Federal Court of Appeal | Cour d'appel fédérale

Date: 20130221

Docket: A-447-11

Citation: 2013 FCA 50

CORAM: **TRUDEL J.A.**
STRATAS J.A.
WEBB J.A.

BETWEEN:

MINISTER OF NATIONAL REVENUE

Appellant

and

RBC LIFE INSURANCE COMPANY,
BMO LIFE ASSURANCE COMPANY,
INDUSTRIAL ALLIANCE PACIFIC INSURANCE AND FINANCIAL SERVICES INC., and
INDUSTRIELLE ALLIANCE ASSURANCE ET SERVICES FINANCIERS INC.

Respondents

Heard at Ottawa, Ontario, on February 12, 2012.

Judgment delivered at Ottawa, Ontario, on February 21, 2013.

REASONS FOR JUDGMENT BY: STRATAS J.A.

CONCURRED IN BY: TRUDEL J.A.
WEBB J.A.

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REASONS FOR JUDGMENT

STRATAS J.A.

[1] The Minister appeals from a judgment dated November 1, 2011 of the Federal Court (*per* Justice Tremblay-Lamer): 2011 FC 1249.

[2] The Federal Court cancelled four authorizations previously obtained by the Minister under subsection 231.2(3) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). The authorizations required RBC Life Insurance Company, Industrial Alliance Pacific Insurance and Financial Services Inc., Industrielle Alliance Assurance et Services Financiers Inc., and BMO Life Assurance Company (the "respondents") to produce information and documents relating to certain of their customers. These customers had purchased a particular insurance product known as the "10-8 plan."

[3] For the reasons that follow, I would dismiss the appeal with costs to the respondents.

[4] The respondents brought a cross-appeal seeking a declaration that subsection 231.2(3) of the Act is of no force or effect because it unjustifiably infringes section 8 of the *Canadian Charter of Rights and Freedoms*. They brought this cross-appeal in case their defence to the main appeal was unsuccessful. As their defence to the main appeal has been successful, I would dismiss the cross-appeal on account of mootness, but with costs to the respondents.

A. The legislative scheme

[5] In pursuit of verifying compliance with the Act, occasionally the Minister requires third parties, such as employers or here, insurers, to provide information about unnamed taxpayers. The Act sets out the following procedures for the Minister to compel these third parties to produce the information:

(1) The Minister can obtain, *ex parte*, an authorization from a judge requiring the third party to provide information about unnamed taxpayers: subsection 231.2(3) of the Act. At this initial *ex parte* stage, the Minister must satisfy the judge that two preconditions are met: the unnamed taxpayers are ascertainable and the authorization's purpose is to verify the unnamed taxpayers' compliance with the Act.

(2) Upon becoming aware of the authorization, the third party can apply to have it reviewed. The reviewing judge may cancel, confirm, or vary the authorization: subsection 231.2(6) of the Act.

If the authorization has not been cancelled, the Minister may enforce the authorization through a compliance order: section 231.7 of the Act.

[6] The text of these provisions is as follows:

231.2. (3) On ex parte application by the Minister, a judge may, subject to such conditions as the judge considers appropriate, authorize the Minister to impose on a third party a requirement under subsection 231.2(1) relating to an unnamed person or more than one unnamed person (in this section referred to as the "group") where the judge is satisfied by information on oath that	**231.2.** (3) Sur requête ex parte du ministre, un juge peut, aux conditions qu'il estime indiquées, autoriser le ministre à exiger d'un tiers la fourniture de renseignements ou production de documents prévue au paragraphe (1) concernant une personne non désignée nommément ou plus d'une personne non désignée nommément — appelée « groupe » au présent article —, s'il est convaincu, sur dénonciation sous serment, de ce qui suit :
(*a*) the person or group is ascertainable; and	*a*) cette personne ou ce groupe est identifiable;

(*b*) the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Act.

b) la fourniture ou la production est exigée pour vérifier si cette personne ou les personnes de ce groupe ont respecté quelque devoir ou obligation prévu par la présente loi;

…

[…]

(5) Where an authorization is granted under subsection 231.2(3), a third party on whom a notice is served under subsection 231.2(1) may, within 15 days after the service of the notice, apply to the judge who granted the authorization or, where the judge is unable to act, to another judge of the same court for a review of the authorization.

(5) Le tiers à qui un avis est signifié ou envoyé conformément au paragraphe (1) peut, dans les 15 jours suivant la date de signification ou d'envoi, demander au juge qui a accordé l'autorisation prévue au paragraphe (3) ou, en cas d'incapacité de ce juge, à un autre juge du même tribunal de réviser l'autorisation.

(6) On hearing an application under subsection 231.2(5), a judge may cancel the authorization previously granted if the judge is not then satisfied that the conditions in paragraphs 231.2(3)(*a*) and 231.2(3)(*b*) have been met and the judge may confirm or vary the authorization if the judge is satisfied that those conditions have been met.

(6) À l'audition de la requête prévue au paragraphe (5), le juge peut annuler l'autorisation accordée antérieurement s'il n'est pas convaincu de l'existence des conditions prévues aux alinéas (3)*a*) et *b*). Il peut la confirmer ou la modifier s'il est convaincu de leur existence.

231.7. (1) On summary application by the Minister, a judge may, notwithstanding subsection 238(2), order a person to provide any access, assistance, information or document sought by the Minister under section 231.1 or 231.2 if the judge is satisfied that

231.7. (1) Sur demande sommaire du minister, un judge peut, malgré le paragraphe 238(2), ordonner à une personne de fournier l'accès, l'aide, les renseignements ou les documents que le minister cherche à obtenir en vertu des articles 231.1 ou 231.2 s'il est convaincu de ce que suit:

(a) the person was required under section 231.1 or 231.2 to provide the access, assistance, information or document and did not do so; and

a) la personne n'a pas fourni l'accès, l'aide, les renseignements ou les documents bien qu'elle en soit tenue par les articles 231.1 ou 231.2;

(b) in the case of information or a document, the information or document is not protected from

b) s'agissant de renseignements ou de documents, le privilèges des communications entre client et avocat,

disclosure by solicitor-client privilege (within the meaning of subsection 232(1)).	au sens du paragraphe 232(1), ne peut être invoqué à leur égard.
(2) An application under subsection (1) must not be heard before the end of five clear days from the day the notice of application is served on the person against whom the order is sought.	(2) La demande n'est entendue qu'une fois écoulés cinq jours francs après signification d'un avis de la demande à la personne à l'égard de laquelle l'ordonnance est demandée.
(3) A judge making an order under subsection (1) may impose any conditions in respect of the order that the judge considers appropriate.	(3) Le juge peut imposer, à l'égard de l'ordonnance, les conditions qu'il estime indiquées.
(4) If a person fails or refuses to comply with an order, a judge may find the person in contempt of court and the person is subject to the processes and punishments of the court to which the judge is appointed.	(4) Quiconque refuse ou fait défaut de se conformer à une ordonnance peut être reconnu coupable d'outrage au tribunal; il est alors sujet aux procédures et sanctions du tribunal l'ayant ainsi reconnu coupable.
(5) An order by a judge under subsection (1) may be appealed to a court having appellate jurisdiction over decisions of the court to which the judge is appointed. An appeal does not suspend the execution of the order unless it is so ordered by a judge of the court to which the appeal is made.	(5) L'ordonnance visée au paragraphe (1) est susceptible d'appel devant le tribunal ayant compétence pour entendre les appels des décisions du tribunal ayant rendu l'ordonnance. Toutefois, l'appel n'a pas pour effet des suspendre l'exécution de l'ordonnance, sauf ordonnance contraire d'un juge du tribunal saisi de l'appel.

B. The basic facts and the Federal Court's decision

[7] On an *ex parte* basis, the Federal Court issued the authorizations. The respondents applied to have them reviewed. The Federal Court cancelled the authorizations. It invoked two bases for its decision.

[8] First, the Federal Court found that the Minister had not disclosed a significant amount of relevant evidence on the *ex parte* applications. Therefore, "the Court was not in a position to appreciate the full context in which the Minister brought the *ex parte* applications": Reasons, paragraph 14. In particular, the Federal Court identified four categories of material facts that were not disclosed to the Court on the *ex parte* applications:

- The Department of Finance's refusal to amend the Act to address outdated provisions;

- Information contained in an advance income tax ruling request, information that was relevant to determining whether there was compliance with the Act;

- The Canada Revenue Agency's decision to "send a message to the industry" by refusing to answer the advance income ruling request and to take measures to chill the 10-8 plan business, in part by undertaking an "audit blitz"; and

- The Canada Revenue Agency's GAAR Committee had determined that the 10-8 plans likely complied with the letter of the Act, if not the spirit.

[9] Second, the Federal Court found the Minister failed to establish one of the two preconditions, namely that the authorizations were made to verify compliance with the Act: paragraph 231.1(3)(*b*) of the Act. While the Federal Court accepted that the Minister had a valid

audit purpose, on the evidence this was "extraneous to her primary goal, which was to chill [the respondents'] 10-8 plan business," a business that on policy grounds the Minister disliked. The Minister's "true purpose was to achieve through audits what the Department of Finance refused to do" by enacting that policy "through legislative amendment." Further, on the evidence the Federal Court was "not satisfied that the requirements [were] actually necessary for the Minister to verify compliance with the Act." See Reasons, at paragraphs 58-60.

[10] The Minister appeals to this Court.

C. The standard of review on appeal

[11] The parties are agreed that the normal, two-fold appellate standard of review applies:

- The Federal Court's findings on questions of law must be correct.

- Unless an extricable question of law is present, its findings on questions of mixed law and fact, including exercises of fact-based discretion, can only be set aside on the basis of palpable and overriding error.

(*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 at paragraphs 8 and 36.)

[12] Palpable and overriding error is a "highly deferential standard of review." A palpable error is one that is "obvious." An overriding error is one that "goes to the very core of the outcome of the

case." See *Canada v. South Yukon Forest Corporation*, 2012 FCA 165 at paragraph 46. For example, a complete lack of evidence to support a factual finding key to the outcome of the case qualifies as a palpable and overriding error: *Hershkovitz v. Tyco Safety Products Canada Ltd.*, 2010 FCA 190 at paragraph 39.

D. Analysis

[13] The Minister's submissions, described below, raise three questions for our consideration:

(1) What is the jurisdiction of the Federal Court on an *ex parte* application under subsection 231.2(3) and on a review under 231.2(6)?

(2) Did the Minister make full and frank disclosure of relevant information on the *ex parte* application in this case?

(3) Did the Minister's valid audit purpose save the authorizations?

(1) What is the jurisdiction of the Federal Court on an *ex parte* application under subsection 231.2(3) and on a review under 231.2(6)?

[14] In oral submissions before us, the Minister submitted that a judge can refuse to grant an authorization under subsection 231.2(3), even where the two preconditions in paragraphs 231.2(3)(*a*) and (*b*) are met. In short, the authorizing judge has discretion.

[15] However, the Minister submitted that a reviewing judge under subsection 231.2(6) does not have discretion. Instead, the reviewing judge is only to verify whether the two preconditions in paragraphs 231.2(3)(*a*) and (*b*) are met. Therefore, if the preconditions are met – *i.e.*, the unnamed taxpayers are ascertainable and the authorization's purpose is to verify the unnamed taxpayers' compliance with the Act – the reviewing judge can do nothing more. The authorization must be upheld.

[16] On the Minister's view of subsection 231.2(6), the reviewing judge cannot set aside an authorization on the ground that the Minister did not make full and frank disclosure of relevant information on the *ex parte* application under subsection 231.2(3). The Federal Court judge did exactly that. Therefore, according to the Minister, the Federal Court judge erred.

[17] I disagree with the Minister's interpretation of subsection 231.2(6). Under that subsection, the reviewing judge's task is not as limited as the Minister suggests.

[18] Both subsections 231.2(3) and 231.2(6) provide that the judge "may" do something. Yet, in the face of the use of the word "may" in both subsections, curiously the Minister admits the existence of discretion in one subsection, but not in the other.

[19] The plain wording of subsection 231.2(6) shows that the reviewing judge is free to go beyond the two statutory preconditions and exercise a discretion regarding whether the authorization should be left in place. In the words of the subsection, a judge "may…vary" the

authorization even where "the judge is satisfied that [the two preconditions] have been met." Importantly, the subsection uses the word, "may," rather than "shall."

[20] This makes sense. If, as the Minister concedes, the judge can exercise discretion on an *ex parte* application under subsection 231.2(3), why wouldn't the judge have an equally broad discretion on a review under subsection 231.2(6)? Express wording – not present here – would be required to cut down the nature of the review under subsection 231.2(6).

[21] The purposes underlying subsections 231.2(3) and 231.2(6) also suggest the Minister's interpretation is incorrect. Before us, the Minister observed that these subsections rest within the enforcement and investigation part of the Act, a part aimed at empowering the Minister to verify taxpayer compliance with the Act, and detect breaches. However, in response to a question posed by this Court, the Minister conceded that the enforcement and investigation part of the Act also aims to ensure the fair and proper treatment of persons subjected to the Minister's investigative powers.

[22] Together, subsections 231.2(3) and 231.2(6) express this dual purpose. Subsection 231.2(3) empowers the Minister to obtain authorizations in certain circumstances. But judicial oversight pervades the process, both at the initial *ex parte* stage, and later if there is a review under subsection 231.2(6). Judicial oversight is necessary because authorizations can intrude on third parties' privacy interests:

> Intrusion into the privacy of individuals is always a sensitive matter, especially when third parties, who themselves may have valid reasons for not wanting to disclose, are required to provide the information. Undoubtedly this is the reason Parliament saw fit to require the Minister to obtain Court authorization for such intrusion upon satisfying the Court of the matters specified in subsection 231.2(3).

(*M.N.R. v. Sand Exploration Limited* (1995), 95 D.T.C. 5358 (F.C.T.D.) at page 5362, *per* Rothstein J. (as he then was).)

[23] This Court has found that authorizations under subsection 231.2(3) can only be granted where the two statutory preconditions are met and where, in the Court's discretion, the granting of the authorizations is warranted in the circumstances. The element of discretion is vital. As Noël J.A. has explained:

> [T]he existence of judicial discretion is essential to the constitutional validity of this type of provision, which is comparable to a seizure even when used in a regulatory (or even non-criminal) context. It is this discretion, conferred upon an independent judge, which protects individuals from the damaging use of this kind of power and brings it into line with the requirements of section 8 of the *Canadian Charter of Rights and Freedoms*.

(*M.N.R. v. Derakhshani*, 2009 FCA 190 at paragraph 19.)

[24] The Minister says that *Derakhshani* is irrelevant to the issue of whether the reviewing judge has discretion under subsection 231.2(6). She says that it concerns *ex parte* applications under subsection 231.2(3), not reviews under subsection 231.2(6).

[25] I disagree. In *Derakhshani*, this Court examined subsection 231.2(3) in the context of subsection 231.2(6) and, as can be seen in the above passage, spoke in broad terms. The observations in *Derakhshani* were integral to its decision, not mere *obiter*. Further, the review under subsection 231.2(6) cannot be divorced from what it is reviewing, the authorization under

subsection 231.2(3). To the extent that *Derakhshani* focused only upon subsection 231.2(3) – which I do not accept – it has a clear import for subsection 231.2(6).

[26] In seeking an authorization under subsection 231.2(3), the Minister cannot leave "a judge…in the dark" on facts relevant to the exercise of discretion, even if those facts are harmful to the Minister's case: *Derakhshani, supra* at paragraph 29; *M.N.R. v. Weldon Parent Inc.*, 2006 FC 67 at paragraphs 153-155 and 172. The Minister has a "high standard of good faith" to make "full disclosure" so as to "fully justify" an *ex parte* order under subsection 231.1(3): *M.N.R. v. National Foundation for Christian Leadership*, 2004 FC 1753, aff'd 2005 FCA 246 at paragraphs 15-16. See also Canada Revenue Agency, *Acquiring Information from Taxpayers, Registrants and Third Parties* (issued June 2010).

[27] To the extent possible, the reviewing judge under subsection 231.2(6) is the same judge who issued the authorization under subsection 231.2(3): see subsection 231.2(5). If, on review, it were a simple matter of ensuring that the two statutory preconditions are met, any judge would be satisfactory. But under this statutory scheme, the original authorizing judge conducts the review, a judge who knows the original information submitted in support of the exercise of discretion in favour of granting the authorization. This also suggests that the review under subsection 231.2(6) must include a discretionary element and is not limited just to verifying that the two statutory preconditions are met.

[28] Were this not so, a startling implication arises. Under the Minister's interpretation, the Minister could withhold important information from the authorizing judge under subsection

231.2(3) – information that would have caused the authorizing judge to exercise the discretion to deny authorization – but on a review under subsection 231.2(6), that same judge must uphold the authorization if he or she finds the two statutory preconditions to be met. The judge – despite knowing of the non-disclosure of important information that would have caused her to deny authorization – is nothing more than a cipher, powerless to act, forced to leave the ill-gotten authorization in place.

[29] Of course, more extreme facts – not present here – can be supposed. On the Minister's interpretation, the authorizing judge could be induced to grant an authorization on the basis of bald lies but, on review, if the statutory preconditions are met, that same judge, having discovered she was deceived, can do nothing about it.

[30] The Minister submits that any relevant non-disclosure or misinformation on an *ex parte* application under subsection 231.2(3) can always be addressed by the reviewing judge because instances of non-disclosure or misinformation will always relate to one or both of the two preconditions for an authorization under subsection 231.2(3). I disagree. Information can be relevant to the discretion under subsection 231.2(3), not only to the two statutory preconditions. For example, the evidence adduced by the Minister may suggest that the two statutory preconditions are met, but, through non-disclosure or misinformation, the Minister could cast relevant taxpayers in a worse light than they deserve. Or the Minister could misinform the judge about the inconvenience and cost to persons who will be subject to the authorization. In both instances, the non-disclosure or misinformation could unfairly affect the judge's discretion.

[31] The Minister's submission also raises issues of a more fundamental nature. A breach of the obligation to make full and frank disclosure of information relevant to the Court's exercise of discretion on an *ex parte* application, such as that contemplated under subsection 231.2(3), can hobble the Court's ability to act properly and judicially, and can result in the making of orders that should not have been made. It is an abuse of process.

[32] In effect, the Minister says that subsections 231.2(3) and 231.2(6) constitute a complete code, ousting the Court's ability to redress such an abuse of process. I disagree.

[33] The Federal Courts have a power, independent of statute, to redress abuses of process, such as the failure to make full and frank disclosure of relevant information on an *ex parte* application: *Indian Manufacturing Ltd. et al. v. Lo et al.* (1997), 75 C.P.R. (3d) 338 at page 342 (F.C.A.); *May & Baker (Canada) Ltd. v. Motor Tanker "Oak"*, [1979] 1 F.C. 401 at page 405 (C.A.).

[34] These authorities speak of the Federal Courts' power as being "inherent." At one time, these authorities were perhaps open to question on the basis that the Federal Courts, as statutory courts, do not have inherent powers. However, this is no longer the case.

[35] The Supreme Court has confirmed the existence of "plenary powers" in the Federal Courts, analogous to the inherent powers of provincial superior courts: *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626 at paragraphs 35 to 38 (a case arising in another context, but stating a principle of universal application). These plenary powers are especially live in situations where the Court is exercising its "superintending power over the

Minister's actions in administering and enforcing the Act": *Derakhshani, supra* at paragraphs 10-11.

[36] In my view, the Federal Courts' power to investigate, detect and, if necessary, redress abuses of its own processes is a plenary power that exists outside of any statutory grant, an "immanent attribute" part of its "essential character" as a court, just like the provincial superior courts with inherent jurisdiction: see *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 S.C.R. 725 at paragraph 30. The Federal Courts' power to control the integrity of its own processes is part of its core function, essential for the due administration of justice, the preservation of the rule of law and the maintenance of a proper balance of power among the legislative, executive and judicial branches of government. Without that power, any court – even a court under section 101 of the *Constitution Act, 1867* – is emasculated, and is not really a court at all. See *MacMillan Bloedel, supra* at paragraphs 30-38, citing with approval K. Mason, "The Inherent Jurisdiction of the Court" (1983), 57 A.L.J. 449 at page 449 and I.H. Jacobs, "The Inherent Jurisdiction of the Court" (1970), 23 C.L.P. 23; and see also *Crevier v. Quebec (A.G.)*, [1981] 2 S.C.R. 220.

[37] From the foregoing, it follows that I cannot accept the Minister's contention that subsections 231.2(3) and 231.2(6) constitute a complete code ousting the power of the Court to investigate, detect and, if necessary, redress abuses of its own processes.

[38] I conclude that when the Federal Court was engaged in its review under subsection 231.2(6) in this case, it had the power to cancel the authorizations it granted on the ground that, in its view,

the Minister had not made full and frank disclosure to it on the *ex parte* application under subsection 231.2(3).

(2) Did the Minister make full and frank disclosure of relevant information on the *ex parte* application in this case?

[39] The Minister answers this in the affirmative. In particular, the Minister challenges the Federal Court's assessment that the undisclosed information, summarized in paragraph 8, above, was relevant to its discretion to grant the authorizations under subsection 231.2(3).

[40] I am satisfied that the Federal Court had a basis for finding that the factual matters in paragraph 8, above, were relevant to the discretion whether the authorizations should have been granted under subsection 231.2(3) in these circumstances. The Federal Court's finding of relevance in this case was a finding of mixed fact and law suffused by factual appreciation, and no legal principle is extricable. Accordingly, on the basis of *Housen*, *supra*, it is incumbent on the Minister to demonstrate palpable and overriding error. The Minister has not done so.

[41] In addition, the existence of each of the factual matters described in paragraph 8, above, was supported by some evidence in the record, and sometimes plenty of evidence in the record: see the references in the respondent's memorandum, footnotes 38 to 101, 165, 167 and 169, each of which the Court has verified for accuracy.

(3) Did a valid audit purpose save the authorizations?

[42] The Minister submits that the Federal Court erred in law by overlooking that that there was evidence upon which the authorizations could have been granted. It stresses there was a legitimate assessment purpose supporting the authorizations. According to the Minister, as a matter of statutory interpretation, as long as an audit purpose supported the issuance of the authorizations, they should have been upheld.

[43] The Federal Court did find that a valid audit purpose existed, but it found it to be a secondary or subservient purpose to the primary purpose of chilling the respondent's business concerning the 10-8 plans. Based on evidence before it, the Federal Court found that the Minister's "primary goal" was to chill this business – a purpose that was not "sufficiently tied to her valid audit purpose" – and the Federal Court was "not satisfied that the requirements [were] actually necessary for the Minister to verify compliance with the Act": Reasons, at paragraphs 58-60.

[44] These were findings of mixed fact and law suffused by facts, findings that can be set aside only by palpable and overriding error. Absent palpable and overriding error, it is not for this Court to re-weigh the evidence and find that a valid audit purpose was the real purpose.

[45] I do agree with the Minister that there was some evidence upon which the Federal Court could have found the two statutory preconditions to be present. There was some evidence upon which it could have exercised its discretion in favour of confirming the authorizations on review.

But the Federal Court saw the facts differently and made findings supported by evidence. Absent palpable and overriding error, its findings and its exercise of discretion must stand.

[46] Even if the Minister had a valid audit purpose, it was still open to the Federal Court, on review, to cancel the authorizations because of the Minister's non-disclosure of relevant information. Based on the statutory interpretation above, in its discretion, this it could do. And it did so, finding material non-disclosure of relevant information on the part of the Minister. In its view, the culpability of the Minister was significant: the non-disclosure was "undoubtedly material" and "could certainly have affected the outcome of the *ex parte* applications": Reasons, at paragraphs 39-40 and 44-45.

[47] The Federal Court recognized that cancellation of authorizations under subsection 231.2(6) is sometimes necessary to deprive the Minister of an "advantage improperly obtained." It recognized that sometimes the Court must exercise its discretion in order to create a deterrent effect and bring home to the Minister the "duty of disclosure…and the consequence[s] if [the Minister] fail[s] in that duty": Reasons, at paragraphs 29-30.

[48] In making these findings and observations, the Federal Court neither erred in principle, nor committed any palpable and overriding error. On the evidence, each factual finding was open to the Federal Court and it exercised its discretion in a lawful manner within the scope of subsection 231.2(6).

E. The related appeal

[49] This appeal was heard on the same day as the appeal in *Minister of National Revenue v. Lordco Parts Ltd.*, file no. A-106-12. I would direct the Registry to deliver a copy of our reasons in *Lordco* to the parties to this appeal, concurrently with the release of these reasons.

F. Disposition of this appeal

[50] Accordingly, I would dismiss both the appeal and the cross-appeal. The respondents advanced the cross-appeal only in case their defence to the appeal failed. Their defence has succeeded. Accordingly, in my view, the respondents have been wholly successful and I would grant them their costs of both the appeal and the cross-appeal.

"David Stratas"
J.A.

"I agree
Johanne Trudel J.A."

"I agree
Wyman W. Webb J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-447-11
APPEAL FROM A JUDGMENT OF THE HONOURABLE MADAM JUSTICE TREMBLAY-LAMER DATED NOVEMBER 1, 2011	
STYLE OF CAUSE:	Minister of National Revenue v. RBC Life Insurance Company *et al.*
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	February 12, 2013
REASONS FOR JUDGMENT BY:	Stratas J.A.
CONCURRED IN BY:	Trudel and Webb JJ.A.
DATED:	February 21, 2013

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