

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120109

Docket: A-46-11

Citation: 2012 FCA 1

**CORAM: EVANS J.A.
SHARLOW J.A.
STRATAS J.A.**

BETWEEN:

RAYMOND NOWAK

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on January 9, 2012.

Judgment delivered from the Bench at Toronto, Ontario, on January 9, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on January 9, 2012)

SHARLOW J.A.

[1] This is an appeal of the judgment of the Tax Court of Canada (2011 TCC 3) affirming a net worth assessment that includes the imposition of penalties under subsection 163(2) of the *Income Tax Act*.

[2] The submissions of counsel for Mr. Nowak included submissions on a motion to present evidence on appeal. The evidence sought to be presented on appeal is intended to undermine the

judge's negative conclusions about Mr. Nowak's credibility, which in turn led to the rejection of Mr. Nowak's explanation for the source of the money that the Minister concluded was unreported income. Counsel for Mr. Nowak concedes that the evidence sought to be presented on appeal could have been presented at trial. His argument is that the evidence nevertheless should be admitted in the interests of justice because, it is alleged, counsel who acted for Mr. Nowak in the Tax Court was ineffective to the point of incompetence. Indeed, the new evidence submission is based entirely on the allegation of ineffective counsel.

[3] We have not been persuaded that the new evidence should be admitted. Not only does the evidence offered in support of the motion fall well short of establishing ineffective counsel, the proposed new evidence offers only a speculative explanation for the inconsistencies in Mr. Nowak's evidence that were noted by the judge and that supported his negative credibility findings.

[4] As to the merits of the appeal, we have not been persuaded that the judgment under appeal is wrong in law or is based on a palpable and overriding factual error. The judge's assessment of the credibility of Mr. Nowak was reasonably open to him on the evidence presented to him, as was his finding that Mr. Nowak deliberately understated his income.

[5] The appeal will be dismissed with costs.

"K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-46-11

**(APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE BRENT DATED
JANUARY 4, 2011, DOCKET NO. 2009-77 (IT) G).**

STYLE OF CAUSE: RAYMOND NOWAK v HER
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 9, 2012

REASONS FOR JUDGMENT OF THE COURT BY: (EVANS, SHARLOW & STRATAS
J.J.A.)

DELIVERED FROM THE BENCH BY: SHARLOW J.A.

APPEARANCES:

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Sheherazade Ghorashy

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