

Docket: 2010-123(IT)I

BETWEEN:

DAVID A. ZALUSKI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on May 17, 2010, at Calgary, Alberta

Before: The Honourable Justice L.M. Little

Appearances:

For the Appellant:                      The Appellant himself  
Counsel for the Respondent:        Jeff Watson

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**JUDGMENT**

The appeal from the Reassessment dated May 7, 2009 made under the *Income Tax Act* for the 2007 taxation year is dismissed, without costs.

Signed at Vancouver, British Columbia, this 21st day of June 2010.

“L.M. Little”

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Little J.

Citation: 2010 TCC 338  
Date: 20100621  
Docket: 2010-123(IT)I

BETWEEN:

DAVID A. ZALUSKI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Little J.

#### A. Facts

[1] The Appellant is a business executive with a major pipeline company in Calgary, Alberta.

[2] The Appellant's daughter, Lara Zaluski, graduated from Sir Winston Churchill High School in Calgary in the spring of 2007.

[3] Following graduation from high school, the Appellant's daughter applied to and was accepted as a student at the New York campus of the American Academy of Dramatic Arts ("AADA") during the calendar year 2007 for a period of 10 months.

[4] The Appellant paid AADA \$17,170 (U.S.) (\$19,579 (Cdn)) in respect of tuition fees for his daughter for the calendar year 2007.

[5] When the Appellant's daughter filed her income tax returns for the 2007 taxation year she reported the following amounts:

Unused tuition, education and text book amount from 2006	\$ 5,776.69
Tuition fees for 2007	\$19,579.72
Education amount – 10 months x \$400	\$ 4,000.00
Textbook amount – 10 months x \$65	\$ 650.00
Total available tuition, education and text book amount	\$30,006.36

[6] In the 2007 taxation year, the Appellant’s daughter had a net federal tax of zero before claiming the tuition, education and text book amount.

[7] The Appellant’s daughter designated the transfer of \$5,000 of tuition, education and text book amount to the Appellant.

[8] When the Appellant filed his income tax return for the 2007 taxation year, he claimed a tax credit of \$5,000 with respect to the tuition, education and text book amount that was transferred from his daughter.

[9] By Notice of Reassessment dated May 7, 2009, the Minister of National Revenue (the “Minister”) disallowed the tax credit of \$5,000 that was claimed by the Appellant. The Minister concluded that the Appellant is not entitled to claim a tax credit with respect to the transfer of tuition fees, since the Appellant’s daughter was not in attendance in a course at a university leading to a degree. Therefore, the claim made by the Appellant does not qualify within the meaning of paragraph 118.5(1)(b) of the *Income Tax Act* (the “Act”).

[10] The Appellant filed a Notice of Objection, and after the Minister confirmed the Reassessment, the Appellant filed a Notice of Appeal to the Tax Court of Canada.

#### B. Issue

[11] The issue is whether the Appellant’s daughter was in attendance in a course at a university leading to a degree within the meaning of paragraphs 118.5(1)(b) and 118.6(1)(b) of the *Act*.

### C. Analysis and Decision

[12] The Appellant noted that AADA confers degrees in recognition of a successful completion of a program designed to prepare graduates for professional careers, emphasizing the development of skills needed for success in a highly competitive industry. The title of the “degree” conferred by the AADA is “Associate of Occupational Studies”.

[13] The Appellant also noted that the Province of Ontario has approved AADA as an educational institution for which funding is available to students who qualify.

[14] The Appellant further noted that the Government of Canada has approved AADA as an educational institution for which funding is available to students who qualify under the Canada Student Loan Program.

[15] Counsel for the Respondent maintained that the Appellant is not entitled to the transfer of tuition fees because the Appellant’s daughter was not in attendance in a course at a university leading to a degree as is required by paragraph 118.5(1)(b) of the *Act*.

[16] In support of his position, counsel for the Respondent referred to the decision of the Federal Court of Appeal in *Klassen v. The Queen*, 2007 FCA 339, 2007 D.T.C. 5612. In that decision, Justice Marc Noël said:

[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.

[17] I have concluded that the *Klassen* decision applies in this situation since AADA is not a university and the degree obtained by Lara Zaluski does not satisfy the requirements of paragraph 118.5(1)(b) of the *Act*. To obtain a bachelor degree, Lara Zaluski would have had to transfer to another college or university in order to complete her studies, as she could not do so at AADA. It therefore follows that Mr. Zaluski is not entitled to claim a tax credit of \$5,000.

[18] In my opinion, the decision of the Federal Court of Appeal in *Klassen* is unambiguous and applies to this case.

[19] The appeal is dismissed, without costs.

Signed at Vancouver, British Columbia, this 21st day of June 2010.

“L.M. Little”

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Little J.

CITATION: 2010 TCC 338

COURT FILE NO.: 2010-123(IT)I

STYLE OF CAUSE: David A. Zaluski and Her Majesty The Queen

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: May 17, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little

DATE OF JUDGMENT: June 21, 2010

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Jeff Watson

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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