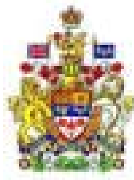
Federal Court of Appeal  Cour d'appel fédérale

Date: 20091210

Docket: A-432-08

Citation: 2009 FCA 367

CORAM: **BLAIS C.J.**
NOËL J.A.
TRUDEL J.A.

BETWEEN:

L. PILETTE

Appellant

and

HER MAJESTY THE QUEEN

Respondent

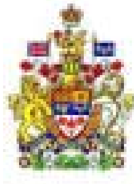
Heard at Ottawa, Ontario, on September 8, 2009.

Judgment delivered at Ottawa, Ontario, December 10, 2009.

REASONS FOR JUDGMENT BY: TRUDEL J.A.

CONCURRED IN BY: BLAIS C.J.
NOËL J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT

TRUDEL J.A.

Introduction

[1] Ms. Pilette is appealing a judgment of Justice Lamarre-Proulx (the Judge) of the Tax Court of Canada concerning the credit for a wholly dependent person under paragraph 118(1)(*b*) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) [the Act], (2008 TCC 336, June 6, 2008).

[2] The constitutional question the appellant is inviting us to rule on in this case is whether clause 118(1)(*b*)(ii)(D) of the Act infringes subsection 15(1) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the Charter), on the basis that it establishes a distinction based on (a) age with respect to the tax credit for a wholly dependent person (the TCWDP) and also (b) the family and economic status of the appellant who, during the relevant period, was living alone with her daughter, who was over the age of 18 and not mentally or physically infirm.

[3] In my view, the question must be answered in the negative in this case. Accordingly, the appellant is not entitled to the TCWDP which she was denied by the Minister of National Revenue (the Minister) for the 2005 tax year.

Legislation

[4] In order to properly grasp the appellant's position, I am reproducing in the Annex paragraph 118(1)(*b*) of the Act (in force at the relevant time), which deals with various personal credits. The conditions under which these credits are granted vary, among other things, according to an individual's personal circumstances and whether any children or persons with disabilities are dependent on that individual and the age of those children or persons. These variations are at the heart of the arguments of the appellant, who is invoking a combination of grounds to plead discrimination.

[5] The legislation shows that the credit sought by the appellant is offered to an individual who satisfies the following conditions: he or she is single, divorced, separated or widowed and, whether alone or jointly with one or more other persons, maintains a self-contained domestic establishment (in which the individual lives) and actually supports in that establishment a third party. The third party must be resident in Canada (except if he or she is a child of the individual), be related to the individual, be under 18 years of age or be the parent or grandparent of the individual, or be suffering from a mental or physical infirmity.

Relevant facts

[6] In 2005, the appellant met only the conditions relating to family circumstances and housing, since her daughter was over the age of 18, having been born on June 10, 1986, and was not suffering from a physical or mental infirmity. These facts are not in dispute.

[7] Subsection 118(1) sets out the applicable formula for calculating the basic personal amount, the spousal amount (118(1)(*a*)) and the amount for a dependent (118(1)(*b*)) (equivalent to spouse credit). The formula is similar in both paragraphs. The amount eligible for the credit corresponds to the personal tax credit amount less the spouse’s or the dependent’s net income during the qualifying period.

<u>Appellant's position</u>

[8] According to the appellant, this formula places all taxpayers who are breadwinners, whether they are married or not, on an equal footing. In the appellant's opinion, this is the only prescriptive rule that is immune from review of the provision under section 15 of the Charter.

[9] Consequently, the exclusion claimed by the Minister—according to her, the only exception to this general rule—creates a discriminatory distinction under the Charter. The reason for the alleged discrimination is, according to the appellant, a ground enumerated in section 15 of the Charter, namely the <u>age of the wholly dependent person</u>. She further argues that the exclusion is based on the <u>family status</u> of taxpayers living alone with a young adult over the age of 18, thus constituting an analogous category of grounds for discrimination.

[10] The essence of the appellant's argument can be found at paragraphs 29 to 31 of her memorandum:

> [TRANSLATION]
> 29. The appellant draws the Court's attention to the fact that the impugned exclusion creates two categories of taxpaying breadwinners: spouses, who deserve lifetime tax relief, regardless of the age of their principal if not sole dependant, and the breadwinners of single-parent families, who may or may not be deserving of tax relief, depending on the age of their dependent.
>
> 30. A breadwinner living with a thirty- or forty-year old spouse can benefit from a major tax credit even if he has the same income as a breadwinner living with her eighteen-year old student daughter who is not entitled to that credit. This tax relief exclusion is the product of

> vexatious stereotypes that undermine the dignity of families whose sole breadwinner is a single parent.
>
> . . .
>
> 31. The impugned exclusion contradicts the rational, appropriate criteria of subsection 118(1) for the subtraction of the dependent person's actual income; it also contradicts the civil law in effect, at least in the province where the appellant was residing at the relevant time. If federal law can define tax parameters, the constitutional interpretation of its rules cannot encroach on civil law. As the appellant pointed out before the Tax Court of Canada, a parent's obligation of support, in civil law, is neither reserved specifically for minors nor inferior to the obligation of spouses. Both the *Civil Code* and the legislative scheme governing financial assistance for education expenses are contrary to such prejudice.

[11] The appellant's position is tantamount to saying that as long as she alone is actually supporting her daughter, regardless of her daughter's age and mental or physical health, she is entitled to the TCWDP. Regardless of the fact that, in this case, it was the appellant's choice to support her daughter, whom, in exchange, she had asked to focus on her studies and to only engage in housekeeping in the shared domestic establishment (appeal book, at pages 6–7) without, in addition, trying to hold a part-time job (appeal book, transcript of the hearing before the Tax Court of Canada, at page 92).

[12] Lastly, according to the appellant, the exclusion cannot be justified under section 1 of the Charter. In her opinion, nothing in the respondent's evidence explains the objectives of the legislation [TRANSLATION] "in enacting the impugned exclusion, let alone how this exclusion is commensurate with a pressing objective" (appellant's memorandum, at paragraph 49).

Respondent's position

[13] The respondent submits that the Judge did not commit a reviewable error in finding that the appellant had not demonstrated discrimination based on the analogous ground chosen in this case. Otherwise, discrimination based on these grounds would be justified under section 1 of the Charter.

[14] The respondent argues that the distinction based on family status is not an analogous ground. Furthermore, the credit provided by paragraph 118(1)(*b*) can also not be claimed by individuals who are married or in a common-law partnership and living together. The Judge did not commit a palpable and overriding error when she found that the appellant had not demonstrated that the economic situation of single-parent families is a homogeneous economic situation involving a vulnerable group. Even though the respondent is of the opinion that the analysis need go no further, the distinction provided by paragraph 118(1)(*b*) of the Act does not create a disadvantage through the perpetuation of prejudice or stereotyping (respondent's memorandum, at paragraphs 30 and 31–40).

[15] Moreover, the respondent accepts that age by association is a distinction based on an analogous ground, even though this ground has never been generally recognized. However, according to the respondent, the appellant has failed to demonstrate that young people over the age of 18 are a historically disadvantaged group through the perpetuation of prejudice or stereotyping (*ibid*, at paragraphs 52–54, 58 and 62).

<u>Tax Court of Canada's decision</u>

[16] The Judge dismissed the appellant's arguments, hence this appeal. Even though I agree with the judgment under appeal, my reasons differ in part from the Judge's. I will therefore deal with the Judge's reasons in my analysis. In fact, I propose dismissing the appeal by concluding that the benefit sought by the appellant is not one provided for by the Act and that subsection 15(1) of the Charter has therefore not been infringed. In short, I will examine the appeal in light of *Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, [2004] 3 S.C.R. 657 [*Auton*] and the more recent *Ali v. Canada*, 2008 FCA 190 [*Ali*].

<u>Standard of review</u>

[17] A question of constitutionality requires the standard of correctness, while the application of subsection 15(1) of the Charter to the facts of a case is reviewable on a standard of palpable and overriding error. The Judge's findings on the evidence she accepted are therefore subject to the latter (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paragraphs 8, 10 and 26).

<u>Analysis</u>

[18] Subsection 15(1) of the Charter ". . . is aimed at preventing <u>discriminatory distinctions</u> that impact adversely on members of groups identified by the grounds enumerated in section 15 and analogous grounds" (*R. v. Kapp*, 2008 SCC 41, [2008] 2 S.C.R. 483 [*Kapp*], at paragraph 16). [Emphasis added.]

[19] As the Judge pointed out, it follows that not all distinctions are discriminatory (reasons for judgment, at paragraph 25). In *Thibaudeau v. Canada*, [1995] 2 S.C.R. 627, at paragraph 91, Justice Gonthier noted that "[i]t is of the very essence of the [Act] to make distinctions, so as to generate revenue for the government while equitably reconciling a range of necessarily divergent interests".

[20] Moreover, subsection 15(1) of the Charter will not be infringed where the benefit sought is not granted to anyone (*Auton* and *Ali*, *supra*). Chief Justice McLachlin's comments in *Auton* are relevant in that respect:

> 41 It is not open to Parliament or a legislature to enact a law whose policy objectives and provisions single out a disadvantaged group for inferior treatment: *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203. On the other hand, <u>a legislative choice not to accord a particular benefit absent demonstration of discriminatory purpose, policy or effect does not offend this principle and does not give rise to s. 15(1) review</u>. This Court has repeatedly held that the <u>legislature is under no obligation to create a particular benefit</u>. It is free to target the social programs it wishes to fund as a matter of public policy, <u>provided the benefit itself is not conferred in a discriminatory manner</u>: *Granovsky v. Canada (Minister of Employment and Immigration)*, [2000] 1 S.C.R. 703, 2000 SCC 28, at para. 61; *Nova Scotia (Attorney General) v. Walsh*, [2002] 4 S.C.R. 325, 2002 SCC 83, at para. 55; *Hodge*, *supra*, at para. 16.
>
> [Emphasis added]

[21] My collegue Ryer, J.A., stated as follows in *Ali*:

> 14. It is apparent from the passage in *Auton* that a legislative choice to accord a particular benefit under the legislation under consideration can potentially give rise to a valid claim that subsection 15(1) of the Charter has been infringed. <u>Paragraph 42 of *Auton* informs that such an infringement can arise if the legislation discriminates directly, by adopting a discriminatory policy, or indirectly, by effect. With respect to the more difficult issue of</u>

> discrimination by effect, the Supreme Court of Canada stated, in that paragraph, that the non-inclusion of a benefit is unlikely to be discriminatory if that non-inclusion is consistent with the purpose and scheme of the relevant legislation.
>
> [Emphasis added]

[22] In this case, how do the facts apply to the principles arising from *Auton* and *Ali*? To answer this question, I will start by examining the first analogous ground chosen by the appellant, that of age.

Age

[23] The appellant, as I have indicated, alleges that the distinction based on her daughter's age is an enumerated ground (appellant's memorandum, at paragraph 22), while the respondent concedes that the distinction is an analogous ground within the meaning of subsection 15(1), since [TRANSLATION] "it is not the appellant's age that is at issue but that of the dependent person . . ." (respondent's memorandum, at paragraphs 49 and 51).

[24] For the purposes of this appeal, I need not resolve this dispute. Nevertheless, I must note that the respondent could not have expected this Court to simply acknowledge the respondent's acquiescence to recognizing a new analogous ground, namely [TRANSLATION] "age by association", without further legal demonstration.

[25] No individual, regardless of his or her family status, is entitled to a tax credit for a dependent child 18 years of age or older who is not suffering from a mental or physical infirmity. Yet this is the benefit sought by the appellant.

[26] I recognize that the parties do not support the *Auton* or *Ali* approach, but they have not convinced me of their arguments to the contrary. Specifically, it appears to me that the parties are wrong about the scope of *Ali*. *Ali* states clearly and simply that in the absence of direct or indirect discrimination, a legislative choice not to accord a particular benefit (*Auton*, *ibid.*) does not engage the right to equality set out in section 15. Indeed, this was the principle laid down in *Auton*, in which the Supreme Court reminded us that "[t]he specific role of s[ubsection] 15(1) in achieving this objective is to ensure that when governments choose to enact benefits or burdens, they do so on a non-discriminatory basis. This confines s[ubsection] 15(1) claims to benefits and burdens imposed by law" (*Auton*, at paragraph 28).

[27] According to the parties, this criteria cannot apply in this case since, in contrast to *Auton* and *Ali*, the Act clearly creates [TRANSLATION] "a distinction based on the alleged grounds of discrimination, namely family status and the age of the dependent child" (respondent's submissions, October 2, 2009, at page 3; appellant's representations on *Ali et Markel v. R.*, October 7, 2009, at paragraph 1), causing the respondent to state that [TRANSLATION] "discrimination by effect" does not even arise in this case (*ibid.*, at paragraph 7).

[28] I do not think that there is reason to narrow the scope of *Auton* in respect of the specific facts of this case. In *Auton*, the Supreme Court was dealing with a legislative scheme that funded a number of programs for autistic children, to the exclusion of funding ABA/ICI therapy for all autistic children between the ages of three and six, because of, *inter alia*, financial constraints and the emergent and controversial nature of this therapy. The Supreme Court dismissed the discrimination argument on the grounds that exclusion was “an anticipated feature of the legislative scheme” (*Auton*, at paragraph 43) and that it was not established that the government had “excluded autistic children on the basis of disability” (*Auton*, at paragraph 3).

[29] In *Ali,* this Court was dealing with the effect of the Act’s provisions on the tax credit for the purchase of drugs prescribed by a medical practitioner or dentist and recorded by a pharmacist, which excluded the expenses incurred to purchase natural health products suggested by a naturopath.

[30] Similarly, this Court is dealing with the effect of the Act’s provisions on the tax credit for a dependent person, which excludes dependent children over the age of 18 not suffering from a mental or physical infirmity. I cannot see how this sequence of facts is immune from the analytical approach proposed in *Auton*. We may also ask whether the legislative scheme is discriminatory, since it accords a benefit to some groups while denying it to certain individuals (see *Auton*, at paragraph 39). In order to determine this, we can also examine the impugned provision to see whether it has a discriminatory purpose (direct discrimination) or effect (indirect discrimination).

[31] This is the exercise I am compelled to do. If I do not identify any discrimination, a section 15 analysis will not be necessary (*Auton*, at paragraph 41).

[32] Clause 118(1)(*b*)(ii)(D) does not systematically exclude all dependent children aged 18 and over, only those who do not suffer from a mental or physical infirmity, regardless of the family status of the parent or parents they depend on.

[33] This age-based distinction is one of the many distinctions contained in the Act, including in:

- section 63: the deduction for child care expenses for children under the age of 16;
- paragraph 118(1)(*b.1*): the child amount for children under the age of 18;
- paragraph 118(1)(*c.1*): the caregiver amount, for which the individual has attained the age of 18 years or the age of 65 years;
- paragraph 118(1)(*d*): the credit for dependants 18 years old and over;
- subsection 118(2): the age credit for individuals 65 years old and over;
- subsection 118.01(2): the adoption expense tax credit, for which the “eligible child” has not attained the age of 18 years;
- subsection 118.02(2): the transit pass tax credit, for which a child of the individual who has not, during the taxation year, attained the age of 19 years is considered to be a “qualifying relation”;
- subsection 118.03(2): the child fitness tax credit for children under 16 years of age, or under 18 years of age where the credit for mental or physical impairment is claimed under section 118.3;

- section 122.6: the Canada Child Tax Benefit, for which a "qualified dependant" has not attained the age of 18 years;
- section 122.7: the Working Income Tax Benefit, for which an "eligible individual" was 19 years of age or older and an "eligible dependant" was under the age of 19 years.

[34] The appellant alleges that the exclusion in question is the result of an [TRANSLATION] "opinion of Parliament that legal age automatically means financial independence" (appellant's memorandum, at paragraph 26).

[35] But several other federal statutes set at 18 the age for exercising rights, such as the right to vote (*Canada Elections Act*, S.C. 2000, c. 9, section 3) and the right to contribute to a pension plan (*Canada Pension Plan*, R.S.C. 1985, c. C-8, section 12). Subsection 5.1(2) of the *Citizenship Act*, R.S.C. 1985, c. C-29, stipulates that the Minister shall on application grant citizenship to a person who was adopted by a citizen on or after January 1, 1947, while the person was at least 18 years of age. Subsection 8(1) of the *Tobacco Act*, S.C. 1997, c. 13, provides that no person shall furnish a tobacco product to a young person, namely a person under 18 years of age, in a public place or in a place to which the public reasonably has access.

[36] Moreover, the non-inclusion of the sought benefit is consistent with the purpose and scheme of the impugned legislation (see *Ali*, above, at paragraph 16). With regard to the legislative scheme

of the Act, the Tax Court of Canada Judge referred to the preliminary remarks made by Justice Tremblay-Lamer at paragraph 29 of *Canada v. Mercier (T.D.)*, [1997] 1 F.C. 560 [*Mercier*]:

> At this point, the specific characteristics of the *Income Tax Act* should be considered. In determining whether the provision in question draws a distinction, I must bear in mind the specific nature of the Act and the personal credit schemes it establishes. In *Thibaudeau* ([1995] 2 S.C.R. 627, at page 702), the Supreme Court of Canada held that it is intrinsic to the *Income Tax Act* to create distinctions so as to generate revenue for the state while equitably reconciling a set of interests that are necessarily divergent.

[37] The impugned legislative scheme is the result of the 1987 tax reform, which was described in *The White Paper: Tax Reform 1987* dated June 18, 1987, by Minister of Finance Michael H. Wilson, as follows:

> A credit of $850 will also replace the current equivalent-to-married exemption but the credit will only be claimable in respect of a parent or grandparent of the taxpayer, a person related to the taxpayer who is infirm, or a dependant under 18 years of age. <u>This latter restriction is consistent with the removal of the exemption for dependent children 18 years of age and over, and reflects the fact that the age of majority is now 18</u>.
>
> [Emphasis added]

[38] As one can read at paragraph 46 of *Mercier*, at the same time, Parliament also chose

> . . . to make the system more consistent and harmonize it with other legislative provisions in order to preclude, for example, a person being considered independent under certain legislative provisions but dependent under others. The reform was intended to provide tax relief to taxpayers with dependants whose ability to be independent is limited, namely minors, adults with a mental or physical infirmity and parents or grandparents.

[39] Indeed, the 1987 tax reform was designed to meet five broad objectives: fairness, competitiveness, simplicity, consistency and reliability (respondent's book of statutes, regulations

and authorities, Volume 2, Tab C). In that vein, the exemption for dependent children 18 years of age and over was removed, reflecting the fact that the age of majority was 18 (*The White Paper: Tax Reform 1987*, respondent's book of statutes, regulations and authorities, Volume 2, Tab C; reasons at paragraph 26).

[40] I therefore find that Parliament's decision not to broaden the credit in the context at bar is not discriminatory.

[41] Indeed, this was the Judge's conclusion, and even though she did not perform the structured analysis generally required by an allegation of discrimination under section 15 of the Charter within the meaning of *Kapp* and *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, or an analysis under *Auton*, a close reading of her reasons satisfies me that she had the principles that apply in this regard in mind and that she did not commit a palpable and overriding error in applying these principles to the relevant facts.

[42] Furthermore, even if I were to adopt the approach suggested by the parties, I would have to dismiss the appellant's arguments as to age, since I was not satisfied that the Judge committed a palpable and overriding error in finding that "I am far from thinking that young adults over the age of 18 who remain dependent on their parents are a group that suffers from social prejudice and that the provision in issue arose out of that prejudice" (reasons, at paragraph 26). The evidence on file allowed the Judge to find that the distinction under review for healthy dependent children over the age of 18 was not inconsistent with the purpose and scheme of the Act.

Family status

[43] With regard to this ground, the Judge also ruled that the appellant had not discharged her burden. In light of the accepted evidence, the Judge found that single-parent family incomes "can vary considerably" and that this was "not a homogeneous economic situation involving a vulnerable group" (reasons, at paragraph 27). Once again, I am not satisfied that she committed a palpable and overriding error in concluding as she did.

Conclusion

[44] Consequently, I would dismiss this appeal with costs.

"Johanne Trudel"
J.A.

"I agree.
Pierre Blais C.J."

"I agree.
Marc Noël J.A."

Certified true translation
Johanna Kratz

ANNEX

(Reproduced from the respondent's book of statutes, regulations and authorities, Volume 1, Tab A)

Personal credits

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

$A \times B$

where

A is the appropriate percentage for the year, and

B is the total of,

Wholly dependent person

(*b*) in the case of an individual who does not claim a deduction for the year because of paragraph 118(1)(*a*) and who, at any time in the year,

(i) is

(A) a person who is unmarried and who does not live in a common-law partnership, or

(B) a person who is married or in a common-law partnership, who neither supported nor lived with their spouse or common law-partner and who is not supported by that spouse or common-law partner, and

(ii) whether alone or jointly with one or more other persons,

Crédits d'impôt personnels

118. (1) Le produit de la multiplication du total des montants visés aux alinéas *a*) à *e*) par le taux de base pour l'année est déductible dans le calcul de l'impôt payable par un particulier en vertu de la présente partie pour une année d'imposition;

Crédit équivalent pour personne entièrement à charge

b) le total de 7 131 $ et de la somme obtenue par la formule suivante :

6 055 $ - D

où :

D représente le revenu d'une personne à charge pour l'année,

si le particulier ne demande pas de déduction pour l'année par l'effet de l'alinéa *a*) et si, à un moment de l'année :

(i) d'une part, il n'est pas marié ou ne vit pas en union de fait ou, dans le cas contraire, ne vit pas avec son époux ou conjoint de fait ni ne subvient aux besoins de celui-ci, pas plus que son époux ou conjoint de fait ne subvient à ses besoins,

(ii) d'autre part, il tient, seul ou avec

maintains a self-contained domestic establishment (in which the individual lives) and actually supports in that establishment a person who, at that time, is

(A) except in the case of a child of the individual, resident in Canada,

(B) wholly dependent for support on the individual, or the individual and the other person or persons, as the case may be,

(C) related to the individual, and

(D) except in the case of a parent or grandparent of the individual, either under 18 years of age or so dependent by reason of mental or physical infirmity,

an amount equal to the total of

(iii) $7,131, and

(iv) the amount determined by the formula

$6,055 - D

where

D is the dependent person's income for the year,

une ou plusieurs autres personnes, et habite un établissement domestique autonome où il subvient réellement aux besoins d'une personne qui, à ce moment, remplit les conditions suivantes :

(A) elle réside au Canada, sauf s'il s'agit d'un enfant du particulier,

(B) elle est entièrement à la charge soit du particulier et d'une ou plusieurs de ces autres personnes,

(C) elle est liée au particulier,

(D) sauf s'il s'agit du père, de la mère, du grand-père ou de la grand-mère du particulier, elle est soit âgée de moins de 18 ans, soit à charge en raison d'une infirmité mentale ou physique;

Child amount

(*b.1*) where

(i) a child of the individual ordinarily resides throughout the taxation year with the individual together with another parent of the child, $2,000 for each such child who is under the age of 18 years at the end of the taxation year, or

Montant pour enfant

b.1) celle des sommes suivantes qui est applicable :

(i) 2 000$ pour chaque enfant du particulier qui est âgé de moins de 18 ans à la fin de l'année et qui réside habituellement, tout au long de l'année, avec le particulier et un autre parent de l'enfant ;

(ii) except where subparagraph (i) applies, the individual may deduct an amount under paragraph (*b*) in respect of the individual's child who is under the age of 18 years at the end of the taxation year, or could deduct such an amount in respect of that child if paragraph 118(4)(*a*) did not apply to the individual for the taxation year and if the child had no income for the year, $2,000 for each such child,

(ii) sauf en cas d'application du sous-alinéa (i), 2 000 $ pour chaque enfant du particulier qui est âgé de moins de 18 ans à la fin de l'année et à l'égard duquel le particulier peut déduire une somme en application de l'alinéa *b*), ou pourrait déduire une telle somme si l'alinéa 118(4)*a*) ne s'appliquait pas à lui pour l'année et si l'enfant n'avait pas de revenu pour l'année ;

Single status

(*c*) except in the case of an individual entitled to a deduction because of paragraph (*a*) or (*b*), $7,131,

Crédit de base

c) 7 131 $, sauf si le particulier a droit à une déduction en application de l'alinéa *a*) ou *b*);

In-home care of relative

(*c.1*) in the case of an individual who, at any time in the year alone or jointly with one or more persons, maintains a self-contained domestic establishment which is the ordinary place of residence of the individual and of a particular person

(i) who has attained the age of 18 years before that time,

(ii) who is

(A) the individual's child or grandchild, or

(B) resident in Canada and is the parent, grandparent, brother, sister, aunt, uncle, nephew or niece of the individual or of the individual's spouse or common-law partner, and

(iii) who is

(A) the individual's parent or grandparent and has attained the

Soins à domicile d'un proche

c.1) dans le cas où le particulier tient à un moment de l'année, seul ou avec une ou plusieurs autres personnes, un établissement domestique autonome qui est son lieu habituel de résidence et celui d'une personne qui remplit les conditions suivantes :

(i) elle a atteint l'âge de 18 ans avant ce moment,

(ii) elle est :

(A) soit l'enfant ou le petit-enfant du particulier,

(B) soit une personne résidant au Canada qui est le père, la mère, le grand-père, la grand-mère, le frère, la soeur, l'oncle, la tante, le neveu ou la nièce du particulier ou de son époux ou conjoint de fait,

(iii) elle est :

(A) soit la mère, le père, la grand-mère ou le grand-père du particulier, ayant atteint l'âge de 65 ans avant ce moment,

age of 65 years before that time, or

(B) dependent on the individual because of the particular person's mental or physical infirmity,

the amount determined by the formula

$15,453 - D.1

where

D.1 is the greater of $11,953 and the particular person's income for the year,

(B) soit à la charge du particulier en raison d'une déficience mentale ou physique,

le montant obtenu par la formule suivante :

15 453 $ - D.1

où :

D.1 représente 11 953 $ ou, s'il est plus élevé, le revenu de la personne pour l'année;

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-432-08
STYLE OF CAUSE:	L. Pilette v. Her Majesty the Queen
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	September 8, 2009
REASONS FOR JUDGMENT BY:	TRUDEL J.A.
CONCURRED IN BY:	CHIEF JUSTICE BLAIS NOËL J.A.
DATED:	December 10, 2009

APPEARANCES:

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Charles Camirand	FOR THE RESPONDENT

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