

Federal Court



Cour fédérale

**Date: 20120604**

**Docket: T-1459-11**

**Citation: 2012 FC 683**

**Ottawa, Ontario, June 4, 2012**

**PRESENT: The Honourable Mr. Justice Scott**

**BETWEEN:**

**S. CUNARD & COMPANY LIMITED**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] This is an application pursuant to section 18.1 of the *Federal Courts Act*, RCS, 1985, c F-7, by S. Cunard & Company Limited (the Applicant) for judicial review of a decision rendered on May 7, 2010, by Ms. Barbara Toole, Assistant Director – Audit Division (Minister’s delegate), of the Canada Revenue Agency [CRA]. The decision under review denied the Applicant’s request for

a late filing of a Form T2057 under subsection 85(7.1) of the *Income Tax Act*, RSC, 1985, c 1 (5<sup>th</sup> supp) [the Act].

[2] For the following reasons, this application for judicial review is dismissed.

## **II. Facts**

[3] On June 7, 2004, the Applicant entered into a purchase and sale agreement with 612482 NB Limited (NBL) for a twenty percent interest in Irving Oil, LLC in exchange for one hundred thousand preferred shares of NBL.

[4] The purchase and sale agreement provided that the Applicant and NBL would complete the transaction on a rollover basis under subsection 85(1) of the Act. The agreement further specified, in section 4, that the parties “jointly agree to file the required election within the time and in the manner prescribed for such filing by the Act.”

[5] The transaction was completed on June 7, 2004. However, the required form containing the election to process the transaction on a rollover basis was not filed with the CRA within the prescribed delay.

[6] On June 11, 2004, the directors of 612482 NB Limited passed a resolution to voluntarily dissolve the corporation. A Certificate of Dissolution was issued by the Province of New Brunswick on July 20, 2004.

[7] On June 2, 2009, the CRA proposed a reassessment of the Applicant since the T2057 election form had not been filed as required by the Act in order to complete a tax-deferred transaction under subsection 85(1). The transaction would therefore be reassessed at its fair market value, thereby creating a taxable capital gain for the Applicant.

[8] On July 1, 2009, the Applicant wrote a letter requesting the Minister of National Revenue to accept a late-filed election as permitted under subsection 85(7.1) of the Act and in the alternative under the fairness provisions of subsection 220(3.2) of the Act.

[9] On July 8, 2009, the Applicant filed a T2057 form, pursuant to subsection 85(7.1) of the Act, with the inclusion of \$5,500.00 in penalty.

[10] The Minister's delegate advised the Applicant of her decision on May 7, 2010. She concluded that:

“After careful consideration of the facts of your request, please be advised that we are willing to accept your late filed s. 85 election dated July 06, 2009 between S. Cunard & Company Limited (Cunard) and 612482 NB Limited (NBL) pursuant to the provisions of ss. 85(7.1), on the condition that it is established that NBL has the legal capacity to execute this election notwithstanding that the Certificate of Dissolution issued regarding NBL by the Province of New Brunswick dated July 20, 2004.

In that regard, your correspondence dated November 12, 2009 indicated that legal counsel had been engaged to commence a process to revive NBL under the New Brunswick Business Corporations Act for the sole purpose of making the election under ss. 85(1) and the application under ss. 85(7.1) of the ITA. Please

provide proof of the revival of the corporation by June 07, 2010 in order that we may bring this matter to a close.

In the event that we do not receive confirmation that NBL's legal existence has been revived by the date requested above, your late filed s. 85 election will not be accepted and S. Cunard and Company Limited will be reassessed to reflect proceeds of disposition at fair market value in accordance with our Query No. 87 proposal of June 2, 2009" (see tab No 3 of the Applicant's Record).

### **III. Legislation**

[11] Relevant sections of the *Income Tax Act*, RSC, 1985, c 1 (5<sup>th</sup> supp) and the *Business Corporation Act*, SNB 1981, c B-9.1 [*Business Corporation Act*] are appended to this decision.

### **IV. Issues**

1. *What is the appropriate standard of review?*
2. *Did the Minister's delegate err in requiring that 612482 NB Limited be revived in order to accept form T2057?*

### **V. Parties' submissions**

#### **A. Applicant's position**

[12] The Applicant submits that the appropriate standard of review in this instance is correctness because the issue raised by this application rests upon an error in law committed by the Minister's delegate when she decided not to accept the late-filed election.

[13] According to the Applicant, paragraph 55 of *Dunsmuir v New Brunswick*, 2008 SCC 9, specifies three criteria to meet in order to apply the reasonableness standard. Defining the issue as one of corporate law dealing with the capacity of an authorized representative to bind a dissolved corporation the Applicant claims that the CRA does not possess a special expertise or unique interest in questions of corporate law, including questions of corporate capacity. Hence it is subject to the standard of correctness.

[14] The Applicant submits that the decision under review is erroneous because there is no necessity to revive a dissolved corporation in order for CRA to accept forms and documents completed after dissolution.

[15] According to the Applicant, there is no requirement that a T2057 form be signed personally; it may also be executed by the authorized representative of a taxpayer. To support its allegations, the Applicant relies on *Barnabe Estate v Minister of National Revenue*, [1999] 4 FC 541 [*Barnabe*], where the Federal Court of Appeal concluded that a deceased individual can file a T2057 form if an authorized representative signs the form on his behalf.

[16] It is the Applicant's position that, just as a deceased taxpayer may have an authorized representative for the purpose of completing an election form, so may a dissolved corporation. It also affirms that its proposition is consistent with the scheme of the Act. The Act contemplates that a dissolved corporation will file its final tax return up to six months after the corporation has been

dissolved, and, in these circumstances, compels an authorized representative to sign the final tax return on behalf of the corporation, specifically, paragraph 150 (1)(a) of the Act.

[17] Had the T2057 form been filed within the prescribed delay as required by subsection 85(6) of the Act, the form would have nonetheless been signed by Mr. Rod Jenkins, the authorized representative of NBL.

[18] The Applicant also relies on section 236 of the Act which reads:

**236.** A return, certificate or other document made by a corporation pursuant to this Act or a regulation shall be signed on its behalf by the President, Secretary or Treasurer of the corporation or by any other officer or person thereunto duly authorized by the Board of Directors or other governing body of the corporation.

**236.** Une déclaration, un certificat ou tout autre document fait par une société en conformité avec la présente loi ou avec son règlement doit être signé en son nom par le président, le secrétaire ou le trésorier de la société ou par tout autre cadre ou personne qui y est régulièrement autorisée par le conseil d'administration ou par tout autre organe de direction de la société.

[19] The Applicant alleges that the Minister's position leads to an absurdity. The T2057 form will not be accepted as validly executed when completed and filed by a dissolved corporation after the six months deadline provided by the Act. The Applicant asserts that nothing prevents the Minister from accepting such a duly executed form.

[20] The applicant also submits that, should the Court determine the applicable standard of review to be reasonableness, then his application should also be allowed because the Minister's

delegate decision remains unreasonable because she is applying a different standard under section 150 of the Act then under subsection 85(6).

**B. Respondent's position**

[21] The Respondent alleges that the decision under review is reasonable. The Minister's delegate reviewed all the documents presented in support of the Applicant's request. It also considered section 36 of the IT-291R3 guidelines (Transfer of Property to a Corporation under subsection 85(1)), which specify that :

“Occasionally, following a transfer of property under subsection 85(1), the corporate transferor or the transferee may be amalgamated with another corporation or liquidated. Where the corporation has been amalgamated and the relevant corporate legislation provides that the amalgamated corporation is a continuation of its predecessors, a valid subsection 85(1) election may be filed by the amalgamated corporation on behalf of its predecessors. However, where the corporation has been liquidated, the corporation has no legal existence following its dissolution. Consequently, any elections must be filed before the corporation is formally dissolved.”

[22] The Minister's delegate decided that the election would only be accepted on the condition that NBL had the legal capacity to execute the election notwithstanding its voluntary dissolution. She also noted the letter forwarded by Applicant's legal counsel indicating that procedures were being taken in order to revive NBL for the purpose of making the election (Affidavit of Barb Toole at para 11, Tab B of the Respondent's Record; see also the letter from Irving Oil Limited dated November 12, 2009, Tab F of the Applicant's Record).

[23] The decision, according to Respondent constituted a proper exercise of discretion and the Minister's delegate was not required to grant relief.

[24] In the alternative, Respondent claims that should the Court determine the applicable standard of review to be correctness, then the Minister's decision is correct in law.

[25] Pursuant to section 138 of the *Business Corporation Act*, directors of a corporation may propose the voluntary dissolution of the corporation. The corporation ceases to exist on the date shown in the certificate of dissolution. No person can bind a corporation after its dissolution unless the corporation is subsequently revived, according to the Respondent, who also submits that a director of a corporation ceases to represent the corporation on the day of its dissolution (*Aujla v Canada*, 2008 FCA 304, [2009] 3 FCR 93 at paras 14 and 26; *R v Gill* (1989), 40 BCLR (2d) 360 at page 367 (B.C. Co.Ct.)).

[26] The Respondent further contends that *Barnabe* cited above can be distinguished from the present case. The Federal Court of Appeal determined that the persons who signed the election in that case were both executors of the estate and officers of the taxable Canadian corporation. As such, the transferee's authorization was provided by "officers of the company [who] had the capacity to sign on behalf of the transferee" (see *Barnabe* cited above at para 14). In the present case, no officers had the capacity to sign on behalf of the transferee.



[27] According to the laws of New Brunswick, NBL is a voluntarily dissolved corporation. Hence, there are no “heirs, executors, liquidators of a succession, administrators or other legal representatives” of NBL as in *Barnabe* cited above.

[28] The Respondent underlines that, support for the proposition that a corporation without existence has no legal representatives can be found within the provincial legislation itself. The *Business Corporations Act* does not contain provisions enabling pre-incorporation contracts. Thus, a corporation’s existence is essential to be bound by agents or representatives performing an act on behalf of the corporation.

## **VI. Analysis**

### ***1. What is the appropriate standard of review?***

[29] The Applicant argues that there is no privative clause in the Act and that the question of law raised by this application is not central to the CRA’s jurisdiction. Consequently, the correctness standard must prevail and no deference must be awarded to the decision of the Minister’s delegate.

[30] On the other hand, the Respondent alleges that a decision pursuant to subsection 85(7.1) of the Act calls for a broad discretion on the Minister’s part. It also involves his relative expertise in the application of the statutory provisions of the Act to the facts of the case.

[31] In *Bugera v Canada (Minister of National Revenue – M.N.R.)*, 2003 FCT 392, [2003] FCJ No 553, at para 14, the Court specified that a “wide discretion is conferred on the Minister by subsection 85(7.1) of the [*Income Tax Act*]. On an application for judicial review the Court may not exercise the discretion given to the Minister. Rather, the Court may only intervene and set aside the discretionary decision under review if the decision was made in bad faith, or without regard to material facts, or on the basis of irrelevant facts, or if the decision was contrary to law” (see also *Barron v Canada (Minister of National Revenue – M.N.R.)*, [1997] FCJ No 175 at para 5).

[32] The Supreme Court of Canada, in *Smith v Alliance Pipeline Ltd*, 2011 SCC 7, [2011] 1 SCR 160 summarized the *Dunsmuir* categories.

[33] Under *Dunsmuir*, cited above, the identified categories are subject to review for either correctness or “reasonableness. The standard of correctness governs (1) a constitutional issue; (2) a question of general law “that is both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise.”(*Dunsmuir* at para 60).

[34] In the present case, the Minister’s delegate had to determine whether or not it is permitted to accept a late-filed election form on behalf of the Applicant and NBL. That decision is discretionary in nature and called for the interpretation of statutes closely connected to its function, with which it will have a particular familiarity. As corporations are often used as vehicles for fiscal purposes, it is to be expected that the CRA will have a particular familiarity with the provincial and federal Corporations Acts. Hence, the appropriate standard of review is reasonableness. The officer’s decision was discretionary in nature. It must therefore be reviewed under the reasonableness

standard (see *Dunsmuir* cited above at para 53). “In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process ... it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” [*Dunsmuir*].

**2. *Did the Minister’s delegate err in requiring that 612482 NB Limited be revived in order for the form T2057 to be validly accepted?***

[35] On November 12, 2009, Mr. Dean Mullin, a representative of the Applicant, wrote to Mr. Brian Baird to explain why the election should have been accepted by the Minister under subsection 85(7.1) of the Act. According to Mr. Mullin, the purchase agreement between the Applicant and NBL indicated the parties’ intention to apply for a section 85 rollover to the transaction and was explicitly referred to in the agreement. Mr. Mullin further indicated that he had engaged legal counsel to revive NBL for the sole purpose of making the election under subsection 85(1) of the Act.

[36] On May 7, 2010, the Minister’s delegate wrote in her decision that, in the event the CRA did not receive confirmation of the revival of the legal existence of NBL, the Applicant’s election would not be accepted and the Applicant would be reassessed in accordance with the proposal contained in Query No 87 (see Affidavit of Barb Toole at para 11, Tab B of the Respondent’s Record).

[37] No confirmation of the revival was ever provided to the CRA because a New Brunswick corporation that has voluntarily been dissolved cannot be revived.

[38] In making her decision, the Minister's delegate further considered the IT-291R3 policy statements of the CRA which stipulate that "...where the corporation has been liquidated, the corporation has no legal existence following its dissolution. Consequently, any elections must be filed before the corporation is formally dissolved".

[39] Also of relevance is Information Circular IC07-1 entitled "Taxpayer Relief Provisions" which cancelled Information Circular IC 92-1. Relevant provisions are paragraphs 56 and 57. They provide as follows:

**Acceptance of a Late, Amended, or Revoked Election**

56. A request may be accepted in the following situations:

- (a) There have been tax consequences not intended by the taxpayer, and there is evidence that the taxpayer took reasonable steps to comply with the law. This could include, for example, the situation where the taxpayer obtained a bona fide valuation for a property, but after the CRA's review the valuation was found to be not correct.
- (b) The request arises from circumstances that are clearly beyond the taxpayer's control. Such extraordinary circumstances could include natural or man-made disasters such as flood or fire; civil disturbances or disruptions in services, such as a postal strike; a serious illness or accident; or serious emotional or mental distress such as death in the immediate family.
- (c) It is evident that the taxpayer acted on incorrect information given by the CRA. This could include incorrect written replies to queries and errors in CRA publications.
- (d) The request results from what is a mechanical error. This could include using the net book value amount when obviously the

taxpayer intended to use the undepreciated capital cost or using an incorrect cost.

(e) The later accounting of the transactions by all parties is as if the election had been made, or had been made in a particular manner.

(f) The taxpayer can demonstrate that he or she was not aware of the election provision, even though they took a reasonable amount of care to comply with the law, and took remedial action as quickly as possible.

### **Denial of a Late, Amended, or Revoked Election**

57. A request will not be accepted in the following instances:

(a) It is reasonable to conclude that the taxpayer made the request for retroactive tax planning purposes. This could include taking advantage of changes to the law enacted after the due date of the election.

(b) Adequate records do not exist.

(c) It is reasonable to conclude that the taxpayer had to make the request because he or she was negligent or careless in complying with the law.

[40] Moreover, subsection 85(6) of the Act clearly states that:

85.(6) Any election under subsection 85(1) or 85(2) shall be made on or before the day that is the earliest of the days on or before which any taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred.

85.(6) Tout choix visé au paragraphe (1) ou (2) doit être fait au plus tard à la date qui survient la première parmi les dates auxquelles un contribuable faisant le choix doit, au plus tard, produire une déclaration de revenu, en application de l'article 150, pour l'année d'imposition pendant laquelle a eu lieu l'opération à laquelle se rapporte le choix.

[41] Subsection 85(7) specifies that :

(7) Where the election referred to in subsection 85(6) was not made on or before the day on or before which the election was required by that subsection to be made and that day is after May 6, 1974, the election shall be deemed to have been made on that day if, on or before the day that is 3 years after that day,

(a) the election is made in prescribed form; and

(b) an estimate of the penalty in respect of that election is paid by the taxpayer or the partnership, as the case may be, when that election is made.

(7) Lorsque le choix visé au paragraphe (6) n'a pas été fait au plus tard à la date à laquelle ou avant laquelle il devait être fait aux termes de ce paragraphe et que cette date est postérieure au 6 mai 1974, le choix est réputé avoir été fait à cette date, si, au plus tard 3 ans suivant cette date :

a) d'une part, le choix est fait selon le formulaire prescrit;

b) d'autre part, le contribuable ou la société de personnes, selon le cas, paye le montant estimatif de la pénalité relative au choix au moment où celui-ci est fait.

[42] Finally, subsection 85(7.1) stipulates that:

85.(7.1) Where, in the opinion of the Minister, the circumstances of a case are such that it would be just and equitable

(a) to permit an election under subsection 85(1) or 85(2) to be made after the day that is 3 years after the day on or before which the election was required by subsection 85(6) to be made, or

(b) to permit an election

85.(7.1) Lorsque le ministre est d'avis que les circonstances d'un cas sont telles qu'il serait juste et équitable :

a) soit de permettre qu'un choix visé au paragraphe (1) ou (2) soit fait après la fin du délai de 3 ans qui suit la date à laquelle il devait être fait au plus tard en vertu du paragraphe (6);

b) soit de permettre qu'un choix fait en vertu du

made under subsection 85(1) or 85(2) to be amended,

paragraphe (1) ou (2) soit modifié,

the election or amended election shall be deemed to have been made on the day on or before which the election was so required to be made if

le choix ou choix modifié est réputé avoir été fait au plus tard à la date à laquelle le choix devait être ainsi fait, si les conditions suivantes sont réunies :

(c) the election or amended election is made in prescribed form, and

c) le choix ou choix modifié est fait selon le formulaire prescrit;

(d) an estimate of the penalty in respect of the election or amended election is paid by the taxpayer or partnership, as the case may be, when the election or amended election is made,

d) le contribuable ou la société de personnes, selon le cas, paie le montant estimatif de la pénalité relative au choix ou choix modifié, au moment où celui-ci est fait.

and where this subsection applies to the amendment of an election, that election shall be deemed not to have been effective.

Lorsque le présent paragraphe s'applique à la modification d'un choix, celui-ci est réputé n'avoir jamais été en vigueur.

[43] It is clear for this Court that in order to fulfill the requirements of subsection 85(1), both the transferee and the transferor must make the election. Form T2057 requires both signatures, that of the transferor and that of an authorized officer of the transferee which, in the present case, is NBL.

[44] It is also well established in jurisprudence that a person cannot bind a corporation after its dissolution unless the corporation is subsequently revived (see *Biondich v Kingscroft Investments Ltd*, [2002] OJ No 4742; *Royal Bank of Canada v Starr (c.o.b. Ettmor Ltd)*, [1985] OJ No 1763).

[45] Having considered all the evidence adduced before her, the Minister's delegate reasonably determined that, due to its voluntary dissolution, NBL did not have the legal capacity of making the appropriate election under subsection 85(1) of the Act. This conclusion is consistent with paragraph 57(b) of Information Circular IC07-1 which provides that a request will not be accepted if "Adequate records do not exist". Adequate record did not exist in this case since NBL was voluntarily dissolved by its directors. "...Where the corporation has been liquidated, the corporation has no legal existence following its dissolution. Consequently, any elections must be filed before the corporation is formally dissolved" (see section 36 of IT-291R3 Guidelines (Transfer of Property to a Corporation under Subsection 85(1)). The minister's delegate followed the existing guidelines.

[46] This case is distinct from *Barnabe* cited above since there were no officers to sign on behalf of NBL.

[47] It is this Court's view that the decision under review was reasonable. The wording of subsections 85(1) and 85(2) of the Act calls for a joint election by two corporations legally capable of complying with all the provisions found in subsections 85(6), 85(7) and 85(7.1). The election had to be made in the prescribed form. In this instance it was not. One party to the transaction could not comply with the requirement notwithstanding its representation that it was taking steps to fulfill the requirement.



[48] The interpretation of the applicable provisions of section 85 by the Minister's delegate was reasonable. Section 85 does not contain a provision dispensing of the requirement to file in the prescribed form.

## **VII. Conclusion**

[49] This application for judicial review is dismissed. The Minister's decision is maintained and costs are awarded to the Respondent.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed;
2. The Minister's decision is maintained; and
3. Costs are awarded to the Respondent.

"André F.J. Scott"

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Judge

## ANNEX

**Subsections 85(1), 85(2), paragraph 150(1)a and subsection 220(3.2) of the *Income Tax Act*, RSC, 1985, c 1 (5<sup>th</sup> supp) provide as follows:**

**85.** (1) Where a taxpayer has, in a taxation year, disposed of any of the taxpayer's property that was eligible property to a taxable Canadian corporation for consideration that includes shares of the capital stock of the corporation, if the taxpayer and the corporation have jointly elected in prescribed form and in accordance with subsection 85(6), the following rules apply:

(a) the amount that the taxpayer and the corporation have agreed on in their election in respect of the property shall be deemed to be the taxpayer's proceeds of disposition of the property and the corporation's cost of the property;

(b) subject to paragraph 85(1)(c), where the amount that the taxpayer and the corporation have agreed on in their election in respect of the property is less than the fair market value, at the time of the disposition, of the consideration therefor (other than any shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer, the amount so agreed on shall, irrespective of the amount actually so agreed on by them, be deemed to be an amount equal to that fair market value;

(c) where the amount that the taxpayer and the corporation have agreed on in their election in respect of the property is greater than the fair market value, at the time of the disposition, of the property so disposed of, the amount so agreed on shall, irrespective of the amount actually so agreed on, be deemed to be an amount equal to that fair market value;

**85.** (1) Lorsqu'un contribuable a disposé, au cours d'une année d'imposition, d'un bien admissible en faveur d'une société canadienne imposable et pour une contrepartie comprenant des actions du capital-actions de la société, et que le contribuable et la société en ont fait le choix sur le formulaire prescrit et conformément au paragraphe (6), les règles suivantes s'appliquent :

a) la somme convenue entre le contribuable et la société dans le choix qu'ils ont fait relativement au bien est réputée être, pour le contribuable, le produit de disposition du bien et, pour la société, le coût du bien;

b) sous réserve de l'alinéa c), lorsque la somme convenue entre le contribuable et la société dans le choix qu'ils ont fait relativement au bien est inférieure à la juste valeur marchande, au moment de la disposition, de la contrepartie de la disposition (autre que toutes actions du capital-actions de la société ou un droit d'en recevoir), reçue par le contribuable la somme ainsi convenue est, quel qu'en soit le montant effectivement convenu entre eux, réputée être une somme égale à cette juste valeur marchande;

c) lorsque la somme convenue entre le contribuable et la société dans le choix qu'ils ont fait relativement au bien est supérieure à la juste valeur marchande, au moment de la disposition, du bien dont il a été ainsi disposé, la somme ainsi convenue est, quel qu'en soit le montant effectivement convenu entre eux, réputée être une somme égale à cette juste valeur marchande;

(*c.1*) where the property was inventory, capital property (other than depreciable property of a prescribed class), a NISA Fund No. 2 or a property that is eligible property because of paragraph 85(1.1)(*g*) or 85(1.1)(*g.1*), and the amount that the taxpayer and corporation have agreed on in their election in respect of the property is less than the lesser of

(i) the fair market value of the property at the time of the disposition, and

(ii) the cost amount to the taxpayer of the property at the time of the disposition,

the amount so agreed on shall, irrespective of the amount actually so agreed on by them, be deemed to be an amount equal to the lesser of the amounts described in subparagraphs 85(1)(*c.1*)(i) and 85(1)(*c.1*)(ii);

(*c.2*) subject to paragraphs 85(1)(*b*) and 85(1)(*c*) and notwithstanding paragraph 85(1)(*c.1*), where the taxpayer carries on a farming business the income from which is computed in accordance with the cash method and the property was inventory owned in connection with that business immediately before the particular time the property was disposed of to the corporation,

(i) the amount that the taxpayer and the corporation agreed on in their election in respect of inventory purchased by the taxpayer shall be deemed to be equal to the amount determined by the formula

$$(A \times B/C) + D$$

*c.1*) lorsque le bien était un bien à porter à l'inventaire, une immobilisation (sauf un bien amortissable d'une catégorie prescrite), un second fonds du compte de stabilisation du revenu net ou un bien qui est un bien admissible par l'effet des alinéas (1.1)*g*) ou *g.1*) et que la somme convenue entre le contribuable et la société dans le choix qu'ils ont fait relativement au bien est inférieure au moins élevé des montants suivants :

(i) la juste valeur marchande du bien au moment de la disposition,

(ii) le coût indiqué du bien, supporté par le contribuable, au moment de la disposition,

la somme ainsi convenue entre eux est, quel qu'en soit le montant effectivement convenu, réputée être égale au moins élevé des montants visés aux sous-alinéas (i) et (ii);

*c.2*) sous réserve des alinéas *b*) et *c*) et malgré l'alinéa *c.1*), lorsque le contribuable exploite une entreprise agricole dont le revenu est calculé selon la méthode de comptabilité de caisse et que le bien consistait en biens à porter à l'inventaire dont la propriété était détenue dans le cadre de cette entreprise immédiatement avant la disposition du bien en faveur de la société :

(i) la somme convenue entre le contribuable et la société dans leur choix concernant les biens à porter à l'inventaire achetés par le contribuable est réputée égale au résultat du calcul suivant :

$$(A \times B/C) + D$$

where

*A*  
is the amount that would be included because of paragraph 28(1)(c) in computing the taxpayer's income for the taxpayer's last taxation year beginning before the particular time if that year had ended immediately before the particular time,

*B*  
is the value (determined in accordance with subsection 28(1.2)) to the taxpayer immediately before the particular time of the purchased inventory in respect of which the election is made,

*C*  
is the value (determined in accordance with subsection 28(1.2)) of all of the inventory purchased by the taxpayer that was owned by the taxpayer in connection with that business immediately before the particular time, and

*D*  
is such additional amount as the taxpayer and the corporation designate in respect of the property,

(ii) for the purpose of subparagraph 28(1)(a)(i), the disposition of the property and the receipt of proceeds of disposition therefor shall be deemed to have occurred at the particular time and in the course of carrying on the business, and

(iii) where the property is owned by the corporation in connection with a farming

où :

*A*  
représente le montant qui serait inclus en application de l'alinéa 28(1)c) dans le calcul du revenu du contribuable pour sa dernière année d'imposition commençant avant la disposition si cette année se terminait immédiatement avant la disposition,

*B*  
la valeur, déterminée en conformité avec le paragraphe 28(1.2), pour le contribuable, immédiatement avant la disposition, des biens à porter à l'inventaire achetés et visés par le choix,

*C*  
la valeur, déterminée en conformité avec le paragraphe 28(1.2), de l'ensemble des biens à porter à l'inventaire du contribuable, qu'il a achetés et dont il était propriétaire dans le cadre de cette entreprise immédiatement avant la disposition,

*D*  
tout montant supplémentaire désigné par le contribuable et la société relativement au bien,

(ii) pour l'application du sous-alinéa 28(1)a)(i), la disposition du bien et la réception du produit de disposition y afférent sont réputées s'être produites au moment de la disposition dans le cadre de l'exploitation de l'entreprise,

(iii) pour l'application de l'article 28, lorsque la société est propriétaire du bien

business and the income from that business is computed in accordance with the cash method, for the purposes of section 28,

(A) an amount equal to the cost to the corporation of the property shall be deemed to have been paid by the corporation, and

(B) the corporation shall be deemed to have purchased the property for an amount equal to that cost,

at the particular time and in the course of carrying on that business;

(d) where the property was eligible capital property in respect of a business of the taxpayer and the amount that, but for this paragraph, would be the proceeds of disposition of the property is less than the least of

(i) 4/3 of the taxpayer's cumulative eligible capital in respect of the business immediately before the disposition,

(ii) the cost to the taxpayer of the property, and

(iii) the fair market value of the property at the time of the disposition,

the amount agreed on by the taxpayer and the corporation in their election in respect of the property shall, irrespective of the amount actually so agreed on by them, be deemed to be the least of the amounts described in

dans le cadre d'une entreprise agricole et que le revenu tiré de cette entreprise est calculé selon la méthode de comptabilité de caisse, les présomptions suivantes s'appliquent :

(A) un montant égal au coût du bien pour la société est réputé avoir été payé par la société au moment de la disposition et dans le cadre de l'exploitation de cette entreprise,

(B) la société est réputée avoir acheté le bien pour un montant égal à ce coût au moment de la disposition et dans le cadre de l'exploitation de cette entreprise;

d) lorsque le bien était une immobilisation admissible relativement à une entreprise du contribuable et que la somme qui, sans le présent alinéa, serait le produit de disposition de ce bien est inférieure au moins élevé des montants suivants:

(i) 4/3 du montant cumulatif des immobilisations admissibles du contribuable au titre de l'entreprise immédiatement avant la disposition,

(ii) le coût du bien supporté par le contribuable,

(iii) la juste valeur marchande du bien au moment de la disposition,

la somme convenue entre le contribuable et la société dans le choix qu'ils ont fait relativement au bien est, quel qu'en soit le montant effectivement convenu entre eux,

subparagraphs 85(1)(d)(i) to 85(1)(d)(iii);

*(d.1)* for the purpose of determining after the time of the disposition the amount to be included under paragraph 14(1)(b) in computing the corporation's income, there shall be added to the amount otherwise determined for Q in the definition "*cumulative eligible capital*" in subsection 14(5) the amount determined by the formula

$$(A \times B/C) - 2(D - E)$$

Where

*A*  
is the amount, if any, determined for Q in that definition in respect of the taxpayer's business immediately before the time of the disposition,

*B*  
is the fair market value immediately before that time of the eligible capital property disposed of to the corporation by the taxpayer,

*C*  
is the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business,

*D*  
is the amount, if any, that would be included under subsection 14(1) in computing the taxpayer's income as a result of the disposition if the values determined for C and D in paragraph 14(1)(b) were zero, and

réputée être égale au moins élevé des montants visés aux sous-alinéas (i) à (iii);

*d.1)* pour calculer, après la disposition, le montant à inclure, en application de l'alinéa 14(1)*b*), dans le calcul du revenu de la société, le résultat du calcul suivant est ajouté au montant représentant par ailleurs l'élément Q de la formule applicable figurant à la définition de « *montant cumulatif des immobilisations admissibles* » au paragraphe 14(5):

$$(A \times B/C) - 2(D - E)$$

où :

*A*  
représente cet élément, déterminé relativement à l'entreprise du contribuable immédiatement avant la disposition,

*B*  
la juste valeur marchande, immédiatement avant la disposition, de l'immobilisation admissible dont le contribuable a disposé en faveur de la société,

*C*  
la juste valeur marchande, immédiatement avant la disposition, de l'ensemble des immobilisations admissibles du contribuable relativement à l'entreprise,

*D*  
le montant qui serait inclus, en application du paragraphe 14(1), dans le calcul du revenu du contribuable par suite de la disposition si la valeur des éléments C et D de la formule figurant à l'alinéa 14(1)*b*) était nulle,

*E*

is the amount, if any, that would be included under subsection 14(1) in computing the taxpayer's income as a result of the disposition if the value determined for D in paragraph 14(1)(b) were zero;

(e) where the property was depreciable property of a prescribed class of the taxpayer and the amount that, but for this paragraph, would be the proceeds of disposition thereof is less than the least of

(i) the undepreciated capital cost to the taxpayer of all property of that class immediately before the disposition,

(ii) the cost to the taxpayer of the property, and

(iii) the fair market value of the property at the time of the disposition,

the amount agreed on by the taxpayer and the corporation in their election in respect of the property shall, irrespective of the amount actually so agreed on by them, be deemed to be the least of the amounts described in subparagraphs 85(1)(e)(i) to 85(1)(e)(iii);

(e.1) where two or more properties, each of which is a property described in paragraph 85(1)(d) or each of which is a property described in paragraph 85(1)(e), are disposed of at the same time, paragraph 85(1)(d) or 85(1)(e), as the case may be, applies as if each property so disposed of had been separately disposed of in the order designated by the taxpayer before the time referred to in subsection 85(6) for the filing of an election in respect of those properties or, if the taxpayer

*E*

le montant qui serait inclus, en application du paragraphe 14(1), dans le calcul du revenu du contribuable par suite de la disposition si la valeur de l'élément D de la formule figurant à l'alinéa 14(1)(b) était nulle;

e) lorsque le bien était un bien amortissable d'une catégorie prescrite appartenant au contribuable et que la somme qui constituerait, sans le présent alinéa, le produit de disposition de ce bien est inférieure au moins élevé des montants suivants :

(i) la fraction non amortie du coût en capital que le contribuable a supporté de tous les biens de cette catégorie immédiatement avant la disposition,

(ii) le coût du bien supporté par le contribuable,

(iii) la juste valeur marchande du bien au moment de la disposition,

la somme convenue entre le contribuable et la société dans le choix qu'ils ont fait relativement au bien est, quel qu'en soit le montant effectivement convenu ainsi entre eux, réputée être égale au moins élevé des montants visés aux sous-alinéas (i) à (iii);

e.1) lorsqu'il est disposé en même temps de plusieurs biens qui sont tous des biens visés à l'alinéa d) ou tous des biens visés à l'alinéa e), l'alinéa d) ou e), selon le cas, s'applique comme s'il avait été disposé de chacun d'eux séparément, dans l'ordre désigné par le contribuable avant le moment fixé au paragraphe (6) pour la présentation d'un choix à l'égard de ces biens ou, si le contribuable n'a pas ainsi désigné cet ordre, dans l'ordre désigné par



does not so designate any such order, in the order designated by the Minister;

(*e.2*) where the fair market value of the property immediately before the disposition exceeds the greater of

(i) the fair market value, immediately after the disposition, of the consideration received by the taxpayer for the property disposed of by the taxpayer, and

(ii) the amount that the taxpayer and the corporation have agreed on in their election in respect of the property, determined without reference to this paragraph,

and it is reasonable to regard any part of the excess as a benefit that the taxpayer desired to have conferred on a person related to the taxpayer (other than a corporation that was a wholly owned corporation of the taxpayer immediately after the disposition), the amount that the taxpayer and the corporation agreed on in their election in respect of the property shall, regardless of the amount actually so agreed on by them, be deemed (except for the purposes of paragraphs 85(1)(*g*) and 85(1)(*h*)) to be an amount equal to the total of the amount referred to in subparagraph 85(1)(*e.2*)(ii) and that part of the excess;

(*e.3*) where, under any of paragraphs 85(1)(*c.1*), 85(1)(*d*) and 85(1)(*e*), the amount that the taxpayer and the corporation have agreed on in their election in respect of the property (in this paragraph referred to as “the elected amount”) would be deemed to be an amount that is greater or less than the amount that would be deemed, subject to paragraph 85(1)(*c*), to be the elected amount under paragraph 85(1)(*b*), the elected amount shall be deemed to be the greater of

le ministre;

*e.2*) en cas d'excédent de la juste valeur marchande du bien immédiatement avant la disposition sur le plus élevé des montants suivants :

(i) la juste valeur marchande, immédiatement après la disposition, de la contrepartie reçue par le contribuable pour le bien dont il a disposé,

(ii) la somme convenue entre le contribuable et la société dans le choix qu'ils ont fait relativement au bien, déterminée compte non tenu du présent alinéa,

s'il est raisonnable de considérer une partie de cet excédent comme un avantage que le contribuable a voulu conférer à une personne qui lui est liée, à l'exclusion d'une société qui est une filiale à cent pour cent du contribuable immédiatement après la disposition, la somme convenue entre le contribuable et la société dans le choix qu'ils ont fait relativement au bien est, quelle que soit la somme effectivement convenue, réputée, sauf pour l'application des alinéas *g*) et *h*), être le total de la somme effectivement convenue et de cette partie de l'excédent;

*e.3*) lorsque, en vertu de l'un des alinéas *c.1*), *d*) et *e*), la somme convenue entre le contribuable et la société dans le choix qu'ils ont fait relativement au bien (appelée « la somme choisie » au présent alinéa) serait réputée être supérieure ou inférieure à celle qui serait réputée, sous réserve de l'alinéa *c*), être la somme choisie en vertu de l'alinéa *b*), la somme choisie est réputée être égale au plus élevé des montants suivants :

(i) the amount deemed by paragraph 85(1)(c.1), 85(1)(d) or 85(1)(e), as the case may be, to be the elected amount, and

(ii) the amount deemed by paragraph 85(1)(b) to be the elected amount;

(e.4) where

(i) the property is depreciable property of a prescribed class of the taxpayer and is a passenger vehicle the cost to the taxpayer of which was more than \$20,000 or such other amount as may be prescribed, and

(ii) the taxpayer and the corporation do not deal at arm's length,

the amount that the taxpayer and the corporation have agreed on in their election in respect of the property shall be deemed to be an amount equal to the undepreciated capital cost to the taxpayer of the class immediately before the disposition, except that, for the purposes of subsection 6(2), the cost to the corporation of the vehicle shall be deemed to be an amount equal to its fair market value immediately before the disposition;

(f) the cost to the taxpayer of any particular property (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer as consideration for the disposition shall be deemed to be an amount equal to the lesser of

(i) the fair market value of the particular property at the time of the disposition, and

(ii) that proportion of the fair market value, at the time of the disposition, of the property disposed of by the taxpayer to the corporation that

(i) la somme réputée, par l'alinéa c.1), d) ou e), selon le cas, être la somme choisie,

(ii) la somme réputée, par l'alinéa b), être la somme choisie;

e.4) si le bien est un bien amortissable d'une catégorie prescrite du contribuable et une voiture de tourisme dont le coût, pour le contribuable, est supérieur à 20 000 \$ ou au montant qui peut être fixé par règlement et si le contribuable et la société ont un lien de dépendance, la somme convenue entre le contribuable et la société dans le choix qu'ils ont fait relativement au bien est réputée être un montant égal à la fraction non amortie du coût en capital de la catégorie, pour le contribuable, juste avant la disposition; toutefois, pour l'application du paragraphe 6(2), le coût de la voiture pour la société est réputé égal à sa juste valeur marchande juste avant la disposition;

f) le coût, supporté par le contribuable, d'un bien particulier (autre que des actions du capital-actions de la société ou le droit d'en recevoir) qu'il a reçu en contrepartie de la disposition, est réputé être égal au moins élevé des montants suivants :

(i) la juste valeur marchande du bien particulier au moment de la disposition,

(ii) la fraction de la juste valeur marchande, au moment de la disposition, du bien dont le contribuable a disposé en faveur de la société, représentée par le

rapport entre :

(A) the amount determined under subparagraph 85(1)(f)(i) is of

(A) d'une part, le montant déterminé en vertu du sous-alinéa (i),

(B) the fair market value, at the time of the disposition, of all properties (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer as consideration for the disposition;

(B) d'autre part, la juste valeur marchande, au moment de la disposition, des biens (autres que des actions du capital-actions de la société ou le droit d'en recevoir) que le contribuable a reçus en contrepartie de la disposition;

(g) the cost to the taxpayer of any preferred shares of any class of the capital stock of the corporation receivable by the taxpayer as consideration for the disposition shall be deemed to be the lesser of the fair market value of those shares immediately after the disposition and that proportion of the amount, if any, by which the proceeds of the disposition exceed the fair market value of the consideration (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer for the disposition, that

g) le coût supporté par le contribuable de toutes catégories d'actions privilégiées du capital-actions de la société qu'il doit recevoir en contrepartie de la disposition est réputé être le moins élevé des montants suivants : la juste valeur marchande de ces actions immédiatement après la disposition et la fraction de l'excédent éventuel du produit de disposition sur la juste valeur marchande de la contrepartie (autre que des actions du capital-actions de la société ou le droit d'en recevoir) qu'il a reçue pour la disposition représentée par le rapport entre :

(i) the fair market value, immediately after the disposition, of those preferred shares of that class,

(i) d'une part, la juste valeur marchande, immédiatement après la disposition, de ces actions privilégiées de cette catégorie,

is of

(ii) the fair market value, immediately after the disposition, of all preferred shares of the capital stock of the corporation receivable by the taxpayer as consideration for the disposition;

(ii) d'autre part, la juste valeur marchande, immédiatement après la disposition, de toutes les actions privilégiées du capital-actions de la société que le contribuable doit recevoir en contrepartie de la disposition;

(h) the cost to the taxpayer of any common shares of any class of the capital stock of the corporation receivable by the taxpayer as consideration for the disposition shall be deemed to be that proportion of the amount, if any, by which the proceeds of the disposition exceed the total of the fair market value, at the time of the disposition, of the consideration (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer for the disposition and the cost to the taxpayer of all preferred shares of the capital stock of the corporation receivable by the taxpayer as consideration for the disposition, that

(i) the fair market value, immediately after the disposition, of those common shares of that class,

is of

(ii) the fair market value, immediately after the disposition, of all common shares of the capital stock of the corporation receivable by the taxpayer as consideration for the disposition; and

(i) where the property so disposed of is taxable Canadian property of the taxpayer, all of the shares of the capital stock of the Canadian corporation received by the taxpayer as consideration for the property are deemed to be, at any time that is within 60 months after the disposition, taxable Canadian property of the taxpayer.

**85. (2) Where**

(a) a partnership has disposed, to a taxable Canadian corporation for consideration that includes shares of the corporation's capital stock, of any partnership property that was

h) le coût supporté par le contribuable de toutes catégories d'actions ordinaires du capital-actions de la société qu'il doit recevoir en contrepartie de la disposition est réputé être la fraction de l'excédent éventuel du produit de disposition sur le total de la juste valeur marchande, au moment de la disposition, de la contrepartie (autre que des actions du capital-actions de la société ou le droit d'en recevoir) qu'il a reçue pour la disposition et du coût que le contribuable a supporté pour toutes les actions privilégiées du capital-actions de la société qu'il doit recevoir en contrepartie de la disposition, représentée par le rapport entre :

(i) d'une part, la juste valeur marchande, immédiatement après la disposition, de ces actions ordinaires de cette catégorie,

(ii) d'autre part, la juste valeur marchande, immédiatement après la disposition, de toutes les actions ordinaires du capital-actions de la société qu'il doit recevoir en contrepartie de la disposition;

i) lorsque le bien dont il a été ainsi disposé est un bien canadien imposable du contribuable, la totalité des actions du capital-actions de la société canadienne qu'il a reçues en contrepartie du bien sont réputées être, à tout moment de la période de 60 mois suivant la disposition, des biens canadiens imposables lui appartenant.

**85. (2) Dans le cas où:**

a) d'une part, une société de personnes a disposé, en faveur d'une société canadienne imposable et pour une contrepartie qui comprend des actions du capital-actions de

celle-ci, d'un de ses biens, à savoir :

(i) a capital property (other than real property, or an interest in or an option in respect of real property, where the partnership was not a Canadian partnership at the time of the disposition),

(i) une immobilisation (sauf un bien immeuble, ou un droit ou une option y afférent, si la société de personnes n'était pas une société de personnes canadienne au moment de la disposition),

(ii) a property described in any of paragraphs 85(1.1)(c) to 85(1.1)(f), or

(ii) un bien visé à l'un des alinéas (1.1)c) à f),

(iii) a property that would be described in paragraph 85(1.1)(g) or 85(1.1)(g.1) if the references in those paragraphs to "taxpayer" were read as "partnership", and

(iii) un bien qui serait visé aux alinéas (1.1)g) ou g.1) si les mentions de « contribuable », à ces alinéas, étaient remplacées par « société de personnes », avec les adaptations nécessaires;

(b) the corporation and all the members of the partnership have jointly so elected, in prescribed form and within the time referred to in subsection 85(6),

b) d'autre part, la société et tous les associés de la société de personnes ont conjointement choisi ainsi relativement à la disposition, selon le formulaire prescrit et dans le délai mentionné au paragraphe (6),

paragraphs 85(1)(a) to 85(1)(i) are applicable, with such modifications as the circumstances require, in respect of the disposition as if the partnership were a taxpayer resident in Canada who had disposed of the property to the corporation.

les alinéas (1)a) à i) s'appliquent, avec les adaptations nécessaires, à la disposition, comme si la société de personnes était un contribuable résidant au Canada qui aurait disposé du bien en faveur de la société.

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

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

## Corporations

## Sociétés

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

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

(i) at any time in the year the corporation

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

(A) is resident in Canada,

(A) la société réside au Canada,

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

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

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

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

(D) disposes of a taxable Canadian property (otherwise than in an excluded disposition), or

(D) elle dispose d'un bien canadien imposable (autrement que par suite d'une disposition exclue),

(ii) tax under this Part

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

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

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

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

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

**220.** (3.2) The Minister may extend the time for making an election or grant permission to amend or revoke an election if

**220.** (3.2) Le ministre peut, en ce qui concerne un choix prévu par une disposition visée par règlement, proroger le délai pour faire le choix ou permettre la modification ou l'annulation du choix si les conditions suivantes sont réunies :

(a) the election was otherwise required to be made by a taxpayer or by a partnership, under a prescribed provision, on or before a day in a taxation year of the taxpayer (or in the case of a partnership, a fiscal period of the partnership); and

a) le choix devait être fait par ailleurs par un contribuable ou une société de personnes au plus tard un jour donné d'une de ses années d'imposition ou d'un de ses exercices, selon le cas;

(b) the taxpayer or the partnership applies, on

b) le contribuable ou la société de

or before the day that is ten calendar years after the end of the taxation year or the fiscal period, to the Minister for that extension or permission.

personnes demande au ministre, au plus tard le jour qui suit de dix années civiles la fin de l'année d'imposition ou de l'exercice, de proroger le choix ou d'en permettre la modification ou la révocation.

**Section 138 of the *Business Corporation Act*, SNB 1981, c B-9.1 provides as follows:**

138(1)The directors may propose the voluntary liquidation and dissolution of a corporation.

138(1)Les administrateurs peuvent proposer la liquidation et la dissolution volontaires d'une corporation.

138(2)Notice of any meeting of shareholders at which voluntary liquidation and dissolution is to be proposed shall set out the terms thereof.

138(2)L'avis de convocation d'une assemblée d'actionnaires qui doit statuer sur la proposition de liquidation et de dissolution volontaires doit en exposer les modalités.

138(3)A corporation may be liquidated and dissolved by special resolution of the shareholders ratifying a proposal by the directors, and, where the corporation has issued more than one class of shares, special resolutions of the holders of each class, whether or not they are otherwise entitled to vote, shall be required ratifying such directors' proposal.

138(3)Une corporation peut être liquidée ou dissoute par résolution spéciale des actionnaires ratifiant une proposition des administrateurs ou lorsqu'il s'agit d'une corporation qui a émis plusieurs catégories d'actions, par résolutions spéciales des détenteurs de chaque catégorie d'actions assorties ou non du droit de vote, ratifiant la proposition des administrateurs de telles actions.

138(4)A statement of intent to dissolve in prescribed form shall be sent to the Director.

138(4)Une déclaration d'intention de dissolution, en la forme prescrite, doit être envoyée au Directeur.

138(5)Upon receipt of a statement of intent to dissolve, the Director shall issue a certificate of intent to dissolve.

138(5)Sur réception d'une déclaration d'intention de dissolution, le Directeur délivre un certificat d'intention de dissolution.

138(6)Upon issue of a certificate of intent to dissolve, the corporation shall cease to carry on business except to the extent necessary for the liquidation, but its corporate existence continues until the Director issues a certificate of dissolution.

138(6)Dès la délivrance d'un certificat d'intention de dissolution, la corporation doit cesser toute activité, sauf dans la mesure nécessaire à la liquidation, mais l'existence même de la corporation ne cesse qu'au moment où le Directeur délivre le certificat de dissolution.

138(7) After issue of a certificate of intent to dissolve, the corporation shall

(a) immediately cause notice thereof to be sent or delivered to each known creditor of the corporation;

(b) forthwith publish notice thereof once a week for four consecutive weeks in a newspaper published or distributed in the place where the corporation has its registered office and take reasonable steps to give notice thereof in each province in Canada where the corporation was carrying on business at the time it sent the statement of intent to dissolve to the Director;

(c) proceed to collect its property, to dispose of properties that are not to be distributed in kind to its shareholders, to discharge all its obligations and to do all other acts required to liquidate its business; and

(d) after giving the notice required under paragraphs (a) and (b) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property, either in money or in kind, among its shareholders according to their respective rights.

138(8) The Director or any interested person may, at any time during the liquidation of a corporation, apply to the Court for an order that the liquidation be continued under the supervision of the Court as provided in this Part, and upon such application the Court may so order and make any further order it thinks fit.

138(9) An applicant under this section shall give the Director notice of the application, and the Director is entitled to appear and be

138(7) À la suite de la délivrance du certificat d'intention de dissolution, la corporation doit :

a) immédiatement en faire envoyer ou délivrer avis à chaque créancier connu de la corporation;

b) publier sans délai un avis, une fois par semaine pendant quatre semaines consécutives, dans un journal publié ou diffusé au lieu de son bureau enregistré et prendre toute disposition raisonnable pour en donner avis dans chaque province du Canada où la corporation exerçait son activité au moment de l'envoi au Directeur de la déclaration d'intention de dissolution;

c) procéder à recouvrer ses biens, à disposer des biens non destinés à être répartis en nature entre ses actionnaires et à honorer ses obligations et à accomplir tous autres actes requis pour liquider son activité; et

d) après avoir donné les avis exigés aux alinéas a) et b) et constitué une provision suffisante pour honorer toutes ses obligations ou s'en acquitter, répartir le reliquat de l'actif, en argent ou en nature, entre les actionnaires, selon leurs droits respectifs.

138(8) Le Directeur ou toute personne intéressée peut, à tout moment, au cours de la liquidation de la corporation, demander à la Cour de rendre une ordonnance décidant que la liquidation sera poursuivie sous la surveillance de la Cour conformément à la présente Partie, et sur telle demande, la Cour peut l'ordonner et rendre toute autre ordonnance pertinente.

138(9) Une personne qui fait la demande en vertu du présent article doit en donner avis au Directeur et celui-ci a le droit de comparaître et



heard in person or by counsel.

138(10) At any time after issue of a certificate of intent to dissolve and before issue of a certificate of dissolution, a certificate of intent to dissolve may be revoked by sending to the Director a statement of revocation of intent to dissolve in prescribed form, if such revocation is approved in the same manner as the resolution under subsection (3).

138(11) Upon receipt of a statement of revocation of intent to dissolve, the Director shall issue a certificate of revocation of intent to dissolve.

138(12) On the date shown in the certificate of revocation of intent to dissolve, the revocation is effective and the corporation may again carry on its business or businesses.

138(13) If a certificate of intent to dissolve has not been revoked and the corporation has complied with subsection (7), the corporation shall prepare articles of dissolution.

138(14) Articles of dissolution in prescribed form shall be sent to the Director.

138(15) Upon receipt of articles of dissolution, the Director shall issue a certificate of dissolution.

138(16) The corporation ceases to exist on the date shown in the certificate of dissolution.

de se faire entendre en personne ou par avocat.

138(10) Un certificat d'intention de dissolution peut, à tout moment, entre la date de son émission et la date de celle du certificat de dissolution, être révoqué sur envoi au Directeur d'une déclaration de renonciation d'intention de dissolution en la forme prescrite, si une telle révocation est approuvée de la même manière que la résolution prévue au paragraphe (3).

138(11) Sur réception de la déclaration de renonciation d'intention de dissolution, le Directeur doit délivrer un certificat de renonciation d'intention de dissolution.

138(12) Le certificat de renonciation d'intention de dissolution prend effet à la date qui y figure et la corporation peut dès lors continuer à exercer son ou ses activités.

138(13) En l'absence de renonciation d'intention de dissolution, la corporation, après avoir observé le paragraphe (7), doit rédiger les statuts de dissolution.

138(14) Les statuts de dissolution, en la forme prescrite, doivent être envoyés au Directeur.

138(15) Sur réception des statuts de dissolution, le Directeur doit délivrer un certificat de dissolution.

138(16) La corporation cesse d'exister à la date figurant sur le certificat de dissolution.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1459-11

**STYLE OF CAUSE:** S. CUNARD & COMPANY LIMITED  
v  
ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** Halifax, Nova Scotia

**DATE OF HEARING:** April 11, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** SCOTT J.

**DATED:** June 4, 2012

**APPEARANCES:**

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