

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20190110**

**Docket: A-350-17**

**Citation: 2019 FCA 7**

**CORAM: GAUTHIER J.A.  
STRATAS J.A.  
NEAR J.A.**

**BETWEEN:**

**LUIS REYES**

**Appellant**

**And**

**HER MAJESTY THE QUEEN**

**Respondent**

Hearing held by videoconference  
Between Ottawa, Ontario and Calgary, Alberta on January 8, 2019.

Judgment delivered at Ottawa, Ontario, on January 10, 2019.

**REASONS FOR JUDGMENT BY:  
CONCURRED IN BY:**

**GAUTHIER J.A.  
STRATAS J.A.  
NEAR J.A.**

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**REASONS FOR JUDGMENT**

**GAUTHIER J.A.**

[1] The appellant, Mr. Luis Reyes, appeals the decision of Lyons J. of the Tax Court of Canada [Tax Court] dated October 23, 2017, in which his appeal from the assessment made under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) [Act] for the 2014 and 2015 taxation years was dismissed (file no. 2016-4744(IT)I, decision unreported).

[2] Mr. Reyes came to Canada from Colombia in 2007 and has been a resident since then. Mr. Reyes began receiving pension benefits from Colombia in 2014. In filing his income tax returns in 2014 and 2015, he reported receiving the Colombian pension amounts, but claimed deductions from income equal to the Colombian pension amounts for each year (\$70,230.67 and \$24,218.96 for 2014 and 2015, respectively). In assessing Mr. Reyes, the Minister of National Revenue [Minister] denied the deductions claimed in respect of the Colombian pension income on the basis that this income was taxable in Canada. Mr. Reyes objected to this assessment, but it was again confirmed by the Minister. Mr. Reyes then appealed to the Tax Court.

[3] The Tax Court concluded that Article (17)1 of the *Canada–Colombia Tax Convention Act, 2010*, S.C. 2010, c. 15, s. 2 [Convention], entitled Canada, as the country of residence, to tax Mr. Reyes’s Colombian pension benefits. It further found that his Colombian pension income was properly included in his income under paragraph 56(1)(a) of the Act, and that Colombia had not taxed Mr. Reyes’s 2014 or 2015 pension income.

[4] Before us, Mr. Reyes argues that the Tax Court erred in its interpretation and analysis of the Convention. This issue is a question of law reviewable under the standard of correctness (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

[5] Despite Mr. Reyes’s valiant efforts to convince us otherwise, I do not agree that the Tax Court erred in dismissing the appeal of Mr. Reyes’s tax assessment. The wording of Article 17(1) of the Convention is clear in entitling the state of residence to tax pension income arising in another state, and Article 17(1) applies even where the pension is on account of government

service pursuant to Article 18(1)(a). As such, the use of the word “may” in Article 17(1) does not suggest that the country of residence is not entitled to tax pension amounts sourced in another country; rather, it recognizes that the decision whether to tax such amounts is to be made by the resident country through its taxing statute.

[6] Moreover, Mr. Reyes has not convinced me that the Tax Court committed any error in its discussion of the *Vienna Convention on the Law of Treaties*, 500 U.N.T.S. 241 in relation to the Convention and Canadian taxation law more generally. Nor has Mr. Reyes persuaded me as to the application of Articles 18 and 19 of the Organisation for Economic Co-operation and Development’s *Model Tax Convention on Income and on Capital* and associated commentaries in this case.

[7] Similarly, I am not persuaded by his submission that the *Universal Declaration of Human Rights*, G.A. Res. 217 (III), U.N. Doc. A/810 (1948) [UNDHR] precludes the taxation of pension income because he has an internationally enshrined “right to social security”. The Tax Court noted Mr. Reyes’s argument in that respect but did not make further comments. It is clear that it had no impact on its interpretation of the Convention. I cannot agree that the Tax Court erred by failing to provide the in-depth analysis that Mr. Reyes suggests was required in respect of this argument.

[8] Before us, Mr. Reyes placed much emphasis on the fact that, because of his recognized “right to social security”, the Convention had to be interpreted in a manner that would preclude taxation of his Colombian pension in Canada. He referred to documentation that was not before

the Tax Court, such as the General Comment No. 19: The right to social security (Art. 9 of the Covenant), U.N. Doc. E/C.12/GC/19 (February 4, 2008) adopted by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) dealing with Article 9 of the International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3 [Covenant]. Neither the Covenant nor the related commentary was before the Tax Court. I agree with the respondent that, like the UNDHR, the Covenant does not deal with taxation per se and it could not have had any impact on the interpretation of the Convention adopted by the Tax Court, considering the specific issues before it.

[9] Mr. Reyes, as self-represented litigant, has conveyed to us the difficulty of the circumstances in which he finds himself. However, this Court can only apply the law as it is written. It has no discretion to do otherwise. For the foregoing reasons, I propose that the appeal be dismissed. The respondent asks for costs. I would award it costs in the amount of \$250.00 all-inclusive.

“Johanne Gauthier”

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J.A.

“I agree  
David Stratas J.A.”

“I agree  
D. G. Near J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE LYONS DATED  
OCTOBER 23, 2017, DOCKETS NO. 2016-4744(IT)I and 2017-1259(IT)I  
DOCKET:** A-350-17

**STYLE OF CAUSE:** LUIS REYES v. HER MAJESTY  
THE QUEEN

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** JANUARY 8, 2019

**REASONS FOR JUDGMENT BY:** GAUTHIER J.A.

**CONCURRED IN BY:** STRATAS J.A.  
NEAR J.A.

**DATED:** JANUARY 10, 2019

**APPEARANCES:**

Luis Reyes FOR THE APPELLANT  
ON HIS OWN BEHALF

E. Ian Wiebe FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Nathalie G. Drouin FOR THE RESPONDENT  
Deputy Attorney General of Canada