

Docket: 2003-615(IT)I

BETWEEN:

PATRICE BEAUDOIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on September 24, 2003, at Québec, Quebec

Before: The Honourable Justice François Angers

Appearances:

Counsel for the Appellant: G. Marc Henry

Counsel for the Respondent: Julie David

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JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the taxation year 2001 is allowed and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 3rd day of March 2004.

"François Angers"

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Angers J.

on this 10th day of February 2005.

Jacques Deschênes, Translator

Citation: 2004CCI152  
Date: 20040303  
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### **REASONS FOR JUDGMENT**

#### **Angers J.**

[1] This is an appeal from an assessment dated May 13, 2002, respecting the taxation year 2001. Trust La Laurentienne ("La Laurentienne") sent the appellant a "Statement of Registered Retirement Savings Plan Income (T4RSP)" form reporting an amount of \$84,761 for the year in issue. The Minister of National Revenue ("the Minister") therefore included this amount in the appellant's income. The appellant objects to this inclusion. Thus, the issue is whether the Minister properly included this amount in the appellant's income. The appellant has chosen to limit the amount in issue in this appeal to \$12,000, the maximum permitted under the informal procedure.

[2] The events that gave rise to this dispute occurred some years ago. The chronology can be summarized as follows:

- 1 — On February 4, 1992, the appellant completed and signed an enrolment form for a fixed-term annuity retirement savings plan from Société nationale de fiducie, now La Laurentienne. The plan was registered and eligible under the *Income Tax Act* (the Act), the *Taxation Act*, R.S.Q., c. I-3, and the regulations thereunder. The appellant designated his *de facto* spouse as revocable beneficiary

in the event of death. Under the rules of the retirement savings plan, annuity payments could not begin before the appellant's 60th birthday. The appellant was born in 1937.

- 2 — On March 9, 1992, the appellant completed and signed a new enrolment form in order to change beneficiaries. The appellant designated his two children as revocable beneficiaries.
- 3 — On December 10, 1993, the appellant had a tax debt amounting to \$203,907.47.
- 4 — On the same date, the Minister sent Société nationale de fiducie a letter of requirement for an amount not exceeding \$203,907.47, the amount of the appellant's tax debt at the time.
- 5 — On December 22, 1993, the Minister sent La Laurentienne, the appellant's new trustee, a letter of requirement similar to the one just mentioned.
- 6 — Société nationale de fiducie and La Laurentienne both failed to comply with the letter of requirement.
- 7 — On February 1, 1994, the appellant made an assignment of his property under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3. The funds invested in the appellant's RRSP were not remitted to the trustee in bankruptcy. The appellant was discharged on an unspecified date.
- 8 — On April 11, 1994, the Minister issued a notice of assessment to La Laurentienne claiming \$61,673, the amount invested in the appellant's RRSP at the time.
- 9 — La Laurentienne objected to this assessment within the prescribed time limits. The Minister ratified the assessment on April 11, 1994.
- 10 — La Laurentienne appealed the assessment in question before the Tax Court of Canada by Notice of Appeal filed on March 5, 1996. The Reply to the Notice of Appeal was filed on May 2, 1996.

- 11 — On January 30, 1998, the Superior Court of Quebec, Bankruptcy Division, issued a certificate of unconditional discharge in favour of the appellant.
- 12 — On December 8, 1998, the Tax Court of Canada allowed a motion by the Minister to dismiss the appeal on the basis that La Laurentienne had not attended the examination for discovery.
- 13 — On May 7, 1999, the appellant, his two sons and La Laurentienne moved for leave to intervene and asked that the judgment rendered by the Tax Court of Canada on December 8, 1998, be set aside. The motion was dismissed on November 9, 1999.
- 14 — The decision dismissing the motion was appealed and, on May 28, 2000, the Federal Court of Appeal dismissed the appeal.
- 15 — In 2001, La Laurentienne paid the Minister the amount of \$84,761.32, hence the issuance of the "Statement of Registered Retirement Savings Plan Income" (T4RSP) form for the appellant's 2001 taxation year.
- 16 — The appellant followed the advice of his tax accountant, who prepared his income tax return for the year in issue; he included the amount of \$84,761.32 as Registered Retirement Savings Plan (RRSP) income and entered the amount of \$12,641.81 as income tax withheld.

[3] The respondent submits that the inclusion of \$84,761 in the appellant's income for the 2001 taxation year is mandatory under paragraph 56(1)(h) and subsection 146(8) of the *Income Tax Act* ("the Act"). Those provisions read as follows:

56(1) **Amounts to be included in income for year** — 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. [RRSP or RRIF]** — 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;

146(8) **Benefits [and withdrawals] 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.

[4] Thus, a taxpayer is required to include, in computing his income, benefits received out of or under a registered retirement savings plan. The term "benefit" is defined in subsection 146(1) of the Act:

"**benefit**" includes any amount received out of or under a retirement savings plan other than

- (a) the portion thereof received by a person other than the annuitant that can reasonably be regarded as part of the amount included in computing the income of an annuitant by virtue of subsections 146(8.8) and 146(8.9),
- (b) an amount received by the person with whom the annuitant has the contract or arrangement described in the definition "retirement savings plan" in this subsection as a premium under the plan,
- (c) an amount, or part thereof, received in respect of the income of the trust under the plan for a taxation year for which the trust was not exempt from tax by virtue of paragraph 146(4)(c), and
- (c.1) a tax-paid amount described in paragraph (b) of the definition "tax-paid amount" in this subsection that relates to interest or another amount included in computing income otherwise than because of this section

and without restricting the generality of the foregoing includes any amount paid to an annuitant under the plan

- (d) in accordance with the terms of the plan,
- (e) resulting from an amendment or modification of the plan, or
- (f) resulting from the termination of the plan;

[5] Counsel for the appellant submits that the \$84,761.32 remitted by La Laurentienne to the Minister must not be considered RRSP income in the appellant's hands because the RRSP benefit resulted from an annuity contract managed by a trust company and is therefore exempt from seizure. Alternatively, in the event that the amount is liable to seizure, counsel for the appellant submits that the amount should not be included in the appellant's income because the RRSP income was included in computing the appellant's income following a transaction aimed at paying a debt which the appellant's discharge from bankruptcy had already extinguished. In either case, it is submitted that the amount was not received by the appellant as a benefit out of or under an RRSP within the meaning of the Act.

[6] The amount in question in the instant case was clearly not paid directly to the appellant. Rather, La Laurentienne paid the amount to the Minister on the appellant's behalf in order to pay down the appellant's tax liability. Consequently, the payment, by a third party, of a taxpayer's tax liability out of his RRSP, is equivalent to the payment of a benefit to the appellant, which means that the appellant can be considered to have been paid a benefit indirectly and must include that amount in computing his income.

[7] In view of the submissions made by counsel for the appellant, it must be asked whether the amount in question was exempt from seizure because La Laurentienne is a trustee under an annuity contract that it manages. If the amount is not exempt from seizure, it must be asked whether the amount paid by La Laurentienne is really a benefit within the meaning of the Act and whether the appellant received a sum of money that was of potential benefit to him, assuming that the amount remitted was used to pay a debt that was extinguished by virtue of the appellant's discharge from bankruptcy.

[8] La Laurentienne's payment of the appellant's RRSP to the Minister, following the appellant's bankruptcy, for the purpose of paying a tax debt that pre-dates the bankruptcy, raises an interesting question about the Minister's priority in relation to the appellant's other creditors at the time that he made an assignment of his property under the *Bankruptcy and Insolvency Act*. If the RRSP was liable to seizure, it seems to me that it should have been assigned to the appellant's trustee in bankruptcy, thereby becoming part of his estate for the benefit of all creditors with provable claims under the *Bankruptcy and Insolvency Act*. Having said this, in order to determine whether or not the appellant's RRSP was liable to seizure in the event of the appellant's bankruptcy or following a garnishment by the Minister, one

must analyze the RRSP annuity contract and the legislation relevant to bankruptcy or to the ensuing period that is in issue in the instant case. The nature of the investment and the conditions that entitle the appellant to request funds from his RRSP must be analyzed.

[9] The evidence in the instant case is incomplete. The respondent submits that the appellant's RRSP consisted of 30-day to one-year term deposits, and that the appellant could demand the funds invested in these deposits upon their maturity. As for the appellant, he submits that the terms of his plan provided that annuity payments could not begin until his 60th birthday (he was born in 1937). According to the appellant, the plan's rules state that, as long as the plan is eligible under tax laws, the funds held and managed by the trustee cannot be withdrawn, transferred or assigned, whether in whole or in part. These facts are set out in the Notice of Appeal filed by La Laurentienne, and the respondent denied them in the Reply to the Notice of Appeal (see Exhibit A-1, tabs 1 and 2). Moreover, none of the witnesses addressed this issue at the trial and no document was tendered that would enable us to resolve this issue. I have no choice but to reject the argument that the amount in question was exempt from seizure.

[10] Subsection 178(1) of the *Bankruptcy and Insolvency Act* sets out a list of debts not released by the discharge of a bankrupt. Tax debts are not on the list. Under subsection 178(2), an order of discharge releases the bankrupt from all other claims provable in bankruptcy. By virtue of the definition of "provable claim" in section 2 and section 121 of the *Bankruptcy and Insolvency Act*, a bankruptcy applies to all debts and liabilities of the bankrupt, present or future, except those listed in subsection 178(1) of the *Bankruptcy and Insolvency Act*:

**"claim provable in bankruptcy", "provable claim" or "claim provable"** includes any claim or liability provable in proceedings under this Act by a creditor;

**Claims provable**

121. (1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.



[11] Section 128 of the Act contains special rules that apply when an individual becomes bankrupt. One such rule is that the trustee in bankruptcy is deemed to be the agent of the bankrupt. The evidence adduced at trial does not enable me to determine whether these rules were followed in the case at bar, or whether the trustee in bankruptcy received notices of assessment concerning the appellant's tax liabilities. What is certain is that the appellant's tax debt amounted to \$203,907.47 on December 10, 1993, and was the subject of a letter of requirement sent to La Laurentienne on that date. The appellant made an assignment of his property on February 1, 1994. At that time, the Minister became a creditor with a claim in the bankruptcy because the claim existed at the time that the appellant assigned his property to the trustee. The certificate of unconditional discharge issued to the appellant is dated January 30, 1998, and has the effect, in my opinion, of releasing the appellant's tax debt. Thus, the measures that the respondent took against La Laurentienne after January 30, 1998, were taken to recover a discharged debt.

[12] Judge Teskey of our Court was faced with a similar question in *Meltzer v. Canada*, [1995] T.C.J. No. 1433. The question was whether certain annuity payments that London Life made to the two appellants' creditors under an order of the Court of Queen's Bench were taxable as income in the appellants' hands. The appellants had converted their RRSPs into annuities a few months before they assigned their property to a trustee in bankruptcy. The Court ordered that the annuities purchased in this manner be paid to the creditors's benefit, and that order was made part of the appellants' order of discharge in bankruptcy. Judge Teskey held as follows at paragraphs 23-24:

The result of Justice Morse's judgment is that the transfer of the funds realized on the collapse of the RRSPs was void. By directing that the annuity payments be made directly to the creditors, he effectively removed the ownership from the Appellants to the creditors. Of particular importance here is that at least following the judgment (if not earlier) the Appellants had no beneficial ownership of, or interest in, the annuities and income arising therefrom, was not their income.

In any event, the sums are not taxable as neither Appellant received any money from London Life after the date of the judgment and received no benefit, as their debt and obligations to the plaintiffs therein had been extinguished by their discharge in bankruptcy.

[13] In the instant case, for reasons that were not explained, the amount invested with La Laurentienne was not assigned to the trustee of the assignment under the *Bankruptcy and Insolvency Act*. It is equally clear that the amount was not directly

paid to the appellant, though the payment of the amount by La Laurentienne could be beneficial to the appellant in the sense that it serves to pay down the appellant's debt to the Minister, thereby constituting an "indirect receipt" that would require the appellant to add the amount to his income for the taxation year in issue. However, since the tax debt was cancelled by the order discharging the appellant, one can, in my view, conclude that La Laurentienne's payment of RRSP income to the Minister, with a view to paying an extinguished debt, is not an amount received by the appellant as a benefit within the meaning of subsection 146(8) of the Act because the appellant obtained no sum of money or advantage as a result of the payment.

[14] Having said this, the Court does not have the jurisdiction to make any order regarding the reimbursement of this amount to La Laurentienne. The Court must respect the powers that it has been granted under subsection 171(1) of the Act:

171(1) **Disposal of appeal** — The Tax Court of Canada may dispose of an appeal by

- a) dismissing it; or
- b) allowing it and
  - (i) vacating the assessment,
  - (ii) varying the assessment, or
  - (iii) referring the assessment back to the Minister for reconsideration and reassessment.

[15] In *McMillen Holdings Ltd. v. Canada (Minister of National Revenue)*, [1987] T.C.J. No. 825, Judge Rip specified the scope of the Tax Court of Canada's jurisdiction:

I cannot overemphasize that the Court's original jurisdiction is to hear and determine appeals in matters arising under the Act; an action against the Crown based on the Act, but is not an appeal from an assessment, is not an appeal arising under the Act, which is within the jurisdiction of this Court.

[16] In *Collins v. Canada*, 96 DTC 1034, Judge Bowman held that the jurisdiction of the Court over an assessment made by the Minister includes the jurisdiction to determine legal questions raised by the assessment:

If this court is to exercise the jurisdiction that it has to determine the existence of legal rights that are relevant to the determination

of tax liability under the *Income Tax Act* it must be able to consider such questions.

[17] Consequently, the appeal is allowed and the assessment is referred back to the Minister for reconsideration and reassessment on the basis that the payment made by La Laurentienne is not to be considered income in the appellant's hands.

Signed at Ottawa, Canada, this 3rd day of March 2004.

"François Angers"

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Angers J.

Translation certified true  
on this 10th day of February 2005.

Jacques Deschênes, Translator