

Docket: 2008-387(OAS)

BETWEEN:

ANDRÉ BOUCHARD,

Appellant,

and

THE MINISTER OF HUMAN RESOURCES  
AND SOCIAL DEVELOPMENT,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

---

Appeal heard on April 29 and May 28, 2008, at Montréal, Quebec

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Claude Lamoureux

---

**JUDGMENT**

The appeal from the decision of the Minister of Human Resources and Social Development dated July 23, 2007, in respect of the benefits payable under the *Old Age Security Act*, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 7th day of July 2008.

"Louise Lamarre Proulx"

---

Lamarre Proulx J.

Translation certified true  
this 22nd day of September 2008  
Stefan Winfield, Reviser

Citation: 2008TCC408  
Date: 20080707  
Docket: 2008-387(OAS)

BETWEEN:

ANDRÉ BOUCHARD,

Appellant,

and

THE MINISTER OF HUMAN RESOURCES  
AND SOCIAL DEVELOPMENT,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

### **REASONS FOR JUDGMENT**

Lamarre Proulx J.

[1] This is an appeal under the *Old Age Security Act* (the Act).

[2] The issue is whether the Minister of Human Resources and Social Development (the Minister) properly took account of a QPP disability pension amount of \$12,401.16 that the Appellant received from the Régie des rentes du Québec during the 2006 taxation year.

[3] On May 15, 2006, the Appellant filed a *Statement of Estimated Income after Retirement or Reduction in Pension Income: Year 2006* (Statement of Estimated Income) because his employment insurance benefits had ceased on March 5, 2005. The statement was received by the Old Age Security Directorate on May 17, 2006 (Exhibit I-1).

[4] The monthly guaranteed income supplement is addressed in Part II of the Act, sections 10 to 18.

[5] Subsection 14(4) of the Act reads as follows:

Additional statement where loss of pension income in current payment period

(4) Where in a current payment period a person who is an applicant, or who is an applicant's spouse or common-law partner who has filed a statement as described in paragraph 15(2)(a), suffers a loss of income due to termination or reduction of pension income, the person may, not later than the end of the payment period immediately after the current payment period, in addition to making the statement of income required by subsection (1) in the case of the applicant or in addition to filing a statement as described in paragraph 15(2)(a) in the case of the applicant's spouse or common-law partner, file a statement of the person's estimated income for the calendar year in which the loss is suffered, other than pension income received by that person in that part of that calendar year that is before the month in which the loss is suffered, in which case the person's income for the base calendar year shall be calculated as the total of

(a) the person's income for that calendar year, calculated as though the person had no pension income for that calendar year, and

(b) any pension income received by the person in that part of that calendar year that is after the month immediately before the month in which the loss is suffered, divided by the number of months in that part of that calendar year and multiplied by 12.

[6] Under this provision, the applicant may make a Statement of Estimated Income after the termination or reduction of income from his pension plan. Here, the reduction of income stems from the fact that the Appellant ceased to be paid employment insurance benefits as of March 2005.

[7] The provision refers to a "loss of income due to termination or reduction of pension income."

[8] Section 14 of the Old Age Security Regulations (the Regulations) describes what is included in the definition of "pension income". I quote paragraphs (a) and (c) through (g):

**14.** For the purposes of section 14 of the Act, "pension income" means the aggregate of amounts received as

(a) annuity payments;

...

(c) employment insurance benefits;

(d) disability benefits deriving from a private insurance plan;

(e) any benefit, other than a death benefit, under the *Canada Pension Plan* or a provincial pension plan as defined in the *Canada Pension Plan*;

(f) superannuation or pension payments, other than a benefit received pursuant to the Act or any similar payment received pursuant to a law of a provincial legislature;

(g) compensation under a federal or provincial employee's or worker's compensation law in respect of an injury, disability or death;

...

[9] Paragraph (c) refers to employment insurance benefits. As we have seen, the Appellant's Statement concerning the reduced pension income was made due to the cessation of his employment insurance benefits.

[10] In section C of the Statement of Estimated Income, which bears the heading "Information about your pension and/or annuity income", the Appellant states that he received a monthly disability benefit of \$3,000 from a private insurance plan starting in May 2005. However, in a handwritten annotation, he states that this category of benefits is [TRANSLATION] "non-taxable", and he does not include any amount in his income. It should be noted that the Appellant nonetheless sets out the monthly amount of the disability benefit.

[11] The dispute in the case at bar is not about the fact that these disability benefits from a private insurance plan were not included. However, at my request, counsel for the Respondent made representations to me concerning this subject, in view of paragraph 14(d) of the Regulations, *supra*.

[12] Counsel for the Respondent agrees that the Appellant did not have to include these amounts in the aforementioned Statement of Estimated Income, because the premiums under the disability plan in question were paid entirely by him. He submits that, under these circumstances, benefits received pursuant to a private insurance plan need not be included in computing income, as stated in paragraph 6(1)(f) of the *Income Tax Act* (the ITA).

[13] Paragraph 6(1)(f) of the ITA reads as follows:

6. (1) There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable:

...

(f) **Employment insurance benefits** — the total of all amounts received by the taxpayer in the year that were payable to the taxpayer on a periodic basis in respect of the loss of all or any part of the taxpayer's income from an office or employment, pursuant to

- (i) a sickness or accident insurance plan,
- (ii) a disability insurance plan, or
- (iii) an income maintenance insurance plan;

to or under which the taxpayer's employer has made a contribution

...

[14] This paragraph provides that amounts payable under a disability insurance plan to the taxpayer on a periodic basis, in respect of loss of income, must be included in computing the taxpayer's income if the disability insurance plan was one to which the employer contributed. According to counsel—and I am not casting doubt on his assertion—if the disability plan is a plan to which the employer alone contributed, the benefits should not be included in computing the income. The apparent logic behind this assertion is that the premiums paid by an individual would not be deductible by the employee in computing his employment income if the insurance plan were one to which the employee alone contributed. If the employer made contributions, the employee could deduct the premiums paid and the benefits would be taxable.

[15] Thus, in the submission of counsel for the Respondent, since the disability benefits were from a private insurance plan to which the Appellant alone contributed, the Appellant did not have to include that income in his Statement of Estimated Income. In my view, this means that paragraph 14(d) of the Regulations would apply only where the disability benefits are paid pursuant to a private plan to which the employer has contributed.

[16] As I have stated, this question of including or not including amounts in the computation of income from a pension plan within the meaning of section 14 of the Act and section 14 of the Regulations is not in issue. What is in issue is the retroactive payment of a QPP disability pension by the Régie des rentes du Québec and the reimbursement of benefits paid by the private insurer, based on the grounds and facts that I shall explain in the paragraphs below.

[17] According to a T4A – Statement of Quebec Pension Plan Benefits, issued for the 2006 taxation year, the Appellant, in the course of that year, received a disability pension of \$16,441.97, consisting of \$12,401.16 for the 2006 year and \$4,040.80 for the 2005 year. The Appellant included this amount in computing his income for the 2006 year and was assessed on that basis. The amounts are included in the computation of income in accordance with paragraph 56(1)(a) of the ITA.

[18] I refer to a letter, dated July 10, 2006, from the Régie des rentes du Québec (Exhibit A-1):

[TRANSLATION]

Subject: Consent to the assignment of the retroactive payment of a disability pension under the Québec Pension Plan

Dear Sir:

The insurer that is currently paying you disability pension benefits has provided the Régie des rentes du Québec with the form you signed authorizing the Régie to remit retroactive disability pension benefits directly to the insurer.

The form authorizes the Régie to reimburse the administrator of your disability insurance plan for amounts paid to you under that plan until you receive your disability pension from the Régie, if you are entitled to one. You also authorized the two organizations to share information regarding the pension.

[19] The letter says that the Appellant, as a QPP recipient, authorized the Régie des rentes du Québec to reimburse the insurance company for the amounts that it had paid him, pending payment of his QPP disability pension.

[20] Following the hearing, the Appellant provided the Court with the documents that he and the private insurer exchanged. Those documents clearly show that all the authorizations necessary to effect the reimbursement and comply with the terms and conditions thereof were signed by the Appellant on May 19, 2006.

[21] On October 19, 2006, the Appellant received the following letter from the Régie des rentes du Québec:

[TRANSLATION]

Subject: Application for disability pension

Dear Sir:

This is to inform you that the Régie des rentes du Québec has accepted your application for a disability pension. Your pension begins in September 2005 and the amount of your pension is \$1,010.20 per month.

However, we will send you a more detailed final notice as soon as your insurance company provides us with the information that will enable us to complete your file and release the payments to you.

[22] On October 31, 2006, the Appellant received another letter from the Régie des rentes du Québec along with a cheque covering the retroactive amount that he was owed. The amount of \$14,142.80, out of a total of \$14,375.10, was remitted to the private insurer.

[23] The Appellant says that he signed the QPP disability benefit application and the reimbursement authorization under duress. He says that he only wanted his insurance company's disability benefits, but that his insurance company forced him to apply to the Régie des rentes du Québec for a disability pension and sign the form. He is therefore asking that I not take the actual income into account for the 2006 year.

[24] Counsel for the Respondent cited paragraph 56(1)(a) of the Act, which reads:

**Section 56: Amounts to be included in income for year**

(1) Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,

(a) Pension benefits, unemployment insurance benefits, etc. – any amount received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of,

(i) a superannuation or pension benefit including, without limiting the generality of the foregoing,

...

(B) the amount of any benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act,

[25] Counsel referred to paragraphs 7, 8, 9 and 10 of the decision in *Abdul-Rahman v. Canada (Minister of Human Resources Development)*, [2005] T.C.J. No. 115 (QL):

[7] That provision [paragraph 56(1)(a) of the *Income Tax Act*] stipulates that an amount of any benefit received by a taxpayer under a provincial plan as defined in section 3 of the *Canada Pension Plan* must be included in the taxpayer's income.

[8] Section 3 of the *Canada Pension Plan* reads as follows:

APPLICATION AND OPERATION OF ACT

3(1) In this Act,

"provincial pension plan" means a plan of old age pensions and supplementary benefits for the establishment and operation of which provision has been made as described in paragraph (a) or (b) of the definition of "province providing a comprehensive pension plan" under a law of a province providing a comprehensive pension plan;

"province providing a comprehensive pension plan" means a province prescribed by a regulation made on the recommendation of the Minister of Human Resources Development for the purposes of this *Act* as a province



(a) the government of which has, on or before May 3, 1965, signified the intention of that province to provide for the establishment and operation in that province, in lieu of the operation therein of this Act, of a plan of old age pensions and supplementary benefits providing for the making of contributions thereunder commencing with the year 1966 and providing for the payment of benefits thereunder comparable to those provided by this Act, or

...

[9] The *Prescribed Province Pension Regulations* read as follows:

1. These Regulations may be cited as the *Prescribed Province Pension Regulations*.
2. The Province of Quebec is hereby prescribed, for the purposes of the *Canada Pension Plan*, as a province the government of which has, before the 30th day after April 3, 1965, signified the intention of such province to provide for the establishment and operation in that province, in lieu of the operation therein of the *Canada Pension Plan*, of a plan of old age pensions and supplementary benefits providing for the making of contributions thereunder, commencing with the year 1966 and providing for the payment of benefits thereunder comparable to those provided by the *Canada Pension Plan*.

[10] Section 105 of the *Québec Pension Plan* reads as follows:

#### QUALIFICATIONS FOR BENEFIT

105 The Board shall, subject to the rules laid down in this Act, pay the following pensions and benefits:

(a) *a retirement pension* to a qualified contributor,

[...]

[26] Counsel then referred to paragraph 105(b) of the *Act respecting the Québec Pension Plan*, which provides for the payment of a disability benefit to a qualified disabled contributor. It reads:

(b) a disability pension to a qualified disabled contributor;

## Analysis and conclusion

[27] Under subsection 12(1) of the Act, the amount of the supplement that can be paid to a pensioner for a month is computed on the basis of the pensioner's monthly base income. "Monthly base income" is defined in section 12 as well: it is based on the income for the base calendar year. Under section 2 of the Act, "income" is computed in accordance with the *Income Tax Act*, subject to certain deductions contained in the Act. Thus, according to section 12 of the Act, the amount of the supplement payable to a pensioner is based on the income determined in accordance with the ITA.

[28] Under subsection 14(4) of the Act, a recipient may choose to apply for the guaranteed income supplement based on estimated income (as opposed to actual income) where there is a reduction of pension income in the course of a year. This is permitted in order to meet the emergency needs of pensioners, but this provision permitting the use of estimated income does not set aside the provisions stipulating that the monthly guaranteed income supplement is computed on the basis of the actual income.

[29] In the event of an overpayment or underpayment, section 18 of the Act provides for the necessary adjustments. The section reads:

### Adjustment of payment of supplements

**18.** Where it is determined that the income for a base calendar year (in this section referred to as the "actual income") of an applicant for a supplement does not accord with the income of the applicant (in this section referred to as the "shown income") calculated on the basis of a statement or an estimate made under section 14, the following adjustments shall be made:

(a) if the actual income exceeds the shown income, any amount by which the supplement paid to the applicant for months in the payment period exceeds the supplement that would have been paid to the applicant for those months if the shown income had been equal to the actual income shall be deducted and retained out of any subsequent payments of supplement or pension made to the applicant, in any manner that may be prescribed; and

(b) if the shown income exceeds the actual income, there shall be paid to the applicant any amount by which the supplement that would have been paid to the applicant for months in the payment period if the actual income had been equal to the shown income exceeds the supplement paid to the applicant for those months.

[30] The provision states that adjustments must be made where the income of the supplement applicant for a base calendar year does not accord with the estimated income.

[31] As explained to the Appellant at the hearing, and as he understood at that time, this Court does not have jurisdiction to rule on his allegation that he signed the QPP disability pension application documents and the reimbursement authorization under duress exerted by the private insurer.

[32] This Court will consider the payment of QPP disability benefits to the Appellant as of September 2005. It is on the basis of the authorization signed by the Appellant, in his capacity as the owner of these benefits, that the Régie des rentes du Québec reimbursed the private insurer for the disability insurance benefits that the private insurer had paid. The Appellant participated, as recipient and owner of the disability pension, in the reimbursement to the insurance company of the interim disability benefits he had received. Consequently, the benefits received from the Régie des rentes du Québec had to be included in computing the Appellant's income for the year 2006 under paragraph 56(1)(a) of the *Income Tax Act*. And the Appellant did, in fact, include that amount. With respect to the inclusion of amounts in a recipient's income, see this Court's decision in *Tessier v. Canada*, [2005] T.C.J. No. 502 (QL), affirmed by the Federal Court of Appeal, [2007] F.C.J. No. 544 (QL).

[33] According to the Reply to the Notice of Appeal, the Minister chose the year 2005 as the basis for computing the Appellant's allowance from July 2006 to June 2007 because it worked to the Appellant's advantage, i.e., his 2005 income was lower than his 2006 income.

[34] As stated above, the monthly guaranteed income supplement is computed on the basis of one's income, determined in accordance with the *Income Tax Act*. QPP pensions are included in computing the Appellant's income under paragraph 56(1)(a) of the ITA. Therefore, having analyzed the facts and the law in the instant case, I am of the opinion that the Minister's decision was well-founded in fact and in law and that the appeal must be dismissed.

[35] Subsection 37(4) of the Act pertains to the discretion of the Minister of Social Development to remit all or any portion of a benefit overpayment. It reads:

(4) Notwithstanding subsections (1), (2) and (3), where a person has received or obtained a benefit payment to which that person is not entitled or a benefit payment in excess of the amount of the benefit payment to which that person is entitled and the Minister is satisfied that

- (a) the amount or excess of the benefit payment cannot be collected within the reasonably foreseeable future,
- (b) the administrative costs of collecting the amount or excess of the benefit payment are likely to equal or exceed the amount to be collected,
- (c) repayment of the amount or excess of the benefit payment would cause undue hardship to the debtor, or
- (d) the amount or excess of the benefit payment is the result of erroneous advice or administrative error in the administration of this Act,

the Minister may, unless that person has been convicted of an offence under any provision of this Act or of the *Criminal Code* in connection with the obtaining of the benefit payment, remit all or any portion of the amount or excess of the benefit payment.

[36] I should note, for the purposes of this subsection, that when the Régie des rentes du Québec notified the Appellant that his disability pension had been accepted, several months had elapsed since he had made his Statement of Estimated Income.

Signed at Ottawa, Canada, this 7th day of July 2008.

"Louise Lamarre Proulx"

---

Lamarre Proulx J.

Translation certified true  
this 22nd day of September 2008  
Stefan Winfield, Reviser

CITATION: 2008TCC408

COURT FILE NO.: 2008-387(OAS)

STYLE OF CAUSE: ANDRÉ BOUCHARD v. MINISTER OF  
HUMAN RESOURCES AND SOCIAL  
DEVELOPMENT

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 29 and May 28, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice  
Louise Lamarre Proulx

DATE OF JUDGMENT: July 7, 2008

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Claude Lamoureux

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada