

Federal Court of Appeal



Cour d'appel fédérale

Date: 20100928

Docket: A-478-09

Citation: 2010 FCA 249

**CORAM: NADON J.A.
SEXTON J.A.
SHARLOW J.A.**

BETWEEN:

RICHARD BENNETT

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on September 28, 2010.

Judgment delivered from the Bench at Toronto, Ontario, on September 28, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on September 28, 2010)

SHARLOW J.A.

[1] Mr. Bennett is appealing a judgment of Justice V. Miller of the Tax Court of Canada (2009 TCC 556) dismissing his appeal from an income tax assessment for 2006. The issue before Justice Miller, and before this Court, is whether Mr. Bennett was entitled to a deduction for a \$50,000 payment he made to his spouse, from whom he is separated, on the basis that it is a “support amount” as defined in subsection 56.1(4) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). We are all of the view that this appeal must be dismissed.

[2] Mr. Bennett is entitled to a deduction for the \$50,000 payment if, but only if, it meets the statutory definition of “support amount”. That definition requires among other things that the amount sought to be deducted must be payable as an allowance on a periodic basis. It is clear from the relevant jurisprudence, particularly *McKimmon v. Canada (Minister of National Revenue)*(C.A.), [1990] 1 F.C. 600, that a lump sum payment of the kind in issue here is not payable on a periodic basis. For that reason, Justice Miller was correct when she concluded that Mr. Bennett is not entitled to the deduction claimed.

[3] Mr. Bennett submits that this Court should, in fairness to him, disregard the part of the statutory definition of “support amount” that imposes the condition relating to periodic payments. He argues that if he had allowed his original monthly obligation to fall into arrears and then made a \$50,000 payment to discharge the accumulated debt, he would have been allowed the deduction (see *The Queen v. Sills* (C.A.), [1985] 2 F.C. 200). We are unable to accept this submission. If the statute is unfair, the remedy lies with Parliament.

[4] For these reasons, this appeal will be dismissed with costs.

"K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-478-09

**(APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE VALERIE MILLER
DATED OCTOBER 29, 2009, IN DOCKET NO. 2008-352 (IT) I)**

STYLE OF CAUSE: RICHARD BENNETT v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 28, 2010

REASONS FOR JUDGMENT OF THE COURT BY: (NADON, SEXTON, SHARLOW
JJ.A)

DELIVERED FROM THE BENCH BY: SHARLOW J.A.

APPEARANCES:

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Bobby J. Sood

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