

Docket: 2012-4483(IT)I

BETWEEN:

MARK L. SAUVE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 13, 2014 at Hamilton, Ontario

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Jan Jensen

JUDGMENT

It is ordered that the appeal with respect to assessments made under the *Income Tax Act* for the 2010 and 2011 taxation years is dismissed. The parties shall bear their own costs.

Signed at Ottawa, Ontario this 27th day of March 2014.

“J.M. Woods”

Woods J.

Citation: 2014 TCC 99
Date: 20140327
Docket: 2012-4483(IT)I

BETWEEN:

MARK L. SAUVE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] Mark Sauve has appealed from assessments that disallowed the dependent tax credit with respect to his two children. The taxation years at issue are 2010 and 2011.

[2] Pursuant to paragraphs 118(1)(b) and (b.1) of the *Income Tax Act*, tax credits are provided with respect to dependent children in circumstances where the spouses are living separate and apart. In this case, Mr. Sauve has shared custody with his former spouse.

[3] The problem that Mr. Sauve has in this appeal is that the legislation clearly disallows the tax credits in his circumstances. The relevant provision is subsection 118(5) of the *Act* which provides:

(5) Support - No amount may be deducted under subsection (1) in computing an individual's tax payable under this Part for a taxation year in respect of a person where the individual is required to pay a support amount (within the meaning assigned by subsection 56.1(4))

to the individual's spouse or common-law partner or former spouse or common-law partner in respect of the person and the individual

(a) lives separate and apart from the spouse or common-law partner or former spouse or common-law partner throughout the year because of the breakdown of their marriage or common-law partnership; or

(b) claims a deduction for the year because of section 60 in respect of a support amount paid to the spouse or common-law partner or former spouse or common-law partner.

[4] It is not in dispute that Mr. Sauve pays support for his two children and that he is living separate and apart from his former spouse. The above provision denies the tax credits with respect to the children in these circumstances.

[5] Mr. Sauve submits that his former spouse makes a form of support payment to him with respect to the children because she has imputed income that has been factored into the support amount that he has to pay. This type of argument has been rejected by this Court on many occasions, and recently has been rejected by the Federal Court of Appeal in *Verones v The Queen*, 2013 FCA 69. In *Verones*, the Court states at paragraph 6:

[6] The whole discussion about the concept of set-off is a mere distraction from the real issue, *i.e.* whether or not the appellant is the only parent making a "child support payment" in virtue of "an order of a competent tribunal or an agreement", as defined under the Act.

[6] In addition, Mr. Sauve submits that the legislation should permit the tax credits in his circumstances. These arguments appear to be based on policy considerations which are the sole prerogative of Parliament and not the Courts. As stated by the Federal Court of Appeal in *Chaya v The Queen*, 2004 FCA 327, at paragraph 4:

[4] The applicant says that the law is unfair and he asks the Court to make an exception for him. However the Court does not have that power. The Court must take the statute as it finds it. It is not open to the Court to make exceptions to statutory provisions on the grounds of fairness or equity. If the applicant considers the law unfair, his remedy is with Parliament, not with the Court.

[7] Since the tax credits that are claimed are clearly prohibited by subsection 118(5) of the *Act*, the appeal must be dismissed.

Signed at Ottawa, Ontario this 27th day of March 2014.

“J.M. Woods”

Woods J.

CITATION: 2014 TCC 99

COURT FILE NO.: 2012-4483(IT)I

STYLE OF CAUSE: MARK L. SAUVE AND HER MAJESTY
THE QUEEN

PLACE OF HEARING: Hamilton, Ontario

DATE OF HEARING: March 13, 2014

REASONS FOR JUDGMENT BY: The Honourable Justice Judith Woods

DATE OF JUDGMENT: March 27, 2014

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Jan Jensen

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Ontario