Docket: 2009-1660(IT)G

BETWEEN:

LUCIEN RÉMILLARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on March 29, 2011, at Montréal, Quebec

Before: The Honourable Justice C.H. McArthur

Appearances:

Counsel for the appellant:	Marie-Ève Simard Maurice Trudeau
Counsel for the respondent:	Michel Lamarre

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2002 taxation year is dismissed with costs.

Signed at Ottawa, Canada, this 29th day of June 2011.

"C.H. McArthur"

McArthur J.

Translation certified true
on this 24th day of August 2011

François Brunet, Revisor

Citation: 2011 TCC 327
Date: 20110629
Docket: 2009-1660(IT)G

BETWEEN:

LUCIEN RÉMILLARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

McArthur J.

[1] This is an appeal from the following notices of reassessment for the 2002 taxation year:

> [TRANSLATION]
> 14. In a notice of reassessment dated May 7, 2007, the Minister of National Revenue (the Minister) added to the income reported by the appellant for his 2002 taxation year the amount of $5,000,000, as additional income, following a forgiveness of debt by the company RCI Environnement inc.
>
> 15. In a notice of reassessment dated June 2, 2008, the Minister confirmed the changes made in the reassessment dated May 7, 2007, and added to the appellant's income for his 2002 taxation year an amount of $1,159,574 as foreign accrual property income.[1]

[2] Those notices of reassessment for the 2002 taxation year were issued outside of the normal reassessment period.

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[1] Taken from the Minister's Reply to the Notice of Appeal.

The facts

[3] Here are the facts that the parties agree on or that I have decided on:

[4] There is no dispute between the parties as to the facts relevant to the case. The appellant is the president and sole director of the company RCI Environnement (RCI). He is also an employee. On December 15, 2000, RCI loaned the appellant $5,000,000. The loan was for 1 year and bore a 10% interest rate. On July 31, 2002, the $5,000,000 loan was written off in RCI's accounting records, and the appellant received an acquittance for $5,000,000 that same day. The interest payable under the loan agreement was paid in full. However, the principal was not repaid.

[5] Before giving the appellant the acquittance, RCI did not take any steps to try to recover its loan from the appellant. In its income tax return for the 2002 taxation year, RCI provided no information on the appellant's creditworthiness and claimed a capital loss, which the Minister disallowed.

[6] On April 28, 2006, the appellant signed a waiver in respect of the normal reassessment period for the 2002 taxation year. On May 7, 2007, the Minister reassessed the appellant, adding to the income he reported for the 2002 taxation year the amount of $5,000,000 as additional income. The respondent did not explain in detail why the notice of reassessment had not been issued during the normal period.

[7] On June 2, 2008, the Minister issued another notice of reassessment. In that reassessment, he confirmed the changes made in the reassessment dated May 7, 2007, and added to the appellant's income for the 2002 taxation year the amount of $1,159,574 as foreign accrual property income. That amount is not at issue here.

[8] Jacques Plante, chartered accountant, testified that he was the Director of Finance and the appellant's advisor. He looks after the appellant's personal affairs and the companies that he holds. He was the only witness for the appellant.

[9] On December 15, 2000, as a representative of RCI, Mr. Plante signed the loan agreement for an amount of $5,000,000. The appellant used the amounts advanced by Placements Saint-Mathieu, a company of which he is president, shareholder and sole director, to pay for the following personal expenses:

(a) A $2,100,000 gift was made to Fiducie Remdev. That trust was created for the appellant's children and descendants.

(b) An $800,000 gift was made to his sons Mathieu and Lucien Rémillard.

(c) A $250,000 gift was made to his nephew Robert Berthelet.

(d) An amount of $2,500,000 was used to purchase a residence and personal furnishings for the appellant.

[10] The appellant paid the interest; RCI reported it in its income, and the appellant did not deduct it from his income.

[11] Mr. Plante explained that RCI forgave the repayment of the $5,000,000 principal and issued an acquittance because a public corporation wanted to buy RCI. That public corporation wanted advances and loans to disappear from RCI's balance sheet. Thus, as the sole director of RCI, the appellant adopted a resolution in order to forgive the debt. The loan was then written off in RCI’s accounting records. The company made no attempt to recover its loan from the appellant.

[12] Daniel Fleurant, an auditor with the Canada Revenue Agency, testified. He corroborated Mr. Plante's testimony that the appellant was the sole director and an employee of RCI, that he had received a T4 slip indicating an amount of $273,000, and that there was no particular ground for RCI to write off the debt of $5,000,000.

[13] The limitation date for the appellant's normal reassessment period for the 2002 taxation year was May 20, 2006. When Mr. Fleurant noticed that the date was coming up, he asked the appellant to sign a waiver in respect of that period. The appellant and his representatives thus had more time to find the answers to the written questions they had received. Mr. Fleurant explained that, if he had not obtained a waiver from the appellant, he would probably have assessed him sooner, without waiting for the appellant's answers.

The issues

[14] The appellant's appeal raises two main issues. First, if the appellant signed a waiver in respect of the normal reassessment period, could the Minister issue two notices of reassessment after the normal reassessment period provided for in subsection 152(4) of the Act, for the 2002 taxation year?

[15] Second, if so, do paragraph 6(1)(*a*) and subsections 6(15), 6(15.1) and 80(1) of the Act allow the Minister to add $5,000,000 to the appellant's income for the 2002 taxation year?

The parties' arguments

[16] Counsel for the appellant argues that the reassessment dated June 2, 2008, is not valid because it was made more than three years after the first original assessments, that is, after the normal reassessment period provided for in subsection 152(3.1) of the Act, even though the appellant waived the normal reassessment period. He maintains that the waiver was valid only for the notice of reassessment dated May 7, 2007, and not for that dated June 2, 2008. In addition, he submits that there was no forgiveness of debt since the benefit from the loan was not conferred by virtue of an office or employment within the meaning of paragraph 6(1)(*a*). For there to be forgiveness of debt, there needs to be a "forgiven amount" within the meaning of subsection 6(15.1). Subsection 6(15.1) is clear and unambiguous: a "forgiven amount" requires four conditions, and the debt in question must, among other things, be a "commercial obligation" within the meaning of subsection 80(1). Accordingly, in this case, there is no "forgiven amount".

[17] Counsel for the Minister submits that, by signing a waiver on April 28, 2006, the appellant waived the normal reassessment period for the 2002 taxation year. Under these circumstances, the Minister was justified in making reassessments for the year in question, and he was not restricted to one reassessment only. Thus, the reassessment dated June 2, 2008, is valid. Second, the Minister argues that a debt was forgiven as a result of paragraph 6(1)(*a*) and subsection 6(15) when RCI Environnement inc. wrote off the debt of $5,000,000 that the appellant owed it. Counsel for the Minister referred to the English version of paragraph 6(15.1), which, according to him, provides for assumptions, not conditions. Thus, the debt in question does not necessarily have to be a "commercial obligation" that arises from a "commercial debt obligation" within the meaning of subsection 80(1) of the Act.

Analysis

[18] I have no difficulty in ruling that paragraph 6(1)(*a*) and subsection 6(15) of the Act may be applied together without requiring the application of subsection 6(15.1). That subsection is an additional relief measure provided for taxpayers who meet the conditions set out in it. The appellant does not meet those conditions on the following grounds. There is no need to conduct a thorough analysis, but in case the ruling above is incorrect, I will address the appellant's alternative position.

[19] The appellant maintains that the Minister cannot make more than one assessment in respect of a taxpayer who has signed a limitation waiver. Since the purpose of the waiver is to give the CRA more time to perform its audit and to avoid an arbitrary assessment, the appellant's waiver of the reassessment period is valid only for the reassessment dated May 7, 2007, and not for that dated June 2, 2008. He cites *Royal Bank of Canada v. Québec (Sous-ministre du Revenu)*,[2] a Court of Québec decision in which Judge Desmarais made the following comments at paragraphs 47 and 48:

> [TRANSLATION]
> 47 The waiver is an accommodation between the parties enabling the tax authorities to carry on with an audit or another type of work leading up to an assessment.
>
> 48 It is helpful to the taxpayer as it will prevent an arbitrary taxation that may be imposed by the Minister because of lack of time. He can therefore finish examining the situation.

[20] The appellant added that, in this case, the Minister benefited from the additional time to complete his audit.

[21] He also cites two Court of Québec decisions: *Strulovitch v. Québec (Sous-ministre du Revenu)*[3] and *Banque National du Canada v. Québec (Sous-ministre du Revenu);*[4] in the latter, Judge Tisseur made the following comments at page 217:

> [TRANSLATION]
> It should be added that, as argued by the applicant, Parliament wanted to provide for some finality in the taxpayer's liability to pay tax. In *Thyssen Mining Construction of Canada Ltd. v. The Queen*, (1975) F.C. 81, 89, The Federal Court ruled that

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2 [1996] Q.J. No. 2561
3 [2005] R.D.F.Q. 160
4 [1992] R.D.F.Q. 213

> In all fiscal statutes, it is in the public interest to provide for some finality in fixing liability for taxes. To achieve this end, taxing and appeal mechanisms invariably provide for limitations in this area.
>
> It must therefore be ruled that the Minister cannot assess a taxpayer who has waived the limitation two, three or more times, indefinitely.

[22] I do not agree with the argument that the Minister may make only one reassessment in respect of a taxpayer who signed a limitation waiver.

[23] Indeed, as stated by counsel for the Minister, the Federal Court of Appeal was called to address this issue in *Canada v. Agazarian*.[5] It wrote the following with respect to subsection 152(4) of the Act, at paragraphs 32 and 33 of its decision:

> [32] One last point of comparison is the power to reassess more than once. In the former enactment, this power was found in the words "as the circumstances may require". In the present disposition, the Minister is given the power to assess or reassess "at any time". *Stroud's Judicial Dictionary (5th Ed.)* (London, Sweet and Maxwell Limited, 1986) gives as the primary definition of "at any time" the following:
>
> > (1) A power to do a thing e.g. to revoke uses "at any time" is not confined to one execution; the words are equivalent to "from time to time, as often as the donee of the power shall think good" (*Digges Case* 1 Rep. 173) …
>
> [33] On the basis of the plain meaning of the words "at any time", I have little difficulty in concluding that the power to assess and reassess more than once applies not only to those reassessments which come within the normal reassessment period but also to those which fall outside that period. There is nothing in the language of the subsection which would support the opposite conclusion.
>
> [Emphasis added]

[24] Even if a carry-over of a loss was at issue in this case, I am satisfied that the same principles could be applied to the case at bar. I am of the view that the Minister may reassess more than once.

[25] The way to make a waiver invalid is to revoke it. A waiver remains valid as long as it is not revoked. This mechanism is set out in subsection 152(4.1).

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5 2004 FCA 32.

[26] In this case, the appellant produced a waiver before the end of the limitation period. That waiver was never revoked. The waiver was therefore valid when the Minister made the reassessment dated June 2, 2008.

[27] Furthermore, under subparagraph 152(4.01)(*a*)(ii), a reassessment is valid only if it pertains to the taxation year and matter specified in the waiver. In this case, the waiver clearly indicates that it is limited to the 2002 taxation year and to the following issue:

> [TRANSLATION]
> Possible tax impact with respect to the forgiveness of debt by RCI Environnement Inc. to Lucien Rémillard in the principal amount of $5,000,000 + interest + incidental fees.

[28] Thus, the question that should be asked is whether the reassessment dated June 2, 2008, pertains to the 2002 taxation year and the matter specified in the waiver.

[29] The notice of reassessment dated May 7, 2007, added $5,000,000 in additional income to the appellant's reported income for the 2002 taxation year.

[30] The notice of reassessment dated June 2, 2008, restated the changes made in the reassessment dated May 7, 2007, and added to the appellant's income for his 2002 taxation year an amount of $1,159,574 as foreign accrual property income.[6] That amount is not at issue here.

[31] The notice of reassessment dated June 2, 2008, added other points, which are not being appealed from. However, like the notice of reassessment dated May 7, 2007, the notice of reassessment dated June 2, 2008, pertains to the forgiveness of debt of $5,000,000, which was the matter specified in the appellant's waiver, which validates it. I agree with the argument of counsel for the Minister that the reassessment dated June 2, 2008, is a reassessment, and not an additional assessment because it replaces that dated May 7, 2007.

[32] In *TransCanada PipeLines Ltd. v. Canada*,[7] the Federal Court of Appeal held that a reassessment replaces and vacates a previous assessment.

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6 See Exhibit A-1, tab 1.

7 2001 FCA 314, para. 12.

[33] Counsel for the appellant argues that it would be absurd for a waiver to be perpetually valid. Indeed, although it is true that a waiver can last for a taxpayer's entire lifetime, it is limited to a certain taxation year and a particular issue. Moreover, the Act provides a solution for taxpayers who do not want to waive a reassessment period forever: it is the revocation mechanism.

[34] Another argument invoked by counsel for the appellant is that the Minister cannot make a reassessment when the previous assessment is disputed, which, he argues, would be contrary to subsection 152(9) of the Act. He cites *R. v. Loewen*[8] and *Anchor Pointe Energy v. The Queen*.[9]

[35] I am not persuaded by that argument. As stated by counsel for the Minister, in subsection 165(7) of the Act, Parliament has provided that the taxpayer may, when he or she has objected to an assessment and appealed from it before the Tax Court of Canada, amend the notice of appeal to add to it the notice of reassessment issued by the Minister.

[36] Subsection 248(1) includes reassessment in the meaning of "assessment". Thus, Parliament has provided that the Minister could make reassessments even when a taxpayer has objected to an assessment and appealed from it.

[37] The appellant suffered no prejudice because he is not in a more unfavourable position than that which he was in after the 2007 reassessment, other than with respect to interest that was being accrued and which he had agreed to when he signed the waiver.

[38] In *Anchor Pointe Energy*, the Federal Court of Appeal did not rule that the Minister could not make more then one reassessment for a taxation year. As held by the Federal Court of Appeal in *TransCanada Pipelines Ltd. v. Canada*, a reassessment vacates a previous assessment for the same year.

[39] In conclusion, the Minister has the power to make several assessments as long as the waiver has not been revoked, and the effect of a reassessment is a vacation of the previous assessment. The notice of assessment dated June 2, 2008, is therefore valid.

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8 2004 FCA 146.

9 2007 FCA 188.

[40] The parties agree that the appellant benefited from a forgiveness of debt relative to a $5,000,000 loan given to him by RCI while he was the director for and an employee of that company during the 2002 taxation year. However, they do not agree on the interpretation of subsections 6(15) and 6(15.1).

[41] Allow me first to describe how paragraph 6(1)(*a*) and subsections 6(15), 6(15.1) and 80(1) apply to the facts of this case before examining the arguments presented by the parties. As the parties have located no cases on the issue of whether forgiveness of debt constitutes a "forgiven amount" within the meaning of subsection 6(15.1) of the Act, we must therefore turn to a literal reading of the Act and to the rules of statutory interpretation.

Paragraph 6(1)(*a*)

[42] Paragraph 6(1)(*a*) provides that the value of a benefit received or enjoyed by the taxpayer in the year in respect of, in the course of, or by virtue of an office or employment must be included in the computation of his or her income as income from an office or employment.

Subsection 6(15)

[43] Subsection 6(15) provides that, for the purpose of paragraph 6(1)(*a*), the value of the benefit from a forgiven obligation is the forgiven amount in respect of the obligation:

> 6(15) For the purpose of paragraph 6(1)(*a*),
>
> > (*a*) a benefit shall be deemed to have been enjoyed by a taxpayer at any time an obligation issued by any debtor including the taxpayer) is settled or extinguished; and
> >
> > (*b*) the value of that benefit shall be deemed to be the forgiven amount at that time in respect of the obligation.

[44] Mr. Plante testified that the appellant had been an employee of RCI in 2002 and that a T4 slip indicating the amount of $273,000 had been issued to him. In addition, it is not disputed that the appellant had benefited from a $5,000,000 loan from RCI while he was RCI's employee in 2002. For these reasons, I am of the view that paragraph 6(1)(*a*) and subsection 6(15) apply to this case.

[45] As for subsection 6(15.1), I will start with a rule of interpretation based on reading the words in the ordinary sense, in harmony with the scheme of the Act, the object of the Act, and the intention of Parliament. In *Canada Trustco Mortgage Company v. Canada*,[10] The Supreme Court of Canada wrote the following:

> 10 . . . The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. . . . The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

[46] The French version of subsection 6(15.1) reads as follows:

> (15.1) Pour l'application du paragraphe (15), le « montant remis » à un moment donné sur une dette émise par un débiteur s'entend au sens qui serait donné à cette expression par le paragraphe 80(1) si les conditions suivantes étaient réunies :
>
> *a*) la dette est une dette commerciale, au sens du paragraphe 80(1), émise par le débiteur;
>
> *b*) il n'est pas tenu compte d'un montant inclus dans le calcul du revenu en raison du règlement ou de l'extinction de la dette à ce moment;
>
> *c*) il n'est pas tenu compte des alinéas *f*) et *h*) de l'élément B de la formule figurant à la définition de « montant remis » au paragraphe 80(1);
>
> *d*) il n'est pas tenu compte des alinéas 80(2)*b*) et *q*).

[47] In the French version, Parliament used the words "si les conditions suivantes étaient réunies", which means that in paragraphs 6(15.1)(*a*) to (*d*), Parliament was providing for conditions, not assumptions. In my opinion, this provision is precise and unambiguous. For that reason, the meaning of the words plays an essential role. Following the ordinary and grammatical sense of the words used in subsection 6(15.1), the words "forgiven amount" in respect of an obligation has the meaning that would be assigned by subsection 80(1) if certain conditions were met.

[48] To conclude on this point, it is appropriate to also refer to another principle of interpretation of tax statutes set out by the Supreme Court of Canada in *Canada Trustco Mortgage Company v. Canada*, *supra*, at paragraph 11:

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10 [2005] 2 S.C.R. 601.

> . . . However, the particularity and detail of many tax provisions have often led to an emphasis on textual interpretation. Where Parliament has specified precisely what conditions must be satisfied to achieve a particular result, it is reasonable to assume that Parliament intended that taxpayers would rely on such provisions to achieve the result they prescribe.
>
> [Emphasis added.]

[49] I am of the opinion that the principle of textual interpretation should be respected. If emphasis is placed on the textual interpretation of subsection 6(15.1), the reference made by this subsection to the definition of "forgiven amount" in subsection 80(1) is still subject to conditions set by Parliament.

The meaning common to both versions

[50] As for the English version of subsection 6(15.1), I am of the view that it has the same import as the French version. It reads as follows:

> (15.1) For the purpose of subsection 6(15), the "forgiven amount" at any time in respect of an obligation issued by a debtor has the meaning that would be assigned by subsection 80(1) if,
>
> (*a*) the obligation were a commercial obligation (within the meaning assigned by subsection 80(1)) issued by the debtor;
>
> (*b*) no amount included in computing income because of the obligation being settled or extinguished at that time were taken into account;
>
> (*c*) the definition "forgiven amount" in subsection 80(1) were read without reference to paragraphs (*f*) and (*h*) of the description of B in that definition; and
>
> (*d*) section 80 were read without reference to paragraphs 2(*b*) and (*q*) of that section.
>
> [Emphasis added.]

[51] Here, Parliament used "if" before the list and "and" at the end of paragraph (*c*). Thus, these two versions show that the condition that applies to the definition of "forgiven amount" in subsection 80(1) is satisfied only if all conditions in paragraphs (*a*) to (*d*) are met.

[52] The meaning that is common to both versions and consistent with Parliament's intention is the following, in my opinion: subsection 6(15.1) provides for an assumption, and not a condition, for the application of paragraph 6(1)(*a*) and subsection 6(15). In other words, subsection 80(1) does not provide additional

conditions in order for there to be an obligation to include the value of a benefit received by virtue of an office or employment in computing income. It follows that the words "forgiven amount" in respect of an obligation have the meaning assigned to them by subsection 80(1) only if all four conditions listed in subsection 6(15.1) are met.

[53] In conclusion, if all four conditions are met, according to subsection 80(1), the "forgiven amount" in respect of an obligation is essentially the lesser of the principal amount of the obligation and the amount for which the obligation was issued, minus any amount paid in satisfaction of the principal amount of the obligation and any other adjustment that takes into account how much of the obligation had been taken into account for income tax purposes. If all four conditions have not been met, the taxpayer cannot take advantage of the relief set out in subsection 6(15.1).

Parliament's intention

[54] In my opinion, the interpretation that I chose is consistent with Parliament's intention. I am of the view that, by adopting subsection 6(15.1), Parliament wanted to provide an additional measure of relief for the taxpayer who meets the conditions listed in it.

[55] Contrary to the appellant's claims, I do not believe that there must be a commercial obligation for the taxpayer to include the value of the benefit that he or she received by virtue of an office or employment in computing his or her income. The fact that the loan given by RCI is not a commercial obligation therefore has no incidence, contrary to the appellant's submissions.

Mood of the verb used

[56] Counsel for the appellant argues that the use of a verb in the conditional mood indicates that the element is hypothetical and that, when a legislative provision has an error, the Court must intervene to correct it. He referred to paragraphs 25 and 26 of *Genex Communications inc. v. The Queen*,[11] which I reproduce below:

> [25] In order to avoid the ambiguity of paragraph (*b*) in the French version, Parliament should have used the verb "auraient" rather than "avaient" to indicate that the paragraph made an assumption. . . .

[11] 2009 TCC 583.

> [26] Paragraphs (*a*) and (*b*) of the French version of the definition of "commercial debt obligation" are drafted in practically the same way. Considering that Parliament does not speak for nothing, it is quite reasonable to believe that in paragraph (*b*) it intended to cover a situation different from that dealt with in paragraph (*a*). . . .

[57] Although it is true that the use of a verb in the conditional indicates that an element is hypothetical, it should be noted that the part of the French version of subsection 6(15.1) that precedes the list uses the verb "être" in two different moods:

> (15.1) Pour l’application du paragraphe (15), le « montant remis » à un moment donné sur une dette émise par un débiteur s’entend au sens qui serait donné à cette expression par le paragraphe 80(1) si les conditions suivantes étaient réunies . . .

[58] The first verb, "serait", is in the conditional and states an assumption, while the second verb, "étaient", is in the imperfect tense and states the conditions for applying that assumption. If all four conditions are met, the assumption applies. If not, the assumption does not apply. Accordingly, subsection 6(15.1) contains no ambiguity, and I do not find it necessary to intervene to make any changes to it as it contains no errors.

Application of subsections 6(15.1) and 80(1)

[59] As I previously mentioned, subsection 6(15) specifies that the words "forgiven amount" in respect of an obligation have the meaning assigned to them by subsection 80(1) if four conditions are met.

[60] Mr. Plante's testimony revealed that the appellant had used the money loaned by RCI for gifts to his relatives and to buy a residence and furniture and that he had repaid the interest for the loan in full and did not deduct it from his income. I note that the Minister did not ask Mr. Plante any questions on this subject in cross-examination before the Court.

[61] In view of Mr. Plante's testimony, which I find to be credible, the loan cannot be a commercial obligation within the meaning of subsection 80(1). Thus, the first condition for applying paragraph 6(15.1) is not met. Consequently, the appellant cannot avail himself of the relief set out in subsection 6(15.1).

The amendment proposed for subsection 6(15.1) and explanatory notes

[62] Otherwise, I conclude that this provision is clear, and, accordingly, although I have examined the proposed amendment to subsection 6(15.1) and the explanatory

notes accompanying it, I do not believe it necessary to take it into account in order to find Parliament's intention.

Other arguments raised by the parties

[63] Contrary to the allegations of counsel for the appellant, I can infer from the fact that the appellant was absent from the hearing that he thought it would be opportune not to give testimony that would be contrary to his position. However, my decision is not based on this fact.

[64] *Analogy with the imposition of interest*: The Minister made an analogy with the imposition of interest at a prescribed rate when a taxpayer receives a benefit from a company in the form of debt, which is set out in subsection 6(9) and section 80.4. According to his reasoning, subsection 6(9) and section 80.4 do not require a commercial obligation for the taxpayer to have to pay tax on the value of the benefit he or she received from a company in the form of debt. Similarly, for subsection 6(15) to apply, no commercial obligation is necessary for the taxpayer to have to include the value of the benefit received by virtue of an office or employment in computing his income. This argument has no merit.

[65] I would tend to agree with counsel for the appellant, who claims that the wording of subsection 6(9) is completely different from that of subsection 6(15). Subsection 6(9) refers to section 80.4. However, in this case, subsection 6(15) refers to subsection 6(15.1), which, in turn, refers to subsection 80(1). Moreover, subsection 6(9) does not provide a list of conditions, unlike subsection 6(15.1). Therefore, I give very little weight to the Minister's analogy.

[66] *Avoiding an absurd consequence*: The Minister argues that it is a well recognized principle of statutory interpretation that Parliament does not intend to produce absurd consequences. I agree with his argument without hesitation, despite the appellant's efforts to make a distinction between a personal and a commercial obligation. I do not believe that there must be a commercial obligation in order for the taxpayer to include the value of the benefit that he or she received by virtue of an office or employment in computing his or her income. Finding the contrary would inevitably lead to an absurd consequence, as noted by the Minister.

[67] *Doctrine*: The Minister submitted a doctrinal commentary according to which, for subsection 6(15.1) to apply, the value of the benefit received by the taxpayer must be included in computing his or her income, and there is no need to distinguish

between a commercial and a personal obligation. In the *Canadian Tax Reporter*,[12] the following is stated on page 3429:

> However, the provisions are worded broadly. Any forgiven loan is deemed to be a benefit under subsection 6(15), and if that benefit is in respect of, in the course of, or by virtue of, the employment of an employee, a taxable benefit arises under paragraph 6(1)(*a*).

[68] I agree with this argument because it is consistent with Parliament's intention, which, in my view, was to include the value of a benefit received by a taxpayer by virtue of an office or employment in computing his or her income, regardless of whether the loan given was a commercial obligation or not.

[69] For these reasons, the appeal from the reassessment made on June 2, 2008, under the Act in respect of the 2002 taxation year is dismissed, with costs.

Signed at Ottawa, Canada, this 29th day of June 2011.

"C.H. McArthur"

McArthur J.

Translation certified true
on this 24th day of August 2011

François Brunet, Revisor

[12] Volume 1, Income – Basic Rules Employment Income, subsections 6(15) and 6(15.1).

CITATION:	2011 TCC 327
COURT FILE NO.:	2009-1660(IT)G
STYLE OF CAUSE:	LUCIEN RÉMILLARD AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	March 29, 2011
REASONS FOR JUDGMENT BY:	The Honourable Justice C.H. McArthur
DATE OF JUDGMENT:	June 29, 2011

APPEARANCES:

Counsel for the appellant:	Marie-Ève Simard Maurice Trudeau
Counsel for the respondent:	Michel Lamarre

COUNSEL OF RECORD:

For the appellant:	
Name:	Marie-Ève Simard Maurice Trudeau
Firm:	Montréal, Quebec
For the respondent:	Myles J. Kirvan Deputy Attorney General of Canada Ottawa, Canada