Docket: 2023-1392(IT)I

BETWEEN:

MICHAEL S. PERSAUD,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on February 1, 2024, at Edmonton, Alberta

Before: The Honourable Mr. Justice Randall S. Bocock

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Callie Matz

JUDGMENT

WHEREAS the Court has published its reasons for judgment in this appeal on this date;

NOW THEREFORE THIS COURT ORDERS THAT:

1. The appeal of the reassessment dated June 21, 2021 concerning the 2019 taxation year is dismissed because the Appellant's father was not a resident in Canada at any time in the year within the meaning of paragraph 118(6)(b) of the *Income Tax Act*;

2. There shall be no costs in the appeal.

Signed at Toronto, Ontario, this 18th day of April 2024.

"R.S. Bocock"

Bocock J.

Citation: 2024 TCC 42
Date: 20240417
Docket: 2023-1392(IT)I

BETWEEN:

MICHAEL S. PERSAUD,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Bocock J.

I. **Facts in Brief**

[1] The Appellant, Michael Persaud, brings this appeal to claim a medical expense deduction on his 2019 tax return concerning health care costs paid for his then acutely ill father, Dennis Persaud.

[2] There are not facts in dispute. Dennis Persaud, a Guyanese citizen and resident, was on a visitor's visa to Canada and planned to stay 2 weeks or so, from May 5 to approximately May 19, 2019. Instead, Dennis suffered a major heart attack and remained in hospital, in Canada, for some 8 weeks until July 14, 2019. During his convalescence in Canada, Dennis required acute and then rehabilitative medical care. He was not covered for such costs because he was not a resident of Canada under applicable Canadian health legislation. Regrettably, Dennis passed away in November, 2021.

[3] Lest anyone think healthcare is "free" in Canada, Dennis' healthcare costs surpassed $18,700. As a dutiful and caring son, Michael Persaud paid those costs for his father, Dennis. Michael claimed the costs as an "allowable amount of medical expenses for other dependents" (the "medical expense deduction"). The Minister denied the request, Michael Persaud objected, and the Minister confirmed her denial.

II. **Statutory Provision**

[4] Several provisions of the *Income Tax Act* ("*ITA*") speak to the medical expense deductions: section 118.2 as to the nature of medical expenses and subsection 118(b) as to the definition of a dependent in respect of whom a taxpayer may claim the medical expense deduction. The nature of the medical expenses otherwise qualify and the Minister does not contest that issue.

[5] Specific excerpts from the *ITA* relevant to this appeal are as follows:

> Definition of ***dependant***
>
> **(6)** For the purposes of paragraph (d) […], ***dependant***, of an individual for a taxation year, means a person who at any time in the year is dependent on the individual for support and is
>
> **[...]**
>
> **(b)** the parent, […], if resident in Canada at any time in the year, of the individual or of the individual's spouse or common-law partner.

[6] A taxpayer must satisfy three components in order to successfully claim the medical expense deduction in relation to a third party. One, the recipient of the treatments must be: related in some way ("kinship"); be dependent on the taxpayer for support ("dependency"); and, if not a spouse or common-law partner or descendant, then fall within a degree of other kinship and be a "resident in Canada at any time in the year" ("residency").

Preliminary Findings and Submissions

Kinship

[7] On the issue of kinship, Dennis was Michael Persaud's father. This first component is factually and legally satisfied.

Dependency

[8] Concerning dependency, the Court found that during his presence in Canada, and distinct from the residency component, Dennis was factually entirely dependent upon Michael Persaud. The amounts paid to support Dennis' treatment, accommodation and rehabilitation in order to allow him to leave the hospital, and Canada, were for Michael Persaud's sole account. There is no case authority on point concerning this slightly staggered wording of "a person who at any time in the year

is dependent on the individual for support" compared to the residency wording of "if resident in Canada at any time in the year". The component of dependency has been met. The only contentious issue is the residency component.

III. **The Parties' Positions**

Residency

[9] At the hearing, the parties presented little authority on the issue of the wording of residency used in 118(6)(b) namely, "residence in Canada at any time in the year", particularly with respect to the use of the phrase elsewhere in the *ITA* and authorities which may have considered same. Therefore, the Court allowed some additional time for brief, subsequent submissions. These were received and the Court now renders its decision.

[10] Michael Persaud interprets paragraph 118(6)(b) to mean "a person that is legally residing in Canada any time between January 1 to December 31 in a specific year". Since Dennis was issued a legal visa for up to six months, and he visited for some 8 weeks, this constitutes residence in Canada. As such, Dennis was a resident of Canada at the time of his 8 week stay, during which time the expenses were incurred.

[11] In contrast, the Respondent argues that the foundational subsection 2(1) of the *ITA*, which directs tax to "be paid on taxable income... of every person resident in Canada at any time in the year" uses, save for deemed residents, the common law definition of residency. This test embodies the concept of "ordinarily resident in Canada".

IV. **Analysis**

[12] Concerning the residency component, the Court shall determine in the context of medical expense deductions "if" Dennis was a "resident in Canada at any time in the year".

The general rule of interpreting repeated words

[13] In an Act of Parliament, repeated words, if possible, are to be attributed a consistent meaning throughout an Act. The Supreme Court of Canada stated that "Unless the contrary is clearly indicated by the context, a word should be given the

same interpretation or meaning whenever it appears in an act."[1] Presumptively, a legislature employs language carefully and consistently such that the same words receive the same meaning and different words have different meanings.[2]

[14] Ascribing similar meaning is particularly true when the words are close together or otherwise related.[3] In *Thomson v Canada (Deputy Minister of Agriculture)*, the Supreme Court of Canada said the following regarding repeated use of the word "recommendation" and its non-binding nature.[4] Justice Cory, for the majority stated:

> The word is used in other provisions of the Act. Unless the contrary is clearly indicated by the context, a word should be given the same interpretation or meaning whenever it appears in an act. […]
>
> […] Clearly in s. 52(1) "recommendations" has its ordinary and plain meaning of advising or counselling. Parliament could not have intended the word "recommendations" in the subsequent subsection of the same section to receive a different interpretation. The word must have the same meaning in both subsections.

[15] Further, the logic was that elsewhere in the legislation the word or expression had a single clear meaning. This finding invoked the presumption of consistent expression warranting application of that meaning throughout. Further, the presumption forcibly applies where the relevant provisions are close together or otherwise related. This tool has been applied repeatedly.

[16] On the other hand, the presumption may be dislodged where circumstances demonstrate such was not the intention pursued by Parliament".[5] As Atkin, L.J. said in *Martin v Lowry (Inspector of Taxes)*[6]:

> If one could adopt as a rigid canon of construction an assumption that in any statute the same word is always used with the same meaning, one's task would perhaps be easier; but it is plain that the assumption is ill-founded… We must have regard to the context.

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[1] *R v Lewis*, [1996] 1 SCR 921 at para 69; *R v Zeolkowski*, [1989] 1 SCR 1378 at para 19.
[2] R Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis, September 2014) at para. 8.32 [*Sullivan*].
[3] *N McCormack, How to Understand Statutes and Regulations*, 2nd ed (Toronto: Thomson Rueters, 2017) at page 161.
[4] *Thomson v Canada (Deputy Minister of Agriculture)*, [1992] 1 SCR 385 at para 27 [*Thomson*].
[5] *Canada v Schwartz*, [1996] 1 SCR 254 at para 61.
[6] *Martin v Lowry (Inspector of Taxes)*, [1926] 1 KB 550 (Eng CA) at 561.

The meaning of "at any time" in Subsection 118(6) of the *Act*

[17] The explanatory notes published when 118(6) was introduced do not mention Parliament's intention behind using the language of "at any time in the year".[7]

[18] The history of subsection 118(6) proves more helpful concerning the intention behind the word "at any time in the year". Before subsection 118(6) was introduced in 1988, there existed the personal exemption under section 109 of the *ITA*. The 1982 technical notes to subsection 118(6) state:[8]

> Section 109 provides the personal exemptions that are deductible in computing an individual's taxable income. The deduction under paragraph 109(1)(b) [now 118(1)B(b)—ed.] is commonly referred to as the married equivalent deduction for taxpayers who are unmarried, separated or divorced and support a dependant in their ordinary place of residence. The deduction under paragraph 109(1)(f) is for dependent parents, grandparents, brothers and sisters. The amendments to paragraphs 109(1)(b) and (f) [now 118(6)—ed.] require that, to qualify for deduction in a year, a dependant (other than the taxpayer's spouse, children or grandchildren) **must have been resident in Canada at some time during the year**.

[Emphasis added.]

[19] One may conclude there has always existed a necessity to have been "resident", whether "at any time in the year" or through the lens of the technical notes, "at some time during the year".

[20] A claim for deductions where residency was in issue was before this Court in *EA Baltazar v Canada*[9]. In that case, the appellant claimed various non-refundable tax credits over the period of four years for a dependant that lived overseas.[10] The Appellant argued that the *ITA* created an exception to the requirement that a dependant be a resident of Canada for the purpose of claiming the equivalent-to-married credit. Justice Sarchuk rejected this argument. He referred to Justice O'Connor's analysis in *Ruzicka v Canada*.[11] In turn, Justice O'Connor held that any exceptions to a dependant being a resident of Canada, at common law, are by virtue

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[7] Any discussion is found at page 255 of the Explanatory Notes.
[8] David Sherman, *2023 Department of Finance Technical Notes – Income Tax – 35th Edition – Volume 1 (Income Tax Act through section 149.2)*, 35th ed (Toronto, ON: Thomson Reuters, 2023) at 1616.
[9] *EA Baltazar v Canada*, 1995 CarswellNat 303 (TCC).
[10] Basic personal amounts, dependant child amounts, and equivalent-to-married amounts.
[11] *Ruzicka v Canada*, [1994] 1 CTC 2092.

of the deemed resident over-ride where the taxpayer also coincidentally lives overseas and supports someone at home.[12] The dependant must still therefore be a resident of Canada, as the meaning of resident is normally understood at common law.[13]

[21] In conclusion, in applying the principles found in *Thomson*, the Court: (i) employs the term or expression as it appears elsewhere in the *Act*; (ii) analyzes the interpretation given to the term to understand its meaning in context; and, (iii) then applies the presumption of consistent expression. The term "at any time in the year" has otherwise received little judicial interpretation beyond the authorities above.

[22] Quantitatively, the term "resident in Canada at any time in the year" is found 17 times in the *Act*. Importantly, it is found in the charging provision: section 2(1) of the *Act*.

[23] By use of "at any time in the year", Parliament modifies "resident", such that one must be "resident in Canada" for the purposes of satisfying the criteria of being a "dependant" eligible in the context of a claim for the medical expense deduction. Therefore, to be "resident in Canada", the normal rules of residency should be used which are otherwise applicable to other sections of the *ITA* to yield consistent application.

[24] One can be a resident of Canada under two circumstances. One is either a deemed resident[14] or a factual resident[15]. There is no dispute that Dennis was not a deemed resident as he did not spend 183 days or more in Canada.

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[12] The Court analyzed the deemed resident rules under section 250(1) of the *Act*.

[13] See also *R v Scheller*, [1975] CTC 601, 75 DTC 5406 (FCTD), where the Federal Court applied former paragraph 109(1)(b), which is essentially the same as the 1989 version of paragraph 118(1)(b) and denied equivalent-to-married status because the daughter of the Canadian resident taxpayer was not maintained by the taxpayer in the domestic establishment where the taxpayer lived.

[14] The deemed resident rules are found in subsection 250(1) and are not applicable to Dennis.

[15] The leading and oft cited authority on the meaning of "residence" is *Thomson v. Minister of National Revenue* (1945), 2 DTC 812 (SCC) [distinct from the previous Thomson at footnote 5 *supra*] for the purposes of determining if someone is resident in which Rand, J. said, at page 815:

> The graduation of degrees of time, object, intention, continuity and other relevant circumstances, shows, I think, that in common parlance "residing" is not a term of invariable elements, all of which must be satisfied in each instance. It is quite impossible to give it a precise and inclusive definition. It is highly flexible, and its many shades of meaning vary not only in the contexts of different matters, but also in

[25] Regrettably, Dennis was not a factual resident of Canada at any time in 2019. The purpose of Dennis' trip was to visit Michael Persaud and other family members for a finite amount of time and well less than 180 days. But for his heart attack, Dennis would have returned home (and his place of residence) in a fortnight. Similarly, there is no evidence otherwise establishing that Dennis was planning to stay in Canada. Dennis never converted or ever intended to convert his intentions, habits or domicile to Canada beyond a short visit, unavoidably delayed for an additional six weeks because of his heart attack. He was not a factual resident.

> different aspects of the same matter. In one case it is satisfied by certain elements, in another by others, some common, some new.

And at page 816:

> But in the different situations of so-called "permanent residence", "temporary residence", "ordinary residence", "principal residence" and the like, the adjectives do not affect the fact that there is in all cases residence; and that quality is chiefly a matter of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living, with its accessories in social relations, interests and conveniences at or in the place in question. It may be limited in time from the outset, or it may be indefinite, or so far as it is thought of, unlimited.

V. **Conclusion**

[26] Repeated words in a section should be given a consistent interpretation. The law from *Thomson* states that one takes the term or expression as it appears elsewhere in the *Act*, analyzes the interpretation given to the term to understand its meaning in context, and then applies the presumption of consistent expression if no contrary intention. That analysis leads to the conclusion Dennis was not an ordinary resident of Canada. The residency component needed to claim medical expense deductions is not present. Regrettably, the appeal is dismissed. There shall be no costs.

Signed at Toronto, Ontario, this 18th day of April 2024.

"R.S. Bocock"

Bocock J.

CITATION:	2024 TCC 42
COURT FILE NO.:	2023-1392(IT)I
STYLE OF CAUSE:	MICHAEL S. PERSAUD AND HIS MAJESTY THE KING
PLACE OF HEARING:	Edmonton, Alberta
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APPEARANCES:

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