

**CRA's inhumane child-care ruling reversed; Comment; Agency denied claim for care of autistic child (News, National Post)\_A Canada Revenue Agency decision to refuse a professional couple's tax-exemption claim for child care for their disabled son has been overturned by a federal judge.**

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The Income Tax Act allows parents to claim childcare expenses under certain circumstances. The purpose is to allow at least a partial offset of such expenses where parents are working. The legislation requires that except in unusual cases, the claim is made by the lower income parent, which means that if one parent stays at home to care for the children and has no earned income (investment income does not count) the family will not be able to claim a deduction.

But a recent decision of the Tax Court had to deal with a situation where both parents worked but where the child care expenses were related to Saturdays when both parents were (presumably) at home.

The CRA disallowed a claim by Manon Labreque of \$635 for the 2000 taxation year. She and her spouse, Richard Joly, are both professionals who held full-time employment in 2003 in the field of finance and accounting. The couple's normal work week was approximately 40 hours from Monday to Friday between 9:00 a.m. and 5:00 p.m. The couple has two children, the elder of whom, Simon (born March 11, 1997) is a non-verbal autistic child for whom child care expenses were claimed for services rendered on Saturdays.

Labreque claimed the deduction for child-care expenses because she had a lower net income than her spouse in 2003.

The payments were made to an organization that serves autistic children. Essentially, this is a child-care service for autistic children available Saturdays from 10:00 a.m. to 3:45 p.m. The ratio of supervision is one instructor for every two children. Services are given in a recreational context and are adapted to the moods and specific limitations of the children who attend.

The statutory provision refers to the expense having been made to allow the parents to earn income from employment or business. The CRA, with its usual humane and common-sense approach, said the deduction was denied because neither parent worked on Saturday.

After a review of the case law, Tax Court Judge Real Favreau made this observation:

"The definition does not specifically require that there be a connection between the time when the child-care services are given and the time when employment duties are performed. If that was Parliament's intent, it would have been easy to state it explicitly."

Previously cited cases, said the judge, "clearly show that it is not necessary for the childcare services to be rendered at the same time the employment duties are performed by the taxpayer to constitute eligible child-care expenses under the Act and still uphold Parliament's intent."

The upshot is that the deduction was allowed. We should note that this was a decision using the informal appeal procedure and thus is not considered a binding precedent. Families of children in respect of whom "unusual" child care expenses are claimed should bear this in mind.