

Docket: 1999-778(IT)I

BETWEEN :

SUCCESSION ANDRÉE JALBERT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal called for hearing on April 7, 2008, at Montreal, Quebec.

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Agent for the Appellant:

André Dupras

Counsel for the Respondent :

Philippe Dupuis

Simon Petit

JUDGMENT

The appeal of the assessment established under the *Income Tax Act* for the 1988 taxation year is dismissed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 23rd day of April 2008.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 22nd day of May 2008.
Elizabeth Tan, Translator

Citation: 2008TCC235

Date: 20080423

Docket: 1999-778(IT)I

BETWEEN:

ESTATE OF ANDRÉE JALBERT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Lamarre Proulx J.

[1] This appeal concerns the 1988 taxation year. It is another case dealing with so-called scientific research and experimental development companies.

[2] The Agent for the Appellant immediately informed the Court that he was not there to challenge the basis of the appeal. He withdrew but asked for a fair decision, if possible.

[3] He stated that the Appellant, who became his wife after the year in question, died in 1998 from breast cancer. He explained that it was only recently that he was made aware of the assessment against his wife. He spoke of the kind-heartedness of the Appellant and her charity work, which was her main priority, perhaps to the detriment of her income tax.

[4] Regarding this application for a decision based on fairness and compassion, the Court explained to the Agent for the Appellant that there was no provision in the *Income Tax Act* (the "Act") that would allow for the substantive tax law to be set aside for fairness reasons. The Court must judge according to the Act. However, there is a provision in the Act that would allow the Minister of National Revenue (the "Minister") to waive the interest and penalties for these reasons, at

subsection 220(3.1) of the Act. The court with jurisdiction to review the exercise of the Minister's power regarding this provision is the Federal Court of Canada.

[5] However, for the Agent for the Appellant's information, the following is the relevant subsection of the Act and the history of this section:

220(3.1) Waiver of penalty or interest -- The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer (or in the case of a partnership, a fiscal period of the partnership) or on application by the taxpayer or partnership on or before that day, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the taxpayer or partnership in respect of that taxation year or fiscal period, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.

History: Subsection 220(3.1) was replaced by S.C. 2005, c. 19, subs. 48(1), applicable as of 2005. However, if a taxpayer or a partnership makes an application to the Minister of National Revenue under subsection 220(3.1) for a taxation year or fiscal period, this subsection is considered to be worded as follows for that taxation year or fiscal period:

(3.1) The Minister may waive or cancel, in whole or in part, any penalty or interest otherwise payable under this Act by a taxpayer or partnership in respect of a taxation year or fiscal period, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.

This subsection previously stated:

(3.1) The Minister may at any time waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by a taxpayer or partnership and, notwithstanding subsections 152(4) to 152(5), such assessment of the interest and penalties payable by the taxpayer or partnership shall be made as is necessary to take into account the cancellation of the penalty or interest.

Subsection 220(3.1) was amended by S.C. 1994, c. 7, Sch. VIII, subs. 127(2) applicable for the 1985 and subsequent taxation years. Subsection 220(3.1) previously read:

(3.1) The Minister may at any time waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by a taxpayer or partnership.

Subsection 220(3.1) was added by S.C. 1994, c. 7, Sch. II, subs. 181(1), applicable to penalties and interest regarding the 1985 and subsequent taxation years.

[6] The Information Circular on this section is numbered IC 98-1R2.

[7] As the Agent for the Appellant discontinued his appeal and since this Court does not have the power to render decisions on any basis other than the Act, the appeal must be dismissed.

Signed at Ottawa, Canada, this 23rd day of April 2008.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 22nd day of May 2008.

Elizabeth Tan, Translator

CITATION: 2008TCC235

COURT FILE NO.: 1999-778(IT)I

STYLE OF CAUSE: ESTATE OF ANDRÉE JALBERT AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: April 7, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Louise Lamarre
Proulx

DATE OF JUDGMENT: April 23, 2008

APPEARANCES:

Agent for the Appellant:	André Dupras
Counsel for the Respondent:	Philippe Dupuis Simon Petit

COUNSEL OF RECORD:

For the Appellant:

 Name:

 Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada