

Docket: 2009-905(IT)I

BETWEEN:

CLAUDE PINEAU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on September 4, 2009, at Montréal, Quebec.

Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Laurent Brisebois

JUDGMENT

The appeal from the reassessment made November 18, 2008 pursuant to which the Minister of National Revenue disallowed, in the calculation of the Appellant's non-refundable tax credits for the 2007 taxation year, credits for an eligible dependant and for children born in 1990 or later, is dismissed without costs.

Signed at Montréal, Quebec, this 30th day of October 2009.

“Réal Favreau”

Favreau J.

Translation certified true
on this 21st day of December 2009.
Bella Lewkowicz, Translator

Citation: 2009 TCC 559
Date: 20091030
Docket: 2009-905(IT)I

BETWEEN:

CLAUDE PINEAU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Favreau J.

[1] The Appellant is appealing from a reassessment made November 18, 2008 pursuant to which the Minister of National Revenue (the Minister) disallowed, in the calculation of the Appellant's non-refundable tax credits for the 2007 taxations year, credits for an eligible dependant in the amount of \$1,440 and for children born in 1990 or later in the amount of \$300, with respect to his daughter, Ariane.

[2] The underlying facts of this case are simple and are described in subparagraphs a), b) and c) of paragraph 6 of the Reply to the Notice of Appeal as follows:

[TRANSLATION]

- a) the Appellant and Ms. Nathalie Pepin lived together as common-law partners for around ten years and the cessation of the common-law partnership occurred on or around June 16, 2005;
- b) the Appellant and Ms. Nathalie Pepin are parents to two minor girls;

- c) in February 2007, with the consent to judgment on the application's motion for child custody, determination of support payments and settlement of financial interests, the following clauses, among others, were ratified:
- i) after serious reflection and discussions, the parents have come to the conclusion that they will share custody of their two daughters,
 - ii) Mr. Pineau will pay Ms. Pepin, for the exclusive benefit of their two minor children, \$61.59 per month in support payments, that is, a total of \$793.07 per year,
 - iii) the aforementioned support payment will be indexed on January 1 of each year, in accordance with the index provided for in by the *Civil Code of Québec*.

[3] The issue stems from the fact that subsection 118(5) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended (Act), stipulates that an individual may not claim a personal tax credit when living separate and apart from his or her former spouse or partner and must make support payments to the former spouse or partner on behalf of a child. Subsection 118(5) of the Act reads as follows:

No amount may be deducted under subsection (1) in computing an individual's tax payable under this Part for a taxation year in respect of a person where the individual is required to pay a support amount (within the meaning assigned by subsection 56.1(4)) to the individual's spouse or common-law partner or former spouse or common-law partner in respect of the person and the individual

- a) lives separate and apart from the spouse or common-law partner or former spouse or common-law partner throughout the year because of the breakdown of their marriage or common-law partnership; or
- b) claims a deduction for the year because of section 60 in respect of a support amount paid to the spouse or common-law partner or former spouse or common-law partner.

[4] Following the consent to judgment on the applicant's motion for child custody, determination of support payments and settlement of financial interests concluded February 9, 2007, each parent deducts one dependent child. Credits totalling \$1,740 were disallowed as the Appellant was paying support payments of \$30.79 per month, that is \$364.48 per year, for his daughter, Ariane.

[5] The Appellant considers subsection 118(5) of the Act to be discriminatory and penalizing and should be amended because it infringes on the convention on the rights of the child adopted by the United Nations General Assembly.

[6] In my opinion, subsection 118(5) of the Act is clear and not vague. The conditions of application have all been met. The Appellant therefore cannot succeed based on this provision.

[7] With respect to the reference to the convention on the rights of the child, it must be mentioned that legally, this convention is not directly applied in Canada. Moreover, the argument regarding the *Charter of Rights and Freedoms* that was raised at the hearing was not raised in the Notice of Appeal and must therefore be rejected.

[8] The Court has no jurisdiction to make judgements in equity. It is bound to apply the Act, as adopted by Parliament.

[9] As such, the appeal is dismissed without costs.

[10] With respect to fairness, it would be desirable if Parliament amended the Act so that the reduction in personal credits be limited to support the amount of payments made to the former spouse with respect to his or her or their children.

Signed at Montréal, Quebec, this 30th day of October 2009.

“Réal Favreau”

Favreau J.

Translation certified true
on this 21st day of December 2009.
Bella Lewkowicz, Translator

CITATION: 2009 TCC 559
COURT FILE NO.: 2009-905(IT)I
STYLE OF CAUSE: Claude Pineau and Her Majesty the Queen
PLACE OF HEARING: Montréal, Quebec
DATE OF HEARING: September 4, 2009
REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau
DATE OF JUDGMENT: October 30, 2009

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Laurent Brisebois

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada