

Docket: 2011-2806(IT)I

BETWEEN:

MARIA LUCARELLI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on July 5, 2012 at Hamilton, Ontario

By: The Honourable Justice J.M. Woods

Appearances:

Counsel for the Appellant: The Appellant herself

Counsel for the Respondent: Alisa Apostle

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**JUDGMENT**

The appeal with respect to an assessment made under the *Income Tax Act* for the 2009 taxation year is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the appellant is entitled to the medical expense tax credit in respect of tuition paid to the TALC Academy. The appellant is entitled to her costs.

Signed at Toronto, Ontario this 22nd day of August 2012.

“J. M. Woods”

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Woods J.

Citation: 2012 TCC 301  
Date: 20120822  
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and

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### **REASONS FOR JUDGMENT**

Woods J.

[1] The appellant, Maria Lucarelli, claimed a medical expense tax credit in respect of tuition paid to a specialized private school for one of her children who had been diagnosed with a learning disability. The Minister of National Revenue disallowed the credit in a reassessment for the 2009 taxation year.

[2] Paragraph 118.2(2)(e) of the *Income Tax Act* describes the expense which Ms. Lucarelli claimed. It reads:

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

[...]

(e) **[school, institution, etc.]** - for the care, or the care and training, at a school, institution or other place of the patient, who has been certified by an appropriately qualified person to be a person who, by reason of a physical or mental handicap, requires the equipment, facilities or personnel specially provided by that school, institution or other place for the care, or the care and training, of individuals suffering from the handicap suffered by the patient;

[3] The issue in the appeal centres on the requirement of a certificate from an appropriately qualified person. In this case, several letters were written by professionals concerning the child's requirements. The Crown submits that the letters are not specific enough to satisfy the certification requirement.

[4] It is not in dispute that the circumstances of this case are sympathetic. It is clear that the child required specialized care and training for a learning disability and that the school in question was able to provide this. The problem, according to the Crown, is simply that the certification requirement was not satisfied.

### Background facts

[5] In 2007, a doctor recommended to Ms. Lucarelli that her seven year old child be assessed for a learning disability by Dr. Nancy Johnston, who is a registered psychologist affiliated with Brock University.

[6] Following an extensive investigation, Dr. Johnston issued a well-written and detailed report which confirmed several problem areas, most notably, a "severe deficit in the area of reading and writing." At the end of the report, Dr. Johnston made eight specific recommendations. The one that is most relevant to this appeal is reproduced below.

It is suggested that an Identification Placement and Review Committee (IPRC) meeting be held in order to develop an Individual Education Plan (IEP) for X. He will need some individual learning resource support in order to bypass his areas of problems and increase coping skills and compensatory approaches.

[7] It appears that the meeting with the IPRC did not take place. Instead, Dr. Johnston approved that the child remain at his current Montessori school provided that the school could provide remedial assistance. The child received this assistance, and he stayed at that school for two years during which there was improvement especially in motor skills. There was less improvement in the area of reading and writing.

[8] In November 2008, the child was assessed by professionals at the Dyslexia Resource Centre. They confirmed that the child's reading skills had not significantly improved since he was assessed by Dr. Johnston. The new assessment was less extensive, and less costly, than the original assessment by Dr. Johnston.

[9] Ms. Lucarelli had to find a new school for her child beginning September 2009 since the Montessori school only taught younger children. She undertook an extensive search and considered many options, including the local public school.

[10] The school that was selected was TALC Academy, which is a private school that specializes in education for children with the same type of learning disability that Ms. Lucarelli's child had. The school was within commuting distance.

[11] Ms. Lucarelli paid tuition to TALC Academy in the amount of \$6,125 for the fall term in 2009. It is this amount that is at issue in the appeal.

[12] The child has continued to attend the TALC Academy since the initial term in 2009. He has done extremely well there, and it is expected that he will be able to continue on in high school in the public system.

[13] The principal of the TALC Academy, David Fisher, testified at the hearing. In respect of the certification requirement, he stated that each year he provides a letter to parents which enables them to claim the medical expense tax credit. The letter provided to Ms. Lucarelli states in part:

[...] In order to be successful and reach his potential, X needs to have the specialized programming that is available at TALC Academy. [...]

[14] In support of her tax claim, in 2010 Ms. Lucarelli requested a further letter from Dr. Johnston which specifically addressed TALC Academy. Apparently, Dr. Johnston had not been aware of this school when the initial report was written. Dr. Johnston wrote:

It was with great pleasure that I learned that X is continuing to progress well in a program that provides him with an individual educational environment where his specific learning disability can be accommodated. The opportunity to bypass his areas of disability, while learning freely in the domains where he excels, will not only allow him to grow according to his capacity, but will also support his social/emotional development and his self-esteem.

The program you described at the "TALC School" follows several recommendations made in my psychological report of 2007. With the attitudinal and academic growth he is currently achieving, I feel confident that a transition to his community school will occur in the near future.

As parents, you deserve recognition for meeting the driving and financial demands needed to allow X this much needed opportunity. Hoping that our province and

community will support you in your goal or providing X with the opportunity to fulfill his potential.

### Analysis

[15] It may be useful to first make a general comment about the availability of the medical expense tax credit for tuition paid to a school such as the TALC Academy, which focuses on reading and writing disabilities. This type of school was found to qualify in a decision of Sobier J. in *Rannelli v The Queen*, 91 DTC 816 (TCC). The Crown takes no issue with this.

[16] As for the certification requirement, which is at issue in this appeal, this requirement has been the subject of several court decisions, many of which were brought to my attention by the parties.

[17] A good starting point for considering the certificate requirement is the following comment of Sharlow J.A. in *Title Estate v The Queen*, 2001 FCA 106, 2001 DTC 5236:

[5] In our view, a certificate under paragraph 118.2(2)(e) must at least specify the mental or physical handicap from which the patient suffers, and the equipment, facilities or personnel that the patient requires in order to obtain the care or training needed to deal with that handicap. The certificates in this case are simply too vague to meet that requirement.

[18] I would also mention that in *Lang v The Queen*, 2009 TCC 182, 2009 DTC 1127, C. Miller J. expressed the view that the certificate must also specify the particular school that is at issue. His reasoning is that Parliament expected an expert to provide this and not a judge.

[19] The Crown did not rely on *Lang* in this appeal. Instead, counsel's argument was that the specialized training that was required was not set out in sufficient detail in Dr. Johnston's report. Another factor was that the report was prepared two years before the child was enrolled in the TALC Academy.

[20] In this case, I am satisfied that the certificate requirement has been satisfied by a combination of the initial report by Dr. Johnston and the follow up assessment by the Dyslexia Resource Centre. Dr. Johnston's report was very detailed in setting out the exact difficulties experienced by the child, and she suggested that individualized training be provided which bypassed the problem areas.

[21] Although neither assessment evaluated particular schools, the evidence of the principal of the TALC Academy made it clear that the methodology of the school was to do precisely what Dr. Johnston had recommended, which was to teach in a way that bypassed the child's problem areas. As an example, examinations were administered by providing the questions orally rather than in writing. Dr. Johnston wrote in great detail about the problem areas and it appears that the TALC Academy specifically addressed these in the manner which Dr. Johnston had recommended. Dr. Johnston's follow up letter supports this conclusion.

[22] It seems to me that the legislative requirements are satisfied in circumstances where Dr. Johnston's report specifies the nature of the disability and the type of training that is required, and the evidence establishes that the TALC Academy specializes in providing this type of training for children with this disability.

[23] As for the period of time between Dr. Johnston's report and the child's enrollment at the TALC Academy, the second assessment by the Dyslexia Resource Centre in November 2008 goes a long way to fill that gap.

[24] I am satisfied that the initial assessment by Dr. Johnston and the follow up assessment by the Dyslexia Resource Centre satisfy the certification requirement in s. 118.2(2)(e) of the *Act*. The appeal will be allowed, with costs.

Signed at Toronto, Ontario this 22nd day of August 2012.

"J. M. Woods"

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Woods J.

CITATION: 2012 TCC 301

COURT FILE NO.: 2011-2806(IT)I

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HER MAJESTY THE QUEEN

PLACE OF HEARING: Hamilton, Ontario

DATE OF HEARING: July 5, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice J.M. Woods

DATE OF JUDGMENT: August 22, 2012

APPEARANCES:

    Counsel for the Appellant: The Appellant herself

    Counsel for the Respondent: Alisa Apostle

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        Firm:

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