

Date: 20060302

Docket: A-90-05

Citation: 2006 FCA 93

CORAM: DÉCARY J.A.

NOËL J.A.

PELLETIER J.A.

BETWEEN:

MINISTER OF HUMAN RESOURCES DEVELOPMENT

Appellant

and

SAMUEL GERSTEL

Respondent

Heard at Montréal, Quebec, on March 2, 2006.

Judgment delivered from the Bench at Montréal, Quebec, on March 2, 2006.

REASONS FOR JUDGMENT OF THE COURT BY:
J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Montréal, Québec, on March 2, 2006)

[1] This is an appeal from a judgment of Angers J. of the Tax Court of Canada rendered pursuant to a reference by the Office of the Commissioner of Review Tribunals for Old Age Security pursuant to subsection 28(2) of the *Old Age Security Act*, R.S.C. 1985, c. O-9 ("OASA"). Further to this reference, Angers J. held that the respondent, Mr. Gerstel, correctly computed his income and that of his spouse for the purposes of calculating their entitlement to the Guaranteed Income Supplement ("GIS") for the period in issue.

[2] The issue boils down to this. The respondent and his spouse took the position that they could claim a discretionary deduction (capital cost allowance ("CCA")) in computing their income for the purpose of determining their GIS entitlement in circumstances where they did not avail themselves of that deduction for income tax purposes. The Minister of Human Resources and Development (the "Minister") contends that income under the OASA must equate the income which the respondent and his spouse reported for income tax purposes.

[3] The word "income" under OASA is defined as follows:

2. In this Act,

2. Les définitions qui suivent s'appliquent à la présente loi.

...

[...]

"income" « revenu »

« revenu » "income"

"income" of a person for a calendar year means the person's income for the year, computed in accordance with the *Income Tax Act*, except that

« revenu » Le revenu d'une personne pour une année civile, calculé en conformité avec la *Loi de l'impôt sur le revenu*, sous réserve de ce qui suit :

- (a)** there shall be deducted from the person's income from office or employment for the year
- (i)** a single amount in respect of all offices and employments of that person equal to the lesser of five hundred dollars and one fifth of the person's income from office or employment for the year,
- (ii)** the amount of employee's premiums paid by the person during the year under the *Employment Insurance Act*, and
- (iii)** the amount of employee's contributions made by the person during the year under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act,
- (b)** there shall be deducted from the person's self-employment earnings for the year the amount of contributions made in respect of those self-employed earnings by the person during the year under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act,
- (c)** there shall be deducted from the person's income for the year, to the extent that those amounts have been included in computing that income,
- (i)** the amount of any benefit under this Act and any similar payment under a law of a provincial legislature,
- (ii)** the amount of any death benefit under the *Canada Pension Plan* or
- a)** les montants suivants sont déduits du revenu de la personne tiré d'une charge ou d'un emploi pour l'année :
- (i)** un montant unique pour l'ensemble des charges et emplois qu'elle occupe, égal au cinquième de son revenu tiré de charges ou d'emplois pour l'année, jusqu'à concurrence de cinq cents dollars,
- (ii)** les cotisations ouvrières qu'elle a versées au cours de l'année en vertu de la *Loi sur l'assurance-emploi*,
- (iii)** les cotisations d'employé qu'elle a versées au cours de l'année en vertu du *Régime de pensions du Canada* ou d'un régime provincial de pensions au sens de l'article 3 de cette loi;
- b)** sont déduites des gains de la personne tirés d'un travail effectué à son compte pour l'année les cotisations qu'elle a versées au titre de ces gains au cours de l'année en vertu du *Régime de pensions du Canada* ou d'un régime provincial de pensions au sens de l'article 3 de cette loi;
- c)** les montants suivants sont déduits du revenu de la personne pour l'année, dans la mesure où ils ont été inclus dans le calcul de ce revenu :
- (i)** les prestations prévues par la présente loi et les prestations

a provincial pension plan as defined in section 3 of that Act, and

(iii) the amount of any social assistance payment made on the basis of a means, a needs or an income test by a registered charity as defined in subsection 248(1) of the *Income Tax Act* or under a program provided for by an Act of Parliament or a provincial legislature that is neither a program prescribed under the *Income Tax Act* nor a program under which the amounts referred to in subparagraph (i) are paid, and

(d) there shall be deducted from the person's income for the year three times the amount, if any, by which

(i) the total of any amounts that may be deducted under section 121 of the *Income Tax Act* in computing the person's tax payable for the year

exceeds

(ii) the person's "tax for the year otherwise payable under this Part" : (within the meaning assigned by subsection 126(7) of the *Income Tax Act* for the purposes of paragraph 126(1)(b) of that Act) for the year;

semblables versées aux termes d'une loi provinciale,

(ii) les prestations de décès prévues par le *Régime de pensions du Canada* ou par un régime provincial de pensions au sens de l'article 3 de cette loi,

(iii) les prestations d'aide sociale versées, compte tenu des ressources, des besoins ou des revenus, par un organisme de bienfaisance enregistré, au sens du paragraphe 248(1) de la *Loi de l'impôt sur le revenu*, ou dans le cadre d'un programme prévu par une loi fédérale ou provinciale, exception faite des programmes visés par règlement pris en application de la *Loi de l'impôt sur le revenu* et de ceux aux termes desquels les montants visés au sous-alinéa (i) sont versés;

d) est déduit du revenu de la personne pour l'année trois fois l'excédent éventuel du total visé au sous-alinéa (i) sur le montant visé au sous-alinéa (ii) :

(i) le total des montants déductibles en application de l'article 121 de la *Loi de l'impôt sur le revenu* dans le calcul de l'impôt payable par la personne pour l'année,

(ii) l' « impôt payable par ailleurs pour l'année en vertu de la présente partie » , au sens où cette expression s'entend au

paragraphe 126(7) de cette loi pour l'application de l'alinéa 126(1)b) de cette loi, de la personne pour l'année.

[4] For the purposes of the GIS, "income" is further defined as follows:

Calculation of income

Calcul du revenu

13. For the purposes of determining the amount of supplement that may be paid to a pensioner for a month before July 1, 1999, the income for a calendar year of a person or an applicant is the income of that person or applicant for that year computed in accordance with the *Income Tax Act*, except that

(a) there shall be deducted from the person's or applicant's income from office or employment for that year

(i) a single amount in respect of all offices and employments of that person or applicant equal to the lesser of five hundred dollars and one fifth of the person's or applicant's income from office or employment for that year,

(ii) the amount of employee's premiums paid by the person or applicant during the year under the *Employment Insurance Act*, and

(iii) the amount of employee's contributions made by the person or applicant during the year under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act;

13. Pour calculer le montant du supplément payable à un pensionné pour un mois antérieur à juillet 1999, le revenu d'une année civile est celui qui est déterminé aux termes de la *Loi de l'impôt sur le revenu*, sous réserve de ce qui suit :

a) les déductions sur le revenu tiré d'une charge ou d'un emploi, pour l'année, sont les suivantes :

(i) un montant unique pour toutes les charges et tous les emplois remplis, égal au moins élevé des deux montants suivants : cinq cents dollars ou un cinquième du revenu tiré d'une charge ou d'un emploi,

(ii) le montant des primes acquittées pendant l'année en vertu de la *Loi sur l'assurance-emploi*,

(iii) le montant au titre de cotisation annuelle d'un employé acquitté en vertu du *Régime de pensions du Canada* ou d'un régime provincial de pensions ou de rentes visé à l'article 3 de cette loi;

<p>(b) there shall be deducted from the person's or applicant's self-employed earnings for that year the amount of contributions made in respect of those self-employed earnings by the person or applicant during the year under the <i>Canada Pension Plan</i> or a provincial pension plan as defined in section 3 of that Act; and</p> <p>(c) there shall be deducted from the person's or applicant's income for that year, to the extent that those amounts have been included in computing that income,</p> <p>(i) the amount of any benefit under this Act and the amount of any similar payment under a law of a provincial legislature,</p> <p>(ii) the amount of any allowance under the <i>Family Allowances Act</i> and the amount of any similar payment under a law of a provincial legislature,</p> <p>(iii) the amount of any death benefit under the <i>Canada Pension Plan</i> or a provincial pension plan as defined in section 3 of that Act,</p> <p>(iv) the amount of any grant under a program that is a prescribed program of the Government of Canada relating to home insulation or energy conversion for the purposes of paragraphs 12(1)(u) and 56(1)(s) of the <i>Income Tax Act</i>, and</p> <p>(v) the amount of any social assistance payment made on the basis of a means, a needs or an income test by a</p>	<p>b) peuvent être déduites des gains du cotisant, pour un travail effectué à son compte, les cotisations versées à ce titre pendant l'année pour le <i>Régime de pensions du Canada</i> ou l'un des régimes provinciaux visés à l'article 3 de cette loi;</p> <p>c) peuvent être déduits lors du calcul du revenu pour l'année, les montants suivants qui y auraient été incorporés :</p> <p>(i) prestations prévues par la présente loi et prestations semblables versées aux termes d'une loi provinciale,</p> <p>(ii) allocations prévues par la <i>Loi sur les allocations familiales</i> et allocations semblables versées aux termes d'une loi provinciale,</p> <p>(iii) prestations de décès prévues par le <i>Régime de pensions du Canada</i> ou par un régime provincial de pensions au sens de l'article 3 de cette loi,</p> <p>(iv) subventions prévues par les programmes - isolation thermique des maisons ou conversion énergétique - visés aux alinéas 12(1)u) et 56(1)s) de la <i>Loi de l'impôt sur le revenu</i>,</p> <p>(v) prestations d'aide sociale versées, compte tenu des ressources, des besoins ou des revenus, par un organisme de bienfaisance enregistré - au sens du paragraphe 248(1) de la <i>Loi de l'impôt sur le revenu</i> - ou dans le cadre d'un programme établi</p>
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<p>registered charity as defined in subsection 248(1) of the <i>Income Tax Act</i> or under a program provided for by an Act of Parliament or a provincial legislature that is neither a program prescribed under the <i>Income Tax Act</i> nor a program under which the amounts referred to in subparagraph (i) are paid.</p> <p>R.S., 1985, c. O-9, s. 13; 1990, c. 39, s. 57; 1996, c. 23, s. 187; 1998, c. 21, s. 109; 1999, c. 31, s. 246(F).</p>	<p>par une loi fédérale ou provinciale, exception faite des programmes prévus par la <i>Loi de l'impôt sur le revenu</i> et de ceux aux termes desquels les montants visés au sous-alinéa (i) sont versés.</p> <p>L.R. (1985), ch. O-9, art. 13; 1990, ch. 39, art. 57; 1996, ch. 23, art. 187; 1998, ch. 21, art. 109; 1999, ch. 31, art. 246(F).</p>
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[5] After reviewing these provisions, the Tax Court Judge concluded that the computation of income under the OASA must be made in accordance with the rules provided under the *Income Tax Act*, R.S.C. 1985, (5th Supp.), c. 1 ("ITA") (subject to the stated exceptions), but that there was no requirement that this income be the same as that reported under the ITA. Since the CCA deduction is optional under the ITA (reference was made to paragraph 20(1)a) thereof), it was open to the respondent and his spouse not to claim CCA for income tax purposes, but to do so for OASA purposes.

[6] In support of the appeal, the Minister argues that income for purposes of the OASA must be construed to be income as reported under the ITA. The Minister insists on the fact that CCA is a running account, and that the decision of the Tax Court could create the need for keeping two sets of CCA accounts, one for income tax purposes and one for OASA purposes. Relying on a contextual approach to statutory construction, the Minister contends that the meaning of income for OASA purposes must be equated to the income reported under the ITA.

Disposition

[7] The difficulty with the Minister's submission is that as the Tax Court Judge points out, this is not what the relevant provisions of the OASA say. Furthermore, a contextual approach to the construction of these provisions does not suggest that we depart from the plain and ordinary meaning of the words which they bear.

[8] The object of the OASA is to provide assistance to the elderly and low income Canadians, and as such, there is no reason why claimants should not compute their income in the manner which is most advantageous to them, so long as they comply with the rules of the ITA as modified by the OASA. The respondent and his spouse complied with these rules.

[9] We acknowledge that optional deductions can create practical difficulties. But as the law reads, there is no basis upon which we could prevent the respondent and his spouse from computing their income as they did on account of these difficulties.

[10] We are of the view that the Tax Court Judge came to the correct conclusion essentially for the reasons that he gave.

[11] The appeal will be dismissed and Mr. Gerstel will be entitled to the disbursements which he incurred in resisting this appeal.

"Marc Noël"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-90-05

**APPEAL FROM AN ORDER OF ANGERSJ. OF THE TAX COURT OF CANADA
DATED JANUARY 31, 2005, DOCKET NO. 2004-237 (OAS).**

STYLE OF CAUSE: Minister of Human Development
v. Samuel Gerstel

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: March 2, 2006

REASONS FOR JUDGMENT OF THE COURT BY: DÉCARY J.A.

NOËL J.A.

PELLETIER J.A.

DELIVERED FROM THE BENCH BY: NOËL J.A.

APPEARANCES:

Adrian Joseph
Samuel Gerstel

FOR THE APPELLANT
FOR THE RESPONDENT

(himself)

SOLICITORS OF RECORD:

MHRD Legal Services

FOR THE APPELLANT

Ottawa, Ontario