

Docket: 2017-762(IT)I

BETWEEN:

LINDSAY FORTNUM,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on June 1, 2018, at Toronto, Ontario

Before: The Honourable Justice Guy R. Smith

Appearances:

Counsel for the Appellant: Justin Kutyan  
Jane Yoo

Counsel for the Respondent: Kevin Hong, Student-at-law  
Diana Aird

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**JUDGMENT**

The appeal from the reassessment made under the *Income Tax Act* for the 2014 taxation year is allowed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 29th day of June 2018.

“Guy Smith”

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Smith J.

Citation: 2018 TCC 126

Date: 20180629

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Appellant,

and

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### **REASONS FOR JUDGMENT**

Smith J.

[1] This is an appeal from a reassessment by the Minister of National Revenue (the “Minister”) denying the Appellant’s tuition tax credit in the amount of \$21,577 for the 2014 taxation year.

[2] This issue is whether the Appellant was entitled to include the amount noted-above in the calculation of her gross non-refundable tax credits pursuant to paragraph 118.5(1)(b) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (the “Act”). That provision provides a tuition tax credit to “a student in full-time attendance at a university outside of Canada in a course leading to a degree” but excludes fees “paid in respect of a course of less than three consecutive weeks duration”.

[3] The material facts are not in dispute and the Appellant was the only witness. From May of 2014 to May of 2015, she attended the University of Notre Dame (“Notre Dame”) in Indiana, United States and completed a master of business administration (“MBA”), obtaining her degree on May 16, 2015.

[4] Notre Dame offers the traditional two year MBA program as well as an accelerated one year MBA program (the “One Year Program”). The latter program is intended for students who have already completed an undergraduate degree in business or have certain prerequisites, notably accounting and statistics.

[5] The One Year Program is composed of three semesters including the summer, fall and spring sessions, each consisting of approximately 17 credits. The summer session includes ten consecutive courses, each of which is of one or two weeks duration or 27.5 hours per week from Monday to Friday. All of the courses are compulsory and are described as “Required Core Courses”, save for the last week when students are given a choice between two electives. The summer semester for 2014 consisted of the following:

Course No.	Course Title	Credit Hours
Required Core Courses		
ACCT 60000	Financial Accounting	2.0
FIN 60210	Managerial Economics	2.0
FIN 60220	US and Global Economy	2.0
FIN 60500	Finance	2.0
MARK 60100	Marketing Management	2.0
MBCM 60440	Management Communication	2.0
MGT 60100	Introduction to Business Analytics	2.0
MGT 60300	Leadership & Organizational Behavior	1.0
MGT 60910	Strategic Essentials	1.0
MBGR 60600	MBA Professional Development	1.0
	ELECTIVE COURSE: MBFT 60700	1.0
	Spreadsheets for Business & Finance	
	OR FIN 70690 Investment Principles	
Semester Total		17.0/18.0

[6] It does not appear to be disputed that these courses are essentially the same as those offered during the fall and spring semesters of the first year of the conventional two year MBA program.

[7] The cost of the One Year Program and the amount claimed as a tuition tax credit for the subject taxation year was \$47,918 CAD consisting of \$21,577 CAD for the summer semester and \$26,341 CAD for the fall semester.

[8] Notre Dame issued a form TL11A (Tuition and Enrollment Certificate – University Outside Canada) for the fall semester but did not issue one for the summer semester since, according to the Appellant, it did not know if it qualified for the tuition tax credit in Canada. In any event, both counsel agree that a form TL11A is not a statutory requirement for the tuition tax credit such that its absence is not relevant to this proceeding.

[9] The Appellant argues that the summer semester is an integral part of the One Year Program, that all courses are compulsory and attendance mandatory. It is not possible to pick and choose or to register for individual courses. Registration and attendance is limited to registrants of the program. The Appellant registered once and paid one fee for the entire summer semester.

[10] The Appellant argues further that the summer semester, though composed of one and two week courses, should be viewed as a program of courses held over ten consecutive weeks, noting that had the same courses been followed simultaneously during the first year of the two year program, there would be no issue as to her entitlement to the tuition tax credit.

[11] The Respondent argues that the Appellant is not entitled to the tuition tax credit for the summer semester since it consisted of ten separate courses of one or two week duration, each separately coded with different professors or instructors.

[12] The relevant provision of the Act provides as follows:

Tuition credit

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) ...

(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 three 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);

[13] Therefore, in order to qualify for a tuition tax credit pursuant to this subparagraph, the taxpayer (i) must be attending a university outside Canada on a full-time basis (ii) in a course leading to a degree, and (iii) the fees must be paid in respect of a course of at least three consecutive weeks duration. Subparagraphs 118.5(1)(b)(ii) and (iii) include further restrictions that are not relevant in this instance.

[14] Before turning to the case law, I will refer to the oft-repeated rule of statutory interpretation as set out in the seminal decision of *Canada Trustco Mortgage Co. v. Canada*, [2005] 2 S.C.R. 601:

[10] It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

[11] (...) Canadian tax legislation received a strict interpretation in an era of more literal statutory interpretation than the present. There is no doubt today that all statutes, including the Act, must be interpreted in a textual, contextual and purposive way. However, the particularity and detail of many tax provisions have often led to an emphasis on textual interpretation. Where Parliament has specified precisely what conditions must be satisfied to achieve a particular result, it is reasonable to assume that Parliament intended that taxpayers would rely on such provisions to achieve the result they prescribe.

(My Emphasis.)

[15] As noted by V.A. Miller in *Rose v. Canada*, 2012 TCC 161 (TCC Informal Procedure) "there are conflicting decisions from this Court with respect to the meaning to be given to the word "course" in this Section", referring to paragraph 118.5(1)(b). She continued as follows:

[14] In *Ferre v. Canada*, 2010 TCC 593, Paris J. relied on the French version of paragraph 118.5(1)(b) to determine that the word "course" refers to a single course within a program of studies and not the entire program of study. Margeson

J. in *Faint (supra)* agreed with the decision in *Ferre*. This interpretation would require that a single course taken by the Appellant last at least 13 consecutive weeks.

[15] However, Bowie J. in *Siddell v. Canada*, 2011 TCC 250, relied on the intent of the legislation to interpret the word "course" as referring to the entire program taken by the individual in an academic year. At paragraph 11 he stated:

[11] It seems to me unlikely that Parliament would intend to provide a tax credit to a student who pursued the same five modules that Mr. Siddell pursued in 2008 if they were pursued simultaneously over the periods between January 10 and May 21 and between August 21 and December 10, which is two semesters, but to provide no credit to the student who completes the same modules one after the other as he did. That interpretation of the legislation, in the words of the Supreme Court in *Cie immobilière*,

(...) would clearly run contrary to the intent of the legislation and would consequently tend to defeat rather than assist the attainment of its objects.

I therefore prefer to interpret the word "course" in this context as referring not to the individual modules, but the entire curriculum pursued throughout the academic year. I would note as well that this meaning seems more consonant with the words "leading to a degree" (in French, "conduisant à un diplôme") which follow the word "course" (cours) where it first appears in paragraph 118.5(1)(b), and follow it also in the definition in subsection 118.6(1). The concept of a course leading to a degree is more in keeping with the whole curriculum of study than with a solitary subject within that curriculum.

[16] Webb J. in *Abdalla (supra)* agreed with the conclusion in *Siddell*, but he based his reasoning on subsections 3(1) and 33(2) of the *Interpretation Act* which provide that words in the singular include the plural and words in the plural include the singular.

[17] Paragraph 118.5(1)(b) has been amended for the 2011 and subsequent taxation years to reduce the minimum course length from at least 13 consecutive weeks to at least 3 consecutive weeks. A consideration of the amendment itself and its purpose leads me to conclude that the word "course" refers to a single course within a curriculum of studies as was determined by Paris J. in *Ferre* and not the entire curriculum as was determined by Bowie J. in *Siddell*. The technical notes and budget papers gave the purpose of the amendment as follows:

Many programs at foreign universities are based on semesters shorter than 13 weeks, with the result that many Canadian students are denied tax recognition of education costs that would otherwise be eligible for the credits or are denied access to EAPs.

To improve the tax recognition of education costs and access to EAPs for Canadian post-secondary students who study outside Canada, Budget 2011 proposes to reduce the minimum course-duration requirement that a Canadian student at a foreign university must meet in order to claim the Tuition, Education and Textbook Tax Credits to three consecutive weeks from 13 consecutive weeks. It is also proposed that the 13-consecutive-week requirement for EAP purposes be reduced to three consecutive weeks when the student is enrolled at a university in a full-time course. The three-consecutive-week requirement is consistent with the policy that applies to post-secondary students who study in Canada for the purposes of qualifying for the Education Tax Credit, the Textbook Tax Credit and EAPs. (The Tuition Tax Credit has no minimum duration requirement when the program is taken from an institution in Canada.)

[18] Paragraph 118.5(1)(b) was amended so that Canadian students who were enrolled full-time at foreign universities with school terms shorter than 13 weeks would still qualify for the tuition tax credit. It is my view that the amendment was intended to ensure that students, like the Appellant, who completed their courses one after the other, rather than simultaneously, would be eligible for the tuition tax credit.

(My Emphasis.)

[16] Justice Miller dismissed the appeal on the basis that, *inter alia*, the eight courses taken simultaneously by the Appellant, ranged from three to nine weeks and therefore were less than 13 weeks in duration (para. 19). However, despite her observation that “the word “course” refers to a single course within a course of studies (...) and not the entire curriculum” (para. 17), she also concluded that the 2011 amendment “was intended to ensure that students (...) who complete their course one after the other, rather than simultaneously, would be eligible for the tuition tax credit” (para. 18).

[17] Given Justice Miller’s views as to the purpose of the amendment, I have to think that she might have concluded otherwise had the eight courses, each ranging from three to nine weeks, been completed consecutively or “one after the other”, for a period of at least 13 weeks.

[18] The significance of the word “consecutively” was addressed by Webb J. (as he then was) in *Abdalla v. Canada*, 2011 TCC 328 (TCC Informal Procedure) where the appellant had taken several courses which lasted six to eight weeks. He concluded that the courses were consecutive and therefore the taxpayer was entitled to the credit. He also considered the intention of Parliament noting that:

[15] (...) The issue in this appeal is whether the consecutive courses, with a duration of more than 13 consecutive weeks, is sufficient to allow the amount paid for these courses to be included as tuition for the purposes of paragraph 118.5(1)(b) of the Act when the courses, on an individual basis, were less than 13 consecutive weeks in duration.

(...)

[21] For the purposes of the tuition credit the fees are determined "in respect of the year". Any of the fees that are determined for the year that are paid in respect of "a course" of less than 13 consecutive weeks duration are not to be included. Would it have been the intention of Parliament that a single course of not less than 13 consecutive weeks duration leading to a degree would qualify for a tuition credit but two or three courses that are taken that would lead to a degree and which are in total at least 13 consecutive weeks in duration would not qualify for a tuition credit? In either case the individual is attending class (in person or online) and working on the course materials for at least 13 consecutive weeks and in each case the course or courses lead to a degree.

[22] It does not seem to me that there is an intention that the reference to "a course" would only refer to the singular and therefore the amount paid for a single course of 13 consecutive weeks duration would qualify for a tuition credit but the amount paid for two or more courses that last for 13 consecutive weeks would not qualify for a tuition credit. As well, there is a reference to "a course" in the first part of paragraph 118.5(1)(b) of the Act (there is a requirement that the individual be "a student ... in a course") and it does not seem to me that this reference to "a course" should be interpreted as including only the singular. Paragraph 118.5(1)(b) of the Act would apply if the individual takes one course or more than one course. Since the first reference to "a course" in paragraph 118.5(1)(b) of the Act would include the plural, the second reference to "a course" in paragraph 118.5(1)(b) of the Act (which is in subparagraph 118.5(1)(b)(i) of the Act) should also include the plural.

(My Emphasis.)

[19] Bowie J. also addressed the purpose of the subject provision in *Siddell v. Canada*, 2011 TCC 220 (TCC Informal Procedure) by indicating that "the requirement that the course not be less than 13 consecutive weeks duration is imposed to ensure that the student attend for a full semester in order to qualify for the tax credit" (para. 11). He added that:

[10] (...) The purpose of sections 118.5 and 118.6 is to provide financial assistance to Canadians who wish to further their education and upgrade their qualifications for employment by pursuing post-secondary education. (...) If the studies are pursued outside Canada then in order to give rise to a tax credit they



must be undertaken at the university level, on a full-time basis, and in a course of at least 13 weeks duration leading to a degree. The requirement that the course be of at least 13 weeks duration is presumably intended to avoid subsidizing casual personal interest courses and courses that are more recreational than educational. The requirement that the course be of not less than 13 consecutive weeks duration is imposed to ensure that the student attend for a full semester in order to qualify for the tax credit.

(My Emphasis.)

[20] As noted above, the Respondent argues that the word “course” must be narrowly construed as referring to a single course on a particular subject. The Appellant admitted in this instance, that the courses are all separately coded and have different instructors which might support an interpretation based on the “ordinary meaning” of the word: *Canada Trustco, supra*, para. 10.

[21] However, the word “course” can also support more than one reasonable meaning, (as noted in *Siddell and Abdalla, supra*), in which case the Court must consider “a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole”: *Canada Trustco, supra*, para. 10.

[22] In this instance there is no doubt that the Appellant was in full-time attendance during the summer semester following courses that lead to a degree. Attendance at all ten courses was mandatory. The Appellant was not entitled to pick and choose. The courses were part and parcel of the summer semester. She registered for the summer semester and paid a single fee. All courses were taken consecutively or “one after the other”, over a ten week semester.

[23] A textual, contextual and purposive analysis of the subject provision leads me to conclude that the tuition fee paid by the Appellant in respect of the summer semester meets the requirements of paragraph 118.5(1)(b) of the Act.

[24] If I am wrong in reaching that conclusion, I find that this is a case where the application of the ordinary principles of interpretation may not resolve the issue, in which case the matter should be resolved by recourse to the residual presumption in favour of the Appellant: *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20, at para. 24.

[25] As a result, the appeal is allowed without costs.

Signed at Ottawa, Canada, this 29th day of June 2018.

“Guy Smith”

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Smith J.

CITATION: 2018 TCC 126

COURT FILE NO.: 2017-762(IT)I

STYLE OF CAUSE: LINDSAY FORTNUM v. HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 1, 2018

REASONS FOR JUDGMENT BY: The Honourable Justice Guy R. Smith

DATE OF JUDGMENT: June 29, 2018

APPEARANCES:

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