

TAX COURT OF CANADA

BETWEEN:

JOAN M. MEREDITH

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

*** * * * ***

**ORAL REASONS FOR JUDGEMENT GIVEN BY
MR. JUSTICE PARIS**

in Courts Administration Service, Courtroom No. 6A,
180 Queen Street West, Toronto, Ontario,
on Thursday, October 20, 2005

*** * * * ***

APPEARANCES:

Ms. Joan M. Meredith

for the Appellant

Mr. Eric Scherbert

for the Respondent

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1 Toronto, Ontario

2 --- Upon commencing on Thursday, October 20, 2005.

3 THE REGISTRAR: This sitting of
4 the Tax Court of Canada is resumed for judgment on
5 file number 2002-3761(IT)G.

6 The appellant Joan M. Meredith is
7 present and represents herself and the respondent
8 is represented by Eric Scherbert.

9 JUSTICE PARIS: Thank you.

10 Ms. Meredith is appealing the
11 disallowance of a portion of the amount she claimed
12 as a medical expense tax credit in her 2000
13 taxation year.

14 The disallowed portion relates to
15 the costs Ms. Meredith incurred in the purchase of
16 a condominium that was adapted for persons with
17 mobility limitations.

18 Ms. Meredith was involved in a car
19 accident in 1995, which left her with spinal cord
20 and head injuries. As a result, she is confined to
21 a wheelchair and has developed Parkinson's disease.

22 She has been unable to work since
23 the accident.

24

25 Prior to August 14, 2000,

1 Ms. Meredith resided in a condominium at
2 2655 Windwood Drive in Mississauga. That
3 condominium was not wheelchair accessible.

4 There was no ramp to permit
5 Ms. Meredith access to and egress from the building
6 without assistance. Similarly, she was not able to
7 open the front door herself. The hallways were
8 narrow and the interior of her unit was not
9 designed to allow movement in a wheelchair.

10 She said she was unable to see out
11 the windows. The setup of the bathroom did not
12 permit her to use it independently. The parking for
13 the unit was located in such a way that she could
14 not use the electric ramp in her van to get in and
15 out.

16 Initially, Ms. Meredith asked the
17 Strata Council of the building to put in a ramp at
18 the front entrance and to change her parking spot.

19 The Council was unwilling to do
20 so. Ms. Meredith decided to seek out a wheelchair
21 accessible residence. She said she did not want to
22 go into a nursing home.

23 She purchased a condominium that
24 was being built nearby at 35 Kingsbridge Garden
25 Circle in Mississauga. The building and unit were

1 designed for disabled persons. The front entrance
2 had access ramps and automatic doors. The public
3 spaces and hallways were wider than usual and there
4 were extra elevators provided.

5 Ms. Meredith's unit had an open
6 kitchen with lower counter surfaces, a specially
7 laid-out bathroom that she could use on her own,
8 and larger rooms to accommodate her wheelchair.

9 She has a double parking space to
10 accommodate her van and the garage doors are fully
11 automatic.

12 Ms. Meredith said that she looked
13 at other properties in the area, but nothing else
14 suited her needs. In 2000, there were no other
15 buildings like this available in her area.

16 In her 2000 tax return,
17 Ms. Meredith claimed the difference between the
18 cost of the new condominium, \$302,000, and the
19 value of her previous condominium, \$122,500, as a
20 medical expense under paragraph 118.2(2)(1.21) of
21 the *Income Tax Act*. That section reads:

22 For the purpose of subsection (1)
23 a medical expense of an individual is an amount
24 paid

25 for reasonable expenses relating

1 to the construction of the principal place of
2 residence of the patient who lacks normal physical
3 development or has a severe and prolonged mobility
4 impairment that can reasonably be considered to be
5 incremental costs incurred to enable the patient to
6 gain access to or to be mobile or functional within
7 the patient's principal place of residence.

8 Originally on her tax return
9 Ms. Meredith had broken down the amount that was
10 subsequently disallowed in the manner set out in
11 paragraph H of the Reply to Notice of Appeal filed
12 by the Respondent in this case.

13 That breakdown listed moving
14 expenses, mortgage interest, taxes and condominium
15 fees as part of her claim, along with the deposits
16 paid for the purchase of the unit.

17 However, in cross-examination
18 Ms. Meredith clarified that her claim was in fact
19 based on the difference between the cost of the new
20 condominium and the value of the previous
21 condominium at the time she purchased the former.

22 Ms. Meredith testified that she
23 arrived at the valuation of the previous residence
24 after consulting with two real estate agents.

25 For the record, I note that the

1 Minister allowed the appellant medical expenses for
2 moving to the new residence under
3 paragraph 118.2(2)(1.5) of the Act and the \$10,481
4 cost of installing certain additional upgrades to
5 the new unit pursuant to paragraph 118.2(2)(1.21).

6

7 Argument

8 The appellant argued that the
9 entire additional cost she incurred to purchase the
10 new condominium unit in excess of the value of her
11 previous unit should be allowed as a medical
12 expense because all of the conditions in paragraph
13 118.2(2)(1.21) were met.

14 She said she was a person with a
15 severe and prolonged mobility impairment, the
16 amount related to the construction of a principal
17 residence for her, and the amount was an
18 incremental cost incurred to enable her to gain
19 access to or to be mobile or functional within her
20 place of residence.

21 She said the only reason she
22 purchased the new residence was to enable her to
23 function normally and independently as possible.

24 She said that she would have
25 preferred to remain in her previous residence but

1 for the reasons already indicated had to relocate.

2 She conceded that she was not
3 entitled to any additional moving expenses beyond
4 those already allowed by the Minister.

5 Respondent's counsel contends that
6 the incremental costs referred to in
7 paragraph 118.2(2)(1.21) are costs incurred in the
8 construction of the new residence that are in
9 addition to the standard costs of construction and
10 that are specifically for design features that
11 enable the occupant to gain access to or be more
12 mobile or functional within the unit.

13 He referred to the decision of
14 this court in *Totten v. The Queen* in which Mr.
15 Justice Miller made the following statement
16 regarding the word incremental:

17 "Incremental means relating
18 to an increase, an addition
19 or augmentation."

20 This suggests to me that
21 incremental adds the element of additional cost
22 over some standard cost.

23 So by way of example, in building
24 a new home, there will always be a front doorway
25 and a range of cost for such a standard doorway.

1 The cost of building a doorway that is wider with
2 special handrails and perhaps a ramp leading up to
3 it would be additional costs or incremental costs,
4 which costs could presumably readily be identified
5 by contractors in contract to the standard doorway
6 cost. This is what I take to mean incremental.

7 Counsel concedes that there would
8 be such costs in this case but says that there is
9 insufficient evidence of what those costs are and
10 therefore that the court should dismiss the appeal.

11 The question before me therefore
12 is what construction costs of the new residence can
13 be considered incremental costs?

14 I accept the definition of the
15 word "incremental" as given by Mr. Justice Miller
16 in *Totten*, that is relating to an increase or an
17 addition or augmentation. The French text uses the
18 word "supplémentaire", which has an equivalent
19 meaning.

20 The difficulty or ambiguity in the
21 wording of the provision though lies in the fact
22 that the phrase "incremental costs" is indicative
23 that those costs are to be considered an increase
24 or addition in relation to another amount, what I
25 will call the base amount.

1 Justice Miller referred to it as
2 the standard amount. When one asks the question
3 incremental to what?, the answer is not
4 self-evident from the wording of the statute. It
5 is not clear what constitutes the base amount
6 beyond which the incremental costs can be said to
7 have been incurred.

8 Two possible answers have been
9 provided by the parties. The Respondent says that
10 the base amount would be the cost of construction
11 of the residence without the additional features.

12 This was the meaning set out by
13 Justice Miller in *Totten*.

14 The Appellant suggests that the
15 cost or value of the former residence should be
16 taken as the base amount and that the incremental
17 or additional costs referred to in
18 paragraph 118.2(2)(1.1) are any costs for
19 construction of a new residence that a taxpayer
20 must lay out beyond what he or she would realize
21 from the sale of the former residence.

22 In her case, she incurred the
23 difference between the price of her new residence
24 and the value of her old residence solely in order
25 to gain an access to and be more mobile or

1 functional in her home.

2 In my view, the interpretation
3 suggested by counsel for the Respondent is to be
4 preferred. That interpretation recognizes that not
5 all of the construction costs of a residence
6 designed for a person with mobility limitations can
7 be said to be incurred to enable the person to gain
8 access to, or to be more mobile or functional
9 within the residence.

10 It appears that the legislative
11 purpose here is to give relief for the costs of
12 necessary modifications and amenities that are
13 required in the construction of a residence for a
14 person with mobility limitations, rather than for
15 the cost of the entire construction.

16 Although Ms. Meredith is claiming
17 only the difference between the value of her old
18 residence and the cost of her new one, under the
19 interpretation of the provision that she is
20 suggesting, the entire cost of construction would
21 be deductible to a person who previously did not
22 own a home.

23 All of the costs of construction
24 would be incremental costs to a person in that
25 situation. I do not believe that to have been the

1 intention of Parliament in enacting
2 Paragraph 118.2(2)(1.21).

3 The difficulty in this case is
4 determining the amount of the incremental costs
5 incurred by Ms. Meredith for what I will refer to
6 as the accessibility features of her new residence.

7 Those features were substantial
8 and I accept that there would be a substantial cost
9 associated with them.

10 According to the evidence,
11 Ms. Meredith looked at many units in her area when
12 she decided she had to move. She said that used
13 two-bedroom condominiums were similar in size and
14 location to her new residence, but lacked the
15 accessibility features of her new condominium, and
16 they were selling for between \$210,000 and
17 \$230,000.

18 I accept that the difference in
19 price between these units and the new unit was
20 largely attributable to the additional features as
21 stated and therefore that the cost of these extra
22 features was between \$72,000 and \$92,000.

23 I accept the lower end of this
24 range as being the more likely cost given that some
25 adjustments should be made for the fact that

1 Ms. Meredith's residence was new construction and
2 the comparables to which she referred were used,
3 and a buyer of a new residence pays a certain
4 premium for new construction.

5 Therefore, on all of the evidence,
6 I find that Ms. Meredith is entitled to an
7 additional medical expense tax credit on a basis
8 that \$72,000 of the cost of her new residence
9 qualified as a medical expense under
10 Paragraph 118.2(2)(1.21) of the Act.

11 The appeal is allowed in part and
12 there will be no order as to costs

I HEREBY CERTIFY THAT I have, to the best
of my skill and ability, accurately transcribed
the foregoing interview.

Antoinette Forcione, Legal Transcriptionist