

Docket: 2008-413(IT)I

BETWEEN:

CAMILLE BOUCHARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on January 14, 2009 at Vancouver, British Columbia

By: The Honourable Justice Judith Woods

Appearances:

Counsel for the Appellant: Eugene Kung

Counsel for the Respondent: Whitney Dunn

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**JUDGMENT**

The appeal in respect of the child tax benefit for the 2004 and 2005 base taxation years is allowed, and the matter is referred back to the Minister of National Revenue for reconsideration and redetermination on the basis that the appellant is entitled to the child tax benefit until his daughter reached the age of 18.

The appellant is entitled to costs.

Signed at Vancouver, British Columbia this 16<sup>th</sup> day of January 2009.

“J. Woods”

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Woods J.

Citation: 2009TCC38  
Date: 20090116  
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and

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### **REASONS FOR JUDGMENT**

**(Delivered orally from the Bench on January 16, 2009)**

#### **Woods J.**

[1] These are reasons delivered orally in the matter of Camille Bouchard and Her Majesty the Queen.

[2] The issue in the appeal is whether Mr. Bouchard is entitled to receive the child tax benefit in respect of a period that he was incarcerated. The period at issue is from October 1, 2005 until April 7, 2007 which is the date at which Mr. Bouchard's daughter attained the age of 18.

[3] In the reply filed by the Minister of National Revenue, the reason that was given for disallowing the claim was that Mr. Bouchard did not reside with his daughter during his period of incarceration. My analysis will be limited to this issue and I have assumed that the other statutory requirements are satisfied.

[4] For several years prior to his incarceration, Mr. Bouchard took care of his daughter as a single parent. Just prior to the incarceration, they lived in a two bedroom apartment in Nanaimo, British Columbia.

[5] In September 2005 Mr. Bouchard was committed to a federal prison where he stayed for 20 months. At the time of the committal, the daughter was 17.

[6] The daughter continued to stay in the Nanaimo apartment for a couple of months after her father went to prison. She then gave the apartment up and moved in with a family that she was acquainted with. During the incarceration, the daughter stayed with a series of three families.

[7] Throughout this time, Mr. Bouchard kept in regular contact with both his daughter and the families. He also supplied funds for the payment of rent to the families and for his daughter's other expenses. I should mention, however, that there was an exception to this during the first three months of the incarceration, when it was difficult for Mr. Bouchard to make contact with his daughter.

[8] The question to be decided in this appeal is whether Mr. Bouchard's incarceration has disentitled him to receive the child tax benefit on the basis that he did not reside with his daughter during this period.

[9] For reasons that I will give, my conclusion on the facts of this case is that the period of incarceration should not disentitle Mr. Bouchard to the child tax benefit.

[10] I will first describe the child tax benefit regime. Since 1993, the government has provided financial assistance to low and medium income families through a grant system established under the *Income Tax Act*. This legislation replaced the prior benefit system which was known as the family allowance. Under the child tax benefit system, a monthly benefit is given to the parent who fulfills the primary responsibility of the care and upbringing of the child. It is not in dispute that Mr. Bouchard was such a parent.

[11] However, the legislation not only requires the parent to care for the child, it also requires the parent to reside with the child. It is this latter requirement that is at issue here.

[12] In a situation such as this, one should ask the question why the legislation has two separate requirements – a residence requirement and a care requirement. Why would not the care requirement be sufficient?

[13] It seems to me that the residence requirement does add something to the legislation because it clarifies that the benefit is to be given to the custodial parent in a divorce situation.

[14] The residence requirement can be difficult to interpret in some situations, however.

[15] One example of such a difficulty was discussed in a case called *Fiogbe*. There Justice O'Connor suggested *in obiter* that if a child has been hospitalized for an extended period, that should not necessarily disentitle one of the parents to the benefit.

[16] Another example was raised in a decision called *Penner*. In this case, the Court had to consider if the residence requirement was satisfied if a child lived somewhere else in order to go to school. Justice Beaubier concluded that this should not disqualify the parent to the benefit.

[17] These are examples of where a child leaves the family home for a period of time. Should the answer be any different if the parent leaves the home? What if a custodial parent is required to work out of town for an extended period and hires a babysitter to look after the child? Or what if the custodial parent is absent for a period of time because they have been committed to prison.

[18] In my view, the child tax benefit provisions should be interpreted in a compassionate way in these types of circumstances so as not to frustrate the obvious intention of Parliament to assist low income families.

[19] Where there is one parent who has custody of the child and takes care of the child, generally that parent should be entitled to the child tax benefit even though the parent may not be physically under the same roof as the child for a period of time.

[20] The circumstances in which the daughter found herself in here are tough for a 17 year old. To deny the benefit to her custodial parent who took care of her would be the antithesis of what Parliament had in mind in enacting the family benefit regime.

[21] In my view, this is a proper case in which to give an expansive meaning of the phrase "resides with." The daughter did not acquire another habitual abode during her father's incarceration and her father maintained responsibility for her care. I find

that the daughter did not give up her ordinary residence with her father, even though it was interrupted for a significant period.

[22] The appeal will be allowed, with costs.

Signed at Vancouver, British Columbia this 16<sup>th</sup> day of January 2009.

“J. Woods”

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Woods J.

CITATION: 2009TCC38

COURT FILE NO.: 2008-413(IT)I

STYLE OF CAUSE: CAMILLE BOUCHARD AND HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: January 14, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice J. Woods

DATE OF JUDGMENT: January 16, 2009

APPEARANCES:

    Counsel for the Appellant: Eugene Kung

    Counsel for the Respondent: Whitney Dunn

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