

Docket: 2009-3389(IT)I

BETWEEN:

MELANIE PIPER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on June 30, 2010, at Victoria, British Columbia

By: The Honourable Justice E.A. Bowie

Appearances:

Agent for the Appellant:

James C. Piper

Counsel for the Respondent:

Matthew W. Turnell

---

**JUDGMENT**

The appeal from the reassessment of tax made under the *Income Tax Act* for the 2006 taxation year is dismissed.

Signed at Ottawa, Canada, this 6th day of October 2010.

“E.A. Bowie”

---

Bowie J.

Citation: 2010 TCC 492  
Date: 20101006  
Docket: 2009-3389(IT)I

BETWEEN:

MELANIE PIPER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

#### **Bowie J.**

[1] During the taxation year 2006, the appellant paid \$11,600 for tuition fees and \$300 for required course materials for her daughter (whom I shall refer to as D) to attend Glenlyon Norfolk School (GNS). In filing her income tax return for 2006 she claimed a tax credit based on this amount under paragraph 118.2(2)(e) of the *Income Tax Act*<sup>1</sup> (the *Act*). The Minister of National Revenue has reassessed her to disallow that credit, and she now appeals from that reassessment.

[2] The relevant provisions of the *Act* read as follows:

118.2(1) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted the amount determined by the formula

[not reproduced]

---

<sup>1</sup> R.S. 1985 c.1 (5th supp.), as amended.

118.2(2) For the purposes of subsection 118.2(1), a medical expense of an individual is an amount paid

(a) ...

(e) for the care, or the care and training, at a school, institution or other place of the patient, who has been certified by an appropriately qualified person to be a person who, by reason of a physical or mental handicap, requires the equipment, facilities or personnel specially provided by that school, institution or other place for the care, or the care and training, of individuals suffering from the handicap suffered by the patient; ...

[3] The issue before me is whether the facts of the appellant's case meet these requirements. For the reasons that follow, I find that they do not.

[4] The appellant's husband appeared as her agent, and he was the only witness for the appellant. He described their daughter as suffering from a learning disability, specifically in relation to reading, reading comprehension and mathematics. Exhibit A-1 is a document entitled PSYCHO-EDUCATIONAL ASSESSMENT REPORT prepared in July 2006 by Dorothy Edgell, Ph.D., Registered Psychologist. Counsel for the respondent objected to the admission of this document into evidence in the absence of its author. One requirement of paragraph 118.2(2)(e) is that an appropriately qualified person must have certified that the student is one who

... by reason of a physical or mental handicap, requires the equipment, facilities, or personnel specially provided by that school ...

Dr. Edgell's status as an appropriately qualified person is not in dispute. Nor is it disputed that she in fact examined D and wrote the report. Quite apart from the correctness of her opinion, the fact of certification by her is a necessary element of the test that paragraph 118.2(2)(e) establishes, and on that basis I admitted her report into evidence, notwithstanding that she was not available to be cross-examined.

[5] Mr. Piper gave evidence at some length about the difficulties that D was having in the public school system and the need for her to have some special attention in order to improve her performance. Dr. Edgell diagnosed a learning disability and recommended to the Pipers that they consider GNS, and also one other private school, as possible places where their daughter might be able to improve her performance. D was enrolled in grade 9 at GNS, where she received special attention from one teacher with whom she started and finished each school day. She was equipped with a computer and a calculator, and during spare periods was assigned to

a quiet room for studying. She also had a special education plan that was based on Dr. Edgell's report and diagnosis.

[6] The respondent called Simon Bruce-Lockhart. He is the Head of School for three GNS schools, each of which has students from junior kindergarten to grade 12. The GNS schools are a not for profit organization that takes day students, and a few boarders, in an academic program that is designed to prepare the students for university. 95% or more of the students at GNS in fact do go on to university, and one of the admission criteria is that the students are capable of coping with the academic program. He testified that D met the GNS school's ordinary admission criteria and was admitted to grade 9 on that basis, although it was known at the time of her admission that she had a learning disability.

[7] Mr. Bruce-Lockhart testified that the GNS schools do not provide a special program for students with learning disabilities, but they do admit students, like D, who have learning disabilities, and they do accommodate them within the normal school program. The school has a special education teacher with a level 2 special education certification, and the learning disability children get some one-on-one time with her. They also have a special education classroom equipped with computers. The students who require it may have extra time to write exams, and they can be assigned to a quiet room for exams, and in certain cases may have a reader. The GNS schools do not promote themselves as being a special needs school, and their program is not designed for children with learning disabilities. When D was in grade 10 she had a spare period each day and she spent that time in the learning assistance room with the learning assistance teacher. During these periods there were other students in the learning assistance room to do homework and assignments, and the learning assistance teacher spent time helping all of them.

[8] It is not necessary in this case to decide whether D's learning disability amounted to a mental handicap, as that expression is used in paragraph 118.2(2)(e). The Federal Court of Appeal has held in *Lister v. Canada*,<sup>2</sup> and again in *Canada v. Scott*,<sup>3</sup> that paragraph 118.2(2)(e) creates a purpose test, which is to say that for the taxpayer to be entitled to the credit that it provides, the expense associated with a child attending the institution must be inextricably tied to the specific needs of that child. In *Scott*, Trudel JA, speaking for herself and Desjardins and Noël JJA, said this:

---

<sup>2</sup> [2006] FCJ 1541.

<sup>3</sup> *Supra*.

The fact that some of the services offered to the general student body were beneficial to the respondent's son and other students with special needs is insufficient to bring Rothesay within the ambit of the provision under study.<sup>4</sup>

[9] Precisely the same is true of the GNS in the present case. GNS is not a school that has the education of handicapped children, or children with learning disabilities, as a dominant purpose. Mr. Bruce Lockhart in his evidence affirmed the accuracy of the following statement which appears at pages 25-6 of Exhibit R-2:

**Learning Support**

In order to thrive at GNS, all students must have the potential to succeed in our program, which has an explicit pre-university focus. However, such potential does not preclude students from experiencing difficulties with the learning process due to physical or learning disabilities. Adaptations can be made to the learning process to allow students to complete our program. All teachers will readily give extra assistance and the Learning Support Coordinator is available to coordinate and advise. In grades 6 and 7 it is possible for remedial assistance to be given as required. For students in Grades 8 to 12, parents must obtain a full psychological educational assessment from a registered educational psychologist to allow adaptations for internal exams and/or for the daily program.

In plain English, GNS is not a special school for handicapped or learning disability children. It is an academic institution that prepares its students for the rigour of a university education. It is, however, capable of accommodating those children who meet its admission standards, but have physical or learning disabilities. As such, it does not fall within the requirements of paragraph 118.2(2)(e) of the *Act*.

[10] The appeal is dismissed.

Signed at Ottawa, Canada, this 6th day of October, 2010.

“E.A. Bowie”

---

Bowie J.

---

<sup>4</sup> *Ibid.* @ para. 18.

CITATION: 2010 TCC 492

COURT FILE NO.: 2009-3389(IT)I

STYLE OF CAUSE: MELANIE PIPER and  
HER MAJESTY THE QUEEN

PLACE OF HEARING: Victoria, British Columbia

DATE OF HEARING: June 30, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice E.A. Bowie

DATE OF JUDGMENT: October 6, 2010

APPEARANCES:

Agent for the Appellant:	James C. Piper
Counsel for the Respondent:	Matthew W. Turnell

COUNSEL OF RECORD:

For the Appellant:

Name:	N/A
Firm:	N/A

For the Respondent:

Myles J. Kirvan  
Deputy Attorney General of Canada  
Ottawa, Canada