

[OFFICIAL ENGLISH TRANSLATION]

Date: 20010924
Docket: 2001-860(IT)I

BETWEEN:

PIERRE BOURGEOIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Delivered orally from the bench on July 31, 2001, at Montréal, Quebec, and revised at Ottawa, Ontario, on September 24, 2001.)

Lamarre, J.T.C.C.

[1] The appellant is appealing from assessments made by the Minister of National Revenue ("Minister") for the 1997, 1998 and 1999 taxation years. By these assessments:

1. the Minister added to the appellant's income an amount of \$17,707.33 that the appellant received from the Régie des rentes du Québec in 1999 as a disability benefit but did not include in his income; that amount included a lump sum for 1997 and 1998; the Minister spread the taxation of the amount over the 1997, 1998 and 1999 taxation years using the method authorized by section 120.3 of the *Income Tax Act* ("Act");

2. the Minister denied the credit for mental or physical impairment claimed by the appellant for those three years.

[2] The appellant explained that \$8,538.39 of the \$17,707.33 awarded to him as a disability benefit was withheld by the Quebec government to repay the social assistance overpayments he had received. The appellant is therefore asking that the taxable amount of the disability benefit be reduced by the amount that was so repaid.

[3] The notices of assessment issued for the 1997 and 1998 taxation years, which were filed in evidence as Exhibits A-1 and A-2, show that the appellant first included but then deducted the social assistance payments in computing his taxable income; as a consequence, in accordance with paragraphs 56(1)(u) and 100(1)(f) of the *Act*, he did not have to pay any tax on these payments.

[4] Under paragraph 56(1)(a) of the *Act*, the amount of the disability benefit is fully taxable. Although part of that amount was used to repay the social assistance overpayments the appellant had received, that is not a reason for reducing the taxable amount of the disability benefit. First of all, the way that income is disposed of should not affect the taxation of income that is otherwise taxable under the *Act*. Moreover, the appellant did not have to assume any tax burden with respect to the social assistance payments.

[5] Furthermore, the recipient of a disability benefit may elect to spread the amount of the benefit over the previous taxation years to which it relates. This is what the Minister did in these assessments, to the appellant's advantage.

[6] It is therefore my view that the assessed amounts are valid as regards the disability benefit.

[7] As for the credit for mental or physical impairment, it is my opinion that the evidence shows on a balance of probabilities that the appellant has a severe and prolonged mental impairment the effects of which are such that his ability to perform a basic activity of daily living (namely perceiving, thinking and remembering) has been markedly restricted within the meaning of sections 118.3 and 118.4 of the *Act* since March 1995.

[8] In the medical certificate filed as Exhibit I-1, Dr. Louis Gaborit, a psychiatrist, referred to a permanent marked restriction existing since March 1995

and attributable to a major personality disorder with schizoid and antisocial traits that considerably hinders normal functioning and the use of the cognitive functions. Dr. Gaborit did not answer question 9 in Part B of the medical certificate (namely, the question whether the impairment is severe enough to restrict the basic activity of daily living in question all or substantially all of the time, even if the patient takes medication or receives therapy). However, I consider that the letter (filed as Exhibit A-6) by Dr. Maurilio Villota, a neurologist, revealing the existence of a slow dysfunction originating in the subcortical regulating centres, and the letter (Exhibit A-7) by Dr. Gaborit revealing a schizotypal personality disorder that may jeopardize the safety of the appellant and of others complete the medical certificate and attest sufficiently to a mental impairment that entitles the appellant to a credit under the *Act*.

[9] In *Radage v. Canada*, [1996] T.C.J. No. 730 (Q.L.), mental impairment was analysed as follows by Judge Bowman of this Court in paragraph 45 of the English version:

Finally there must be considered – and this is the most difficult principle to formulate – the criteria to be employed in forming the judgement whether the mental impairment is of such severity that the person is entitled to the credit, i.e. that that person's ability to perceive, think and remember is markedly restricted within the meaning of the Act. It does not necessarily involve a state of complete automatism or anoësis, but it should be of such a severity that it affects and permeates his or her life to a degree that it renders that person incapable of performing such mental tasks as will enable him or her to function independently and with reasonable competence in everyday life.

[10] It is therefore my opinion that the appellant has proved that he has a mental impairment of such a severity that it affects and permeates his life to a degree that it renders him incapable of performing such mental tasks as will enable him to function with reasonable competence in everyday life.

[11] Moreover, in my view, the requirement in the *Act* that a doctor certify that the appellant has a severe and prolonged impairment—as discussed in *MacIsaac v. Canada*, [1999] F.C.J. No. 1898—as a prerequisite to the appellant's obtaining a credit for mental or physical impairment has been satisfied in the circumstances.

[12] For these reasons, I would grant the credit for mental or physical impairment for the 1997, 1998 and 1999 taxation years, which are the years at issue here.

[13] The appeals from the assessments made under the *Act* for the 1997, 1998 and 1999 taxation years are therefore allowed and the assessments are referred back to the Minister for reconsideration and reassessment on the basis that the appellant was entitled to a credit for mental or physical impairment for each of those years in accordance with section 118.3 of the *Act*. The assessments remain unchanged in all other respects.

Signed at Ottawa, Canada, this 24th day of September 2001.

"Lucie Lamarre"

J.T.C.C.

Translation certified true
on this 21st day of February 2003.

Erich Klein, Revisor.