

Docket: 2008-518(IT)G

BETWEEN:

SHEILA WOODS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on February 10, 2010, at Ottawa, Canada.

Before: The Honourable Justice Patrick Boyle

Appearances:

Counsel for the appellant: Bruce F. Simpson

Counsel for the respondent: Pascal Tétrault

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**JUDGMENT**

The appeal from the reassessment made under the *Income Tax Act* with respect to the appellant's 2004 taxation year is dismissed, with costs, in accordance with the attached Reasons for Judgment.

Signed at Toronto, Ontario, this 24<sup>th</sup> day of February 2010.

"Patrick Boyle"

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Boyle J.

Citation: 2010 TCC 106  
Date: 20100224  
Docket: 2008-518(IT)G

BETWEEN:

SHEILA WOODS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

#### **Boyle J.**

[1] Mrs. Woods, a resident of Canada, received an amount of approximately \$65,000 in 2004 as a result of the death of her brother Martin Kaye, a resident of the United Kingdom (“UK”), while he was employed in the UK by a UK employer, one of QinetiQ Group PLC or QinetiQ Limited (the employer being hereinafter referred to as “QinetiQ”).

[2] The amount was paid to Mrs. Woods in accordance with the Death Benefit provisions of the QinetiQ Pension Scheme, a trust fund established by QinetiQ Group PLC for the purpose of maintaining a retirement benefits scheme for employees of QinetiQ Group PLC and associated employers. The Credit Advice issued to her by her Canadian bank identifies the remitter as “QinetiQ Pension Scheme” and payment detail as “QinetiQ Pension”. In her 2004 tax return Mrs. Woods disclosed the receipt of this amount and took the position that it should be exempt from Canadian tax as it was essentially a life insurance payment.

[3] The taxpayer was reassessed to include the amount in income. It is the respondent’s position that the amount is a superannuation or pension benefit included under subparagraph 56(1)(a)(i) of the *Income Tax Act* (the “Act”) or, in the alternative, a death benefit included in income in accordance with subparagraph 56(1)(a)(iii) of the *Act*. It is the appellant’s position that the employer

was carrying on an insurance activity in the operation of the QinetiQ Pension Scheme to provide what are termed therein Death Benefits, or, in the alternative, that the Death Benefits provided by the QinetiQ Pension Scheme were the economic equivalent of insurance and, in either case, should be treated in Canada for tax purposes as non-taxable life insurance proceeds.

## I. Facts

[4] Mrs. Woods' brother Martin was a long-time UK civil service employee working at a defence research establishment in England. In 2001 the government agency was privatized and QinetiQ became his successor employer. The constitution and administration of the QinetiQ Pension Scheme is in accordance with a Trust Deed and a detailed set of Rules. The trustees of the QinetiQ Pension Scheme are individuals and it was administered in the years in question by Towers Perrin in the UK. It provides for retirement benefits, death benefits, pension increases and transfers of pension benefits. There are provisions for both defined benefit employees and defined contribution employees. The defined benefit provisions of the plan are only available to QinetiQ's former civil service employees. Mrs. Woods' brother was governed by the defined benefit provisions.

[5] The retirement benefits provisions for defined benefit employees provide for regular and recurring payments to employees based upon their length of service and their earnings, as well as provisions for early retirement, late retirement and ill-health retirement.

[6] In addition the QinetiQ Pension Scheme Rules applicable to defined benefit employees provide for Death Benefits which, in the case of Mrs. Woods' brother who died without a surviving spouse or children, were a lump sum equal to three times his final pensionable earnings which were essentially three times his annual salary at the time of death. The amount is unaffected by an employee's length of service.

[7] The Rules provide for the payment of the Death Benefits to a surviving spouse. If, as in this case, the employee dies leaving no spouse, the Rules provide that the trustees of the QinetiQ Pension Scheme have full discretion in the two years following death to pay the death benefit amount to relatives, dependants, former spouses, etc. An employee can file with the plan administrator a non-binding written Expression of Wish for this purpose. Apparently this has been carefully crafted to minimize UK income and inheritance taxes as such discretionary payments are

received tax-free in the UK. If no such discretionary payments are made within two years of death, the Death Benefits must be paid to the personal representative of the late employee.

[8] In this case no Expression of Wish was filed by Mrs. Woods' brother but the trustees decided to pay the Death Benefits equally to the late employee's mother and three sisters. Mrs. Woods, her mother and at least one of her two sisters are residents of Canada.

[9] The Rules provide for the calculation of employee contributions to the QinetiQ Pension Scheme which, in the case of defined benefit employees, is a function of their earnings. There is no separately identified contribution required for the Death Benefits or any other benefit. The Trust Deed requires employer contributions sufficient to make due provision for the benefits provided under the QinetiQ Pension Scheme.

[10] The trustees of the QinetiQ Pension Scheme are authorized to effect life insurance policies to insure the benefits payable on death. Based upon some of the correspondence sent to Mrs. Woods and her sister by the administrator of the QinetiQ Pension Scheme relating to a satisfactory death certificate being provided to the insurer before payment could be made, I must infer that all or a portion of the Death Benefits in this case were funded with life insurance on the life of Martin Kaye.

## II. Law

[11] Subparagraph 56(1)(a)(i) of the *Act* provides that “. . . there shall be included in computing the income of a taxpayer for a taxation year, . . . any amount received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of, a superannuation or pension benefit . . . ”.

[12] Subsection 248(1) of the *Act* provides that a superannuation or pension benefit “includes any amount received out of or under a superannuation or pension fund or plan and, without restricting the generality of the foregoing, includes any payment made to a beneficiary under the fund or plan . . . in accordance with the terms of the fund or plan . . . ”.

[13] Payments under a foreign retirement arrangement are not included in income under subparagraph 56(1)(a)(i) if the amount would not be subject to income tax in the foreign country. However, a foreign retirement arrangement is defined for this

purpose to require that it be prescribed by regulation. The only foreign retirement arrangement so prescribed under Regulation 6803 is a United States Individual Retirement Account (“IRA”).

[14] Subparagraph 56(1)(a)(iii) of the *Act* provides that “. . . there shall be included in computing the income of a taxpayer for a taxation year, . . . any amount received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of . . . a death benefit . . .”.

[15] Subsection 248(1) defines death benefit to be “the total of all amounts received by a taxpayer in a taxation year on or after the death of an employee in recognition of the employee’s service in an office or employment. . .”. The definition continues by establishing an exemption for the first \$10,000 of death benefits received, which \$10,000 must be shared if more than one person receives a portion of a death benefit as is the case here. (The \$10,000 threshold exemption for death benefits has remained unchanged under the *Act* for at least 45 years.)

### III. Analysis

[16] There is simply no way that the QinetiQ Pension Scheme can be considered in law to be a life insurance policy issued by QinetiQ to Martin Kaye. It is clearly a pension fund. It has all of the attributes normally found in a pension fund. I cannot accept that the death benefit provisions constitute a life insurance regime separate from the retirement pension provisions in the QinetiQ Pension Scheme. The funds for retirement pension provisions and for death benefits are not required to be kept separate. There is no provision for the contributions used in part to fund the Death Benefits to reflect medical health risks, sex, age or similar factors or any provision whatsoever for any medical or underwriting review. Nor does it appear to be established and the employee cannot designate the person or persons to whom the Death Benefits are to be paid or are not to be paid. This has none of the hallmarks of a policy of life insurance.

[17] Nor is there any basis to conclude on these facts that the trustees of the QinetiQ Pension Scheme acted as agent for either any insurer the scheme dealt with or as agent for Martin Kaye with respect to a life insurance policy issued by any such insurer in favour of Mr. Kaye.

[18] It may be that the death benefit can serve much of the same purposes of life insurance or that it is the economical functional equivalent of life insurance. That

however does not make it life insurance. The interpretation and application of the provisions of the *Act* are not governed by the courts' assessment of economic realities or by alternative commercial and legal structures that could have accomplished the same economic objectives or results: see the Supreme Court of Canada in *Shell Canada Limited v. The Queen et al.*, 99 DTC 5669.

[19] I should add that, even if this were considered to be employer provided life insurance, the taxpayer may find that the Canada Revenue Agency would not agree that it was tax exempt since there is no evidence of whether or not the employer was deducting the amount paid as a premium or of other similar considerations.

[20] The remaining questions to be decided are:

- (1) is the amount received by Mrs. Woods a superannuation or pension benefit included in her income under subparagraph 56(1)(a)(i);
- (2) is the amount received a death benefit included in her income under subparagraph 56(1)(a)(iii), in which case Mrs. Woods' reassessment will have to be revised to reflect her share of the \$10,000 exemption applicable to death benefits; and
- (3) if the amount can be described as both a superannuation or pension benefit and a death benefit for purposes of the *Act*, which regime governs it.

[21] A superannuation or pension benefit is deemed by subsection 248(1) to include any amount received out of or under a superannuation or pension fund or plan. The *Act* does not however define superannuation or pension fund or plan. The meaning of "superannuation or pension benefit" goes on to expressly catch any payment made to a beneficiary under the fund or plan in accordance with the terms of the fund or plan. I do not think this last phrase adds anything to the first in this case. The fundamental question is to determine whether the QinetiQ Pension Scheme was a superannuation or pension fund or plan.

[22] In *Crown Trust Co. (McArdle Estate) [No. 1] v. M.N.R.*, 65 DTC 5176, the Supreme Court of Canada had to consider an amount payable out of a pension plan pursuant to the pension plan agreement upon the death of the employee. The pension plan agreement related to both insurance and pension benefits but the Court was concerned only with the pension benefits. The amount payable was a pension benefit upon death derived from employee contributions, employer contributions and

earnings of the fund. In that case the Supreme Court of Canada wrote “the [amount] received by appellant was clearly an amount ‘received out of or under a superannuation or pension fund or plan’”. And later “it was clearly a death benefit under [a particular pension provision] of the Agreement. I can see no difference in principle between such payment and any other pension benefit payable after death from a pension fund or plan to which a deceased person has contributed.” It is clear from the Court’s words that a superannuation or pension fund or plan is one which entitles an employee to receive a pension upon retirement. It is equally clear that a superannuation or pension fund or plan can provide death benefits in the form of a return of premiums or otherwise.

[23] In *Lamash Estate v. M.N.R.*, 91 DTC 9, this Court had occasion to consider the *McArdle* decision. In that case the deceased federal public servant was entitled under the terms of the *Federal Public Service Superannuation Act* to a pension and, since she died without a surviving spouse or children, had a lump sum guaranteed five year minimum benefit paid to her estate. This Court found the *Public Service Superannuation Act* to be a superannuation or pension fund or plan. The appellant in that case argued that the lump sum guaranteed five year minimum benefit was a death benefit entitled to the more favourable treatment given the \$10,000 threshold exemption. The Court rejected that argument because the amount could not be said to have been paid in recognition of her service in the employment of the public service. Rather, it was received because she was required to contribute to the superannuation or pension fund or plan. The fact that the minimum benefit was described as a death benefit in the superannuation fund’s governing documents did not make it a death benefit as defined in subsection 248(1) of the *Act*.

[24] The *Lamash Estate* decision found support in *The Queen v. Irene M. Cumming*, 76 DTC 6265 (FCTD), which considered whether a death benefit under the *Canada Pension Plan* was also a death benefit under the *Act*. In deciding that it was not, the Court applied the same logic:

It is true that the deceased was a contributor to CPP because he was employed; it is equally true that the CPP death benefit became payable because he was a contributor but to say that it was paid “in recognition of his service in employment” is to do considerable violence to the idea plainly conveyed by those ordinary English words.

I would add that the French definition of “death benefit” is similarly worded.

[25] In *The Queen v. Herman*, 78 DTC 6311 (FCTD), the Court considered the United Nations Joint Staff Pension Fund. The taxpayers argued that the monthly

pension amounts received by them were not benefits derived from a superannuation or pension fund or plan because they were not entitled to deduct their contributions to the plan when they had been made under the peculiar assessment regime in lieu of tax payable by the United Nations employees. The Tax Review Board had found in favour of the taxpayers by interpreting the phrase superannuation or pension fund or plan as a fund to provide retirement income where the contributions into the fund are deductible. In finding against the taxpayers, the Federal Court wrote at 6314:

I cannot agree that a pension fund must be limited to one to which contributions are deductible for tax purposes when made. Certainly there was a superannuation or pension fund here, and the Regulations which were filed as an exhibit in the present trial make this abundantly clear, and I can find no justification . . . in the [definition of a superannuation or pension fund or plan] which refers to *any amount* paid out of a “superannuation or pension fund” in accordance with the terms of the fund, nor elsewhere in [the tax legislation], for breaking down such a fund into its elements and holding it is not such a fund with respect to the payments made by a taxpayer into it and not deductible by him from income tax when made, but is nevertheless a superannuation or pension fund with respect to payments made by the employer. While this might seem to be an equitable result, the text of the Act does not give any indication that this can be done.

[26] And later the Federal Court wrote at 6315:

In taxing superannuation or pension income the Act appears to make no distinction as to origin of it. It merely taxes all of it when received by a taxpayer resident in Canada and liable to Canadian income tax.

[27] In this regard I should note that paragraph 6(1)(g) of the *Act* makes it clear that superannuation or pension benefits under the *Act* can include amounts related to employment outside Canada.

[28] In *Abrahamson v. M.N.R.*, 91 DTC 213, this Court had occasion to consider whether a US IRA was a superannuation or pension fund or plan and whether amounts received by the taxpayer from his IRA were superannuation or pension benefits.<sup>1</sup> The Court held that a superannuation or pension fund or plan is a formal program which determines the amount and regularity of an allowance paid at regular intervals to a person usually but not always as a result of the termination of employment for the purpose of providing that person with a minimum means of

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<sup>1</sup> This case predated the concept of “foreign retirement arrangement” in clause 56(1)(a)(i)(C.1) of the *Act*. This case was decided by Rip J. as he then was, this Court’s current Chief Justice; the successful taxpayer’s counsel was D.G.H. Bowman, this Court’s previous Chief Justice.



existence. The US IRA did not provide for such payments at all as the beneficiary of the account could have demanded the balance in his account at anytime much as with a Canadian Registered Retirement Savings Plan. The Court held the IRA was not a superannuation or pension fund or plan.

[29] In *Bardsley v. M.N.R.*, 70 DTC 1546, the Tax Appeal Board held that amounts paid to an employee's widow under the death benefit provisions of a plan by way of a return of employee contributions, and those by way of a return of the employer and employee contributions plus interest, were superannuation or pension benefits and not death benefits. The Board reasoned that they were superannuation or pension benefits because they were "any amount received out of or under a superannuation or pension fund . . . including any payments made to the beneficiary under the plans . . . in accordance with the terms of the fund or plan . . .". The Board held that a so-called death benefit under a superannuation or pension fund or plan cannot be a death benefit as defined in the *Act*.

[30] From these cases and the provisions of the *Act* themselves I can summarize as follows:

- (1) A superannuation or pension fund or plan is an arrangement which provides for payment of regular post-retirement income to employees and determines the entitlement, the amount and frequency of such payments;
- (2) A superannuation or pension fund or plan may also provide for other entitlements and payments to or for the benefit of the employees that relate to retiring from work;
- (3) Any amount received from a superannuation or pension fund or plan is a superannuation or pension benefit except where the *Act* specifically provides otherwise. There is no exception for payments to persons other than the employee or his or her estate. Nor is there an exception for amounts that relate to employment exercised outside Canada by a non-resident of Canada. A death benefit provided for in a superannuation or pension fund or plan is a superannuation or pension benefit for purposes of the *Act* and is not a death benefit as defined in the *Act*. It is not paid in recognition of an employee's service in employment but is paid because the employee participated in, and usually contributed to, the superannuation or pension fund or plan.

[31] Applying this to the case at bar, Mrs. Woods' appeal cannot succeed. The QinetiQ Pension Scheme is a superannuation or pension fund or plan and the Death Benefits received by her thereunder are a superannuation or pension benefit that is not a death benefit as defined under the *Act*.

[32] The appeal will be dismissed with costs.

Signed at Toronto, Ontario, this 24<sup>th</sup> day of February 2010.

"Patrick Boyle"

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Boyle J.

CITATION: 2010 TCC 106

COURT FILE NO.: 2008-518(IT)G

STYLE OF CAUSE: SHEILA WOODS v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Ottawa, Canada

DATE OF HEARING: February 10, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: February 24, 2010

APPEARANCES:

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