

CANADA / JUDGMENT

Zaleskiy v. The King

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Docket: 2026-970(IT)I

BETWEEN: ALEXEY A.Z. ZALESSKIY,
Appellant,
and
HIS MAJESTY THE KING,
Respondent .
Appeal heard on August 20, 2026, at Vancouver, British Columbia
Before: The Honourable Justice David E. Spiro

Appearances :

For the Appellant: The Appellant himself

Counsel for the
Respondent: Rochelle Leung

JUDGMENT

The appeal of the reassessment for the Appellant's 2024 taxation year denying an amount in respect of an eligible dependant under paragraph 118(1)(b) of the Income Tax Act is dismissed without costs.

Signed this 26th day of August 2026.

"David E. Spiro"

Spiro J.

Citation: 2026 TCC 159

Date: 20260826

Docket: 2026-970(IT)I

BETWEEN:

ALEXEY A.Z. ZALESSKIY,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Spiro J.

[1] Until the end of 2022, the Appellant, Alexey Zalesskiy (“Alexey”), was married to Elena Lobanova (“Elena”). In 2019, they had a son. Toward the end of 2022, their marriage broke down and they divorced. On the breakdown of their marriage, Elena moved from the family home in Surrey, British Columbia to Russia along with her son.

[2] By the end of May 2024, Elena and her son were back in Surrey. Alexey and Elena began living separate and apart under Alexey’s roof.

[3] To determine whether Alexey is entitled to a tax credit for his son under paragraph 118(1)(b) of the Income Tax Act (the “Act”), we must first review an order issued on consent in 2022 under which he agreed to pay child support and spousal support following the breakdown of the marriage.

The Consent Order [4] Toward the end of 2022, Alexey and Elena applied for an order to be issued by the Supreme Court of British Columbia (the “BCSC”). In paragraph 1 of that order, issued on December 22, 2022 (the “Consent Order”), the Court ordered:

1. BY CONSENT, on an interim without prejudice basis as to the quantum, entitlement, and parties’ incomes, on the basis of [Alexey’s] Guideline income of \$120,000 and [Elena’s] Guideline income of \$0, and on the basis of the Child primarily residing with [Elena], [Alexey] will pay to [Elena] child support in the amount of \$1,113 and spousal support in the amount of \$2,632, commencing November 1, 2022, and on the first day of each and every month thereafter pending any further agreements or orders. [1]

[Emphasis added]

The Alleged Oral Agreement Between Alexey and Elena [5] Alexey testified at trial and was cross-examined by Crown counsel. At the centre of his testimony was his assertion that in consideration for Elena and her son returning to Canada, he would provide them with their material needs in kind and would, therefore, stop paying child support and spousal support as set out in the Consent Order.

[6] Based solely on Alexey’s evidence, I find it hard to believe that Elena would have agreed to such an arrangement. Why would a young mother surrender her legal right to receive child support and spousal support based solely on a promise from her estranged husband that he would provide for all their material needs?

[7] Elena was not called as a witness at the hearing.

Paragraph 118(1)(b) of the Income Tax Act [8] In his return for 2024, Alexey claimed \$15,705 as an amount for an eligible dependant. That is the amount in dispute in this appeal.

[9] Paragraph 118(1)(b) of the Act allows a tax credit to an individual if they were, at any time in the year, unmarried and supported a person in their home who was wholly dependent on that individual for support, related to the individual, and under 18 years of age.

[10] Alexey met those conditions in 2024. However, what the Act provides in paragraph 118(1)(b) it takes away, in certain circumstances, in subsection 118(5).

Subsection 118(5) of the Income Tax Act [11] Subsection 118(5) of the Act provides that the tax credit under paragraph 118(1)(b) is not available where the individual lives separate and apart from their former spouse throughout the year due to the breakdown of their marriage AND is “required to pay a support amount” (“est tenu de payer une pension alimentaire”) to the individual’s former spouse in respect of the person. [2] Here is the text of subsection 118(5) in both official languages:

118(5) No amount may be deducted under subsection (1) in computing an individual’s tax payable under this Part for a taxation year in respect of a person where the individual is required to pay a support amount (within the meaning assigned by subsection 56.1(4)) to the individual’s spouse or common-law partner or former spouse or common-law partner in respect of the person and the individual

- (a) lives separate and apart from the spouse or common-law partner or former spouse or common-law partner throughout the year because of the breakdown of their marriage or common-law partnership; or
- (b) claims a deduction for the year because of section 60 in respect of a support amount paid to the spouse or common-law partner or former spouse or common-law partner.

[Emphasis added]

118(5) Aucun montant n’est déductible en application du paragraphe (1) relativement à une personne dans le calcul de l’impôt payable par un particulier en vertu de la présente partie pour une année d’imposition si le particulier, d’une part, est tenu de payer une pension alimentaire au sens du paragraphe 56.1(4) à son époux ou conjoint de fait ou ex-époux ou ancien conjoint de fait pour la personne et, d’autre part, selon le cas :

- a) vit séparé de son époux ou conjoint de fait ou ex-époux ou ancien conjoint de fait tout au long de l’année pour cause d’échec de leur mariage ou union de fait;
- b) demande une déduction pour l’année par l’effet de l’article 60 au titre de la pension alimentaire versée à son époux ou conjoint de fait ou ex-époux ou ancien conjoint de fait.

[Sans caractères gras dans l’original]

The Appellant's Position [12] As noted above, Alexey asserts that by mid-2024 he was providing – by way of oral agreement with Elena – an entirely different type of support than that contemplated by the Consent Order. He contends that he agreed to provide – and did provide – what he calls “support in kind” to his son and to Elena which was intended to satisfy all their material needs, and which made the monthly payment of support – whether by way of child support or spousal support – entirely unnecessary.

[13] In Alexey's submission, this new arrangement – under which Elena agreed to return to Canada along with their son – superseded and replaced his obligation to pay child support and spousal support as set out in the Consent Order. He contended that one of the stated premises underlying the support provisions of the Consent Order (that the child was primarily residing with Elena) no longer held true as of mid-2024. Although technically still in effect, the support provisions of the Consent Order were obsolete and irrelevant by mid-2024. The Court should, therefore, conclude that was no longer “required to pay a support amount” to Elena in respect of the child.

The Crown's Position [14] The Crown reads subsection 118(5) as a complete bar to Alexey's claim under paragraph 118(1)(b). Crown counsel, Ms. Leung, contends that Alexey lived separate and apart from Elena throughout the year because of the breakdown of their marriage AND Alexey was “required to pay a support amount” to Elena in respect of their son, namely, \$1,113 each month.

[15] Absent variation of the Consent Order, it continued in effect throughout 2024. Alexey, therefore, continued to be “required to pay a support amount” to Elena in respect of their son in that year even if he no longer felt obligated to do so.

Analysis

[16] In interpreting the phrase “required to pay a support amount” in subsection 118(5) of the Act (“est tenu de payer une pension alimentaire”) , we begin with the text. At first glance, Parliament's use of the word “required” (and the words “est tenu”) would suggest that there must be a legal obligation arising from statute, regulation, court order, or common law.

[17] But is that reading supported by the context in which those words are found elsewhere in the Act? Let's take a look. The Act provides that interest runs from the date on which a person was “required to pay” an amount under the Act or a regulation to the date on which the amount is paid (see, for example, subsection 227(9.3), subsection 161(2), and subsection 161(11) of the Act). The Act also provides that a person is liable to a penalty if they fail to pay an amount they are “required to pay” under the Act or a regulation (see subsection 227(9) of the Act). Finally, the Act uses the phrase “required to pay” where the obligation to pay arises from the law of contract (see, for example, subparagraph 8(1)(f)(i) of the Act). The common denominator throughout is a legal obligation to pay an amount.

[18] What about purpose? The purpose of subsection 118(5) is to preclude a credit for a wholly dependent person where the individual is required to pay support with respect to that person. Whether that reflects good or bad tax policy is not for this Court to decide. As the Ontario Court of Appeal recently reminded us:

It is illegitimate for courts to involve themselves in matters of legislative policy. Policy is for politics. [3]

Conclusion

[19] Even if I found that Alexey and Elena concluded an oral agreement that Alexey be relieved of his obligations to pay child support and spousal support, such an agreement would have no effect on Alexey's legal obligation to pay child support and spousal support pursuant to the Consent Order. Absent variation by the BCSC, the terms of the Consent Order – including its support provisions – remained in effect throughout 2024. [4]

[20] As Alexey was required to pay child support for his son in 2024, subsection 118(5) of the Act precludes his claim for an amount for an eligible dependant under paragraph 118(1)(b) of the Act for the 2024 taxation year. His appeal will be dismissed.

Signed this 26th day of August 2026.

“David E. Spiro”

Spiro J.

CITATION:

2026 TCC 159

COURT FILE NO.:

2026-970(IT)I

STYLE OF CAUSE:

ALEXEY A.Z. ZALESSKIY AND HIS MAJESTY THE KING

PLACE OF HEARING:

Vancouver, British Columbia

DATE OF HEARING:

August 20, 2026

REASONS FOR JUDGMENT BY:

The Honourable Justice David E. Spiro

DATE OF JUDGMENT:

August 26, 2026

APPEARANCES:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Rochelle Leung

COUNSEL OF RECORD:

For the Appellant:

N/A

For the Respondent:

Marie-Josée Hogue

Deputy Attorney General of Canada

Ottawa, Canada

- [1] Exhibit R-1, Affidavit of Amrit Banstola, page 8.
- [2] There was no dispute that the child support of \$1,113 per month under the Consent Order was a “support amount” within the meaning of subsection 118(5), namely, that it meets the definition of “support amount” in subsection 56.1(4) of the Act.
- [3] Cycle Toronto v Ontario (Attorney General) , 2026 ONCA 582, at para 22. Emphasis in the original.
- [4] Depending on its wording, a variation may have retroactive effect. Indeed, this Court has recognized that a subsequent order may have the effect of retroactively vitiating an earlier one (see Abiola v The Queen , 2013 TCC 115 at para 20).

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