

2005-2462(IT)I  
Citation: 2007TCC610

IN THE TAX COURT OF CANADA  
IN RE: THE INCOME TAX ACT

**BETWEEN:**

**DEBBIE SCOTT**

APPLICANT

- and -

**HER MAJESTY THE QUEEN**

RESPONDENT

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**HEARD BEFORE:** The Honourable Justice Diane Campbell

**PLACE HEARD:** Charlottetown, Prince Edward Island

**DATE HEARD:** Tuesday, June 26, 2007

**COUNSEL:** Ms. Debbie Scott  
Self-represented

Ms. Deanna M. Frappier  
Solicitor for the Respondent

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**THE REGISTRAR:** Ms. Patricia Cantle

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Per: Patricia Cantle, CCR

I N D E X O F P R O C E E D I N G S

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CAMPBELL, J. (ORAL REASONS).....3

1                   **CAMPBELL, J. (Orally):**     Let the record  
2 show that I am delivering oral judgment in the matter of  
3 Debbie Scott which I heard yesterday morning.

4                   In respect to the 2002 taxation year, the  
5 Appellant claimed as a deductible medical expense the  
6 amount of \$12,900.00, being the cost of tuition fees paid  
7 on behalf of her son, Matthew, to attend Rothesay  
8 Collegiate School, a private school in Saint John,  
9 New Brunswick.

10                  The Minister of National Revenue (the  
11 "Minister") reassessed the Appellant on the basis that the  
12 amount claimed was not a deductible medical expense,  
13 pursuant to paragraph 118.2(2)(e) of the *Income Tax Act*  
14 (the Act").

15                  According to the Appellant's evidence her  
16 son was diagnosed with several learning disabilities and  
17 behavioural problems when he was in Grade 3. Mrs. Scott  
18 stated that he coped well from Grades 1 through 6, but  
19 remained socially an outcast with no friends. Homework,  
20 that should take 15 minutes for any other student, would  
21 take up to two to three hours to complete at home.

22                  In Grade 7 he was subjected to a different  
23 program involving different teachers and subjects, with  
24 books kept in his locker instead of readily available to  
25 him at his desk. This new setting presented

1 organizational issues with attendant adjustment and  
2 behavioural problems. This had a domino effect because of  
3 his inability to organize himself and focus on essential  
4 school tasks which translated to suspensions of varying  
5 lengths from school. Medication was prescribed for the  
6 obsessive compulsive behaviours, but the side effects were  
7 severe.

8                   When the Appellant first heard about  
9 Rothesay Collegiate, now known as Rothesay Netherwood, she  
10 obtained feedback on this school from teachers, other  
11 parents and students, as well as Dr. Mitchell Zelman,  
12 Matthew's pediatrician. She was informed that the school  
13 had some successes with other individuals with  
14 disabilities similar to Matthew's. She investigated other  
15 schools in Prince Edward Island, but found only two  
16 private schools which had religious affiliations, that  
17 could not offer support programs for Matthew's behavioural  
18 and social issues.

19                   The Appellant's evidence was that Rothesay  
20 provided smaller class size and therefore smaller  
21 student/teacher ratios. In fact, when Matthew attended  
22 Grade 8 at Rothesay there were only seven other students  
23 in his classroom. This provided increased daily  
24 supervision. There were daily meetings with an advisor as  
25 well. Matthew was assisted both socially and academically

1 at the school. He resided in a residence where teachers  
2 were available almost constantly. His homework was  
3 supervised nightly. According to the Appellant, this  
4 environment provided the essential structure and control  
5 over his behaviour within which Matthew could progress  
6 both socially and academically.

7 Dr. Mitchell Zelman is Matthew's  
8 pediatrician. He was qualified as an expert witness. He  
9 sees approximately 20 families weekly who have children  
10 with attention deficit disorders, plus behavioural  
11 problems. When he initially diagnosed Matthew with  
12 attention deficit disorder, he also suspected other  
13 disabilities and behavioural problems. He suggested that  
14 Matthew also see the school's psychologist. In addition to  
15 the attention deficit disorder and auditory processing  
16 disorder, Matthew suffers from obsessive compulsive  
17 disorder, as well as associated behavioural issues.

18 Dr. Zelman described attention deficit  
19 disorder as basically being able to hear the information,  
20 but the inability to then understand and process it, or to  
21 know what to do with it. He stated that this presents  
22 particular problems for such individuals in the regular  
23 classroom setting but that there are schools that deal  
24 with this type of learning disability and that one such  
25 school in 2002 was Rothesay. His evidence was that he

1 discussed the possibility of Rothesay with the Appellant  
2 because he recognized that such individuals can benefit  
3 from this type of academic setting.

4           Dr. Zelman was aware that Rothesay provided  
5 a unique setting prior to his discussions with the  
6 Appellant as he had knowledge of the school's reputation  
7 from conferences he attended, discussions with other  
8 doctors and discussions with other parents who had  
9 enrolled their children there. According to his evidence  
10 it was not only the small classroom setting (which could  
11 also be offered at other private schools) but the constant  
12 tracking and monitoring of students by advisors, for  
13 example, in respect to medication trials, that was the  
14 advantage of such a school. This method facilitated  
15 continuing contact and monitoring between the outside  
16 doctor and the school advisor.

17           The third and final witness was  
18 Paul Kitchen, the head of the school at Rothesay. He  
19 referred to Rothesay as an independent school with  
20 charitable status but not a private school. He testified  
21 that Rothesay can accommodate students with a variety of,  
22 as he put it, "learning styles". He gave the example of a  
23 former student who was accommodated in writing exams where  
24 it took him up to eight hours to complete. This student  
25 is now an engineering graduate. It is not specifically a

1 specialized school for the learning disabled but he stated  
2 that the programs offered at Rothesay do help those with  
3 such issues. Teachers were not required to have  
4 specialized training to deal with individuals with  
5 learning disabilities but they are exposed to training  
6 through speakers and they are given assistance to set up  
7 better programs for such students.

8           In addition, house parents are located in  
9 each of the four residences. They are generally teachers  
10 who reside on campus. In 2002 Matthew's house parent was  
11 also a registered nurse. They all have basic medical  
12 background in first aid and emergency training. Classroom  
13 size is kept small and each student also has an assigned  
14 supervisor who is generally an older Grade 12 student.  
15 They act as a "cheerleader" and mentor to the student and  
16 meet regularly with the teachers to discuss their  
17 student's progress and to initiate and implement new plans  
18 and programs for that student.

19           And finally there was a personal homework  
20 coach for each student in residence. He explained that  
21 faculty continually, as he called it, did loops around the  
22 residence floors and rooms in the evenings to ensure that  
23 students were working on homework assignments.

24           Mr. Kitchen also testified that the school  
25 was asked by the Appellant to assist with professional

1 testing of Matthew. Ultimately this testing required a  
2 doctor's request to complete as the school would not act  
3 upon the parents' request alone. The surveys and tests  
4 required teacher participation and were completed over a  
5 six to eight week period. If I understand his evidence  
6 correctly, the testing of Matthew occurred on two separate  
7 occasions and involved approximately seven to eight  
8 teachers.

9

10 Now I turn to my analysis in this appeal.  
11 There is only one issue to be decided and that is whether  
12 the Appellant is entitled to claim as a deduction a  
13 medical expense, being the cost of the tuition paid to  
14 Rothesay in 2002, pursuant to paragraph 118.2(2)(e) of the  
15 Act. That paragraph states the following, and I quote:

16 "For the purposes of subsection (1), a  
17 medical expense of an individual is an  
18 amount paid

19

...

20 (e) for the care, or the care and  
21 training, at a school, institution or  
22 other place of the patient, who has  
23 been certified by an appropriately  
24 qualified person to be a person who,  
25 by reason of a physical or mental



1 handicap requires the equipment,  
2 facilities or personnel specially  
3 provided by that school, institution  
4 or other place for the care, or the  
5 care and training, of individuals  
6 suffering from the handicap suffered  
7 by the patient;"

8 Respondent counsel referred me to the case  
9 of *Collins v. The Queen*, [1998] T.C.J. No. 396, where at  
10 paragraph 20 the Court set out the four criteria to be met  
11 under this provision. Respondent counsel advised me that  
12 only the third and fourth factors were at issue and I  
13 therefore conclude that the implication is that the  
14 Appellant satisfied the first two requirements. That is,  
15 she had paid an amount for the care or care and training  
16 at the school and that Matthew does, indeed, suffer from a  
17 mental handicap.

18 The third criteria states and I quote from  
19 that case:

20 "The school ... must specially provide to the  
21 patient suffering from the handicap, equipment,  
22 facilities or personnel for the care or care and  
23 training of other persons suffering from the same  
24 handicap".

1                    Respondent            counsel            argued            that  
2 Mr. Kitchen's evidence supported that Rothesay did not  
3 provide special training to its staff to deal with  
4 students with learning disabilities and that it did not  
5 provide facilities or programs specific to their needs  
6 other than the same programs it provided to every other  
7 student.

8                    I            disagree            with            the            Respondent's  
9 interpretation of Mr. Kitchen's evidence. Rothesay was a  
10 school that did not happen to enrol Matthew by accident.  
11 They were aware of his special needs and in fact, Rothesay  
12 was set up to accommodate such students, as Mr. Kitchen  
13 put it and I quote "with different learning styles". His  
14 evidence was that Rothesay was not a school exclusively  
15 for the learning disabled but the school's programs were  
16 able to adapt to and accommodate such individuals and in  
17 the end Rothesay had a track record of assisting them. As  
18 Dr. Zelman put it and I quote, "Rothesay had a history of  
19 dealing with them very nicely". To the school's credit  
20 their philosophy of students committing to do their best  
21 within their capabilities encouraged the more challenged  
22 students to integrate with the academically gifted  
23 students. This was clearly exhibited in the student  
24 mentor program where older students acted as cheerleaders.  
25 Although the programs were not specifically designed for

1 students such as Matthew, they were progressive and  
2 forward enough thinking that they could accommodate those  
3 with attention deficit disorder and those struggling with  
4 other learning and organizational disabilities.

5           According to Mr. Kitchen's evidence and the  
6 examples of the past successes within the school, students  
7 evolve academically and socially within their own set of  
8 limitations. This was particularly true for Matthew, who  
9 according to his mother, was given the essential  
10 structure, discipline and guidance to progress to the  
11 point both socially and academically, where he has just  
12 recently as of yesterday, graduated from Grade 12.

13           According to Mr. Kitchen's evidence there  
14 was continuous monitoring of Matthew's homework, his  
15 progress, new programs were created and implemented for  
16 him through consultation between his teachers and  
17 individual advisor and finally, testing, specifically  
18 tailored to Matthew, was completed by teachers under the  
19 guidance of Matthew's outside physician. As Mr. Kitchen  
20 stated, this testing involved and I quote "an incredible  
21 number of hours" and Mr. Kitchen's evidence indicated that  
22 Matthew was not the only student for whom they had  
23 completed testing for an outside physician.

24           In addition, the staff did receive some  
25 training through speakers and seminars which Mr. Kitchen

1 likened to professional development. He did not provide  
2 me with a great deal of specifics but I am satisfied that  
3 the staff did receive training in order to be in a  
4 position to deal with special needs students that Rothesay  
5 was in the habit of accepting into its programs.

6           Certainly the school took charge of this  
7 young boy and provided care to him in a residence setting  
8 on a 24/7 basis over the academic school year. Teachers  
9 lived in the residences and the evidence supports that  
10 such students were given a great deal of individual  
11 attention and monitoring.

12           Although the programs were not specifically  
13 designed for special needs students, they were certainly  
14 capable of successfully adapting to their needs. It was  
15 unclear from the evidence why or just how these programs  
16 are successful at accommodating all types of students but  
17 successful they are. It may be a combination of the daily  
18 structured aspect, the constant supervision and  
19 involvement of older students as well as staff with the  
20 students and the philosophy of the school of working under  
21 the guidance of outside physicians. The school had a  
22 reputation for taking on the challenge of these students  
23 where the regular school system had failed them.

24           I am satisfied therefore that Rothesay  
25 provided Matthew with the facilities, programs and

1 personnel for both his care and training requirements as  
2 well as the care and training of persons suffering from  
3 similar mental handicaps.

4                   The fourth requirement, which the  
5 Respondent counsel contends has not been satisfied, states  
6 as follows and I quote again from the *Collins* case:

7                   "An appropriately qualified person must certify  
8                   the mental or physical handicap is the reason  
9                   the patient requires that the school specially  
10                  provide the equipment, facilities or personnel  
11                  for the care or the care and training of  
12                  individuals suffering from the same handicap."

13                  The issue here is whether Dr. Zelman  
14 certified Matthew as requiring the special training  
15 offered at Rothesay. There is no requirement under  
16 paragraph 118.2(2)(e) that this certification be in  
17 writing or any other special format. In fact, I had the  
18 benefit of hearing Dr. Zelman's evidence rather than  
19 reading a form he completed and submitted into evidence or  
20 a brief letter he composed in the run of a busy day. I  
21 had the unique benefit of having Dr. Zelman before me. In  
22 addition, the Appellant offered Dr. Zelman as an expert  
23 witness in the area of pediatrics and learning  
24 disabilities and with the consent of Respondent counsel he  
25 was accepted as such.

1           Dr. Zelman had prior knowledge of Rothesay  
2 as a destination for individuals with learning and  
3 behavioural problems. His knowledge was gained at medical  
4 conferences and from discussions with other doctors and  
5 parents. It is clear from his evidence that he endorsed  
6 Rothesay as an appropriate learning centre with the  
7 capabilities to adequately address and assist with  
8 Matthew's problems and mental handicaps.

9           He confirmed his diagnosis of attention  
10 deficit disorder and associated behavioural issues and  
11 according to his expert testimony he considered that  
12 Matthew could benefit from this type of structured  
13 setting. He stated that Rothesay had a reputation in the  
14 medical community for assisting and dealing with  
15 individuals with learning disabilities and on this basis  
16 he recommended it to the Appellant.

17           In this vein, I believe he was certifying  
18 or representing this school to the Appellant or vouching  
19 that this school could benefit Matthew based on the  
20 school's track record in the medical community. Of  
21 course, I do not believe he could guarantee it as an  
22 absolute cure all to the Appellant any more than he could  
23 recommend another program at another school or medication  
24 that would guarantee a resolution to Matthew's issues.

25           I believe we have to be practical here. I

1 do not believe the provision was meant to be interpreted  
2 as restrictively as Respondent counsel perhaps submits.  
3 If it were, there would be very few, if any, programs in  
4 any school that would fit the bill in cases such as this  
5 one so as to allow the deduction.

6           Contrary to submissions that allowing the  
7 appeal may open the floodgates to others, I believe that  
8 each case must be decided on its merits as attention  
9 deficit disorders are not all alike in severity and not  
10 all of them may necessarily constitute and qualify as a  
11 medical handicap.

12           In any event, I am simply concerned with  
13 this appeal and the facts in this appeal. I am satisfied  
14 that this fourth criteria has also been met. I accept the  
15 expert evidence of Dr. Zelman and conclude that his  
16 recommendation of Rothesay to the Appellant qualified as  
17 his certification of the school as a positive potential  
18 for assisting in, not curing, Matthew's disabilities to  
19 enable him to develop the social and academic skills to  
20 be, as Mr. Kitchen stated, the best he can be within those  
21 limitations.

22           Accordingly, the appeal is allowed to  
23 entitle Mrs. Scott, the Appellant, to claim the cost of  
24 the tuition fees paid to Rothesay in the 2002 taxation  
25 year pursuant to paragraph 118.2(2)(e) of the Act.

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(MATTER CONCLUDES)



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CERTIFICATE OF COURT TRANSCRIBER

We, Philomena Drake and Sandy Adam, Court Transcriber, hereby certify that I have transcribed the foregoing and that it is a true and accurate transcript of the evidence in this matter, **Debbie Scott**, (Appellant) v. **Her Majesty The Queen** (Respondent), taken by way of electronic recording.

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Philomena Drake, 2006-18  
Sandy Adam, 2006-34  
Certified Court Reporters

Halifax, Nova Scotia  
Friday, October 12, 2007

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STYLE OF CAUSE: Debbie Scott and  
Her Majesty the Queen

PLACE OF HEARING: Charlottetown, Prince Edward Island

DATE OF HEARING: June 25, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice Diane Campbell

DATE OF ORAL JUDGMENT: June 26, 2007

APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Deanna M. Frappier

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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