Docket: 2021-2283(IT)I

BETWEEN:

MARK ANDREWS,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on November 10, 2022, at Ottawa, Canada

Before: The Honourable Justice Jean Marc Gagnon

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Warwick Walton

JUDGMENT

In accordance with the attached Reasons for Judgment, this appeal made under the *Income Tax Act* in respect of the June 17, 2021 reassessment of the Appellant's 2018 taxation year is dismissed, without costs.

Signed at Toronto, Ontario, this 7th day of February 2023.

"J. M. Gagnon"

Gagnon J.

Citation: 2023 TCC 19
Date: February 7, 2023
Docket: 2021-2283(IT)I

BETWEEN:

MARK ANDREWS,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Gagnon J.

I. Introduction

[1] The Appellant, Mr. Mark Andrews, has instituted an appeal under the informal procedure in respect of a reassessment made under the *Income Tax Act*, RSC 1985, c 1 (5th Supp), as amended (**ITA**), for the 2018 taxation year.

[2] Mr. Andrews originally claimed in his 2018 income return a medical expense credit under section 118.2 ITA in respect of his mother-in-law, Mrs. Fernande Brochu. In his return, the Appellant claimed $20,675.44 as medical expenses paid for Mrs. Brochu. Mrs. Brochu resides at a long-term care facility and requires assistance in all daily functions.

[3] The Minister of National Revenue (**Minister**) initially assessed Mr. Andrews' 2018 taxation year as filed by notice of assessment dated May 30, 2019. On December 5, 2019, the Minister reassessed the Appellant's 2018 taxation year and disallowed the total amount of medical expenses claimed for Mrs. Brochu in the Appellant's income return for the year. In response to the Appellant's notice of objection, the Minister varied the 2018 reassessment and allowed medical expenses for a dependant other in the amount of $607 and allowed a disability tax credit for dependant other in the amount of $8,235. This latest notice of reassessment dated June 17, 2021 is the basis for this appeal.

II. Issue in dispute

[4] At the hearing, the parties admitted that all conditions to allow Mr. Andrews' medical expense credit under section 118.2 are satisfied, except one. It must be determined whether the Appellant's total medical expenses claimed in filing his income return for the 2018 taxation year in respect of the Appellant's mother-in-law were paid by the Appellant in accordance with the requirements set out in paragraph (d) of item E of the formula in subsection 118.2(1) ITA. If so, the appeal shall be allowed and the Appellant's original assessment issued by the Agency for the Appellant's 2018 taxation year shall prevail. If not, the Appellant's situation shall be as determined by the notice of reassessment dated June 17, 2021.

[5] The amounts supporting the medical expense credit claimed by Mr. Andrews are not in dispute.

III. Position of the Appellant

[6] Mr. Andrews argues that for purposes of subsection 118.2(1) ITA medical expenses in respect of a dependant paid by the Appellant include medical expenses paid by the Appellant and the Appellant's spouse. Almost all of the medical expenses of the Appellant's mother-in-law were paid by the Appellant's spouse from a joint bank account held by his spouse and his spouse's mother. As his spouse had authority over the bank account, medical expenses paid by the Appellant's spouse from that account meet the definition of "paid by the individual" for purposes of paragraph (d) of item E in subsection 118.2(1) ITA.

[7] In addition, the intent of Parliament with respect to the credit for medical expense provided for in section 118.2 ITA is such that the amount paid as medical expenses from the bank account shall be eligible regardless of whether the expense is paid by the Appellant or the Appellant's spouse. Therefore, the appeal shall be allowed.

IV. Position of the Respondent

[8] To be successful, the Appellant himself must have paid the medical expenses claimed for his spouse's mother. Such expenses were paid from a bank account over which the Appellant had no authority, ownership or other right. Subsection 118.2(1) ITA requires that the medical expenses be paid by the individual claiming the medical expense credit. Such expenses can't be paid by the individual's spouse for the purposes of subsection 118.2(1) ITA. The appeal must be dismissed.

V. Analysis

a) legislative provisions

[9] For the 2018 taxation year, subsection 118.2(1) ITA reads 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
>
> **A x [(B - C) + D]**
>
> where
>
> **A** is the appropriate percentage for the taxation year;
>
> **B** is the total of the individual's medical expenses in respect of the individual, the individual's spouse or common-law partner or a child of the individual who has not attained the age of 18 years before the end of the taxation year
>
> **(a)** […]
> **(b)** […]
> **(c)** […] and
> **(d)** that were paid by the individual or the individual's legal representative within any period of 12 months that ends in the taxation year or, if those expenses were in respect of a person (including the individual) who died in the taxation year, within any period of 24 months that includes the day of the person's death;
>
> **C** is the lesser of $2,302 [$1,813] and 3% of the individual's income for the taxation year; and
>
> **D** is the total of all amounts each of which is, in respect of a dependant of the individual (within the meaning assigned by subsection 118(6), other than a child of the individual who has not attained the age of 18 years before the end of the taxation year), the amount determined by the formula
>
> **E - F**
>
> where
>
> **E** is the total of the individual's medical expenses in respect of the dependant
>
> **(a)** […]
> **(b)** […]
> **(c)** […] and

> **(d)** that were paid by the individual or the individual's legal representative within the period referred to in paragraph (d) of the description of B; and
>
> **F** is the lesser of $2,302 [$1,813] and 3% of the dependant's income for the taxation year.
>
> (emphasis added)

b) applicable treatment

[10] To qualify as an allowable medical expense, the medical expense must fall into one of two groups referred to in subsection 118.2(1) ITA: (Group A) the expense must have been paid by the taxpayer in respect of medical services provided to the taxpayer, the taxpayer's spouse or common-law partner, or a child of the taxpayer who has not attained the age of 18 years before the end of the taxation year; and (Group B) the expense must have been paid by the taxpayer in respect of medical services provided to a dependant who includes a parent of the taxpayer or the taxpayer's spouse or common-law partner.

[11] Considering the facts of the present case, Group B is the applicable group. For the 2018 taxation year, the amount of the medical expense credit in respect of dependent relatives is reduced by the lesser of $2,302 and 3 per cent of the dependant's income for the taxation year. Since 2011, there is no upper limit on the claim for a dependent relative's expenses. Item D or E – F of the formula shown above illustrates this result.

[12] Mrs. and Mr. Andrews testified at the hearing. Both were generally credible and reliable. In this regard, the Court would like to note the dedication shown by Mrs. and Mr. Andrews in caring for Mrs. Brochu.

[13] The evidence at the hearing highlighted the situation as applicable in the present case. In 2018, the Appellant's mother-in-law, Mrs. Brochu, resides at a long-term care facility called Sun Parlor Home Long Term Care in Leamington, Ontario (**Sun Parlor**). Mrs. Brochu's husband passed away in 2014. She has osteoporosis and requires assistance in all daily functions including the use of a wheelchair.

[14] Mrs. Andrews is the Appellant's spouse and Mrs. Brochu's only child. Mrs. Andrews has been approved as a personal care provider and as such can visit her mother anytime she needs to and assist her whenever there is a need. They take care of Mrs. Brochu both in terms of personal comfort as well as financial assistance when her financial needs exceed her personal financial autonomy.

[15] In 2010, the decision to open a bank account was made in order to centralize all Mrs. Brochu's income and banking operations in one single account. Considering her health conditions, the Caisse Desjardins suggested that a joint account be opened under the names of Mrs. Brochu and Mrs. Andrews (**Joint Account**). The benefit of this approach was to allow deposits and withdrawals by each of the Joint Account holders without requiring a power of attorney or mandate to do so or co-signatures. This was much easier from the Caisse Desjardins' perspective.

[16] Once the Joint Account opened, all Mrs. Brochu's funds were transferred to the Joint Account and all income received by Mrs. Brochu were now deposited in that account. Also, Desjardins personal pre-authorized debits were set up to allow each of Sun Parlor and Remedy'sRx Pharmacy for Mrs. Brochu's medication to receive its monthly payment directly from the Joint Account.

[17] In 2018, the Joint Account was the only bank account of Mrs. Brochu. She had no other investments or assets.

[18] Except for a $5,000 deposit to the Joint Account made in March 2018 by Mrs. Andrews in order to avoid bank charges otherwise payable on the account, the only deposits to the Joint Account in 2018 were from Mrs. Brochu for a total of $19,054 and only two withdrawals were made each month: the Sun Parlor monthly payment and a Remedy'sRx Pharmacy charge, for an annual total of $19,618.

[19] In 2018, the Court notes that the opening balance of the Joint Account was $8,027 and the closing balance on December 31 was $12,467. Net of the $5,000 deposit to avoid bank charges, the Joint Account closing balance in 2018 was $7,467. This supports that in 2018 more than 97% of the medical expenses paid from the Joint Account were covered by Mrs. Brochu's deposits made that year to the account.

[20] The total accepted eligible medical expenses by the Canada Revenue Agency (**CRA**) for Mrs. Brochu in 2018 amounted to $20,675. This was the amount claimed by Mr. Andrews as Item E in subsection 118.2(1) ITA. Such amount was then reduced by Item F in subsection 118.2(1) which was 3% of $19,484 or $584. Consequently, the Appellant claimed as Item D in subsection 118.2(1) the amount of $20,090.

[21] However, the CRA determined that Mrs. Brochu contributed $19,484 in that year to her own medical expenses (i.e., her total 2018 net income), and only the excess could reasonably be considered out of pocket medical expenses paid by the Appellant.

[22] Considering the issue in dispute as exposed above, the question to be answered by the Court is whether the Appellant paid the $19,484 as medical expenses in respect of Mrs. Brochu. To do so, the Court acknowledges that this amount was paid out of the Joint Account.

[23] In the present case, paragraph (d) of Item E in subsection 118.2(1) ITA requires that the total of the Appellant's medical expenses in respect of his dependant must be paid by the Appellant. The possibility that the medical expenses are paid by a legal representative of the Appellant was not raised in this case and is therefore not relevant.

[24] In *Canada Trustco Mortgage Co.* v. *Canada* [1], the Supreme Court of Canada confirmed the following position with respect to statute interpretation of tax laws:

> [10] It has been long established as a matter of statutory interpretation that "the words of an Act [*ITA*] are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act [*ITA*], the object of the Act [*ITA*], and the intention of Parliament": see *65302 British Columbia Ltd.* v. *Canada*, 1999 CanLII 639 (SCC), [1999] 3 S.C.R. 804, 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 [*ITA*] as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play [sic] 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 [*ITA*] as a harmonious whole.
>
> [11] As a result of the Duke of Westminster principle (*Commissioners of Inland Revenue* v. *Duke of Westminster*, [1936] A.C. 1 (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.

[1] *Canada Trustco Mortgage Co.* v *Canada*, 2005 SCR 54 [***Canada Trustco***].

> […]
>
> [13] The *Income Tax Act* remains an instrument dominated by explicit provisions dictating specific consequences, inviting a largely textual interpretation. […]
>
> (emphasis added)

[25] Several years earlier, the Supreme Court of Canada mentioned in *Antosko* [2], also a tax decision:

> [34] […] Where the words of the section are not ambiguous, it is not for this Court to find that the appellants should be disentitled to a deduction because they do not deserve a "windfall", as the respondent contends. In the absence of a situation of ambiguity, such that the Court must look to the results of a transaction to assist in ascertaining the intent of Parliament, a normative assessment of the consequences of the application of a given provision is within the ambit of the legislature, not the courts. […]
>
> (emphasis added)

[26] Also, in *Antosko*:

> [25] […] While it is true that the courts must view discrete sections of the Income Tax Act in light of the other provisions of the Act and of the purpose of the legislation, and that they must analyze a given transaction in the context of economic and commercial reality, such techniques cannot alter the result where the words of the statute are clear and plain and where the legal and practical effect of the transaction is undisputed: *Mattabi Mines Ltd.* v. *Ontario (Minister of Revenue)*, 1988 CanLII 58 (SCC), [1988] 2 S.C.R. 175, at p. 194; see also *Symes* v. *Canada*, 1993 CanLII 55 (SCC), [1993] 4 S.C.R. 695.
>
> (emphasis added)

[27] In the year following the *Antosko* decision, in another tax decision, the Supreme Court of Canada added in *Friesen* [3]:

> [59] […] [T]he clear language of the Income Tax Act takes precedence over a court's view of the object and purpose of a provision. As Hogg and Magee stated in Principles of Canadian Income Tax Law, supra, at p. 453:

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[2] *Canada* v *Antosko*, [1994] 2 SCR 312 [***Antosko***].
[3] *Friesen* v. *Canada*, [1995] 3 SCR 103 at para 59-60 [***Friesen***].

> It would introduce intolerable uncertainty into the Income Tax Act if clear language in a detailed provision of the Act were to be qualified by unexpressed exceptions derived from a court's view of the object and purpose of the provision.
>
> [60] […] Therefore, the object and purpose of a provision need only be resorted to when the statutory language admits of some doubt or ambiguity. […]
>
> (emphasis added)

[28] The above excerpt from Hogg and Magee in Principles of Canadian Income Tax Law was reproduced in the Supreme Court of Canada decisions in *Canada Trustco* and *Shell Canada*.

[29] A few years following the *Friesen* decision, the Supreme Court of Canada mentioned in *Shell Canada* [4], a decision dealing with the ITA:

> [43] (…) This Court has consistently held that courts must therefore be cautious before finding within the clear provisions of the Act an unexpressed legislative intention: *Canderel Ltd.* v. *Canada*, 1998 CanLII 846 (SCC), [1998] 1 S.C.R. 147, at para. 41, per Iacobucci J.; *Royal Bank of Canada* v. *Sparrow Electric Corp.*, 1997 CanLII 377 (SCC), [1997] 1 S.C.R. 411, at para. 112, per Iacobucci J.; Antosko, supra, at p. 328, per Iacobucci J. Finding unexpressed legislative intentions under the guise of purposive interpretation runs the risk of upsetting the balance Parliament has attempted to strike in the Act.
>
> (…)
>
> [45] (…) The courts' role is to interpret and apply the Act as it was adopted by Parliament. (…)
>
> (emphasis added)

[30] In two recent decisions from the Tax Court of Canada, references were made to *Canada Trustco*:

> [51] Additionally, the Supreme Court of Canada in *Celgene Corp* affirmed *Canada Trustco Mortgage Co.* at paragraph 21:
>
> [S]tatutory interpretation involves a consideration of the ordinary meaning of the words used and the statutory context in which they are found … . The words, if clear, will dominate; if not, they yield to an interpretation that best meets the

[4] *Shell Canada Ltd.* v *Canada*, [1999] 3 SCR 622 [***Shell Canada***].

> overriding purpose of the statute.3 [*Celgene Corp* v *Canada (Attorney General)*, 2011 SCC 1 at para 21.]
>
> [52] The Court is of the view that the words of sections 21, 22 and 35 of the *Constitution Act*, 1867 are precise, clear and unequivocal. Thus, the words should dominate the statutory interpretation process. [5]

and:

> [25] More recently the Supreme Court in *Canada* v. *Loblaw Financial Holdings Inc.*, 2021 SCC 51, para. 41, referenced that Court's *Canada Trustco* above language, confirming the "textual, contextual and purposive analysis" approach to statutory interpretation in a tax context. Also that Court affirmed that, "[w]here the words of a statute are 'precise and unequivocal', their ordinary meaning will play a dominant role." [6]

[31] In Hunt [7], Justice Bocock of this Court referred to the Supreme Court of Canada's comments about the analytical process:

> 10 A statutory provision must be interpreted according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole.7 [*Canada Trustco*, para 10] Further, where the words of a statute are precise and unequivocal, those words play a dominant role in the interpretation.8 [*Ibid*.] The Supreme Court in *Canada Trustco* also noted that "[t]he 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."9 [*Ibid*.]
>
> 11 Recent Supreme Court cases provide further insight into this analytical process. If words of a legislative provision appear to be precise and unequivocal, the Court must still examine the legislative context and purpose.10 [*ATCO Gas & Pipelines Ltd v Alberta (Energy & Utilities Board,*), 2006 SCC 4, [2006] 1 SCR 140 at paragraph 48.] An examination of a provision may yield clarity at first glance and yet its context may reveal latent ambiguities.11 [*Canada Trustco*, para 47]
>
> (emphasis added)

[32] Based on these learnings from the Supreme Court of Canada, before resorting to statutory interpretation tools, it is necessary to ask whether the word "individual" in paragraph (d) of Item E in subsection 118.2 ITA raises any ambiguity. Must it

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[5] *FU2 Productions Ltd.* v *The King*, 2022 TCC 148.
[6] *Wallster* v *The King*, 2022 TCC 124.
[7] *Hunt* v *The Queen*, 2022 TCC 67 [***Hunt***].

mean strictly the individual claiming the medical expense credit or might it also mean, as claimed by the Appellant, the individual's spouse?

[33] Turning to the "textual" component of the *Canada Trustco* analysis, the wording of paragraph (d) only refers to the individual claiming the medical expense credit as the payor of the expenses. The provision does not refer to the individual's spouse or the common-law partner of the individual like the gifts credit under section 118.1 ITA where the total charitable gifts of an individual for purposes of the credit explicitly include gifts made by the individual, the individual's spouse or common-law partner. This is not the case in section 118.2 ITA.

[34] A plain reading of paragraph (d) reveals little if any doubt as to the scope of the test to be met by the Appellant. He is the only person who must have paid the expenses. The statutory language appears clear.

[35] With regard to the analysis of the "contextual" component referred to in *Canada Trustco*, it would appear that subsection 118.2(3) ITA is the only provision deeming "the individual" to have paid for purposes of subsection 118.2(1) ITA an amount that was in fact paid by someone else. This provision reads as follows:

> (3) For the purposes of subsection (1),
>
> (a) any amount included in computing an individual's income for a taxation year from an office or employment in respect of a medical expense described in subsection (2) paid or provided by an employer at a particular time shall be deemed to be a medical expense paid by the individual at that time; and
>
> […]
>
> (emphasis added)

[36] Although subsection 118.2(3) ITA expands the scope of "the individual" to include "an employer" in the context of the provision, there is no other deeming rule in the ITA applicable in the present case that could do the same.

[37] One could be of the view that, if Parliament added a deeming rule for "an employer", why would it have refrained from doing the same for "the individual's spouse or common-law partner" or adding "the individual's spouse or common-law partner" in paragraph (d) if this was one of the meanings to be given of paragraph 118.2(1)E(d) ITA?

[38] In other provisions of the ITA including in section 118.1 ITA dealing with the gifts credit, Parliament mentioned "individual or the individual's spouse" 22 times (a common-law partner reference is also included in 21 out of these 22 occurrences). As none of these formulations is reproduced in paragraph 118.2(1)E(d) ITA, the situation supports the absence of ambiguity: if Parliament had expressed the intention to refer to and include the spouse or common-law partner as having paid for the medical expenses claimed by the individual in subsection 118.2(1), an explicit mention would have been in place.

[39] Regarding the "purposive" component analysis in *Canada Trustco*, the technical notes released by the Department of Finance when amendments to section 118.2 ITA were introduced over the years add some comfort to the meaning of paragraph 118.2(1)B(d) and E(d) ITA. In the 2011 federal Budget Supplementary Information, the Department of Finance mentioned:

> Subsection 118.2(1) provides a formula for the calculation of an individual's medical expense tax credit. The description of D in that formula provides a limit to the amount of medical expenses that an individual may claim for a taxation year in respect of their dependant (other than the individual's spouse, the individual's common-law partner or a child of the individual who has not attained the age of 18 years before the end of the taxation year). This limit is the lesser of $10,000 and the amount by which the expenses paid by the individual on behalf of the dependant exceed the dependant's medical expense threshold for the year (which is the lesser of 3% of the dependant's net income and an indexed amount ($2,052 in 2011)).
>
> The description of D in the formula is amended to remove the $10,000 limit.
>
> [emphasis added]

[40] About the Medical Expense Tax Credit for Other Dependants, the same document in paragraph 33 states:

> The Medical Expense Tax Credit provides income tax relief for taxpayers with above-average medical and disability expenses in recognition that these individuals have a reduced ability to pay income tax as a result of incurring those expenses. A taxpayer may claim a credit in respect of eligible expenses incurred in respect of himself or herself, his or her spouse or common-law partner, or his or her child who is under 18 years of age.
>
> Caregivers may also claim the Medical Expense Tax Credit in respect of eligible expenses incurred in respect of a "dependent" relative if the caregiver pays medical or disability-related expenses of the dependent relative. For this purpose, a "dependent" relative is defined as a child who is 18 years of age or older, or a

> grandchild, parent, grandparent, brother, sister, uncle, aunt, niece or nephew, who is dependent on the taxpayer for support.
>
> [emphasis added]

[41] In June 2006, the budget documents of the Department of Finance referred to section 118.2 ITA as follows:

> Subsection 118.2(1) provides the calculation of an individual's medical expense tax credit (METC). The description of D in that subsection includes the individual's medical expenses amounts paid by the individual in respect of a dependant (other than an individual's spouse, the individual's common-law partner or child of the individual who has not attained the age of 18 years) to the lesser of $5,000 and the amount by which the expenses paid by the individual on behalf of the dependant exceed the dependant's medical expense threshold for the year or 3% of net income.
>
> [emphasis added]

[42] On tax relief for caregivers under section 118.2 ITA as it existed in 2005, the federal Budget Supplementary Information mentioned:

> Taxpayers paying medical or disability-related expenses on behalf of a dependent relative may claim those expenses under the medical expense tax credit (METC). For this purpose, a dependent relative is defined as a child who is 18 years of age or older, or a grandchild, parent, grandparent, brother, sister, uncle, aunt, niece or nephew, who is dependent on the taxpayer for support.
>
> [emphasis added]

[43] None of these notes refers to “individual’s spouse” or “common-law partner” of the individual claiming the medical expense credit.

[44] Moreover, it is interesting to note that the 2011 technical notes above referred to the medical expense tax credit as a credit providing relief for taxpayers with accumulated medical expenses. The Court takes this excerpt to mean that eligibility for the credit can be considered to the extent that the taxpayer's financial capacity is adversely affected by the expenses incurred. Subject to the specific exception of having paid personally for the medical expense, the purpose of the credit would not be to compensate a taxpayer for any other form of assistance provided with respect to expenses incurred by another person or for the support provided to his or her loved ones, no matter how commendable.

[45] Paragraph 118.2(3)(b) ITA supports this interpretation as it denies eligibility for the medical credit in respect of medical expenses for which the individual is entitled to a refund:

> (b) there shall not be included as a medical expense of an individual any expense to the extent that
>
> (i) the individual,
>
> (ii) the person referred to in subsection (2) as the patient,
>
> (iii) any person related to a person referred to in subparagraph (i) or (ii), or
>
> (iv) the legal representative of any person referred to in any of subparagraphs (i) to (iii)
>
> is entitled to be reimbursed for the expense, except to the extent that the amount of the reimbursement is required to be included in computing income and is not deductible in computing taxable income.
>
> (emphasis added)

[46] None of the authors discussing the medical expense credit that the Court was able to identify referred to the right of an individual claiming the credit to consider medical expenses other than the expenses paid by the individual, with one exception. [8] The Court identified the 2015 article listed below has one exception referring, we assume, to the CRA's administrative policy discussed below.

[47] The CRA would appear to have a somewhat liberal view of an individual's medical expenses eligible for the medical expense credit. The Court noted two sources that may support this position, one of which was introduced into evidence by the Appellant. [9] The 2018 Medical Expenses Guide (RC4065(E) Rev. 18), which outlines the medical expense credit, mentions about an individual's eligible expenses:

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[8] *Inter alia*, Lucie Champagne and Gael Melville, "Credit Where It's Due: Tax Credits for Elder-Care Expenses and Other Tax Considerations," in "Personal Tax Planning" (2018), 66:4 Canadian Tax Journal, 1013-1040; Jamie Golombek, Debbie Pearl-Weinberg, and Tess Francis, "Tuition Expenses and Tutoring Fees as Medical Expenses," Personal Tax Planning feature (2015) 63:2 Canadian Tax Journal 543-564 and Hélène Marquis, Collection APFF – Impôt et taxes: Planifier pour les familles ayant des besoins spéciaux - 01 septembre 2017 – No. 3.

9 The Medical Expenses Guide RC4065(E) Rev.21 was introduced by the Appellant at the hearing. The Court refers to RC4065(E) Rev.18 for the purposes herein. The Court also noted Interpretation Bulletin IT-519R2 dated April 01, 2001, which was cancelled and replaced March 28, 2013 with, *inter alia*, Income Tax Folio, S1-F1-C1 - Medical Expense Tax Credit. These documents are issued by the CRA.

How do you claim medical expenses?

You can claim medical expenses on line 330 or 331 of your Schedule 1.

Line 330 – You can claim the total eligible medical expenses you or your spouse or common-law partner paid for any of the following persons:

- yourself
- your spouse or common-law partner
- your or your spouse's or common-law partner's children born in 2001 or later

Line 331 – You can claim the part of eligible medical expenses you or your spouse or common-law partner paid for any of the following persons who depended on you for support:

- your or your spouse's or common-law partner's children born in 2000 or earlier, or grandchildren
- your or your spouse's or common-law partner's parents, grandparents, brothers, sisters, uncles, aunts, nephews, or nieces who were residents of Canada at any time in the year

You have to calculate, for **each** dependant, the medical expenses that you are claiming on line 331.

[emphasis added]

[48] The same guide also refers to the following example:

Example

Richard and Pauline have two children, Jen and Rob. They have reviewed their medical expenses and decided that the 12-month period ending in 2018 they will use to calculate their claim is July 1, 2017 to June 30, 2018. They had the following expenses:

Richard	$1,500
Pauline	$1,000
Jen (their 16-year-old daughter)	$1,800
Rob (their 19-year-old son)	$1,000
Total medical expenses	**$5,300**

> Since Jen is under 18, Richard and Pauline can combine her medical expenses with theirs, for a total of $4,300. Either Richard or Pauline can claim this amount on line 330 of their Schedule 1. Since Rob is over 18, his medical expenses should be claimed on line 331.
>
> Pauline's net income (on line 236 of her return) is $32,000. She calculates 3% of that amount, which is $960. Because the result is less than $2,302, she subtracts $960 from $4,300. The difference is $3,340, which is the amount she could claim on Schedule 1.
>
> Richard's net income is $48,000. He calculates 3% of that amount, which is $1,440. Because the result is less than $2,302, he subtracts $1,440 from $4,300. The difference is $2,860, which is the amount he could claim on Schedule 1.
>
> In this case, it is better for Pauline to claim all the expenses for Richard, herself, and their daughter Jen on line 330.
>
> To decide who should claim the medical expenses for Rob on line 331, Richard and Pauline will have to make the same calculation using Rob's net income.

[49] This CRA's practice is an administrative position. It has no legal force or basis before the Court. [10] However, for their own reasons, it appears that the CRA decided not to apply this practice in this case. And unless this Court is the view that there is ambiguity in the law, the Court is bound to apply the law as Parliament wrote it.

[50] Based on the foregoing review, the remarks made in paragraph [34] above remain appropriate and applicable in the circumstances, particularly with respect to the identity of the individual having paid the eligible medical expenses in paragraph 118.2(1)E(d) ITA. This Court is of the view that paragraph 118.2(1)E(d) requires that the medical expenses in respect of a dependant expected to be included in computing the medical tax credit claimed by an individual must be paid by the individual himself. There is no ambiguity that could be reasonably made from the wording used by Parliament within this provision. It is even more difficult to find ambiguity in a context where the ambiguity would need to arise from the absence of words and the statute as written is clear in its scope, albeit restrictive in the eyes of

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[10] The Supreme Court of Canada tax decision in *M.N.R.* v *Inland Industries Limited*, 72 DTC 6013 written by Mr. Justice Pigeon, referred to by Mr. Justice Cattanach in *Stickel* v *M.N.R.*, 72 DTC 6178 and followed since, confirms that whatever the Minister of National Revenue or his officers or employees may say is their interpretation of the law, does not change what the law is, subject for interpretation purposes in situations where the law is ambiguous. See also the Supreme Court of Canada decisions in *Harel* v *The Deputy Minister of Revenue of the Province of Quebec*, [1978] 1 S.C.R. 851 and *Nowegijick* v *The Queen*, [1983] 1 S.C.R. 29. See also, *Morissette* c *Canada*, 2019 CCI 103 (para 38) [***Morissette***], *Satinder* v *Canada*, 2002 FCA 491 (para 9), *Ludmer* v *Canada*, [1995] 2 FC 3, *Kennedy* v *Canada*, [2001] TCJ No 486, *Estate of Dora Greenstone* v *The Minister of National Revenue*, 91 DTC 969 and *Canada (Canadian Human Rights Commission)* v *Canada (Attorney General*, 2011 SCC 53.

some. Unfortunately, the Appellant is asking the Court to rewrite the provision, which the Court is not allowed to do. [11]

[51] The absence of the words such as “individual’s spouse” and “common-law partner” in paragraph 118.2(1)E(d) ITA while present for other purposes in the ITA is significant and indicative of the intention not to extend the payment of medical expenses to persons other than the individual claiming the medical credit. The situation in section 118.1 ITA is particularly telling, where the gift credit was originally for an individual’s own gifts, the provision was subsequently amended to accept gifts made by the individual's spouse or common-law partner consistent with the CRA’s then administrative practice. [12]

[52] Mr. Andrews’ situation presents 2 challenges among others. The first one is the absence of the words spouse or common-law spouse in paragraph 118.2(1)E(d) ITA forcing the Appellant to establish that he paid Mrs. Brochu’s medical expenses himself. The second is that such expenses must not be reimbursable and certainly not been assumed by Mrs. Brochu herself.

[53] The evidence showed that the total amount paid by Mrs. Brochu from the Joint Account and claimed as medical expenses by the Appellant amounts to approximately $19,500, which is about Mrs. Brochu’s 2018 net income accepted by the parties and the amount deposited in the Joint Account that year by Mrs. Brochu.

[54] The evidence also explained the reasons the Joint Account was opened, how funds, contributions and deposits were made to this account, who are signatories to the account, and the monthly pre-authorized withdrawals. These details that were supported through mainly by the testimony of Mrs. Andrews, and the documentary evidence support the position that Mrs. Brochu directly contributed in 2018 to her own medical expenses more specifically with monthly payments made to Sun Parlor and the Remedy’sRx Pharmacy. The Appellant did not support such payments as required by paragraph 118.2(1)E(d) ITA. The evidence did not establish that the Appellant had any authority over the Joint Account in 2018. This aspect is detrimental to the Appellant. And regardless of the fact that the Court does not confirm that it should be given any weight, the position of Mrs. Andrews on the Joint Account is not relevant to the Appellant’s position.

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[11] Reference is made to note 9. See also *Douziech* v *The Queen*, 2000 CanLII 343 (TCC) referred later to in *Morissette*.
[12] See Bill C-43; S.C. 2014, C. 39, S. 34(2). See also the technical notes accompanying the amendments.

[55] In addition, and without being dispositive of this appeal, it would have been important to consider paragraph 118.2(3)(b) ITA for the purpose of determining whether anyone other than Mrs. Brochu is entitled to the medical expenses paid by her. The notion of paying the medical expense for the purposes of paragraph 118.2(1)E(d) cannot simply mean the action of paying. The financial consideration of the complete operation and the legal context governing the rights of the parties involved must be considered in order to reach a reasonable interpretation of the text.

[56] Finally, Mr. Andrews noted that the manner in which the transactions were completed in this case could have been completed in a different manner and produced the same result. Accordingly, the manner should not play a dominant role. In response to this contention, we refer to the comment made by the Supreme Court of Canada in *Shell Canada* regarding how a taxpayer can expect to be taxed:

> […] Unless the Act [ITA] provides otherwise, a taxpayer is entitled to be taxed based on what it actually did, not based on what it could have done, and certainly not based on what a less sophisticated taxpayer might have done.
>
> [emphasis added]

[57] For all these reasons, the appeal of the reassessment relating to the Appellant's 2018 taxation year will be dismissed, without costs.

Signed at Toronto, Ontario, this 7th day of February 2023.

"J. M. Gagnon"

Gagnon J.

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APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Warwick Walton

COUNSEL OF RECORD:

For the Respondent:	François Daigle Deputy Attorney General of Canada Ottawa, Canada