

Docket: 2006-956(IT)I

BETWEEN:

CLAUDE BERTRAND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on August 30, 2006, at Trois-Rivières, Quebec

Before: The Honourable Justice Paul Bédard

Appearances:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Annick Provencher

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 2002 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 15th day of November 2006.

"Paul Bédard"

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Bédard J.

Translation certified true  
on this 11th day of July 2007.

Brian McCordick, Translator

Citation: 2006TCC515  
Date: 20061115  
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### **REASONS FOR JUDGMENT**

#### **Bédard J.**

[1] This is an appeal under the informal procedure from an assessment which was made by the Minister of National Revenue ("the Minister") and which added to the Appellant's income the amount of \$8,615 on account of registered retirement savings plan (RRSP) income.

#### **Facts**

[2] The Appellant filed a notice of intention to make a proposal in bankruptcy on July 19, 2001 ("the proposal"). Under the proposal, the Appellant's RRSPs would go to pay the amounts owed to his creditors. The relevant paragraph of the proposal reads as follows:

[TRANSLATION]

The debtor shall transfer seisin of his registered retirement savings plans, the aggregate gross value of which is approximately \$8,200, to the trustee. The amount, net of tax, which shall be collected by the administrator shall be distributed to the creditors.<sup>1</sup>

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<sup>1</sup> Exhibit I-1, at paragraph 5.

[3] The proposal was accepted by the creditors on November 29, 2001. It was ratified by the Superior Court on January 21, 2002.

[4] Upon filing his notice of intent, the Appellant held two RRSPs: one with the Laurentian Bank and the other with Scotiabank. Under the terms of the proposal, Claude Moisan, the bankruptcy trustee, sent a letter dated December 20, 2001 to both banks, requesting the redemption of the Appellant's RRSPs.

[5] The Laurentian Bank RRSPs were redeemed on January 10, 2002. The Laurentian Bank sent a cheque for \$3,750.04 to the trustee. The details of the withdrawal are as follows:<sup>2</sup>

Gross amount:	\$4792.89
Federal tax:	\$237.34
Provincial tax:	\$759.50
Administration fees:	<u>\$46.01</u>
Net amount:	\$3,750.04

[6] The Scotiabank RRSPs were redeemed on March 10, 2002. The details of the withdrawal are as follows:<sup>3</sup>

Gross amount:	\$4003.62
Federal tax:	\$ 200.18
Provincial tax:	\$640.58
Administration fees:	<u>\$25.00</u>
Net amount:	\$3,137.86

[7] The Appellant had already reported an amount of \$135 in his income tax return for the 2002 taxation year as RRSP income. Consequently, the Minister added the difference, that is to say, a total of \$8,615 in RRSP income, to the Appellant's income, calculated as follows:

Laurentian Bank RRSP (less \$46.00 in administration fees not shown as RRSP income T4-RSP )	\$4,746.88
Scotiabank RRSP	\$4,003.62
Less amount reported by the Appellant	<u>\$135.00</u>
Net amount:	\$8,615.50

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<sup>2</sup> See Exhibit I-2.

<sup>3</sup> See Exhibit 1-2.

## Issue

[8] The issue is whether the reassessment of February 3, 2006, in respect of the Appellant's 2002 taxation year, is well founded. By this reassessment, the Minister added \$8,615 from an RRSP to the Appellant's income for the 2002 taxation year. The actual determination to be made is whether the Appellant received a total of \$8,749 from his RRSP in the 2002 taxation year, thereby requiring the amount to be included in his income for his 2002 taxation year under paragraph 56(1)(h) and subsection 146(8) of the *Income Tax Act* ("the Act").

## The law

[9] The inclusion of amounts from an RRSP is prescribed by paragraph 56(1)(h) of the Act, which reads as follows:

56. [Amounts to be included in income for year]

(1) Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year

(h) [Registered retirement savings plan, etc.] amounts required by section 146 in respect of a registered retirement savings plan or a registered retirement income fund to be included in computing the taxpayer's income for the year;

[10] Thus, paragraph 56(1)(h) of the Act refers to the relevant rules of section 146, which states the amounts that must be included in computing a taxpayer's income. The relevant part of that section of the Act is subsection 146(8), which reads as follows:

146. (8) [Benefits taxable] There shall be included in computing a taxpayer's income for a taxation year the total of all amounts received by the taxpayer in the year as benefits out of or under registered retirement savings plans, other than excluded withdrawals (as defined in subsection 146.01(1) or 146.02(1)) of the taxpayer and amounts that are included under paragraph (12)(b) in computing the taxpayer's income.

## The Appellant's position

[11] The Appellant's first submission is that he did not "receive" the proceeds of the RRSP because the trustee collected the proceeds and remitted them to the creditors, and thus, subsection 146(8) of the Act cannot apply.

[12] In my opinion, this argument is without foundation. The courts have defined the term "receive" very broadly. For example, in *Morin*,<sup>4</sup> the Federal Court (Trial Division) held that the word receive "obviously means to get or to derive benefit from something." The Court applied this holding in *Mintzer*.<sup>5</sup>

[13] Moreover, with respect to the collection of an RRSP by a trustee as part of a taxpayer's proposal in bankruptcy, the Court in *Agard*<sup>6</sup> held that the appellant received the proceeds of his RRSP even though the amount did not come into his hands. The Court stated as follows in this regard:

9. . . . In addition, the Appellant claims that he never received the monies from the RRSP and therefore cannot be taxed on its receipt. This argument is also without merit. All of the assets of the Appellant remained the assets of the Appellant and not the trustee under the Proposal. [Footnote omitted.]

10. Under the Proposal, the Appellant merely directed what was to happen to the proceeds of the RRSP. The proceeds were always his property just as the RRSP itself was his. The trustee was merely a conduit through which the funds passed on their way to the creditors. . . .<sup>7</sup>

[14] In the case at bar, the Appellant had a legal obligation to reimburse his creditors and comply with the terms of the proposal, which provided that he had to transfer seisin of the RRSPs to the trustee so that he could reimburse the unsecured creditors. In the bankruptcy proposal, the Appellant decided to use his RRSPs. Thus, the Appellant benefited from the proceeds of his RRSPs in that his creditors were reimbursed and he was discharged from his debts.

[15] The Appellant's last argument was that the decision in *Marchessault*<sup>8</sup> should be applied to the instant case. There, the appellant filed a bankruptcy proposal that was ratified by the Superior Court on July 10, 2003. The appellant submitted that since a proposal had been made, the 2003 taxation year should be divided into two periods: pre-proposal and post-proposal. The Minister, however, alleged that where a proposal in bankruptcy is made, the taxation year cannot be split in two. Justice Lamarre of the Tax Court of Canada held that the taxation year should be divided into two parts. In reaching this conclusion, she stated that courts sitting in bankruptcy had the power to render a declaratory judgment dividing a taxation

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<sup>4</sup> *Morin v. Canada*, [1974] F.C.J. No. 907 (QL) (F.C.T.D.), at paragraph 23.

<sup>5</sup> *Mintzer v. Canada*, [1998] T.C.J. No. 325 (QL).

<sup>6</sup> *Agard v. Canada*, [1994] T.C.J. No. 40.

<sup>7</sup> *Agard v. Canada*, *supra* note 4, at paragraphs 9 and 10.

<sup>8</sup> *Marchessault v. Canada*, [2006] T.C.J. No. 361 (QL).

year into two parts. If courts dealing with bankruptcy matters had not so held, the Court would have an incidental power to rule on this issue and then determine what should be included in the pre-proposal and post-proposal periods. Applying *Bernier*<sup>9</sup> and *Gollner*,<sup>10</sup> Lamarre J. held that subsection 128(2) of the Act also applies to situations where a taxpayer makes a proposal in bankruptcy. Under subsection 128(2), a year ends and a new year begins on the date of a taxpayer's bankruptcy.

[16] In my opinion, *Marchessault* cannot apply to the facts of the instant case. It should be recalled that the decision of Lamarre J. in *Marchessault* was that a new taxation year must begin immediately after the date of a proposal. In the case at bar, the notice of intention was filed on July 19, 2001, and the date of the proposal is November 19, 2001. However, the RRSPs were collected during the following taxation year, namely 2002. Thus, even if a year had to be divided, it would be the 2001 taxation year. However, that is not the year covered by the instant appeal. The taxation year in question is the 2002 taxation year, and the proceeds of the RRSP were received in 2002.

[17] For these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 15th day of November 2006.

"Paul Bédard"

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Bédard J.

Translation certified true  
on this 11th day of July 2007.

Brian McCordick, Translator

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<sup>9</sup> *Bernier (f.a.s. J.B. Bernier Enr.) (Syndic) c. Québec (Sous-ministre du Revenu)*, [2000] Q.J. No. 982 (QL) (Que. C.A.).

<sup>10</sup> *Gollner v. Canada*, [2003] O.J. No. 3309 (QL) (Ont. S.C.J.).

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REASONS FOR JUDGMENT BY: The Honourable Justice Paul Bédard  
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APPEARANCES:

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COUNSEL OF RECORD:

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Firm:

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