

Docket: 2012-3343(CPP)

BETWEEN:

WILLIAM A. VERMILYEA,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on January 22, 2013 at Ottawa, Canada

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Mélanie Sauriol

JUDGMENT

The appeal is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada this 14th day of February 2013.

“G. A. Sheridan”

Sheridan J.

Citation: 2013 TCC 50
Date: 20130214
Docket: 2012-3343(CPP)

BETWEEN:

WILLIAM A. VERMILYEA,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

Sheridan J.

Background and Procedural History

[1] This appeal has to do with contributions the Appellant made to the Quebec Pension Plan (“QPP”) under the *Quebec Pension Plan Act* in 2009. At that time, the Appellant was resident in Ontario but employed in the province of Quebec. His employment earnings from his two Quebec-based employers totaled \$62,626¹ from which was deducted \$2,883 in QPP contributions.

[2] In 2009, the Appellant was also receiving a retirement pension under the Canada Pension Plan (“CPP”). In these circumstances, the Appellant believed that under paragraph 12(1)(c) of the CPP, no contributions should be payable in respect of his Quebec employment income.

[3] A request for a refund of overpayment of contributions is governed by section 39 of the CPP. In keeping with the practice permitted by the Minister of National Revenue (the “Minister”), the Appellant claimed a refund of the overpayment of QPP contributions of \$2,883 under line 448 of his 2009 tax return.

¹ Exhibits R-1 and R-2.

[4] By Notice of Assessment dated April 13, 2010 (“Initial Assessment”), the Minister refunded the full amount claimed by the Appellant in his return.

[5] However, by Notice of Reassessment under the *Income Tax Act* dated September 6, 2011 (“Subsequent Assessment”), the Minister adjusted the overpayment amount from \$2,883 to \$764. According to paragraph 8 of the Amended Reply to the Notice of Appeal, this adjustment was based on the following calculation:

Total QPP Pensionable Earnings	\$46,300
Less Basic CPP/QPP Exemption	-\$3,500
Earnings Subject to Contribution Maximum (\$42,800)	\$42,800
Total Contributions Deducted	\$2,883
Required Contribution (42,800 * 4.95%, to a Maximum of \$2,118.60)	- \$2,118.6
Overpayment	<u>\$764.64</u>

[6] On December 5, 2011, the Appellant filed a Notice of Objection to the Subsequent Assessment.

[7] The Minister issued a Notice of Confirmation dated April 25, 2012 confirming the Subsequent Assessment.

Procedures, Jurisdiction and Remedies Available

[8] At the hearing, counsel for the Respondent sought and was granted leave to file an amended Reply to the Notice of Appeal setting out the procedural history in language conforming to the provisions of the CPP and also, revising the Minister’s position in respect of the Court’s jurisdiction to hear and dispose of the appeal. Counsel’s submissions appear at paragraphs 16-19 of the Respondent’s Written Representations:

16. While there is no ability to appeal a decision of the Minister under s. 39 of the CPP, this Court can consider whether QPP contributions were payable.

17. When a refund of an overpayment of QPP is requested within the four year limitation period by a contributor covered by the 1968 Agreement, the Minister must make a determination as to whether (1) a contribution is payable and (2) the amount of the contribution payable, in order to calculate the amount of the overpayment and refund [Footnote 16: See the calculation found at ss 8(2) of the CPP.] Those questions are listed under section 26.1 of the CPP, and the Minister can make those determinations on her own initiative by virtue of section 27.3 of the CPP.
18. A right of appeal lies to this Court with respect to those two decisions, by virtue of sections 27 and 28 of the CPP. The Court, on an appeal from the Minister's determination that a contributor had the obligation to contribute to the QPP, can vacate, confirm or vary that determination.
19. What is properly at issue in this appeal is whether the Minister correctly determined that a QPP contribution was payable.

[9] The issue of what relief may be granted in disposing of the above question is dealt with in paragraph 31 of the Respondent's Written Representations:

31. Likewise, under the CPP, the Court's jurisdiction with respect to employees is limited to appeals from decisions of the Minister on an appeal from a decision made under section 26.1 of the CPP. The only relief that can be granted by this Court with respect to appeals by employees (which necessarily imply a decision under section 26.1 of the CPP) is found at section 28 of the CPP and is limited to vacating, confirming or varying a decision of the Minister on an appeal under section 27 of the CPP. The relief that can be granted does not include the ordering of refunds, which constitutes a claim for recovery of a debt alleged to be owing.

Analysis

[10] For the following reasons, I am persuaded that a contribution was payable under the QPP in 2009. To determine whether a contribution was payable by the Appellant to the QPP in 2009, regard must be had to the workings of the CPP and the QPP. The Respondent's witness, Mr. Eric Gagnon, a technical policy advisor with the Canada Revenue Agency responsible for the CPP and QPP, testified as to the historical background of the legislation and how it functioned to facilitate the harmonious administration of refunds of overpayments governed by the CPP and the *Quebec Pension Plan Act*. His testimony was clear and credible.

[11] Briefly summarized, when the CPP was enacted in 1965, the provinces were given the option of developing their own comprehensive contributory pension plans rather than signing on to the CPP. The province of Quebec chose to set up its own

comprehensive contributory pension plan, the QPP, under the *Quebec Pension Plan Act*. To avoid duplication of contributions, it was agreed that the obligation to make contributions in respect of employment earnings to either the CPP or the QPP would be based on the province of employment². This distinction is important in the present appeal because the Appellant was resident in Ontario but employed in the province of Quebec.

[12] The Appellant relied on paragraph 12(1)(c) of the CPP in support of his position that no contributions ought to be payable on his Quebec earnings:

Contributory Salary and Wages

Amount of Contributory salary and wages

12. (1) The amount of the contributory salary and wages of a person for a year is the person's income for the year from pensionable employment, computed in accordance with the *Income Tax Act* (read without reference to subsection 7(8) of the Act), plus any deductions for the year made in computing that income otherwise than under paragraph 8(1)(c) of the Act, but does not include any such income received by the person

(a) before he reaches eighteen years of age;

(b) during any month that is excluded from that person's contributory period under this Act or under a provincial pension plan by reason of disability; or

(c) after he reaches seventy years of age or after a retirement pension becomes payable to him under this Act or under a provincial pension plan.

[13] However, subsection 12(1) must be read in light of 12(3) of the CPP which provides that where the employment income has been earned in a province with its own comprehensive contributory pension plan, the term "contributory salary and wages" as referred to in the CPP must be construed in accordance with the criteria under the applicable provincial legislation:

12. (3) A reference in this Act to the contributory salary and wages of a person for a year shall, in relation to any remuneration paid to him in respect of pensionable employment in a province providing a comprehensive pension plan, be construed as a reference to his income for the year from that employment as that income is required to be computed under the provincial pension plan of that province. [Emphasis added.]

² Subsection 4(1) of the CPP and section 2 of the *Quebec Pension Plan Act*.

[14] There is a reference to “contributory salary and wages” in subsection 8(2) of the CPP which sets out the formula for determining whether there has been an overpayment of employee contributions under the CCP or the QPP. Since the Appellant’s province of employment was Quebec and that province has its own comprehensive contributory pension plan, subsection 12(3) requires that the amount of the “contributory salary and wages” used in the overpayment formula in subsection 8(2) be determined under the *Quebec Pension Plan Act*; the relevant provision is section 50:

DIVISION IV
CALCULATIONS OF CONTRIBUTIONS

Contribution of Employee

Amount.

50. Every employee who is employed in pensionable employment for an employer shall, by deduction at source, make a contribution equal to the product of one-half of the rate of contribution for the year and the lesser of the following amounts:

(a) the employee's salary and wages for the year, described in the second paragraph, that the employee's employer pays to or in respect of the employee, or is deemed to pay to the employee, minus the prescribed amount of the employee's personal exemption; and

(b) his maximum contributory earnings for the year, minus such amount as is determined in prescribed manner to be his salary and wages paid by such employer on which a contribution has been made for the year by the employee under a similar plan.

Salary and wages.

The salary and wages for a year to which subparagraph *a* of the first paragraph refers is the total of

(a) the base wages, within the meaning of section 1159.1 of the Taxation Act (chapter I-3), the employee receives for the year from pensionable employment, minus the amount deducted in computing the employee's income for the year under section 76 of that Act; and

(b) the income the employee is deemed to receive for the year from pensionable employment under paragraph *a* of section 37.2.

Restriction.

However, the salary and wages described in the second paragraph does not include any amount paid to the employee, paid in respect of the employee or deemed to be paid to the employee before the employee reaches 18 years of age or in a month that, because of a disability, is excluded from the employee's contributory period under subparagraph *a* of the second paragraph of section 101.

[15] Unlike paragraph 12(1)(c) of the CPP³, the “Restrictions” portion of section 50 of the *Quebec Pension Plan Act* does not operate to exclude from the obligation to contribute to the QPP those in receipt of a retirement pension. From this it follows that the Minister properly determined that a contribution was payable under the QPP in 2009. Accordingly, the Appellant’s appeal is dismissed.

Signed at Ottawa, Canada this 14th day of February 2013.

“G. A. Sheridan”

Sheridan J.

³ As it read in 2009.

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REASONS FOR JUDGMENT BY: The Honourable Justice G. A. Sheridan
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APPEARANCES:

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