

Date: 20070613

Docket: A-397-06

Citation: 2007 FCA 229

**CORAM: RICHARD C.J.
LÉTOURNEAU J.A.
NADON J.A.**

BETWEEN:

RAYMOND LAQUERRE

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Hearing held at Québec, Quebec, on June 11, 2007.

Judgment delivered at Québec, Quebec, on June 13, 2007.

REASONS FOR JUDGMENT BY:

LÉTOURNEAU J.A.

CONCURRED IN BY:

**RICHARD C.J.
NADON J.A.**

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REASONS FOR JUDGMENT

LÉTOURNEAU J.A.:

[1] Is the amount of \$3,955 received by the appellant as indexation of his pension taxable under subparagraph 56(1)(a)(i) of the *Income Tax Act*, R.S.C. 1985, c. 1 (Act)? Mr. Justice Tardif (judge) of the Tax Court of Canada answered this question in the affirmative. This is the decision that is under appeal.

[2] The appellant represented himself. His employment with the Royal Canadian Mounted Police (RCMP) ended in 1995 for reasons of physical disability. Although he was under sixty (60) years of age, the appellant was entitled to indexation of his pension because his employment was terminated due to disability. In 2003, the amount of his pension was \$29,905, of which \$3,955 was the amount of indexation.

[3] Certain pension payments or compensation from the RCMP are exempted from taxation under paragraph 81(I)(i) of the Act. One such pension is paid under section 32 or 33 of the *Royal Canadian Mounted Police Superannuation Act*, S.C. 1985, c. R-11 (RCMPSA).

[4] The appellant acknowledged before the judge that the tax exemption he was claiming was not provided for in any law. He nevertheless asked the judge to create the requested exemption.

[5] The judge is obliged to apply the Act and it was not in his power to grant the appellant's request. He nevertheless analyzed the Act and the RCMPSA to ensure that the appellant was excluded from the benefit of paragraph 81(I)(i) of the Act.

[6] The judge rightly concluded that the pension received by the appellant was not paid to him under section 32 or 33, but rather under Part III of the RCMPSA. Section 32 deals with the eligibility for an award, while section 33 pertains to the payment of a treatment allowance. Obviously, these two amounts differ from a pension received under a contributory pension plan.

[7] The judge was also of the opinion that the appellant's pension was the principal, while the indexation of the pension was accessory to the principal, because it is calculated on the base annuity. Consequently, the accessory was, in his view, taxable on the same basis as the principal.

[8] The appellant acknowledges that the principal, that is, the amount of his pension, is taxable, but submits that the indexation is not. He asserts that he has been unfairly treated because, in his view, the benefits paid for an occupational disease under the *Act respecting occupational health and safety*, R.S.Q., c. S-2.1 and the *Act respecting industrial accidents and occupational diseases*, R.S.Q., c. A-3.001, as well as the related indexation, are not taxable.

[9] Section 44 of the *Act respecting industrial accidents and occupational diseases* provides for payment of an income replacement indemnity to a person who becomes unable to carry on employment by reason of an employment injury. The latter includes an occupational disease.

[10] The income replacement indemnity corresponds to 90% of income and is subject to a certain number of deductions: see sections 45, 144 and 144.1 of that legislation. There is under section 117 a sort of indexation further to an annual revalorization of the annual gross income used as the basis for computing the income replacement indemnity.

[11] It is true, as the appellant submits, that this income replacement indemnity is not taxable. This is expressly provided for in section 144. However, the amount received by the appellant is not an

income replacement indemnity, but rather a pension under the RCMPSA, which is governed by the provisions of the RCMPSA.

[12] With respect, the judge was right to conclude that the amount at issue in this case was subject to the general taxation system provided for in the Act.

[13] For these reasons, I would dismiss the appeal with costs.

“Gilles Létourneau”

J.A.

“I concur.
J. Richard C.J.”

“I concur.
Marc Nadon J.A.”

Certified true translation
Susan Deichert, LLB

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-397-06

STYLE OF CAUSE: Raymond Laquerre v.
Her Majesty the Queen

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CONCURRED IN BY: Richard C.J.
Nadon J.A.

DATED: June 13, 2007

APPEARANCES:

Raymond Laquerre

FOR THE APPELLANT

Simon-Nicholas Crépin

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT