

Docket: 2007-436(IT)I

BETWEEN:

DAVID E. CHIASSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on February 12, 2010,
at Winnipeg, Manitoba

By: The Honourable Justice C.H. McArthur

Appearances:

| | |
|-----------------------------|-----------------------------------|
| For the Appellant: | The Appellant himself |
| Counsel for the Respondent: | Gerald Chartier and Cam Regehr |

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2003, 2004 and 2005 taxation years are dismissed.

Signed at Ottawa, Canada, this 15th day of April 2010.

“C.H. McArthur”

McArthur J.

Citation: 2010 TCC 202

Date: 20100415

Docket: 2007-436(IT)I

BETWEEN:

DAVID E. CHIASSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

McArthur J.

[1] These appeals are from assessments by the Minister of National Revenue (Minister) for the taxation years 2003, 2004 and 2005. The Appellant is a veteran of the Canadian Armed Forces who compulsorily retired due to disability after serving 19 years and 19 days. He received pension payments that were included in his taxable income. He submits that the payments should be exempt from taxation.

Issues

[2] Are the pension payments exempt from taxation under the *Income Tax Act (ITA)*? If they are not exempt should they be tax exempt, pursuant to subsection 15(1) of the *Canadian Charter of Rights and Freedoms (Charter)*?

[3] The Appellant is an engaging intelligent man who I commend for his well researched and spirited presentation. He obviously spent weeks, if not months in preparation.

[4] He suffers from severe post-traumatic stress disorder and was diagnosed with the condition in April 2004. He receives drug therapy and his Veterans Affairs Counsellor is working on a comprehensive rehabilitation plan involving many specialities. Stress and anxiety can have a significant impact on him.¹

[5] In computing income for 2003, 2004, and 2005 taxation years the he did not include pension benefits received pursuant to paragraph 16(1)(d) of the *Canadian Forces Superannuation Act (CFSA)* in the amount of \$25,842.00, \$26,617.00, \$27,070.00, respectively. In addition, he received, a tax free disability pension under section 21 of the *Pension Act* which was tax free pursuant to paragraph 81(1)(d) of the *ITA*.

Legislation

[6] Pension payments received must be included in the taxpayer's taxable income, pursuant to subparagraph 56(1)(a)(i) of the *ITA*, which reads:

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

(a)– any amount received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of,

(i) a superannuation or pension benefit including, without limiting the generality of the foregoing,

[7] Subsection 248(1) of the *ITA* defines superannuation or pension benefits as:

... any amount received out of or under a superannuation or pension fund or plan and, without restricting the generality of the foregoing, includes any payment made to a beneficiary under the fund or plan or to an employer or former employer of the beneficiary thereunder

- (a) in accordance with the terms of the fund or plan,
- (b) resulting from an amendment to or modification of the fund or plan, or
- (c) resulting from the termination of the fund or plan.

¹ Taken from information received upon a request for adjournment on May 6, 2009.

[8] Subsection 81(1) of the *ITA* lists amounts that are exempt from income inclusion. These include provisions related to pension payments made to Canadian Forces members.

81(1) There shall not be included in computing the income of a taxpayer for a taxation year,

81(1)(d) a pension payment, an allowance or compensation that is received under or is subject to the *Pension Act*, the *Civilian War-related Benefits Act* or the *War Veterans Allowance Act*, an amount received under the Gallantry Awards Order or compensation received under the regulations made under section 9 of the *Aeronautics Act*;

81(1)(d.1) the total of all amounts received by the taxpayer in the year on account of a Canadian Forces income support benefit payable to the taxpayer under Part 2 of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act* or on account of a disability award, death benefit, clothing allowance or detention benefit payable to the taxpayer under Part 3 of that Act;

81(1)(e) a pension payment received by the taxpayer on account of disability or death arising out of a war from a country that was an ally of Canada at the time of the war, if that country grants substantially similar relief for the year to a person receiving a pension referred to in paragraph (d);

Analysis

[9] The Appellant receives two pensions. The first is received under section 21 of the *Pension Act*. It is agreed that it is exempt from taxation, pursuant to paragraph 81(1)(d) of the *ITA*. This pension payment is not at issue in these appeals. He receives the second pension under paragraph 16(1)(d) of the *CFSA*.² None of the exempting provisions under section 81 of the *ITA* include pension payments made under the *CFSA*, and these pension payments are not exempt from taxation. Under paragraph 56(1)(a) and section 3 of the *ITA*, these payments received by the Appellant must be included in his taxable income.

[10] I now turn to the Appellant's *Charter* argument. He states that subsection 15(1) of the *Charter* supports his position. It reads:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

² *Canadian Forces Superannuation Act*, referred to earlier.

[11] The Appellant submits that pension payments made in respect of a disability under the *CFSA* should be exempt from taxation because the *ITA* under paragraph 81(1)(i) grants such relief to Royal Canadian Mounted Police veterans under the *Royal Canadian Mounted Police Superannuation Act (RCMPSA)* which reads:

81(1) There shall not be included in computing the income of a taxpayer for a taxation year,

(i)– a pension payment or compensation received under section 5, 31 or 45 of the *Royal Canadian Mounted Police Pension Continuation Act*, chapter R-10 of the Revised Statutes of Canada, 1970, or section 32 or 33 of the *Royal Canadian Mounted Police Superannuation Act*, in respect of an injury, disability or death;

[12] The Supreme Court of Canada’s decision in *R. v. Kapp*.³ Paragraph 17 contains a test for determining the existence of discrimination under subsection 15(1):

The template in *Andrews*, as further developed in a series of cases culminating in *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, established in essence a two-part test for showing discrimination under s. 15(1): (1) Does the law create a distinction based on an enumerated or analogous ground? (2) Does the distinction create a disadvantage by perpetuating prejudice or stereotyping? These were divided, in *Law*, into three steps, but in our view the test is, in substance, the same.

[13] If the answers to both of the questions are “yes”, then there is a subsection 15(1) *Charter* infringement. This infringement, however, may be justified under section 1 of the *Charter* as a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society.

Does the law create a distinction based on an enumerated or analogous ground?

[14] No doubt, the pension in question is a disability pension. This finding is important because his *Charter* argument was premised on the comparison between the treatment of the Canadian Forces disability pension payments and the RCMP disability pension payments.

³ 2008 SCC 41.

[15] The Appellant submits that there is a distinction between the two groups because payments under section 32 or 33 of the *RCMPSA* receive tax relief under paragraph 81(1)(i) of the *ITA* while the payments under paragraph 16(1)(d) of the *CFSA* receive no relief.

[16] I find no such distinction. Members of the Canadian Forces and members of the RCMP who are forced to retire due to disability may each receive two types of pensions. The first type of pension is exempt from taxation. Section 21 of the *Pension Act* grants a disability pension to Canadian Forces members and is exempt from taxation, pursuant to paragraph 81(1)(d) of the *ITA*. The Appellant is a recipient of this pension. Similarly, disability pensions under sections 32 and 33 of the *RCMPSA* are tax exempt pursuant to paragraph 81(1)(i) of the *ITA*. Similar taxation treatment is afforded to both parties for a similar type of pension.

[17] The second type of pension is not exempt from taxation. Paragraph 16(1)(d) of the *CFSA* payments must be included in income, pursuant to paragraph 56(1)(a) of the *ITA*. Similarly, an RCMP member who would receive a similar disability pension under subsection 11(2) of the *RCMPSA* must include it in his income, pursuant to paragraph 56(1)(a) of the *ITA*.

[18] In summary, there is no distinction between how recipients of disability payments from the RCMP and the Canadian Forces are treated for taxation purposes.

[19] Furthermore, the analogous ground upon which the Appellant makes his *Charter* argument, occupational status, is in fact not an analogous ground. See *Baier v. Alberta*,⁴ at paragraph 65, and *Delisle v. Canada* at paragraph 44.⁵

[20] Having found that the Appellant's *Charter* argument fails for lack of distinction and lack of an analogous ground, there is no need to consider the second stage.

⁴ 2007 SCC 31.

⁵ [1999] 2 S.C.R. 989.

[21] For these reasons, the appeals are dismissed.

Signed at Ottawa, Canada, this 15th day of April 2010.

“C.H. McArthur”

McArthur J.

CITATION: 2010 TCC 202

COURT FILE NO.: 2007-436(IT)I

STYLE OF CAUSE: DAVID E. CHIASSON AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: February 12, 2010,

REASONS FOR JUDGMENT BY: The Honourable Justice C.H. McArthur

DATE OF JUDGMENT: April 15, 2010

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Gerald Chartier and
Cam Regehr

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm: N/A

For the Respondent: Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada