

Lucarelli v The Queen, 2012 TCC 301

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Certification Requirement to Deduct Tuition for Schooling as a Medical Expense

Lucarelli v The Queen, [2012 TCC 301](#)

At issue in this appeal was whether the certification requirement in paragraph 118.2(2)(e) was met, thereby entitling the taxpayer to deduct the tuition paid to a specialized private school for a child diagnosed with a learning disability as a medical expense tax credit.

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The Court held that the legislative requirement for a certificate are satisfied by a doctor's report that specifies the nature of the disability and the type or training required, and evidence that establishes that the school enrolled in provides that type of training for children with the disability identified. There was no need to specify the school in the report, and there was no need for an official certificate.

Comment: The words of paragraph 118.2(2)(e) make the requirements clear in these circumstances: (1) The patient needs to be certified to be a person who by reason of (a) mental or physical handicap, (b) requires the equipment, facilities or personnel; (2) that the certification be by an appropriately qualified person; (3) that the requirement for equipment, facilities or personnel be "specially provided by that school [...]"; and (4) that the school (etc) specially provide for individual's suffering from the handicap suffered by the patient.

It appears that the certificate must identify a school that is appropriate, since the ITA refers to "that school", not "a School". Also, the provision seems to contemplate one qualified person providing the certificate and does not seem to accommodate a compilation of documents meeting the certification requirement. The circumstances of this case do not appear to strictly fit within the words of the ITA, and the Court may have been moved more by the sympathy.

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FACTS

The Taxpayer claimed the tuition for her child to attend a specialized private school as a medical tax credit relying on her child having a learning disability. The taxpayer's child was

assessed in 2007 by a psychologist who issued a detailed report making several recommendations, including the need for an individual education plan and individual learning resources. The Child was later assessed in 2008 by professionals, which was less extensive an assessment than the first.

The taxpayer had to find a new school and began an intensive search for schools, including public schools, finally selecting a school that specialized in educating children with the learning disability that the taxpayer's child had. The specialized schooling began in 2009.

The taxpayer obtained a letter from the school's principal identifying the need for specialized programming and that the schools meet this needs and requested a further letter from the original psychologist that stated that the school the child was registered in follows several of the recommendations made.

The MNR denied the credit for the 2009 tax year on the basis that the certification requirement was not met. The Crown did not challenge the needs of the child for specialized care and training, or the school's ability to provide for this need.

ANALYSIS

Justice Woods expressly stated that the taxpayer was very sympathetic and began by reviewing the relevant words of the relevant provision. Paragraph 118.2(2)(e) reads:

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

[...]

(e) **[school, institution, etc.]** - 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;

The court noted that schools specialized in assisting with reading and writing issues qualify for the tax credit, referring to *Rannelli v The Queen*, 91 DTC 816 (TCC).

In dealing with the certification requirement the court was referred to several decisions. In [Title Estate v The Queen, 2001 FCA 106](#), it was stated that the certificate must " at least specify the mental or physical handicap from which the patient suffers, and the equipment, facilities or personnel that the patient requires in order to obtain the care or training needed to deal with that handicap". Woods J also mentioned that in [Lang v The Queen, 2009 TCC 182](#), it was stated that the certificate ought to also specify the particular schools.

The Crown did not argue *Lang*, but rather argued that the report relied on was prepared two years before enrolment in the school and that the specialized training was not set out in sufficient detail in the report.

The Court disagreed and stated that the certificate requirement was met by looking at the initial report and the follow-up report, which set out (1) the exact difficulties experienced by the child, and (2) the suggestion for individualized training be provided for the problem areas. Though neither report specified a school, the letter from the principal indicated that the school's methodology was exactly that recommended in the psychologist report.

Thus the court stated at paragraph 22:

[22] It seems to me that the legislative requirements are satisfied in circumstances where Dr. Johnston's report specifies the nature of the disability and the type of training that is required, and the evidence establishes that the TALC Academy specializes in providing this type of training for children with this disability.

The lapse of time between the first report and the enrollment was "filled" by the second report.

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