

Docket: 2011-3345(IT)I

BETWEEN:

HICHAM LAHLOU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 9, 2013 at Montréal, Québec

Before: The Honourable Justice Patrick Boyle

Appearances:

Counsel for the Appellant: M^e Bruno Grenier

Counsel for the Respondent: M^e Anne-Marie Boutin

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* with respect to the Appellant's 2008 taxation year is allowed, with costs, and the assessment is referred back the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada this 17th day of May 2013.

"Patrick Boyle"

Boyle J.

Citation: 2013 TCC 161

Date: 20130517

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BETWEEN:

HICHAM LAHLOU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Boyle J.

[1] This informal appeal concerns whether post-doctoral fellowships received by the taxpayer in 2008 while a post-doctoral scholar at McGill University qualify for the subsection 56(3) scholarship exemption.

[2] There are several prior decisions of this Court concerning the taxation of post-doctoral fellowships. See for example, the decision of Archambault J. in *Chabaud v. The Queen*, 2011 TCC 438, the decisions of Woods J. in *Huang v. The Queen*, 2012 TCC 81, 2012 DTC 1120 and in *Caropreso v. The Queen*, 2012 TCC 212, 2012 DTC 1190 and my decision in *Lewis v. The Queen*, 2013 TCC 137. These cases highlight the fact that, prior to the 2010 legislative amendments to the definition of “qualifying educational program” in subsection 118.6(1) of the *Income Tax Act* (the “Act”), these cases are very dependent upon their particular facts and circumstances. As noted by Woods J. in *Huang*, since the 2010 amendments it is clear that post-doctoral research fellowships do not qualify for the subparagraph 56(3)(a)(i) scholarship exemption. The decision in *Lewis* confirms that.

[3] In this case, the Respondent’s principal position is that the amounts were fellowships described in subparagraph 56(1)(n), but that they did not qualify for the scholarship exemption in subparagraphs 56(1)(n)(ii) and 56(3)(a)(i) because they were not received in connection with Mr. Lahlou’s enrolment as a student in an educational program that qualifies for the subsection 118.6(2) education credit.

[4] In its Reply, the Respondent pleaded in the alternative that the amounts were not fellowships but were employment income, or in the further alternative, were research grants included in income under paragraph 56(1)(o). After hearing the evidence of the taxpayer and of his post-doctoral research supervising professor, the Respondent abandoned these two alternative arguments.

[5] The Respondent did not plead or argue the position that the fellowships were income from the office of post-doctoral scholar, trainee, researcher or fellow and for that reason excluded from being a fellowship described in subparagraph 56(1)(n)(i).

Facts

[6] Briefly, in 2008 Dr. Lahlou was a post-doctoral fellow at McGill University. His research project was in the field of breast cancer progression. This research was conducted in a McGill laboratory in its medicine and biochemistry departments under the supervision of Professor William J. Muller, a Canada Research Chair in Molecular Oncology. The evidence of both Dr. Muller and Dr. Lahlou is that Dr. Lahlou conducted his research project quite independently and autonomously. Dr. Muller appoints several post-doctoral fellows in his laboratory each year, and currently has five post-doctoral fellows. The evidence of Dr. Muller is that the purpose of the position in his laboratory is to have fellows train and develop to become independent researchers qualified to do their own research programs as associate professors in their own university labs. This is consistent with the description of post-doctoral researchers and fellows on McGill's website. The maximum period of a post-doctoral fellow at McGill University is five years immediately following their doctorate.

[7] The taxpayer completed his PhD at a University in France. Upon arranging his fellowship at Dr. Muller's lab at McGill University prior to 2008, he personally obtained a \$30,000 fellowship from a French organization to support his research at McGill University. In order to begin his McGill fellowship, he obtained a Canadian work permit and not a study permit.

[8] In 2008, Dr. Lahlou received two fellowships. One was from the Fonds de la recherche en santé du Québec ("FRSQ") in the amount of \$30,000. The FRSQ fellowship was paid directly by FRSQ to Dr. Lahlou in 12 monthly installments. The FRSQ did not require and did not receive any reporting from Dr. Lahlou regarding his research progress or results.

[9] McGill University also awarded a \$12,000 fellowship to Dr. Lahlou out of its funds and grant monies allocated to Dr. Muller's research lab. This was funded from a grant to McGill University by the Canadian Institutes of Health Research. McGill University paid this amount to Dr. Lahlou regularly over the course of the year.

[10] Dr. Lahlou's claim in 2008 for the scholarship exemption for both fellowships was denied by the Canada Revenue Agency ("CRA"). Upon then filing with CRA a copy of the T2202 form required for the subsection 118.6(2) education credit along with a completed Schedule 11, his claim for the subsection 118.6(2) education credit amounts was allowed. However, he was still denied the scholarship exemption in subsections 56(1) and subsection 56(3).

Law

The relevant portions of the applicable *Income Tax Act* provisions are as follows:

<i>Amounts to be included in income for year</i>	<i>Sommes à inclure dans le revenu de l'année</i>
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56.(1) Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,

[...]

Scholarships, bursaries etc...

(n) the amount, if any, by which

(i) the total of all amounts (other than [...] amounts received in respect of, in the course of or by virtue of an office or employment) received by the taxpayer in the year, each of which is an amount received by the taxpayer as or on account of a scholarship, fellowship or bursary, or a prize for achievement in a field of endeavour ordinarily carried on by the taxpayer, other than a prescribed prize,

exceeds

56.(1) Sans préjudice de la portée générale de l'article 3, sont à inclure dans le calcul du revenu d'un contribuable pour une année d'imposition:

[...]

Bourses d'études, de perfectionnement, etc.

n) l'excédent éventuel:

(i) du total des sommes (à l'exclusion des [...] sommes reçues dans le cours des activités d'une entreprise et des sommes reçues au titre, dans l'occupation ou en vertu d'une charge ou d'un emploi) reçues au cours de l'année par le contribuable à titre de bourse d'études, de bourse de perfectionnement (fellowship) ou de récompense couronnant une oeuvre remarquable réalisée dans son domaine d'activité habituel, à l'exclusion d'une récompense visée par règlement,

sur:

(ii) the taxpayer's scholarship exemption for the year computed under subsection (3);
[...]

[...]

Exemption for scholarships, fellowships, bursaries and prizes

(ii) l'exemption pour bourses d'études du contribuable pour l'année, calculée selon le paragraphe (3);
[...]

[...]

Exemption pour bourses d'études, bourses de perfectionnement (fellowships) ou récompenses

56.(3) For the purpose of subparagraph (1)(n)(ii), a taxpayer's scholarship exemption for a taxation year is the total of

a) the total of all amounts each of which is the amount included under subparagraph (1)(n)(i) in computing the taxpayer's income for the taxation year in respect of a scholarship, fellowship or bursary received in connection with the taxpayer's enrolment

(i) in an educational program in respect of which an amount may be deducted under subsection 118.6(2) in computing the taxpayer's tax payable under this Part for the taxation year, for the immediately preceding taxation year or for the following taxation year, or
[...]

(c) the lesser of \$500 and the amount by which the total described in subparagraph (1)(n)(i) for the taxation year exceeds the total of the amounts determined under paragraphs (a) and (b).

Definitions

118.6.(1) For the purposes of sections

56.(3) Pour l'application du sous-alinéa (1)n(ii), l'exemption pour bourses d'études d'un contribuable pour une année d'imposition correspond au total des sommes suivantes:

a) le total des sommes représentant chacune la somme incluse en application du sous-alinéa (1)n(i) dans le calcul du revenu du contribuable pour l'année au titre d'une bourse d'études ou d'une bourse de perfectionnement (fellowship) reçue relativement à son inscription:

(i) soit à un programme d'études pour lequel une somme est déductible en application du paragraphe 118.6(2) dans le calcul de l'impôt à payer par le contribuable en vertu de la présente partie pour l'année, pour l'année d'imposition précédente ou pour l'année d'imposition subséquente,
[...]

c) 500 \$ ou, s'il est moins élevé, l'excédent du total visé au sous-alinéa n(i) pour l'année sur le total des sommes déterminées selon les alinéas a) et b).

Définitions

118.6.(1) Les définitions qui suivent

63 and 64 and this subdivision,

s'appliquent aux articles 63 et 64 et à la présente sous-section.

[...]

'qualifying educational program"
"programme de formation admissible"

"programme de formation
admissible""qualifying educational
program"

"qualifying educational program"
means a program of not less than three
consecutive weeks duration that
provides that each student taking the
program spend not less than ten hours
per week on courses or work in the
program [...]

"programme de formation admissible"
Programme d'une durée minimale de
trois semaines consécutives, aux cours
ou aux travaux duquel l'étudiant doit
consacrer dix heures par semaine au
moins et qui, s'il s'agit d'un programme

[...]

[...]

Education credit

Credit d'impôt pour études

118.6.(2) There may be deducted in
computing an individual's tax payable
under this Part for a taxation year the
amount determined by the formula

118.6.(2) Le montant obtenu par la
formule suivante est déductible dans le
calcul de l'impôt payable par un
particulier en vertu de la présente partie
pour une année d'imposition:

A x B

A x B

where

où:

A is the appropriate percentage for the
year; and

A représente le taux de base pour
l'année;

B is the total of the products obtained
when

B la somme des produits suivants:

(a) \$400 is multiplied by the number of
months in the year during which the
individual is enrolled in a qualifying
educational program as a full-time
student at a designated educational
institution, and

a) 400 \$ multipliés par le nombre de
mois de l'année pendant lesquels le
particulier est inscrit à un programme
de formation admissible comme
étudiant à temps plein d'un
établissement d'enseignement agréé,

(b) \$120 is multiplied by the number of
months in the year (other than months
described in paragraph (a)),each of
which is a month during which the

b) 120 \$ multipliés par le nombre de
mois de l'année (sauf ceux visés à
l'alinéa a)) dont chacun est un mois
pendant lequel le particulier est inscrit à

individual is enrolled at a designated educational institution in a specified educational program that provides that each student in the program spend not less than 12 hours in the month on courses in the program,

un programme de formation déterminé d'un établissement d'enseignement agréé, aux cours duquel l'étudiant doit consacrer au moins 12 heures par mois.

if the enrolment is proven by filing with the Minister a certificate in prescribed form issued by the designated educational institution and containing prescribed information [...].

Pour que le montant soit déductible, l'inscription du particulier doit être attestée par un certificat délivré par l'établissement - sur le formulaire prescrit contenant les renseignements prescrits [...].

The 2010 amendments are underlined below:

Les modifications de 2010 sont soulignées ci-dessous :

Definitions

Définitions

118.6.(1) For the purposes of sections 63 and 64 and this subdivision,

118.6.(1) Les définitions qui suivent s'appliquent aux articles 63 et 64 et à la présente sous-section.

[...]

[...]

'qualifying educational program'
"programme de formation admissible"

"programme de formation admissible"
"qualifying educational program"
"programme de formation admissible"

"qualifying educational program" means a program of not less than three consecutive weeks duration that provides that each student taking the program spend not less than ten hours per week on courses or work in the program and, [...] that is a program at a post-secondary school level that does not consist primarily of research (unless the program leads to a diploma from a college or a Collège d'enseignement général et professionnel, or a bachelor, masters, doctoral or equivalent degree)

Programme d'une durée minimale de trois semaines consécutives, aux cours ou aux travaux duquel l'étudiant doit consacrer dix heures par semaine au moins et qui, [...] est un programme de niveau postsecondaire qui ne consiste pas principalement à faire de la recherche, à moins qu'il ne mène à un diplôme décerné par un collège ou un collège d'enseignement général et professionnel ou à un baccalauréat, une maîtrise ou un doctorat ou à un grade équivalent.[...]

[...]

Analysis

[11] It is accepted by the parties and the Court that the two amounts received by the taxpayer in this case are fellowships described in subparagraph 56(1)(n)(i) given their nature and purpose. Therefore, the question to be decided is whether they give rise to a corresponding scholarship exemption amount for purposes of subparagraph 56(1)(n)(ii) and as defined in subsection 56(3). It is also accepted by the parties and the Court that there is no basis to treat the two fellowships differently for purposes of this analysis.

[12] A taxpayer's scholarship exemption for a year is the total of all amounts received by the taxpayer in the year as or on account of fellowships and similar amounts that were received in connection with his enrolment in an educational program that qualifies for the subsection 118.6(2) education credit.

[13] The definition of "qualifying educational program" for purposes of the education credit in subsection 118.6 requires that the taxpayer be a student in a program at a post-secondary educational institution that meets certain minimum periods spent on courses or work. Since McGill University is a qualifying educational institution and its post-doctoral fellow program requires more than the minimum amount of research work, the question in this case narrows to whether McGill University's post-doctoral fellows are students. Student is not a defined term for these purposes.

[14] The evidence in this case on the status of post-doctoral fellows in Québec and on whether McGill University characterizes its post-doctoral fellows as students is not perfectly clear nor entirely consistent.

[15] At McGill University, the application and acceptance process for post-doctoral fellows is substantially similar to that for doctoral fellows – those working on obtaining their PhDs. In each case, it is very different than for undergraduate and master's level students.

[16] McGill's post-doctoral fellows are required to be registered with the same group that registers doctoral candidates. Post-doctoral fellows are issued student cards and student numbers. They are governed by the university's Handbook of Student Rights and Responsibilities.

[17] McGill University issued Mr. Lahlou a T2202 certifying to CRA that he was a full-time student. McGill's website describes post-doctoral fellows as a trainee

category with full-time student status. Post-doctoral education at McGill University is administered by its office of Graduate and Post-Doctoral Studies. They are required to sign a Letter of Agreement for Post-Doctoral Education. Post-doctoral fellows are members of McGill University's Post-Graduates Students Society. Post-doctoral fellows have access to the university's Student Services.

[18] On the other hand, McGill University does not always clearly characterize its post-doctoral fellows as students and does not treat post-doctoral fellows as it does its students working towards a degree. Post-doctoral fellows do not pay tuition or many other fees. They do not follow the application and admission process applicable at the bachelor and master's levels. They do not take courses, obtain credits or work towards a degree. In its Award Certification Form, McGill University refers several times to students and post-doctoral scholars as if they are different registration characterizations. In its Course Calendar, McGill University does not include post-doctoral fellows in its categories of students (this is perhaps because post-doctoral fellows do not generally take credit courses).

[19] On balance, having considered the overall evidence on this point, I am satisfied that while a post-doctoral fellow at McGill University in 2008, Mr. Lahlou was considered by the university and himself to be a student at the university. I consider it most significant that in this case it appears clear that the purpose and structure of the post-doctoral fellow program was the continued training and education of the fellows within a fixed period of time following the receipt of their doctoral degree.

[20] Is it sufficient that McGill University characterized Mr. Lahlou as a student in its post-doctoral educational program in this case? In *Huang*, Woods J. considered the meaning of the term "student" used in the education credit provisions in the case of a post-doctoral fellow. She chose to give it a broad meaning, and reflecting its general usage, having considered the term within its context and having regard to the purpose of the education credit provision and the scholarship exemption.

[21] It is clear from the 2010 amendments that a student can be primarily performing research without pursuing a degree and qualify for the education credit. Otherwise the amendments would not have been necessary or would have been differently worded. The 2010 amendments introduced substantive new requirements to the education credit which are in addition to the pre-existing requirements. This further supports a broader meaning of the term "student" than that advanced by the Respondent in this case.

[22] In *Huang* the evidence was that the Ontario government did not consider post-doctoral fellows as students for purposes of allocating funding to universities. Woods J. did not accept that this led to a conclusion that post-doctoral fellows were not students within the ordinary meaning of that word. Similarly, in this case, the evidence is that the Quebec provincial education ministry did not characterize post-doctoral fellows as students for purposes of funding university operating budgets. The province did however recognize post-doctoral fellows for purposes of funding university building needs as persons to be accommodated within its buildings. For the purposes of funding space, the province treats post-doctoral fellows as full-time student equivalents as if they were doctoral students. The evidence is also that provincial approval is required for educational programs leading to a degree. For the same reasons as Woods J., I do not accept that the provincial government's meaning of the term students for university funding purposes governs or restricts its meaning in the *Act*. Nor do I accept that the meaning of the term educational program in the *Act* in 2008 was restricted by the Quebec government's requirement that educational programs leading to a degree required their approval and that no post-doctoral programs had sought approval (presumably because they do not lead to a degree).

[23] Similarly, I do not find the recommendations of a 1994 provincial focus group considering the appropriate role, regulation, funding and development of post-doctoral fellows particularly persuasive or helpful in the circumstances. Indeed, I have no indication how or if that group's recommendations were acted upon by the province except as regards university funding. I was not referred to any provincial legislation defining any of the terms in question.

[24] Words used in the *Act* that do not have a defined statutory meaning and that have a well-accepted meaning in common usage among Canadians, and that do not also have any alternate technical or special meaning, should generally be given their ordinary meaning in reading the *Act*, subject to being considered in their context and with the purpose of the relevant provisions in mind.

[25] I conclude that Mr. Lahlou was a student for purposes of the education credit and was entitled to a deduction in respect of that credit. For this reason his 2008 fellowships qualified for the scholarship exemption and were tax free. I agree with the reasons of Woods J. in *Huang* on this point. The Crown did not appeal its loss in *Huang*. I would also note that this conclusion is consistent with the CRA having granted Dr. Lahlou his subsection 118.6(2) education credit for the very year in issue after he requested the adjustments to his initial 2008 assessment.

[26] While *Huang* was an informal decision and therefore of no official precedential value, I recognize it as a well and clearly reasoned decision of this Court

on the very point in issue in this case. Had there been any doubt in my mind as to whether I concurred with the reasons of Woods J., it is a decision that I would have respected and followed in any event as a matter of judicial comity. After all, this is also an informal decision of no official precedential value, and the issue has ceased to be relevant after 2009 given the 2010 amendments.

[27] The appeal is allowed, with costs.

Signed at Ottawa, Canada this 17th day of May 2013.

"Patrick Boyle"

Boyle J.

CITATION: 2013 TCC 161

COURT FILE NO.: 2011-3345(IT)I

STYLE OF CAUSE: HICHAM LAHLOU AND HER MAJESTY
THE QUEEN

PLACE OF HEARING: Montréal, Québec

DATE OF HEARING: April 9, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: May 17, 2013

APPEARANCES:

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