Docket: 2022-168(IT)I

BETWEEN:

JONATHON S. BREEN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on September 28, 2022, at Sidney, British Columbia, and written submissions received from the Respondent on November 29, 2022 and from the Appellant on January 18, 2023.

Before: The Honourable Justice Joanna Hill

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Katherine Shelley

JUDGMENT

The appeal with respect to the Notice of Reassessment for the 2018 taxation year is allowed, without costs, on the basis that the Appellant is entitled to the medical expense tax credit for gloves used in respect of a wheelchair, pursuant to paragraph 118.2(2)(i) of the *Income Tax Act*, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 14th day of April 2023.

"Joanna Hill"

Hill J.

Citation: 2023 TCC 48
Date: 20230414
Docket: 2022-168(IT)I

BETWEEN:

JONATHON S. BREEN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Hill J.

I. Introduction

[1] In 2018, Dr. Jonathon Breen and his wife incurred various expenses when they moved from their two-storey, 100-year-old home to a single-storey, grade-level home that could accommodate the increasing limitations of his mobility disability.

[2] The Minister of National Revenue allowed Dr. Breen's claim for the medical expense tax credit for expenses related to that new home purchase. However, she denied the claim for a property transfer tax payment expense because of the $2,000 limit on the amount that can be claimed for moving expenses under paragraph 118.2(2)(l.5) of the *Income Tax Act*. The Minister also determined that Dr. Breen did not qualify for the moving expense deduction under section 62 because he did not move 40 kilometres closer to a new work or school location.

[3] Dr. Breen acknowledged that these statutory limitations apply in his case. His primary argument is that the provisions at issue violate his equality rights under subsection 15(1) of the *Canadian Charter of Rights and Freedoms* because they are under-inclusive, leading to adverse impact discrimination on the ground of disability.

[4] Despite Dr. Breen's thorough and thoughtful submissions, this argument cannot succeed. There is no discrimination within the meaning of subsection 15(1)

of the *Charter* because there is no distinction based on disability, either directly or indirectly. The provisions at issue apply to all taxpayers based on their specific, individual circumstances. Parliament is not required to provide tax benefits that meet the needs of all taxpayers.

[5] In the present case, Dr. Breen qualified for the medical expense tax credit for moving expenses because of his disability, but he was subject to the $2,000 limit imposed by Parliament. His disability otherwise was not an impediment to claiming the moving expense deduction under section 62 of the *Income Tax Act* because he would have qualified for the deduction if he had moved 40 kilometres closer to a new job.

II. Background – The medical expense claims

[6] Dr. Breen and his wife claimed the medical expense tax credit for expenses related to his mobility disability arising from conditions that existed, and have deteriorated, since he contracted polio as a child.[1]

[7] The Minister determined that the Breens had eligible medical expenses of $31,598.01, including renovations of $26,281.90 to their new home, and $2,000 for moving expenses related to moving supplies and the cost of a moving company.[2]

[8] The allowed moving expenses did not include a property transfer tax payment of $17,600 on the purchase of the new home ("PTT payment"). Dr. Breen claimed $8,096 of the PTT payment and his wife claimed the remaining $9,504.

[9] The Minister denied the PTT payment expense on the basis that the $2,000 limit for moving expenses under paragraph 118.2(2)(l.5) of the *Income Tax Act* had already been reached.[3]

[10] The Minister also determined that Dr. Breen could not claim the PTT payment as a moving expense deduction under section 62 because his new house was not 40

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[1] Dr. Breen claimed 46% of the medical expenses and his wife claimed the remaining 54%.

[2] Other allowed expenses were dental expenses of $439.80, adapted fitness centre expenses of $550, medical travel of $172.10, prescription medication of $15.12, and health premiums of $2,139.09. In total, Dr. Breen claimed medical expense tax credits of $19,169 and the Minister allowed $14,535.08.

[3] For ease of reference, relevant provisions of the *Income Tax Act*, RSC, 1985, c 1 (5th Supp), as amended, referred to in these Reasons are reproduced in Appendix "A".

kilometres closer to a new place of employment or business, as required by the definition of an "eligible relocation" in subsection 248(1).[4]

[11] The Minister also disallowed Dr. Breen's medical expense tax credit claim for heating pads and wheelchair gloves.[5]

[12] In written submissions filed after the hearing, the Respondent conceded that the wheelchair gloves qualify as a medical expense pursuant to paragraph 118.2(2)(i), on the basis that Dr. Breen uses the gloves in respect of a listed medical device, specifically his wheelchair.[6] Indeed, Dr. Breen testified that while the gloves are not specifically "wheelchair gloves", he purchases and uses rappelling gloves to protect his hands and for using his wheelchair in the winter and other difficult conditions.

[13] The Respondent otherwise maintains that the heating pads expense does not qualify for the medical expense tax credit because they are neither a device, nor used in respect of a device, listed in paragraph 118.2(2)(i).[7]

[14] As a result, the only amounts at issue are the PTT payment expense and the heating pads expense.

[15] Dr. Breen testified in support of his appeal. I do not doubt his credibility, sincerity, or his expertise in attitudinal and employment issues related to people with disabilities. However, his appeal turns on the application of various provisions of the *Income Tax Act* and legal principles with respect to how the *Charter* applies to those provisions.

III. Analysis

[16] Dr. Breen agreed that he cannot claim the PTT payment because he has already reached the $2,000 limit for moving expenses for the medical expense tax credit. He also agreed that he otherwise does not meet the 40-kilometre distance requirement for the moving expense deduction.

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[4] If Dr. Breen qualified for the moving expense deduction, he could have claimed the full PTT payment.
[5] Dr. Breen claimed $50.39 for the heating pads and $64.96 for the wheelchair gloves.
[6] Respondent's Written Submissions, filed November 29, 2022, para 26.
[7] *Ibid*, para 27.

[17] Dr. Breen argued that the medical expense tax credit and moving expense deduction provisions infringe his right to equality under subsection 15(1) of the *Charter*. He stated that inadvertent discrimination has occurred because Parliament failed to consider the needs and circumstances of people with disabilities.

[18] Subsection 15(1) of the *Charter* prohibits discrimination as follows:

> Equality before and under law and equal protection and benefit of law
>
> 15(1) 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.

[19] As established by the Federal Court of Appeal, if there is no discrimination within the meaning of this provision, a court does not need to conduct a section 15 analysis.[8]

[20] This threshold determination is based on the principle that discrimination will not result from every distinction or difference in treatment.[9] The *Income Tax Act* makes distinctions through various statutory requirements, in an attempt to generate government revenue while balancing various economic and social policies.[10] In this context, the right to the equal benefit of the law does not mean that each taxpayer has an equal right to receive the same amounts, deductions, or benefits.[11]

[21] This Court has applied these principles to conclude that various benefit provisions under the *Income Tax Act* do not engage subsection 15(1) of the *Charter* because they do not discriminate on the basis of any of the enumerated grounds. Rather, the statutory requirements apply to all taxpayers.

[22] As outlined below, Dr. Breen's appeal cannot be distinguished from these previous decisions.

A. Dr. Breen's inability to claim the PTT payment as a medical expense does not constitute discrimination

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[8] *Pilette v HMTQ*, 2009 FCA 367, para 31. See also *Ali v HMTQ*, 2008 FCA 190 (leave to appeal refused [2008] SCCA No 356), para 20.
[9] *Thibaudeau v Canada*, [1995] 2 SCR 627, p 680.
[10] *Ibid*, p 676.
[11] *Ibid*.

[23] Dr. Breen argued that the medical expense tax credit scheme violates subsection 15(1) because it does not provide a proper category for which the PTT payment could be claimed. He based this argument on the proposition that the PTT payment is not a moving expense, but rather part of the purchase of the new residence. If the payment had not been made, the purchase of the property could not have been completed.

[24] Dr. Breen submitted that the violation of his equality rights occurred by inadvertent omission, when Parliament failed to provide an additional medical expense tax credit category for the purchase of a home. Paragraphs 118.2(2)(l.2) and 118.2(2)(l.21) provide credits for renovations and for home construction costs, respectively.

[25] In Dr. Breen's case, financial constraints prevented him from renovating his 100-year-old Arts and Crafts home or from building a new home. The most viable option was to buy another home. Dr. Breen stated that Parliament failed to consider this third, reasonable and affordable option that may be more suitable for an individual's particular disability.

[26] This position does not assist Dr. Breen because, even if I accept that what he is proposing is not already covered in the moving expense category, he is seeking a benefit that is not provided to anyone under the *Income Tax Act*.

[27] Relying on Supreme Court of Canada jurisprudence, the Federal Court of Appeal in *Ali* held that subsection 15(1) of the *Charter* will not be infringed if the benefit sought is not provided by the law being challenged.[12] In that case, the Federal Court of Appeal held that the medical expense tax credit is not discriminatory if no taxpayer is permitted to claim the cost of dietary supplements. The exclusion of these supplements is not discriminatory in effect because it is fully consistent with the purpose and scheme of the legislation, which is to only provide the medical expense tax credit in respect of specifically enumerated types of medical expenses.[13] Not all types of medical expenses qualify.

[28] In *Chevalier*, this Court held that there was no discrimination with respect to a taxpayer's inability to claim the medical expense tax credit for vitamins, organic

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[12] *Ali v HMTQ*, 2008 FCA 190, paras 12-20. In *Pilette v HMTQ*, 2009 FCA 367, the Federal Court of Appeal applied the same reasoning to dismiss a challenge to the wholly dependent person credit in paragraph 118(1)(b) of the *Income Tax Act*.
[13] *Ibid*, paras 17-19.

food, supplements, and osteopathic services to treat fibromyalgia and chronic fatigue syndrome.[14] Eligibility was based on the product or service purchased, not on the type of disability from which a taxpayer suffers.[15]

[29] The following paragraph from *Chevalier* applies in the present case:[16]

> As mentioned previously, the medical expense tax credit, being a large-scale benefit program, cannot take into account every taxpayer's needs. Furthermore, there is no legal requirement that it do so. I agree that subsection 118.2(2) of the Act does not allow the Appellant to deduct all medical expenses that relate to her individual needs. However, this was never the intended purpose of subsection 118.2(2) of the Act. Also, the said provision does not exclude the Appellant on the basis of personal traits or circumstances; it is not arbitrary, but, rather, it applies equally to all taxpayers. Many taxpayers suffering from various types of illnesses seek alternative medical treatment, thus it cannot be said that the legislation draws a line based on physical characteristics. The government simply had to define the scope of subsection 118.2(2); it did so on the basis of the type of medical services and products. Consequently, the needs of the Appellant have been taken into account by the government, since she qualifies for some tax relief under that subsection.

[30] Dr. Breen's challenge similarly cannot succeed because no taxpayer is permitted to claim the medical expense tax credit for the purchase of a new residence, except for those expenses that fall under the existing categories in subsection 118.2(2) of the *Income Tax Act*.

[31] Although Dr. Breen's primary *Charter* arguments were not directed at the $2,000 limit in paragraph 118.2(2)(l.5), the same principles apply.

[32] In *Keehn*, this Court determined that the 80-kilometre distance requirement in paragraph 118.2(2)(h) does not violate subsection 15(1) of the *Charter* because it applies equally to all individuals seeking to claim a medical expense tax credit for travel expenses to obtain medical services.[17] While the provision allows for travel expenses for medical purposes, Parliament has imposed a specific distance criteria, limiting the tax relief to individuals who have to travel more than 80 kilometres. This

[14] *Chevalier v HMTQ*, 2008 TCC 11.
[15] *Ibid*, para 37.
[16] *Ibid*, para 60.
[17] *Keehn v HMTK*, 2023 TCC 1, paras 9-12.

Court held that the distance criteria is not based on differences between individuals themselves.[18]

[33] The $2,000 limit for moving expenses under paragraph 118.2(2)(l.5) similarly has general application:

> 118.2(2) For the purposes of subsection (1), a medical expense of an individual is an amount paid
>
> […]
>
> (l.5) for reasonable moving expenses (within the meaning of subsection 62(3), but not including any expense deducted under section 62 for any taxation year) of the patient, who lacks normal physical development or has a severe and prolonged mobility impairment, incurred for the purpose of the patient's move to a dwelling that is more accessible by the patient or in which the patient is more mobile or functional, if the total of the expenses claimed under this paragraph by all persons in respect of the move does not exceed $2,000;

[34] Notably, only individuals who lack "normal physical development" or have a "severe and prolonged mobility impairment" qualify for this expense.[19] The $2,000 limit does not otherwise systematically exclude taxpayers on the basis of disability.

B. The moving expense deduction criteria do not constitute discrimination

[35] Dr. Breen also argued that the requirements to claim the moving expense deduction under section 62 of the *Income Tax Act* constitute systemic discrimination because they do not take into account the realities of people with mobility disabilities. He believes that valid reasons for relocation that are specific to disability were not considered when Parliament imposed the 40-kilometre distance requirement.

[36] The criteria at issue are found in the definition of an "eligible relocation" in subsection 248(1):

> *eligible relocation* means a relocation of a taxpayer in respect of which the following apply:

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[18] *Ibid*, para 11.

[19] Similar criteria apply for the renovations expense, home construction expense, and driveway alteration expense in paragraphs 118.2(2)(l.2), (l.21), and (l.6), respectively.

> (a) the relocation occurs to enable the taxpayer
>
> > (i) to carry on a business or to be employed at a location (in section 62 and this definition referred to as "the new work location") that is, except if the taxpayer is absent from but resident in Canada, in Canada, or
> >
> > (ii) to be a student in full-time attendance enrolled in a program at a post-secondary level at a location of a university, college or other educational institution (in section 62 and this definition referred to as "the new work location"),
>
> (b) the taxpayer ordinarily resided before the relocation at a residence (in section 62 and this definition referred to as "the old residence") and ordinarily resided after the relocation at a residence (in section 62 and this definition referred to as "the new residence"),
>
> (c) except if the taxpayer is absent from but resident in Canada, both the old residence and the new residence are in Canada, and
>
> (d) the distance between the old residence and the new work location is not less than 40 kilometres greater than the distance between the new residence and the new work location;

[37] In considering the purpose and effect of this definition, the Federal Court of Appeal recognized that an employee may have to move in order to remain within a practical commuting distance of a new job.[20] The Federal Court of Appeal also recognized that Parliament limited the deduction to moves that bring a taxpayer at least 40 kilometres closer to the new work or school location, in order to prevent the provision from being invoked when a taxpayer simply desires a change in residence.[21]

[38] Dr. Breen takes issue with this distance requirement on the basis that there is no consideration of whether 40 kilometres is an appropriate distance. He stated that people with disabilities may encounter difficulties that are not connected to distance, such as the time it may take to travel between locations and access to appropriate transportation services. In overlooking this consideration, Parliament indirectly discriminated against individuals with disabilities.

[39] However, Dr. Breen's failure to qualify for the deduction was not based on his disability, but on the particular facts of his case. There was no new work or school

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[20] *Giannakopoulos v The Minister of National Revenue*, [1995] 3 FC 294 (FCA), para 7.
[21] *Ibid*.

location. In 2018, Dr. Breen was a full-time PhD student at the University of British Columbia, had casual employment conducting research and policy development for the university, and operated a consulting firm, Breen and Associates, with a focus on social policy and disability and employment. The move to the new home assisted Dr. Breen in his ability to work from home for his existing studies, employment, and business activities.

[40] Dr. Breen also did not meet the distance requirement because his new home is only 13 kilometres closer to the University of British Columbia.

[41] There was no distinction within the meaning of subsection 15(1) of the *Charter*. All taxpayers are subject to the same requirements, based on their individual, factual circumstances.[22]

[42] Dr. Breen's position also disregards the tax benefit schemes within the *Income Tax Act* intended to assist taxpayers with disabilities. In the present case, the medical expense tax credit provisions provided Dr. Breen with some, but not complete relief for various medical expenses he incurred.[23]

C. The heating pads expense does not qualify for the medical expense tax credit

[43] Dr. Breen testified that he uses the heating pads to assist with blood circulation problems caused by the temperature dysregulation associated with polio. It is a form of self-administered treatment for his continued polio symptoms.

[44] While I do not doubt Dr. Breen's basis for their use, the heating pads do not qualify for the medical expense tax credit. They are not a device, or used in respect of a device, listed in paragraph 118.2(2)(i). They also do not qualify under paragraph 118.2(2)(m) because they are not a device or equipment listed in the applicable regulation.[24]

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[22] See *Konecny v HMTQ*, 2013 TCC 334, paras 27-28, where this Court struck a claim of discrimination from a Notice of Appeal with respect to the moving expense deduction.

[23] The disability tax credit provisions also provide some relief to taxpayers who fall within a relatively restricted category of impairment (*Johnston v Canada*, [1998] FCJ No 169 (FCA) para 10).

[24] *Income Tax Regulations*, "Part LVII Medical Expense Tax Credit", s. 5700.

[45] This Court reached a similar conclusion in *Ross*, where that taxpayer attempted to claim the medical expense tax credit for the cost of heating pads and other treatment supplies.[25]

[46] Parliament intended to limit the availability of the medical expense tax credit to a specific list of items and types of expenses.[26] In this regard, the heating pads do not qualify under any of the statutory categories.

IV. Conclusion

[47] Dr. Breen is an effective and moving advocate for people with disabilities. His expertise and breadth of knowledge are undeniable.

[48] However, his *Charter* arguments fail because none of the provisions at issue systematically exclude persons with a disability in general, or those in a specific subset of that group. To the contrary, certain provisions of the medical expense tax credit are specifically directed at individuals with severe and prolonged mobility impairment. The credits and deductions provided under the *Income Tax Act* cannot address the circumstances of every taxpayer.

[49] Dr. Breen qualified for the maximum amount provided under paragraph 118.2(2)(1.5), the medical expense category Parliament intended to capture moving expense payments like the PTT. There is no basis for this Court to extend the provision beyond Parliament's clear intention. As this Court stated in *Johnston*, it is Parliament's job to set limits for the establishment and ongoing delivery of social programs and this Court cannot "substitute its judgment for where such lines should be drawn or redrawn."[27]

[50] The appeal is therefore allowed only with respect to the wheelchair glove expense conceded by the Respondent.

Signed at Ottawa, Canada, this 14th day of April 2023.

"Joanna Hill"

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[25] *Ross v HMTQ*, 2014 TCC 317, paras 23-26.
[26] *Ali v HMTQ*, 2008 FCA 190, para 17.
[27] *Johnston v HMTQ*, 2012 TCC 177, para 16.

Hill J.

Appendix "A"

Medical expenses

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

[…]

(i) for, or in respect of, an artificial limb, an iron lung, a rocking bed for poliomyelitis victims, a wheel chair, crutches, a spinal brace, a brace for a limb, an ileostomy or colostomy pad, a truss for hernia, an artificial eye, a laryngeal speaking aid, an aid to hearing, an artificial kidney machine, phototherapy equipment for the treatment of psoriasis or other skin disorders, or an oxygen concentrator, for the patient;

[…]

(l.2) for reasonable expenses relating to renovations or alterations to a dwelling of the patient who lacks normal physical development or has a severe and prolonged mobility impairment, to enable the patient to gain access to, or to be mobile or functional within, the dwelling, provided that such expenses

(i) are not of a type that would typically be expected to increase the value of the dwelling, and

(ii) are of a type that would not normally be incurred by persons who have normal physical development or who do not have a severe and prolonged mobility impairment;

(l.21) for reasonable expenses relating to the construction of the principal place of residence of the patient who lacks normal physical development or has a severe and prolonged mobility impairment, that can reasonably be considered to be incremental costs incurred to enable the patient to gain access to, or to be mobile or functional within, the patient's principal place of residence, provided that such expenses

(i) are not of a type that would typically be expected to increase the value of the dwelling, and

(ii) are of a type that would not normally be incurred by persons who have normal physical development or who do not have a severe and prolonged mobility impairment;

[…]

(l.5) for reasonable moving expenses (within the meaning of subsection 62(3), but not including any expense deducted under section 62 for any taxation year) of the patient, who lacks normal physical development or has a severe and prolonged mobility impairment, incurred for the purpose of the patient's move to a dwelling that is more accessible by the patient or in which the patient is more mobile or functional, if the total of the expenses claimed under this paragraph by all persons in respect of the move does not exceed $2,000;

[…]

(m) for any device or equipment for use by the patient that

(i) is of a prescribed kind,

(ii) is prescribed by a medical practitioner,

(iii) is not described in any other paragraph of this subsection, and

(iv) meets such conditions as are prescribed as to its use or the reason for its acquisition;

to the extent that the amount so paid does not exceed the amount, if any, prescribed in respect of the device or equipment;

Moving expenses

62 (1) There may be deducted in computing a taxpayer's income for a taxation year amounts paid by the taxpayer as or on account of moving expenses incurred in respect of an eligible relocation, to the extent that

(a) they were not paid on the taxpayer's behalf in respect of, in the course of or because of, the taxpayer's office or employment;

(b) they were not deductible because of this section in computing the taxpayer's income for the preceding taxation year;

(c) the total of those amounts does not exceed

(i) in any case described in subparagraph (a)(i) of the definition eligible relocation in subsection 248(1), the total of all amounts, each of which is an amount included in computing the taxpayer's income for the taxation year from the taxpayer's employment at a new work location or from carrying on the business at the new work location, or because of subparagraph 56(1)(r)(v) in respect of the taxpayer's employment at the new work location, and

(ii) in any case described in subparagraph (a)(ii) of the definition eligible relocation in subsection 248(1), the total of amounts included in computing the taxpayer's income for the year because of paragraphs 56(1)(n) and (o); and

(d) all reimbursements and allowances received by the taxpayer in respect of those expenses are included in computing the taxpayer's income.

Moving expenses of students

(2) There may be deducted in computing a taxpayer's income for a taxation year the amount, if any, that the taxpayer would be entitled to deduct under subsection (1) if the definition eligible relocation in subsection 248(1) were read without reference to subparagraph (a)(i) of that definition and if the word "both" in paragraph (c) of that definition were read as "either or both".

Definition of moving expenses

(3) In subsection 62(1), moving expenses includes any expense incurred as or on account of

(a) travel costs (including a reasonable amount expended for meals and lodging), in the course of moving the taxpayer and members of the taxpayer's household from the old residence to the new residence,

(b) the cost to the taxpayer of transporting or storing household effects in the course of moving from the old residence to the new residence,

(c) the cost to the taxpayer of meals and lodging near the old residence or the new residence for the taxpayer and members of the taxpayer's household for a period not exceeding 15 days,

(d) the cost to the taxpayer of cancelling the lease by virtue of which the taxpayer was the lessee of the old residence,

(e) the taxpayer's selling costs in respect of the sale of the old residence,

(f) where the old residence is sold by the taxpayer or the taxpayer's spouse or common-law partner as a result of the move, the cost to the taxpayer of legal services in respect of the purchase of the new residence and of any tax, fee or duty (other than any goods and services tax or value-added tax) imposed on the transfer or registration of title to the new residence,

(g) interest, property taxes, insurance premiums and the cost of heating and utilities in respect of the old residence, to the extent of the lesser of $5,000 and the total of such expenses of the taxpayer for the period

(i) throughout which the old residence is neither ordinarily occupied by the taxpayer or by any other person who ordinarily resided with the taxpayer at the old residence immediately before the move nor rented by the taxpayer to any other person, and

(ii) in which reasonable efforts are made to sell the old residence, and

(h) the cost of revising legal documents to reflect the address of the taxpayer's new residence, of replacing drivers' licenses and non-commercial vehicle permits (excluding any cost for vehicle insurance) and of connecting or disconnecting utilities,

but, for greater certainty, does not include costs (other than costs referred to in paragraph 62(3)(f)) incurred by the taxpayer in respect of the acquisition of the new residence.

Definitions

248 (1) In this Act,

eligible relocation means a relocation of a taxpayer in respect of which the following apply:

(a) the relocation occurs to enable the taxpayer

(i) to carry on a business or to be employed at a location (in section 62 and this definition referred to as "the new work location") that is, except if the taxpayer is absent from but resident in Canada, in Canada, or

(ii) to be a student in full-time attendance enrolled in a program at a post-secondary level at a location of a university, college or other educational institution (in section 62 and this definition referred to as "the new work location"),

(b) the taxpayer ordinarily resided before the relocation at a residence (in section 62 and this definition referred to as "the old residence") and ordinarily resided after the relocation at a residence (in section 62 and this definition referred to as "the new residence"),

(c) except if the taxpayer is absent from but resident in Canada, both the old residence and the new residence are in Canada, and

(d) the distance between the old residence and the new work location is not less than 40 kilometres greater than the distance between the new residence and the new work location;

CITATION:	2023 TCC 48
COURT FILE NO.:	2022-168(IT)I
STYLE OF CAUSE:	JONATHON S. BREEN v. HIS MAJESTY THE KING
PLACE OF HEARING:	Sidney, British Columbia
DATE OF HEARING:	September 28, 2022
REASONS FOR JUDGMENT BY:	The Honourable Justice Joanna Hill
DATE OF JUDGMENT:	April 14, 2023

APPEARANCES:

For the Appellants:	The Appellant himself
Counsel for the Respondent:	Katherine Shelley

COUNSEL OF RECORD:

For the Appellant:

Name:	N/A
Firm:	

For the Respondent:	Shalene Curtis-Micallef Deputy Attorney General of Canada Ottawa, Canada