

Docket: 2016-3885(IT)I

BETWEEN:

QIN JIANG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on June 14, 2019, at Montréal, Quebec  
and written submissions

Before: The Honourable Justice Patrick Boyle

Appearances:

For the appellant: The appellant herself

Counsel for the respondent: Emmanuel Jilwan

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### **JUDGMENT**

The appeal of the redetermination made under the *Income Tax Act* for the 2013 base year is dismissed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 3rd day of September 2019.

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"Patrick Boyle"

Boyle J.

Citation: 2019 TCC 188

Date: 20190903

Docket: 2016-3885(IT)I

BETWEEN:

QIN JIANG,

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and

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Respondent.

[OFFICIAL ENGLISH TRANSLATION]

**REASONS FOR JUDGMENT**

Boyle J.

[1] The issue in this case is to determine whether, following the custody order issued by the Superior Court of Québec in December 2014, Ms. Jiang was still eligible to receive the Canada Child Tax Benefit (CCTB) for her children.

[2] Ms. Jiang and her former spouse have three children. The couple separated in June 2014. The first custody order, issued in June 2014, and the second custody order, issued in August 2014, both provided for shared custody of the children. The third custody order, issued in December 2014, awarded sole custody of the children to their father.

[3] Following the order of December 2014, the children lived with their father, and their mother had a new residence nearby. Ms. Jiang continued to be involved in the lives of her three children. The children stayed with their mother from Friday to Sunday every other week. In addition, her daughter spent the Thursday alone with her mother. Since Ms. Jiang lived nearby, she could also have her children over for dinner twice a week. Sometimes, her daughter would visit her or sleep over at her home more often than the access privileges provided.

[4] Ms. Jiang continued to be involved in her children's health care and education; she also provided for some of their other needs. She also brought them to the hairdresser and bought them certain things they needed.

[5] Although Ms. Jiang is a very devoted and involved mother, in the December 2014 order of the Superior Court of Québec, the children's father was granted sole custody and their mother was granted access privileges. As a result of that order, after that date, Ms. Jiang could not be considered an "eligible individual" within the meaning of section 122.6 of the *Income Tax Act* and section 6302 of the *Income Tax Regulations*, since she did not meet the first two requirements of the definition, set out in paragraphs (a) and (b). Those paragraphs apply to the individual with whom the children reside and the parent who primarily fulfils the responsibility for their care and upbringing.

[6] The relevant sections of the aforementioned provisions of the Act and Regulations are attached as an appendix to these reasons.

[7] For these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 3rd day of September 2019.

"Patrick Boyle"

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Boyle J.

## Appendix

122.6 “eligible individual” in respect of a qualified dependant at any time means a person who at that time

(a) resides with the qualified dependant,

(b) is a parent of the qualified dependant who

(i) is the parent who primarily fulfils the responsibility for the care and upbringing of the qualified dependant and who is not a shared-custody parent in respect of the qualified dependant, or

(ii) is a shared-custody parent in respect of the qualified dependant,

(h) prescribed factors shall be considered in determining what constitutes care and upbringing.

[...]

6302 For the purposes of paragraph (h) of the definition eligible individual in section 122.6 of the Act, the following factors are to be considered in determining what constitutes care and upbringing of a

122.6 « particulier admissible » S’agissant, à un moment donné, du particulier admissible à l’égard d’une personne à charge admissible, personne qui répond aux conditions suivantes à ce moment :

a) elle réside avec la personne à charge;

b) elle est la personne — père ou mère de la personne à charge — qui :

(i) assume principalement la responsabilité pour le soin et l’éducation de la personne à charge et qui n’est pas un parent ayant la garde partagée à l’égard de celle-ci,

(ii) est un parent ayant la garde partagée à l’égard de la personne à charge;

[...]

h) les critères prévus par règlement serviront à déterminer en quoi consistent le soin et l’éducation d’une personne.

6302 Pour l’application de l’alinéa h) de la définition de particulier admissible à l’article 122.6 de la Loi, les critères suivants servent à déterminer en quoi consistent le soin et l’éducation d’une personne à charge

qualified dependant:

(a) the supervision of the daily activities and needs of the qualified dependant;

(b) the maintenance of a secure environment in which the qualified dependant resides;

(c) the arrangement of, and transportation to, medical care at regular intervals and as required for the qualified dependant;

(d) the arrangement of, participation in, and transportation to, educational, recreational, athletic or similar activities in respect of the qualified dependant;

(e) the attendance to the needs of the qualified dependant when the qualified dependant is ill or otherwise in need of the attendance of another person;

(f) the attendance to the hygienic needs of the qualified dependant on a regular basis;

(g) the provision, generally, of guidance and companionship to the qualified dependant; and

(h) the existence of a court order in respect of the qualified dependant that is valid in the jurisdiction in which the qualified dependant resides.

admissible :

a) le fait de surveiller les activités quotidiennes de la personne à charge admissible et de voir à ses besoins quotidiens;

b) le maintien d'un milieu sécuritaire là où elle réside

c) l'obtention de soins médicaux pour elle à intervalles réguliers et en cas de besoin, ainsi que son transport aux endroits où ces soins sont offerts;

d) l'organisation pour elle d'activités éducatives, récréatives, athlétiques ou semblables, sa participation à de telles activités et son transport à cette fin;

e) le fait de subvenir à ses besoins lorsqu'elle est malade ou a besoin de l'assistance d'une autre personne;

f) le fait de veiller à son hygiène corporelle de façon régulière;

g) de façon générale, le fait d'être présent auprès d'elle et de la guider;

h) l'existence d'une ordonnance rendue à son égard par un tribunal qui est valide dans la juridiction où elle réside.

CITATION: 2019 TCC 188

COURT FILE NO.: 2016-3885(IT)I

STYLE OF CAUSE: QIN JIANG AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: June 14, 2019

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: September 3, 2019

APPEARANCES:

For the appellant: The appellant herself  
Counsel for the respondent: Emmanuel Jilwan

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

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Deputy Attorney General of Canada  
Ottawa, Canada