

Court File No. 2004-4687(IT)I

TAX COURT OF CANADA

IN RE: the Income Tax Act

BETWEEN:

JOHN WILLIAM GRAY

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

HEARD BEFORE THE HONOURABLE MR. JUSTICE O'CONNOR

at Ontario Court - Provincial Division, Courtroom No. 1

Century Place, 4th Floor, 199 Front Street,

Belleville, Ontario,

on Tuesday, November 29th, 2005 at 9:31

APPEARANCES:

Mr. John W. Gray the Appellant in person

Ms Cheryl Cruz for the Respondent

Also Present:

Ms Roberta Colombo Court Registrar

Ms Penny Stewart Court Reporter

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Upon commencing on Tuesday, November 29, 2005 at 9:31.

JUSTICE O'CONNOR: I am prepared to render a judgment.

Firstly, it is clear that this court does not have jurisdiction with respect to the Ontario property and sales tax credits.

Secondly, the basic facts recited in the Reply to the Notice of Appeal, the Appellant has admitted that the assumptions of fact contained in paragraph 10 of the Reply are correct.

It has also been confirmed that in the subsequent relevant period, that is, in 2004 and 2005, the factual picture taken in December, 2003 remains the same.

The effect of all of the paragraphs and subsections of section 122 of the Income Tax Act is that the GST credit is calculated on the basis of the combined incomes of the Appellant and his wife. In some cases the date used in the calculation, such as the date of the marriage and the date of the persons commencing to live together, may seem to produce an unfair result. This issue has been brought before this Court several times. There are at least two decisions that I am aware of where exactly the same issue was brought forward, and

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those are the cases of *Russell v. The Queen*, and *McFayden v. The Queen*; those are decisions in 2001 and 2000. And, as I said, the exact same issue was brought up in both those cases and both judges, who had to deal with it, expressed the view that the provisions of Section 122, in certain circumstances, may appear to be unfair, but those are the provisions and this Court really cannot, although sometimes it might like to, change the provisions of the *Income Tax Act*.

Regrettably, therefore, the appeal has to be dismissed.

--- Whereupon concluding at 9:58 a.m.

I HEREBY CERTIFY THAT I have, to the best of my skill and ability, accurately recorded by Shorthand and transcribed therefrom, the foregoing proceeding.

Penny Stewart, Chartered Shorthand Reporter

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