Docket: 2016-3676(IT)I

BETWEEN:

SHERRY MANGAL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 22, 2017, at Toronto, Ontario

Before: The Honourable Justice B. Russell

Appearances:

Agent for the Appellant:	Roystan Mangal
Counsel for the Respondent:	Kieran Lidhar

JUDGMENT

The appeal from the reassessments raised March 9, 2015 under the *Income Tax Act* (Canada) for the Appellant's 2012 and 2013 taxation years is dismissed, without costs, in accordance with the attached reasons for judgment.

Signed at Quebec City, Quebec, this 8th day of January 2018.

"B. Russell"

Russell J.

Citation: 2018TCC8
Date: 20180108
Docket: 2016-3676(IT)I

BETWEEN:

SHERRY MANGAL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Russell J.

Introduction:

[1] This is an informal procedure appeal of the two March 9, 2015 reassessments per the federal *Income Tax Act* (Act) of the Appellant's 2012 and 2013 taxation years respectively. The Appellant asserts that in so reassessing the Minister of National Revenue (Minister) erred in including a T4A'd payment of $35,614 from the Appellant's former employer BCE Inc. as income in the Appellant's 2013 taxation year. The Appellant's position is that in so doing the Minister erred in not recognizing that the payment was tax exempt.

Evidence:

[2] The evidence at hearing disclosed that the Appellant was a former employee of BCE Inc. (BCE) and as such a member of BCE's registered pension plan for its Ontario employees (BCE-RPPO). A letter to the Appellant from BCE dated July 17, 2012 (Ex. A-1) informed she was one of former members of the BCE-RPPO. The BCE-RPPO was affected by "partial wind ups" in 1993, 1996 and 1999. Accordingly she was entitled to a "payment of surplus" from the BCE-RPPO provided necessary regulatory consents are obtained. It stated also that the Appellant had retained counsel named in the letter to represent her in negotiations between BCE and the "BCE Ontario Employees' Pension Surplus Committee". These negotiations led to achievement of a "Surplus Sharing Agreement", signed

February 28, 2012 (SSA). The letter informed further that to have the surplus paid out of the pension fund of the BCE-RPPO to BCE in accordance with SSA, so that BCE could then distribute the surplus as individually directed by the Appellant and like former BCE employees, consent of the Ontario Superintendent of Financial Services to a “surplus withdrawal application” was required (and subsequently obtained).

[3] The letter states also that the Appellant had instructed her counsel to consent on her behalf to the SSA. The letter states that under the terms of the SSA,

> 50% of the Net Surplus (surplus minus expenses, adjusted to take into account benefit enhancements paid to certain members at the time of the Partial Wind Ups, and also adjusted for investment earnings to the date of payment) attributable to each of the Partial Wind Ups will be payable to that particular Wind Up Group. Each Sharing Group Member will receive a pro rata share of the Members’ Share allocated to his or her Partial Wind Up Group based on the value of his or her liabilities under the Plan at the applicable Partial Wind Up date subject to a minimum allocation for each Sharing Group Member of $1,000.

[4] The letter informed further that the Appellant’s estimated share of the portion of the surplus assets payable to her “Partial Wind Up Group” was $34,700 and that she could elect either, or a combination of two payment options. Option A was to have a specified amount of her “surplus payment” contributed to her RRSP, subject to her having the necessary contribution room. The Appellant chose this option for 100% of what her actual surplus payment would be, up to $5,500 in addition to the aforesaid estimated amount of $34,700. Option B was to receive the balance of the “surplus payment” not allocated to Option A in a lump sum cash payment less applicable withholding taxes. The Appellant signed and dated (July 24, 2012) a four page form accompanying the letter thereby indicating her choice to have all her “surplus payment” contributed to her personal RRSP with Great West Life.

[5] A T4A slip was issued to the Appellant by BCE’s agent RBC Investor Services for the Appellant’s 2013 taxation year (Ex. A-2), referencing the amount of $35,614 as a “lump-sum payment” to be entered on “line 130”. Ex. A-3 is a RBC “confirmation of payment” to the Appellant stating that her “direct contribution” from the BCE-RRPO “issued 15 February 2013 by RBC Investor Services” will be credited to her Great West Life RRSP in the gross and net amounts of $35,614.02. Attached to Ex. A-2 (entered also as Ex. R-1) was a 2012 taxation year RRSP receipt showing the slightly greater amount of $34,814 having

been received by London Life (ostensibly for Great West Life) as "amount of retirement savings portion of premium".

[6] Neither party entered into evidence a copy of the SSA itself.

[7] The Appellant's representative testified that upon speaking with a Canada Revenue Agency (CRA) officer she requested of CRA that her claimed RRSP deduction be moved from her 2012 to her 2013 taxation year; and this was done.

[8] Key assumptions made by the Minister in raising the appealed reassessment include, from the Reply:

i. para. 12(b) - in the 2013 year the Appellant received a surplus amount, a total of $35,614, from a BCE Inc. registered pension plan;

ii. para. 12(e) - the Appellant elected to contribute funds to her RRSP from the surplus amount and on February 15, 2013, during the first 60 days of the 2013 taxation year, funds in the total amount of $35,614 were contributed to the Appellant's RRSP with Great West Life;

iii. para. 12(h) - on December 11, 2014 the Minister reassessed the Appellant's 2013 taxation year to include the surplus amount paid to the Appellant in the amount of $35,614 that had not been previously reported by the Appellant:

iv. para. 12(j) - on March 9, 2015, as requested by the Appellant, the Minister reassessed both the Appellant's 2012 and 2013 taxation years to move part of the RRSP deduction in the amount of $35,418 from the 2012 taxation year and to allow a deduction for this amount for the 2013 taxation year;

v. para. 12(k) - the surplus amount received by the Appellant from the BCE Inc. pension plan in the amount of $35,614 was income for the 2013 taxation year.

Issue:

[9] The issue is whether the T4'd subject payment of $35,614 was reportable income to the Appellant for her 2013 taxation year.

Parties' Submissions:

[10] At the request of the Court the parties filed written submissions post-hearing. The Appellant submits that wrongly two receipts were issued for the same amount, the $35,614, the two receipts being the T4A slip and the RRSP receipt. The SSA negotiated by BCE, BCE Ontario Employees' Pension Surplus Committee, the Appellant per counsel, *et al* contemplated the RRSP receipt, however not the T4A slip. The Appellant asserts that a T4A, "was never mentioned in the negotiated agreement. (Whether this quoted assertion of the Appellant is a telling point, the Appellant, upon whom lay the burden of initially adducing evidence to make at least a *prima facie* case, did not submit in evidence the referenced "negotiated agreement", *i.e.*, the SSA itself.)

[11] The Appellant submits that the $35,614 should be viewed as a direct transfer from one registered investment vehicle to another absent any tax consequences. The T4A slip triggers an immediate tax consequence as it requires that the T4A'd amount - the $35,614 - be added to the Appellant's income. The Appellant vigorously disputes that the subject payment of the $35,614 was a payment of pension surplus. However, actual evidence of this is quite lacking. In her written submissions, the Appellant cites no provisions of the Act notwithstanding that the Respondent's previously filed and served written submissions summarized below referenced various provisions of the Act and their applicability.

[12] The Appellant also maintains that this situation results in double taxation on the basis that the amount being paid into the RRSP is made taxable by issuance of the T4A slip and it will again be taxed when eventually the RRSP is paid out, as a RRIF, or in lump sum(s) or otherwise.

[13] The Respondent submits that the evidence established that the subject payment was a surplus payment from the BCE-RPPO as referred to in the description of the SSA in BCE's July 17, 2012 letter. Thus the $35,614 (per the T4A slip) was properly included in the Appellant's 2013 taxation year income, noting that at the hearing the Appellant acknowledged that counsel on her behalf had, 12 years after leaving BCE, executed the SSA being an agreement that the Appellant and other individuals in like position would receive a "surplus payment" from the BCE-RPPO, and in 2013 she did receive this amount as "pension income" per the T4A slip, paid directly to her own RRSP. This was done at the direction of the Appellant. The Respondent submitted that the Appellant provided no evidence that the T4A slip had been incorrectly issued and its issuance indicates that the reported sum of $35,614 was received by the Appellant as a taxable amount.

[14] The Respondent further submits that the surplus payment must be included in income per section 147.3 and paragraph 56(1)(a) of the Act. As the transfer amount does not fall under subsections 147.3(1) to (7), then per subsections 147.3(9) and (10) the transfer amount is included under paragraph 56(1)(a). It does not fall within subsection 147.3(4) because at least some portion of it relates to an actuarial surplus, as amply indicated by the documentary evidence.

[15] The Respondent's response to the Appellant's double taxation submission is that the RRSP deduction completely offset the subject income addition.

Analysis:

[16] Paragraph 56(1)(a) and subsections 147.3(1) to (10) of the Act provide as follows:

> 56(1)(a)
>
> Amounts to be included in income for year
>
> 56 (1) Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,
>
> (a) any amount received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of,
>
> (i) a superannuation or pension benefit including, without limiting the generality of the foregoing,
>
> (A) the amount of any pension, supplement or spouse's or common-law partner's allowance under the Old Age Security Act and the amount of any similar payment under a law of a province,
>
> (B) the amount of any benefit under the Canada Pension Plan or a provincial pension plan as defined in section 3 of that Act,
>
> (C) the amount of any payment out of or under a specified pension plan, and
>
> (C.1) the amount of any payment out of or under a foreign retirement arrangement established under the laws of a country, except to the extent that the amount would not, if the taxpayer were resident in the country, be subject to income taxation in the country,
>
> but not including

(D) the portion of a benefit received out of or under an employee benefit plan that is required by paragraph 6(1)(g) to be included in computing the taxpayer's income for the year, or would be required to be so included if that paragraph were read without reference to subparagraph 6(1)(g)(ii),

(E) the portion of an amount received out of or under a retirement compensation arrangement that is required by paragraph 56(1)(x) or 56(1)(z) to be included in computing the taxpayer's income for the year,

(F) a benefit received under section 71 of the Canada Pension Plan or under a similar provision of a provincial pension plan as defined in section 3 of that Act, and

(G) an amount received out of or under a registered pension plan as a return of all or a portion of a contribution to the plan to the extent that the amount

(I) is a payment made to the taxpayer under subsection 147.1(19) or subparagraph 8502(d)(iii) of the Income Tax Regulations, and

(II) is not deducted in computing the taxpayer's income for the year or a preceding taxation year,

(ii) a retiring allowance, other than an amount received out of or under an employee benefit plan, a retirement compensation arrangement or a salary deferral arrangement,

(iii) a death benefit,

(iv) a benefit under the Unemployment Insurance Act, other than a payment relating to a course or program designed to facilitate the re-entry into the labour force of a claimant under that Act, or a benefit under Part I, VII.1, VIII or VIII.1 of the Employment Insurance Act,

(v) a benefit under regulations made under an appropriation Act providing for a scheme of transitional assistance benefits to persons employed in the production of products to which the Canada-United States Agreement on Automotive Products, signed on January 16, 1965 applies,

(vi) except to the extent otherwise required to be included in computing the taxpayer's income, a prescribed benefit under a government assistance program, or

(vii) a benefit under the Act respecting parental insurance, R.S.Q., c. A-29.011;

….

Transfer — money purchase to money purchase, RRSP or RRIF

147.3 (1) An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount;

(b) is transferred on behalf of a member in full or partial satisfaction of the member's entitlement to benefits under a money purchase provision of the plan as registered; and

(c) is transferred directly to

(i) another registered pension plan to provide benefits in respect of the member under a money purchase provision of that plan,

(ii) a registered retirement savings plan under which the member is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the member is the annuitant (within the meaning assigned by subsection 146.3(1)).

(2) An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount;

(b) is transferred on behalf of a member in full or partial satisfaction of the member's entitlement to benefits under a money purchase provision of the plan as registered; and

(c) is transferred directly to another registered pension plan to fund benefits provided in respect of the member under a defined benefit provision of that plan.

(3) An amount is transferred from a registered pension plan (in this subsection referred to as the "transferor plan") in accordance with this subsection if the amount

(a) is a single amount;

(b) consists of all or any part of the property held in connection with a defined benefit provision of the transferor plan;

(c) is transferred directly to another registered pension plan to be held in connection with a defined benefit provision of the other plan; and

(d) is transferred as a consequence of benefits becoming provided under the defined benefit provision of the other plan to one or more individuals who were members of the transferor plan.

(4) An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount no portion of which relates to an actuarial surplus;

(b) is transferred on behalf of a member in full or partial satisfaction of benefits to which the member is entitled, either absolutely or contingently, under a defined benefit provision of the plan as registered;

(c) does not exceed a prescribed amount; and

(d) is transferred directly to

(i) another registered pension plan and allocated to the member under a money purchase provision of that plan,

(ii) a registered retirement savings plan under which the member is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the member is the annuitant (within the meaning assigned by subsection 146.3(1)).

(4.1) An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is transferred in respect of the actuarial surplus under a defined benefit provision of the plan; and

(b) is transferred directly to another registered pension plan and allocated under a money purchase provision of that plan to one or more members of that plan.

(5) An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount no portion of which relates to an actuarial surplus;

(b) is transferred on behalf of an individual who is a spouse or common-law partner or former spouse or common-law partner of a member of the plan and who is entitled to the amount under a decree, order or judgment of a competent tribunal, or under a written agreement, relating to a division of property between the member and the individual in settlement of rights arising out of, or on a breakdown of, their marriage or common-law partnership; and

(c) is transferred directly to

(i) another registered pension plan for the benefit of the individual,

(ii) a registered retirement savings plan under which the individual is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the individual is the annuitant (within the meaning assigned by subsection 146.3(1)).

(6) An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount;

(b) is transferred on behalf of a member who is entitled to the amount as a return of contributions made (or deemed by regulation to have been made) by the member under a defined benefit provision of the plan before 1991, or as interest (computed at a rate not exceeding a reasonable rate) in respect of those contributions; and

(c) is transferred directly to

(i) another registered pension plan for the benefit of the member,

(ii) a registered retirement savings plan under which the member is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the member is the annuitant (within the meaning assigned by subsection 146.3(1)).

(7) An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount no portion of which relates to an actuarial surplus;

(b) is transferred on behalf of an individual who is entitled to the amount as a consequence of the death of a member of the plan and who was a spouse or

common-law partner or former spouse or common-law partner of the member at the date of the member's death; and

(c) is transferred directly to

(i) another registered pension plan for the benefit of the individual,

(ii) a registered retirement savings plan under which the individual is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the individual is the annuitant (within the meaning assigned by subsection 146.3(1)).

(7.1) An amount is transferred from a registered pension plan (in this subsection referred to as the "transferor plan") in accordance with this subsection if

(a) the amount is a single amount;

(b) the amount is transferred in respect of the surplus (as defined by regulation) under a money purchase provision (in this subsection referred to as the "former provision") of the transferor plan;

(c) the amount is transferred directly to another registered pension plan to be held in connection with a money purchase provision (in this subsection referred to as the "current provision") of the other plan;

(d) the amount is transferred in conjunction with the transfer of amounts from the former provision to the current provision on behalf of all or a significant number of members of the transferor plan whose benefits under the former provision are replaced by benefits under the current provision; and

(e) the transfer is acceptable to the Minister and the Minister has so notified the administrator of the transferor plan in writing.

(8) An amount is transferred from a registered pension plan (in this subsection referred to as the "transferor plan") in accordance with this subsection if

(a) the amount is a single amount;

(b) the amount is transferred in respect of the actuarial surplus under a defined benefit provision of the transferor plan;

(c) the amount is transferred directly to another registered pension plan to be held in connection with a money purchase provision of the other plan;

(d) the amount is transferred in conjunction with the transfer of amounts from the defined benefit provision to the money purchase provision on behalf of all or a significant number of members of the transferor plan whose benefits under the defined benefit provision are replaced by benefits under the money purchase provision; and

(e) the transfer is acceptable to the Minister and the Minister has so notified the administrator of the transferor plan in writing.

(9) Where an amount is transferred in accordance with any of subsections 147.3(1) to (8),

(a) the amount shall not, by reason only of that transfer, be included by reason of subparagraph 56(1)(a)(i) in computing the income of any taxpayer; and

(b) no deduction may be made under any provision of this Act in respect of the amount in computing the income of any taxpayer.

(10) Where, on behalf of an individual, an amount is transferred from a registered pension plan (in this subsection referred to as the “transferor plan”) to another plan or fund (in this subsection referred to as the “transferee plan”) that is a registered pension plan, a registered retirement savings plan or a registered retirement income fund and the transfer is not in accordance with any of subsections 147.3(1) to (7),

(a) the amount is deemed to have been paid from the transferor plan to the individual;

(b) subject to paragraph 147.3(10)(c), the individual shall be deemed to have paid the amount as a contribution or premium to the transferee plan; and

(c) where the transferee plan is a registered retirement income fund, for the purposes of subsection 146(5) and Part X.1, the individual shall be deemed to have paid the amount at the time of the transfer as a premium under a registered retirement savings plan under which the individual was the annuitant (within the meaning assigned by subsection 146(1)).

[17] It seems that the Appellant’s appeal position has been prompted by an experience that her husband (the Appellant’s herein representative) had had with respect to a BCE pension entitlement of his own whereby a pension related amount was paid on his account apparently without incurring issuance of a T4A slip. There was no evidence called as to the details of that, and in any event the relevance of such evidence would have been highly questionable. It is trite law that the issue in a tax appeal is to be determined on the basis of law applied to proven facts to establish whether the appealed assessment etc. is right or wrong, and in particular

absent any regard for how some other taxpayer, presuming identical circumstances, may have been or was treated.

[18] The cornerstone of the Appellant's submissions is that the subject payment was not a pension surplus. No evidence was called to support this surprising proposition - surprising for several reasons:

i. the July 17, 2012 letter as noted in detail above is replete with references to the subject payment being a "surplus" including describing the SSA as involving negotiations as to the amount and sharing of a "surplus" emanating from the BCE-RPPO;

ii. the Appellant's own counsel negotiated and signed the SSA on her behalf, the very title of which agreement is, "Surplus Sharing Agreement";

iii. on July 24, 2012 the Appellant completed, signed and subsequently submitted to BCE her four page Option Election Form (Ex. A-1), by checking off Option A on page 2 reading, "I wish to contribute $34,700 of my ***surplus*** payment to my personal RRSP." [bolding and italics added for emphasis] (In accordance with terms included in this Option Election Form the inserted estimated figure of $34,700 was ultimately revised to the Appellant's actual credited figure being the subject amount of $35,614);

iv. the said Option Election Form also required assurance that the Appellant had RRSP contribution room sufficient for receipt of the subject payment. Similarly, the Form noted at page 3 that for Option B, being the lump sum payment option, the lump sum would be paid "less applicable holding taxes". To this I say it is hardly to be expected that Option B would be taxable and Option A not.

[19] The reason why "surplus" is a key factor is because of certain provisions of the Act, as submitted by the Respondent but unreferenced in the Appellant's written submissions. (One was acknowledged in passing in the Appellant's prior oral representations at the hearing, before the requested written representations were filed and served).

[20] Section 143.7 of the Act identifies several situations involving transfer of assets from vehicle A to vehicle B that can be effectuated without any tax consequence. They are found in subsections 147.3(1) through (7).

[21] Subsection 147.3(10), set out above, provides in essence that where for an individual (thus including the Appellant), an amount is transferred from a registered pension plan (thus including BCE-RPPO) to a RRSP (thus including the Appellant's Great West Life RRSP) and the transfer is not in accordance with any of the several situations referenced in subsections 147.3(1) through (7), then per paragraph (a) the transferred amount is deemed to have been paid to the individual and per paragraph (b), subject to an inapplicable provision relating to a registered retirement income fund, that individual is deemed to have paid the amount as a contribution to his/her RRSP.

[22] And subsection 147.3(9), set out above, essentially provides that where an amount is transferred in accordance with any of subsections (1) through (8), then per paragraph (a) the amount shall not be included in income per subparagraph 56(1)(a)(i) and per paragraph (b) no deduction from income may be made under any provision of the Act in respect of the amount.

[23] The question becomes whether the herein payment is within or without any of subsections 147.3(1) through (8). Neither party raised any as being potentially applicable other than subsection 147.3(4). That provision makes relevant the question of whether the subject amount is a pension "surplus". This provision, set out above, essentially provides that an amount is transferred from a registered pension plan (such as the BCE-RPPO) to an RRSP on a tax exempt basis if *inter alia* per paragraph (a) "no portion of that amount relates to an actuarial surplus".

[24] So, in a pension context does "surplus" equate to an "actuarial surplus"? Presumably surplus means surplus to requirements and in the absence of direct evidence on this seemingly obvious point I believe I can take judicial notice that any surplus of a pension plan is determined in whole or part on an actuarial basis. Thus I do conclude that the surplus in this case is an actuarial surplus. The fact that the surplus arose through "partial wind ups" of the BCE-RPPO in 1993, 1996 and 1999 does not detract from my thinking that regardless, the BCE-RPPO assets and liabilities would have had to have been reviewed actuarially to confirm that a surplus as to needs existed and the quantum of that surplus. Importantly, distribution of the surplus amount that has been determined, amongst various and sundry past if not also present employees of BCE would still needed to be negotiated, and that would explain the need for and the existence of the negotiated SSA.

[25] The fact that consent was required of the Ontario Superintendent of Financial Services to a "surplus withdrawal application" before the SSA could be implemented is corroborative of this conclusion.

[26] Further, I cannot contemplate how a pension may have surplus other than one identified or affirmed actuarially. I am assisted in this regard by the decision of *Kidd v. Canada Life Assurance Co.*, 2013 ONSC 1868, cited by the Respondent. In the course of reasons for judgment, Perell, J. for the Ontario Superior Court had cause to consider the term "pension surplus". The dispute in this case arose from mergers of certain pension plans in 1997. A consolidated pension plan was created and the associated funds were merged into a single fund. A major issue was who owns the surplus of the consolidated pension plan. The Court at paragraph 30, stated that:

> Pension surplus is the excess value of the assets in a pension plan over the value of the liabilities, both calculated in a manner prescribed by pension laws. <u>The amount of surplus at any given time is actuarially determined under set guidelines and prescribed factors.</u> It will become important to understand that at any given time, a pension surplus is a legal fiction. A pension surplus only becomes tangible and real when trust monies calculated at a particular date or actually paid out to the owners of the surplus. [Underlining added]

[27] This finding confirms my conclusion above that a pension surplus is determined actuarially. Thus in respect of the surplus amount identified for the Appellant in this appeal, it cannot be said per paragraph 147.3(4)(a) that the $35,614 is not a transfer of, "a single amount no portion of which relates to an actuarial surplus". Restating to avoid the double negative, in my view the transfer in the Appellant's situation is a transfer of a single amount which relates to an actuarial surplus in whole or part.

[28] Thus as the subject payment as a transfer does not accord with paragraph 147.3(4), then per subsection 147.3(10), "the transfer is not in accordance with any of subsections 147.3(1) to (7)", and per paragraph (a) the amount is deemed to have been paid to the Appellant and per paragraph (b) deemed to have been a contribution to her RRSP. I note that apart from subsection 147.3(4) neither party raised any of the section 147.3 subsections (1) to (8) as being of potential application in the Appellant's circumstances. I have briefly reviewed same without noting any that obviously would apply. Subsection 147.3(4.1) does allow transfer of an actuarial surplus, but in from a registered pension plan under a defined benefit provision of that plan to another registered plan, and allocated under a

money purchase provision of that plan to one or more of its members. Those circumstances are quite different from the Appellant's.

[29] The Appellant had argued strenuously that this was not a surplus (presumably so as to not be ejected from subsection 147.3(4) by reasons of paragraph (a) thereof); this notwithstanding that all her documentation filed in evidence, including the Option Election Form that she had signed, identified the amount as precisely that - a surplus. Also, I infer from the fact the Appellant did not seek to enter in evidence the central document being the SSA that it would not have benefitted her argument. Perhaps if the Appellant does feel that the SSA is not properly reflective of the applicable circumstances then she has a matter to take up with her lawyer who represented her in negotiating the SSA.

[30] The Appellant argued that the T4A slip should not have been issued. The foregoing analysis shows why it was correctly issued - the subject amount became an amount paid to the Appellant per paragraph 147.3(1) and thus an amount to be included in income per subparagraph 56(1)(a)(C) set out above, being an amount received by the taxpayer as a "payment out of or under a specified pension plan." In this instance the pension plan was the BCE-RPPO.

[31] The Appellant also had concerns with having to pay tax because the subject payment was rightly included in 2013 income while the RRSP deduction ultimately was taken in the 2013 taxation year after initially having been claimed in the 2012 taxation year. I see no difficulty with this. Certainly some additional tax would have been owing for the 2012 year as a result of removing the RRSP deduction therefrom. It is axiomatic that for the 2013 year the RRSP deduction would completely offset the appealed addition to income for that taxation year.

[32] There is one more thing. While the Appellant has to recognize the subject payment as income it should not be overlooked that she had room to claim an RRSP deduction to completely offset that income. On the other hand if the subject payment had qualified as non-taxable within the various types of transfers encompassed by subsection 147.3 then per paragraph 147.3(9)(b) any RRSP deduction for it was prohibited. There is no residual tax difference between these two situations, except perhaps that in the former scenario, here applicable, the Appellant used up some of her RRSP contribution room, which anyway she was willing to do from the start.

[33] In contrast, the Appellant's filing position was that she could claim the RRSP deduction without at the same time having to claim the contribution

generating that deduction as income. Indeed it would be startling in the extreme were the Act to condone so one-sided an interpretation.

Conclusion:

[34] The appeal is denied, without costs in this informal procedure proceeding. The appealed reassessments for the Appellant's 2012 and 2013 taxation years are affirmed.

Signed at Quebec City, Quebec, this 8th day of January 2018.

"B. Russell"

Russell J.

CITATION:	2018TCC8
COURT FILE NO.:	2016-3676(IT)I
STYLE OF CAUSE:	SHERRY MANGAL AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	August 22, 2017
REASONS FOR JUDGMENT BY:	The Honourable Justice B. Russell
DATE OF JUDGMENT:	January 8, 2018

APPEARANCES:

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Counsel for the Respondent:	Kieran Lidhar

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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