

Docket: 2005-117(IT)I

BETWEEN:

CHARLES WALTER FENNER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on June 8, 2006 at Hamilton, Ontario

Before: The Honourable Justice Brent Paris

Appearances:

Agent for the Appellant: Enzo Galano

Counsel for the Respondent: P. Michael Appavoo

---

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2003 taxation year is dismissed.

Signed at Ottawa, Canada, this 12th day of June, 2006.

"Brent Paris"

---

Paris, J.

**Court File No. 2005-117(IT)I**

**Citation: 2006TCC396**

**TAX COURT OF CANADA**

**IN RE: the Income Tax Act**

**BETWEEN:**

**CHARLES WALTER FENNER**

**Appellant**

**- and -**

**HER MAJESTY THE QUEEN**

**Respondent**

**HEARD BEFORE THE HONOURABLE MR. JUSTICE B. PARIS**

**at the John Sopinka Court House**

**45 Main Street East**

**Hamilton, Ontario**

**on Thursday, June 8, 2006 at 9:25 a.m.**

**APPEARANCES:**

Mr. E. Galano

Agent for the Appellant

Mr. P. M. Appavoo

for the Respondent

**Also Present:**

Mr. Colin Nethercut

Court Registrar

Ms Donna Sloan

Court Reporter

**A.S.A.P. Reporting Services Inc. © 2006**

**200 Elgin Street, Suite 1004  
Ottawa, Ontario K2P 1L5  
(613) 564-2727**

**120 Adelaide Street West, Suite 2500  
Toronto, Ontario M5H 1T1  
(416) 861-8720**

Hamilton, Ontario

These are the reasons for judgement in the case of *Charles Walter Fenner v. The Queen*, 2005-117(IT)I.

This is an appeal from a re-assessment of the Appellant's 2003 taxation year whereby the Minister of National Revenue determined that the Appellant was liable for a tax of \$2,436 under Part I.2 of the *Income Tax Act*.

In 2003 the Appellant received a lump sum payment of Workers' Compensation benefits in the amount of \$42,287 in relation to a work place injury he sustained in 1977. This amount was included in the Appellant's income pursuant to paragraph 56(1)(v) of the *Income Tax Act*, but a deduction for the full amount was allowed under paragraph 110(1)(f) in the computation of the Appellant's taxable income. Therefore, the lump sum payment was not subject to tax under Part I of the *Act*.

However, the WCB payment was included in the Appellant's income for the purposes of Part I.2 of the *Act* which levies a tax on Old Age Security benefits received by an individual. Subsection 180.2 sets the tax at 15 per cent of an individual's "adjusted income" over a threshold amount (\$57,879 for 2003). "Adjusted income" is defined as "the amount that would be the individual's income under Part I for the year if no amount were deductible under paragraph 60(w) or included in respect of a gain

from a disposition of property to which section 79 applies”.

The Appellant takes the position that the Workers' Compensation payment should not be taken into account in calculating his “adjusted income” for the purposes of Part I.2. His counsel points out that the payment was in respect of amounts that should have been paid to him from the date of his injury in 1977 up to the date he received the payment.

The Appellant’s counsel says that the intent of Part I.2 is not to include one-time, lump sum payments such as the one received by the Appellant in a taxpayer's adjusted income. He submits that this kind of payment skews a taxpayer's income, causing it to be higher than average, and that the court should interpret the definition of “adjusted income” to exclude lump sum payments even if this means going outside the wording of the *Act*. Counsel argued that the effect of including the WCB payment in the Appellant's income was to punish a taxpayer who received two types of means based payments in the same year.

The Appellant's counsel also argued that changes made to the Workmen's Compensation legislation in 1982 should also be taken into account. According to the Appellant, prior to 1982 Workers' Compensation benefits for permanent disabilities were payable monthly for the life of the worker; after 1982 the payments were made on a lump sum basis calculated to the age of

65. He says that since he was injured in 1977 he was entitled to an award of a monthly pension which, had it been paid to him at the time, would not have resulted in him having an income in excess of the threshold amount under subsection 180.2(2) of the *Income Tax Act* in 2003.

After considering the submissions made on behalf on the Appellant I am unable to agree that Parliament did not intend to include lump sum payments in a taxpayer's income under Part I.2 of the Act.

The Supreme Court of Canada, in *Canada Trustco Mortgage Company v. The Queen*, 2000 S.C.C. 54, has indicated that in interpreting legislation, a court must conduct a textual, contextual and purposive analysis of the provision in question. The Court also said that, given the complexity and detail of the *Income Tax Act*, in normal circumstances greater weight will be placed on a textual analysis of the provision under consideration.

In this case I believe the definition of adjusted income is clear and unambiguous and leaves no room to exclude lumpsum payments of Workmen's Compensation benefits from the calculation.

Furthermore, I am not convinced that the context and purpose of the provision provide any support for the Appellant's position. Firstly, I note that the definition of adjusted

income was added to the Act in 1996. Formerly, subsection 180.2(1) based the tax payable on an individual's income under Part I of the *Income Tax Act*. Subsequent to the amendment, two items that would have otherwise formed part of the individual's income under Part I were excluded from the Part I.2 tax base. To my mind, this is an indication that Parliament has turned its mind to the question of what should be excluded from the Part I.2 tax base and has chosen not to exclude the kind of lump sum payment in issue in this case.

Furthermore, Parliament's purpose in enacting Part I.2 was to recover a portion of Old Age Security benefits paid to taxpayers who are less in need of those payments than others. It is consistent with that policy that lump sum payments be taken into account in determining a taxpayer's needs during a particular taxation year.

As stated by Lamarre Proulx, T.C.J. in *Franklin v. The Queen*, 2003TCC598 such payments form part of a person's financial resources for the year. The fact that the lump sum payment may be referable to income that was payable for earlier years does not change the fact that the receipt of the amount puts it at the disposition of the recipient and makes it available at that point to meet his or her financial needs for the particular taxation year.

I am also unable to accept that any legislative

change made to the Workmen's Compensation legislation in 1982 as described by the Appellant has any bearing on the outcome of this appeal. The event which triggered the Appellant's liability for Part I.2 tax was the receipt of the lump sum payment in 2003. Any compensation received under Workmen's Compensation law in respect of an injury and disability or death must be included in income, according to paragraph 56(1)(v) of the *Act*.

As pointed out by counsel for the Respondent, this court has consistently found that lump sum retroactive awards of Workmen's Compensation benefits are required to be included in an individual's income for the purpose of calculating Part I.2 tax. These cases include *Franklin (supra)*, *Poulin v. R.*, [1998 ] 3 C.T.C. 2820, *Miner Estate v. R.*, 2003TCC598, *Alibhai v. Canada*, [2005] T.C.J. No. 394 and *Bongiovanni v. R.*, [2001] 1 C.T.C. 2186.

I recognize that the result to the taxpayer is harsh, but any relief from this result must come from Parliament by means of a change in the law.

For all of these reasons the appeal is dismissed.

---

*ASAP Reporting Services Inc.*

*(613) 564-2727*

*(416) 861-8720*



CITATION: 2006TCC396  
COURT FILE NO.: 2005-117(IT)I  
STYLE OF CAUSE: CHARLES WALTER FENNER AND  
H.M.Q.  
PLACE OF HEARING: Hamilton, Ontario  
DATE OF HEARING: June 8 2006  
REASONS FOR JUDGMENT BY: The Honourable Justice B. Paris  
DATE OF JUDGMENT: June 12, 2006

APPEARANCES:

Agent for the Appellant: Enzo Galano  
Counsel for the Respondent: Michael Appavoo

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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