Docket: 2006-2016(IT)G

BETWEEN:

PETER MUDRY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on January 21, 2008 at Windsor, Ontario

Before: The Honourable Justice E. P. Rossiter

Appearances:

Counsel for the Appellant: Arthur M. Barat

Counsel for the Respondent: Frédéric Morand

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2004 taxation year is allowed and the reassessment 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 20th day of March, 2008.

"E. P. Rossiter"

Rossiter, J.

Citation: 2008TCC160
Date: 20080320
Docket: 2006-2016(IT)G

BETWEEN:

PETER MUDRY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Rossiter, J.

Background

[1] The Appellant received medical services at the Institute of Integrative Medicine in New York and New Jersey, United States ("Institute"), administered under the supervision and direction of a medical doctor. The Appellant received similar medical services at the Toronto Clinic for Preventative Medicine ("Clinic"), under the supervision and direction of medical doctors but administered by nurses. Payments were made by the Appellant to the Institute and the Clinic respectively for these services. Neither the Institute nor the Clinic was a private or public hospital but were facilities with medical doctors and nurses on staff. The Appellant sought to claim medical expense credits for the payment of these medical services, but the Canada Revenue Agency (“CRA”) denied the claim since the payments were not made to a medical practitioner as required under paragraph 118.2(2)(*a*) of the *Income Tax Act* ("*Act*").

Facts

[2] The Appellant is an 85 year old retired school teacher and principal. The Appellant suffered a massive heart attack in 2004 and shortly thereafter suffered a stroke. After hospitalization his situation seemed to stabilize. He sought advice from the Clinic on Chelation Therapy. The Clinic would not provide treatment due to the extent of the Appellant’s condition and he was referred to an expert in

Chelation Therapy, Dr. Majid Ali at the Institute. The Appellant travelled to New York and New Jersey where he received Chelation Therapy treatments at the Institute under the supervision and direction of Dr. Ali, a medical doctor and licensed physician in the States of New York and New Jersey. The Appellant incurred $5,457.78 in expenses for the Chelation Therapy treatments in New York and New Jersey, $2,138.51 being for the therapy treatments and the balance for travel, lodging and meals associated with his trips to and from New York and New Jersey.

[3] Upon recommendation of Dr. Ali, the Appellant continued Chelation Therapy treatments at the Clinic, which were administered by registered nurses under the authorization and at the direction of Dr. Bryn Waern and Dr. Louis Spencer. Both Dr. Waern and Dr. Spencer are medical practitioners providing consulting services to the Clinic in conjunction with Dr. Ali. According to the Appellant's daughter's testimony, Chelation treatment at the Clinic typically would involve a registered nurse taking the Appellant's temperature, blood pressure, the doctor checking his chart, and the nurse inserting the IV for the treatment flow. Dr. Waern and Dr. Spencer were always involved giving directions with respect to the treatments. The Appellant incurred $21,136.13 in expenses for the Chelation Therapy treatments received at the Clinic; $14,673.85 for the therapy treatments and the balance for travel, lodging and meals associated with trips to and from Toronto.

[4] Based on the letters from Dr. Ali dated February 23, 2006, the Appellant's family physician Dr. Thomas J. Barnard dated January 23, 2006 and Dr. Bryn Waern's letter dated February 7, 2006, it can be said the therapy was successful. The Appellant made a good recovery and some three years later was present in Court throughout the hearing of the appeal.

[5] The Institute had registered nurses, numerous medical doctors, some of whom were professors of medicine and staff providing nutritional counselling, performing research and laboratory work. The Clinic is affiliated with the Institute as noted on its website where it states in part:

> Affiliations
>
> The Toronto Clinic for Preventative Medicine has a professional affiliation with the Capital University of Integrative Medicine of Washington, D.C., and is sponsored by Dr. Majid Ali's Institute of Integrative Medicine of Denville, New Jersey. Dr. Ali acts as a consultant to the Clinic and is regularly consulted on difficult cases.

[6] Payments for the medical services provided at the Clinic or Institute by the medical doctors - Dr. Ali at the Institute and Dr. Spencer, Dr. Waern and Dr. Ali at the Clinic, were made by the Appellant or by the Appellant's daughter to the Institute or Clinic, with the Appellant reimbursing the daughter. For the 2004 taxation year the Appellant had submitted receipts to the CRA claiming the medical expenses in relation to the Chelation Therapy but these were rejected as insufficient and returned to the Appellant. The Appellant then obtained additional receipts including correspondence from the Institute dated February 23, 2006 and signed by the Office Manager, which stated in part as follows:

> The above patient attended our offices on October 6, 7 and 8, 2004 for examination and consultation with Dr. Ali as well as for several intravenous treatments and specialized medical tests.
>
> The total medical expenses for these services was $1,554.00 U.S.
>
> In addition, the above patient paid $105.00 US each for 2 follow-up telephone consultations with Dr. Ali on November 15, 2004 and March 31, 2005, for a total of $210.00 US.
>
> The grand total for the above medical expenses is $1,764.00 US.
>
> This figure is for medical expenses only and does not include any of the patient's travel or lodging expenses.

[7] The Appellant also produced a receipt for the total amount billed by the Clinic of $14,673.85 signed by Dr. Cristina Radulescu, Director of the Clinic, which identified the Appellant as the patient and Dr. Waern as the authorizing physician.

[8] Attached to the Clinic receipt was a schedule showing the date and the medical service rendered, the blood pressure and pulse of the patient at the time the service was rendered, who made the entries and the bill for each medical service by date. A Patient Medical Expense Report, which was an official prescription receipt for the medications acquired by the Clinic doing intravenous treatment of the Appellant, showed the drugs which were acquired through Dr. Waern and Dr. Spencer the consulting physicians with the Clinic. The acquisition of these drugs on the Patient Medical Expenses Report co-relates generally with the timelines for the medical services provided to the Appellant by the Clinic.

[9] For the Chelation Therapy treatments received by the Appellant at the Institute, the Respondent admits that (1) Dr. Ali is a qualified medical practitioner and appropriately licensed; (2) the treatment at the Institute was provided by and administered to the Appellant by Dr. Ali or under his supervision; (3) the Chelation Therapy treatments were received in 2004 and paid for in 2004 by the Appellant; and (4) if the Chelation Therapy treatment expenses are allowed as medical expenses, the expenses associated with the same, namely the travel would also be acceptable.

[10] The documentation given to CRA by the Appellant in relation to medical services provided at the Clinic identifies the doctors by name, Dr. Spencer and Dr. Waern who authorized the treatment, the address of the Clinic, confirms the treatment dates, the expenses by treatment date and identifies the patient. It was admitted by the Respondent that treatment was received in 2004 and paid for in 2004, and if the Chelation Therapy treatment expenses are allowed as medical expenses, the expenses associated with the same, namely travel would be accepted.

[11] According to the testimony of the CRA Litigation Officer, Denis Deloges, to establish medical expense claims, the documentation must collectively, identify the doctor, provide the address of the doctor, confirm the treatment dates, the total expense amounts and identify the patient. The documentation does not have to be signed by the doctor nor is any break-down required. This same witness further stated that it is reasonable to assume: (1) some of the monies would be paid to the doctors; (2) some would be used to pay other expenses associated with operating a medical office; and (3) these medical practitioners were in the business of providing medical services for a fee. The correspondence from the Institute dated February 23, 2006 and the receipt issued by the Clinic both meet all the documentation requirements listed by the CRA Litigation Officer, but CRA refused to grant the medical expense credit because payment was to the Institute or Clinic and not a medical practitioner and in the case of the Clinic because the medical service was not provided by a medical practitioner or nurse.

Issues

[12] (1) Does the phrase, “an amount paid to a medical practitioner…”, include an amount paid to a clinic or institute, when the clinic or institute has

the medical service provided by a medical practitioner or nurse in its employ?

(2) Were the medical services provided by the Clinic administered by a medical practitioner or nurse?

Law and Analysis

[13] Paragraph 118.2(2)(*a*) of the *Act* states in part as follows:

> (2) Medical expenses. For the purposes of subsection (1), a medical expense of an individual is an amount paid
>
> (a) [medical and dental services] – to a medical practitioner, dentist or nurse or a public or licensed private hospital in respect of medical or dental services provided to a person ... . [Emphasis added].

There is no issue here as to whether or not the medical services were provided by a public or licensed private hospital as the Institute and Clinic were neither. Also based on the evidence presented at trial it has been established that the medical services received at the Clinic were administered by a nurse under the direction of a medical practitioner.

[14] In this appeal we are concerned with amounts paid by the Appellant to the Institute or Clinic for medical services provided by a medical practitioner or nurse in the employ of the Institution or Clinic. The Respondent asserts that this section must be read strictly and literally - medical expense is an amount that must be paid to a medical practitioner, dentist or nurse and no-one else - insisting that the payment be made "directly" to a medical practitioner. The Respondent goes so far as to say that the payment for the medical services cannot be paid to a corporation, a proprietorship, a partnership, a clinic or an institute even though the medical service was provided by a medical practitioner or nurse in the employ of a corporation, proprietorship, partnership, clinic or institute.

[15] I believe there is an ambiguity in paragraph 118.2(2)(*a*) as the *Act* fails to stipulate whether the payment must be made directly to a medical practitioner or if it may be made indirectly. The Respondent, on behalf of CRA, states the payment must be made directly but why would the Crown read this word into the *Act* any more so than to read the word "indirectly" into the *Act*?

[16] I take judicial notice of the fact, that in today's society, it is a rarity that any person pays for medical services directly to a medical practitioner – the payment

almost always go to a professional corporation, clinic, health centre, medical centre, health group, health or medical institute, partnership, or business name where the medical practitioner is an employee, the operator or in a consultative role. Medical services are performed in a variety of business environments, in a variety of physical settings from out of his/her home to large franchise clinics or institutes with multiple offices and qualified personnel in many jurisdictions. Being a business it operates in a fashion which best suits its business objectives, whether it be for marketing, tax planning or business development.

[17] In interpreting statutes, the textual, contextual, purposive (TCP) approach was set out in *The Queen v. Canada Trustco Mortgage Co.*, 2005 SCC 54, at paragraphs 10 and 11 where the Supreme Court of Canada states the following:

> It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804 (S.C.C.), at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.
>
> As a result of the Duke of Westminster principle (*Commissioners of Inland Revenue v. Duke of Westminster*, [1936] A.C. 1 (U.K. H.L.)) that taxpayers are entitled to arrange their affairs to minimize the amount of tax payable, Canadian tax legislation received a strict interpretation in an era of more literal statutory interpretation than the present. There is no doubt today that all statutes, including the Income Tax Act, must be interpreted in a textual, contextual and purposive way. However, the particularity and detail of many tax provisions have often led to an emphasis on textual interpretation. Where Parliament has specified precisely what conditions must be satisfied to achieve a particular result, it is reasonable to assume that Parliament intended that taxpayers would rely on such provisions to achieve the result they prescribe.

[18] The application of the TCP analysis was clarified in the *Ontario (Minister of Finance) v. Placer Dome Canada Limited*, 2006 SCC 20, in which LeBel J. stated the following at paragraphs 21 to 24:

> In *Stubart Investments Ltd. v. The Queen*, [1984] 1 S.C.R. 536 (S.C.C.), this Court rejected the strict approach to the construction of taxation statutes and held that

the modern approach applies to taxation statutes no less than it does to other statutes. That is, "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (p. 578): see *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804 (S.C.C.), at para. 50. However, because of the degree of precision and detail characteristic of many tax provisions, a greater emphasis has often been placed on textual interpretation where taxation statutes are concerned: *Canada Trustco Mortgage Co. v. Canada*, [2005] 2 S.C.R. 601, 2005 SCC 54 (S.C.C.), at para. 11. Taxpayers are entitled to rely on the clear meaning of taxation provisions in structuring their affairs. Where the words of a statute are precise and unequivocal, those words will play a dominant role in the interpretive process.

On the other hand, where the words of a statute give rise to more than one reasonable interpretation, the ordinary meaning of words will play a lesser role, and greater recourse to the context and purpose of the Act may be necessary: *Canada Trustco*, at para. 10. Moreover, as McLachlin C.J. noted at para. 47, "[e]ven where the meaning of particular provisions may not appear to be ambiguous at first glance, statutory context and purpose may reveal or resolve latent ambiguities". The Chief Justice went on to explain that in order to resolve explicit and latent ambiguities in taxation legislation, "the courts must undertake a unified textual, contextual and purposive approach to statutory interpretation".

The interpretive approach is thus informed by the level of precision and clarity with which a taxing provision is drafted. Where such a provision admits of no ambiguity in its meaning or in its application to the facts, it must simply be applied. Reference to the purpose of the provision "cannot be used to create an unexpressed exception to clear language": see P. W. Hogg, J. E. Magee and J. Li, *Principles of Canadian Income Tax Law* (5th ed. 2005), at p. 569; *Shell Canada Ltd. v. R.*, [1999] 3 S.C.R. 622 (S.C.C.). **Where, as in this case, the provision admits of more than one reasonable interpretation, greater emphasis must be placed on the context, scheme and purpose of the Act**. Thus, legislative purpose may not be used to supplant clear statutory language, but to arrive at the most plausible interpretation of an ambiguous statutory provision.

Although there is a residual presumption in favour of the taxpayer, it is residual only and applies in the exceptional case where application of the ordinary principles of interpretation does not resolve the issue: *Notre-Dame de Bon-Secours*, at p. 19. Any doubt about the meaning of a taxation statute must be reasonable, and no recourse to the presumption lies unless the usual rules of interpretation have been applied, to no avail, in an attempt to discern the meaning of the provision at issue. In my view, the residual presumption does not assist PDC in the present case because the ambiguity in the *Mining Tax Act* can be resolved through the application of the ordinary principles of statutory interpretation. [Emphasis added].

[19] I believe the words of paragraph 118.2(2)(*a*) can support more than one reasonable meaning – the payment by the taxpayer might have to be made "directly" to a medical practitioner, on the other hand it may be made indirectly to a medical practitioner i.e. where the medical practitioner is in the employ of another or uses some entity name, so long as the medical service is provided by a medical practitioner. By application of the TCP approach the ordinary meaning of that paragraph plays a lesser role. I must look to the context and purpose in the interpretation process so as to find harmony with the *Act* as a whole.

[20] The medical expense credit is for payment of a medical service provided. What purpose would be served within the taxation scheme if it was required that the payment for a medical expense be made directly to a medical practitioner as opposed to the professional corporation, partnership or employer of the medical practitioner providing the service? It is: (1) the provision of medical service; (2) by one of several enumerated persons in subsection 118.2(2), i.e. medical practitioner, nurse, et cetera, that is important. A medical service is no less a medical service because it is paid for to some entity not defined in the *Act* when it is the qualification of the person providing the service that is important. Obviously, it was the intent of Parliament to give financial relief to taxpayers who incur medical expenses, for medical services provided by certain enumerated professionals, whom Parliament felt could provide such required services.

[21] The position of the Respondent does not take into consideration the facts of which I took judicial notice of and which are very prevalent in society today. Medical services provided by a medical practitioner or someone enumerated in paragraph 118.2(2)(*a*) of the *Act* should be suffice to qualify as a medical expense credit.

[22] Also, CRA realized the absurdity that would result from requiring a taxpayer to pay medical practitioners directly for medical services received, in its Interpretation Bulletin IT 519R2 ("IT").

[23] The CRA's published IT provides their administrative policy in respect of the application of the medical expense credit. My understanding of interpretation bulletins is that they are to advise the public as to a position CRA would take with respect to a particular issue, in this case medical expense credit. At paragraph 20 of the IT, CRA establishes, in part, as to what payments will be eligible for the medical expense credit, and which reads as follows:

> 20. Payments made to partnerships, societies and associations for medical services rendered by their employees or partners are qualifying medical expenses as long as the person who provided the service is a medical practitioner, dentist or nurse authorized to practice in accordance with the laws discussed in paragraph 3(a) to (c) above. For example, the Arthritis Society employs physiotherapists to provide medical services to persons suffering from arthritis and rheumatism. Payments made to that society for the services of such employees are qualifying medical expenses. Other similar organizations are the Victorian Order of Nurses and The Canadian Red Cross Society Home Maker Services. Payments qualify only to the extent that they are for the period when the patient is at home. Payments for a period when the nurse is simply looking after a home and children when the patient is in hospital or otherwise away from home do not qualify since these would be personal or living expenses. In some instances, such as that of the Canadian Mothercraft Society, the visiting worker instead of the society may give the receipts but, if the worker can be regarded as a practical nurse, those receipts will be accepted. [Emphasis added].

The disallowance of the Appellant's medical expense credits because cheques were made payable to an institute or clinic, is in contradiction of CRA's position enunciated in the IT.

[24] The IT makes reference to payments being made to societies, associations or partnerships, but provides no guidance as to what constitutes these structures and if either the Clinic or Institute fall within the purview of one of these entities. Neither the IT nor the *Act* defines these terms and as such reliance is placed on jurisprudence in other areas of law.

[25] In *R. v. AFC Soccer*, 2004 MBCA 73, 2004 CarswellMan 212, 32 C.P.R. (4th) 53, Steel J.A. defined a "society" in the context of determining whether AFC Soccer was capable in law of being subject to prosecution stemming from copyright infringement, the following was stated at paragraph 9:

> A business name is obviously not a public body or body corporate. Nor is it a society or company. A "company" is defined in Black's Law Dictionary, 6th ed., as a "[u]nion or association of persons for carrying on a commercial or industrial enterprise; a partnership, corporation, association, joint stock company**". A "society" is defined in that same dictionary as:**
>
> > **An association or company of persons (generally unincorporated) united together by mutual consent, in order to deliberate, determine, and act jointly for some common purpose.** [Emphasis added].

[26] The concept of an “association” was discussed in *Archibald v. Canada (Wheat Board)*, (1997), 44 C.R.R. (2d) 105 (Fed. T.D.), by Muldoon J., at paragraph 58 and 59, in which it was being decided whether parts of the *Canadian Wheat Board Act* were unconstitutional, the court stated the following:

> Freedom of association has everything to do with the meaning of "association". In The Oxford English Dictionary, 2nd ed. 1989, Clarendon Press, the first and **paramount definition of "association", 1.a, is "The action of combining together for a common purpose; the condition of such combination; confederation, league."** It is obvious that the reference is to a confederation of persons, not things. In the 1985 update Le Petit Robert, dictionnaire de la langue française, Paris, the first and third definitions convey the same thought: "1o Action d'associer qqn à qqch. V. Participation, collaboration, coopération * * * 3o Groupement de personnes qui s'unissent en vue d'un but déterminé. * * * "Le but de toute association politique est la conservation des droits naturels et imprescriptibles de l'homme"." Again, the joint combining of people, not things, for a determined objective.
>
> Both official languages have the same derivation of "association" **in the Latin language: associare, "To join (to), associate (with)", and even more basic: societas: "1. The fact or condition of being associated for a common purpose, partnership * * * 2. A body of persons associated for a common purpose. * * * 3. Partnership (between peoples or sovereigns) in war, etc., alliances". (Oxford Latin Dictionary, combined ed. 1985, Oxford University Press.)** Broad, ancestral definitions can lead one in many diverse directions, but here the point is that the kind of association whose freedom is guaranteed by the Charter, means an association of people, and not just people's things, chattels, commodities or other property. The plaintiffs' leading counsel conceded before the Court, without a shadow of doubt, that the grain which is a subject of this litigation is a commercial commodity (as is quite obvious, in any event), in fact, a thing, but not a person. Therefore Charter paragraph 2.(d) has nothing to do with different producers' grain being mixed together in rail cars, elevators and bins of any kind: grain, being inanimate and non-human, is incapable of "association" in the sense of paragraph 2.(d) of the Charter. Having their grain mixed together does not thereby push the producers into any sort of constitutional association. [Emphasis added].

[27] The *Partnerships Act*, R.S.O. 1990, c. P.5, defines partnership at section 2, which states the following:

> Partnership is the relation that subsists between persons carrying on a business in common with a view to profit, but the relation between the members of a company or association that is incorporated by or under the authority of any special or general Act in force in Ontario or elsewhere, or registered as a corporation under any such Act, is not a partnership within the meaning of this Act.

[28] In *Continental Bank Leasing Corp. v. The Queen*, [1998] S.C.J. No. 63 at paragraph 22, it was noted that the wording in section 2 of the *Partnerships Act* is common to the majority of partnership statutes which requires three essential components to establish a partnership: (1) a business, (2) carried on in common, (3) with a view to profit.

[29] There is no evidence before the Court as to what is the nature of the Institute or the Clinic, that is, whether they are a body corporate, partnership, proprietorship, society, association, and neither the *Canada Business Corporations Act* ("CBCA") nor the *Ontario Business Corporations Act* ("OBCA") provides any assistance in defining institute or clinic. Both terms are, however, defined in Webster's Ninth New Collegiate Dictionary as follows:

> **in·sti·tute** • something that is instituted: as **a** (1)**:** an elementary principle recognized as authoritative (2)*plural* **:** a collection of such principles and precepts; *especially* **:** a legal compendium **b:** an organization for the promotion of a cause **:** **ASSOCIATION** <a research *institute*> <an *institute* for the blind> **c:** an educational **institution** and especially one devoted to technical fields **d:** a usually brief intensive course of instruction on selected topics relating to a particular field <an urban studies *institute*>
>
> **clin·ic** • 1**:** a class of medical instruction in which patients are examined and discussed 2**:** a group meeting devoted to the analysis and solution of concrete problems or to the acquiring of specific skills or knowledge in a particular field <writing *clinics*> <golf *clinics*>3 **a:** a facility (as of a hospital) for diagnosis and treatment of outpatients **b:** a group practice in which several physicians work cooperatively

[30] When one looks at the letterhead of the Institute it is quite evident that the clinical and consulting staff at the Institute are associated in some form or another for a common purpose or cause, which is to provide medical services in relation to chronic immune, allergic, ecologic, nutritional, degenerative and stress related disorders. The same can be said with respect to the Clinic. Doctors Spencer, Waern and Ali are all consulting physicians at this clinic as well as others including a Dr. Cristina Radulescu.

[31] Although not law, Interpretation Bulletins issued by CRA can be used by the Courts as interpretative aids as was discussed in the Ontario Court of Appeal decision of *Placer Dome Canada Ltd. v. Ontario* (Minister of Finance), 2004 CarswellOnt 3491, 190 O.A.C. 157, where the following was noted:

[49] While prior administrative policy is not determinative of the correct interpretation of a statutory provision, such policy is entitled to appropriate consideration by the court. In my view, it goes too far to say that the task of interpretation in this case should not be affected by the Minister's policy which existed for a number of years and is directly on point. In *Will-Kare Paving & Contracting Ltd. v. R.*, [2000] 1 S.C.R. 915 (S.C.C.) at para. 66, Binnie J. stated:

> Administrative policy and interpretation are not determinative but are entitled to weight and can be an important factor in case of doubt about the meaning of legislation (citations omitted).

[50 Binnie J.'s observation in *Will-Kare* is particularly apt in a case where there is some ambiguity or lack of clarity in the legislative provision under consideration. While I have concluded that there is no ambiguity in the definition of "hedging" under the Act, the trial judge clearly came to a different conclusion. If he is right that the definition of "proceeds" under the Act produces redundancy, and therefore affects the interpretation of the definition of "hedging", then it is my view that he would and should have been assisted by the Minister's administrative policy. The policy expressly rejected the decision in *Echo Bay* upon which the trial judge's decision is largely based.

[51] One of the authorities relied upon by Binnie J. in *Will-Kare* was *Harel v. Quebec (Deputy Minister of Revenue)* (1977), [1978] 1 S.C.R. 851 (S.C.C.) where De Granpré J. stated at p. 859:

> Once again, I am not saying that the administrative inter-pretation could contradict a clear legislative text; but in a situation such as I have just outlined, this interpretation has real weight and, in case of doubt about the meaning of the legislation, becomes an important factor.

[52] In a more recent case, Sexton J.A. made a similar point in *Silicon Graphics Ltd. v. R.* (2002), [2003] 1 F.C. 447 (Fed. C.A.) at para. 52:

> Of course, statements by Revenue Canada officials are not declarative of the law. However, in the recent case of *Canadian Occidental U.S. Petroleum Corp. v. Canada* (2001), 2001 D.T.C. 295 (T.C.C.), Bowman A.C.J. noted that while the administrative position of Revenue Canada is not declarative of the law, it is nonetheless of assistance in circumstances where the Minister seeks to reassess the taxpayer in a manner inconsistent with its own administrative position. Associate Chief Justice Bowman wrote, at paragraph 30:
>
> > The Court is not bound by departmental practice although it is not uncommon to look at it if it can be of any assistance in resolving a doubt: *Nowegijick v. The Queen et al.*, 83 D.T.C. 5041 at 5044. **I might add as a corollary to this that departmental practice may be of**

> **assistance in resolving a doubt in favour of a taxpayer. There can be no justification for using it as a means of resolving a doubt in favour of the very department that formulated the practice** (emphasis added).

[32] As noted by Chief Justice Bowman, Interpretation Bulletins can, nonetheless, be of assistance in circumstances when the Minister seeks to reassess the taxpayer in the manner inconsistent with his own administrative position, which is the situation in the case at bar. The Minister is disallowing medical expenses in circumstances which are inconsistent with its own administrative position as stated in its own IT. The application of the IT in this particular case assists in resolving doubt in favour of the taxpayer.

[33] Given the interpretation set out in the IT, definitions referred to above, the facts which I took judicial notice of and the other facts of this case, I find that the Clinic and Institute fall within the definitions of society or associations, as contemplated by the IT. The Clinic or Institute could have been business names used by the medical practitioners for business purposes, whether it be marketing, tax purposes, profile purposes, or bringing together a variety of professionals to provide medical services and as such, when payments are made to the Clinic or the Institute they are being made to the medical practitioner who provided the medical services.

[34] The Court should give a most equitable and broad interpretation as possible to subsection 118.2(2) in dealing specifically with medical expenses. I refer to *Johnston v. R.*, 98 DTC 6169 wherein Mr. Justice Létourneau, speaking on behalf of the Federal Court of Appeal, stated in part as follows at paragraphs 10 and 11:

> [10] The purpose of sections 118.3 and 118.4 is not to indemnify a person who suffers from a severe and prolonged mental or physical impairment, but to financially assist him or her in bearing the additional costs of living and working generated by the impaiment. As Bowman T.C.J. wrote in *Radage v. R.* at p. 2528:
>
> > The legislative intent appears to be to provide a modest relief to persons who fall within a relatively restricted category of markedly physically or mentally impaired persons. The intent is neither to give the credit to every one who suffers from a disability nor to erect a hurdle that is impossible for virtually every disabled person to surmount. It obviously recognizes that disabled persons need such tax relief and it is intended to be of benefit to such persons.
>
> The learned Judge went on to add, at p. 2529, and I agree with him:

> If the object of Parliament, which is to give to disabled persons a measure of relief that will to some degree alleviate the increased difficulties under which their impairment forces them to live, is to be achieved the provisions must be given a humane and compassionate construction.
>
> [11] Indeed, although the scope of these provisions is limited in their application to severely impaired persons, they must not be interpreted so restrictively as to negate or compromise the legislative intent.

[35] I believe the interpretation taken by the Respondent in this particular matter is so restrictive as to negate or compromise the legislative intent. I believe the objective of Parliament was to give to taxpayers, who have incurred medical expenses, for medical services provided by a medical practitioner, some measure of relief that will to some degree alleviate increased financial burden which they have incurred as a result of the medical expense. The restrictive interpretation taken by the Respondent does not achieve the objective of Parliament, nor is it consistent with the views of CRA enunciated it its IT.

[36] I find that the Appellant has also met all the conditions enumerated by the Respondent's own witness, the CRA Litigation Officer, as necessary to meet the requirements of paragraph 118.2(2)(*a*) of the *Act*, allowing the Appellant to receive the medical expense credit for the duration of treatments he received at the Institute and Clinic including the travel expenses put forthwith in respect to same.

[37] I thank the parties for narrowing the issues and focusing their evidence before the Court. I allow the appeal and direct that the matter be referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that:

> For the 2004 taxation year the appeal is allowed and the Appellant shall be allowed:
>
> (a) medical expenses and travel expenses in the amount of $5,457.78 in relation to Chelation Therapy treatments received by the Appellant at the Institute of Integrative Medicine;
>
> (b) medical expenses and travel expenses in the amount of $21,136.13 in relation to Chelation Therapy treatments received by the Appellant at the Toronto Clinic for Preventative Medicine;

(c) by consent, $1,139.80 for medical expenses for treatments received at the Victoria Hospital in London, Ontario;

(d) by consent, $138.50 for parking expenses for various medical facilities at which the above medical expenses were incurred; and

(e) by consent, a rollover under subsection 60(l) of the *Act*, of Scotiabank RRSP number 2398197**,** plan number 009543158 in the amount of $16,745.63 from the RIF of the Appellant's deceased wife to the Appellant in the 2004 taxation year resulting in a reduction of income to the Appellant in the 2004 taxation of $16,745.63.

[38] With respect to costs under the *Tax Court of Canada Rules* (*General Procedure*), Rule 147(1), the Court has the discretionary power over the payment of costs to all parties involved in any proceeding including the amount of the allocation of those costs in determining the persons by whom they are to be paid. In exercising the above-noted discretionary, I have considered the following:

1. The result of the proceedings - The Appellant has been successful in these proceedings and the Respondent unsuccessful with the appeal being allowed.

2. Amounts in issue - Although the amounts in issue are not huge, they are certainly of significance to this 85 year old taxpayer.

3. Importance of the issues - These issues are not only significant to the taxpayer but most certainly of significance to the public in general. The taxpaying public would on a regular basis incur medical expenses as a result of paying for medical services provided by medical practitioners - this issue is very important to the taxpaying public at large given the ambiguity in the section in question.

4. Offers of settlement made in writing - I have confirmed within the Court file that there are no filed-sealed Offers of Settlement from either party, in this litigation.

5. Volume of work - Although the issue was relatively narrow and I thanked the parties for keeping the evidence focused, this file required a considerable amount of work because of the novel question before

the Court and there was little jurisprudence with respect to the interpretation of the section in question.

6. Complexity of the issue - The issue in this case was relatively complex and difficult. Interpreting statutes and trying to determine Parliamentary intent by applying textual, contextual and purposive approach in statutory interpretations is always an arduous task.

7. Conduct of any party - Both parties were very attentive to the issue and focused their case before the Court.

8. Denial or refusal of a party to make an admission – Neither party was neglectful in any fashion with respect to failure to admit anything that should have been admitted. The parties were most helpful to each other and the Court in focusing the Court on the issue at hand.

9. Improper, vexatious or unnecessary proceedings - There were no improper or vexatious steps at any stage of the proceedings that were unnecessary.

10. I feel there is one other factor which is relevant to the issue of costs. CRA took a very narrow, strict interpretation with the section in question and this is of particular concern given IT 519R2, where CRA appears to take the position which is contrary to the position they took with respect to the Appellant in this appeal.

[39] I award costs of the appeal to the Appellant and after considering the applicable Tariff, fix costs at the sum at $3,000 plus disbursements and applicable taxes.

Signed at Ottawa, Canada, this 20th day of March, 2008.

"E. P. Rossiter"

Rossiter, J.

CITATION:	2007TCC160
COURT FILE NO.:	2006-2016(IT)G
STYLE OF CAUSE:	PETER MUDRY AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Windsor, Ontario
DATE OF HEARING:	January 21, 2008
REASONS FOR JUDGMENT BY:	The Honourable Justice E. P. Rossiter
DATE OF JUDGMENT:	March 20, 2008

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