

Federal Court of Appeal



Cour d'appel fédérale

Date: 20151026

**Dockets: A-255-14, A-249-14, A-251-14,
A-252-14, A-253-14, A-254-14**

Citation: 2015 FCA 225

**CORAM: STRATAS J.A.
SCOTT J.A.
BOIVIN J.A.**

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

RAY CASTRO

Respondent

Docket: A-249-14

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

RUBIROSA TIROY

Respondent

Docket: A-251-14

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

RONALDO DAVID

Respondent

Docket: A-252-14

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

DANILO MAGARRO

Respondent

Docket: A-253-14

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

MARIA S. GRANDE

Respondent

Docket: A-254-14

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

ARIS N. ANI

Respondent

Heard at Winnipeg, Manitoba, on May 7, 2015.

Judgment delivered at Ottawa, Ontario, on October 26, 2015.

REASONS FOR JUDGMENT BY:

SCOTT J.A.

CONCURRED IN BY:

STRATAS J.A.
BOIVIN J.A.

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REASONS FOR JUDGMENT

SCOTT J.A.

I. Nature of the appeals

[1] Subsection 118.1(3) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) [*Act*] allows an individual to claim a tax credit with respect to gifts made to a registered charity.

[2] The Minister of National Revenue (the Minister) disallowed the tax credits claimed by each of the respondents for their respective gifts made to CanAfrica International (CanAfrica), a registered charity, in 2006. As each of the respondents was issued an inflated tax receipt by CanAfrica, the Minister took the position that each donation made, in order to be a true gift, must have been made without any benefit in return.

[3] The respondents appealed the assessments to the Tax Court of Canada. For the reasons set out in *David v. The Queen*, 2014 TCC 117, Justice J. Woods (the Judge) of the Tax Court allowed their appeals. The Minister now appeals.

[4] The appeals in files A-249-14 *Her Majesty The Queen v. Rubirosa Tiroy*, A-251-14 *Her Majesty The Queen v. Ronaldo David*, A-252-14 *Her Majesty The Queen v. Danilo Magarro*, A-253-14 *Her Majesty The Queen v. Maria S. Grande*, and A-254-14 *Her Majesty The Queen v. Aris N. Ani* were consolidated by order of this Court dated July 23, 2014, the appeal in file A-249-14 *Her Majesty The Queen v. Rubirosa Tiroy* being designated as the lead appeal.

[5] This Court, at the beginning of the hearing, noted that no notices of appearance were filed in appeals A-249-14, A-251-14, A-252-14, A-253-14, and A-254-14. Since files A-249-14, A-251-14, A-252-14, A-253-14, and A-254-14 were consolidated, the appeals were heard together. Another file A-255-14 *Her Majesty The Queen v. Ray Castro* raised the same issues and was heard with the consolidated files. Counsel on all files agreed that they would direct their submissions to *Castro* alone and that the outcome in *Castro* would apply *mutatis mutandis* to all of the appeals. The Court agreed with this approach and has proceeded in that way. I direct that a copy of these reasons for judgment should therefore be placed in each Court file.

II. Facts

[6] The facts are straightforward. In 2006 each respondent was independently solicited by their tax return preparer Mr. Rodigo Layco to make donations to CanAfrica. At that time, CanAfrica was a registered charity under the *Act*. It could therefore issue valid donation receipts.

During the same period, the Canada Revenue Agency (CRA) was investigating CanAfrica. Its registration as a charity was ultimately revoked by the CRA in 2007.

[7] CanAfrica issued to each of the respondents a donation tax receipt for tax credits they claimed in their respective income tax returns for 2006. The amount of the receipts issued by CanAfrica for each of the respondent is set out in the table that follows:

Name	Amount of the receipts
Rubirosa Tiroy	\$2,500
Ronaldo David	\$10,000
Danilo Magarro	\$5,000
Ray Castro	\$15,000
Maria S. Grande	\$20,000
Aris N. Ani	\$5,000

[8] In reassessments issued under the *Act* for the 2006 taxation year, the Minister disallowed each of those credits in their entirety.

[9] In making the assessments, the Minister took the position that each of the respondents was involved in a scheme with their tax preparer. In consideration for a charitable receipt issued by CanAfrica, each respondent paid 10% of the face value of the receipt to CanAfrica, plus an undetermined commission to the tax preparer Mr. Rodigo Layco.

[10] All the respondents appealed their reassessments and testified before the Judge, but none of them had any documents such as copies of cheques to support their claim that they donated more than 10% of the sum that appears on their receipts.

[11] Rubirosa Tiroy was issued a tax receipt in the amount of \$2,500 by CanAfrica. She testified having given either \$400 or \$800 in cash. On cross-examination, when confronted with a letter she had sent to the CRA claiming she had made a donation of \$400 in cash and some goods, she changed her testimony. In view of this inconsistency, the Judge determined that the amount donated by Ms. Tiroy was \$250.

[12] Ronaldo David was issued a donation receipt in the amount of \$10,000 by CanAfrica. He testified that he gave an amount in cash of approximately \$2,500 and some clothing and household goods to CanAfrica. Having failed to provide any detailed description of his non-cash donations and an estimate of its actual value, the Judge determined that the amount actually given by Mr. David as a donation to CanAfrica was \$1,000.

[13] Danilo Magarro was issued a tax receipt in his spouse's name in the amount of \$5,000 by CanAfrica. Ms. Elisa Magarro testified that she gave \$5,000 in cash to CanAfrica by means of a bag of bills she kept at her house, even though she was unemployed at that time. In view of these highly improbable circumstances, the Judge concluded that the amount actually donated by Ms. Magarro was \$500.

[14] Aris N. Ani was issued a tax receipt by CanAfrica in the amount of \$5,000. He testified that he gave between \$2,200 and \$2,700 in cash and also made a donation of clothing and household goods to CanAfrica. The Judge found Mr. Ani's testimony to be implausible in view of the fact that he has four children and a family income of \$53,000. She determined that the amount actually given was \$500 in cash.

[15] Ray Castro and his wife were issued tax receipts in the aggregate amount of \$15,000 as there is a limit of \$10,000 by individual. Mr. Castro testified that he gave an amount of \$2,600 in cash. Mr. Castro could not establish a breakdown between the cash donated and the commission paid to his tax preparer. The Judge concluded that Mr. Castro donated only \$1,500.

[16] Ms. Grande testified that for every \$800 given to CanAfrica, she would be issued a receipt in the amount of \$5,000. The judge determined that this was consistent with the assumption made by the Minister that 10% was given in cash and a fee of 6 % was paid to the tax preparer. Ms. Grande also claimed tax credits for goods provided by others, but failed to prove it. The Judge concluded that she had given \$2,000 as a donation to CanAfrica.

III. Statutory Framework

[17] The following provisions are relevant to this case:

- Pursuant to subsection 118.1(3) of the *Act*, an individual may claim a tax credit with respect to a gift made to a registered charity.

- Paragraph 118.1(2)(a) of the *Act* requires that a gift be evidenced by filing with the Minister a receipt that contains prescribed information.
- Subsection 248(1) of the *Act* specifies that the term “prescribed” means prescribed by regulation or determined in accordance with rules prescribed by regulation.
- Part XXV of the *Income Tax Regulations*, C.R.C. c. 945 [*Regulations*] contains the relevant regulatory provisions. Sections 3500 to 3505 provide with a framework regulating the issuance of tax receipts by registered charities in exchange for donations.
- Under the *Technical Tax Amendments Act, 2012*, S.C. 2013, c. 34, subsections 248(30), 248(31) and 248(32) were added to the *Act*. These subsections provide that in certain circumstances, the existence of an advantage or a benefit will not disqualify a transfer of property from being a gift.
- Pursuant to subsection 248(32) of the *Act*, the term “advantage” is defined broadly. It includes the value of any benefit a donor has enjoyed in consideration for the gift either immediately or subsequently.
- Subsection 248(31) of the *Act* requires that the eligible amount of a gift be reduced by the amount of the advantage received as determined by subsection 248(32).

- Paragraph 248(30)(a) of the *Act* states that if the amount of the advantage does not exceed 80% of the fair market value of the property transferred, then it remains a gift.
- It is to be noted that paragraph 248(30)(b) of the *Act* grants the Minister the power to allow a charitable donation credit even if the benefit exceeds 80% of the value of the property transferred, as long as the Minister is satisfied that there was an intention to make a gift.

IV. Decision of the Tax Court

[18] The Judge determined the amount given in cash by each of the respondents and concluded they were gifts. The Minister disputed this finding on the basis that the respondents expected to gain from their donations because they were to receive benefits in the form of inflated tax receipts. The Judge decided that the inflated tax receipts issued by CanAfrica were not benefits. Consequently, the respondents could claim a tax credit equivalent to the amount of cash they determined they had given.

[19] The Judge concluded that each of the respondents was entitled to a tax credit equal to 10% of the face amount of the charitable gift receipt provided by CanAfrica.

[20] I wish to take a closer look at the Judge's reasons.

[21] In allowing the respondents' appeals, the Judge found that the Minister had assumed that in consideration of a charitable tax receipt from CanAfrica, each respondent had paid 10% of the face value that appears on the receipt, plus a commission to the tax preparer.

[22] The Judge rejected the Minister's position that the amount given by each of the respondents could not be considered a gift because they expected to receive a benefit in return in the form of an inflated tax receipt.

[23] The Judge surveyed the most recent jurisprudence including this Court's decision in *Canada v. Berg*, 2014 FCA 25, [2014] 3 C.T.C. 1 [*Berg*]. She found that it did not clarify the issue as to whether an inflated tax receipt constitutes a benefit. The Judge relied on the pronouncement of Sexton J.A. in *Canada v. Doubinin*, 2005 FCA 298, [2005] D.T.C. 5624 [*Doubinin*], at paragraphs 14 to 17, to conclude that the issuance of an inflated tax receipt should not usually be considered as a benefit that negates a gift.

[24] The Judge also concluded that it was not necessary to consider the application of recent amendments to the *Act*, subsections 248(30), (31), and (32), as the inflated tax receipts were not benefits. The amendments had therefore no application.

[25] The Judge did not consider whether the receipts issued by CanAfrica met the requirements of subsection 118.1 of the *Act* and all of the prescribed information requirements listed in section 3501 of the *Regulations* as this issue was not raised before her.

V. The appeal

[26] In this appeal, the Minister asserts that the Tax Court erred in law, firstly in finding that the respondents made gifts within the meaning of section 118.1 of the *Act* in circumstances where they sought to enrich themselves through cash payments made to their tax preparer in exchange for inflated charitable gift receipts. Alternatively, the Minister claims that if the Judge did not err in finding that the respondents made gifts to CanAfrica, she did err in law by failing to apply subsections 248(30) and (32) of the *Act*. She also erred in law by failing to determine whether the respondents' receipts met the requirements of subsection 118.1(2) of the *Act* and subparagraph 3501(1)(h)(i) of the *Regulations*.

[27] Counsel for Mr. Castro counters by asserting that the only issue in this case is whether the trial judge erred in finding that the respondent made gifts within the meaning of section 118.1 of the *Act*. As the Minister's position is based on the premise that the respondent paid an amount of 10% in cash of the face value of the receipt issued by CanAfrica, counsel for the respondent claims that the Minister is asking this Court to make an adverse factual inference that contradicts the record on a crucial point that was not directed to the respondent regarding his client's intention to make a donation. Counsel asserts that Mr. Castro's donative intent was never properly introduced as an issue during the hearing before the judge.

[28] On the issue of the application of sections 248(30) to 248(32) of the *Act*, the respondent's counsel takes the position that the Judge was correct in her determination that the inflated tax

receipts were not benefits and that these sections did not apply. Otherwise, the very purpose of the amendments, which is to permit the leveraging of donations, would be defeated.

[29] Counsel for Mr. Castro did not object to the issue of the validity of the receipts being raised for the first time on appeal. In fact, in oral argument, he made brief submissions on it.

[30] In order that the Court be confident that it had all of the parties' submissions on that issue, during the hearing the Court asked for further written submissions. Those submissions were received and were carefully reviewed.

[31] For the reasons that follow, I would allow this appeal and the companion appeals on the sole ground that the absence of the correct cash amount of the donation on the charitable receipts fails to meet the requirements of subsection 118.1(2) of the *Act* and subparagraph 3501(1)(h)(i) of the *Regulations*. Therefore, the claims to a tax credit in both Mr. Castro's appeal and the companion appeals are invalid.

VI. Issues

[32] The issues in this appeal are the following:

- i. Did the respondent make gifts within the meaning of section 118.1 of the *Act* in circumstances where he received inflated tax receipts?
- ii. Did subsections 248(30), (31), and (32) of the *Act* apply to the gifts made by the respondent?

- iii. Does the absence of the cash amount donated by the respondent on the receipts issued by CanAfrica invalidate his claim to a tax credit?

VII. Standard of review

[33] It is settled that questions of law are reviewed on the standard of correctness, while questions of fact or questions of mixed fact and law suffused by facts are to be reviewed on the standard of overriding and palpable error (see *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paragraphs 8 and 10).

[34] As stated in *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601 at paragraph 44: “[t]he textual, contextual and purposive interpretation of specific provisions of the Income Tax Act is essentially a question of law but the application of these provisions to the facts of a case is necessarily fact-intensive”.

VIII. Analysis

[35] The first issue in this appeal is whether the respondent made gifts within the meaning of section 118.1 of the *Act* in circumstances where he received inflated tax receipts.

[36] An individual can claim a tax credit with respect to a gift made to a registered charity pursuant to subsection 118.1(3) of the *Act*. The amount of the tax credit is determined by the amount of the gift. A tax credit cannot exceed the amount of the gift. The Minister disputes the Judge’s finding that the respondents made gifts on the basis that they expected to gain from their donation because they received a benefit in the form of an inflated tax receipt. The Judge

concluded that the inflated tax receipts issued by CanAfrica were not benefits. Consequently, the respondents could claim a tax credit equal to the amount of cash she found they had given.

[37] The basis for the Judge's conclusion that the respondents did not receive a benefit that negates the gifts they made to CanAfrica was threefold. Firstly, the Judge relied on the respondents' testimonies concerning the sum they each donated to CanAfrica and on this Court's finding in *Doubinin*, at paragraphs 14 to 17. The Judge also refused to hear a new argument presented by the Minister to the effect that the respondents lacked donative intent because that issue was not clearly identified in the Minister's reply to the notice of appeal. This last argument was reargued before us. It must fail again.

[38] Having reviewed the reply to the appeal, and considering the applicable standard of review of reasonableness, I must defer to the Judge's determination that the Minister's reply was not sufficiently clear to place the respondents on notice that they needed to establish their donative intent. The respondents should have had a chance to prepare and introduce evidence accordingly. Furthermore the transcript of Mr. Castro's cross-examination reveals that counsel for the Minister questioned him on his donation to the registered charity on several occasions, without even disputing that a donation was made. This could have led the respondent to conclude that there was no need to establish his intention to make a gift (Appeal Book, Tab H, page 36, lines 1 to 6, and pages 42 to 48).

[39] As the hearing before the Judge was conducted under the Informal Procedure and the respondents were not represented, she was correct to apply the rule in *Browne v. Dunn* (1893), 6

R. 67 (H.L.) and disallow the Minister's argument on their donative intent since they were not sufficiently notified and consequently did not prepare to introduce any evidence on this point.

[40] In order to make her determination that the cash donated by the respondents were gifts, the Judge turned to this Court's decision in *Canada v. Berg*, 2014 FCA 25, [2014] 3 C.T.C. 1 [Berg].

[41] The facts in *Berg* are as follows. Mr. Berg participated in a so-called donation program in 2002 and 2003 whereby he received inflated tax receipts. Mr. Berg purchased timeshare units located in Saint Vincent and the Grenadines, which he subsequently transferred to a registered charity. As part of the purchase transactions, Mr. Berg received documents designed to receive tax credits based on a falsely inflated value of his timeshare units. These pretence documents were intended to deceive the Minister into believing that Mr. Berg's cost of the timeshare units was far in excess of what he actually paid. One of the pretence documents was a promissory note establishing that Mr. Berg still owed close to ten times the amount he actually paid for the timeshare units. Mr. Berg had also paid a substantial fee to the program promoters, and then transferred his timeshare units to a registered charity. The charity issued a charitable gift receipt for ten times the value of the amount he had paid for his timeshare units based on the value actually paid plus the amount of the promissory note.

[42] The judge of the Tax Court concluded that the pretence documents received by Mr. Berg were of no value since they were false and they could therefore not constitute a benefit. On appeal, this Court overturned that conclusion. The pretence documents had value since they were

used by Mr. Berg to claim greater tax credits than those he was actually entitled to receive. Furthermore, this Court determined that on the facts of that case, it was not open to the judge to conclude that Mr. Berg had the requisite donative intent. Mr. Berg never intended to impoverish himself by transferring the timeshare units to the registered charity; on the contrary he wanted to enrich himself by making use of falsely inflated charitable gift tax receipts. In sum, Mr. Berg did not have the requisite donative intent for the purposes of section 118.1 of the *Act*.

[43] The Judge, having reviewed *Berg*, concluded that this Court had determined that receipt of a benefit will negate a gift, but had not commented on the Tax Court's conclusion that an inflated tax receipt is not a benefit.

[44] She therefore turned to *Doubinin*, where this Court found that Mr. Doubinin was entitled to claim a tax credit of \$6,887 which represents the sum he actually gave to a registered charity named ABLE. On advice from his financial planner Mr. Doubinin believed that if he donated \$6,887 to ABLE he would become eligible to receive a charitable donation receipt of \$27,548 if a non-resident trust made a charitable donation on his behalf equivalent to 3 times his donation. Since a representative of ABLE informed Mr. Doubinin that the non-resident trust had made the donation, he claimed a tax credit of \$27,548. The Minister took the position that he should not be entitled to any credit at all because he made his gift hoping to receive an inflated tax receipt of \$27,548, which is a benefit. This Court determined that on the specific facts of that case it was impossible for Mr. Doubinin to benefit from the inflated tax receipt since it could not be issued in his name. Section 118.1 of the *Act* does not allow a taxpayer to claim a tax credit for a gift

made by another person. Consequently, the trial judge's finding that Mr. Doubinin did not expect a benefit was upheld by this Court as it was not made in a perverse or a capricious manner.

[45] In the case before us, the Minister challenges the Judge's conclusion that the inflated receipts in the present case do not constitute a benefit based on *Berg*. He argues that the receipts issued by CanAfrica are equivalent to the pretence documents that negated Mr. Berg's gift on the basis that he had obtained a benefit. The Minister also turns to *Webb v. The Queen*, 2004 TCC 619, [2005] 3 C.T.C. 2068 [*Webb*]. In that case, a person was denied tax credits for charitable donations in excess of donations actually made on the basis that the receipt of kickbacks of part of the donation constituted a benefit. Finally the Minister submits that in *Doubinin*, this Court distinguished *Webb*. As the taxpayer did not knowingly participate in the issuance of an inflated receipt, he could not benefit from it. The registered charity was not in a position to issue a receipt in his name because the *Act* does not allow an individual to claim a tax credit for a gift made by a third party.

[46] As I review the Judge's reasons, the cases cited, and the parties' submissions, I cannot accept the Minister's position for the following reasons.

[47] The Judge was correct to find that *Berg* did not resolve the question before her, as the Court did not rule that the inflated tax receipt by itself constituted a benefit. I can find no error in the Judge's determination that based on the facts before her, the respondents were not involved in a leveraged charitable donation scheme in which their cash donations were connected to pretence documents as in *Berg* or a kickback of part of the donation as in *Webb*. The Judge found

that the respondents made a cash donation through their tax preparer for which they received an inflated tax receipt, and claimed inflated tax credits.

[48] The circumstances in the present case are closer to those in *Doubinin*. The respondents did not participate in the issuance of the tax receipts. The Judge's determination that the respondents made gifts was not made in a capricious manner; it was based on the respondents' testimonies. She did not find that there were extraordinary circumstances that should be taken into account that would negate their entitlement to a tax credit for the amount she determined they had given. *Doubinin* left such a possibility open to the Judge.

[49] Turning to the second issue, I must decide if subsections 248(30), (31), and (32) of the *Act* apply to the gifts made by the respondent Ray Castro.

[50] Subsections 248(30), 248(31) and 248(32) apply only to an instance where a property, including cash, is transferred as a donation and an advantage is received in return.

[51] As stated previously, these subsections, enacted in 2012, created a new regime that allows for leveraging up to 80% of the value of a gift. The value of a benefit received by the donor is deducted from the actual amount donated.

[52] The Judge concluded that the inflated tax receipts received by the respondents in this case were not benefits. Before us, the Minister argues that if her determination that the inflated tax

receipts were not benefits is incorrect, then she should have applied subsections 248(30), (31), and (32) of the *Act* in respect of the respondents' gifts made to CanAfrica in 2006.

[53] Subsection 248(30) of the *Act* provides that in certain circumstances the amount of an advantage received in respect of a transfer of property will not disqualify the transfer from being a gift where the amount of the advantage does not exceed 80% of the fair market value of the transferred property or where the transferor satisfies the Minister that the transfer was made with the intention of making a gift.

[54] Subsection 248(32) of the *Act* defines an advantage as any benefit the donor receives, obtains or enjoys or to which he is entitled, either immediately or in the future that is in consideration of the gift, that is in gratitude for the gift or that is in any way related to the gift.

[55] Since the Minister takes the position that the respondents never intended to make a gift, he considers that the inflated value of the tax receipts received by the respondents constitutes such an advantage that was obtained in consideration for the cash gifts made pursuant to subsection 248(32) of the *Act*.

[56] In essence, the Minister takes the position that any amount in excess of the Judge's finding with respect to the cash portion of the respective donations made by the respondent constitutes a benefit. As the amounts of the advantage exceeds 80% of the cash paid, they vitiate the gifts made by each respondent by application of paragraph 248(30)(a). The result is that the benefit exceeds 80% of the fair market value of the amount transferred by each of the

respondents. The Minister also takes the position that paragraph 248(30)(b) of the *Act*, which permits him to allow a charitable donation even if the benefit exceeds 80% of the value of the transferred property, is inapplicable because he is not satisfied that the respondents intended to make a gift.

[57] Since I agree with the Judge's finding that the tax receipts received by the respondents did not constitute a benefit, these sections cannot apply. The respondents did not receive an advantage within the meaning of subsection 248(32) of the *Act*.

[58] I now turn to the third issue. Does the absence of the cash amount donated by Mr. Castro on the receipts issued by CanAfrica invalidate his claim to a tax credit?

[59] Having reviewed the statutory scheme, I would observe that the *Act* states clearly in subsection 118.1(2) that the eligible amount of a gift must be proven by filing with the Minister a receipt for the gift that contains prescribed information. That language is unambiguous.

[60] Subsection 248(1) of the *Act* specifies that prescribed information means prescribed by regulation or determined in accordance with rules prescribed by regulation;

[61] Sections 3500 to 3505 of Part XXV of the *Regulations* contain the relevant regulatory provisions with respect to receipts issued by a registered charity to attest a gift was made by a taxpayer.

[62] Section 3500 of the *Regulations* defines an “official receipt” as meaning a receipt for the purposes of subsections 110.1(2) or (3) or 118.1(2), (6) or (7) of the *Act*, containing information as required by sections 3501 or 3502 of the *Regulations*;

[63] Subparagraphs 3501(1)(h)(i) of the *Regulations* prescribes that every official receipt issued by a registered charity must contain a statement that it is an official receipt for income tax purposes and indicate the exact amount of a cash gift.

[64] Paragraph 3501(6)(b) of the *Regulations*, states that the amount of the cash gift has to be found on the official receipt form otherwise it is deemed to be spoiled.

[65] The consequence of producing a spoiled receipt is stated in subsection 3501(5) of the *Regulations*: that receipt must be marked as cancelled.

[66] The Minister takes the position that the *Act* and the *Regulations* contain strict requirements that are mandatory as to what information must appear on a receipt before a tax credit can be included in the total charitable gifts of a taxpayer for a year.

[67] According to the Minister, if the mandatory requirements are not met, the deficient receipt does not satisfy the requirements of section 118.1(2) of the *Act* and so the taxpayer cannot claim a credit for a donation made.

[68] In support of this position the Minister relies on this Court's decision in *Slobodrian v. Canada (Minister of National Revenue)*, 2005 FCA 336, [2006] 1 C.T.C. 35. That case dealt with the application of section 3501 of the *Regulations*, and this Court rejected Mr. Slobodrian's appeal against a judgement of the Tax Court finding that the amounts claimed as charitable donations did not meet that description under the *Act*. This Court stated at paragraphs 4 and 5:

[4] In addition, the learned Tax Court judge was of the view "that the donations were not proven by receipts for the gifts that contained prescribed information, as provided by subsection 118.1(2) of the *Income Tax Act*" and section 3501 of the *Regulations*. The receipts did not reflect the registration number of the issuer or certify that the signator is duly authorized to issue such receipts.

[69] The Minister also based her position on the recent decision of *Sowa v. Canada*, 2015 FCA 103, [2015] F.C.J. No. 473 (Q.L.) at paragraph 6 [*Sowa*], in which this Court confirmed the findings of the Tax Court of Canada, which had disallowed a charitable donation tax credit because the receipt did not contain the prescribed information and because the taxpayer failed to establish that she had donated the full amount indicated on the receipt.

[70] Mr. Castro counters that there is no authority supporting the Minister's position that the lack of prescribed information on a receipt will invalidate an otherwise valid gift. The receipt is evidence of a gift. In the respondent's view, that is enough. The *Regulations* are not a mechanism for overriding all evidence pointing to a gift and Parliament never intended that a receipt operate as a trip wire to deny a credit for valid gifts.

[71] Mr. Castro also cites *Mitchell v. Canada (Attorney General)*, 2002 FCA 407, [2003] 2 F.C. 767 [*Mitchell*] at paragraph 43, where this Court found that, notwithstanding the absence of

waivers in prescribed form, there could still be a waiver since the Crown had all the relevant facts from the beginning when it agreed to reassess the taxpayer on the basis of a test case. In Mr. Castro's case, the Tax Court has made a finding that a \$1,500 cash donation was made by Mr. Castro. In his view, this finding is sufficient and there is no requirement that the mention of \$1,500 as a cash gift necessarily appear on the receipts issued by CanAfrica.

[72] Mr. Castro equally relies on this Court's decision in *Chabot v. Canada*, 2001 FCA 383, [2002] D.T.C. 6708 [*Chabot*] for the proposition that a flexible approach must be taken to the interpretation of the *Regulations*.

[73] This Court stated in paragraph 3 of *Chabot*, that:

With respect to the requirements under section 3501 of the *Regulations*, as is noted by Judge Tardif in *Nathalie Plante v. The Queen*, [1999] T.C.J. No. 51 (Q.L.), at paragraph 46 of his reasons, it is clear that:

[46] The requirements in question are not frivolous or unimportant; on the contrary, the information required is fundamental, and absolutely necessary for checking both that the indicated value is accurate and that the gift was actually made.

Having regard to the foregoing, the *Regulations* must be applied with some flexibility. In this case, and unlike Judge Lamarre, I am of the view that by appending the certificate of appraisal to the receipt, which was otherwise incomplete, the charitable organization satisfied the requirements of the *Regulations*.

[74] Mr. Castro argues that subsection 118.1(2) of the *Act* does not state that all the prescribed information must be included and that, in light of *Chabot* and *Mitchell*, some flexibility must be allowed.

[75] I must reject Mr. Castro's argument that the language of the provision does not state that all of the prescribed information must be present.

[76] Firstly, the Court in *Chabot* and *Mitchell* allowed for some flexibility on the basis that all the information was, in any event, readily available to the Minister. In *Chabot* it was contained in a certificate appended to the receipt, whereas in *Mitchell* the Minister received all the information, though not in prescribed form, acknowledged its receipt, and acted as though it had been filed in prescribed form (see *Mitchell* at paragraphs 34, 38 and 40).

[77] In the present case, the amount of the cash donations does not appear on the receipts as prescribed by paragraph 3501(1)(h)(i) of the *Regulations*. The amounts that appear on the receipts are not the amount the respondent actually gave in cash according to the Judge's determination. Unlike *Mitchell* and *Chabot*, the information is not readily available to the Minister. More importantly, in view of the language used in the *Regulations*, it is apparent that the receipts filed by Mr. Castro do not contain the prescribed information. More precisely, the amount of his respective cash donations do not appear, as prescribed by subparagraph 3501(1)(h)(i). The same can be said for the receipts filed by the respondents in the other appeals.

[78] I must also point out that subsection 3501(6) of the *Regulations* is unambiguous; it states that every official receipt form on which any of the following is incorrectly or illegibly entered is deemed to be spoiled. Paragraph (b) of subsection 3501(6) clearly mentions the amount of the gift in the case of a cash gift.

[79] It is a well-established principle that delegated legislation, such as the *Regulations*, is to be interpreted in accordance with the general principles of interpretation, in addition to being read in the context of its enabling Act (see Ruth Sullivan, “*Sullivan on the Construction of Statutes*”, 6th ed. (Markham, Ont., LexisNexis, 2014) at c.13.18). Consequently, subparagraph 3501(1)(h)(i) and subsection 3501(6) of the *Regulations* must be interpreted in their grammatical and ordinary sense, in harmony with the *Act* (see *Amaratunga v. Northwest Atlantic Fisheries Organization*, 2013 SCC 66, [2013] 3 S.C.R. 866, at paragraph 37).

[80] As I read paragraph 3501(6)(b) of the *Regulations* in its grammatical and ordinary sense, it is clear that, in the case of a cash gift, if the amount of the cash gift is incorrect or is not legibly written, the receipt is deemed to be spoiled. This general interpretation accords with the scheme of the *Act*.

[81] The *Act* is meant primarily as a source of revenue for the federal government. Parliament has also used the *Act* to create incentives for private activities that benefit the community as a whole. Registered charities are allowed to issue charitable gift receipts to facilitate their funding.

[82] Pursuant to section 118.1 of the *Act* and subparagraph 3501(1)(h)(i) of the *Regulations*, tax receipts enable a taxpayer who makes a donation to obtain a non-refundable tax credit based on the fair market value of his gift to a registered charity. The non-refundable tax credit is a percentage of the cash donated or if the donation is a property a percentage of its fair market value. The tax credit is meant to entice the taxpayer to make donations because it also serves to reduce his impoverishment as a result of the gift made.

[83] The *Regulations* have been enacted to ensure that the charitable tax receipts are accurate and truthful since the tax system in Canada is based on self-assessment. When cash is donated, there is no documentary evidence available other than the mention of the exact amount on the receipt issued by the registered charity. In the case of a cash gift, as the entitlement and the calculation of the exact amount of the tax credit is based on the official receipt issued by the registered charity, it is in keeping that the absence of the amount of the cash donation on an official tax receipt will result in a spoiled receipt, or as stated in the French version of subsection 3501(6) of the *Regulations*: “le reçu officiel est considéré comme inutilisable”, translated literally “it cannot be used”.

[84] Subparagraph 3501(h)(i) of the *Regulations* states unequivocally that the amount of the cash gift must appear on the receipt. The consequence of a failure to include that information is outlined in subsection 3501(6), which is that the receipt is deemed to be spoiled. Just as in the recent case of *Sowa*, the missing cash donation information on the receipts in the present case is sufficient to deny the respondent’s claim to a tax credit pursuant to subsection 118.1(2) of the *Act*.

[85] Even if the Judge determined that a gift was made, there was no official receipt, in the present case, evidencing the amount that was donated, in violation of subsection 118.1(2) of the *Act*. Consequently, the respondent is denied any tax credit.

IX. Conclusion

[86] For these reasons:

- a) I would allow the appeals in files A-255-14 *Ray Castro v. Her Majesty The Queen*, A-249-14 *Rubirosa Tiroy v. Her Majesty The Queen*, A-251-14 *Ronaldo David v. Her Majesty The Queen*, A-252-14 *Danilo Magarro v. Her Majesty The Queen*, A-253-14 *Maria S. Grande v. Her Majesty The Queen*, and A-254-14 *Aris N. Ani v. Her Majesty The Queen*, with costs;
- b) set aside the judgment of the Tax Court of Canada rendered on April 15, 2014 in files A-255-14 *Her Majesty The Queen v. Ray Castro*, A-249-14 *Her Majesty The Queen v. Rubirosa Tiroy*, A-251-14 *Her Majesty The Queen v. Ronaldo David*, A-252-14 *Her Majesty The Queen v. Danilo Magarro*, A-253-14 *Her Majesty The Queen v. Maria S. Grande*, and A-254-14 *Her Majesty The Queen v. Aris N. Ani*;
- c) render the judgment that should be rendered in files A-255-14 *Her Majesty The Queen v. Ray Castro*, A-249-14 *Her Majesty The Queen v. Rubirosa Tiroy*, A-251-14 *Her Majesty The Queen v. Ronaldo David*, A-252-14 *Her Majesty The Queen v. Danilo Magarro*, A-253-14 *Her Majesty The Queen v. Maria S. Grande*, and A-254-14 *Her Majesty The Queen v. Aris N. Ani*; and
- d) restore the Minister's assessment denying the tax credit claimed by each of the respondents in files, A-255-14 *Her Majesty The Queen v. Ray Castro*, A-249-14 *Her*

Majesty The Queen v. Rubirosa Tiroy, A-251-14 *Her Majesty The Queen v. Ronaldo David*, A-252-14 *Her Majesty The Queen v. Danilo Magarro*, A-253-14 *Her Majesty The Queen v. Maria S. Grande* , and A-254-14 *Her Majesty The Queen v. Aris N. Ani*, for the taxation year 2006.

"A.F. Scott"

J.A.

"I agree.

David Stratas J.A."

"I agree.

Richard Boivin J.A."

ANNEX

Relevant legislative provisions:

***Income Tax Act, R.S.C. 1985, c.1
(5th Supp.)***

118.1(1) In this section,

...

Proof of gift

118.1(2) An eligible amount of a gift is not to be included in the total charitable gifts, total cultural gifts or total ecological gifts of an individual unless the making of the gift is evidenced by filing with the Minister

(a) a receipt for the gift that contains prescribed information;

(b) in the case of a gift described in the definition “total cultural gifts” in subsection (1), the certificate issued under subsection 33(1) of the *Cultural Property Export and Import Act*; and

(c) in the case of a gift described in the definition “total ecological gifts” in subsection (1), both certificates referred to in that definition.

Ordering of gifts

118.1(2.1) For the purpose of determining an individual’s total charitable gifts, total cultural gifts and total ecological gifts for a taxation year, no amount in respect of a gift described in any of the definitions of those expressions and made in a

***Loi de l’impôt sur le revenu,
L.R.C. 1985, ch.1 (5ième suppl.)***

118.1(1) Les définitions qui suivent s’appliquent au présent article.
[...]

Attestation du don

118.1 (2) Pour que le montant admissible d’un don soit inclus dans le total des dons de bienfaisance, le total des dons de biens culturels ou le total des dons de biens écosensibles, le versement du don doit être attesté par la présentation au ministre des documents suivants :

(a) un reçu contenant les renseignements prescrits;

(b) s’il s’agit d’un don visé à la définition de « total des dons de biens culturels » au paragraphe (1), le certificat délivré en vertu du paragraphe 33(1) de la *Loi sur l’exportation et l’importation de biens culturels*;

(c) s’il s’agit d’un don visé à la définition de « total des dons de biens écosensibles » au paragraphe (1), les deux attestations mentionnées à cette définition.

Ordre d’application

118.1(2.1) Pour déterminer le total des dons de bienfaisance, le total des dons de biens culturels et le total des dons de biens écosensibles d’un particulier pour une année d’imposition, aucune somme relative à un don visé à la définition de l’une de ces expressions

particular taxation year is to be considered to have been included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a taxation year until amounts in respect of such gifts made in taxation years preceding the particular year that can be so considered are so considered.

248(1) In this Act,

...

Intention to give

(30) The existence of an amount of an advantage in respect of a transfer of property does not in and by itself disqualify the transfer from being a gift to a qualified donee if

(a) the amount of the advantage does not exceed 80% of the fair market value of the transferred property; or

(b) the transferor of the property establishes to the satisfaction of the Minister that the transfer was made with the intention to make a gift.

Eligible amount of gift or monetary contribution

(31) The eligible amount of a gift or monetary contribution is the amount by which the fair market value of the property that is the subject of the gift or monetary contribution exceeds the amount of the advantage, if any, in respect of the gift or monetary contribution.

et fait au cours d'une année d'imposition donnée n'est considérée comme ayant été incluse dans le calcul d'une somme déduite en application du présent article dans le calcul de l'impôt payable par le particulier en vertu de la présente partie pour une année d'imposition tant que les sommes relatives à ces dons faits au cours des années d'imposition précédant l'année donnée qui peuvent être ainsi considérées ne le sont pas.

248(1) Les définitions qui suivent s'appliquent à la présente loi.

[...]

Intention de faire un don

(30) Le fait qu'un transfert de bien donne lieu à un montant d'un avantage ne suffit en soi à rendre le transfert inadmissible à titre de don à un donataire reconnu si, selon le cas :

a) le montant de l'avantage n'excède pas 80 % de la juste valeur marchande du bien transféré;

b) le cédant établit à la satisfaction du ministre que le transfert a été effectué dans l'intention de faire un don.

Montant admissible d'un don ou d'une contribution monétaire

(31) Le montant admissible d'un don ou d'une contribution monétaire correspond à l'excédent de la juste valeur marchande du bien qui fait l'objet du don ou de la contribution sur le montant de l'avantage, le cas échéant, au titre du don ou de la contribution.

Amount of advantage

(32) The amount of the advantage in respect of a gift or monetary contribution by a taxpayer is the total of

(a) the total of all amounts, other than an amount referred to in paragraph (b), each of which is the value, at the time the gift or monetary contribution is made, of any property, service, compensation, use or other benefit that the taxpayer, or a person or partnership who does not deal at arm's length with the taxpayer, has received, obtained or enjoyed, or is entitled, either immediately or in the future and either absolutely or contingently, to receive, obtain, or enjoy

(i) that is consideration for the gift or monetary contribution,

(ii) that is in gratitude for the gift or monetary contribution, or

(iii) that is in any other way related to the gift or monetary contribution, and

(b) the limited-recourse debt, determined under subsection 143.2(6.1), in respect of the gift or monetary contribution at the time the gift or monetary contribution is made.

Income Tax Regulations, C.R.C., c.945

3500. In this Part,

...

Montant de l'avantage

(32) Le montant de l'avantage au titre d'un don ou d'une contribution monétaire fait par un contribuable correspond au total des sommes suivantes :

a) le total des sommes, sauf celle visée à l'alinéa b), représentant chacune la valeur, au moment du don ou de la contribution, de tout bien ou service, de toute compensation ou utilisation ou de tout autre bénéfice que le contribuable, ou une personne ou une société de personnes qui a un lien de dépendance avec lui, a reçu ou obtenu, ou a le droit, immédiat ou futur et absolu ou conditionnel, de recevoir ou d'obtenir, ou dont le contribuable ou une telle personne ou société de personnes a joui ou a le droit, immédiat ou futur et absolu ou conditionnel, de jouir, et qui, selon le cas :

(i) est accordé en contrepartie du don ou de la contribution,

(ii) est accordé en reconnaissance du don ou de la contribution,

(iii) se rapporte de toute autre façon au don ou à la contribution;

b) la dette à recours limité, déterminée selon le paragraphe 143.2(6.1), relative au don ou à la contribution au moment où il est fait.

Règlement de l'impôt sur le revenu, C.R.C., ch. 945

3500. Dans la présente partie,

[...]

“employees’ charity trust”

“employees’ charity trust” means a registered charity that is organized for the purpose of remitting, to other registered charities, donations that are collected from employees by an employer;

« fiducie de bienfaisance d’employés »

« fiducie de bienfaisance d’employés » s’entend d’un organisme de bienfaisance enregistré qui est constitué aux fins de verser à d’autres organismes de bienfaisance enregistrés les dons qu’un employeur recueille de ses employés;

“official receipt”

“official receipt” means a receipt for the purposes of subsection 110.1(2) or (3) or 118.1(2), (6) or (7) of the *Act*, containing information as required by section 3501 or 3502;

« reçu officiel »

« reçu officiel » s’entend d’un reçu remis pour l’application des paragraphes 110.1(2) ou (3) ou 118.1(2), (6) ou (7) de la Loi, sur lequel figurent les détails exigés par les articles 3501 ou 3502.

“official receipt form”

official receipt form” means any printed form that a registered organization or other recipient of a gift has that is capable of being completed, or that originally was intended to be completed, as an official receipt by it;

« formule de reçu officiel »

« formule de reçu officiel » désigne toute formule imprimée d’une organisation enregistrée ou d’un autre bénéficiaire d’un don qui est susceptible d’être remplie ou qui était originairement destinée à être remplie, comme reçu officiel de l’organisation ou du bénéficiaire;

“other recipient of a gift”

“other recipient of a gift” means a person, to whom a gift is made by a taxpayer, referred to in any of paragraphs (a) and (d) of the definition “qualified donee” in subsection 149.1(1), paragraph 110.1(1)(c) and subparagraph 110.1(3)(a)(ii) of the *Act*;

« autre bénéficiaire d’un don »

« autre bénéficiaire d’un don » Personne, visée aux alinéas a) ou d) de la définition de « donataire reconnu » au paragraphe 149.1(1), à l’alinéa 110.1(1)c) ou à l’alinéa 110.1(3)b) de la Loi, à qui un contribuable fait un don.

“registered organization”

“registered organization” means a registered charity, a registered Canadian amateur athletic association or a registered national arts service

« organisation enregistrée »

« organisation enregistrée » s’entend d’un organisme de bienfaisance enregistré, d’une association canadienne enregistrée de sport

organization.

3501(1) Every official receipt issued by a registered organization shall contain a statement that it is an official receipt for income tax purposes and shall show clearly in such a manner that it cannot readily be altered,

...

(h) the amount that is...

(i) the amount of a cash gift, or

(ii) if the gift is of property other than cash, the amount that is the fair market value of the property at the time that the gift is made;

(h.1) a description of the advantage, if any, in respect of the gift and the amount of that advantage;

(h.2) the eligible amount of the gift;

(i) the signature, as provided in subsection (2) or (3), of a responsible individual who has been authorized by the organization to acknowledge gifts; and

...

3501(5) A spoiled official receipt form shall be marked "cancelled" and such form, together with the duplicate thereof, shall be retained by the registered organization or the other recipient of a gift as part of its records.

amateur ou d'un organisme enregistré de services nationaux dans le domaine des arts;

3501(1) Tout reçu officiel délivré par une organisation enregistrée doit énoncer qu'il s'agit d'un reçu officiel aux fins de l'impôt sur le revenu et indiquer clairement, de façon à ce qu'ils ne puissent être modifiés facilement, les détails suivants :

[...]

h) celle des sommes ci-après qui est applicable :

(i) le montant du don en espèces,

(ii) lorsque le don est un don de biens autres que des espèces, la juste valeur marchande du bien au moment où le don est fait;

h.1) une description de l'avantage, le cas échéant, au titre du don et le montant de cet avantage;

h.2) le montant admissible du don;

i) la signature, ainsi qu'il est prévu au paragraphe (2) ou (3), d'un particulier compétent qui a été autorisé par l'organisation à accuser réception des dons;

[...]

3501(5) Une formule de reçu officiel qui est gâchée doit porter l'inscription « annulée » et cette formule ainsi que son duplicata doivent être conservés par l'organisation enregistrée ou par l'autre bénéficiaire d'un don en tant que partie de ses registres.

3501(6) Every official receipt form on which any of the following is incorrectly or illegibly entered is deemed to be spoiled:

...

(b) the amount of the gift, in the case of a cash gift;

3501(6) Tout formulaire de reçu officiel sur lequel un ou plusieurs des renseignements ci-après sont inscrits de façon incorrecte ou illisible est considéré comme inutilisable :

[...]

b) le montant du don, dans le cas d'un don en espèces;

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: A-255-14
A-249-14
A-251-14
A-252-14
A-253-14
A-254-14

STYLE OF CAUSE Docket A-255-14: HER MAJESTY THE QUEEN v.
RAY CASTRO

STYLE OF CAUSE Docket A-249-14: HER MAJESTY THE QUEEN v.
RUBIROSA TIROY

STYLE OF CAUSE Docket A-251-14: HER MAJESTY THE QUEEN v.
RONALDO DAVID

STYLE OF CAUSE Docket A-252-14: HER MAJESTY THE QUEEN v.
DANILO MAGARRO

STYLE OF CAUSE Docket A-255-14: HER MAJESTY THE QUEEN v.
MARIA S. GRANDE

STYLE OF CAUSE Docket A-255-14: HER MAJESTY THE QUEEN v.
ARIS N. ANI

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BOIVIN J.A.

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