

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130409

Docket: A-492-11

Citation: 2013 FCA 94

**CORAM: SHARLOW J.A.
DAWSON J.A.
WEBB J.A.**

BETWEEN:

SEAN CAVANAGH

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on April 9, 2013.

Judgment delivered from the Bench at Toronto, Ontario, on April 9, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130409

Docket: A-492-11

Citation: 2013 FCA 94

CORAM: SHARLOW J.A.
DAWSON J.A.
WEBB J.A.

BETWEEN:

SEAN CAVANAGH

Appellant

and

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on April 9, 2013)

SHARLOW J.A.

[1] The issue in this appeal is whether the appellant Sean Cavanagh is entitled, in computing his income for purposes of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), to deduct interest paid on late support payments. In an unreported decision rendered orally on November 3, 2011, Justice Margeson of the Tax Court of Canada held that no such deduction was permitted. Mr. Cavanagh now appeals to this Court. Having considered the written and oral submissions of Mr. Cavanagh, we have concluded that this appeal must be dismissed.

[2] Mr. Cavanagh's obligation to pay the interest in issues arises from two orders of the Ontario Court, one dated February 23, 1993 and the other dated July 11, 1995. Both orders required Mr. Cavanagh to pay support in a specified amount per week, as well as interest at a specified rate on any support payments in default, from the date of default. According to the uncontradicted evidence, Mr. Cavanagh defaulted on his support obligations. In 2006, he made a payment that discharged his entire obligation to that point, including accrued interest in the amount of \$10,187.77. That is the amount of the deduction in issue in this case.

[3] Mr. Cavanagh's principal argument is that the interest payment meets the statutory definition of "support amount" in subsection 56.1(4) of the *Income Tax Act*. We do not accept this argument. In our view, the interest in issue does not meet a key element of the statutory definition of "support amount" because it is not an amount payable for the maintenance of the Mr. Cavanagh's former spouse or his children. On the contrary, the interest is payable for an entirely different purpose, which is to compensate the recipient for the delay in the payment of court ordered support.

[4] For that reason, this appeal will be dismissed with costs. The parties have agreed that costs should be fixed in the amount of \$1,500 inclusive of all disbursements and any taxes.

"K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-492-11

(APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE T.E. MARGESON, DATED NOVEMBER 15, 2011, IN DOCKET NO. 2011-583(IT)I)

STYLE OF CAUSE: SEAN CAVANAGH v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 9, 2013

REASONS FOR JUDGMENT OF THE COURT BY: SHARLOW J.A.
DAWSON J.A.
WEBB J.A.

DELIVERED FROM THE BENCH BY: SHARLOW J.A.

APPEARANCES:

Sean Cavanagh FOR THE APPELLANT

Sandra K.S. Tsui FOR THE RESPONDENT
Laurent Bartleman

SOLICITORS OF RECORD:

Self-Represented FOR THE APPELLANT

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada