

Docket: 2005-2760(IT)I

BETWEEN:

RAYMOND LAQUERRE,

Appellant,

and

HER MAJESTY THE QUEEN

Respondent.

Appeal heard on February 2, 2006, at Trois-Rivières, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Simon-Nicolas Crépin

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2003 taxation year is dismissed without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 21st day of July 2006.

“Alain Tardif”

Tardif J.

Translation certified true
on this 21st day of December 2006.
Gibson Boyd, Translator

Citation: 2006TCC404
Date: 20060721
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BETWEEN:

RAYMOND LAQUERRE,

Appellant,

and

SA MAJESTÉ LA REINE,

Respondent.

REASONS FOR JUDGMENT

Tardif J.

[1] This is an appeal from an assessment made by the Minister of National Revenue (the “Minister”) under the *Income Tax Act* (the “Act”) for the 2003 taxation year.

[2] The issue is whether the Minister correctly determined and approved the inclusion of the sum of \$3,955 in the calculation of the Appellant’s pension income.

[3] The facts are very simple and have been well summarized in subparagraphs 6 (a), (b), (c) and (d) of the Reply to Notice of Appeal; they read as follows:

[TRANSLATION]

- (a) On October 19, 2004, the Minister revised the Appellant’s pension, relying on the T4A slip issued by the Royal Canadian Mounted Police;
- (b) at the objection stage, the Appellant claimed that of the pension of \$29,905, a sum of \$3,995 represented indexation of the pension and that that sum should be tax exempted since he was forced to retire due to his state of health;

- (c) The company Morneau Sobeco, which manages the Royal Canadian Mounted Police Pension Fund, confirmed that the Appellant receives an annuity under the *Royal Canadian Mounted Police Superannuation Act* based on his years of service;
- (d) a pension granted for long service is taxable.

[4] The position of the parties is, again, very simple to summarize.

[5] The Appellant argued that, if it had not been for his state of health, the pension he would have been entitled to for his years of service and work with the Royal Canadian Mounted Police would not have been indexed; had it not been so, there would not have been indexation.

[6] The Appellant indicated that, as beneficiary of a pension for health reasons, with a supporting medical certificate, he was entitled to indexation, which represents an amount of \$3,955 for the 2003 taxation year. Consequently, the Appellant wishes to deduct this amount of \$3,955 from his taxable income, given that he considers that this amount was paid to him due to illness.

[7] In support of his claims, the Appellant indicated that he can be compared to those who cease work following an accident at work and receive 90% of their pay tax free.

[8] The Minister argued that the pension granted to the Appellant was mainly based on his long service, which, moreover, was not denied by the Appellant. The Appellant did indeed receive a pension essentially corresponding to his years of service, which was indexed due to the fact that he had a medical certificate.

[9] First of all, there is a big difference between the two situations. Indeed, a person who stops work following an accident at work normally receives compensation calculated according to their compensation at the time of the accident. The number of years of service is not taken into consideration.

[10] Thus, two people, each with a very different number of years of service, could receive the same compensation following an accident at work if their salary were the same at the time of the accident.

[11] In this case, the amount that the Appellant received was essentially based on his years of service with the Royal Canadian Mounted Police. As for the indexation, it was essentially a result of the medical certificate that enabled the Appellant to sever the work relationship with his employer.

[12] Let us look at the provisions of the Act.

[13] All taxpayers must declare all of their income, which is taxable under section 3 of the Act.

[14] Certain income and certain deductions are not attributable to the principal sources of income covered by the Act. Pension income receives a specific treatment. This income is dealt with in section 56 of the Act, in particular subparagraph 56(1)(a)(i), “Other sources of income”. This income must be included in the year when the taxpayer receives it:

56. (1) Amounts to be included in the income for year –

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

(a) Pension benefits, unemployment insurance benefits, etc. –

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,

...

[15] Subsection 248(1) defines the expression “superannuation or pension benefit”, which is found in subparagraph 56(1)(a)(i), as follows:

248. (1) Definitions – In this Act,

...

“**superannuation or pension benefit**” includes 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.

[16] The Act provides for several distinctions; there can be tax deductions, credits or exemptions, according to the circumstances. Section 149 of the Act provides for various exemptions. Section 81 of the Act provides for more exemptions.

[17] Paragraph 81(1)(i) of the ITA provides:

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

(i) **R.C.M.P. pension or compensation** -- 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;

[18] The pension concerned in this case is not covered by one or the provisions mentioned in paragraph 81(1)(i) of the Act, i.e. section 32 or 33 of the *Royal Canadian Mounted Police Superannuation Act* (“RCMPSA”). The pension concerned in sections 32 and 33 is clearly defined.

[19] In *Gingras v. Canada*, No. 95-2467(IT)I, July 19, 1996, [1996] T.C.J. No. 794, par. 2-5 and 9 (QL), Lamarre Proulx J. indicated:

The appellant was released from the Royal Canadian Mounted Police on December 2, 1988 as he had become disabled. Under paragraph 11(2)(b) of the *Royal Canadian Mounted Police Superannuation Act* (“RCMPSA”), as the appellant had ten or more years of pensionable service to his credit he was entitled to an immediate annuity. Under subsection 10(1) of that Act the amount depended on the number of years of pensionable service.

The annuities received from 1989 to 1992 amounted to \$26,727, \$25,959, \$27,205 and \$28,783 respectively. The pension payment

application (filed by the appellant with his table 2A) indicated that the annuities were paid pursuant to paragraph 10(2)(b), now paragraph 11(2)(b), of the RCMPSA.

Under section 32 of the aforementioned RCMPSA (before 1985 this was section 27), a pension in accordance with the Pension Act shall be granted to any member of the RCMP who has suffered a disability in any case where the disease resulting in the disability arose out of, or was directly connected with, his service in the Force. On December 2, 1988 the appellant made an application for such a pension.

The Canadian Pension Commission tribunal rendered a decision on March 14, 1990, retroactive to December 3, 1988, awarding the appellant a right to a pension under subsection 32(1) of the RCMPSA.

...

It is quite clear that neither the facts nor the law supports this argument of the appellant. The appellant receives pensions in two different categories, one pursuant to paragraph 11(2)(b) of the RCMPSA for his service and to be included in calculating his income under subparagraph 56(1)(a)(i) of the Act, and the other under section 32 of the RCMPSA, which is not included in calculating his income under paragraph 81(1)(i) of the Act.

[Emphasis added.]

[20] The pension income is therefore taxable.

[21] Pensions and additional pensions under the *Canada Pension Plan* or the *Old Age Security Act* are equally taxable (see Vern Krishna, *The Fundamentals of Canadian Income Tax*, 8th ed., Thomson Carswell, Toronto, 2004, p. 517).

[22] The issue to be determined is whether the amount received from indexation must be taxed or not. To answer that question, the following questions must first be answered:

- 1) Is the indexation granted under section 32 or 33 of the *RCMPSA*?
- 2) Is this indexation accessory to the principal and therefore taxable?

[23] The answer to the first question being negative, I do not need to answer the second.

[24] The *RCMPSA* states the following at sections 32 and 33 at Part II:

PART II

BENEFITS IN RESPECT OF INJURY OR DEATH ON SERVICE

32. Subject to this Part, an award in accordance with the *Pension Act* shall be granted to or in respect of:

(a) any person to whom Part VI of the former Act applied at any time before April 1, 1960 who, either before or after that time, has suffered a disability or has died, or

(b) any person who served in the Force at any time after March 31, 1960 as a contributor under Part I of this Act and who has suffered a disability, either before or after that time, or has died,

in any case where the injury or disease or aggravation thereof resulting in the disability or death in respect of which the application for the award is made arose out of, or was directly connected with, the person's service in the Force.

...

33. (1) Where a former member of the Force who is in receipt of a pension under this Part, under subsection 22(1) of the *Royal Canadian Mounted Police Act*, chapter

241 of the Revised Statutes of Canada, 1952, as that subsection read before April 1, 1960, or under subsection 5(1) of the *Royal Canadian Mounted Police Pension Continuation Act*, chapter R-10 of the Revised Statutes of Canada, 1970, by reason of his having become disabled is receiving treatment as an in-patient under regulations made pursuant to the *Department of Veterans Affairs Act* for the disability in respect of which his pension was awarded or granted, he may be paid a treatment allowance that, in the opinion of the Treasury Board, would be equivalent to the treatment allowance that would be payable to him under those regulations if he were a veteran to whom those regulations applied, and during the time the treatment allowance is being paid to him section 41 of the *Pension Act* shall apply with such modifications as the circumstances require to his pension.

[25] The increase or indexation considered in these sections only applies to the situations described in them; indexation is therefore a sort of supplementary benefit. Indeed, it is interesting, essential even, to take into consideration sections 35 and 39 of the RCMP SA, at Part III:

PART III

SUPPLEMENTARY BENEFITS

35. In this Part,

“pension” means any pension, annual allowance or annuity payable under Part I.

“recipient” means

(a) a person who is in receipt of a pension and who has reached sixty years of age,

(b) a person who is in receipt of a pension and who, not having reached sixty years of age, is disabled,

(c) a person who, not having reached sixty years of age, is in receipt of a pension under subsection 11(9) or (10),

(d) a person who, not having reached sixty years of age, is in receipt of a pension as a result of having been compulsorily retired from the Force by reason of any mental or physical

condition rendering the person disabled,

(e) a person who, not having reached sixty years of age, is in receipt of a pension based on not less than

(i) twenty-six years of pensionable service, in the case of a person who has reached fifty-nine years of age but has not reached sixty years of age,

(ii) twenty-seven years of pensionable service, in the case of a person who has reached fifty-eight years of age but has not reached fifty-nine years of age,

(iii) twenty-eight years of pensionable service, in the case of a person who has reached fifty-seven years of age but has not reached fifty-eight years of age,

(iv) twenty-nine years of pensionable service, in the case of a person who has reached fifty-six years of age but has not reached fifty-seven years of age, or

(v) thirty years of pensionable service, in the case of a person who has reached fifty-five years of age but has not reached fifty-six years of age, or

(f) a person who is in receipt of the pension by reason of being a survivor or a child.

...

39. (1) The supplementary benefit payable to a recipient for a month in any year shall be calculated with reference to the retirement year of the recipient and shall be equal to the amount of the supplementary retirement benefit that would be payable with respect to the recipient's pension under section 4 of the *Supplementary Retirement Benefits Act* if that Act applied to the recipient.

...

[26] Section 4 of the *Supplementary Retirement Benefits Act* ("SRBA") provides the following:

SUPPLEMENTARY RETIREMENT BENEFITS

...

4. (1) The supplementary retirement benefit payable to a recipient for a month in any year is an amount equal to the amount obtained by multiplying:

(a) the amount of the pension payable to the recipient for that month by

(b) the ratio that the Benefit Index for that year bears to the Benefit Index for the retirement year of the person to or in respect of whom or in respect of whose service the pension is payable,

and subtracting therefrom:

(c) the amount of the pension payable to the recipient for that month.

...

[27] Finally, it is interesting to note the resemblance between the contents of the RCMP's "Benefit Information Bulletin of Indexation" (Exhibit A-3) and section 35 of the *RCMPSA*.

<i>RCMPSA</i>	<i>Information Bulletin (RCMP)</i>
<p>35. In this Part, "recipient" means</p> <p>(a) a person who is in receipt of a pension and who has reached sixty years of age,</p> <p>(b) a person who is in receipt of a pension and who, <u>not having reached sixty years of age, is disabled,</u></p> <p>(c) a person who, not having reached sixty years of age, is in receipt of a pension under subsection 11(9) or (10),</p> <p>(d) a person who, not having reached sixty years of age, is in receipt of a pension as a result of having been compulsorily retired from the Force by reason of any mental or physical condition rendering the person disabled,</p> <p>(e) a person who, not having reached sixty years of age, is in receipt of a pension based on not less than</p> <p>(i) twenty-six years of pensionable service, in the case of a person who has reached fifty-nine years of age but has not reached sixty years of age, [26 + 59 = 85]</p>	<p>Annuities payable under the provisions of the <i>RCMPSA</i> and the <i>RCMPPCA</i> are subject to indexation and are applicable to:</p> <p>a) All survivors in receipt of an annual allowance, except those in receipt of benefits under Part IV, <i>RCMP Pension Continuation Act</i> (Widow's and Orphan's Pension Fund);</p> <p>b) <u>Regular Members under 60 years of age and Civilian Members under 50 years of age who were discharged due to disability;</u></p> <p>c) Regular Members and Civilian Members under 60 years of age who have become disabled since retirement; (See d)</p> <p>d) Civilian Members becomes at age 50;</p> <p>e) Regular Members whose age and complete years of pensionable service, when added together, total 85, commencing at:</p> <p>(i) age 55 if pension is based on 30 or more years of pensionable service, [55 + 30 = 85] [See 35(e)(v)]</p> <p>(ii) age 56 if pension is based on not less than 29 years of pensionable service, [56 + 29 = 85]</p>

- (ii) twenty-seven years of pensionable service, in the case of a person who has reached fifty-eight years of age but has not reached fifty-nine years of age, [27 + 58 = 85]
- (iii) twenty-eight years of pensionable service, in the case of a person who has reached fifty-seven years of age but has not reached fifty-eight years of age, [28 + 57 = 85]
- (iv) twenty-nine years of pensionable service, in the case of a person who has reached fifty-six years of age but has not reached fifty-seven years of age, [29 + 56 = 85]
- (v) thirty years of pensionable service, in the case of a person who has reached fifty-five years of age but has not reached fifty-six years of age, [30 + 55 = 85] or
- (f) a person who is in receipt of the pension by reason of being a survivor or a child.
- [See 35(e)(iv)]
- (iii) age 57 if pension is based on not less than 28 years of pensionable service, [57 + 28 = 85] [See 35(e)(iii)]
- (iv) age 58 if pension is based on not less than 27 years of pensionable service, [58 + 27 = 85] [See 35(e)(ii)]
- (v) age 59 if pension is based on not less than 26 years of pensionable service, [59 + 26 = 85] [See 35(e)(i)]
- (vi) If none of the above conditions apply, **indexation** becomes payable at age 60.

[28] For these reasons, I must conclude that the amount that the Appellant receives from indexation cannot be qualified as compensation under section 32 or 33 of the RCMPSA.

[29] This assessment is valid under section 40 of the RCMPSA, which reads as follows:

40. (1) The supplementary benefit payable to a recipient shall be paid at the same times, in the same manner, during or in respect of the same periods and subject to the same terms and conditions as the pension payable to that recipient.

[30] Indexation is therefore accessory to the principal. On the taxpayer's pay statement, the indexation amount ("IND1") is calculated by applying a mathematical formula to the base annuity ("BAS1").

[31] The amount payable under the indexation corresponds with a supplementary benefit rather than compensation. Indeed, an indexation amount cannot be paid alone; it must be calculated based on another amount.

[32] In this sense, it cannot be compensation, but rather a supplementary benefit accessory to an essential principal amount; the principal amount can exist without indexation, but the reverse is not true.

[33] In this case, the amount of the supplementary benefit or of the indexation has its basis in section 35 of the RCMPSA, rather than section 32 or 33 of the RCMPSA.

[34] For these reasons, this supplementary benefit cannot be deductible under paragraph 81(1)(i) of the Act; consequently, the appeal must be dismissed.

Signed at Ottawa, Canada, this 21st day of July 2006.

Alain Tardif

Tardif J.

CITATION: 2006TCC404

COURT FILE NO.: 2005-2760(IT)I

STYLE OF CAUSE: Raymond Laquerre and
Her Majesty the Queen

PLACE OF HEARING: Trois-Rivières, Quebec

DATE OF HEARING: February 2, 2006

REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif

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