

Docket: 2020-2467(IT)I

BETWEEN:

LIN L. KEEHN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Appeal heard on December 14, 2022, at Edmonton, Alberta

Before: The Honourable Justice Bruce Russell

Appearances:

For the Appellant:                      The Appellant himself

Counsel for the Respondent:      Eliza Li

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**JUDGMENT**

The Appeal of the Appellant’s February 27, 2020 reassessment of his 2018 taxation year is dismissed, without costs.

Signed at Halifax, Nova Scotia, this 6th day of January 2023.

“B. Russell”

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Russell J.

Citation: 2023 TCC 1  
Date: January 6, 2023  
Docket: 2020-2467(IT)I

BETWEEN:

LIN L. KEEHN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

### **REASONS FOR JUDGMENT**

Russell J.

[1] The appellant, Mr. Lin L. Keehn, appeals a reassessment raised February 27, 2020 under the federal *Income Tax Act* (Act) pertaining to his 2018 taxation year. It reflects denial by the Minister of National Revenue (Minister) that \$853 that Mr. Keehn's spouse had paid in 2018 for hospital parking constituted a "medical expense" pursuant to section 118.2 of the Act. The Minister thus excluded this amount from calculation of the balance of the medical expense tax credit (METC) that the Minister found Mr. Keehn was entitled to for his 2018 taxation year.

[2] Mr. Keehn in his Notice of Appeal pleads:

My wife has to park to obtain dialysis incurring parking expenses. The subsection 118.2(2) specifies traveling over 80 km and has nothing to do with parking. Does not specifically exclude nor include parking. Parking is not an act of driving. It is in fact not driving. It discriminates against people who have to travel less than 80 km for necessary medical treatment.

[3] At the hearing Mr. Keehn testified. It was helpful to hear from him regardless that essentially there was no dispute as to the facts. The essential fact is that during the 2018 taxation year Mr. Keehn's spouse received, three times per week, kidney dialysis treatment at the Royal Alexandra Hospital in Edmonton. Typically Mrs. Keehn would drive from her home to the hospital where she would park the car, and then upon completion of her treatment session drive back home. Her home was approximately 22 kilometres from the hospital.

[4] Mr. Keehn testified that these dialysis treatments were life-saving and without same his spouse would have died. He equated the parking expense to a medical treatment expense. She needed to be able to park her car to receive treatments. As said the total of claimed parking expenses for the 2018 taxation year was \$853. The Minister allowed other expenses as medical expenses totaling \$6,342 for Mr. Keehn's 2018 taxation year.

[5] Mr. Keehn also testified that his spouse was a retired nurse and she had spent much of her nursing career working at this same hospital.

[6] The Minister's denial of the parking cost as a medical expense is based on subsection 118.2(2) of the Act which sets out what are "medical expenses" for purposes of calculating the amount of a MRTC per subsection 118.2(1).

[7] As noted, Mr. Keehn pleaded in his Notice of Appeal that the Act discriminates as to "reasonable travel expenses" thereby including parking expenses, insofar as allowing inclusion of such expenses only for individuals required to travel not less than 80 kilometres (one way) for necessary medical treatment.

[8] Paragraphs 118.2(2)(g) and (h) of the Act provide:

(2) [Medical expenses] For the purposes of subsection (1), a medical expense of an individual is an amount paid

(g) to a person engaged in the business of providing transportation services, to the extent that the payment is made for the transportation of

(i) the patient, and

(ii) one individual who accompanied the patient, where the patient was, and has been certified in writing by a medical practitioner to be, in capable of traveling, without the assistance of an attendant

from the locality, where the patient dwells to a place, not less than 40 km from that locality, where medical services are normally provided, or from that place to that locality, if

(iii) substantially equivalent, medical services are not available in that locality,

(iv) the route travelled by the patient is, having regard to the circumstances, a reasonably direct route, and

(v) the patient travels to the place to obtain medical services for himself or herself, and it is reasonable, having regard to the circumstances, for the patient to travel to that place, to obtain those services;

(h) for reasonable travel expenses (other than expenses described in paragraph (g)) incurred in respect of the patient and, where the patient was, and has been certified in writing by a medical practitioner to be, incapable of travelling, without the assistance of an attendant, in respect of one individual who accompanied the patient, to obtain medical services in a place that is not less than 80 km from the locality, where the patient dwells if the circumstances described in subparagraphs (g)(iii) to (v) apply;

[9] Paragraph 118.2(2)(h) of the Act, which makes a distinction for one way travel distances of not less than 80 km, applies equally to any and all individuals seeking to claim a METC.

[10] Discrimination is addressed in subsection 15(1) of the *Canadian Charter of Rights and Freedoms (Constitution Act, 1982)*. That provision provides, under the heading “Equality Rights”:

15(1) [Equality before and under law, and equal protection and benefit of law]  
Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[11] But, this is not a case where for any given law, here paragraph 118.2(2)(h), there is discrimination as between individuals in the expression or application of that law. While that provision expresses a limitation of not less than 80 km, that limitation is not based on, or to be applied on the basis of, differences of individuals themselves. Rather, it is applied on the basis of whether any given individual had not less than an 80 km one way distance to travel. Here, Mrs. Keehn had a one way distance of only 22 km to travel.

[12] Parliament chooses to recognize as a medical expenses hospital parking costs (being part of “reasonable travel expenses”) for one way travel of not less than 80 km. But that does not mean Parliament is discriminating by not granting the same recognition for parking costs for one way travel of any lesser distance. Parliament is entitled to make such distinctions in the Act, such as in protecting the fisc, without constituting discrimination as referenced above.

[13] Turning to jurisprudence, in *Ali v. R.*, 2008 CarswellNat 1629, 2008 FCA 190, para 13, the Federal Court of Appeal observed re the role of subsection 15(1) of the *Charter* in the context of benefits per subsection 118.2(2) of the Act:

13. The appellants wish to have the scope of the METC extended to cover “off the shelf” drugs but Parliament has not chosen to do so. In this regard, the words of Chief Justice McLachlin in paragraph 41 of *Auton (Guardian ad litem of) v. British Columbia*, [2004] 3 S.C.R. 657 (S.C.C.), are apposite:

41. It is not open to Parliament or a legislature to enact a law whose policy objectives and provisions single out a disadvantaged group for inferior treatment; *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203. On the other hand, a legislative choice not to accord a particular benefit absent demonstration of discriminatory purpose, policy or effect does not offend this principle and does not give rise to a s. 15(1) review. This Court has repeatedly held that the legislature is under no obligation to create a particular benefit. It is free to target the social programs it wishes to fund as a matter of public policy, provided the benefit itself is not conferred in a discriminatory manner: *Granovsky v. Canada (Minister of Employment and Immigration)*, [2000] 1 S.C.R. 703, 2000 SCC 28, at para. 61; *Nova Scotia (Attorney General) v. Walsh*, [2002] 4 S.C.R. 325, 2002 SCC 83, at para. 55; *Hodge*, supra, at para. 16.

[14] Here, the Supreme Court of Canada has stated that:

- i. Parliament, “is under no obligation to create a particular benefit”; and
- ii. Parliament, “is free to target the social programs it wishes to fund as a matter of public policy, provided the benefit itself is not conferred in a discriminatory manner”.

[15] I will dismiss the appeal, albeit without costs; judgment to issue accordingly.

Signed at Halifax, Nova Scotia, this 6th day of January 2023.

“B. Russell”

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Russell J.

CITATION: 2023 TCC 1

COURT FILE NO.: 2020-2467(IT)I

STYLE OF CAUSE: LIN L. KEEHN AND HIS MAJESTY  
THE KING

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: December 14, 2022

REASONS FOR JUDGMENT BY: The Honourable Justice Bruce Russell

DATE OF JUDGMENT: January 6, 2023

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Eliza Li

COUNSEL OF RECORD:

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