

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20130627**

**Docket: A-354-12**

**Citation: 2013 FCA 172**

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

**BETWEEN:**

**GEORGE J. BRAKE**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at St. John's, Newfoundland and Labrador, on June 27, 2013.

Judgment delivered from the Bench at St. John's, Newfoundland and Labrador, on June 27, 2013.

**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 St. John's, Newfoundland and Labrador, on June 27, 2013)

**SHARLOW J.A.**

[1] Mr. George Brake is appealing a judgment of Justice Valerie Miller of the Tax Court of Canada (2012 TCC 315). She dismissed Mr. Brake's appeal of a reassessment of tax payable under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) for 2008. The reassessment disallowed Mr. Brake's claim for a deduction for bad debts in the amount of approximately \$11,400.

[2] The deduction was disallowed on the basis of the Minister's determination that the conditions of subparagraph 20(1)(p)(i) were not met. Under that provision, a taxpayer may claim a

deduction in a particular year for a debt that became uncollectible in that year, but only if the debt was included in the taxpayer's income in that year or in a prior year.

[3] The debts in issue were the result of loans Mr. Brake made to a corporation owned by himself and his spouse, and loans he made to his spouse in connection with her own sole proprietorship, to enable them to pay their respective business expenses. It is undisputed that the debts became uncollectible in 2008.

[4] Mr. Brake submitted in the Tax Court, and repeated in this Court, that the loans were included in his income at some point, because he made the loans out of his own after-tax income and he did not claim a deduction for the loans when he made them.

[5] Justice Miller did not accept Mr. Brake's argument because it is based on a misunderstanding of subparagraph 20(1)(p)(i). We agree with Justice Miller, substantially for the reasons she gave.

[6] For the purpose of subparagraph 20(1)(p)(i), a debt owed to a taxpayer can be said to have been included in the taxpayer's income only when the debt represents unpaid revenue that has been earned by the taxpayer in connection with a business or property, if the revenue was included in income. The facts of this case do not meet that condition.

[7] Subparagraph 20(1)(p)(ii) cannot assist Mr. Brake either, because it applies only to a taxpayer that is an insurer, a financial institution, or a taxpayer whose ordinary business includes the

leading of money. The record before this Court is not capable of establishing that Mr. Brake falls into any of those categories.

[8] Mr. Brake also seeks to rely on paragraph 8 of Interpretation Bulletin IT-442R. That does not assist Mr. Brake, for two reasons. First, that paragraph addresses circumstances that do not arise in this case. Second, and perhaps more importantly, that paragraph does not and could not, as a matter of law, amend subparagraph 20(1)(p)(i).

[9] For these reasons, this appeal will be dismissed with costs fixed in the amount of \$1,200, inclusive of all taxes and disbursements.

“K. Sharlow”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-354-12

**STYLE OF CAUSE:** GEORGE J. BRAKE v. HER  
MAJESTY THE QUEEN

**PLACE OF HEARING:** St. John's, Newfoundland and  
Labrador

**DATE OF HEARING:** June 27, 2013

**REASONS FOR JUDGMENT OF THE COURT BY:** SHARLOW, DAWSON, STRATAS  
JJ.A.

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

**APPEARANCES:**

George J. Brake FOR THE APPELLANT

Cecil S. Woon FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada