

Date: 20071026

Docket: A-601-05

Citation: 2007 FCA 339

**CORAM: LINDEN J.A.
NOËL J.A.
RYER J.A.**

BETWEEN:

BRENDA G. KLASSEN

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Saskatoon, Saskatchewan, on October 10, 2007.

Judgment delivered at Ottawa, Ontario, on October 26, 2007.

REASONS FOR JUDGMENT BY:

NOËL J.A.

CONCURRED IN BY:

**LINDEN J.A.
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REASONS FOR JUDGMENT

NOËL J.A.

[1] This is an appeal from a decision of Beaubier J. of the Tax Court of Canada confirming a reassessment which denied the tuition and education credits claimed by the appellant, on behalf of her son, on the basis that the educational institution which he attended in the United States did not qualify as a "university outside Canada" or a "designated educational institution" within the meaning of sections 118.5. and 118.6 of the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.), (the "ITA") (these provisions with emphasis on the relevant portions are reproduced as Appendix I to this decision).

RELEVANT FACTS

[2] In January 2003, Brenda Klassen's son Trevor enrolled in, and attended full time, Minot State University–Bottineau (“MSU-Bottineau”) while on a baseball scholarship. MSU-Bottineau is an educational institution, accredited by the American Council on Education, which offers students a two-year associate degree as well as other technical programs. Following these two years of study, students may transfer course credits towards a bachelor degree at Minot State University (“MSU”) or another university of their choice.

[3] MSU-Bottineau is affiliated with MSU, an American Council on Education accredited university, which confers associate degrees, bachelor's degrees, and post-graduate degrees. It is recognized as a “designated educational institution” for the purposes of the ITA (listed in Schedule VIII of the *Income Tax Regulations* (the “Regulations”).

[4] MSU and MSU-Bottineau have separate registrars and collect tuition independently. However, they are governed by the same President and seven member governing board of the North Dakota Educational System. The Dean of MSU-Bottineau reports to the President of MSU and general education courses taken at MSU-Bottineau are deemed to have been taken at MSU.

[5] In advance of Trevor's enrolment, the appellant contacted the Canada Revenue Agency in order to confirm that MSU-Bottineau was a qualifying institution under the ITA and that she was entitled to the credits on amounts transferred to her from Trevor. She claims that she received this

confirmation. Relying on these representations, the appellant claimed credits totalling \$5,000 for the first year of Trevor's enrolment at MSU-Bottineau.

[6] By reassessment issued on March 14, 2005, the Minister of National Revenue (the "Minister") disallowed the claimed credits on the ground that MSU-Bottineau was neither a "university outside Canada" nor a "designated education institution". Upon this reassessment being confirmed, the appellant brought an appeal before the Tax Court of Canada.

DECISION OF THE TAX COURT OF CANADA

[7] In upholding the reassessment, the Tax Court Judge held that MSU-Bottineau, where the appellant's son was enrolled, was not a degree granting institution since it did not grant degrees at the bachelor's level or higher. He further held that although MSU-Bottineau was affiliated with MSU, a qualifying institution, it was nevertheless a separate institution and therefore could not benefit from the former's status. The Tax Court Judge went on to dismiss the appeal.

ALLEGED ERRORS IN DECISION UNDER APPEAL

[8] Counsel for the appellant raised before us three separate grounds of appeal. First, Counsel recognized that MSU-Bottineau does not grant degrees at the bachelor's level. However, he pointed out that it does grant an "associate degree" after the successful completion of a two year program. According to Counsel, there is no requirement in the ITA that a qualifying institution confer any particular type of degree and as MSU-Bottineau is by name a university and grants a degree, the fact

that it does not confer a bachelor's degree is not a relevant consideration for denying the credits claimed.

[9] Alternatively, Counsel submitted that even if MSU-Bottineau does not qualify because it does not itself confer a bachelor degree, it should be considered as an extension of MSU, which as noted earlier, is a "designated educational institution" listed in Schedule VIII of the Regulations. In making this argument, Counsel relies on the fact that MSU-Bottineau's general education program, in which Trevor was enrolled, is integrated with MSU's and leads to a bachelor's degree upon completion of the four year program at MSU.

[10] Finally, even if there is no basis in law for the credits claimed, Counsel contends that relief should nevertheless be granted to the appellant since she had been advised through the Canada Revenue Agency's Inquiries Telephone Service, that the credit was available to her.

ANALYSIS

[11] Paragraph 118.5(1)(b) of the ITA provides that "where [an] individual was during the year a student in full-time attendance at a university outside Canada in a course leading to a degree", that individual may claim a credit with respect to the tuition fees paid to the university. Section 118.6 provides for an education credit for a "designated educational institution" which at paragraph 118.6(1)(b) is defined as a "university outside Canada".

[12] Although, no statutory definition is provided under the ITA for the expression “university outside Canada”, there is a body of cases emanating from the Tax Court of Canada where that expression was construed (*Gillich v. Canada* [2006] T.C.J. No. 25 (“*Gillich*”); *Dean v. Canada* [2005] T.C.J. No. 89 (“*Dean*”); *Gilbert v. Canada* [1998] T.C.J. No. 1091 (“*Gilbert*”); *Laprairie v. Canada (Minister of National Revenue – M.N.R.)* [2007] T.C.J. No.68) (“*Laprairie*”); *Cleveland v. Canada* [2004] T.C.J. No. 23 (“*Cleveland*”). In these cases, the Courts have turned to the following dictionary definitions of “university”:

Oxford English Dictionary: The whole body of teachers and scholars engaged, at a particular place, in giving and receiving instruction in the higher branches of learning; such persons associated together as a society or corporate body, with definite organization and acknowledged powers and privileges (esp. that of conferring degrees), and forming an institution for the promotion of education in the higher and more important branches of learning; also the colleges, buildings, etc. belonging to such a body (cited in *Gillich, supra* at para. 5).

Black’s Law Dictionary: An institution of higher learning, consisting of an assemblage of colleges united under one corporate organization and government, affording instruction in the arts and sciences and the learned profession and conferring degrees (cited in *Dean, supra* at para. 8).

Webster’s Third International Dictionary: A body of persons gathered at a particular place for the disseminating and assimilating of knowledge in advanced fields of study; an institution of higher learning providing facilities for teaching and research and authorized to grant academic degrees (cited *Dean, supra* at para.8).

[13] Typically, the cases refer to bachelor, master and doctorate degrees as examples of the type of degree that a university confers and require that a qualifying institution be authorized to grant at least one of these:

The Chief distinguishing characteristic between a university and other institutions of learning is the power and authority possessed by an institution of learning to grant titles or degrees such as Bachelor of Arts, Master of Arts, or Doctor of Divinity, by which it is

certified that the holders have attained some definite proficiency. (Re *City of London and Ursuline Religious of the Diocese of London*, 43 D.L.R. (2d) 220 at p. 228, as applied in *Gilbert supra*, at para. 15).

[14] Paragraph 5 of *Interpretation Bulletin IT-516R2* although not determinative, is also relevant:

An educational institution located in a country outside Canada is presumed to qualify for purposes of paragraph 118.5(1)(b) if it is recognized by an accrediting body (that is nationally accepted in that country) as being an educational institution which confers degrees at least at the bachelor or equivalent level... For example, an institution listed in the current edition of *Accredited Institutions of Post-Secondary Education* published by the American Council on Education and indicated in that publication as being an institution granting degrees at the “B” level (bachelor’s degree or equivalent), “M” level (master’s degree or equivalent), “D” level (doctoral degree) or “P” level (first professional degree..) will be regarded as a university that qualifies under paragraph 118.5(1)(b). Also, an institution listed in Schedule VIII of the *Income Tax Regulations* is recognized as satisfying the requirements of paragraph 118.5(1)(b).

[My emphasis]

[15] Counsel for the appellant correctly points out that this *Interpretation Bulletin* as it applied to earlier years did not provide for the minimum baccalaureate requirement. According to the old bulletin, any institution bearing the name “university” was, absent evidence to the contrary, presumed to qualify and accreditation by a national accrediting agency in the country in which the institution is located was considered to be decisive. Significantly, no reference was made to the type of degree granted by a qualifying institution (*Interpretation Bulletin IT-516R1*, at para. 4).

[16] The question that arises in this case is whether the “bachelor degree or equivalent level” minimum requirement adopted by the Tax Court and applied by the Minister in determining

entitlement to the credits properly flows from the expression “university outside Canada” as it appears in paragraphs 118.5(1)(b) and 118.6(1)(b) of the ITA.

[17] The expression “university outside Canada” must be read in context, according to its ordinary sense, harmoniously with the scheme of the ITA, its object and the intention of Parliament. At the same time, it is important to pay particular attention to the textual meaning of the words when attempting to construe detailed provisions of the ITA such as the ones here in issue (*A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency)*, 2007 SCC 42, at para. 16).

[18] The common feature which runs through the above quoted definitions is that a university is an institution of higher learning which confers degrees attesting to some definite proficiency. A bachelor degree is generally recognized as a minimum requirement for the pursuit of higher studies (usually referred to as “graduate” studies) leading to masters and doctorate degrees.

[19] It is significant that in the case of educational institutions located in Canada, and in the case of cross-border commuters (i.e., those who commute daily to an educational institution in the United States), the benefit of the credits extends not only to those enrolled in a university, but also in a “college or other educational institution providing courses at a post-secondary school level, ...” (see subparagraphs 118.5(1)(a)(i), 118.5(1)(c)(i) and paragraph 118.6(1)(c)). It seems clear that Parliament, in extending the benefit of the credits in those two instances, drew a distinction between a “university” on the one hand, and the other educational institutions referred to in that phrase, on the other.

[20] I agree with the statement made by Mogan J. in *Gilbert supra*, (at para. 21) and adopted by McArthur J. in *Cleveland supra* (at para. 16) that Parliament in limiting the application of paragraphs 118.5(1)(b) and 118.6(1)(b) to a “university outside Canada” opted for a more restrictive approach with respect to foreign institutions. This was done in order to allow the Minister to exercise some measure of control over the type and level of education supported by the credits. In giving effect to the distinction drawn by Parliament, the most salient feature which distinguishes a “university” is the type of degree which a university grants and in particular the baccalaureate degree, which is the threshold requirement imposed by universities for the pursuit of graduate studies. I can think of no other reliable or objectively ascertainable criteria on which the distinction drawn by Parliament could rest.

[21] I therefore conclude that the expression “university outside Canada” refers to an educational institution which confers degrees usually granted by universities, that is a doctorate degree, a master degree or at minimum degrees at the baccalaureate level or its equivalent. The degree granted by MSU-Bottineau in this case (i.e., the “associate degree”) attests to the successful completion of a two year undergraduate program. As this is the highest degree which MSU-Bottineau can confer, it does not qualify as a “university outside Canada”. The fact that MSU-Bottineau calls itself a university cannot alter this conclusion.

[22] If MSU-Bottineau is not itself a qualifying university, the appellant submits that it should be viewed as part and parcel of M.S.U., which, as earlier noted, grants baccalaureate degrees and post-graduate degrees, and is a “designated educational institution”.

[23] In support of his submission, the appellant relies in particular on the fact that although MSU-Bottineau operates on a different campus (some 100 kilometres away from the MSU campus), it is governed by the same President and seven member governing board. Furthermore, the Dean of MSU-Bottineau reports to the President of MSU and any general education course taken at MSU-Bottineau is deemed to have been taken at MSU. Students who successfully complete the two year general education requirements at MSU-Bottineau can transfer to MSU (or any other university) to complete the four year baccalaureate program.

[24] I agree that the MSU-Bottineau educational program is integrated with MSU's baccalaureate program and that from this perspective MSU-Bottineau might be viewed as an extension of MSU. However, I do not believe that this alone can provide the appellant with the relief which she seeks.

[25] According to paragraph 118.5(1)(b), the tuition credit is computed by reference to the tuition paid "to the university". As was noted by the Tax Court Judge, MSU-Bottineau and MSU are distinct corporate bodies, and the record shows they have separate registrars and collect tuition independently. It follows that even if MSU-Bottineau could be viewed as an extension of MSU, the tuition was not paid "to the university" as required by paragraph 118.5(1)(b).

[26] The education credit provided by section 118.6 does not bear this requirement because it is not computed by reference to the tuition fees paid. However, the two credits go hand in hand and provide for tax relief with respect to enrolment at the same qualifying institution. In my view, the

Tax Court Judge came to the correct conclusion when he held that MSU-Bottineau and MSU are different institutions and that the institution in which Trevor was enrolled did not qualify for the credits.

[27] Finally, I see no basis in the appellant's contention that the assessment should be varied based on an officially induced error. It is trite law that the relief granted by the courts in an appeal against a reassessment under ITA must be based on the law. If in fact the appellant was misled through negligence, some other remedy may be available. However, no relief can be granted on this basis in the context of a tax appeal.

[28] Normally costs are awarded to the successful party. In keeping with this norm, the respondent is seeking the costs of this appeal against the appellant. However, I note that the Tax Court Judge at the close of the hearing invited the losing party to pursue the matter before this Court seemingly because there was no appellate decision on the issue which he had to decide. In my view, the appellant by her appeal has contributed to the clarification of the law and should not be burdened by an order of costs.

[29] I would therefore dismiss the appeal, each party assuming their respective costs.

“Marc Noël”

J.A.

“I agree

A.M. Linden J.A.”

“I agree

C. Michael Ryer J.A.”

APPENDIX I

Sections 118.5 and 118.6 of the *Income Tax Act*, R.S.C. 1985, (5th Supp.), c.1:

Tuition

118.5 (1) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted,

(a) where the individual was during the year a student enrolled at an educational institution in Canada that is

(i) a university, college or other educational institution providing courses at a post-secondary school level, or

(ii) certified by the Minister of Human Resources and Skills Development to be an educational institution providing courses, other than courses designed for university credit, that furnish a person with skills for, or improve a person's skills in, an occupation,

an amount equal to the product obtained when the appropriate percentage for the year is multiplied by the amount of any fees for the individual's tuition paid in respect of the year to the educational institution if the total of those fees exceeds \$100, except to the extent that those fees

(ii.1) are paid to an educational institution described in subparagraph (i) in respect of courses that are not at the post-secondary school level,

Crédit d'impôt pour frais de scolarité

118.5 (1) Les montants suivants sont déductibles dans le calcul de l'impôt payable par un particulier en vertu de la présente partie pour une année d'imposition :

a) si le particulier est inscrit au cours de l'année à l'un des établissements d'enseignement suivants situés au Canada :

(i) établissement d'enseignement — université, collège ou autre — offrant des cours de niveau postsecondaire,

(ii) établissement d'enseignement reconnu par le ministre des Ressources humaines et du Développement des compétences comme offrant des cours — sauf les cours permettant d'obtenir des crédits universitaires — qui visent à donner ou à augmenter la compétence nécessaire à l'exercice d'une activité professionnelle,

le produit de la multiplication du taux de base pour l'année par les frais de scolarité payés à l'établissement pour l'année si le total de ces frais dépasse 100 \$, à l'exception des frais :

(ii.1) soit qui sont payés à un établissement visé au sous-alinéa (i) pour des cours qui ne sont pas de niveau postsecondaire,

(ii.2) are paid to an educational institution described in subparagraph (ii) if

(A) the individual had not attained the age of 16 years before the end of the year, or

(B) the purpose of the individual's enrolment at the institution cannot reasonably be regarded as being to provide the individual with skills, or to improve the individual's skills, in an occupation,

(iii) are paid on the individual's behalf by the individual's employer and are not included in computing the individual's income,

(iii.1) are fees in respect of which the individual is or was entitled to receive a reimbursement or any form of assistance under a program of Her Majesty in right of Canada or a province designed to facilitate the entry or re-entry of workers into the labour force, where the amount of the reimbursement or assistance is not included in computing the individual's income,

(iv) were included as part of an allowance received by the individual's parent on the individual's behalf from an employer and are not included in computing the income of the parent by reason of subparagraph 6(1)(b)(ix), or

(v) are paid on the individual's

(ii.2) soit qui sont payés à un établissement visé au sous-alinéa (ii) si, selon le cas :

(A) le particulier n'avait pas atteint l'âge de 16 ans avant la fin de l'année,

(B) il n'est pas raisonnable de considérer que le motif de l'inscription du particulier à l'établissement consistait à lui permettre d'acquérir ou d'améliorer la compétence nécessaire à l'exercice d'une activité professionnelle,

(iii) soit qui ont été payés pour son compte par son employeur et ne sont pas inclus dans le calcul de son revenu,

(iii.1) soit qui sont des frais au titre desquels le particulier a ou avait le droit de recevoir un remboursement ou une autre forme d'aide aux termes d'un programme de Sa Majesté du chef du Canada ou d'une province, destiné à faciliter l'entrée ou le retour de travailleurs sur le marché du travail, si le montant du remboursement ou de l'aide n'est pas inclus dans le calcul du revenu du particulier,

(iv) soit qui font partie d'une allocation que son père ou sa mère a reçue pour son compte d'un employeur et ne sont pas inclus dans le calcul de revenu de son père ou de sa mère par application du sous-alinéa 6(1)(b)(ix);

(v) soit qui sont payés pour le

behalf, or are fees in respect of which the individual is or was entitled to receive a reimbursement, under a program of Her Majesty in right of Canada designed to assist athletes, where the payment or reimbursement is not included in computing the individual's income;

(b) where the individual was during the year a student in full-time attendance at a university outside Canada in a course leading to a degree, an amount equal to the product obtained when the appropriate percentage for the year is multiplied by the amount of any fees for the individual's tuition paid in respect of the year to the university, except any such fees

(i) paid in respect of a course of less than 13 consecutive weeks duration,

(ii) paid on the individual's behalf by the individual's employer to the extent that the amount of the fees is not included in computing the individual's income, or

(iii) paid on the individual's behalf by the employer of the individual's parent, to the extent that the amount of the fees is not included in computing the income of the parent by reason of subparagraph 6(1)(b)(ix); and

(c) where the individual resided throughout the year in Canada near the boundary between Canada and the United States if the individual

(i) was at any time in the year a

compte du particulier, ou sont des frais pour lesquels il a ou avait droit à un remboursement, dans le cadre d'un programme de Sa Majesté du chef du Canada d'aide aux athlètes, à condition que le paiement ou le montant du remboursement ne soit pas inclus dans le calcul du revenu du particulier;

b) si, au cours de l'année, le particulier fréquente comme étudiant à plein temps une université située à l'étranger, où il suit des cours conduisant à un diplôme, le produit de la multiplication du taux de base pour l'année par le total des frais de scolarité payés à l'université pour l'année, à l'exception des frais qui ont été :

(i) soit payés pour des cours d'une durée inférieure à 13 semaines consécutives,

(ii) soit payés pour son compte par son employeur, dans la mesure où ils ne sont pas inclus dans le calcul de son revenu,

(iii) soit payés pour son compte par l'employeur de son père ou de sa mère, dans la mesure où ces frais ne sont pas inclus dans le calcul du revenu de son père ou de sa mère par application du sous-alinéa 6(1)(b)(ix);

c) si, tout au long de l'année, le particulier réside au Canada près de la frontière entre le Canada et les États-Unis et si :

(i) d'une part, il est inscrit à un

student enrolled at an educational institution in the United States that is a university, college or other educational institution providing courses at a post-secondary school level, and

(ii) commuted to that educational institution in the United States,

an amount equal to the product obtained when the appropriate percentage for the year is multiplied by the amount of any fees for the individual's tuition paid in respect of the year to the educational institution if those fees exceeds \$100, except to the extent that those fees

(iii) are paid on the individual's behalf by the individual's employer and are not included in computing the individual's income, or

(iv) were included as part of an allowance received by the individual's parent on the individual's behalf from an employer and are not included in computing the income of the parent by reason of subparagraph 6(1)(b)(ix).

Application to deemed residents

(2) Where an individual is deemed by section 250 to be resident in Canada throughout all or part of a taxation year, in applying subsection (1) in respect of the individual for the period when the individual is so deemed to be resident in Canada, paragraph (1)(a) shall be read without reference to the words "in Canada".

moment de l'année à un établissement d'enseignement situé aux États-Unis — université, collège ou autre — offrant des cours de niveau postsecondaire,

(ii) d'autre part, il fait régulièrement la navette entre sa résidence et cet établissement,

le produit de la multiplication du taux de base pour l'année par le total des frais de scolarité payés à l'établissement pour l'année si ces frais dépassent 100 \$ et à l'exception des frais :

(iii) soit qui ont été payés pour son compte par son employeur et ne sont pas inclus dans le calcul de son revenu,

(iv) soit qui font partie d'une allocation que son père ou sa mère a reçue pour son compte d'un employeur et ne sont pas inclus dans le calcul du revenu de son père ou de sa mère par application du sous-alinéa 6(1)(b)(ix).

Application aux particuliers réputés résider au Canada

(2) Lorsque, en application de l'article 250, un particulier est réputé résider au Canada tout au long d'une année d'imposition ou d'une partie de celle-ci, le paragraphe (1) lui est applicable pour cette année ou partie d'année, selon le cas, compte non tenu des mots « situés au Canada » à l'alinéa (1)(a).

Inclusion of ancillary fees and charges

(3) For the purpose of this section, "fees for an individual's tuition" includes ancillary fees and charges that are paid

(a) to an educational institution referred to in subparagraph 118.5(1)(a)(i), and

(b) in respect of the individual's enrolment at the institution in a program at a post-secondary school level,

but does not include

(c) any fee or charge to the extent that it is levied in respect of

(i) a student association,

(ii) property to be acquired by students,

(iii) services not ordinarily provided at educational institutions in Canada that offer courses at a post-secondary school level,

(iv) the provision of financial assistance to students, except to the extent that, if the reference in paragraph 56(1)(n) to "\$500" were read as a reference to "nil", the amount of the assistance would be required to be included in computing the income, and not be deductible in computing the taxable income, of the students to whom the assistance is provided, or

(v) the construction, renovation or maintenance of any building or facility, except to the extent that the building or facility is owned

Frais accessoires

(3) Pour l'application du présent article, sont compris parmi les frais de scolarité d'un particulier les frais accessoires qui sont payés, à la fois :

a) à un établissement d'enseignement visé au sous-alinéa (1)a)(i);

b) au titre de l'inscription du particulier à l'établissement à un programme de niveau postsecondaire.

Ne sont pas des frais de scolarité :

c) les frais de toute nature dans la mesure où ils sont exigés relativement à ce qui suit :

(i) une association d'étudiants,

(ii) des biens à être acquis par les étudiants,

(iii) des services qui ne sont pas habituellement fournis dans des établissements d'enseignement au Canada qui offrent des cours de niveau postsecondaire,

(iv) la prestation d'aide financière aux étudiants, sauf dans la mesure où, si la somme de 500 \$ à l'alinéa 56(1)n) était remplacée par zéro, le montant d'aide serait à inclure dans le calcul du revenu des étudiants bénéficiaires et ne serait pas déductible dans le calcul de leur revenu imposable,

(v) la construction, la rénovation ou l'entretien de tout bâtiment ou de toute installation, sauf dans la mesure où ils appartiennent à l'établissement et servent à offrir :

by the institution and used to provide

(A) courses at the post-secondary school level, or

(B) services for which, if fees or charges in respect of the services were required to be paid by all students of the institution, the fees or charges would be included because of this subsection in the fees for an individual's tuition, and

(d) any fee or charge for a taxation year that, but for this paragraph, would be included because of this subsection in the fees for the individual's tuition and that is not required to be paid by

(i) all of the institution's full-time students, where the individual is a full-time student at the institution, and

(ii) all of the institution's part-time students, where the individual is a part-time student at the institution,

to the extent that the total for the year of all such fees and charges paid in respect of the individual's enrolment at the institution exceeds \$250.

(A) soit des cours de niveau postsecondaire,

(B) soit des services relativement auxquels des frais, s'ils étaient exigés de l'ensemble des étudiants de l'établissement, seraient inclus par l'effet du présent paragraphe dans les frais de scolarité d'un particulier;

d) les frais pour une année d'imposition qui, si ce n'était le présent alinéa, seraient inclus par l'effet du présent paragraphe dans les frais de scolarité du particulier et qui n'ont pas à être payés par :

(i) l'ensemble des étudiants à temps plein de l'établissement, si le particulier est un étudiant à temps plein de l'établissement,

(ii) l'ensemble des étudiants à temps partiel de l'établissement, si le particulier est un étudiant à temps partiel de l'établissement,

dans la mesure où le total pour l'année des frais de cette nature qui sont payés au titre de l'inscription du particulier à l'établissement dépasse 250 \$.

Definitions

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

"designated educational institution"
means

(a) an educational institution in Canada that is

(i) a university, college or other educational institution designated by the Lieutenant Governor in Council of a province as a specified educational institution under the *Canada Student Loans Act*, designated by an appropriate authority under the *Canada Student Financial Assistance Act*, or designated by the Minister of Higher Education and Science of the Province of Quebec for the purposes of *An Act respecting financial assistance for students of the Province of Quebec*, or

(ii) certified by the Minister of Human Resources and Skills Development to be an educational institution providing courses, other than courses designed for university credit, that furnish a person with skills for, or improve a person's skills in, an occupation,

(b) a university outside Canada at which the individual referred to in subsection 118.6(2) was enrolled in a course, of not less than 13 consecutive weeks duration, leading to a degree,
or

(c) if the individual referred to in subsection 118.6(2) resided, throughout the year referred to in that subsection, in Canada near the

Définitions

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

«établissement d'enseignement agréé»

a) Un des établissements d'enseignement suivants situés au Canada :

(i) université, collège ou autre établissement d'enseignement agréé soit par le lieutenant-gouverneur en conseil d'une province au titre de la *Loi fédérale sur les prêts aux étudiants*, soit par une autorité compétente en application de la *Loi fédérale sur l'aide financière aux étudiants*, ou désigné par le ministre de l'Enseignement supérieur et de la Science de la province de Québec pour l'application de la *Loi sur l'aide financière aux étudiants* de cette province,

(ii) établissement d'enseignement reconnu par le ministre des Ressources humaines et du Développement des compétences comme offrant des cours — sauf les cours permettant d'obtenir des crédits universitaires — qui visent à donner ou augmenter la compétence nécessaire à l'exercice d'une activité professionnelle;

b) université située à l'étranger, où le particulier mentionné au paragraphe (2) est inscrit à des cours d'une durée minimale de 13 semaines consécutives qui conduisent à un diplôme;

boundary between Canada and the United States, an educational institution in the United States to which the individual commuted that is a university, college or other educational institution providing courses at a post-secondary school level;

"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, in respect of a program at an institution described in the definition "designated educational institution" (other than an institution described in subparagraph (a)(ii) of that definition), that is a program at a post-secondary school level but, in relation to any particular student, does not include a program if the student receives, from a person with whom the student is dealing at arm's length, any allowance, benefit, grant or reimbursement for expenses in respect of the program other than

(a) an amount received by the student 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 student,

(b) a benefit, if any, received by the student because of a loan made to the student in accordance with the requirements of the *Canada Student Loans Act* or *An Act respecting financial assistance for education expenses*, R.S.Q., c. A-13.3, or because of financial assistance given to the student in accordance with the requirements of the *Canada Student*

c) établissement d'enseignement situé aux États-Unis — université, collège ou autre — offrant des cours de niveau postsecondaire si, tout au long de l'année mentionnée au paragraphe (2), le particulier mentionné à ce paragraphe réside au Canada près de la frontière entre le Canada et les États-Unis et qu'il fasse régulièrement la navette entre sa résidence et cet établissement.

«*programme de formation admissible* »
"*qualifying educational 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 d'un établissement visé à la définition de «établissement d'enseignement agréé» (sauf un établissement visé au sous-alinéa a)(ii) de cette définition), est de niveau postsecondaire, à l'exclusion du programme au titre des frais duquel l'étudiant reçoit d'une personne avec laquelle il n'a aucun lien de dépendance une allocation, un avantage, une subvention ou un remboursement, qui n'est :

a) ni une somme reçue au titre d'une bourse d'études, d'une bourse de perfectionnement (*fellowship*) ou d'une récompense couronnant une oeuvre remarquable réalisée dans son domaine d'activité habituel;

b) ni un avantage reçu en raison d'un prêt consenti à l'étudiant conformément à la *Loi fédérale sur les prêts aux étudiants* ou à la *Loi sur l'aide financière aux études*, L.R.Q., ch. A-13.3, ou en raison d'une aide financière consentie à l'étudiant conformément à la *Loi fédérale sur*

Financial Assistance Act, or

(c) an amount that is received by the student in the year under a program referred to in subparagraph 56(1)(r)(ii) or (iii), a program established under the authority of the *Department of Human Resources and Skills Development Act* or a prescribed program;

"specified educational program"
«programme de formation déterminé»

"specified educational program" means a program that would be a qualifying educational program if the definition "qualifying educational program" were read without reference to the words "that provides that each student taking the program spend not less than 10 hours per week on courses or work in the program".

Education credit

(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

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the total of the products obtained when

(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

l'aide financière aux étudiants;

c) ni une somme que l'étudiant reçoit au cours de l'année dans le cadre d'un programme mentionné aux sous-alinéas 56(1)r(ii) ou (iii), d'un programme établi sous le régime de la *Loi sur le ministère des Ressources humaines et du Développement des compétences* ou d'un programme visé par règlement.

«programme de formation déterminé»
"specified educational program"

«programme de formation déterminé»
Programme qui serait un programme de formation admissible s'il n'était pas tenu compte du passage « aux cours ou aux travaux duquel l'étudiant doit consacrer 10 heures par semaine au moins » dans la définition de «programme de formation admissible».

Crédit d'impôt pour études

(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 :

$$A \times B$$

où :

A représente le taux de base pour l'année;

B la somme des produits suivants :

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

(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 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,

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 and, in respect of a designated educational institution described in subparagraph (a)(ii) of the definition "designated educational institution" in subsection (1), the individual has attained the age of 16 years before the end of the year and is enrolled in the program to obtain skills for, or improve the individual's skills in, an occupation.

Post-secondary textbook credit

(2.1) If an amount may be deducted under subsection (2) in computing the individual's tax payable for a taxation year, there may be deducted in computing the individual's tax payable under this Part for the year the amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the total of the products obtained when

d'enseignement agréé,

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

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 — et présenté au ministre et, s'il s'agit d'un établissement d'enseignement agréé visé au sous-alinéa a)(ii) de la définition de cette expression au paragraphe (1), le particulier doit avoir atteint l'âge de 16 ans avant la fin de l'année et être inscrit au programme en vue d'acquérir ou d'améliorer sa compétence à exercer une activité professionnelle.

Crédit pour manuels de niveau postsecondaire

(2.1) Si une somme est déductible en application du paragraphe (2) dans le calcul de l'impôt à payer par le particulier pour une année d'imposition, est déductible dans le calcul de son impôt à payer en vertu de la présente partie pour l'année la somme obtenue par la formule suivante :

$$A \times B$$

où :

A représente le taux de base pour l'année;

(a) \$65 is multiplied by the number of months referred to in paragraph (a) of the description of B in subsection (2), and

(b) \$20 is multiplied by the number of months referred to in paragraph (b) of that description.

Students eligible for the disability tax credit

(3) In calculating the amount deductible under subsection (2) or (2.1), the reference in subsection (2) to “full-time student” is to be read as “student” if

(a) an amount may be deducted under section 118.3 in respect of the individual for the year; or

(b) the individual has in the year a mental or physical impairment the effects of which on the individual have been certified in writing, to be such that the individual cannot reasonably be expected to be enrolled as a full-time student while so impaired, by a medical doctor or, where the impairment is

(i) an impairment of sight, by a medical doctor or an optometrist,

(i.1) a speech impairment, by a medical doctor or a speech-language pathologist,

(ii) a hearing impairment, by a medical doctor or an audiologist,

(iii) an impairment with respect to the individual’s ability in feeding or dressing themselves, by a medical doctor or an occupational therapist,

B le total des produits suivants :

a) le produit de 65 \$ par le nombre de mois visés à l’alinéa a) de l’élément B de la formule figurant au paragraphe (2),

b) le produit de 20 \$ par le nombre de mois visés à l’alinéa b) de cet élément.

Étudiants admissibles au crédit d’impôt pour personnes handicapées

(3) Pour le calcul de la somme déductible en application des paragraphes (2) ou (2.1), l’expression « étudiant à temps plein » au paragraphe (2) vaut mention de « étudiant » si, selon le cas :

a) un montant est déductible en application de l’article 118.3 relativement au particulier pour l’année;

b) le particulier a, au cours de l’année, une déficience mentale ou physique dont les effets, selon l’attestation écrite d’une des personnes suivantes, sont tels qu’il est vraisemblable de s’attendre à ce que le particulier ne puisse être inscrit comme étudiant à temps plein tant qu’il a cette déficience :

(i) un médecin en titre,

(ii) s’il s’agit d’une déficience visuelle, un médecin en titre ou un optométriste,

(ii.1) s’il s’agit d’un trouble de la parole, un médecin en titre ou un orthophoniste,

(iii) s’il s’agit d’une déficience auditive, un médecin en titre ou

(iii.1) an impairment with respect to the individual's ability in walking, by a medical doctor, an occupational therapist or a physiotherapist, or

(iv) an impairment with respect to the individual's ability in mental functions necessary for everyday life (within the meaning assigned by paragraph 118.4(1)(c.1)), by a medical doctor or a psychologist.

un audiologiste,

(iv) s'il s'agit d'une déficience quant à la capacité de s'alimenter ou de s'habiller, un médecin en titre ou un ergothérapeute,

(iv.1) s'il s'agit d'une déficience quant à la capacité de marcher, un médecin en titre, un ergothérapeute ou un physiothérapeute,

(v) s'il s'agit d'une déficience des fonctions mentales nécessaires aux activités de la vie courante, un médecin en titre ou un psychologue.

[My emphasis]

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-601-05

(APPEAL FROM A JUDGMENT OF BEAUBIER J. OF THE TAX COURT OF CANADA, DATED NOVEMBER 9, 2005, NO. 2005-2155(IT)I)

STYLE OF CAUSE: BRENDA KLASSEN v. HER MAJESTY THE QUEEN

PLACE OF HEARING: SASKATOON,
SASKATCHEWAN

DATE OF HEARING: OCTOBER 10, 2007

REASONS FOR JUDGMENT BY: NOËL J.A.

CONCURRED IN BY: LINDEN J.A.
RYER J.A.

DATED: OCTOBER 26, 2007

APPEARANCES:

Mr. Chris A. Lavier FOR THE APPELLANT

Ms. Karen Janke FOR THE RESPONDENT

SOLICITORS OF RECORD:

MACDERMID LAMARSH
Barristers & Solicitors
Saskatoon, Saskatchewan FOR THE APPELLANT

JOHN H. SIMS, Q.C.
Deputy Attorney General for Canada
Saskatoon, Saskatchewan FOR THE RESPONDENT