

Docket: 2006-3220(IT)I

BETWEEN:

CHRISTOPHER A. STREITENBERGER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on April 10, 2007, at Saskatoon, Saskatchewan

Before: The Honourable Justice G.A. Sheridan

Appearances:

For the Appellant:

The Appellant himself

For the Respondent:

Sharlene Telles-Langdon

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**JUDGMENT**

The appeals of the redeterminations of the Minister of National Revenue of the Appellant's 2001, 2002 and 2003 base taxation years are allowed and the matters are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant was the "eligible individual" for the months of May 2003 to April 2005 of the 2001, 2002 and 2003 base taxation years, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 25th day of July 2007.

"G.A. Sheridan"

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Sheridan J.

Citation: 2007TCC430  
Date: 20070725  
Docket: 2006-3220(IT)I

BETWEEN:

CHRISTOPHER A. STREITENBERGER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Sheridan, J.

[1] The Appellant, Christopher Streitenberger, is appealing the redetermination of the Minister of National Revenue of his entitlement to the Canada Child Tax Benefit for the base taxation years 2001, 2002 and 2003.

[2] In making her redetermination, the Minister made the following assumptions of fact, as set out in paragraph 16 of the Reply to the Notice of Appeal:

- (a) the Appellant and Sandra are the natural parents of Adam;
- (b) Adam's date of birth is January 13, 1991;
- (c) throughout the 2001, 2002 and 2003 base taxation years, the Appellant and Sandra were divorced and lived separate and apart;
- (d) the June 8, 2000 Consent Order provided that:
  - (i) the Appellant and Sandra shall have joint custody of Adam;
  - (ii) the primary residence for Adam shall be with Sandra; and
  - (iii) Adam shall reside on alternate weeks with the Appellant and Sandra at their residence;

- (e) subsequent to April 2003, Adam resided with the Appellant from Monday to Friday;
- (f) subsequent to April 2003, Adam resided with Sandra from Friday evening to Sunday evening;
- (g) Sandra moved to Saskatoon in 2003 to obtain work to enable herself to support Adam;
- (h) Adam stayed in Bruno with the Appellant;
- (i) Adam intends on residing with Sandra in Saskatoon once he graduates from high school;
- (j) throughout the period of April 2003 to April 2004, the Appellant received \$1,960.44 from Sandra for the CCTB, as follows:

April 2003	\$ 221.32
May 2003	221.32
June 2003	221.32
July 2003	261.48
August 2003	115.00
September 2003	115.00
October 2003	115.00
November 2003	115.00
December 2003	115.00
January 2004	115.00
March 2004	230.00
April 2004	115.00
Total	<u>\$1,960.44</u>

- (k) Sandra has invested her portion of the CCTB into a Registered Educational Savings Plan for Adam;
- (l) Sandra paid for Adam's clothing and allowances;
- (m) Sandra maintained a separate bedroom for Adam in her home;
- (n) Adam lived with the Appellant who resided with his parents;
- (o) Sandra provides medical insurance for Adam;
- (p) Sandra arranges for transportation for Adam for his medical appointments in Saskatoon;

- (q) Sandra transports and attends Adam's athletic activities;
- (r) Sandra provided Adam with the special soaps and skin cleaners he requires;
- (s) Sandra attends to Adam's educational needs and attended his parent teacher interviews;
- (t) pursuant to Justice Margeson's decision in the Tax Court of Canada of March 14, 2005, Sandra was entitled to the CCTB and NCBS for Adam for the period subsequent to April 2003 and was the parent who primarily fulfilled the responsibility for the care and upbringing of Adam;
- (u) the 2001, 2002 and 2003 base taxation years means the months of July, 2002 to June 2003, July 2003 to June 2004 and July 2004 to June 2005, respectively;
- (v) the Appellant received CCTB benefits of \$147.37, \$2,670.84 and \$2,615.86 totaling \$5,434.07 for the months of May 2003 to April 2005 in the 2001, 2002 and 2003 base taxation years, as detailed in Schedule A attached to and forming part of the Reply to the Notice of Appeal (hereinafter "Schedule A");
- (w) the Appellant was not entitled to receive CCT benefits for the 2001, 2002 and 2003 base taxation years, as detailed in Schedule A; and
- (x) the Appellant was in receipt of a CCTB overpayment of \$5,434.07 for the months of May 2003 to April 2005 in the 2001, 2002 and 2003 base taxation years, as detailed in Schedule A.

[3] As is evident from the assumption in paragraph 16(t) of the Reply to the Notice of Appeal, this is the second time the Court has considered whether the Appellant or his ex-spouse, Sandra Scott, is entitled to the CTB for much of the same period. In the Scott appeal, Margeson, J., without giving reasons, held that Ms. Scott was entitled to the CTB and the Minister redetermined the Appellant's entitlement accordingly. It is from that redetermination that the Appellant now appeals. In these circumstances, it seems to me that it would have been appropriate (indeed, desirable) for the Minister to have sought, under section 174 of the *Income Tax Act*, to join the Appellant as a party to Ms. Scott's appeal.<sup>1</sup> Had this been done, two unfortunate results could have been avoided: the family would not have had to go through

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<sup>1</sup> I note for the record that counsel for the Respondent in the present matter was not counsel on Ms. Scott's appeal.

judicial proceedings a second time in respect of the same period on the same issue, and the Court would not have been put in the embarrassing position of hearing what is, in effect, a kind of appeal of the decision in the first proceeding.

[4] In any event, at the hearing of the present matter, the Appellant testified on his own behalf and called his son, Adam as a witness. Ms. Scott was subpoenaed by the Crown. Having listened carefully to all three, I am satisfied that each parent was contributing fully, in the context of a joint custody order, to the care and upbringing of their son. The situation was made more difficult by the fact that Ms. Scott lived in Saskatoon while the Appellant was living about an hour away in the community of Bruno, Saskatchewan. Adam, who was just going into his teens during the relevant time, chose to live with his father to continue his schooling and sports activities with his friends in Bruno. Meanwhile, Ms. Scott had to move to Saskatoon to improve her chances at earning a living. Adam spent almost all weekends with his mother in the city. Both parents provided Adam with a room in their respective homes. Notwithstanding the distance between residences, each saw to and provided for their son's nutritional, health, recreational, educational and emotional needs according to their means and availability. Though not relevant to the determination of CTB entitlement, I note there was no suggestion in the evidence before me that the payments received by either Ms. Scott or the Appellant were used for purposes other than Adam's care and upbringing.

[5] The *Act* does not permit either the officials administering the CTB program or the Court hearing the appeal to impose a shared distribution of the CTB. Having to go through judicial proceedings to establish a parent's entitlement to the CTB is a costly and traumatic exercise for families that are already financially and emotionally fragile following the marriage breakdown. I am mindful that it is the duty of Parliament to write the law and that mine is to apply it as written. I cannot help but wonder aloud, however, if the legislation's purpose of providing financial assistance to children in need might be better served if the *Act* imposed a statutory presumption of an equal sharing of the CTB between parents with joint custody of their children, subject to a parent's satisfying the Court that such a sharing was inappropriate in the circumstances. What the answer to this question may be, however, is for others to determine.

[6] In the present case, I am satisfied that the Appellant has successfully made his case that he was the "eligible individual" for the months of May 2003 to April 2005 of the 2001, 2002 and 2003 base taxation years. The appeal is allowed and the redetermination is referred back to the Minister of National Revenue for

reconsideration and reassessment, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 25th day of July 2007.

“G.A. Sheridan”

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Sheridan J.

CITATION: 2007TCC430

COURT FILE NO.: 2006-3220(IT)I

STYLE OF CAUSE: CHRISTOPHER A. STREITENBERGER  
AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Saskatoon, Saskatchewan

DATE OF HEARING: April 10, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice G.A. Sheridan

DATE OF JUDGMENT: July 25, 2007

APPEARANCES:

For the Appellant:	The Appellant himself
For the Respondent:	Sharlene Telles-Langdon

COUNSEL OF RECORD:

For the Appellant:

Name:	
Firm:	

For the Respondent:

John H. Sims, Q.C. Deputy Attorney General of Canada Ottawa, Canada
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