Federal Court of Appeal | Cour d'appel fédérale

Date: 20250121

Docket: A-100-23

Citation: 2025 FCA 14

CORAM: **WEBB J.A.**
MONAGHAN J.A.
WALKER J.A.

BETWEEN:

MARLENE ENNS

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Edmonton, Alberta, on October 22, 2024.

Judgment delivered at Ottawa, Ontario, on January 21, 2025.

REASONS FOR JUDGMENT BY: WEBB J.A.

CONCURRED IN BY: MONAGHAN J.A.
WALKER J.A.

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REASONS FOR JUDGMENT

WEBB J.A.

[1] This is an appeal from the Judgment of the Tax Court of Canada (2023 TCC 28, *per* Russell J.) that dismissed Marlene Enns' appeal from the assessment issued under section 160 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act). In general, under this section, if an individual transfers property to their spouse or common-law partner for consideration that is less

than the fair market value of the property transferred, the Minister of National Revenue can assess the transferee for all or a portion of the unpaid tax debt of the transferor.

[2] The Tax Court Judge adopted the decision of Graham J. in *Kuchta v. The Queen*, 2015 TCC 289, (*Kuchta*) and found that, for the purposes of paragraph 160(1)(*a*) of the Act, Marlene Enns did not cease to be the "spouse" of Peter Enns on his death. As a result, the amount that Marlene Enns received as the designated beneficiary of the Registered Retirement Savings Plan (RRSP) of Peter Enns following his death was a transfer of property to his "spouse". Marlene Enns was therefore liable for the lesser of the amount of the RRSP transferred to her and Peter Enns' unpaid tax debt.

[3] For the reasons that follow, I would allow this appeal.

I. Background

[4] At the Tax Court hearing, the parties submitted an Agreed Statement of Facts. Marlene Enns and Peter Enns, at all relevant times, lived in Alberta. Marlene Enns was married to Peter Enns. Peter Enns designated Marlene Enns as the sole beneficiary of his RRSP. Peter Enns died on May 22, 2013. The fair market value of his RRSP, at that time, was $102,789.52. Peter Enns also had an outstanding liability under the Act that was greater than the fair market value of the RRSP.

[5] Marlene Enns was assessed under section 160 of the Act for the amount equal to the fair market value of the RRSP ($102,789.52). The assessment was based on Marlene Enns being the "spouse" of Peter Enns when the RRSP was transferred to her following his death.

II. Decision of the Tax Court of Canada in This Appeal

[6] The issue before the Tax Court in this appeal was whether, for the purposes of paragraph 160(1)(*a*) of the Act, Marlene Enns continued to be the "spouse" of Peter Enns following his death. The Tax Court Judge noted that there were two prior decisions of the Tax Court that reached opposite conclusions with respect to whether, for the purposes of paragraph 160(1)(*a*) of the Act, a survivor continues to be the "spouse" of their deceased partner.

[7] In *Kiperchuk v. The Queen*, 2013 TCC 60, Lamarre J. found that a person ceased to be a "spouse" upon death:

> [25] Assuming that the transferor is the former husband, he was not related to the appellant by marriage at the time she became entitled to the RRSP. Indeed, the status of marriage is ended by death or by a decree absolute of divorce (*Kindl Estate, Re 1982 CarswellOnt 340*, [(1983), 39 O.R. (2d) 219] paragraph 10 [Ontario High Court of Justice]).
>
> [26] Therefore, the appellant was not related by marriage to her former husband at the time of the transfer as she was then no longer his spouse (paragraphs 251(1)(*a*) and 251(2)(*a*) of the [Act]). Nor was she deemed not to have dealt at arm's length with her former husband under paragraph 251(1)(*b*) of the [Act], as the RRSP did not devolve to her through the estate.

[8] In *Kuchta*, the Tax Court Judge reached the opposite conclusion. As noted above, the Tax Court Judge in the appeal that is before us adopted the meaning of "spouse" as found in

Kuchta and concluded that Marlene Enns was still the "spouse" of Peter Enns notwithstanding his death.

[9] The Tax Court Judge in *Kuchta* completed a textual, contextual and purposive analysis of subsection 160(1) of the Act.

[10] The Tax Court Judge in *Kuchta* noted that "spouse" is not defined in the Act, but the legal and dictionary meanings of "spouse" do not contemplate that a person would still be a "spouse" following the death of the person to whom that person was married:

> [22] Dictionary definitions of the word "spouse" clearly contemplate a relationship between two living people. Those definitions are in line with the legal meaning of the word. However, dictionary definitions do not necessarily reflect the ordinary usage of a word.

[11] The Tax Court Judge in *Kuchta* then considered the ordinary use of the word "spouse" in conversations, obituaries and newspaper articles to refer to a surviving member of a couple and concluded that "there are two different meanings of the word 'spouse': one legal and one colloquial" (paragraph 28). The Tax Court Judge also noted that section 160 of the Act does not provide any clarification on the meaning of "spouse", for the purposes of that section.

[12] As part of his contextual analysis, the Tax Court Judge in *Kuchta* reviewed various sections of the Act dealing with a transfer of property on death. Subsections 146(8.91), 70(6), 72(2) and 148(8.2) of the Act all apply to transfers of property on death and refer to the "spouse"

of the person who died, as if the “spouse” continued to be a “spouse” following the death of the person to whom they were married.

[13] The definition of “refund of premiums” in subsection 146(1) and subsections 146(5.1), 146(8.8) and 248(23.1) of the Act refer to a person who was the “spouse” of the person who died immediately before that person’s death. Thus, these provisions supported a finding that a “spouse” ceases to be a “spouse” on death.

[14] The English version of subsection 147.3(7) of the Act supported a finding that a person ceased to be a “spouse” on death. However, the French version indicated that a person was still a “spouse” following the death of the person to whom the survivor had been married.

[15] The Tax Court Judge in *Kuchta* found that the textual analysis and contextual analysis led to an ambiguity in the use of the term “spouse”. He then concluded that a purposive analysis supported a finding, for the purposes of subsection 160(1) of the Act, that a person was still a “spouse” following the death of the person to whom the survivor was married:

> [66] A purposive analysis of subsection 160(1) strongly points in favour of an interpretation of the word “spouse” in that subsection that includes a widow or widower. The scheme of subsection 160(1) indicates that its purpose is to capture all transfers to non-arm's length persons and to expand that net to capture transfers to even arm's length persons on death. Looking more specifically at RRSPs, the scheme of subsection 160(1) appears to be designed to capture transfers of RRSPs on death.

[16] The Tax Court Judge in *Kuchta* found that there was nothing in the Act that would exempt transfers (and in particular transfers of RRSPs) on death (whether to widows, widowers, or financially dependent people) from the application of section 160 of the Act.

[17] As a result, the Tax Court Judge in *Kuchta* found that, for the purposes of section 160 of the Act, a "spouse" includes a widow or widower. Since the Tax Court Judge, in the matter that is the subject of this appeal, adopted the reasoning and the conclusion in *Kuchta*, he found that Marlene Enns was still the "spouse" of Peter Enns following his death and the appeal from the assessment issued under section 160 of the Act was dismissed.

III. Issue and Standard of Review

[18] The relevant statutory provision in this appeal is paragraph 160(1)(*a*) of the Act, which refers to a transfer to a "spouse":

(1) Where a person has, on or after May 1, 1951, transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to	(1) Lorsqu'une personne a, depuis le 1er mai 1951, transféré des biens, directement ou indirectement, au moyen d'une fiducie ou de toute autre façon à l'une des personnes suivantes :
(*a*) the person's spouse or common-law partner or a person who has since become the person's spouse or common-law partner,	*a*) son époux ou conjoint de fait ou une personne devenue depuis son époux ou conjoint de fait;
…	[…]

[19] The sole issue in this appeal is whether, for the purposes of paragraph 160(1)(*a*) of the Act, a person continues to be the "spouse" of their deceased partner following the death of the person to whom the survivor was married immediately before their death.

[20] Since the issue in this appeal is a question of statutory interpretation, the standard of review is correctness (*Housen v. Nikolaisen*, 2002 SCC 33).

IV. Analysis

[21] Section 160 of the Act imposes a liability on the transferee of property in certain situations for the unpaid tax liability of the transferor. This Court, in *Canada v. Livingston*, 2008 FCA 89, leave to appeal to SCC refused, 32630 (25 September 2008), set out the criteria to apply when considering subsection 160(1) of the Act. The only issue in this appeal is whether Marlene Enns was still the spouse of Peter Enns when his RRSP was transferred to her as the designated beneficiary of his RRSP, on his death.

[22] It is an important aspect of this appeal that the RRSP was transferred directly to Marlene Enns and that it did not pass through Peter Enns' estate. Whether an RRSP passes directly to a designated beneficiary (and does not pass through the estate of the deceased) is a question of law and, in particular, of the law of the appropriate province. If the RRSP were part of Peter Enns' estate, the RRSP (together with whatever other assets were part of his estate) would have been available to satisfy Peter Enns' debts (including his tax debt).

[23] The Ontario Court of Appeal confirmed, for Ontario, "that RRSPs do not form part of the estate of the deceased but instead devolve directly to the designated beneficiary" (*Amherst Crane Rentals Ltd. v. Perring*, (2004), 187 O.A.C. 336, at paragraphs 3 and 4). It appears that it would be the same result in Alberta. In *Roberts v. Roberts*, 2021 ABQB 945, the Alberta Court of Queen's Bench noted, at paragraph 47, that "[s]ection 71 [of the *Wills and Succession Act*, S.A. 2010, c. W-12.2] specifically provides that participants in certain defined plans (pension, annuity, RRSP, RRIF, TFSA, or as prescribed by legislation) may designate a person to receive a benefit payable under the plan, upon the participant's death: s. 71(1)(a)(i)-(v)". The Court found that "the TFSA does not form part of the Estate, but belongs to Peggy Campbell, pursuant to the beneficiary designation" (paragraph 60).

[24] Since a TFSA passes directly to a designated beneficiary in Alberta, it would be the same result for an RRSP, as the applicable provision in the *Wills and Succession Act*, S.A. 2010, c. W-12.2 includes a reference to RRSPs as well as TFSAs. Therefore, Peter Enns' RRSP was transferred directly to Marlene Enns, as the designated beneficiary of his RRSP, and it did not pass through his estate. The sole question for determination in this appeal is: was Marlene Enns still the "spouse" of Peter Enns when the RRSP passed to her?

[25] "Spouse" is not defined in the Act.

[26] A textual, contextual and purposive analysis is required to determine the interpretation of "spouse" in paragraph 160(1)(*a*) of the Act (*Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, at para. 10).

A. *Textual Analysis*

[27] In both *The New Shorter Oxford English Dictionary on Historical Principles* (1993 Edition) [New York: Oxford University Press Inc.] and B. Garner, *Black's Law Dictionary*, (St. Paul, MN: Thomson Reuters, 2024), a "spouse" is defined as a "married person". This would mean that a person is only a "spouse" for the period during which that person was married and, therefore, when a marriage ends, a person ceases to be a "spouse".

[28] In *Rahimi v. Canada (Citizenship and Immigration)*, 2017 FC 758, the Federal Court considered the meaning of "related by … marriage" as it appears in paragraph 83(5)(*a*) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The Court found that a marriage ends when one of the two individuals, who were married, dies:

> [75] …I take it to be beyond debate that in order to be married, to have a marriage, both parties must be alive. Similarly in my view, unless the contrary is stated in the legislation, there can be no debate that a marriage ends on death. Marriage vows traditionally are made "until death us do part". On the death of a spouse, no divorce is required in order to remarry. Legislatively, Parliament has the exclusive jurisdiction to regulate the legal capacity to enter into marriage. In that capacity Parliament has expressed its view of whether a marriage ends on death. Section 2.3 of the *Civil Marriage Act*, SC 2005, c 33, contains the declaratory statement that:
>
> | | |
> |---|---|
> | 2.3 No person may contract a new marriage until every previous marriage has been <u>dissolved by death</u> or by divorce or declared null by a court order. | 2.3 Nul ne peut contracter un nouveau mariage avant que tout mariage antérieur ait été <u>dissous par le décès</u> ou le divorce ou frappé de nullité par ordonnance d'un tribunal. |
> | [emphasis added] | [non souligné dans l'original] |

[29] The Tax Court Judge in *Kuchta* also acknowledged that a marriage ends on death:

> [19] …There is no question that, in legal terms, marriage ends on death. Both parties agree that this is the case, the law is clear on this point and it is acknowledged in subsection 248(23). Immediately following Mr. Juba's death, Ms. Kuchta was no longer married to him.

[30] Since the ordinary meaning of "spouse" is a person who is married to another individual and since marriage ends on death, this would lead to the conclusion that when a marriage ends as a result of the death of one of the individuals, the survivor ceases to be the "spouse" of the deceased.

[31] In his textual analysis, the Tax Court Judge in *Kuchta*, however, considered the ordinary use of the word "spouse" in conversations, obituaries and newspaper articles. In my view, it is not necessary to consider the relevance of the colloquial meaning of "spouse" in interpreting "spouse" for the purposes of paragraph 160(1)(*a*) of the Act in light of my findings concerning the relevant context — in particular, the statutory definition of "common-law partner" in subsection 248(1) of the Act.

B. *Contextual Analysis*

[32] The error committed by the Tax Court Judge in this appeal is reflected in paragraph 41 of his reasons when, in adopting the analysis and the decision in *Kuchta*, he stated that:

> [41] … the *Kuchta* analysis does not, "[fail] to consider legislation or binding authorities which would [produce] a different result."

[33] The contextual analysis in *Kuchta* failed to take into account the definition of "common-law partner" in subsection 248(1) of the Act. The Tax Court Judge in *Kuchta* implicitly acknowledged that "spouses" and "common-law partners" should be treated in the same way, but he does not refer to the statutory definition of "common-law partner":

> [34] The use of the term 'common-law partner' in subsection 160(1) does not provide any clarity either. In the same way that marriage ends on death, common-law partnership ends on death. In the same way that people use the words "wife" and "husband" to refer to surviving spouses, people use "common-law partner" to refer to surviving partners. In fact, it is even more difficult to describe a surviving partner because there are no equivalent words to "widow" and "widower" for common-law partners in either English or French. The context of subsection 160(1) supports both the legal or colloquial meanings of "common-law partner" and thus is not helpful in determining which meaning Parliament used.
>
> [Emphasis added.]

[34] The Tax Court Judge's reference to the context of subsection 160(1) of the Act supporting "both the legal or colloquial meaning of 'common-law partner'" is an error of law. Since "common-law partner" is defined in subsection 248(1) of the Act and since subsection 248(1) of the Act stipulates that the definitions in that subsection apply to the Act, it was an error to not consider the statutory definition of "common-law partner":

common-law partner, with respect to a taxpayer at any time, means a person who cohabits at that time in a conjugal relationship with the taxpayer and	***conjoint de fait*** En ce qui concerne un contribuable à un moment donné, personne qui, à ce moment, vit dans une relation conjugale avec le contribuable et qui, selon le cas :
(*a*) has so cohabited throughout the 12-month period that ends at that time, or	*a*) a vécu ainsi tout au long de la période de douze mois se terminant à ce moment;

(*b*) would be the parent of a child of whom the taxpayer is a parent, if this Act were read without reference to paragraphs 252(1)(*c*) and (*e*) and subparagraph 252(2)(*a*)(iii),	*b*) est le père ou la mère d'un enfant dont le contribuable est le père ou la mère, compte non tenu des alinéas 252(1)*c*) et *e*) ni du sous-alinéa 252(2)*a*)(iii).
and, for the purpose of this definition, where at any time the taxpayer and the person cohabit in a conjugal relationship, they are, at any particular time after that time, deemed to be cohabiting in a conjugal relationship unless they were living separate and apart at the particular time for a period of at least 90 days that includes the particular time because of a breakdown of their conjugal relationship;	Pour l'application de la présente définition, les personnes qui, à un moment quelconque, vivent ensemble dans une relation conjugale sont réputées, à un moment donné après ce moment, vivre ainsi sauf si, au moment donné, elles vivaient séparées, pour cause d'échec de leur relation, pendant une période d'au moins 90 jours qui comprend le moment donné.

[35] It is this definition of "common-law partner" as set out in subsection 248(1) of the Act that is relevant for the purposes of subsection 160(1) of the Act.

[36] The opening part of the definition contemplates two individuals who are cohabiting in a conjugal relationship. Two individuals would not be cohabiting in a conjugal relationship following the death of one of them.

[37] The definition of "common-law partner" includes the following:

> … where at any time the taxpayer and the person cohabit in a conjugal relationship, they are, at any particular time after that time, deemed to be cohabiting in a conjugal relationship …

[38] A literal reading of this deeming rule would lead to the conclusion that where two individuals cohabit in a conjugal relationship on the day before one of them dies, at any particular time after that time (which would include any particular time after the death of one of the partners) they would be deemed to be cohabiting in a conjugal relationship. As well, if both partners die, a literal reading would mean that they would continue to cohabit in a conjugal relationship, assuming that they were cohabiting in a conjugal relationship the day before they died.

[39] The question is whether Parliament intended this deeming rule to be applicable in the event of the death of one of the individuals. The consequence of the application of the deeming rule is clear. However, does the deeming rule apply in the event of the death of one of the individuals? Would Parliament have intended to deem the surviving partner to continue to cohabit in a conjugal relationship with their deceased partner? In my view, this is not the result that Parliament intended.

[40] The deeming rule, if applicable, results in two persons being deemed to continue to cohabit in a conjugal relationship “unless they were living separate and apart at the particular time for a period of at least 90 days that includes the particular time because of a breakdown of their conjugal relationship”. If one of the two partners is deceased, this condition for the termination of the period of deemed cohabitation would never be satisfied as only one of the two individuals would still be living. Therefore, in the event of the death of one of the partners, the two partners would continue to be deemed to be cohabiting in a conjugal relationship (and hence to be “common-law partners”) forever. This could not have been the intended result.

[41] When Parliament added the definition of “common-law partner” to the Act in 2000 (*Modernization of Benefits and Obligations Act*, S.C. 2000, c. 12), Parliament also changed all of the references to “spouse” to “spouse or common-law partner”. It is self-evident that Parliament intended the Act to apply equally to couples, whether they were married or in a common-law partnership.

[42] Given this equal treatment, the rules in section 251 of the Act assist in determining whether Parliament intended the deeming rule in the definition of “common-law partner” to apply in the event of the death of one of the partners.

[43] Subsection 251(2) of the Act provides that related persons are individuals connected by marriage or common-law partnership. Subsection 251(6) of the Act expands “connected by marriage or common-law partnership” by providing that:

(6) For the purposes of this Act, persons are connected by	(6) Pour l’application de la présente loi :
…	[…]
(*b*) marriage if one is married to the other or to a person who is so connected by blood relationship to the other;	*b*) des personnes sont unies par les liens du mariage si l’une est mariée à l’autre ou à une personne qui est ainsi unie à l’autre par les liens du sang;
(*b.1*) common-law partnership if one is in a common-law partnership with the other or with a person who is connected by blood relationship to the other; …	*b.1*) des personnes sont unies par les liens d’une union de fait si l’une vit en union de fait avec l’autre ou avec une personne qui est unie à l’autre par les liens du sang; …

[44] Since a marriage ends on the death of one of the individuals who were married to each other, when a person who was married dies, the survivor would no longer be connected by marriage to the persons with whom their deceased partner was connected by blood relationship. To have the same rules apply to individuals in a common-law partnership, that relationship would also have to cease upon the death of one of the partners. Otherwise, the surviving partner would continue to be connected by common-law partnership to the parents and siblings of their deceased partner forever, while a person who was married would cease to be connected by marriage to the parents and siblings of their deceased partner upon the death of the deceased partner.

[45] In order to treat couples the same for the purposes of section 251, regardless of whether they are married or they are common-law partners, since a marriage ends on death, a common-law partnership will also end on death. A common-law partnership is defined in subsection 248(1) of the Act as the relationship between individuals who are "common-law partners":

common-law partnership means the relationship between two persons who are common-law partners of each other;	***union de fait*** Relation qui existe entre deux conjoints de fait.

[46] Since a common-law partnership is the relationship between common-law partners, Parliament must have intended that the deeming rule in the definition of "common-law partner" would only apply while both partners are still living, *i.e.*, an individual ceases to be the "common-law partner" of their deceased partner on that partner's death.

[47] A person will therefore no longer be a “common-law partner” following the death of their partner. When an RRSP is transferred to the surviving partner as the designated beneficiary of the RRSP, it would not be a transfer of property to a “common-law partner”. To treat “common-law partners” and married couples equally, the transfer of a deceased individual’s RRSP to their designated beneficiary (who was their spouse immediately before their death) would not be a transfer of property to a “spouse”.

[48] As part of the contextual analysis, the Tax Court Judge in *Kuchta* noted that subsections 146(8.91), 70(6), 72(2) and 148(8.2) of the Act all apply to transfers of property on death and refer to the “spouse” of the person who died, as if the “spouse” continued to be a “spouse” following the death of the person to whom they were married.

[49] Subsection 146(8.91) of the Act refers to “the spouse or common-law partner of the deceased”. It is therefore clear from the language used in that subsection that Parliament intended that a person who was the “spouse or common-law partner” of the deceased immediately before their death would still be treated as such following their death. There is no similar language in section 160 of the Act.

[50] With respect to subsection 70(6) of the Act, the Tax Court Judge in *Kuchta* found that applying the ordinary and legal meaning of “spouse” would render this subsection meaningless:

> [42] Subsection 70(6) describes an acquisition being made as a consequence of a taxpayer's death by “the taxpayer's spouse” or a trust under which “the taxpayer's spouse” is entitled to receive all of the income during his or her life. Thus, subsection 70(6) not only contemplates that a taxpayer may have a spouse after death, but also that that person's status as a spouse would continue for the

> rest of his or her life. This entire subsection would be rendered meaningless if one did not accept that the word "spouse" could include a widow or widower. The entire purpose of the subsection is to allow a rollover of capital property to a widow or widower or a trust for the benefit of that person. If the word "spouse" did not include a widow or widower, there would be no one to whom capital property could be rolled. Again, since I must assume that Parliament intended subsection 70(6) to have meaning, I must therefore conclude that Parliament intended the word "spouse" to include "widows" and "widowers" in that subsection.
>
> [Emphasis added.]

[51] The Tax Court Judge in *Kuchta*, at paragraphs 47 and 48, only briefly refers to subsections 72(2) and 148(8.2) of the Act. The references to "spouse or common-law partner" in each of these provisions would also render them meaningless unless a survivor, following the death of the person who was their "spouse" or "common-law partner" immediately before their death, continued to be the "spouse" or "common-law partner" of that person.

[52] However, finding that the ordinary and legal meaning of "spouse" applies to subsection 160(1) of the Act does not render this subsection meaningless. The provision will still apply to transfers between "spouses" during their lifetimes.

C. *Purposive Analysis*

[53] With respect to the purpose of subsection 160(1) of the Act, the Tax Court Judge in *Kuchta* noted:

> [67] The most common example given of the type of situation that subsection 160(1) is designed to prevent is a husband who has an outstanding tax debt, transferring his assets to his wife. Any transfer of property from Mr. Juba to

> Ms. Kuchta during his lifetime would have been caught by subsection 160(1). Why would Parliament have not intended to catch a transfer of Mr. Juba's RRSPs on his death? Was the purpose to exempt transfers of property on death from subsection 160(1)? Was the purpose to exempt transfers of property to widows or widowers? Was it to exempt transfers of property to people who were financially dependent or co-dependent on the tax debtor? Was it to exempt transfers of RRSPs on death? Was the purpose to exempt transfers of RRSPs on death to people who were financially dependent or co-dependent on the tax debtor? As set out below, I find that there is no evidence to support any of these purposes in subsection 160(1).

[54] It should first be noted that an individual cannot transfer their RRSP during their lifetime to their spouse, except in accordance with subsection 147.3(5) of the Act in settlement of rights arising out of or on a breakdown of the marriage.

[55] As noted above, if the applicable provincial law so provides, when an individual is designated as a beneficiary of an RRSP, that RRSP passes directly to the designated beneficiary and the RRSP is not part of the deceased's estate. Sections 60 and 146 of the Act set out the rules concerning the tax implications arising as a result of the death of an annuitant of an RRSP. In general, when an individual designates their spouse as the beneficiary of their RRSP, no tax will be payable by that individual on their death. That designated beneficiary, if they transfer the amount in the RRSP to their own RRSP (or to acquire a qualifying annuity) (paragraph 60(*l*) of the Act), will defer the tax liability related to the amount in the RRSP until they eventually withdraw the amount from their RRSP (or qualifying annuity).

[56] In this case, as set out in the Agreed Statement of Facts submitted at the Tax Court hearing, Marlene Enns transferred the amount she received from Peter Enns' RRSP into her locked-in retirement account with the Royal Bank. If she is still the "spouse" of Peter Enns and if

the funds in the locked-in retirement account are required to pay Peter Enns' tax debt, Marlene Enns would have to withdraw the funds from the locked-in retirement account (if she is able to do so). She would then be liable to pay the tax incurred on this withdrawal of funds.

[57] An assessment under section 160 of the Act is based on the fair market value of the property transferred and not on the net amount after taxes (*Canada v. Gilbert*, 2007 FCA 136, leave to appeal to SCC refused, 32066 (20 September 2007); *Kufsky v. Canada*, 2022 FCA 66, at para. 75).

[58] The section 160 assessment against Marlene Enns is for the full amount of the RRSP - $102,789.52. If she withdraws this amount as a lump sum to pay the section 160 assessment, she will incur a significant tax liability in the year in which the funds are withdrawn, as the full amount of $102,789.52 will be included in computing her income for the purposes of the Act. Not only will she have to pay the $102,789.52 to satisfy the section 160 assessment, but she will also have to pay the taxes based on adding $102,789.52 to her income. It is far from clear that Parliament would have intended this result following the death of a person's partner.

[59] The tax consequences, as set out above, when an RRSP is transferred to a designated beneficiary who was the spouse of the deceased immediately before their death, could also explain why the legal and ordinary meaning of "spouse" is the correct interpretation of this word for the purposes of paragraph 160(1)(*a*) of the Act.

V. Conclusion

[60] As a result, I would find that Marlene Enns was not the "spouse" of Peter Enns when, following his death, his RRSP was transferred to her as the designated beneficiary of his RRSP.

[61] I would allow the appeal and set aside the Judgment of the Tax Court. I would allow Marlene Enns' appeal from the assessment issued under section 160 of the Act and vacate that assessment. I would grant Marlene Enns costs in the Tax Court and in this appeal.

"Wyman W. Webb"
J.A.

"I agree.
K. A. Siobhan Monaghan J.A."

"I agree.
Elizabeth Walker J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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