

Docket: 2024-680(GST)I

BETWEEN:

IAN CHARLEBOIS,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Appeal heard on May 8, 2025, at Ottawa, Ontario

Before: The Honourable Justice Perry Derksen

Appearances:

For the Appellant:                      The Appellant himself

Counsel for the Respondent:      Daniel Powell

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**JUDGMENT**

In accordance with the attached Reasons for Judgment;

The Registry is directed to mark the copies of the notices of assessment for the appellant's 2022 and 2023 taxation years at Tab 18 of the appellant's book of documents for identification as Exhibit I-1;

The appeal from a Notice of Assessment dated January 13, 2023 made under the *Excise Tax Act* in respect of the appellant's application for the GST/HST new housing rebates for an owner-built home is dismissed, without costs.

Signed this 22nd day of May 2025.

“Perry Derksen”

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Derksen J.

Citation: 2025 TCC 76  
Date: 20250522  
Docket: 2024-680(GST)I

BETWEEN:

IAN CHARLEBOIS,

Appellant,

and

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Respondent.

### **REASONS FOR JUDGMENT**

Derksen J.

#### **I. Overview**

[1] In February 2020, the appellant purchased vacant land located at 846 Rockson Crescent in Ottawa, Ontario, and later constructed a 2-storey single family dwelling on the property. The City of Ottawa granted an occupancy permit for the Rockson property on January 19, 2021. Soon after, the appellant commenced the buildout of a separate basement unit. Later, in June of 2022, the appellant transferred the Rockson property to his wholly owned corporation, Ian Charlebois New Homes and Condos Inc. By that point, both units (i.e., the main unit comprising the main floor and second storey, and the basement unit) were fully leased.

[2] The appellant applied for the GST/HST New Housing Rebate for an owner-built home, which the Minister of National Revenue denied by notice of assessment dated January 13, 2023. The Minister denied the rebate on the basis that the appellant did not construct the Rockson property for use as his primary place of residence and he was not the first individual to occupy the home.

[3] And so, this appeal concerns whether the appellant is entitled to a rebate for an owner-built home under s. 256(2) of *Excise Tax Act*, R.S.C., 1985, c. E-15 (ETA)

and the parallel Ontario rebate provision in s. 256.21 of the ETA, as prescribed by s. 46 of the *New Harmonized Value-added Tax System Regulations, No. 2*, SOR/2010-151, as amended (Regulations).

[4] I have concluded that the appeal must be dismissed for the reasons discussed further below.

## **II. Statutory Framework for the GST/HST New Housing Rebates for Owner-Built Homes**

[5] As stated, there are two rebates in issue: (i) a rebate under s. 256(2) of the ETA; and (ii) an Ontario rebate under s. 256.21 of the ETA — as prescribed in s. 46 of the Regulations. The Ontario rebate, prescribed in s. 46 of the Regulations, adopts the conditions for entitlement in s. 256(2) of the ETA.

[6] The Minister denied the rebates on the basis that the appellant did not satisfy two conditions in s. 256(2). And counsel for the respondent confirmed at the hearing of the appeal that only those two conditions were in issue, in particular the conditions in ss. 256(2)(a) and 256(2)(d)(i).

[7] The condition that the appellant must satisfy in s. 256(2)(a) concerns whether the appellant constructed the residence for use as his primary place of residence. Paragraph 256(2)(a) reads:

### **Rebate for owner-built homes**

256(2) Where

(a) a particular individual constructs or substantially renovates, or engages another person to construct or substantially renovate for the particular individual, a residential complex that is a single unit residential complex or a residential condominium unit for use as the primary place of residence of the particular individual or a relation of the particular individual,

...

[8] The condition that the appellant must satisfy in s. 256(2)(d)(i) concerns whether the appellant was the first individual to occupy the residence after the construction or substantial renovation had begun. Subparagraph 256(2)(d)(i) reads:

**256(2) Where**

...

(d) either

(i) the first individual to occupy the complex after the construction or substantial renovation is begun is the particular individual or a relation of the particular individual, or

...

[9] Although the text of both provisions refers to “a relation of the particular individual”, that element is not in issue; there is no suggestion that the appellant constructed the Rockson property for use as the primary place of residence of a relation or that a relation was the first person to occupy the property.

[10] I note also that an “individual” is defined to mean a natural person (see the definition in s. 123 of the ETA). This is significant here only to the extent that it seems clear that the appellant understood that the acquisition of the Rockson property and the construction of the residence could not be undertaken using a corporate entity if a claim were to be made for the rebates for an owner-built home, and presumably also if he wished the Rockson property to be eligible for the principal residence exemption under the *Income Tax Act*.

[11] The expression, “primary place of residence”, as used in s. 256(2)(a), is not defined in the ETA. As such, it is necessary to look to prior jurisprudence. Moreover, whether the appellant constructed the Rockson property for use as his primary place of residence is a question of fact. The relevant time for this determination requires an assessment of the appellant’s intention when the home was being constructed.

[12] In considering a person’s intention or purpose, a person’s conduct is generally more revealing than “ex post facto declarations” (see generally *MacDonald v. Canada*, 2020 SCC 6, at para. 22). Courts are, therefore, not guided only by a person’s subjective statements of purpose and instead will look for objective manifestations of purpose (see *Symes v. Canada*, [1993] 4 SCR 695, at p. 736) and examine the surrounding factual circumstances.

[13] The actual use of the property may be evidence of a person’s intention and a more reliable indicator (see *Coburn Realty Ltd. v. The Queen*, 2006 TCC 245, at para. 10). However, the fact that an individual may or may not live in the house is

distinct from the intention that could motivate the person to construct the house. This is why living in a house on its own is insufficient to establish that the person had the requisite intention contemplated in s. 256(2)(a): see *Hammound v. The King*, 2023 TCC 55, at para 50.

[14] In considering a person's intention through a lens of occupancy, this Court has considered several factors, including the following in *Sozio v. The Queen*, 2018 TCC 258 (albeit in the context of s. 254(2)(b), which concerns whether an individual has "acquired" a rebate property for use as the primary place of residence of the individual):

- a. demarcation of primary place of residence by change of address;
- b. the relocation of sufficient personal effects to the rebate property;
- c. if no occupancy of the residence, was there cogent evidence of frustration of occupancy;
- d. permanent occupant insurance versus seasonal or rental coverage;
- e. delivery of possession of previous primary residence to another; and
- f. if dual occupancy continues, then the rebate property must be more frequently occupied, more convenient to third party locations such as work, more convenient to amenities and more suitable to the needs of the taxpayer.

[15] Important is that there is no fixed list of factors. What is required is a clear and settled intention to occupy the property as a primary place of residence: *Kniazhev v. The Queen*, 2019 TCC 58, at para. 7. Parliament's use of the word "primary" suggests that the person must have a settled intention to centre or arrange their personal and family affairs around that property: *Kniazhev* at para 8.

[16] Turning to the matter of occupancy in s. 256(2)(d)(i), this Court in *Sindhi v. The King*, 2023 TCC 102, considered the distinction between acquiring a property for use as a primary place of residence and occupancy in the context of the rebate provision in s. 254(2), and in particular the difference between s. 254(2)(a) and s. 254(2)(g). The former focuses on the intention of the individual to use the property as their primary place of residence, while the latter refers to occupying it as a place of residence. In that context, Rossiter C.J. (as he then was) emphasized that

occupancy is something more than simply having a mattress with a set of sheets and pillowcases and a table at the premises (*Sindhi* at para. 24).

[17] Having reviewed the relevant statutory conditions that are in issue, I next turn to whether the appellant is entitled to the GST/HST rebates for an owner-built home.

### **III. Has the Appellant Satisfied the Conditions in ss. 256(2)(a) and (d)(i)?**

#### ***A. The Appellant has the Burden***

[18] The appellant bears the burden, on a balance of probabilities, to demolish or disprove the assumptions of fact on which the Minister's assessment is based. The fact that the appellant bears this burden is well established: *Eisbrenner v. Canada*, 2020 FCA 93, *Chibani v. Canada*, 2021 FCA 196, at para. 12; and *Hickman Motors Ltd. v. Canada*, [1997] 2 SCR 336. The standard of a balance of probabilities means that on a factual issue, I must consider whether it is more likely than not that a fact happened or did not, or that an event occurred: *F.H. v. McDougall*, 2008 SCC 53, at paras. 44 and 49.

[19] The Minister made several assumptions of fact that are contested by the appellant. These include the assumptions that the appellant did not build the Rockson property to be occupied by him as a primary place of residence and instead "built" it as an investment property (reply at paras. 10(n) and (o)). I read these paragraphs in the reply to mean that the Minister assumed that the appellant did not construct the house for use as his primary place of residence and instead acquired the property and built the residence as an investment property. The Minister also assumed that the appellant had no plans to occupy the Rockson property as a primary place of residence (reply at para. 10(p)).

[20] Regarding occupancy, the Minister assumed that the Rockson property was occupied by tenants on March 25, 2021, that the tenants were not related to the appellant, and that the appellant did not occupy the property before March 25, 2021 (reply at paras. 10(v), (w), and (x)).

[21] The appellant denies other assumptions of fact that were made by the Minister.

#### ***B. The Facts that are Admitted or Not Controversial***

[22] On May 1, 2025, the appellant filed a document styled an amended notice of appeal, but it was more akin to an answer to the reply and, during the hearing, I stated that I would treat it as such and will refer to it as the answer. The appellant made some admissions in the answer and then sought to clarify his position on the assumptions of fact that were not admitted. The appellant was the only witness that testified. I will first deal with the admitted facts or those that are not controversial.

[23] The appellant purchased the Rockson property on February 25, 2020, for \$160,000, which at the time was vacant land. The appellant began constructing a residence on the property in July 2020.

[24] When construction was initially completed, the house was comprised of a main floor, a second floor with four bedrooms, and an unfinished basement. On January 19, 2021, the appellant obtained an occupancy permit from the City of Ottawa. The occupancy permit describes the building permit description as for the construction of a “2 storey single family dwelling” (see Exhibit A-10 within Tab 3 of the appellant’s documents, p. 40). Eventually, another separate unit was completed in the basement, which had a separate entrance and separate metering for heat, hydro and water consumption.

[25] On June 2, 2022, the appellant transferred the Rockson property to his wholly owned corporation, Ian Charlebois New Homes and Condos Inc. At the time of the transfer, the appellant recorded the value of the property as \$1,325,000.

[26] The appellant applied for the GST/HST New Housing Rebate for Owner-Built Houses in respect of the Rockson property. It is not entirely clear when the appellant signed and submitted the application. The copy of the application introduced in evidence bears the date of November 27, 2021 (Exhibit A-10 at p. 20). The Canada Revenue Agency (CRA) acknowledged receiving the application by letter dated April 27, 2022. Later, by letter dated October 11, 2022, the CRA asked the appellant to provide documents to support the application for the rebates.

[27] In response, the appellant provided the CRA with, in part, a copy of an appraisal of the Rockson property that was prepared by a Mr. Armstrong for Caisse Desjardins Ontario Credit Union Inc. for mortgage lending purposes. The appraisal report was dated March 25, 2021, and indicates an appraisal date of March 21, 2021 (Exhibit A-10 at p. 43–44).

[28] The Minister disallowed the rebate application by notice of assessment dated January 13, 2023.



[29] In denying the application, the Minister made certain assumptions of fact that originated from Mr. Armstrong's appraisal report. Specifically, the appraisal report states, in part, that the subject is a custom built two storey home with a self contained two-bedroom basement apartment. The report also states that the four-bedroom above grade unit is rented for \$2,500 per month and that the basement suite is to be owner occupied (Exhibit A-10 at p. 46). The report acknowledges that due to the pandemic, the interior of the home was not inspected and notes that an exterior walk around was completed, and interior details were "obtained from the vendor and/or real estate agent at the time of inspection". I note here that the appellant operates a real estate brokerage through another corporate entity, Ian Charlebois Real Estate & Mortgages Inc.

[30] It is self-evident that the Minister relied on the appraisal report in assuming that the Rockson property was occupied by tenants on March 25, 2021 (see reply at para. 10(v)). The appellant disputes this assumption of fact.

### ***C. Mr. Charlebois' Evidence and Findings of Fact***

[31] As stated, the appellant was the only witness that testified. At the outset, I note that the appellant, experienced in the real estate industry, knew what he needed to say to be entitled to the rebates in issue. In particular, the appellant testified that he consulted a lawyer in 2020 about building a personal residence, entered into the purchase agreement for the property in his personal name, started building and finished on January 15, 2021, so he could move into the Rockson property as his primary residence. The appellant emphasized that because he intended this the entire time and moved in, his actions satisfy what is required for the rebates.

[32] I will proceed through the key parts of the appellant's oral testimony and the key documentary evidence chronologically, to the extent possible.

[33] To begin, the appellant was single and had no children when he acquired the vacant land at 846 Rockson Crescent. He emphasized that he "lived small" and with few furnishings. Once built, the Rockson property was about 3,100 square feet in size, excluding the basement.

[34] The appellant introduced a heavily redacted email dated February 12, 2020, that he said was exchanged with his lawyer. In the email, the appellant, referring to the Rockson property, stated, "It will be for a primary home so I need it to be in my name personally (sic) the agreement of purchase and sale would be for this week and

we would close before Feb. 24” (see Exhibit A-7). Since the statement is self-serving and the remainder of the email was heavily redacted, I give it no weight. I note that under cross-examination the appellant claimed that the remainder of the email was subject to solicitor-client privilege and no issue of implied waiver of privilege was raised by the respondent.

[35] Turning next to the end of 2020, the appellant testified that the Rockson property was pretty much ready in December of 2020 before he left for a trip. Prior to this, the appellant was residing at 52 Chamberlain Avenue in Ottawa in a house that he owned personally. The appellant said that he moved some of his furnishings from 52 Chamberlain Avenue, which was previously his primary residence, before his trip. Later, on January 7, 2021, arrangements were made by Air Canada for the appellant to fly from Toronto to Ottawa during the evening of January 16, 2021.

[36] On January 9, 2021, a cleaning service cleaned the Rockson property for the appellant. The appellant also arranged for a photographer to take professional interior photos of the residence on January 9, 2021, and these were provided to the appellant on January 14, 2021, via an email link. The appellant said that he wanted professional photos because this was his first new home.

[37] The appellant also testified that he relied on an exception in an Ontario stay-at-home order, issued during the COVID-19 pandemic and effective on January 14, 2021, which permitted traveling to another residence if an individual were moving residences. And so, he described moving from 52 Chamberlain Avenue to the Rockson property on January 17 and 18, 2021 and spending his first night there on January 18th.

[38] In terms of furniture, the appellant said that he moved a couch over to the Rockson property before he left on vacation in December and moved a couple of tables and obviously a bed on January 18th. The residence had appliances, and the appellant said that was basically it. He said that no one helped him and, “technically” people could not be on the road.

[39] The next day, on January 19, 2021, the appellant obtained occupancy from the City of Ottawa, as noted previously.

[40] In cross-examination, the appellant was confronted with an online posting in which he advertised the Rockson property on January 19, 2021, as a “brand new rental” (Exhibit R-3 at p. 1–2). The posting advertised a lease that would include the main and second floor only, and 50% of the garage and driveway. The posting

described the basement as a separate unit, but with designated storage space for the upper tenant. The posting stated that a “2 year lease +” was preferred and it included photos taken by the photographer a few days earlier.

[41] The appellant acknowledged the posting and that he had done it. He said that he had slept on the matter on January 18th and posted the ad during the afternoon of January 19th. He testified that he was already living at the property by January 19th and, due to the COVID-19 pandemic, he had to decide whether he could afford the Rockson property. The appellant referred to low job security and said interest rates were rising and so he made the decision to rent out the property. The appellant also testified that because of his fluctuations in income, if interest rates rose by two to three percent, he would not be able to afford the property on the main and second floor and decided to live in the basement. To that end, the appellant said he took steps to begin constructing the basement unit and finished them in April 2021.

[42] The appellant introduced into evidence, as part of Exhibit A-10, a March 15, 2021, email confirming that he had submitted a request with Canada Post for new mailbox keys. This was necessary because mail was to be delivered to a community mailbox, instead of to the residence.

[43] I next return to Mr. Armstrong’s appraisal report regarding the Rockson property, which had an effective date of March 21, 2021, and was completed under a cover letter dated March 25, 2021. The appellant introduced the appraisal report as part of Exhibit A-10 and I note that the report was not introduced for the purpose of expressing an opinion on the value of the property. The difficulty that I have is that the facts stated in the report do not align with the appellant’s testimony and the information contained in the report would have come from the appellant.

[44] Elements of the appraisal report are clearly accurate. For example, the basement is described as 90% finished. This coincides with the appellant’s evidence that work had began on building out the basement suite soon after the January 19, 2021, occupancy permit was obtained. Moreover, Mr. Armstrong’s appraisal report relies on photos that were obviously provided by the appellant. These included various photos of the basement kitchen, basement bathroom, and basement finishings.

[45] What then am I to make of Mr. Armstrong’s statements that the “4 bedroom above grade unit is rented for \$2,500 per month” and the “basement suite is to be owner occupied”? I accept that Mr. Armstrong did not undertake an interior inspection, and he acknowledged this in his report. But he also stated that the interior

details were obtained from the “vendor and/or real estate agent at the time of inspection”. As stated, these details could only have come from the appellant.

[46] If the information was true, this would raise concerns about the appellant’s credibility. If the appellant provided inaccurate information to Mr. Armstrong because it served the appellant’s objectives at that time, this too would raise concerns about his credibility. If there was a miscommunication with Mr. Armstrong, I would have expected some convincing evidence about a contemporaneous attempt to correct the information. But here there is none. In the circumstances, I am left with concerns.

[47] The appellant introduced into evidence a copy of a mortgage loan commitment from Equitable Bank dated April 9, 2021, for the Rockson property in the principal amount of \$937,500 (see Exhibit A-9). But the document was heavily redacted by the appellant. The commitment required a current appraisal report confirming a market value of not less than \$1.25 million. Because of the redactions, significant details in the document are unavailable to me, including details about the appraisal report. What is left includes a term that the appellant was required to provide valid and current documentation, including a utility bill and government ID. The appellant was also required to submit written confirmation of rental income by way of executed lease agreements or bank statements respecting the property that he owned at 52 Chamberlain Avenue and another property that he owned at 814 Smyth Road, in Ottawa. What I cannot see, because of the redactions, for example, is whether Equitable Bank also required lease confirmations respecting the Rockson property.

[48] The Equitable Bank commitment letter and a subsequent mortgage statement confirm that the appellant was able to borrow against the Rockson property by way of a mortgage. It seems he obtained a 36-month term at a fixed rate of 2.69% and was able to access his equity in the property since he self-financed the construction with cash. The documents do not, however, establish that the appellant constructed the residence for use as his primary place of residence or that he was the first individual to occupy the residence. And the redactions leave me with concerns about whether the appellant has been forthcoming about details relating to the Rockson property.

[49] It seems more likely that the appellant had taken steps in March 2021 to obtain mailbox keys for a tenant, or future tenant, and then he sought mortgage financing to unlock equity in the property. I do not need to decide whether someone else was occupying the Rockson property in March of 2021, although some evidence points

toward that conclusion (and the Minister's assumption of fact is presumed true unless demolished by the evidence).

[50] What I must decide is whether the appellant constructed the residence for use as his primary place of residence and whether he was the first individual to occupy the residence. Having considered the appellant's oral testimony and the documentary evidence, I find myself unable to accept the appellant's evidence. Moreover, his testimony is uncorroborated in circumstances where, in my view, if it were true, it should have been relatively easy to corroborate with witnesses or additional documentary evidence.

[51] I have already referred to the advertisement of the Rockson property as a rental on January 19, 2021. This undermines the appellant's evidence that he constructed a large residence — when he was single and lived small — for use as his primary place of residence. I also do not accept the appellant's evidence about changing his mind just before January 19, 2021, about his intended use of the property. The appellant referred to rising interest rates, but the Bank of Canada did not begin raising its overnight rate until March 2022.

[52] Moreover, the appellant has not produced a single photo, despite an extended period of opportunity, showing that he lived in the Rockson property; there are no photos of a dirty kitchen, furniture, personal possessions, books or anything that would make the residence looked lived in.

[53] The appellant also introduced a proposal dated April 20, 2021, from O'Reilly Brothers for asbestos removal services at 52 Chamberlain Avenue (see Exhibit A-3). He also introduced some photos of remediation work being done at that property (see Exhibits A-4 and A-5). I accept that at some point in the early part of 2021, asbestos was identified in the existing building materials at 52 Chamberlain Avenue and that construction work was undertaken to remove it. And I accept that the appellant decided to renovate 52 Chamberlain Avenue in 2021.

[54] The appellant also introduced an Uber Eats delivery confirmation dated April 6, 2021, showing that food was delivered to the Rockson property (see Exhibit A-4 at p. 91–92). But this coincides with the time when construction of the basement suite was being completed in April 2021 and the appellant's evidence that occupancy for the basement unit was granted on April 19, 2021. A single Uber Eats delivery confirmation reveals little to nothing about where the appellant was living in 2021. A full history of Uber Eats deliveries in 2021 may have painted a different picture.

[55] The appellant also introduced some other images at Exhibit A-5. One photo, which seems to have been posted online on March 24, 2021, shows the garage door and part of a golf simulator set up against a wall in the garage of the Rockson property. Again, this coincides with construction work being undertaken in the basement suite. Another image shows an online posting by the appellant on May 31, 2021, regarding data of an outdoor run. The appellant invites me to make the inference that this demonstrates that he was living at the Rockson property in May 2021. I accept that the appellant went for a run on May 31, 2021, in Stittsville but that is as far as that image takes me. Another image shows a posting of the appellant standing in front of the corner of the garage at the Rockson property with a bike. The appellant says the image was taken on July 26, 2021. I do not give the images and the appellant's evidence about a run and cycling the weight needed to overcome the burden of demolishing the Minister's assumptions of fact. In my view, these images do not offer the corroboration that I would have expected to be available if the appellant was living at the Rockson property.

[56] The Minister assumed that the appellant's home address was listed as 52 Chamberlain Avenue with the CRA as of May 1, 2021. This seems to coincide with the filing of the appellant's income tax return for the 2020 taxation year, although I do not have evidence of that before me.

[57] The appellant also introduced a copy of his driver's licence with an issue date of June 9, 2021, which shows his address as 846 Rockson Cres in Stittsville (see Exhibit A-11). This seems to coincide more closely with the identification expectations of Equitable Bank. I accept that the appellant was using the Rockson property for his identification, at least as of June 9, 2021.

[58] The difficulty that I have, however, is that the appellant has not satisfied me on a balance of probabilities that he changed his address to the Rockson property in such a way that he occupied it as his residence. Although the appellant introduced some utility bills for early 2021 from Enbridge, Hydro Ottawa, Reliance Home Comfort, and the City of Ottawa for water, these are ambiguous at best (see Exhibit A-17). They certainly do not demonstrate that the appellant was occupying the property in early 2021, or throughout the rest of the year and into 2022. In short, the objective manifestations and surrounding circumstances do not assist the appellant.

[59] Moreover, what I do not have is evidence of insurance (for the property itself or a vehicle), or evidence that the appellant arranged for services such as Wi-Fi, or evidence that the appellant relocated sufficient personal effects to the Rockson property. These are matters that would go a long way in showing that the appellant

had a settled intention to centre or arrange his personal affairs around the Rockson property. It is also not unrealistic to expect some records of deliveries for personal or online shopping items to the Rockson property, especially during the COVID-19 pandemic. Here there are none, except for a single Uber Eats order from Subway when the basement construction was being completed.

[60] Instead, I have the rental listing from January 19, 2021. And in cross-examination counsel for the respondent put additional listings to the appellant. In particular, on September 11, 2021, the appellant advertised the basement unit of the Rockson property for rent at \$1,850 per month (Exhibit R-3 at p. 3). The images in the posting seem to show staging furniture. The unit does not look lived in. The appellant posted another listing for the basement unit on October 10, 2021, using the same photos (Exhibit R-3 at p. 4).

[61] Later, on October 26, 2021, another post congratulated the landlord on the lease of the basement (Exhibit R-3 at p. 5). Consistent with that post, counsel for the respondent introduced a standard residential tenancy lease that the appellant entered into with a tenant for a tenancy of the basement unit starting on November 11, 2021 (Exhibit R-1). The lease seems to be signed on November 20, 2021.

[62] The appellant posted more ads for the main and second floor of the Rockson Property on April 11, 2022 (Exhibit R-3 at p. 6). On April 20, 2022, a “just rented” post offered congratulations on the lease of what is evidently the main floor and second floor of the Rockson property (Exhibit R-3 at p. 7). A lease with respect to Unit A, and in particular the main floor and second floor, was signed on April 22, 2021, and made effective June 1, 2022 (Exhibit R-2).

[63] The appellant says that he lived in the Rockson property on the main and second floor until around when he transferred it to his company, Ian Charlebois New Homes and Condos Inc., in June 2022. This coincides with the lease that commenced on June 1, 2022.

[64] I note also that the transfer of the Rockson property to Ian Charlebois New Homes and Condos Inc. in June 2022 involved a disposition of the property to a separate legal entity, and this is so regardless of whether that corporation was wholly owned by the appellant.

[65] Eventually, the Rockson property was converted into a triplex — after it was owned by Ian Charlebois New Homes and Condos Inc. — and fully leased.

[66] The appellant referred to his notice of assessment for the 2021 taxation year (Exhibit A-6). He redacted the date of the notice, but I infer that his tax return for the 2021 taxation year would have been filed in the spring of 2022. The notice shows the appellant's address as 846 Rockson Crescent.

[67] Important to note is that I do not need to decide where else the appellant actually lived in 2021.

[68] What I do know is that the appellant owned 814 Smyth Road since 2010. He also owned 52 Chamberlain Avenue since about 2016. And he entered into a purchase agreement for 810 Smyth Road in Ottawa on March 29, 2022, and closed on that transaction in August 2022.

[69] The appellant says that he lived with his parents in Nepean after he left the Rockson property and before he took possession of the property at 810 Smyth Road in August 2022. The appellant also said that he lived in the main floor of 810 Smyth Road until the basement was finished and then he moved into the basement and leased the main floor to a tenant. He testified that he moved out and back into 52 Chamberlain Avenue some time in early 2023. The evidence is not clear whether the appellant moved back into 52 Chamberlain Avenue in February 2023, or in March 2023.

[70] What struck me in listening to the appellant's evidence is that he seemed tuned to his desire that the Rockson property be treated as his principal residence for the purposes of the *Income Tax Act*. This became even more apparent when he referred to his notice of assessment for the 2022 taxation year, which showed his address as 810 Smyth Road. (Although the notices for 2022 and 2023 were not entered as an exhibit, they were referred to and should have been at least marked for identification. To that end, my judgment will direct that the redacted copies of the notices of assessment for the appellant's 2022 and 2023 taxation years at Tab 18 of the appellant's book of documents be marked as Exhibit I-1.)

[71] The appellant said that when he filed for his 2022 taxation year in 2023, 810 Smyth Road was his principal or primary residence. He also filed his 2023 taxation year in 2024 on the basis that 810 Smyth Road was his residence. Again, by 2024, the appellant was living at 52 Chamberlain Avenue.

[72] It seems the appellant may be seeking to create a record of which property he considers to be his principal residence for purposes of the *Income Tax Act* since he owns 810 Smyth Road personally. When he was sworn in as a witness, the appellant



said that his address was at 810 Smyth Road, but it turns out that that is not where he lives. He lives at 52 Chamberlain Avenue, which has been owned by Ian Charlebois New Homes and Condos Inc. since some time in 2022. The property at 52 Chamberlain Avenue also became the location from which the appellant's work as a real estate agent was conducted through Ian Charlebois Real Estate & Mortgages Inc. (see for example the documents related to the agreement of purchase and sale for 810 Smyth Road at Exhibit A-10 at p. 74–77).

[73] My task is not to decide where the appellant's principal residence is under the *Income Tax Act*. I simply point this out because the appellant seems to be telling me things that suit his understanding about taxation matters, leaving me concerned about his candour.

[74] The appellant's conduct suggests that 52 Chamberlain Avenue has long been his primary base for both his work and his personal routine. It seems more likely that the property became temporarily uninhabitable after the appellant commenced renovations at 52 Chamberlain Avenue in early 2021. I find it more likely that the appellant commenced a voluntary renovation of 52 Chamberlain Avenue in early 2021 with work beginning in or about April or May of 2021. It does not make sense that the appellant would construct a residence in Stittsville, to be used as his primary place of residence when the centre of his routine and business was in the core of Ottawa. Even 810 Smyth Road was a shorter and more realistic drive to 52 Chamberlain Avenue compared to the approximately 30 kilometres between the Rockson Property and 52 Chamberlain Avenue.

[75] In the end, I am not satisfied, on a balance of probabilities, that the appellant constructed the residence on the Rockson property with the intention of using it as his primary residence.

[76] The appellant first constructed the residence, obtained an occupancy permit and then completed the construction of the basement unit. Later, after the property was fully leased and disposed of to Ian Charlebois New Homes and Condos Inc., it was converted to a triplex. Here, the appellant's conduct, as reflected in the January 19, 2021, listing advertising the Rockson property as a rental (posted a few days after returning to Ottawa from a vacation and a mere day after he alleges to have begun living in the property) and his subsequent conduct, points against the property being constructed for use as his primary place of residence. I also reiterate the lack of corroborating evidence to support the appellant's oral testimony and alleged state of mind. And there is no compelling evidence of frustration.

[77] In the circumstances, the appellant has not overcome the burden to demolish the Minister's assumption of fact that the appellant did not build (i.e., construct) the Rockson property (i.e., the residence) for use as his primary place of residence. Moreover, the appellant has not demolished the Minister's assumption that the Rockson property was built (i.e., constructed) as an investment property.

[78] In addition, and based on the whole of the evidence, I do not accept that the appellant was the first individual to occupy the Rockson property. He might have moved a mattress and slept there on a few occasions, but I am unable to accept that the appellant occupied the property within the meaning of that concept as considered in the case law referred to above. I do not know where the appellant lived while the renovations at 52 Chamberlain Avenue were undertaken, but I am not satisfied on a balance of probabilities that it was at the Rockson property.

#### **IV. Conclusion**

[79] I conclude that the appellant has not satisfied the conditions in ss. 256(2)(a) and 256(2)(d)(i). Accordingly, the appellant is not entitled to the rebates for an owner-built home in s. 256(2) and in s. 256.21 as prescribed in s. 46 of the Regulations. Accordingly, the appellant's appeal is dismissed, without costs.

Signed this 22nd day of May 2025.

\_\_\_\_\_  
"Perry Derksen"

Derksen J.

CITATION: 2025 TCC 76

COURT FILE NO.: 2024-680(GST)I

STYLE OF CAUSE: Ian Charlebois v. His Majesty The King

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: May 8, 2025

REASONS FOR JUDGMENT BY: The Honourable Justice Perry Derksen

DATE OF JUDGMENT: May 22, 2025

APPEARANCES:

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COUNSEL OF RECORD:

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