

[OFFICIAL ENGLISH TRANSLATION]

2001-2904(IT)I

BETWEEN:

YVES ANDRÉ RIO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on June 4, 2002, at Montréal, Quebec, by

the Honourable Judge Pierre Archambault

Appearances

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Mounes Ayadi

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JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 1999 taxation year is dismissed.

Signed at Ottawa, Canada, this 12th day of June 2002.

“Pierre Archambault”

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J.T.C.C.

Translation certified true  
on this 26<sup>th</sup> day of February 2004.

Sophie Debbané, Revisor

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Date: 20030114  
Docket: 2001-2904(IT)I

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**REASONS FOR JUDGMENT**

(delivered from the bench at the hearing  
on June 4, 2002, at Montréal, Quebec,  
and subsequently revised for greater clarity)

**Archambault, J.T.C.C.**

[1] Yves André Rio has challenged an assessment made by the Minister of National Revenue (the **Minister**) with respect to the 1999 taxation year. The Minister disallowed the deduction of a \$10,500 expense that Mr. Rio had claimed in computing his income. The expense concerns the rent that he paid for an apartment in Toronto when he was living in that city during the 1999 taxation year.

Facts

[2] Mr. Rio is an employee of the Ministère du Revenu du Québec (the **Ministère**), who at his employer's request, but without being required to do so, agreed to be transferred to the Toronto office to work as a large business auditor. He moved to Toronto with his spouse in May 1992 and stayed there until August 1,

1999. To compensate him for the expenses resulting from this transfer, his employer reimbursed him for his moving expenses.

[3] With regard to the living expenses incurred in Toronto, the Ministère's policy was to pay several kinds of monthly allowances. There was a housing allowance the amount of which was determined in 1999 as follows: from the amount of \$3,450, considered to correspond to the cost of an apartment, \$687 representing a reasonable rent that a person living in Montréal would be required to pay was deducted. In addition to the housing allowance, an official duties allowance of \$830.55 and a high cost of living allowance of \$116.74 were paid.

[4] For personal reasons, Mr. Rio had decided to keep his apartment in Montréal, which belonged to his parents and for which he paid a monthly rent of \$500. Among other things, he wanted to encourage stays in Quebec and make things easier for his spouse who sometimes had contracts to carry out in Montréal.

[5] At that time, an employee of the Ministère would generally be transferred for a three-year period—the transfer being renewable for another two years. At the time, those employees had to return to Quebec at the end of five years. Because of the lack of interest of some employees at the Ministère in such transfers, the policy was changed to allow a longer stay in Toronto. Mr. Rio stayed there for seven years. Some employees even extended their stay to 12 years. In recent years, the policy was changed once again to requiring employees to return to Quebec after five years.

[6] Mr. Rio indicated that the monthly rent for his apartment in Toronto was \$1,500 and that it remained the same from 1992 to 1999. Were it not for the excellent relationship he had with its owner, his rent could have been higher.

[7] During the period from 1992 to 1999, the policy of the Ministère appeared to take the tax payable on the housing allowance into account, although this was not very clear. In recent years, however, it has been more explicitly and clearly indicated that the amount of the allowance takes into account the tax that the employee will have to pay on the allowance. Moreover, in round figures, the net amount of the housing allowance represents approximately \$2,700 (which comes out to \$1,350 when tax at 50% has been calculated), whereas the cost of the rent in Mr. Rio's case was \$1,500. Thus it is reasonable to believe that the Ministère's policy was to take

the tax payable into account, even though the amount granted may have been insufficient given the rent actually paid in Toronto.<sup>1</sup>

### Parties' position

[8] In his Notice of Appeal, Mr. Rio did not challenge the inclusion in his income of all of the allowances paid by the Ministère in 1999. However, he had claimed a deduction of \$10,500 representing the total of the seven monthly rent payments made by him for his Toronto apartment. At the beginning of the hearing, he acknowledged that subsection 8(2) of the *Income Tax Act* (the *Act*) explicitly provides that no expense may be deducted except as permitted in the *Act*. Mr. Rio accordingly changed his position and argued instead that the sum of \$10,500 should not have been included in his income.

[9] In the respondent's view, irrespective of whether the amounts paid by Mr. Rio's employer are considered a reimbursement of expenses or an allowance, they represent a taxable benefit that must be included in Mr. Rio's income from employment. The two leading decisions cited in support of the respondent's position is the one of my colleague Judge Teskey in *MacDonald v. Canada*, [1992] T.C.J. No. 299 (QL); and the one I rendered in *Dionne v. Canada*, [1996] T.C.J. No. 1691 (QL).

[10] In the first decision, Judge Teskey concluded, at page 4, that the decisions in *McNeill v. Canada*, [1987] 1 F.C. 119, (86 DTC 6477); *Splane v. The Queen*, 90 DTC 6442; *Phillips v. M.N.R.*, 90 DTC 1274; and *Côté v. M.N.R.*, 91 DTC 261, could not be applied to facts similar to those in that case. Judge Teskey stated as follows at page 4:

... However, these four decisions are distinctly different from this case. They each dealt with a one time lump sum payment, the purpose of which was to reimburse a specific loss. Here, the Appellant is receiving monthly amounts as long as he is employed in the Toronto office and lives in a designated area subject to the adjustments referred to in paragraphs 2, 3 and 4 of the Bulletin. It makes no difference to the amount whether the recipient purchases a residence, rents a residence or lives rent free with parents. The only criteria, to obtain what is referred to as the "housing subsidy", is a transfer to Toronto and to live in the designated area.

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<sup>1</sup> It must be remembered that Mr. Rio received other allowances as well.

In the next paragraph, he went on to say:

Based on the evidence before me and the decision of Noël J. in Ransom, I am satisfied that these payments are an allowance within the meaning of paragraph 6(1)b) of the Act and not a reimbursement.

[11] In *Dionne*, counsel for the respondent specifically cited the passage in paragraph 55 in which I concluded that, in order to determine whether a taxpayer suffered prejudice, one must adopt the taxpayer's point of view in relation to his fellow citizens in the city where he lives and not in relation to the inhabitants of where he came from (where he lived before the transfer). The passage in question is reproduced below:

[55] In my view, it seems fair to compare this taxpayer to his new fellow citizens in order to determine whether he is actually suffering prejudice by reason of his employment. As the old saying goes, "When in Rome, do as the Romans do." This is also the approach used by my colleague Judge Bonner in *Gernhart v. The Queen*, [1996] C.T.C. 462, 96 D.T.C. 1672.

### Analysis

[12] In my opinion, *MacDonald* and *Dionne* are relevant in assessing the relevant facts of this appeal and in applying the appropriate tax rules to dispose of this appeal. This is not a taxpayer who is required to live in a city other than his place of residence on a temporary basis, namely, a few weeks or even several months. Rather, this is a taxpayer who decided to move for a minimum period of three years. Quite clearly, unforeseen circumstances could have shortened this stay. In actual fact, however, the stay in Toronto lasted seven years, that is, from 1992 to 1999.

[13] In a context such as that, it is my opinion that it is important to determine whether Mr. Rio suffered prejudice the compensation of which would not be taxable. To resolve this issue, his situation must be compared with that of other Toronto residents. From that viewpoint, Mr. Rio did not suffer prejudice and, consequently, the compensation that he received from the Ministère was an allowance for personal or living expenses that must be included in his income under paragraph 6(1)(a) of the *Act*.<sup>2</sup>

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<sup>2</sup> This paragraph reads as follows:

Amounts to be included as income from office or employment

[14] Although *Dionne* involved a taxpayer who lived in a remote region in Canada's North, I do not believe that the rule that a living allowance or reimbursement for living expenses must be included in income from employment is to be interpreted differently depending on whether the person lives in a remote area or in a major Canadian city.

[15] For these reasons, I conclude that the appeal of Mr. Rio must be dismissed.

Signed at Drummondville, Quebec, this 14th day of January 2003.

“Pierre Archambault”

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J.T.C.C.

Translation certified true  
on this 26<sup>th</sup> day of February 2004.

Sophie Debbané, Revisor

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6. (1) There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable:

(a) Value of benefits — the value of board, lodging and other benefits of any kind whatever received or enjoyed by the taxpayer in the year in respect of, in the course of, or by virtue of an office or employment, except any benefit ...

[Emphasis added.]