

●●● Tax Court rejects deduction for CLE costs

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Life could get a bit more complicated for some lawyers across Canada as they head into tax season this year after the Tax Court of Canada disallowed one lawyer's expenses for mandatory continuing legal education courses.

"I think this gives other lawyers a real problem," says David Jamieson, executive vice-president with J.D Irving Ltd. in New Brunswick. "I also think it gives a problem to directors who are taking director training courses."

The comments come after Justice Valerie Miller recently rejected Jamieson's appeal of the Canada Revenue Agency's decision to disallow \$8,242 in expenses in 2009 to attend continuing legal education courses in Chicago and Vancouver and maintain a home office.

At the same time, the CRA allowed his deduction of \$2,506 for professional membership fees.

Jamieson, who's a member of the bars of Ohio, New York, and Massachusetts, argued he had to take at least 12 hours a year of continuing legal education courses to maintain his professional certification in those jurisdictions.

Jamieson argued he was in the business of being a lawyer and "earned fees as a lawyer from his services as a director on various boards of directors and as a trustee for various trusts," Miller said in the ruling.

The CRA argued Jamieson couldn't deduct the expenses related to the courses because he didn't earn any business income that year outside of his salary as an employee. It disallowed the expenses for the home office after concluding Jamieson's conditions of employment with J.D. Irving didn't require him to have one.

In her ruling, Miller questioned whether Jamieson's work constituted a business.

"With all due respect to the appellant, being a lawyer is not in and of itself a business," she wrote. "One must practise law as a business to be in the business of law. There was no evidence before me from which I could conclude that the appellant had a law practice."

Miller said Jamieson's director's fees were treated as income from an office and were included in the T4 slip issued by J.D. Irving. While Jamieson acted as a trustee for his sister-in-law's testamentary trust, he wasn't in the business of being a trustee, Miller added.

While Jamieson also argued his status as a member of the legal bar required him to provide pro bono services, the expenses racked up as a result of his work as a member of the National Council of Moritz weren't deductible, Miller ruled.

"The expenses he incurred to perform his pro bono services are not deductible nor should they be deductible. The taxpayers of Canada should not have to bear the expenses associated with the appellant's pro bono services."

Reached on vacation in Florida, Jamieson says the ruling "is unfair for people who work for companies" and could have a significant impact on a number of lawyers across the country.

Jamieson says he has picked up the tab for maintaining his credentials and his continuing legal education courses since J.D. Irving hired him 34 years ago.

"There is going to be a lot of demand on companies now to pay this."

Jamieson says the CRA argued that in order to qualify as a business, lawyers must have a separate office and an accounting system and advertise. However, while corporations may allow in-house lawyers to act as a trustee or do pro bono work, they would frown on them setting up a separate office and advertising, he notes.

While obligatory courses are relatively new in Canada, Jamieson says the bar in places like New York and Ohio have required them for several years. Although he has claimed the costs of the courses over the years, 2009 was the first time CRA disallowed the expense. It allowed the expenses in 2010 and 2011 when he reported business income.

Jamieson says the ruling could also call into question the fees paid for directors' courses.

"Seems to me that this opinion, the way it is written, is saying that if you hold an office, you can't deduct those kinds of expenses."

Jamieson doesn't plan to appeal the ruling, however.

Adam Aptowitz, a tax lawyer with Drache Aptowitz LLP, says the decision is similar to rulings that have touched other

occupations.

"These kinds of decisions come out pretty regularly with respect to other industries. Anybody that watches enough of these decisions would have seen similar fact patterns in other cases."

Aptowitz suggests lawyers either ensure they have business income if they want to deduct continuing legal education costs or have their employer put it in writing that they have to maintain their legal credentials as a condition of employment.

"If they would lose their job because they are not an active member of the law society, then presumably those expenses would be deductible if they had to pay them personally."

Roy Thomas, director of communications for the Law Society of Upper Canada, says the decision is unlikely to affect demand for its continuing legal education programs.

"It would appear that the court has differentiated between the business expenses of an individual versus corporate expenses," he says. "We don't expect this decision will have an impact on our continuing professional development programs."