

*Indexed as:*  
**Burke v. Canada**

**Between**  
**Herbert Burke, plaintiff, and**  
**Her Majesty the Queen, defendant**

[1976] F.C.J. No. 104

[1976] A.C.F. no 104

66 D.L.R. (3d) 704

[1976] C.T.C. 209

76 D.T.C. 6075

Court File No. T-4557-75

Federal Court of Canada - Trial Division  
Ottawa, Ontario

**Thurlow A.C.J.**

Heard: January 27 and 28, 1976

Judgment: February 16, 1976

(17 pp.)

**Counsel:**

H. George McKenzie, for the plaintiff.

N.W. Nichols, for the defendant.

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**1 THURLOW A.C.J.:**-- This is a reference for determination under subsection 17(3) of the Federal Court Act, of a question arising under the Income Tax Act which the parties, pursuant to

subsection 173(1) of that Act and subsection 17(3) of the Federal Court Act, have agreed in writing should be determined by the Court. The question, as settled by a supplementary agreement in writing filed since the hearing, is that of the extent, if any, to which certain amounts, totalling \$383.87, paid by the plaintiff during the year 1973 as dues to a trade union, of which he was, at all material times, a member, are deductible in computing his income for that year.

2 The question arises under Section 8 of the Income Tax Act which provides, inter alia, as follows:

8. (1) In computing a year'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:
  - (i) amounts paid by the taxpayer in the year as
    - (i) annual professional membership dues the payment of which was necessary to maintain a professional status recognized by statute,
    - (ii) office rent, or salary to an assistant or substitute, the payment of which by the officer or employee was required by the contract of employment,
    - (iii) the cost of supplies that were consumed directly in the performance of the duties of his office or employment and that the officer or employee was required by the contract of employment to supply and pay for,
    - (iv) annual dues to maintain membership in a trade union as defined
      - (A) by section 3 of the Canada Labour Code, or
      - (B) in any provincial statute providing for the investigation, conciliation or settlement of industrial disputes,

or to maintain membership in an association of public servants the primary object of which is to promote the improvement of the members' conditions of employment or work, and
  - (v) annual dues that were, pursuant to the provisions of a collective agreement, retained by his employer from his remuneration and paid to a trade union or association designated in subparagraph (iv) of which the taxpayer was not a member,

to the extent that he has not been reimbursed, and is not entitled to be reimbursed in respect thereof;

- (2) Except as permitted by this section, no deductions shall be made in computing a taxpayers' income for a taxation year from an office or employment.
- (5) Notwithstanding subparagraphs (1)(i)(i) and (iv), annual dues are not deductible thereunder in computing a taxpayer's income from an office or employment to the extent that they are, in effect, levied
  - (a) for or under a superannuation fund or plan,
  - (b) for or under a fund or plan for annuities, insurance or similar benefits, or
  - (c) for or any other purpose not directly related to the ordinary operating expenses of the association or trade union to which they were paid.

**3** Basically, the plaintiff's position is that the amounts in question are deductible under subparagraph 8(1)(i)(iv) as being annual dues paid by him to maintain membership in a trade union as defined, and in respect of which he has not been reimbursed and is not entitled to be reimbursed. The position of the Defendant is (1) that the amounts sought to be deducted were not "annual" dues within the meaning of subparagraph 8(1)(i)(iv); and (2) that if the amounts were annual dues within the meaning of subparagraph 8(1)(i)(iv), to the extent that they were amounts directed to what is referred to as the "Mortuary Benefit" and the "Old Age Benefit" provided for by the constitution and bylaws of the union, their deduction is prohibited by subsection 8(5).

**4** The facts on which the matter is to be determined are set out in the first 25 paragraphs, of an Agreed Statement of Facts and Issues, and in two further paragraphs incorporated therein by the supplementary agreement and numbered 27 and 28. Though they are detailed and rather lengthy, I quote them in full:

1. At all material times in his 1973 taxation year the Plaintiff was a member in good standing of the International Typographical Union of North America, herein called "the ITU" and a member of the Ottawa Typographical Union, No. 102, herein called the "Local Union", in the City of Ottawa, Province of Ontario, Canada, and the Plaintiff was employed as a printer in the City of Ottawa, Ontario.
2. At all material times the ITU had its headquarters in Colorado Springs, Colorado, U.S.A. and was a trade union as defined by Section 3 of the Canada Labour Code, for the purposes of Section 8(1)(i)(iv)(A) of the Income Tax Act R.S.C. 1952, c. 148 as amended by S.C. 1970-72 c. 63, as amended (the "Income Tax Act").
3. The ITU is the legal bargaining agent for the Plaintiff and his membership in the

ITU is a condition of his employment as a printer. The Constitution of the ITU current in 1973 was contained in its Books of Laws (the "Laws") along with Bylaws, and references herein to "Constitution" and "Bylaws" are to those contained in the laws.

4. The ITU was established approximately 120 years ago in the spirit of fraternalism and brotherhood and for the purpose of caring for and advancing the interests of its members as outlined in its laws. This spirit of fraternalism and brotherhood within the ITU and the fulfilment of its purposes are evidenced by the following programs which have been adopted over the years by the ITU for the benefit of its members under its Constitution and Bylaws:
  - (a) the cost of training members in the printing trade, since its inception culminating in the establishment of the ITU training centre in 1955;
  - (b) the payment of death benefits to the families of deceased members of the ITU, in accordance with Article XX, Section 11 of the Bylaws, since 1891 (hereinafter referred to as the "Mortuary Benefit");
  - (c) the payment of benefits to retired members of the ITU in accordance with Article XX, Section 1 of the Bylaws, since 1908 (hereinafter referred to as the "Old Age Benefit" referred to in the laws as the "Old Age Pension" and sometimes referred to by the ITU as the "Fraternal Benefit"; and
  - (d) the maintenance of a retirement home for aged or disabled members of the ITU since 1892.

All of these programs of the ITU are maintained by the union dues paid by its members.

5. The ITU established the Old Age Benefit for the benefit of retired members in 1908, and payment of it has continued since that time. Initially, it consisted of the payment of the sum of \$4.00 per week to retired members of the ITU who met certain specified qualifications. In 1973, it was paid in accordance with Article XX of the Bylaws.
6. Subject to the laws, the following describes some of the features of the Mortuary Benefit and the Old Age Benefit and their operation:
  - (a) In establishing these benefits for its members, the ITU adopted the concept of an additional levy directed solely to the payment of these benefits; the payment of this levy has always been a condition of membership in the ITU.

- (b) Since inception, payment of both the Mortuary Benefit and the Old Age Benefit has been operated with the intention of matching the payment of benefits and the dues collected for this purpose, so that over the years the receipts and disbursements with respect to these payments have been more or less equated.
- (c) There has been no attempt to accumulate dues received in respect of the additional levy referred to in (a) above for the purpose of ensuring the payment of a benefit to an active member upon his retirement, although from time to time such accumulation in the short term may occur.
- (d) The payment of the Old Age Benefit is dependent on amounts collected currently for this purpose, and the amount of such payment is in accordance with Article XX of the Bylaws.
- (e) The amounts collected under the above-noted levy are not physically segregated into separate funds, although records, referred to as "Funds" are kept of all amounts paid and received under this levy; any income from the excess amount of the levy which may accrue from time to time, is allocated to the General Fund of the ITU as hereinafter described and is not used for the purpose of calculating or paying these benefits.
- (f) Similarly, all expenses of operating the program have been paid out of the General Fund, and not from receipts for dues directed to the Mortuary Benefit or to the Old Age Benefit.
- (g) Except for the sum of \$2,656,812.50 which was applied by the ITU in 1952 for defence purposes, all amounts collected from members for the purpose of the Mortuary Benefit and the Old Age Benefit, together with donations received for this purpose from time to time, have gone to the payment of such benefits or are being held in reserve for payment of such benefits.
- (h) Benefits paid to Canadian members are not determined by dues levied in Canada alone, but, subject to the Laws, on the combined Canadian and U.S. dues collected for these purposes.
- (i) The entitlement of a retired member to the payment of the Old Age Benefit is not a right vested irrevocably in the retired member in that the payment of the benefit can be terminated by the Executive Council of the ITU in accordance with Sections 9 and 10 of Article XX of the Bylaws. In addition Article IX of the Constitution could be amended by referendum vote in accordance with Article II, Section 3 and Article XVI, Section 1 of the Constitution and could result in a loss of the benefits to retired members.
- (j) No active or retired member of the ITU has any claim or entitlement to a reimbursement to him of amounts paid to the ITU under this levy.

7. In his 1973 taxation year the Plaintiff paid a total of \$383.87 in order to maintain his membership in the ITU in accordance with the Laws without reimbursement or entitlement to reimbursement therefor, the payments being made monthly as follows:

Jan.	\$27.32
Feb.	27.17
March	31.13
April	28.67

May	30.33
June	29.31
July	31.17
August	30.01
Sept.	37.01
Oct.	34.47
Nov.	38.27
Dec.	39.01

8. As an active member of the ITU the dues of the Plaintiff were calculated and assessed in accordance with Article IX of the ITU Constitution as follows:

- (a) a per capita tax of \$1.00 per month;
- (b) additional dues of 2 1/2% of total earnings;
- (c) two levies for dues of 1/2% of total earnings each imposed when reserves fell below certain limits specified in the Constitution;
- (d) local dues assessed by the Local Union in addition to the foregoing dues of the ITU.

With reference to the dues paid by the Plaintiff in 1973, dues were assessed against the Plaintiff under each of these levies in each month except that one of the levies referred to in (c) above was only applied in the months of September through December inclusive.

9. The Plaintiff paid the aggregate amount in monthly payments directly to the

Secretary of the Local Union without deduction at source or other involvement by his employer.

10. Each month, all sums paid by the Plaintiff to the Secretary of the Local Union which were collected on behalf of the Local Union were paid into its bank account in the City of Ottawa, and all sums collected on behalf of the ITU were paid by the Secretary of the Local Union to the ITU which in turn deposited them into a single bank account of the ITU at the Bank of Nova Scotia in the City of Toronto, Province of Ontario. An accounting of the amounts collected by the Secretary of the Local Union on behalf of the ITU was forwarded to the ITU each month.
11. These sums, together with the dues of the U.S. members of the ITU which are maintained in a single bank account in Colorado Springs, are then combined for accounting purposes into a total single monthly receipt by the bookkeeping department of the ITU in Colorado Springs.
12. Amounts from dues collected in one country may be used to augment amounts collected in the other in paying benefits. Between 1965 and 1972, approximately 8.7 million dollars were transferred to Canada from U.S. dues to augment Canadian dues and pay benefits to Canadian members. In 1973, \$600,000.00 was transferred from Canada to the U.S. for similar purposes.
13. In accordance with the provisions of the Constitution, the dues collected by the local Secretary and remitted to the ITU were assigned in the accounts of the ITU to defined "Funds" as follows:
  - (a) the per capita tax, fifty cents to the Union Printers Home fund and the balance to the General Fund;
  - (b) the additional dues of 2 1/2%, to maintain the balance in the mortuary fund at \$1,000,000.00 and the remainder to the "old age pension fund";
  - (c) the two 1/2% levies for dues, to the defense fund and the strike benefit fund respectively.
14. No physical separation of the sums collected as union dues by the ITU was made, and the "Funds" referred to in the Constitution and Bylaws of the ITU refer to bookkeeping records which serve several purposes, including:
  - (1) the "Funds" serve to allocate dues as they are collected for specific purposes in the ITU,
  - (2) the use of the "Funds" enable the ITU to prepare its budgets for its various commitments based on the anticipated revenues directed to these purposes,

- (3) the use of the "Funds" provides the members with guidelines on the uses to be made of their dues,
  
15. The Constitution of the ITU prescribes the application which can be made of the dues collected by the ITU under the various levies set forth in paragraph 8 hereof. However, the Executive Council of the ITU is empowered by Article IX, Section 11 of the Constitution to effect a notional transfer of dues from one fund to another whenever same is deemed necessary to maintain the integrity of the Union. These transfers have been effected on numerous occasions from dues collected for payment of the Mortuary and Old Age Benefit and the only such transfer which has not been returned from other dues collected is the transfer in the amount of \$2,656,812.50 made in 1952.
16. Accordingly, the dues paid to the ITU by the Plaintiff were applied by it in accordance with the laws to the following purposes:
  - (a) to the payment of salaries and expenses of its officers, staff, and union organizers retained by it and by the Local Union together with the expenses of maintaining the ITU headquarters offices;
  - (b) to the payment of strike benefits;
  - (c) to the payment of death benefits to the families of deceased members of the ITU, in accordance with Article XX, Section 11 of the Bylaws of the ITU, being the Mortuary Benefit;
  - (d) to the payment of benefits to retired members of the ITU in accordance with Article XX, Section 1 of the Bylaws of the ITU, being the Old Age Benefit;
  - (e) to the maintenance of a retirement home for the aged or disabled members of the ITU.
  
17. The dues paid to the Local Union by the Plaintiff were applied by it to defray its operating expenses, and deduction by the Plaintiff of these sums in calculating his income is not in issue.
18. In 1944 a request was made to the Minister of National Revenue by the Ottawa Typographical Union, on behalf of the Canadian membership of the ITU, for approval of the Old Age Benefit referred to in the Laws, which approval was granted in 1945 at the discretion of the said Minister, effective for the 1944 taxation year, such that the amounts paid by the Canadian members of the ITU and directed to the payment of the Old Age Benefit became a deductible expense to the members for the purpose of calculating their income, as provided in Section 5(1)(g)(i) of the Income War Tax Act.

19. The only evidence available with respect to the facts relied upon by the Minister in 1944 in exercising his discretion is the 1944 Book of Laws of the ITU, the provisions of which are essentially the same as those in the 1973 laws.
20. By an amendment to the Income Tax Act, S.C. 1947-1948, c. 15, such amendment being section 3(3) of S.C. 1951, c. 51, provision was made for the deductibility of certain annual dues paid to maintain membership in a trade union. This provision was continued in Section 8(1)(i) of the Income Tax Act, R.S.C. 1952, c. 148, as amended by S.C. 1970-72, as amended.
  
21. Approximately 90% of all union dues paid by trade union members in Canada are assessed, levied and paid on a monthly basis.
22. Effective January 1, 1973, and by virtue of the discretion vested in him under the provisions of the Income Tax Act, the acceptance of the Old Age Benefit for registration by the Minister of National Revenue was withdrawn, such that the deductibility from income of the sum representing union dues paid by the Plaintiff in his 1973 taxation year for the Old Age Benefit was not allowed under the provisions of Section 8(1)(m) of the Income Tax Act.
23. The Plaintiff now seeks to deduct all amounts paid to the ITU pursuant to the provisions of Section 8(1)(i) of the Income Tax Act for his 1973 taxation year.
24. With the exception of the fact that the ITU maintains a Canadian bank account, the description appearing in the Book of Laws of the ITU for 1973 is factually true.
25. (a) Any reference herein or in the Laws to "old age pension" and "old age pension fund" is descriptive only, and not to be considered as an admission by the Plaintiff as to the existence of a pension plan for member of the ITU.  
  
(b) The agreement of either party to the facts recited above is not to be construed as admitting the relevance of those facts in the determination of the questions on this reference:
  
27. By amendment to the Constitution of the ITU in November 1975, the payment of the monthly levy set forth in Section 1, (a) of Article IX of the Constitution was made discretionary and the payment of same was no longer a condition of union membership. By amendment effective January 1, 1975, the amount of the benefit payable under section 1 of Article XX of the By-Laws was no longer a stipulated amount but was established to be an amount directly related to the amounts collected for that purpose.
28. In 1967, the ITU established the "ITU Negotiated Pension Plan (Canada)". This Plan is a funded pension plan having a Canadian Trustee and contributions to the

plan are made solely by the employers. The plan has been registered by the Minister of National Revenue for the purposes of Section 8(1)(m) of the Income Tax Act.

5 The following excerpts are from Article IX of the Constitution of the union:

Article IX - Revenue and Funds

Section 1. The monthly dues of the membership shall consist of: A per capita tax of \$1.00 per month which shall include subscription for The Typographical Journal, to be paid by every member of the International Typographical Union except those members domiciled at the Union Printers Home. The per capita tax, together with dues as herein provided, shall be collected and transmitted to the Secretary-Treasurer of the International Typographical Union.

Additional dues for the old age pension and mortuary funds according to the following classifications:

(a) Active members (including members working at the trade, seeking work at the trade, and employed in supervisory capacities related to work at the trade, such as superintendent or production manager but not limited to these titles) -- Two and one-half per cent upon total earnings.

Sec. 2. The balance in the mortuary fund shall be maintained at \$1,000,000. Pension and mortuary dues shall be apportioned after receipt at headquarters as follows: to the mortuary fund an amount equal to mortuary benefits paid during the month, the remainder to the old age pension fund.

Sec. 6. The general fund shall be used to defray all expenses of the International Typographical Union except disbursements for the pension fund, the mortuary fund and the Home fund.

Sec. 7. On the death of each member in good standing, a death benefit shall be paid to the designated beneficiary in amounts as follows, except as otherwise provided by International law:

For a continuous membership of one year or less, \$50.

For a continuous membership of more than one year and less than two years, \$100.

For a continuous membership of two years and less than three years, \$200.

For a continuous membership of three years and less than four years, \$300.

For a continuous membership of four years and less than five years, \$400.

For a continuous membership of five years or more, \$500.

Any member who has been suspended from membership and subsequently reinstated, in accordance with the laws of the International Topographical Union, shall not be entitled to any benefit if death occurs within one month after such reinstatement.

Sec. 8. The mortuary benefit fund shall be used for the purpose of disbursing mortuary benefits.

Sec. 10. The old age pension fund shall be used for the purpose of maintaining and disbursing pensions to aged and superannuated members.

**6** The article also refers to a general fund, a defence fund and a strike benefit fund and authorizes the Executive Council to transfer moneys from one fund to another whenever deemed necessary to maintain the integrity of the organization.

**7** Further provisions respecting the Old Age Pension and Mortuary Benefit are contained in Article XX of the Bylaws and include the following:

Article XX -- Old Age Pension and  
Mortuary Benefit

Old Age Pension

Section 1. Any member of the International Typographical Union who has

reached the age of 60 years and having a continuous membership of twenty-five years immediately antedating the time of application and who is unable to continue in or secure sustaining employment because of age or disability may receive the sum of \$100 per month

Sec. 2. Any member having a continuous membership of 27 years immediately antedating time of application, and who has not reached the age of 60 years, may, upon submission of full and sufficient proof of total and permanent incapacitation, receive the sum of \$100 per month subject to the provisions hereafter set forth, except that the provisions of Section 3 of this article shall not be construed [sic] as being applicable to members who have been determined to be totally and permanently incapacitated for the purposes outlined above.

Sec. 3. Pensioners may engage in a pursuit inside or outside the trade, but shall not be eligible for the pension in any four-week pension period that money received as wages shall exceed the sum equivalent to eight shifts' pay at the scale of the local union (or unions) with which pensioner is affiliated during the pension period, or in any five-week pension period that money received as wages shall exceed the sum equivalent to ten shifts' pay at the scale of the local union (or unions) with which pensioner is affiliated during the pension period: Provided, That the regulation of the working privilege to pensioners be relegated to local unions.

#### Mortuary Benefit

Sec. 11. Mortuary claims shall be allowed the beneficiary of any deceased member in good standing under the following terms and conditions: It is expressly provided that the beneficiary of any member shall be entitled to the mortuary benefit should death occur within the thirty-day period immediately following the expiration date of a current working card. (See Section 1, Article IX, and Section 2, Article XXIII, Bylaws).

Sec. 12. Each and every member of the International Union shall be required to designate a beneficiary to who his or her mortuary benefit is to be paid in event of death. Such designation shall be made upon his or her application for membership, or upon a blank provided by the International Secretary-Treasurer for the purpose. The mortuary benefit of a member who is on the old age pension roll or a resident of the Union Printers Home at time of death shall be disbursed as provided in Section 17, and no beneficiary may be designated other than as

provided in that section. Any member may change his or her beneficiary at any time by notifying the International Secretary-Treasurer and filling out the proper form, except that pensioners and Home residents shall be restricted in the choice of beneficiary or beneficiaries to relatives listed in Section 17.

Sec. 13. The mortuary benefit is primarily intended to guarantee proper burial for the member and other considerations are secondary to this end. The local union shall determine what constitutes a proper burial in cases where the deceased is indebted to the local union for assistance provided or guaranteed before death during and pertaining to his last illness; or for dues the local union has been compelled to pay in his behalf as provided in Section 8, Article IX, Bylaws, and in such cases the excess over burial expenses shall be paid to the local union to the extent of such indebtedness before any amount shall be paid to a designated beneficiary.

It is specifically provided that the mortuary benefit is not to be used as security for personal loans by the local union or others to members. Dues paid by a local union on behalf of a pensioner or resident of the Home are not deductible from the mortuary benefit.

Sums paid by the local union for transportation to the Home or as refund transportation from the Home or subsequent Home transportations which the member can not pay himself may be charged as indebtedness to the local union within the meaning of this section.

Where a member has made no specific arrangements for funeral expenses to be paid from another source the International Typographical Union mortuary benefit shall be available for that purpose except as herein otherwise provided. Where the Secretary-Treasurer of the International Union has documentary information that a member has made specific arrangements for funeral expenses to be paid from another source indebtedness to the local union as above provided shall first be paid and upon presentation of receipted bills for funeral expenses the balance shall be paid to the designated beneficiary. Where (without specific arrangement) funeral expenses have been paid from insurance or other fraternal benefits, the designated beneficiary shall receive such mortuary benefit as may be payable.

Sec. 14. If no beneficiary be named or if the designated beneficiary resides at a point where he or she can not take charge of the funeral then the International Typographical Union shall defray the expenses of the funeral out of the amount owing upon the mortuary benefit of the deceased member not to exceed the amount available from such benefit.

**8** The Minister's submissions with respect to his first position were that the dues paid by the plaintiff were not "annual" dues, that in its context in Section 8(1)(i)(iv) the word "annual" means recurring once in a year or alternatively, reckoned by the year in the sense that their amount must be ascertainable in advance on some day of the year and not merely by adding up on the last day of the year what has been paid as dues.

**9** No case was cited in support of either proposition and in my view neither is sustainable. Nowhere in the language of the provision itself is any such limitation expressed and there appears to be no sound reason for implying such a limitation. The context is that of a statute which imposes taxes annually in respect of income for taxation years and what appears to me to have been intended by the use of the word "annual" in section 8(1)(i)(iv) is simply to make it clear that only union dues of the recurring kind, as opposed to initiation or entrance dues paid once and for all on becoming a member, are to be deductible<sup>1</sup>.

**10** Here the dues paid by the plaintiff were not initiation or entrance dues but dues of the recurring kind. They accrued in the taxation year and were the dues of the year, the payment of which was required to maintain the plaintiff's membership for the year. In my opinion, they are "annual" dues within the meaning of the provision<sup>2</sup> and the facts that they were calculated monthly, that they varied in amount from month to month depending on the member's earnings for the month, and that they were paid monthly are all immaterial for this purpose. The Minister's contention, in my opinion, therefore fails.

**11** The next question is whether the deduction of the payments, to the extent that they were levied and paid in respect of the Old Age Benefit and the Mortuary Benefit provided for by the constitution and bylaws of the Union, is prohibited by subsection 8(5). The issue with respect to the Old Age Benefit is whether the payments were levied "for or under a superannuation fund or plan" within the meaning of subsection 8(5).

**12** In this connection, it appears to me that the meaning of the expression "for or under a superannuation fund or plan" is not modified or affected by the words "in effect" which I think refer only to the dues levied and the purpose for which they are levied. It is conceivable that dues may be levied in such a manner that they may not be described or identified as being for a superannuation fund or plan but are, in fact, levied in whole or in part for such purpose. In such case, the words "in effect" would apply to bring them within the prohibition. The word "effectivement" in the French language version appears to me to support this interpretation. Here, however, no such question arises since the portion of the dues paid in respect of the Old Age Benefit and the Mortuary Benefit

are expressly provided for by the constitution and bylaws and are readily identifiable in the total dues paid.

**13** The plaintiff's case with regard to the Old Age Benefit is that the fund or plan under which payments may become available to him is not a superannuation fund or plan within the meaning of subsection 8(5). Counsel submitted that the meaning of "superannuation fund or plan" is different from and narrower than that of "pension fund or plan" in that superannuation refers only to an allowance made by a former employer upon termination of service due to age or infirmity and that in using the word "superannuation" alone in subsection 8(5), when it is used in conjunction with the word "pension" in the definition of "superannuation or pension benefit" in subsection 248(1) of the Act, the intention of the statute was to confine the prohibition of paragraph 8(5)(a) to amounts paid for or under what are strictly "superannuation" funds or plans within the meaning of the word as suggested by him.

**14** Such an interpretation will allow little scope for the operation of the statutory provision and I do not think it is so limited. It is no doubt true that, as pointed out by Counsel, the payments from the Old Age Benefit fund are not to be made by or received from an employer or former employer of the beneficiary and that there are various provisions which render the plaintiff's prospects of receiving such a benefit subject to uncertainties. But it is not without significance, as indicative of the ordinary usage and meaning of the words that the constitution and bylaws of the union refer to the "Old Age Pension fund" and to its recipients as aged and "superannuated" members. In my opinion, the expression "superannuation fund or plan" in subsection 8(5) is broad enough to include any fund or plan for providing payments to persons who have by reason of age or disability ceased to be employed either entirely or in a particular position and whether or not the fund or the payments are provided at the expense of the employer or former employer. The fact that the Old Age Benefit is not paid or contributed to by such employers of union members and the further fact that the entitlement of members is subject to severe restrictions, which may result in the denial to a particular member of any benefits, are, in my view, immaterial to the decision whether the fund or plan falls within the meaning of the statutory expression. In my opinion, the Old Age Pension fund as provided for by the constitution and bylaws of the union can properly be described as a "superannuation fund" and the provisions therefor can properly be described as a "superannuation plan" within the ordinary meaning of the statutory expression. I think, as well, that this conclusion fits better than the plaintiff's position would, if upheld, with the scheme of the statute, in which there are other provisions dealing with the deductibility of amounts paid for what, in general, appears to include the like purpose and which, as it seems to me, were intended to define the extent to which payments for such purposes may be deducted in computing income. See subsections 8(1), paragraphs (1) and (m), 8(6), 8(8) and 8(9).

**15** I turn now to the Mortuary Benefit, and first to the question whether the payments with respect to it fall within the prohibition of subparagraph 8(5)(b) as having been levied "for or under a fund or plan for annuities, insurance or similar benefits". The Mortuary Benefit is plainly not an annuity, but what becomes payable under the provisions for it is an amount fixed by the

constitution, it is payable in respect of a member who dies while in good standing and, subject to the recovery therefrom of certain debts owing to the union and the right of the union to require that the funeral expenses of the deceased member be paid from it, it is payable to a beneficiary. These factors suggest that the fund or plan is for a form of insurance, having some of the characteristics of life insurance. From the point of view of the union, the provisions appear to be designed to put aside a fund which will be available to ensure that the funds of the union accumulated for other purposes are not dissipated in providing proper burials for deceased members. It may be tenuous to classify the fund or plan as one for insurance, though the word "insurance" in such a context has, so far as I am aware, no very particular or precise connotation, but it seems to me that if the Mortuary Benefit fund or plan is not one for insurance, it is plainly one for benefits that are similar to insurance or insurance benefits and within the meaning of subparagraph 8(5)(b).

**16** This conclusion makes it unnecessary to consider whether the amounts levied in respect of the Mortuary Benefit fund fall within the prohibition of subparagraph 8(5)(c).

**17** In the result the answer to the question referred to the Court is that the amounts totalling \$383.87 paid by the plaintiff to the International Typographical Union in the year 1973 are deductible in computing his income for the year, except to the extent that they were levied by the union in respect of the "Old Age Benefit" and the "Mortuary Benefit" provided for by the constitution and bylaws of the union.

**18** There will be no order for costs.

THURLOW A.C.J.

qp/s/mps

1 Royal Trust Company v. M.N.R. 1956-1960 Ex. CR 70 at page 86.

2 Compare Ryall v. Howe 1923 2 KB 447 at page 454 Consolidated Textiles Limited v. M.N.R. 1947 Ex. CR 77 at page 81.