

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20151104**

**Docket: A-269-15**

**Citation: 2015 FCA 240**

**CORAM: WEBB J.A.  
SCOTT J.A.  
GLEASON J.A.**

**BETWEEN:**

**SANDRA PAULINE HEROUX**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Dealt with in writing without appearance of parties.

Judgment delivered at Ottawa, Ontario, on November 4, 2015.

**REASONS FOR JUDGMENT BY:**

**WEBB J.A.**

**CONCURRED IN BY:**

**SCOTT J.A.  
GLEASON J.A.**

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**REASONS FOR JUDGMENT**

**WEBB J.A.**

[1] By Judgment rendered on May 5, 2015 (2015 TCC 183), the Tax Court dismissed the Appellant's appeal that she had brought under the informal procedure in relation to an assessment that had been issued under section 160 of the *Income Tax Act*, R.S.C. 1985, c.1 (5<sup>th</sup> Supp.) (the Act). The Appellant filed a notice of appeal on June 3, 2015 which stated, in relation to the grounds of appeal, that:

THE GROUNDS OF APPEAL are as follows: (Set out the grounds of appeal, including those grounds set out in subsection 27(1.3) of the Federal Courts Act, reproduced below, which apply to the appeal. Also include a reference to any other statutory provision or rule to be relied on.)

Subsection 27(1.3) provides as follows:

27(1.3) The only grounds for an appeal under subsection (1.2) are that the Tax court of Canada :

- (a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction.
- (b) failed to observe a principal of natural justice, procedural fairness or other procedure that it was required by law to observe.
- (c) erred in law in making a decision or an order, whether or not the error appears on the face of the record.
- (d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.
- (e) acted, or failed to act, by reason of fraud or perjured evidence, or
- (f) acted in any other way that was contrary to law.

(if the appellant wishes the Tax court of Canada to forward material to the Registry, add the following paragraph)

The appellant requests that the Tax Court of Canada send a certified copy of the following material that is not in the possession of the appellant but is in the possession of that court to the appellant and to the Registry. (Specify the particular material.)

[2] Other than replacing “principle” in paragraph (b) above with “principal”, and a few minor formatting and style changes, the above is a replication of Form 337.1 attached to the *Federal Courts Rules*, SOR/98-106, including the instructions to an appellant.

[3] The Respondent brought a motion for an Order to quash this appeal on the basis that this notice of appeal does not disclose any grounds for the appeal or, in the alternative, for an Order requiring the Appellant to amend her notice of appeal to specify the grounds for her appeal.

[4] By an Order dated August 19, 2015, this Court ordered that:

1. The appellant shall amend her Notice of Appeal within the next twenty (20) days from the date of receipt of this Order to conform to the requirements of section 337.1(c) of the Rules by indicating her specific grounds of appeal including a reference to any specific statutory provision or rule she intends to rely on, failing which this appeal will be dismissed with costs without further notice.

[5] On September 11, 2015 the Appellant submitted a booklet containing a copy of the Order dated August 19, 2015 and approximately 57 pages of “submitted evidence”.

[6] By letter dated September 28, 2015, the Respondent has requested that the appeal be dismissed.

[7] In my view, the Appellant has not complied with the Order dated August 19, 2015. The attempted appeal is from a decision that relates to an assessment issued under section 160 of the Act. Subsection 160(1) of the Act provides as follows:

**160.** (1) Where a person has, on or after May 1, 1951, transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to

(a) the person’s spouse or common-law

**160.** (1) L’orsqu’une personne a, depuis le 1<sup>er</sup> mai 1951, transféré des biens, directement ou indirectement, au moyen d’une fiducie ou de toute autre façon à l’une des personnes suivantes :

a) son époux ou conjoint de fait ou une

partner or a person who has since become the person's spouse or common-law partner,

(b) a person who was under 18 years of age, or

(c) a person with whom the person was not dealing at arm's length

the following rules apply:

(d) the transferee and transferor are jointly and severally, or solidarily, liable to pay a part of the transferor's tax under this Part for each taxation year equal to the amount by which the tax for the year is greater than it would have been if it were not for the operation of sections 74.1 to 75.1 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of any income from, or gain from the disposition of, the property so transferred or property substituted for it, and

(e) the transferee and transferor are jointly and severally, or solidarily, liable to pay under this Act an amount equal to the lesser of

(i) the amount, if any, by which the fair market value of the property at the time it was transferred exceeds the fair market value at that time of the consideration given for the property, and

(ii) total of all amounts each of which is an amount that the transferor is liable to pay under this Act (including, for greater certainty, an amount that the transferor is liable to pay under

personne devenue depuis son époux ou conjoint de fait;

b) une personne qui était âgée de moins de 18 ans;

c) une personne avec laquelle elle avait un lien de dépendance,

les règles suivantes s'appliquent :

d) le bénéficiaire et l'auteur du transfert sont solidairement responsables du paiement d'une partie de l'impôt de l'auteur du transfert en vertu de la présente partie pour chaque année d'imposition égale à l'excédent de l'impôt pour l'année sur ce que cet impôt aurait été sans l'application des articles 74.1 à 75.1 de la présente loi et de l'article 74 de la *Loi de l'impôt sur le revenu*, chapitre 148 des Statuts révisés du Canada de 1952, à l'égard de tout revenu tiré des biens ainsi transférés ou des biens y substitués ou à l'égard de tout gain tiré de la disposition de tels biens

e) le bénéficiaire et l'auteur du transfert sont solidairement responsables du paiement en vertu de la présente loi d'un montant égal au moins élevé des montants suivants :

(i) l'excédent éventuel de la juste valeur marchande des biens au moment du transfert sur la juste valeur marchande à ce moment de la contrepartie donnée pour le bien,

(ii) le total des montants représentant chacun un montant que l'auteur du transfert doit payer en vertu de la présente loi (notamment un montant ayant ou non fait l'objet d'une

this section, regardless of whether the Minister has made an assessment under subsection (2) for that amount) in or in respect of the taxation year in which the property was transferred or any preceding taxation year,

cotisation en application du paragraphe (2) qu'il doit payer en vertu du présent article) au cours de l'année d'imposition où les biens ont été transférés ou d'une année d'imposition antérieure ou pour une de ces années

but nothing in this subsection limits the liability of the transferor under any other provision of this Act or of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of this subsection.

Toutefois, le présent paragraphe n'a pas pour effet de limiter la responsabilité de l'auteur du transfert en vertu de quelque autre disposition de la présente loi ni celle du bénéficiaire du transfert quant aux intérêts dont il est redevable en vertu de la présente loi sur une cotisation établie à l'égard du montant qu'il doit payer par l'effet du présent paragraphe.

[8] In essence, section 160 of the Act is the section that allows the Minister of National Revenue to assess one person (the transferee) for all or a portion of the tax liability of another person (the transferor) if:

- a) the transferor is the spouse or common law partner or otherwise does not deal at arm's length with the transferee;
- b) the transferor transfers property to the transferee for consideration that is less than the fair market value of such property; and
- c) the transferor owes an amount under the Act in respect of the taxation year in which the property is transferred or a preceding year.

[9] The transferor in this case was Glen Heroux, the spouse of the Appellant. The Tax Court Judge noted that the Appellant's representative at the Tax Court Hearing stated that the only argument that the Appellant was raising was whether she was the person who had been assessed. The Tax Court Judge found that she was the person who had been assessed and dismissed her appeal. The Tax Court Judge also noted that the Appellant's representative had raised a new

argument in rebuttal – that the Appellant, although she was a resident of Manitoba, was not a resident of Canada. The Tax Court Judge rejected this proposition.

[10] Since this is an appeal from a decision rendered under the informal procedure, the grounds for an appeal are limited by subsection 27(1.3) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, to only those grounds as set out in that subsection. It is not possible to discern from the various documents that the Appellant has submitted which of these permitted grounds of appeal she is alleging would be applicable in this case.

[11] The “submitted evidence” includes a document identified as a “motion” that simply reiterates the only permitted grounds for an appeal from a decision rendered by the Tax Court under the informal procedure as set out in subsection 27(1.3) of the *Federal Courts Act* and which are repeated in Form 337.1. This document does not indicate which ground (or grounds) would be applicable in this matter or why such ground (or grounds) would be applicable. Simply quoting the statutory provision which sets out the limited grounds of appeal is not sufficient.

Rule 337.1 (c) (which was specifically referred to in the Order) provides that:

337.1 An appeal from a final judgment of the Tax Court of Canada under subsection 27(1.2) of the Act shall be commenced by a notice of appeal, in Form 337.1, setting out:

...

(c) a complete and concise statement of the grounds intended to be argued, including a reference to any statutory provision or rule to be relied on;

[12] The Appellant has simply reiterated the only grounds that are available for an appeal, not the grounds that she would intend to argue. There is nothing in this “motion” to indicate why the

Appellant believes that any of the permitted grounds for an appeal from a decision rendered under the informal procedure would be applicable in this case.

[13] In another document that was included by the Appellant in her booklet submitted on September 11, 2015, the Appellant indicates that she “will be relying on the following 7 points as to why the Income Tax Act 5<sup>th</sup> Supplement does not, and cannot, apply to me, as it is written, and further, as you are aware, there is no requirement for me to file according to 150(1.1)(b)”. The seven points that follow appear to all be in relation to the Appellant’s argument that she is not a resident of Canada or that she does not have any taxable income. There is no reference to her spouse, Glen Heroux, in any of these seven points.

[14] None of her “points” address section 160 of the Act. Under section 160 of the Act, the relevant tax liability is not her tax liability but rather the tax liability of another person, in this case, Glen Heroux. As well, there is no requirement in section 160 of the Act that the transferee (referred to above) must be a resident of Canada. The Appellant has not indicated why she has not “resided on any Canada Lands” or why this would be relevant for the purposes of section 160 of the Act.

[15] The remaining documents are copies of correspondence and other documents that do not provide any insight into why any of the permitted grounds of appeal would be applicable in this case.



[16] As a result, I would dismiss her appeal, with costs.

"Wyman W. Webb"

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J.A.

"I agree.

A.F. Scott J.A."

"I agree.

Mary J.L. Gleason J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-269-15

**STYLE OF CAUSE:** SANDRA PAULINE HEROUX v.  
HER MAJESTY THE QUEEN

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR JUDGMENT BY:** WEBB J.A.

**CONCURRED IN BY:** SCOTT J.A.  
GLEASON J.A.

**DATED:** NOVEMBER 4, 2015

**WRITTEN REPRESENTATIONS BY:**

Sandra Pauline Heroux FOR THE APPELLANT

Ainslie Schroeder FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada HER MAJESTY THE QUEEN