

Citation: 2004TCC546  
Date: 20040812  
Docket: 2003-3283(IT)I

BETWEEN:

BRUCE I. PHINNEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

**REASONS FOR JUDGMENT**  
**(delivered orally from the Bench at**  
**Moncton, New Brunswick on July 22, 2004)**

**Woods J.**

[1] This is an appeal in respect of a disallowance of the disability tax credit for the 2001 taxation year.

[2] The appellant, Bruce Phinney, resides in Sackville, New Brunswick, and has worked as a general labourer at Mount Allison University for over 20 years. He has coped with a number of medical conditions, the most severe being that he was born without a right hand and fingers. This disability has made it difficult finding well paying work and Mr. Phinney lives below the poverty line.

[3] Mr. Phinney was denied the disability tax credit for the first time for the 2001 taxation year and he became aware that 58,000 Canadians were similarly denied the credit around the same time. He has taken this appeal because he believes that it is unjust for the credit to be taken away from so many deserving people. He indicated that he has been financially assisted by the credit for several years and that it has helped him in working towards a degree in commerce. He has one more year before his degree and indicated that the 2001 reassessment has really set him back in reaching this goal.

[4] It is with regret that I must tell Mr. Phinney that I am not able to allow his appeal. The Tax Court is only able to decide appeals based on the legislation passed by Parliament. In this case the legislation is restrictive. In order to qualify for the credit, an individual must suffer from one of the disabilities listed in the legislation. Mr. Phinney's disabilities, even though severe, are not among the items listed in the legislation. Mr. Phinney agrees with this, as does his doctor who filled out the certificate.

[5] In these circumstances, Mr. Phinney has not satisfied the criteria that Parliament has set out in sections 118.3 and 118.4 to qualify for the credit and I have no ability to allow the appeal in these circumstances.

[6] That is sufficient to dispose of this matter but before closing I would note two things. First Mr. Phinney indicated that the credit was disallowed for the first time in 2001 and that the reassessment has greatly increased his financial burden and set back his ability to complete his final year of his commerce degree. I am not able to provide relief for this but there is a procedure that Mr. Phinney may wish to pursue to try to obtain a waiver of any interest was payable in respect of the reassessment. That procedure is under the so called fairness provisions and it requires an application to the Canada Revenue Agency. Counsel for the Crown may be able to assist with providing the necessary contact information.

[7] Secondly, Mr. Phinney indicated that he was taking this appeal because of the 58,000 people who have had the disability tax credit denied. He has been a capable advocate for this cause today. His view is that the disability tax credit should apply to people, like himself, who suffer financially because of a disability. It is a matter for Parliament to consider whether the law should be changed. Counsel for the Crown suggested that there were groups that are advocating for a legislative change. Mr. Phinney may wish to consider getting in contact with one of these groups.

[8] Unfortunately, however, the appeal for the 2001 taxation year must be dismissed.

Signed at Toronto, Ontario, this 12th day of August, 2004.

"J.M. Woods"

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J.M. Woods J.

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STYLE OF CAUSE: Bruce I. Phinney v. The Queen  
PLACE OF HEARING: Moncton, New Brunswick  
DATE OF HEARING: July 22, 2004  
REASONS FOR JUDGMENT BY: The Honourable Justice J.M. Woods  
DATE OF REASONS FOR JUDGMENT: August 12, 2004

APPEARANCES:

For the Appellant: The Appellant himself  
Counsel for the Respondent: Caitlin Ward and Katherine McIntyre

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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