

BETWEEN:

ESTATE OF GRACE J. MCLEAN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Appeal heard on November 14, 2022, at Kelowna, British Columbia

Before: The Honourable Mr. Justice Randall S. Boccock

Appearances:

Agent for the Appellant:

David M. Pansegrau

Counsel for the Respondent:

Katherine Matthews

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ORDER

WHEREAS after hearing opening submissions and initial testimony of the Appellant's personal representative and executor, Respondent's counsel moved to quash the appeal because of the lack of jurisdiction to hear the appeal;

AND WHEREAS the Court considered such motion, recessed and reconvened to render oral reasons for decision;

NOW THEREFORE THIS COURT ORDERS THAT:

1. The Respondent's motion is granted, without costs; and,
2. The appeal is quashed because the Court lacks jurisdiction to hear an appeal to waive interest on an assessment.

Signed at Ottawa, Ontario, this 22<sup>nd</sup> day of November, 2022.

“R.S. Boccock”

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Boccock J.

Docket: 2022-1740(IT)I

BETWEEN:

ESTATE OF GRACE J. MCLEAN,

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and

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EDITED VERSION OF TRANSCRIPT  
OF ORAL REASONS FOR ORDER

Let the attached edited transcript of the reasons for order rendered orally at the hearing on November 14, 2022 at Kelowna, British Columbia, be filed. The transcript (certified by the Court Reporter) has been edited for style, clarity, grammar and minor corrections only; there have been no substantive changes.

Signed at Ottawa, Ontario, this 25<sup>th</sup> day of November, 2022.

“R.S. Bocock”

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Bocock J.

Citation:2022TCC150  
Date:20221125  
Docket: 2022-1740(IT)I

BETWEEN:

ESTATE OF GRACE J. MCLEAN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

(Appeal called and decision rendered orally at the hearing on  
November 14, 2022, at Kelowna, British Columbia)

Bocock J.

[1] As I mentioned before the break, I will now render my reasons for an order in respect of this appeal. The reasons are responsive to the Crown's motion to quash the appeal because the Court does not have statutory authority to grant the relief sought by the Estate of Grace McLean, the taxpayer in this appeal.

[2] The factual background in this particular appeal imbeds the oddity of it. Mr. Pansegrau, who is the son of the deceased, Grace McLean, and the executor and beneficiary, brings this appeal. He does so because in 2019 he received notification from the *Canada Pension Plan*, quite unsolicited based on the facts before the Court, that an additional benefit was payable to Grace McLean.

[3] Critical to understanding how this odd situation arises is the fact that in 2019, Grace McLean was dead. She passed away in 2017. Therefore, a benefit was being conferred on a pensioner, under the *Canada Pension Plan*, who was no longer alive.

[4] Further complicating the situation is that the additional benefit reached back some 20 years. As is normal, those additional amounts were assessed collectively as income in last taxation year of Grace McLean's life, being 2017.

[5] As a result of an objection filed by Mr. Pansegrau, the Minister reassessed and granted relief. But it was partial, not complete relief. And in fact, the notice of reassessment provides a lot of context:

“Your Canada or Quebec pension plan lump sum benefit”

[Of course that was the deceased's lump sum benefit.]

“-- qualifies for special tax calculation. If it benefits you, we take the amount of \$300 or more from previous years as though you had received it in those years”

“-- rather than in the year you actually received it.”

[6] This is done so logically because the pension amounts, if properly paid, would have been received over all such years. That is because progressive tax rates will weigh more heavily on lump sum amounts in the single, current year paid. That is unfair since, through no fault of the taxpayer, those monies became payable in one year rather than received and sprinkled over many taxation years. In this case, the number of years over which those benefits would have been paid was some 20 years. The Minister's explanation continues:

“Using this special calculation...”

[the Minister continues through her agents,]

“...we determined that it benefits you to have the amount from previous years taxed in this way. We changed your Canada Pension benefit income to \$7,422 to delete the previous years' benefits. We calculated a federal tax adjustment of \$1,189.11 and a provincial adjustment of \$588.50. We changed the total payable by those amounts.”

[7] That was the benefit of the reassessment, and now the slight detriment.

“We charged you arrears interest of \$234.89 on the balance you owe (namely the additional tax). We calculated this interest to the date of the Notice.”

[8] The date of the Notice, for the record, was June 4<sup>th</sup>, 2020.

[9] The period over which that interest is charged is from the balance due date, not expressed in this part of the reassessment, until that reassessment because the tax owing from 2017 had not been repaid on the date of reassessment.

[10] From further explanations of the Minister, we know that the balance due date utilized was relevant to the date of death in 2017.

[11] Contextually, it is important to remember that the benefit was not paid until 2019 and the taxpayer's estate had no idea that that benefit existed until 2019.

[12] Having said all that, this Court, in considering the respondent's motion to quash, examined section 161(1) of the *Income Tax Act* and it provides:

Where at any time after a taxpayer's balance- due date for a taxation year

(a) the total of the taxpayer's balance payable under this [Act] exceeds the amount the taxpayer has paid ... – [I am excerpting this slightly.]

...the taxpayer shall pay the Received General interest.

[13] The relevant interest period is between the balance due date in 2017 until the date of reassessment which was in 2020. Therefore, statutorily, for that particular period there is an amount of interest owing under the *Act*.

[14] As the Court stated when it discussed this matter with both the appellant and respondent's counsel earlier today, this strikes the Court as anomalous. It is anomalous because the policy issue behind interest is to ensure that taxpayers, who benefit from amounts that they have either wrongfully received or withhold or incorrectly received as a refund, and who retain those moneys should reimburse the federal treasury interest for the moneys of which it should have had use. However, the issue here is, should a taxpayer in 2019, who then receives a benefit which that taxpayer had no idea existed, nor made any claim for, be responsible for interest when the taxpayer, because of the taxpayer's then legal status, must declare that income two years before, in 2017?

[15] Because the actual taxpayer, Grace McLean, had died in 2017, her estate is required to report that addition income on the terminal tax return in 2017. This is notwithstanding that, the amounts were not known to be payable, or payable and received until some two years later.

[16] Back to the motion to quash. This Court is a statutory Court. It does not have equitable jurisdiction. I can assure you, Mr. Pansegrau, that if it did it would grant your appeal. But it does not.

[17] Instead, all the Court can do is take the *Act*, interpret it and ensure that the Court does not turn the *Act* upside down because of an unintended anomaly. Otherwise, to turn the *Act* upside down to solve an anomaly may possibly resolve the anomaly, but unbearably misinterpret the clear wording of the *Act*.

[18] So you might well ask, as I do, what process is in place for these rare and clear anomalies? Because, as stated, the Court is required to grant the motion to quash because it does not have statutory authority to grant the equitable relief you seek on the interest waiver. Also, pursuant to section 171 of the *Act* does it have authority to determine whether interest has been fairly charged. It may only determine whether the *Act* permits the Minister to charge interest, and the *Act* does permit the Minister, with reference to the balance due date of 2017, to charge interest on the balance due on the date owed until the outstanding tax is repaid. That is the state of the law, clearly stated.

[19] There are some other avenues you might pursue. As I outlined in the case of *Rajagopola v. HMQ* in 2022 TCC 8, and also which Justice McPhee outlined in *Wiegers v. HMQ*, 2019 TCC 260, which was cited by Crown counsel at paragraphs 18 to 24, there is a process under which taxpayers may apply for relief.

[20] There are certain conditions to that. Sometimes it is financial need or financial hardship. Other circumstances may include the waiver of interest because of fairness or delay or unintended consequences.

[21] The facts of this case seem to suit the application of remediation for fairness. That is not my decision to make. It will be the Minister's. And *Wiegers* tells you that. The case of *Rajagopola* will tell you that. But you may wish to take a look at Tax Circular 07-1 and the Taxpayer Relief Provisions outlined in Part II. If you do so, you will have a pathway to apply to the Minister in the circumstances and utilize these oral reasons, which will be published. If and when you apply, provide all the information that you have on file.

[22] To conclude, I have no alternative, based on the *Act* and my authority, but to grant, rightfully and legally, the motion to quash the appeal. As pointed out, Mr. Pansegrau, the estate may take full opportunity to apply under the taxpayer relief provisions contained in that Part II of the Information Circular; the very provision, which outlines that, is subsection 223.1 of the *Income Tax Act*.

Signed at Ottawa, Ontario, this 25<sup>th</sup> day of November, 2022.

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“R.S. Boccock”

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Boccock J.

CITATION: 2022TCC150

COURT FILE NO.: 2022-1740(IT)I

STYLE OF CAUSE: ESTATE OF GRACE J. MCLEAN AND  
HIS MAJESTY THE KING

PLACE OF HEARING: Kelowna, British Columbia

DATE OF HEARING: November 14, 2022

REASONS FOR ORDER BY: The Honourable Mr. Justice Randall S.  
Bocock

DATE OF ORDER: November 22, 2022

APPEARANCES:

Agent for the Appellant: David M. Pansegrau  
Counsel for the Respondent: Katherine Matthews

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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Deputy Attorney General of Canada  
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