Docket: 2017-2245(IT)G

BETWEEN:

BOBBIE MANN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard June 27, 28 and 29, 2022 at Toronto, Ontario and September 21, 2022 at Ottawa, Ontario

Before: The Honourable Justice Bruce Russell

Appearances:

Counsel for the Appellant: Osborne G. Barnwell

Counsel for the Respondent: Chris Eccles

JUDGMENT

The respective appeals of the four reassessments raised March 22, 2017 under the federal *Income Tax Act* of the appellant's 2008, 2011, 2012 and 2013 taxation years are allowed on the following basis, per the accompanying reasons for judgment:

2008 taxation year reassessment:

(i) was validly raised per subparagraph 152(4)(a)(i) of the Act;

(ii) the deposit amount of $502,788, reassessed as unreported income, is reduced to the amount of $99,607, to be taxed on capital account;

(iii) the deposit of $48,000, reassessed as unreported income, is accepted as being a family gift and so is not taxable;

(iv) the amount of $1,733, being the total of several unidentified deposits reassessed as unreported income, is accepted as not being unreported income and so is not taxable;

(v) gross negligence penalties are to be adjusted as applicable.

2011 taxation year reassessment:

(i) the $9,000 and $5,000 deposit amounts, each reassessed unreported income, are accepted as being family gifts and thus are not taxable;

(ii) gross negligence penalties are to be adjusted as applicable.

2012 taxation year reassessment:

(i) the $121,855 (Stillmeadow Rd.) and $124,886 (Ogden Ave.) disposition amounts are to be taxed on capital account;

(ii) the amounts of $11,600 and $4,143 are accepted as reported income and thus are not taxable;

(iii) gross negligence penalties are to be adjusted as applicable.

2013 taxation year reassessment:

(i) the $22,083 settlement payment share is to be taxed on capital account as reassessed;

(ii) the $6,240 of unidentified deposits, taxed as unreported income, is to be reduced to $5,500;

(iii) all gross negligence penalties are to be removed except on the $500 deposit said to have been rent.

Costs: there having been mixed success, the parties have 45 days from the date of this Judgment to each file submissions as to costs (maximum seven pages, double spaced), should they in the meantime not have reached agreement as to costs.

Signed at Halifax, Nova Scotia, this 24th day of October 2023.

"B. Russell"

Russell J.

Citation: 2023 TCC 151
Date: 24102023
Docket: 2017-2245(IT)G

BETWEEN:

BOBBIE MANN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Russell J.

I. Introduction:

[1] The appellant, Ms. Kanwaljit "Bobbie" Mann, appealed reassessments of her 2008 to 2013 taxation years inclusive, raised March 22, 2017 under the federal *Income Tax Act* (Act). They are net worth reassessments per subsection 152(7) of the Act, which allows for (re)assessments not dependant on returns or information supplied by the taxpayer.

[2] At the hearing's commencement, the respondent conceded the appellant's 2009 and 2010 taxation year appeals. The 2008, 2011, 2012 and 2013 taxation year appeals remain at issue. The appealed 2008 taxation year reassessment was raised beyond its applicable normal reassessment period, and so is potentially "statute-barred".

[3] The appellant has a post-secondary degree and is a certified management accountant. She worked as a Canada Revenue Agency (CRA) employee for approximately 30 years. Latterly at CRA, she was a Financial Reviewer (i.e., auditor) of SR&ED tax credits claims. She prepared her own tax returns for the years at issue.

II. Reassessments:

[4] The appellant in her Notice of Appeal pleads that "the use of a [n]et [w]orth method in this case was inappropriate".[1]

[5] On June 5, 2015, the Minister of National Revenue (Minister) raised net worth reassessments of the appellant's income tax liabilities, resulting in a $5,540,547 total of unreported income for the 2008 – 2013 taxation years inclusive. Notices of objection were served. In response, on March 22, 2017 the appellant was again net worth reassessed, resulting in a much-reduced total of $473,179 of unreported income.

[6] The herein appealed March 22, 2017 reassessments for the remaining years in issue provide as follows, with gross negligence penalties:

Taxation Year	**Revised Total Income**	**Gross Negligence Penalties**
2008	$212,894	$20,718
2011	$106,866	$2,773
2012	$341,283	$36,875
2013	$79,585	$3,135

[7] In the respondent's Reply, ministerial assumptions are pleaded under the heading "net worth", particularly including:

- para. 16(n) - the appellant did not maintain proper personal books and records in relation to the 2008, 2009, 2010, 2011, 2012 and 2013 taxation years; and,

- para. 16(o) - the appellant did not include all of the income she received when reporting her income for each year...

III. Issues:

[8] The two parties pleaded the same three issues: (i) whether unreported income amounts that the appellant has challenged constitute income under the Act; (ii) whether the 2008 taxation year is statute-barred; and (iii) whether the assessed subsection 163(2) penalties are valid.

[1] Notice of Appeal, para. 20

[9] In her post-hearing written submissions, the appellant put forth two "alternative arguments": (i) whether the Minister's assumption in support of taking a net worth approach was demolished by the appellant; and (ii) whether this Court has jurisdiction to invalidate or vacate the net worth reassessments which the appellant says were "infected by an illegitimate process".[2]

IV. Factual background:

[10] The appellant and her spouse Mr. Jagit Basi bought and/or sold several residential properties in Mississauga during the taxation years in issue, including the following which are further addressed below: residences at 45 Bay Street, 1225 Mineola Gardens, 16 Ben Machree Drive, 2615 Stillmeadow Road and 1608 Ogden Avenue. The latter two properties were held in the name of their adult child, Anita Basi.

V. Analysis:

[11] I first address the two issues raised in the appellant's post-hearing submissions.

Post-hearing issue 1 - Whether the Tax Court has jurisdiction to vacate net worth reassessments, "infected by an illegitimate process".

[12] The appellant's position is that the Minister proceeded improperly by way of net worth reassessments "and that the Tax Court has jurisdiction to invalidate or vacate the reassessment which was infected by an illegitimate process."[3]

[13] A CRA auditor reviewed the initial net worth audit on the asserted basis that new evidence had been received. The appellant disputes that there was any new evidence. The Appeals officer considered the recommendations of the second auditor, and accepted same, reflected in the subject March 22, 2017 reassessments.

[14] The March 22, 2017 net worth reassessments reduced the June 15, 2015 net worth reassessments in the appellant's favour from $5,540,547 to $473,179.

[15] Also the appellant cites "unnecessary 'harassment'" of the taxpayer in relation to CRA investigating "into her family financial affairs", "visits to the appellant's

---

[2] Appellant's written submissions, paras. 13, 14
[3] Ibid.

bank", "all paint[ing] a negative picture of the appellant to others, as a tax evader or cheat."[4]

[16] The appellant argues that the Tax Court has jurisdiction to vacate the reassessments due to this "illegitimate process". Also, the appellant claims that the facts in this case can be distinguished from others where the conduct at issue has no direct relationship on the amounts being reassessed.[5] The appellant argues that in this case, alleged misapplication of internal CRA policy was "directly linked to the validity of the assessed amount".[6]

[17] As well, the appellant submitted that the net worth method was used in an abusive manner – citing minor amounts said to be income as they were unidentified and also failure of Minister to concede amounts that were obviously non-taxable. The appellant argued that "[s]urely, the Court must not and cannot turn a blind eye to such 'abuse' which is before it."[7]

[18] The appellant refers to this process as a "breach of fairness" and an "impermissible procedure" and calls the assessments "tainted".[8]

[19] The respondent's position is that the conduct and process by which the reassessments were established are irrelevant. The Court's jurisdiction is to determine whether the appealed reassessments are valid based on the facts and relevant law.[9]

[20] In *Main Rehabilitation Co. Ltd. v. R.*[10] the Federal Court of Appeal (FCA) stated:

> …what is in issue in an appeal pursuant to section 169 is the validity of the assessment and not the process by which it is established… Put another way, the question is not whether the [CRA] officials exercised their powers properly, but whether the amounts assessed can be shown to be properly owing under the Act. (underlining added)

[21] Similarly, in *Ereiser v. R.* the FCA stated:

---

[4] Appellant's written submissions, para. 102
[5] Appellant's written submissions, paras. 14-15
[6] *Ibid.*, para. 124
[7] Appellant's written submissions, para. 111
[8] *Ibid.*, paras. 120, 129, 130
[9] Respondent's written submissions, paras. 81-86
[10] *Main Rehabilitation Co. Ltd. v. The Queen*, 2004 FCA 403 at para. 7

> …the role of the Tax Court of Canada in an appeal of an income tax assessment is to determine the validity and correctness of the assessment, based on the relevant provisions of the Act and facts giving rise to the taxpayer's statutory liability. Logically, the conduct of a tax official, who authorizes an assessment is not relevant to the determination of that statutory liability. It is axiomatic that the wrongful conduct by an income tax official is not relevant to the determination of the validity or correctness of an assessment.[11] (underlining added)

[22] The appellant argued that her case can be distinguished on the basis that there was a direct nexus between conduct of CRA officials and the amounts of the reassessments. However, in fact the alleged misfeasance in *Ereiser* was directly linked to the amount of the reassessment, *i.e.* CRA officials said they would reassess to a lower amount of $80,000 "all in" if the appellant pleaded guilty to related tax evasion charges. Nevertheless, the FCA determined that that "allegation of coercion by tax officials"[12]was not a basis for the Tax Court to vacate the reassessments.

[23] Additionally, Monaghan J. as she then was, stated in *Auto Maculate Inc. v. R.*, 2020 TCC 105, para. 47, citing *Hawks v. R.*, [1997] 2 C.T.C. 133 (FCA):

> [i]nterim assessments, proposals, or opinions expressed by the auditors or the appeals division of CRA cannot be relied upon to establish the invalidity of the final reassessment.

[24] The appellant likened this situation to that of *O'Neill Motors Limited v. R.*[13] There the FCA approved the use of subsection 24(1) of *The Canadian Charter of Rights and Freedoms* to vacate a reassessment, where there had been a violation of section 8 of the *Charter* (protection against unreasonable search and seizure).[14]

[25] A *Charter* violation can affect the admissibility of evidence obtained by the Minister. In arguing that CRA officials had wrongly proceeded, appellant's counsel referred to a possible violation of the appellant's right to equality under section 15 of the *Charter*. This allegation was not developed, nor was any Charter provision pleaded in the Notice of Appeal.[15]

[26] In conclusion, the jurisprudence is clear, subject to *Charter* arguments particularly re improperly obtained evidence, that this Court does not have

---

[11] *Ereiser v. R.*, 2013 FCA 20 at para. 31
[12] *Ibid.*, para. 40
[13] *O'Neill Motors Limited v. R.*, [1998] 3 CTC 385, 98 DTC 6424
[14] Appellant's written submissions, paras. 128, 129
[15] Notice of Appeal, para. 19 ("Statutory Provisions Relied Upon")

jurisdiction to vacate reassessments where CRA officials failed to exercise their powers properly.

<u>Post-hearing issue 2: whether any of the net worth assessments should be vacated because there was no basis for use of the net worth method of assessment.</u>

[27] The second non-pleaded issue raised post-hearing by the appellant is whether the appealed net worth reassessments should be vacated on the basis of there being no basis for the use of such reassessments. The appellant argues that the facts of this case do not support the use of net worth assessments. The Minister had made the assumption, referenced above, that the appellant had not maintained proper books and records.

[28] The evidence was that when the audit began, in 2014, the assigned CRA officer contacted the appellant, seeking to meet and to obtain books and records. The appellant initially refused to meet with the CRA officer and retained present counsel who met with the CRA auditor himself.

[29] Apparently, much of the appellant's documentation relating to real estate activities and banking had been stored in a basement cabinet of the appellant and spouse's 45 Bay St. home. The appellant testified that that documentation was lost in July 2013, when the basement had flooded.[16] There was no corroboration of this such as for example an insurance claim or photo of the flooded basement.

[30] Appellant's counsel declined to provide CRA any documentation sought by the CRA auditor pertaining to the statute-barred years 2008, 2009 and 2010, unless CRA advised counsel of its reason for seeking to open any of these statute-barred years.

[31] As the appellant did not provide requested documents, the CRA auditor requested information from various financial institutions and conducted property searches.[17] The auditor questioned how the appellant and spouse, with their reported incomes, could purchase numerous real estate properties and qualify for large mortgages.[18] A CRA internal affairs memorandum indicated risk of unreported

---

[16] Transcript, pp. 120, 121
[17] Exhibit A-4, p. 1
[18] Exhibit A-6, p. 5

income.[19] The appellant was said to own several properties in addition to her principal residence, worth over $3 million.[20]

[32] The appellant submits that regardless of the extent of co-operation, the CRA auditor had all he needed to complete an audit without resorting to the net worth method. The appellant states also that there should be no confidence in the March 22, 2017 net worth reassessments that collectively reduced by more than $5 million the net worth reassessments raised June 15, 2015.

[33] The respondent's position is that use of the net worth method for reassessment was appropriate, where a taxpayer had unreliable or non-existent records and was insufficiently co-operative with the Minister in providing relevant records.

[34] The respondent argues that the appellant did not keep or in any event, produce much in the way of books and records and also that the appellant did not cooperate with the auditor and the CRA throughout the audit and appeals process. The respondent claims that it was appropriate for the auditor to proceed by way of net worth reassessments.[21]

[35] In *Truong v. R.*[22] Bocock J. observed that a taxpayer may challenge an alternative assessment such as a net worth assessment under subsection 152(7) of the Act in three ways: (i) challenge its necessity or method chosen in first instance; (ii) challenge specific aspects of the quantum, methodology or inclusions; and/or (iii) submit evidence concerning non-taxable sources of income received by the taxpayer.

[36] In *Guibord v. R.*[23] the FCA denied the taxpayer's appeal in which the taxpayer appellant argued that the net worth reassessments should have been vacated as they were not completed in a principled and rational manner, and also as they were arbitrary, insofar as the Minister could have used another method.

[37] In denying this appeal the FCA noted that in her appealed decision Tax Court Justice V. Miller had questioned the integrity of the taxpayer's evidence in several respects including that the systems used by the appellant for sales and daily cash reconciliations were haphazard and questionable; large amounts attributable to sales

---

[19] Ibid., p. 1
[20] Ibid.
[21] Respondent's written submissions, para. 94
[22] *Truong v. R.*, 2017 TCC 22 at para. 36; aff'd 2018 FCA 6; leave to appeal denied
[23] *Guibord v. R.*, 2011 FCA 344

were not run into the cash register; and one of the appellant's treated his duties as a bookkeeper in a cavalier and frivolous manner. This caused the learned trial judge to not accept the appellants' explanations of discrepancies between declared revenues and the net worth assessments.[24]

[38] In *Mensah v. R*.[25] the net worth assessment method was deemed inappropriate as the taxpayer was found to have kept "meticulous" records and Bowman C.J. found her to be a highly credible and honest witness.

[39] In this matter, I decline to vacate the appealed net worth reassessments. Here, in addressing the challenged particulars of these net worth reassessments, the appellant's evidence is at times questioned and the appellant's records were not meticulously kept. As well, there was less than full taxpayer co-operation vis-à-vis the CRA auditors.

[40] I now address the pleaded issues, per taxation year.

<u>2008 Taxation Year:</u>

A. <u>$502,788 deposit/$99,607 capital gain:</u>

[41] The Minister reassessed as unreported income a $502,788 deposit in the appellant's bank account on May 9, 2008, of which nothing was reported in the appellant's 2008 taxation year return. In due course, the amount was identified as a payment from the appellant's lawyer of proceeds of disposition of the residential premises at 1225 Mineola Gardens (Mineola Gardens).

[42] On April 17, 2007, the appellant and her spouse had jointly purchased the Mineola Gardens residential property for $670,000. They sold Mineola Gardens on May 9, 2008 for $830,000, of which $502,788 was deposited into the appellant's account at closing. After necessary deductions including of the adjusted cost base, the appellant's gain on the disposition of Mineola Gardens was determined to be $99,607.[26]

[43] The appellant maintains that Mineola Gardens was her principal residence when it was sold in 2008. Nevertheless, in her 2008 return the appellant did not

---

[24] *Guibord,* paras. 10-12
[25] *Mensah v. R*., 2008 TCC 378, paras. 4, 23
[26] See calculation in Respondent's written submissions, para. 33

report anything related to disposition of Mineola Gardens. Nor was Mineola Gardens designated as her principal residence.

[44] The appellant testified that in early 2007 she, her spouse and three children aged 14, 20 and 22 resided with her husband/their father at their Bay St. residential premises. However, she and her spouse were not getting along. In or about April 2007 she moved out of their Bay St. residence, with the children. They moved into the newly acquired Mineola Gardens premises. Her spouse, who stayed at the Bay St. premises, testified that he was on the Mineola Gardens title as joint tenant with his spouse to facilitate obtaining a mortgage on that property.

[45] The appellant and her husband remained married and not separated pursuant to any judicial separation or written separation agreement as referenced in the section 54 definition of principal residence, set out below.

[46] Mineola Gardens was not a finished home when purchased. A kitchen was installed in due course but in the meantime the appellant and children used a camp stove to prepare meals. There were no or few interior doors in this three-bedroom home.

[47] The appellant testified that in December of 2007, she and her husband began to consider reconciling. They were inclined to reconcile for cultural reasons related to potential engagement of their eldest daughter. Therefore, they decided to sell the Mineola Gardens property. It is unclear exactly when Mineola Gardens was put up for sale but likely it was for sale by the end of 2007. The appellant testified that in early January she, with a car and trailer, moved furniture and personal belongings back to the Bay St. property. The children then or had moved back to the Bay St. premises.

[48] The appellant's evidence was that she slept at night at the Mineola Gardens property. Otherwise, it seems she basically lived at the Bay St. property with the rest of her family. She said that each morning before going to work, she went to the Bay St. premises to shower, for laundry, etc.

[49] Water bills for the Mineola Gardens premises show negligible water consumption for December 2007 and nil consumption during January and February of 2008. As well, the respondent produced an insurance certificate of vacancy for Mineola Gardens dated December 17, 2007. It certified that Mineola Gardens was vacant for insurance purposes. The appellant said she was unable to reach her insurance agent to obtain explanation as to why her insurance company would have

issued this certificate. During this period also the appellant's realtor urged that the Mineola Gardens premises be kept in "spic and span" condition for purposes of showing the premises to potential purchasers.

[50] Also, the appellant's mail continued to be sent to the Bay St. address. The appellant never arranged for her mail to come to the Mineola Gardens address. She said this was because she had had more important matters to deal with than that.

[51] An offer to buy the Mineola Gardens property was accepted in or about April 2008. The sale closed in May 2008.

[52] The Minister assumed in raising the 2008 reassessment that the appellant lived at the Bay St. premises from August 31, 1999 to May 30, 2008 when that property was sold. This does not reflect that for some period of time at least in 2007 she lived at the Mineola Gardens premises. The insurance company vacancy certificate issued December 17, 2007 suggests they all had returned to live at the Bay St. premises by that date. Virtually no water consumption in late 2007 and into the first two months of 2008 further supports this conclusion.

[53] It seems questionable that the appellant continued to access the Mineola Gardens premises solely for night-time sleeping, while avoiding any water usage as indicated by the nil water usage bill for the first two months of 2008.

[54] The term "principal residence" is defined in section 54 of the Act as follows:

> principal residence of a taxpayer for a taxation year means a particular property that is a housing unit, a leasehold interest in a housing unit or a share of the capital stock of a cooperative housing corporation acquired for the sole purpose of acquiring the right to inhabit a housing unit owned by the corporation and that is owned, whether jointly with another person or otherwise, in the year by the taxpayer, if
>
> > (a) where the taxpayer is an individual other than a personal trust, the housing unit was ordinarily inhabited in the year by the taxpayer, by the taxpayer spouse or common-law partner or former spouse or common-law, partner or by a child of the taxpayer,
>
> … except that, subject to section 54.1, a particular property shall be considered not to be a taxpayer's principal residence for a taxation year
>
> > (c) where the taxpayer is an individual other than a personal trust, unless the particular property was designated by the taxpayer in prescribed form and manner to be the taxpayer's principal residence for the year and no other

> property has been designated for the purposes of this definition for the year…
>
> > (A) by the taxpayer,
> >
> > (B) by a person who was throughout the year the taxpayer's spouse or common-law partner (other than a spouse or common-law partner who was throughout the year living apart from, and was separated under a judicial separation or written separation agreement from, the taxpayer)…. (underlining added)

[55] This definition provides that an individual may designate only one principal residence in a given year. Therefore, with the Bay St. residential property jointly owned by the appellant and her spouse also being sold in May 2008 (they had owned it for nine years as opposed to Mineola Gardens for one year), the appellant and her spouse had opportunity to designate it as their principal residence for 2008.

[56] At para. 16(ii) of the Notice of Appeal, the respondent pleads the ministerial assumption that "the appellant did not report a capital gain in respect of the Bay Street Property". What is the relevance of that pleading in this appeal which does not focus on the Bay St. property? There is no suggestion that, like Mineola Gardens, the capital gain from sale of the Bay St. property was taxable.

[57] Quite possibly the relevance is that Bay St. was the residential property in the year 2008 that the appellant and her spouse designated as their principal residence. That would be consistent with this ministerial assumption that the capital gain pertaining to the Bay St. sale was not required to be reported. As only one such property can be designated in a year, then any other sale such as sale of the Mineola Gardens property could not also have the benefit of the principal residence capital gains exemption.

[58] The appellant testified that for the 2008 taxation year, 45 Bay was her husband's principal residence and Mineola Gardens was hers. But, each spouse having his/her own principal residence is not permitted by the "principal residence" definition, unless spouses living apart were, "separated under a judicial separation or written separation agreement". And as stated above, that was not the case here; whether or not Mineola Gardens otherwise qualified as being a principal residence of the appellant.

[59] Nevertheless, I now address whether Mineola Gardens could otherwise have been a principal residence of the appellant.

[60] The above “principal residence” definition requires the taxpayer or related person to have “ordinarily inhabited” the premises during the particular year (here, 2008). In *Wall v. R.*[27] Visser J. discussed the meaning of “ordinarily inhabited”. He found, following the Supreme Court of Canada in *Thomson*[28], that it meant “residence in the course of the customary mode of life of the person concerned” or “in the ordinary or usual course of events”. As well, *Rebus v. R.*[29] was referred to, in which Little J. of this Court interpreted “ordinarily inhabited” to mean “normally occupy as a home”, as distinguished from the taxpayer in that case sleeping overnight in a garden shed but having an apartment which he said he normally occupied.

[61] That is suggestive of the case at bar where for family/cultural reasons the appellant resumed largely living with the rest of her family at the Bay St. premises, whether she to whatever extent slept overnight at Mineola Gardens without any water usage at those premises, returning to Bay St. first thing each morning.

[62] I find it difficult to accept that by early 2008 the appellant regularly slept overnight at Mineola Gardens, particularly with there being there little or no water consumption (she testified that she went to the Bay St. residence each morning for shower), and noting also the 17 December 2007 insurance vacancy certificate. But in any event, I find per *Wall* and *Rebus* that such marginal occupation would be insufficient to meet the “ordinarily inhabited” requirement in the “principal residence” definition.

[63] For the foregoing reasons, I find that in the 2008 taxation year Mineola Gardens was not a principal residence of the appellant. Thus, the principal residence exemption would not apply to the appellant upon the 2008 disposition of that property, assuming she had not with her husband designated Bay St. as her principal residence for the 2008 taxation year.

[64] Accordingly, I find that the appellant wrongly did not report in her 2008 taxation year return any capital gain in relation to disposition of the Mineola Gardens property.

B. <u>The statute-barred 2008 taxation year:</u>

---

[27] *Wall v. R.*, 2019 TCC 168, aff’d 2021 FCA 132 for other reasons
[28] *Thomson v. M.N.R.*, [1946] SCR 209
[29] *Rebus v. R.*, [2002] 3 CTC 2328 (TCC), para. 23

[65] As noted, the 2008 taxation year was statute-barred. Subparagraph 152(4)(a)(i) of the Act permits reassessment of a person after expiry of the applicable normal reassessment period – here three years.[30] The March 22, 2017 reassessment of the appellant's 2008 taxation year was raised after expiry of more than three years following the May 6, 2013 initial assessment date.

[66] Subparagraph 152(4)(a)(i) provides:

> 152(4) Assessment and reassessment [limitation period] – The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest, or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect of the year only if
>
> (a) the taxpayer or person filing the return
>
> (i) has made any misrepresentation that is attributable to neglect, carelessness or willful default or has committed any fraud in filing the return or in supplying any information under this Act… (underlining added)

[67] The question is, did the appellant, "ma[k]e any misrepresentation that is attributable to neglect, carelessness or wilful default or [commit] any fraud in filing the return or in supplying any information under this Act".

[68] In *Hansen v. The Queen*,[31] D'Auray J. observed that there is no misrepresentation when a taxpayer has been reasonable in the manner that he or she reported income. As well, my learned colleague cited *Regina Shoppers Mall Ltd. v. R.*, which states that there is no misrepresentation where, "…a taxpayer thoughtfully, deliberately and carefully assesses the situation and files on what he bona fide believes to be the proper method."[32]

[69] As well, *Hansen* provides, "…that taxpayers have the right to disagree with the Minister in their interpretation of the Act, without this necessarily being considered a misrepresentation."[33]

---

[30] Act, paragraph 152(3.1)(b)
[31] *Hansen v. The Queen*, 2020 TCC 102
[32] *Ibid.* at para. 76, citing *Regina Shoppers Mall Ltd. v. R.*, [1990] 2 CTC 183, 90 DTC 5427
[33] *Ibid.,* at para. 80, citing *Savard v. The Queen*, 2008 TCC 62 at para. 78

[70] As found above, Mineola Gardens was not the appellant's personal residence insofar as she was only sleeping there, with virtually nil water consumption for the Mineola Gardens property. She otherwise was with her family who resided at the Bay St. property that she and her spouse owned. There was evidence that she had not informed others that she had changed her address from Bay St. By only sleeping nightly at Mineola Gardens there, she was not ordinarily inhabiting, i.e. normally occupying as a home, Mineola Gardens. As well, she had not designated it as her principal residence in her 2008 return. Additionally, she was unable to explain an insurance certification that the Mineola property was vacant.

[71] These facts establish that the appellant did not give thoughtful, deliberate and careful consideration before deciding to not report the Mineola Gardens gain. It would be obvious to a person with 30 years CRA employment that merely sleeping at a property would not qualify it as being a person's principal residence. In accordance with jurisprudence cited above, that is not ordinary habitation or normal occupation of a residence.

[72] Also it would be obvious to her as a long term CRA employee that to claim the exemption she would have to have designated the property as her principal residence.

[73] This suffices to decide the statute-barred issue. That is, per subparagraph 152(4)(a)(i), I find that not reporting the gain constituted, "a misrepresentation attributable to neglect, carelessness or wilful default in filing the return or in supplying any information under the Act." Accordingly the Minister was justified in reassessing the otherwise statute-barred 2008 taxation year per subparagraph 152(4)(a)(i).

C. <u>$48,000 – Deposit from Roma Taxi:</u>

[74] The appellant's evidence was that this $48,000 deposit was a gift from her parents to help with their grandchildren, noting that her parents had not been in a position to help her much when she was in university. The documentary evidence of this was a deposit slip into her account from the Etobicoke bank account of Roma Taxi, which was a taxi business owned by her father. The money was credited to the appellant's account about the time the Ben Machree Drive property was purchased. She testified that she had never worked for Roma Taxi.

[75] There was no testimony opposing this. I accept the appellant's evidence that this $48,000 payment was a gift from her parents. Thus, it should be removed as unreported taxable income.

D. $1,733 – Unidentified Deposits:

[76] Other contested unidentified deposits for 2008 were $200; $1,000; $47.66 and $492.46, totalling $1,733.

[77] The appellant testified regarding these minor amounts. The $200 deposit was a credit memo from TD Bank. The appellant had paid this amount for a property evaluation, which the Bank refunded upon appellant choosing to obtain a TD mortgage. Ms. Mann testified that the $1,000 came from daughter Tanya's bank account and was not income. Further, she testified that the $492.46 deposit came from a line of credit and was not income.

[78] I accept the appellant's explanations of these small sums, absent evidence to the contrary. The $1,733 total is to be excluded from unreported taxable income.

E. Was the Minister correct in assessing $20,718 of gross negligence penalties?

[79] Subsection 163(2) of the Act provides as follows, as to when gross negligence penalties may be imposed:

> 163(2) Every person who, knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer…filed or made in respect of a taxation year for the purposes of this Act, is liable to a penalty of the greater of $100 and 50% of...

[80] This provision requires that the appellant have made a false statement or omission, and that the statement or omission have been made knowingly or under circumstances amounting to gross negligence.

[81] Owen J. in *Peck v. The Queen* commented as to establishing actual knowledge and willful blindness as follows:

> Actual subjective knowledge and willful blindness may be proven by direct evidence, by circumstantial evidence or by a combination of the two. The

> determination of whether there is actual subjective knowledge or willful blindness must be made in light of all the circumstances.[34]

[82] Instead of proving knowledge, the Minister may establish that the taxpayer was grossly negligent. In the venerable 1984 decision of *Venne v. The Queen*, Strayer J., then of the Federal Court Trial Division, spoke of gross negligence as follows:

> 'Gross negligence' must be taken to involve greater neglect than simply a failure to use reasonable care. It must involve a high degree of negligence tantamount to intentional acting, an indifference as to whether the law is complied with or not.[35]

[83] In 2015, the Supreme Court of Canada in *Guindon*[36] endorsed Strayer J.'s description of gross negligence, and it was recently applied by the FCA in *Khanna*.[37]

[84] Also, there are identified factors relevant in drawing the line between ordinary and gross negligence, including: the magnitude of the omission in relation to the income declared, the opportunity the taxpayer had to detect the error, and the taxpayer's education and apparent intelligence.[38] Further, the Court may consider a "genuine effort to comply".[39]

[85] Turning to 2008, for the same reasons as for opening that otherwise statute-barred year, regarding failure to report proceeds from the disposition of Mineola Gardens, I find the assessed gross negligence penalty to be appropriate. A long term CRA employee with knowledge of the Act could not believe that simply sleeping at a property is sufficient to constitute that property the person's principal residence, while also not designating it as such in the pertinent return. Thus gross negligence is established as addressed in the above jurisprudence. The conduct fell notably below what would be expected of a reasonable taxpayer.

[86] The gross negligence penalty should only apply to the unreported capital gain of $99,607.

2011 Taxation Year:

A. $9,000 – Unidentified Deposit:

---

[34] *Peck v. The Queen*, 2018 TCC 52 at para. 48
[35] *Venne v. The Queen*, [1984] CTC 223 at 234 (FCTD)
[36] *Guindon v. Canada*, 2015 SCC 41 at para. 60
[37] *Khanna v. Canada*, 2022 FCA 84 at para. 7
[38] *Manhue v. R.,* 2018 TCC 71 at para. 63, citing *DeCosta v. R.*, 2006 TCC 545.
[39] *Gray v. R.*, 2016 TCC 54 at para. 34

[87] The appellant provided a record from her parents' TD bank account showing a transfer of $9,000 to her bank account. She testified this was a gift from her parents. There was no evidence indicating otherwise. I accept that the $9,000 deposit was a family gift and was not unreported taxable income.

B. $5,000 – Unidentified Deposit:

[88] The appellant produced a record from her parents' bank account showing a transfer to her bank account of $5,000. No evidence was adduced contesting the conclusion that this was a family gift. I find that the $5,000 was not unreported taxable income.

C. $8,887 – Unidentified Deposits ($4,900; $316; $1,000; $771; $1,900):

[89] The appellant testified that deposits totaling $4,900 were strike pay payments received by her spouse. No documentation to support this claim was provided. Nor did the appellant explain why the deposits are not consistent amounts and were not deposited on a scheduled basis.

[90] The appellant's husband, Mr. Basi, confirmed he had received strike pay. He said he received several $250 payments that went into a joint account he had with the appellant. I believe this could have been corroborated. Also, of course 4,900 is not a multiple of 250. Therefore, I am not sufficiently satisfied that the $4,900 was strike pay, as opposed to unreported taxable income.

[91] The appellant testified that the $316 deposit was from canceled insurance and was not income. She said that the $1,000 was possibly from her daughter Anita but she was not sure. She testified also that the $1,900 was rental income that she had previously reported.

[92] I will recognize the $316, $1,000, $771 and $1,900 amounts on a *de minimus* basis as not being non-reported income.

D. Gross negligence penalties of $2,773:

[93] Gross negligence penalties for 2011 taxation year are to be adjusted in conformity with the foregoing findings.

2012 Taxation Year:

A. <u>$121,844 – Sale of 2615 Stillmeadow Road and $124,886 – Sale of 1608 Ogden Avenue:</u>

[94] As stated above, the 2615 Stillmeadow Road residential property (Stillmeadow Rd.) was purchased November 10, 2011 for $448,274. The purchase was made by funds provided by the appellant. The appellant's daughter Anita Basi was listed as purchaser. Stillmeadow Rd. was sold several month later, on March 7, 2012 for $570,118. The $121,844 net sale proceeds went to the appellant’s bank account. The capital gain was not reported by either Anita or the appellant.

[95] Shortly after, on April 27, 2012 the 1608 Ogden Avenue residential property (Ogden Ave.) was purchased for $492,828, again funded by the appellant. Daughter Anita again was listed as purchaser. The Ogden Ave. property was sold months later on August 31, 2012 for $617,714. The $124,866 net proceeds of sale went into the appellant’s bank account.

[96] The appellant’s position is that the net proceeds of sale of neither property were taxable to her, as she had owned neither property. Rather, Anita had owned both. The appellant says that the purchase of Stillmeadow Rd. was her gift to Anita, as Anita had special needs and her mother the appellant sought to help her become independent, encouraging her to move from the family home and into a residence of her own.

[97] The appellant’s testimony, and the testimony of Anita and also Anita’s sister Tanya, was that Anita lived in the Stillmeadow Rd. house for three months or so, but Anita was unhappy as the house was not as private as she had wished. It was on a corner lot and thus relatively exposed. She did not feel safe there. So, it was sold and the Ogden Ave. house was bought in Anita’s name and Anita lived in it. That house was located such that Anita could walk to her work and also, it was in an area where she several of her friends lived or had lived. She was familiar with this area, where her high school was located.

[98] Anita’s testimony was that she found upon living at Ogden Ave. that some of her friends had moved away, and Anita wished to move back home with her parents. Thus, after a few months the Ogden Ave. house was sold and Anita moved back in with her parents.

[99] Anita testified there had been significant renovations done to the Ogden Ave. house while she was there (“kitchen, bathrooms, basement”), and that she wanted to

move back in with her parents.[40] She also testified some renovations had been done while she was at Stillmeadow Rd. – "a little bit of fixing up of certain things".[41]

[100] The respondent's position is that Anita Basi as title holder of these two properties was a bare trustee of these properties on behalf of her mother, who in reality was the beneficial owner of the properties.

[101] Neither the appellant, nor daughter Anita, reported any gain from the Ogden Ave. disposition. The appellant opposes the respondent's bare trustee argument, for why the net proceeds of sale of these two dwellings ostensibly owned by Anita should be taxed to the appellant. The appellant says the Minister's factual bases for the bare trustee argument were not pleaded in the Reply.

[102] As well Ms. Kulwinder Banwait, the appellant's real estate agent, was called by the respondent to testify. She acted as agent for the appellant in the purchase and sale of both the Stillmeadow Rd. and Ogden Ave. properties. She testified that the appellant said she was looking for houses that she could renovate and sell. She recalls no reference by the appellant to finding properties suitable for her daughter Anita. Both of these two properties were "fixer-upper" types.

[103] Regarding ministerial assumptions, the respondent does not need to state which assumptions specifically support a particular position. Per *Bemco Confectionary*, the respondent "merely needs to state the facts that were relied upon in assessing and then may ask the trial judge to use these facts to draw conclusions in favour of the position being advanced."[42]

[104] As well, the FCA recently stated in *Jefferson v. Canada* that, "Even where a taxpayer succeeds in demolishing the Minister's assumptions, or the Minister does not rely on any assumptions, the Minister may nonetheless establish the correctness of an assessment based on all the evidence tendered."[43]

[105] Regarding bare trusts, Lamarre J., as she then was, stated in *De Mond* v. *R*.[44] that, "a bare trustee is a person who holds property in trust at the absolute disposal, and for the absolute benefit of the beneficiaries". Further, bare trustees have been

---

[40] Transcript, p. 251
[41] Transcript, p. 249
[42] *Bemco Confectionary and Sales Ltd. v. The Queen*, 2015 TCC 48 at para. 23; aff'd 2016 FCA 21.
[43] *Jefferson v. Canada*, 2022 FCA 81 at para. 28, citing *Pollock v. Canada*, [1994] 2CTC 385, 94 DTC 6050 (FCA); *Lacroix v. Canada*, 2008 FCA 241 and *Deyab v. Canada*, 2020 FCA 222 (FCA)
[44] *De Mond v. R.*, [1999] 4 CTC 2007, 99 DTC 893 (TCC)

compared to agents and "[t]he existence of a bare trust will be disregarded for income tax purposes where the bare trustee holds property as a mere agent or for the beneficial owner."[45]

[106] Citing *De Mond*, the Supreme Court of Canada has stated:

> …even where private parties purport to create a trust, those relationships may be scrutinized to determine their true nature for tax purposes. For example, a 'bare trust'– where a trustee's only obligation is to convey property to the beneficiary upon demand – is generally disregarded for tax purposes.[46]

[107] *Fourney v. R*[47] discusses bare trusts and their interaction with resulting trusts. Hogan J. cited the following description of beneficial ownership from the Supreme Court's decision in *Pecore v. Pecore*:[48] "Equity...recognizes a distinction between legal and beneficial ownership. The beneficial owner of property has been described as '[t]he real owner of property even though it is in someone else's name.'"

[108] Hogan J. notes that a transfer of property for no consideration generally results in a rebuttable presumption of resulting trust and discusses *Pecore*, wherein the Supreme Court stated:

> The presumption of resulting trust is a rebuttable presumption of law and general rule that applies to gratuitous transfers. When a transfer is challenged, the presumption allocates the legal burden of proof. Thus, where a transfer is made for no consideration, the onus is placed on the transferee to demonstrate that a gift was intended.
>
> The presumption of resulting trust therefore alters the general practice that a plaintiff (who would be the party challenging the transfer in these cases) bears the legal burden in a civil case. Rather, the onus is on the transferee to rebut the presumption of a resulting trust.

[109] The presumption of advancement (i.e., a gift) does not apply to transfer from parents to adult children, even if the adult child is dependent on the parent. In this situation, a resulting trust arises. However:

> There will of course be situations where a transfer between a parent and an adult child was intended to be a gift. It is open to the party claiming that the transfer is a gift to rebut the presumption of resulting trust by bringing evidence to support his

---

[45] *Ibid.*, paras. 36, 37
[46] *Canada (Attorney General) v. British Columbia Investment Management Corp*, 2019 SCC 63 at para. 61.
[47] *Fourney v. R.*, 2011 TCC 520
[48] *Pecore v. Pecore*, 2007 SCC 17

> or her claim. In addition, while dependency will not be a basis on which to apply the presumption of advancement, evidence as to the degree of dependency of an adult transferee child on the transferor parent may provide strong evidence to rebut the presumption of a resulting trust.[49]

[110] The evidence required to rebut the presumption is "evidence of the transferor's contrary intention on the balance of probabilities."[50]

[111] As stated in the respondent's written submissions and also to a degree pleaded in the Reply51, on March 7, 2012 proceeds of disposition of the Stillwater property were deposited into a bank account held jointly by the appellant and her two adult daughters. On the following day $260,000 was transferred from that joint account to a bank account held solely by the appellant. On March 11, 2012 $300,000 was transferred from the said joint account to a bank account held solely by the appellant.[52]

[112] The respondent notes also that the proceeds of sale of the Ogden Ave. property ($124,866) were used as part of $587,000 paid by the appellant November 9, 2012 to purchase a property at 1528 Greenridge Circle (Greenridge Circ.). That property was acquired in the name of Mimar Holdings Corporation, of which the appellant was president, officer and director.

[113] On September 18, 2013, a $600,000 mortgage was issued with Greenridge Circ. as security. The following day title to Greenridge Circ. was transferred from Mimar Holdings to the appellant, for nil consideration.

[114] On the next following day, $176,875 of the mortgage proceeds was deposited into the appellant's account.[53]

[115] I conclude based on all the evidence including that decisions regarding purchase and sale were made by the appellant rather than by Anita, but most particularly because the gains from selling each of the Stillmeadow Rd. and Ogden Ave. properties ended up with the appellant and not Anita, that Anita had held title to the properties as bare trustee for her mother the appellant. Thus, the gains

---

[49] *Pecore*, para. 41
[50] *Pecore*, para. 43
[51] Reply, paras. 16(jj) – 16(bbb)
[52] Respondent's written submissions, para. 53
[53] Respondent's written submissions, paras. 61,62,63

are taxable capital gains of the appellant – not Anita – as in both instances the appellant was the beneficial owner.

B. $11,600 – TFSA Contribution:

[116] The respondent has accepted that the $11,600 for the TFSA contribution was not unreported income. Accordingly, I so find.

C. $4,143 – Unidentified Deposits ($1,000; $300; $260; $1,900; $1,622; - $939):

[117] The unidentified deposit total of $4,143 is made up of several deposits - $1,000, $300, $260, $1,900, $1,622 and unreconciled net worth discrepancy of negative $939.

[118] The appellant referenced a transaction record and testified that the $1,000 deposit was not income, but she was not sure if its source. She said it could be from a line of credit. She had a line of credit with the National Bank and there was a note in the appellant's handwriting saying, “National Bank Montreal”. According to the appellant the $300 and $260 were credit memos from TD Bank. There was a note that said “May Wong, TD Bank”, and the appellant said this was the manager of her home branch. The appellant claimed that the $1,900 deposit is rent money, as was the $1,622 deposit. The record for the latter deposit had the notes “rent” and “Burgess” written on it in the appellant’s handwriting. The appellant stated that Burgess lived at the Lakeshore property.[54]

[119] The respondent’s position was basically that the amounts were not sufficiently supported or explained.

[120] I accept the appellant’s evidence as to these minor amounts. I recognize that with passage of time minor amounts become difficult to recall and there tends to be less surviving documentary back-up. This applies to the complete $4,143 total including the negative $939 adjustment.

D. Gross negligence penalties of $36,875:

[121] I do not believe that in this situation regarding Stillmeadow Rd. and Ogden Ave. disposition gains, it was obvious that daughter Anita constituted a bare trustee with her mother being the beneficial owner. The bare trustee concept is a

[54] Transcript, pp. 94-95

particularly legal one, not readily familiar to those not trained in law. Thus, on these facts I do not find the appellant was grossly negligent for not having reported the gains on the dispositions of these two properties as opposed to adult daughter Anita who held title doing so. The fact that Anita did not, I am unable to ascribe to the appellant.

2013 Taxation Year:

A. $22,083 – Settlement funds attributed as gain on sale of 16 Ben Machree Drive property

[122] On September 19, 2008, the 16 Ben Machree Drive property (Machree Dr.) was purchased for $915,878 in the names of the appellant and her adult daughters Tanya and Anita Basi. It was sold June 30, 2010 for $820,000 resulting in a capital loss of $73,551. The three owners sued their real estate agent regarding this purchase. On January 31, 2013, they received a settlement payment of $132,500, of which the appellant's one-third share was $44,167.

[123] The appellant received $22,083 as her share of a settlement payment pursuant to an action she had brought against a realtor for negligence and/or fraud. Her share was not reported.

[124] After closing of the Machree Dr. purchase the appellant was advised that the apartment above the garage was illegal. Thus, the rentable domestic units of Machree Dr. were fewer (and income potential less) and total value of the property was less than what the sued realtor had indicated to the appellant prior to purchase.

[125] The appellant says these settlement funds are not taxable as the settlement was to compensate her for her frustrations and the negligent conduct she experienced from the realtor. The appellant argues also that the Minister did not adduce evidence that a lower sales price was obtained as a result of the misrepresentation which led to the sale or that the sale proceeds related to natural depreciation of the property caused by unfavourable market forces.[55]

[126] The respondent submits that the settlement funds are taxable. The appellant had a one-third interest in Machree Dr. The owners of Machree Dr. incurred a capital loss on their subsequent sale of the property. The owners received a $132,500 payment arising out of the sale of the property in settlement of legal claims relating

---

[55] Appellant's written submissions, paras. 93-95.

to defects in the property not disclosed at the time of purchase. The appellant's one-third portion of this payment was $44,167.

[127] The respondent asserts that under the surrogatum principle, the tax consequences of a settlement payment turned on the tax treatment of the item that the payment was meant to replace. As the settlement payment related to defects in the Machree Dr. property, the settlement payment is taxable.

[128] The Supreme Court of Canada addressed the surrogatum principle in *Tsiaprailis v. Canada*.[56] Charron J., writing for the majority, discussed the tax treatment of a settlement payment arising from the termination of a taxpayer's long-term disability benefits by the insurer. She wrote:

> …awards of damages and settlement payments are inherently neutral for tax purposes... in assessing whether the monies will be taxable, we must look to the nature and purpose of the payment to determine what it is intended to replace. The inquiry is a factual one. The tax consequences of the damage or settlement payment is then determined according to this characterization. In other words, the tax treatment of the item will depend on what the amount is intended to replace. This approach is known as the surrogatum principle.
>
> …
>
> The determinative questions are: (1) what was the payment intended to replace? And, if the answer to that question is sufficiently clear, (2) would the replaced amount have been taxable in the recipient's hands?[57]

[129] In *Transocean Offshore Ltd. v. R.*[58] the FCA applied the surrogatum principle to determine whether a payment paid to a landlord's damages or settlement of the termination of a lease is income or a capital receipt. The Court stated that if the amount is paid as compensation for lost future rent it is income. If the amount is compensation for a diminution of capital, it is capital.[59]

[130] Here, according to the amended statement of claim against the realtor, the appellant and her fellow plaintiffs were seeking damages for loss of rent or for the loss of value due to the true legal state of the property.

---

[56] *Tsiaprailis v. Canada*, 2005 SCC 8
[57] *Tsiaprailis*, paras. 7, 15
[58] *Transocean Offshore Ltd. v. R.*, 2005 FCA 104
[59] *Transocean*, para. 50

[131] If the suit had been predominantly about loss of potential rents rather than overstatement of the property's price then following the surrogatum principle, the settlement payment would be treated as rental income. Thus, the entire $44,167 would be included in the appellant's income instead of the $22,083 taxable capital gain that was reassessed. However, now including the full $44,167 would be in breach of the rule that a taxpayer's appeal cannot result in an increased reassessment.[60]

[132] Accordingly, I find that $22,083 gain arising from the settlement payment is to be left as reassessed.

B. <u>$6,240 – Unidentified deposits – ($5,000; $640; $500; $100):</u>

[133] A $42 deposit was conceded by the respondent leaving the total of $6,240 at issue.

[134] The appellant testified that the $5,000 deposit was a credit memo, but no documentation was provided. The $640 was a credit memo from TD Bank. The $500 deposit was said to be rent. The $100 was replacement by the bank of $100 missing from a withdrawal by the appellant.

[135] I find the explanation for the $5,000 deposit insufficient to establish that that deposit was not unreported income. The $500 was rent and thus taxable. I accept the $640 and $100 deposits as not being unreported income. Thus, out of the total of $6,240, $5,500 deposit remains as unreported income, and $740 is accepted as not being unreported income.

C. <u>Gross negligence penalties of $3,135:</u>

[136] I concluded that the settlement payment received by the appellant should be included in her income as a capital benefit based on the surrogatum principle. I consider it grossly negligent that the appellant did not report any gain arising from her share of the settlement payment that she received. Her own pleading made clear that her claim was based on loss of rental income and/or of reduced value of the premises, rather on personal aspects such as frustration, etc.

---

[60] *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47 at para. 95, citing *Harris v. M.N.R.*, [1964] CTC 562, 64 DTC 5332.

[137] Assuming a gross negligence penalty was reassessed in respect of the aforesaid $5,000 deposit for which the appellant did not provide documentation excusing it from consideration as unreported income, I have insufficient basis to concur. This is a borderline significant amount, and it is not a matter of gross negligence to be unable to provide corroborating documentation some years later, that it is not unreported income. A gross negligence penalty should remain for the $500 deposit identified as being rent.

VI. Conclusion:

[138] In accordance with the foregoing reasons for judgment, judgment will be issued allowing the appeal for each taxation year in issue although substantively reflecting mixed success of the parties. The parties will each have 45 days from the date the Judgment is signed to respectively file submissions as to costs (maximum 7 pages, double spaced), should they not in the meantime have reached agreement between themselves as to costs.

Signed at Halifax, Nova Scotia, this 24th day of October 2023.

"B. Russell"

Russell J.

CITATION:	2023 TCC 151
COURT FILE NO.:	2017-2245(IT)G
STYLE OF CAUSE:	BOBBIE MANN AND HIS MAJESTY THE KING
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	June 27, 28 & 29, 2022
	September 21, 2022
REASONS FOR JUDGMENT BY:	The Honourable Justice Bruce Russell
DATE OF JUDGMENT:	October 24, 2023

APPEARANCES:

Counsel for the Appellant:	Osborne G. Barnwell
Counsel for the Respondent:	Chris Eccles

COUNSEL OF RECORD:

For the Appellant:

Name:	Osborne G. Barnwell
Firm:	OBG Law
For the Respondent:	Shalene Curtis-Micallef Deputy Attorney General of Canada Ottawa, Canada