

Docket: 2004-3009(IT)I

BETWEEN:

DEANNA BAILEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on January 11, 2005, at Halifax, Nova Scotia

Before: The Honourable Justice Gerald J Rip

Appearances:

For the Appellant:                   The Appellant herself

Counsel for the Respondent:      Christa MacKinnon

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**JUDGMENT**

The appeal from the assessment of the Minister of National Revenue for the 2002 taxation year with respect to the Child Tax Benefits is allowed, with costs, if any, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the appellant is entitled to claim the \$2,962 that she paid to Crossroads Academy in 2002 in respect of child care expenses.

Signed at Ottawa, Canada, this 29th day of April 2005.

"Gerald J. Rip"

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Rip J.

Citation: 2005TCC305  
Date: 20050429  
Docket: 2004-3009(IT)I

BETWEEN:

DEANNA BAILEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Rip J.

[1] Mrs. Deanna Bailey appeals from an assessment under the *Income Tax Act* ("Act") for the 2002 taxation year in which the Minister of National Revenue disallowed a portion of the amount she claimed for child care expenses. It is the position of the Minister that the amount in issue was paid by Mrs. Bailey for the education of her daughter and not the care of the child.

[2] During the relevant period both Mrs. Bailey and her husband worked full-time and during the time they worked, required that their two children be supervised by responsible persons. Prior to 2002, Mrs. Bailey had enrolled her elder daughter at Point Pleasant Child Care centre in Halifax. In the fall of 2002, Mrs. Bailey sought to enrol her daughter for her primary year in a Halifax public school. However, her daughter, who was to turn five years of age on October 11, 2002, could not enter primary year in Nova Scotia as the provincial regulations required children to "be five years old on or before the first day of October" to enter the public school system.

[3] Since Mrs. Bailey's daughter was 10 days too young to enter any public school in Halifax, Mrs. Bailey considered two options. She could either send her daughter back to Point Pleasant Child Care center at a cost of \$5,000 per year or send her

daughter to Crossroads Academy for \$4,000 per year. She chose to send her daughter to Crossroads Academy.

[4] Crossroads Academy was described by Mrs. Bailey as a private elementary school teaching grades grade primary<sup>1</sup> to grade 6. Her daughter attended grade primary and there is no question that in grade primary the child receives education. The school also provides activities both before and after the general curriculum. The school is open from 7:30 a.m. to 5:00 p.m. Mrs. Bailey's daughter remained at school the entire time. In reassessing the appellant the Minister determined that the portion paid for the four hours when curriculum was taught was for education and not for child care. In other words, the time the child attended grade primary is education, the time spent at school during the day immediately before and after attending grade primary is child care.

[5] The issue in this appeal is whether \$2,962 paid to Crossroads Academy in 2002 was in respect of child care expenses.

[6] Section 63 provides a limited tax deduction for parents who require their children to be supervised because they are employed outside the home. Subsection 63(3) provides for a general deduction of expenses a working parent pays for the purpose of caring for their children. This deduction is restricted when the amount was paid for various other services such as education, hospital care or board and lodging.

[7] Subsection 63(3) of the *Income Tax Act* provides the following definition of "child care expense":

"child care expense" means an expense incurred in a taxation year for the purpose of providing in Canada, for an eligible child of the taxpayer, child care services including baby sitting services, day nursery services or services provided at a boarding school or camp if the services were provided

(a) to enable the taxpayer, or the supporting person of the child for the year, who resided with the child at the time the expense was incurred,

(i) to perform the duties of an office or employment,

...

except that

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<sup>1</sup> Grade primary is equivalent to kindergarten.

...

- (d) for greater certainty, any expenses described in subsection 118.2(2) and any other expenses that are paid for medical or hospital care, clothing, transportation or education or for board and lodging, except as otherwise expressly provided in this definition, are not child care expenses;

[8] To determine what is meant by a child care expense it is helpful to consider the definition of the word "care". The *Canadian Oxford English Dictionary*<sup>2</sup> defines care as "the process of looking after or providing for someone or something; the provision of what is needed for health or protection".

[9] The French version confirms the importance of protecting the child as the phrase for child care expenses is «frais de garde d'enfants» which literally means costs of minding the children.

[10] The Minister submits that the fees paid to Crossroads Academy for grade primary is an amount paid for education and is thus excepted from the definition of "child care expense". The Minister's argument is premised on the belief that due to the exception in paragraph 63(3)(d) a child care expense cannot include some form of education. In doing so he is missing the distinction between the "to" and "for". A plain reading of subsection 63(3) suggests "for" has an intent or purpose and thus the subsection is not concerned with *to* whom the amounts are paid but for the purpose they are paid.

[11] Section 12 of the *Interpretation Act*<sup>3</sup> requires that each enactment be given a fair, large and liberal construction and interpretation that best ensures the attainment of its objects. Although it is unnecessary to look at the legislative intent when the provision is clear, doing so, here, provides further support for this interpretation. Such an interpretation requires section 63 is be read in the context of the whole statute and with the 'object and spirit' and purpose of that provision in mind<sup>4</sup>.

[12] In *Symes v. The Queen*<sup>5</sup>, Iacobucci J. noted the object and spirit behind the deduction for child care expenses when he referred to the Proposals for Tax Reform (1969), (E.J. Benson, Minister of Finance).

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<sup>2</sup> Canada: Oxford University Press, 1998.

<sup>3</sup> R.S.C. I. c-21.

<sup>4</sup> *Shell Canada Ltd. v. The Queen*, [1999] 3 S.C.R.622; *Singleton v. Canada*, [2001] 2 S.C.R. 1046.

<sup>5</sup> 94 DTC 6001 at p.6019.

2.7 We propose to permit deduction of the child care expenses that face many working parents today. The problem of adequately caring for children when both parents are working, or when there is only one parent in the family and she or he is working, is both a personal and a social one. We consider it desirable on social as well as economic grounds to permit a tax deduction for child care expenses, under carefully controlled terms, in addition to the general deduction for children.

...

2.9 This new deduction for child care costs would be a major reform. While it is not possible to make an accurate forecast of the number who would benefit from this new deduction, it seems likely to be several hundred thousand families. It would assist many mothers who work or want to work to provide or supplement the family income, but are discouraged by the cost of having their children cared for ...

[13] The legislative intent in enacting this provision was to assist parents who work by subsidizing child care expenses in the form of a deduction. Given that goal, it is difficult to accept the Minister's conclusion that any expense related to looking after the child of a working parent should be denied solely because it included an educative element. Such an interpretation would clearly undermine the intent of the Parliament for it would likely exclude all types of child care expenses, especially those in respect of a young child; for to a young child almost all positive interaction serves as education – be it through discipline, television shows, stories or games.

[14] That being said, the relevant question is what was Mrs. Bailey primary reason for enrolling her daughter in Crossroads?

[15] As noted above, Mrs. and Mr. Bailey worked full time and required their children to be cared for. Mrs. Bailey was not required to enroll her daughter in school but testified that she preferred that her daughter attend school rather than her previous day-care. As a consequence, I find Mrs. Bailey's purpose for putting her daughter in Crossroads Academy was for reasonably priced child care services and any education received was an incidental benefit.

[16] The appeal is allowed, with costs, if any.

Signed at Ottawa, Canada, this 29th day of April 2005.

"Gerald J. Rip"

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Rip J.

CITATION: 2005TCC305  
COURT FILE NO.: 2004-3009(IT)I  
STYLE OF CAUSE: DEANNA BAILEY AND HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: January 11, 2005

REASONS FOR JUDGEMENT BY: The Honourable Justice Gerald J. Rip

DATE OF JUDGMENT: April 29, 2005

APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Christa MacKinnon

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.  
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