



SUPREME COURT OF CANADA

CITATION: Des Groseillers v.
Quebec (Agence du revenu),
2022 SCC 42

APPEAL HEARD: November 3,
2022

JUDGMENT RENDERED:
November 17, 2022

DOCKET: 39879

BETWEEN:

Yves Des Groseillers and BMTC Group Inc.
Appellants

and

Agence du revenu du Québec
Respondent

OFFICIAL ENGLISH TRANSLATION

CORAM: Wagner C.J. and Karakatsanis, Brown, Rowe, Martin, Kasirer and
Jamal JJ.

REASONS FOR The Court
JUDGMENT:
(paras. 1 to 5)

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**Yves Des Groseillers and
BMTC Group Inc.**

Appellants

v.

Agence du revenu du Québec

Respondent

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2022 SCC 42

File No.: 39879.

2022: November 3; 2022: November 17.

Present: Wagner C.J. and Karakatsanis, Brown, Rowe, Martin, Kasirer and Jamal JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Taxation — Income tax — Assessment — Taxpayer giving stock options to various registered charities — Taxpayer claiming tax credits corresponding to amounts of gifts in his tax returns — Reassessments made against taxpayer to add amounts of gifts to his taxable income — Reassessments vacated by Court of Québec but restored by Court of Appeal — Court of Appeal’s decision affirmed — Taxation Act, CQLR, c. I-3, ss. 50, 422(c)ii.

Statutes and Regulations Cited

Taxation Act, CQLR, c. I-3, ss. 50, 422(c)ii.

APPEAL from a judgment of the Quebec Court of Appeal (Chamberland, Schragger and Cournoyer JJ.A.), 2021 QCCA 906, [2021] AZ-51770266, [2021] J.Q. n° 5962 (QL), 2021 CarswellQue 6472 (WL), setting aside a decision of Bourgeois J., 2019 QCCQ 1430, [2019] J.Q. n° 2345 (QL), 2019 CarswellQue 1831 (WL). Appeal dismissed.

Dominic C. Belley, Catherine Dubé, Nicolas Benoit-Guay and Mareine Gervais Cloutier, for the appellants.

Normand Perreault and Gabriel Déry, for the respondent.

English version of the judgment delivered by

THE COURT —

[1] We are all of the opinion that the appeal should be dismissed.

[2] In a unanimous judgment of the Quebec Court of Appeal relating to the *Taxation Act*, CQLR, c. I-3 (“T.A.”), Cournoyer J.A. correctly stated the following:

[TRANSLATION] Because we are engaged primarily in an exercise of statutory interpretation, and for ease of reference, I will reproduce sections 50, 54 and 422 T.A. again:

50. An employee who transfers or disposes of rights under the agreement referred to in section 48 in respect of securities to a person with whom the employee is dealing at arm's length, is deemed to receive because of the employee's office or employment, in the taxation year in which the employee makes the transfer or disposition, a benefit equal to the amount by which the value of the consideration for the transfer or disposition exceeds the amount paid by the employee to acquire those rights.

[...]

54. If a particular qualifying person has agreed to sell or issue one of its securities, or a security of a qualifying person with which it does not deal at arm's length, to one of its employees or to an employee of the qualifying person with which it does not deal at arm's length, the employee is deemed to receive no benefit under or because of the agreement other than as provided in this division.

[...]

422. Except as otherwise provided in this Part, the disposition or acquisition of a property by a taxpayer is deemed to be made at the fair market value of the property at the time of the disposition or acquisition, as the case may be, where

(a) the taxpayer acquires it by gift, succession or will, or because of a disposition that does not result in a change in the beneficial ownership of the property;

(b) the taxpayer acquires it from a person with whom he is not dealing at arm's length, for an amount greater than such value; or

(c) the taxpayer disposes of it

i. to a person with whom the taxpayer is not dealing at arm's length, gratuitously or for consideration that is less than that fair market value,

ii. to any person by gift or

iii. to a trust because of a disposition that does not result in a change in the beneficial ownership of the property.

Mr. Des Groseillers argues that section 422 does not apply in this case because sections 47.18 to 58.0.7 of the T.A. constitute a complete code that contains, within itself and in an exhaustive manner, all the rules for the computation of income derived from the issuance of securities to employees, as well as all the legal fictions that the legislature considered necessary to adopt in support of those rules. He adds that section 54 T.A. is a section that excludes the application of section 422 T.A., by providing otherwise.

How should the matter be resolved?

...

First, section 50 T.A. provides for two things. To begin with, it indicates the time at which a benefit received because of an agreement referred to in section 48 T.A. will be taxed. In addition, by treating the transfer as employment income, section 50 creates an exception to the general rule that the disposition of property gives rise to a capital gain or loss. Subparagraph 422(c)(ii) T.A., in attributing a value to the consideration, has no impact on these legal fictions. That being said, there is, in my view, no actual conflict between section 50 and section 422.

Second, the very broad formulation of the rule set out in section 422 suggests that the legislature's purpose was to attribute to any disposition of property by a person a value equal to the fair market value of the property for the purposes of computation of income. Moreover, the legislature did not explicitly exclude the Division of the statute relating to employee stock options from the application of section 422 when it enacted the *Taxation Act* in 1972 or when subsequent amendments were made thereto. Its silence in this regard is telling, because there are several express references in the T.A. to the non-applicability of section 422.

The only effect of section 54 T.A. is to give precedence to the application of sections 49 et seq. over any other section that lays down a taxing rule. Section 54 does not prevent the ARQ from relying on the presumptions set out in the T.A. in computing a taxpayer's taxable income.

...

In this case, the interpretation adopted by the trial judge posits that Division VI of the T.A. is a complete code and that "section 422 T.A. may not be relied upon to supplement the rules for the computation of income provided for in Division VI".

However, while section 54 ensures that sections 49 et seq. of the T.A. apply to benefits arising from the granting of stock options and excludes those benefits from the ambit of sections 36 and 37, it does not, in the

absence of clear legislative indicia to this effect, constitute a code so complete and so hermetic that the application of section 422 is excluded.

I note that section 422 is in Title VII of the T.A., which concerns the omnibus rules relating to the computation of income. It provides more specifically that where a taxpayer disposes of property to any person by gift, as in this case, the disposition is deemed to be made at the fair market value of the property at the time of the disposition. [Emphasis in original; footnotes omitted.]

(2021 QCCA 906, at paras. 52, 57-58, 62-64 and 69-71 (CanLII))

[3] We agree with Cournoyer J.A.'s view; this is sufficient to dismiss the appeal. The other grounds advanced by the appellants are without merit.

[4] Like the Court of Appeal, we conclude that the respondent properly assessed Mr. Des Groseillers, pursuant to s. 50 T.A., for the benefit received. In this case, and on the basis of s. 422(c)ii T.A., the value of the consideration received is deemed to be equal to the fair market value of the stock options at the time of the gift.

[5] The appeal is therefore dismissed with costs throughout.

Appeal dismissed with costs throughout.

Solicitors for the appellants: Norton Rose Fulbright Canada, Montréal.

*Solicitors for the respondent: Larivière Meunier (Revenu Québec),
Montréal.*