

Date: 20101012
Docket: A-608-08
Citation: 2010 FCA 261

CORAM : BLAIS C.J.
TRUDEL J.A.
MAINVILLE J.A.

BETWEEN:
HER MAJESTY THE QUEEN
Appellant
and
DIANE PROULX
Respondent

Hearing held at Montréal, Quebec, on October 12, 2010.
Judgment delivered from the Bench at Montréal, Quebec, on October 12, 2010.

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

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on October 12, 2010)
TRUDEL J.A.

[1] This is an appeal from a judgement of Justice Lamarre-Proulx of the Tax Court of Canada (the judge) dated November 6, 2008 (2008 TCC 545).

[2] The judge allowed the respondent Diane Proulx's appeal from the assessment by the Minister of National Revenue under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (Act) for the 2005 taxation year.

[3] In allowing the appeal, the judge recognized Ms. Proulx, a pastoral agent with the Roman Catholic Church (the Church), more specifically in the diocese of St-Jérôme, as having "the status and role of a regular minister with the Church" (Reasons for Judgment, at paragraph 25).

[4] This finding allowed the respondent to include a clergy residence deduction, permitted under section 8 of the Act, when computing her income for the 2005 taxation year.

[5] The relevant paragraph of this provision reads as follows:

Deductions allowed

8. (1) 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

...

Clergy residence

(c) where, in the year, the taxpayer

(i) is a member of the clergy or of a religious order or a regular minister of a religious denomination, and

(ii) is
 (A) in charge of a diocese, parish or congregation,
 (B) ministering to a diocese, parish or congregation, or
 (C) engaged exclusively in full-time administrative service by appointment of a

Éléments déductibles

8. (1) Sont déductibles dans le calcul du revenu d'un contribuable tiré, pour une année d'imposition, d'une charge ou d'un emploi ceux des éléments suivants qui se rapportent entièrement à cette source de revenus, ou la partie des éléments suivants qu'il est raisonnable de considérer comme s'y rapportant :

[...]

Résidence des membres du clergé
 c) lorsque le contribuable, au cours de l'année :

(i) d'une part, est membre du clergé ou d'un ordre religieux ou est ministre régulier d'une confession religieuse,

(ii) d'autre part :
 (A) soit dessert un diocèse, une paroisse ou une congrégation,
 (B) soit a la charge d'un diocèse, d'une paroisse ou d'une congrégation,
 (C) soit s'occupe exclusivement et à plein

religious order or religious denomination,

the amount, not exceeding the taxpayer's remuneration for the year from the office or employment, equal to

(iii) the total of all amounts including amounts in respect of utilities, included in computing the taxpayer's income for the year under section 6 in respect of the residence or other living accommodation occupied by the taxpayer in the course of, or because of, the taxpayer's office or employment as such a member or minister so in charge of or ministering to a diocese, parish or congregation, or so engaged in such administrative service, or

(iv) rent and utilities paid by the taxpayer for the taxpayer's principal place of residence (or other principal living accommodation), ordinarily occupied during the year by the taxpayer, or the fair rental value of such a residence (or other living accommodation), including utilities, owned by the taxpayer or the taxpayer's spouse or common-law partner, not exceeding the lesser of

(A) the greater of

(I) \$1,000 multiplied by the number of months (to a maximum of ten) in the year, during which the

temps du service administratif, du fait de sa nomination par un ordre religieux ou une confession religieuse,

le montant, n'excédant pas sa rémunération pour l'année provenant de sa charge ou de son emploi, égal :

(iii) soit au total des montants, y compris les montants relatifs aux services publics, inclus dans le calcul de son revenu pour l'année en vertu de l'article 6 relativement à la résidence ou autre logement qu'il a occupé dans le cadre ou en raison de l'exercice de sa charge ou de son emploi, à titre de membre ou ministre qui ainsi dessert un diocèse, une paroisse ou une congrégation, a ainsi la charge d'un diocèse, d'une paroisse ou d'une congrégation ou est ainsi occupé à un service administratif,

(iv) soit au loyer et aux services publics qu'il a payés pour son lieu principal de résidence (ou autre logement principal) qu'il a occupé habituellement au cours de l'année, ou à la juste valeur locative d'une telle résidence (ou autre logement) lui appartenant, ou appartenant à son époux ou conjoint de fait, jusqu'à concurrence du moins élevé des montants suivants :

(A) le plus élevé des montants suivants :

taxpayer is a person described in subparagraphs (i) and (ii), and

(II) one-third of the taxpayer's remuneration for the year from the office or employment, and

(B) the amount, if any, by which

(I) the rent paid or the fair rental value of the residence or living accommodation, including utilities

exceeds

(II) the total of all amounts each of which is an amount deducted, in connection with the same accommodation or residence, in computing an individual's income for the year from an office or employment or from a business (other than an amount deducted under this paragraph by the taxpayer), to the extent that the amount can reasonably be considered to relate to the period, or a portion of the period, in respect of which an amount is claimed by the taxpayer under this paragraph;

(I) le produit de la multiplication de 1 000 \$ par le nombre de mois de l'année (jusqu'à concurrence de dix) au cours desquels il est une personne visée aux sous-alinéas (i) et (ii),

(II) le tiers de sa rémunération pour l'année provenant de sa charge ou de son emploi,

(B) l'excédent éventuel du montant visé à la subdivision (I) sur le montant visé à la subdivision (II):

(I) le loyer payé ou la juste valeur locative de la résidence ou du logement, y compris les services publics,

(II) le total des montants représentant chacun un montant déduit, au titre de la même résidence ou du même logement, dans le calcul du revenu d'un particulier pour l'année provenant d'une charge, d'un emploi ou d'une entreprise (sauf un montant déduit par le contribuable en application du présent alinéa), dans la mesure où il est raisonnable de considérer que le montant se rapporte à tout ou partie de la période pour laquelle le contribuable a déduit un montant en application du présent alinéa;

[6] The ensuing debate was not unfamiliar to the judge. In her reasons, she points out that she had already conducted a lengthy analysis of a similar issue in *Lefebvre v. Canada*, 2008 TCC 395, which decided seven appeals heard together [collectively, the *Lefebvre* case].

[7] The issue of whether pastoral agents of the Church can claim the benefit of the paragraph quoted above is also not unfamiliar to this Court, which, on October 29, 2009, allowed the appeal by Her Majesty the Queen in *Canada v. Lefebvre*, 2009 FCA 307.

[8] In *Lefebvre*, this Court stated first of all that “[p]aragraph 8(1)(c) of the Act sets out two requirements: a status requirement (subparagraph 8(1)(c)(i)) and a function requirement (subparagraph 8(1)(c)(ii))”, criticizing the judge for having confused status and function (at paragraphs 22 and 20).

[9] This Court went on to determine:

. . . it is clear that, according to the rules of the Church, only ordained ministers commit “*ad vitam aut culpam*” and are awarded a special status. That pastoral agents do not possess this status is evident from their temporary mandates, which the Church may terminate at any time (*ibid.* at paragraph 49).

[10] In the present case, the judge signed her reasons and her judgement without the benefit of the teachings of this Court in *Lefebvre*, followed in June 2010 by the Court of Québec in *Beaudoin c. Québec (Sous-ministre du Revenu)* [2010] J.Q. No. 8380 (J. Désy), 2010 QCCQ 5528; J.E. 2010-1412. She can therefore not be criticized for having adopted her earlier reasoning, although it has since been held to be wrong by this Court.

[11] We all agree that *Lefebvre* provides a full answer to the issue on appeal, namely whether Ms. Proulx, acting as a pastoral agent, is a regular minister of the Roman Catholic Church (Respondent’s Factum, at paragraph 37). The answer is no.

[12] Moreover, the respondent has not given any justifiable reason to overrule the judgment rendered in *Lefebvre* by another panel of this Court (*Miller v. Canada (Attorney General)*, 2002 FCA 370).

[13] For these reasons, the appeal will be allowed, the judgement of the Tax Court of Canada judge will be set aside, and rendering the judgement which ought to have been rendered, the appeal of Diane Proulx from the assessment of the 2005 taxation year will be dismissed with costs in her favour, pursuant to section 18.25 of the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2, and fixed at \$500.

“Johanne Trudel”

J.A.

Certified true translation
Michael Palles

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-608-08

(APPEAL FROM A JUDGEMENT OF JUSTICE LAMARRE-PROULX OF THE TAX COURT OF CANADA DATED NOVEMBER 6, 2008, DOCKET NO. 2008-721(IT) I DOCKET).

STYLE OF CAUSE: HER MAJESTY THE QUEEN v.
DIANE PROULX

PLACE OF HEARING: Montréal, Quebec

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DELIVERED FROM THE BENCH BY: TRUDEL J.A.

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