

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20161026**

**Docket: A-171-15**

**[ENGLISH TRANSLATION]**

**Citation: 2016 FCA 264**

**CORAM: NADON J.A.  
TRUDEL J.A.  
SCOTT J.A.**

**BETWEEN:**

**ALEXANDRE DUPLESSIS**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Montréal, Quebec, on October 26, 2016.

Judgment delivered at Montréal, Quebec, on October 26, 2016.

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

**SCOTT J.A.**

Federal Court of Appeal



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and

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Respondent

**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Montréal, Quebec, on October 26, 2016.)

**SCOTT J.A.**

[1] In a decision handed down on February 18, 2015, Justice D'Auray (the Judge) of the Tax Court of Canada (TCC) dismissed the appellant's appeal of assessments issued pursuant to section 160 of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (the ITA) on June 11, 2010, for the 2004 and 2005 taxation years. The Judge held that since the income tax returns from the corporation 9073-8253 Québec Inc. (the Corporation) were not filed within three years of the end

of the 2004 and 2005 taxation years, the Corporation was not entitled to a dividend refund in accordance with subsection 129(1) of the ITA.

[2] After reading the Judge's decision and the reasons on which it is based and carefully examining the underlying factual background, we are of the view that the Judge was correct in confirming the assessment issued pursuant to subsection 160(1) of the ITA when she found that the Corporation had not respected the time limit of three years set out in subsection 129(1) of the ITA and determined that this breach was fatal, the Act being clear on this matter.

[3] The appellant acknowledges that the Corporation, of which he is the sole shareholder, paid him dividends of \$52,500 in 2004 and of \$55,000 in 2005 and that it did not file its income tax returns for the 2004 and 2005 taxation years until November 2009, thus after the three-year time limit set out in subsection 129(1) for entitlement to a refund of dividends paid. Nevertheless, he is arguing that the integration theory, according to which a taxpayer should not be doubly taxed, should lead this Court to overturn the decision under appeal because the Minister's refusal to order the requested refund caused the appellant to pay 77% in taxes and penalties on the dividends of \$107,500 received in 2004 and 2005.

[4] The integration theory cannot overturn a clear provision in the ITA. Moreover, the debtor in this case is the Corporation and not the appellant. This Court, in *1057513 Ontario Inc. v. Canada*, 2015 FCA 207, at paragraph 4, confirmed that the filing of an income tax return within three years after the end of the year in which the dividend is paid is a mandatory prerequisite for claiming a dividend refund pursuant to subsection 129(1) of the ITA.

[5] While we are sympathetic to the appellant's situation, we have no choice but to give effect to the ITA. However, we echo the Judge's suggestion to the appellant to submit a request for taxpayer relief to the Minister for the penalties and interest.

[6] Given the circumstances of this case, the appeal is dismissed without costs.

"A.F. Scott"

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J.A.

Certified true translation François Brunet, Revisor
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**FEDERAL COURT OF APPEAL**  
**SOLICITORS OF RECORD**

Docket: A-171-15

APPEAL OF A TAX COURT OF CANADA JUDGMENT DATED FEBRUARY 18, 2015,  
CITATION 2013-2191 (IT) G.

STYLE OF CAUSE: ALEXANDRE DUPLESSIS v. HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: October 26, 2016

REASONS FOR JUDGMENT OF THE COURT BY: NADON J.A.  
TRUDEL J.A.  
SCOTT J.A.

DELIVERED FROM THE BENCH BY: SCOTT J.A.

**APPEARANCES:**

Alexandre Duplessis For the appellant  
(REPRESENTING HIMSELF)

Christina Ham For the respondent

**SOLICITORS OF RECORD:**

William F. Pentney For the respondent  
Ottawa, Ontario