

Docket: 2007-1618(IT)G

BETWEEN:

DAVID M. HOMER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Catherine M.C. Homer (2007-1542(IT)G) and
Evelyn Leland (2007-4885(IT)G)
on February 25, 2009, at Moncton, New Brunswick.

Before: The Honourable Justice François Angers

Appearances:

Counsel for the Appellant: Dale T. Briggs
Counsel for the Respondent: Stan W. McDonald

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* is allowed with only one set of costs for David M. Homer and Catherine M.C. Homer. The assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 21st day of May 2009.

"François Angers"

Angers J.

Docket: 2007-1542(IT)G

BETWEEN:

CATHERINE M.C. HOMER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
David M. Homer (2007-1618(IT)G) and
Evelyn Leland (2007-4885(IT)G)
on February 25, 2009, at Moncton, New Brunswick.

Before: The Honourable Justice François Angers

Appearances:

Counsel for the Appellant	Dale T. Briggs
Counsel for the Respondent:	Stan W. McDonald

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* is allowed with only one set of costs for Catherine M.C. Homer and David M. Homer. The assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 21st day of May 2009.

"François Angers"

Angers J.

Docket: 2007-4885(IT)G

BETWEEN:

EVELYN LELAND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
David M. Homer (2007-1618(IT)G) and
Catherine M.C. Homer (2007-1542 (IT)G)
on February 25, 2009, at Moncton, New Brunswick.

Before: The Honourable Justice François Angers

Appearances:

Counsel for the Appellant: Susan K. Layton
Counsel for the Respondent: Stan W. McDonald

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* is allowed with costs and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 21st day of May 2009.

"François Angers"

Angers J.

Citation: 2009 TCC 219
Date: 20090521
Dockets: 2007-1618(IT)G
2007-1542(IT)G
2007-4885(IT)G

BETWEEN:

DAVID M. HOMER,
CATHERINE M.C. HOMER,
EVELYN LELAND,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Angers J.

[1] All three appellants were assessed under section 160 of the *Income Tax Act* (the *Act*), Evelyn Leland for an amount of \$22,000 and David and Catherine Homer for an amount of \$13,300. The facts giving rise to these assessments were agreed upon by the parties in their Joint Statement of Facts and are reproduced below:

A. GENERAL

1. Nellie Isabelle Leland died on January 8, 2000, leaving her Last Will and Testament dated October 13, 1998, and registered in the Charlotte County Registry Office #10895697, book 715 at page 415 on March 16, 2000.
2. The late Nellie Isabelle Leland appointed Leonard James Leland, Helen McKinnon and Elinor Zetina as her executors and Trustees of her estate.

3. Helen McKinnon and Elinor Zetina renounced their rights to administer the estate by Renunciations dated October 27, 2000 and September 10, 2000 respectively. Leonard James Leland was left as sole executor.

B. CATHERINE AND DAVID HOMER

4. At all material times from the time of acquisition, the Appellants were the joint owners of certain real estate located in the Parish of St. George, Charlotte County, New Brunswick identified as lot 2002-1 on plan #15801674 registered in the Charlotte County Registry Office on February 11, 2003 (the "Homer Property").
5. On January 8, 2000, these Appellants acquired the Homer Property under the Last Will and Testament of Nellie Isabelle Leland referred to in Paragraph 1 above.
6. Prior to the time of the acquisition by these Appellants, the late Nellie Isabelle Leland was the sole owner of the Homer Property.
7. At the time of the acquisition, the fair market value of the Homer Property was \$13,300.00.
8. The Appellant Catherine M.C. Homer was the niece of the late Nellie Isabelle Leland.
9. At all material times, the Appellant David M. Homer was the spouse of Catherine M.C. Homer.
10. The Homer Property vested in these Appellants by section 19 of the *Devolution of Estates Act* RSNB 1973 c. D-9 on the second anniversary of the death of the late Nellie Isabelle Leland without any act required on the part of these Appellants.
11. These Appellants executed a deed to themselves for the Homer Property which was registered in the Charlotte County Registry Office as number 16462849 on June 19, 2003.
12. At the time of the acquisition, the consideration given by these Appellants for the Homer Property was nil.
13. The Minister of National Revenue (the "Minister") reassessed these Appellants in the amount of \$13,300.00 in respect of the acquisition of the Homer Property pursuant to section 160 of the Act.

C. EVELYN LELAND

14. At all material times from the time of acquisition, the Appellant, Evelyn Leland, was the registered owner of certain real estate located in the Parish of St. George, Charlotte County, New Brunswick, presently identified as Lot 2002-5 on a subdivision plan entitled "Nellie L. Leland Subdivision 2002-1" registered in the Charlotte County Registry Office on February 11, 2003, as #15801625 (the "Leland Property").
15. This Appellant acquired the property under the Last Will and Testament of Nellie Isabelle Leland, referred to in Paragraph 1 above.

16. The Leland Property vested in this Appellant by section 19 of the *Devolution of Estates Act* as referenced in Paragraph 11 above, on the second anniversary of the death of the late Nellie Isabelle Leland without any act required on the part of this Appellant.
17. This Appellant and her husband executed a deed to themselves for the Leland Property which was registered in the Charlotte County Registry Office as #15714448 on January 22, 2003.
18. At all material times, this Appellant was the spouse of Dennis Leland.
19. Dennis Leland, referred to in Paragraph 19 above, was the nephew of the late Nellie Isabelle Leland.
20. Prior to the acquisition by this Appellant, the late Nellie Isabelle Leland was the sole owner of the Leland Property.
21. At the time of the acquisition, the consideration given by this Appellant for the Leland Property was nil.
22. The Minister reassessed this Appellant in the amount of \$22,000.00 in respect of the acquisition of the Leland Property pursuant to section 160 of the Act.

[2] The fair market value (FMV) of the land (the Leland property) in the Evelyn Leland appeal is in dispute. Each party has submitted an appraisal of the transferred property, the value of which I will address later in my reasons. The aggregate of all amounts that the late Nellie Leland was liable to pay under the *Act* in respect of her 2000 taxation year or any preceding taxation year has been established by the respondent to be not less than \$34,078.92 as of the date of the pleadings. The amount owed as of May 19, 2003, as per a statement of account, was \$28,577.65. A copy of the late Nellie Isabelle Leland's will was filed as an exhibit.

[3] Catherine Homer and Evelyn Leland testified at the hearing. Catherine Homer is the niece of the late Nellie Leland, the said Nellie Isabelle Leland being her father's sister. Catherine Homer was born in Montreal and has moved a few times but has been a resident of Riverview, New Brunswick, for the last 17 years. When she was younger, she saw her aunt about two weeks per year and later, periodically, as she put it. In the early 1970's, it was on the odd weekend, when they visited the family, and eventually she saw her aunt on a couple of long weekends each year. She described her relationship with her aunt as a typical one and one in which no discussions of personal matters ever took place. In fact, she testified, she knew nothing of her aunt's estate until after her death when she was informed that she had inherited land. Although she admits her relationship with her aunt was a close one, she was extremely surprised to get something. She did not believe that the land owned by her aunt was to be divided and thought that some of her older cousins would have been in line to inherit the property.

[4] She had a deed made to herself and her husband on the advice of the executor and her lawyer, after the will was registered and her inherited parcel vested in her under the *Devolution of Estates Act*.

[5] Evelyn Leland is the spouse of Dennis Leland, who is the nephew of the late Nellie Leland. Evelyn Leland married Dennis in April of 1979 and they have been living in southern Maryland in the U.S. She and her husband visited his aunt once a year, and sometimes once every other year, for periods of two weeks at a time. They stayed with his aunt during these visits. She and her husband felt close to her, and to her husband, his aunt meant a lot.

[6] Evelyn Leland has no knowledge of her husband's aunt's finances or source of income other than that she was a nurse and owned a house. She had no knowledge of her husband's aunt's debts, but admits that her husband did have talks with his aunt about financial matters. She personally never had any discussions with her husband's aunt about her estate. Her husband was asked if he would want the house and land and he suggested to his aunt that perhaps others should get it. She only found out about her inheritance when the will was read and was surprised not only that she had inherited something but that the property was to be divided, as other lots were also bequeathed. The extent of their knowledge was limited to the fact that her husband's aunt had been considering giving her husband the property; they did not know of the bequest until after her death.

[7] In order for section 160 of the *Act* to apply, four requirements must be met. They are:

1. there must be a transfer of property;
2. there must be no consideration, or inadequate consideration, flowing from the transferee to the transferor;
3. the transferor must be liable to pay to the Canada Revenue Agency under the *Act* an amount in respect of the year in which the property was transferred or any preceding year;
4. the transferor and the transferee must not have been dealing with each other at arm's length.

[8] The appellants' position is that in the circumstances of this case, they are not transferees as the properties in question were not transferred to them by the executor of the estate. Rather, they vested in them by virtue of the *Devolution of Estates Act* of New Brunswick and the deeds from the appellants to themselves do not make them transferees as they were executed and registered after the properties in question had

vested in them by virtue of the *Devolution of Estates Act*. They also argue that they were dealing with the testatrix at arm's length since they are not blood relations of the testatrix. Finally, they submit that no trust existed or was validly created as the properties were devised to them unconditionally or indefeasibly. If a trust existed, the appellants further argue, they were dealing at arm's length with the trust.

[9] The respondent's position is that there was a transfer of the properties, which transfer was set in motion by the last will and testament of the testatrix. According to the respondent, the appellants and the estate of the late Nellie Isabelle Leland are deemed not to be dealing with each other at arm's length by virtue of paragraph 251(1)(b) of the *Act*, and so all the requirements of subsection 160(1) of the *Act* are met.

[10] There are three issues to be determined in these appeals. Was there a transfer of the properties to the appellants and by whom? If there was, were the transferor and the transferees dealing with each other at arm's length, and if they were not, what is the fair market value of the Leland property?

[11] Subsection 160(1) of the *Act* makes a transferee and transferor jointly and severally liable to pay the tax or part of the tax that the transferor is liable to pay under the *Act*. The relevant provision reads as follows:

Tax liability re property transferred not at arm's length — 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

- (a) the person's spouse or common-law partner or a person who has since become the person's spouse or common-law partner,
- (b) a person who was under 18 years of age, or
- (c) a person with whom the person was not dealing at arm's length.

[12] In *Biderman et al. v. The Queen*, 2000 DTC 6149, the Federal Court of Appeal summarized the purpose of subsection 160(1) of the *Act* in the following words at paragraph 37:

. . . Section 160 of the *Act* is an anti-avoidance provision with respect to transfers. Its purpose "is to prevent a taxpayer from defeating the claim of the Minister to unpaid taxes by transferring his assets to a spouse, or certain other persons, for little or no consideration". It only comes into play once liability for income tax of any sort, not just capital gains, has been established. It is concerned with effective collection of taxes and broadens the scope of the persons from whom Revenue Canada may collect tax. . . .

[13] On the day that Nellie Isabelle Leland passed away, her property vested in the executor and trustee she appointed under her will. Peter W. Hogg, Joanne E. Magee and Jinyan Li, in *Principles of Canadian Income Tax Law*, 4th ed. (Toronto: Carswell, 2002), Chapter 17, describe the process as follows, at page 510:

A trust exists when the management and control of property is vested in one person or persons (the "trustee") while enjoyment of the property is vested in another person or persons (the "beneficiary"). Normally, the legal forms by which this division between management and enjoyment of property is accomplished are that legal title to the trust property is in the trustee, while equitable (or beneficial) title to the trust property is in the beneficiary. Normally, so long as there is a separation of legal and beneficial ownership, there is a trust.

[14] The authors define a testamentary trust as follows, at page 511:

. . . A testamentary trust is a trust created "as a consequence of the death of an individual" (S. 108(1)). Most testamentary trusts are created by will, which of course becomes operative only on the death of the testator or testatrix (who is the settlor). . .

...

A testamentary trust is a trust arising as a consequence of the death of a taxpayer and the terms of a testamentary trust are generally set out in a taxpayer's will. What is also somewhat confusing, however, is that the *Income Tax Act* (the "Act") draws no distinction between a "trust" and an "estate"; the term "trust" refers to both (S. 104(1)). For the purposes of the Act, it is immaterial whether a person who is administering property for others is doing so as a personal representative (estate trustee) or as a trustee.

[15] They explain the concept of estate as follows, at pages 511 and 512:

What is an estate? When a person dies, his or her assets and liabilities are known as the deceased's estate. The deceased's estate passes to the personal representative (or legal representative, which is the phrase used in the Act). A personal representative is known in estate law as an estate trustee. An estate trustee is a person who is appointed by the will of the deceased or by the court which occurs if the deceased left no will (died intestate) or if the deceased left a will which failed to appoint an estate trustee or if the appointed estate trustee declined to serve. The duty of the personal representative is to administer the deceased person's estate (This involves ascertaining and getting in all the assets, paying the debts, filing tax returns and paying taxes, paying funeral expenses and the expenses of administration, and generally getting the estate into a form in which it can be distributed to the persons who are entitled to inherit it under the terms of the will . . .).

If the deceased died intestate, or if the will directs the immediate distribution of the deceased's property, the personal representative's final act will be to distribute the property to the deceased's successors. But if the will establishes a trust (in which case it is called a trust will), the personal representative's final act will be to transfer the assets given on trust to the person appointed trustee by the will. Thenceforth the trustee will hold the assets on trust for the beneficiaries designated in the will. In practice, a trust will often appoint the same person (or persons) to be both estate trustee and trustee of a particular trust created by the will. If so, at the time when that person has completed the administration of the estate, he or she ceases to be an estate trustee administering an estate and becomes a trustee. It is often difficult to ascertain when that mysterious transformation occurs, but it is rarely necessary to do so because there are so few differences between a person a representative and a trustee that nothing usually turns on the question of whether the person was acting in the capacity of a personal representative or in the capacity of a trustee. For tax purposes, the definition of a trust includes an estate (S. 104(1)), so that tax consequences rarely flow from the shadowy distinction between an estate and a trust.

[16] The same authors explain in the following words how a trust is created, at page 518 :

On death, all capital property of a deceased taxpayer is deemed to have been disposed of, immediately before death, for proceeds of disposition equal to the fair market value of the property (S. 70(5)(a)). Any resulting taxable capital gains (or allowable capital losses) have to be recognized as income (or loss) of the deceased for the taxation period ending at his or her death (the deceased's terminal year). The estate is thus deemed to acquire the property of the deceased at a cost equal to the fair market value of the property. These rules apply to all of a deceased person's capital property, including property left on trust.

[17] I find it relevant to cite another passage, from different authors, particularly with respect to distinguishing a trust from an estate. Larry H. Frostiak, John E.S. Poyser and Grace Chow in *Practitioner's Guide to Trusts, Estates and Trust Returns*, 2007-2008 edition (Toronto: Thomson Carswell, 2007), at pages 16-18, had this to say:

A trust is not the same as an estate. The personal representative of an estate takes title to the property of the deceased and is obliged to handle that property with many of the same duties of good faith that attach to a trustee, but the division of ownership which is one of the hallmarks of a trust relationship is absent. The beneficiary of a trust holds the equitable title to the property of the trust while the trustee holds the legal title. The beneficiary of an estate however does not, as a rule, enjoy a beneficial interest in the assets while they are under administration and form part of the estate.

The timing of the shift in equitable ownership can be important. Generally, residuary beneficiaries do not enjoy beneficial ownership in the assets comprising the residue until the debts are ascertained and paid, allowing the residue to be known, and not in specific items of property in the residue until those items are "allocated" or earmarked for the beneficiary. Equitable ownership may pass sooner in the case of a specific bequest or where the whole of the residue is due to a single beneficiary. Where a statute applies to a specific situation and is held to provide for immediate or early vesting then the statute will govern. The precise moment when equitable ownership passes can be crucial when considering issues like indefeasible vesting, as might be the case in claiming tax treatment as a testamentary spouse trust, or when considering claims by creditors, which will not attach to estate assets until the debtor-beneficiary has beneficial ownership in them.

The role of the trustee and the personal representative of an estate are very similar but not identical. Provincial legislation governing trustees often includes personal representatives under the rubric "trustee" but does not treat them coextensively. The distinction can be important:

Although for the purpose of certain statutes there has been a tendency to assimilate the position of executor or other personal representative to that of trustee, the functions of trustees and personal representatives are generally quite distinct, and a significant amount of confusion can be created if, apart from the statutes, personal representatives are regarded as holding the assets of an estate as trustees. Trustees are concerned with the custody and management of assets for the benefit of beneficiaries of the trust; in contrast, the primary responsibility of a personal representative is to wind up the estate of a deceased person by collecting his or her property and discharging all claims against it.

While an estate is not the same thing as a trust, there are many situations where the terms of a last will and testament will stipulate that a trust is to be established holding some or all of the assets of the estate after the administration of the estate proper is complete. In wills where this intent is not clearly expressed, it can be difficult to determine the date on which the estate ends and the trust begins, particularly if the personal representatives of the estate and the trustees of the trust are one and the same person or group of persons.

[18] That being said, it is fair to state that in our fact situation the properties in question vested in the trustee and personal representative of the estate following Nellie Isabelle Leland's death and that these properties were not subjected to any transfer by the trustee and personal representative for the purpose of administering the estate. Instead, the properties eventually vested in the various appellants by virtue of the provisions of section 19 of the *Devolution of Estates Act* of New Brunswick, R.S.N.B., 1973, c. D-9, which reads as follows:

Vesting of property not disposed of by representative — Money and securities for money to a value of twenty-five hundred dollars, personal chattels or real property not disposed of by the personal representatives, or conveyed to, divided or distributed among the persons beneficially entitled thereto within two years after the death of the deceased shall, whether probate or letters of administration have or have not been taken out, be thenceforward vested in the persons beneficially entitled thereto under the will or upon the intestacy, or their assigns, without any conveyance by the personal representatives.

[19] The properties in question therefore vested in the persons beneficially entitled thereto (i.e. the appellants) without any conveyance by the trustee or the personal representative of the estate. The Court of Queen's Bench of New Brunswick in *Harris v. Harris*, [1991] N.B.J. No. 574 (QL), has held that any power the executor of the estate had, either by implication under the will, or under the *Devolution of Estates Act*, to sell the property for the purposes of distributing the estate expired on the second anniversary of the death of the deceased unless the will either expressly or implicitly provided that title would remain in the executor beyond the two-year period. The relevant passage in *Harris* reads as follows:

In *Re Anthony's Will* (1977), 17 N.B.R. (2d) 364 the will conferred express powers on a testamentary trustee to sell and convert, postpone conversion of, or retain, the residue of the estate. Stratton, J. held that those powers were not affected by section 19 of the Act and that the real estate had not vested in the beneficiaries under that section. In *Becker v Cleland's Estate* (1979), 25 N.B.R. (2d) 328 Chief Justice Hughes referred to the decision in the Anthony case. He pointed out that Stratton, J. had followed a line of decisions in Ontario where there were some different statutory provisions. Even in the absence of those provisions he was of the opinion that where the will vests title to the estate in the executors in language which either expressly or impliedly indicates that title is to remain in them beyond the period prescribed by statute, the statutory provision divesting the executors of title on the expiry of two years is inoperative and title may continue in them notwithstanding the expiry of that period.

There is nothing in Mrs. Harris's will that either expressly or impliedly provides that title would remain in the executor beyond the two year period. Even during that period any sale by the executor for the purpose of distribution would have been subject to sections 9 and 10 of the Act and would not have been valid as respects the beneficiaries unless they concurred therein.

It is therefore my ruling that any power the executor of the estate had, either by implication under the will or under the Act, to sell the property for the purposes of distributing the estate expired on the second anniversary of the death of Mrs. Harris, i.e. on June 29, 1990.

[20] There is no evidence in this case that the will of the late Nellie Isabelle Leland expressly or implicitly provided that title would remain in her trustee beyond the two-year period. Thus, on the second anniversary of the late Nellie Isabelle Leland's death, the properties vested indefeasibly in the various appellants by virtue of the *Devolution of Estates Act*. In my opinion, that is when the transfer occurred.

[21] That conclusion raises the following question: Who is the transferor in these circumstances? The answer to that question is of considerable importance in determining if the transferor and the transferee were dealing with each other at arm's length. Subsection 251(1) of the *Act* defines "arm's length" as follows:

Arm's length — For the purposes of this Act,

- (a) related persons shall be deemed not to deal with each other at arm's length;
- (b) a taxpayer and a personal trust (other than a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1)) are deemed not to deal with each other at arm's length if the taxpayer, or any person not dealing at arm's length with the taxpayer, would be beneficially interested in the trust if subsection 248(25) were read without reference to subclauses 248(25)(b)(iii)(A)(II) to (IV); and
- (c) where paragraph (b) does not apply, it is a question of fact whether persons not related to each other are at a particular time dealing with each other at arm's length.

[22] The respondent has conceded that paragraph 251(1)(a) has no application here. Counsel for the respondent relies instead on the deeming provision found in paragraph 251(1)(b). For paragraph 251(1)(b) to apply, the transferor has to be either the trust created by the will or the estate, a trust and an estate being considered one and the same by virtue of subsection 104(1) of the *Act*. However, if the properties vested indefeasibly in the transferees (appellants) by virtue of the *Devolution of Estates Act* and any power the executor, personal representative or trustee of the estate may have had accordingly expired on the second anniversary of the death of Nellie Isabelle Leland, it cannot be said, in my opinion, that the transferor is the trust or the estate. Since there is nothing in Nellie Isabelle Leland's will that either expressly or implicitly provides that title (legal) would remain in the executor or trustee beyond the two-year period, the provisions of the *Devolution of Estates Act* apply so as to divest the executors, personal representatives and trustees of the legal title they held in the properties and all their powers have thus expired. In my opinion, the trust or the estate cannot be said to be a party to the transfer of the properties. In such circumstances, the presumption found in paragraph 251(1)(b) would have no application.

[23] The transferor here could arguably be the late Nellie Isabelle Leland, but it has been agreed that she is not related to the appellants within the meaning of the definition of related persons in the *Act* and consequently the presumption found in paragraph 251(1)(a) is not applicable. Given the above circumstances, section 160 has no application here as it cannot be concluded that the transferor and the transferee were not dealing at arm's length.

[24] The respondent also relies on paragraph 251(1)(c) to argue that the transferor and transferee were not dealing at arm's length. That paragraph requires that the determination of whether persons not related to each other are in fact dealing with each other at arm's length be made on the basis of the circumstances existing at a particular time. That particular time must therefore be established in order to apply some of the criteria that have been generally accepted by the courts in determining whether persons not related to each other are dealing with each other at arm's length.

[25] In the fact situation here there are, in my opinion, three possible particular times: (a) the time at which the will was drafted; (b) the time of Nellie Isabelle Leland's death, which is when the will speaks; or (c) the time at which the property vested, that is, on the second anniversary of Nellie Isabelle Leland's death. Given the criteria to be applied, the only realistic factual determination here would be that the particular time was when the will was drafted, and there is no evidence that any influence was exerted on the late Nellie Isabelle Leland by any of the appellants at that time.

[26] This is sufficient to allow the appeals and vacate the assessments issued against the appellants. Although it is not necessary, I will nevertheless address the issue of the FMV of the Leland property. Each party submitted an appraisal of that property prepared by the party's expert. Neither of these experts was asked to give evidence at trial. The appellants' expert determines the FMV of the property to be \$9,645 while the respondent's expert puts it at \$22,000.

[27] The Leland property is a vacant parcel of land with a total area of 18 acres and is located on the north side of Mascarene Road in Charlotte County, New Brunswick. The land is described as extremely boggy cut-over woodland. The assessment value for property for tax purposes as of November 2004 is \$13,500. The report prepared by the appellant's appraiser is far better documented than the report submitted by the respondent and is supported by comparables, the comparables method having been determined to be the most appropriate for this property. The property was originally appraised at \$14,000 by the appellant's appraiser, but this amount was later reduced

to \$9,645 by making certain adjustments. The respondent's report is less elaborate, the respondent's appraiser having relied on information obtained from a roadside inspection, aerial photographs and provincial plans, and on assessment information, all of which appear to be a lot less reliable in these circumstances.

[28] The effective date of the appellant's appraisal was November 30, 2004. The effective date of the respondent's appraisal was June 19, 2003, and the assessment for property tax purposes was as of February 2003. The transfer date was January 8, 2002, two years after Nellie Isabelle Leland's death. I find that the assessment for property tax purposes and the appellant's appraisal to be the most reliable and probable. I therefore conclude that the FMV of the Leland property was \$11,500 at the time of the transfer. I would reduce the assessment against the appellant Evelyn Leland by half since she only received a one-half interest in the Leland property, as it was transferred to both her and her husband.

[29] The appeals are allowed with one set of costs for Catherine and David Homer and one set of costs for Evelyn Leland.

Signed at Ottawa, Canada, this 21st day of May 2009.

"François Angers"

Angers J.

CITATION: 2009 TCC 219

COURT FILE NOS.: 2007-1618(IT)G, 2007-1542(IT)G,
2007-4885(IT)G

STYLES OF CAUSE: David M. Homer v. HMQ
Catherine M.C. Homer v. HMQ
Evelyn Leland v. HMQ

PLACE OF HEARING: Moncton, New Brunswick

DATE OF HEARING: February 25, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice François Angers

DATE OF JUDGMENT: May 21, 2009

APPEARANCES:

Counsel for the Appellants Dale T. Briggs
David M. Homer and Catherine
M.C. Homer:

Counsel for the Appellant Susan K. Layton
Evelyn Leland:

Counsel for the Respondent: Stan W. McDonald

COUNSEL OF RECORD:

For the Appellants
David M. Homer and
Catherine M.C. Homer:

Name: Dale T. Briggs

Firm: Cox & Palmer
Moncton, New Brunswick

For the Appellant
Evelyn Leland:

Name: Susan K. Layton

Firm: Clark Drummie
Saint John, New Brunswick

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada