

Dockets: 2008-497(IT)I  
2008-1950(IT)I

BETWEEN:

JAMES K. MEDYNSKI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on January 26, 2009 at Edmonton, Alberta

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Deborah McGuire

---

**JUDGMENT**

The appeal with respect to assessments made under the *Income Tax Act* for the 2004 and 2005 taxation years is dismissed.

Signed at Ottawa, Canada this 22<sup>nd</sup> day of April 2009.

“J. Woods”

---

Woods J.

Citation: 2009 TCC 216  
Date: 20090422  
Dockets: 2008-497(IT)I  
2008-1950(IT)I

BETWEEN:

JAMES K. MEDYNSKI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

#### **Woods J.**

[1] The appellant, James Medynski, appeals in respect of assessments made under the *Income Tax Act* for the 2004 and 2005 taxation years.

[2] The question to be determined is the deductibility of certain expenses that were incurred by Mr. Medynski and reimbursed to him by his former employer, the Dene Tha' First Nation.

[3] The reimbursement was part of a damages award made by an arbitrator following the summary dismissal of Mr. Medynski as a school principal in 2004. The employer admitted that the dismissal was unjust. The arbitration was only to set the damages.

[4] The total amounts received by Mr. Medynski pursuant to the award were \$216,237 in 2004 and \$122,274 in 2005.

[5] The appellant acknowledges that these amounts are included in income as a "retiring allowance" as that term is defined in s. 248(1) of the *Act*. It provides:

“*retiring allowance*” - “retiring allowance” means an amount (other than a superannuation or pension benefit, an amount received as a consequence of the death of an employee or a benefit described in subparagraph 6(1)(a)(iv)) received (a) on or after retirement of a taxpayer from an office or employment in recognition of the taxpayer’s long service, or (b) in respect of a loss of an office or employment of a taxpayer, whether or not received as, on account or in lieu of payment of, damages or pursuant to an order or judgment of a competent tribunal, by the taxpayer or, after the taxpayer’s death, by a dependant or a relation of the taxpayer or by the legal representative of the taxpayer;

[6] Included in computing the above amounts are various expenditures made by Mr. Medynski. He seeks to deduct some of these as legal expenses.

[7] The amounts which are claimed as legal expenses are:

- (a) travel costs between Calgary, Alberta and his new place of employment - \$7,492.10;
- (b) research, legal and accounting fees in connection with the arbitration proceeding - \$3,144.31;
- (c) relocation expenses from Chateh, Alberta, his former place of employment to Calgary, Alberta - \$2,392.84;
- (d) increased housing costs in Calgary, Alberta as compared with Chateh, Alberta where he was formerly employed - \$15,950;
- (e) dental, medical and vision expenses that would have been reimbursed to Mr. Medynski if he had continued to be employed - \$3,051.19; and
- (f) interview expenses relating to new employment - \$1,537.79.

[8] Mr. Medynski seeks to deduct these expenses as legal expenses pursuant to paragraph 60(o.1) of the *Act*.

[9] In the assessments, the Minister did allow a deduction for some of the expenses. The amounts allowed are listed above in (b) under the category “research, legal and accounting expenses.” These amounts are not in dispute.

[10] In respect of the other items, it is the Minister's position that they are not legal expenses and are not deductible under the *Act*.

[11] The provision that Mr. Medynski seeks to have applied allows a deduction for legal expenses paid to collect or establish a right to a retiring allowance.

[12] Certain parts of the provision are reproduced below, with the relevant parts underlined:

**60.(o.1) Idem** - the amount, if any, by which the lesser of

- (i) the total of all legal expenses (other than those relating to a division or settlement of property arising out of, or on a breakdown of, a marriage or common-law partnership) paid by the taxpayer in the year or in any of the 7 preceding taxation years to collect or establish a right to an amount of  
[...]
- (B) a retiring allowance of the taxpayer or a deceased individual of whom the taxpayer was a dependant, relation or legal representative [...]

[Emphasis added]

[13] The question is simply whether the amounts in dispute are legal expenses.

[14] Mr. Medynski submits that the word "legal" has a very broad meaning. According to the dictionary, it encompasses anything related to the law.

[15] Applying this meaning to the term "legal expenses," Mr. Medynski suggests, it includes any expenses that are in some way related to the law.

[16] In the context of paragraph 60(o.1), it is submitted a deduction is allowed for expenses that are incurred to establish a retiring allowance that have some relationship to the law.

[17] Several of the above expenses would qualify for deduction under this provision, it is suggested, because they are expenses incurred to mitigate damages. Mitigation is a legal requirement. The deduction also encompasses medical expenses, it is suggested, because there is a legal requirement for receipts in order to be entitled to reimbursement for these.

[18] The term "legal expenses" in para. 60(o.1) must be interpreted in context and in accordance with the purpose of the provision.

[19] In my view, the meaning ascribed to “legal expenses” that is suggested by Mr. Medynski is broader than what is contemplated by the section.

[20] The purpose of paragraph 60(*o.1*) is to allow a deduction for expenses of legal-type services incurred in connection with collecting or establishing a right to a retiring allowance or other amounts which are not relevant here. The type of expenses which are contemplated by the provision are expenses incurred for services typically performed by a lawyer. It may also include support services such as accounting fees which are incurred to support a wrongful dismissal claim.

[21] None of the disputed items qualify as legal expenses in accordance with this meaning.

[22] This is sufficient to dispose of the main issue but I would briefly mention other issues that arose during the hearing.

[23] The first concerns other arguments that Mr. Medynski sought to raise at the hearing.

[24] The arguments are: (1) that the Canada Revenue Agency had acted improperly during the audit, (2) that interest charged pursuant to the *Act* contravenes the equality provisions of the *Canadian Charter of Rights and Freedoms*, and (3) that an award of general damages of \$5,000 is not taxable.

[25] I did not allow these arguments to be raised at the hearing because the Minister did not have sufficient notice of them.

[26] The appeal for the 2005 taxation year first came before me last September. At that hearing, the matter was adjourned to enable Mr. Medynski to provide details to the Minister of a constitutional argument. The matter was rescheduled for January 2009 on a peremptory basis.

[27] The Minister was not provided with further information of the constitutional argument raised in September prior to the hearing. Further Mr. Medynski did not provide the Minister with notice of new arguments that were raised for the first time at the January 2009 hearing. It would not be fair to the Minister to have these issues adjudicated without prior notice.

[28] The second matter concerns the possibility of a deduction under other provisions. Although Mr. Medynski did not suggest that the expenses were

deductible under any other provision of the *Act*, counsel for the Minister informed the Court that the Canada Revenue Agency had considered whether a deduction might be allowable under other provisions. Apparently, they had concluded that no other provisions were applicable. Mr. Medynski did not challenge this at the hearing.

[29] Finally, I would mention that the parties were asked to provide submissions subsequent to the hearing on whether there would be a basis to exclude some of the reimbursement payments from the computation of the retiring allowance.

[30] Although this issue was not raised by Mr. Medynski, I felt that it was important for the parties to address it because the result in the case appears to be harsh. After reviewing the submissions, I am not aware of any basis on which I could provide relief.

[31] I would briefly mention that I considered the potential application of the surrogatum principle. This is a judge-made rule that applies to some damage payments. The problem here is that a judge-made rule cannot override the specific provisions of the *Act*. The amounts received here are within the statutory definition of retiring allowance.

[32] In the result, the appeal in respect of the 2004 and 2005 taxation years is dismissed.

Signed at Ottawa, Canada this 22<sup>nd</sup> day of April 2009.

“J. Woods”

---

Woods J.

CITATION: 2009 TCC 216

COURT FILE NOs.: 2008-497(IT)I  
2008-1950(IT)I

STYLE OF CAUSE: JAMES K. MEDYNSKI AND  
HER MAJESTY THE QUEEN

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: January 26, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice J. Woods

DATE OF JUDGMENT: April 22, 2009

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Deborah McGuire

COUNSEL OF RECORD:

For the Appellant:

Name: n/a

Firm:

For the Respondent: John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada