

Docket: 2016-3189(IT)I

BETWEEN:

KELLY-JEAN ARCHIBALD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on May 17, 2017, at Toronto, Ontario.

Before: The Honourable Justice Patrick Boyle

Appearances:

For the Appellant:                      The Appellant herself

Counsel for the Respondent:        Brad Bechard

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**JUDGMENT**

For the attached reasons for judgment, the appeal from the assessment made under the *Income Tax Act* for the 2014 taxation year is dismissed without costs.

Signed at Ottawa, Canada, this 30th day of May 2017.

“Patrick Boyle”

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Boyle J.

Citation: 2017 TCC 96  
Date: 20170530  
Docket: 2016-3189(IT)I

BETWEEN:

KELLY-JEAN ARCHIBALD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

#### **Boyle J.**

[1] This informal appeal requires the Court to decide if Ms. Archibald was attending university full-time while she was enrolled and completing her master's degree in business administration from the University of Liverpool in its online learning program. Full-time attendance is a requirement in order to claim the education tax credit if the university one attends is outside Canada.

[2] This appeal is in respect of the 2014 taxation year which was Ms. Archibald's first year of MBA studies. Her courses were offered in the last seven months of that year. She has now completed her MBA and her graduation will be this July. She has been working full-time at Humber College in Toronto throughout, and has obtained her MBA to pursue a career as a full-time instructor at Humber College.

[3] Ms. Archibald has previously completed her bachelor's degree in education and her master's degree in education from well-known and reputable Canadian universities, both on a distance learning basis. One of those Canadian universities offers both on-campus and distance learning programs; the other only offers distance learning programs.

[4] The University of Liverpool is a well-known and reputable university in the United Kingdom. It offers the MBA program from which Ms. Archibald has recently graduated on both on-campus and online learning bases. The University of Liverpool describes its distance learning as an online program.

[5] The University issued to Ms. Archibald a Canada Revenue Agency (“CRA”) TL11A information slip which clearly indicated that all of her study months in the year were part-time and none were full-time.

[6] Ms. Archibald explained that the University had classified online learning in its MBA program as part-time because its MBA program is a one-year program for students attending its campus, whereas the courses are offered over a three-year period for those attending online.

[7] Ms. Archibald also put in evidence her email exchange with the University officer in the Bursar’s Office which explains the part-time classification on her TL11A slip. It confirms Ms. Archibald’s explanation and reads:

Regarding the full time/part time classification, the degree conferring institution makes this determination. This is due to the rates that credits are accumulated. Full time masters degrees are completed in one academic year in the United Kingdom (including dissertation), and online programmes are completed at three years on average. It is not possible for students to study fast enough to be considered to be studying full time. . . .

[8] The MBA program requires successful completion of 180 credits to graduate, whether attending online or on campus. All 180 credits are completed in a single academic year if attending on campus. The credits for courses offered online in each year are 30 credits in year one and 75 credits in each of years two and three.

[9] The University MBA program is offered in eight course modules. All but one are eight-week modules. Each eight-week module is worth 15 credits. The University’s materials indicate:

The amount of learning indicated by a credit value is based on an estimate using the idea of **notional hours of learning**. The number of notional hours of learning provides a rough guide to how long it will take a typical student, on average, to achieve the learning outcomes (what you will know, understand and be able to do having successfully completed the learning) specified for the module or programme.

The estimate of notional hours of learning doesn't just include formal classes, but estimates the amount of time spent in preparation for these classes, along with private or independent reading and study, plus revision and the completion of course-work required on the module.

Within the UK, **one credit represents 10 notional hours of learning**. Institutions use this guide as a basis for setting the credit value of a module or programme before it is offered to students. For example, a module that is estimated to involve 150 notional hours of learning will be assigned 15 credits and one that involves 400 notional hours of learning will be assigned 40 credits.

If it takes you more or less time than estimated to complete the learning, you are still awarded the set credit value — not more or less.

...

[10] Thus, an eight-week 15 credit module is estimated to involve 150 notional hours of learning — or somewhat less than 20 hours per week.

[11] In her testimony, Ms. Archibald estimated that she worked 25 to 40 hours each week on her MBA courses. In her letter to the CRA refuting the assessment, she estimated she spent 20 to 25 hours weekly and, later, 25 to 30 hours weekly. In her email to the University Bursar's Office, she estimated she spent approximately 30 hours per week.

[12] It is not disputed that a student can attend a university full-time when enrolled in distance or online learning. It is not disputed that a student can both work full-time and pursue her studies full-time. It is not disputed that postgraduate studies can be pursued full-time even though there may not be scheduled hours for classes, lectures, labs or discussions groups, etc. commonly associated with undergraduate studies. At the hearing, the Crown acknowledged that, contrary to what was assumed by the CRA when reassessing Ms. Archibald, she did not in fact receive any financial assistance from Humber College for her studies. The only issue to be decided is whether the University's classification of her studies as part-time is correct or whether her estimate of, say, approximately 30 hours per week, qualifies her attendance as full-time.

[13] It is my view that the University's part-time classification is correct. The University's characterization is well-reasoned and sensible in the circumstances. It is objectively determined, beginning with the U.K. definition of a university credit as involving 10 notional hours of learning. Finally, it compares its on-campus MBA program rate of accruing credits to the rate of credit accumulation for its

online MBA program involving the same courses, modules, credits and other requirements. Since the online rate is 30% to 40% of the on-campus rate of credit accumulation for completed studies, it is reasonable to conclude that it cannot be described as full-time attendance.

[14] I do not accept that the legislation contemplates that full-time or part-time characterization of a student's attendance at a university is dependent upon how much time each particular individual needs to, or chooses to, devote to their studies. Such an approach would lead to universities being unable to make the determinations needed to issue the required information slips. It would require this Court to decide how much less than 100% full-time is still full-time and to draw a full-time/part-time cut-off line. Importantly, it would not be realistic to expect a court following such an approach to simply accept a particular student's very rough and otherwise unsubstantiated estimate of her average weekly hours devoted to program studies. Different people learn differently and at different speeds. There is nothing wrong with that and it is very easy to observe. However, there is no reason to think that the classification of a student's attendance at university on either a full-time or part-time basis for purposes of the education tax credit should differ because of that.

[15] My conclusion is consistent with what Justice Paris wrote in *Ferre v. The Queen*, 2010 TCC 593:

26 It seems to me that the question of whether an individual is enrolled as a full-time student and is in full-time attendance is a matter that is determined by the institution the individual is attending. The institution controls its enrollment and determines the status of its students as either full or part-time according to the course load that is undertaken. Here, the University certified on the TL11A form that the Appellant was registered for part-time credit during 2008, and the Appellant has not shown that this information is incorrect. I place no weight on his testimony that an unnamed person at the University told him that his courses were treated as part-time courses by the University only because they were taken online. This is hearsay, and furthermore it was not established what position the unnamed person occupied at the University or how he or she would have knowledge of why the Appellant's courses were treated as part-time. Also, the written materials from the University show that the course work was expected to take between 20 and 25 hours per week, which is consistent with part-time status.

27 The meaning of the phrase “full-time attendance” in paragraph 118.5(1)(b) and previous versions of that provision has been the subject of several Court decisions. In *R. v. Gaudet*, the Federal Court of Appeal said that the phrase “full-time” was “a difficult expression and one which it may be impossible to define exactly.” However, the Court went on to find that the taxpayer’s wife, who had taken a night course which involved seven hours of classes and 10 hours of study per week was not a student in full-time attendance for the purpose of what was then paragraph 110(1)(h) of the Act.

...

30 While I agree with the Tax Review Board that it may be possible for a person to carry on more than one full-time activity at a time, I do not think that the question of whether a student is in full-time attendance at a university can be answered simply by looking at the time spent by a taxpayer on courses or other related activities. If so, a person who took only one course but spent the equivalent of a full work week on course work could be said to be in full-time attendance, while a person who took a full course load but only spent a few hours a day on them would not be. I do not believe that this is the intent of the tuition and education credit provisions of the Act since it would make it extremely difficult to administer. It is necessary in my view to look at objective criteria in determining full-time attendance. The best indicator would be the university’s expectation of the student and the amount of time the program is designed to take. The evidence in this case shows that the University expected the online MBA program to take between 20 and 25 hours per week to complete. It is not clear whether this was applicable to the Appellant’s work on his dissertation, but the fact that that the TL11A form showed that he was registered for part-time credit in 2008 would suggest that the time requirements of the dissertation was similar to what was required for his course work. Therefore, I find that the Appellant was not in full-time attendance and was not enrolled as a full-time student at the University in 2008, and is not eligible for the tuition or full-time education credit.

(The *Ferre* decision also involved the University of Liverpool’s online MBA program.)

[16] Ms. Archibald referred the Court to *Krause v. The Queen*, 2004 TCC 594, as support for the position that spending between 22 to 36 hours weekly constitutes full-time attendance. However, it is clear that in *Krause*, the university characterized the attendance as full-time and that the key issue before Associate Chief Justice Bowman (as he then was) was whether online attendance could ever be considered full-time.

[17] Ms. Archibald also referred the Court to *McGrath v. The Queen*, 2007 TCC 295, as another case in which 20 to 25 hours weekly qualified as full-time

attendance. In *McGrath*, the evidence accepted by Justice McArthur was that the university considered Ms. McGrath to be in full-time attendance. That is not the case here.

[18] Finally, Ms. Archibald referred the Court to the decision of Justice Bowie in *Siddell v. The Queen*, 2011 TCC 250, which again involved the University of Liverpool's online MBA program. However, in that case, the Crown did not dispute that Mr. Siddell was a full-time student. The issue before the Court was only whether the since repealed 13-week course requirement for the education tax credit was satisfied.

[19] In none of these cases did the Court decide contrary to the particular university's classification, nor did any decide that 20 to 30 hours weekly constituted full-time.

[20] I do not need to decide in this case how the full-time/part-time classification should be made for a student attending a university that only offers online courses or distance education, which may include on-campus requirements, and does not offer completely on-campus courses. I could not decide what would be reasonable in such a case as I have no evidence of how such a university makes such characterizations, nor how it assigns credits to its courses, nor how often it offers the particular courses required to complete a particular program, etc. This is best left to another case that involves such a university where the needed evidence would be before the Court.

[21] I am dismissing Ms. Archibald's appeal because her facts and circumstances do not satisfy the requirements set out in the *Income Tax Act* for the education tax credit.

[22] Ms. Archibald is to be commended for the clarity of her presentation and for the preparation that obviously went into it. She performed in the top of the top 1% of self-represented taxpayers appearing before this Court based on my 10-year judicial experience. She outshone some lawyers and many other agents and representatives who have appeared before me. Her preparation and composure, the clarity of her written materials, her oral evidence and her submissions, and her ability to respond to questions in cross-examination, are no doubt a reflection of what a fine educator she must be.

[23] The appeal is dismissed without costs.

Signed at Ottawa, Canada, this 30th day of May 2017.

“Patrick Boyle”

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Boyle J.



CITATION: 2017 TCC 96

COURT FILE NO.: 2016-3189(IT)I

STYLE OF CAUSE: KELLY-JEAN ARCHIBALD v.  
THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 17, 2017

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: May 30, 2017

APPEARANCES:

For the Appellant: The Appellant herself

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COUNSEL OF RECORD:

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