

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20100618**

**Docket: A-443-09**

**Citation: 2010 FCA 162**

**CORAM: NADON J.A.  
SHARLOW J.A.  
LAYDEN-STEVENSON J.A.**

**BETWEEN:**

**742190 ONTARIO INC.  
COB VAN DEL MANOR NURSING HOME**

**Appellant**

**and**

**CANADA CUSTOMS AND REVENUE AGENCY**

**Respondent**

Heard at Toronto, Ontario, on June 9, 2010.

Judgment delivered at Ottawa, Ontario, on June 18, 2010.

REASONS FOR JUDGMENT BY:

SHARLOW J.A.

CONCURRED IN BY:

NADON J.A.  
LAYDEN-STEVENSON J.A.

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**REASONS FOR JUDGMENT**

**SHARLOW J.A.**

[1] 742190 Ontario Inc., which until 1998 carried on a business called Van Del Manor Nursing Homes (“Van Del Manor”), has appealed a judgment of the Federal Court (2009 FC 985) dismissing Van Del Manor’s application for an order requiring the Minister of National Revenue to consider a number of requests for Ministerial review of certain source deduction assessments. For the reasons that follow, I would allow the appeal and make the order requested by Van Del Manor.

The statutory schemes

[2] In the context of this case, the term “source deductions” refers to amounts that Van Del Manor as an employer was required to withhold from remuneration paid to its employees and remit to the federal government on account of amounts payable by the employees as tax under the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.), contributions under the *Canada Pension Plan*, R.S.C. 1985, c. C-8, and premiums under the *Unemployment Insurance Act*, R.S.C. 1985, c. U-1, and its statutory successor, the *Employment Insurance Act*, S.C. 1996, c. 23.

[3] It is not clear whether the amounts in issue also include amounts payable by Van Del Manor on its own account as the “employer’s share” of contributions under the *Canada Pension Plan* and premiums under the *Unemployment Insurance Act* and the *Employment Insurance Act*, but nothing turns on that.

[4] The disposition of this appeal requires an understanding of five different statutory schemes relating to the formal determination by the Minister of an employer’s liability for source deductions, and the procedure for challenging such a determination. The relevant provisions of the five statutory schemes are reproduced in appendices to these reasons:

- (a) the *Income Tax Act* (Appendix A),
- (b) the *Canada Pension Plan Act* as it read before December 18, 1997 (Appendix B),
- (c) the *Canada Pension Plan* as it now reads (Appendix C ),
- (d) the *Unemployment Insurance Act* (Appendix D), and

(e) the *Employment Insurance Act* (Appendix E).

[5] Each of these statutory schemes is lengthy and complex, and each has some unique provisions. However, for the purposes of this appeal it is enough to understand four elements that these statutory schemes have in common: (1) the assessment of the liability to pay, (2) the notification of the assessment, (3) the right to a Ministerial review of the assessment, and (4) the right to a judicial appeal of the assessment.

[6] The first common element is the assessment. The word “assessment” generally refers to the determination by the Minister of the amount of a person’s liability, and includes the act of making the determination and the product of the determination (*Canada v. Anchor Pointe Energy Ltd.* (F.C.A.), [2008] 1 F.C.R. 839, 2007 FCA 188 at paragraph 32). The assessment may be based on a return or report filed by the person or information obtained by the Minister from another source. The review may be cursory (such as an administrative processing of the person’s return or report) or it may involve an audit or a more extensive investigation. Typically, the statute will also provide that the notice of assessment is determinative of the amount of the liability of the assessed person subject only to changes that may be made by a reassessment, including a reassessment after a Ministerial review or judicial appeal.

[7] The second common element is the notification. Generally, the Minister has a legal obligation to prepare a document called a notice of assessment stating the amount of the assessment and other relevant particulars, and a legal obligation to send the notice of assessment to the person who is obliged to pay the assessed amount. The statute may stipulate the method by which the

notice of assessment must be sent, and may also stipulate one or more presumptions upon which the Minister may rely if it becomes necessary to prove that the notice of assessment was sent.

[8] The third common element is the right of the person assessed to request a review of the assessment by the Minister (for assessments under the *Income Tax Act*, this is referred to as a right to object). The statute stipulates the period within which that right must be exercised, and may provide that the limitation period may be extended. The statute may also state one or more presumptions that may be made if it becomes necessary to prove the date of the commencement of the limitation period.

[9] The fourth common element is the right of the person assessed to appeal the assessment, or in other words to have the Tax Court of Canada determine the correctness of the assessment. The Tax Court has no jurisdiction to consider an appeal of an assessment unless the person assessed has validly exercised the right to request a Ministerial review or, in the case of an income tax assessment, to object (*Bormann v. Canada*, 2006 FCA 83).

### Facts

[10] In January of 2007, Van Del Manor submitted over 90 notices of objection to the Minister relating to assessments made in the years 1991 to 1998 in relation to source deductions. Most of the notices of objection related to assessments under the *Income Tax Act*, but 43 of them were intended as requests for Ministerial review of source deduction assessments under the *Canada Pension Plan*, the *Unemployment Insurance Act*, and the *Employment Insurance Act*. Those 43 requests were submitted in the form used for objections to income tax assessments, but nothing turns on that. Van

Del Manor was seeking the Ministerial review of those 43 assessments on the basis of what are said to be reconstructed notices of assessment provided by the Minister in October of 2006.

[11] The computer records maintained by the Canada Revenue Agency apparently indicate that in the years 1991 to 1998 there were 43 source deduction assessments of Van Del Manor under the *Canada Pension Plan*, the *Unemployment Insurance Act*, and the *Employment Insurance Act*. There is also evidence that, in the course of various proceedings over the years, Van Del Manor had become aware of the amount of the liabilities the Minister was claiming from Van Del Manor for source deductions, interest and penalties. However, the evidence of Van Del Manor was that, prior to October of 2006, it had not received, and its principals and directors had not seen, notices of assessment made in the years 1991 to 1998. That evidence is not contradicted. The Minister has provided no evidence that notices of the 43 assessments were sent to Van Del Manor, by mail or otherwise, before October of 2006.

[12] Counsel for Van Del Manor indicated at the oral hearing that Van Del Manor is not contesting its liability to pay the amount assessed as source deductions, but wishes to challenge its liability for the related interest and penalties. In particular, Van Del Manor seeks to assert a due diligence defence to the imposition of penalties.

[13] I note parenthetically that the affidavit of Serge Nadeau sworn June 11, 2008, which was submitted by the Minister in the Federal Court, indicates that the directors of Van Del Manor, Mr. Stainton Pinnock and Ms. Stella Pinnock, had been assessed for the unpaid source deductions but successfully appealed those assessments to the Tax Court of Canada (the judgments are dated October 6, 2004 in Tax Court files 2001-3014(IT)G and 2001-3013(IT)G; the reasons for judgment

are not in the record and apparently are not reported). The Tax Court judgments relieved the directors of personal liability for employee source deductions but did not affect the liability of Van Del Manor.

[14] The requests for Ministerial review in relation to the *Canada Pension Plan*, the *Unemployment Insurance Act*, and the *Employment Insurance Act* were referred to a delegate of the Minister, who declined to consider them on their merits, because she concluded that they were submitted outside the applicable limitation periods. That decision was communicated to Van Del Manor by letter dated March 22, 2007.

[15] The income tax objections apparently were also rejected, presumably by a different delegate of the Minister. Nevertheless they are now properly before the Tax Court of Canada, for reasons that are explained under the next heading.

#### Proceedings in the Tax Court of Canada

[16] After learning of the Minister's decisions not to consider the requests for Ministerial review or the objections, Van Del Manor filed notices of appeal in the Tax Court of Canada.

[17] The Minister moved for an order quashing the appeals for want of jurisdiction, based on two alternative grounds. The Minister's principal argument was that the Tax Court had no jurisdiction to entertain the appeals because Van Del Manor had not objected or sought Ministerial review of the assessments within the statutory time limits. The Minister's alternative argument was that the Minister's decision to reject the objections and requests for Ministerial review was in fact a refusal

to determine the merits which could be challenged only by way of an application to the Federal Court for judicial review.

[18] The Minister's motion to quash the appeals was dismissed in relation to the income tax assessments, but granted in respect of the assessments under the *Canada Pension Plan*, the *Unemployment Insurance Act* and the *Employment Insurance Act* (741290 Ontario Inc. v. Her Majesty the Queen, 2008 TCC 55). (Counsel for Van Del Manor informed the Court at the hearing of this appeal that the income tax appeals have been heard in the Tax Court and are under reserve.)

[19] The Tax Court judge, in considering the motion to quash, reasoned that the disposition of the motion turned on whether Van Del Manor had made its objections and requests for Ministerial review within the statutory limitation period. In all cases the limitation period was 90 days but in his analysis, the limitation period began in some cases when the person assessed was notified of the assessment but in other cases, when the notice of assessment was mailed. Specifically, the Tax Court judge concluded as follows:

- (a) the *date of notification rule* applied to:
  - (i) a request for Ministerial review under section 27.1 of what I will call the “new” *Canada Pension Plan* (the *Canada Pension Plan* as amended effective December 18, 1997 by S.C. 1997, c. 40, s. 65), and
  - (ii) a request for Ministerial review under section 92 of the *Employment Insurance Act* (which came into effect on June 30, 1996); and
- (b) the *date of mailing rule* applied to:



- (i) an objection under the *Income Tax Act*;
- (ii) a request for Ministerial review under subsection 27(2) of what I will call the “old” *Canada Pension Plan* (that is, the *Canada Pension Plan* as it read before December 18, 1997),
- (iii) a request for Ministerial review under the *Unemployment Insurance Act* (which was in effect before June 30, 1996).

[20] With respect to the assessments to which the *date of notification rule* applied, the Tax Court judge concluded that, by 2005 at the latest, Van Del Manor had sufficient knowledge of the contents of the assessments to constitute notification. On that basis he concluded that the January 2007 requests for Ministerial review were out of time in relation to assessments under the new *Canada Pension Plan* (namely, assessments that the Minister says were made on or after December 18, 1997) and the *Employment Insurance Act* (namely, assessments that the Minister says were made on or after June 30, 1996). The appeals of those assessments were quashed for want of jurisdiction. As against Van Del Manor, that was a final judgment that Van Del Manor could have appealed to the Federal Court of Appeal, but did not. Van Del Manor accepts that it has no further remedies in relation to the assessments under the new *Canada Pension Plan* or the *Employment Insurance Act*.

[21] With respect to the assessments to which the *date of mailing rule* applied, the Tax Court judge noted the jurisprudence establishing that the burden is on the Minister to prove that the assessments were mailed. He concluded that the Minister had not met that burden. The Tax Court judge said that he would have dismissed the Minister’s motion to quash the appeals relating to the

assessments that were subject to the date of mailing rule, but for the Minister's alternative argument that the Minister had not made a decision that could be appealed to the Tax Court at all.

[22] The Tax Court judge rejected that argument for the income tax assessments because paragraph 169(1)(b) of the *Income Tax Act* provides for a right of appeal where the Minister makes no decision. However, he accepted it for assessments under the old *Canada Pension Plan* and the *Unemployment Insurance Act*, because neither of those statutes has an analogous provision.

[23] In accepting the Minister's alternative argument in relation to the assessments under the old *Canada Pension Plan* and the *Unemployment Insurance Act*, the Tax Court judge was following *Power v. Minister of National Revenue*, 2005 TCC 200, in which Justice Bowie held that a decision of the Minister to reject a request for Ministerial review because it is filed late is not a decision that can be appealed to the Tax Court. He characterized such a decision as a refusal to decide, which can be challenged only by way of an application to the Federal Court for judicial review. In my view, the correctness of the principle in *Power* is an open question. However, the correctness of the *Power* case was not argued in this appeal.

[24] The Tax Court judge concluded his reasons by suggesting to Van Del Manor that only the Federal Court has the jurisdiction to grant a remedy for the Minister's refusal to review an assessment. Van Del Manor accepted that suggestion, as described under the next heading.

#### Proceedings in the Federal Court

[25] Van Del Manor commenced an application for judicial review in the Federal Court in relation to the requests for Ministerial review of the assessments under the old *Canada Pension*

*Plan* (the assessments the Minister says were made before December 18, 1997) and under the *Unemployment Insurance Act* (the assessments the Minister says were made before June 30, 1996). Van Del Manor sought among other things an order compelling the Minister to consider the requests for Ministerial review on their merits.

[26] In opposing the application for judicial review, the Minister invited the Federal Court judge to conclude, contrary to the decision of the Tax Court judge, that the requests for Ministerial review of assessments under the old *Canada Pension Plan* and the *Unemployment Insurance Act* were filed late. The Minister's argument was based on authorities not cited to the Tax Court judge, including sections 43 and 44 of the *Interpretation Act*, R.S.C. 1985, C. I-21, and some cases. The Federal Court judge agreed that the requests for Ministerial review were filed late and dismissed Van Del Manor's application for judicial review on that basis.

#### Issues on appeal

##### *(a) Issue estoppel and abuse of process*

[27] Van Del Manor argues that the Minister is barred by the doctrines of issue estoppel or abuse of process from arguing in the Federal Court that the requests for Ministerial review were filed late. The Minister argues that those doctrines have no application in this case because the issues in the Tax Court were not the same as the issues in the Federal Court, and because the Minister was barred from appealing the Tax Court judgment because it was an interlocutory judgment in an informal proceeding (see subsection 27(1.2) of the *Federal Courts Act*, R.S.C. 1985, c. F-7).

[28] The doctrine of issue estoppel was well summarized by Justice Malone, writing for this Court in *Apotex Inc. v. Merck & Co. (C.A.)*, [2003] 1 F.C. 242. I reproduce here the relevant excerpts from that summary (my emphasis):

(¶26) Issue estoppel applies to preclude relitigation of an issue which has been conclusively and finally decided in previous litigation between the same parties or their privies [*Angle v. M.N.R.*, [1975] 2 S.C.R. 248 and *Grandview (Town of) v. Doering* [1976] 2 S.C.R. 621]. It applies not only to issues decided finally and conclusively, but also to arguments that could have been raised by a party in exercise of reasonable diligence (*Fidelitas Shipping Co. Ltd. v. V/O Exportchleb*, [1966] 1 Q.B. 630 (C.A.); *Merck & Co. v. Apotex Inc.* (1999), 5 C.P.R. (4<sup>th</sup>) 363 (F.C.A.)). Issue estoppel applies where an issue has been decided in one action between the parties, and renders that decision conclusive in a later action between the same parties, notwithstanding that the cause of action may be different (*Hoystead v. Commissioner of Taxation*, [1926] A.C. 155 (P.C.); *Minott v. O'Shanter Development Co.* (1999), 42 O.R. (3d) 321 (C.A.)). The second cause of action, however, must involve issues of fact or law which were decided as a fundamental step in the logic of the prior decision. Issue estoppel does not arise if the question arose collaterally or incidentally in the earlier proceedings. The test for such an inquiry is whether the determination on which it is sought to found the estoppel is so fundamental to the substantive decision that the latter cannot stand without the former (*Angle, supra*; *R. v. Duhamel* (1981), 33 A.R. 271 (C.A.), affirmed by [1984] 2 S.C.R. 555).

(¶27) In the words of Moir J.A. in *Duhamel, supra*, adopted by Lamer C.J. on appeal, “[t]his contemplates the premise that the prior decision could not have been obtained without the point in issue being resolved in favour of the party urging the estoppel” (*Duhamel, supra*, at 278). In essence, this statement is merely an affirmation of the principles articulated by Dickson J. in *Angle, supra*, in 1974. This does not necessarily imply, however, that the issue must have been the main point or *ratio decidendi* of the first decision, but rather that resolution of the issue is an essential element of the logic or reasoning behind it (*Iron v. Saskatchewan (Minister of Environment and Public Safety)*, [1993] 6 W.W.R. 1 (Sask. C.A.) at page 11). The decision which is said to give rise to the estoppel need not be a decision which determines the entire subject-matter of the litigation. The test for issue estoppel is a substantive issue test where the decision affects substantive rights of the parties with respect to a matter bearing on the merits of the cause of action (see D. Lange, *The Doctrine of Res Judicata in Canada* (Toronto: Butterworths, 2000) at 78).

...

(¶29) Finality in litigation is the paramount policy concern; a party should not be vexed twice for resolution of an issue already decided conclusively. A litigant should have only “one bite at the cherry” (*Danyluk v. Ainsworth Technologies Inc.* [2001] 2 S.C.R. 460 at paragraphs. 18-19; *Hoystead, supra*)...

[29] In my view, this is a case where either the doctrine of issue estoppel, or the broader doctrine of abuse of process, should have barred the Minister from asserting in the Federal Court that the Ministerial review requests in issue were filed late. The issue of timeliness had been determined conclusively in Van Del Manor's favour by the Tax Court judge, in a proceeding involving the same parties and the same facts as the application for judicial review heard by the Federal Court judge. As between these parties and in relation to the assessments in issue, the Minister and Van Del Manor should be bound by the Tax Court judge's conclusion that the requests for Ministerial review of the assessments under the old *Canada Pension Plan* and the *Unemployment Insurance Act* were not filed late.

[30] In my view, it is not relevant that the Minister could not appeal the decision of the Tax Court. Parliament has chosen to deny parties the right to appeal an interlocutory judgment of the Tax Court in matters heard under the informal procedure of that Court. That is a legislative policy choice that necessarily entails the prospect that such a decision of the Tax Court is binding as between the parties, whether or not it is correct in law. The Minister chose to bring an interlocutory motion to quash the appeals of Van Del Manor, thus risking a decision that could not be appealed. It would have been open to the Minister to plead the jurisdiction issue in its reply to the notices of appeal so that the question of jurisdiction could be determined in the final judgment. Having chosen the litigation strategy it did, the Minister cannot fairly complain of the consequences.

[31] For these reasons, I would allow the appeal of Van Del Manor from the judgment of the Federal Court judge and set aside his judgment. In the interest of judicial economy, I will not refer

this matter back to the Federal Court. Instead I will consider the application for judicial review *de novo*.

[32] The issue raised in Van Del Manor's application for judicial review is whether the Minister should be compelled to consider, on their merits, Van Del Manor's requests for Ministerial review of source deduction assessments under the old *Canada Pension Plan* and the *Unemployment Insurance Act*, given that the requests were made on a timely basis. As the main remedy sought by Van Del Manor is an order in the nature of *mandamus*, the principles to be applied are those set out in *Apotex Inc. v. Canada (Attorney General) (C.A.)*, [1994] 1 F.C. 742, at pages 766-9.

[33] In my view, a fair application of those principles compels the following conclusions: (1) The Minister has a public duty to review an assessment when requested on a timely basis to do so. (2) Given that the requests for review in this case were timely, Van Del Manor has a clear right to performance of that duty. (3) The Minister has no discretion to decline to review the assessments. (4) Van Del Manor has no adequate alternative remedy. In this context, the remedy of a waiver is not adequate because it is granted only at the discretion of the Minister. (5) It cannot be said that the requested review is without merit, because the income tax appeals that have apparently proceeded on the same or similar grounds have been heard by the Tax Court and are under reserve. (6) There is no equitable bar to relief. The Minister cannot rely on the doctrine of *laches* to preclude a Ministerial review that is made on a timely basis. Nor does the fact that Van Del Manor has previously requested waivers of interest and penalties necessarily mean that Van Del Manor has conceded that they were correctly assessed. There is no evidence that a waiver cannot be requested

without such a concession, or that the Minister notified Van Del Manor that the making of a waiver request would be construed as a concession.

[34] I conclude that it would be appropriate in this case to make an order requiring the Minister to review the source deduction assessments that are the subject of Van Del Manor's application for judicial review, namely, the assessments made under the old *Canada Pension Plan* and the *Unemployment Insurance Act*.

*(b) Alternatively, were the requests for Ministerial review filed late?*

[35] Even if the issue of late filing had been properly raised in the Federal Court, I would have concluded that the appeal should be allowed because the record cannot reasonably support the factual conclusion that the requests for Ministerial review of the source deduction assessments made under the old *Canada Pension Plan* and the *Unemployment Insurance Act* were filed late.

[36] The statutory obligation of the Minister in relation to those assessments must be determined on the basis of the statutes in force when, according to the Minister, the assessments were made. The Minister has asserted from the outset and still asserts that the assessments in issue were made before December 18, 1997 (in the case of the assessments under the old *Canada Pension Plan*) and before June 30, 1996 (in the case of assessments under the *Unemployment Insurance Act*). As the Tax Court judge correctly concluded, those provisions obliged the Minister to notify the assessed person of the assessments by mailing notices of assessment. The Minister to this day has not produced evidence that the notices of assessment were mailed to Van Del Manor when the assessments were made, or at any time thereafter.

[37] The Minister has argued that, by virtue of amendments to the *Canada Pension Plan* effective December 18, 1997, and by virtue of the repeal of the *Unemployment Insurance Act* on June 30, 1996 and the enactment of the *Employment Insurance Act* on that date, the statutory limitation period for a request for Ministerial review of an assessment does not commence on the date of the mailing of the notice of assessment, but on the date on which the person assessed is “notified” of the assessments. I need not determine whether this argument is correct. For the purposes of this appeal I will assume without deciding that it is.

[38] In the context of the relevant statutory schemes, a person is “notified” of an assessment when the Minister provides the person with information equivalent to the substantive contents of a notice of assessment. The record before this Court discloses no evidence that the Minister provided Van Del Manor with that information at any time before October of 2006, when the reconstructed notices of assessment were created and given to Van Del Manor.

[39] The Minister cites a number of other proceedings taken by Van Del Manor in seeking relief from the assessments in issue, in particular a series of waiver requests, in support of the contention that notification occurred in 2005 at the latest. However, the Minister has not provided the documentary foundation for any of those waiver requests. They may well have been based on statements of account or documents relating to enforcement proceedings, none of which are in the record, which may or may not have contained the same substantive information as notices of assessment.



### Conclusion

[40] For these reasons, I would allow the appeal with costs and set aside the judgment of the Federal Court. Making the judgment that should have been made, I would allow Van Del Manor's application for judicial review with costs and order the Minister to consider Van Del Manor's requests for Ministerial review of source deduction assessments made under the *Canada Pension Plan* before December 18, 1997 and under the *Unemployment Insurance Act* before June 30, 1996, on the basis that they were not filed late. Costs will be assessed on the ordinary scale, that is, under Column III of Tariff B of the *Federal Courts Rules*.

### Postscript

[41] At the conclusion of the hearing of this appeal, the panel advised counsel that judgment was reserved. The next day, counsel for the Minister submitted to the Court a letter containing a new argument in support of his submission against the application of the doctrine of issue estoppel. The new argument is that according to section 18.28 of the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2, a judgment of the Tax Court under the informal procedure (as was the decision of The Tax Court judge in this case) has no precedential value. Counsel for Van Del Manor wrote a letter to the Court in response, objecting to this new argument being raised in this manner but nevertheless submitting that section 18.28 of the *Tax Court of Canada Act* cannot be interpreted as a limitation to the doctrines of issue estoppel or abuse of process.

[42] Counsel sometimes becomes aware of a new authority or new argument after the conclusion of oral argument on appeal. If judgment has not yet been rendered and the new point is considered important enough to raise despite the fact that the oral hearing has been concluded, the correct

procedure is to consult with counsel for the other party or parties to see if agreement can be reached on whether the new point should be raised, and on a method of raising it that permits a formal response from the other party or parties if they consider a response is necessary. Failing agreement, the party seeking to raise the new point may file a notice of motion to seek leave to raise it. Such motions are and should be rare, and will not be granted without good reason.

[43] This Court normally would not entertain a new argument raised by letter as counsel for the Minister has done in this case unless all parties had consented. However, I propose in this case to make an exception because the point is easily dealt with and my conclusion favours Van Del Manor.

[44] I agree with counsel for Van Del Manor on the meaning of section 18.28 of the *Tax Court of Canada Act*. To say that a judgment has no precedential value means that it does not state the law so as to be binding in a future case. A judgment may for any number of reasons have no precedential value, but even so it is binding on the parties and may prevent either party from attempting to relitigate an issue previously decided in the other party's favour on the same facts.

“K. Sharlow”

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J.A.

“I agree  
M. Nadon J.A.”

“I agree  
Carolyn Layden-Stevenson J.A.”

## APPENDIX A

### *Income Tax Act, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.)*

#### **Subsection 165 (1) and (3) (Division I of Part 1)**

**165.** (1) A taxpayer who objects to an assessment under this Part may serve on the Minister a notice of objection, in writing, setting out the reasons for the objection and all relevant facts,

...

*(b)* in any other case, on or before the day that is 90 days after the day of mailing of the notice of assessment.

...

(3) On receipt of a notice of objection under this section, the Minister shall, with all due dispatch, reconsider the assessment and vacate, confirm or vary the assessment

or reassess, and shall thereupon notify the taxpayer in writing of the Minister's action.

**165.** (1) Le contribuable qui s'oppose à une cotisation prévue par la présente partie peut signifier au ministre, par écrit, un avis d'opposition exposant les motifs de son opposition et tous les faits pertinents, dans les délais suivants :

[...]

*b)* dans les autres cas, au plus tard le 90<sup>e</sup> jour suivant la date de mise à la poste de l'avis de cotisation.

[...]

(3) Sur réception de l'avis d'opposition, le ministre, avec diligence, examine de nouveau la cotisation et l'annule, la ratifie ou la modifie ou établit une nouvelle

cotisation. Dès lors, il avise le contribuable de sa décision par écrit.

#### **Subsection 169 (1) (Division I of Part 1)**

**169.** (1) Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied after either

*(a)* the Minister has confirmed the assessment or reassessed, or

**169.** (1) Lorsqu'un contribuable a signifié un avis d'opposition à une cotisation, prévu à l'article 165, il peut interjeter appel auprès de la Cour canadienne de l'impôt pour faire annuler ou modifier la cotisation:

*a)* après que le ministre a ratifié la cotisation ou procédé à une nouvelle cotisation;

(b) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed,

but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

b) après l'expiration des 90 jours qui suivent la signification de l'avis d'opposition sans que le ministre ait notifié au contribuable le fait qu'il a annulé ou ratifié la cotisation ou procédé à une nouvelle cotisation;

toutefois, nul appel prévu au présent article ne peut être interjeté après l'expiration des 90 jours qui suivent la date où avis a été expédié par la poste au contribuable, en vertu de l'article 165, portant que le ministre a ratifié la cotisation ou procédé à une nouvelle cotisation.

### Subsection 227 (10)

**227.** (10) The Minister may at any time assess any amount payable under

(a) subsection 227(8), 227(8.1), 227(8.2), 227(8.3) or 227(8.4) or 224(4) or 224(4.1) or section 227.1 or 235 by a person,

...

and, where the Minister sends a notice of assessment to that person or partnership, Divisions I and J of Part I apply with any modifications that the circumstances require.

**227.** (10) Le ministre peut, en tout temps, établir une cotisation pour les montants suivants :

a) un montant payable par une personne en vertu des paragraphes (8), (8.1), (8.2), (8.3) ou (8.4) ou 224(4) ou (4.1) ou des articles 227.1 ou 235;

[...]

Les sections I et J de la partie I s'appliquent, avec les modifications nécessaires, à tout avis de cotisation que le ministre envoie à la personne ou à la société de personnes.

### Subsection 244 (14) and (15)

**244.** (14) For the purposes of this Act, where any notice or notification described in subsection 149.1(6.3), 152(3.1), 165(3)

**244.** (14) Pour l'application de la présente loi, la date de mise à la poste d'un avis ou d'une notification, prévus aux paragraphes

or 166.1(5) or any notice of assessment or determination is mailed, it shall be

149.1(6.3), 152(3.1), 165(3) ou 166.1(5), ou d'un avis de cotisation ou de

presumed to be mailed on the date of that notice or notification.

détermination est présumée être la date apparaissant sur cet avis ou sur cette notification.

(15) Where any notice of assessment or determination has been sent by the Minister as required by this Act, the assessment or determination is deemed to have been made on the day of mailing of the notice of the assessment or determination.

(15) Lorsqu'un avis de cotisation ou de détermination a été envoyé par le ministre comme le prévoit la présente loi, la cotisation est réputée avoir été établie et le montant, déterminé à la date de mise à la poste de l'avis de cotisation ou de détermination.

## APPENDIX B

### *Canada Pension Plan, R.S.C. 1985, c. C-8, as it read before December 18, 1997*

#### Subsection 22 (1) and (2)

22. (1) The Minister may assess an employer for an amount payable by him under this Act, or may re-assess the employer or make additional assessments as the circumstances require, and the expression "assessment" when used in this Act with reference to any action so taken by the Minister under this section includes any such re-assessment or additional assessment.

22. (1) Le ministre peut évaluer le montant payable par un employeur aux termes de la présente loi ou il peut réévaluer ce montant à l'égard de cet employeur ou établir des évaluations supplémentaires selon que les circonstances l'exigent; l'expression «évaluation», utilisée dans la présente loi relativement à toute initiative ainsi prise par le ministre en vertu du présent article, s'entend également d'une nouvelle évaluation ou d'une évaluation supplémentaire.

(2) After assessing an employer for an amount payable by him under this Act, the Minister shall send the employer a notice of assessment, and on that notice being sent to the employer, the assessment shall be

(2) Après avoir évalué le montant payable par un employeur aux termes de la présente loi, le ministre envoie à l'employeur un avis d'évaluation; dès l'envoi de cet avis à

deemed to be valid and binding, subject to being varied or vacated on appeal under this Act, and the employer is liable to pay to Her Majesty the amount thereof forthwith.

l'employeur, l'évaluation est réputée valide et obligatoire sous réserve de modification ou d'annulation sur appel prévu par la présente loi et l'employeur est tenu d'en payer sans délai le montant à Sa Majesté.

### Subsection 23 (2)

**23.** (2) Section 160, subsections 161 (11) and 220 (3.1), (4) and (5), sections 221.1 and 223 to 224.3, subsections 227 (9.1) and (10), sections 229, 236 and 244 (except subsections 244 (1) and (4)) and subsections 248(7) and (11) of the *Income Tax Act* apply, with such modifications as the circumstances require, to all contributions, interest, penalties and other amounts payable by a person under this Act, and for the purposes of this subsection, the reference in subsection 224 (1.2) of that Act to “subsection 227 (10.1) or a similar provision” shall be read as a reference to “section 22 of the *Canada Pension Plan*”.

**23.** (2) L'article 160, les paragraphes 161 (11) et 220 (3.1), (4) et (5), les articles 221.1 et 223 à 224.3, les paragraphes 227 (9.1) et (10), les articles 229, 236 et 244, à l'exception des paragraphes 244(1) et (4), et les paragraphes 248 (7) et (11) de la *Loi de l'impôt sur le revenu* s'appliquent, avec les adaptations nécessaires, aux cotisations, intérêts, pénalités et autres montants payables par une personne en vertu de la présente loi. Pour l'application du présent paragraphe, le passage, au paragraphe 224 (1.2) de cette loi, « du paragraphe 227 (10.1) ou d'une disposition semblable » est remplacé par le passage « de l'article 22 du *Régime de pensions du Canada* ».

### Subsection 27 (2) and (5)

**27.** (2) Where the Minister has assessed an employer for an amount payable by him under this Act, the employer or his representative may appeal to the Minister for a reconsideration of the assessment, either as to whether any amount should be assessed as payable or as to the amount so assessed, within ninety days of the day of mailing of the notice of assessment.

**27.** (2) Lorsque le ministre a évalué le montant payable par un employeur aux termes de la présente loi, l'employeur ou son représentant peut, dans les quatre-vingt-dix jours de l'envoi par la poste de l'avis d'évaluation, en appeler au ministre pour demander que soit reconsidérée l'obligation de verser un montant ou le montant ainsi évalué.

...

[...]

(5) On an application or an appeal under this section, the Minister shall, with all due dispatch, determine the question raised by the application or vacate, confirm or vary the assessment or re-assess, and he shall thereupon notify any employee affected or his representative and the employer or his representative.

(5) Saisi d'une demande ou d'un appel aux termes, du présent article, le ministre arrête, avec toute la diligence voulue, la question soulevée par la demande ou annule, confirme ou modifie l'évaluation, ou fait une réévaluation, et il en avise dès lors tout employé intéressé ou son représentant ainsi que l'employeur ou son représentant.

### **Subsection 28 (1)**

**28.** (1) An employee or employer affected by a determination by or a decision on an appeal to the Minister under section 27, or the representative of either of them, may, within ninety days after the determination or decision is communicated to that employee or employer, or within such longer time as the Tax Court of Canada on application made to it within those ninety days may allow, appeal from the determination or decision to that Court by sending a notice of appeal in prescribed form by registered mail to the Registry of that Court.

**28.** (1) Un employé ou un employeur visé par l'arrêt du ministre ou par sa décision sur l'appel que prévoit l'article 27, ou son représentant, peut, dans les quatre-vingt-dix jours qui suivent la date à laquelle l'arrêt ou la décision lui est communiquée, ou dans le délai supplémentaire que la Cour canadienne de l'impôt peut accorder sur demande qui lui est présentée dans les quatre-vingt-dix jours, en appeler de l'arrêt ou de la décision en question auprès de cette Cour en envoyant un avis d'appel dans la forme prescrite par courrier recommandé au greffe de la Cour.

### **Subsection 29 (1)**

**29.** (1) The Minister has authority to decide any question of fact or law necessary to be decided in determining any question or reconsidering any assessment required to be determined or reconsidered under section 27 and to decide whether an employee or employer may be or is affected thereby.

**29.** (1) Le ministre a le pouvoir de décider toute question de fait ou de droit qui doit être tranchée, en arrêtant une question quelconque ou en examinant de nouveau une évaluation dont l'arrêt ou la reconsidération est exigé par l'article 27, et de décider si un employé ou un employeur est ou peut être visé de ce fait.

## APPENDIX C

### *Canada Pension Plan, R.S.C., 1985, c. C-8 (current version)*

#### Subsection 22 (1) and (2)

22. (1) The Minister may assess an employer for an amount payable by him under this Act, or may re-assess the employer or make additional assessments as the circumstances require, and the expression “assessment” when used in this Act with reference to any action so taken by the Minister under this section includes any such re-assessment or additional assessment.

(2) After assessing an employer for an amount payable by him under this Act, the Minister shall send the employer a notice of assessment, and on that notice being sent to the employer, the assessment shall be deemed to be valid and binding, subject to being varied or vacated on appeal under this Act, and the employer is liable to pay to Her Majesty the amount thereof forthwith.

22. (1) Le ministre peut évaluer le montant payable par un employeur aux termes de la présente loi ou il peut réévaluer ce montant à l'égard de cet employeur ou établir des évaluations supplémentaires selon que les circonstances l'exigent ; l'expression «évaluation », utilisée dans la présente loi relativement à toute initiative ainsi prise par le ministre en vertu du présent article, s'entend également d'une nouvelle évaluation ou d'une évaluation supplémentaire.

(2) Après avoir évalué le montant payable par un employeur aux termes de la présente loi, le ministre envoie à l'employeur un avis d'évaluation; dès l'envoi de cet avis à l'employeur, l'évaluation est réputée valide et obligatoire sous réserve de modification ou d'annulation sur appel prévu par la présente loi et l'employeur est tenu d'en payer sans délai le montant à Sa Majesté.

#### Subsection 23 (2)

23. (2) Section 160, subsections 161(11) and 220(3.1), (4) and (5), sections 221.1 and 223 to 224.3, subsections 227(9.1) and (10), sections 229, 236 and 244 (except subsections 244(1) and (4)) and subsections 248(7) and (11) of the *Income Tax Act* apply, with such modifications as the circumstances require, in relation to all

23. (2) L'article 160, les paragraphes 161(11) et 220(3.1), (4) et (5), les articles 221.1 et 223 à 224.3, les paragraphes 227(9.1) et (10), les articles 229, 236 et 244 (sauf les paragraphes 244(1) et (4)) et les paragraphes 248(7) et (11) de la *Loi de l'impôt sur le revenu* s'appliquent, avec les adaptations nécessaires, aux cotisations,



contributions, interest, penalties and other amounts payable by a person under this Act, and for the purposes of this subsection,

(a) the reference in subsection 224(1.2) of that Act to “subsection 227(10.1) or a similar provision” shall be read as a reference to “section 22 of the *Canada Pension Plan*”; and

(b) subsection 224(1.2) of the *Income Tax Act* shall apply to employer’s contributions, employee’s contributions, and related interest, penalties or other amounts, subject to subsections 69(1) and 69.1(1) of the *Bankruptcy and Insolvency Act* and section 11.09 of the *Companies’ Creditors Arrangement Act*.

intérêts, pénalités et autres montants payables par une personne en vertu de la présente loi. Pour l’application du présent paragraphe :

a) le passage « du paragraphe 227(10.1) ou d’une disposition semblable » au paragraphe 224(1.2) de cette loi vaut mention de « de l’article 22 du *Régime de pensions du Canada* »;

b) le paragraphe 224(1.2) de la *Loi de l’impôt sur le revenu* s’applique aux cotisations d’employeur, aux cotisations d’employé et aux intérêts, pénalités ou autres sommes afférents, sous réserve des paragraphes 69(1) et 69.1(1) de la *Loi sur la faillite et l’insolvabilité* et de l’article 11.09 de la *Loi sur les arrangements avec les créanciers des compagnies*.

### Section 27.1

**27.1** An employer who has been assessed under section 22 may appeal to the Minister for a reconsideration of the assessment, either as to whether an amount should be assessed as payable or as to the amount assessed, within 90 days after being notified of the assessment.

**27.1** Lorsqu’une somme payable par lui a été évalué par le ministre au titre de l’article 22, l’employeur peut, dans les quatre-vingt-dix jours suivant la date à laquelle il reçoit l’avis d’évaluation, demander au ministre de réviser l’évaluation quant à la question de savoir s’il y a matière à évaluation ou quel devrait être le montant de celle-ci.

### Section 27.2

**27.2** (1) Where an appeal is made to the Minister under section 27 or 27.1, the Minister shall

**27.2** (1) Le ministre notifie son intention de régler la question relative à l’appel ou à la révision à tous les intéressés, y compris le

(a) notify any person who may be affected by the appeal that the Minister intends to decide the appeal, including the Minister of Social Development in the case of an appeal of a ruling; and

(b) give the person an opportunity to provide information and to make representations to protect the person's interests, as the circumstances require.

(2) An appeal shall be addressed to the Assistant Director of Appeals in a Tax Services Office of the Canada Revenue Agency and delivered or mailed to that office.

(3) The Minister shall decide the appeal within a reasonable time after receiving it and shall notify the affected persons of the decision in any manner that the Minister considers adequate.

ministre du Développement social dans les cas visés aux articles 27 ou 27.1; il leur donne également, selon le besoin, la possibilité de fournir des renseignements et de présenter des observations pour protéger leurs intérêts.

(2) Les demandes d'appel et de révision sont adressées au directeur adjoint des Appels d'un bureau des services fiscaux de l'Agence du revenu du Canada et sont livrées à ce bureau ou y sont expédiées par la poste.

(3) Le ministre règle la question soulevée par l'appel ou la demande de révision dans les meilleurs délais et notifie le résultat aux intéressés de la manière qu'il juge adéquate.

### Subsection 28 (1)

**28.** (1) A person affected by a decision on an appeal to the Minister under section 27 or 27.1, or the person's representative, may, within 90 days after the decision is communicated to the person, or within any longer time that the Tax Court of Canada on application made to it within 90 days after the expiration of those 90 days allows, appeal from the decision to that Court in accordance with the *Tax Court of Canada Act* and the applicable rules of court made thereunder.

**28.** (1) La personne visée par la décision du ministre sur l'appel que prévoit les articles 27 ou 27.1, ou son représentant, peut, dans les quatre-vingt-dix jours qui suivent la date à laquelle la décision lui est communiquée, ou dans le délai supplémentaire que la Cour canadienne de l'impôt peut accorder sur demande qui lui est présentée dans les quatre-vingt-dix jours suivant l'expiration de ces quatre-vingt-dix jours, en appeler de la décision en question auprès de cette Cour en conformité avec la *Loi sur la Cour*

*canadienne de l'impôt* et les règles de cour applicables prises en vertu de cette loi.

### **Subsection 29 (2)**

**29.** (2) Except as otherwise provided in this Act, the decision of the Minister or the Tax Court of Canada of an appeal under section 27, 27.1 or 28 and a ruling of an authorized officer under section 26.1 is final and binding for all purposes of this Act.

**29.** (2) Sauf disposition contraire de la présente loi, toute décision prise par la Cour ou le ministre aux termes des articles 27, 27.1 ou 28, de même que toute décision prise par un fonctionnaire en vertu de l'article 26.1, est définitive et obligatoire pour tout ce qui touche à la présente loi.

## **APPENDIX D**

### ***Unemployment Insurance Act, R.S.C. 1985, c. U-1, in effect before June 30, 1996***

#### **Subsection 56 (1), (2) and (4)**

**56.** (1) The Minister may assess an employer for an amount payable by him under this Act, or may reassess that employer or make such additional assessments as the circumstances require, and the expression "assessment" when used in this Act with reference to any action so taken by the Minister under this section includes that reassessment or additional assessment.

(2) After assessing an employer for an amount payable by him under this Act, the Minister shall send the employer a notice of assessment, and on that notice being sent to the employer the assessment shall be deemed to be valid and binding subject to being vacated or varied on appeal under this Act, and the employer is liable to pay

**56.** (1) Le ministre peut établir une évaluation initiale, une évaluation révisée ou, au besoin, des évaluations complémentaires de ce que doit payer un employeur, et le mot « évaluation », lorsqu'il est utilisé dans la présente loi pour désigner une initiative ainsi prise par le ministre en vertu du présent article, s'entend également de l'évaluation révisée ou complémentaire.

(2) Après toute évaluation d'une somme payable par un employeur en vertu de la présente loi, le ministre lui envoie un avis d'évaluation. Dès l'envoi de cet avis, l'évaluation est réputée valide et obligatoire sous réserve de modification ou d'annulation sur appel prévu par la présente loi, et l'employeur est tenu de payer

to Her Majesty the amount thereof  
forthwith.

...

(4) The day of mailing of a notice of assessment described in subsection (2) shall, in the absence of any evidence to the contrary, be deemed to be the day appearing from the notice to be the date thereof unless called in question by the Minister or by a person acting for him or for Her Majesty.

immédiatement à Sa Majesté la somme  
indiquée.

[...]

(4) La date d'expédition par la poste d'un avis d'évaluation visé au paragraphe (2) est réputée, à défaut de preuve contraire, être la date qui, au vu de cet avis, paraît être la date d'expédition, sauf si elle est contestée par le ministre ou par une personne agissant pour lui ou pour Sa Majesté.

#### **Subsection 61 (2) and (6)**

**61. (2)** Where the Minister has assessed an employer for an amount payable by him under this Act, the employer may appeal to the Minister for a reconsideration of the assessment, either as to whether any amount should be assessed as payable or as to the amount so assessed, within ninety days of the day of mailing of the notice of assessment.

...

(6) On an application or an appeal under this section, the Minister shall, with all due despatch, determine the question raised by the application or vacate, confirm or vary the assessment, or reassess, and he shall thereupon notify any person affected.

**61. (2)** Lorsque le ministre a évalué une somme payable par un employeur en vertu de la présente loi, l'employeur peut, dans les quatre-vingt-dix jours de la date d'expédition par la poste de l'avis d'évaluation, demander au ministre de reconsidérer l'évaluation, quant à la question de savoir s'il y a matière à évaluation ou quel devrait être le montant de l'évaluation.

[...]

(6) À la suite d'une demande faite en vertu du présent article, le ministre doit, avec toute la diligence voulue, soit régler la question soulevée par la demande, soit annuler, confirmer ou modifier l'évaluation, ou la réviser, et notifier le résultat à toute personne concernée.

### **Subsection 70 (1)**

**70.** (1) The Commission or a person affected by a determination by, or a decision on an appeal to, the Minister under section 61 may, within ninety days after the determination or decision is communicated to him, or within such longer time as the Tax Court of Canada on application made to it within those ninety days may allow, appeal from the determination or decision to that Court in the manner prescribed.

**70.** (1) La Commission ou une personne que concerne le règlement d'une question par le ministre ou une décision sur appel au ministre, en vertu de l'article 61, peut, dans les quatre-vingt-dix jours de la communication du règlement ou de la décision ou dans le délai supplémentaire que peut accorder la Cour canadienne de l'impôt sur demande à elle présentée dans ces quatre-vingt-dix jours, interjeter appel devant la Cour canadienne de l'impôt de la manière prescrite.

### **Subsection 71 (1)**

**71.** (1) The Minister and the Tax Court of Canada have authority to decide any question of fact or law necessary to be decided in determining any question or reconsidering any assessment required to be determined or reconsidered under section 61 or 70 and to decide whether a person may be or is affected thereby, and, except as provided in this Act, the decision of the Minister, or the decision of the Tax Court of Canada, as the case may be, is final and binding for all purposes of this Act.

**71.** (1) Le ministre et la Cour canadienne de l'impôt ont le pouvoir de décider toute question de fait ou de droit qu'il est nécessaire de décider pour régler une question ou reconsidérer une évaluation qui doit être réglée ou reconsidérée en vertu des articles 61 ou 70, ainsi que de décider si une personne est ou peut être concernée et, sauf disposition contraire de la présente loi, la décision du ministre ou de la Cour canadienne de l'impôt, selon le cas, est définitive et obligatoire à toutes les fins de la présente loi.

## APPENDIX E

### *Employment Insurance Act, S.C., 1996, c. 23, (current version)*

#### Subsection 85 (1), (2) and (4)

**85.** (1) The Minister may assess an employer for an amount payable by the employer under this Act, or may reassess the employer or make such additional assessments as the circumstances require, and the expression “assessment” when used in this Act with reference to any action so taken by the Minister under this section includes a reassessment or an additional assessment.

(2) After assessing an employer for an amount payable under this Act, the Minister shall send the employer a notice of assessment, and when the notice is sent the assessment is valid and binding subject to being vacated or varied on appeal under this Act, and the employer is liable to pay the amount to Her Majesty without delay.

...

(4) The day of mailing of a notice of assessment described in subsection (2) is, in the absence of any evidence to the contrary, deemed to be the day appearing from the notice to be the date of the notice unless called into question by the Minister or by a person acting for the Minister or for Her Majesty.

**85.** (1) Le ministre peut établir une évaluation initiale, une évaluation révisée ou, au besoin, des évaluations complémentaires de ce que doit payer un employeur, et le mot « évaluation », lorsqu’il est utilisé dans la présente loi pour désigner une initiative ainsi prise par le ministre en vertu du présent article, s’entend également de l’évaluation révisée ou complémentaire.

(2) Après toute évaluation d’une somme payable par un employeur en vertu de la présente loi, le ministre lui envoie un avis d’évaluation. Dès l’envoi de cet avis, l’évaluation est réputée valide et obligatoire sous réserve de modification ou d’annulation sur appel prévu par la présente loi, et l’employeur est tenu de payer immédiatement à Sa Majesté la somme indiquée.

[...]

(4) La date d’expédition par la poste d’un avis d’évaluation visé au paragraphe (2) est réputée, à défaut de preuve contraire, être la date qui, au vu de cet avis, paraît être la date d’expédition, sauf si elle est contestée par le ministre ou par une personne agissant pour lui ou pour Sa Majesté.

## Section 92

**92.** An employer who has been assessed under section 85 may appeal to the Minister for a reconsideration of the assessment, either as to whether an amount should be assessed as payable or as to the amount assessed, within 90 days after being notified of the assessment.

**92.** Lorsque le ministre a évalué une somme payable par un employeur au titre de l'article 85, l'employeur peut, dans les quatre-vingt-dix jours suivant la date à laquelle il reçoit l'avis d'évaluation, demander au ministre de reconsidérer l'évaluation quant à la question de savoir s'il y a matière à évaluation ou quel devrait être le montant de celle-ci.

## Subsection 93 (3)

**93. (3)** The Minister shall decide the appeal within a reasonable time after receiving it and shall notify the affected persons of the decision.

**93. (3)** Le ministre règle la question soulevée par l'appel ou la demande de révision dans les meilleurs délais et notifie le résultat aux personnes concernées.

## Section 99

**99.** Section 160, subsections 161(11) and 220(3.1), sections 221.1 and 224 to 224.3 and subsections 227(9.1) and (10) and 248(7) and (11) of the *Income Tax Act* apply to all premiums, interest, penalties and other amounts payable by a person under this Part and Part VII.1, with the modifications that the circumstances require, and for the purposes of this section,

**99.** L'article 160, les paragraphes 161(11) et 220(3.1), les articles 221.1 et 224 à 224.3 et les paragraphes 227(9.1) et (10) et 248(7) et (11) de la *Loi de l'impôt sur le revenu* s'appliquent, avec les adaptations nécessaires, aux cotisations, intérêts, pénalités et autres sommes payables par une personne en vertu de la présente partie ou de la partie VII.1. Pour l'application du présent article :

(a) the reference in subsection 224(1.2) of that Act to "subsection 227(10.1) or a similar provision" is to be read as a reference to "section 85 or 152.24, as the case may be, of the *Employment Insurance Act*"; and

a) le passage « du paragraphe 227(10.1) ou d'une disposition semblable » au paragraphe 224(1.2) de cette loi vaut mention de « de l'article 85 ou 152.24, selon le cas, de la *Loi sur l'assurance-emploi* »;

(b) subsection 224(1.2) of the *Income Tax Act* applies to employer's premiums, employee's premiums, and premiums under Part VII.1, and related interest, penalties or other amounts, subject to subsections 69(1) and 69.1(1) of the *Bankruptcy and Insolvency Act* and section 11.09 of the *Companies' Creditors Arrangement Act*.

b) le paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* s'applique aux cotisations patronales, aux cotisations ouvrières, aux cotisations prévues par la partie VII.1 et aux intérêts, pénalités ou autres sommes afférents, sous réserve des paragraphes 69(1) et 69.1(1) de la *Loi sur la faillite et l'insolvabilité* et de l'article 11.09 de la *Loi sur les arrangements avec les créanciers des compagnies*.

### **Subsection 103 (1)**

**103.** (1) The Commission or a person affected by a decision on an appeal to the Minister under section 91 or 92 may appeal from the decision to the Tax Court of Canada in accordance with the *Tax Court of Canada Act* and the applicable rules of court made thereunder within 90 days after the decision is communicated to the Commission or the person, or within such longer time as the Court allows on application made to it within 90 days after the expiration of those 90 days.

**103.** (1) La Commission ou une personne que concerne une décision rendue au titre de l'article 91 ou 92, peut, dans les quatre-vingt-dix jours suivant la communication de la décision ou dans le délai supplémentaire que peut accorder la Cour canadienne de l'impôt sur demande à elle présentée dans les quatre-vingt-dix jours suivant l'expiration de ces quatre-vingt-dix jours, interjeter appel devant la Cour canadienne de l'impôt de la manière prévue par la *Loi sur la Cour canadienne de l'impôt* et les règles de cour applicables prises en vertu de cette loi.

### **Subsection 104 (1) and (2)**

**104.** (1) The Tax Court of Canada and the Minister have authority to decide any question of fact or law necessary to be decided in the course of an appeal under section 91 or 103 or to reconsider an assessment under section 92 and to decide whether a person may be or is affected by

**104.** (1) La Cour canadienne de l'impôt et le ministre ont le pouvoir de décider toute question de fait ou de droit qu'il est nécessaire de décider pour rendre une décision au titre de l'article 91 ou 103 ou pour reconsidérer une évaluation qui doit l'être au titre de l'article 92, ainsi que de



the decision or assessment.

décider si une personne est ou peut être concernée par la décision ou l'évaluation.

(2) Except as otherwise provided in this Act, a decision of the Tax Court of Canada or the Minister and a ruling of an authorized officer under section 90 are final and binding for all purposes of this Act.

(2) Sauf disposition contraire de la présente loi, la décision de la Cour canadienne de l'impôt, du ministre ou du fonctionnaire autorisé au titre de l'article 90, selon le cas, est définitive et obligatoire à toutes les fins de la présente loi.

### Section 155

**155.** The *Unemployment Insurance Act* is repealed.

**155.** La *Loi sur l'assurance-chômage* est abrogée.

### Section 161

**161.** All matters relating to the payment of premiums under the former Act shall be dealt with under that Act.

**161.** Les questions relatives au versement de cotisations payables au titre de l'ancienne loi sont traitées conformément à celle-ci.

### Subsection 190 (1)

**190.** (1) Except as otherwise provided in this section, this Act comes into force on June 30, 1996.

**190.** (1) Sous réserve des autres dispositions du présent article, la présente loi entre en vigueur le 30 juin 1996.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-443-09

**(AN APPEAL FROM THE ORDER OF THE HONOURABLE MR. JUSTICE HUGHES, DATED SEPTEMBER 30, 2009, IN FEDERAL COURT FILE NO.: T-499-08)**

**STYLE OF CAUSE:** 742190 ONTARIO INC. COB  
VAN DEL MANOR NURSING  
HOME v. CANADA CUSTOMS  
AND REVENUE AGENCY

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 9, 2010

**REASONS FOR JUDGMENT BY:** SHARLOW J.A.

**CONCURRED IN BY:** NADON J.A.  
LAYDEN-STEVENSON J.A.

**DATED:** JUNE 18, 2010

**APPEARANCES:**

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