

A-29-96

**CORAM:DESJARDINS J.A.
DÉCARY J.A.
ROBERTSON J.A.**

BETWEEN:

GARY ANKA

Applicant

- and -

HER MAJESTY THE QUEEN

Respondent

Heard at Ottawa, Ontario, on Thursday, June 5, 1997.

Judgment rendered from the Bench on Thursday, June 5, 1997.

REASONS FOR JUDGMENT OF THE COURT:

DESJARDINS J.A.

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REASONS FOR JUDGMENT
**(Rendered from the Bench at Ottawa, Ontario
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DESJARDINS J.A.

This is an application for judicial review of a judgment of the Tax Court of Canada which dismissed the applicant's appeal from assessments made under the *Income Tax Act* for the 1990, 1991, 1992 and 1993 taxation years.

The applicant claims, as medical expenses under paragraphs 118.2(2)(e) and

(h) of the Act,¹ certain amounts disbursed for his daughter who suffered language problems.

In view of the clear finding of fact made by the Tax Court judge, that nothing in the evidence linked the child's tuition at nursery and elementary schools and swimming and ballet lessons to the child's handicap, our intervention would be totally unwarranted. The case of *Peter Teresko v. Minister of National Revenue*,² relied on by the applicant, relates to an entirely different situation.

There is also no reason to intervene in the finding of fact made by the Tax Court judge that the travelling expenses of the child from the cottage to school added anything

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118.2(2) For the purposes of subsection (1), a medical expense of an individual is an amount paid

...

118.2(2)(e) for the care, or the care and training, at a school, institution or other place of the patient, who has been certified by an appropriately qualified person to be a person who, by reason of a physical or mental handicap, requires the equipment, facilities or personnel specially provided by that school, institution or other place for the care, or the care and training, of individuals suffering from the handicap suffered by the patient;

...

118.2(2)(h) for reasonable travelling expenses (other than expenses described in paragraph (g)) incurred in respect of the patient and, where the patient was, and has been certified by a medical practitioner to be, incapable of travelling without the assistance of an attendant, in respect of one individual who accompanied the patient, to obtain medical services in a place that is not less than 80 kilometres from the locality where the patient dwells if the circumstances described in subparagraphs (g)(iii), (iv) and (v) apply.

118.2(2) Pour l'application du paragraphe (1), les frais médicaux d'un particulier sont les frais payés:

...

118.2(2)e) pour le soin dans une école, une institution ou un autre endroit -- ou le soin et la formation -- du particulier, de son conjoint ou d'une personne à charge visée à l'alinéa a), qu'une personne habilitée à cette fin atteste être quelqu'un qui, en raison d'un handicap physique ou mental, a besoin d'équipement, d'installations ou de personnel spécialisés fournis par cette école ou institution ou à cet autre endroit pour le soin -- ou le soin et la formation -- de particuliers ayant un handicap semblable au sien;

...

118.2(2)h) pour les frais raisonnables de déplacement, à l'exclusion des frais visés à l'alinéa g), engagés à l'égard du particulier, du conjoint ou d'une personne à charge visée à l'alinéa a) et, si ceux-ci sont, d'après le certificat d'un médecin, incapables de voyager sans l'aide d'un préposé à leurs soins, à l'égard d'un seul particulier les accompagnant, afin d'obtenir des services médicaux dans un lieu situé à 80 kilomètres au moins de la localité où le particulier, le conjoint ou la personne à charge habitent, si les conditions visées aux sous-alinéas g)(iii) à (v) sont réunies.

²64 DTC 263.

to the applicant's ordinary commuting expenses.

This application for judicial review will be dismissed.

"Alice Desjardins"

J.A.

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REASONS FOR JUDGMENT