

IWK Health Centre v. Canada, 2026 FCA 113 (CanLII)

Source: Federal Court of Appeal
Date: 2026-06-11
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A-146-25

A-147-25

A-148-25

A-149-25

A-150-25

A-151-25

Citation: 2026 FCA 113

**CORAM: GLEASON J.A.
LASKIN J.A.
LOCKE J.A.**

BETWEEN:

IWK HEALTH CENTRE and NOVA SCOTIA HEALTH AUTHORITY

Appellants

and

HIS MAJESTY THE KING

Respondent

Heard at Toronto, Ontario, on June 11, 2026.
Judgment delivered from the Bench at Toronto, Ontario, on June 11, 2026.

REASONS FOR JUDGMENT OF THE COURT BY:

LOCKE J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on June 11, 2026).

LOCKE J.A.

[1] The present consolidated appeals concern a decision of the Tax Court of Canada (2025 TCC 44, the Tax Court Decision) that addressed a number of appeals from assessments made under Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the Act). The appellants sought a rebate for selected public service bodies under [subsection 259\(3\)](#) of the Act in respect of reimbursements paid to their employees for their healthcare expenses concerning, among other things, acupuncture, massage therapy, naturopathy and homeopathy services (the Services). The Minister of National Revenue disallowed the rebate and the Tax Court refused to intervene.

[2] Essentially, the “non-creditable tax charged” that is used to calculate the rebate under [subsection 259\(3\)](#) is defined, among other things, in terms of tax deemed under section 175 to have been paid. Section 175 applies where (i) an employee acquires a service “for consumption or use in relation to activities of the employer”, (ii) the employee pays the tax payable in respect of that acquisition, and (iii) the employer reimburses the employee.

[3] The Tax Court concluded that the deeming provision of section 175 did not apply because the Services in question acquired by the appellants’ employees were not “for consumption or use in relation to activities of the employer”, since they were “of a particularly personal and individual nature, designed to be consumed by the person purchasing the supply”. The Tax Court found that the fact that the appellants were contractually obliged to their employees to make the reimbursements in question was “not a sufficient nexus or connection between the Services and the employer’s activities to displace the highly personal nature of these supplies”: see paragraph 30 of the Tax Court Decision. In reaching its conclusion, the Tax Court relied heavily on the decisions of this Court in *ExxonMobil Canada Ltd. v. Canada*, [2010 FCA 1](#) (*ExxonMobil*), and *Westcoast Energy Inc. v. Canada*, [2022 FCA 57](#) (*Westcoast*).

[4] In the present appeals, the appellants’ arguments are directed not to distinguishing *ExxonMobil* and *Westcoast* on the facts, but rather to asserting that these two decisions are manifestly wrong and therefore should not be followed.

[5] The appellants properly recognize, as was said in *Westcoast* at paragraph 5, that “[w]e must follow earlier decisions of this Court unless they can be distinguished or are “manifestly wrong” within the meaning of *Miller v. Canada (Attorney General)*, 2002 FCA 370, 220 D.L.R. (4th) 149” [Miller]. The appellants also properly recognize, as indicated in *Miller* at paragraph 10, that “manifestly wrong” means that the Court in the prior decision(s) overlooked a relevant statutory provision or a case that ought to have been followed.

[6] The appellants argue several respects in which they say that the decisions in *ExxonMobil* and *Westcoast* are manifestly wrong. Having carefully considered all of these arguments, we are not convinced that any of them have merit. We conclude that we remain bound to follow *ExxonMobil* and *Westcoast*.

[7] The appellants’ arguments that either or both *ExxonMobil* and *Westcoast* produce results that are absurd and that they are inconsistent with one another do not meet the requirements of *Miller* that the Court overlooked a relevant statutory provision or a case that ought to have been followed. Rather, they urge us to disagree with the statutory interpretation reached by this Court in previous decisions.

[8] We are also not convinced by the appellants’ argument that the interpretation given to sections 174 and 175 in *ExxonMobil* and *Westcoast* overlooked the scheme of the Act and provisions thereof. In *ExxonMobil*, Justice Marc Noël (as he then was) considered section 174 in detail and with regard to other provisions of the Act. We see no manifest error there. For his part, Justice David Stratas in *Westcoast* concluded that the interpretation of section 174 in *ExxonMobil* applied equally to section 175. That finding of equal application is not in dispute before us.

[9] Though this Court’s decision in *General Motors of Canada Ltd. v. Canada*, 2009 FCA 114, [2010] 2 F.C.R. 344 (*General Motors*), was not mentioned in either *ExxonMobil* or *Westcoast*, the appellants have not convinced us that it was overlooked in either case. *General Motors* concerned section 169 of the Act and expenses incurred by the employer concerning the employees’ pension

plan and later charged to the plan. *ExxonMobil* and *Westcoast*, on the other hand, concerned expenses incurred by employees and later reimbursed by the employer: in *ExxonMobil*, for a moving allowance, and in *Westcoast*, for healthcare expenses similar to those in the present appeals. It is reasonable to conclude that these distinctions explain why *General Motors* was not addressed.

[10] For the foregoing reasons, and despite the able submissions of Mr. Joly, we will dismiss the appeals with one set of costs to the respondent.

"George R. Locke"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS:	A-145-25 (lead file), A-146-25, A-147-25, A-148-25, A-149-25, A-150-25, A-151-25
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DELIVERED FROM THE BENCH BY:	LOCKE J.A.

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