

TAX COURT OF CANADA

BETWEEN:

JAMES D. GRAY

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

* * * * *

**HEARD BEFORE MR. JUSTICE PARIS
in the Courts Administration Service, Courtroom "C",
180 Queen Street West,
Toronto, Ontario
on Thursday, January 18, 2007 at 9:37 a.m.**

* * * * *

APPEARANCES:

James Gray

Self-represented

Josh Hunter

For the Respondent

Also present:

William O'Brien

Court registrar

Linda O'Brien

Court reporter

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JUSTICE PARIS: These are the reasons for judgement in the appeal of James Gray v. The Queen, 2006-614(IT)I.

The issue in this case is the deductibility of support amounts paid by Mr. Gray, the appellant, in respect of the 2000 and 2001 taxation years. The deduction for support is found in paragraph 60 of the Income Tax Act. In particular, the calculation of the amount of support deductible in a year by a taxpayer is set out in paragraph 60(b) of the Income Tax Act.

The formula involves a calculation of the total amount of support paid by a taxpayer after 1996 less the amount of child support paid under subparagraph B of that definition.

For the purposes of this appeal only that part of paragraph 60(b)B is relevant. The provision reads:

"There may be deducted in computing a taxpayer's income for a taxation year such of the following amounts as are applicable:

1 "(b) total of all amounts
2 each of which is an amount
3 determined by the formula $A =$
4 $(B + C)$ where,
5 "A the total amount of
6 support --
7 "B is the total of all
8 amounts each of which is a
9 child support amount that
10 became payable by the
11 taxpayer to the particular
12 person under an agreement or
13 order on or after its
14 commencement day and before
15 the end of the year in
16 respect of a period that
17 began on or after its
18 commencement day."

19 In this case, the dispute arises
20 as a result of there being a number of orders made
21 with respect to payment of support from the
22 appellant to his ex-spouse, both spousal support
23 and child support. The original order was made
24 prior to May 1997, and subsequent orders were made
25 as set out in the reply to the notice of appeal.

1 The subsequent orders replaced the
2 initial order. The original order was replaced by
3 an order dated June 13th, 1997. As counsel for the
4 respondent points out, this is a replacement order.
5 It doesn't speak to any variation of the original
6 order.

7 That order in turn was replaced by
8 an order in May 1998, an order made under the
9 Divorce Act for corollary relief. That order again
10 was a replacement order rather than any order
11 varying a prior order by the terms of the order
12 itself and under the provisions of the Divorce Act
13 so that the May 1998 order replaced the June 13th,
14 1997 order.

15 Subsequently, in February 2002 an
16 order was made varying the May 1998 order with
17 respect to the payment of child support to require
18 the appellant to pay additional amounts in respect
19 of private school fees and camp fees for the
20 daughter.

21 The question is: What was the
22 commencement day of the February 2002 order
23 according to the definition of commencement day in
24 paragraph 56.1(4) of the Act.

25 The respondent alleges that the

1 commencement day of that order was the date, first
2 date, at which the pre May 1997 order was replaced
3 by another order, either June 13th, 1997 or May
4 1998, and that therefore payments made under the
5 February 2002 order were made under an order with a
6 commencement day of either June 13th, 1997 or May
7 1998.

8 The respondent argues that the
9 orders must be considered as a chain of orders that
10 arise from the original pre May 1997 order for
11 support, and, therefore, where such a chain of
12 orders dealing with support exists, I have to look
13 in the definition of commencement day at paragraph
14 (b) to determine commencement day through the
15 entire chain of orders up to the February 2002
16 order.

17 In my view, this submission is not
18 founded in the wording of the definition of
19 commencement day, paragraph (b) in particular.

20 What paragraph (b) attempts to do
21 is set the commencement day of an order made before
22 May 1997, and it looks, in doing so, at the day the
23 order was made or where it was varied or replaced,
24 the date of the variation or the first replacement
25 of that order. That gives us a different day for

1 the pre May 1997 order.

2 Once, however, there is a
3 subsequent replacement of a replacement of a pre
4 May 1997 order the chain is broken. There is no
5 requirement to consider a subsequent replacement
6 order as being relevant for the purposes of
7 determining a commencement day of an order made
8 before May 1997. This is a new order of which the
9 commencement day must be looked at under paragraph
10 (a) of the definition of commencement day.

11 The second replacement order in
12 this case in May 1998 gave rise to a commencement
13 day calculated or determined under paragraph (a) of
14 the definition of commencement day.

15 The subsequent variation in
16 February of 2002 is an order and it is an order
17 made after April 1997, and so according to the
18 definition of commencement day, the February 2002
19 order would also have a commencement day determined
20 under paragraph (a) of that definition.

21 No provision is made in paragraph
22 (a) to take into account variations of orders for
23 the purposes of establishing the commencement day
24 of the variation of another order. This February
25 2002 order is an order on its face. The fact that

1 it varies a prior order does not prevent it from
2 being an order, and, therefore, in my view, it has
3 a commencement day on the date that it is made as
4 it is made after April 1997.

5 The question then becomes what was
6 the day on which the February 2002 order was made.
7 This becomes an issue because the February 2002
8 order required the appellant to pay amounts of
9 child support retroactive to earlier dates prior to
10 2002.

11 Is the fact that the order
12 required retroactive payments of child support
13 relevant to the determination of the date the order
14 was made? In my view, it is not.

15 The fact that an order provides
16 for retroactive payments of support does not cause
17 the order itself to be made on the date that the
18 retroactive child support was required to be paid.

19 This is supported in part by the
20 rules of the Ontario Court Family Law Rules, rule
21 25, which states:

22 "An order is effective from
23 the day on which it is made
24 unless it states otherwise."

25 This is an indication that the

1 date on which an order is effective is different
2 from the date on which it is made. The Court rules
3 distinguish between the effective date of an order
4 and the date on which it is made, and in this case
5 the retroactive portion of the February 2002 order
6 is the effective date of that portion of the order.
7 It is not though the date on which that order was
8 made.

9 Further support for the position
10 that an order is made as of the date on which it is
11 pronounced and signed is found in the case of *The*
12 *Queen v. Larsson*, 97 DTC 5425. The case dealt with
13 support payments. I refer to the comment of
14 Mr. Justice MacDonald before the court at page
15 5428:

16 "It is the usual rule that an
17 order of a court is effective
18 from the date on which it is
19 made unless it provides
20 otherwise. Thus, where a
21 court does not explicitly
22 state that it intends for its
23 order to apply retroactively,
24 it will be assumed that the
25 order does not so apply."

1 amounts that are payable on or after the
2 commencement day of the order are added into the
3 calculation. In this case, as the commencement day
4 of the order of February 2002 is February 11th,
5 2002, no amounts payable before that date can be
6 taken into account in calculating the support and
7 child support payable by the appellant for those
8 two years.

9 So to summarize, the commencement
10 day for the February 2002 order is determined under
11 paragraph 56.1(4), the definition of commencement
12 day, paragraph (a) the date that the order is made.
13 The date the order was made was February 11th,
14 2002, and, therefore, only amounts that became
15 payable on or after that commencement day are
16 amounts to be considered under (b) of section 60,
17 subparagraph B of the Act to calculate the total
18 amount of the child support payments that must be
19 taken into account in the calculation of support
20 for that year.

21 On that basis, the appeal is
22 allowed and Mr. Gray is entitled to his costs, if
23 any, of the hearing.

24 THE REGISTRAR: Order. Please
25 rise.

1 MR. GRAY: Thank you, Your Honour.

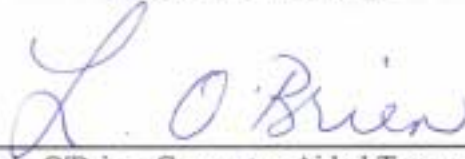
2 THE REGISTRAR: This court is now

3 adjourned until 2:00.

4 --- Whereupon the proceedings adjourned

5 at 12:46 p.m.

I HEREBY CERTIFY THAT I have, to the best
of my skill and ability, accurately recorded
by Shorthand and transcribed therefrom, the
foregoing proceeding.



Linda O'Brien, Computer-Aided Transcription