

Federal Court of Appeal



Cour d'appel fédérale

Date: 20170331

Docket: A-45-16

Citation: 2017 FCA 67

[ENGLISH TRANSLATION]

**CORAM: GAUTHIER J.A.
SCOTT J.A.
DE MONTIGNY J.A.**

BETWEEN:

JEAN FILION

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Quebec City, Quebec, on March 23, 2017.

Judgment delivered at Ottawa, Ontario, on March 31, 2017.

REASONS FOR JUDGMENT BY:

SCOTT J.A.

CONCURRED IN BY:

**GAUTHIER J.A.
DE MONTIGNY J.A.**

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REASONS FOR JUDGMENT

SCOTT J.A.

[1] Jean Filion (the appellant) is appealing from a judgment dated January 14, 2016 (2015-3504(IT)I) of Justice Ouimet (the Judge) of the Tax Court of Canada. The Judge disallowed the deduction of the legal expenses paid between 1999 and 2003 « to obtain » a retiring allowance in the amount of \$29,699.08 received in 2013, pursuant to paragraph 60(o.1) of the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.) (the ITA).

[2] The issue raised in this appeal is whether the Judge erred in finding, as he did, that the appellant could not benefit from the deduction provided for in paragraph 60(o.1) of the ITA.

[3] For the following reasons, I am of the view that the judge did not make any error warranting this Court's intervention. I would therefore dismiss this appeal.

I. The facts

[4] It is not disputed that the appellant paid \$35,813.78 in legal expenses between 1999 and 2003 in order to defend himself in a criminal prosecution for breach of trust and fraud against the Quebec government. In addition, he launched contemporaneously a civil suit in 2001 in order to recover a transition allowance from the National Assembly. The lawsuit was stayed until 2009 pending the outcome of the criminal case. Following a hearing in 2012, a judge of the Superior Court delivered a judgment in 2013 and awarded him a partial allowance of \$29,699.08 and \$5,317.36 in interest, totalling \$35,016.44.

II. The impugned decision

[5] The Judge found that the appellant was not entitled to claim a deduction of \$35,813.78 against his partial allowance of \$35,016.44 because his legal expenses had not been paid within the seven-year time limit set out in paragraph 60(o.1) of the ITA. The Judge also indicated that he did not have to determine whether the legal expenses had actually been incurred to establish a right to a retiring allowance.

III. The appellant's position

[6] The appellant argued that the Judge should have interpreted paragraph 60(o.1) liberally and considered that, given the stay of his civil suit, it had been impossible for him to obtain the transition allowance against which he could deduct the legal expenses he had paid. The Judge therefore should have excluded the time during which the civil suit had been stayed, as if there had been an interruption of the seven-year time period prescribed by that paragraph of the ITA.

[7] Alternatively, the appellant challenges the constitutionality of paragraph 60(o.1), arguing that the time limit set out in that provision prevents the deduction of legal expenses when the duration of a civil suit exceeds seven years, which, in his view, breaches judicial independence and section 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 (the Charter). He argues that a taxpayer involved in a civil proceeding for several years should not be penalized and denied this deduction because of court delays along the way.

[8] Finally, the appellant reiterates the argument presented before the Judge to the effect that the legal expenses paid to defend himself against the charges in the criminal proceeding enabled him to preserve the evidence essential for establishing his right to a transition allowance in his civil action.

IV. The standard of review

[9] The standards of review enunciated in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 apply here.

V. Analysis

[10] Paragraph 60(o.1) of the ITA allows for the deduction, in computing a taxpayer's income for a taxation year, of legal expenses paid by the taxpayer to collect a retiring allowance or a pension benefit to which he or she was entitled, up to the amount received (in this case, \$35,016.44). The ITA provides that the taxpayer will not be able to deduct the expenses unless they were paid in the taxation year or in any of the seven preceding taxation years, up to the amount received.

[11] The appellant does not satisfy the criteria set out in that provision. He did not collect a retiring allowance or pension benefit income from which he could have deducted the legal expenses paid in the seven taxation years following the date of their payment. That failure is fatal.

[12] The criteria set out in the provision are clear. The purposive construction of the provision confirms that it does not contain any ambiguity that would make it possible to take into account an interruption in the computing of the seven taxation years referred to in the ITA, contrary to the appellant's claim.

[13] The appellant served and filed a notice of constitutional question challenging the constitutionality of paragraph 60(o.1) of the ITA and asks this Court to declare the time limit set out in the provision for deducting legal expenses to have no force or effect. However, this argument was not made before the Judge.

[14] It is true that a court of appeal always has discretion to consider a constitutional question even when the parties have not raised it at trial: see *Guindon v. Canada*, 2015 SCC 41, [2015] 3 S.C.R. 3 at paragraphs 32 to 35. But there must be a good reason to do so. In this case, the appellant provided no circumstances that would justify this Court's exercise of its discretion. In addition, the courts are generally hesitant to examine the constitutional validity of a legislative provision without a sufficient factual context and without evidence making it possible to assess the reasonableness of the provision with regard to section 1 of the Charter. Regardless, the appellant's argument appears to be wholly without merit insofar as he was unable to demonstrate, even *prima facie*, that the distinction made by paragraph 60(o.1) is based on a ground enumerated in section 15 of the Charter or on an analogous ground. Consequently, I am of the view that it would be inappropriate and unjustified to rule on the constitutional question raised belatedly by the appellant.

[15] For all of these reasons, I would dismiss this appeal without costs.

“A.F. Scott”

J.A.

“I agree.

Johanne Gauthier J.A.”

“I agree.

Yves de Montigny J.A.”

Certified true translation
Janine Anderson, Revisor

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-45-16

STYLE OF CAUSE: JEAN FILION v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: QUEBEC CITY, QUEBEC

DATE OF HEARING: MARCH 23, 2017

REASONS FOR JUDGMENT BY: SCOTT J.A.

CONCURRED IN BY: GAUTHIER J.A.
DE MONTIGNY J.A.

DATED: MARCH 31, 2017

APPEARANCES:

Jean Filion FOR THE APPELLANT
(Self-represented)

Claude Lamoureux FOR THE RESPONDENT

SOLICITORS OF RECORD:

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