

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20100527

Docket: A-155-09

Citation: 2010 FCA 138

**CORAM: BLAIS C.J.
EVANS J.A.
SHARLOW J.A.**

BETWEEN:

SANDRA GALLANT

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Fredericton, New Brunswick, on May 27, 2010.

Judgment delivered from the Bench at Fredericton, New Brunswick, on May 27, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Fredericton, New Brunswick, on May 27, 2010)

EVANS J.A.

[1] This is an appeal by Sandra Gallant from a decision by the Tax Court of Canada (2009 TCC 91), in which Justice Angers dismissed her appeal from the reassessments by the Minister of National Revenue for her 2001 and 2002 taxation years. The Minister reassessed Ms Gallant for unreported business income of \$114,365 for 2001, and \$137,360 for 2002.

[2] Ms Gallant operated special care-homes in those years providing care services to residents. She says that means and need tested payments made by the Province of New Brunswick under statutory programs in respect of residents in the care home, where she herself resided with her family, are excluded from income.

[3] She relies on paragraph 81(1)(h) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Suppl.), the relevant parts of which provide:

81.(1) There shall not be included in computing the income of a taxpayer for a taxation year,

...

(h) where the taxpayer is an individual (other than a trust), a social assistance payment (other than a prescribed payment) ordinarily made on the basis of a means, needs or income test under a program provided for by an Act of Parliament or a law of a province, to the extent that it is received directly or indirectly by the taxpayer for the benefit of another individual (other than the taxpayer's spouse or common-law partner or a person who is related to the taxpayer or to the taxpayer's spouse or common-law partner), if

...

81.(1) Ne sont pas inclus dans le calcul du revenu d'un contribuable pour une année d'imposition :

[...]

h) la prestation d'assistance sociale, sauf une prestation visée par règlement, qui est habituellement payée à un particulier, à l'exclusion d'une fiducie, dans le cadre d'un programme prévu par une loi fédérale ou provinciale, après examen des ressources, de besoins et du revenu — dans la mesure où il la reçoit, directement ou indirectement, au profit d'un autre particulier, à l'exception de son époux ou conjoint de fait ou d'une personne qui lui est liée ou qui est liée à son époux ou conjoint de fait — si, à la fois :

[...]

[4] The Judge held that the payments in question were not social assistance payments received by the provider of the services (here, Ms Gallant) for the benefit of the residents. Relying on earlier decisions of the Tax Court to the same effect, he said (at para. 19):

The long-term care services are provided to beneficiaries, subsidized or not, in return for the payment of the rate set by the Province and are purely contractual in nature. The appellant is in the business of providing long-term care services and the beneficiaries purchase those services by paying the rate established by the Province. The fact that some beneficiaries have qualified for a subsidy does not change the contractual nature of the services nor does it make the subsidy a social assistance payment made to the home operator on behalf of the beneficiary.

[5] The Judge also quoted from the judgment in *Anderson v. R.*, [2001] 4 C.T.C. 2837 (TCC), where Justice O'Connor said (at para. 8) that paragraph 81(1)(h) "was never intended to exempt income earned by a person running a business at a profit."

[6] We are not persuaded that on the facts before him, Justice Angers committed any error of law, or palpable and overriding error of fact or of mixed fact and law, in concluding that the payments made by the Province in this case do not fall within paragraph 81(1)(h).

[7] For these reasons, the appeal will be dismissed with costs.

"John M. Evans"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-155-09

**(APPEAL FROM A JUDGMENT OF THE TAX COURT OF CANADA DATED
MARCH 6, 2009, BY THE HONOURABLE JUSTICE ANGERS,
DOCKET NO. 2006-3534(IT)G)**

STYLE OF CAUSE: Sandra Gallant v. Her Majesty the
Queen

PLACE OF HEARING: Fredericton, New Brunswick

DATE OF HEARING: May 27, 2010

REASONS FOR JUDGMENT OF THE COURT: BLAIS C.J., EVANS AND
SHARLOW JJ.A.

DELIVERED FROM THE BENCH BY: EVANS J.A.

DATED: May 27, 2010

APPEARANCES:

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