Federal Court of Appeal | Cour d'appel fédérale

Date: 20250512

Dockets: A-357-23 (Lead File)
A-356-23

Citation: 2025 FCA 94

CORAM: **WEBB J.A.**
RENNIE J.A.
LASKIN J.A.

BETWEEN:

CHRIS WALBY and JOEL DE LAS ALAS

Appellants

and

HIS MAJESTY THE KING

Respondent

Heard at Toronto, Ontario, on November 28, 2024.

Judgment delivered at Ottawa, Ontario, on May 12, 2025.

REASONS FOR JUDGMENT BY: WEBB J.A.

CONCURRED IN BY: RENNIE J.A.
LASKIN J.A.

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REASONS FOR JUDGMENT

WEBB J.A.

[1] Mr. Walby and Mr. De Las Alas participated in the Global Learning Gifting Initiative program (the "GLGI Program"). Each appellant received two receipts – one for the cash they paid and a second receipt for an alleged donation of educational courseware licences (the "Licenses"). They claimed charitable donation tax credits under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act) based on both the cash paid and the transfer of the

Licenses. Mr. Walby and Mr. De Las Alas were reassessed by the Minister of National Revenue (the Minister) to deny these tax credits.

[2] Mr. Walby and Mr. De Las Alas acknowledge that the charitable donation tax credits in relation to the Licenses were properly denied. The only issue before the Tax Court was whether Mr. Walby and Mr. De Las Alas should be allowed to claim charitable donation tax credits based on their cash payments.

[3] The Tax Court found that the cash payments made by Mr. Walby and Mr. De Las Alas were not gifts for the purposes of the Act (2023 TCC 164). Their appeals from the reassessments were dismissed. These are their appeals from the Judgments of the Tax Court dismissing their appeals from the reassessments.

[4] For the reasons that follow, I would dismiss these appeals.

I. Background

[5] The parties filed a Partial Agreed Statement of Facts with the Tax Court. This document lists the amounts Mr. Walby claimed as charitable donations for the seven years that he participated in the GLGI Program:

	2005	**2006**	**2007**	**2008**	**2009**	**2020**	**2011**
Cash	$15,000	$15,000	$15,000	$15,000	$15,000	$10,000	$10,000
In-Kind (the Licenses)	$75,010	$60,077	$75,006	$75,043	$60,010	$50,021	$50,000
Total:	**$90,010**	**$75,077**	**$90,006**	**$90,043**	**$75,010**	**$60,021**	**$60,000**

[6] Mr. De Las Alas only participated for one year. The amounts that he claimed as charitable donations for 2006 as a result of his participation in the GLGI Program are as follows:

Cash	$13,600
In-Kind (the Licenses)	$54,447
Total:	**$68,047**

[7] The mechanics of how the GLGI Program worked are set out in the Partial Agreed Statement of Facts and are summarized in the reasons of the Tax Court. Essentially, each participant in the GLGI Program would contribute cash to a registered charity and, upon being approved as capital beneficiary of the Global Learning Trust (2004), such participant would receive the Licenses that they could donate to a registered charity. The fair market value of the Licenses was stated to be approximately 4 to 5 times the amount of cash they contributed. Mr. Walby and Mr. De Las Alas now acknowledge that much of the GLGI Program was a sham and the Licenses were worthless.

II. Tax Court Decision

[8] The Tax Court Judge noted that Mr. Walby and Mr. De Las Alas admitted that they expected to be enriched as a result of participating in the GLGI Program:

> [14] …They also admitted that it was their expectation that they would receive back, as a result of their participation in the GLGI Program, more than their cash contribution. Both Appellants expected to be enriched as a result of their participation.

[9] The Tax Court Judge found that:

- [p]articipation in the GLGI Program constitutes only one single interconnected arrangement [paragraph 32];

- the cash donation was part of a *quid pro quo* to receive a distribution of courseware licenses from the Trust which would ultimately result in an inflated charitable tax receipt relating to the in kind donation by consequence of the Transactional Documents [paragraph 35]; and

- [i]n the present case, the taxpayer [*sic*] had clear intent to profit when making their donations. The taxpayer [*sic*] intended to make the cash donation which would cause seemingly valuable courseware licenses to be transferred to them which would subsequently be donated for valuable tax credits that exceeded the amount of the initial cash donation [paragraph 43].

[10] None of these factual findings are challenged in these appeals.

[11] The Tax Court found that neither Mr. Walby nor Mr. De Las Alas had any donative intent with respect to the cash they paid. The cash was paid as part of the series of transactions in which they participated to make a profit. As a result, the cash they paid did not qualify as a gift to a charity for the purposes of section 118.1 of the Act.

[12] The Tax Court Judge also found that the provisions of subsections 248(30) to (32) of the Act would only be applicable if there was a donative intent. Since Mr. Walby and Mr. De Las Alas did not have any donative intent, these provisions did not apply.

[13] Despite having found that subsections 248(30) to (32) did not apply, the Tax Court Judge nonetheless commented on the meaning of the word “value” in subsection 248(30) of the Act and found that “[t]he amount of the advantage of the courseware is the value that the Appellants expected the courseware to have (and not the fair market value it actually had)” (paragraph 74).

III. Issue and Standard of Review

[14] The appellants, in paragraph 9 of their memorandum, frame the issues as follows:

> 1) The Tax Court judge erred in finding that the donation to the registered charity was not a valid gift.
>
> 2) The Tax Court judge erred in finding that the split gifting rules operated to vitiate a valid gift.

[15] The issues, based on the arguments made by Mr. Walby and Mr. De Las Alas in their memorandum and at the oral hearing, can be reframed as:

> (a) did the Tax Court Judge err in treating the transactions as one interconnected series of transactions;
>
> (b) is there a valid gift if, even though a donor may expect to receive something of value, the donor does not actually receive anything of value; and
>
> (c) did the Tax Court Judge err in his interpretation of value for the purposes of subsection 248(30) of the Act?

[16] The standard of review for any question of fact is palpable and overriding error and the standard of review for any question of law (including any extricable question of law) is correctness (*Housen v. Nikolaisen*, 2002 SCC 33).

IV. Analysis

[17] The GLGI Program has been the subject of several unsuccessful appeals to the Tax Court and this Court. The first decision of the Tax Court to address the deductibility of the tax credits claimed in the GLGI Program was *Mariano v. The Queen*, 2015 TCC 244. In that case, the Tax Court denied both the charitable donation tax credit based on the cash paid and the charitable donation tax credit claimed in relation to the alleged donation of the Licenses. Recently, this Court dismissed an appeal from a taxpayer who was also denied charitable donation tax credits arising from participating in the GLGI Program (*Aslam v. Canada*, 2024 FCA 193).

[18] The appellants in these appeals submit that their case is unique because they are only seeking a tax credit based on the cash paid to the registered charity.

[19] The facts are not in dispute. The appellants paid cash to a registered charity. They expected to receive the Licenses that could be donated to a registered charity. They filed tax returns claiming charitable donation tax credits based on the cash that they had paid and on the basis that the fair market value of the Licenses was four to five times the amount of the cash that they had paid. The transactions related to the Licenses were a sham and no property of any value was transferred to the appellants.

A. *Were the Transactions Interconnected?*

[20] In their memorandum, the appellants argue that the two receipts (one for the cash and the other related to the Licenses) should have been treated separately:

> 10. There is simply no statutory mechanism in the *Act* which calls for combining receipts and then determining their combined legitimacy.
>
> 11. The beginning and ending of the determination of a valid gift is the receipt. Thus the common vernacular of "inflated receipts" is used in the donations cases. At the outset a charitable receipt is required to be issued by a registered charity and the taxpayer must then show that the gift is valid by proving that the amounts indicated on the receipt were actually given to the charity in order to claim the tax credit. In all cases where this is proven the gift is allowed. Donative intent does not arise in such cases as it is self evident. In cases where a portion of the receipted amount is in dispute, the court then concerns itself with the mechanisms by which the amounts claimed were leveraged/inflated and whether there was sufficient donative intent to constitute a gift under the *Act*.

[21] This argument focuses on the receipts and is essentially an argument that because Mr. Walby and Mr. De Las Alas each received receipts for the cash that they paid, separate and apart from the receipts based on the Licenses, they should be entitled to a tax credit based on the cash paid. The argument is that the Court should look no further than the receipt and once the taxpayer establishes that the amount indicated on the receipt was paid, the taxpayer is entitled to claim the charitable donation tax credit.

[22] However, while a receipt is a requirement to obtain a tax credit (subsection 118.1(2) of the Act), the receipt alone does not establish the gift. It is simply evidence of the gift:

(2) An eligible amount of a gift is not to be included in the total charitable	(2) Pour que le montant admissible d'un don soit inclus dans le total des

gifts, total cultural gifts or total ecological gifts of an individual unless the making of the gift is evidenced by filing with the Minister	dons de bienfaisance, le total des dons de biens culturels ou le total des dons de biens écosensibles, le versement du don doit être attesté par la présentation au ministre des documents suivants :
(*a*) a receipt for the gift that contains prescribed information;	*a*) un reçu contenant les renseignements prescrits;

[23] The entitlement to a tax credit is found in subsection 118.1(3) of the Act, which provides that a tax credit is based on an individual's total gifts for a year. "Total gifts" is defined in subsection 118.1(1) of the Act and includes an individual's total charitable gifts. For the purposes of these appeals, the relevant portion of the definition of total charitable gifts is "the total of all amounts each of which is the eligible amount … of a gift … that is made to a" registered charity.

[24] The determination of whether the cash paid by Mr. Walby and Mr. De Las Alas was a gift is not confined to only the transactions directly related to the payment of the cash. This Court in *Maréchaux v. Canada*, 2010 FCA 287 (*Maréchaux*), at paragraph 12, confirmed the following finding by the Tax Court Judge in that case:

> There is just one interconnected transaction here, and no part of it can be considered a gift that the appellant gave in expectation of no return.

[25] The Tax Court Judge, in the appeals before us, sets out the facts that supported his view that there was only one interrelated arrangement in paragraph 32 of his reasons. None of these findings are challenged in these appeals. Furthermore, in this case, the appellants themselves

considered the transactions to be interconnected. As noted by the Tax Court Judge, the appellants "expected to be enriched as a result of their participation" in the GLGI Program. They would only be enriched if the transactions were interconnected.

[26] There is no merit in the appellants' argument that the determination of whether a taxpayer has made a gift is based only on confirming that the amount indicated on a particular receipt was paid. The determination of whether a gift is made is based on all the relevant circumstances and, in particular, all components of a single interrelated transaction.

[27] The Tax Court Judge did not err in treating the GLGI Program as one interrelated transaction.

B. *Meaning of the Word "Gift"*

[28] The appellants argue that the cash payments were valid gifts because they did not actually receive anything of value as a result of making these payments. This argument raises the question — what is the meaning of the word "gift"?

[29] The word "gift" is not defined in the Act. The appellants rely on the decision of the Tax Court in *Morrison v. The Queen*, 2018 TCC 220 (*Morrison*). Although *Morrison* was appealed to this Court, the issue of whether Mr. Morrison was entitled to a charitable donation tax credit based on the cash payment that he had made was not before this Court in that appeal.

[30] In *Morrison*, the taxpayer participated in a charitable donation program — the Canadian Humanitarian Trust donation program (the CHT Program). Although he also participated in another program, only his participation in the CHT Program is relevant to the appellants' argument in these appeals.

[31] The various transactions involved in the relevant program are described in paragraph 27 of the reasons of the Tax Court Judge:

> [27] According to the promotional materials for the CHT Program, the CHT Program involved the following elements:
>
> - Client makes a cash donation to a registered charitable foundation (Foundation A)
> - Client applies to WHI [World Health Initiatives Inc.] to be considered as a potential Class A beneficiary of CHT
> - CHT transfers title to World Health Organization ('WHO') Essential Medicine Units to the successful applicant (Client)
> - Client chooses to donate WHO Essential Medicine Units ('WHOEM Units') [pharmaceuticals] to a registered charitable foundation (Foundation B)
> - Foundation A issues a tax receipt for the cash donation; Foundation B issues a tax receipt for the net value of the WHOEM Units
> - WHOEM Units are distributed to those in need in developing countries

[32] Mr. Morrison participated in the CHT Program in 2004 and 2005. In reassessing Mr. Morrison's 2005 taxation year, the Minister allowed a tax credit based on the cash payment

he made in that year. For 2004, the tax credit based on the cash payment was denied. Therefore, the Tax Court Judge in *Morrison* only considered whether Mr. Morrison should be allowed a charitable donation tax credit based on the cash paid in 2004.

[33] In filing his tax return for 2004, Mr. Morrison claimed that he had made two charitable donations: $15,350 in cash and $41,108.82 based on the alleged value of certain pharmaceuticals. The Tax Court Judge allowed Mr. Morrison's claim for a charitable donation tax credit for the cash that he paid to the registered charity on the basis that this payment of cash was a gift:

> [158] I accept that Mr. Morrison issued a cheque in the amount of $15,530 in good faith to D&H LLP in trust for the benefit of ADRA as a gift to that charity. The cash gift was paid by Mr. Morrison from his own funds. While Mr. Morrison may have expected to receive, in exchange for the payment, pharmaceuticals from CHT to donate to an in-kind charity, the legal and economic reality is that contrary to the representations in the marketing materials prepared by CDL for WHI, he received no pharmaceuticals from CHT and donated nothing of value to MCF in 2004. Accordingly, the cash donation resulted in no adjunct benefit to Mr. Morrison.
>
> [159] In *The Queen v. Friedberg*, 92 D.T.C. 6031 (F.C.A.), the Federal Court of Appeal recognized that to vitiate a gift, a benefit or consideration must actually flow to the donor:
>
> > … a gift is a voluntary transfer of property owned by a donor to a donee, in return for which **no benefit or consideration flows to the donor** (at 6032).
>
> [Emphasis added by the Tax Court Judge.]

[34] The Tax Court Judge only referred to the definition of gift as set out in *The Queen v. Friedberg*, [1991] FCJ No. 1255, 92 D.T.C. 6031 (FCA) (*Friedberg*) and stated, in paragraph

159 of his reasons, that this Court in *Friedberg* "recognized that to vitiate a gift, a benefit or consideration must actually flow to the donor". As a result of this conclusion, he focused on whether Mr. Morrison actually received the pharmaceuticals.

[35] Consequently, the Tax Court Judge did not reach any conclusion on whether Mr. Morrison anticipated or expected a benefit (*i.e.* the expectation that he would receive pharmaceuticals that he could donate to a registered charity). The statement in paragraph 158 that "[w]hile Mr. Morrison may have expected to receive, in exchange for the payment, pharmaceuticals from CHT to donate to an in-kind charity" suggests that Mr. Morrison may have had this expectation.

[36] At paragraph 162, the Tax Court Judge in *Morrison* found a disconnect between the cash payment and the entitlement to receive pharmaceuticals:

> [162] I reject the Respondent's position that the cash donation was a fee payable to participate in the CHT Program. The participants in the CHT Program may have been encouraged to make a cash donation but the documents do not suggest that there was an obligation to make such a donation and the uncontradicted evidence of the Appellants is that neither was told that they had to make a cash donation. WHI created a structure which might have led Mr. Morrison to believe that it was more likely that he would be appointed a Class A beneficiary if he made a cash donation but there is no evidence that he was obligated to make a cash donation, that the cash donation was a condition precedent to appointment as a Class A beneficiary or that the cash donation was a fee payable for appointment as a Class A beneficiary. Mr. Miller testified that individuals had been appointed Class A beneficiaries even though their cheques had bounced. Counsel for the Respondent suggested this was due to administrative expediency, but Mr. Miller stated that he did not recall that being the case.

[37] This factual finding of a disconnect between the cash payment and the entitlement to pharmaceuticals is not directly a finding that Mr. Morrison did not anticipate or expect a benefit, as the Tax Court Judge stated, at paragraph 162, that "WHI created a structure which might have led Mr. Morrison to believe that it was more likely that he would be appointed a Class A beneficiary if he made a cash donation". As a result, it is not clear that the Tax Court Judge made a finding that Mr. Morrison did not anticipate or expect a benefit.

[38] The Tax Court Judge's decision in *Morrison* does not assist Mr. Walby and Mr. De Las Alas. To illustrate why this decision does not assist Mr. Walby and Mr. De Las Alas it is necessary to review the context in which the statement concerning a gift was made in *Friedberg* and the subsequent decisions of the Supreme Court of Canada and this Court that have confirmed that a gift is a voluntary transfer of property without any expectation or anticipation of a benefit or advantage.

[39] The statement in *Friedberg* that was highlighted by the Tax Court Judge in *Morrison* is:

> … a gift is a voluntary transfer of property owned by a donor to a donee, in return for which no benefit or consideration flows to the donor.

[40] This characterization of a gift in *Friedberg* suggests that if a donor voluntarily transfers property with the expectation that the donor will receive a benefit, but no benefit is actually received, the transfer will still qualify as a gift. This characterization of a gift was made in the context of the issues raised in *Friedberg*.

[41] Mr. Friedberg wished to purchase two textile collections for the Royal Ontario Museum (the ROM). For one collection (the Abemayor Collection) Mr. Friedberg paid the purchase price to the vendor, but the related documentation reflected a sale by the vendor directly to the ROM. The question was whether Mr. Friedberg had made a donation of the Abemayor Collection to the ROM and therefore would be entitled to a deduction under what was then 110(1)(*b.1*) of the Act (a gift of certain cultural property).

[42] This Court found that since the documentation reflected a sale directly by the vendor to the ROM, Mr. Frieberg did not make a gift of the Abemayor Collection to the ROM, but rather he made a gift of the cash that paid for this collection.

[43] For the second collection which was purchased by Mr. Friedberg and later donated by him to the ROM, he was entitled to the deduction available for gifts of qualifying cultural property.

[44] There was no issue or question of any expected benefit or consideration that would flow to Mr. Friedberg.

[45] Following *Friedberg*, the Supreme Court confirmed that a key element of a gift is the absence of any expectation of remuneration. McLachlin J. (as she then was), writing on behalf of the majority of the Supreme Court in *Peter v. Beblow*, [1993] 1 S.C.R. 980 (*Beblow*), stated:

> The central element of a gift at law – intentional giving to another without expectation of remuneration – is simply not present.

[46] This requirement that the donor not have any expectation of a benefit was also recited by this Court in *Woolner v. Canada (Attorney General)*, [1999] FCJ No. 1615, 99 D.T.C. 5722 (*Woolner*):

> [7] This Court has held that a gift, within the meaning of the common law, is a voluntary transfer of property from one person to another gratuitously and not as the result of a contractual obligation without anticipation or expectation of material benefit. In the present case, it is clear that the contributions were voluntary. The main issue for determination is whether or not the contributions were made with the anticipation of a benefit or advantage of a material nature.

[47] This requirement of no expectation of a benefit also appears in the statement of the Tax Court that was confirmed by this Court in *Maréchaux*, at paragraph 12:

> There is just one interconnected transaction here, and no part of it can be considered a gift that the appellant gave in expectation of no return.

[48] As a result, if a donor transfers property with the expectation that the donor will receive a benefit or advantage, the transfer will not be a gift. If a taxpayer expects to receive a benefit, they will not have the requisite donative intent to make a gift. The same Tax Court Judge, who allowed Mr. Morrison to claim a gift for the cash that he paid, confirmed, in *Cassan v. The Queen*, 2017 TCC 174, that a taxpayer must have the requisite donative intent to make a gift:

> [270] The Respondent correctly states that for a transfer of property to be a gift, the transferor must have the requisite donative intent. …
>
> [271] In order for there to be a gift, the transferor must objectively make a gratuitous transfer and must subjectively intend to make a gratuitous transfer.

[49] In *Ludco Enterprises Ltd. v. Canada*, 2001 SCC 62, the Supreme Court stated at paragraph 54:

> In the interpretation of the Act, as in other areas of law, where purpose or intention behind actions is to be ascertained, courts should objectively determine the nature of the purpose, guided by both subjective and objective manifestations of purpose…

[50] While generally a Court has to consider the objective and subjective manifestations of purpose, in the appeals that are before us, the appellants admitted that their intention was to make a profit:

> [14] …They also admitted that it was their expectation that they would receive back, as a result of their participation in the GLGI Program, more than their cash contribution. Both of the Appellants expected to be enriched as a result of their participation.

[51] Mr. Walby and Mr. De Las Alas expected to receive Licenses that had a fair market value of four to five times the amount of cash that they contributed to the registered charity. As a result, they lacked the requisite donative intent to have their cash payments considered to be a gift. The Tax Court judge did not err in this finding.

C. *Interpretation of Value in subsection 248(30) of the Act*

[52] The appellants only briefly address subsections 248(30) to (32) of the Act in paragraphs 19 to 22 of their memorandum. In paragraph 19, the appellants state:

> In order for the split gifting rules to have meaning, the "value" described in subsections 248(30-32) must be real.

[53] The appellants are essentially only challenging the Tax Court Judge's interpretation of the word "value" in subsection 248(32) of the Act.

[54] Subsections 248(30) to (32) were added to the Act to address a situation where a donor may, in exchange for cash or property transferred to a registered charity, receive something of value. Subsection 248(30) states:

(30) The existence of an amount of an advantage in respect of a transfer of property does not in and by itself disqualify the transfer from being a gift to a qualified donee if	(30) Le fait qu'un transfert de bien donne lieu à un montant d'un avantage ne suffit en soi à rendre le transfert inadmissible à titre de don à un donataire reconnu si, selon le cas :
(*a*) the amount of the advantage does not exceed 80% of the fair market value of the transferred property; or	*a*) le montant de l'avantage n'excède pas 80 % de la juste valeur marchande du bien transféré;
(*b*) the transferor of the property establishes to the satisfaction of the Minister that the transfer was made with the intention to make a gift.	*b*) le cédant établit à la satisfaction du ministre que le transfert a été effectué dans l'intention de faire un don.

[55] The Tax Court Judge found that subsection 248(30) of the Act does not eliminate the requirement that a donor has a requisite donative intent. This finding is not challenged by the appellants and I agree with the finding of the Tax Court Judge that subsection 248(30) of the Act does not eliminate the requirement that a donor have a requisite donative intent. Where, as here, Mr. Walby and Mr. De Las Alas expected to make a profit from their participation in the GLGI

Program, there was no donative intent with respect to any part of their cash payment. Therefore subsections 248(30) to (32) do not assist them.

[56] Subsections 248(30) to (32) operate to allow a donor to claim that a transfer of property is, in part, a gift provided that the donor intends that part to be a gift. For example, if a person were to pay a registered charity $500 to attend a dinner that has a value of $100, the person would have a donative intent for $400 of the payment. In this case, since both appellants intended to profit from their participation in the GLGI Program, they did not have donative intent with respect to any part of the cash that they paid.

[57] Having found that subsections 248(30) to (32) of the Act did not apply, the Tax Court Judge went on to comment, in *obiter*, in paragraph 74 of his reasons, on "the amount of the advantage":

> The amount of the advantage of the courseware is the value that the Appellants expected the courseware to have (and not the fair market value it actually had).

[58] Subsection 248(32) of the Act defines the amount of the advantage:

(32) The amount of the advantage in respect of a gift or monetary contribution by a taxpayer is the total of	(32) Le montant de l'avantage au titre d'un don ou d'une contribution monétaire fait par un contribuable correspond au total des sommes suivantes :
(*a*) the total of all amounts, other than an amount referred to in paragraph (*b*), each of which is the value, at the time the gift or monetary contribution is made, of	*a*) le total des sommes, sauf celle visée à l'alinéa *b*), représentant chacune la valeur, au moment du don ou de la contribution, de tout bien ou service, de toute

any property, service, compensation, use or other benefit that the taxpayer, or a person or partnership who does not deal at arm's length with the taxpayer, has received, obtained or enjoyed, or is entitled, either immediately or in the future and either absolutely or contingently, to receive, obtain, or enjoy	compensation ou utilisation ou de tout autre bénéfice que le contribuable, ou une personne ou une société de personnes qui a un lien de dépendance avec lui, a reçu ou obtenu, ou a le droit, immédiat ou futur et absolu ou conditionnel, de recevoir ou d'obtenir, ou dont le contribuable ou une telle personne ou société de personnes a joui ou a le droit, immédiat ou futur et absolu ou conditionnel, de jouir, et qui, selon le cas :
(i) that is consideration for the gift or monetary contribution,	(i) est accordé en contrepartie du don ou de la contribution,
(ii) that is in gratitude for the gift or monetary contribution, or	(ii) est accordé en reconnaissance du don ou de la contribution,
(iii) that is in any other way related to the gift or monetary contribution, and	(iii) se rapporte de toute autre façon au don ou à la contribution;
(*b*) the limited-recourse debt, determined under subsection 143.2(6.1), in respect of the gift or monetary contribution at the time the gift or monetary contribution is made.	*b*) la dette à recours limité, déterminée selon le paragraphe 143.2(6.1), relative au don ou à la contribution au moment où il est fait.
[Emphasis added.]	[Non souligné dans l'original.]

[59] The Crown, in these appeals, noted that subsection 248(32) of the Act refers to "value" but subsection 248(31) of the Act refers to "fair market value":

(31) The eligible amount of a gift or monetary contribution is the amount by which the fair market value of the property that is the subject of the gift or monetary contribution exceeds the amount of the advantage, if any, in	(31) Le montant admissible d'un don ou d'une contribution monétaire correspond à l'excédent de la juste valeur marchande du bien qui fait l'objet du don ou de la contribution sur le montant de l'avantage, le cas

respect of the gift or monetary contribution.	échéant, au titre du don ou de la contribution.
[Emphasis added.]	[Non souligné dans l'original.]

[60] The Crown therefore argued that the reference to "value" in subsection 248(32) of the Act does not mean fair market value but rather means the greater of fair market value and the "perceived worth of the benefit, from the perspective of the donor" (paragraph 59 of the Crown's memorandum). The Crown did not identify any provision of the Act where the word "value" (without the words "fair market" immediately preceding it) was found to mean the greater of fair market value and a perceived worth or was based on a subjective amount.

[61] In B. Garner, *Black's Law Dictionary*, (St. Paul, MN: Thomson Reuters, 2024), the word "value" is defined as:

> 1. The significance, desirability, or utility of something …
>
> 2. An important quality or standard that guides behavior and decision-making …
>
> 3. The monetary worth or price of something; the amount of goods, services, or money that something commands in an exchange. …

[62] *The New Shorter Oxford English Dictionary on Historical Principles* (1993 Edition) [New York: Oxford University Press Inc.] (*Oxford Dictionary*) includes a definition for "value" that is substantially the same as the third definition as set out in *Black's Law Dictionary*: "The material or monetary worth of a thing; the amount of money, goods, etc., for which a thing can be exchanged or traded".

[63] For the Act, which is a statute imposing a tax, the third definition of "value" as set out in *Black's Law Dictionary* and as also included as a definition of "value" in the *Oxford Dictionary* would be the relevant definitions as they define "value" in monetary terms. These definitions are an objective determination of the value of a property or service.

[64] In *Canada (Attorney General) v. Nash*, 2005 FCA 386, this Court confirmed the definition of "fair market value" as set out in an earlier decision of the Federal Court:

> [8] The well-accepted definition of fair market value is found in the decision of Cattanach J. in *Henderson Estate and Bank of New York v. M.N.R.* 1973 CanLII 2406 (FC), 73 D.T.C. 5471 at 5476:
>
> > The statute does not define the expression "fair market value", but the expression has been defined in many different ways depending generally on the subject matter which the person seeking to define it had in mind. I do not think it necessary to attempt an exact definition of the expression as used in the statute other than to say that the words must be construed in accordance with the common understanding of them. That common understanding I take to mean the highest price an asset might reasonably be expected to bring if sold by the owner in the normal method applicable to the asset in question in the ordinary course of business in a market not exposed to any undue stresses and composed of willing buyers and sellers dealing at arm's length and under no compulsion to buy or sell. I would add that the foregoing understanding as I have expressed it in a general way includes what I conceive to be the essential element which is an open and unrestricted market in which the price is hammered out between willing and informed buyers and sellers on the anvil of supply and demand.
>
> Although Cattanach J. expressed the caution that his words did not constitute an "exact" definition, the extent to which his words have been adopted in the jurisprudence without change over some thirty years suggests that his approach, although not necessarily exhaustive, is now considered to be the working definition.

[65] In many cases, where property is transferred between persons who are dealing with each other at arm's length, whether the relevant definition of "value" referred to above or the definition of "fair market value" as adopted in *Nash* is applied, the result will probably be the same. The "monetary worth or price of something; the amount of goods, services, or money that something commands in an exchange" would generally be the "highest price an asset might reasonably be expected to bring if sold by the owner in the normal method applicable to the asset in question in the ordinary course of business in a market not exposed to any undue stresses and composed of willing buyers and sellers dealing at arm's length and under no compulsion to buy or sell". There may, however, be situations where the required conditions for determining the "fair market value" are not present. For example, if a vendor or a purchaser is under undue stress, the worth or price of an object (its value) may be greater or less than the amount that would be determined without such undue stress (its fair market value).

[66] The Act includes numerous references to "fair market value" and "value" (without the words "fair market" immediately preceding it). For example, subsection 15(1) of the Act, dealing with shareholder benefits, refers to "value":

15 (1) If, at any time, a benefit is conferred by a corporation on a shareholder of the corporation, on a member of a partnership that is a shareholder of the corporation or on a contemplated shareholder of the corporation, then the amount or value of the benefit is to be included in computing the income of the shareholder, member or contemplated shareholder, as the case may be, for its taxation year that includes the time, except to the extent that the	15 (1) La valeur de l'avantage qu'une société confère, à un moment donné, à son actionnaire, à un associé d'une société de personnes qui compte parmi ses actionnaires ou à son actionnaire pressenti est incluse dans le calcul du revenu de l'actionnaire, de l'associé ou de l'actionnaire pressenti, selon le cas, pour son année d'imposition qui comprend ce moment, sauf dans la mesure où cette valeur est réputée en vertu de l'article 84 constituer un dividende ou dans la

amount or value of the benefit is deemed by section 84 to be a dividend or that the benefit is conferred on the shareholder …	mesure où cet avantage est conféré à l'actionnaire au moyen de l'une des opérations suivantes: […]
[Emphasis added.]	[Non souligné dans l'original.]

[67] In *Downey v. Canada*, 2006 FCA 353, (*Downey*) Mr. Downey sold land to a company in which he owned one-third of the shares. The purchase price for the land was $420,000. The Minister reassessed Mr. Downey on the basis that he was not dealing at arm's length with the company and the fair market value of the land was only $150,000. As a result, the Minister included $270,000 in Mr. Downey's income as a benefit under subsection 15(1) of the Act, which was the difference between the amount paid by the company ($420,000) and the fair market value of the land ($150,000).

[68] Mr. Downey appealed the reassessment to the Tax Court. The Tax Court (2005 TCC 810) found that the fair market value of the land was $259,000 and reduced the amount of the benefit under subsection 15(1) accordingly to $161,000.

[69] This Court (in the appeal from the Tax Court Judgment) noted that the Tax Court Judge did not make any finding with respect to whether Mr. Downey was not dealing at arm's length with the company:

> [6] In our opinion, it was an error of law for the Judge to have failed to make a finding on this critical question of mixed fact and law. The appraisal evidence of fair market value was only relevant if the transaction was not at arm's length. If it was an arm's length sale, the purchase price of $420,000 must stand as the value of the land.

[70] The value of the land, for the purposes of the determining the amount of the benefit under subsection 15(1) of the Act, was therefore either the amount paid by the company (if Mr. Downey and the company were dealing at arm's length) or the fair market value of the land (if Mr. Downey and the company were not dealing at arm's length). This Court also found that, based on the record, Mr. Downey could not have established that he was dealing at arm's length with the company and dismissed his appeal.

[71] *Downey* stands for the proposition that an objective determination of value is relevant in determining the value of a benefit under subsection 15(1) of the Act. When a shareholder sells property to a company in which they own shares, either the fair market value of the property (if the shareholder and the company do not deal at arm's length) or the amount paid (if the shareholder and the company deal at arm's length) is relevant. There was no consideration of "the perceived worth of the benefit" to the shareholder or the "perceived worth of the land" that Mr. Downey sold to the company.

[72] In *Schwartz v. Canada*, [1996] 1 S.C.R. 254, La Forest J., writing on behalf of the majority of the Supreme Court in the context of an income tax appeal, stated at paragraph 61:

> It is a well-established principle of interpretation that words used by Parliament are deemed to have the same meaning throughout the same statute; see, for recent applications of the principle by this Court, *R. v. Zeolkowski*, [1989] 1 S.C.R. 1378, and *Thomson v. Canada (Deputy Minister of Agriculture)*, [1992] 1 S.C.R. 385. This, as all principles of interpretation, is not a rule, but a presumption that must give way when circumstances demonstrate that such was not the intention pursued by Parliament. However, in the present circumstances, I see no reason to depart from that principle since, to the contrary, it confirms and is consistent with the ordinary meaning of the words "employment" and "retiring allowance" chosen by Parliament.

[73] This principle was repeated in *Francis v. Baker*, [1999] 3 S.C.R. 250, when Bastarache J., writing on behalf of the Supreme Court, at paragraph 37, referred to “the established principle that where the same word is used on multiple occasions in a statute, one is to give the same meaning to that word throughout the statute”.

[74] In my view, there is nothing in the context of subsection 248(32) of the Act that would suggest that Parliament intended a different meaning for the word “value” than would be ascribed to this word when it appears elsewhere in the Act without the words “fair market” (*e.g.* subsection 15(1) of the Act). Adopting a meaning for the word “value” in subsection 248(32) of the Act that is based on an “expected value” or a “perceived worth” could result in unintended consequences in other provisions of the Act where the word “value” is used without the words “fair market” immediately preceding it.

[75] As a result, I do not agree that “value” in subsection 248(32) of the Act should be ascribed a different definition than it would have in subsection 15(1) of the Act where it is used without the words “fair market” immediately preceding it. The purpose of subsection 248(32) of the Act is to determine the amount of the advantage in respect of a gift or monetary contribution. The amount of the advantage would be the monetary worth or price of the advantage which would be an objective amount and not a subjective determination of an “expected value” or a “perceived worth”.

V. Conclusion

[76] I would dismiss the appeals. The parties at the conclusion of the oral submissions confirmed that they had agreed upon a sum of $8,000 for costs for the successful party. I would therefore award costs of $8,000 to the Crown.

"Wyman W. Webb"
J.A.

"I agree.
Donald J. Rennie J.A."

"I agree.
J.B. Laskin J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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CONCURRED IN BY:	RENNIE J.A. LASKIN J.A.
DATED:	MAY 12, 2025

APPEARANCES:

Jeff Pniowsky Matthew Dalloo	FOR THE APPELLANTS
David Silver Allanah Smith Erin Wolfe	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Thompson Dorfman Sweatman LLP Winnipeg, Manitoba	FOR THE APPELLANTS
Shalene Curtis-Micallef Deputy Attorney General of Canada	FOR THE RESPONDENT