T-1288-92

OTTAWA, Ontario, THE 15TH DAY OF NOVEMBER 1996.

PRESENT: THE HONOURABLE MADAME JUSTICE TREMBLAY-LAMER

BETWEEN:

HER MAJESTY THE QUEEN,

Plaintiff,

- and -

MARCELLE MERCIER,

Defendant.

O R D E R

The plaintiff's appeal is allowed. The assessment by the Minister of National Revenue against the defendant for the 1988 taxation year is confirmed.

Danièle Tremblay-Lamer
JUDGE

Certified true translation

A. Poirier

T-1288-92

BETWEEN:

HER MAJESTY THE QUEEN,

Plaintiff,

- and -

MARCELLE MERCIER,

Defendant.

REASONS FOR ORDER

TREMBLAY-LAMER J.

This is an appeal *de novo* from a decision by the Tax Court of Canada allowing the defendant's appeal from a notice of assessment issued against her for the 1988 taxation year.

I. The Facts

In 1988, the defendant maintained by herself a domestic establishment in which she lived with her son, who was twenty-four (24) years old at the time and was not suffering from any mental or physical infirmity. Her son's income that year was $695.21. Thus, the defendant was wholly supporting him. For the 1988 taxation year, she accordingly claimed a credit for a wholly dependent related person under paragraph 118(1)(*b*) of the *Income Tax Act* (hereinafter "the Act"),[1] which read as follows at the relevant time:

> **118.** (1) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula
>
> A x B
>
> where
>
> A is the appropriate percentage for the year, and
>
> B is the aggregate of,
>
> * * *

[1] R.S.C. 1952, c. 148, as amended by S.C. 1970-71-72, c. 63, and subsequent amendments.

(*b*)in the case of an individual not entitled to a deduction by reason of paragraph (*a*) who, at any time in the year,

(i)is an unmarried person or a married person who neither supported nor lived with his spouse and is not supported by his spouse, and

(ii)whether by himself or jointly with one or more other persons, maintains a self-contained domestic establishment (in which the individual lives) and actually supports therein a person who, at that time, is

(A)except in the case of a child of the individual, resident in Canada,

(B)wholly dependent for support on the individual, or the individual and such other person or persons, as the case may be,

(C)related to the individual, and

(D)except in the case of a parent or grandparent of the individual, either under 18 years of age or so dependent by reason of mental or physical infirmity,

an amount equal to the aggregate of

(iii)$6,000, and

(iv)an amount determined by the formula

5 000 $ - (D - 500 $)

where

Dis the greater of $500 and the income for the year of the dependent person;

Thus, under clause 118(1)(*b*)(ii)(D) of the Act, when a claim is made in respect of a person other than a parent or grandparent of the individual, the credit is granted only if:

(1) the related person is under 18 years of age or

(2)the related person is over 18 years of age but is dependent by reason of mental or physical infirmity.

In the case at bar, as noted above, the defendant's son was over 18 years of age and was not suffering from any mental or physical infirmity. Since the defendant did not meet the conditions for the subsection in question to apply, she was denied the credit. The defendant submits that the age condition in clause 118(1)(*b*)(ii)(D) of the Act is contrary to the provisions of subsection 15(1) of the *Canadian Charter of Rights and Freedoms* (hereinafter "the Charter").[2]

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[2] *Canada Act 1982* (1982, c. 11 (U.K.)) in R.S.C. 1985, App. II, No. 44.

II. Issues

Does the age condition included in clause 118(1)(*b*)(ii)(D) of the Act infringe subsection 15(1) of the Charter? If so, is that infringement of subsection 15(1) justified under section 1 of the Charter? If it is not justified, is the remedy being sought, namely a finding that clause 118(1)(*b*)(ii)(D) of the Act is of no force or effect, an appropriate remedy?

III. Tax Court of Canada Judgment

Judge Lamarre Proulx recognized that age is a ground of discrimination under subsection 15(1) of the Charter. However, she noted that not every distinction based on age is necessarily discriminatory. She expressed the opinion that a distinction based on age will not infringe subsection 15(1) unless it has a discriminatory effect on the complainant.

In considering whether paragraph 118(1)(*b*) of the Act has a discriminatory effect, she began by looking at whether there is a discrete and insular minority in respect of which the Court should be vigilant. She found that in the case at bar there are two such groups: the group of persons claiming the credit and the group of wholly dependent related persons. Moreover, among the group of persons claiming the credit, she drew a distinction between persons to whom the credit is actually granted and those to whom it is denied because of the age of the dependent related person. In her view, the latter group is one that is often disadvantaged. She also felt that the determination of whether the impugned subsection has a discriminatory effect required an analysis of its purpose and object. In her opinion, the primary purpose of the subsection is to provide tax relief to persons who maintain a domestic establishment in which they live with a related person who is wholly dependent on them for support. These considerations led her to find that clause 118(1)(*b*)(ii)(D) of the Act has a discriminatory effect and therefore infringes subsection 15(1) of the Charter.

Because of her conclusion with respect to subsection 15(1) of the Charter, she moved on to the section 1 analysis. In this regard, she referred to the criteria established by the Supreme Court of Canada in *R.* v. *Oakes*.[3] She applied the

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[3] [1986] 1 S.C.R. 103.

following criteria: first, it must be shown that there is an objective that is sufficiently important to warrant the infringement of a Charter right. She stated that a sufficiently important objective is one that relates to pressing and substantial concerns. She then considered the proportionality test, which has three separate components:

(1)the measures must be rationally connected to the objective;

(2)the means chosen must be such as to impair the guaranteed right in question as little as possible; and

(3)there must be a proportionality between the direct effect of the chosen measures and the importance of the objective in question.

As far as the importance of the objective was concerned, she found that Parliament's desire to reduce the national debt, spread the tax burden and give effect to the government's priorities are pressing and substantial concerns.

She then considered whether there is a rational connection between the measure adopted and Parliament's desire to reduce the national debt. In this regard, she expressed regret that no evidence had been adduced to show the economic effect of making the credit inapplicable to wholly dependent related persons who are over 18 years of age. She nevertheless found that there is a rational connection in the case at bar because of the fact that there are various federal and provincial statutes that guarantee a minimum income to wholly dependent related persons over 18 years of age.

However, she concluded that the measure adopted does not meet the minimal impairment test. She attached great importance to the fact that in most cases the measure penalizes parents who support their children on their own. She accordingly found that the restriction imposed by clause 118(1)(*b*)(ii)(D) of the Act is not justified under section 1.

Having found that the clause infringes subsection 15(1) of the Charter and is not saved by section 1, she considered whether she had jurisdiction to grant a remedy and then what the appropriate remedy should be. With regard to the jurisdiction of a Tax Court of Canada judge to grant a remedy under section 52 of the *Constitution Act, 1982*,[4] she referred to the principles formulated by La Forest J. in *Douglas/Kwantlen*

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[4] *Canada Act 1982* (1982, c. 11 (U.K.)) in R.S.C. 1985, App. II, No. 44.

Faculty Association v. *Douglas College*.[5] In her view, that case established that administrative tribunals and lower courts have the power to rule on the constitutional validity of statutes as part of the mandate conferred on them. She therefore expressed the view that the mandate of Tax Court of Canada judges, as set out in sections 12 and 171 of the *Tax Court of Canada Act*,[6] is broad enough to authorize them to consider the constitutionality of statutes.

In Judge Lamarre Proulx's view, the appropriate remedy in the case at bar is a declaration that clause (D) of subparagraph 118(1)(*b*)(ii) of the Act is of no effect. She reached that conclusion because clause (D) is not essential to the existence of subparagraph 118(1)(*b*)(ii). The appeal by Ms. Mercier, the defendant in these proceedings, was therefore allowed.

IV. The Parties' Arguments

The plaintiff acknowledged that the defendant would have been entitled to the credit had it not been for the requirement concerning the related person's age. However, she argued that the requirement was consistent with subsection 15(1) of the Charter. She submitted that clause 118(1)(*b*)(ii)(D) of the Act does not discriminate based on age. She added that, even if there is discrimination within the meaning of subsection 15(1), the conditions set out in paragraph 118(1)(*b*) of the Act are justified under section 1 as reasonable limits in a free and democratic society. Finally, she submitted in the alternative that if the measure set out in paragraph 118(1)(*b*) does infringe subsection 15(1), it is covered by subsection 15(2) of the Charter.

The defendant began by noting that the requirement concerning the child's age was added in 1988. The provision had existed for a long time and its application depended solely on whether the related person was wholly dependent. Historically, therefore, Parliament applied only that criterion to determine whether to grant the credit. By adding the age condition, the defendant argued, Parliament infringed subsection 15(1) of the Charter. She submitted that this is because clause 118(1)(*b*)(ii)(D) of the Act adversely affects a vulnerable, discrete, low-income minority that is a victim of age

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5 [1990] 3 S.C.R. 570.

6 R.S.C. 1985, c. T-2.

discrimination. Finally, she argued that this infringement is not saved by the operation of section 1.

V. Analysis

A. Applicable Principles

1. Purpose and Effect of the Act

Since *R.* v. *Edwards Books*[7] and *R.* v. *Big M Drug Mart Ltd.*,[8] it has been accepted that both the purpose and the effect of legislation are relevant in determining whether it is consistent with the Charter's principles. Either an unconstitutional purpose or an unconstitutional effect can invalidate legislation. The purpose and effect of legislation were defined as follows in *R.* v. *Big M Drug Mart Ltd.*:[9]

> All legislation is animated by an object the legislature intends to achieve. This object is realized through the impact produced by the operation and application of the legislation. Purpose and effect respectively, in the sense of the legislation's object and its ultimate impact, are clearly linked, if not indivisible.[10]

Thus, in the context of a constitutional challenge based on the Charter, the purpose—that is, the object of the legislation—and the effect—that is, the ultimate impact of the legislation—are both relevant. It must be ensured that both are consistent with the principles set out in the Charter.

However, in *Big M Drug Mart Ltd.*,[11] Dickson J. (as he then was) also said the following about how the purpose and effect of legislation interact:

> If the acknowledged purpose of the *Lord's Day Act*, namely, the compulsion of sabbatical observance, offends freedom of religion, it is then unnecessary to consider the actual impact of Sunday closing upon religious freedom. Even if such effects were found inoffensive, as the Attorney General of Alberta urges, this could not save legislation whose purpose has been found to violate the *Charter*'s guarantees. In any event, I would find it difficult to conceive of legislation with an unconstitutional purpose, where the effects would not also be unconstitutional.[12]

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7 [1986] 2 S.C.R. 713.

8 [1985] 1 S.C.R. 295.

9 *Ibid.*

10 *Ibid.*, at p. 331 (*per* Dickson J. (as he then was)).

11 *Ibid.*

12 *Ibid.*, at p. 333.

The effect of legislation cannot make it constitutionally valid if its purpose violates any of the Charter's guarantees. The effect may, however, make legislation constitutionally invalid even if its purpose complies with the Charter's guarantees.

Dickson C.J. expressed a similar view in *Edwards Books*,[13] in which he wrote the following:

> Even if a law has a valid purpose, it is still open to a litigant to argue that it interferes by its effects with a right or freedom guaranteed by the *Charter*. It will therefore be necessary to consider in some detail the impact of the *Retail Business Holidays Act*.[14]

2. Subsection 15(1) of the Charter

Subsection 15(1) of the Charter reads as follows:

> **15.** (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

It was in *Andrews* v. *Law Society of British Columbia*[15] that the parameters for the application of the rule set out in subsection 15(1) were established. In my view, those parameters were misunderstood by the honourable Tax Court of Canada judge. Having found that a distinction had been drawn based on one of the grounds enumerated in subsection 15(1), namely age, she did not have to consider whether there was a discrete and insular minority when she determined the discriminatory effect of that distinction. The parameters that every court must apply in a review under subsection 15(1) of the Charter are as follows:

(1) the impugned statute must draw a distinction, intentional or otherwise, between the individual, as a member of a group, and others;

(2) that distinction must be based on an enumerated or analogous ground; and

(3) the legislative impact of the statute must be discriminatory, that is, it must impose a burden not imposed on others.

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13 *Supra*, note 7.

14 *Ibid.*, at p. 752.

15 [1989] 1 S.C.R. 143.

In *Rudolf Wolff & Co.*[16] and a few years later in *Symes*,[17] the Supreme Court of Canada reaffirmed what it had already held in *Andrews*:[18] the process applicable under subsection 15(1) of the Charter is essentially a comparative one. It is this same comparative process that makes it possible to determine whether the statute creates a distinction, classification or differentiation.[19]

Although the Supreme Court clearly adopted a three-step analysis in *Andrews*[20] and the decisions that followed it, the trilogy of *Miron* v. *Trudel*,[21] *Egan* v. *Canada*[22] and *Thibaudeau* v. *Canada*[23] marked the emergence of a fourth criterion, namely relevance.

Thus, to the classic test used in an analysis under subsection 15(1) of the Charter, Lamer C.J. and La Forest, Major and Gonthier JJ. added a new step that determines whether there is a relevant basis for the distinction drawn by the legislator based on an enumerated or analogous ground. When applying this fourth and final test, the linguistic, philosophical and historical context in which the issue arises must be borne in mind. It should be noted that the addition of this fourth test means that a legislative distinction may be found not to restrict the right guaranteed by subsection 15(1) of the Charter even if it is discriminatory and based on an enumerated or analogous ground.

However, not all the members of the Court agreed on the inclusion of this fourth step. Sopinka, Cory, Iacobucci and McLachlin JJ. objected to the inclusion of such a test, which they considered unacceptable because it would completely marginalize the rule set out in section 1 of the Charter.

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16 *Rudolf Wolff & Co.* v. *Canada*, [1990] 1 S.C.R. 695.

17 *Symes* v. *R.*, [1993] 4 S.C.R. 695.

18 *Supra*, note 15.

19 To the same effect: *Haig* v. *Canada*, [1993] 2 S.C.R. 995, and *R.* v. *Finta*, [1994] 1 S.C.R. 701.

20 *Supra*, note 15.

21 [1995] 2 S.C.R. 418.

22 [1995] 2 S.C.R. 513.

23 [1995] 2 S.C.R. 627.

L'Heureux-Dubé J. did not express any view on the relevancy test. Since the Supreme Court is equally divided, I will take account of this new test in applying the rule set out in subsection 15(1) of the Charter to the facts of this case.

3. Section 1 of the Charter

Section 1 of the Charter reads as follows:

> 1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The principles applicable to a section 1 analysis were established by the Supreme Court of Canada in *R.* v. *Oakes*.[24] Since that case, the courts have consistently and unanimously applied those principles. More recently, in *Dagenais* v. *Canadian Broadcasting Corporation*,[25] the principles were reaffirmed. In *R.* v. *Laba*,[26] the Supreme Court of Canada, *per* Sopinka J., summarized them as follows:

> 1) In order to be sufficiently important to warrant overriding a constitutionally protected right or freedom the impugned provision must relate to concerns which are pressing and substantial in a free and democratic society;
>
> 2) The means chosen to achieve the legislative objective must pass a three-part proportionality test which requires that they (a) be rationally connected to the objective, (b) impair the right or freedom in question as little as possible and (c) have deleterious effects which are proportional to both their salutary effects and the importance of the objective which has been identified as being of "sufficient importance".

B. Application to the Case at Bar

1. Preliminary Remarks

At this point, the specific characteristics of the *Income Tax Act* should be considered. In determining whether the provision in question draws a distinction, I must bear in mind the specific nature of the Act and the personal credit schemes it establishes. In *Thibaudeau*,[27] the Supreme Court of Canada held that it is intrinsic to the *Income Tax Act* to create distinctions so as to generate revenue for the state while equitably reconciling a set of interests that are necessarily divergent.

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24 *Supra*, note 3.

25 [1994] 3 S.C.R. 835.

26 [1994] 3 S.C.R. 965, at p. 1006.

27 *Supra*, note 23, at p. 702.

As far as personal credits are concerned, the courts have found that their purpose is to make the tax system fairer by recognizing the different circumstances of taxpayers and taking account of their differing ability to pay taxes as a result of those circumstances.[28]

2.Subsection 15(1) of the Charter

(a)Whether paragraph 118(1)(*b*) of the Act draws a distinction between the individual, as a member of a group, and others

To begin with, I do not think it can be said that the provision draws a distinction between various taxpayers based on their respective incomes. Eligibility for the credit is independent of the income of the taxpayer claiming it. Parliament is therefore not seeking to provide tax relief to low-income taxpayers.

Paragraph 118(1)(*b*) draws a distinction between married and unmarried taxpayers. In my view, however, that distinction cannot serve as a basis for this challenge. It was decided in *Schachtschneider* v. *R.*[29] that the provision does not discriminate against married taxpayers. Mahoney J.A. stated the following in that case:

> There may be others differently treated by subsection 118(1) on the basis of personal characteristics, but the group now in issue is composed of married persons with a child of the marriage, living together and not supporting each other. In my opinion, that is not a group that can be described as being disadvantaged in the context of its place in the entire social, political and legal fabric of our society. It follows that it is not a distinct and insular minority within the contemplation of section 15. The distinction made by subsection 118(1) of the *Income Tax Act* between married and unmarried persons in those like circumstances is not discriminatory.

Paragraph 118(1)(*b*) also draws a distinction between unmarried taxpayers supporting an adult child who is not suffering from any mental or physical infirmity and those wholly supporting a minor child, a parent or grandparent or an adult suffering from a mental or physical infirmity. This distinction having been established, I believe it is appropriate to turn to the second step of the test.

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28 *Schachtschneider* v. *R.*, [1994] 1 F.C. 40 (F.C.A.).

29 *Ibid*., at p. 56.

(b) Whether the distinction is based on an enumerated or analogous ground

Is the distinction drawn by the Act based on an enumerated or analogous ground? In the case at bar, the only ground being relied on is age, to which subsection 15(1) expressly refers. Age is a personal characteristic. This personal characteristic must also be a characteristic of the members of the group in respect of which the Act draws a distinction, namely taxpayers wholly supporting a child who is not suffering from any mental or physical infirmity and is over 18 years of age. This is what was noted by McIntyre J. in *Andrews*:[30]

> . . . discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group. . . . (emphasis added)

That is not the case here. The distinction drawn by the Act is based not on the age of the members of the group identified above, but on the age of the person in respect of whom the credit is being claimed.

I will not express any view as to whether the status of a taxpayer wholly supporting a child who is not suffering from any mental or physical infirmity and is over 18 years of age can be considered an analogous ground. The defendant did not make such an argument.

In light of my finding with regard to the second test, I do not consider it necessary to look at the third test, which seeks to determine whether the distinction drawn by the Act imposes a burden, disadvantage or obligation on the group in question.

(i) Discrimination by association

The defendant argued that discrimination by association can exist. She submitted that there can be an infringement of subsection 15(1) of the Charter even when the distinction drawn by the Act is based on a personal characteristic (enumerated in subsection 15(1) or analogous to those enumerated therein) of another person, that is, the dependent person. Although this argument was not accepted by the majority of the

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30 *Supra*, note 15, at p. 174.

Federal Court of Appeal in *Benner* v. *The Queen*,[31] it was the subject of a dissenting opinion by Linden J.A. Assuming that the argument could succeed, it should nevertheless be asked whether every distinction based on age is necessarily discriminatory, that is, whether such a distinction necessarily imposes a burden, disadvantage or obligation.

Even assuming that the distinction imposes a burden on taxpayers wholly supporting a related person who is over the age of 18, is that distinction based on a relevant personal characteristic enumerated in subsection 15(1)?

(c)The relevancy test

Without expressing any view on the validity of the relevancy test, I would say that its application to the case at bar leads to the conclusion that clause 118(1)(*b*)(ii)(D) does not restrict the right guaranteed by subsection 15(1) of the Charter.

When the ground relied on is that of age, it must be determined whether there are "solid grounds for importing benefits on one age group over another". In the case at bar, Parliament has established the age of 18 as the standard, since at that age children are considered independent and capable of supporting themselves. As noted by Létourneau J.A. in *Lister*:[32]

> In the context of determining whether a child is dependent on his parents or not, age is a most relevant factor. Barring the odd exception, it is the factor which applies, and is applied, most commonly, conveniently and fairly to the proper determination of the family unit for benefit-allocation purposes.

This age is the same one used in a number of federal and provincial statutes to determine when a person is entitled to vote[33] or buy tobacco[34] or alcohol[35] or must contribute to a pension plan.[36]

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[31] [1994] 1 F.C. 250 (F.C.A.), leave to appeal to the Supreme Court of Canada granted.

[32] *Lister* v. *Canada*, [1995] 1 F.C. 130, at p. 155 (F.C.A.).

[33] See, for example, the *Canada Elections Act*, R.S.C. 1985, c. E-2, the *Election Act*, R.S.Q., c. E-3.3, and the *Election Act*, R.S.O. 1990, c. E-6.

[34] See the *Tobacco Sales to Young Persons Act*, S.C. 1993, c. 5.

[35] See the *Act respecting offences relating to alcoholic beverages*, R.S.Q., c. I-8.1

[36] See, for example, the *Canada Pension Plan*, R.S.C. 1985, c. C-8, and the *Act respecting the Québec Pension Plan*, R.S.Q., c. R-9.

The functional value of the Act in this instance is to take account of when a person is considered to have attained a sufficient degree of financial independence. The goal is to grant a tax credit to a taxpayer supporting a person who is related to the taxpayer and whose ability to be independent is limited, namely a minor child, an adult suffering from an infirmity or a parent or grandparent who cannot support himself or herself for some reason. Thus, the distinction drawn by Parliament is based not on a stereotypical assumption about a group, but on an objective standard: the person's level of independence. In light of this functional value, I would be inclined to find that the distinction is based on a relevant personal characteristic enumerated in subsection 15(1), namely age.

3. Section 1 of the Charter

Although I have found that paragraph 118(1)(*b*) of the Act is consistent with the equality guarantee in subsection 15(1) of the Charter, I have decided to proceed with the analysis under section 1 of the Charter. This will enable me to make certain findings of fact based on the evidence adduced by the plaintiff, findings that will be helpful if the defendant's arguments under section 15 of the Charter are accepted on appeal.

(a) Sufficiently important objective

The plaintiff's evidence shows that the purpose of the 1988 tax reform, as far as personal deductions are concerned, was to make the system more consistent and harmonize it with other legislative provisions in order to preclude, for example, a person being considered independent under certain legislative provisions but dependent under others. The reform was intended to provide tax relief to taxpayers with dependants whose ability to be independent is limited, namely minors, adults with a mental or physical infirmity and parents or grandparents.[37]

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[37] In this regard, see Exhibit D-3 and the 1987 White Paper on Tax Reform.

(b)The proportionality test
(i)Means proportional to the objectives to be attained

The criterion adopted by Parliament to determine whether a person is independent is the age of 18, except if the person has a mental or physical infirmity or is a parent or grandparent.

As we have seen, this is the age used in a number of federal and provincial statutes to determine when a person begins to have certain rights or obligations. In most provinces, 18 is the age of majority.

As noted above, I believe the age of 18 to be relevant in light of the Act's objective of taking account of when a person not suffering from any mental or physical infirmity is considered to have attained a sufficient degree of financial independence. Parliament grants a credit to taxpayers who are supporting a person whose ability to be independent is limited.

(ii)Minimal impairment

Reference should be made to the warning first given by the Supreme Court in *Irwin Toy Ltd.*[38] and repeated numerous times since. The courts must be flexible when applying the minimal impairment test to a statute in which the legislature, acting as a mediator, has had to choose among the claims of competing groups and distribute scarce resources among them.

It is therefore not a question of finding the best possible restriction, but of finding a reasonable restriction.

In the case at bar, paragraph 118(1)(*b*) of the Act does not totally exclude persons who are over 18 years of age. The credit is granted if the dependent person, although over 18 years of age, has an infirmity or is a parent or grandparent.

The House of Commons and Senate committees had suggested that the age limit be set at 21 rather than 18. That suggestion was not accepted, since Parliament

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[38] *Irwin Toy Ltd.* v. *Attorney General of Quebec*, [1989] 1 S.C.R. 927, and *Stoffman* v. *Vancouver General Hospital*, [1990] 3 S.C.R. 483.

preferred to promote the harmonization of the tax system by adopting the age of 18. In any event, the fact that children's education and tuition fee credits can be transferred to their parents met the committees' concerns in this regard.[39]

In my view, in light of the current economic situation in which the government must reduce its expenditures and increase its revenues to deal with the deficit, there is no doubt that the government was justified in making the choice it made. In these circumstances, the impairment was minimal.

(iii)Deleterious effects

It follows from the foregoing that the effects of paragraph 118(1)(*b*) of the Act on taxpayers whose adult children are dependent on them are not so significant that they take precedence over the government's objective of providing tax relief that takes account of the time when a person not suffering from any infirmity is considered to have attained a sufficient degree of financial independence and of the limited ability of certain persons to be financially independent.

VI.Disposition

I am of the view that clause 118(1)(*b*)(ii)(D) of the Act is not a restriction on the right guaranteed by subsection 15(1) of the Charter. In any event, if I had found that the clause was inconsistent with subsection 15(1), I would have held that such a restriction was justified under section 1.

For these reasons, the plaintiff's appeal is allowed. The assessment by the Minister of National Revenue against the defendant for the 1988 taxation year is confirmed.

OTTAWA, Ontario
The 15th day of November 1996

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[39] See the relevant extracts from Exhibit D-3 (affidavit of M. Horner), Exhibit D-4 (report of the House of Commons committee, at pp. 34-35) and, finally, Exhibit D-1 (report of the Senate committee).

Danièle Tremblay-Lamer
JUDGE

Certified true translation

A. Poirier

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT NO.: T-1288-92

STYLE OF CAUSE: Her Majesty the Queen,

Plaintiff,

and

Marcelle Mercier,

Defendant.

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: October 21, 1996

REASONS FOR ORDER BY: Madame Justice Tremblay-Lamer

DATED: November 15, 1996

APPEARANCES:

Chantal Jacquier	for the Plaintiff
Jean-Paul Morin Pierre Giroux	for the Defendant

SOLICITORS OF RECORD:

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