

Cour d'appel
fédérale



Federal Court
of Appeal

Date: 20110127

Docket: A-261-10

Citation: 2011 FCA 28

**CORAM: NADON J.A.
PELLETIER J.A.
MAINVILLE J.A.**

BETWEEN:

GEORGE GAISFORD

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on January 24, 2011.

Judgment delivered at Vancouver, British Columbia, on January 27, 2011.

REASONS FOR JUDGMENT BY:

MAINVILLE J.A.

CONCURRED IN BY:

NADON J.A.
PELLETIER J.A.

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REASONS FOR JUDGMENT

MAINVILLE J.A.

[1] This concerns an appeal of a decision of Webb J. of the Tax Court of Canada dated June 17, 2010 cited as 2010 TCC 332 which rejected the Appellant's claims that his 2007 income for the purposes of determining the guaranteed income supplement under the *Old Age Security Act*, R.S.C. 1985, c. O-9 ("OAS") should not include amounts received in that year from his Registered Retirement Income Fund ("RRIF") and should not include the gross-up amount for dividends he received in that year.

[2] The Appellant's basic argument before the Tax Court and in this appeal is that the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) ("ITA") does not define income, and consequently, compulsory RRIF withdrawals and the gross-up of dividend revenues, though taxable amounts for the purposes of the ITA, should not be treated as income for the purposes of the OAS.

[3] The problem with the Appellant's argument is that it ignores the plain and clear language of both the OAS and the ITA. The guaranteed income supplement is dependent upon a person's income as its purpose is to supplement the monthly OAS pension for those seniors with limited income. The guaranteed income supplement is thus adjusted to take into account the income of a beneficiary in accordance with adjustment formulas set out in the OAS.

[4] Under section 2 of the OAS, the "income" of a person for a calendar year "means the person's income for the year, computed in accordance with the *Income Tax Act*" subject to certain deductions which are not relevant to the Appellant's situation. Division B of the ITA sets out the rules for the computation of income under that act.

[5] Both paragraphs 56(1)(t) and 82(1)(b) of the ITA are included in its Division B. Paragraph 56(1)(t) provides that amounts received under a RRIF during a year are to be included in computing a taxpayer's income for the year, subject to certain adjustments which do not apply here. Paragraph 82(1)(b) provides that an individual taxpayer shall include in computing income a percentage gross-up of amounts received from a corporation resident in Canada on account of taxable dividends.

[6] In light of these clear provisions of the OAS and the ITA, the Appellant's arguments have no legal foundation and must be rejected.

[7] The Appellant is arguing for a policy change to the existing OAS scheme which he perceives as unfairly penalizing low income elderly pensioners who have contributed to registered retirement savings plans or who have accumulated savings for their retirement in the form of investments in Canadian corporations. However, the courts are not the appropriate forum for the Appellant's issues.

[8] I would therefore dismiss this appeal without costs.

"Robert M. Mainville"

J.A.

"I agree
Marc Nadon J.A."

"I agree
J.D. Denis Pelletier J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-261-10

**APPEAL FROM A DECISION OF WEBB J. OF THE TAX COURT OF CANADA
DATED JUNE 17, 2010, CITATION NO. 2010 TCC 332**

STYLE OF CAUSE: GEORGE GAISFORD v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, B.C.

DATE OF HEARING: January 24, 2011

REASONS FOR JUDGMENT BY: MAINVILLE J.A.

CONCURRED IN BY: NADON J.A.
PELLETIER J.A.

DATED: January 27, 2011

APPEARANCES:

George Gaisford FOR THE APPELLANT ON HIS
OWN BEHALF

Marla Teeling FOR THE RESPONDENT

SOLICITORS OF RECORD:

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