

Signed at Ottawa, Canada, this 14th day of August 2002.

“Pierre Archambault”

J.T.C.C.

Translation certified true
on this 27th day of February 2004.

Sophie Debbané, Revisor

[OFFICIAL ENGLISH TRANSLATION]

Date: 20021115
Docket: 2001-1430(IT)I

BETWEEN:

BRUNO NADEAU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(delivered orally from the bench at the hearing
on August 7, 2002, at Trois-Rivières, Quebec,
and edited for greater clarity)

Archambault, J.T.C.C.

[1] Bruno Nadeau challenges a reassessment made by the Minister of National Revenue (the **Minister**) with respect to the 1999 taxation year. In computing Mr. Nadeau's income, the Minister disallowed the deduction of a sum of \$4,284 paid for legal expenses to contest a motion brought by his former spouse to increase support. Subsequently, Mr. Nadeau asked the Minister to increase the amount of the deduction he claimed by \$3,000, that is, the amount he had paid to reimburse his former spouse's legal expenses. The Minister maintains that section 18 of the *Income Tax Act* (the *Act*) does not entitle the payer of support to such a deduction, although he is of the opinion that the section allows the recipient of such support to deduct the legal expenses incurred in order to have the amount increased.

Facts

[2] The facts are relatively simple. Mr. Nadeau, who was married in 1981 to Francine Laliberté, obtained his divorce in July 1996. The judgment of the Superior Court granting the divorce ordered him to pay support to Ms. Laliberté for the benefit of the couple's children.

[3] Subsequently, Ms. Laliberté moved to have the amount of the support increased and to obtain support for herself. Mr. Nadeau contested the motion before the Superior Court and was successful. Subsequently, he requested that the support not be taxable, and it was reduced by the Quebec Court of Appeal from \$250 to \$120.58 per week. In 1999, the amount of his legal expenses was \$4,284.

[4] The principal basis of Mr. Nadeau's challenge is the discrimination in the provisions of the *Act*. The Minister of National Revenue allows recipients of support to deduct the legal expenses incurred to have their support increased, whereas payers of support contesting a motion for increased support cannot deduct their legal expenses.

[5] In fact, as I concluded in *Bergeron v. Canada*, [1999] T.C.J. No. 510, neither the payer of support nor the recipient of support is entitled to deduct his or her legal expenses. Consequently, there is no discrimination in the provisions of the *Act* that would allow a class of taxpayers, i.e., support recipients, to deduct their legal expenses and that would deny that deduction to another class, i.e., that of support payers.

[6] I also note for the purposes of the case that Mr. Nadeau did not serve notice on the Attorney General of Canada and on the attorney general of each province, in accordance with section 57 of the *Federal Court Act*, of his intention to challenge the constitutionality of the *Act* by reason of its discriminatory provisions. In view of my conclusion that the *Act* does not discriminate between the treatment accorded to recipients of support and that accorded to payers of support, there is no need for me to decide whether the provisions of the *Canadian Charter of Rights and Freedoms* should be applied. If I had thought it were possible that there were discriminatory provisions in the *Act*, I would have given Mr. Nadeau time to allow him to serve notice on the Attorney General of Canada and of each province.

[7] For all these reasons, the appeal is dismissed, without costs.

Signed at Ottawa, Canada, this 15th day of November 2002.

“Pierre Archambault”

J.T.C.C.

Translation certified true
on this 27th day of February 2004.

Sophie Debbané, Revisor