

Docket: 2007-24(IT)I

BETWEEN:

MARIE-CLAIRE GOUGEON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on February 18, 2010, at Montréal, Quebec

Before: The Honourable Justice Alain Tardif

Appearances:

For the appellant:                      The appellant herself  
Counsel for the respondent:        Janie Payette

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 2001 taxation year is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 2nd day of July 2010.

"Alain Tardif"

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Tardif J.

Translation certified true  
on this 17th day of August 2010  
Margarita Gorbounova, Translator

Citation: 2010 TCC 359

Date: 20100702

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### **REASONS FOR JUDGMENT**

Tardif J.

[1] This is an appeal from an assessment based on section 3, subsections 56(2), 146(1), 146(8), 146(16), 147.1(11), 152(9) and 248(1) and paragraph 56(1)(h) of the *Income Tax Act* (the Act).

[2] The issues are as follows:

- (a) Whether, in determining the appellant's income for the 2001 taxation year, the Minister was justified in adding the amount of \$58,206 as income from a registered retirement savings plan;
- (b) Alternatively, whether, in determining the appellant's income for the 2001 taxation year, the amount of \$58,206 was correctly added as an indirect payment.

[3] In explaining and justifying the assessment under appeal, the respondent relied on the following assumptions of fact:

[TRANSLATION]

1. She denies the allegations of fact in the Notice of Appeal that are not consistent with the following.

2. The notice of original assessment in respect of the 2001 taxation year was sent to the appellant on April 8, 2002.
3. In a reassessment, notice of which was sent to the appellant on March 5, 2005, in respect of the 2001 taxation year, the Minister of National Revenue (the Minister) added, in computing said appellant's income, the amount of \$58,206 as income from a registered retirement savings plan.
4. On April 18, 2005, the appellant served a notice of objection on the Minister in respect of the 2001 taxation year.
5. On September 25, 2006, the Minister confirmed the reassessment dated March 3, 2005, in respect of the 2001 taxation year.
6. On May 17, 2007, the Honourable Justice Alain Tardif of the Tax Court of Canada allowed the appellant's application to extend the time for appealing in respect of the 2001 year, and the Notice of Appeal attached to the application was considered to be valid and deemed to have been filed with the Tax Court of Canada on the same day.
7. In making and confirming the reassessment dated March 3, 2005, in respect of the 2001 taxation year, the Minister relied on the same assumptions of fact, specifically:
  - (a) The company called Canadian Corporation Creation Center (CCCC) was incorporated on February 23, 2000, under Part II of the *Canada Corporations Act*, and its head office was in Ottawa.
  - (b) The company called National Business Investment in Trust Inc. (NBI) was incorporated on November 15, 1999, under the *Ontario Business Corporations Act*, and its head office was in Ottawa.
  - (c) On June 21, 2000, as part of a trust agreement, CCCC appointed three trustees to administer the pension plan set up by CCCC under the name of "Régime de retraite pour les employés et membres de Canadian Corporation Creation Center".
  - (d) On July 18, 2000, the CCCC pension plan filed with the Canada Customs and Revenue Agency (now Canada Revenue Agency) an application to register a pension plan in respect of the CCCC pension plan.
  - (e) On December 19, 2000, the Canada Customs and Revenue Agency (now Canada Revenue Agency) approved the application to register a pension plan for CCCC. The registration of the "Régime de retraite pour les employés et membres de Canadian Corporation Creation Center" took effect retroactively on July 24, 2000.

- (f) During 2000 and 2001, advertisements were placed in local papers promoting a tax scheme in which CCCC proposed to holders of locked-in pension plans or RRSPs to transfer their pension funds into the CCCC pension plan in exchange for a loan from NBI or another company of the same group.
- (g) CCCC had no activities other than receiving money from financial institutions and remitting it to NBI or to other companies of the same group.
- (h) On September 28, 2001, following an investigation concerning CCCC, the Financial Services Commission of Ontario revoked the provincial registration of the CCCC pension plan.
- (i) On December 11, 2001, the Minister issued a notice of intent to revoke the registration of the pension plan known as the “Régime de retraite pour les employés et membres de Canadian Corporation Creation Center”, having registration number 1062363 RREMCCCC of the company CCCC, mainly for the following reasons:
  - (i) The primary purpose of the CCCC pension plan was not to provide periodic payments to individuals after retirement and until death in respect of their service as employees of CCCC.
  - (ii) There was no employer–employee relationship between CCCC and the members of the CCCC pension plan.
- (j) CCCC did not appeal from the service of the notice of intent to revoke the registration.
- (k) The Minister then issued a notice of revocation of registration with respect to the pension plan known as the “Régime de retraite pour les employés et membres de Canadian Corporation Creation Center” having registration number 1062363 RREMCCCC, of the company CCCC, and the revocation was in effect as of July 24, 2000.
- (l) In 2001, the appellant held, among other things, a locked-in retirement account the market value of which was assessed to be \$58,206.
- (m) On December 20, 2000, the appellant signed form T2033 authorizing a transfer in the amount of \$58,206 from the locked-in retirement account she held with Financière Banque Nationale inc. into the CCCC registered pension plan, having number 1062363 RREMCCCC. The transfer was completed on or around January 16, 2001.

- (n) Following the transfer, the Canadian Corporation Creation Center transferred the appellant's money to the National Business Investment in Trust Inc.
- (o) In the course of 2001, the appellant cashed a cheque in the amount of \$40,778 issued in her name by National Business Investment in Trust Inc. and dated January 22, 2001.
- (p) The Minister considered that the amount of \$58,206 that the appellant had transferred from her locked-in retirement account to the CCCC pension plan, revoked on July 24, 2000, was not a transfer of funds between registered plans, but that that amount was received by the appellant in the course of 2001 as a benefit from a registered retirement savings plan.
- (q) The Minister thus included in the appellant's income for the 2001 taxation year the amount of \$58,206.

**Other relevant facts**

- 8. The appellant was never an employee of CCCC.
- 9. CCCC never made employer contributions to the "Régime de retraite pour les employés et membres de Canadian Corporation Creation Center" having registration number 1062363 RREMCCCC.
- 10. CCCC and the appellant never truly intended for the CCCC pension plan to provide the appellant with periodic payments after she retired.

[4] In support of her appeal, the appellant read a short text that she herself had prepared. In addition to her text, she indicated that she did not understand why the various stakeholders such as the bank had not warned her about the potential tax consequences of making the transfer requested.

[5] She stated that there is a well-known program called HBP, which allows RRSP holders to use their RRSPs to purchase property. Given the existence of such a program, she believed that her plan was legitimate. However, she did not take steps to verify with the competent authorities or a qualified person whether that was true.

[6] She stated that the advertisement stating that she could take advantage of the money accumulated in her locked-in retirement account in order to carry out her plan to buy a home had piqued her interest. She then contacted the Canadian Corporation Creation Center (CCCC) having number 1062263 RREMCCCC, which had published the advertisement.

[7] She met with a representative who seemed credible and trustworthy to her in a building and offices that inspired trust. To confirm and validate her perception of the trustworthiness of the company in question, she stated that she had obtained a business card.

[8] The business in question was giving her the opportunity to take advantage of the capital in her pension plan (locked-in retirement account). She expressly requested, by means of her signature, that it take all necessary steps with the custodian of her pension plan, namely, Financière Banque Nationale Inc., in order to transfer the amount of \$58,206.00 on January 16, 2001. Paragraphs (n) and (o) of the Reply to the Notice of Appeal describe the process very well:

[TRANSLATION]

(n) Following the transfer, the Canadian Corporation Creation Center transferred the appellant's money to the National Business Investment in Trust Inc.

(o) In the course of 2001, the appellant cashed a cheque in the amount of \$40,778 issued in her name by National Business Investment in Trust Inc. and dated January 22, 2001.

[9] She stated that she had found the withholding of \$17,428.00 reasonable, given the usual and well-known policy of withholding an amount of income tax to which, in this case, administrative fees and commission had been added. She also stated that she had not wondered about this and had accepted everything without question.

[10] To the question of why she had not mentioned her withdrawal in her income tax return that year, the appellant replied that she had not paid attention to the taxes purportedly deducted at source given that she had never received a document attesting to the exact amount deducted.

[11] The appellant reluctantly acknowledged that she had been careless on the pretext that the system allows taxpayers to use their RRSPs in order to purchase property.

[12] Evidently, she had not discussed her plan with the person responsible for her file at Financière Banque Nationale Inc., because she stated that she had had to answer questions about whether she was satisfied with the service received, thus demonstrating that the bank did not understand the reason for her transfer request.

[13] The respondent called two witnesses: Francine Hamel, from the Fraud Prevention Section, and Gilles Lalonde from the Registered Plans Directorate. They explained and described all of the facts the assessment under appeal was based on, which were also very well set out in the Reply to the Notice of Appeal, reproduced in paragraph 3 of this judgment.

[14] The two witnesses explained the organizational structure of the entities involved in this true criminal organization, whose ultimate goal was to enrich its founders, downright unscrupulous swindlers who had the indecency and audacity to apply to the tax authorities at both the provincial level in Ontario and the federal level to have the authorization required to receive accreditation to administer pension funds in order to reassure the pension beneficiaries and managers from whom they hoped to obtain transfers. Both levels of government accepted the application for registration.

[15] After some time, the Ontario tax authorities found out about the fraud. Informed about the possibility of fraud, the Canada Revenue Agency retroactively cancelled the registration or accreditation obtained several months earlier. Consequently, all cases involving the criminal organization, including, obviously, the appellant's, were dealt with. Several taxpayers were able to benefit from the class action filed against the province of Ontario, but the appellant did not qualify.

[16] Very comprehensive documentary evidence was gathered and submitted by the Agency; that evidence made it possible to note that the appellant had indeed received most of her retirement fund, specifically, \$40,778.00.

[17] This observation is based on documents that were confiscated during the investigation; there is no dispute or challenge in that regard since the appellant very clearly admitted that she had received the amount of \$40,778.00 from the organization with which she had done business.

[18] The appellant was careless and rash to contact strangers from a newspaper ad.

[19] The appellant stated that she had trusted them, among other things, because of the premises where the meeting took place and because of a business card that looked bona fide; she indicated that she lamented the fact that the bank had not warned her before making the transfer.

[20] The appellant stated that the person responsible for her file at the bank had asked her if she was satisfied with the service she was receiving; evidently, the trustee who managed the appellant's retirement account helped her make a transfer

without understanding the reason for it. The bank's reaction demonstrates that the appellant clearly did not explain or describe her plan; if she had, the bank would possibly have expressed reservations since it would have appeared that a competitor was offering a plan that did not exist.

[21] The evidence established that the appellant is an intelligent person who is very articulate and is also able to understand certain nuances of the situation very well. I believe that she was able to understand the risks and dangers that are inherent in such a transaction. In addition, the comments to the effect that the people she had transacted business with seemed trustworthy demonstrate that the appellant had some reservations as to the legitimacy of the transaction.

[22] The features of an RRSP or any other pension plan that benefits from a temporary tax exemption, which starts when the account is opened and usually ends when the beneficiary withdraws all or part of the plan's contents, are known to the general public and undeniable.

[23] Income tax, which is neither paid nor withheld on the principal or on the return, is basically deferred or carried forward; however, what is certain is that sooner or later the tax burden must be taken on. Any plan, offer, information or person who offers the possibility of avoiding the tax burden inherent in a person's retirement investments should set off alarm bells in those who are being offered such a thing.

[24] An informed and careful person should conduct a thorough investigation with the help of qualified and competent people when someone offers him or her a scenario with a different end result.

[25] In this case, the situation is a little different, however, because the appellant did not seem to want to avoid the tax obligations inherent in a withdrawal from her locked-in retirement account. Rather, she wanted to take out the locked-in funds before formally retiring, which was what the criminal organization<sup>1</sup> was offering, while there was no such opportunity at the trust institution holding her retirement account. That was something that should have alerted the appellant, especially since a professional organization above reproach rarely advertises itself in the newspaper.

[26] Why did the appellant take a risk without taking any precautions? She wanted the money from her retirement account at all costs. It is not rare in such a situation to become less cautious and even somewhat rash in making decisions.

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<sup>1</sup> The supposed tax withholdings were in reality profits to swindlers, who pocketed more than the equivalent of the income tax usually withheld by trustees of retirement funds.



[27] In that regard, she said that she felt she could trust the criminal organization because, among other things, the person whom she met gave her a business card, which she filed in evidence.

[28] An organization that puts an ad in a newspaper would not be afraid to distribute one or more business cards; that is obviously not sufficient to draw conclusions as to its trustworthiness.

[29] A reasonable and careful person would certainly not be content with such second-rate devices to meet his or her duty of care and vigilance. Furthermore, why did the appellant not explain the reasoning behind her plan to her financial advisor at the bank?

[30] In any case, these facts are irrelevant to disposing of an appeal in which the assessment is based solely on the fact that the appellant authorized the transfer of and took out the funds accumulated in her locked-in retirement account.

[31] The appellant did indeed receive money from her locked-in retirement account, which in itself supported and warranted the obligation to pay the income tax on the amount that was transferred in accordance with the assessment issued.

[32] Thus, beyond all other considerations, the real issue is essentially whether the assessment is well-founded. The appellant admits that she had expressly done what was needed to transfer the retirement account so that she could then gain access to most of the capital it contained. That fact alone proves the merits of the assessment because she herself chose to end the tax moratorium that was supposed to end once she started to benefit from the money sheltered from income tax in accordance with the applicable conditions.

[33] The Tax Court of Canada is required, first, to act in accordance with the provisions of the *Income Tax Act* and, second, to specifically ensure that all its decisions are consistent when cases are similar. Two cases were recently decided; one of them was affirmed by the Federal Court of Appeal. The decisions were as follows:

- *Bonavia v. Canada*, 2009 TCC 289, affirmed by *Bonavia v. Canada*, 2010 FCA 129.
- *Astorino v. Canada*, 2010 TCC 144.

[34] Those decisions are relevant because the companies they involve are the same as in this case.

[35] In fact, the appellant was swindled. She is the only one responsible for this situation. As for the assessment, it was well-founded in that the appellant benefited from \$58,000; in fact, she expressly authorized the transfer of the account managed by Financière Banque Nationale to a company of her own choosing.

[36] The transfer of the retirement account was made to her advantage and for her benefit with the appellant's full knowledge, because she wanted to access the money in order to carry out her plan of purchasing a residence.

[37] The fact that she received \$40,778.00 instead of \$58,206.00 is absolutely irrelevant since her decision affected the entire amount.

[38] The evidence clearly established that the conditions set out in subsection 56(2) of the Act were present:

- (1) The payment was made to a person other than the taxpayer in respect of whom an assessment is made.
- (2) The payment was made pursuant to the direction of or with the concurrence of the taxpayer.
- (3) The payment was made for the benefit of the taxpayer.
- (4) The payment would have been included in the income of the taxpayer in respect of whom a reassessment was made to the extent that it would have been if the taxpayer had received the payment him- or herself.

[39] For these reasons, the appeal is dismissed without costs.

Signed at Ottawa, Canada, this 2nd day of July 2010.

"Alain Tardif"

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Tardif J.

Translation certified true  
on this 17th day of August 2010  
Margarita Gorbounova, Translator

CITATION: 2010 TCC 359

COURT FILE NO.: 2007-24(IT)I

STYLE OF CAUSE: MARIE-CLAIRE GOUGEON AND HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 18, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif

DATE OF JUDGMENT: July 2, 2010

APPEARANCES:

For the appellant:	The appellant herself
Counsel for the respondent:	Janie Payette

COUNSEL OF RECORD:

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