

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20170517**

**Docket: A-175-16**

**Citation: 2017 FCA 105**

**CORAM: SCOTT J.A.  
BOIVIN J.A.  
DE MONTIGNY J.A.**

**BETWEEN:**

**NATALE FERLAINO**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Montréal, Quebec, on May 17, 2017.  
Judgment delivered from the Bench at Montréal, Quebec, on May 17, 2017.

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

**SCOTT J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Montréal, Quebec, on May 17, 2017).

**SCOTT J.A.**

[1] This is an appeal brought forward by Natale Ferlaino (the appellant) from a judgment of the Tax Court of Canada (TCC) rendered by Smith J. (the Judge) on April 28, 2016, and reported at 2016 TCC 105. The Judge confirmed the Minister of National Revenue's (the Minister) reassessments of the appellant's 2010 and 2012 taxation years, and found that under subsection 7(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act), the employment

benefits received by the appellant as a result of the exercise of employee stock options denominated in U.S. dollars (USD) were to be calculated by converting the Canadian Dollar (CAD) value of the exercise price and the fair market value of shares at the time of the exercise, using the exchange rate in effect on the date the options were exercised.

[2] We have not been persuaded that the Judge made an error in law in upholding the Minister's reassessments by relying on a contextual and purposive interpretation of section 7 of the Act. He correctly applied the relevant legal principles and case law relating to the taxation of employee benefits derived from stock options denominated in a foreign currency.

[3] We also agree with the Judge that section 7 of the Act constitutes a complete code for the taxation of employee stock options. Tax implications for the exercise of stock options, including the conversion of foreign denominated amounts used to calculate employee benefits arising under section 7 of the Act, are solely triggered on their exercise date.

[4] In the present appeal, no taxable transaction occurred when the stock options were granted to the appellant since he did not acquire at that time a taxable benefit (*Steen v. Canada*, [1988] 1 C.T.C. 256, 19 F.T.R. 80). The case relied upon by the appellant to support his position that tax implications are triggered upon granting stock options (*Canada (Attorney General) v. Henley*, 2007 FCA 370, 371 N.R. 179 [*Henley*]) is distinguishable from the facts of this case, as this Court specifically mentioned in *Henley* (at paragraphs 13 and 18) that its conclusions were inapplicable in the context of employee stock options exercised under section 7 of the Act. Furthermore, the appellant has failed to point out any specific language in the Act or binding

case law before this Court that justifies a different tax treatment for the calculation of taxable employee benefits derived from the exercise of foreign denominated stock options.

[5] The taxable transactions in this appeal occurred when the appellant exercised his stock options in 2010 and 2012, as this was the moment when the shares were acquired in exchange for an “amount paid” within the meaning of subparagraph 7(1)(a)(ii), and when the value of the appellant’s employment benefits could be ascertained under that same provision.

[6] Only then was the appellant required under paragraph 261(2)(b) of the Act to calculate his reportable benefits by converting at once all relevant amounts, being the exercise price, along with the fair market value of the shares at the time the appellant exercised his options, using the exchange rate applicable on the date of the exercise.

[7] For these reasons, the appeal will be dismissed with costs.

« A.F. Scott »

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-175-16

**STYLE OF CAUSE:** NATALE FERLAINO v. HER  
MAJESTY THE QUEEN

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** MAY 17, 2017

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BOIVIN J.A.  
DE MONTIGNY J.A.

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

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