

CORAM: THE CHIEF JUSTICE

LINDEN, J.A.

HENRY, D.J.

B E T W E E N:

WILLIAM J. McRAE,

Appellant

-and-

HER MAJESTY THE QUEEN,

Respondent

- and -

THE CANADIAN COUNCIL OF CHRISTIAN CHARITIES

THE EVANGELICAL FELLOWSHIP OF CANADA

THE INTERDENOMINATIONAL FOREIGN MISSION

ASSOCIATION OF CANADA,

Intervenors

HEARD at Toronto, Ontario, Monday, February 17, 1997.

JUDGMENT delivered from the Bench at Toronto, Ontario, on Tuesday, February 18, 1997.

REASONS FOR JUDGMENT BY: THE CHIEF JUSTICE

A-644-94

CORAM: THE CHIEF JUSTICE

LINDEN, J.A.

HENRY, D.J.

B E T W E E N:

WILLIAM J. McRAE,

Appellant

-and-

HER MAJESTY THE QUEEN,

Respondent

- and -

THE CANADIAN COUNCIL OF CHRISTIAN CHARITIES

THE EVANGELICAL FELLOWSHIP OF CANADA

THE INTERDENOMINATIONAL FOREIGN MISSION

ASSOCIATION OF CANADA,

Intervenors

REASONS FOR JUDGMENT

(Delivered from the Bench at Toronto, Ontario,

on Tuesday, February 18, 1997)

THE CHIEF JUSTICE:

This is an appeal from a judgment of the Trial Division, dated 4 November, 1994, dismissing an action by the appellant by way of an appeal *de novo* from a judgment of the Tax Court, dated 18 October, 1988 [(1989) D.T.C. 663]. In the latter judgment the Tax Court dismissed the appellant's appeal against a reassessment by the Minister of National Revenue (the "Minister") which disallowed the appellant's claim to a residence deduction pursuant to paragraph 8(1)(c) of the *Income Tax Act*, S.C. 1970-71-72, c. 63 as amended (the "Act") for the taxation year 1986.

In 1986, the appellant was President of the Ontario Bible College (OBC) and the Ontario Theological Seminary (OTS). For that year he claimed a deduction in the amount of \$13,500.00 for income tax purposes as a residence allowance pursuant to paragraph 8(1)(c) of the *Act*. That paragraph reads:

8. (1) **Deductions allowed.**- In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:

...

(c) **clergyman's residence.**- where the taxpayer is a member of the clergy or of a religious order or a regular minister of a religious denomination, and is in charge of, or ministering to a diocese, parish or congregation, or engaged exclusively in full-time administrative service by appointment of a religious order or religious denomination, an amount equal to

(i) the value of the residence or other living accommodation occupied by him in the course of or by virtue of his office or employment as such member or minister so in charge of or ministering to a diocese, parish or congregation, or so engaged in such administrative service, to the extent that such value is included in computing his income for the year by virtue of section 6, or

(ii) rent paid by him for a residence or other living accommodation rented and occupied by him, or the fair rental value of a residence or other living accommodation owned and occupied by him, during the year but not, in either case, exceeding his remuneration from his office or employment as described in subparagraph (i);

The Minister disallowed the claim and the appellant appealed to the Tax Court which dismissed his appeal and confirmed the Minister's reassessment.

On further appeal to the Trial Division, the appellant contended that as a senior officer and President of OBC and a person who had signed the Statement of Faith of the College, he was a member of a religious order, namely the OBC, and was engaged exclusively in full-time administrative service by appointment of the order. The appellant contended further that he qualified for the deduction as a member of a religious order or as a regular minister, ministering to a congregation, composed of the students, faculty, senior officers and staff of the OBC.

The learned Trial Judge found that the appellant was not a member of a religious order by reason of his office and his membership in OBC since that organization was not a religious order, within the meaning of paragraph 8(1)(c), of the *Act*. Without determining whether the appellant was a regular minister within the terms of that provision, but assuming for the purpose of the case that he was, the Trial Judge also found that the appellant was not "a regular minister in charge of or ministering to a congregation". He also found that since OBC was not a religious order, the appellant was not engaged, by reason of his office at OBC, in full-time administrative service by appointment of a religious order. The Trial Judge therefore concluded that the appellant had not disproved to the requisite degree the assumptions of fact upon which the Minister based his assessment on tax for the 1986 taxation year and he dismissed the appellant's action with costs. The Trial Judge supported his conclusions by thorough and careful reasons.

In the appeal before us, the appellant raised objections to each of the findings of the Trial Judge except his conclusion, in *obiter*, that the appellant was a "regular minister of a religious denomination". For her part, the respondent takes issue with the conclusion that the appellant was a regular minister of a religious denomination.

We do not find it necessary to call upon the respondent for argument since we are all of the view that the Trial Judge was right in concluding that, on the facts of this case, the appellant was not entitled to the deduction claimed and we are in substantial agreement with his reasons. Having said that, we express no opinion respecting the correctness of his conclusion that the appellant was a regular minister of a religious denomination, because that conclusion was not necessary for his decision.

By order of Stone J.A. The Canadian Council of Christian Charities, the Evangelical Fellowship of Canada and The Interdenominational Foreign Mission Association of Canada were added as Intervenor. The Intervenor filed a memorandum of fact and law and were represented by counsel who participated in oral argument respecting various concerns which were said to arise from the reasons of the Trial Judge.

Despite the skilful and careful argument of counsel for the Intervenors, we are all of the view that those concerns cannot be said to arise from a fair reading of the reasons of the Trial Judge in their entirety. It is clear to us that the Trial Judge did not purport to lay down detailed definitions of the words and phrases in paragraph 8(1)(c) applicable in all cases. Indeed, in our view the Trial Judge interpreted paragraph 8(1)(c) and applied that interpretation correctly to the facts of this particular case. For these reasons, the appeal will be dismissed with costs and the reassessment of the Minister confirmed. There will be no costs for or against the Intervenors.

"Julius A. Isaac"

C.J.

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

COURT NO: A-644-94

STYLE OF CAUSE: WILLIAM J. McRAE,

-and-

HER MAJESTY THE QUEEN

DATE OF HEARING: FEBRUARY 17, 1997

PLACE OF HEARING: TORONTO, ONTARIO

REASONS FOR JUDGMENT BY: THE CHIEF JUSTICE

Delivered from the Bench at Toronto, Ontario

on Tuesday, February 18, 1997

APPEARANCES:

Mr. John M. Campbell

For the Appellant

Ms. Susan Van Der Hout

Mr. Eric Noble

For the Respondent

Mr. Patrick J. Boyle

Mr. John Fabello

For the Intervenors

SOLICITORS OF RECORD:

Miller Thomson

20 Queen Street West, Suite 2500

Toronto, Ontario

M5H 3S1

For the Appellant

George Thomson

Deputy Attorney General

of Canada

For the Respondent

Fraser & Beatty

P.O. Box 100

First Canadian Place

Toronto, Ontario

M5X 1B2

For the Intervenors

FEDERAL COURT OF CANADA

Court No.: A-644-94

Between:

WILLIAM J. McRAE

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT