

Docket: 2019-1067(IT)G

BETWEEN:

DIANE PANNETON,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on December 6, 2023, at Montreal, Quebec

Before: The Honourable Justice Dominique Lafleur

Appearances:

Counsel for the appellant: Simon St-Gelais

Counsel for the respondent: Renaud Fioramore-Beaulieu

JUDGMENT

The appeal from the assessment made under section 160 of the *Income Tax Act* dated March 14, 2018, is dismissed, with costs to the respondent under Tariff B of Schedule II of the *Tax Court of Canada Rules (General Procedure)*, in accordance with the attached reasons for judgment.

Signed at Montreal, Quebec, this 26th day of February 2024

“Dominique Lafleur”

Lafleur J.

Translation certified true
on this 24th day of December 2025

Margarita Gorbounova, Senior Jurilinguist

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REASONS FOR JUDGMENT

Lafleur J.

I. BACKGROUND

[1] The appellant, Diane Panneton, is appealing to this Court from an assessment made by the Minister of National Revenue (the “Minister”) under section 160 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the “Act”), in which the Minister claimed the amount of \$131,309.38 from Ms. Panneton.

[2] According to the Minister, Ms. Panneton’s spouse, Yvon Charbonneau, transferred a total of \$141,109.38 to Ms. Panneton from the 2002 to 2004 taxation years through two corporations that he controlled (GAM and PAM, defined below), at a time when Mr. Charbonneau had a much more significant tax liability.

[3] At the hearing, only Mr. Charbonneau testified for the appellant. Martin Nadeau, team leader at the Objections Division in the Laval office of the Canada Revenue Agency (the “CRA”), testified for the respondent.

[4] In these reasons, all references to legislative provisions refer to the Act, unless otherwise stated.

II. PROVISIONS OF THE ACT

[5] The relevant parts of subsection 160(1) read as follows:

<p>160(1) Where a person has, on or after May 1, 1951, transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to</p> <p>(a) the person's spouse or common-law partner or a person who has since become the person's spouse or common-law partner,</p> <p>...</p> <p>the following rules apply:</p> <p>(d) ...,</p> <p>(e) the transferee and transferor are jointly and severally, or solidarily, liable to pay under this Act an amount equal to the lesser of</p> <p>(i) the amount, if any, by which the fair market value of the property at the time it was transferred exceeds the fair market value at that time of the consideration given for the property,</p> <p>...</p>	<p>160(1) Lorsqu'une personne a, depuis le 1er mai 1951, transféré des biens, directement ou indirectement, au moyen d'une fiducie ou de toute autre façon à l'une des personnes suivantes :</p> <p>a) son époux ou conjoint de fait ou une personne devenue depuis son époux ou conjoint de fait;</p> <p>...</p> <p>les règles suivantes s'appliquent :</p> <p>d) ...;</p> <p>e) le bénéficiaire du transfert et l'auteur du transfert sont solidairement responsables du paiement en vertu de la présente loi d'un montant égal au moins élevé des montants suivants :</p> <p>(i) l'excédent éventuel de la juste valeur marchande des biens au moment du transfert sur la juste valeur marchande à ce moment de la contrepartie donnée pour le bien,</p> <p>...</p>
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III. ISSUE AND ADMISSIONS BY THE PARTIES

[6] In a letter to the Court dated November 30, 2023, confirmed by the parties at the start of the hearing, the parties informed the Court that the only issue the Court must decide is as follows:

Did Mr. Charbonneau, the tax debtor, transfer, "either directly or indirectly, by means of a trust or by any other means whatever", the amount of \$141,109.38 to his spouse, Ms. Panneton, pursuant to subsection 160(1)?

[7] The parties agreed that the other conditions for applying subsection 160(1) have been met (see *The Queen v. Livingston*, 2008 FCA 89 [*Livingston*] at para. 17):

- (i) Mr. Charbonneau had a tax liability in an amount at least equal to \$141,109.38 at the time of the transfers, which took place over the period from 2002 to 2004;
- (ii) The beneficiary of the transfers, Ms. Panneton, was Mr. Charbonneau's spouse throughout the period from 2002 to 2004 and was still his spouse as of the date of the hearing;
- (iii) The fair market value of the property transferred, totalling \$141,109.38, exceeds the fair market value of the consideration given by Ms. Panneton, which was \$9,800.00.

IV. CONCLUSION AND DISPOSITION

[8] For the reasons that follow, the Court concludes that Mr. Charbonneau transferred "indirectly ... by any other means whatever" the amount of \$141,109.38 to his spouse, Ms. Panneton, pursuant to subsection 160(1). Accordingly, the appeal is dismissed, with costs to the respondent calculated pursuant to Tariff B of Schedule II of the *Tax Court of Canada Rules (General Procedure)*.

V. FACTS

5.1 Mr. Charbonneau's testimony

GAM

[9] In 1995, Mr. Charbonneau incorporated 9029-4802 Québec Inc., doing business as Groupe Action Motivation ("GAM"), among other names.

[10] From 2001 to 2008, the directors of GAM were Mr. Charbonneau and Ms. Panneton; Ms. Panneton was the secretary-treasurer, and Mr. Charbonneau was the president.

[11] Until 2009, Mr. Charbonneau was the sole shareholder of GAM. In 2009, Ms. Panneton acquired the shares of the capital stock of GAM, held by Mr. Charbonneau at that time.

[12] From 2001 to 2008, GAM offered about 150 to 200 corporate training activities per year (including mentoring and conferences), had no employees, and retained about 23 freelancers per year. Mr. Charbonneau oversaw the company's business; more specifically, he handled the delivery of orders, business development, and quality control. Ms. Panneton handled the secretarial work, took notes about the delivery of training, and advised the company, but received no remuneration from GAM.

[13] GAM's clientele came from across Quebec; GAM's income came from mentoring and corporate training services. The amounts billed to clients in payment for the services performed were deposited into GAM's bank account, not into Mr. Charbonneau's personal bank account.

[14] Mr. Charbonneau stated that GAM incurred expenses for the following purposes in the course of operating its business: business development, travel, rent, office supplies and stationery, and leasehold improvements to the premises in the basement of the residence of which Ms. Panneton was the sole owner (the "residence"). Mr. Charbonneau also lived in the residence.

PAM

[15] In 1998, Mr. Charbonneau incorporated Productions Action Motivation Inc. ("PAM"). PAM was created for the purpose of producing motivational videos.

[16] A few years later, in 2004, PAM was apparently used to recruit investors, create an investment club, and invest in the stock market. A man named André Cloutier joined PAM to recruit investors.

[17] According to Mr. Charbonneau, Mr. Cloutier occupied an office in the basement of the residence. At that time, neither Mr. Charbonneau nor Ms. Panneton were working for PAM, except for Mr. Charbonneau depositing the contributions received from investors in PAM's bank account.

[18] According to PAM's annual returns for 2001 and 2002, Mr. Charbonneau was the sole shareholder and director. According to the annual return for 2003, Mr. Cloutier was a shareholder and director and the vice-president, and Mr. Charbonneau was a shareholder and director and the president.

[19] However, according to Mr. Charbonneau, Mr. Cloutier became a shareholder of PAM only in 2004, since Mr. Charbonneau was the sole shareholder and director in 2003.

[20] In 2002 and 2004, PAM allegedly generated no income, but did incur expenses for the following purposes in the course of operating its business: rent, business trips, office supplies, and leasehold improvements to the premises in the basement of Ms. Panneton's residence.

Residence and work carried out

[21] The residence was purchased by Ms. Panneton in May 2002 for \$215,000. The work on it apparently began in early 2003.

[22] Mr. Charbonneau testified regarding the extent of the leasehold improvements that were allegedly made to the residence: installation of a washroom, floors and partitions in the basement, construction of a training room in the garage, and expansion of the parking area to accommodate four to six cars.

[23] Mr. Charbonneau also stated that expenses were incurred for building a gazebo on the residence property for holding business meetings.

5.2 Testimony of Mr. Nadeau

[24] During 2002, 2003 and 2004, Mr. Charbonneau had no personal bank accounts.

[25] According to the CRA's "Option C" printout concerning Mr. Charbonneau, he reported business income of \$23,930 in 2002 and no income from 2003 to 2007 (Exhibit A-1, Tab 6, Copy of the CRA's Option C printout for Mr. Charbonneau for the 2002 to 2007 taxation years [in a bundle]).

[26] In 2009, the CRA carried out a personal audit of Mr. Charbonneau for the 2002 to 2007 taxation years. Following the audit, the CRA assessed him using the net worth method (Exhibit A-1, Tab 7: audit report by Mr. Létourneau (CRA) for the underlying assessment).

[27] Following the audit, a total of \$1,280,532 was added to Mr. Charbonneau's income for 2002 to 2004, and a total of \$70,503 was added to Mr. Charbonneau's income for 2005 to 2007.

[28] Withdrawals from PAM's bank account totalling \$1,176,342 were added to Mr. Charbonneau's income under subsection 15(1).

[29] According to Mr. Nadeau, amounts totalling \$1.5 million were deposited into PAM's bank account and withdrawn from it. Since there was no evidence that those amounts came from anyone other than Mr. Charbonneau, he was taxed on those amounts.

[30] At the hearing, however, Mr. Nadeau testified that certain amounts probably came from investors. Mr. Charbonneau objected to the assessments and declared bankruptcy in December 2012.

[31] With respect to the Minister's assessment concerning Ms. Panneton, Mr. Nadeau stated that the grounds for the objection were that the amounts transferred to Ms. Panneton did not come from Mr. Charbonneau and that certain amounts had already been assessed under subsection 15(1).

[32] According to Mr. Nadeau, however, the amounts assessed under subsection 15(1) came from neither GAM nor PAM, but from another company.

VI. POSITIONS OF THE PARTIES

6.1 Appellant's position

[33] According to the appellant, impoverishment of the tax debtor's patrimony is essential to finding that there was a transfer for the purposes of section 160.

[34] In this case, there was no direct or indirect transfer of property from the patrimony of Mr. Charbonneau to the patrimony of Ms. Panneton, since PAM and GAM, not Mr. Charbonneau, transferred the amounts from their own funds for the benefit of Ms. Panneton for making leasehold improvements in the basement of the residence.

[35] Given that PAM and GAM are not tax debtors, Ms. Panneton may not be held liable for the tax liabilities of her spouse, Mr. Charbonneau. In addition, it cannot be concluded that there was a transfer of any property from the patrimony of Mr. Charbonneau to the patrimony of Ms. Panneton, since Mr. Charbonneau's patrimony was not impoverished by the cheques issued by PAM and GAM to Ms. Panneton.

[36] The appellant also stated, in support of her position, that PAM and GAM are legal persons with patrimony separate from Mr. Charbonneau's and have full enjoyment of their civil rights (articles 301 *et seq.* of the *Civil Code of Québec*, CQLR c. CCQ-1991 ("C.C.Q.")).

[37] In addition, the appellant submits that Mr. Charbonneau did not indirectly transfer \$141,109.38 to her, since Mr. Charbonneau did not transfer those amounts to PAM and GAM in order for PAM and GAM to then transfer them to her. According to the appellant, the evidence showed that PAM and GAM had their own sources of income.

[38] Finally, it would be contradictory for the Minister to have assessed Mr. Charbonneau for appropriating funds from PAM and GAM under subsection 15(1) to now argue that the funds in PAM's and GAM's bank accounts were Mr. Charbonneau's own funds.

6.2 Respondent's position

[39] According to the respondent, Mr. Charbonneau transferred property directly or indirectly to Ms. Panneton within the meaning of subsection 160(1), and therefore Ms. Panneton is liable for Mr. Charbonneau's tax debts in accordance with the Minister's assessment. In support of that position, the respondent submitted two theories to the Court.

[40] The respondent's first theory is that, using PAM and GAM, Mr. Charbonneau transferred amounts totalling \$141,109.38 to Ms. Panneton (or for her benefit) from his own funds, which means that he transferred property for the purposes of subsection 160(1).

[41] The following facts allegedly support that conclusion.

[42] First, PAM and GAM did not carry on any business during the period from 2001 to early 2004.

[43] The evidence showed that PAM reported no income and claimed no expenses from 2001 to 2003, while GAM generated little income. Mr. Charbonneau reported no income from 2002 to 2007.

[44] In addition, the respondent submits that the alleged leasehold improvements made to the basement of the residence cannot be considered to have been made for

the benefit of a business carried on by GAM and PAM since the payments made by GAM and PAM were used for renovating the residence.

[45] According to the respondent, Mr. Charbonneau's testimony was at times vague, contradictory, and self-serving and is therefore not credible. The respondent asks the Court to draw a negative inference from Ms. Panneton and Mr. Cloutier's absence from the hearing.

[46] The respondent adds that the identity of the beneficiaries of the various cheques does not support the appellant's position.

[47] Finally, the evidence has apparently shown that Mr. Charbonneau had no bank accounts at the time of the transfers, between 2002 and 2004. He was the sole shareholder of GAM and the sole or majority shareholder of PAM. He controlled both companies, PAM and GAM, and their bank accounts. It is therefore highly likely that he was using the companies' bank accounts as if they were his personal bank accounts.

[48] However, if the Court is not persuaded by the respondent's first theory, the respondent submits that Mr. Charbonneau transferred the \$141,109.38 to Ms. Panneton "indirectly ... or by any other means whatever" within the meaning of subsection 160(1).

[49] According to the respondent, Mr. Charbonneau made arrangements for PAM and GAM to make payments to third parties for the renovation of the residence, for the benefit of Ms. Panneton. It must therefore be concluded that Mr. Charbonneau's patrimony was thereby impoverished.

[50] In this regard, the Court must apply the principles found in *Canada v. Kieboom* [1992] 3 F.C. 488 (F.C.A.) [*Kieboom*] and *Strachan v. The Queen*, 2013 TCC 362 [*Strachan*].

VII. DISCUSSION

7.1 **Transfer under subsection 160(1): relevant case law**

[51] According to the interpretation method set out by the Supreme Court of Canada in *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601 [*Canada Trustco*] (at para. 10):

The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole.

[52] In that decision, the Supreme Court of Canada also reiterated that the complexity of some provisions of the Act should lead the courts to emphasize the textual interpretation, to achieve the consistency, predictability and fairness that taxpayers require (*Canada Trustco* at paras. 11–12).

[53] The purpose of subsection 160(1) “is especially crucial to inform the application of” that subsection. Its purpose is “to prevent a taxpayer from transferring his property to his spouse ... in order to thwart the Minister’s efforts to collect the money which is [owed] to him” (see *Livingston* at para. 18, citing *Medland v. Canada*, 98 D.T.C. 6358 (F.C.A.) [*Medland*]).

[54] Recently, in *Eyeball Networks Inc. v. The Queen*, 2021 FCA 17 (at para. 60), the Federal Court of Appeal reiterated the purpose of subsection 160(1):

[44] As affirmed by this Court, the purpose of subsection 160(1) is to protect the tax authorities against any vulnerability that may result from a transfer of property between non-arm’s length persons for a consideration that is less than the fair market value of the transferred property....

[55] As shown by the above case law, this provision must be interpreted broadly and liberally in a way that adheres to its purpose and to the text of the provision and the context of the Act.

[56] First, subsection 160(1) is drafted in very broad language. The subsection covers all situations where, in one way or another, a tax debtor transfers property to their spouse (or other persons referred to in subsection 160(1)), if the transfer “thwart[s] the Minister’s efforts to collect the money which is [owed] to him” (see *Livingston* at para. 18, citing *Medland*).

[57] The use of the words “either directly or indirectly, by means of a trust or by any other means whatever” also indicates Parliament’s intention to include a wide range of transactions available to a tax debtor for transferring property to another person referred to in subsection 160(1).

[58] In addition, the French version of subsection 160(1) uses the words “[l]orsqu’une personne a ... transféré des biens...”, not “des biens lui appartenant” [property of the taxpayer]. The terminology used indicates that there is no

requirement that the spouse (or other person referred to in subsection 160(1)) receive the same property as that transferred by the tax debtor. The English version of subsection 160(1) uses the words “[w]here a person has ... transferred property...”, which are to the same effect.

[59] The Court also reaches this conclusion by considering other provisions of the Act that use language that is different from the language used for the purposes of subsection 160(1). For example, for computing the capital gain from the disposition of a property, subsection 39(1) provides that, for the purposes of the Act, the capital gain to be included in computing a taxpayer’s income must be from the disposition of “any property of the taxpayer”. The French version of subsection 39(1) uses the expression “*un bien lui appartenant*”. Regarding the value of property to be included in an inventory for the purposes of the Act, section 10 provides that the value of the property will be the cost at which the taxpayer acquired the property (in French, it uses the expression “*coût d’acquisition pour le contribuable*”).

[60] In addition, the courts have interpreted the word “transfer” broadly (see *Damis Properties Inc. v. The Queen*, 2021 TCC 24 [*Damis Properties*] at paras. 119–31, decision overturned on appeal but not on this point; see *Canada v. Microbjo Properties Inc.*, 2023 FCA 157). In *Damis Properties*, to reach that conclusion, the Court referred to the definition of “transfer” in *David Fasken Estate v. Minister of National Revenue*, [1948] Ex CR 580 (at 591–92) [*Fasken Estate*].

[61] The principles stated in *Fasken Estate* were reiterated by the Federal Court of Appeal in *Kieboom*, where the Court had to determine the meaning to be given to the words “transferred property either directly or indirectly by means of a trust or by any other means whatever” in applying the attribution rules set out in the Act. These words are very similar to those in subsection 160(1).

[62] In that case, Mr. Kieboom had arranged for his company to issue shares to his spouse for consideration that was lower than the shares’ fair market value, thereby reducing his own capital interest in the company. The Federal Court of Appeal concluded that there had been an indirect transfer by Mr. Kieboom to his spouse:

18 ... In my view, the phrase “transfer of property” is used in this provision in a rather broad sense. Both of the nouns in the phrase are general and non-technical. As for the word transfer, Lord Justice James in *Gathercole v. Smith* (1880-81), 17 Ch. D. 1 (C.A.), stated at page 7 that the noun transfer was “one of the widest terms that can be used.” Lord Justice Lush [at page 9] stated that the word “transferable” includes “every means by which the property may be passed from one person to another.”

19 President Thorson, relying on the above definitions in *Fasken, David v. Minister of National Revenue*, [1948] Ex.C.R. 580, at page 592, stated:

The word “transfer” is not a term of art and has not a technical meaning. It is not necessary to a transfer of property from a husband to his wife that it should be made in any particular form or that it should be made directly. All that is required is that the husband should so deal with the property as to divest himself of it and vest it in his wife, that is to say, pass the property from himself to her. The means by which he accomplishes this result, whether direct or circuitous, may properly be called a transfer.

...

21 In this case, therefore, the taxpayer transferred property to his wife, that is, he gave a portion of his ownership of the equity in his company to his wife. The 40% capital interest in his company which he gave to his wife was clearly property. His beneficial interest in his company was reduced by 40% and hers was increased by 40%. The fact that this transfer of property was accomplished through causing his company to issue shares makes no difference. Subsection 74(1) covers transfers that are made “directly or indirectly” and “by any other means whatever”. The transfer, which in this case was indirect, in that the taxpayer arranged for his company to issue shares to his wife, is nevertheless a transfer from the husband to the wife. ...

[Emphases added.]

[63] In *Medland*, the Federal Court of Appeal examined the issue of whether an individual had transferred property to his spouse within the meaning of subsection 160(1) by making principal payments to the bank on a debt secured by a mortgage on the residence owned by his spouse. The Federal Court of Appeal concluded that there had been an indirect transfer within the meaning of subsection 160(1):

[15] In my view, the Tax Court judge was correct when he concluded that the applicant's spouse transferred property indirectly to the applicant to the extent of the portion of the mortgage payments that related to the principal of the mortgage.

[16] The word “property” in subsection 160(1) of the Act, which is defined as meaning “property of any kind”, including “money”, has been described by Lord Langdale⁹ as “the most comprehensive of all the terms which can be used inasmuch as it is indicative and descriptive of every possible interest which the party can have”.

[17] The word “transfer” is not defined in the Act. It was commented upon in the *Estate of David Fasken v. M.N.R.*¹⁰ by President Thorson of the Exchequer Court of Canada in the following terms:

...

[19] By applying the phrases “transfer... of property...” of subsection 41(4) of the *Income Tax Act* of 1917 to that situation, Thorson P. indicated, in effect, that, contrary to the submission of the applicant in the case at bar, it is not necessary that, when a husband divest himself of a particular property, that same property must have become vested in his spouse.

[20] The words “indirectly... by... any other means” in subsection 160(1) of the Act refer to any circuitous way in which property of any kind passes from one person to another. In the case at bar, when Mr. Medland made the payments to the mortgagee, he specified that such money was to be attributed in diminution of the mortgage on the property on which he had no more interest. While it is true that subsection 160(1) of the Act does not contain the words “for the benefit of” or “on behalf of” as found in subsections 15(1) or 74.1(1) or paragraph 224(1.1)(b) of the Act, the applicant does not deny that she became less indebted by the payments and her equity in the property increased. The means by which this result occurred were monies paid to the Bank which was then transferred by the Bank on the account of the mortgage of a house owned solely by the applicant. The payment to the Bank was simply a conduit through which the funds passed indirectly from her husband to her.

[21] The applicant's submission, that no transfer of property occurred because what Mr. Medland divested himself was money which monies were never transferred [physically] to the applicant, is without merit. ...

[Emphases added.]

[64] In *Strachan*, the Court had to determine whether section 160 applied to the transactions by which Mr. Strachan had allowed his spouse to subscribe to shares in a company wholly owned by him for a value below the fair market value. After referring with approval to the conclusions in *Kieboom*, the Court concluded as follows:

[38] At hand, Mr. Strachan similarly transferred property to the appellant in that he gave her first 95 percent then 98 percent of his capital interest in Northside by allowing her to subscribe to 38 shares for a value of \$38,000 and 75 shares for a value of \$75,000 in 2001 and 2002 respectively. I have found that Mr. Strachan was the sole shareholder of Northside before December 9, 2004. He thereby divested himself of the rights attached to his shares in the same proportion (i.e. his right to vote as sole shareholder, to receive 100 percent of the dividends should they be declared and to receive all the remaining property of the corporation on dissolution). The fact that Mr. Strachan accomplished the transfer of the shares to the appellant by causing Northside to issue them should make no difference.

[65] Finally, in *Damis Properties*, after examining the case law dealing with the term “transfer” and the decisions dealing with subsection 160(1), including *Kieboom*

and *Medland*, the Court very correctly and appropriately summarized the law that applies in respect of subsection 160(1):

[130] First, the Court finds that Mr. Kieboom “arranged” the transactions that constituted the transfer of the property from himself to his spouse. In my view, this is a summary of what occurred and is not a condition in the preamble. The words “a person has ... transferred property ...” require an objective determination of what has occurred. The words do not require a determination of who brought about what has occurred.

[131] Second, the Court dismisses Mr. Kieboom’s narrow classification of the property in issue as particular shares in the corporation. This suggests to me that rather than attempting to trace particular property, one must consider all the circumstances and determine whether it is reasonable to conclude that there is a connection between the diminishment of the property of one person and the increase in the property of another person. This is the approach taken in *Kieboom* and *Medland*.

[Emphases added.]

[66] In this case, in light of the case law, in order to conclude that there was a transfer under subsection 160(1), the Court must determine whether it is reasonable to conclude that there was a connection between any reduction in Mr. Charbonneau’s patrimony and the increase in Ms. Panneton’s patrimony.

7.2 Transfer made “indirectly ... by any other means” by Mr. Charbonneau to Ms. Panneton within the meaning of subsection 160(1)

[67] In this case, it is not disputed by the parties that between November 4, 2002, and December 12, 2003, GAM issued cheques from its bank account at the Caisse Populaire Desjardins de La Prairie (Exhibit A-1, Tab 22, Copy of GAM cheques [in a bundle]) totalling \$83,392.27 in payment to third parties for various goods and services.

[68] It is also not disputed by the parties that between March 1, 2003, and January 16, 2004, PAM issued cheques from its bank account at the Caisse Populaire St-Lambert (Exhibit A-1, Tab 16, Copy of PAM cheques [in a bundle]) totalling \$57,717.11 in payment to third parties for various goods and services.

[69] In addition, the appellant agrees that GAM’s and PAM’s payments to third parties, totalling \$83,392.27 and \$57,717.11 respectively, were made for her benefit, since they were made in consideration of work performed at the residence wholly owned by her.

[70] Therefore, the parties agree that property totalling \$141,109.38 was transferred to Ms. Panneton. This principle stems from *Medland* (at paras. 20–21) and was applied by this Court in *Goldberg v. The Queen*, 2003 D.T.C. 190 (T.C.C.) (at para. 14).

[71] The Court must therefore determine whether the property totalling \$141,109.38 was transferred from Mr. Charbonneau, the tax debtor, to Ms. Panneton under subsection 160(1).

[72] Applying the principles developed in the case law, the Court concludes, for the following reasons, that Mr. Charbonneau transferred the amount of \$141,109.38 “indirectly ... by any other means whatever” to his spouse, Ms. Panneton, pursuant to subsection 160(1).

[73] After reviewing all the circumstances surrounding the transactions, the Court concludes, on a balance of probabilities, that there is a connection between the reduction in Mr. Charbonneau’s patrimony and the increase in Ms. Panneton’s patrimony. Consequently, given the admissions made by the parties, all of the requirements for subsection 160(1) to apply have been met in this case.

[74] The evidence has shown, on a balance of probabilities, that GAM and PAM received no consideration in exchange for the payments to third parties totalling \$141,109.38.

[75] The Court does not accept Mr. Charbonneau’s version of the facts, which was that the amounts paid by GAM and PAM were used to pay for leasehold improvements to the residence for the benefit of GAM and PAM, which carried on their business there.

[76] The Court instead concludes that major renovations were done in the residence for the benefit of Ms. Panneton. In addition, since the two companies made payments to third parties totalling \$141,109.38 without receiving any consideration, it is appropriate for the Court to conclude that the patrimony of GAM and PAM was reduced by an equivalent amount and to infer that the value of the GAM and PAM shares held by the sole shareholder, Mr. Charbonneau, declined by an equivalent amount.

[77] As stated by this Court in *Nichols v. The Queen*, 2009 TCC 334, the credibility of testimony is assessed as follows:

[23] In assessing credibility I can consider inconsistencies or weaknesses in the evidence of witnesses, including internal inconsistencies (that is, whether the testimony changed while on the stand or from that given at discovery), prior inconsistent statements, and external inconsistencies (that is, whether the evidence of the witness is inconsistent with independent evidence which has been accepted by me). Second, I can assess the attitude and demeanour of the witness. Third, I can assess whether the witness has a motive to fabricate evidence or to mislead the court. Finally, I can consider the overall sense of the evidence. That is, when common sense is applied to the testimony, does it suggest that the evidence is impossible or highly improbable.

[78] To evaluate a witness's credibility, the Court may consider inconsistencies, weaknesses in the testimony, and the attitude of the witness. It may also assess whether the witness has a motive to mislead the Court and consider the overall sense of the evidence. The Court may accept all, some or only parts of a witness's testimony, or reject all of a witness's testimony (see *Ha v. The Queen*, 2011 TCC 271, at para. 21).

[79] Mr. Charbonneau's testimony regarding the leasehold improvements is less than credible, since, among other things, that argument was never raised before this appeal was heard. That argument was never raised during discussions with the CRA or during the process of objecting to the assessment under appeal before this Court. The notice of objection filed in evidence (Exhibit A-1, Tab 2, Copy of the appellant's notice of objection to assessment No. 4870340) makes no mention of the existence of such leasehold improvements.

[80] In addition, the notice of appeal filed by Ms. Panneton makes no mention of this. The notice of appeal refers only to the payments made by GAM to third parties, stating that the cheques [TRANSLATION] "correspond to amounts that the appellant paid to herself via her own company in the amounts that were then owed to her by that company" (see para. 10 of the notice of appeal filed with the Court on March 28, 2019). The notice of appeal makes no mention of PAM.

[81] At the respondent's request, the Court draws an adverse inference from Ms. Panneton's absence at the hearing of her appeal before the Court and concludes that her testimony would not have helped her case or would even have been unfavourable to Mr. Charbonneau's position (see *Imperial Pacific Greenhouses Ltd. v. The Queen*, 2011 FCA 79, at para. 14).

[82] The appellant tried to justify her absence at the hearing of her appeal by saying it was to help the hearing proceed smoothly, given that the only issue was whether

Mr. Charbonneau had transferred property to her. The Court considers that justification to be entirely inappropriate and does not accept it. Accordingly, the Court draws an adverse inference. Ms. Panneton's testimony would have been very useful to enable the Court to determine the extent of the work done on the residence, that is, whether leasehold improvements had been made in the basement of the residence or whether major renovations had been done in the residence.

[83] In addition, Mr. Charbonneau provided no financial statements showing the existence of such leasehold improvements for the benefit of GAM and PAM.

[84] The respondent produced a copy of the Cortax record maintained by the CRA showing GAM's tax returns and schedules for the taxation years ending on January 31, 2003, and January 31, 2004 (see Exhibit I-1, Cortax for 2003, and Exhibit I-2, Cortax for 2004). The balance sheet shows no capital property under leasehold improvements; the only capital property shown is computer equipment and software (cost: \$14,388) and machinery, furniture and accessories (cost: \$1,449).

[85] PAM filed no tax returns for the 2002, 2003 and 2004 taxation years, as it was required to do. It was only during the audit of Mr. Charbonneau, which began in 2009, that he filed PAM's tax returns for 2002 to 2004. PAM filed no balance sheet, reported no income and claimed no expenses.

[86] It would have been easy for Mr. Charbonneau, who controlled both companies, to produce those documents. The Court therefore concludes, on a balance of probabilities, that there were no leasehold improvements, and the payments to third parties were made by PAM and GAM for renovating the residence.

[87] The evidence showed, on a balance of probabilities, that major renovations were done to the residence. The residence was acquired in May 2002 for a price of \$215,000 and a total of \$141,109.38 was paid to third parties by GAM and PAM for the work done on the residence. In view of the amounts in question, it is more likely that major renovations were done in the residence rather than leasehold improvements in the basement for GAM's and PAM's activities.

[88] Furthermore, the identities of some third-party beneficiaries of the payments cast doubt on the nature of the expenses incurred. They seem to indicate that renovations were done in the residence, not leasehold improvements in the basement of the residence for the purposes of PAM's and GAM's business. In reaching that conclusion, the Court considered payments made to the following third parties, for

example: Club piscine, Cèdres experts, Sensation musicale Hi-Fi, Ébénisterie S.R. Inc., and Créations de Légance Inc. (see Exhibit A-1, Tab 22, Copy of cheques issued by GAM [in a bundle], and Tab 16, Copy of cheques issued by PAM [in a bundle])).

[89] In addition, for the reasons that follow, the evidence showed, on a balance of probabilities, that Mr. Charbonneau was the sole shareholder of GAM and PAM throughout the period during which the companies issued the cheques and made the payments to third parties without receiving any consideration.

[90] As set out above, given those transactions, it is therefore appropriate for the Court to infer that the value of the GAM and PAM shares held by the sole shareholder, Mr. Charbonneau, fell by an equivalent amount and that Mr. Charbonneau thus disposed of property having a total value of \$141,109.38.

[91] For GAM, the cheques were issued and the payments made to third parties over the period from November 4, 2002, to December 12, 2003. The evidence showed that Mr. Charbonneau was the sole shareholder of GAM from 1995 (when the company was incorporated) to 2009.

[92] For PAM, the cheques were issued and the payments made to third parties over the period from March 1, 2003, to January 16, 2004. The evidence showed that Mr. Charbonneau was the sole shareholder of PAM from 2001 to 2003, and in January 2004. It is more likely that Mr. Cloutier became a shareholder of PAM only after January 2004, that is, after the period during which the cheques were issued by PAM and the payments to third parties were made. For one thing, Mr. Charbonneau himself testified that Mr. Cloutier became a shareholder of PAM only in 2004. In addition, it is less likely that Mr. Cloutier would have allowed PAM to issue cheques in payment for goods or services for the benefit of Ms. Panneton without consideration.

[93] Furthermore, the value of Ms. Panneton's patrimony increased by the same amount since Ms. Panneton gave no consideration for the amount of \$141,109.38 paid by GAM and PAM to third parties for her benefit (except for rent totalling \$9,800, as admitted by the respondent), and she therefore received an equivalent benefit.

[94] If those payments had not been made by GAM and PAM, the tax authorities could have seized the shares of the companies held by Mr. Charbonneau and

liquidated the bank accounts, among other things, to at least partially pay off Mr. Charbonneau's tax debt.

[95] The appellant argues that, given that corporations have a separate legal personality from their shareholders and directors, the Court could not have concluded that Mr. Charbonneau transferred property to Ms. Panneton within the meaning of subsection 160(1), given that the evidence showed that the cheques had been issued to the third parties by PAM and GAM, not by Mr. Charbonneau.

[96] The appellant cites articles 301 *et seq.* of the C.C.Q. in support of her position. The relevant articles read as follows:

301. Legal persons have full enjoyment of civil rights.

302. Every legal person has a patrimony which may, to the extent provided by law, be divided or appropriated to a purpose. It also has the extra-patrimonial rights and obligations flowing from its nature.

303. Legal persons have capacity to exercise all their rights, and the provisions of this Code concerning the exercise of civil rights by natural persons are applicable to them, adapted as required.

They have no incapacities other than those which may result from their nature or from an express provision of law.

[97] The Court does not accept the appellant's argument on this point, having regard to the way that the word "transfer" in subsection 160(1) must be interpreted and how it has been interpreted in the case law, as explained above. It is clear that subsection 160(1) does not require that the same property be transferred by the tax debtor to their spouse (or to another person referred to in subsection 160(1)) in order for it to apply.

[98] The Court also concludes, on a balance of probabilities, that there is a connection between the reduction in Mr. Charbonneau's patrimony and the increase in Ms. Panneton's patrimony, given that the payments to third parties by GAM and PAM resulted in a reduction in Mr. Charbonneau's patrimony and an equivalent increase in Ms. Panneton's patrimony.

[99] The Court therefore concludes that Mr. Charbonneau transferred property totalling \$141,109.38 to Ms. Panneton "indirectly ... by any other means whatever" within the meaning of subsection 160(1).

[100] Having concluded that Mr. Charbonneau transferred property totalling \$141,109.38 to Ms. Panneton “indirectly ... by any other means whatever”, the Court need not make a finding regarding the application of the respondent’s first theory.

Signed at Montreal, Quebec, this 26th day of February 2024.

“Dominique Lafleur”

Lafleur J.

Translation certified true
On this 24th day of December 2025

Margarita Gorbounova, Senior Jurilinguist

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COURT FILE NO.: 2019-1067(IT)G

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