

Citation: 2010TCC65
Date: 20100224
Docket: 2009-3459(IT)G

BETWEEN:

PATRICK E. NICHOLLS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR ORDER

Sheridan, J.

[1] By way of background, the Appellant represented himself at the hearing of the Respondent's motion to dismiss the appeal of his **1998** taxation year. It was not clear from his Notice of Appeal, his evidence or his submissions in respect of the Respondent's motion exactly what his intentions were in filing his appeal. After hearing from the parties, I granted the Respondent's motion on the basis that:

1. if the purpose of the Appellant's appeal was to challenge the assessment of his **1998** taxation year, it must be dismissed because there was no tax payable in that year and there can be no appeal from a 'nil' assessment; and
2. alternatively, if his appeal was in respect of his request for a determination of loss for the **1998** taxation year, then it must be quashed for being premature as, as of the date of this hearing, the Minister had not yet issued a Notice of Determination of Loss in respect of the **1998** taxation year.

[2] After rendering the above decision from the Bench, I inadvertently deferred the question of costs to the trial judge. Having since realized this oversight, I have, pursuant to subsection 172(1) of the *Tax Court of Canada Rules (General Procedure)*, turned my mind to the matter of costs. Notwithstanding the

Respondent's success in this motion, taking into account the Appellant's self-represented status and his financial straits¹, I am not satisfied that an order of costs against the Appellant is in the best interest of justice. Accordingly, it is hereby ordered that each party shall bear its own costs throughout.

These Amended Reasons for Order are issued in substitution for the Reasons for Order dated February 9, 2010.

Signed at Ottawa, Canada, this 24th day of February, 2010.

“G. A. Sheridan”

Sheridan J.

¹ See Order of Sheridan, J. dated November 6, 2009 waiving the General Procedure filing fee.

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COURT FILE NO.: 2009-3459(IT)G
STYLE OF CAUSE: PATRICK E. NICHOLLS AND
HER MAJESTY THE QUEEN
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: February 2, 2010
REASONS FOR ORDER BY: The Honourable Justice G. A. Sheridan
DATE OF **AMENDED** REASONS FOR ORDER: February **24**, 2010

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Iris Kingston

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

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