

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20111019**

**Docket: A-127-11**

**Citation: 2011 FCA 290**

**CORAM: EVANS J.A.  
LAYDEN-STEVENSON J.A.  
STRATAS J.A.**

**BETWEEN:**

**CHERYL ALISON LANS**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Vancouver, British Columbia, on October 18, 2011.

Judgment delivered at Vancouver, British Columbia, on October 19, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS J.A.

CONCURRED IN BY:

LAYDEN-STEVENSON J.A.  
STRATAS J.A.

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**REASONS FOR JUDGMENT**

**EVANS J.A.**

[1] This is an appeal by Cheryl Alison Lans of a decision of the Tax Court (2011 TCC 121), in which Justice Woods (Judge) dismissed her appeal from income tax assessments for the taxation years 2004 and 2005. The assessments were based on Ms Lans' excess contributions to her registered retirement savings plan (RRSP) in those years. The assessed tax for 2004 is \$1,039.88, with a penalty of \$176.78, and for 2005, \$1,098.72 in tax and a penalty of \$186.78.

[2] Although Ms Lans had made written submissions in support of her appeal, she did not appear at the hearing and was not represented. Ms Lans was aware of the time and date of the hearing. The Court had earlier rejected her request that the appeal be disposed of on the basis of the parties' written submissions. However, it also advised her that she could choose not to attend the hearing if she wished, that the panel hearing the appeal would consider her memorandum of fact and law, but that counsel for the respondent would be present and would have the right to address the Court.

[3] After delaying the start of the hearing in order to determine if Ms Lans was in the vicinity of the court room, and finding that she was not, the Court proceeded in her absence. Counsel for the respondent did not add to his written submissions, except to say, in response to a query from the Bench, that his client was seeking costs if successful in the appeal.

[4] Subsection 204.1(2.1) of the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1 (Act), imposes a special tax on taxpayers who exceed the amount of their allowable RRSP contributions in any year.

[5] The Judge held that she had no jurisdiction to vacate the tax assessed on the basis of Ms Lans' complaint that the Canada Revenue Agency (CRA) had included post-doctoral grants in her income, but had not included similar grants in the income of taxpayers in other parts of the country. The Judge noted that subsection 204.1(4) of the Act gives the Minister of National Revenue (Minister) a limited fairness discretion to waive the 1% tax payable on excess RRSP contributions

under subsection 204.1(2.1). However, she held that only the Federal Court has jurisdiction to review discretionary decisions made by the Minister under subsection 204.1(4).

[6] The penalties had been imposed on Ms Lans under subsection 162(1) of the Act, as modified by subsection 204.3(2), for failing to file in time a special return in respect of her excess RRSP contribution, as required by subsection 204.3(1). Ms Lans argued that the penalties should be vacated because she reasonably believed that an excess contribution tax would not be imposed as she had had no taxable income in the years in question. However, the Judge was not satisfied that the steps that Ms Lans had taken constituted due diligence.

[7] Finally, the Judge held that she had no fairness jurisdiction to waive the interest payable.

[8] I am not persuaded that, in reaching her decision, the Judge made any errors warranting the intervention of this Court. Whether she had jurisdiction to vacate the tax and interest on the ground of fairness, or to review the exercise of the Minister's discretion to waive the tax, is a question of law. This Court can intervene if satisfied that the Judge got the law wrong. In my view, she did not.

[9] The fact that the application of the law in particular circumstances may seem harsh, or that CRA officials may not always have been very helpful, is not a ground on which the Tax Court can grant relief from a lawful assessment. On an appeal against the amount of an assessment, the Tax Court had no jurisdiction to adjudicate Ms Lans' allegation that the Act was applied to her in a discriminatory manner in breach of section 15 of the *Canadian Charter of Rights and Freedoms*:

*Main Rehabilitation Co. v. Canada*, 2004 FCA 403, 247 D.L.R. (4th) 597. This Court cannot reverse the Judge's decision on an issue that she had no jurisdiction to decide. In any event, Ms Lans provided no factual basis for her allegation that her Charter rights had been violated.

[10] The Judge's finding that Ms Lans had not shown due diligence warranting the grant of relief from paying the penalties assessed against her for late filing is a question of mixed fact and law, and can be reversed by this Court only if the Judge made some palpable and overriding error.

[11] I see no such error in the Judge's conclusion that Ms Lans had failed to take reasonable steps to ascertain her tax liability, and had thus not established due diligence. Although warned by the Minister in 2007 that she owed tax on her excess RRSP contributions in 2004 and 2005, Ms Lans did not file the required returns until 2009.

[12] It is not open to Ms Lans to argue in this Court, for the first time, that the assessments were statute-barred, an assertion that is not supported by the appeal record.

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

"John M. Evans"

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J.A.

"I agree  
Carolyn Layden-Stevenson J.A."

"I agree  
David Stratas J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-127-11

**APPEAL FROM AN ORDER OF THE HONOURABLE MADAM JUSTICE JUDITH WOODS, DATED FEBRUARY 23, 2011, DOCKET NUMBER 2010-3135(IT)1**

**STYLE OF CAUSE:** Cheryl Alison Lans v.  
Her Majesty The Queen

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** October 18, 2011

**REASONS FOR JUDGMENT BY:** EVANS J.A.

**CONCURRED IN BY:** LAYDEN-STEVENSON J.A.  
STRATAS J.A.

**DATED:** October 19, 2011

**APPEARANCES:**

Kristian DeJong  
Ron Wilhelm

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Myles J. Kirvan  
Deputy Attorney General of Canada

FOR THE RESPONDENT