Federal Court of Appeal | Cour d'appel fédérale

Date: 20250704

Dockets: A-137-21
A-369-21 (Lead file)
A-370-21
A-371-21
A-372-21
A-373-21

Citation: 2025 FCA 129

CORAM: **BOIVIN J.A.**
LOCKE J.A.
MONAGHAN J.A.

Docket: A-137-21

BETWEEN:

THE RRSP OF JAMES T. GRENON (552-53721) BY ITS TRUSTEE CIBC TRUST CORPORATION

Appellant

and

HIS MAJESTY THE KING

Respondent

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AND BETWEEN:

JAMES T. GRENON, THE RRSP OF JAMES T. GRENON (552-53721)

BY ITS TRUSTEE CIBC TRUST CORPORATION, MAGREN HOLDINGS LTD.,2176 INVESTMENTS LTD. (as successor to Grencorp Management Inc. which was the successor to 994047 Alberta Ltd.), MAGREN HOLDINGS LTD. (successor by amalgamation to 1052785 Alberta Ltd.)

Appellants

and

HIS MAJESTY THE KING

Respondent

Heard at Toronto, Ontario, on May 29 and May 30, 2023.

Judgment delivered at Ottawa, Ontario, on July 4, 2025.

REASONS FOR JUDGMENT BY: MONAGHAN J.A.

CONCURRED IN BY: BOIVIN J.A.
LOCKE J.A.

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REASONS FOR JUDGMENT

MONAGHAN J.A.

[1] A trust governed by a registered retirement savings plan (RRSP) generally is exempt from tax, but that is not universally true. Where an RRSP owns investments that are not qualified investments, it may be liable for tax on income it earns from those investments and on gains it realizes from their disposition. Moreover, prior to 2011, an RRSP that held an investment other than a qualified investment could be liable for a one percent monthly tax based on the fair market value of the investment at the time it was acquired.

[2] The RRSP of James T. Grenon (Grenon RRSP) acquired units in certain trusts that the annuitant, James Grenon, took the initiative in establishing. In 2013, the Minister of National Revenue issued assessments under Part I of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) to

Grenon RRSP for its 2004 to 2009 taxation years assessing tax on the income it earned from those trust units. In support of the assessments, the Minister initially relied on the general anti-avoidance rule (GAAR), accepting that the trust units were "qualified investments" as that term is defined in the *Income Tax Act*. However, the Minister subsequently concluded that the units were not qualified investments and relied on that as an alternative ground in support of the Part I assessments.

[3] The Minister also assessed Grenon RRSP for the one percent monthly tax imposed by Part XI.1 of the *Income Tax Act* based on the fair market value of the trust units it held at each month-end in 2004 to 2009. Again, the Minister initially relied on GAAR, but subsequently advanced the alternative ground that the trust units were not qualified investments.

[4] Grenon RRSP appealed those assessments to the Tax Court of Canada, challenging their merits and submitting that the 2004 to 2008 assessments were statute-barred.

[5] The Tax Court concluded that the assessments were not statute-barred, and the trust units were not qualified investments. In the alternative, it concluded that GAAR applied, and the tax consequences imposed by the assessments were reasonable in the circumstances. However, the Tax Court also concluded that the Minister's 2005 Part I assessment was incorrect because the Minister included an amount in Grenon RRSP's 2005 income that was not income from the trust fund units. Accordingly, the Tax Court allowed Grenon RRSP's appeal of the 2005 Part I assessment and ordered the Minister to reassess Grenon RRSP removing that amount from its

income. The Tax Court otherwise dismissed Grenon RRSP's appeals and confirmed the assessments: *Grenon v. The Queen*, 2021 TCC 30 (*per* Smith J.).

[6] Grenon RRSP appeals the Tax Court's decision to this Court, asserting that the Tax Court erred in concluding that the trust units were not qualified investments, that GAAR applied and that the 2004 to 2008 assessments were not statute-barred. Grenon RRSP asserts the Tax Court should have allowed all its appeals and vacated the assessments.

[7] For reasons I will explain, I would not interfere with the Tax Court's conclusions that the units were not qualified investments and that Grenon RRSP was taxable under Part I on any income derived from such units. I also agree with the Tax Court that the Part I assessments were not statute-barred.

[8] However, the Tax Court should have dismissed Grenon RRSP's appeal of its 2005 Part I assessment and thus erred in allowing that appeal.

[9] I also conclude that the Tax Court erred in dismissing Grenon RRSP's appeal of the Part XI.1 assessments.

[10] Those conclusions are sufficient to dispose of the appeals. Accordingly, I do not propose to analyze other issues addressed in the Tax Court's reasons, including its GAAR analysis. However, that choice should be understood as expressing no opinion as to whether I agree or disagree with the Tax Court's analysis on those other issues.

I. Introduction

[11] Before I explain why I have come to these conclusions, a few preliminary comments are necessary.

[12] Although six taxation years are at issue in this appeal, except as expressly noted, all references to statutory provisions in these reasons are to provisions of the *Income Tax Act* or the *Income Tax Regulations*, C.R.C., c. 945 (*Regulations*) as in effect on January 1, 2009. Any differences in the provisions applicable in the other taxation years will be expressly addressed to the extent relevant. Appendix A to these reasons contains the key provisions relevant to this appeal. Because many of them were amended subsequently, portions of these reasons may not be relevant under the amended provisions. In these reasons, I identify provisions of the *Income Tax Act* by "s." and provisions of the *Regulations* by "ITR".

[13] At issue are units of six unit trusts established on Mr. Grenon's initiative. Mr. Grenon intended that each trust would qualify as a "mutual fund trust" as that term is defined in the *Income Tax Act*: Tax Court reasons at paras. 5, 31. References to unitholders and units refer, respectively, to beneficiaries of a trust and their interests as beneficiaries of the trust.

[14] The trusts were called "income funds" which is an alternative to the expression "income trusts". Each term typically refers to mutual fund trusts that indirectly own operating businesses through subsidiary trusts and partnerships. Neither expression is used in the *Income Tax Act*.

While nothing turns on this terminology, like the Tax Court, I use the expression “income funds” to describe the trusts at issue in this appeal.

[15] Before describing the circumstances in which the income funds were established and issued units, including to Grenon RRSP, it is useful to summarize certain key income tax principles relevant to this appeal.

A. *Key Relevant Taxation Principles*

(1) Taxation of RRSPs and their annuitants

[16] Where an RRSP is a trust, it is taxed as an individual: s. 104(2), paragraph (*b*) of the definition of “retirement savings plan”, s. 146(1). However, an RRSP is exempt from Part I tax on its taxable income provided it holds only qualified investments, does not carry on a business and does not borrow money: ss. 146(4), (10.1), 149(1)(*r*).

[17] Together, the *Income Tax Act* and *Regulations* specify which properties are qualified investments for RRSPs: s. 146(1), Part XLIX of the *Regulations*. A unit of a “mutual fund trust” is a qualified investment: ITR 4900(1)(*d*).

[18] Where an RRSP owns property that is not a qualified investment—a “non-qualified investment” (NQI) (see definition, s. 146(1))—the RRSP is taxable under Part I of the *Income Tax Act* on any income derived from the NQI and on any capital gains it realizes from disposing of the NQI: s. 146(10.1). Moreover, the RRSP computes that income as if 100 percent of any

capital gains were taxable capital gains and 100 percent of any capital losses were allowable capital losses: s. 146(10.1)(*b*)(ii).

[19] One of two other consequences may arise where an RRSP holds NQI.

[20] Where an RRSP acquires NQI, Part I of the *Income Tax Act* requires the annuitant to include in their income the fair market value of the NQI at the time it was acquired (acquisition date value): ss. 56(1)(*h*), 146(10). If the annuitant has done so, and the RRSP disposes of the NQI, the annuitant may deduct from income the lesser of the amount they previously included in income and the RRSP's proceeds from disposing of the NQI: s. 146(6).

[21] Where an RRSP holds NQI at the end of any month, Part XI.1 of the *Income Tax Act* imposes a tax on the RRSP for that month equal to one percent of the NQI's acquisition date value: s. 207.1(1)(*a*). However, Part XI.1 tax does not apply where the acquisition date value was included in the annuitant's income by virtue of subsection 146(10).

[22] Thus, either the annuitant or the RRSP is taxable based on the acquisition date value of the NQI, but not both.

(2) Qualification as a "mutual fund trust"

[23] A trust qualifies as a mutual fund trust at a particular time only if it satisfies several conditions: s. 132(6). Regulation 4801 prescribes certain conditions that must be satisfied at the

time a trust seeks to qualify as a mutual fund trust. I refer to Regulation 4801(*a*) as the "distribution condition" and Regulation 4801(*b*) as the "minimum beneficiary condition".

[24] The distribution condition may be satisfied in one of two ways:

(i) there has been a lawful distribution of units of the trust to the public in circumstances in which a prospectus or similar document was not required to be filed (ITR 4801(*a*)(i)(A)); or

(ii) a class of units of the trust is qualified for distribution to the public (ITR 4801(*a*)(ii)).

For this purpose, "qualified for distribution to the public" is defined and requires a prospectus, registration statement or similar document to be filed with a regulatory authority, and where required, accepted for filing, and a lawful distribution of units to the public in accordance with that document: ITR 4803(2)(*a*).

[25] The minimum beneficiary condition requires that, in respect of a class of units that meets the distribution condition, there are no fewer than 150 beneficiaries each of whom holds not less than a block of those units with an aggregate fair market value of not less than $500: ITR 4801(*b*). The number of units that constitutes a block of units depends on the value of a unit: definition of "block of units", ITR 4803(1).

(3) Tax filing obligations

[26] Under Part I of the *Income Tax Act*, a taxpayer must file a "return of income" in prescribed form unless an exception applies. The prescribed form for a trust is a T3 Trust Income Tax and Information Return (T3).

[27] Part XI.1 provides that "a taxpayer to whom [that] Part applies", including an RRSP, must file "a return for the year under [that] Part in prescribed form and containing prescribed information". In that return, the taxpayer must estimate the tax, if any, payable by it under Part XI.1: s. 207.2(1).

[28] Most trusts, including RRSPs, must also file an information return: ITR 204(1).

(4) Assessments and statute-barring

[29] When a taxpayer files a tax return, the Minister must review it and issue an assessment; the Minister may also issue an assessment if a taxpayer does not file a return: ss. 152(1), (7).

[30] The Minister may later decide to reassess a taxpayer. However, absent an applicable exception, the Minister cannot reassess a taxpayer for taxes for a particular taxation year after the normal reassessment period for that year expires. One exception is where a tax return includes a misrepresentation attributable to neglect, carelessness or wilful default: s. 152(4)(*a*)(i).

[31] The normal reassessment period for a taxation year commences when the Minister sends an original notice of assessment or notice that no tax is payable for that taxation year, whichever is earlier: s. 152(3.1). This process applies separately under each Part of the *Income Tax Act* imposing tax. Thus, a Part I assessment does not start the normal reassessment period for Part XI.1 purposes and *vice versa*.

[32] A taxpayer may choose not to file a tax return, particularly if they believe they have no tax liability. However, the taxpayer then accepts the risk that the normal reassessment period will not start unless the Minister issues an assessment or notice that no tax is payable despite not receiving a return.

[33] The normal reassessment period for a particular taxation year for a trust (including an RRSP) ends three years after the Minister sends the notice of assessment or notice that no tax is payable for that taxation year: s. 152(3.1)(*b*).

[34] Against that backdrop, I turn now to the factual background to this appeal.

B. *Factual Background*

(1) Establishment of the income funds and issuance of units

[35] By 2003, Grenon RRSP had accumulated significant assets. Mr. Grenon was not interested in Grenon RRSP holding passive investments or a diversified portfolio of publicly-traded companies. Rather, he wanted to be actively involved in the management of entities in

which Grenon RRSP, directly or indirectly, invested. Mr. Grenon "preferred a flow-through structure using business trusts or limited partnerships that he viewed as more efficient from an income tax point of view": Tax Court reasons at para. 21.

[36] Between 2003 and 2006, Mr. Grenon established six income funds with the objective that each would qualify as a mutual fund trust so that their units would be qualified investments for Grenon RRSP. Mr. Grenon was a promoter, manager and a trustee of each income fund.

[37] However, Mr. Grenon did not want the expense of a prospectus offering or to raise a large amount of capital; he only wanted to meet the minimum requirements for the income funds to achieve mutual fund status: Tax Court reasons at paras. 23, 31, 151. Accordingly, each income fund prepared an offering memorandum (OM) with the intention of relying on the offering memorandum exemption (OME) from the prospectus requirement that was available under the securities laws of Alberta and British Columbia. The conditions to qualify for the OME under those laws, insofar as they are relevant to this appeal, were the same.

[38] Each OM stated that the relevant income fund sought subscriptions from a minimum of 160 investors resident in Alberta or British Columbia, each of whom would subscribe for a minimum of 100 units at $7.50 per unit. Mr. Grenon specifically chose these minimums to satisfy the minimum beneficiary condition—150 beneficiaries each holding a block of units with a value of at least $500: Tax Court reasons at paras. 30-31, 163, 189, 205, 208, 235.

[39] The OME required that each investor receive a copy of the OM, purchase units as principal, return a signed risk acknowledgement form and subscription agreement, and pay the subscription price. Provincial securities rules prescribed the contents of the OM and the form of risk acknowledgement, but not the form of subscription agreement. An issuer relying on the OME was required to file the OM, together with a report, with the provincial securities authorities within 10 days of a distribution: Tax Court reasons at paras. 151-159.

[40] Under each OM, 171 investors resident in Alberta or British Columbia subscribed for 100 units. For the most part, the same investors, including Mr. Grenon and entities he controlled, subscribed for units in each of the income funds using subscription agreements attached to the OMs: Tax Court reasons at paras. 2, 28, 31-33, 357, 396. No investor acquired more than the minimum 100 units. Each income fund thereby raised $128,250: Tax Court reasons at para. 31.

[41] The OMs recognized these funds would be insufficient to pursue the income funds' investment goals. Each OM stated that Mr. Grenon would invest at least $1 million: Tax Court reasons at para. 34. As will be seen, Grenon RRSP—not Mr. Grenon—made the significant investment in each income fund, although it did not subscribe for units under the OMs.

[42] The subscription agreements required each investor to represent that they were "purchasing…as principal for [their] own account, not for the benefit of any other person"; that they "ha[d] attained the age of majority and ha[d] the legal capacity and competence to execute" the subscription agreement and "ha[d] such knowledge, skill and experience in business, financial and investment matters" so as to be "capable of evaluating the merits and risks" of

acquiring units. The terms of the subscription agreement could not be modified except by an instrument in writing: Tax Court reasons at para. 155.

[43] The prescribed risk acknowledgement form required the purchaser to acknowledge the investment was risky and that they could lose all the money invested. The instructions on the risk acknowledgement form required that the purchaser sign it: see Appeal Book at 3172, 3175 (Forms 45-103F3 and 45-106F4).

[44] Notwithstanding these documents, each income fund accepted subscriptions from more than 30 minors and subscriptions signed by an adult on behalf of a minor or another adult. Each income fund also accepted payments from one adult for units subscribed for and issued to others: Tax Court reasons at paras. 291-292, 309, 336-337.

(2) Grenon RRSP becomes a unitholder

[45] Following the subscriptions by the 171 investors, Mr. Grenon's position was that the income funds were mutual fund trusts so that their units were qualified investments for Grenon RRSP. Accordingly, he gave instructions to the trustee of Grenon RRSP—CIBC Trust Corporation (Trustee)—that Grenon RRSP subscribe for units in each of the income funds. Each time, before it would permit Grenon RRSP to subscribe for units, the Trustee required certain documents, including a copy of the OM and a legal opinion from a reputable law firm confirming the income fund's status as a mutual fund trust.

[46] The legal opinions delivered to the Trustee relied on a declaration by Mr. Grenon or another income fund trustee as to certain matters, including that the relevant income fund had completed a lawful distribution of units to the public and had more than 150 beneficiaries: Tax Court reasons at paras. 518-519, 537; see, for example, Appeal Book at 8724-8725, 8752-8753, 8821-8822, 8825-8827, 8907-8908, 8939-8940, 8976-8978, 8980-8982.

[47] Between 2003 and 2009, Grenon RRSP subscribed for units in each income fund paying more than $310 million in aggregate: Tax Court reasons at paras. 42-47. Only after Grenon RRSP subscribed for units were the income funds able to acquire the assets that were to generate significant income. Grenon RRSP's subscriptions reduced the collective interest of the initial investors in each income fund to less than three percent, and in some cases less than one percent: Tax Court reasons at paras. 3, 59, 63, 397, 568.

[48] Broadly speaking, the income funds used Grenon RRSP's subscription proceeds to acquire income-generating assets, sometimes through subsidiary trusts and partnerships. Depending on the income fund, those assets included indebtedness of Mr. Grenon and persons related to him, operating businesses, and indebtedness and shares of private corporations acquired from Mr. Grenon or business associates. Through allocations and distributions, the income earned by the partnerships and trusts became the income funds' income. The income funds in turn distributed their income to their unitholders, principally Grenon RRSP. As a result, the income funds had no taxable income. (The RRSPs of two business associates each acquired a 49 percent interest in a different income fund from Grenon RRSP in exchange for cash: Tax

Court reasons at para. 25. Nothing turns on this fact and it was not raised on appeal. Consequently, I ignore it.)

[49] The Minister's Part I assessments assumed that the income funds distributed more than $186 million in income to Grenon RRSP in the 2004 to 2009 taxation years: Tax Court reasons at paras. 48-49.

(3) Tax reporting

[50] Grenon RRSP was one of hundreds of thousands of RRSPs governed by a particular specimen plan of the Trustee.

[51] For the taxation years at issue, a trustee for a group of RRSPs governed by a particular specimen plan filed a *T3GR Group Income Tax and Information Return for RRSP, RRIF, or RESP Trusts* (T3GR). The T3GR required trustees to report certain information for the RRSPs in the group on an aggregate basis. The T3GR required a trustee to attach a list of all taxable RRSPs under the specimen plan containing information specific to each taxable RRSP and its annuitant, including the RRSP's liability for Part XI.1 tax. However, it stated that a trustee was to use a T3—the prescribed income tax return for trusts for Part I purposes—to report an RRSP's taxable income.

[52] For each of the 2004 to 2009 taxation years, the Trustee filed a T3GR for the group that included Grenon RRSP. The Trustee reported taxes payable by RRSPs in the group under each of Parts XI and XI.1 on an aggregate basis on the pre-printed T3GR form and attached a list of

those taxable RRSPs which included information about their tax liability for those taxes on an individualized basis. Grenon RRSP was not on any list.

[53] In each case, the Minister sent a "trust notice of assessment" to the Trustee assessing the taxes as reported in the filed T3GR on a global (aggregate) basis. The notices referred to the corresponding T3GR but did not separately assess each of the RRSPs for which the Trustee included individualized information, including taxes payable, in the list attached to the filed T3GR.

[54] No T3 return under Part I was filed on behalf of Grenon RRSP.

(4) The resulting assessments of Grenon RRSP

[55] In March 2013, the Minister issued a Part I notice of assessment to Grenon RRSP for each of the 2004 to 2009 taxation years. Those assessments assessed Grenon RRSP for Part I tax on the income distributed to it by the income funds.

[56] The Minister also assessed Grenon RRSP under Part XI.1 for the same taxation years, imposing the one percent tax on the acquisition date value of any income fund units that Grenon RRSP held at a month-end in those taxation years.

[57] Although the Minister's principal assessing position was that GAAR applied and these tax consequences were reasonable to deny the tax benefits, by the time the appeals were before

the Tax Court, the Minister added sham, window dressing and a claim the units were NQI as alternative grounds for upholding the assessments.

(5) Grenon RRSP appeals the assessments

[58] Grenon RRSP appealed the assessments to the Tax Court. It argued that the income funds were mutual fund trusts, and their units were qualified investments. Moreover, it argued, there was no sham and window dressing is not a stand-alone basis for upholding the assessments. Grenon RRSP also submitted that the GAAR conditions were not met but, if they were, the tax consequences were not reasonable in the circumstances. It asserted that the only reasonable tax consequence was to assess Mr. Grenon, not Grenon RRSP.

[59] Grenon RRSP also claimed the assessments for all but 2009 were statute-barred. It asserted its normal reassessment period for Part I and Part XI.1 purposes commenced when the trust notices of assessment were issued to the Trustee. Moreover, Grenon RRSP claimed the T3GRs did not contain any misrepresentations that would allow the Minister to reassess beyond the normal reassessment period.

C. *Related Appeals*

[60] Before describing the Tax Court's decision concerning Grenon RRSP's appeals, some additional background is necessary.

[61] In addition to assessing Grenon RRSP, the Minister also assessed Mr. Grenon in connection with these transactions, relying on various grounds, including GAAR, but not relying on subsection 146(10) to include the acquisition date value of the income fund units in his income.

[62] Part I reassessments were issued to Mr. Grenon for his 2008 and 2009 taxation years. Those assessments reflected an increase in his income equal to the income funds' distributions to Grenon RRSP in those years. Notwithstanding that Grenon RRSP acquired income fund units in 2003 to 2009 with an aggregate cost exceeding $314 million (Tax Court reasons at para. 41), the Minister did not reassess Mr. Grenon under Part I for his 2003 to 2007 taxation years because the Minister considered those years statute-barred.

[63] However, the Minister assessed Mr. Grenon for his 2004 to 2011 taxation years under Part X.1. Part X.1 imposes a one percent monthly tax on excess contributions to an RRSP: s. 204.1(2.1). The Minister's position was that the income fund distributions to Grenon RRSP should be recharacterized as excess contributions Mr. Grenon made to Grenon RRSP.

[64] In November 2005, Grenon RRSP owned approximately 58 percent of Foremost Industries Income Fund (FMO), a publicly-traded mutual fund trust. In late November 2005, Grenon RRSP paid the subscription price for units of Tom 2003-4 Income Fund (TOM)—one of the income funds relevant to this appeal—by transferring its FMO units to TOM in exchange for TOM units. This transfer preceded a FMO reorganization that occurred at the end of 2005. In 2013 and 2014, the Minister assessed three corporations controlled by Mr. Grenon in connection

with their participation in that reorganization and their subsequent payment of capital dividends exceeding $110 million. Those corporations appealed the 2014 assessments to the Tax Court.

[65] The Tax Court heard all the appeals together on common evidence but issued separate judgments and reasons. One set of reasons, reported as *Grenon v. The Queen*, 2021 TCC 30, addressed the appeals by Mr. Grenon and Grenon RRSP relating to Grenon RRSP's acquisition of the income fund units and the income funds' distributions to Grenon RRSP. Those reasons are the subject of this appeal.

[66] In those reasons, the Tax Court concluded that, apart from GAAR, the provisions the Minister relied on to assess Mr. Grenon did not apply. While the Tax Court would have upheld Mr. Grenon's assessments based on GAAR, it concluded that doing so would not be reasonable in the circumstances because those assessments taxed the same distributions as Grenon RRSP's Part I assessments: Tax Court reasons at paras. 623-624. Thus, the Tax Court allowed Mr. Grenon's appeal. The respondent did not appeal that decision.

[67] Those reasons also address the Tax Court's dismissal of Grenon RRSP's appeal of its Part I and Part XI.1 assessments, apart from the 2005 Part I assessment which the Tax Court allowed.

[68] The Tax Court dismissed the corporations' appeals for reasons reported as *Magren Holdings Ltd. v. The Queen*, 2021 TCC 42 [*Magren TCC*]. A third Tax Court decision, reported

as *Grenon v. The Queen*, 2021 TCC 89, awarded lump sum costs to the respondent in relation to all appeals. These two decisions were also appealed to this Court.

[69] This appeal and the *Magren TCC* appeal are closely related in one important respect. TOM realized significant income in 2005 because of the FMO reorganization and distributed more than 99.5 percent of that income to Grenon RRSP. This Court's decision regarding the corporate appeals, *Magren Holdings Ltd. v. His Majesty the King*, 2024 FCA 202, leave to appeal to SCC refused, 41650 (19 June 2025), explains how that income arose and was distributed, first to TOM and then to Grenon RRSP: see *Magren FCA* at paras. 43-44, 61-62, 70, 79.

[70] The Minister's 2005 Part I assessment of Grenon RRSP treated $136,654,427 of TOM's distribution to Grenon RRSP as income from NQI. The Tax Court concluded that the Minister erred in doing so and thus allowed Grenon RRSP's appeal of the 2005 Part I assessment.

[71] With that background, I turn now to the Tax Court decision that is the subject of this appeal.

II. The Tax Court Decision

A. *Merits of the Assessments*

(1) Regulation 4801 conditions: Mutual fund trust status

[72] Before the Tax Court, the respondent's primary position was that the income funds were not mutual fund trusts because the conditions in Regulation 4801 were not satisfied. In particular, the respondent argued that those conditions could be satisfied only where 150 beneficiaries acquired their units in a lawful distribution. Because more than 65 investors in each income fund did not acquire their units in compliance with the OM and OME, the respondent said, the income funds did not qualify as mutual fund trusts and their units were NQI.

[73] Grenon RRSP countered that Regulation 4801 does not require all 150 beneficiaries to have acquired the units in a lawful distribution. It maintained that all the distributions of units to investors were lawful but, regardless, each income fund made *some* lawful distributions in accordance with the relevant OM and OME. Moreover, when Grenon RRSP acquired its income fund units, each income fund had more than 150 unitholders each holding a block of units with a fair market value exceeding $500. Thus, the income funds qualified as mutual fund trusts, and therefore their units were qualified investments.

[74] The Tax Court sided with the respondent on this issue. It concluded that Regulation 4801 required a lawful distribution of units, or one or more lawful distributions carried out at different times, to no fewer than 150 investors each investing at least $500 in accordance with provincial

securities laws: Tax Court reasons at paras. 202-207, 599. The Tax Court concluded that each income fund made a single distribution, but that a lawful distribution required no fewer than 160 investors to acquire units: Tax Court reasons at paras. 205, 208.

[75] The Tax Court further concluded that three categories of subscriptions did not comply with the OM or OME: those made by minors, those made by adults where another adult signed the subscription form on their behalf, and those made by adults where another adult paid for the units: Tax Court reasons at paras. 291, 309, 336. Accordingly, the Tax Court disregarded those subscriptions for purposes of analyzing whether the income funds met the conditions for achieving mutual fund status: Tax Court reasons at paras. 292, 309, 337.

[76] Doing so, the Tax Court concluded that none of the income funds completed a lawful distribution and therefore none qualified as a mutual fund trust. As a result, their units were NQI when Grenon RRSP acquired them and Grenon RRSP was liable for Part I tax on the income distributions it received from the income funds.

[77] The Tax Court also dismissed Grenon RRSP's appeal of the Part XI.1 assessments. It concluded that because the Minister had not assessed Mr. Grenon to include those distributions in his income as annuitant of Grenon RRSP, the Minister was permitted to assess Grenon RRSP pursuant to Part XI.1: Tax Court reasons at paras. 477-479.

[78] Although its conclusion that the income funds did not qualify as mutual fund trusts (and so their units were NQI) was sufficient to address the merits of the Part I and Part XI.1

assessments, the Tax Court considered the respondent's alternative grounds in support of the assessments.

(2) Alternative grounds: Sham and window dressing

[79] The respondent asserted that the income funds were not properly constituted as mutual fund trusts and that, while Mr. Grenon knew that to be the case, he made various misrepresentations to provincial securities administrators, to counsel who provided the legal opinions to the Trustee and, as trustee of the income funds, in the income funds' T3 returns. Accordingly, the respondent argued, the transactions were a sham. Moreover, the respondent said that the creation of the income funds and distribution of units to the initial 171 investors was window dressing, intended to lead the Minister to believe that there was a lawful distribution of units to the public.

[80] While conceding the income funds were established for tax-planning purposes, Grenon RRSP said a tax motivation was not sufficient to establish a sham. Moreover, it argued, window dressing is not a stand-alone doctrine that permits a transaction to be ignored.

[81] On these issues, the Tax Court sided with Grenon RRSP. While accepting the respondent's submissions regarding the income funds' failure to qualify as mutual fund trusts and Mr. Grenon's misrepresentations, the Tax Court was not convinced that the income funds did not exist or were a sham or window dressing: Tax Court reasons at paras. 427-434, 453-454.

[82] Because the respondent did not advance these arguments before us on appeal, I will not address them further.

(3) GAAR

[83] In the further alternative, the respondent asserted that the series of transactions provided tax benefits and included avoidance transactions. Because the resulting tax avoidance was abusive, the respondent submitted, GAAR applied, and the assessments imposed reasonable tax consequences to deny the tax benefits.

[84] Grenon RRSP countered that GAAR did not apply because, while there was tax planning, there was no abuse. Further, it submitted that even if GAAR applied, the tax consequences were not reasonable to deny any tax benefit. Rather, in its view, the Minister should have assessed Mr. Grenon, not Grenon RRSP.

[85] The Tax Court agreed with the respondent: if the income fund units were qualified investments, GAAR would apply. The Tax Court was satisfied there were tax benefits and avoidance transactions, and the transactions abused the RRSP and mutual fund trust provisions. It also concluded that the tax consequences were reasonable in the circumstances.

[86] As noted above, while the Tax Court also would have upheld Mr. Grenon's assessments based on GAAR, it concluded that it would not be reasonable to subject both Mr. Grenon and Grenon RRSP to tax on the same income. Accordingly, it allowed Mr. Grenon's appeal. The

respondent did not appeal that decision, and I need not comment further on that aspect of the Tax Court's decision.

B. *Statute-Barring (2004 to 2008 Assessments)*

[87] Before the Tax Court, Grenon RRSP's position was that the 2004 to 2008 assessments were statute-barred. It submitted that the T3GR was the only prescribed return for RRSPs for Part I and Part XI.1 purposes. Because Grenon RRSP was part of the group for which the Trustee filed a T3GR, Grenon RRSP said the trust notices of assessment the Minister issued to the Trustee constituted Grenon RRSP's Part I and Part XI.1 assessments. As a result, Grenon RRSP's normal reassessment period for 2004 to 2008 expired before March 2013, when the Minister issued the Part I and Part XI.1 assessments under appeal. Moreover, the T3GRs contained no misrepresentations entitling the Minister to assess Grenon RRSP after the normal reassessment period.

[88] The respondent countered that the T3GR was an information return for all RRSPs in the group but was not a tax return for Part I purposes. While conceding the T3GR was a return for Part XI.1 purposes, the respondent said that was so only for those RRSPs included in the list attached to the T3GR and for which the Trustee provided the required information on an individualized basis. In the alternative, the respondent claimed the T3GRs contained misrepresentations entitling the Minister to assess Grenon RRSP beyond the normal reassessment period.

[89] The Tax Court largely agreed with the respondent. While agreeing the T3GR was prescribed for purposes of Part I, Part XI.1 and Regulation 204, the Tax Court described that return as a "streamlined process for the reporting of group RRSPs involving hundreds of thousands of plans under one specimen plan": Tax Court reasons at para. 522.

[90] The Tax Court found that the T3GRs "were accepted by CRA as 'group' returns for administrative purposes only" and "were not intended to override a trustee's other reporting obligations", including the obligation to file a T3 return reporting income under Part I for any RRSP in the group with taxable income: Tax Court reasons at para. 525. The Tax Court noted that "the trustee's reporting obligations were specified on [the] face of the pre-printed form": Tax Court reasons at para. 525.

[91] As to the return obligations under Part XI.1, the Tax Court said that "[t]he 'streamlined' administrative process…placed the onus on [the Trustee]…to identify RRSPs within the [s]pecimen [p]lan that held non-qualified investments, an obligation that reflects the notion that 'the process of tax collection relies primarily upon taxpayer self-assessment and self-reporting'": Tax Court reasons at para. 526, citing *R. v. Jarvis*, 2002 SCC 73, [2002] 3 S.C.R. 757 at para. 49.

[92] The Tax Court accepted the respondent's position that any RRSPs not identified as taxable on the list attached to the T3GR were included as part of the "information" portion of the T3GR, but a trust notice of assessment did not assess their taxes. As a result, Grenon RRSP's normal reassessment period for Part XI.1 purposes did not start when the Minister issued the trust notices of assessment: Tax Court reasons at paras. 533-535.

[93] Accordingly, the Tax Court concluded that none of the assessments was statute-barred: Tax Court's reasons at para. 536. In the circumstances, the Tax Court considered it unnecessary to decide whether the T3GRs contained misrepresentations attributable to neglect, carelessness or wilful default.

C. *2005 Part I Assessment – The Tax Court Judgment*

[94] However, despite those findings, the Tax Court allowed Grenon RRSP's appeal of the 2005 Part I assessment. It concluded that the Minister had erred by including $136,654,427 TOM distributed to Grenon RRSP in Grenon RRSP's 2005 income. The Tax Court concluded that amount was not a distribution of income: Tax Court reasons at paras. 626, 636. Accordingly, the Tax Court referred the 2005 assessment back to the Minister for reconsideration and reassessment on that basis. The respondent did not appeal that decision.

III. The Appeal

A. *Merits of the Assessments*

[95] Grenon RRSP says the Tax Court erred in interpreting Regulation 4801. This error of law led it to err in concluding that the income funds were not mutual fund trusts and that the units were NQI. Grenon RRSP maintains that the units were qualified investments.

[96] Grenon RRSP further contends that the GAAR conditions are not satisfied in this case but, in any event, the Tax Court erred in concluding that the Minister could rely on GAAR to

assess Grenon RRSP, rather than Mr. Grenon. Moreover, it says, Part XI.1 tax is not a reasonable tax consequence because the Tax Court did not identify any tax benefit denied by the Part XI.1 tax and, although described as a tax, Part XI.1 tax is a penalty and therefore cannot be assessed based on GAAR.

[97] The respondent says the Tax Court made no reviewable errors.

B. *Statute-Barring (2004 to 2008 Assessments)*

[98] Grenon RRSP alleges that the Tax Court erred in law in concluding that the assessments for the 2004 to 2008 taxation years were not statute-barred. Its principal argument is that the trust notices of assessment assessed all RRSPs governed by the specimen plan, regardless of whether they were identified on the list attached to the T3GR.

[99] While the respondent says the Tax Court did not err, it says that the normal reassessment periods do not apply because the T3GRs contained misrepresentations. Those misrepresentations permitted the Minister to assess beyond the normal reassessment period.

C. *Post-Hearing Questions*

[100] Following the hearing of the appeal, the Court sought submissions from the parties on two additional issues.

(1) Exemption from Part XI.1 tax

[101] The first concerned the Part XI.1 assessments. We asked whether, should we decide that the Tax Court did not err in concluding the income fund units were NQI, the acquisition date value was included in Mr. Grenon's income so that the Minister was precluded from assessing Grenon RRSP for Part XI.1 tax based on that acquisition date value. We also asked the parties whether their response would be different should we determine the units were qualified investments, but that GAAR applied.

[102] Grenon RRSP responded that the Part XI.1 tax exception applied and thus its appeal of the Part XI.1 assessments should be allowed. It submitted that this should be the case whether the units were NQI or were qualified investments, but GAAR applied. Grenon RRSP explained that it had always maintained that the reasonable tax consequence was to tax Mr. Grenon.

[103] The respondent disagreed, submitting that if the units were NQI, the exception does not apply because their acquisition date value was not included in Mr. Grenon's income. Mr. Grenon did not report that amount as income and the Minister did not assess Mr. Grenon on the basis it was his income. The respondent also submitted that if the units are qualified investments and GAAR applies, imposing Part XI.1 tax on Grenon RRSP is a reasonable tax consequence.

(2) 2005 Part I assessment

[104] The second question concerned the Tax Court's decision to allow Grenon RRSP's appeal of the 2005 Part I assessment. Notwithstanding that the respondent did not appeal that decision,

we sought submissions on whether it was open to us to overturn it, if we concluded that the units were NQI or that GAAR applied.

[105] The respondent submitted that we both could, and should, do so, arguing the Tax Court made a palpable and overriding error in concluding that the $136,654,427 distribution was not Grenon RRSP's income from its TOM units, and so not income from NQI.

[106] Grenon RRSP disagreed, submitting that arguments not available to it with respect to other income fund distributions were available with respect to the $136,654,427 distribution. Therefore, it would be inappropriate for this Court to overturn that aspect of the Tax Court's decision.

D. *Summary of Conclusions on Appeal*

[107] Before I summarize my conclusions, I reiterate that I have decided to address only those issues necessary to determine the appeals and my silence on any other issues should not be considered an endorsement but as expressing no view.

[108] I have concluded that the Tax Court erred in interpreting Regulation 4801. However, reading the Tax Court's reasons in their entirety while correcting that error, I would not disturb the Tax Court's conclusions that the income funds did not complete a lawful distribution of units to the public and that the income fund units were NQI. Applying the correct interpretation to the Tax Court's findings and inferences of fact, I am satisfied that the Tax Court would have come to

the same conclusion. Accordingly, any disagreements I have with the Tax Court's reasons would not affect those conclusions.

[109] I have also determined that the Tax Court did not err in concluding that Grenon RRSP's Part I assessments were not statute-barred. However, it erred in concluding that the $136,654,427 TOM distributed to Grenon RRSP was not income from NQI. Accordingly, the Tax Court erred in allowing Grenon RRSP's appeal of its 2005 Part I assessment. I am satisfied we can, and should, correct that error on appeal.

[110] Finally, I have concluded that the Tax Court erred in dismissing Grenon RRSP's appeal of the Part XI.1 assessments. Because Grenon RRSP acquired NQI, the acquisition date value of the NQI should have been treated as Mr. Grenon's income in the relevant taxation years. Mr. Grenon's failure to report those amounts as income, and the Minister's failure to assess Mr. Grenon on the basis it was his income, are of no consequence. Accordingly, Grenon RRSP is not liable for Part XI.1 tax in the 2004 to 2009 taxation years on the acquisition date value of the income fund units that it held at each month-end in those taxation years and that were NQI when acquired.

[111] In light of these conclusions, I need not address whether the Part XI.1 assessments were statute-barred or whether GAAR applies and decline to do so.

IV. Standard of Review

[112] The appellate standard of review applies to this appeal.

[113] The interpretation of Regulation 4801 is a question of law, and accordingly no deference is owed to the Tax Court's interpretation. We must be satisfied the interpretation is correct. Questions of fact or mixed fact and law (absent an extricable legal question) are reviewed for palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 at para. 36 [*Housen*].

V. Analysis

A. *The Tax Court Erred in Interpreting Regulation 4801*

[114] The only condition for mutual fund status at issue before the Tax Court was satisfaction of the prescribed conditions in Regulation 4801: the distribution condition and the minimum beneficiary condition.

[115] It is useful to set out the relevant portion of Regulation 4801 here as it applied in the taxation years at issue in this appeal:

4801 In applying at any time paragraph 132(6)(c) of the Act, the following are prescribed conditions in respect of a trust:	**4801** Pour l'application, à un moment donné, de l'alinéa 132(6)c) de la Loi, les conditions auxquelles une

	fiducie doit satisfaire sont les suivantes :
(a) either	**a)** selon le cas :
(i) the following conditions are met:	**(i)** les conditions ci-après sont réunies :
(A) there has been at or before that time a lawful distribution in a province to the public of units of the trust and a prospectus, registration statement or similar document was not, under the laws of the province, required to be filed in respect of the distribution, and	**(A)** des unités de la fiducie ont, au plus tard à ce moment, fait l'objet d'un appel public légal à l'épargne dans une province, et un prospectus, une déclaration d'enregistrement ou un document semblable relatif à cet appel n'avait pas à être produit selon la législation provinciale,
…, or	…
(ii) a class of the units of the trust is, at that time, qualified for distribution to the public; and	**(ii)** une catégorie d'unités de la fiducie peut, à ce moment, faire l'objet d'un appel public à l'épargne;
(b) in respect of a class of the trust's units that meets at that time the conditions described in paragraph (a), there are at that time no fewer than 150 beneficiaries of the trust, each of whom holds…	**b)** à l'égard d'une catégorie d'unités de la fiducie qui remplit à ce moment les conditions énoncées à l'alinéa a), la fiducie compte, à ce moment, au moins 150 bénéficiaires qui détiennent chacun : …

[116] The Tax Court concluded that Regulation 4801 should be read conjunctively "requir[ing] a lawful distribution of units according to the laws of the provinces to no less than 150 investors with a minimum investment of $500": Tax Court reasons at para. 599; see also paras. 198, 207, 342, 348.

[117] Grenon RRSP says the Tax Court erred because it treated the distribution condition and the minimum beneficiary condition as a single condition.

[118] I agree.

[119] While both conditions must be satisfied at the time a trust seeks to qualify as a mutual fund trust, Regulation 4801 does not require that the 150 beneficiaries acquire their units in a lawful distribution. The Tax Court erred in concluding otherwise.

(1) The Tax Court's interpretation of Regulation 4801

[120] Before the Tax Court, the respondent argued that the subscriptions for units in each of the income funds suffered from multiple deficiencies resulting in an unlawful distribution and, as a result, "the distribution did not meet the requirements of paragraph 4801(b) of the *Regulations* that there be 'no fewer than 150 beneficiaries'": Tax Court reasons at paras. 162-163. The respondent's position was that Regulation 4801 required a lawful distribution to at least 150 investors: Tax Court reasons at paras. 190-191.

[121] Grenon RRSP disputed that any of the deficiencies resulted in unlawful distributions but asserted that Regulation 4801 did not require all 150 beneficiaries to acquire their units through a lawful distribution: Tax Court reasons at paras. 186, 202. Put another way, Grenon RRSP argued that only one lawful distribution to a single investor was required.

[122] The Tax Court rejected this proposition. In interpreting Regulation 4801, the Tax Court said "the use of the conjunctive 'and' (and not the disjunctive 'or') indicates that the conditions of both paragraphs [4801(*a*) and (*b*)] must be met": Tax Court reasons at para. 197. I agree, but Grenon RRSP does not appear to have suggested otherwise.

[123] The Tax Court continued, stating that "[f]rom a contextual point of view, it is apparent that Parliament intended to link the requirement in paragraph (a) that there be 'a lawful distribution…to the public' with the requirement in paragraph (b)…that there be a widely-held distribution to no fewer than 150 investors": Tax Court reasons at para. 197. The Tax Court accepted the respondent's position that the 150 beneficiaries had to acquire units in a lawful distribution.

[124] In particular, the Tax Court interpreted the phrase "in respect of a class of the trust's units that meets at that time the conditions prescribed in paragraph (a)"—found in the opening words of Regulation 4801(*b*)—as "[requiring] that 'at the time' the lawful distribution is completed, there are no fewer than 150 investors": Tax Court reasons at para. 198.

[125] I disagree.

[126] The phrase "at any time" (à un moment donné), found in the opening words of Regulation 4801, refers to the time when it is determined whether the trust qualifies as a mutual fund trust (determination time). This is the same "at any time" (à un moment donné) that appears in the definition of "mutual fund trust": "a trust is a mutual fund trust *at any time* if *at that time*",

among other conditions, it meets the prescribed conditions in Regulation 4801: s. 132(6) (emphasis added).

[127] The minimum beneficiary condition asks whether, "in respect of a class of the trust's units that meets at *that time* [à ce moment] the [distribution condition], there are *at that time* [à ce moment] no fewer than 150 beneficiaries": ITR 4801(*b*) (emphasis added).

[128] The distribution condition requires a lawful distribution to the public to have been completed "at or before *that time*" (au plus tard à ce moment) (ITR 4801(*a*)(i)(A)) or that units be qualified for distribution to the public "at *that time*" (à ce moment) (ITR 4801(*a*)(ii)) (emphasis added). The definition of "qualified for distribution to the public" states units will be so qualified only if "there *has been*" a lawful distribution (emphasis added). In other words, to be qualified for distribution to the public at that time, the lawful distribution must be completed at or before that time.

[129] As is clear, whichever of the two means of satisfying the distribution condition a trust relies on, the lawful distribution must be completed no later than "that time".

[130] Clearly, each reference to "that time" ("ce moment") in Regulations 4801(*a*) and (*b*) is to the determination time (*i.e.*, "at any time" in the opening words of ITR 4801, itself a reference to "at that time" in the definition of "mutual fund trust"). None refers to the time when the lawful distribution is completed.

[131] Yet, the Tax Court read the reference to "at that time" in Regulation 4801(*b*) as referring to "the time the conditions described in paragraph (a) are met". That interpretation is inconsistent with the text. That interpretation also renders the first "at that time" in Regulation 4801(*b*) redundant and "before that time" in Regulation 4801(*a*)(i)(A) meaningless. The latter phrase expressly contemplates that the distribution condition may be satisfied before the determination time—and before the minimum beneficiary condition is satisfied.

[132] There is no dispute that Regulations 4801(*a*) and (*b*) are conjunctive. But that only means both conditions must be satisfied *at* the determination time. I agree with Grenon RRSP that they are separate conditions.

[133] No doubt the minimum beneficiary condition may be satisfied through a lawful distribution to the public, but the text of Regulation 4801(*b*) does not require that be so. As the Tax Court itself recognized, it may be satisfied through a lawful distribution to the public and another lawful distribution: Tax Court reasons at para. 207. (I express no comment on the Tax Court's statement that a distribution made in reliance on the "Friends, Family and Business Associates Exemption" qualifies as a distribution to the public.) The minimum beneficiary condition might also be satisfied through a unitholder transferring units to others. While the minimum beneficiary condition must be satisfied at the determination time, the distribution condition may be satisfied before the determination time. Indeed, the Tax Court describes this very sequence of events: Tax Court reasons at para. 207.

[134] In interpreting Regulation 4801, the Tax Court did not meaningfully engage with the text of paragraph (*b*) of Regulation 4801. This was an error. I therefore will start with the proper interpretation of Regulation 4801(*b*)—the minimum beneficiary condition.

(2) Principles of statutory interpretation and Regulation 4801(*b*)

[135] Legislation is interpreted "according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the [*Income Tax Act*] as a whole": *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601 at para. 10 [*Canada Trustco*]. Moreover, "[b]ecause of the degree of precision and detail characteristic of many tax provisions, a greater emphasis has often been placed on textual interpretation where taxation statutes are concerned": *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20, 2006 1 S.C.R. 715 at para. 21 [*Placer Dome*].

[136] Because of this precision and detail, where "[the] provision admits of no ambiguity in its meaning…it must simply be applied" and reference to the provision's purpose "cannot be used to create an unexpressed exception to clear language": *Placer Dome* at para. 23, citing Peter W. Hogg, Joanne E. Magee & Jinyan Li, *Principles of Canadian Income Tax Law*, 5th ed. (Toronto: Thomson Reuters, 2005) at 569; *Shell Canada Ltd. v. Canada*, [1999] 3 S.C.R. 622, 178 D.L.R. (4th) 26.

[137] Although the Tax Court cited these principles of statutory interpretation, it did not apply them. Indeed, while there must be a lawful distribution of units to the public at or before the determination time, none of the text, context or purpose supports the Tax Court's interpretation

that the minimum beneficiary condition must be met through one or more distributions, to the public or otherwise.

(a) *Text*

[138] The Supreme Court of Canada recently reminded us that "[t]he starting point in any interpretive exercise is the text of the provision" and that "[i]n the absence of statutory definitions, what should be focused on is the grammatical and ordinary meaning of the text, that is, 'the natural meaning' that appears when the provision is simply read through as a whole": *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43, 498 D.L.R. (4th) 316 at paras. 23, 28 [*CISSS A*].

[139] In interpreting Regulation 4801, the Tax Court refers to "investors", the same term it used to describe the 171 persons who subscribed for units in each of the income funds. That term connotes persons who "invest" money, including by subscribing for securities: *Oxford English Dictionary* (online). The term used in Regulation 4801(*b*), however, is "beneficiaries", and in particular beneficiaries who *hold* units. In French, it is "bénéficiaires qui détiennent". I see no ambiguity in this language.

[140] The Tax Court did not consider the words "beneficiary" or "hold", nor identify any ambiguity suggesting that those words should not be interpreted according to their plain meaning. Nonetheless, it interpreted the text as if it read "no fewer than 150 investors in the trust, each of whom holds not less than one block of units acquired in a lawful distribution".

[141] Notably, the text of the minimum beneficiary condition says nothing about how the beneficiaries become unitholders. It simply asks whether, at the determination time, there are no fewer than 150 beneficiaries each of whom holds not less than a block of units with a fair market value of at least $500. The French version is similarly unambiguous.

[142] Properly interpreted, the text simply does not support the Tax Court's interpretation.

(b) *Context*

[143] The only context the Tax Court examined was Regulation 4801 itself. However, the relevant context includes other provisions of the *Income Tax Act* and the *Regulations*, including the definition of "mutual fund trust" and other uses of "hold".

[144] However, looking first at the immediate context, I note that the text of the distribution condition says nothing about the size of the distribution or the minimum number of subscribers who must participate in it. The text simply asks whether there has been a lawful distribution in a province to the public of units of a class. The Tax Court acknowledged a distribution to 50 investors could be a lawful distribution to the public: Tax Court reasons at para. 207.

(i) Other uses of "hold"

[145] Before I examine other uses of "hold" in the *Income Tax Act* and *Regulations*, I acknowledge that "hold" has many possible meanings. However, I am satisfied that, in the context of the *Income Tax Act*, "hold" is intended to mean "own", unless the context in which it

is used indicates otherwise. I see nothing in Regulation 4801 that suggests hold is not intended to mean own. To the contrary, as noted in paragraph 161 below, the prescribed conditions were once expressly described as concerning dispersal of *ownership*.

[146] There is a presumption that a word has the same interpretation or meaning wherever it appears in the same legislation, unless the context clearly indicates a contrary intention: *Thomson v. Canada (Deputy Minister of Agriculture)*, [1992] 1 S.C.R. 385, 133 N.R. 345 at 400; *R. v. Zeolkowski*, [1989] 1 S.C.R. 1378, 95 N.R. 149 at 1387. Similarly, there is a presumption that different words used in a statute are intended to have different meanings: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at para. 81; *R. v. Barnier*, [1980] 1 S.C.R. 1124, 31 N.R. 273 at 1135-1136.

[147] The *Income Tax Act*'s use of "hold" and "acquire" suggests they have different meanings. For instance, the definition of "mutual fund trust" itself distinguishes between "holding" and "acquiring" property: s. 132(6)(*b*)(ii). That same distinction also appears elsewhere. For example, subsection 259(1) allows an RRSP (among other taxpayers) that "*acquires, holds* or disposes of" units of qualified trusts to elect to be "deemed not to *acquire, hold* or dispose of" those units but instead be treated as owning a proportionate interest in the trust's assets (emphasis added). There are other examples.

[148] The French versions of these provisions similarly distinguish between the two concepts, using "acquérir" (acquire) and "détenir" (hold).

(ii) Part XLVIII of the *Regulations*

[149] Regulation 4801 appears in Part XLVIII of the *Regulations* and its text is very similar to that in Regulation 4800(1). The latter provision prescribes conditions necessary for a Canadian corporation without shares listed on a stock exchange in Canada to become a "public corporation" for purposes of the *Income Tax Act*. (Corporations that have shares listed on a stock exchange in Canada automatically qualify as public corporations: definition of "public corporation", s. 89(1).)

[150] Like Regulation 4801, Regulation 4800(1) has two conditions: one concerning the distribution of shares and the second concerning shareholders. The shareholder condition has two parts. There must be "no fewer than…150 [(or 300 in some cases]…persons, other than insiders of the corporation, each of whom *holds*…not less than one block of shares of that class" and "insiders of the corporation shall not *hold* more than 80 per cent of the issued and outstanding shares of that class": ITR 4800(1)(*b*), (*c*) (emphasis added).

[151] Regulation 4800(2) is the companion provision under which a public corporation without shares listed on a Canadian stock exchange may cease to be a public corporation for purposes of the *Income Tax Act*. In that case, insiders must *hold* at least 90 percent of each class of shares that were qualified for distribution to the public, and there must be fewer than 50 (or 100 in some cases) non-insiders, each of whom *holds* not less than a block of shares of that class: ITR 4800(2)(*a*), (*b*).

[152] As with the minimum beneficiary condition, the focus of the shareholder condition in Regulation 4800 is on shares *held* at the relevant time. How they were acquired is not part of the inquiry. To state the obvious, shareholders may not have acquired their shares from the corporation. They may acquire them from other shareholders by purchase, gift or otherwise, including through stock exchange transactions if the shares were previously listed or are listed on a stock exchange outside Canada. Similarly, beneficiaries of unit trusts may acquire their units from other unitholders.

[153] Regulation 4803 contains interpretive rules applicable to both Regulations 4800 and 4801, including provisions relevant to satisfying the shareholder and minimum beneficiary conditions. Those provisions also refer to persons who "hold" shares or units, without any reference to how they became holders: ITR 4803(3), (4).

(iii) Other relevant provisions

[154] Where Parliament intends to restrict how securities (or other properties) are acquired, it can—and does—say so explicitly. For example, clause 194(4.2)(*a*)(i)(B) of the *Income Tax Act* describes a share "issued…as part of a lawful distribution to the public"; paragraph 187.3(2)(*b*) refers to a share "acquired by a person…as part of a distribution to the public". The same language appears in Regulation 6201(11)(*b*) and in paragraph (*b*) of the definition of "grandfathered share" ("action de régime transitoire") in subsection 248(1) of the *Income Tax Act.* A "flow-through share" means a share of the capital stock of a principal business corporation "issued to a person under an agreement in writing made between the person and the

corporation": s. 66(15). There are many other examples: see, for example, ss. 110.6(14)(*f*), 127.2(10), 127.3(9), 212(23)(*a*).

[155] No similar language appears in Regulation 4801(*b*). Nothing describes or restricts how the 150 beneficiaries become unitholders.

(iv) Conclusion on context

[156] In summary, I see nothing in the context that suggests "hold" as used in Regulation 4801 has a meaning other than its ordinary meaning—here, "to own".

(c) *Purpose*

[157] The Tax Court said two things about the purpose of Regulation 4801. First, it said that Regulation 4801's purpose "is to establish the precise requirements for a 'mutual fund trust' that may provide valuable tax advantages to annuitants as a 'qualified investment' for RRSP purposes": Tax Court reasons at para. 199. I agree that Regulation 4801's purpose is to establish the requirements for a trust to qualify as a mutual fund trust. However, that statement does not assist in interpreting what the conditions mean.

[158] Second, the Tax Court said, "Parliament intended to link the requirement…that there be 'a lawful distribution…to the public' with the requirement…that there be a widely-held distribution to no fewer than 150 investors": Tax Court reasons at para. 197. I agree that

Parliament intended the trust units (and shares, in the case of a public corporation) to be widely held at the determination time.

[159] However, the Tax Court does not explain why a *distribution* to 150 beneficiaries is required to achieve that purpose. Regulation 4801(*b*)'s purpose "cannot be used to create an unexpressed exception to clear language": *Placer Dome* at para. 23. The text does not express any limits on how the minimum beneficiary condition is satisfied.

[160] The definition of "mutual fund trust" was amended with effect from 2000: see Tax Court reasons at paras. 135-136; *Technical Tax Amendments Act, 2012*, S.C. 2013, c. 34, s. 278(1) (technical amendments). The prior version of the text is helpful in identifying the purpose of Regulation 4801(*b*).

[161] Before the technical amendments, paragraph 132(6)(*c*) required a trust to "compl[y] with prescribed conditions relating to the number of its unitholders, dispersal of ownership of its units and public trading of its units" to qualify as a mutual fund trust. This text expressly identified three subjects for the prescribed conditions.

[162] Regulation 4801 reflected this, addressing each separately: public trading (the units were qualified for distribution to the public) in paragraph (*a*); and the number of unitholders and dispersal of ownership (at least 150 beneficiaries each holding a block of units with a fair market value of not less than $500) in paragraph (*b*).

[163] While the technical amendments eliminated the description that followed “prescribed conditions” in the “mutual fund trust” definition, the stated reason was so that the prescribed conditions “are not limited to those relating to ownership and trading of its units”: *Explanatory Notes Relating to the Income Tax Act, the Excise Tax Act and Related Legislation*, the Honourable James M. Flaherty, Minister of Finance (October 2012) at 363.

[164] Although the distribution condition was subsequently amended, the minimum beneficiary condition has never been amended. This suggests Regulation 4801(*b*)’s purpose remains prescribing conditions relating to the number of unitholders and dispersal of ownership. Achieving that purpose does not require that “hold” be read in a manner other than according to its ordinary meaning.

(d) *Conclusion on the interpretation of Regulation 4801(b)*

[165] Although “the text must be considered in light of the context and object” of the provision, the text remains “the anchor of the interpretive exercise”: *CISSS A* at para. 24.

[166] Regulation 4801(*b*)’s text asks whether, at the determination time, there are 150 beneficiaries each of whom holds not less than a block of units of a class with a value of at least $500. It places no limitation on the way the 150 beneficiaries become unitholders, and the context and purpose do not suggest any restriction is intended. Thus, the Tax Court erred in concluding that all 150 beneficiaries must acquire their units in a lawful distribution.

(3) Regulation 4801(*a*): Lawful distribution to the public

[167] However, that does not end the matter. Each income fund also had to satisfy the distribution condition. That condition requires a lawful distribution in a province to the public of units of the class of units held by the 150 beneficiaries.

[168] There is no dispute that when Grenon RRSP acquired its income fund units, the only other unitholders were those who acquired their units from the income funds based on subscription agreements attached to the income funds' OMs. I must therefore determine whether the Tax Court erred in concluding that the income funds did not meet the distribution condition by issuing those units.

[169] Before I address this issue, I note that the parties and the Tax Court proceeded on the basis that Regulation 4801(*a*)(ii)—the units were "qualified for distribution to the public"—did not apply to the income funds notwithstanding that the OME required the income funds to file their OMs with the securities regulators: Tax Court reasons at paras. 152, 159. The parties appear to have agreed that an offering memorandum was not a "similar document" to a prospectus or registration statement: Tax Court reasons at para. 141. While I am far from convinced that is so, nothing turns on which of the two provisions applies in this appeal. The definition of "qualified for distribution to the public" also requires a lawful distribution to the public. The meaning of that phrase lies at the heart of the dispute.

[170] Therefore, I will proceed as the Tax Court did: the relevant provision is Regulation 4801(*a*)(i)(A). It requires "a lawful distribution in a province to the public of units of the trust" to be completed at or before the determination time.

(a) *The Tax Court's conclusions on lawful distribution*

[171] Despite the Tax Court's treatment of Regulation 4801 as a single combined condition, the Tax Court's analysis centred on the distribution condition.

[172] Before the Tax Court, Grenon RRSP argued that "distribution" refers to a single trade in securities not previously issued: Tax Court reasons at paras. 187-188. In other words, each income fund made 171 separate distributions to residents of Alberta and British Columbia using its OM and, although Grenon RRSP disputed any distributions were unlawful, each income fund completed many distributions that complied with the OM and OME. Because a single lawful distribution to a single investor was sufficient, Grenon RRSP argued, each income fund satisfied the distribution condition.

[173] The respondent disagreed. It submitted that Regulation 4801 required a distribution to at least 150 investors in compliance with the OME and OM: Tax Court reasons at para. 190.

[174] The Tax Court accepted that the term "distribution" "refer[s] generally to 'a' trade in securities of an issuer" under provincial securities law but determined that, "had Parliament intended to refer to an isolated trade to one investor [in Regulation 4801], it would have said so

using precise language": Tax Court reasons at para. 194. In its view, "to the public" would be superfluous were that not the case: Tax Court reasons at para. 195.

[175] The Tax Court clearly interpreted "distribution" in Regulation 4801 as meaning the issuance of securities in a particular offering (*i.e.*, distribution in the collective sense). Consistent with its view, the Tax Court concluded that each income fund completed "only 'one' distribution of units" under its OM: Tax Court reasons at paras. 28, 205.

[176] The Tax Court then considered what was required for the distribution to be lawful. Under provincial securities laws, a distribution requires the preparation and filing of a prospectus or an available exemption from the prospectus requirement: Tax Court reasons at paras. 147-148. The Tax Court concluded that the income funds relied exclusively on the OME: Tax Court reasons at paras. 141, 237.

[177] The respondent asserted that OME requirements are mandatory, have the force of law and must be strictly complied with; a distribution that does not strictly comply with these requirements will be considered unlawful. In support, the respondent cited several securities commission and court decisions, including *Re Homerun International Inc.*, 2014 ABASC 59; *Re Cloutier*, 2014 ABASC 170; *Bartel Re*, 2008 ABASC 141 [*Bartel*]; *R. v. Del Bianco*, 2008 ABPC 248, 456 A.R. 134, affirmed *Del Bianco v. Alberta Securities Commission*, 2004 ABCA 344, 357 A.R. 361; *R. v. Boyle*, 2001 ABPC 152, 300 A.R. 284 [*Boyle*]; and *Ironside v. Smith*, 1998 ABCA 366, 223 A.R. 379: see Tax Court reasons at paras. 213-218.

[178] The Tax Court agreed. It concluded that a distribution made in reliance on a prospectus exemption, like the OME, would be lawful only where the terms of the exemption were "strictly complied with" and the distribution "undertaken in full compliance with the regulatory regime": Tax Court reasons at para. 229, quoting from *Boyle* at para. 18. Thus, the Tax Court said, "[o]nly 'distributions that fall squarely within the exemption requirements will not be illegal'": Tax Court reasons at para. 229, quoting from *Bartel* at para. 109.

[179] The Tax Court then described in detail what it considered the key elements of the OME: the issuer was obliged to prepare an OM in prescribed form and deliver it to each subscriber; the OME required compliance with the OM; each subscriber was required to purchase securities under the OM as principal; each subscriber was required to sign (and deliver to the issuer) a risk acknowledgement in a prescribed form; and each subscriber was required to sign a subscription agreement and pay the subscription price: Tax Court reasons at paras. 154, 284.

[180] Applying these principles, the Tax Court found that it was an essential term of each OM that a minimum of 160 investors acquire units: Tax Court reasons at paras. 30, 163, 205. The Tax Court also concluded that each income fund accepted subscriptions that did not comply with the terms and conditions of the OM and OME.

[181] In particular, contrary to the subscription agreements, the income funds accepted subscriptions from minors. The Tax Court was also not satisfied that subscriptions signed by someone other than the person in whose name the units were issued, or subscriptions where someone other than the subscriber paid for the units, met the OME's "purchase as principal"

requirement. Accordingly, it said those subscriptions were to be ignored. Doing so, the Tax Court found that none of the income funds distributed units to 160 investors in compliance with the OME and OM such that no income fund completed a lawful distribution to the public of units.

(b) *Grenon RRSP's appeal*

[182] On appeal, Grenon RRSP does not suggest that the Tax Court erred in concluding that a distribution is lawful where it complies with an exempt distribution rule, nor contest the Tax Court's conclusions about what the OME required. However, Grenon RRSP maintains that the Tax Court erred in concluding that the income funds did not comply with the OME.

[183] Grenon RRSP submits that the Tax Court erred in interpreting the distribution condition. It submits that each issue from treasury to a person is a distribution, "even if it is part of a collective distribution", and that each income fund completed many lawful distributions and therefore satisfied the distribution condition: Appellant's Memorandum of Fact and Law at para. 85.

[184] Grenon RRSP also submits that when determining whether the distributions were lawful, the Tax Court erroneously emphasized form, rather than focusing on substantive rights. Each distribution, Grenon RRSP submits, was in keeping with the OME requirements and any deviations from the subscription agreements or OM were of no consequence as at most they would render the issuance of units voidable, but not unlawful.

[185] Grenon RRSP further asserts that the Tax Court erred in law by misdirecting itself as to which party bore the burden to establish the circumstances of the signatories to the subscription agreements.

[186] Whether the Tax Court erred in interpreting the distribution condition is a question of law reviewed on a correctness standard. However, several of Grenon RRSP's submissions challenge the Tax Court's findings of fact, inferences drawn from those findings, or findings of mixed fact and law. There we can interfere only if Grenon RRSP establishes a palpable and overriding error or an extricable error of law.

[187] I turn first to the interpretation of the distribution condition.

(c) *Interpretation of Regulation 4801(a): Distribution*

(i) Text

[188] Distribution is not defined in the *Income Tax Act*. While the word has many possible meanings, I agree with the parties that "distribution" in Regulation 4801 is concerned with a distribution of securities—units of a trust.

[189] The Supreme Court tells us it is both appropriate and consistent with the modern principle of statutory interpretation to reference the broader commercial law to give meaning to words and expressions that have well-defined meanings outside of the *Income Tax Act*: *Will-Kare Paving & Contracting Ltd. v. Canada*, 2000 SCC 36, [2000] 1 S.C.R. 915 at paras. 31-33;

Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc., 2001 SCC 36, [2001] 2 S.C.R. 100 at paras. 57-59.

[190] There is no dispute that the relevant commercial law here is provincial securities law. That said, even in that context, "distribution" can have more than one meaning, as Grenon RRSP concedes. It can, for example, refer to a trade in a single security, as is evident from the Alberta and British Columbia securities legislation the Tax Court cited.

[191] However, securities legislation also uses "distribution" to refer to the issuance of securities to all investors in a single offering: see, for example, *Securities Act*, C.Q.L.R., c. V-1.1, ss. 5, 12, 89; *Securities Act*, R.S.B.C. 1996, c. 418, ss. 83(1), 131(9), 183(15); *Securities Act*, R.S.O. 1990, c. S.5, ss. 1(1) (definition of "distribution to the public"), 57(2), (2.2), 62(3), (4), 63(7), 70(1); *Securities Act*, R.S.A. 2000, c. S-4, ss. 128(1), 129, 184(2), 203(8).

[192] Similarly, section 1.8 of *Companion Policy 45-106CP Prospectus Exemptions* states "A distribution of securities to a person that had no pre-existing purpose and is created or used solely to purchase or hold securities under exemptions (a 'syndicate') may be considered *a* distribution of securities to the *persons* beneficially owning or controlling the syndicate" (emphasis added). See also subsections 3.6(3) and 3.8(6) of *Companion Policy 45-106CP*.

[193] Moreover, an issuer offering securities by prospectus or registration statement is often described as undertaking a distribution of securities notwithstanding that thousands of subscribers may acquire securities under the prospectus or registration statement.

[194] Thus, read in isolation, “distribution” as used in Regulation 4801(*a*)(i)(A) may be described as ambiguous. It could refer to an issuance of units to a single investor in accordance with provincial securities laws or an issuance of units to numerous investors in a single offering. I refer to the latter as the “collective” meaning of distribution.

[195] It would, however, be an error to read “distribution” in isolation because what the distribution condition requires is “a lawful distribution in a province to the public”.

[196] The Tax Court determined that “distribution” had the collective meaning. Accordingly, it concluded that each income fund completed only one distribution of units before Grenon RRSP later acquired units in a second distribution: Tax Court reasons at paras. 28, 192-193, 198, 203-208. As I will explain, I have not been persuaded the Tax Court erred in its interpretation.

Interpreting bilingual legislation

[197] Because the *Income Tax Act* and *Regulations* are enacted in both English and French, both are equally authoritative expressions of the law: *R. v. Quesnelle*, 2014 SCC 46, [2014] 2 S.C.R. 390 at para. 53; *R. v. Wolfe*, 2024 SCC 34, 441 C.C.C. (3d) 415 at para. 58.

[198] To interpret bilingual legislation, we first search for a shared meaning between the French and English versions: *R. v. S.A.C.*, 2008 SCC 47, [2008] 2 S.C.R. 675 at para. 14 [*S.A.C.*]. Where the plain meaning of the English and French versions is not clearly the same, the two versions must be reconcilable to find a shared meaning: *S.A.C.* at para. 15. If one version is “plain and unequivocal” and the other ambiguous, the former is the shared meaning: *S.A.C.* at

para. 15, citing *R. v. Daoust*, 2004 SCC 6, [2004] 1 S.C.R. 217 at para. 28 [*Daoust*]. Where one has a broader meaning than the other, the narrower meaning is favoured: *S.A.C.* at 15, citing *Schreiber v. Canada (Attorney General)*, 2002 SCC 62, [2002] 3 S.C.R. 269 at para. 56.

[199] The parallel expression in the French version of Regulation 4801(*a*) does not use the French equivalent of "distribution"—"placement" (see, for example, *Loi sur les valeurs mobilières*, R.L.R.Q, c. V-1.1, s. 5). Rather the expression used in French is "ont...fait l'objet d'un appel public légal à l'épargne dans une province"—that is, "have been the subject of a lawful public offering in a province".

[200] In my view, the expression "public offering" does not refer to the issuance of securities to a single investor, but rather to the issuance of securities pursuant to an offering, by prospectus, OM or some other process. Thus, the French and English versions are reconcilable: the shared meaning is consistent with interpreting "distribution" in the collective sense.

[201] This supports the Tax Court's conclusion that each income fund made a single distribution pursuant to its OM.

[202] The second step in the interpretive exercise is to determine whether the shared meaning is consistent with Parliament's intent, having regard to the ordinary rules of statutory interpretation: *S.A.C.* at para. 16, citing *Daoust* at para. 30.

(ii) Context

Immediate context

[203] As noted above, the word “distribution” is not used in isolation but rather appears in the phrase “a lawful distribution in a province to the public”. This surrounding context is both relevant and significant. It tells us that more than a distribution of units is required. The distribution must meet certain conditions.

[204] I agree with the Tax Court that the words “to the public” must be given meaning and they are suggestive of a collective, particularly when regard is had to the French version of Regulation 4801(*a*). I also agree with the Tax Court that had Parliament intended to refer to a single trade, the modifying phrase “to the public” would have been unnecessary: Tax Court reasons at para. 195.

[205] The phrase “lawful distribution to the public” also appears in the definition of “qualified for distribution to the public” which was the only means by which a trust could satisfy the distribution condition until Regulation 4801 was amended. That definition requires that a prospectus, registration statement or similar document be filed with and, where required by law, accepted for filing by a securities regulator, and that there has been a lawful distribution to the public in accordance with that document: ITR 4803(2). As I explain below, the modifying phrase “to the public” was retained when the distribution condition for mutual fund trusts was relaxed. This too supports its significance to the distribution condition.

[206] I pause to acknowledge that a prospectus might be filed to distribute securities to a single investor to qualify the distributed securities as freely tradeable. However, interpreting "distribution" in the collective sense (*i.e.*, as referring to the offering) would not preclude a finding that a distribution in accordance with such a prospectus qualifies as a lawful distribution to the public.

Other uses of "distribution to the public"

[207] Other uses of the phrase "distribution to the public" in the *Income Tax Act* and *Regulations* similarly support interpreting "distribution" in the collective sense.

[208] For example, paragraph 187.3(2)(*b*) refers to a share issued "as part of a distribution to the public" ("dans le cadre d'un appel public à l'épargne"). If a security can be issued or acquired *as part of a* distribution, then distribution must refer to the offering made under a prospectus or in reliance on an exemption (*i.e.*, the collective meaning). Other provisions also refer to "part of a distribution": see, for example, ss. 193(7.1), 194(4.2)(*a*)(ii)(B), 195(7.1), 248(1) (definition of "grandfathered share"); ITR 6201(11)(*b*), 6202.1(5) (definitions of "new right" and "new share").

[209] Thus, the context is entirely consistent with the shared (*i.e.*, collective) meaning of "distribution".

(iii) Purpose

[210] Regulation 4801(*a*) was once described in the definition of "mutual fund trust" as addressing the "public trading of units". As I noted in paragraph 161 above, paragraph 132(6)(*c*) was amended to delete the description of the nature of the prescribed conditions.

[211] Before the technical amendments, a trust's units had to be "qualified for distribution to the public" requiring a prospectus, registration statement or similar document to be filed and a lawful distribution of units to the public in accordance with that document to have been completed.

[212] The stated purpose of amending the distribution condition was "to ensure that the requirements under the [*Income Tax Act*] for a distribution are no more onerous than those imposed under provincial securities requirements" so that "where the filing of a prospectus, registration statement or similar document is not required in order for *a* distribution to any *persons* to be considered lawful", the trust could nonetheless qualify: *Regulatory Impact Analysis Statement*, S.O.R. 2001-216, *Canada Gazette*, Part II, vol. 135, no. 14 at 1271 (RIAS) (emphasis added). I observe that the RIAS uses "*a* distribution" in the collective sense.

[213] That stated purpose is reflected in the only difference between the two means of satisfying the distribution condition following the amendment—one requires a prospectus, registration statement or other document to be filed and the other does not. The lawful

distribution “to the public” requirement is common to both. Retention of that modifying phrase reinforces the Tax Court’s conclusion that “distribution” should be given its collective meaning.

[214] In light of the foregoing, I conclude that the Tax Court did not err in interpreting “distribution” in Regulation 4801 as meaning distribution in the collective sense.

(d) *Interpretation of Regulation 4801(a): Lawful*

[215] As noted, the expression used in Regulation 4801(*a*)(i)(A) is “lawful distribution in a province to the public of units”. The Tax Court also addressed what was necessary for a distribution to be lawful.

[216] It concluded that where a distribution is made relying on a prospectus exemption, the exemption “must be strictly complied with and ‘must be undertaken in full compliance with the regulatory regime’” and that “[o]nly ‘distributions that fall squarely within the exemption requirements will not be illegal’, suggesting that all others will be considered illegal”: Tax Court reasons at para. 229 (citations omitted).

[217] This view of what it means for a distribution to be lawful is consistent with the definition of “qualified for distribution to the public” which requires that there has been a *lawful* distribution to the public of units in accordance with the filed prospectus, registration statement or similar document. It is not enough that the prospectus or other document be filed, or that the distribution accord with its terms, though both of those are requirements. The distribution also must be lawful (*i.e.*, comply with the relevant provincial securities laws).

[218] Similarly, where an issuer relies on a prospectus exemption, the distribution must be lawful (*i.e.*, comply with the exemption relied on under relevant provincial securities laws).

[219] I agree with the Tax Court that whether a subscription is void or voidable is not determinative of whether there was a lawful distribution. The question is not whether a subscription agreement is enforceable between the parties: Tax Court reasons at paras. 230, 263. Rather, the question is whether the income funds completed a *lawful* distribution (*i.e.*, whether the distribution met applicable provincial securities law requirements).

(e) *Conclusion on the interpretation of Regulation 4801(a)*

[220] I conclude that the context and purpose are consistent with the shared textual meaning of "distribution" which is the collective meaning. I also agree with the Tax Court that, for a distribution to be lawful, it must be completed in compliance with the relevant provincial securities laws. This means that where an exemption from the prospectus requirements is relied on, compliance with the terms of that exemption specified in the applicable provincial securities law is required.

[221] I also accept that not every deviation from the prospectus requirement or prospectus exemptions, or from the terms of the prospectus or OM, will necessarily lead to the conclusion the distribution is unlawful, even if it might attract liability or enforcement action: *Arbour Energy Inc., Re*, 2012 ABASC 131 at para. 860. However, I do not read the Tax Court as suggesting otherwise. It accepted that some deviations were not indicative of an unlawful distribution: Tax Court reasons at paras. 238-245, 279. Indeed, as I read the Tax Court's reasons,

had at least 160 investors acquired units in compliance with the OME and OM, the Tax Court may well have come to a different conclusion about whether the income funds completed a lawful distribution to the public of units.

[222] Nor do I agree with Grenon RRSP that the Tax Court concluded that "anything short of perfection makes the distribution unlawful": Appellant's Memorandum of Fact and Law at para. 89. Rather, the Tax Court focused on the deviations (or "deficiencies" as the Tax Court described them) that it determined resulted in non-compliance with the requirements of the OME.

[223] Accordingly, I conclude that the Tax Court did not err in its interpretation of "lawful distribution in a province to the public" in the distribution condition. I turn next to Grenon RRSP's submissions concerning the deficiencies that led the Tax Court to conclude the income funds did not complete a lawful distribution.

(4) The income funds' distributions were not lawful distributions

[224] As noted, whatever the correct interpretation of the distribution condition, Grenon RRSP contends that the deficiencies the Tax Court identified did not result in the income funds' distributions being unlawful. It submits that any deviations are immaterial.

(a) *The Tax Court's finding that the distributions were unlawful*

[225] In applying its interpretation of the distribution condition to the circumstances applicable to the income funds, the Tax Court addressed what the OME required and whether those

requirements were met such that it could be said that each income fund made a lawful distribution to the public.

[226] The Tax Court found that each income fund completed only one distribution and relied exclusively on the OME. It also concluded that a minimum of 160 investors was an essential term of each OM: Tax Court reasons at paras. 205, 281. This led the Tax Court to conclude that a lawful distribution "required a distribution to no fewer than 160 investors": Tax Court reasons at para. 208.

[227] The Tax Court did not find that the income funds did not issue units to 171 investors, describing that issue as one that was not before it: Tax Court reasons at paras. 230-231, 308, 335. Rather, it concluded that certain units were not issued in compliance with the OME and thus were to be ignored when determining whether the required minimum offering condition was met: Tax Court reasons at paras. 291-292, 309, 337. I interpret this to mean that, having established a minimum offering size as a term of their OMs—a term the Tax Court found essential—to have a lawful distribution to the public of units, at least 160 investors had to acquire units in compliance with the OM and OME.

[228] I see no reviewable error in these conclusions.

[229] The OME does not require a minimum number of investors be specified. However, if one is specified, the OM must so state and must explain how funds would be returned if the minimum is not achieved; if there is no minimum, the OM must state $0 as the minimum and

state “You may be the only purchaser”. This information must be on the cover page: see Multilateral Instrument 45-103, *Capital Raising Exemptions*, Form 45-103F1; and National Instrument 45-106, *Prospectus and Registration Exemptions*, Form 45-106F2. Thus, once a minimum is established, it must be met or the terms of the offering and OM amended. It was open to the income funds to amend their OMs to revise the minimum, but they did not: Tax Court reasons at para. 281. Grenon RRSP does not challenge the Tax Court’s finding that the minimum offering was an essential term.

[230] The Tax Court also concluded that the subscription agreement, attached to the OM and listed in the OM’s table of contents, was indivisible from the OM: Tax Court reasons at paras. 260-261. Again, Grenon RRSP does not challenge this conclusion.

[231] The subscription agreements required each subscriber to represent that they were purchasing as principal for their own account. This, as noted, is an express condition of the OME. Those agreements also required each subscriber who was an individual to represent that they had attained the age of majority and had the legal capacity and competence to execute the subscription agreement. Each subscriber was also required to represent that they had “such knowledge, skill and experience in business, financial and investment matters so that the [subscriber] is capable of evaluating the merits and risks of an investment in the [u]nits”: Tax Court reasons at para. 155.

[232] Finally, each subscriber was required to sign the mandated risk acknowledgement form, acknowledging the investment was risky and that they could lose all their money invested.

[233] The Tax Court agreed with the respondent that it was contrary to the terms of the OME and OM for minors to acquire units: Tax Court reasons at paras. 254-255. Accordingly, it concluded that subscriptions by minors were to be ignored for purposes of determining whether the income funds completed a lawful distribution. (Based on the Tax Court's interpretation of the distribution requirement, this determination would have been sufficient to conclude that the income funds had not issued units to at least 160 investors in compliance with the OME and OM.)

[234] However, the Tax Court also concluded that subscribers who did not pay for their units or sign their subscription agreements were not transacting on their own account. This led it to conclude that, contrary to the requirements of the OME, those individuals did not purchase units as principal and their subscriptions also were to be ignored. (This conclusion also would have been sufficient to conclude that the income funds had not issued units to at least 160 investors in compliance with the OME and OM.)

[235] As a result, the Tax Court found that none of the income funds made a lawful distribution in a province to the public of its units in accordance with its OM or OME.

(b) *The appeal*

[236] Grenon RRSP disagrees with the Tax Court's findings.

(i) Subscriptions by minors

[237] While each income fund had 171 investors, the Tax Court found that 39 subscribers in the 2003 funds, and 31 subscribers in the 2006 funds, were minors. Grenon RRSP submits that the Tax Court erred in making those findings because the Minister did not assume that minors signed subscription agreements when assessing Grenon RRSP. Consequently, Grenon RRSP says, the respondent bore the burden of establishing those facts. However, Grenon RRSP argues that the Tax Court mistakenly placed the burden on Grenon RRSP.

[238] I disagree.

[239] While I accept some of the Tax Court's statements concerning burden are inapt, the Tax Court's findings about subscriptions by minors were not based on any assumptions. Rather, they were grounded in the evidence.

[240] The Tax Court said the fact minors signed subscription documents was relatively uncontroversial. In fact, the Trustee conceded that between 35 and 40 unitholders were minors when they subscribed for units: Tax Court reasons at para. 117. The Tax Court said that Mr. Grenon did not seriously dispute the respondent's position on minors. Rather, Mr. Grenon admitted that minors subscribed and said he had no reason to conclude that the persons the respondent contended were minors were not, but that it was irrelevant and he was not concerned: Tax Court reasons at paras. 116, 122, 246. The Tax Court described an affidavit the respondent introduced as "establish[ing] the birthdates of the minor [i]nvestors in the 2003 and 2006 series

of funds”: Tax Court reasons at paras. 125, 247. Several witnesses also admitted minors had subscribed for units: Tax Court reasons at paras. 86, 88, 248.

[241] Accordingly, the Tax Court had ample evidence to support its findings that more than 30 subscribers in each income fund were minors.

[242] Grenon RRSP submits that minors can own property and enter into contracts. It submits that such contracts are not void, but rather voidable. Grenon RRSP therefore says that the Tax Court erred in concluding that minors could not sign subscription agreements or risk acknowledgement forms, either themselves or by a guardian. The Tax Court addressed and rejected these same arguments: Tax Court reasons at paras. 219-227.

[243] The question is not whether a minor may own property or sign a contract, or whether a contract with a minor is void or voidable. Nor is it whether a guardian may bind a minor by signing a contract on the minor’s behalf. How those questions might be answered as a matter of general contract law is irrelevant to the issue here.

[244] Rather, the question before the Tax Court was whether accepting subscription agreements and risk acknowledgement forms signed by minors or by others on their behalf was a breach of provincial securities laws because it failed to comply with the terms of the OME and OM. The Tax Court concluded it did.

[245] It explained that there is an investor protection element to the terms of the OME and that issuing units to minors was contrary to that investor protection objective. Further, given its terms, the risk acknowledgement form—which was an express condition of the OME—was intended to be signed by adults with legal capacity: Tax Court reasons at paras. 263, 266, 287, 289. The Tax Court concluded that minors could not represent that they had the requisite "knowledge, skill and experience" and were "capable of evaluating the merits and risks" of investing in units and of seeking "appropriate professional advice". Grenon RRSP has not persuaded me that the Tax Court made a reviewable error in coming to these conclusions.

[246] While Grenon RRSP submits that "[n]o decision of a securities commission was located which invalidated subscriptions signed by a guardian or agent", neither has it identified any cases where a guardian or agent of a minor has signed a subscription agreement or risk acknowledgment form: Appellant's Memorandum of Fact and Law at para. 110. The absence of any decisions addressing the issue does not establish that the Tax Court erred in concluding that minors could not be purchasers in reliance on the OME.

[247] While Grenon RRSP also contends there is no express prohibition on minors subscribing for units, like the Tax Court, I have difficulty accepting that provincial securities regulators envisaged minors, some as young as two years old, subscribing for units based on the OME. Given the terms on which the OME is available, the absence of an express prohibition in the OME is far from determinative.

[248] Grenon RRSP says the Tax Court erred in concluding that the income funds made a misrepresentation in their OMs. Despite the representation in the subscription agreements, it says there is nothing in the OM telling investors that the income funds will only accept subscriptions from those over the age of majority and the Tax Court erred in concluding otherwise. As I read the Tax Court's reasons, it did not conclude that this was a misrepresentation in the OMs, but rather that the reports filed by the income funds contained a misrepresentation when listing minors as investors: Tax Court reasons at paras. 279-280. I address this aspect of the Tax Court's decision below at paragraphs 270 and 271.

[249] That said, based on the evidentiary record, it was open to the Tax Court to find that the OMs told investors that minors could not subscribe for units. The OMs, under the heading "Subscription Procedure", stated a subscriber may acquire units *if* the income fund receives (and accepts) a subscription agreement "substantially in the form" attached to OM. The subscription agreements, under the heading "Legal Capacity", contained a representation that the subscriber has reached the age of majority. Although the OM suggests inconsequential changes to the subscription agreement could be accepted, I am skeptical that a waiver of a subscriber's representation concerning legal capacity would be characterized that way.

[250] Moreover, the Tax Court did not accept Grenon RRSP's assertion that this representation was waived. The Tax Court observed that each subscription agreement provided that none of its provisions could be modified "except by an instrument in writing, signed by the party against whom, any waiver…is sought": Tax Court reasons at paras. 155, 277. Other than Mr. Grenon's statement that the condition had been waived, Grenon RRSP pointed to no evidence showing the

income funds waived the subscription agreements' contractual conditions in writing. The Tax Court expressed doubts about Mr. Grenon's candour and honesty, as well as the credibility of Mr. Grenon's characterization of events and testimony on certain issues: Tax Court reasons at paras. 179, 382. Therefore, it was open to the Tax Court to find that the income funds did not take any steps to waive the condition regarding legal capacity and age of majority: Tax Court reasons at paras. 265, 277.

[251] A finding the minors' subscriptions were unlawful, in that they failed to meet the terms of the OME (including the OM), would have been sufficient for the Tax Court to conclude that the income funds did not complete a lawful distribution to the public. Ignoring those subscriptions, none of the income funds would have lawfully achieved the minimum offering specified in their OMs: Tax Court reasons at paras. 246, 292. None would have completed a "lawful distribution…to the public of units" in compliance with the OM and so the OME.

[252] Nonetheless, I will address the Tax Court's analysis of the income funds' compliance with the requirement that purchasers acquire units as principal.

(ii) Purchasing as principal

[253] Consistent with the express OME requirement, the subscription agreements required that the subscribers represent they were purchasing as principal.

[254] The Tax Court concluded that none of the minors paid for their units. However, because it had already determined those subscriptions should be ignored, who paid for their units was not relevant: Tax Court reasons at para. 312.

[255] Thus, the respondent's submissions and the Tax Court's analysis focused on units issued to 27 adults by the 2003 income funds and units issued to 43 adults by the 2006 income funds. The Tax Court found that those units were paid for by someone other than the person to whom the units were issued. From this, the Tax Court inferred the named purchasers were not purchasing as principal. It also found that some subscription agreements were signed by an adult other than the subscriber.

[256] This again brings me to the issue of burden. The Tax Court described the respondent as having assumed, among other things, that many adult subscribers did not sign their own subscription documents and did not pay for their own units: Tax Court reasons at para. 173.

[257] I agree with Grenon RRSP that these were not assumptions underlying the Minister's assessments of Grenon RRSP. Rather, they were additional facts the respondent relied on in support of its argument the income funds did not qualify as mutual fund trusts. They were added as additional facts in support of the assessments when the respondent amended the reply to Grenon RRSP's notice of appeal following discoveries. I therefore agree with Grenon RRSP that the respondent—not Grenon RRSP—bore the burden of establishing those facts.

[258] Consequently, I accept that the Tax Court's discussion of burden of proof in this context is inapt. Nonetheless, I do not agree that the Tax Court erred in concluding those facts—that adults signed subscriptions for, and paid the subscription price for units issued to, others—were established on a balance of probabilities.

[259] To the contrary, the Tax Court found that Mr. Grenon admitted that adults signed subscription agreements for other adults: Tax Court reasons at para. 294. Mr. Grenon also admitted that he knew some adults were signing for other adults and paying for their units but was not the least bit concerned with this: Tax Court reasons at paras. 171-172, 179. Another witness testified that he funded the subscriptions by his spouse and children, such payments "intended as gifts": Tax Court reasons at para. 88. Other witnesses also testified to funding minors' subscription prices and signing on behalf of others: Tax Court reasons at paras. 81, 86.

[260] The Tax Court also found that, following the discovery process, requests to admit, and production of documents, including the subscription documents and subscription cheques (all of which are in the evidentiary record), the respondent was able to particularize "those basic assumptions" – admittedly a misnomer as they were additional facts and not assumptions: Tax Court reasons at paras. 173, 313. From the evidentiary record, it is evident that in several instances a single cheque was written to pay the subscription price for multiple subscriptions.

[261] The Tax Court said Grenon RRSP and Mr. Grenon provided no evidence to contradict the tabulation of these subscriptions the respondent prepared based on the information Mr. Grenon provided. The Tax Court described Mr. Grenon as failing to address the facts with candour,

fairness and honesty or with any specificity: Tax Court reasons at para. 179. It said Mr. Grenon's statement that he did not admit the numbers was insufficient: Tax Court reasons at para. 174. The Tax Court ultimately drew negative inferences because of Mr. Grenon's vague responses: Tax Court reasons at paras. 301, 318, 334.

[262] In view of this, I am satisfied that the Tax Court's findings regarding adults signing subscriptions and paying for units for other adults and minors were grounded in the totality of the evidence before it. The respondent was entitled to rely on Grenon RRSP's evidence—including its documents and Mr. Grenon's oral testimony—to establish these facts, particularly absent any evidence to the contrary: *Jefferson v. Canada*, 2022 FCA 81, 2022 D.T.C. 5055 at para. 29; *Pollock v. R.* (1993), 161 N.R. 232, 94 D.T.C. 6050 (F.C.A.) at paras. 20-21.

[263] Having found these facts, the Tax Court then turned to the inferences to be drawn and the legal consequences: Tax Court reasons at para. 181.

[264] Grenon RRSP's position was that purchasing as principal does not require the subscriber to use its own money. Rather, a purchaser may rely on a third party to physically deliver the money: Tax Court reasons at para. 320.

[265] The respondent, citing *Little (re)*, 2000 LNABASC 391, 9 A.S.C.S. 3333 and *Cartaway Resources Corp, Re*, 2000 LNBCSC 156, 2000 BCSECCOM 88 [*Cartaway*], submitted that the expression "to purchase as principal" meant to purchase for one's own account and not for the benefit of others: Tax Court reasons at paras. 321-325. The respondent argued that the inference

to be drawn was that, except in the case of cheques drawn by spouses on joint chequing accounts, where someone other than the subscriber signed the subscription agreement or paid for the units, the subscriber was not purchasing as principal.

[266] The Tax Court found that an investor purchasing as principal is expected to advance their own funds, to act in a transaction entirely for their own account, and not on behalf of others and to make the full investment themselves: Tax Court reasons at paras. 328-329. It referred to securities regulators' concerns about this requirement: see also *Boyle* at para. 36 and *Cartaway* at para. 246 concerning the importance of the "purchase as principal" requirement, albeit in the context of a different exemption.

[267] Absent any "explanation or information as to why third parties were advancing funds on behalf of other adults (who were not their spouses)", the Tax Court drew the "logical inference" that units paid for by someone other than the person to whom they were issued were not acquired by the person as principal: Tax Court reasons at paras. 330, 332.

[268] While the Tax Court again made some inapt statements concerning burden, reading its reasons in their entirety, I conclude that the Tax Court's criticisms of Grenon RRSP were based on the inadequacy and vagueness of its evidence and responses to the evidence concerning these subscriptions, given the inferences Grenon RRSP asked the Tax Court to draw from its factual findings concerning those subscriptions.

[269] This Court cannot interfere with the Tax Court's inferences unless Grenon RRSP demonstrates the Tax Court made a palpable and overriding error in drawing them or in making the factual findings underlying them: *Housen* at para. 22; *Gagné Estate v. Canada*, 2023 FCA 9, 2023 A.C.W.S. 210 at para. 37; *Vandenberg v. Canada*, 2021 FCA 228, 338 A.C.W.S. (3d) 367 at para. 5. Such inferences are owed a high degree of deference, and Grenon RRSP has not established that the Tax Court made a palpable and overriding error.

(iii) Grenon RRSP's other submissions

[270] The Tax Court found that the income funds made a misrepresentation (as defined in the relevant securities law) in reports filed with the securities commissions: Tax Court reasons at para. 280. Grenon RRSP asserts that was an error because a misrepresentation, as defined, is limited to misrepresentations concerning material facts. Material facts, in turn, are facts that could be expected to affect the value of the securities. Grenon RRSP submits the Tax Court had no evidence about any effect the representation about subscribers being at least 18 years of age would have on the value of the income fund units.

[271] I need not decide whether the Tax Court erred in concluding that the reports contained a misrepresentation. That statement appears in the Tax Court's lengthy discussion of subscriptions by minors. As I read the Tax Court's reasons, the Tax Court did not rely on that statement for its conclusion that the income funds did not complete a lawful distribution. Indeed, it considered the obligation to not make a misrepresentation to "[relate] primarily to the contents of the OM, including the business objectives of the issuer, the use of subscription proceeds or the contractual

rights of unit holders, for example", notwithstanding that it found that obligation extended to the reports filed with the securities commissions: Tax Court reasons at paras. 279-281.

[272] The Tax Court's focus was on the 160 minimum investor term, the subscriptions by minors (which it concluded were contrary to the OME and OM), and the subscriptions by adults where it inferred the subscriber was not purchasing as principal. It was the Tax Court's findings in that regard that led it to conclude the income funds had not met the distribution condition.

[273] Grenon RRSP advances two other arguments on this point.

[274] First, it asserts that reputable law firms provided opinions that the income fund units were qualified investments. The Trustee required such opinions as a condition of Grenon RRSP subscribing for units.

[275] However, the issue the Tax Court faced was whether the income funds had completed a lawful distribution to the public. The legal opinions expressed no view on that matter. Rather, they relied on trustees' certificates to that effect: Tax Court reasons at para. 45.

[276] Second, Grenon RRSP asserts that none of the unitholders disavowed their subscriptions, protested their status as unitholder, exercised any right of recission, or raised any complaint whatsoever.

[277] While I have no reason to doubt that assertion, like the Tax Court, I fail to see its relevance. The Tax Court concluded that unitholders receiving regular distributions may have had no reason to complain; in the absence of a complaint, a lack of enforcement proceedings was similarly irrelevant: Tax Court reasons at para. 282. The Tax Court was satisfied that had the securities regulators received a complaint, they would have concluded the distributions were not lawful: Tax Court reasons at para. 289.

[278] While the Tax Court concluded that "distribution" referred to the collective meaning, I do not read the Tax Court as saying that a lawful distribution required that every investor who acquired units under the OM comply with the OME. Were that so, a single non-compliant subscription would be sufficient to disqualify the entire distribution, regardless of the issuer's knowledge of the deviation. I agree with Grenon RRSP that such a conclusion could have ramifications beyond this appeal.

[279] But neither is that the basis on which the Tax Court concluded the income funds did not complete a lawful distribution. To the contrary, the Tax Court focused on whether at least 160 subscribers complied with the OME and OM because that was an essential term. It concluded they had not. Grenon RRSP has not demonstrated any error warranting this Court's interference with that conclusion.

[280] Neither would I characterize the deviations as "minor procedural matters or technical irregularities that are 'more of a matter of form rather than substance'", as Grenon RRSP asserts before us: Appellant's Memorandum of Fact and Law at para. 87. Rather, the deficiencies the

Tax Court identified touched on what it considered fundamental aspects of the OM and OME. Nor were the deviations limited to one or two isolated incidents. The Tax Court identified one or more deficiencies in approximately 40% of the subscriptions for each income fund.

[281] The facts as found by the Tax Court are clear: Mr. Grenon, as promoter, established a minimum offering size. That meant that, to complete a lawful distribution to the public of units, at least 160 subscribers needed to acquire units from each income fund in compliance with the OME and OM. Despite that requirement, Mr. Grenon was far more interested in achieving a minimum of 160 unitholders than ensuring compliance with the OME and OM.

[282] For these reasons, the Tax Court said it had difficulty disagreeing with the respondent's submission that Mr. Grenon "demonstrated a wanton and reckless disregard for the requirements of the securities legislation, the OME and the OM" and found him to be "careless, cavalier and possibly indifferent": Tax Court reasons at paras. 346-347, 379.

[283] I cannot disagree.

[284] Grenon RRSP invites this Court to overturn the Tax Court's finding that the income funds did not comply with the OME by asking us to ignore the very documents that the income funds prepared and used with the objective of qualifying for the OME. Moreover, Grenon RRSP does so by making sweeping, general statements about the legal capacity of minors to contract and the consequences of minors entering into contracts, the law of agency and guardianship, and

what inferences should be drawn from what is or is not expressly stated in the securities provisions regarding the OME. Respectfully, I would decline Grenon RRSP's invitation.

(5) Conclusion on mutual fund trust and qualified investment status

[285] In my view, Regulation 4801 requires a trust to have completed at least one lawful distribution to the public of units of a class of a trust before or at the determination time. While there is no minimum number of persons who must participate, nor a minimum number of units that must be distributed, the distribution must strictly comply with provincial securities laws.

[286] Regulation 4801 also requires that 150 beneficiaries each hold a block of units of the class that was the subject of a lawful distribution to the public but places no restriction or limitation on how the 150 beneficiaries become unitholders. Moreover, while both conditions must be satisfied at the determination time, one may be satisfied before the other.

[287] The Tax Court did not conclude that the units were not issued by the income funds nor that they were not acquired by the subscribers. To the contrary, the Tax Court said that whether the subscriptions were void or voidable was a matter between the income fund and the relevant investor: Tax Court reasons at paras. 230, 308, 335. It noted that the respondent did not seek a declaration or finding to that effect, nor to deprive investors of their distributions from the income funds: Tax Court reasons paras. 230-231, 233. I must therefore conclude that the Tax Court was satisfied that the income funds issued units to 171 investors each of whom held a block of units with a fair market value exceeding $500. Accordingly, in my view, each income fund met the minimum beneficiary condition.

[288] However, based on the Tax Court's factual findings, it concluded that the income funds had not satisfied the distribution condition. In particular, the Tax Court was satisfied that a significant number of investors did not comply with the OME and OM, including with essential OME requirements and the income funds' own documents. As a result, the Tax Court concluded that the units issued to those investors should be ignored in determining whether the income funds had complied with an essential term in their OMs: that they issue units to a minimum of 160 investors in compliance with the OME.

[289] I see no palpable and overriding error in these conclusions.

[290] Accordingly, the Tax Court did not err in concluding that none of the income funds qualified as a mutual fund trust and that their units were NQI when Grenon RRSP subscribed for units in those funds, and I would dismiss Grenon RRSP's appeal to the extent it relates to the Part I assessments.

B. *The Tax Court Erred in Dismissing Grenon RRSP's Appeal of the Part XI.1 Assessments*

[291] This brings me to the Part XI.1 assessments the Minister issued to Grenon RRSP under subsection 207.1(1). The Tax Court dismissed Grenon RRSP's appeal of those assessments.

[292] As described above, where an RRSP holds investments that are NQI, it may be liable for Part XI.1 tax based on the NQI's acquisition date value. However, an RRSP is not liable for that tax if the acquisition date value was included in the annuitant's income pursuant to subsection

146(10). That provision states that if the RRSP acquires NQI, the acquisition date value shall be included in the annuitant's income.

[293] The respondent explains that the Part XI.1 assessments were premised on the application of GAAR. Through discoveries, the respondent obtained additional information leading the Minister to conclude the income fund units were NQI. However, the Minister concluded that Mr. Grenon's 2003 to 2007 taxation years were statute-barred and therefore did not reassess Mr. Grenon including the acquisition date value in his income. Rather, the Minister asserted the units were NQI as an alternative argument in support of Grenon RRSP's Part XI.1 assessments.

[294] The Tax Court agreed with the respondent that the income fund units were NQI when Grenon RRSP acquired them. While recognizing Part XI.1 tax did not apply if the acquisition date value was included in Mr. Grenon's income pursuant to subsection 146(10), the Tax Court stated that that exception did not apply because Mr. Grenon "was not assessed" pursuant to that provision: Tax Court reasons at para. 479.

[295] I disagree.

[296] Part XI.1 tax applies where subsection 146(10) does not. Subsection 146(10) applies where the RRSP acquires NQI and the annuitant is resident in Canada. Subsection 146(10) is not relevant to the computation of a non-resident's taxable income earned in Canada. Thus, Part XI.1 tax applies where the RRSP holds NQI at a month-end but either acquired a qualified investment

that subsequently becomes NQI or acquired NQI when the annuitant was a non-resident so that subsection 146(10) did not apply.

[297] The Tax Court did not expressly analyze whether subsection 207.1(1) or 146(10) applied. Instead, the reasons suggest that the Tax Court and the parties proceeded as if the Minister could choose whether to assess the annuitant or the RRSP, and here the Minister chose to assess Grenon RRSP: Tax Court reasons at paras. 478-479, 620.

[298] This led us to seek submissions from the parties regarding the application of the exception to Part XI.1 tax should we agree with the Tax Court's conclusion that the income fund units were NQI.

[299] In response, Grenon RRSP cited the Tax Court's reasons at paragraphs 611 and 613 and clarified that it had maintained before the Tax Court that, if the income fund units were NQI, subsection 146(10) applied and the Minister should have assessed Mr. Grenon. However, the paragraphs Grenon RRSP cited appear under the heading "Determination of tax consequences" in the Tax Court's GAAR analysis. There the Tax Court concluded the Minister could choose whether to assess Mr. Grenon as annuitant or Grenon RRSP: Tax Court reasons at para. 620. Although I express no view about the Tax Court's conclusion, I observe that different considerations may apply in a GAAR context.

[300] For its part, the respondent accepts, at least in the non-GAAR context, that the Minister does not have a choice as to whether to assess the annuitant or the RRSP. However, Mr. Grenon

did not include the acquisition date value in income in his Part I returns and the Minister did not treat those amounts as income when assessing those returns. Accordingly, the respondent says, no amount "was included in [Mr. Grenon's] income" as required by the exception to Part XI.1 tax. The respondent relies on *Quigley v. R.*, [1996] 1 C.T.C. 2378, 50 D.T.C. 1057 (T.C.C.), *Skinner v. The Queen*, 2009 TCC 269, [2009] D.T.C. 1358, and *Brake v. Canada*, 2013 FCA 172, [2013] 5 C.T.C. 178.

[301] Grenon RRSP takes the contrary view. It asserts that, if Grenon RRSP acquired NQI, subsection 146(10) requires Mr. Grenon to include the acquisition date value in his income. As a result, the exception applies.

[302] I agree with Grenon RRSP.

[303] Subsection 56(1) provides that "there *shall be included in computing the income* of a taxpayer for a taxation year" the amounts described in that section, including "amounts required by section 146 in respect of a [RRSP]…to be included in computing the taxpayer's income for the year": s. 56(1)(*h*) (emphasis added). Subsection 146(10) in turn states that where an RRSP acquires NQI, the acquisition date value "*shall be included in computing the income for the year* of the taxpayer who is the annuitant" (emphasis added).

[304] This language is clear and unambiguous. It mandates that the acquisition date value of NQI acquired by Grenon RRSP be included in Mr. Grenon's income. This is so whether Mr. Grenon reports the amount, or the Minister assesses Mr. Grenon on the basis that that amount is

his income. A taxpayer's income from an office, employment, business, property or other source is the taxpayer's income computed in accordance with the *Income Tax Act*: s. 4. The amount described in subsection 146(10) must therefore be included in Mr. Grenon's income.

[305] The Minister has a statutory duty to assess the tax payable in accordance with the facts and the law: *Canada (Attorney General) v. Collins Family Trust*, 2022 SCC 26, [2022] 1 S.C.R. 747 at para. 26, citing *CIBC World Markets Inc. v. Canada*, 2012 FCA 3, 426 N.R. 182 at paras. 16, 20-21; *Galway v. Minister of National Revenue*, [1974] 1 F.C. 600, 2 N.R. 324 (F.C.A.) at 602; *Canada v. 984274 Alberta Inc.*, 2020 FCA 125, [2020] 4 F.C.R. 384 at para. 52, leave to appeal to SCC refused, 39355 (29 April 2021). Here, the Minister concluded, and the Tax Court agreed, that Grenon RRSP acquired NQI.

[306] Assessments fix tax liability; they do not determine the income nor the facts underlying the assessment. Absent a reassessment, Mr. Grenon's Part I assessments are valid and binding on the Minister and Mr. Grenon notwithstanding that they are based on an incorrect conclusion about Mr. Grenon's income: s. 152(3).

[307] However, Mr. Grenon and Grenon RRSP are different taxpayers.

[308] A taxpayer who receives a derivative assessment under section 160 may challenge their assessment by attacking the underlying assessment notwithstanding that that assessment is binding on the primary taxpayer: *Gaucher v. Canada*, [2001] C.T.C. 125, 54 D.T.C. 6678 (F.C.A.); *Canada v. 594710 British Columbia Ltd.*, 2018 FCA 166, [2019] 5 C.T.C. 1, leave to

appeal to SCC refused, 38352 (21 February 2019); *Csak v. The King*, 2024 TCC 9, [2024] 3 C.T.C. 2106, affirmed on this point 2025 FCA 60, 2025 D.T.C. 5043. Grenon RRSP's circumstances are at least as compelling as those circumstances.

[309] Grenon RRSP neither participated in, nor had a right to participate in, how Mr. Grenon reported his income nor how the Minister assessed Mr. Grenon's returns. For purposes of determining its tax liability, Grenon RRSP cannot be bound by the income Mr. Grenon reported nor by the basis on which the Minister assessed Mr. Grenon's returns.

[310] Accordingly, to challenge its Part XI.1 assessments, Grenon RRSP is entitled to attack the correctness of the facts underlying Mr. Grenon's assessments—in this case, Mr. Grenon's income. None of the cases the respondent relies on convinces me otherwise. None concerns a taxpayer challenging the assessment of another taxpayer.

[311] Thus, having concluded that the income fund units were NQI when Grenon RRSP acquired them, the Tax Court should have concluded that the acquisition date value was included in Mr. Grenon's income under subsection 146(10) and that the Part XI.1 tax exception was available to Grenon RRSP. Because it did not, the Tax Court erred in dismissing Grenon RRSP's appeal of its Part XI.1 assessments.

C. *The Tax Court Correctly Concluded that the Part I Assessments were not Statute-Barred*

[312] In March 2013, the Minister issued Part I and Part XI.1 notices of assessment to Grenon RRSP for its 2004 to 2009 taxation years. The Tax Court concluded that these were the first

assessments for those taxation years and thus were not statute-barred. On appeal, Grenon RRSP says the Tax Court erred in doing so.

[313] Given my conclusion that the Tax Court erred in dismissing Grenon RRSP's appeal of the Part XI.1 assessments on the merits, I need not address whether those assessments were statute-barred. I will therefore limit my analysis to the Part I assessments.

[314] In support of its argument that the 2004 to 2008 Part I assessments are statute-barred, Grenon RRSP repeats the arguments it made before the Tax Court. Grenon RRSP again asserts the "trust notice of assessment" sent to the Trustee in response to the T3GR the Trustee filed for the group of RRSPs constituted a notice of assessment or a notice that no tax was payable for Part I and Part XI.1 purposes for all RRSPs in the group, including Grenon RRSP.

[315] Grenon RRSP points to the definition of "prescribed" in the *Income Tax Act*. In the case of a form, "prescribed" means "the information to be given on a form or the manner of filing a form, authorized by the Minister": paragraph (*a*) of the definition of "prescribed", s. 248(1). Here, Grenon RRSP says, the only form the Minister authorized is a T3GR, and the Minister did so through an information circular published by the Canada Revenue Agency, IC78-14R4 *Guidelines for trust companies and other persons responsible for filing T3GR, T3D, T3P, T3S, T3RI, and T3F returns* dated July 1, 2006 (information circular).

[316] I disagree.

[317] Under Part I, *each* taxpayer is required to file a "return of income in prescribed form". Despite what the information circular might suggest, the T3GR was not the prescribed form for Part I. Consistent with this, the T3GR seeks no information about which RRSPs are liable for Part I tax, nor about what their Part I tax liability is, even on an aggregate basis. The T3GR only seeks information about taxes under Part XI (relating to excess foreign property holdings—no longer relevant) and Part XI.1 (relating to NQI held at a month-end). Unsurprisingly, the trust notices of assessment issued to the Trustee assess only those taxes; they neither refer to nor assess Part I tax.

[318] Moreover, as the Tax Court observed, the T3GR expressly instructs trustees to file a T3 if an RRSP governed by the specimen plan had taxable income. There is no ambiguity on the issue.

[319] Grenon RRSP was obligated to file a return under Part I reporting taxable income. By not doing so, it accepted the risk that the Minister would not issue a Part I assessment to start its normal reassessment period.

[320] Consequently, I agree with the Tax Court that the March 2013 Part I assessments were the original Part I assessments for Grenon RRSP and none was statute-barred.

VI. 2005 Part I Assessment – The Tax Court Decision

[321] Finally, I turn to the Minister's Part I assessment of Grenon RRSP for the 2005 taxation year. As described above, that assessment was premised on $136,654,427 of TOM's distribution

to Grenon RRSP being income from NQI subject to Part I tax. The Minister's assessments of Mr. Grenon treated that amount as an excess contribution he made to Grenon RRSP subject to Part X.1 tax.

[322] Before the Tax Court, in the context of his appeals, Mr. Grenon argued that the FMO reorganization—which is the subject of *Magren FCA*—had no effect on the value of Grenon RRSP's assets. Rather, Grenon RRSP exchanged one asset (FMO units) for another asset (TOM units) of the same value. Accordingly, he argued, the reorganization should not be treated as giving rise to an excess contribution to Grenon RRSP: Tax Court reasons at paras. 446, 449-450.

[323] The Tax Court accepted that argument: Tax Court reasons at paras. 450, 453. However, that argument was only relevant in the context of Mr. Grenon's assessments: Tax Court reasons at para. 105(a)(iv) and in contrast, para. 105(b). The status of the TOM units as qualified investments or NQI was irrelevant to Mr. Grenon's Part X.1 assessments.

[324] Notwithstanding that Grenon RRSP's Part I assessment treated the $136,654,427 Grenon RRSP received from TOM as income from NQI, and that the Tax Court found that the TOM units were NQI, the Tax Court concluded that the $136,654,427 should be excluded from Grenon RRSP's 2005 income for Part I purposes. The Tax Court explained that "[Grenon RRSP] would be entitled to a credit in the amount of $136,654,427…since that amount represented the value of the units issued by [TOM] in exchange for the units of FMO. The amount should thus be excluded from the calculation as it reflected an exchange transaction that did not actually increase the value of the [Grenon RRSP] and was not income": Tax Court reasons at para. 626.

[325] However, the $136,654,427 is not the value of TOM units issued to Grenon RRSP ($152,874,000): Tax Court reasons at paras. 449, 629; see also *Magren TCC* at paras. 21-24, 215. Nor is it the accrued gain on the FMO units when Grenon RRSP transferred them to TOM ($118,210,242) or when TOM transferred them to the corporate appellants ($125,080,593): *Magren TCC* at paras. 215-216. Indeed, the Tax Court itself said it was "apparent that the amounts paid by the [i]ncome [f]unds to [Grenon RRSP] in respect of the 2004 to 2011 taxation years, constituted income from non-qualified investments…that are subject to an assessment made pursuant to subsection 146(10.1) in the [Grenon RRSP appeal]": Tax Court reasons at para. 624.

[326] As explained in *Magren FCA*, TOM's 2005 income comprised $137,265,892 of "other income", almost entirely comprised of Foremost Venture Trust's $137,106,106 distribution to TOM: *Magren FCA* at paras. 61-64, 70, 79. TOM distributed its 2005 income to its unitholders. Grenon RRSP, as the 99.5 percent unitholder, received $136,654,427 representing 99.5 percent of TOM's "other income".

[327] Although the Tax Court upheld Grenon RRSP's Part I assessments without resorting to GAAR—by concluding the income fund units were NQI—it does not address TOM's distribution in that context. Yet the Tax Court ordered the Minister to reassess Grenon RRSP to remove that amount from its 2005 income.

[328] Having identified this during our deliberations, we sought submissions from the parties.

[329] First, we asked for submissions regarding any other explanation for the amount. Neither party offered one. I am satisfied that the Tax Court erred in characterizing the $136,654,427 as anything other than income TOM distributed to Grenon RRSP.

[330] Second, we asked whether it was open to this Court to address this distribution notwithstanding that no party raised it on appeal. The respondent asserts the Tax Court made a palpable and overriding error—confusing the income distribution Grenon RRSP received in respect of TOM's 2005 income with Grenon RRSP's transfer of the FMO units to TOM for TOM units in November 2005—leading the Tax Court to conclude the amount was not income.

[331] I agree that the Tax Court made a palpable and overriding error. Having found the income fund units were NQI, the Tax Court should have dismissed Grenon RRSP's appeal of its 2005 Part I assessment.

[332] However, the question we posed is whether we can and should address this error in the circumstances. Although the respondent could have filed a cross-appeal, it did not. For that reason, Grenon RRSP says we should not address it.

[333] Appellate courts have the discretion to consider new issues on appeal, where failing to do so would risk an injustice: *R. v. Mian*, 2014 SCC 54, [2014] 2 S.C.R. 689 at paras. 41-42 [*Mian*]. Whether the failure to raise a new issue would do so depends on the circumstances but, where there is good reason to believe the result would have been different had the error not been made,

the appellate court's intervention is justified: *Mian* at para. 45; *R. v. Barton*, 2019 SCC 33, [2019] 2 S.C.R. 579 at para. 50.

[334] *Mian* seeks to strike a balance between the adversarial process and the appellate court's duty to ensure that justice is done: paras. 37-41, 46; see also *R. v. G.F.*, 2021 SCC 20, [2021] 1 S.C.R. 801 at para. 93. However, an appellate court must be satisfied that there is a sufficient basis in the record on which to resolve the issue: *Mian* at para. 51; *Quan v. Cusson*, 2009 SCC 62, [2009] 3 S.C.R. 712 at paras. 36-37.

[335] In my view, the issue is not new: Grenon RRSP's liability for Part I tax on income distributed by the income funds is one of the central issues in this appeal. The record is clear that the amount in question is income TOM distributed to Grenon RRSP. Grenon RRSP does not suggest otherwise. However, even if it were a new issue, I am satisfied there is a sufficient basis in the record to resolve the issue and we have a duty to do so to ensure justice is done.

[336] Grenon RRSP asserts that it has arguments concerning this distribution that were not available to it with respect to the other distributions. It submits this amount differs from the other distributions because Grenon RRSP had an accrued gain on its FMO units, which were qualified investments, before it transferred them to TOM. The income TOM distributed, Grenon RRSP says, is from the same source—FMO, the units of which are a qualified investment—and accrued at the same time (before Grenon RRSP transferred its FMO units to TOM).

[337] The respondent counters that the TOM units were NQI and Grenon RRSP's income from NQI is taxable under Part I regardless of the ultimate source of the distribution.

[338] On this point, I agree with the respondent.

[339] Subsection 146(10.1) is clear. Income from NQI is taxable regardless of the ultimate source of that income. Here, as explained in *Magren FCA*, Foremost Venture Trust distributed income to TOM as beneficiary: *Magren FCA* at paras. 61-64. TOM in turn distributed that income to Grenon RRSP as beneficiary. That income is deemed to be Grenon RRSP's income from a property that is an interest in a trust—here, the TOM units held by Grenon RRSP: s. 108(5)(*a*).

[340] However, the TOM units were not units of a mutual fund trust and were NQI. Accordingly, the income Grenon RRSP received as TOM unitholder was income from NQI that is taxable under Part I.

[341] Grenon RRSP also argues that it should be permitted to reduce that income by a $129,876,648 loss it claims to have realized on the disposition of the TOM units in 2008. Without deciding whether Grenon RRSP in fact incurred a loss, the Tax Court concluded any such loss would not reduce Grenon RRSP's income from its NQI because the RRSP regime does not contemplate the deduction of losses suffered within an RRSP: Tax Court reasons at paras. 451, 631.

[342] While I disagree with the last statement, it is of no consequence. Accepting, but without deciding, that Grenon RRSP realized a loss when it disposed of its TOM units in 2008, nothing suggests that loss was anything other than a capital loss. Subsection 146(10.1) changes the portion of a capital gain or loss that is relevant to computing income, but not the source of that income. Allowable capital losses are deductible only against taxable capital gains. Thus, any allowable capital loss Grenon RRSP realized on its disposition of the TOM units was not deductible against the $136,654,427 at issue here.

VII. Conclusion

[343] In conclusion, I would allow the appeal, in part. I would set aside the Tax Court's amended judgment dated April 27, 2021 and, giving the decision the Tax Court should have given:

(i) dismiss Grenon RRSP's appeal from the assessments the Minister issued to Grenon RRSP on March 6, 2013 under Part I of the *Income Tax Act* for the 2004 to 2009 taxation years; and

(ii) allow Grenon RRSP's appeal from the assessments issued to Grenon RRSP on March 6, 2013 under Part XI.1 of the *Income Tax Act* for the 2004 to 2009 taxation years, and vacate those assessments.

[344] If the Minister has reassessed Grenon RRSP's 2005 taxation year in accordance with the Tax Court order, I would order the Minister to reassess Grenon RRSP's 2005 taxation year as required to reflect the above.

[345] Given the divided success on this appeal, in my discretion, I would award no costs.

VIII. Costs Appeal: A-369-21

[346] This brings me to the appeal of *Grenon v. The Queen*, 2021 TCC 89 (Court file A-369-21) addressing costs of all related appeals (see discussion under Related Appeals starting at paragraph 60 above). Given my conclusion with respect to Grenon RRSP's appeal, I would refer the matter of costs back to the same judge of the Tax Court for the determination of the costs award, taking these reasons into account.

"K.A. Siobhan Monaghan"
J.A.

"I agree.
Richard Boivin J.A."

"I agree.
George R. Locke J.A."

Appendix A

Income Tax Act	**Loi de l'impôt sur le revenu**
PART I	**PARTIE I**
[...]	[...]
56(1) Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,	**56 (1)** Sans préjudice de la portée générale de l'article 3, sont à inclure dans le calcul du revenu d'un contribuable pour une année d'imposition :
[...]	[...]
(h) amounts required by section 146 in respect of a registered retirement savings plan or a registered retirement income fund to be included in computing the taxpayer's income for the year;	**h)** toutes sommes relatives à un régime enregistré d'épargne-retraite ou à un fonds enregistré de revenu de retraite et qui doivent, en vertu de l'article 146, être incluses dans le calcul du revenu du contribuable pour l'année;
[...]	[...]
104 (2) A trust shall, for the purposes of this Act, and without affecting the liability of the trustee or legal representative for that person's own income tax, be deemed to be in respect of the trust property an individual, but where there is	**104 (2)** Pour l'application de la présente loi, et sans que l'assujettissement du fiduciaire ou des représentants légaux à leur propre impôt sur le revenu en soit atteint, une fiducie est réputée être un particulier

more than one trust and

relativement aux biens de la fiducie; mais lorsqu'il existe plus d'une fiducie et que :

(a) substantially all of the property of the various trusts has been received from one person, and

a) d'une part, dans l'ensemble, tous les biens des diverses fiducies proviennent d'une seule personne;

(b) the various trusts are conditioned so that the income thereof accrues or will ultimately accrue to the same beneficiary, or group or class of beneficiaries,

b) d'autre part, les diverses fiducies sont telles que le revenu en découlant revient ou reviendra finalement au même bénéficiaire ou groupe ou catégorie de bénéficiaires,

such of the trustees as the Minister may designate shall, for the purposes of this Act, be deemed to be in respect of all the trusts an individual whose property is the property of all the trusts and whose income is the income of all the trusts.

ceux des fiduciaires que le ministre peut désigner sont réputés être, pour l'application de la présente loi, relativement à toutes les fiducies, un particulier dont les biens sont les biens de toutes les fiducies et dont le revenu est le revenu de toutes les fiducies.

[...]

[...]

132 (6) Subject to subsection 132(7), for the purposes of this section, a trust is a mutual fund trust at any time if at that time

132 (6) Sous réserve du paragraphe (7) et pour l'application du présent article, une fiducie est une fiducie de fonds commun de placement à un moment donné si, à ce moment, les

	conditions suivantes sont remplies :
(a) it was a unit trust resident in Canada,	**a)** d'une part, dans l'ensemble, tous les biens des diverses fiducies proviennent d'une seule personne;
(b) its only undertaking was	**b)** sa seule activité consiste :
(i) the investing of its funds in property (other than real property or an interest in real property),	**(i)** soit à investir ses fonds dans des biens, sauf des biens immeubles ou des droits dans de tels biens,
(ii) the acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) that is capital property of the trust, or	**(ii)** soit à acquérir, à détenir, à entretenir, à améliorer, à louer ou à gérer des biens immeubles qui font partie de ses immobilisations ou des droits dans de tels biens,
(iii) any combination of the activities described in subparagraphs 132(6)(b)(i) and 132(6)(b)(ii), and	**(iii)** soit à exercer plusieurs des activités visées aux sous-alinéas (i) et (ii);
(c) it complied with prescribed conditions relating to the number of its unit holders, dispersal of ownership of its units and public trading of its units.	**c)** elle satisfaisait aux conditions prescrites portant sur le nombre de ses détenteurs d'unités, la répartition et le commerce de ses unités.
[...]	[...]

146 (1) In this section,

[...]

"qualified investment" for a trust governed by a registered retirement savings plan means

[...]

(d) such other investments as may be prescribed by regulations of the Governor in Council made on the recommendation of the Minister of Finance;

[...]

(4) Except as provided in subsection 146(10.1), no tax is payable under this Part by a trust on the taxable income of the trust for a taxation year if, throughout the period in the year during which the trust was in existence, the trust was governed by a registered retirement savings plan, except that

146 (1) Les définitions qui suivent s'appliquent au présent article :

[...]

« placement admissible » « placement admissible » Dans le cas d'une fiducie régie par un régime enregistré d'épargne-retraite :

...

d) tout autre placement qui peut être prévu par règlement pris par le gouverneur en conseil, sur recommandation du ministre des Finances.

[...]

(4) Sous réserve du paragraphe (10.1), aucun impôt n'est payable en vertu de la présente partie par une fiducie sur son revenu imposable pour une année d'imposition si, tout au long de la période de l'année où la fiducie existait, elle était régie par un régime enregistré d'épargne-retraite; toutefois :

(a) if the trust has borrowed money (other than money used in carrying on a business) in the year or has, after June 18, 1971, borrowed money (other than money used in carrying on a business) that it has not repaid before the commencement of the year, tax is payable under this Part by the trust on its taxable income for the year;

a) si la fiducie a emprunté de l'argent (autre que de l'argent utilisé pour l'exploitation d'une entreprise) au cours de l'année ou a emprunté, après le 18 juin 1971, de l'argent (autre que de l'argent utilisé pour l'exploitation d'une entreprise) qu'elle n'a pas remboursé avant le début de l'année, un impôt est payable par la fiducie, en vertu de la présente partie, sur son revenu imposable pour l'année;

(b) in any case not described in paragraph 146(4)(a), if the trust has carried on any business or businesses in the year, tax is payable under this Part by the trust on the amount, if any, by which

b) dans tout cas non visé à l'alinéa a), si la fiducie a exploité une ou plusieurs entreprises au cours de l'année, un impôt est payable par elle en vertu de la présente partie sur l'excédent éventuel du montant visé au sous-alinéa (i) sur le montant visé au sous-alinéa (ii):

(i) the amount that its taxable income for the year would be if it had no incomes or losses from sources other than from that business or those businesses, as the case may be,

(i) le montant qui constituerait le revenu imposable de la fiducie pour l'année si elle n'avait pas tiré de revenu, ni subi de pertes de sources autres que l'entreprise ou les entreprises en question,

exceeds

(ii) such portion of the amount determined under subparagraph 146(4)(b)(i) in respect of the trust for the year as can reasonably be considered to be income from, or from the disposition of, qualified investments for the trust; and

(ii) la partie du montant déterminé selon le sous-alinéa (i) à l'égard de la fiducie pour l'année, qu'il est raisonnable de considérer comme un revenu provenant soit de placements admissibles pour elle, soit de la disposition de tels placements;

(c) if the last annuitant under the plan has died, tax is payable under this Part by the trust on its taxable income for each year after the year following the year in which the last annuitant died.

c) si le dernier rentier en vertu du régime est décédé, un impôt est payable par la fiducie en vertu de la présente partie sur son revenu imposable pour chaque année postérieure à l'année suivant l'année du décès de ce rentier.

[...]

[...]

(6) Where in a taxation year a trust governed by a registered retirement savings plan disposes of a property that, when acquired, was a non-qualified investment, there may be deducted, in computing the income for the taxation year of the taxpayer who is the annuitant under

(6) Lorsque, au cours d'une année d'imposition, une fiducie régie par un régime enregistré d'épargne-retraite dispose d'un bien qui, au moment où il a été acquis, était un placement non admissible, il est permis de déduire, dans le calcul du revenu du contribuable qui est le rentier du régime, pour l'année

the plan, an amount equal to the lesser of

d’imposition, une somme égale au moins élevé des montants suivants :

(a) the amount that, by virtue of subsection 146(10), was included in computing the income of that taxpayer in respect of the acquisition of that property, and

a) le montant qui était, en vertu du paragraphe (10), inclus dans le calcul du revenu de ce contribuable à l’égard de l’acquisition de ce bien;

(b) the proceeds of disposition of the property

b) le produit de disposition du bien.

[...]

[...]

(10) Where at any time in a taxation year a trust governed by a registered retirement savings plan

(10) Lorsque, à un moment donné d’une année d’imposition, une fiducie régie par un régime enregistré d’épargne-retraite :

(a) acquires a non-qualified investment, or

a) acquiert un placement non admissible;

(b) uses or permits to be used any property of the trust as security for a loan,

b) utilise à titre de garantie d’un prêt un bien quelconque de la fiducie ou en permet l’utilisation,

the fair market value of

la juste valeur marchande :

(c) the non-qualified investment at the time it was acquired by the trust, or

c) du placement non admissible au moment de son acquisition par la fiducie;

(d) the property used as security at the time

d) du bien utilisé à titre de garantie, au moment où il a

it commenced to be so used,

as the case may be, shall be included in computing the income for the year of the taxpayer who is the annuitant under the plan at that time.

(10.1) Where in a taxation year a trust governed by a registered retirement savings plan holds a property that is a non-qualified investment,

(a) tax is payable under this Part by the trust on the amount that its taxable income for the year would be if it had no incomes or losses from sources other than non-qualified investments and no capital gains or losses other than from dispositions of non-qualified investments; and

(b) for the purposes of paragraph 146(10.1)(a),

(i) "income" includes dividends described in section 83, and

commencé à être ainsi utilisé,

selon le cas, doit être incluse dans le calcul du revenu, pour l'année, du contribuable qui est le rentier en vertu du régime à ce moment.

(10.1) Lorsqu'une fiducie régie par un régime enregistré d'épargne-retraite détient, au cours d'une année d'imposition, un bien qui est un placement non admissible :

a) la fiducie doit payer un impôt en vertu de la présente partie sur le montant qui serait son revenu imposable pour l'année si les sources de ses revenus et pertes n'étaient que des placements non admissibles et si ses gains en capital et pertes en capital ne résultaient que de la disposition de tels placements;

b) pour l'application de l'alinéa a):

(i) sont compris dans le revenu les dividendes visés à l'article 83,

(ii) paragraphs 38(a) and 38(b) shall be read without reference to the fractions set out in those paragraphs.

(ii) aux alinéas 38a) et b) il n'est pas tenu compte des fractions qui y figurent.

152 (1) The Minister shall, with all due dispatch, examine a taxpayer's return of income for a taxation year, assess the tax for the year, the interest and penalties, if any, payable and determine

152 (1) Le ministre, avec diligence, examine la déclaration de revenu d'un contribuable pour une année d'imposition, fixe l'impôt pour l'année, ainsi que les intérêts et les pénalités éventuels payables et détermine :

(a) the amount of refund, if any, to which the taxpayer may be entitled by virtue of section 129, 131, 132 or 133 f or the year; or

a) le montant du remboursement éventuel auquel il a droit en vertu des articles 129, 131, 132 ou 133, pour l'année;

(b) the amount of tax, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 122.7(2) or (3), 125.4(3), 125. 5(3), 127.1(1), 127.41 (3) or 210.2(3) or (4) t o be paid on account of the taxpayer's tax payable under this Part for the year.

b) le montant d'impôt qui est réputé, par les paragraphes 120(2) ou (2.2), 122.5(3), 122.51(2), 122.7(2) ou (3), 125.4(3), 125. 5(3), 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.

[...]

[...]

(3) Liability for the tax under this Part is not affected by an incorrect or incomplete assessment

(3) Le fait qu'une cotisation est inexacte ou incomplète ou qu'aucune cotisation n'a été faite n'a pas

or by the fact that no assessment has been made.

[...]

(7) The Minister is not bound by a return or information supplied by or on behalf of a taxpayer and, in making an assessment, may, notwithstanding a return or information so supplied or if no return has been filed, assess the tax payable under this Part.

d'effet sur les responsabilités du contribuable à l'égard de l'impôt prévu par la présente partie.

[...]

(7) Le ministre n'est pas lié par les déclarations ou renseignements fournis par un contribuable ou de sa part et, lors de l'établissement d'une cotisation, il peut, indépendamment de la déclaration ou des renseignements ainsi fournis ou de l'absence de déclaration, fixer l'impôt à payer en vertu de la présente partie.

PART XI.1

207.1 (1) Where, at the end of any month, a trust governed by a registered retirement savings plan holds property that is neither a qualified investment (within the meaning assigned by subsection 146(1)) nor a life insurance policy in respect of which, but for subsection 146(11), subsection 146(10) would have applied as a consequence of its acquisition, the trust shall, in respect of that

PARTIE XI.1

207.1 (1) La fiducie régie par un régime enregistré d'épargne-retraite et qui, à la fin d'un mois donné, détient des biens qui ne sont ni un placement admissible (au sens du paragraphe 146(1)) ni une police d'assurance-vie à l'égard de laquelle, sans le paragraphe 146(11), le paragraphe 146(10) aurait été applicable à la suite de son acquisition doit payer, pour ce mois, en vertu de la présente partie, un impôt égal à

month, pay a tax under this Part equal to 1% of the fair market value of the property at the time it was acquired by the trust of all such property held by it at the end of the month, other than

1 % de la juste valeur marchande des biens au moment où ils ont été acquis par la fiducie, de tous ces biens qu'elle détient à la fin du mois, autres que :

(a) property, the fair market value of which was included, by virtue of subsection 146(10), in computing the income, for any year, of an annuitant (within the meaning assigned by subsection 146(1)) under the plan; and

a) les biens dont la juste valeur marchande a été incluse, en vertu du paragraphe 146(10), dans le calcul du revenu, pour une année donnée, d'un rentier (au sens du paragraphe 146(1)) en vertu du régime;

(b) property acquired by the trust before August 25, 1972.

b) les biens acquis par la fiducie avant le 25 août 1972.

(2) Where, at the end of any month, a trust governed by a deferred profit sharing plan holds property that is neither a qualified investment (within the meaning assigned by section 204) nor a life insurance policy (referred to in paragraphs 198(6)(c) to 198(6)(e) or subsection 198(6.1)), the trust shall, in respect of that month, pay a tax under this Part equal to 1% of the fair

(2) La fiducie régie par un régime de participation différée aux bénéfices et qui, à la fin d'un mois donné, détient des biens qui ne sont ni un placement admissible (au sens de l'article 204) ni une police d'assurance-vie (visée aux alinéas 198(6)c) à e) ou au paragraphe 198(6.1)) doit payer, pour ce mois, en vertu de la présente partie, un impôt égal à 1 % de la juste valeur marchande des biens au moment où ils ont

market value of the property at the time it was acquired by the trust of all such property held by it at the end of the month, other than

été acquis par la fiducie, de tous ces biens qu'elle détient à la fin du mois, autres que :

(a) property in respect of the acquisition of which the trust has paid or is liable to pay a tax under subsection 198(1); and

a) les biens pour l'acquisition desquels la fiducie a payé ou est tenue de payer un impôt en vertu du paragraphe 198(1);

(b) property acquired by the trust before August 25, 1972.

b) les biens acquis par la fiducie avant le 25 août 1972.

(3) Every trust governed by a registered education savings plan shall, in respect of any month, pay a tax under this Part equal to 1% of the total of all amounts each of which is the fair market value of a property, at the time it was acquired by the trust, that

(3) La fiducie régie par un régime enregistré d'épargne-études doit payer, pour un mois, en vertu de la présente partie, un impôt égal à 1 % du total des montants représentant chacun la juste valeur marchande d'un bien, au moment de son acquisition par la fiducie, qui, à la fois :

(a) is not a qualified investment (as defined in subsection 146.1(1)) for the trust; and

a) n'est pas un placement admissible, au sens du paragraphe 146.1(1), pour la fiducie;

(b) is held by the trust at the end of the month.

b) est détenu par la fiducie à la fin du mois.

(4) Where, at the end of any month after 1978, a trust governed

(4) La fiducie régie par un fonds enregistré de revenu de retraite et

by a registered retirement income fund holds property that is not a qualified investment (within the meaning assigned by subsection 146.3(1)), the trust shall, in respect of that month, pay a tax under this Part equal to 1% of the fair market value of the property at the time it was acquired by the trust of all such property held by it at the end of the month other than property, the fair market value of which was included by virtue of subsection 146.3(7) in computing the income for any year of an annuitant (within the meaning assigned by subsection 146.3(1)) under the fund.

qui, à la fin d'un mois donné après 1978, détient des biens qui ne sont pas un placement admissible (au sens du paragraphe 146.3(1)) doit payer, pour ce mois, en vertu de la présente partie, un impôt égal à 1 % de la juste valeur marchande des biens au moment où ils ont été acquis par la fiducie, de tous ces biens qu'elle détient à la fin du mois, autres que les biens dont la juste valeur marchande a été incluse, en vertu du paragraphe 146.3(7), dans le calcul du revenu d'une année donnée d'un rentier (au sens du paragraphe 146.3(1)) en vertu du fonds.

(5) Where at any time a taxpayer whose taxable income is exempt from tax under Part I makes an agreement (otherwise than as a consequence of the acquisition or writing by it of an option listed on a designated stock exchange) to acquire a share of the capital stock of a corporation (otherwise than from the corporation) at a price that may differ

(5) Le contribuable dont le revenu imposable est exonéré de l'impôt prévu à la partie I et qui convient (autrement que par suite de l'acquisition ou de la vente par lui d'une option inscrite à la cote d'une bourse de valeurs désignée) d'acquérir une action du capital-actions d'une société (auprès d'une personne autre que la société) à un prix qui peut différer

from the fair market value of the share at the time the share may be acquired, the taxpayer shall, in respect of each month during which the taxpayer is a party to the agreement, pay a tax under this Part equal to the total of all amounts each of which is the amount, if any, by which the amount of a dividend paid on the share at a time in the month at which the taxpayer is a party to the agreement exceeds the amount, if any, of the dividend that is received by the taxpayer.

de la juste valeur marchande de l'action au moment où l'action peut être acquise doit payer en vertu de la présente partie, pour chaque mois où il est partie à la convention, un impôt égal au total des sommes représentant chacune l'excédent éventuel du montant d'un dividende versé sur l'action au cours du mois où il est partie à la convention sur le montant du dividende qu'il reçoit.

207.2 (1) Within 90 days after the end of each year, a taxpayer to whom this Part applies shall

207.2 (1) Le contribuable assujetti à la présente partie doit, dans les 90 jours qui suivent la fin de chaque année :

(a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;

a) produire auprès du ministre, sans avis ni mise en demeure, une déclaration pour l'année en vertu de la présente partie, selon le formulaire prescrit et contenant les renseignements prescrits;

(b) estimate in the return the amount of tax, if any, payable by it under this Part in

b) estimer dans cette déclaration l'impôt dont il est redevable en vertu de la présente

respect of each month in the year; and

(c) pay to the Receiver General the amount of tax, if any, payable by it under this Part in respect of each month in the year.

(2) Where the trustee of a trust that is liable to pay tax under this Part does not remit to the Receiver General the amount of the tax within the time specified in subsection 207.2(1), the trustee is personally liable to pay on behalf of the trust the full amount of the tax and is entitled to recover from the trust any amount paid by the trustee as tax under this section.

(3) Subsections 150(2) and 150(3), sections 152 and 158, subsections 161(1) and 161(11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

[...]

248 (1) In this Act,

partie pour chaque mois de l'année;

c) verser cet impôt au receveur général.

(2) Le fiduciaire d'une fiducie qui est assujettie à l'impôt en application de la présente partie qui ne remet pas au receveur général le montant de l'impôt, dans le délai imparti, est personnellement tenu de verser, au nom de la fiducie, le montant total de l'impôt et a le droit de recouvrer de la fiducie toute somme ainsi versée.

(3) Les paragraphes 150(2) et (3), les articles 152 et 158, les paragraphes 161(1) et (11), les articles 162 à 167 et la section J de la partie I s'appliquent à la présente partie, avec les adaptations nécessaires.

[...]

248 (1) Les définitions qui suivent

	s’appliquent à la présente loi.
[...]	[...]
“prescribed” means	« prescrit »
(a) in the case of a form, the information to be given on a form or the manner of filing a form, authorized by the Minister,	**a)** Dans le cas d’un formulaire, de renseignements à fournir sur un formulaire ou de modalités de production ou de présentation d’un formulaire, autorisés par le ministre;
(a.1) in the case of the manner of making or filing an election, authorized by the Minister, and	**a.1)** dans le cas de modalités de présentation ou de production d’un choix, autorisées par le ministre;
(b) in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation;	**b)** dans les autres cas, visé par règlement du gouverneur en conseil, y compris déterminé conformément à des règles prévues par règlement.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS:	A-137-21 A-369-21(LEAD FILE) A-370-21, A-371-21, A-372-21, A-373-21
DOCKET:	A-137-21
STYLE OF CAUSE:	THE RRSP OF JAMES T. GRENON (552-53721) BY ITS TRUSTEE CIBC TRUST CORPORATION v. HIS MAJESTY THE KING
AND DOCKETS:	A-369-21(LEAD FILE) A-370-21, A-371-21, A-372-21, A-373-21
STYLE OF CAUSE:	JAMES T. GRENON, THE RRSP OF JAMES T. GRENON (552-53721) BY ITS TRUSTEE CIBC TRUST CORPORATION, MAGREN HOLDINGS LTD.,2176 INVESTMENTS LTD. (as successor to Grencorp Management Inc. which was the successor to 994047 Alberta Ltd.), MAGREN HOLDINGS LTD. (Successor by amalgamation to 1052785 Alberta Ltd.) V. HIS MAJESTY THE KING
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 29 AND 30, 2023
REASONS FOR JUDGMENT BY:	MONAGHAN J.A.
CONCURRED IN BY:	BOIVIN J.A. LOCKE J.A.
DATED:	JULY 4, 2025

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