSCRIPT OF
REASONS FOR JUDGMENT

Let the attached certified transcript of my Reasons for Judgment delivered orally from the Bench at Halifax, Nova Scotia on January 23, 2009, be filed.

“Diane Campbell”

Campbell J.

Signed in Ottawa, Canada, this 27th day of April 2009.

File No. 2008-2308(IT) I

**IN THE TAX COURT OF CANADA
IN RE: THE INCOME TAX ACT**

BETWEEN:

KEITH SAMPSON

APPELLANT

- and -

HER MAJESTY THE QUEEN

RESPONDENT

R E A S O N S F O R J U D G M E N T

HEARD BEFORE: The Honourable Madam Justice Campbell**DATE HEARD:** Thursday, January 22, 2009**PLACE HEARD:** Halifax, Nova Scotia**APPEARANCES:** Mr. Keith Sampson
Self-RepresentedMs. Devon E. Peavoy
Solicitor for the Respondent

THE REGISTRAR: Mr. Michael Kowalchuk

Recorded by:**Drake Recording Services Limited**

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Halifax, NS B3H 3Z4

Per: Ms. Shannon Young-Urquhart, Commissioner of Oaths

I N D E X O F P R O C E E D I N G S

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JUSTICE CAMPBELL - ORAL REASONS 3

1 **Campbell, J. (Orally):** Let the record show
2 that I am delivering Oral Reasons in the Appeal of
3 Keith Sampson, which I heard yesterday.

4 Mr. Sampson is a pipe welder, who travelled
5 on four different occasions in the 2006 taxation year to
6 find work in his field in the construction industry.

7 He is a single man, who owns a house in
8 Antigonish and travelled on these four separate occasions
9 to find work in other parts of Canada. These moves were as
10 follows:

11 1. February 8, 2006 from Antigonish to
12 Sarnia, Ontario, where he worked for
13 approximately 11 weeks and then
14 returned to Nova Scotia for
15 approximately two weeks.

16 2. Then again on May 8, 2006, he
17 travelled from Antigonish to
18 Fort Saskatchewan where he worked for
19 about six weeks, before he returned
20 once again to Nova Scotia.

21 3. On August 12, 2006, he travelled
22 from Antigonish to Fort McMurray, where
23 he worked for approximately six to
24 seven weeks.

25 4. And then on September 28, 2006, he

1 travelled from Fort McMurray back to
2 Antigonish, Nova Scotia, where he
3 obtained work at a pulp mill around
4 October 16, 2006.

5 Every time the Appellant travels to a place
6 to locate employment, he takes his own car and any personal
7 items, excepting furniture and larger household items, that
8 he will require when he is away from his house in
9 Antigonish.

10 When he travels, he does not have a job
11 waiting for him. He locates work while on the road, and
12 never knows how long his work will last. Generally, he
13 stays in hotels and camps, but stayed for part of the time
14 in an apartment while working in Sarnia. He maintains his
15 Nova Scotia license and health card, as well as his bank
16 account in Nova Scotia. He did not change his mailing
17 address throughout any of the period in 2006.

18 The Appellant claimed the moving expenses he
19 incurred for these four work relocations in 2006. The issue
20 is whether he can claim them.

21 The Appellant's position is that due to the
22 nature of the economy he must travel where he can obtain
23 work, and that because of the nature of this work he never
24 knows how long he will have work in any one location. The
25 Appellant believes that he becomes an ordinary resident of

1 the centre that he relocates to, in order to find work.

2 The Respondent's position is that the moving
3 expenses are not eligible for deduction, because his travel
4 in 2006 did not qualify as an eligible relocation as
5 defined in subsection 248(1), as he was ordinarily resident
6 throughout all of 2006 in the province of Nova Scotia.

7 For me to find in the Appellant's favour and
8 allow this appeal, I would have to conclude that he was
9 ordinarily resident in these different locations. They were
10 all relatively short stays, ranging in duration from six
11 weeks to 11 weeks. I agree with Justice Miller's comments
12 in *Calvano v. The Queen*, 2004 DTC 2471, that the starting
13 point, in this type of Appeal, must begin with the
14 Supreme Court decision in *Thomson v. Minister of National*
15 *Revenue*, [1946] S.C.R. 209, where Justice Estey stated, at
16 pages 231 to 232, the following, and I am going to read the
17 relevant portion into the record.

18 "A reference to the dictionary and
19 judicial comments upon the meaning of
20 these terms indicates that one is
21 'ordinarily resident' in the place
22 where in the settled routine of his
23 life he regularly, normally or
24 customarily lives. One 'sojourns' at a
25 place where he unusually, casually or

1 intermittently visits or stays. In the
2 former the element of permanence; in
3 the latter that of the temporary
4 predominates. The difference cannot be
5 stated in precise and definite terms,
6 but each case must be determined after
7 all of the relevant factors are taken
8 into consideration, but the foregoing
9 indicates in a general way the
10 essential difference.”

11 Each case must turn on its own set of facts
12 viewed as a whole. What may be relevant in one case, may
13 not be in another. Duration of stay, accommodation,
14 community connections maintained or severed, transfers of
15 mail, licenses, health cards and vehicle registrations are
16 just some of the factors which must be analyzed and
17 considered. Of course, these factors assist the Court in
18 determining the more subjective element of intention of the
19 taxpayer as to whether the move encompasses the taxpayer
20 settling into the trappings of a routine, day-to-day
21 lifestyle in the new location. In light of this, there must
22 be a finding that the residence of the taxpayer has, in
23 fact, changed to be an eligible relocation as defined in
24 subsection 248(1); otherwise, the taxpayer will not be able
25 to bring himself within the ambit of the relevant

1 provisions to make a claim for these moving expenses.

2 In *Rennie v. M.N.R.*, 90 DTC 1050,
3 Justice Christie made the following comments, and I am
4 going to read the relevant portion again into the record:

5 "Subsections 62(1) and (3) of the Act,
6 which permit the deduction of 'moving
7 expenses', cannot be interpreted so as
8 to envisage a taxpayer having more than
9 one residence at any given time, since
10 they are intended to apply to the
11 commencement of employment at a place
12 in Canada that precipitates a move by
13 the taxpayer from the place in Canada
14 where he ordinarily resided before the
15 move to a place in Canada where he
16 ordinarily resided after the move. The
17 words 'ordinarily resided', moreover,
18 should be given the connotation
19 ascribed to them by the Supreme Court
20 of Canada in *Thomson* ..."

21 Which references the quote that I read into
22 the record just previously.

23 The evidence in this Appeal discloses that
24 the Appellant returned to his residence in Antigonish
25 throughout 2006. The durations of the work related stays

1 were shorter in nature, being between six and 11 weeks. He
2 did not change his license, bank account, medical card or
3 mail to any of these new locations. He took only some
4 personal items in the car with him, on each trip, leaving
5 behind all of his furniture at his residence in Antigonish.

6 In fact, each time the Appellant left
7 Antigonish, he could not at that time have formed a settled
8 intent to relocate to the work location with the purpose of
9 establishing some roots there, as he did not have work when
10 he left Antigonish, and never knew where he would end up or
11 for how long. One of his work situations lasted a mere six
12 weeks, and he testified that the very nature of his work is
13 subject to abrupt shutdowns.

14 In addition, for the most part, he stayed in
15 motels and employer campsites. In the case of *Persaud v.*
16 *The Queen*, 2007 DTC 1432, Justice Webb concluded that a
17 taxpayer who had relocated to a remote community for more
18 than three months had established a settled, ordinary
19 routine to his life to qualify him as ordinarily resident.

20 In *Cavalier v. Canada*, [2001] T.C.J.
21 No. 719, Justice Bowie, concluded that to be ordinarily
22 resident, a taxpayer need not have formed the intention to
23 remain permanently or for any particular length of time at
24 the new residence. There seems to be more emphasis placed
25 on duration of stay in these cases than I believe is

1 justified. Certainly it is one factor, but only one of many
2 that must be considered in the context of the entire
3 evidence which presents itself in each individual case. If
4 three months qualify, does it mean, for instance, that
5 three months less one week, or less two days will not? The
6 latter period may or may not qualify depending on all of
7 the evidence adduced in a particular appeal. I believe
8 Parliament enacted provision 62 with a view to a relocation
9 that has an element of permanency attached to it, and as
10 referenced in the Supreme Court of Canada decision in
11 *Thomson*.

12 This is apparent, when one looks at the
13 types of expenses contemplated by this very provision
14 including the transportation of household items, cost to
15 cancel a lease or to sell a residence, legal expenses to
16 purchase a new residence at the new location and cost to
17 change resident addresses.

18 In addition, it talks of meal costs up to a
19 15-day transitory period. If Parliament had intended that a
20 taxpayer get the expenses upon moving from A to B with
21 little else, I believe this provision would contain an
22 entirely different wording and there would be no need for
23 it to contain the words "ordinarily resident".

24 In any event, I am not bound by the
25 decisions which hold a different view of this provision, as

1 they are under the informal procedure, and I am not bound
2 by them.

3 The Appellant has failed to establish that
4 he moved on any one of these four trips from his residence
5 in Antigonish, where he ordinarily resided, to a new place
6 where it could be said he was ordinarily residing.

7 He could not find employment in Nova Scotia,
8 and as a result he travelled to various locations in
9 Canada, throughout 2006, to locate work. The costs,
10 incurred in doing so, were simply the incidental travel
11 expenses to a new worksite, but did not relate to a change
12 in residence from Antigonish, where he always intended to
13 return. His travel in 2006 involved intermittent work stays
14 only.

15 In accordance with these reasons, the Appeal
16 is therefore dismissed.

17

18 --- Upon concluding at 8:53 a.m.

CERTIFICATE OF COURT TRANSCRIBER

I, Philomena Drake, Court Transcriber, hereby certify that I have transcribed the foregoing and it is a true and accurate transcript of the evidence given in this matter, **KEITH SAMPSON** (Appellant) and **HER MAJESTY THE QUEEN** (Respondent), taken by way of electronic recording.

Philomena Drake
Court Transcriber (Reg. #2006-36)

Halifax, Nova Scotia
Friday, April 03, 2009

CITATION: 2009 TCC 204

COURT FILE NO.: 2008-2308(IT)I

STYLE OF CAUSE: Keith Sampson and
Her Majesty the Queen

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: January 22, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Diane Campbell

DATE OF ORAL JUDGMENT: January 23, 2009

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Devon E. Peavoy

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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