

[OFFICIAL ENGLISH TRANSLATION]

1999-3914(IT)I

BETWEEN:

GUYLÈNE PERRAS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on July 28, 2000, at Montréal, Quebec, by

the Honourable Judge Louise Lamarre Proulx

Appearances

For the Appellant: The Appellant herself

Agent for the Respondent: Ninette Singoye (Student-at-Law)

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JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 1997 taxation year is allowed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 9th day of August 2000.

"Louise Lamarre Proulx"

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J.T.C.C.

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Date: 20000809  
Docket: 1999-3914(IT)I

BETWEEN:

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and

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Respondent.

**REASONS FOR JUDGMENT**

**Louise Lamarre Proulx, J.T.C.C.**

[1] This is an appeal under the informal procedure for the 1997 taxation year. The issue is whether, for the year in question, the Minister of National Revenue (the "Minister") was correct in including in the appellant's income an amount of \$3,300 as alimony or other allowance payable on a periodic basis under section 56 of the *Income Tax Act* (the "Act").

[2] The facts on which the Minister relied in making his reassessment are set out in paragraph 4 of the Reply to the Notice of Appeal (the "Reply"):

[TRANSLATION]

- (a) the appellant did not report in her income tax return initially filed for the 1997 taxation year any taxable income from alimony or any other allowance payable on a periodic basis;

- (b) in terms of the taxable income from alimony or from any other allowance payable on a periodic basis, the Minister assessed the appellant's initial return as filed;
- (c) in a judgment of the Superior Court handed down in April 1993 and in a consent to relief regarding custody and alimony, it is stated that:
  - (i) the appellant and her former spouse, Marcel Beaulieu, lived together from May 1984 to September 1990;
  - (ii) from this relationship were born Carl-Olivier (June 19, 1987) and Fabrice (November 24, 1989);
  - (iii) the appellant had custody of the two children;
  - (iv) the former spouse had to pay the appellant alimony in the amount of \$200 a month for child support;
  - (v) in addition, the former spouse had to pay the appellant an amount of \$230 a month as a non-alimony contribution;
- (d) an examination that was made of the former spouse's proofs of payment showed that he had paid the appellant \$3,300 as alimony or other allowance payable on a periodic basis in the year at issue.

[3] It is worth reproducing paragraph 2 from the appellant's Notice of Appeal:

[TRANSLATION]

- 2. Mr. Beaulieu decided at one point that he was no longer able to pay the total amount of the alimony, or \$200, and the non-alimony portion of \$230 a month. He therefore offered to give me \$150 every two weeks. He explained that he could not do more at the moment but he promised not to deduct the amount of \$150 every two weeks since it did not correspond to the amount ordered by the Superior Court.

[4] Only the appellant testified. She admitted the facts set out in paragraphs 4(a) to 4(c) of the Reply.

[5] In her testimony, she repeated the explanation provided in paragraph 2 of her Notice of Appeal, referred to earlier. That agreement between her and Mr. Beaulieu was made at the end of 1996 or the beginning of 1997. The \$150 cheques issued every two weeks were produced in evidence as Exhibit I-1. Those cheques were produced in order to show the payment referred to in paragraph 4(d) of the Reply. In my view, they corroborate and confirm the appellant's testimony that Mr. Beaulieu proposed a new method of payment to the appellant, different from that provided for in the consent to relief regarding custody and alimony, filed as Exhibit A-1 and referred to in paragraph 4(c) of the Reply.

[6] The agent for the respondent referred to the decisions in *Canada v. Sills* [1985] 2 F.C. 200; *Canada v. Sigglekow* [1985] F.C.J. No. 902. Those decisions hold that the payments, although made later than the time limits provided for in an agreement or judgment, retain their nature as alimony. The judgments also hold that, although a judgment or a written agreement concerning alimony or other allowance may have indicated that such payment is not taxable, this does not prevent the amount from being taxable under the *Act*.

### Finding

[7] The evidence in the case at bar revealed that the payments made did not comply with the consent to relief regarding custody and alimony approved by the Superior Court but with another agreement that was negotiated by the payer. That agreement was described in paragraph 2 of the Notice of Appeal. In her testimony, the appellant outlined it once again and the payer's cheques corroborated and confirmed the new agreement. That agreement is an oral agreement.

[8] "Support amount" is defined in subsection 56.1 of the *Act*:

*"support amount"* means an amount payable or receivable as an allowance on a periodic basis for the maintenance of the recipient, children of the recipient or both the recipient and children of the recipient, if the recipient has discretion as to the use of the amount, and

- (a) the recipient is the spouse or former spouse of the payer, the recipient and payer are living separate and apart because of the breakdown of their marriage and the amount is receivable under an order of a competent tribunal or under a written agreement; or

- (b) the payer is a natural parent of a child of the recipient and the amount is receivable under an order made by a competent tribunal in accordance with the laws of a province.

[9] An amount qualifies as a support amount if, together with the other conditions expressed in the definition, it is payable under an order made by a court or under a written agreement. The payments not having been made under a court order but under an oral agreement, they are not amounts in the nature of a support amount within the meaning of this term in subsection 56.1(4) of the *Act*. Accordingly, those amounts do not have to be included in the appellant's income under paragraph 56(1)(b) of the *Act*.

[10] The appeal is allowed, without costs.

Signed at Ottawa, Canada, this 9th day of August 2000.

"Louise Lamarre Proulx"

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J.T.C.C.