

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20121126**

**Dockets: A-346-11  
A-347-11**

**Citation: 2012 FCA 311**

**CORAM: NOËL J.A.  
GAUTHIER J.A.  
MAINVILLE J.A.**

**BETWEEN:**

**FRANCINE LESSARD**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Hearing held at Montréal, Quebec, on November 22, 2012.

Judgment delivered at Ottawa, Ontario, on November 26, 2012.

**REASONS FOR JUDGMENT BY:**

**GAUTHIER J.A.**

**CONCURRED IN BY:**

**NOËL J.A.  
MAINVILLE J.A.**

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**REASONS FOR JUDGMENT**

**GAUTHIER J.A.**

[1] Ms. Lessard is appealing the decision of Justice Jorré of the Tax Court of Canada (2011 TCC 320) dismissing her appeals of the assessments made under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act) for her 2003 (A-346-11) and 2004 (A-347-11) taxation years.

[2] These appeals were consolidated by an order of this Court dated December 7, 2011. In accordance with that order, these reasons will be filed in file No. A-346-11 and a copy hereof will be filed in file No. A-347-11.

[3] The appellant submits that the denial of her request for an adjournment presented at the beginning of the hearing before the TCC on April 18, 2011, violates her right to representation by counsel and constitutes a breach of the rules of fairness and natural justice. According to her, the judge also committed many errors of law in rejecting her arguments and committed palpable and overriding errors in his assessment of the relevant facts.

[4] Despite our sympathy for Ms. Lessard, who is self-represented, I cannot find any error warranting this Court's intervention.

[5] In the very particular circumstances of these appeals to the TCC, the refusal to adjourn the hearing yet again (five last-minute adjournment requests had already been granted) was justified. This is all the more evident when one considers that Ms. Lessard confirmed during the hearing before us that she had still not been able to secure the services of counsel to represent her.

[6] The appellant's principal argument is based on the fact that her entitlement to the amounts taxed in 2003 and 2004 was revoked by a judgment rendered on November 2, 2004, by the Tribunal administratif du Québec (TAQ). She submits that, under the civil law, that judgment

has retroactive effect, and that the disability pension that had been paid to her therefore never constituted income in her hands.

[7] While it is true that the civil law serves as suppletive law, this is subject to Parliament's right to adopt provisions providing otherwise (see section 8.1 of the *Interpretation Act*, R.S.C. 1985, c. I-21, as amended).

[8] In this respect, the Act provides that tax is computed on a yearly basis (section 3). Moreover, the amounts to be included in income for the year listed in paragraph 56(1)(a) are paired with the deduction provided for in subparagraph 60(n)(ii) which allows a taxpayer to give effect to a change in the tax status of an amount received during the year (or a preceding year) and to cancel the effects of that amount by repaying it.

[9] With respect to the 2003 taxation year, the amounts paid out to Ms. Lessard retained their pension status throughout the year because the TAQ judgment was not rendered until November 2004. As for the 2004 taxation year, the amounts received by the appellant from January to November were pension amounts at the time of receipt, and it was open to the appellant to give effect to the change in status of the amounts paid out by repaying them before the end of her taxation year, which she did not do.

[10] As a result, Ms. Lessard had the use of the amounts paid out to her as pension benefits during her 2003 and 2004 taxation years, which explains why she is liable for the taxes resulting from the receipt of those amounts.

[11] There is therefore no reason to depart from this Court's decision in *Lessard v. Canada*, 2007 FCA 9 (leave to appeal refused by the Supreme Court of Canada, June 7, 2007, File No. 31942). In my view, Justice Jorré rightly rejected Ms. Lessard's main argument.

[12] In her Notice of Constitutional Question with respect to the 2003 and 2004 taxation years, the appellant indicates that the combined effect of paragraph 56(1)(a) and subparagraph 60(n)(ii) violates her constitutional rights because, in this case, it requires her to pay more taxes, given that her income once she began repaying the amounts received from the Régie des rentes du Québec (RRQ) was lower than it had been during the years she was receiving them. According to her, these additional taxes threaten her survival and dignity contrary to section 7 of the *Canadian Charter of Rights and Freedoms* (the Charter). She also asserts that the provisions constitute discrimination within the meaning of section 15 of the Charter against the elderly or the disabled.

[13] In January 2003, Ms. Lessard had already commenced proceedings before the TAQ for the reversal of the RRQ decision of October 9, 2002, granting her claim for a disability pension. As I have already stated, the appellant opted not to repay the benefits and thereby cancel the inclusion in income of the amounts paid out to her, even though it was open to her to do so in order to be consistent with her position that she was not entitled to the benefits in question.

[14] In light of the facts of these cases, I am of the view that the constitutional questions raised by the appellant are groundless.

[15] In the circumstances, the appeal should therefore be dismissed without costs.

“Johanne Gauthier”

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J.A.

“I concur,  
Marc Noël J.A.”

“I concur,  
Robert M. Mainville J.A.”

Certified true translation  
Erich Klein

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKETS:** A-346-11  
A-347-11

**APPEAL FROM A JUDGMENT BY JUSTICE GASTON JORRÉ OF THE TAX COURT OF CANADA, DATED JUNE 25, 2011, IN FILES 2006-1555(IT)I AND 2006-1648(IT)I.**

**STYLE OF CAUSE:** FRANCINE LESSARD v. HER MAJESTY THE QUEEN

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** November 22, 2012

**REASONS FOR JUDGMENT BY:** GAUTHIER J.A.

**CONCURRED IN BY:** NOËL J.A.  
MAINVILLE J.A.

**DATED:** November 26, 2012

**APPEARANCES:**

Francine Lessard

FOR THE APPELLANT  
(on her own behalf)

Gabriel Girouard

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

N/A

**FOR THE APPELLANT  
(on her own behalf)**

William F. Pentney  
Deputy Attorney General of Canada

FOR THE RESPONDENT