

Docket: 2014-3740(IT)G

BETWEEN:

ROBERT K. GEICK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on May 23, 2017, at Sudbury, Ontario

Before: The Honourable Mr. Justice Randall S. Boccock

Appearances:

For the Appellant:                      The Appellant himself  
Counsel for the Respondent:        Gabrielle White

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**JUDGMENT**

IN ACCORDANCE with the Reasons for Judgment attached, the appeal in respect of the 2012 taxation year is dismissed on the basis that the legal expenses incurred by the Appellant are not deductible against income from office or employment.

Signed at Ottawa, Canada, this 21st day of June 2017.

“R.S. Boccock”

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Boccock J.

Citation:2017 TCC 120  
Date:20170621  
Docket: 2014-3740(IT)G

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ROBERT K. GEICK,

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### **REASONS FOR JUDGMENT**

Bocock J.

#### I. Introduction

[1] The Appellant, Robert Geick, incurred \$115,996.00 in legal fees between 2007 and 2011. There is no dispute on the quantum he paid, the period over which the expenses were incurred or their characterization as legal fees. However, the Minister of National Revenue (the “Minister”) disallowed the deduction of the legal fees against 2012 employment income on the basis the fees were exclusively paid to defend criminal charges.

[2] Mr. Geick appeals and asserts there were three bases upon which such legal fees are deductible. Succinctly put, his grounds of appeals are:

- (i) any criminal conviction, which was defended by payment of the legal fees, if proved against Mr. Geick would have resulted in the loss of his employment income (“employment loss”);
- (ii) a long and arduous claim process for pension benefits ensued culminating in payments in 2012 of a commuted lump sum in respect of which certain legal fees were expended to access the pension funds (“pension impairment”); and

- (iii) Mr. Geick's loss of employment would have resulted in seizure by creditors of five rental properties because Mr. Geick's creditworthiness would have been destroyed ("property seizure").

[3] To the contrary, the Minister says the legal fees were paid solely to defend criminal charges. The Minister also asserts the legal fees were not incurred to collect or establish a right to collect an amount owed as income, as required under sub-section 8(1)(b) of the *Income Tax Act*, RSC 1985, c.1, as amended (the "*Act*"). Further, the Minister states the legal fees were not paid to collect or establish a right to collect a pension in respect of employment, as required under sub-section 60(0.1) of the *Act*. Lastly, the Minister determined there was no probability of property seizure proximate to any potential job loss.

## II. Factual Background

[4] Mr. Geick was a police officer from 1990 until 2011. In 2006, as a result of several charges under the Criminal Code relating to incidents in 2004, he was suspended from active duty with pay. Around the same time, he was in a car accident which caused him extensive and permanent injury.

### a) Criminal Charges

[5] Mr. Geick retained legal counsel to defend the criminal charges. As a result, some were withdrawn. There was at least one conviction which resulted in a conditional sentence involving a period of house arrest.

[6] The invoices for legal services were produced at the hearing. The first invoice related to legal fees commencing on June 8, 2007 and the last consisted of similar services terminating on August 12, 2011. Where services were described in any detail, they referenced specific criminal procedures and proceedings: bail hearings, bail review, preliminary inquiries, pre-trial conferences and motions, severance and charter applications and meetings with Crown attorneys. Some generic references existed: "meeting with client", "interview with client" and "reporting to client". No references to other "non-criminal" legal services were contained in such invoices. These invoices totalled all the legal fees initially deducted.

### b) Pension Benefits

[7] Relevant documents between Mr. Geick and his pension plan holder were also produced. These spanned a period from May 2011 until May 2012. These documents comprise Mr. Geick's initial submissions regarding his claim for monthly pension benefits, then, the ultimate pay-out of his "locked in" commuted pension benefit in March, 2012. Mr. Geick listed the sole reason for collecting his pension as permanent disability.

c) Rental Income

[8] With respect to the rental properties, Mr. Geick submitted a list of five properties. He testified that he owned each jointly with another person. Three were owned jointly with his wife, one with his sister and the final one with his wife and a Mr. Prevost. All interests in the properties were divided equally among the described owners. Mr. Geick stated each property was subject to a mortgage, but he could not recall the mortgage balances or monthly payments.

III. Employment Loss

(a) The Law

[9] The relevant excerpted portion of the *Act* reads as follows:

Deductions allowed

8(1) In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted...the following amounts...

Legal expenses of employee

(b) amounts paid by the taxpayer in the year as or on account of legal expenses incurred by the taxpayer to collect, or to establish a right to, an amount owed to the taxpayer that, if received by the taxpayer, would be required by this subdivision to be included in computing the taxpayer's income;

[10] A review of the section plainly describes its purpose: incurring deductible legal fees "to collect, or to establish a right to, an amount owed to the taxpayer" which income, if received, would be employment income. The adjective "employment" may be read into the section because the over-arching relevant statutory portion referred to in the *Act* is subdivision "a". This subdivision relates to income or loss from an office or employment.

[11] The question remains: is the expenditure of legal fees for the “preservation” of a taxpayer’s employment sufficient to constitute an effort to “collect” or “establish” a right to collect an amount of employment income owed? For the following reasons it is not sufficient.

[12] During the hearing, Mr. Geick indicated he was fully remunerated as a police officer during the currency of defending the criminal charges. There was no evidence otherwise to suggest moneys were owed or unpaid to him for such services. When he retired from police service, he received a monthly disability pension. This began on September 1, 2011. Prior to that time he received his full salary from employment. There simply was no gap relating to unpaid, withheld or contested remuneration as employment income.

[13] On this point, the Tax Court has been repeatedly clear. Reported cases have also involved police officers. It is logically accepted that such officers might be subject to termination from employment if convicted of a criminal offence. This is Mr. Geick’s argument.

[14] The Court shall leave aside for a moment the fact Mr. Geick was not subsequently removed from employment after an actual conviction on at least one charge against him. More to the point, neither the possibility of such an occurrence nor the actual occurrence after conviction is sufficient to fall within the wording of sub-section 8(1). The use of the words “collect or establish a right to collect an amount owed” has considerable bearing on this.

[15] Justice Woods, as she then was, dealt with both these situations. Firstly, she held that unless the legal fees are incurred to collect amounts (previously described as salary and wages) “owed” from employment, they are not deductible under paragraph 8(1)(b). The protection or preservation of a future source of income is not sufficient: *Esposito v. R.*, 2004 TCC 102 at paragraphs 6 and 7. Secondly, even where termination follows, legal fees spent to initially defend such termination or seek reinstatement, are not deductible. In another case before the Court, Justice Woods also held that damages for wrongful termination are not income from employment, but rather an award of damages for breach of contract and do not fall within “salaries or wages”: *Blackburn v. R.*, 2010 TCC 69 at paragraphs 23 through 27.

[16] That same appellant had been previously unsuccessful in separately asserting before the Tax Court that legal fees expended to defend *Police Services Act* charges should be deductible under subsection 8(1). In both those distinct appeals,

the Federal Court of Appeal decision in *Blagdon v. R.*, 2003 DTC 549 was referenced. That decision enunciates that the *sine qua non* for the deductibility of legal fees under subsection 8(1) is the existence of unpaid salary. If none exists, the deduction is not allowed and the appeal must fail. In Mr. Geick's case, there was no salary or wages unpaid or owing. His appeal cannot succeed on this ground.

#### IV. Pension Impairment

##### (a) The Law

[17] The relevant excerpted portion of the *Act* relating to deductible legal expenses concerning pension benefits is as follows:

Deductions in Computing Income

Other deductions

60 There may be deducted in computing a taxpayer's income...

Idem

(0.1) the amount, if any, by which the lesser of

(i) the total of all legal expenses...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

(A) a benefit under a pension fund or plan...in respect of the employment of the taxpayer..., or

(B) a retiring allowance of the taxpayer or a deceased individual of...

[18] A taxpayer is allowed to deduct legal expenses paid to collect or establish a right to a pension. Mr. Geick received full monthly disability pension benefits on September 1, 2011. He commenced the process to collect that pension earlier that year. As stated, he had been on disability leave for medical reasons related to a motor vehicle accident since 2006. There were no entries in the legal accounts suggesting legal advice was sought or given concerning the collection, application or assertion of a right constituting a pension benefit. His pension claim process occurred concurrently with the latter period when the criminal charges were defended.

[19] The remaining argument is that proven criminal charges *per se* might generally impair his pension benefits. There simply was no evidence that Mr. Geick was at risk of losing his pension benefits because of the criminal charges. Based upon the evidence he produced, his application to collect his pension proceeded seamlessly, aside from the usual informational and medical requirements. His pension application itself was coincident with the final stages of the criminal proceedings. No evidence suggested possible future termination if convicted of criminal charges. On the basis of these facts, the Court cannot accept that Mr. Geick would not have received his entitled pension benefits, as he in fact did, notwithstanding an a conviction on one of the criminal charges.

[20] Therefore, there was no collection or establishment of a right needed to collect pension in the present case requiring the expenditure of legal fees.

#### V. Property Seizure

[21] Mr. Geick argues that incurring legal fees was necessary to protect his rental property income. He asserts that the financing related to these 5 jointly held properties was precarious. His loss of employment as a police officer would have made mortgage renewal impossible or, at least, highly unlikely. Such lack of mortgage renewal would have led to demand for the loans and seizure of the assets, or, although not expressed, sale of the assets on a forced sale basis at diminished values.

[22] The Court cannot accept this basis for deductibility for several reasons:

- (i) there were no references in any legal accounts during the currency of the charges referencing the rental properties, the related business or managing the collateral risk related to job loss;
- (ii) the evidence regarding these properties before the Court was minimal. It consisted of a list of 5 municipal addresses and a brief description of the property as any of a triplex, duplex or fourplex etc. There were no legal descriptions, mortgage amounts, maturity dates, due dates, mortgagees, registered owners and mortgagors, mortgage terms, property values, net worth statements of co-mortgagors, rent rolls or cash flow statements provided for any unit;
- (iii) Mr. Geick confirmed that the partner on each property was either a police officer or nurse and otherwise gamefully employed; and,

(iv) all mortgages were in good standing, and no evidence suggested payments could not be made from the rental stream or by the other co-owners, none of whom testified.

[23] In summary, on this evidentiary basis alone, the existence and extent of any interest by Mr. Geick in the rental properties cannot be sustained. There is no usual evidence before this Court of his ownership interest: a parcel register, deed, insurance certificate, co-tenancy agreement or tax roll.

[24] Further, even if sufficient evidence of the rental properties' existence had been adduced, some form of objective third party evidence from the mortgagees or similar lender regarding the probable risk of mortgage renewal was required. Given the other gamefully employed co-owners and the rental income stream, some objective contrary evidence of lending risk was needed from a typical lender or even the co-owners. There was none.

[25] In conclusion, the appeal is dismissed. Mr. Geick incurred the legal expenses solely to protect his future source of income as a police officer. His vested pension, which he immediately began collecting upon retirement which, in turn, followed a conviction on at least one criminal charge, was never at risk or owing, but unpaid. Further, there was no evidence regarding his vaguely described interests in rental properties or their risk of seizure should he have lost his job.

[26] Costs are awarded to the Respondent in accordance with the tariff.

Signed at Ottawa, Canada, this 21st day of June 2017.

“R.S. Bocock”

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Bocock J.



CITATION: 2017 TCC 120

COURT FILE NO.: 2014-3740(IT)G

STYLE OF CAUSE: ROBERT K. GEICK AND HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Sudbury, Ontario

DATE OF HEARING: May 23, 2017

REASONS FOR JUDGMENT BY: The Honourable Mr. Justice Randall S.  
Bocock

DATE OF JUDGMENT: June 21, 2017

APPEARANCES:

For the Appellant: The Appellant himself  
Counsel for the Respondent: Gabrielle White

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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