

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20150928**

**Docket: A-471-14**

**Citation: 2015 FCA 207**

**CORAM: GAUTHIER J.A.  
WEBB J.A.  
NEAR J.A.**

**BETWEEN:**

**1057513 ONTARIO INC.**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Toronto, Ontario, on September 28, 2015.  
Judgment delivered from the Bench at Toronto, Ontario, on September 28, 2015.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**WEBB J.A.**

Federal Court of Appeal



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1057513 ONTARIO INC.

Appellant

and

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**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Toronto, Ontario, on September 28, 2015).

**WEBB J.A.**

[1] This is an appeal from the Judgment of Boccock, J. of the Tax Court of Canada (2014 TCC 272) who dismissed the Appellant's appeal from the reassessments under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), (the Act) for the taxation years 1997-2004. The Appellant was denied a dividend refund (as defined in subsection 129(1) of the Act) because the Appellant had not filed a tax return for any of the relevant taxation years within 3 years from the end of such

year. The Tax Court Judge held that the failure to file a tax return within 3 years from the end of the taxation year during which the dividend was paid precluded the Appellant from receiving the dividend refund for that year.

[2] The Appellant, during its taxation years 1997 to 2004, received dividends that resulted in tax being payable under Part IV of the Act. During these same taxation years the Appellant paid dividends which, if the returns would have been filed within the three year period as set out in subsection 129(1) of the Act, would have resulted in a dividend refund for each year. However, the tax returns for the 1997 to 2004 taxation years were not filed until 2008.

[3] A dividend refund under subsection 129(1) of the Act is the lesser of two amounts – 1/3 of all taxable dividends paid in a particular taxation year and the corporation's refundable dividend tax on hand at the end of such year. A dividend refund, as provided in this subsection, may be paid by the Minister without any application for such dividend refund being made by the taxpayer (paragraph (a)). If the Minister does not voluntarily pay the dividend refund, the taxpayer may apply for this dividend refund and then the Minister must pay the dividend refund (paragraph (b)) if the taxpayer has made the application in writing within the time period as set out in this paragraph (b).

[4] However, it is a condition for either paragraph 129(a) or (b) that the corporation's return for the particular year for which it will be claiming the refund must be filed within 3 years after the end of this year. If the return is not filed within this three year period, neither paragraph (a) nor paragraph (b) is applicable. Since the Appellant did not file its tax returns for any of its 1997

to 2004 taxation years within three years from the end of any of these taxation years, the provisions of paragraphs (a) and (b) of subsection 129(1) are not applicable and the Minister is neither obligated nor empowered, under subsection 129(1) of the Act, to pay the dividend refund amount to the Appellant for any of these years.

[5] In this appeal the Appellant essentially repeated the arguments that it made before the Tax Court Judge. We are not persuaded that, under the applicable statutory interpretation principles, the Tax Court Judge committed any error in concluding that the requirement to file tax returns within three years from the end of the taxation year in which the dividend is paid as set out in subsection 129(1) of the Act is a condition that must be satisfied in order for the Appellant to receive the dividend refund under this subsection.

[6] In our view since the condition as set out in subsection 129(1) of the Act that precedes paragraphs (a) and (b) has not been satisfied, there would not be any amount that would be a dividend refund for any of the taxation years 1997 to 2004 in this case for the purposes of paragraph 129(3)(d) of the Act. Therefore, the refundable dividend tax on hand account balance of the Appellant is not reduced by the dividends that were paid during the 1997 to 2004 taxation years in relation to which no amounts were refunded under subsection 129(1) of the Act.

[7] As a result the appeal will be dismissed with costs.

"Wyman W. Webb"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-471-14

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE BOCOCK OF THE TAX COURT OF CANADA, DATED SEPTEMBER 24, 2014, DOCKET NO. 2009-3721(IT)G**

**STYLE OF CAUSE:** 1057513 ONTARIO INC. v. HER MAJESTY THE QUEEN

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** SEPTEMBER 28, 2015

**REASONS FOR JUDGMENT OF THE COURT BY:** GAUTHIER J.A.  
WEBB J.A.  
NEAR J.A.

**DELIVERED FROM THE BENCH BY:** WEBB J.A.

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