Docket: 2024-239(IT)I

BETWEEN:

DAVID TOEWS,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on June 2, 2025, at Oakville, Ontario

Before: The Honourable Justice J. Scott Bodie

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Devon Peavoy Sheherazade Ghorashy

---

JUDGMENT

The appeal of the reassessment made under the *Income Tax Act* in respect of the Appellant's 2008 taxation year is allowed, without costs, and the reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled to claim a charitable donation amount of $39,398 for the 2008 taxation year.

Signed this 11th day of September 2025.

"J. Scott Bodie"

Bodie J.

Citation: 2025 TCC 123
Date: 20250911
Docket: 2024-239(IT)I

BETWEEN:

DAVID TOEWS,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Bodie J.

I. INTRODUCTION

[1] Mr. Toews' appeals, by way of the informal procedure, a reassessment (the "Reassessment") by the Minister of National Revenue (the "Minister") reducing his allowable charitable donation amount for the 2008 taxation year, from the $39,398 that he claimed to $ nil. The appeal arises from Mr. Toews' participation in a leveraged donation scheme promoted by Canadians Care Humanitarian Corporation (the "Scheme"). The Reassessment is dated January 20, 2014, and was confirmed pursuant to a Notice of Confirmation dated November 16, 2023.

[2] It is the Minister's position that:

1. the Minister is entitled to reassess Mr. Toews for the 2008 taxation year, notwithstanding that the Reassessment was issued after the normal reassessment period in respect of Mr. Toews' 2008 taxation year; and

2. Mr. Toews is not entitled to the charitable donation amount he claimed for the 2008 taxation year;

because certain persons are liable to a penalty in respect of the Scheme, which is a tax shelter, and such penalty has not been paid.

A. Preliminary Matters

[3] Mr. Toews participated in two separate tax programs in the 2006, 2007 and 2008 taxation years. In each of 2006 and 2007, he participated in a program known as the Universal Donation Program ("UDP"). In 2008, he participated in both the UDP and the Scheme. He ultimately received reassessments arising from his participation in these programs for each of these three years, which were all ultimately confirmed by the Minister. His Notice of Appeal relates to each of 2006, 2007 and 2008. However, by way of Court Order dated November 4, 2022, his appeals in respect of 2006, 2007 and 2008 arising from his participation in the UDP were bifurcated from his appeal of the Reassessment, and the Respondent's obligation to file replies in the appeals that involve the UDP was held in abeyance. Consequently, this appeal relates only to his participation in the Scheme.

II. **FACTS**

[4] Mr. Toews testified at the hearing of this appeal. He did not call any other witnesses. I found his testimony to be reliable and credible.

[5] Mr. Toews testified that he is a senior underwriting consultant for a large insurance company in Canada. He testified that he was raised in a Mennonite home and that he was taught by his parents, both through their teachings and by their examples, the importance of charitable giving. He testified that he has attempted to pass on those same values to each of his four children and he provided evidence of a long history of donating significant amounts of money to various charities both before and after 2008.

[6] In 2006 Mr. Toews met Vincent Ciccone at his place of worship. He testified that Mr. Ciccone pulled at his heart strings because he recognized Mr. Toews' desire to help people both locally and globally through charitable donations. Mr. Ciccone told Mr. Toews that he had a tax shelter program that could assist Mr. Toews in his charitable giving. Mr. Toews testified that he understood from Mr. Ciccone that there would be financial and tax benefits from participating in the tax shelter, but he said that he was interested in the program because such benefits would allow him to increase his charitable donations.

[7] This initial tax shelter program was the UDP in which Mr. Toews participated for each of the 2006, 2007 and 2008 taxation years. In 2009, Mr. Toews discovered that this tax shelter program in which funds were apparently invested in various projects, was fraudulent.

[8] However, he testified that in 2008 he had not yet discovered any reason not to trust Mr. Ciccone. He therefore decided to participate in another of his programs, being the Scheme. Mr. Toews testified that he was attracted to the Scheme because unlike UDP in which a participant's funds were invested, Mr. Ciccone told him that the Scheme would allow Mr. Toews to donate to charities of his choice. He testified that he indicated to Mr. Ciccone that he wished to donate money to two separate funds connected with his church, a building fund and an education fund. Mr. Toews understood from Mr. Ciccone that such donations could be facilitated through the Scheme, in a manner similar to directing donations through any other umbrella charitable foundation, such as the United Way.

[9] Mr. Toews testified that it was his understanding that under the Scheme, he would make a $10,000 payment to an organization called GEMS Capital Management Services Inc ("GEMS") which would then arrange for a loan to be made to him in the amount of $40,000. This full loan amount would then be donated to his designated charities through a foundation called the Trinity Global Support Foundation (the "Foundation") and he would receive a tax receipt in the amount of $40,000. He further testified that he understood that he would not be responsible for repaying the loan. Mr. Toews testified that based on this understanding he borrowed $10,000 from a third party, which he paid to GEMS and accordingly ultimately received a tax receipt in the amount of $40,000. It was on the basis of this tax receipt that he claimed an allowable charitable donation amount of $39,398 in his tax return for the 2008 taxation year. The Minister initially assessed Mr. Toews' 2008 taxation year as filed, on August 24, 2009.

[10] In 2009 problems with the UPD investments came to light, and Mr. Toews stopped any further dealings with Mr. Ciccone.

[11] Mr. Toews was unable to produce any documents at the hearing of this matter with respect to his participation in the Scheme other than a form that was titled "Pledge Form" and had the name, "Canadians Care" at its top. The Pledge Form which he signed indicated that he agreed to pledge $40,000 to the Foundation, named the funds established by his church referred to above, as the intended beneficiaries of his donation, and acknowledged that he was submitting, with the form, a cheque in the amount of $10,000 to "GEMS Capital". The pledge form is dated December 2, 2008. He was not able to provide any other documentation with respect to his participation in the Scheme such as a cancelled cheque for the $10,000 he paid to participate in the Scheme, any documentation with respect to a loan, including any evidence that he either received or provided a direction to pay any proceeds of a loan, or the tax receipt.

[12] Nevertheless, his understanding of the Scheme, as related in his testimony, was generally consistent with a promotional brochure with the name "Canadians Care" on it, which outlines the general parameters of Scheme and was introduced into evidence by the Respondent. Mr.Toews admitted in cross-examination that he saw the contents of this brochure in a slide show that Mr. Ciccone provided at a presentation where Mr. Ciccone promoted the Scheme.

[13] Although Mr. Toews was unable to produce any documents with respect to his participation in the Scheme, apart from the pledge form, the Respondent did not ask the Court to draw any negative inferences as a result of such inability. Counsel for the Respondent acknowledged that, in her view, Mr. Toews is a generous man who was forthright in his testimony. I concur with this assessment. Mr. Toews did not appear to be hiding from, or in any way attempting to cover up the truth. Throughout the hearing, he very freely made admissions that were not necessarily in his favour, when the situation warranted.

[14] One of the issues in this matter is whether the Minister is entitled to reassess Mr. Toews past the normal reassessment period. This case serves as an example of why limitation periods have been established and form part of our laws. The events which were the subject of this hearing occurred approximately six years before the time of the Reassessment and approximately seventeen years before the hearing of this matter. Under such circumstances, it is not surprising that details are more difficult to recall and it becomes more difficult to for either party to produce records. Accordingly, I do not draw any negative inferences from Mr. Toews' inability to produce documents specific to this case.

[15] I also note, with some degree of sympathy, that the trying of this matter, from the Respondent's point of view, was challenging because of the dearth of specific evidence with respect to either Mr. Toews' specific participation in the Scheme or with respect to the way in which the Scheme operated in general.

[16] I further note that this matter was originally part of a group for purposes of litigation in this Court. I understand that this is the only matter from that group to come before this Court.

[17] Accordingly, the Respondent was able to introduce into evidence some general documents that may have been obtained from others who participated in the Scheme. However, the Respondent was unable to introduce documents that related specifically to Mr. Toews. Furthermore, as shall be seen, there are details as to the inner workings of the Scheme that, despite the efforts of the Respondent, remain

elusive. For those actually involved in the implementation of the Scheme were unavailable, or I imagine, otherwise uncooperative, leaving it to the Respondent to piece together many of the details of the Scheme as best they could.

[18] These efforts were complicated by the fact that none of those who were assessed penalties as a result of their participation in the Scheme appealed such penalties. This resulted in the Respondent lacking evidence with respect to many details of the Scheme, making it difficult to understand the nuances of how the Scheme was designed and implemented. As will be evident below, in light of the basis on which the Minister denied the charitable deductions claimed by Mr. Toews, this made the Respondent's case particularly challenging.

III. **POSITIONS OF THE PARTIES**

A. Respondent's Position

[19] The Respondent denies Mr. Toews' claim on a basis which is different from the basis on which other leveraged donation programs which have previously come before this Court have been challenged. Therefore, familiar matters such as Mr. Toews' donative intent in participating in the Scheme is not challenged or put in issue. This is because the Respondent takes the position that the only basis for denial currently available to the Minister, is subsection 237.1(6.1) of the *Income Tax Act* (the "Act"). All other avenues are statute barred.

[20] All statutory references herein will be to the Act.

[21] Subsection 237.1(6.1) provides that no amount may be deducted or claimed by a person in respect of a tax shelter of the person where any person is liable to a penalty under subsection 237.1(7.4) and such penalty is unpaid. Subsection 237.1(6.2) provides that notwithstanding subsection 152(4), assessments may be made as are necessary to give effect to subsection 237.1(6.1). Accordingly, the fact that a taxation year is otherwise statute-barred does not prevent the Minister from issuing a reassessment under subsection 237.1(6.1).

[22] Subsection 237.1(7.4) provides that every person who, whether as principal or as agent, sells, issues or accepts consideration in respect of a tax shelter before the Minister has issued an identification number for the tax shelter, is liable to a specified penalty.

[23] Accordingly, it is the Minister's position that four individuals were liable to and were assessed a penalty in respect of the Scheme under subsection 237.1(7.4). Such penalties remain unpaid. Therefore, in the Minister's view, the Minister is entitled to reassess Mr. Toews notwithstanding the passing of the normal reassessment period, and Mr. Toews is not entitled to the deduction in respect of the Scheme under subsection 237.1(6.1).

B. Mr. Toews' Position

[24] It is Mr. Toews' position that he donated $10,000 cash to a charity and should therefore be entitled to claim a deduction of such amount. However, because of the basis of the reassessment, as explained above, this position is not tenable. If the Minister's position is correct, then he is denied the ability to deduct the entire amount claimed. If not, he is entitled to deduct the entire $39,398 claimed.

IV. **ISSUES**

[25] The issues to be determined by this Court are as follows:

1. Does the Scheme constitute a tax shelter as required by both subsections 237.1(6.1) and 237.1(7.4)?

2. What does it mean to be liable to a penalty under subsection 237.1(6.1)?

3. Are any of the four persons assessed a penalty in respect of the Scheme (the "Assessed Persons") liable to a penalty pursuant to subsection 237.1(7.4)?

[26] I will examine each of these issues in turn.

V. **ANALYSIS**

A. Does the Scheme constitute a tax shelter as required by both subsections 237.1(6.1) and 237.1(7.4)?

a. Statutory Framework

[27] The term "tax shelter" is defined in paragraph (a) of the definition of such term in subsection 237.1(1) to include a "gifting arrangement" as described in paragraph (b) of the definition of the term "gifting arrangement". The term "gifting arrangement" is defined in paragraph (b) of the definition of such term in subsection

237.1(1), to include any arrangement under which it may reasonably be considered, having regard to statements or representations made in connection with the arrangement, that if a person were to enter into the arrangement, the person would incur a limited recourse debt, determined under subsection 143.2(6.1), that can reasonably be considered to relate to a gift to a qualified donee.

[28] Subsection 143.2(6.1) defines limited recourse debt with reference to the term "limited recourse amount". Under subsection 143.2(6.1) the limited recourse debt in respect of a gift is the total of certain amounts, at the time a gift is made, including each "limited recourse amount" of the taxpayer and certain other specified parties, that can reasonably be considered to relate to the gift. Subsection143.2(7) deems all unpaid indebtedness to be a limited recourse amount unless:

1. *bona fide* arrangements, evidenced in writing, were made at the time the indebtedness arose, for repayment by the debtor of the indebtedness and all interest on the indebtedness within a reasonable period of time, not exceeding 10 years; and

2. interest is payable at least annually, at a rate equal to or greater than the lesser of:

    a. the prescribed rate of interest in effect at the time the indebtedness arose; and

    b. the prescribed rate of interest applicable from time to time during the term of the indebtedness;

    and is paid in respect of the indebtedness by the debtor no later then 60 days after the end of each taxation year of the debtor that ends in the period.

b. Application of the Law to the Facts

[29] As mentioned, there was little evidence introduced by either party with respect to the specifics of Mr. Toews' participation in the Scheme or with respect to the details of how the Scheme operated in general. Frankly, the mechanics of the Scheme as presented at the hearing, make such little sense from a commercial or any other perspective, that I can only conclude that either there are elements of the Scheme that are not fully understood by Mr. Toews and the Respondent, or the Scheme was little more than a fraud.

[30] Nevertheless, in his testimony, Mr. Toews was clear in his understanding of the Scheme. Based on such understanding, I conclude that the Scheme in which Mr. Toews participated was a tax shelter. Mr. Toews testified that it was his understanding, having regard to statements made to him by Mr. Ciccone that by participating in the Scheme he would be issued a loan of $40,000 with no *bona fide* arrangements for repayment and that the amount of the loan would be used to make a charitable gift to his church. Further, Mr. Toews testified that he never repaid any part of the $40,000 debt.

[31] As the debt which Mr. Toews understood he incurred by participating in the Scheme was unpaid and, according to Mr. Toews had no *bona fide* terms for repayment, it is my view that the debt which Mr. Toews testified he incurred constitutes a limited recourse amount as deemed by subsection 143.2(7). Further, as such limited recourse amount was incurred, in Mr. Toews' view, to make a gift to Mr. Toews' church, such amount must be included of the calculation Mr. Toews' limited-recourse debt at the time he understood that such gift was made in accordance with subsection 143.2(6.1). Therefore, the Scheme as Mr. Toews understands it, constitutes a "gifting arrangement" under paragraph (b) of the definition of such term in subsection 237.1(1). Such an arrangement constitutes a tax shelter pursuant to paragraph (a) of the definition of such term in subsection 237.1(1).

[32] Accordingly, based on the testimony of Mr. Toews, I conclude that the Scheme in which he participated is a tax shelter.

B. What does it mean to be Liable to a Penalty under subsection 237.1(6.1)?

[33] As discussed above, the charitable donation amount claimed by Mr. Toews in respect of the Scheme for the 2008 taxation year will be denied if any person is liable to a penalty under subsection 237.1(7.4) and such penalty is unpaid.

[34] The Respondent called one witness, Tarvinder Kaur. Ms. Kaur is an appeals officer with the Canada Revenue Agency (the "CRA"). Ms. Kaur is a Chartered Professional Accountant who has been employed with the CRA since 2003. I found Ms. Kaur to be a reliable and credible witness. However, I also note that according to Ms. Kaur's testimony she had no direct involvement with the audit in this matter. Her involvement with, and knowledge of this matter, is limited to the facts and information available to her upon her review of the CRA's files. She testified that the auditors who worked on Mr. Toews' file were unavailable at the time of the hearing.

[35] Ms. Kaur testified that four people, Mr. Ciccone, Karen Thomson-Ciccone, Carmine Domenicucci and Thomas Johnson were assessed penalties by the CRA in respect of the Scheme under subsection 237.1(7.4). These four people are the Assessed Persons referred to above. However, the mere assessment of a penalty by the CRA does not, in and of itself, mean that a person is liable to a penalty for purposes of subsection 237.1(6.1). Rather to be liable to such a penalty, a person must have fulfilled the requirements of the provision which imposes such penalty.

[36] In *Wichartz v Canada* [1995] 1 CTC 2866, Justice Sobier of this Court explained that it is not the assessment of a penalty that makes a taxpayer "liable" to the penalty, but the fact that they committed the action or omission that the provision of the ITA prescribes in order to subject the taxpayer to the penalty. According to Justice Sobier, there is a distinction between when a taxpayer is liable to a penalty and when the penalty becomes payable. At page 2868, he wrote:

> An analogy to liability for income taxes might be helpful. It is clear that an assessment does not create liability for income tax. The provisions of the Act create the liability for that tax. Similarly, the Act creates the liability for the penalty. Simply because the taxpayer is liable for a penalty upon failure to file a return, it does not necessarily follow that the penalty is payable at that time… While the Act creates the liability for the penalty at the time of failure, it becomes payable by reason of an assessment.

[37] The decision in *Wichartz* is consistent with the Supreme Court of Canada's decision in *MNR v Panko*, [1972] SCR 319 where the court held that a person is liable to a penalty when they are exposed to the risk that such penalty may be assessed. The court wrote at page 330:

> Indeed, to say that a person is liable to a penalty is merely to expose him to the risk thereof; only when the necessary action or step is taken to exact it does it become effective.

[38] The risk of exposure to a penalty arises when the statutory requirements making a taxpayer eligible for a penalty have been fulfilled (for example, by failing to wait for the Minister to issue an identification number for a tax shelter before taking certain actions). It is at that time that the taxpayer is liable to a penalty. The mere assessment of a penalty is not conclusive evidence that the underlying requirements for the imposition of a penalty have been met. The assessment merely crystallizes the risk to which the taxpayer may already have been exposed, thereby triggering certain objection and appeal rights, and potentially debt obligations. Therefore, in this case it is necessary to determine whether any of the Assessed

Persons met the requirements necessary to expose one or more of them to a penalty under subsection 237.1(7.4).

C. Are any of the Assessed Persons Liable to a Penalty under subsection 237.1(7.4)?

[39] Subsection 237.1(7.4) provides as follows:

> Every person who files false or misleading information with the Minister in respect of an application under subsection (2) or, whether as principal or as agent, sells, issues or accepts consideration in respect of a tax shelter before the Minister has issued an identification number for the tax shelter is liable to a penalty…

[40] Accordingly, for any of the Assessed Persons to be liable to a penalty under subsection 237.1(7.4) in the current circumstances, the following conditions must be met:

1. One or more of the Assessed Persons must have acted as principal or agent;

2. In such capacity one or more of the Assessed Persons must have sold, issued or accepted consideration in respect of a tax shelter; and

3. Such act must have occurred before the Minister issued an identification number for the Scheme.

[41] As discussed above, the Scheme as it relates to Mr. Toews, is in my view, a tax shelter. Further Ms. Kaur testified that there is no record of the Minister ever issuing an identification number in respect of the Scheme. I accept her testimony in this regard. Accordingly, the third condition is met.

[42] I will now consider whether the other two conditions are met.

a. The Respondent's Position

[43] It is the Respondent's position that each of the Assessed Persons performed integral roles in respect of the Scheme, as principals or agents of various corporate entities.

[44] According to the Respondent, the Scheme was marketed by Canadians Care. Under the Scheme, participants would make cash payments to GEMS in order to apply for a 3-year or 5-year loan from GEMS, to be co-signed by GEMS. The cash payment was fixed at 25% of the loan amount requested by a participant and was

directed to GEMS to allegedly pre-pay interest and pay certain administrative expenses. No interest rate was set and there was no allocation made between pre-paid interest and administrative expenses. GEMS would, on behalf of the Participants, donate the full loan amount to the Foundation, a charity which was, at the time, registered with the CRA as a private foundation. The Foundation correspondingly issued participants donation receipts for the full amount of the loan. Through this process, the Scheme effectively required participants to pay $250 cash (to GEMS) for every $1,000 of charitable donation receipts that they received.

[45] The Foundation ultimately invested most of the funds it received with GEMS Limited Partnership II which then loaned a significant portion of the funds it received to the Ciccone Group.

[46] As a result of the Scheme in the 2008 taxation year, the Foundation receipted over $7,806,639.

b. The Evidence

[47] None of the Assessed Persons were called by either party to testify. The only witness who appeared at the hearing on behalf of the Respondent was Ms. Kaur who did not provide evidence as to the nature of the roles played by any of the Assessed Persons with respect to the Scheme. The Respondent introduced into evidence a charitable receipt apparently issued by the Foundation that was apparently signed by Ms. Thomson-Ciccone, and a document called a Loan Application Form which was apparently signed by Mr. Johnson on behalf of GEMS. Both documents had all identifying information redacted. Neither document related specifically to Mr. Toews' participation in the Scheme. However, Mr. Toews testified in cross-examination that he likely signed a Loan Application Form and received a charitable tax receipt from the Foundation in the forms of the documents introduced into evidence by the Respondent, although he could not recall who would have signed such documents.

[48] In addition, in the Reply the Respondent stated that in determining Mr. Toews' tax liability for the 2008 taxation year as it relates to the Scheme, the Minister relied on certain assumptions, including the following:

1. at all material times, Mr. Ciccone was a director and the President of the Foundation;

2. at all material times Mrs. Thomson-Ciccone was a director and the Secretary-Treasurer of the Foundation;

3. at all material times Mr. Domenicucci was a director and a member of the Audit and Grant Committee of the Foundation;

4. all charitable receipts issued by the Foundation were signed by Ms. Thomson-Ciccone;

5. at all material times Mr. Johnson was the sole shareholder of GEMS;

6. at all material times, each of the Assessed Persons were aware of the Scheme.

[49] As discussed above, in his testimony Mr. Toews testified that he was introduced to the Scheme by Mr. Ciccone and that he attended presentations with respect to the Scheme that were conducted by Mr. Ciccone. He testified that at such presentations he reviewed the contents of the promotional brochure which the Respondent introduced into evidence, and which had the name "Canadians Care" on it. Mr. Toews did not mention that any of the other Assessed Persons were involved with his participation in the Scheme in either his direct testimony or on cross-examination. I note that the names of none of the Assessed Persons appeared in the brochure.

c. The Law

[50] While the Respondent introduced evidence which generally seemed to piece together the workings of the Scheme carried out by the corporate actors identified above and the offices of each of the Assessed Persons, the Respondent was unable to identify specific acts committed by Ms. Thomson-Ciccone, Mr. Domenicucci and Mr. Johnson (the "Position Based Assessed Persons"). Subsection 237.1(7.4) is specific in listing the acts that must be committed by a person in order for such person to be liable to a penalty. A person must have been engaged in selling, issuing or accepting consideration in respect of a tax shelter. In order for the Minister to assess what, in many cases, will be a significant penalty against a person, the Minister must be able to clearly identify the act committed for which the penalty is assessed. As Justice Webb wrote in *Canada v O'Dwyer* 2013 FCA 200 at paragraph 31:

> In setting out the basis upon which the penalty was assessed, the Minister should clearly identify the role that Thomas O'Dwyer is alleged to have played and not

> simply reiterate every possible permutation or combination that could satisfy the statutory conditions to impose the penalty. Any taxpayer who has been assessed a penalty should know why the penalty was assessed.

d. Application of the Law

[51] The Respondent did not introduce any evidence as to the roles played by any of the Position-Based Assessed Persons in the Scheme, the authorities granted to them by any of the corporate entities involved in the Scheme or the specific ways in which any of them were involved in selling, issuing or accepting consideration in respect of a tax shelter. Even if it could be argued that as officers, directors or shareholders of corporate entities involved in the Scheme, the Assessed Persons were acting as principals or agents of such entities, it would be necessary to prove on a balance of probabilities that the Assessed Persons committed at least one of the prohibited acts. In my view, the Respondent failed to meet that burden with respect to the Position-Based Assessed Persons. Further, the assumptions contained in the Reply are not sufficient to attach liability to any of them for the penalty.

[52] In my view, the fact that Ms. Thomson-Ciccone apparently signed a charitable receipt which had any identifying information redacted, on behalf of the Foundation, does not, in and of itself show that she committed any of the prohibited acts in respect of the Scheme, as either a principal or an agent. The fact that Mr. Johnson apparently signed a loan application form which had any identifying information redacted, on behalf of GEMS, does not, in and of itself, show that he committed any of the prohibited acts as either a principal or agent. There was no evidence introduced as to specific acts committed by these individuals which could support a finding, on a balance of probabilities that they sold, issued or accepted consideration in respect of a tax shelter as a principal or agent of any of the corporate entities involved in the Scheme.

[53] The mere fact that they may have been shareholders, directors or officers of corporate entities involved in the Scheme is not enough, in and of itself, to expose them to the penalty in subsection 237.1(7.4). A person does not take on the acts committed by a corporation merely by virtue of being a shareholder, director or officer. The doctrine of separate corporate personality, originating in *Salomon* v *Salomon & Co.*, [1897] AC 22 at paragraph 50, has been consistently applied by Canadian courts and has become a basic tenet of Canadian corporate law.

[54] Further, the meaning to be attached to the word “principal” as used in subsection 237.1(7.4) is not entirely clear. The term “principal” is not a position at

Canadian corporate law. The term may be used in the sense of referring to the person who committed an act. If this is the sense intended for the word in subsection 237.1(7.4), then the "principal" would be the corporate entities themselves. For there was no suggestion that the corporate entities were nominees. Under the law of agency the term "principal" is a person who directs an agent. There was no evidence introduced to indicate that any of the Position-Based Assessed Persons either directed an agent or, had the authority, either express or implied, to act as an agent of any of the corporate entities.

[55] Mr. Ciccone is in a different category. In his testimony, Mr. Toews identified Mr. Ciccone as the person who introduced him to the Scheme and made representations as to how the Scheme worked in presentations in which materials prepared by or on behalf of Canadians Care were discussed. At the very least Mr. Ciccone acted as the agent of Canadians Care with its apparent authority on which Mr. Toews reasonably relied.

[56] The issue, then, is whether this conduct by Mr. Ciccone constituted any of the prohibited acts as listed in subsection 237.1(7.4) which may give rise to Mr. Ciccone's liability under that provision. In other words, did he sell, issue or accept consideration in respect of a tax shelter?

e. Did Mr. Ciccone commit a Prohibited Act?

i. Did Mr. Ciccone sell?

[57] I struggled with the intended meaning of the word "sells" in subsection 237.1(7.4). For it seems that the word could be attributed a meaning similar to the word "promotes" which is used in various provisions of the Act, but is conspicuously missing from subsection 237.1(7.4).

[58] Subsection 237.1(7.4) is commonly referred to as the "promoter penalty". Yet the term "promoter" does not appear in the provision. The question therefore becomes whether the word "sells" as used in subsection 237.1(7.4) is intended to have a meaning that encapsulate a meaning comparable to the word "promotes" or whether it is intended to have a distinct, and therefore more limited meaning.

[59] In answering this question, it is instructive that the term "promoter" is defined in subsection 237.1(1), and unlike subsection 237.1(7.4), the definition of that term uses both the word "sells" and the word "promotes".

[60] The definition provides as follows:

> "**promoter**" in respect of a tax shelter means a person who in the course of a business
>
> (a) sells or issues, or promotes the sale, issuance or acquisition of, the tax shelter,
>
> (b) acts as an agent or advisor in respect of the sale or issuance, or the promotion of the sale, issuance or acquisition, of the tax shelter, or
>
> (c) accepts, whether as principal or agent, consideration in respect of the tax shelter,
>
> and more than one person may be a tax shelter promoter in respect of the same tax shelter.

[61] In *The Construction of Statutes*, 7th ed., Professor Ruth Sullivan explains that, in many respects, reading legislation is no different from reading any other text. The reader relies on the same lexicon, the same rules of grammar and punctuation, and the same underlying cultural values and assumptions (see § 8.01).

[62] These principles espoused by Professor Sullivan are consistent with the principle that in interpreting legislation a court should presume that every word in a statute carries meaning and plays a specific role in advancing legislative purpose. In *R v Proulx*, [2000] 1 SCR 61 Chief Justice Lamar wrote, "It is a well-accepted principle of statutory interpretation that no legislative provision should be interpreted so as to render it mere surplusage". Accordingly, it should be presumed that the each of the terms "sells" and "promotes" in the definition of "promoter" carries a distinct meaning.

[63] If the word "sells" is to have a meaning distinct from the word "promotes" then, going back to the principles espoused by Professor Sullivan, it follows that the meaning of the term "sells" should be limited to its ordinary, grammatical sense, as would any other text. According to B.A. Garner, *Blacks Law Dictionary* (12th ed. 2024) the definition of "sell" is "To transfer (property) by sale". The definition of "sale" is "The transfer of property or title for a price." In the *Canadian Oxford Dictionary* (2nd ed. 2004), the term "sell" is similarly defined as the "exchange (goods, services etc.) for money".

[64] Further it should be presumed when interpreting statutory provisions that the legislature uses language carefully and consistently, such that identical words within

a statute have the same meaning. As Justice Sopinka wrote in *R v Zeolkowski*, [1989] 1 SCR 1378 at 1387, "Giving the same words the same meaning throughout a statute is a basic principle of statutory interpretation".

[65] Closely related to these concepts that the legislature uses language carefully and consistently and that the same words should be given the same meaning throughout a statute, is the rule of implied exclusion. Words used have meaning. But words excluded may also have meaning. Where legislation expressly refers to certain items, the deliberate omission of one item from a comparable list is presumed to have legislative intent. As Professor Sullivan points out in *The Construction of Statutes*, cited above, at § 8.09, where legislation employs a pattern in words used, courts expect it to be used consistently. Departure from that pattern may indicate that the legislature did not intend the same result.

[66] The fact that the term "promoter" is excluded from subsection 237.1(7.4), which also excludes the word "promotes" from a list of activities which is comparable to the list of activities in the definition of "promoter" should, according to the principles of statutory interpretation referred to above, be considered deliberate. It seems to me therefore that the legislature intended for the penalty to apply to a person who enters into an agreement to transfer *something* to another for a price prior to the issuance of an identification number, but not to a person who promotes *something* before such issuance.

[67] I do not need to determine the matter for purposes of determining this case, but I do note, as counsel for the Respondent pointed out in her argument at the hearing of this matter, that it is not clear from the wording of subsection 237.1(7.4) exactly what a person is prohibited from selling or issuing prior to the issuance of an identification number. It is much clearer in the definition of "promoter" in subsection 237.1(1) that the words "sells", and "issues" refers to a tax shelter. Paragraph (a) of the definition of "promoter" for example, provides that the term includes a person who, "sells or issues, or promotes the sale, issuance or acquisition of, the tax shelter". This may be contrasted with the wording in subsection 237.1(7.4) which imposes a penalty against a person who "sells, issues or accepts consideration in respect of a tax shelter". Similarly, it is much clearer in the definition of "promoter" in subsection 237.3(1) that the distinct terms "promotes" and "sells" refer to an arrangement. Under paragraph (a) of that definition, the term "promoter" includes a person who "promotes or sells (whether as principal or agent and whether directly or indirectly) an arrangement, plan or scheme (referred to in this definition as an arrangement)…"

[68] In any event, on the basis of the principles of statutory interpretation referred to above, and given that in two separate definitions of the term "promoter" in two different sections of the Act, including section 237.1, the Act uses the terms "sells" and "promotes" as distinct terms, and then in the list of prohibited activities in subsection 237.1(7.4) which is comparable to the lists contained in the two definitions, excludes the word "promotes", I conclude first, that the terms "sells" and "promotes" are intended to have distinct meanings, and secondly, that the exclusion of the word "promotes" in subsection 237.1(7.4) is intentional.

[69] In my view, the meaning of the term, "sells" as used in subsection 237.1(7.4) should therefore be limited to a transfer or exchange for a price and should not encapsulate a meaning comparable to the word "promotes". Parliament chose in the definition of "promoter" in subsection 237.1(1) to list the words "sells" and "promotes" separately and therefore distinctly. If Parliament had intended to catch the promotion of a tax shelter prior to the issuance of an identification number for purposes of imposing the penalty in subsection 237.1(7.4), it would have included the word "promotes" in the list of prohibited activities. Alternatively it could have used the defined term "promoter", the definition of which includes the word "promotes" in a list of activities comparable to the list of prohibited activities in subsection 237.1(7.4). The fact that it did not, is instructive.

[70] The evidence shows that Mr. Ciccone introduced Mr. Towes to the Scheme and gave presentations to him and presumably others on how it worked. However, it did not show that Mr. Ciccone transferred anything to Mr. Toews for a price. In fact, Mr. Toews testified that when he ultimately decided to participate in the Scheme, it was an associate of Mr. Ciccone, who was not named as an Assessed Person, who assisted him with signing the necessary paperwork to become a participant and presumably collected the required $10,000 payment.

[71] I therefore conclude that the Respondent did not introduce evidence at the hearing of this matter sufficient to prove, on a balance of probabilities, that Mr. Ciccone sold anything to Mr. Toews, nor did the assumptions relied on by the Minister in the Reply, establish that Mr. Ciccone sold anything to Mr. Toews.

ii. Did Mr. Ciccone issue?

[72] The Act does not define the word "issue". It does not appear that the word has received specific judicial consideration in the context of the phrase "sell, issue or accept consideration in respect of a tax shelter" as used in subsection 237.1(7.4).

[73] Pursuant to *The Canadian Oxford Dictionary*, cited above, the word "issue" means "a giving out or circulation of shares, notes, stamps etc." This is consistent with the definition of the word in *Black's Law Dictionary*, cited above: "to send out or distribute officially".

[74] Accordingly, it seems that the word "issue" is meant to capture the distribution of an interest in favour of a participant, by a particular entity. For example, a corporation may issue a share to a shareholder, a limited partnership may issue a limited partnership interest to an investor, or a lender may issue a loan to a borrower.

[75] None of the evidence presented at the hearing of this matter nor any of the assumptions relied upon by the Minister, as set out in the Reply support a finding that any of the Assessed Persons, as principal or agent, issued something as part of the Scheme.

[76] It was the Respondent's position that the loans in the Scheme were issued by GEMS. The Respondent introduced into evidence, the redacted Loan Application Form that was referred to above, and which appears to have been signed by Mr. Johnson. However, in my view, this form, in and of itself, does not establish, on a balance of probabilities, that Mr. Johnson himself issued loans. In any event, Mr. Toews was clear in cross-examination that he did not recall ever dealing with Mr. Johnson.

[77] In my view, both the Respondent's evidence introduced at the hearing of this matter and the Minister's assumptions set out in the Reply are insufficient to prove, on a balance of probabilities that any of the Assessed Persons, in any capacity, issued something as part of the Scheme.

iii. Was consideration accepted in respect of the Scheme?

[78] It was the position of the Respondent that the Assessed Persons accepted consideration as principal or agent of the corporate entities alleged to be involved in the Scheme of which they were directors, officers or shareholders. The Respondent argued that:

1. Mr. Ciccone accepted consideration in respect of the Scheme when the Ciccone Group, of which he was the sole shareholder, officer and director accepted monies either directly or indirectly from GEMS;

2. Mr. Domenicucci accepted consideration in respect of the Scheme when G8 Resort Management, the general partner of GEMS Limited Partnership II, of which he was the shareholder and director, accepted monies directly or indirectly from the Foundation;

3. Ms. Thomson-Ciccone accepted consideration in respect of the Scheme when the Foundation of which she was an officer and director accepted the proceeds of the alleged loans from GEMS;

4. Mr. Johnson accepted consideration in respect of the Scheme when GEMS of which he was the sole shareholder accepted the fee equivalent of 25% of the loan amount.

[79] It is obvious that the CRA spent a significant amount of time and other resources in attempting to piece together the workings of the Scheme and the flow of monies between the various corporate entities that the CRA believed to be involved in the Scheme. This was evident from the various working papers and auditors' reports which Ms. Taur referred to in her testimony. These efforts of the CRA were no doubt complicated because it likely received little, if any, information or cooperation from the actual operators of the Scheme. The other participants in the Scheme likely had no more information to provide on the nuances of the Scheme, than did Mr. Toews.

[80] Despite their efforts, the Respondent was not able to provide evidence to fully demonstrate the flow of monies between the various corporate which the CRA believed occurred. The Respondent did introduce into evidence some general ledgers apparently prepared by GEMS and the Foundation which indicated that some funds labelled on the ledgers as "prepay interest charges on loan" were received by GEMS, presumably by various participants in the Scheme, and that the Foundation received monies from GEMS, presumably the donation amounts.

[81] It was the Respondent's position that these donation amounts were actually loaned to GEMS by the Ciccone Group before they were paid to the Foundation, that the Foundation paid the amounts received by it to GEMS Limited Partnership II, which then completed the circle by paying the amounts it received back to the Ciccone Group. It is not clear from the evidence, what happened to the money apparently paid to GEMS as prepaid interest or on what basis money would have been paid to GEMS Limited Partnership II before being paid to the Ciccone Group, or even that such money was so routed. While the general ledgers introduced by the Respondent may have indicated parts of the alleged money flow, the Respondent did not

introduce evidence necessary to prove, on a balance of probabilities the full circle of funds which was alleged.

[82] Even if the Respondent were able to prove, on a balance of probabilities, that $40,000 actually flowed from the Ciccone Group to GEMS then to the Foundation and then to GEMS Limited Partnership II and then ultimately to the Ciccone Group, the Respondent was unable to point to any specific acts performed by any of the Assessed Persons in accepting any monies as part of this alleged route of funds. As discussed above, liability does not attach to an individual under subsection 237.1(7.4) merely as a result of the individual being a director, officer or shareholder of a corporation that may have participated in a tax shelter. The specific role of any of the Assessed Persons, if any, in either accepting or paying funds as part of this alleged circle, based on the evidence submitted at the hearing of this matter, remains unknown.

[83] The Respondent further argues that Mr. Ciccone accepted consideration in respect of the Scheme by virtue of receiving T4 earnings from the Ciccone Group. In *Hexalog Ltée* c R 2005 TCC 67, the Court considered the phrase "in respect of" in section 237.1 and concluded that "consideration" should be interpreted broadly to include all amounts received from investors of a tax shelter.

[84] I agree. In my view, there may be circumstances where remuneration paid to an employee may constitute consideration for purposes of imposing a penalty under subsection 237.1(7.4). For example, commissions, finder's fees or bonuses dependent upon, or paid out of subscription monies may constitute a close enough connection to a tax shelter, such that such payments could be viewed as consideration in respect of the tax shelter.

[85] However, in this case the Respondent was not able to introduce evidence to demonstrate such a connection. There was no evidence introduced as to the business(es) of the Ciccone Group, its assets, its liabilities and expenses and the source(s) of its income other than the fact that some portion of its income may have emanated from the Scheme, although as discussed above this is not, on a balance of probabilities, clear from the evidence. Further, the Respondent did not introduce any evidence with respect to the nature of such income (other than it was T4 earning) or the basis on which it was determined or paid to Mr. Ciccone. The evidence simply did not show, on a balance of probabilities, that the source of his T4 income from the Ciccone Group was wholly, or even partially, the Scheme.

VI. **CONCLUSION**

[86] Accordingly, based on evidence submitted by the Respondent at the hearing of this matter and the assumptions relied upon by the Minister in the Reply, the Respondent has not established, on a balance of probabilities, that any of the Assessed Persons, as principal or agent, sold, issued or accepted consideration in respect of the Scheme prior to the Minister issuing an identification number for the Scheme. Therefore, the Respondent has not proved, on a balance of probabilities that any the Assessed Persons are liable to a penalty under subsection 237.1(7.4).

[87] As a result, the Minister is not entitled to rely on subsection 237.1(6.2) to reassess Mr. Toews for the 2008 taxation year beyond the normal reassessment period. Mr. Toews is therefore entitled to the charitable amount he claimed for the 2008 taxation year in respect of the Scheme.

[88] The appeal is allowed, without costs, and the Reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that Mr. Toews is entitled to claim a charitable donation amount of $39,398 for the 2008 taxation year.

Signed this 11th day of September 2025.

"J. Scott Bodie"

Bodie J.

CITATION:	2025 TCC 123
COURT FILE NO.:	2024-239(IT)I
STYLE OF CAUSE:	DAVID TOEWS AND HIS MAJESTY THE KING
PLACE OF HEARING:	Oakville, Ontario
DATE OF HEARING:	June 2, 2025
REASONS FOR JUDGMENT BY:	The Honourable Justice J. Scott Bodie
DATE OF JUDGMENT:	September 11, 2025

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Devon Peavoy Sheherazade Ghorashy

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:	Shalene Curtis-Micallef Deputy Attorney General of Canada Ottawa, Canada