

Federal Court



Cour fédérale

Date: 20130215

Docket: T-404-11

Citation: 2013 FC 158

[UNREVISED ENGLISH CERTIFIED TRANSLATION]
Ottawa, Ontario, February 15, 2013

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

MARTINE PAQUET

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by the Canada Revenue Agency (the Agency) to refuse to credit the applicant for tax deducted at source. The decision was recommended by an Agency representative on April 14, 2009, and implemented through the applicant's notice of assessment dated June 11, 2009. For the following reasons, the application for judicial review will be dismissed.

I. Factual background

[2] Martine Paquet (the applicant) allegedly worked for 3978834 Canada Inc. throughout 2006, performing the duties of a representative for a real estate development project. She alleges that she worked Monday to Sunday, inclusively, from noon to 5:00 p.m. and by appointment, selling family units in the project. The applicant was paid a gross weekly salary of \$500 plus a 5.5% commission on sales, for a total employment income of \$175,000.08 in 2006 (Applicant's Record, p 20). The applicant states that the commissions and wages were paid irregularly but that the taxes payable were withheld. The applicant's employer, 3978834 Canada Inc., allegedly withheld \$33,592.08 in source deductions for the year 2006 (Applicant's Record, Amended Detailed Affidavit of Martine Paquet, pp 13 and 20).

[3] The applicant submitted her 2006 income tax return in August 2008 (Respondent's Record, p 28). The Agency's computer system detected an anomaly in the income tax return filed by the applicant for the 2006 taxation year, specifically, the fact that the information appearing on the T4 slip issued by 3978834 Canada Inc. and enclosed with the applicant's tax return did not appear in the Agency's computer system. It was impossible to match up the information provided by the applicant and her employer. After the anomaly was detected, the applicant's file was assigned to Francine Lamarche, a senior examiner at the Agency, on September 14, 2008. The examiner had to verify why the T4 slip submitted by the applicant for the 2006 taxation year was not in the Agency's computer system and determine whether the Agency could rely on the information appearing on the slip in question (Respondent's Record, Affidavit of Francine Lamarche, pp 1-2).

[4] The Agency's computer system also revealed that the T4 slip filed by the applicant was not recorded under 3978834 Canada Inc.'s business number, whereas the T4 slips for other employees of the same company did appear in the computer system (Respondent's Record, Exhibit B of the Affidavit of Francine Lamarche, p 16).

[5] When she reviewed the applicant's file, the Agency examiner obtained the following information using the Agency's computer system:

- a. the applicant's spouse was Gaston Therrien, the director of 3978834 Canada Inc. from 1998 to 2004;
- b. the applicant reported that she was separated during the 2005 and 2006 taxation years;
- c. 3978834 Canada Inc. did not issue any T4 information slips over \$49,038 for the 2006 taxation year or for previous years;
- d. the employee contributions to the Quebec Pension Plan (QPP) and the Quebec Parental Insurance Plan (QPIP) stated on the applicant's T4 slip for 2006 were incorrect;
- e. the most recent financial statements filed with the Agency by 3978834 Canada Inc. covered the period from February 1, 2003, to January 31, 2004;
- f. the applicant did not work for 3978834 Canada Inc. in the taxation years prior to 2006.

(Respondent's Record, Affidavit of Francine Lamarche, p 5)

[6] The Agency examiner was of the opinion that this information was insufficient to determine whether it was possible to rely on the information appearing on the T4 slip that the applicant had submitted with her tax return, particularly the deductions at source appearing on the T4 slip. On September 18, 2008, the Agency examiner sent the applicant a letter asking her to provide supporting information for the figures reported on her T4 slip, namely:

[TRANSLATION]

- a. the name of the payer;
- b. the payer's address and telephone number;
- c. the dates during which she worked in this job in 2006;
- d. copies of paystubs for 2006 or any other documentation that could substantiate the income tax deducted at source;
- e. the duties she performed;
- f. the number of people who were working for this employer in 2006.

(Respondent's Record, Affidavit of Francine Lamarche, Exhibit E, pp 32-33)

[7] The applicant responded by a letter dated September 25, 2008, providing the following information:

[TRANSLATION]

- a. 3978834 Canada Inc.;
- b. 454 St-Paul Street, Le Gardeur, Quebec, J5Z 4C7 (Tel.: 450-582-4811);
- c. 2006;
- d. See attached T4 and Relevé 1;
- e. Representative;
- f. Approximately five or six persons (It would be better if you asked the company yourself).

(Respondent's Record, Affidavit de Francine Lamarche, Exhibit F, p 35)

[8] The Agency examiner found this information to be insufficient and therefore telephoned the applicant on September 29, 2008, and left her a message. When the applicant failed to return

the call, the Agency examiner sent the applicant a second letter, dated November 4, 2008, asking for the name of the company's owner, a copy of her paystubs for 2006, the payment method used by her employer, a copy of her Record of Employment and copies of banking transactions showing the deposits of her pay.

[9] By a letter dated November 27, 2008, the applicant stated that the company's owner was Gaston Therrien, that she had been paid by cheque and that the copies of her paystubs, her Record of Employment and the banking transactions were unavailable. The Agency examiner was of the opinion that this information was still not enough to validate the fact that she had worked for the employer in question and that she had received wages from which deductions at source had been made.

[10] On December 2, 2008, the Agency examiner sent a round-trip memorandum to the Trust Accounts Compliance Section (the Section) to warn them that the T4 slip issued by 3978834 Canada Inc. for the applicant did not appear in the Agency's computer system. According to the respondent, this memorandum was also sent so that the Section could perform other checks, if they were willing and able, concerning the T4 slip in question. The examiner also asked the Section to notify her if they decided to accept the information on the T4 slip. According to the Agency examiner, at that time, nothing was credited to the deduction at source account for 3978834 Canada Inc., meaning that there [TRANSLATION] "was no money to cover the amounts on the [T4] issued by Ms. Paquet" (Applicant's Record, Examination of Francine Lamarche, p 73).

[11] Since she still had not heard back from the Section, on April 14, 2009, the Agency examiner closed the applicant's file in order to make the initial assessment for the 2006 taxation year. The Agency examiner allegedly recommended to the Confidence Validity Section that they not rely on the deductions on the applicant's T4 slip because the deductions at source could not be validated. The Agency examiner sent the applicant a letter explaining this and notifying the applicant that if she provided documentation clearly showing that the deductions at source had been made, her return would be reassessed and possibly adjusted.

[12] On May 27, 2009, the Agency examiner had a telephone conversation with Gaston Therrien, 3978834 Canada Inc.'s president, who stated that he had sent the Agency information concerning the company's employees, that the company's remittances were not up to date and that the applicant worked as a sales and sales support representative. He told the Agency examiner that he would send the documents by fax, but he never did.

[13] It is alleged that it was through the respondent's requests for supporting information that the applicant learned that her employer, 3978834 Canada Inc., had failed to remit to the authorities the sums supposedly deducted at source (Applicant's Record, Amended Detailed Affidavit of Martine Paquet, p 13). It is further alleged that collection action was taken against 3978834 Canada Inc. to recover the sums deducted at source, sums that correspond to the amounts that the Agency is claiming from the applicant (Applicant's Record, Amended Detailed Affidavit of Gaston Therrien, p 27).

[14] In his amended detailed affidavit, the president of 3978834 Canada Inc. filed the T4 slips for his twelve (12) employees for 2006, stating a total of more than \$66,000 in deductions at source (Applicant's Record, pp 36-41).

[15] An order of Prothonotary Morneau dated August 2, 2011, allowed the applicant to file a supplementary affidavit from the representative of 3978834 Canada Inc., as well as a report on the employer's deductions and contributions, the T4 summary and the 2006 year-end report for 3978834 Canada Inc. The prothonotary found that the documents met the four (4) criteria set out in *Atlantic Engraving Ltd v Lapointe Rosenstein*, 2002 FCA 503, 299 NR 244. The same order also gave the applicant the opportunity to file a reply affidavit. In this supplementary affidavit, the representative of 3978834 Canada Inc. states that the company sent the T4 summary to the tax authorities at the end of February 2007 (Applicant's Record, Supplementary Detailed Affidavit of Gaston Therrien, p 42 and Exhibit 3). He also provided a summary report on the employer's deductions and contributions for all of the company's employees, which report indicates a total of more than \$66,000 in income tax deducted at source for the twelve (12) employees (Applicant's Record, Supplementary Detailed Affidavit of Gaston Therrien, Exhibit 4, p 48). The representative of 3978834 Canada Inc. also stated that the applicant was the only employee whose T4 slip was not accepted by the tax authorities (Applicant's Record, Supplementary Detailed Affidavit of Gaston Therrien, p 42).

II. Impugned decision

[16] The Agency refused to credit the applicant for deductions at source that had allegedly been made by her employer. This decision was implemented in the notice of assessment dated

June 11, 2009 (Applicant's Record, pp 6-8). The notice of assessment states that the applicant owes the sum of \$45,063, which includes a penalty for late filing and interest on the arrears. The assessment summary states that the applicant's taxable income is \$175,000, with \$39,305 in net federal tax payable and \$0 in total tax deducted. The applicant is challenging the Agency's decision to assess the total tax deducted as \$0.

III. Issue

[17] This application for judicial review raises the following issue: Was the Agency's decision not to credit the applicant for the amounts allegedly deducted from her pay in 2006 reasonable?

IV. Statutory provisions

[18] The provisions of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [the Act] and the *Income Tax Regulations*, CRC, c 945 [the Regulations] that are relevant to the present case are reproduced in an appendix to these reasons.

V. Standard of review

[19] The parties agree—and the Court concurs with their view—that this matter is a question of mixed fact and law and that the applicable standard of review would then be reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]).

[20] The Agency's decision must therefore be reviewed on the standard of reasonableness. Accordingly, the Court will consider whether the decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law and whether the

decision was justified, transparent and intelligible within the decision-making process (*Dunsmuir*, above at para 47).

VI. Arguments

A. *The applicant*

[21] The applicant argues that the Agency's decision not to credit her for the sums allegedly deducted at source from her pay was unjustified in the circumstances. According to the applicant, she should not be punished for the employer's filing failures that allegedly prevented the Agency from matching up the data in its computer system. The applicant is of the opinion that the inability to match up the data that the employer must file with the information that she provided should not result in her not being credited for the amounts deducted at source. The applicant further argues that her employer did indeed file the various federal and provincial forms for 2006, for each and every one of its employees.

[22] The applicant states that she answered the Agency's requests for information to the best of her knowledge. According to the applicant, the respondent should have waited for an answer to the round-trip memorandum that had been sent to the Section. The applicant is of the opinion that the Section could have done more checks concerning the T4 slip issued in her case and that closing her file on April 14, 2009, without having received an answer from the Section.

[23] According to the applicant, the Agency representative should have checked with other employees of 3978834 Canada Inc. to verify that the applicant did indeed work there. The applicant argues that the Agency placed the onus on her to file documentation that 3978834

Canada Inc. should have provided, when it is up to the person who pays the wages to deduct the amounts assessed and make an information return in prescribed form (as stated in section 200 of the Regulations), and to file the return by a given date (section 205 of the Regulations).

[24] The applicant submits that the Agency did not perform the required checks that could have corroborated her statements. The applicant alleges that the Agency did not act with the rigour reasonably required in the circumstances when it refused to acknowledge the sums deducted from her pay. The applicant submits that it is up to the Department to apply the relevant legislation and recover from its agent, the employer (3978834 Canada Inc.), the amounts deducted but not remitted to the tax authorities. The applicant argues that she is entitled to the benefit of the amounts deducted from her pay, even if her employer failed to remit them to the Minister (citing *Robert Lalonde v The Minister of National Revenue* (1982), 82 DTC 1772 [available on QL] and *Manke v Canada*, [1998] TCJ No 759, 98 DTC 1969 [available on QL]).

[25] According to the applicant, the Agency erred in drawing a negative inference from the fact that she had previously been the spouse of the representative of 3978834 Canada Inc.; the fact that the employer had failed to file her T4 slips; the fact that, before 2006, none of the employer's T4 slips was for more than \$49,038; and the fact that the applicant did not work for 3978834 Canada Inc. before 2006. The applicant argues that she had nothing to gain in reporting a gross salary of \$175,000 and claiming that deductions had been made at source, since that would have left her indebted to the tax authorities for an amount she allegedly did not receive.

B. *The respondent*

[26] The respondent is of the opinion that no deductions were made from the pay the applicant received from 3978834 Canada Inc., so she would not be entitled to a credit for income tax deducted at source. The respondent takes the position that the applicant did not submit any documentation or information proving that she worked for the employer and that she received a salary from which deductions at source were made.

[27] The respondent agrees with the applicant that if amounts were in fact deducted from her salary as income tax deducted at source during the 2006 taxation year, these amounts must be applied to reduce the tax payable for 2004, even if the employer, 3978834 Canada Inc. failed to remit these sums to the Agency (citing *Canada v Mercantile Bank of Canada*, [1980] FCJ No 254, [1981] 2 FC 169 [*Mercantile Bank*]; subsections 153(1) and 156.1(4) of the Act). However, if nothing was deducted at source, the applicant is not entitled to any credit for income tax withheld. An employer's failure to deduct sums directly from an employee's pay does not relieve the employee of his or her responsibility to pay his or her tax for the year (*Mercantile Bank*, above at para 45).

[28] According to the respondent, the decision to disregard the amount stated on the applicant's T4 slip for deductions at source was reasonable. The respondent submits that the decision of April 14, 2009, implemented in the assessment dated June 11, 2009, was preceded by an analysis of internal Agency documents that could not confirm the salary deductions appearing on the T4 slip. The respondent notes that the Agency contacted the applicant twice in writing and once by telephone to ask her to submit supporting documentation for the alleged deductions, but

it did not receive any documentation allowing it to confirm that she worked for 3978834 Canada Inc. and had received a salary from which deductions at source had been made.

[29] The respondent also submits that the Agency had no obligation to investigate 3978834 Canada Inc., as the applicant alleges, and that the Minister of National Revenue has a duty to make an assessment with all due dispatch (subsection 152(1) of the Act).

VII. Analysis

[30] First of all, regarding the affidavits of the president of 3978834 Canada Inc. and the other documents filed as exhibits with these affidavits, the respondent alleges that this evidence concerns new facts that were not before the decision maker and is therefore inadmissible in this application for judicial review, which must be limited to the record as it was before the decision maker. However, the Court notes that an order made by a prothonotary in respect of this case gave the applicant permission to file the supplementary affidavit of the president of 3978834 Canada Inc. as well as a summary T4 and a summary report on the employer's deductions and contributions (*Paquet c Canada*, 2011 CF 972, [2011] ACF no 1184 (QL)). The Court is of the opinion that these documents are admissible, but only for the limited purpose of assessing the reasonableness of the Agency's decision.

[31] The applicant had to show that these sums allegedly deducted at source from her salary were actually deducted, not that they were remitted to the Agency, which is up to her employer to prove. The Court is of the opinion that the documents that the Agency requested from the applicant were under her control and could have been filed (e.g., a bank statement showing the

deposits of her pay). The evidence shows that the Agency did not ask the applicant to provide documents that she could not have in her possession. Nor did the Agency ask the applicant to provide documents that were the employer's responsibility and of which she was unaware. The Court notes that the Agency contacted the applicant three (3) times to try to obtain the information. The Agency contacted the applicant by letter on September 18, 2008, and November 4, 2008, and determined that the replies to the two (2) written requests (September 26, 2008, and December 2, 2008) were inadequate. As regards the telephone request, the telephone message left by the Agency went unanswered.

[32] The taxation system is based on self-reporting and self-assessment, and the Court points out that the burden of proof is on the taxpayer, as stated by Justice Létourneau of the Federal Court of Appeal in *Voitures Orly Inc v Canada*, 2005 FCA 425 at para 20, [2005] FCJ No 2116 (QL):

[20] To sum up, we see no merit in the submissions of the appellant that it no longer had the burden of disproving the assumptions made by the Minister. We want to firmly and strongly reassert the principle that the burden of proof put on the taxpayer is not to be lightly, capriciously or casually shifted. There is a very simple and pragmatic reason going back to over 80 years ago as to why the burden is on the taxpayer: see *Anderson Logging Co. v. British Columbia*, [1925] S.C.R. 45, *Pollock v. Canada (Minister of National Revenue)* (1993), 161 N.R. 232 (F.C.A.), *Vacation Villas of Collingwood Inc. v. Canada* (1996), 133 D.L.R. (4th) 374 (F.C.A.), *Anchor Pointe Energy Ltd. v. Canada*, 2003 FCA 294. It is the taxpayer's business. He knows how and why it is run in a particular fashion rather than in some other ways. He knows and possesses information that the Minister does not. He has information within his reach and under his control. The taxation system is a self-reporting system. Any shifting of the taxpayer's burden to provide and to report information that he knows or controls can compromise the integrity, enforceability and, therefore, the credibility of the system. That being said, we

recognize that there are instances where the shifting of the burden may be warranted. This is simply not one of those cases.

[Emphasis added.]

[33] Moreover, the Court cannot agree with the applicant's submission that the inability of the Agency's computer system to match her T4 slip with information that her employer should have provided is the reason for refusing to credit her for the deductions at source. This inability to match the data, which is an anomaly, triggered an examination of the applicant's file. The applicant could have put this examination to rest by filing documents proving that a deduction at source had been made in her case. In light of the record, which contains no evidence to this effect, it was not unreasonable for the Agency to conclude as it did.

[34] The Court agrees with the respondents arguments to the effect that the burden of proof is on the applicant and that the Agency has no obligation to investigate a third party to confirm the claims of a taxpayer, as the applicant submitted. The Court refers to the remarks of Justice Létourneau of the Federal Court of Appeal in *Canada v Landry*, 2010 FCA 135 at para 37, [2010] FCJ No 662 (QL):

[37] Even though the judge recognized in his reasons that the respondent has the obligation to rebut the Minister's assumptions, it is surprising to see that he created an obligation on the part of the Agency to conduct investigations into third parties to corroborate or try to disprove the respondent's statements. Taxpayers are the ones who have information on their affairs, and it is up to them to provide it and discharge their burden of proof, especially in cases of net worth assessments. Contrary to what the judge wrote, it was not up to the auditor to provide a "possible explanation as to the sources of the [respondent's] income"

[Emphasis added.]

[35] The applicant also criticizes the Agency for closing her file prematurely, that is, before receiving a reply to the round-trip memorandum sent to the Section. However, the decision to close the applicant's file for the 2006 taxation year came after April 14, 2009, that is, more than two (2) years after the end of the taxation year and five (5) months after the first contacts with the applicant. The Court also notes that the Agency's decision shows that the Agency was still willing to make a reassessment if the applicant sent in documentation (Respondent's Record, pp 45-46).

[36] Therefore, in light of the numerous requests that the Agency made to the applicant, and the fact that the burden of proof is on the taxpayer, the Agency's decision to close the applicant's file so that it could make an assessment in a timely manner was not only reasonable in the circumstances, but also complied with the obligation of the Minister, acting through the Agency, to examine taxpayers' returns with all due dispatch (subsection 152(1) of the Act). Finally, the argument concerning the search of the company, raised by the applicant at the hearing, did not persuade this Court.

[37] The Court is of the opinion that the Agency's decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, above; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708; *Smith v Alliance Pipeline Ltd*, 2011 SCC 7, [2011] 1 SCR 160; *Construction Labour Relations v Driver Iron Inc.*, 2012 SCC 65, [2012] SCJ No 65 (QL)). The intervention of this Court is unwarranted.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed, with costs.

“Richard Boivin”

Judge

Certified true translation
Michael Palles

Appendix

The following provisions of the *Income Tax Act* are relevant to this application for judicial review:

DIVISION I	SECTION I
RETURNS, ASSESSMENTS, PAYMENT AND APPEALS	DECLARATIONS, COTISATIONS, PAIEMENT ET APPELS
...	[...]
<i>Assessment</i>	<i>Cotisation</i>
Assessment 152. (1) The Minister shall, with all due dispatch, examine a taxpayer's return of income for a taxation year, assess the tax for the year, the interest and penalties, if any, payable and determine (a) the amount of refund, if any, to which the taxpayer may be entitled by virtue of section 129, 131, 132 or 133 for the year; or (b) the amount of tax, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 122.7(2) or (3), 125.4(3), 125.5(3), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year. ...	Cotisation 152. (1) Le ministre, avec diligence, examine la déclaration de revenu d'un contribuable pour une année d'imposition, fixe l'impôt pour l'année, ainsi que les intérêts et les pénalités éventuels payables et détermine : a) le montant du remboursement éventuel auquel il a droit en vertu des articles 129, 131, 132 ou 133, pour l'année; b) le montant d'impôt qui est réputé, par les paragraphes 120(2) ou (2.2), 122.5(3), 122.51(2), 122.7(2) ou (3), 125.4(3), 125.5(3), 127.1(1), 127.41(3) ou 210.2(3) ou (4), avoir été payé au titre de l'impôt payable par le contribuable en vertu de la présente partie pour l'année. [...]
<i>Payment of Tax</i>	<i>Paiement de l'impôt</i>
Withholding 153. (1) Every person paying at any time in a taxation year (a) salary, wages or other remuneration, other than amounts described in subsection	Retenue 153. (1) Toute personne qui verse au cours d'une année d'imposition l'un des montants suivants :

115(2.3) or 212(5.1),

...

shall deduct or withhold from the payment the amount determined in accordance with prescribed rules and shall, at the prescribed time, remit that amount to the Receiver General on account of the payee's tax for the year under this Part or Part XI.3, as the case may be, and, where at that prescribed time the person is a prescribed person, the remittance shall be made to the account of the Receiver General at a designated financial institution.

...

Payment of remainder

156.1 (4) Every individual shall, on or before the individual's balance-due day for each taxation year, pay to the Receiver General in respect of the year the amount, if any, by which the individual's tax payable under this Part for the year exceeds the total of

(a) all amounts deducted or withheld under section 153 from remuneration or other payments received by the individual in the year, and

(b) all other amounts paid to the Receiver General on or before that day on account of the individual's tax payable under this Part for the year.

...

a) un traitement, un salaire ou autre rémunération, à l'exception des sommes visées aux paragraphes 115(2.3) ou 212(5.1);

[...]

doit en déduire ou en retenir la somme fixée selon les modalités réglementaires et doit, au moment fixé par règlement, remettre cette somme au receveur général au titre de l'impôt du bénéficiaire ou du dépositaire pour l'année en vertu de la présente partie ou de la partie XI.3. Toutefois, lorsque la personne est visée par règlement à ce moment, la somme est versée au compte du receveur général dans une institution financière désignée.

[...]

Paiement du solde

156.1 (4) Tout particulier doit payer au receveur général pour chaque année d'imposition, au plus tard à la date d'exigibilité du solde qui lui est applicable pour l'année, l'excédent éventuel de l'impôt dont il est redevable en vertu de la présente partie sur le total des montants suivants :

a) les montants déduits ou retenus en application de l'article 153 de la rémunération ou d'autres paiements reçus par le particulier au cours de l'année;

b) les autres montants payés au receveur général au plus tard à cette date au titre de l'impôt payable par le particulier en vertu de la présente partie pour l'année.

PART XV

ADMINISTRATION AND

ENFORCEMENT

[...]

...

COLLECTION

...

Withholding taxes

227. (1) No action lies against any person for deducting or withholding any sum of money in compliance or intended compliance with this Act.

Return filed with person withholding

(2) Where a person (in this subsection referred to as the “payer”) is required by regulations made under subsection 153(1) to deduct or withhold from a payment to another person an amount on account of that other person’s tax for the year, that other person shall, from time to time as prescribed, file a return with the payer in prescribed form.

Failure to file return

(3) Every person who fails to file a return as required by subsection (2) is liable to have the deduction or withholding under section 153 on account of the person’s tax made as though the person were a person who is neither married nor in a common-law partnership and is without dependants.

Trust for moneys deducted

(4) Every person who deducts or withholds an amount under this Act is deemed,

PARTIE XV

APPLICATION ET EXÉCUTION

[...]

RECouvreMENT

[...]

Retenue des impôts

227. (1) Nulle action ne peut être intentée contre une personne pour le fait de déduire ou de retenir une somme d’argent quelconque en conformité, réelle ou intentionnelle, avec la présente loi.

Déclaration à produire auprès de la personne qui fait les retenues

(2) Lorsqu’une personne (appelée le « payeur » au présent paragraphe) est tenue en vertu des dispositions réglementaires prises en application du paragraphe 153(1) de déduire d’un paiement à une autre personne ou de retenir sur un tel paiement un montant au titre de l’impôt de cette autre personne pour l’année, cette autre personne doit, selon les modalités de temps fixées par ces dispositions, produire auprès du payeur une déclaration selon le formulaire prescrit.

Défaut de produire la déclaration

(3) Toute personne qui omet de produire un formulaire, ainsi que le requiert le paragraphe (2), est susceptible de subir la déduction ou retenue en vertu de l’article 153 au titre de son impôt au même titre que si elle était sans personne à charge, n’était pas mariée et ne vivait pas en union de fait.

notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of trust

(4.1) Notwithstanding any other provision of this Act, the Bankruptcy and Insolvency Act (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

(a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and

(b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to such a security interest

Montant détenu en fiducie

(4) Toute personne qui déduit ou retient un montant en vertu de la présente loi est réputée, malgré toute autre garantie au sens du paragraphe 224(1.3) le concernant, le détenir en fiducie pour Sa Majesté, séparé de ses propres biens et des biens détenus par son créancier garanti au sens de ce paragraphe qui, en l'absence de la garantie, seraient ceux de la personne, et en vue de le verser à Sa Majesté selon les modalités et dans le délai prévus par la présente loi.

Non-versement

(4.1) Malgré les autres dispositions de la présente loi, la Loi sur la faillite et l'insolvabilité (sauf ses articles 81.1 et 81.2), tout autre texte législatif fédéral ou provincial ou toute règle de droit, en cas de non-versement à Sa Majesté, selon les modalités et dans le délai prévus par la présente loi, d'un montant qu'une personne est réputée par le paragraphe (4) détenir en fiducie pour Sa Majesté, les biens de la personne, et les biens détenus par son créancier garanti au sens du paragraphe 224(1.3) qui, en l'absence d'une garantie au sens du même paragraphe, seraient ceux de la personne, d'une valeur égale à ce montant sont réputés :

a) être détenus en fiducie pour Sa Majesté, à compter du moment où le montant est déduit ou retenu, séparés des propres biens de la

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

...

Penalty

(8) Subject to subsection 227(8.5), every person who in a calendar year has failed to deduct or withhold any amount as required by subsection 153(1) or section 215 is liable to a penalty of

(a) 10% of the amount that should have been deducted or withheld; or

(b) where at the time of the failure a penalty under this subsection was payable by the person in respect of an amount that should have been deducted or withheld during the year and the failure was made knowingly or under circumstances amounting to gross negligence, 20% of that amount.

Joint and several liability

(8.1) Where a particular person has failed to deduct or withhold an amount as required under subsection 153(1) or section 215 in respect of an amount that has been paid to a non-resident person, the non-resident person is jointly and severally liable with the particular person to pay any interest payable by the particular person pursuant to subsection 227(8.3) in respect thereof.

...

Interest on amounts not deducted or withheld

personne, qu'ils soient ou non assujettis à une telle garantie;

b) ne pas faire partie du patrimoine ou des biens de la personne à compter du moment où le montant est déduit ou retenu, que ces biens aient été ou non tenus séparés de ses propres biens ou de son patrimoine et qu'ils soient ou non assujettis à une telle garantie.

Ces biens sont des biens dans lesquels Sa Majesté a un droit de bénéficiaire malgré toute autre garantie sur ces biens ou sur le produit en découlant, et le produit découlant de ces biens est payé au receveur général par priorité sur une telle garantie.

[...]

Défaut de retenue à la source

(8) Sous réserve du paragraphe (8.5), toute personne qui ne déduit pas ou ne retient pas un montant au cours d'une année civile conformément au paragraphe 153(1) ou à l'article 215 est passible d'une pénalité :

a) soit de 10 % du montant qui aurait dû être déduit ou retenu;

b) soit de 20 % du montant qui aurait dû être déduit ou retenu au cours de l'année si, au moment du défaut, une pénalité en application du présent paragraphe était payable par la personne sur ce montant et si le défaut a été commis sciemment ou dans des circonstances équivalant à faute lourde.

Solidarité

(8.1) Dans le cas où une personne ne déduit

(8.3) A person who fails to deduct or withhold any amount as required by subsection 135(3), 135.1(7), 153(1) or 211.8(2) or section 215 shall pay to the Receiver General interest on the amount at the prescribed rate, computed

(a) in the case of an amount required by subsection 153(1) to be deducted or withheld from a payment to another person, from the fifteenth day of the month immediately following the month in which the amount was required to be deducted or withheld, or from such earlier day as may be prescribed for the purposes of subsection 153(1), to,

(i) where that other person is not resident in Canada, the day of payment of the amount to the Receiver General, and

(ii) where that other person is resident in Canada, the earlier of the day of payment of the amount to the Receiver General and April 30 of the year immediately following the year in which the amount was required to be deducted or withheld;

(b) in the case of an amount required by subsection 135(3) or 135.1(7) or section 215 to be deducted or withheld, from the day on which the amount was required to be deducted or withheld to the day of payment of the amount to the Receiver General; and

(c) in the case of an amount required by subsection 211.8(2) to be withheld, from the day on or before which the amount was required to be remitted to the Receiver General to the day of the payment of the amount to the Receiver General.

Liability to pay amount not deducted or withheld

(8.4) A person who fails to deduct or withhold any amount as required under

pas ou ne retient pas un montant conformément au paragraphe 153(1) ou à l'article 215 sur un montant payé à une personne qui ne réside pas au Canada, ces deux personnes sont solidairement tenues au paiement des intérêts payables par la première sur ce montant conformément au paragraphe (8.3).

[...]

Intérêts sur les montants non déduits ou non retenus

(8.3) La personne qui ne déduit pas ou ne retient pas un montant conformément aux paragraphes 135(3), 135.1(7), 153(1) ou 211.8(2) ou à l'article 215 doit payer au receveur général des intérêts sur ce montant calculés au taux prescrit :

a) s'il s'agit d'un montant à déduire ou à retenir sur un paiement à une autre personne en application du paragraphe 153(1), pour la période commençant le quinzième jour du mois qui suit le mois au cours duquel le montant aurait dû être déduit ou retenu ou à toute date antérieure qui peut être fixée par règlement pour l'application de ce paragraphe, et se terminant :

(i) le jour du paiement du montant au receveur général, si cette autre personne ne réside pas au Canada,

(ii) au premier en date du jour du paiement du montant au receveur général et du 30 avril de l'année qui suit l'année au cours de laquelle le montant aurait dû être déduit ou retenu, si cette autre personne réside au Canada;

b) s'il s'agit d'un montant visé aux

subsection 135(3) or 135.1(7) in respect of a payment made to another person or under subsection 153(1) in respect of an amount paid to another person who is non-resident or who is resident in Canada solely because of paragraph 250(1)(a) is liable to pay as tax under this Act on behalf of the other person the whole of the amount that should have been so deducted or withheld and is entitled to deduct or withhold from any amount paid or credited by the person to the other person or otherwise to recover from the other person any amount paid by the person as tax under this Part on behalf of the other person.

(8.5) [Repealed, 1994, c. 7, Sch. VIII, s. 132(2)]

Penalty

(9) Subject to subsection 227(9.5), every person who in a calendar year has failed to remit or pay as and when required by this Act or a regulation an amount deducted or withheld as required by this Act or a regulation or an amount of tax that the person is, by section 116 or by a regulation made under subsection 215(4), required to pay is liable to a penalty of

(a) subject to paragraph (b), if

(i) the Receiver General receives that amount on or before the day it was due, but that amount is not paid in the manner required, 3% of that amount,

(ii) the Receiver General receives that amount

(A) no more than three days after it was due, 3% of that amount,

(B) more than three days and no more

paragraphes 135(3) ou 135.1(7) ou à l'article 215, pour la période commençant le jour où le montant aurait dû être déduit ou retenu et se terminant le jour de son paiement au receveur général;

c) s'il s'agit d'un montant à retenir conformément au paragraphe 211.8(2), pour la période commençant à la date limite de versement du montant au receveur général et se terminant le jour de son versement.

Obligation de payer un montant non déduit ou non retenu

(8.4) La personne qui ne déduit pas ou ne retient pas un montant conformément soit aux paragraphes 135(3) ou 135.1(7) sur un paiement fait à une autre personne, soit au paragraphe 153(1) sur un montant payé à une autre personne qui ne réside pas au Canada ou qui n'y réside que par application de l'alinéa 250(1)a), doit payer, au nom de cette autre personne, à titre d'impôt en vertu de la présente loi, la totalité du montant qui aurait dû être ainsi déduit ou retenu et a le droit de déduire ou de retenir ce montant sur tout montant payé à cette autre personne ou porté à son crédit, ou de le recouvrer autrement de cette autre personne.

(8.5) [Abrogé, 1994, ch. 7, ann. VIII, art. 132(2)]

Défaut de remettre une retenue à la source

(9) Sous réserve du paragraphe (9.5), toute personne qui ne remet pas ou ne paye pas au cours d'une année civile, de la manière et dans le délai prévus à la présente loi ou à son

than five days after it was due, 5% of that amount, or

(C) more than five days and no more than seven days after it was due, 7% of that amount, or

(iii) that amount is not paid or remitted on or before the seventh day after it was due, 10% of that amount; or

(b) where at the time of the failure a penalty under this subsection was payable by the person in respect of an amount that should have been remitted or paid during the year and the failure was made knowingly or under circumstances amounting to gross negligence, 20% of that amount.

Penalty

(9.1) Notwithstanding any other provision of this Act, any other enactment of Canada, any enactment of a province or any other law, the penalty for failure to remit an amount required to be remitted by a person on or before a prescribed date under subsection 153(1), subsection 21(1) of the Canada Pension Plan, subsection 53(1) of the Unemployment Insurance Act and subsection 82(1) of the Employment Insurance Act shall, unless the person who is required to remit the amount has, knowingly or under circumstances amounting to gross negligence, delayed in remitting the amount or has, knowingly or under circumstances amounting to gross negligence, remitted an amount less than the amount required, apply only to the amount by which the total of all so required to be remitted on or before that date exceeds \$500.

Interest on amounts deducted or withheld but not remitted

règlement, un montant déduit ou retenu conformément à la présente loi ou à son règlement ou un montant d'impôt qu'elle doit payer conformément à l'article 116 ou à une disposition réglementaire prise en application du paragraphe 215(4) est passible d'une pénalité :

a) soit, sous réserve de l'alinéa b) :

(i) si le receveur général reçoit ce montant au plus tard à la date où il est exigible, mais que le montant n'est pas payé de la manière prévue, de 3 % du montant,

(ii) si le receveur général reçoit ce montant :

(A) au plus trois jours après la date où il est exigible, de 3 % du montant,

(B) plus de trois jours mais au plus cinq jours après la date où il est exigible, de 5% du montant,

(C) plus de cinq jours mais au plus sept jours après la date où il est exigible, de 7% du montant,

(iii) si ce montant n'est pas payé ou remis au plus tard le septième jour suivant la date où il est exigible, de 10% du montant;

b) soit de 20 % du montant qui aurait dû être remis ou payé au cours de l'année si, au moment du défaut, une pénalité en application du présent paragraphe était payable par la personne et si le défaut a été commis sciemment ou dans des circonstances équivalant à faute lourde.

Restriction

(9.1) Malgré les autres dispositions de la

(9.2) Where a person has failed to remit as and when required by this Act or a regulation an amount deducted or withheld as required by this Act or a regulation, the person shall pay to the Receiver General interest on the amount at the prescribed rate computed from the day on which the person was so required to remit the amount to the day of remittance of the amount to the Receiver General.

Interest on certain tax not paid

(9.3) Where a person fails to pay an amount of tax that, because of section 116, subsection 212(19) or a regulation made under subsection 215(4), the person is required to pay, as and when the person is required to pay it, the person shall pay to the Receiver General interest on the amount at the prescribed rate computed from the day on or before which the amount was required to be paid to the day of payment of the amount to the Receiver General.

Liability to pay amount not remitted

(9.4) A person who has failed to remit as and when required by this Act or a regulation an amount deducted or withheld from a payment to another person as required by this Act or a regulation is liable to pay as tax under this Act on behalf of the other person the amount so deducted or withheld.

...

Minister's receipt discharges debtor

(13) The receipt of the Minister for an amount deducted or withheld by any person as required by or under this Act is a good and sufficient discharge of the liability of any debtor to the debtor's creditor with respect thereto to the extent of the amount referred to in the receipt.

présente loi et tout autre texte législatif fédéral ou provincial et toute règle de droit, la pénalité pour défaut d'une personne de remettre un montant qu'elle devait au plus tard remettre à une date fixée par une disposition réglementaire prise en application du paragraphe 153(1), du paragraphe 21(1) du Régime de pensions du Canada, du paragraphe 53(1) de la Loi sur l'assurance-chômage et du paragraphe 82(1) de la Loi sur l'assurance-emploi ne s'appliquent qu'à l'excédent, sur \$500, du total des montants que cette personne devait au plus tard remettre à cette date. Le présent paragraphe ne s'applique pas à une personne qui a, sciemment ou dans des circonstances équivalant à faute lourde, tardé à remettre le montant ou remis un montant inférieur à celui qu'elle devait remettre.

Intérêts sur les montants déduits ou retenus mais non remis

(9.2) La personne qui ne remet pas, de la manière et dans le délai prévus à la présente loi ou à son règlement, un montant déduit ou retenu conformément à la présente loi ou à son règlement doit payer au receveur général des intérêts sur ce montant calculés au taux prescrit pour la période commençant le jour où elle était tenue de remettre ce montant et se terminant le jour où le montant est remis au receveur général.

Intérêts sur l'impôt impayé

(9.3) La personne qui ne paie pas, de la manière et dans le délai prévus, un montant d'impôt qu'elle devait payer conformément à l'article 116, au paragraphe 212(19) ou à une disposition réglementaire prise en application du paragraphe 215(4) est tenue de verser au receveur général des intérêts sur

...

Liability of directors for failure to deduct

227.1 (1) Where a corporation has failed to deduct or withhold an amount as required by subsection 135(3) or 135.1(7) or section 153 or 215, has failed to remit such an amount or has failed to pay an amount of tax for a taxation year as required under Part VII or VIII, the directors of the corporation at the time the corporation was required to deduct, withhold, remit or pay the amount are jointly and severally, or solidarily, liable, together with the corporation, to pay that amount and any interest or penalties relating to it.

...

ce montant calculés au taux prescrit pour la période commençant le jour où elle était tenue de payer ce montant et se terminant le jour du versement du montant au receveur général.

Obligation de payer un montant non remis

(9.4) La personne qui ne remet pas, de la manière et dans le délai prévus à la présente loi ou à son règlement, un montant déduit ou retenu d'un paiement fait à une autre personne conformément à la présente loi ou à son règlement doit payer, au nom de cette autre personne, à titre d'impôt en vertu de la présente loi, le montant ainsi déduit ou retenu.

[...]

Récépissé du ministre constituant quittance

(13) Le récépissé du ministre pour un montant déduit ou retenu par une personne, comme l'exige la présente loi, est une libération bonne et suffisante de l'obligation de tout débiteur envers son créancier à cet égard jusqu'à concurrence du montant mentionné dans le récépissé.

[...]

Responsabilité des administrateurs pour défaut d'effectuer les retenues

227,1 (1) Lorsqu'une société a omis de déduire ou de retenir une somme, tel que prévu aux paragraphes 135(3) ou 135.1(7) ou aux articles 153 ou 215, ou a omis de verser cette somme ou a omis de payer un montant d'impôt en vertu de la partie VII ou VIII pour une année d'imposition, les administrateurs de la société, au moment où celle-ci était tenue de déduire, de retenir, de verser ou de payer la somme,

sont solidairement responsables, avec la société, du paiement de cette somme, y compris les intérêts et les pénalités s'y rapportant.

[...]

The following provisions of the *Income Tax Regulations* are relevant to this application for judicial review:

Periodic Payments

102. (1) Except as otherwise provided in this Part, the amount to be deducted or withheld by an employer

(a) from any payment of remuneration (in this subsection referred to as the “payment”) made to an employee in his taxation year where he reports for work at an establishment of the employer in a province, in Canada beyond the limits of any province or outside Canada, and

(b) for any pay period in which the payment is made by the employer

shall be determined for each payment in accordance with the following rules:

...

Remittances to Receiver General

108. (1) **Subject to subsections (1.1), (1.11) and (1.12), amounts deducted or withheld in a month under subsection 153(l) of the Act shall be remitted to the Receiver General on or before the 15th day of the following month.**

(1.1) Subject to subsection (1.11), where the average monthly withholding amount of an employer for the second calendar year preceding a particular calendar year is

(a) equal to or greater than \$15,000 and less than \$50,000, all amounts deducted or withheld from payments described in the definition “remuneration” in subsection 100(1) that are made in a month in the particular calendar year by the employer shall

Paiements périodiques

102. (1) Sauf dispositions contraires de la présente partie, le montant à déduire ou à retenir par un employeur

a) de tout paiement de rémunération (dans le présent paragraphe, appelé le « paiement ») versé à un employé dans son année d'imposition lorsqu'il se présente au travail à un établissement de l'employeur situé dans une province, au Canada au-delà des limites d'une province ou à l'extérieur du Canada, et

b) pour toute période de paie pendant laquelle l'employeur verse le paiement

est déterminé pour chaque paiement conformément aux règles suivantes :

[...]

Remises au receveur général

108. (1) **Sous réserve des paragraphes (1.1), (1.11) et (1.12), les montants déduits ou retenus au cours d'un mois aux termes du paragraphe 153(1) de la Loi doivent être remis au receveur général au plus tard le 15^e jour du mois suivant.**

(1.1) Sous réserve du paragraphe (1.11), dans le cas où la retenue mensuelle moyenne effectuée par un employeur pour la deuxième année civile précédant une année civile donnée est :

a) égale ou supérieure à 15 \$0 et inférieure à 50 \$0, les montants déduits ou retenus sur les paiements visés à la définition de « rémunération » au paragraphe 100(1) qui sont effectués par l'employeur au cours d'un

be remitted to the Receiver General

(i) in respect of payments made before the 16th day of the month, on or before the 25th day of the month, and

(ii) in respect of payments made after the 15th day of the month, on or before the 10th day of the following month; or

...

(1.11) Where an employer referred to in paragraph (1.1)(a) or (b) would otherwise be required to remit in accordance with that paragraph the amounts withheld or deducted under subsection 153(1) of the Act in respect of a particular calendar year, the employer may elect to remit those amounts

(a) in accordance with subsection (1), if the average monthly withholding amount of the employer for the calendar year preceding the particular calendar year is less than \$15,000 and the employer has advised the Minister that the employer has so elected; or

(b) if the average monthly withholding amount of the employer for the calendar year preceding the particular calendar year is equal to or greater than \$15,000 and less than \$50,000 and the employer has advised the Minister that the employer has so elected,

(i) in respect of payments made before the 16th day of a month in the particular calendar year, on or before the 25th day of the month, and

(ii) in respect of payments made after the 15th day of a month in particular calendar year, on or before the 10th day of the following month.

(1.12) If at any time

mois de l'année civile donnée doivent être remis au receveur général au plus tard :

(i) le 25e jour du mois, si les paiements sont effectués avant le 16e jour du mois,

(ii) le 10e jour du mois suivant, s'ils sont effectués après le 15e jour du mois;

[...]

(1.11) L'employeur visé aux alinéas (1.1)a) ou b) serait normalement tenu de remettre, conformément à l'un ou l'autre de ces alinéas, les montants déduits ou retenus aux termes du paragraphe 153(1) de la Loi pour une année civile donnée peut choisir de les remettre :

a) conformément au paragraphe (1), si la retenue mensuelle moyenne effectuée par lui pour l'année civile précédant l'année civile donnée est inférieure à 15 \$0 et s'il informe le ministre de son choix;

b) si la retenue mensuelle moyenne effectuée par lui pour l'année civile précédant l'année civile donnée est égale ou supérieure à 15 \$0 et inférieure à 50 \$0 et s'il informe le ministre de son choix :

(i) à l'égard des paiements effectués avant le 16e jour d'un mois de l'année civile donnée, au plus tard le 25e jour de ce mois,

(ii) à l'égard des paiements effectués après le 15e jour d'un mois de l'année civile

(a) the average monthly withholding amount in respect of an employer for either the first or the second calendar year before the particular calendar year that includes that time is less than \$3,000,

(b) throughout the 12-month period before that time, the employer has remitted, on or before the day on or before which the amounts were required to be remitted, all amounts each of which was required to be remitted under subsection 153(1) of the Act, under subsection 21(1) of the Canada Pension Plan, under subsection 82(1) of the Employment Insurance Act or under Part IX of the Excise Tax Act, and

(c) throughout the 12-month period before that time, the employer has filed all returns each of which was required to be filed under this Act or Part IX of the Excise Tax Act on or before the day on or before which those returns were required to be filed under those Acts,

all amounts deducted or withheld from payments described in the definition "remuneration" in subsection 100(1) that are made by the employer in a month that ends after that time and that is in the particular calendar year may be remitted to the Receiver General

(d) in respect of such payments made in January, February and March of the particular calendar year, on or before the 15th day of April of the particular year,

(e) in respect of such payments made in April, May and June of the particular calendar year, on or before the 15th day of July of the particular year,

(f) in respect of such payments made in July, August and September of the particular calendar year, on or before the 15th day of

donnée, au plus tard le 10e jour du mois suivant.

(1.12) Lorsque à un moment donné, à la fois :

a) la retenue mensuelle moyenne effectuée par un employeur pour la première ou la deuxième année civile précédant l'année civile donnée qui inclut ce moment est inférieure à 3 \$0;

b) tout au long de la période de 12 mois qui précède ce moment, l'employeur a remis, au plus tard à la date où ils devaient être remis, tous les montants à remettre ou à verser aux termes du paragraphe 153(1) de la Loi, du paragraphe 21(1) du Régime de pensions du Canada, du paragraphe 82(1) de la Loi sur l'assurance-emploi ou de la partie IX de la Loi sur la taxe d'accise;

c) tout au long de la période de 12 mois qui précède ce moment, l'employeur a produit toutes les déclarations qui devaient être produites aux termes de la présente Loi ou de la partie IX de la Loi sur la taxe d'accise au plus tard à la date où ces déclarations devaient être produites aux termes de ces lois,

les montants déduits ou retenus sur les paiements visés à la définition de « rémunération » au paragraphe 100(1) qui sont effectués par l'employeur au cours d'un mois qui se termine après le moment donné et qui tombe dans l'année civile donnée peuvent être remis au receveur général :

d) au plus tard le 15 avril de l'année civile donnée en ce qui concerne les paiements effectués au cours des mois de janvier, février

October of the particular year, and

(g) in respect of such payments made in October, November and December of the particular calendar year, on or before the 15th day of January of the year following the particular year.

...

(2) Where an employer has ceased to carry on business, any amount deducted or withheld under subsection 153(1) of the Act that has not been remitted to the Receiver General shall be paid within 7 days of the day when the employer ceased to carry on business.

(3) Remittances made to the Receiver General under subsection 153(1) of the Act shall be accompanied by a return in prescribed form.

(4) Amounts deducted or withheld under subsection 153(4) of the Act shall be remitted to the Receiver General within 60 days after the end of the taxation year subsequent to the 12-month period referred to in that subsection.

...

PART II

INFORMATION RETURNS

REMUNERATION AND BENEFITS

200. (1) Every person who makes a payment described in subsection 153(1) of the Act (other than an annuity payment in respect of an interest in an annuity contract to which subsection 201(5) applies) shall make an information return in prescribed form in respect of the payment unless an information return in respect of the payment has been made under sections 202, 214, 237 or 238.

et mars de l'année donnée,

e) au plus tard le 15 juillet de l'année civile donnée en ce qui concerne les paiements effectués au cours des mois d'avril, mai et juin de l'année donnée,

f) au plus tard le 15 octobre de l'année civile donnée en ce qui concerne les paiements effectués au cours des mois de juillet, août et septembre de l'année donnée,

g) au plus tard le 15 janvier de l'année qui suit l'année civile donnée en ce qui concerne les paiements effectués au cours des mois d'octobre, novembre et décembre de l'année donnée.

[...]

(2) Lorsque l'employeur a cessé d'exploiter une entreprise, tout montant déduit ou retenu en vertu du paragraphe 153(1) de la Loi qui n'a pas été remis au Receveur général doit l'être dans les 7 jours de la date à laquelle l'employeur a cessé d'exploiter l'entreprise.

(3) Les remises au Receveur général en vertu du paragraphe 153(1) de la Loi doivent être accompagnées d'une déclaration selon le formulaire prescrit.

(4) Les montants déduits ou retenus en vertu du paragraphe 153(4) de la Loi doivent être remis au Receveur général dans les 60 jours de la fin de l'année d'imposition qui suit la période de 12 mois mentionnée dans ce paragraphe.

[...]

PARTIE II

DÉCLARATIONS DE

RENSEIGNEMENTS

...

DATE RETURNS TO BE FILED

205. (1) All returns required under this Part shall be filed with the Minister without notice or demand and, unless otherwise specifically provided, on or before the last day of February in each year and shall be in respect of the preceding calendar year.

(2) Where a person who is required to make a return under this Part discontinues his business or activity, the return shall be filed within 30 days of the day of the discontinuance of the business or activity and shall be in respect of any calendar year or a portion thereof prior to the discontinuance of the business or activity for which a return has not previously been filed.

REMUNERATION ET AVANTAGES

200. (1) Toute personne qui effectue un paiement visé au paragraphe 153(1) de la Loi, sauf un paiement de rente relatif à un intérêt dans un contrat de rente auquel s'applique le paragraphe 201(5), doit remplir une déclaration de renseignements selon le formulaire prescrit à l'égard de tout paiement ainsi effectué, à moins qu'une telle déclaration n'ait été remplie en application des articles 202, 214, 237 ou 238.

[...]

DATE DE PRODUCTION DES DECLARATIONS

205. (1) Toutes les déclarations requises en vertu de la présente partie doivent être produites au ministre sans avis ni demande, et, sauf disposition expressément contraire, doivent l'être au plus tard le dernier jour de février de chaque année, à l'égard de l'année civile précédente.

(2) Lorsqu'une personne tenue de faire une déclaration en vertu de la présente partie discontinue son entreprise ou opération, la déclaration doit être produite dans les 30 jours qui suivent la date de la discontinuation de l'entreprise ou opération et doit viser la totalité ou une partie de l'année civile précédant la discontinuation de l'entreprise ou opération pour laquelle une déclaration n'a pas déjà été produite.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-404-11

STYLE OF CAUSE: Martine Paquet v The Attorney General of Canada

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 28, 2013

REASONS FOR JUDGMENT: BOIVIN J.

DATED: February 15, 2013

APPEARANCES:

Marc Côté

FOR THE APPLICANT

Philippe Dupuis

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Labelle, Boudrault, Côté & Associés
Montréal, Quebec

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of Canada

FOR THE RESPONDENT