Federal Court of Appeal | Cour d'appel fédérale

Date: 20180718

Docket: A-230-17

Citation: 2018 FCA 136

CORAM: **STRATAS J.A.**
NEAR J.A.
WOODS J.A.

BETWEEN:

BONNYBROOK PARK INDUSTRIAL DEVELOPMENT CO. LTD.

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Heard at Toronto, Ontario, on January 9, 2018.

Judgment delivered at Ottawa, Ontario, on July 18, 2018.

REASONS FOR JUDGMENT BY: WOODS J.A.

CONCURRED IN BY: NEAR J.A.

DISSENTING REASONS BY: STRATAS J.A.

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REASONS FOR JUDGMENT

WOODS J.A.

[1] Bonnybrook Industrial Park Development Co. Ltd. appeals from a decision of the Federal Court (2017 FC 642) which dismissed an application for judicial review of a decision of the Minister of National Revenue.

[2] Bonnybrook is a private corporation that earns rental income and as such qualifies for a partial refund of tax when its income is distributed to shareholders as a dividend. Commonly referred to as a dividend refund, the refund is provided for in subsection 129(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) which aims to achieve tax neutrality in respect of passive income whether the income is earned directly by an individual or through a corporation.

[3] One of the requirements of the dividend refund is that the corporation file a tax return within three years after the end of the relevant taxation year. Bonnybrook failed to file tax returns for many years and missed the deadline for the 2003 to 2011 taxation years, inclusive. It submits that this was due mainly to ongoing medical problems of its principal.

[4] Bonnybrook sought to overcome this difficulty by applying for relief from the Minister with respect to the tax return filing requirement under the discretionary taxpayer relief provisions in subsections 220(2.1) and (3) of the Act. When relief was denied, Bonnybrook applied for judicial review in the Federal Court.

[5] The Federal Court (*per* Campbell J.) dismissed the application for judicial review, except to grant some relief for interest on the consent of the parties. Bonnybrook has appealed from this decision to this Court.

[6] The statutory provisions that are most relevant to this appeal are reproduced in an appendix to these reasons.

A. Procedural background

[7] In February 2015, Bonnybrook took advantage of the voluntary disclosure program and disclosed unreported income by filing its delinquent tax returns. The voluntary disclosure program is designed to encourage taxpayers to voluntarily report previously undisclosed income and for this purpose it relieves interest and penalties.

[8] The Minister issued notices of assessment pursuant to the voluntary disclosure on May 13, 2015. In the notices, Bonnybrook was advised that its claim for dividend refunds for the 2003 to 2011 taxation years was denied because the corporation had failed to satisfy the requirement to file tax returns within three years from those taxation years.

[9] On May 6, 2016, Bonnybrook again applied for dividend refunds, this time pursuant to taxpayer relief provisions found in section 220 of the Act. Bonnybrook submitted that the Minister should grant the relief due to its principal's medical condition, and the punitive double tax that results from missing the filing deadline. Three specific types of relief were requested:

(1) Pursuant to subsection 220(2.1) of the Act, Bonnybrook sought a waiver of the dividend refund requirement to file corporate tax returns within three years.

(2) To the same effect, pursuant to subsection 220(3) of the Act, Bonnybrook sought an extension of this three year deadline.

(3) Pursuant to subsection 220(3.1), related relief with respect to penalties and interest was also sought.

[10] The Minister's response, which was to deny the request in its entirety, was set out in a letter from the Appeals Division of the Canada Revenue Agency (CRA) dated October 12, 2016. The relevant part of the letter reads:

> Denied Dividend Refund:
>
> You have requested under *subsection 220(3)* that the Minister exercise discretionary powers to waive or extend the requirement to file the corporation's tax returns within three years for the purposes of dividend refund. *Subsection 220(3)* states, "*The Minister may at any time extend the time for making a return under this Act*". Filing requirements and refund of overpayment of tax are governed by two different section of the Act. *Subsection 150(1)* of the Act sets out the tax return requirements and filing deadlines for taxpayers and *Subsection 164(1)* of the Act provides rules governing the refunds of overpayments of tax. It is our position that *Subsection 220(3)* is only applicable to the provisions of *Subsection 150(1)* and has no application to *Subsection 164(1)*.

[11] On October 21, 2016, Bonnybrook applied for judicial review of the Minister's decision in the Federal Court. As mentioned earlier, the application was dismissed except for some relief of interest.

[12] The Federal Court issued a single set of reasons for Bonnybrook and an unrelated taxpayer which had a similar issue. This appeal concerns only Bonnybrook.

B. The Federal Court decision

[13] Before the Federal Court was an application to judicially review the Minister's decision, which was set out in the CRA's letter. Bonnybrook sought an order compelling the Minister to issue the dividend refunds and to cancel any related penalties and interest. The only relief granted by the Court was for interest, on consent.

[14] With respect to the dividend refunds, the Court determined that there was a threshold question concerning the jurisdiction of the Federal Court to decide the matter. The Court concluded that it had no jurisdiction, as the matter involved an interpretation of the Act which was within the exclusive jurisdiction of the Tax Court of Canada (Reasons, paras. 22-25).

C. Issues

[15] There are two main issues.

(a) Did the Federal Court make a reviewable error in concluding that it did not have jurisdiction?

(b) Did the Minister err in concluding that the Minister had no authority to exercise the discretion requested?

[16] In this Court, Bonnybrook no longer seeks an order compelling the Minister to issue the dividend refunds. It merely seeks a determination that the Minister has the discretionary power to

do so. Bonnybrook acknowledges that it was for the Minister, and not the Court, to exercise that discretion.

D. Did the Federal Court err regarding jurisdiction?

[17] Both parties submit that the Federal Court made a reviewable error in concluding that it lacked jurisdiction to decide the judicial review application on the basis that the issue involves an interpretation of the Act which is within the exclusive jurisdiction of the Tax Court of Canada. I agree with the parties' submissions.

[18] With respect to the applicable standard of review, the question of jurisdiction is a pure question of law for which the standard of review is correctness (*Pembina County Water Resource District v. Manitoba*, 2017 FCA 92, 409 D.L.R. (4th) 719, at paragraph 35).

[19] Applying this standard, the Federal Court was incorrect in deciding that the Tax Court of Canada has the exclusive jurisdiction to decide questions involving interpretations of the Act. The Tax Court's jurisdiction is limited by statute, and in income tax matters its jurisdiction is generally limited to hearing appeals concerning the correctness of assessments. Its jurisdiction does not extend to judicial review of decisions of the Minister under discretionary relief provisions of the Act (*The Minister of National Revenue v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, 2014 D.T.C. 5001, at paragraph 90). Accordingly, the Federal Court does have the jurisdiction to decide this judicial review application.

[20] In light of this error, it is appropriate for this Court to consider Bonnybrook's application for judicial review afresh (*Minister of Citizenship and Immigration v. Kandola*, 2014 FCA 85, 372 D.L.R. (4th) 342, at paragraph 29).

E. Did the Minister err regarding authority?

(1) Preliminary issues

[21] It is necessary at the outset to consider the appropriate standard of review. Although this is an appeal from a decision of the Federal Court, the focus is on the decision of the Minister (*Agraira v. Canada (Public Safety and Emergency Preparedness*), 2013 SCC 36, [2013] 2 S.C.R. 559 at paras. 45-46).

[22] The relevant general principle on standard of review is well known − a deferential, reasonableness standard presumptively applies if the issue concerns an interpretation of a decision-maker's home statute (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 235, at para. 62), and see most recently *Groia v. Law Society of Upper Canada*, 2018 SCC 27 at paras. 46 and 175 and *Canada (Canadian Human Rights Commission) v. Canada (Attorney General*), 2018 SCC 31 at paras. 27-30.

[23] In one post-*Dunsmuir* decision, the presumption was overcome and a correctness standard applied by this Court in circumstances not dissimilar to this appeal (*Bozzer v. The Queen*, 2011 FCA 186, 2011 D.T.C. 5106, at para. 3). In *Bozzer*, the Court relied on a pre-*Dunsmuir* decision also of this Court which held that a correctness standard should apply

because the Minister did not have a greater expertise than the courts in interpreting the relevant provisions of the Act (*Redeemer Foundation v. M.N.R.*, 2006 FCA 325, at para. 24, affirmed, without comment on this point, at 2008 SCC 46).

[24] *Bozzer* can be explained as a case that applied paragraph 62 of *Dunsmuir*, namely where a pre-*Dunsmuir* authority has satisfactorily settled the standard of review, the reviewing court should simply adopt that standard of review.

[25] However, nothing turns on the difference between reasonableness and correctness in this particular case. The Supreme Court has often said that reasonableness "takes its colour from the context" and "must be assessed in the context of the particular type of decision making involved and all relevant factors." (See for example *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29, [2016] 1 S.C.R. 770 at para. 22.) In addition, as a matter of practice, when a reasonableness standard is applied, reviewing courts often afford administrators less leeway where they have not set out the rationales underlying the view of the statute they have reached, as in this case (*Vavilov v. Canada (Citizenship and Immigration)*, 2017 FCA 132, 52 Imm. L.R. (4th) 1 at paras. 38-39 (leave to appeal granted by the Supreme Court of Canada on May 10, 2018)).

[26] A second preliminary issue concerns two obvious errors on the face of the Minister's decision.

[27] The first error is that the decision refers to the refund in subsection 164(1) of the Act instead of the dividend refund in subsection 129(1). Subsection 164(1) provides a procedure for

obtaining refunds of overpayments of tax. There are similarities between these two refund provisions, notably with respect to the requirement to file a tax return within three years, but Bonnybrook was not seeking a refund under subsection 164(1) of the Act.

[28] The second error is that the decision fails to discuss one of the two forms of relief that Bonnybrook was seeking. The Minister's decision deals with the request for an extension of time to file the return (subsection 220(3) of the Act) but it does not mention the request for a waiver of the filing requirement (subsection 220(2.1) of the Act).

[29] At the hearing, both parties urged the Court to treat these errors as minor in nature that should be ignored. I would agree with this approach concerning the reference to the wrong refund section. The Minister was clearly notified that Bonnybrook was seeking relief with respect to the refund in subsection 129(1). In this computerized age of "cut and paste," this error is best explained as an oversight which should be overlooked. It is relatively clear that the Minister intended to refer to this provision.

[30] I reach a different conclusion with respect to the second error. There is no evidence that the Minister gave any consideration to the request for a waiver pursuant subsection 220(2.1). In light of this, it is appropriate to remit the matter back to the Minister for consideration.

[31] Bonnybrook submits that remitting the matter back unfairly protracts this proceeding, particularly since the Minister's view is on this issue is generally known. I disagree that this result is unfair. Bonnybrook could have gone back to the Minister after the decision was issued

to request a decision concerning the waiver. As it stands, there is no decision for a court to review concerning the waiver application.

[32] Accordingly, the analysis below will only deal with the application for an extension of time pursuant to subsection 220(3) of the Act.

[33] In deciding on this approach, I have taken into account the dissenting reasons of Justice Stratas. I share the concerns expressed by my colleague with respect to the reasons in the Minister's decision. The Minister supplemented these reasons significantly by its submissions in this appeal. As Justice Stratas notes, the Supreme Court of Canada has recently commented on situations in which a court supplements the reasons in a judicial review application. In my view, it is appropriate in this case to decide the appeal with respect to subsection 220(3) by taking into consideration the Minister's arguments presented at the hearing.

(2) Applicable principles of statutory interpretation

[34] The proper approach to statutory interpretation was described in *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601 at paragraph 10:

> [10] It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a

> dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

[35] I turn now to the main issue.

(3) Did the Minister have the authority to provide relief?

[36] The dividend refund provision in subsection 129(1) includes a condition that the taxpayer file a corporate tax return within three years after the end of the relevant taxation year. The legislation is clear on this point and it has been confirmed many times in judicial decisions involving taxpayers who have missed the deadline.

[37] Bonnybrook does not take issue with this. Rather, it submits that the Minister has the authority under subsection 220(3) of the Act to extend the three year filing deadline under subsection 129(1).

[38] As described in the CRA letter above, the Minister refused to grant the relief sought, stating briefly that "*Subsection* 220(3) is only applicable to the provisions of *Subsection* 150(1) and has no application to *Subsection* 164(1)." Other than this conclusory statement, no reasons were provided.

[39] This is not the first time that this issue has come before the CRA. The Court was referred to other letters of the CRA, spanning the period 2008 to 2014, in which it took the same position. (2008-026958, 2011-040570, 2011-042633, 2013-049942). The rationale for the CRA's position is perhaps best set out in its latest letter (2013-049942):

> … The provisions of 220(2.1) or 220(3) do not indirectly permit the Minister to issue a dividend refund when subsection 129(1) directly restricts the issuance of the dividend refund. Accordingly, it is our view that granting an extension of time to make a return of income using subsection 220(2) or (3.1) does not have the effect of eliminating the requirement in subsection 129(1) that the return of income be filed within three years of the end of the taxation year.

[40] The CRA's view expressed above is that the taxpayer relief provisions cannot affect a filing requirement which restricts the issuance of a dividend refund. The problem with this reasoning is that this is exactly what the taxpayer relief provisions are intended to do — enable the Minister to provide relief from strict filing requirements.

[41] There is no question that the text, context and purpose of subsection 129(1) of the Act is to require a tax return to be filed within three years. This is not the end of the matter, however, as it is also necessary to consider the text, context and purpose of the taxpayer relief provision. Interpreted in this manner, subsection 220(3) gives the Minister a broad discretion to override strict filing requirements in other provisions.

[42] Subsection 220(3) of the Act provides the Minister with a broad discretion to extend the time to file a "return". The provision is not new, as it can be traced back to the *Income War Tax Act, 1917*, S.C. 1917, c. 28. Given its long history, and its broad language, the reach of

subsection 220(3) has no doubt expanded over time as new “return” filing requirements have been enacted.

[43] For example, the provision applies to any type of “return,” which would include information returns that are required to be filed in various circumstances. It has also been applied by the Federal Court in respect of an income tax return filing requirement for non-residents under subsection 216(4) (*Kutlu v. Canada*, 130 F.T.R. 85, [2000] 4 C.T.C. 129 (F.C.)).

[44] In its memorandum, the Crown submits that the waiver authority in subsection 220(2.1) does not apply to subsection 129(1) because the return requirement is a condition rather than a requirement. This argument was only with respect to the waiver authority in subsection 220(2.1) of the Act. In any event, it is worth noting that in *Kutlu*, above, an extension of time was granted under subsection 220(3) in respect of requirement that was essentially a condition.

[45] It is also useful to note that the CRA has authorized waivers that are conditions to obtaining a benefit. Some examples are set out below.

- The CRA has waived the filing requirement in subsection 8(10) of the Act which is a condition of obtaining a deduction for certain employment expenses (CRA Guide T4044 at p. 5).

- The CRA has also waived the filing requirement in subsection 63(1) of the Act which is a condition of obtaining a deduction for child care expenses (CRA Income Tax Folio S1-F1-C2, para. 1.47).

- In the past, the CRA had extended the time for filing research and development forms under subsection 37(11) which are a requirement to claiming R&D benefits. (See *Alex Parallel Computers Research Inc. v. Canada*, 157 F.T.R. 247, [1999] 2 C.T.C. 180.) This practice was later prohibited by an amendment to the Act in subsection 220(2.2).

[46] Based on the text alone, subsection 220(3) provides the Minister the discretion to grant the relief that Bonnybrook seeks.

[47] This interpretation also aligns with the context and purpose of taxpayer relief provisions such as subsection 220(3). From time to time, Parliament has enacted various measures to blunt the harsh effects of strict filing requirements in the Act. Some of these relieving provisions are specific to particular requirements and others are more general. There is no one size fits all for the type of relief that is granted. Sometimes the relief is granted automatically subject to payment of a penalty (*e.g.*, subsection 85(7) of the Act), and in other cases the relief is subject to specific conditions (*e.g.*, subsection 166.1(7) of the Act).

[48] Subsections 220(2.1) and (3) are examples of relief measures which have broad application and give the Minister the authority to provide relief from filing requirements

throughout the Act. The decision of the Minister regarding subsection 220(3)fails to give due regard to the breadth of this provision.

[49] I now address specific submissions made by the Minister.

[50] Counsel for the Minister submits that a proper contextual interpretation of subsection 129(1) requires one to take into account two unrelated provisions, subsections 152(4.2) and 164(1.5) of the Act. They are relief provisions that were enacted in 1994, with retroactive effect to 1985, and apply mainly to individuals.

[51] Subsection 152(4.2) permits the Minister to issue a reassessment to reduce tax if a taxpayer applies for such relief within ten years. It is intended to allow for non-controversial adjustments in a taxpayer's favour and it overrides the usual limitation periods for reassessments. The provision does not apply to corporations.

[52] Subsection 164(1.5) of the Act is a companion provision which applies to refunds of overpayments of tax rather than reassessments. It allows for relief from the strict requirement in subsection 164(1) of the Act that a tax return be filed within three years, and enables the Minister to extend this deadline to ten years. Similar to the related provision in subsection 152(4.2), corporations are excluded from this relief.

[53] The CRA's policy concerning when discretion under the 1994 provisions will be exercised is set out in Technical Notes issued by the Department of Finance when the provisions

were introduced. Generally, the policy is to grant relief as long as the Minister is satisfied that the taxpayer would otherwise be entitled to it. As illustrated in the Technical Note regarding subsection 164(1.5), below, no exceptional circumstances need be shown.

> In most circumstances, a refund will be made to a taxpayer under this new subsection where the Minister is satisfied that it would have been made had the taxpayer's return been filed on time … and that the resulting assessment would be correct in law.

[54] It is not clear what led Parliament to enact the 1994 amendments, but their introduction corresponds in time with a decision of the Tax Court of Canada which is scathing in its rebuke of the harshness of the three year deadline to file a tax return in order to obtain a refund of an overpayment of tax: *Chalifoux v. M.N.R.,* 91 D.T.C. 946 at p. 947, [1991] 2 C.T.C. 2243:

> … This abrogation of a taxpayer's right of ownership, one of the most fundamental rights in a democratic society, seems to me to be abusive on the part of the legislature and should be removed from the statute book, at least in its present form.

[55] The significance of the 1994 amendments, counsel suggests, is that if Parliament intended that the Minister have the discretion to extend the three year deadline in the dividend refund provision, it would have done so expressly as it did in subsection 164(1.5).

[56] In my view, counsel suggests a leap too far in suggesting that subsection 220(3) of the Act does not apply to dividend refunds in light of the 1994 amendments. In circumstances where a provision provides relief to taxpayers, such as subsection 220(3), the provision should be given effect unless it is quite clear that Parliament intended otherwise. Parliament has not done so in

subsection 129(1), even taking into account subsections 152(4.2) and 164(1.5) of the Act. If Parliament had intended that the general relief provisions in subsections 220(3) not apply to subsection 129(1), it would have been an easy matter for Parliament to have provided for this explicitly.

[57] Counsel for the Minister further submits that the three year deadline in subsection 129(1) is a practical and generous rule that is intended to provide finality.

[58] I would agree that the filing deadline in subsection 129(1) is intended to provide some finality, but I would not agree that it was intended to be generous or override general taxpayer relief provisions. Filing deadlines in the Act are generally intended to be reasonable and provide some finality, but the Act also recognizes that strict filing requirements may result in unfairness in particular circumstances.

[59] I would also comment that the legislative scheme contemplated by subsection 129(1) is quite different from the detailed scheme for filing notices of objection which included extensions of time that was recently considered by this Court in *M.N.R. v. ConocoPhillips Canada Resources Corp.,* 2017 FCA 243, 2017 D.T.C. 5135. That case does not assist in the interpretation of subsection 129(1).

[60] The Minister also submits that the consequences to Bonnybrook of missing the filing deadline are not as harsh as Bonnybrook suggests because the corporation has not necessarily

lost the dividend refunds forever. The refund can be carried over to be used in future taxation years, subject to the computations provided for in subsection 129(1).

[61] Bonnybrook asserts that in its particular circumstances it is very unlikely that it could ever recover the lost refunds in light of the computations in subsection 129(1). The Minister has not disputed this.

[62] Finally, the Minister submits that an extension of time to file a return should not be granted because an extension was already granted to Bonnybrook under the voluntary disclosure program.

[63] I do not agree. Even if Bonnybrook was previously granted an extension, which is not clear on the record, the extension was granted for the limited purpose of waiving interest and penalties. This is no reason to prohibit another extension for a different purpose in the Act.

F. Conclusion

[64] For the reasons above, I have concluded that there is no principled basis on which to give subsections 129(1) and 220(3) of the Act the restrictive meaning suggested by the Minister. The Minister's decision is both unreasonable and incorrect.

[65] I would allow the appeal, set aside the judgment of the Federal Court, allow the application for judicial review, and set aside the Minister's decision. I would refer the matter

back to the Minister to consider Bonnybrook's application for relief under subsections 220(2.1) and 220(3) in accordance with the principles in these reasons. I would also award costs to Bonnybrook both here and below.

"Judith M. Woods"
J.A.

"I agree
D.G. Near J.A."

STRATAS J.A. (Dissenting reasons)

A. Introduction

[66] I have read my colleague's reasons. I agree with her analysis and conclusions concerning the jurisdiction of the Federal Court to consider the application for judicial review. I also agree with her that the Minister's reference to the refund in subsection 164(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) instead of the dividend refund in subsection 129(1), must be seen as a typographical error that can be overlooked—albeit a very careless one.

[67] I also agree with my colleague's reasoning concerning the Minister's failure to deal with subsection 220(2.1) of the Act. I agree that this must be sent back to the Minister. As I shall explain, it is not for the Federal Court, as a reviewing court, and this Court, sitting on appeal, to do the work Parliament has assigned exclusively to the Minister. It is not for these Courts to interpret subsection 220(2.1) for the Minister. Under the Act, that is the Minister's job.

[68] On the Minister's disposition of the taxpayer's application for an extension of time under subsection 220(3), in substance the Minister has failed to do the work Parliament assigned to her. As was the case with the subsection 220(2.1) application, the Minister has not done her job. So, as we are doing in the case of the subsection 220(2.1) application, we should order the Minister to do her job concerning the subsection 220(3) application, including interpreting the subsection and giving reasons for it.

[69] My colleague (at para. 33) shares my concern about the Minister's underperformance concerning the subsection 220(3) application. But, unlike the subsection 220(2.1) application, she has gone ahead and interpreted subsection 220(3) for the Minister. Thus, my colleague's proposed disposition of this application is different: she would send it back to the Minister for the limited purpose of applying to the taxpayer's situation the interpretation of the subsection she has done for the Minister.

[70] As her proposed disposition is different from mine and is supported by a majority of the appeal panel, my reasons are dissenting reasons.

B. The nature of this case

[71] This is an administrative law case. We are to review the decision of the Minister, only one component of which is statutory interpretation. To be acceptable and defensible, the decision also has to meet minimum standards under administrative law. In this case, the Minister has fallen short of one of those standards, a rather fundamental one.

C. The problem with the Minister's decision concerning subsection 220(3)

[72] The Minister has asserted a position concerning subsection 220(3) but, except for referring to a couple of other sections, has not offered meaningful or coherent reasons in support of that position. In substance, we have only a bottom-line assertion without explanation.

[73] In this Court, the submissions of counsel for the Minister effectively concede the inadequacy of the non-reasons offered by the Minister. In reality, the submissions were reasons that the Minister could have thought about and written up to support her decision but did not: a bootstrapping of the Minister's decision after she became *functus officio*. This gives rise to all of the concerns sounded by the Supreme Court in cases such as *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44, [2015] 2 S.C.R. 147 and *R. v. Teskey*, [2007] 2 SCR 267, 2007 SCC 25. But given how little the Minister had done, what else could counsel do?

[74] My colleague's response to this is to interpret subsection 220(3) herself in the course of conducting reasonableness review, in effect doing the job of statutory interpretation and reasons-writing that the Minister should have done. On this, for the reasons set out below, I decline to join her.

D. The applicable law

[75] Following the hearing, we invited the parties to provide written submissions on the issue of adequacy of the Minister's reasons and the decisions of the Supreme Court in *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, 416 D.L.R. (4th) 579 and *Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4, 417 D.L.R. (4th) 239, both of which were released soon after the hearing of this appeal. We have received and considered those submissions.

[76] I accept that the Supreme Court has instructed reviewing courts that they are supposed to supplement the reasons of administrative decision-makers in some circumstances, in effect participating in the reasons-giving process: *Delta* at para. 23.

[77] But there is a limit to our participation. *Delta* does not require us to figure out for ourselves the merits of the matter, decide the merits for the administrator, and then draft the administrator's reasons. Instead, *Delta* underscores that administrators must still do their job. *Delta* declares (at para. 27) that "reasons [given by the administrator] still matter" and play a "vital role…in administrative law." For good measure, *Delta* reiterates (at para. 24) the warning the Supreme Court sounded in *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654: namely that reviewing courts do not have *carte blanche* to draft reasons for the administrative decision-maker.

[78] *Alberta Teachers* tells us that it is one thing for reviewing courts to interpret reasons in light of the record and conclude that—despite silence in the reasons on certain matters—the matters must have been considered and dealt with in a certain way. But it is quite another thing to draft the administrator's reasons from scratch or to cross out portions of the administrator's reasons and write our own.

[79] In *Delta* (at para. 23), the Supreme Court instructs reviewing courts that "[s]upplementing reasons *may* be appropriate in cases where the [administrator's] reasons are either non-existent or insufficient" [my emphasis]. This covers off the situation where despite the administrator's silence in the reasons on certain matters, the context shows that the matters must

have been considered and dealt with in a certain way. One such situation is where we can see the dots in the administrator's decision and their relationship, so we can draw the lines connecting them: *Komolafe v. Canada (Citizenship and Immigration)*, 2013 FC 431, 16 Imm. L.R. (4th) 267 at para. 11 *per* Rennie J. (as he then was), cited with approval in *Delta* at para. 28 and *Williams Lake* at para. 154. As *Delta* explains (at para. 28), the entitlement of a reviewing court to supplement reasons does not allow it to put its own dots on the page and connect them, thereby dictating reasons to the administrator.

[80] *Delta* has clamped down on the seemingly open-ended standard in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708. *Newfoundland Nurses* was taken by some to go so far as to require reviewing courts to do the administrator's job of deciding the merits and to draft reasons for it. Coming just one day after *Alberta Teachers*, not referring to *Alberta Teachers*, and so different from *Alberta Teachers*, *Newfoundland Nurses* caused some to query whether *Alberta Teachers* was good law: see, *e.g.*, *Lemus v. Canada (Citizenship and Immigration)*, 2014 FCA 114, 372 D.L.R. (4th) 567 at paras. 28-38. Now *Delta* has told us it is.

[81] Effectively, *Delta* has also clamped down on *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47, [2016] 2 S.C.R. 293. In *Edmonton East*, the administrator did not interpret the taxation provision before it, let alone write reasons in support of any interpretation. But rather than sending the matter back to the administrator and telling it to do its job, the Supreme Court went ahead and did the administrator's job itself. See Prof. Leonid Sirota, "Law in La-La-Land: The Post-Truth Jurisprudence of Canadian Administrative Law," in

Double Aspect (blog), online: https://doubleaspect.blog/2016/12/04/law-in-la-la-land. See also Prof. Paul Daly, "Reasons and Reasonableness in Administrative Law: *Delta Air Lines Inc. v. Lukács*" (2018) 31 Can. J. Admin. L. & Prac. 209 at p. 215, who writes that in *Delta*, *Edmonton East* was "passed over in silence like an unloved distant relative."

[82] *Delta* is supported by a fundamental constitutional principle: Parliament's law binds all, including administrators and courts: *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49, [2005] 2 S.C.R. 473; *Canada (Minister of Citizenship and Immigration) v. Fisher-Tennant*, 2018 FCA 132 at paras. 23 and 24. If Parliament has passed a law assigning a job to an administrator, the administrator should do it, not the reviewing court.

[83] *Delta* is also supported by the well-established role of a reviewing court. A reviewing court is to *review* the work of an administrator, not *do* the work of an administrator. Parliament has made the administrator the merits-decider, not the reviewing court: *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, 428 N.R. 297 at paras. 17-20; *Bernard v. Canada (Revenue Agency)*, 2015 FCA 263, 479 N.R. 189 at paras. 17-19; *Robbins v. Canada (Attorney General)*, 2017 FCA 24 at para. 17; *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 128 at paras. 85 and 87. Here Parliament has vested the responsibility of interpreting these provisions in this context to the Minister, not us: *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895 at paras. 33-34. Administrators and reviewing courts—each bound by law—must stick to the role Parliament has given them.

[84] Two weeks after *Delta*, the Supreme Court released its decision in *Williams Lake*. There, it reaffirmed the principles in *Delta*.

[85] The dissenting opinions in *Williams Lake* suggest that the majority failed to follow the principles in *Delta* and engaged in impermissible supplementing of the tribunal's reasons (see paras. 141-146, 151-155, 206-207). But this criticism is directed to *how* the majority applied the principles in *Delta*; in no way did the majority mean to modify or disparage the principles themselves. When the Supreme Court's application of principles differs from its statement of the principles, it is best for us to take our direction from the latter, not the former: Prof. Paul Daly, "The Signal and the Noise in Administrative Law" (2017) 68 U.N.B.L.J. 68.

[86] And surely in *Williams Lake* the Supreme Court—as a court of law mindful of the rule of law, the binding nature of law, and the importance of legal precedent—did not intend to depart from the principles it had painstakingly set out in *Delta* just two weeks before.

E. Application to the facts of this case

[87] In the case before us, a law, the *Income Tax Act*, binds us all. In this law, Parliament has given the Minister a job to do: to look at subsection 220(3), interpret it, and decide on the taxpayer's application. To comply with this law, the Minister at least has to grapple with these things.

[88] But here the Minister asserted only a bottom-line position concerning subsection 220(3). The Minister's reasons do not adequately disclose how she reached that position. Because of this, our ability to conduct reasonableness review is fatally hobbled: *Leahy v. Canada (Citizenship and Immigration)*, 2012 FCA 227, [2014] 1 F.C.R. 766 at paras. 116-137. By not explaining her decision, the Minister is basically saying "trust me, I got it right," an assertion that impermissibly undermines this Court's responsibility to engage in meaningful review: *Fisher-Tennant*, above at paras. 23-24. In the words of *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47, the Minister's decision—an important one that effectively imposes a civil liability to the state—lacks transparency and justification.

[89] In this case I have a deeper concern: I cannot conclude that the Minister has grappled with this matter and done her job.

[90] Should I do the Minister's job, interpret the subsections and write up the reasons the Minister should have written? No.

[91] My job is judicial review of the Minister, not judicial impersonation of the Minister. I do not work for the Minister. I am not the Minister's adviser, thinker, or ghostwriter. I am an independent reviewer of what the Minister has done.

[92] In conducting a review, I am entitled to interpret the reasons given by the Minister seen in light of the record before her. Through a legitimate process of interpretation, I can sometimes understand what the Minister meant when she was silent on certain things.

[93] But faced with a silence whose meaning cannot be understood through legitimate interpretation, who am I to grab the Minister's pen and "supplement" her reasons? Why should I, as a neutral judge, be conscripted into the service of the Minister and discharge her responsibility to write reasons? Even if I am forced to serve the Minister in that way, who am I to guess what the Minister's reasoning was, fantasize about what might have entered the Minister's head or, worse, make my thoughts the Minister's thoughts? And why should I be forced to cooper up the Minister's position, one that, for all I know, might have been prompted by inadequate, faulty or non-existent information and analysis?

[94] The Minister should do the job Parliament assigned to her and her alone: to look at the relevant provisions, interpret them, and decide upon their meaning with an explanation that permits meaningful review.

F. Proposed disposition

[95] Therefore, like my colleague, I would quash the Minister's decision concerning the taxpayer's application for an extension of time under subsection 220(3). But I would remit it to the Minister for full consideration and decision. I concur with the rest of my colleague's proposed disposition.

"David Stratas"

J.A.

APPENDIX

***Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.)**

Subsection 8(10)	**Paragraphe 8(10)**
8(10) An amount otherwise deductible for a taxation year under paragraph (1)(c), (f), (h) or (h.1) or subparagraph (1)(i)(ii) or (iii) by a taxpayer shall not be deducted unless a prescribed form, signed by the taxpayer's employer certifying that the conditions set out in the applicable provision were met in the year in respect of the taxpayer, is filed with the taxpayer's return of income for the year.	8(10) Un contribuable ne peut déduire un montant pour une année d'imposition en application des alinéas (1)c), f), h) ou h.1) ou des sous-alinéas (1)i)(ii) ou (iii) que s'il joint à sa déclaration de revenu pour l'année un formulaire prescrit, signé par son employeur, qui atteste que les conditions énoncées à la disposition applicable ont été remplies quant au contribuable au cours de l'année.
Subsection 37(11) (As in force prior to December 14, 2017)	**Paragraphe 37(11)** (En vigueur avant le 14 décembre 2017)
37(11) Subject to subsection 37(12), no amount in respect of an expenditure that would be incurred by a taxpayer in a taxation year that begins after 1995 if this Act were read without reference to subsection 78(4) may be deducted under subsection 37(1) unless the taxpayer files with the Minister a prescribed form containing prescribed information in respect of the expenditure on or before the day that is 12 months after the taxpayer's filing-due date for the year.	37(11) Sous réserve du paragraphe (12), un montant n'est déductible en application du paragraphe (1) au titre d'une dépense qu'un contribuable engagerait, compte non tenu du paragraphe 78(4), au cours d'une année d'imposition qui commence après 1995 que s'il présente au ministre, au plus tard douze mois après la date d'échéance de production qui lui est applicable pour l'année, un formulaire prescrit contenant les renseignements prescrits relativement à la dépense.
Subsection 63(1)	**Paragraphe 63(1)**
63 (1) Subject to subsection 63(2), where a prescribed form containing prescribed information is filed with a taxpayer's return of income (other than a return filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) under this Part for a taxation year, there may be	63 (1) Sous réserve du paragraphe (2), lorsque le formulaire prescrit contenant les renseignements prescrits accompagne la déclaration de revenu d'un contribuable produite en vertu de la présente partie pour une année d'imposition (à l'exclusion de celle produite ou déposée en application des

deducted in computing the taxpayer's income for the year such amount as the taxpayer claims not exceeding the total of all amounts each of which is an amount paid, as or on account of child care expenses incurred for services rendered in the year in respect of an eligible child of the taxpayer, …

paragraphes 70(2) ou 104(23), de l'alinéa 128(2)e) ou du paragraphe 150(4)), est déductible dans le calcul du revenu du contribuable pour l'année le montant qu'il demande, ne dépassant pas le total des montants représentant chacun un montant, au titre des frais de garde d'enfants engagés pour des services rendus au cours de l'année relativement à un enfant admissible du contribuable, payé : …

Subsection 129(1)

129(1) Where a return of a corporation's income under this Part for a taxation year is made within 3 years after the end of the year, the Minister

(*a*) may, on sending the notice of assessment for the year, refund without application an amount (in this Act referred to as its "dividend refund" for the year) equal to the lesser of

(i) 38 1/3% of all taxable dividends paid by the corporation on shares of its capital stock in the year and at a time when it was a private corporation, and

(ii) its refundable dividend tax on hand at the end of the year; and

(*b*) shall, with all due dispatch, make the dividend refund after sending the notice of assessment if an application for it has been made in writing by the corporation within the period within which the

Paragraphe 129(1)

129(1) Lorsque la déclaration de revenu d'une société en vertu de la présente partie pour une année d'imposition est faite dans les trois ans suivant la fin de l'année, le ministre :

a) peut, lors de l'envoi de l'avis de cotisation pour l'année, rembourser, sans que demande en soit faite, une somme (appelée « remboursement au titre de dividendes » dans la présente loi) égale à la moins élevée des sommes suivantes :

(i) 38 1/3 % de l'ensemble des dividendes imposables que la société a versés sur des actions de son capital-actions au cours de l'année et à un moment où elle était une société privée,

(ii) son impôt en main remboursable au titre de dividendes, à la fin de l'année;

b) doit effectuer le remboursement au titre de dividendes avec diligence après avoir envoyé l'avis de cotisation, si la société en fait la demande par écrit au cours de la période pendant laquelle le

Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the corporation for the year if that subsection were read without reference to paragraph 152(4)(*a*).

ministre pourrait établir, aux termes du paragraphe 152(4), une cotisation concernant l'impôt payable en vertu de la présente partie par la société pour l'année si ce paragraphe s'appliquait compte non tenu de son alinéa *a*).

Paragraph 150(1)(*a*)

150(1) Subject to subsection (1.1), a return of income that is in prescribed form and that contains prescribed information shall be filed with the Minister, without notice or demand for the return, for each taxation year of a taxpayer,

(*a*) in the case of a corporation, by or on behalf of the corporation within six months after the end of the year if

(i) at any time in the year the corporation

(A) is resident in Canada,

(B) carries on business in Canada, unless the corporation's only revenue from carrying on business in Canada in the year consists of amounts in respect of which tax was payable by the corporation under subsection 212(5.1),

(C) has a taxable capital gain (otherwise than from an excluded disposition), or

(D) disposes of a taxable Canadian property (otherwise than in an

Alinéa 150(1)*a*)

150(1) Sous réserve du paragraphe (1.1), une déclaration de revenu sur le formulaire prescrit et contenant les renseignements prescrits doit être présentée au ministre, sans avis ni mise en demeure, pour chaque année d'imposition d'un contribuable :

a) dans le cas d'une société, par la société, ou en son nom, dans les six mois suivant la fin de l'année si, selon le cas :

(i) au cours de l'année, l'un des faits suivants se vérifie :

(A) la société réside au Canada,

(B) elle exploite une entreprise au Canada, sauf si ses seules recettes provenant de l'exploitation d'une entreprise au Canada au cours de l'année consistent en sommes au titre desquelles un impôt était payable par elle en vertu du paragraphe 212(5.1),

(C) elle a un gain en capital imposable (sauf celui provenant d'une disposition exclue),

(D) elle dispose d'un bien canadien imposable (autrement que par suite

excluded disposition), or

(ii) tax under this Part

(A) is payable by the corporation for the year, or

(B) would be, but for a tax treaty, payable by the corporation for the year (otherwise than in respect of a disposition of taxable Canadian property that is treaty-protected property of the corporation);

d'une disposition exclue),

(ii) l'impôt prévu par la présente partie :

(A) est payable par la société pour l'année,

(B) serait, en l'absence d'un traité fiscal, payable par la société pour l'année (autrement que relativement à la disposition d'un bien canadien imposable qui est un bien protégé par traité de la société);

Subsection 152(4.2)

152(4.2) Notwithstanding subsections (4), (4.1) and (5), for the purpose of determining — at any time after the end of the normal reassessment period, of a taxpayer who is an individual (other than a trust) or a graduated rate estate, in respect of a taxation year — the amount of any refund to which the taxpayer is entitled at that time for the year, or a reduction of an amount payable under this Part by the taxpayer for the year, the Minister may, if the taxpayer makes an application for that determination on or before the day that is 10 calendar years after the end of that taxation year,

(*a*) reassess tax, interest or penalties payable under this Part by the taxpayer in respect of that year; and

(*b*) redetermine the amount, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 122.7(2)

Paragraphe 152(4.2)

152(4.2) Malgré les paragraphes (4), (4.1) et (5), pour déterminer, à un moment donné après la fin de la période normale de nouvelle cotisation applicable à un contribuable — particulier (sauf une fiducie) ou succession assujettie à l'imposition à taux progressifs — pour une année d'imposition, le remboursement auquel le contribuable a droit à ce moment pour l'année ou la réduction d'un montant payable par le contribuable pour l'année en vertu de la présente partie, le ministre peut, si le contribuable demande pareille détermination au plus tard le jour qui suit de dix années civiles la fin de cette année d'imposition, à la fois :

a) établir de nouvelles cotisations concernant l'impôt, les intérêts ou les pénalités payables par le contribuable pour l'année en vertu de la présente partie;

b) déterminer de nouveau l'impôt qui est réputé, par les paragraphes 120(2) ou (2.2), 122.5(3),

or (3), 122.9(2), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

122.51(2), 122.7(2) ou (3), 122.9(2), 127.1(1), 127.41(3) ou 210.2(3) ou (4), avoir été payé au titre de l'impôt payable par le contribuable en vertu de la présente partie pour l'année ou qui est réputé, par le paragraphe 122.61(1), être un paiement en trop au titre des sommes dont le contribuable est redevable en vertu de la présente partie pour l'année.

Subsection 164(1)

164(1) If the return of a taxpayer's income for a taxation year has been made within 3 years from the end of the year, the Minister

(*a*) may,

(i) before sending the notice of assessment for the year, where the taxpayer is, for any purpose of the definition refundable investment tax credit (as defined in subsection 127.1(2)), a qualifying corporation (as defined in that subsection) and claims in its return of income for the year to have paid an amount on account of its tax payable under this Part for the year because of subsection 127.1(1) in respect of its refundable investment tax credit (as defined in subsection 127.1(2)), refund all or part of any amount claimed in the return as an overpayment for the year, not exceeding the amount by which the total determined under paragraph (*f*) of the definition refundable investment tax credit in subsection 127.1(2) in respect

Paragraphe 164(1)

164(1) Si la déclaration de revenu d'un contribuable pour une année d'imposition est produite dans les trois ans suivant la fin de l'année, le ministre :

a) peut faire ce qui suit :

(i) avant d'envoyer l'avis de cotisation pour l'année — si le contribuable est, pour l'application de la définition de crédit d'impôt à l'investissement remboursable au paragraphe 127.1(2), une société admissible au sens de ce paragraphe qui, dans sa déclaration de revenu pour l'année, déclare avoir payé un montant au titre de son impôt payable en vertu de la présente partie pour l'année par l'effet du paragraphe 127.1(1) et relativement à son crédit d'impôt à l'investissement remboursable au sens du paragraphe 127.1(2) — rembourser tout ou partie du montant demandé dans la déclaration à titre de paiement en trop pour l'année, jusqu'à concurrence de l'excédent du total visé à l'alinéa *c*) de la

of the taxpayer for the year exceeds the total determined under paragraph (*g*) of that definition in respect of the taxpayer for the year,

définition de crédit d'impôt à l'investissement remboursable au paragraphe 127.1(2) sur le total visé à l'alinéa d) de cette définition, quant au contribuable pour l'année,

(ii) before sending the notice of assessment for the year, where the taxpayer is a qualified corporation (as defined in subsection 125.4(1)) or an eligible production corporation (as defined in subsection 125.5(1)) and an amount is deemed under subsection 125.4(3) or 125.5(3) to have been paid on account of its tax payable under this Part for the year, refund all or part of any amount claimed in the return as an overpayment for the year, not exceeding the total of those amounts so deemed to have been paid, and

(ii) avant d'envoyer l'avis de cotisation pour l'année — si le contribuable est une société admissible, au sens du paragraphe 125.4(1), ou une société de production admissible, au sens du paragraphe 125.5(1), et si un montant est réputé par les paragraphes 125.4(3) ou 125.5(3) avoir été payé au titre de son impôt payable en vertu de la présente partie pour l'année — rembourser tout ou partie du montant demandé dans la déclaration à titre de paiement en trop pour l'année, jusqu'à concurrence du total des montants ainsi réputés avoir été payés,

(iii) on or after sending the notice of assessment for the year, refund any overpayment for the year, to the extent that the overpayment was not refunded pursuant to subparagraph (i) or (ii); and

(iii) au moment de l'envoi de l'avis de cotisation pour l'année ou par la suite, rembourser tout paiement en trop pour l'année, dans la mesure où ce paiement n'est pas remboursé en application des sous-alinéas (i) ou (ii);

(*b*) shall, with all due dispatch, make the refund referred to in subparagraph (*a*)(iii) after sending the notice of assessment if application for it is made in writing by the taxpayer within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the taxpayer for the

b) doit effectuer le remboursement visé au sous-alinéa *a*)(iii) avec diligence après avoir envoyé l'avis de cotisation, si le contribuable en fait la demande par écrit au cours de la période pendant laquelle le ministre pourrait établir, aux termes du paragraphe 152(4), une cotisation concernant l'impôt payable en vertu de la présente

year if that subsection were read without reference to paragraph 152(4)(a).

partie par le contribuable pour l'année si ce paragraphe s'appliquait compte non tenu de son alinéa *a*).

Subsection 164(1.5)

164(1.5) Notwithstanding subsection (1), the Minister may, on or after sending a notice of assessment for a taxation year, refund all or any portion of any overpayment of a taxpayer for the year

Paragraphe 164(1.5)

164(1.5) Malgré le paragraphe (1), le ministre peut, à la date d'envoi d'un avis de cotisation pour une année d'imposition ou par la suite, rembourser tout ou partie d'un paiement en trop d'un contribuable pour l'année si, selon le cas :

(*a*) if the taxpayer is an individual (other than a trust) or a graduated rate estate for the year and the taxpayer's return of income under this Part for the year was filed on or before the day that is 10 calendar years after the end of the year;

a) le contribuable est un particulier (sauf une fiducie) ou une succession assujettie à l'imposition à taux progressifs pour l'année et sa déclaration de revenu pour l'année en vertu de la présente partie a été produite au plus tard le jour qui suit de dix années civiles la fin de l'année d'imposition;

(*b*) where an assessment or a redetermination was made under subsection 152(4.2) or 220(3.1) or 220(3.4) in respect of the taxpayer; or

b) une cotisation a été établie, ou un montant déterminé de nouveau, en application des paragraphes 152(4.2) ou 220(3.1) ou (3.4), à l'égard du contribuable;

(*c*) to the extent that the overpayment relates to an assessment of another taxpayer under subsection 227(10) or (10.1) (in this paragraph referred to as the "other assessment"), if the taxpayer's return of income under this Part for the taxation year is filed on or before the day that is two years after the date of the other assessment and if the other assessment relates to

c) dans la mesure où le paiement en trop se rapporte à une cotisation établie à l'égard d'un autre contribuable en vertu des paragraphes 227(10) ou (10.1) (appelée « autre cotisation » au présent alinéa), si la déclaration de revenu que le contribuable est tenu de produire en vertu de la présente partie pour l'année est produite au plus tard le jour qui suit de deux ans la date d'établissement de l'autre cotisation et que celle-ci porte :

(i) in the case of an amount

(i) dans le cas d'une cotisation

assessed under subsection 227(10), a payment to the taxpayer of a fee, commission or other amount in respect of services rendered in Canada by a non-resident person or partnership, and

(ii) in the case of an amount assessed under subsection 227(10.1), an amount payable under subsection 116(5) or (5.3) in respect of a disposition of property by the taxpayer.

établie en vertu du paragraphe 227(10), sur le paiement au contribuable d'honoraires, d'une commission ou d'une autre somme à l'égard de services rendus au Canada par une personne ou une société de personnes non-résidente,

(ii) dans le cas d'une cotisation établie en vertu du paragraphe 227(10.1), sur une somme à payer en vertu des paragraphes 116(5) ou (5.3) relativement à la disposition d'un bien par le contribuable.

Subsection 216(4)

216(4) If a non-resident person or, in the case of a partnership, each non-resident person who is a member of the partnership files with the Minister an undertaking in prescribed form to file within six months after the end of a taxation year a return of income under Part I for the year as permitted by this section, a person who is otherwise required by subsection 215(3) to remit in the year, in respect of the non-resident person or the partnership, an amount to the Receiver General in payment of tax on rent on real or immovable property or on a timber royalty may elect under this section not to remit under that subsection, and if that election is made, the elector shall,

(*a*) when any amount is available out of the rent or royalty received for remittance to the non-resident person or the partnership, as the case may be, deduct 25% of the

Paragraphe 216(4)

216(4) Lorsqu'une personne non-résidente ou, dans le cas d'une société de personnes, chaque personne non-résidente qui en est un associé présente au ministre, selon le formulaire prescrit, l'engagement de produire une déclaration de revenu en vertu de la partie I pour une année d'imposition dans les six mois suivant la fin de l'année, ainsi que le permet le présent article, une personne qui est par ailleurs tenue, en vertu du paragraphe 215(3), de remettre au cours de l'année, relativement à la personne non-résidente ou à la société de personnes, une somme au receveur général en paiement d'impôt sur le loyer de biens immeubles ou réels ou sur une redevance forestière peut choisir, en vertu du présent article, de ne pas faire de remise en vertu de ce paragraphe, auquel cas elle doit :

a) lorsqu'un montant quelconque de loyer ou de redevance reçu pour être remis à la personne non-résidente ou à la société de personnes est disponible, en

amount available and remit the amount deducted to the Receiver General on behalf of the non-resident person or the partnership on account of the tax under this Part; and

déduire 25 % et remettre la somme déduite au receveur général pour le compte de la personne non-résidente ou de la société de personnes, au titre de l'impôt prévu par la présente partie;

(*b*) if the non-resident person or, in the case of a partnership, a non-resident person who is a member of the partnership

b) si la personne non-résidente ou, dans le cas d'une société de personnes, une personne non-résidente qui en est un associé :

(i) does not file a return for the year in accordance with the undertaking, or

(i) soit ne produit pas de déclaration pour l'année conformément à l'engagement qu'elle a présenté au ministre,

(ii) does not pay under this section the tax the non-resident person or member is liable to pay for the year within the time provided for payment,

(ii) soit ne paie pas l'impôt qu'elle est tenue de payer pour l'année, en vertu du présent article, dans le délai imparti à cette fin,

pay to the Receiver General, on account of the non-resident person's or the partnership's tax under this Part, on the expiration of the time for filing or payment, as the case may be, the full amount that the elector would otherwise have been required to remit in the year in respect of the rent or royalty minus the that the elector has remitted in the year under paragraph 216(4)(*a*) in respect of the rent or royalty.

remettre au receveur général, au titre de l'impôt de la personne non-résidente ou de la société de personnes en vertu de la présente partie, dès l'expiration du délai prévu pour la production de la déclaration ou pour le paiement de l'impôt, la totalité de la somme qu'elle aurait par ailleurs été tenue de remettre au cours de l'année au titre du loyer ou de la redevance, diminuée des montants qu'elle a remis au cours de l'année à ce titre en vertu de l'alinéa *a*).

Subsection 220(2.1)

220(2.1) Where any provision of this Act or a regulation requires a person to file a prescribed form, receipt or other document, or to provide prescribed information, the Minister may waive the requirement, but the person shall provide the document or

Paragraphe 220(2.1)

220(2.1) Le ministre peut renoncer à exiger qu'une personne produise un formulaire prescrit, un reçu ou autre document ou fournisse des renseignements prescrits, aux termes d'une disposition de la présente loi ou de son règlement d'application. La personne est néanmoins tenue de

information at the Minister’s request.

fournir le document ou les renseignements à la demande du ministre.

Subsection 220(2.2)

220(2.2) Subsection (2.1) does not apply in respect of a prescribed form, receipt or document, or prescribed information, that is filed with the Minister on or after the day specified, in respect of the form, receipt, document or information, in subsection 37(11) or paragraph (m) of the definition investment tax credit in subsection 127(9).

Paragraphe 220(2.2)

220(2.2) Le paragraphe (2.1) ne s’applique pas au formulaire prescrit, au reçu ou au document, ni aux renseignements prescrits, qui sont présentés au ministre à l’expiration du délai fixé au paragraphe 37(11) ou à l’alinéa m) de la définition de crédit d’impôt à l’investissement au paragraphe 127(9), ou par la suite, relativement aux formulaire, reçu, document ou renseignements.

Subsection 220(3)

220(3) The Minister may at any time extend the time for making a return under this Act.

Paragraphe 220(3)

220(3) Le ministre peut en tout temps proroger le délai fixé pour faire une déclaration en vertu de la présente loi.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-230-17
APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE CAMPBELL DATED JUNE 30, 2017, DOCKET NO. T-1801-16	
STYLE OF CAUSE:	BONNYBROOK PARK INDUSTRIAL DEVELOPMENT CO. LTD. v. MINISTER OF NATIONAL REVENUE
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 9, 2018
REASONS FOR JUDGMENT BY:	WOODS J.A.
CONCURRED IN BY:	NEAR J.A.
DISSENTING REASONS BY:	STRATAS J.A.
DATED:	JULY 18, 2018

APPEARANCES:

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