

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20110322**

**Docket: A-257-10**

**Citation: 2011 FCA 113**

**CORAM: NOËL J.A.  
NADON J.A.  
PELLETIER J.A.**

**BETWEEN:**

**MARCEL DRAPEAU**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Montréal, Quebec, on March 22, 2011.

Judgment delivered from the Bench at Montréal, Quebec, on March 22, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Montréal, Quebec, on March 22, 2011)**

**NOËL J.A.**

[1] This is an appeal of a judgment by Justice Lamarre of the Tax Court of Canada (TCC judge) dismissing the appeal by Marcel Drapeau (the appellant) from the assessments of the Minister of National Revenue under the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (ITA) for the 2004 and 2005 taxation years. These assessments added a total of \$118,748 in unreported income to the appellant's income and levied a penalty in accordance with subsection 163(2) of the ITA on the additional tax determined by the assessment.

[2] The appellant's argument before the TCC judge was that this additional income was income belonging to a third party, a long-time acquaintance of the appellant. The TCC judge found that the evidence, including the third party's testimony, did not support this argument. She therefore dismissed the appeal. The appellant contends that in so doing, the TCC judge made a palpable and overriding error in her assessment of the evidence.

[3] We do not share this view. The TCC judge had to decide whether the testimonies of the appellant and the third party who interceded on his behalf should be accepted. On the evidence, it was open to the TCC judge to disregard those testimonies and find that the appellant had failed to meet his burden of proof.

[4] The appeal will be dismissed with costs.

“Marc Noël”

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J.A.

Certified true translation  
Sarah Burns

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-257-10

**APPEAL OF THE JUDGMENT RENDERED BY JUSTICE LUCIE LAMARRE OF THE TAX COURT OF CANADA, DATED JUNE 9, 2010, DOCKET NO. 2008-3959 (IT)G.**

**STYLE OF CAUSE:** Marcel Drapeau v. Her Majesty the Queen

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** March 22, 2011

**REASONS FOR JUDGMENT OF THE COURT BY:** NOËL J.A.  
NADON J.A.  
PELLETIER J.A.

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

**APPEARANCES:**

Jacques Renaud FOR THE APPELLANT

Alain Gareau FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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Deputy Attorney General of Canada