

Docket: 2006-805(IT)I

BETWEEN:

MAGELLA CHABOT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on August 18, 2006, at Sept-Îles, Quebec

Before: The Honourable Justice Paul Bédard

Appearances:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Benoit Mandeville

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**JUDGMENT**

The appeal from the reassessment made under the *Income Tax Act* for the 2003 taxation year is allowed and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Bromont, Quebec, this 22nd day of January 2007.

"Paul Bédard"

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Bédard J.

Translation certified true  
on this 26th day of February 2008.  
Susan Deichert, Reviser

Citation: 2006TCC630

Date: 20070122

Docket: 2006-805(IT)I

BETWEEN:

MAGELLA CHABOT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

**REASONS FOR JUDGMENT**

Bédard J.

[1] This is an appeal under the informal procedure, against a reassessment dated February 25, 2005, in which the Minister of National Revenue (the Minister) disallowed a support deduction in the amount of \$5,040 claimed by the Appellant in computing his income for the 2003 taxation year.

The facts

[2] In a judgment dated October 25, 1993 (Exhibit I-1, para. 8), Mr. Justice Paul Corriveau of the Superior Court of Quebec determined that the Appellant had to pay his ex-spouse Christine Martel \$265 per month in support for their daughter Véronique (the support).

[3] The Appellant did not pay Ms. Martel this support from January 1, 2000, to January 1, 2002 (the relevant period). The arrears thereby accumulated during the relevant period (the arrears) amounted to approximately \$7,628.

[4] In a judgment dated November 29, 2002, Corriveau J.

- (i) ordered the Appellant to pay Ms. Martel the arrears<sup>1</sup>;
- (ii) varied the amount of support to be paid for the period subsequent to January 1, 2002<sup>2</sup>; and
- (iii) permitted the Appellant to deduct from the arrears the sum of \$1,790 which the Appellant had paid his daughter Véronique directly as support in 2000, 2001 and 2002 (the support paid directly).<sup>3</sup>

[5] The evidence<sup>4</sup> discloses that the Appellant paid Ms. Martel some of the arrears, that is to say, \$3,250, in 2003.

[6] The Appellant had deducted the following amounts as support in computing his income for the 2003 taxation year:

- (i) the arrears (\$3,250) paid to Ms. Martel in 2003; and
- (ii) the support (\$1,790) paid directly to the Appellant's daughter in 2000, 2001 and 2002.

### The law

[7] The provisions of the *Income Tax Act* (the Act) that are applicable to the tax treatment of child support payments are as follows:

#### **Section 60: Other deductions**

There may be deducted in computing a taxpayer's income for a taxation year such of the following amounts as are applicable

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<sup>1</sup> Exhibit A-1, paragraph 57.

<sup>2</sup> Exhibit A-1, paragraph 58.

<sup>3</sup> Exhibit A-1, paragraph 59.

<sup>4</sup> Exhibit A-2, [TRANSLATION] "Statement of Account".

...

(b) Support - the total of all amounts each of which is an amount determined by the formula

$$A - (B+C)$$

where

- A is the total of all amounts each of which is a support amount paid after 1996 and before the end of the year by the taxpayer to a particular person, where the taxpayer and the particular person were living separate and apart at the time the amount was paid,
- B is the total of all amounts each of which is a child support amount that became payable by the taxpayer to the particular person under an agreement or order on or after its commencement day and before the end of the year in respect of a period that began on or after its commencement day, and
- C is the total of all amounts each of which is a support amount paid by the taxpayer to the particular person after 1996 and deductible in computing the taxpayer's income for a preceding taxation year....

**60.1(4)** Definitions -- The definitions in subsection 56.1(4) apply in this section and section 60.

**56.1 (4)** Definitions -- The definitions in this subsection apply in this section and section 56.

"child support amount" means any support amount that is not identified in the agreement or order under which it is receivable as being solely for the support of a recipient who is a spouse or common-law partner or former spouse or common-law partner of the payer or who is a parent of a child of whom the payer is a natural parent.

"commencement day" at any time of an agreement or order means

- (a) where the agreement or order is made after April 1997, the day it is made; and

...

"support amount" means an amount payable or receivable as an allowance on a periodic basis for the maintenance of the recipient, children of the recipient or both

the recipient and children of the recipient, if the recipient has discretion as to the use of the amount, and

(a) the recipient is the spouse or common-law partner or former spouse or common-law partner of the payer, the recipient and payer are living separate and apart because of the breakdown of their marriage or common-law partnership and the amount is receivable under an order of a competent tribunal or under a written agreement; or

(b) the payer is a natural parent of a child of the recipient and the amount is receivable under an order made by a competent tribunal in accordance with the laws of a province.

### Analysis and conclusion

[8] In my opinion, the Appellant could, in accordance with paragraph 60(b) of the Act, deduct the arrears as child support in computing his income because the obligation to pay those arrears stemmed from an order that was issued on October 25, 1993, and, therefore, before April 1997. The order of November 29, 2002, did not create a commencement day because it did not change the total child support payable to Ms. Martel under the terms of the 1993 order. Indeed, the order of November 29, 2002, merely confirmed the Appellant's obligation to pay Ms. Martel the child support that she was entitled to receive during the relevant period under the terms of the 1993 order. However, for the following reasons, the part of the arrears (\$1,790) which the 2002 order allowed to be deducted from the arrears otherwise payable is not, in my opinion, deductible as support under paragraph 60(b) of the Act in computing the Appellant's income:

(i) The \$1,790 was not paid in accordance with the 1993 order. Indeed, the order provided that the Appellant was to pay \$265 per month to Ms. Martel for the benefit of his daughter Véronique. The Appellant paid this amount directly to his daughter.

(ii) Support is only deductible in the year that it was paid. The amount of \$1,790 was paid in 2000, 2001 and 2002, not in 2003.

(iii) The amount of \$1,790 is not support because the Appellant paid it directly to his child rather than paying it to Ms. Martel so that she could use it at her discretion.

[10] For these reasons, only the amount of \$3,250 could be deducted as support in computing the Appellant's income for the 2003 taxation year in accordance with paragraph 60(b) of the Act.

Signed at Bromont, Quebec, this 22nd day of January 2007.

"Paul Bédard"

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Bédard J.

Translation certified true  
on this 26th day of February 2008.  
Susan Deichert, Reviser

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APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Benoit Mandeville

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.  
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