

Docket: 2002-3101(IT)I

BETWEEN:

MICHEL NOLIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on February 17, 2003, at Trois-Rivières, Quebec

Before: The Honourable Judge Alain Tardif

Appearances:

For the Appellant:                      The Appellant himself

Counsel for the Respondent:              Stéphanie Côté

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AMENDED JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 1999 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 14th day of April 2003.

"Alain Tardif"

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J.T.C.C.

Translation certified true  
on this 30<sup>th</sup> day of April 2004.

Sophie Debbané, Revisor

Citation: 2003TCC199  
Date: 20030414  
Docket: 2002-3101(IT)I

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Appellant,

and

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[OFFICIAL ENGLISH TRANSLATION]

**AMENDED REASONS FOR JUDGMENT**

**Tardif, J.T.C.C.**

[1] This is an appeal from an assessment for the 1999 taxation year.

[2] In establishing and confirming the January 22, 2002, Notice of Reassessment for the 1999 taxation year, the Minister of National Revenue ("the Minister") relied on the following assumptions of fact in particular:

[TRANSLATION]

- (a) the appellant and Yolande Reny were married on April 3, 1976;
- (b) from the marriage of the appellant and Yolande Reny were born two daughters:
  - (i) Emmanuelle, born on June 18, 1976, and
  - (ii) Émilie, born on March 6, 1983;
- (c) the appellant and Yolande Reny stopped living together around August 1, 1996;

- (d) in support of his request for adjustment for the 1999 taxation year, the appellant submitted a document in which Yolande Reny acknowledged receiving from him support payments in the amount of \$15,000;
- (e) the appellant then provided the February 19, 2001, Quebec Superior Court divorce judgment by Legris J.S.C., confirming and making binding a December 22, 2000, draft agreement between the parties;
- (f) the December 22, 2000, draft agreement between the parties did not contain any retroactive provisions provided for in subsection 60.1(3) of the *Income Tax Act* (hereinafter "the Act");
- (g) lastly, the appellant submitted to the Minister a document dated July 9, 2001, in which the parties acknowledge that, at the time of the August 1996 separation, an agreement was reached whereby, among other things, the appellant would pay Yolande Reny on a regular basis, that is, every 15 days, support totalling \$15,000 for the 1999 taxation year;
- (h) the Minister considers that the support in the amount of \$15,000 paid by the appellant to Yolande Reny for the 1999 taxation year was not made under a written agreement or order of a competent tribunal.

[3] After being sworn, the appellant admitted the truth of paragraphs (a), (b), (c), (d), and (e).

[4] At issue is whether the amount of \$15,000 paid by the appellant to Yolande Reny was deductible as support or other allowance payable on a periodic basis for the 1999 taxation year.

[5] The appellant, clearly well prepared to argue his case, adduced a number of documents in support of his claims. He also called his former spouse as a witness. It was clear from the evidence adduced by the appellant that he did indeed pay his former spouse an amount of \$15,000; as well, by her signature (Exhibit A-5), his former spouse attested that she received that amount.

[6] The appellant argued that he regularly and consistently met his undertakings; he adduced a statement establishing that he paid \$12,000 for the 1997 taxation year.

[7] On the basis of receipts, the appellant argued that the payments were made as support, which he agreed to pay; he added that he paid those amounts, not out of mere generosity, but out of obligation.

[8] I do not doubt that the appellant paid the amount at issue under an agreement; he would certainly not have agreed to pay such an amount without feeling obliged to do so.

[9] The problem lies not with that fact but, essentially, with the applicable legislative provision that periodic payments must be made under a written agreement or order by a competent tribunal in order to be considered support payments.

[10] This requirement is basic and utterly essential. The main exhibit adduced by the appellant in this regard is the February 19, 2001, judgment by Legris J.S.C., which reiterates at length a draft agreement between the parties. Under heading (e), "Spousal support", the draft agreement provides as follows:

[TRANSLATION]

(e) Spousal support

Starting on the date of the divorce judgment, the male applicant shall pay the female applicant annual support equivalent to \$20,000 for herself, in order to meet her needs.

However, from January 1, 2003, to December 31, 2007, the amount of support shall be reviewed: Old Age Pension and Quebec Pension Plan amounts received by the female applicant shall be deducted from the amount of support owed by the male applicant to the female applicant.

In consideration of the benefits hereby granted by the male applicant, the applicants agree that the above-described support shall terminate as of right on December 31, 2007.

Starting on January 1, 2008, no support shall be requested by the female applicant from the male applicant.

Starting on January 1, 2002, the amount of support shall be indexed annually depending on the rate of increase paid to the male applicant by his employer.

With the exception of the cases set out below, the amount of support shall not be reviewed if the male applicant's income increases or decreases.

If the male applicant becomes disabled, the amount of support shall be reviewed, taking into account the income paid to the male applicant by his employer as a result of the disability, indicated as a percentage of the income paid to him prior to the disability.

If there is cessation of the male applicant's employment that is attributable to his employer, the amount of support shall be revised downward, where applicable, taking into account all income of the male applicant and the female applicant. For the purposes of calculation, the applicants set out the following reasoning.

If the male applicant's total income is \$75,000 and the female applicant's income is \$1,000, the female applicant shall be entitled to 100 per cent of the amount of support, that is, \$20,000.

If the female applicant is successful in finding employment or in exercising an activity that generates net income exceeding \$3,000, she shall so inform the male applicant and, where applicable, shall agree to review the amount of support accordingly.

Under Quebec's *Act to facilitate the payment of support*, R.S.Q., c. P-2.2, the amount of support should be collected by means of the deduction method: the male applicant's employer should deduct the amount of support from the male applicant's salary and then remit it to the Quebec Minister of Revenue, who shall remit the amounts of support collected to the female applicant every two weeks.

Any agreements concerning readjustments of the amount of support shall be made in writing and shall be signed by the applicants. These agreements shall be binding on Quebec's Ministère du Revenu for the purposes of applying Quebec's *Act to facilitate the payment of support* as though the readjustments were set out in the judgment to be handed down and Quebec's Ministère du Revenu is ordered to comply with them.

The applicants agree that, until an official of Quebec's Ministère du Revenu intervenes in the case in order to deduct the amount of support from the male applicant's salary, the debtor shall pay the support into an account authorized by the female applicant every other week on Thursdays.

[11] There is no express provision concerning the amount paid prior to the judgment.

[12] Essentially, Exhibits A-4 and A-5 are receipts certifying that the appellant did indeed pay \$15,000 for the 1999 taxation year and \$12,000 for the 1997 taxation year. These exhibits are not an agreement creating rights and obligations but are an acknowledgement of the outcome of a possible agreement, the evidence of which has never established that it was written. Since that requirement is absolutely fundamental and inescapable, the appeal must be dismissed.

Signed at Ottawa, Canada, this 14th day of April 2003.

"Alain Tardif"

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J.T.C.C.

Translation certified true  
on this 30<sup>th</sup> day of April 2004.

Sophie Debbané, Revisor