Docket: 2006-3250(IT)I

BETWEEN:

PRISCILLE G. MONTGOMERY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on May 15, 2007 at Sudbury, Ontario

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Jade Boucher

JUDGMENT

The appeal in respect of an assessment made under the *Income Tax Act* for the 2000 taxation year is dismissed.

Signed at Toronto, Ontario, this 1st day of June 2007.

"J. Woods"

Woods J.

Citation: 2007TCC317
Date: 20070601
Docket: 2006-3250(IT)I

BETWEEN:

PRISCILLE G. MONTGOMERY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] What is the meaning of the word "interest" for purposes of paragraph 12(1)(c) of the *Income Tax Act* (the "ITA")? That question arises here in context of an award received by Priscille Montgomery under pay-equity legislation.

[2] In the late 1970s, Parliament enacted the *Canadian Human Rights Act* (the "CHRA") which, among other things, prohibits the federal government from paying wages that discriminate on the basis of gender.

[3] Mrs. Montgomery, who was a federal government clerical worker at the relevant time, received a retroactive adjustment of wages under that legislation in 2000. The payment was made under an award issued by the Canadian Human Rights Tribunal, following a complaint filed on behalf of a large number of clerical employees. The complaint was filed on December 19, 1984 and the Tribunal issued its decision on July 29, 1998. The employees affected were awarded an adjustment to wages retroactive to March 8, 1985, and interest on that amount to the date of payment.

[4] The Tribunal's decision was upheld on a judicial review to the Federal Court – Trial Division. Shortly thereafter, the parties settled some outstanding details, which details were embodied in a consent order issued by the Tribunal.

[5] The award to Mrs. Montgomery included an amount of $12,186.25 which was reported by her employer on a T5 slip as interest. It appears that most of this amount constitutes what is usually described as "pre-judgment interest" and a small portion represents "post-judgment interest."

[6] Mrs. Montgomery submits that this amount is not taxable because it is not interest. The Crown concedes that the amount is not taxable unless it is, in fact, interest.

[7] By way of background, I understand that several other taxpayers have also challenged the taxation of the interest portion of the award.

[8] The first appeal to come before this Court was *Burrows v. The Queen*, 2006 D.T.C. 2172 (T.C.C.), in which an argument was made that the taxation of the interest portion of the award breached the provisions of the Canadian Charter of Rights and Freedoms. Ms. Burrows did not take issue with the characterization of the amount as "interest." The appeal was dismissed by Lamarre J.

[9] More recently, this Court has heard other appeals which I understand have all been dismissed orally from the Bench. At the time of writing, several other appeals are pending.

[10] The relevant section, paragraph 12(1)(c) of the ITA, provides:

> 12.(1) There shall be included in computing the income of a taxpayer for a taxation year as income from a business or property such of the following amounts as are applicable
>
> […]
>
> (*c*) subject to subsections (3) and (4.1), any amount received or receivable by the taxpayer in the year (depending on the method regularly followed by the taxpayer in computing the taxpayer's income) as, on account of, in lieu of payment of or in satisfaction of, interest to the extent that the interest was not included in computing the taxpayer's income for a preceding taxation year;
> (Emphasis added.)

[11] Mrs. Montgomery, who was self-represented at the hearing, makes several arguments. First, she submits that s. 12(1)(c) does not apply to all interest, but only

to interest arising from a business or property. In her view, the amount at issue does not relate to either a business or property source.

[12] Second, Mrs. Montgomery submits that the generally-accepted meaning of the word “interest” as found in dictionaries encompasses only amounts paid with respect to borrowed money. There is no borrowed money involved here, she notes.

[13] Reference was made to the following definition of “interest” which Mrs. Montgomery had discovered by way of a computer dictionary search:

> [n] a fixed charge for borrowing money; usually a percentage of the amount borrowed; “how much interest do you pay on your mortgage.”

[14] Further, Mrs. Montgomery submits that s. 12(1)(c) should be interpreted in a manner similar to the provision which provides for the deduction of interest, s. 20(1)(c). She argues that the deduction is limited to interest paid on borrowed money and submits that a similar limitation should be read into the inclusion provision in s. 12(1)(c).

[15] Unfortunately for the appellant, I am unable to agree with these submissions.

[16] As for whether the interest portion of the award has a business or property source, in my view it has a source from property. The federal government’s failure to pay wages to female clerical employees commensurate with the wages paid to men who were employed in comparable work gave rise to a right of compensation under the CHRA. This right is property, which term is broadly defined in s. 248(1) of the ITA.

[17] Second, I do not agree with Mrs. Montgomery’s argument that the generally-accepted dictionary meaning of the word “interest” is restricted to situations involving borrowed money.

[18] Mrs. Montgomery referred to an extract from a computer search that links interest to borrowed money. The original source of that definition is not apparent from the extract provided.

[19] In my view, the definition cited by Mrs. Montgomery is overly restrictive. I note the following definition of “interest” from The Canadian Oxford Dictionary,

2nd edition, 2004: “money paid for the use of money lent, or for not requiring the repayment of a debt.” This definition suggests that interest may be referable to any type of debt, and not just debt in the form of borrowed money.

[20] Mrs. Montgomery also argues that s. 12(1)(c) should be interpreted in a manner similar to s. 20(1)(c) which, she submits, applies only to interest on borrowed money.

[21] I cannot agree with this submission. First, s. 20(1)(c) is not restricted to situations involving borrowed money as Mrs. Montgomery suggests. In addition, the language used in the two provisions is different, and this suggests that Parliament did not intend that they have a similar scope. There is no reason to restrict interest in s. 12(1)(c) to situations involving borrowed money.

[22] In my view, the interest portion of the award received by Mrs. Montgomery is properly characterized as “interest” which is included in computing income under s. 12(1)(c). During the period covered by the award, the wages received by Mrs. Montgomery contravened the provisions of the CHRA. The interest portion of the award was paid to her as compensation for the retention of monies which properly should have been paid as wages.

[23] The decision of Reed J. in *Miller v. The Queen*, 85 D.T.C. 5354 (FC-TD), is relevant to this case. In *Miller*, interest paid on a retroactive payment of wages was determined to be interest for purposes of the $1,000 deduction in s. 110.1 of the ITA that was in force at the relevant time. The wage adjustment was determined by binding arbitration pursuant to a collective agreement.

[24] The judge summed up her conclusion as follows:

> In my view the $62.51 was genuinely a payment of interest. The parties agreed that their relationship would be governed on the basis of the retroactive agreement. This involved the retention of monies owing to the Plaintiff for which compensation was ultimately paid. The compensation paid was described by the parties and the arbitration board as interest. It was calculated on an accrual basis by reference to a normal rate of interest then current or with respect to the employer’s cost of borrowing. I can see no reason why this does not fall within the meaning of the word “interest” as it is used in section 110.1 of the Income Tax Act.

[25] The facts in this appeal are analogous to the facts in *Miller* and I see no reason not to follow that decision here.

[26] Despite Mrs. Montgomery's valiant efforts, I conclude that the interest portion of the award received by her in 2000 is properly included in computing income under s. 12(1)(c). The appeal is dismissed.

Signed at Toronto, Ontario, this 1st day of June 2007.

"J. Woods"

Woods J.

CITATION:	2007TCC317
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APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Jade Boucher

COUNSEL OF RECORD:

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Firm:	

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