

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20100119

Docket: A-157-09

Citation: 2010 FCA 17

**CORAM: NADON J.A.
EVANS J.A.
STRATAS J.A.**

BETWEEN:

RHONDA RAY

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on January 19, 2010.

Judgment delivered from the Bench at Toronto, Ontario, on January 19, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS J.A.

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20100119

Docket: A-157-09

Citation: 2010 FCA 17

**CORAM: NADON J.A.
EVANS J.A.
STRATAS J.A.**

BETWEEN:

RHONDA RAY

Appellant

and

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on January 19, 2010)

EVANS J.A.

[1] This is an appeal by Rhonda Ray from a decision of the Tax Court of Canada (2009 TCC 140) in which Justice V. A. Miller dismissed her appeal against the reassessments of her 2001, 2002, and 2003 taxation years. In those reassessments, the Minister of National Revenue disallowed Ms Ray's claim for medical expense tax credits ("METC") for the cost of vitamins, herbs, natural foods and other substances, on the ground that their purchase was not recorded by a pharmacist as required by paragraph 118.2(2)(n) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

[2] Ms Ray suffers from fibromyalgia and other medical conditions which, she says, disproportionately affect women. She states that the substances for which she claimed METCs were prescribed by a medical practitioner, and purchased, to treat these conditions. The Judge rejected Ms Ray's argument that, because paragraph 118.2(2)(n) does not include the substances that she purchased for her medical conditions, it violates her Charter rights: in particular, her rights under section 7 and her rights under section 15 to equality and to freedom from discrimination on grounds of gender and disability.

[3] We are all of the opinion that the Judge correctly dismissed Ms Ray's appeal. It is settled law in this Court that paragraph 118.2(2)(n) does not contravene section 15 and that, in the absence of any distinguishing facts, the principles established in *Miller v. The Queen*, 2002 FCA 370, 220 D.L.R. (4th) 149, provide no basis for departing from the Court's prior jurisprudence. After considering *R. v Kapp*, 2008 SCC 41, [2008] 2 S.C.R. 483, the Court in *Tall v. The Queen*, 2009 FCA 342, rejected Mr Tall's argument that paragraph 118.2(2)(n) violated his rights under paragraph 2(b) and section 15 of the Charter.

[4] Counsel for Ms Ray argued that in *Kapp* the Supreme Court of Canada implicitly relieved section 15 claimants from the requirement, established in *Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, 2004 SCC 78, [2004] 3 S.C.R. 657, that benefits sought by claimants must be provided by law. In our view, this argument is more appropriately addressed in the Supreme Court of Canada since it has already been rejected in this Court as a basis for not following the decision in *Ali v. The Queen*, 2008 FCA 190, holding that paragraph 118.2(2)(n) is not discriminatory in either purpose or effect.

[5] We note that Ms Ray's argument that the reassessments violated her rights under section 7 was also rejected in *Ali* on the basis of the decision of this Court in *Matthew v. Canada*, 2003 FCA 371.

[6] For these reasons, the appeal will be dismissed with costs.

"John M. Evans"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-157-09

(APPEAL FROM A JUDGMENT OR ORDER OF JUSTICE MILLER, OF THE TAX COURT OF CANADA, DATED MARCH 6, 2009, DOCKET NOS. 2004-2700 (IT) G AND 2006-432 (IT) G)

STYLE OF CAUSE: RHONDA RAY v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 19, 2010

**REASONS FOR JUDGMENT
OF THE COURT BY:** (NADON, EVANS & STRATAS J.J.A.)

DELIVERED FROM THE BENCH BY: EVANS J.A.

APPEARANCES:

Patricia A. Le Febour FOR THE APPELLANT

Brent Cuddy FOR THE RESPONDENT
Franco Calabrese

SOLICITORS OF RECORD:

Rochon Geneva LLP FOR THE APPELLANT
Toronto, Ontario

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario