

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130410

Docket: A-327-12

Citation: 2013 FCA 99

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

BETWEEN:

DANIEL LAWRENCE FANNON

Appellant

and

REVENUE CANADA

Respondent

Heard at Toronto, Ontario, on April 10, 2013.

Judgment delivered from the Bench at Toronto, Ontario, on April 10, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on April 10, 2013)

SHARLOW J.A.

[1] Mr. Fannon is appealing a judgment of Justice Near (2012 FC 876). That judgment dismissed an application for judicial review of a decision of the Minister of National Revenue refusing Mr. Fannon's request for reassessments for the years 2001 to 2005. The reassessments were requested to allow deductions pursuant to section 63 of the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.) for child care expenses paid by Mr. Fannon with respect to his son. We are all of the view that this appeal must be dismissed for the following reasons.

[2] Section 63 sets out a number of conditions that must be met before a deduction for child care expenses can be allowed. It is undisputed that in this case, the child care expenses paid by Mr. Fannon are deductible only if his son resided with him when the expenses were incurred. Mr. Fannon concedes that during the relevant period, his son did not reside with him. Justice Near concluded that because that statutory condition was not met, the Minister's decision not to reassess to allow the deductions was reasonable. We agree.

[3] Mr. Fannon also argued in the Federal Court, and maintains in this Court, that section 63 violates his right under subsection 15(1) of the *Canadian Charter of Rights and Freedoms* to the equal benefit of the law without discrimination. He argues that section 63 discriminates against him on the basis of marital status, family status and an analogous ground, place of residence.

[4] Justice Near rejected Mr. Fannon's *Charter* argument for a number of reasons. In this appeal it is enough to comment on only one of those reasons, which is the lack of evidence (see paragraph 17 of Justice Near's reasons).

[5] In order to succeed in his *Charter* claim, Mr. Fannon was required to submit evidence capable of proving that the statutory condition barring his claim for a deduction for child care expenses creates an adverse distinction based on an enumerated or analogous ground, and that the statutory distinction creates a disadvantage by perpetuating prejudice or stereotyping (*Quebec (Attorney General) v. A.*, 2013 SCC 5; *R. v. Kapp*, 2008 SCC 41). Mr. Fannon presented no

evidence in the Federal Court that addresses those questions. The lack of an evidentiary foundation is fatal to his *Charter* claim (*MacKay v. Manitoba*, [1989] 2 S.C.R. 357).

[6] Mr. Fannon also argues that section 63 should be interpreted more generously than the Minister has done in this case, because even though his son did not reside with him when the child care expenses were incurred, his claim for a deduction for those expenses is fair and reasonable in the circumstances, and meets the policy objectives of section 63. Unfortunately for Mr. Fannon, the Minister is not free to disregard statutory conditions to the deductibility of child care expenses. If section 63 is too restrictive to meet its policy objectives in the particular circumstances of this case, the remedy lies with Parliament, not with the Minister and not with this Court.

[7] For these reasons, the appeal will be dismissed with costs. Based on the oral submissions of the parties, costs will be fixed in the amount of \$300 inclusive of all disbursements and taxes.

"K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-327-12

**(APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE NEAR,
DATED JULY 11, 2012, IN DOCKET NO. T-586-11)**

STYLE OF CAUSE: DANIEL LAWRENCE FANNON v.
REVENUE CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 10, 2013

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

**DELIVERED FROM THE
BENCH BY:** SHARLOW J.A.

APPEARANCES:

Daniel Lawrence Fannon FOR THE APPELLANT

Paolo Torchetti FOR THE RESPONDENT
Arnold Bornstein

SOLICITORS OF RECORD:

Self-Represented FOR THE APPELLANT

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