

BETWEEN:

CLAUDE DAUPHIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on January 14, 2019, at Montréal, Quebec.

Before: The Honourable Justice Réal Favreau

Appearances:

For the appellant:	The appellant himself
Counsel for the respondent:	Marie-Claude Landry

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**JUDGMENT**

The appeal from the reassessment made by the Minister of National Revenue under the *Income Tax Act*, dated December 28, 2016, with respect to the appellant's 2015 taxation year, is dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 30th day of April 2019.

“Réal Favreau”

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Favreau J.

Citation: 2019 TCC 93  
Date: 20190430  
Docket: 2018-1071(IT)I

BETWEEN:

CLAUDE DAUPHIN,

Appellant,

and

HER MAJESTY THE QUEEN,

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**REASONS FOR JUDGMENT**

Favreau J.

[1] This is an appeal from a reassessment made under the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), as amended (the “Act”) by the Minister of National Revenue (the “Minister”), dated December 28, 2016 regarding the appellant’s 2015 taxation year.

[2] Under the reassessment, the Minister disallowed the \$27,414 deduction of legal expenses claimed by the appellant.

[3] Claude Dauphin, a member of the Barreau du Québec since 1978, and mayor of the Ville de Lachine borough and a Ville de Montréal municipal councillor from November 2001 to November 5, 2017, testified at the hearing to explain the circumstances under which the legal expenses were incurred.

[4] The appellant explained that on July 22, 2015, when there were two years and three months remaining before the end of his term as mayor of the Lachine borough and Ville de Montréal municipal councillor, the Sûreté du Québec conducted searches at his home as well as at his borough office as part of an investigation into the Ville de Montréal administration team.

[5] Pursuant to these searches, the appellant retained the services of a law firm specializing in this type of situation. During the searches, Syndic du Barreau

counsel were on site to ensure that documents covered by legal privilege were sealed.

[6] Following these searches, the appellant had to pay \$27,414 in legal fees for the 2015 taxation year. Invoices for McMillan LLP's legal fees dated November 11, 2015 and February 15, 2016 were submitted as evidence. A detailed description of the services rendered was attached to these invoices.

[7] The legal services concerned the following topics:

- discovery to obtain information regarding the search and sealing of documents covered by legal privilege;
- preparation of motions and orders for access to seized documents that were not under seal and seized documents that were sealed;
- review of denunciations used to obtain the search warrants;
- establishment of a privileged document access protocol;
- appeal to the Court to file the motion for a copy of the seized documents and to approve the privileged document review process;
- dealings with the Sûreté du Québec to obtain the return of seized documents;
- examination of seized documents; drafting of a list of privileged documents and identifying the reasons for maintaining privilege;
- representations to the Court to maintain the confidentiality of documents under seal;
- review of privileged documents and denunciations to determine whether a publication ban would be appropriate.

[8] The appellant produced his income tax return for the 2015 taxation year, in which he reported salary income as well as federal and provincial pension income. On line 229 of his income tax return, the appellant also claimed the amount of \$27,414 as other employment expenses.

[9] On July 30, 2015, the appellant asked the Ville de Montréal to pay for the costs incurred in connection with the searches performed at his home and borough office.

[10] In a letter dated August 5, 2015, the Ville de Montréal informed the appellant that it refused to cover the fees of the appellant's legal counsel because it was not a legal proceeding under the *Cities and Towns Act* and because the appellant was not prosecuted in connection with the searches.

[11] In a letter dated October 3, 2016, the Canada Revenue Agency (the "CRA") asked the appellant to provide explanations regarding the \$27,414 employment expense.

[12] In response to the CRA's request for information, the appellant indicated, in a letter dated October 18, 2016, that the legal fees had been incurred to preserve his right to continue his employment with the Ville de Montréal and to receive the resulting remuneration.

[13] The CRA did not accept the explanations provided by the appellant, and the Minister made a reassessment, which disallowed the deduction of legal expenses in the amount of \$27,414 because the legal expenses were not incurred to collect wages or to establish his right to wages that his employer owed him, as required under paragraph 8(1)(b) of the Act.

[14] Following this reassessment, the appellant filed a notice of objection in a letter dated February 7, 2017, in which the appellant alleged that the expense was necessary to maintain his income and that his profession's code of conduct demanded that all necessary measures be taken to [TRANSLATION] "maintain the honour, dignity and reputation of the profession and maintain the public's trust in the profession."

[15] Following a conference call on December 15, 2017 with the appeals officer responsible for processing the appellant's notice of objection, the appellant sent the appeals officer a table, on January 2, 2018, showing the amounts of fees billed by McMillan LLP regarding solicitor-client privilege and other related matters. According to the appellant, the fees relating to legal privilege represented approximately 75% of the total fees billed.

[16] According to the appellant, the five individuals who participated in the December 15, 2017 conference call had reached a tacit agreement in principle. It

was simply a matter of separating the fees that had been incurred to comply with legal privilege to be deducted on line 8860 of the 2015 income tax return from other fees that were deducted as “other employment expenses”, which the appellant admitted were not deductible for tax purposes.

[17] The participants in the December 15, 2017 conference included the appellant, Sammy Forcillo, who was a Ville de Montréal councillor and member of the executive committee, Jacques Dauphin, the appellant’s brother and retired chartered professional accountant, and appeals officer Véronique Larose, accompanied by a technician.

[18] Sammy Forcillo and Claude Dauphin testified at the hearing and explained that legal fees relating to solicitor-client privilege were easy to separate because the fee invoices were broken down into 15-minute increments and were very specific. They also pointed out that it is very difficult for municipal officials to charge fees to citizens to whom they often provide legal advice.

[19] On January 16, 2018, the appellant received a call from another appeals officer, Olivier St-Jacques, who informed him that he was now responsible for the appellant’s case and that his objection had been denied. He did not provide any explanations. Also, the appeals officer did not make any reference to the December 15, 2017 conference call and the tacit agreement between the participants in this conference call.

[20] In a letter dated February 1, 2018, the CRA confirmed that the appellant’s notice of objection was rejected on the grounds that the legal expenses claimed were not incurred to collect an amount due to the appellant or to establish a right to such an amount. As a result, the legal expenses incurred are considered a non-deductible personal expense for tax purposes.

[21] On cross-examination, the appellant acknowledged that he retired as a member of the Barreau on September 15, 2014 and, as such, could not practice law in 2015 even though he was registered on the Barreau’s roll as a retired lawyer.

### Analysis and conclusion

[22] The only deduction for legal expenses that may be claimed by a person who holds an office or employment is expressly provided for in paragraph 8(1)(b) and subsection 8(2) of the Act, which read as follows:

## Deductions

8(1) [Deductions allowed] In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:

[...]

(b) [Legal expenses of employee] amounts paid by the taxpayer in the year as or on account of legal expenses incurred by the taxpayer to collect, or to establish a right to, an amount owed to the taxpayer that, if received by the taxpayer, would be required by this subdivision to be included in computing the taxpayer's income;

[...]

8(2) [General limitation] Except as permitted by this section, no deductions shall be made in computing a taxpayer's income for a taxation year from an office or employment.

[23] Under these circumstances, it is difficult to conclude that the appellant incurred legal expenses to collect the salary or wages owed to him by his employer or to establish a right to such salary or wages as required under paragraph 8(1)(b) of the Act.

[24] As Sharlow J. of the Federal Court of Appeal noted in *Fenwick v. Canada*, 2008 FCA 370, paragraph 8(1)(b) of the Act has a relatively narrow scope. Sharlow J. made the following comments in paragraph 7 of this judgment:

[7] Justice Woods rejected the broad interpretation of paragraph 8(1)(b) proposed on behalf of Mr. Fenwick. In my view, she was correct to do so. Paragraph 8(1)(b) has a relatively narrow scope. It is intended to apply where an employee incurs legal expenses in attempting to collect unpaid salary or wages, or in attempting to resolve a dispute with an employer or former employer as to the amount of salary to which the employee is entitled (see *Loo v. Canada*, 2004 FCA 249). In the latter case, it is usually the employee alleging an underpayment.

[25] In this case, the appellant's right to maintain his remuneration as an employee was not at issue, because the dispute was not with the Ville de Montréal. The appellant wanted to maintain his reputation and ensure that he was not subject to criminal prosecution for actions taken in the performance of his duties as mayor of the Lachine borough and as a Ville de Montréal councillor.

[26] In addition, the legal expenses claimed or any portion thereof are not a deductible expense in computing the appellant's income because they were not incurred for the purpose of earning a professional income.

[27] In 2015, the appellant reported only salary income and federal and provincial pension income. The appellant did not report any professional income in 2015. As a retired member of the Barreau du Québec, the appellant was subject to section 54.1 of the *Act respecting the Barreau du Québec* and could not practise the profession of solicitor, including performing for others the following acts listed in paragraphs (a) to (c) of subsection 1 of section 128 of the *Act respecting the Barreau du Québec*:

- to give legal advice and consultations on legal matters;
- to prepare and draw up a notice, motion, proceeding or other similar document intended for use in a case before the courts;
- to prepare and draw up an agreement, petition, by-law, resolution or other similar document relating to the constitution, organization, reorganization or winding-up of a legal person governed by federal or provincial laws respecting legal persons, or the amalgamation of several legal persons or the surrender of a charter.

[28] Also, the appellant could not plead or act before any tribunal, including those covered by paragraphs 1 to 7 of paragraph (a) of subsection 2 of section 128 of the *Act respecting the Barreau du Québec*.

[29] In this case, it is clear from the evidence that the legal expenses paid by the appellant were not incurred to earn professional income in 2015. Consequently, the legal expenses paid by the appellant are a personal expense within the meaning of paragraph 18(1)(h) of the Act, which is not deductible in computing his income in accordance with paragraph 18(1)(a). These paragraphs read as follows:

18(1) In computing the income of a taxpayer from a business or property no deduction shall be made in respect of:

- a) an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property;

[...]

(h) personal or living expenses of the taxpayer, other than travel expenses incurred by the taxpayer while away from home in the course of carrying on the taxpayer's business;

[30] For these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 30th day of April 2019.

“Réal Favreau”

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Favreau J.



CITATION: 2019 TCC 93

DOCKET: 2018-1071(IT)I

STYLE OF CAUSE: CLAUDE DAUPHIN v. HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 14, 2019

REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau

DATE OF JUDGMENT: April 30, 2019

APPEARANCES:

For the appellant: The appellant himself  
Counsel for the respondent: Marie-Claude Landry

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

For the respondent: Nathalie G. Drouin  
Deputy Attorney General of Canada  
Ottawa, Canada