

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20200402**

**Docket: A-189-19**

**Citation: 2020 FCA 70**

**CORAM: DAWSON J.A.  
STRATAS J.A.  
LASKIN J.A.**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant**

**and**

**CAROLINE COLITTO**

**Respondent**

Heard at Toronto, Ontario, on February 26, 2020.

Judgment delivered at Ottawa, Ontario, on April 2, 2020.

**REASONS FOR JUDGMENT BY:**

**DAWSON J.A.**

**CONCURRED IN BY:**

**STRATAS J.A.  
LASKIN J.A.**

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**Appellant**

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**CAROLINE COLITTO**

**Respondent**

**REASONS FOR JUDGMENT**

**DAWSON J.A.**

[1] The *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (Act) contains a number of provisions designed to secure the collection of monies owing under it. Two of these provisions are at issue in this appeal: subsections 160(1) and 227.1(1).

[2] Broadly speaking, subsection 227.1(1) imposes joint and several liability on a director of a corporation that fails to remit tax which the Act requires be withheld at source. Subsection 160(1) imposes joint and several liability on a transferee of property if the person's spouse (or certain other related parties) transfers property to them for less than the fair market value of the property and the transferor has an outstanding liability under the Act in or in respect of the year of the transfer or an earlier year.

[3] Subsection 160(1) and section 227.1 are set out in the Appendix to these reasons.

#### The facts

[4] Domenic Colitto was a director and shareholder of Core Precision Technologies Ltd. Between February and August 2008, Precision failed to remit source deductions to the Minister of National Revenue. It was admitted at trial that as a director of Precision Mr. Colitto did not exercise due diligence to prevent Precision's failure to remit the required source deductions.

[5] While Precision was in default of its obligation to remit the required source deductions, Mr. Colitto transferred certain properties to his wife, Caroline Colitto, the respondent to this appeal. More particularly, on May 2, 2008, Mr. Colitto transferred 50% of his interest in property referred to as the "Aida Property" to his wife. The fair market value of the 50% interest transferred to his wife was \$41,250. The fair market value of the consideration given to him by his wife was two dollars. On May 2, 2008 Mr. Colitto also transferred a 50% interest he held in property referred to as the "Concession Property" to his wife. The fair market value of the 50%

interest was \$187,500. The fair market value of the consideration given to him by his wife was two dollars.

[6] On October 10, 2008, the Minister issued a notice of assessment to Precision for unremitted source deductions, interest and penalties totaling \$631,554.23. No notice of objection was filed to the assessment. On August 6, 2009, a certificate for Precision's tax debt in the amount of \$794,286.98 was registered in the Federal Court under section 223 of the Act. On November 23, 2010, the Sheriff was directed to enforce the writ for the amount of \$776,380.32, an amount which reflected payments made to reduce the debt. On January 4, 2011, Precision's tax debt was executed and returned unsatisfied.

[7] On March 28, 2011, the Minister issued a notice of assessment to Mr. Colitto in the amount of \$733,812.98. No notice of objection was filed to the assessment.

[8] On January 13, 2016, the Minister issued notices of assessment to the respondent pursuant to section 160 of the Act. The assessments were in the amounts of \$187,498 and \$41,248 and represented the fair market value of the benefit received by the respondent as a result of the transfer of the two properties to her. The respondent filed notices of objection in respect of the assessments and subsequently appealed to the Tax Court of Canada.

[9] For reasons cited as 2019 TCC 88, the Tax Court allowed the respondent's appeals on the ground that Mr. Colitto's personal liability under section 227.1 of the Act did not arise until

2011, when Precision's tax debt was executed and returned unsatisfied. Thus, the transfers of properties were not caught by section 160 of the Act.

[10] This is an appeal from the judgment of the Tax Court.

#### The decision of the Tax Court

[11] When certain conditions are satisfied, subsection 160(1) of the Act makes a transferee of property jointly and severally liable for the tax debt of the transferor. The material condition in this case is the requirement in subparagraph 160(1)(e)(ii): the question is whether Mr. Colitto, the transferor, was liable under the Act to pay an amount "in or in respect of" the taxation year in which the properties were transferred or any preceding taxation year.

[12] This required the Tax Court to consider whether Mr. Colitto's liability under section 227.1 of the Act was an amount he was liable to pay in or in respect of his 2008 taxation year, the year in which the properties were transferred (reasons, paragraph 42). The Court's analysis on this point is set out in paragraphs 43 to 78 of its reasons.

[13] The Court's analysis may be summarized as follows:

- Although subsection 227.1(1) of the Act imposes joint and several liability on "the directors of the corporation at the time the corporation was required to deduct,

withhold, remit or pay” certain specified amounts but failed to do so, the subsection “is silent as to when this liability arises” (reasons, paragraph 43).

- While subsection 227.1(1) is silent about the time at which a director’s liability arises, subsection 227.1(2) provides that a “director is not liable under subsection 227.1(1) unless ... a certificate for the amount of the corporation’s liability referred to in that subsection has been registered in the Federal Court under section 223 and execution for that amount has been returned unsatisfied in whole or in part” (reasons, paragraph 45) (emphasis omitted).
- Precision had failed to remit source deductions in 2008, however this tax debt was not executed and returned unsatisfied until January 4, 2011 (reasons, paragraph 46).
- The text of subsection 227.1(2) “is very clear and unambiguous, and strongly suggests that a director’s liability for unremitted source deductions ... does not arise until the relevant preconditions set out in subsection 227.1(2) of the Act are met.” These preconditions were not met until January 4, 2011 (reasons, paragraph 48).
- This conclusion was consistent with the decision of this Court in *Canada (Attorney General) v. McKinnon*, [2001] 2 F.C. 203, 194 D.L.R. (4th) 164 (F.C.A.), cited as *Worrell* by the Tax Court (reasons, paragraph 49).
- Subsection 227.1(1) is a tax collection provision that “effectively penalizes directors personally if they do not ensure that a corporation of which they are a director deducts and remits specified amounts to the Minister.” However, Parliament did not intend liability under this subsection to be absolute. Therefore,

Parliament “prescribed limits to that power in ... subsections 227.1(2) [through] (5)” (reasons, paragraph 53).

- Contextually, a comparison of the language of subsection 227.1(2) with the language of subsection 227.1(4) confirmed the interpretation that subsection 227.1(2) “is a timing provision”. This is so because subsection 227.1(2) states that a “director is not liable under subsection (1), unless”, whereas subsection 227.1(4) states that no “action or proceedings to recover any amount payable by a director ... under subsection 227.1(1) shall be commenced more than two years after the director last ceased to be a director of that corporation.” While subsection 227.1(4) is a statutory limitation period, subsection 227.1(2) is not a limitation period. Rather, it is “a pre-condition to establishing liability under subsection 227.1.” Had Parliament intended subsection 227.1(2) to mean that a liability of a director could not be recovered before the condition was met it “could have used the same language as it did in subsection 227.1(4)” (reasons, paragraph 54) (emphasis omitted).
- These provisions demonstrate that Parliament “never intended that a director’s liability under section 227.1 of the Act for a corporation’s failure should be viewed as absolute the moment that the corporation failed to meet its remittance obligations” (reasons, paragraph 55).
- The Court declined to follow contrary decisions of the Tax Court in: *Pliskow v. The Queen*, 2013 TCC 283, [2013] G.S.T.C. 112; *Sheck v. The Queen*, 2018 TCC 125, [2018] G.S.T.C. 64; *White v. The Queen*, [1995] 1 C.T.C. 2538, 95 D.T.C. 877 (T.C.C.); and, *Filippazzo v. The Queen*, [2000] 3 C.T.C. 2691, 2000 D.T.C.

2326 (T.C.C.). It was not apparent to the Tax Court that in these cases the Tax Court had engaged in the required textual, contextual and purposive interpretation of sections 160 and 227.1. Additionally, the Court preferred the decision of this Court in *McKinnon* and other cited decisions of the Tax Court (reasons, paragraph 65).

- A director’s liability does not arise under subsection 227.1(1) “unless and until the relevant preconditions in subsection 227.1(2) are satisfied” (reasons, paragraph 68).
- It followed that Mr. Colitto’s liability as a director of Precision did not arise under section 227.1 until January 4, 2011, when the preconditions in subsection 227.1(2) were met (reasons, paragraph 69).
- It further followed that the transfers of the properties in 2008 were not caught by section 160 of the Act, so that Ms. Colitto’s appeals were allowed (reasons, paragraphs 78 and 79).

#### The issue

[14] The sole issue raised on this appeal is whether Mr. Colitto’s liability under section 227.1 of the Act was “in or in respect of” his 2008 taxation year, within the meaning of subparagraph 160(1)(e)(ii) of the Act. The parties agree that this is a case of first impression before this Court.



Consideration of the issue

[15] The determination of whether Mr. Colitto's liability under section 227.1 of the Act was "in or in respect of" his 2008 taxation year turns on the proper interpretation of section 227.1.

This is a question of law and the Tax Court's interpretation of the provision is reviewable on the standard of correctness.

[16] As the Tax Court correctly stated, at paragraph 47 of its reasons, section 227.1 must be interpreted using a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole.

[17] I therefore begin with consideration of the relevant text. For ease of reference, the relevant portions of subsections (1) and (2) of section 227.1 are:

227.1(1) Liability of directors for failure to deduct - Where a corporation has failed to deduct or withhold an amount as required by subsection 135(3) or 135.1(7) or section 153 or 215, has failed to remit such an amount or has failed to pay an amount of tax for a taxation year as required under Part VII or VIII, the directors of the corporation at the time the corporation was required to deduct, withhold, remit or pay the amount are jointly and severally, or solidarily, liable, together with the corporation, to pay that amount and any interest or penalties relating to it.

(2) Limitations on liability - A director

227.1 (1) Responsabilité des administrateurs pour défaut d'effectuer les retenues - Lorsqu'une société a omis de déduire ou de retenir une somme, tel que prévu aux paragraphes 135(3) ou 135.1(7) ou aux articles 153 ou 215, ou a omis de verser cette somme ou a omis de payer un montant d'impôt en vertu de la partie VII ou VIII pour une année d'imposition, les administrateurs de la société, au moment où celle-ci était tenue de déduire, de retenir, de verser ou de payer la somme, sont solidairement responsables, avec la société, du paiement de cette somme, y compris les intérêts et les pénalités s'y rapportant.

(2) Restrictions relatives à la

is not liable under subsection 227.1(1), unless	responsabilité - Un administrateur n'encourt la responsabilité prévue au paragraphe (1) que dans l'un ou l'autre des cas suivants :
(a) a certificate for the amount of the corporation's liability referred to in that subsection has been registered in the Federal Court under section 223 and execution for that amount has been returned unsatisfied in whole or in part;	a) un certificat précisant la somme pour laquelle la société est responsable selon ce paragraphe a été enregistré à la Cour fédérale en application de l'article 223 et il y a eu défaut d'exécution totale ou partielle à l'égard de cette somme;
(emphasis added)	(soulignements ajoutés)

[18] I disagree with the Tax Court's conclusion that subsection 227.1(1) is silent about when the director's liability arises (reasons, paragraph 43). At the least, the English version is ambiguous. The phrase "the directors of the corporation at the time the corporation was required to deduct, withhold, remit or pay the amount are jointly and severally, or solidarily, liable, together with the corporation, to pay that amount" may be read to simply specify which directors are liable for the corporation's failure to deduct, withhold, remit or pay (those directors at the time of default). At the same time, the phrase may equally be read to specify not only which directors are liable, but the point in time at which such liability arose (at the time of the corporation's failure).

[19] The Tax Court failed to consider the equally authoritative French version of subsection 227.1(1). To the extent that any ambiguity exists in the English version, the French version adds no additional clarity.

[20] However, any ambiguity in the meaning of subsection 227.1(1) is eliminated when one considers the context and purpose of the provision.

[21] The most important contextual factor is found in subsection 227.1(2).

[22] The Tax Court read subsection 227.1(2) to “strongly” suggest that a director’s liability does not “arise until the relevant preconditions set out in subsection 227.1(2)” are met (reasons, paragraph 48). Contrary to the Tax Court’s reading of the provision, subsection (2) makes clear that it is subsection (1) that imposes liability upon directors. Subsection (2) is a relieving provision that sets out specified circumstances when the liability otherwise imposed by subsection (1) may be avoided. Thus, a “director is not liable under subsection 227.1(1), unless” or an “administrateur n’encourt la responsabilité prévue au paragraphe (1) que dans l’un ou l’autre des cas suivants”.

[23] Subsection 227.1(2) does not state that a director is not liable for the corporation’s default “unless and until” the specified actions take place. This is the language that would be required to effect the result found by the Tax Court. The Tax Court impermissibly read the words “and until” into subsection 227.1(2) in order to conclude that a director’s liability does not arise under subsection 227.1(1) “unless and until the relevant preconditions in subsection 227.1(2) are satisfied” (reasons, paragraph 68).

[24] Properly understood, subsection 227.1(2) effects, among other things, a purpose that animates a number of provisions of the Act: the avoidance of double taxation. Thus, paragraph

227.1(2)(a) operates to avoid double taxation by prohibiting the Minister from recovering unremitted source deductions from a director otherwise liable for the deductions if the corporation has already paid all of the liability (see also subsection 227.1(5) to the extent the corporation has paid a portion of the liability). Similarly, subject to the potential application of section 166 of the Act (see, for example, *Kyte v. Canada* (1996), 122 F.T.R. 320, 51 D.T.C. 5022 (F.C.A.); *Moriyama v. Canada*, 2005 FCA 207, 337 N.R. 243) the Minister may not collect an amount in excess of the amount proven to be owing by a corporation after liquidation, dissolution or bankruptcy proceedings have been commenced.

[25] As to the purpose of the provision, this Court held in *Smith v. Canada*, 2001 FCA 84, 273 N.R. 357, that subsection 227.1(1) was enacted to strengthen the Crown's ability to enforce the statutory obligation imposed on corporations to remit source deductions. It was "perceived that a corporation, particularly a corporation in financial difficulty, might prefer to default on its obligation to remit taxes, in order to satisfy creditors whose claims were more immediately pressing." The directors' liability provision was enacted to deter corporations from pursuing such a course. The provision was "based on the presumption that a decision by a corporation to default on its remittance obligations would originate with the directors".

[26] The interpretation adopted by the Tax Court renders this purpose nugatory and pointless. The Tax Court's interpretation would allow a director significant time following the corporation's default to re-organize his or her financial affairs to avoid personal financial responsibility. Parliament cannot have intended the directors' liability provision to be avoided as it was in the present case.

[27] Having examined the text, the context and the purpose of subsection 227.1(1) I conclude that Mr. Colitto's liability for unremitted source deductions arose in or in respect of the 2008 taxation year. The Tax Court erred in law in finding otherwise.

[28] In reaching this conclusion I have considered the 1982 Explanatory Notes to section 227.1 and the 1988 Technical Notes to paragraph 227.1(2)(a) relied upon by counsel for the respondent.

[29] While Explanatory and Technical Notes are permissible, extrinsic interpretive aids (*Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at paragraph 15), they are not binding on the Court and cannot supplant the required textual, contextual and purposive analysis. In the present case, the passages relied upon are generally descriptive of the operation of section 227.1. They are not targeted to the issue before this Court and shed no light on it. In any event, the Notes cannot overcome the result of the interpretive exercise.

[30] Before concluding, it is prudent to deal with the Tax Court's reliance on the decision of this Court in *McKinnon*. At paragraphs 49 and 50 the Tax Court relied upon the following passages from paragraphs 37 and 76 of this Court's reasons in *McKinnon* (as reported in the Federal Courts Reports):

Fifth, directors incur no personal liability under subsection 227.1(1), and therefore do not need to invoke subsection 227.1(3), if at any time the company's debt to Revenue Canada, including interest and late payment penalties, is discharged. This is because subsection 227.1(2) qualifies subsection 227.1(1) by providing, in effect, that a director is liable to pay to the Crown the amounts not remitted by the company only after all efforts to collect have been exhausted.

...

Whether directors have exercised due diligence to prevent such failures from occurring has both a legal and a factual aspect. As a matter of law, the liability of a director for unremitted source deductions and GST does not crystallize until the conditions prescribed in subsection 227.1(2) have been satisfied. Moreover, if the remittances are made in full, albeit late, the directors will not be liable for the company's previous failure to remit.

(emphasis in original) (footnotes omitted)

[31] There are two points to be made. First, as the Tax Court noted, these comments were made in *obiter* as the present issue was not before the Court. The Court's remarks were in the nature of a general description of the legislation and were not a considered interpretation of subsection 227.1(1). Second, the fact that a director may be required to pay a corporation's debt only after collection efforts have been exhausted against the corporation is not inconsistent with the director's liability arising in or in respect of an earlier taxation year.

[32] The respondent's reliance on decisions such as *Canadian-Automatic Data Processing Services Ltd. v. CEEI Safety & Security Inc.* (2004), 246 D.L.R. (4th) 400, 192 O.A.C. 152, (Ont. C.A.) is similarly misplaced. At issue in this decision was a claim for unjust enrichment in the context of provincial legislation that rendered directors of corporations liable in certain circumstances for unpaid employee wages. The Court was not required to determine, and did not determine, the time in respect of which the directors became liable for unpaid wages.

### Conclusion

[33] For these reasons I would allow the appeal with costs and set aside the judgment of the Tax Court. Pronouncing the judgment that ought to have been pronounced, I would dismiss Caroline Colitto's appeals from the assessments dated January 13, 2016 made under section 160

of the *Income Tax Act*, and require her to pay the costs in the Tax Court to Her Majesty the Queen.

“Eleanor R. Dawson”

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J.A.

“I agree.

David Stratas J.A.”

“I agree.

John B. Laskin J.A.”

## APPENDIX

160 (1) Where a person has, on or after May 1, 1951, transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to

(a) the person's spouse or common-law partner or a person who has since become the person's spouse or common-law partner,

(b) a person who was under 18 years of age, or

(c) a person with whom the person was not dealing at arm's length,

the following rules apply:

(d) the transferee and transferor are jointly and severally, or solidarily, liable to pay a part of the transferor's tax under this Part for each taxation year equal to the amount by which the tax for the year is greater than it would have been if it were not for the operation of sections 74.1 to 75.1 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of any income from, or gain from the disposition of, the property so transferred or property substituted for it, and

(e) the transferee and transferor are jointly and severally, or solidarily, liable to pay under this Act an amount equal to the lesser of

(i) the amount, if any, by which the fair market value of the property at the time it was transferred exceeds the fair

160 (1) Lorsqu'une personne a, depuis le 1er mai 1951, transféré des biens, directement ou indirectement, au moyen d'une fiducie ou de toute autre façon à l'une des personnes suivantes :

a) son époux ou conjoint de fait ou une personne devenue depuis son époux ou conjoint de fait;

b) une personne qui était âgée de moins de 18 ans;

c) une personne avec laquelle elle avait un lien de dépendance,

les règles suivantes s'appliquent :

d) le bénéficiaire et l'auteur du transfert sont solidairement responsables du paiement d'une partie de l'impôt de l'auteur du transfert en vertu de la présente partie pour chaque année d'imposition égale à l'excédent de l'impôt pour l'année sur ce que cet impôt aurait été sans l'application des articles 74.1 à 75.1 de la présente loi et de l'article 74 de la *Loi de l'impôt sur le revenu*, chapitre 148 des Statuts révisés du Canada de 1952, à l'égard de tout revenu tiré des biens ainsi transférés ou des biens y substitués ou à l'égard de tout gain tiré de la disposition de tels biens;

e) le bénéficiaire et l'auteur du transfert sont solidairement responsables du paiement en vertu de la présente loi d'un montant égal au moins élevé des montants suivants :

(i) l'excédent éventuel de la juste valeur marchande des biens au moment du transfert sur la juste valeur



market value at that time of the consideration given for the property, and

(ii) the total of all amounts each of which is an amount that the transferor is liable to pay under this Act (including, for greater certainty, an amount that the transferor is liable to pay under this section, regardless of whether the Minister has made an assessment under subsection (2) for that amount) in or in respect of the taxation year in which the property was transferred or any preceding taxation year,

but nothing in this subsection limits the liability of the transferor under any other provision of this Act or of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of this subsection.

...

227.1 (1) Where a corporation has failed to deduct or withhold an amount as required by subsection 135(3) or 135.1(7) or section 153 or 215, has failed to remit such an amount or has failed to pay an amount of tax for a taxation year as required under Part VII or VIII, the directors of the corporation at the time the corporation was required to deduct, withhold, remit or pay the amount are jointly and severally, or solidarily, liable, together with the corporation, to pay that amount and any interest or penalties relating to it.

marchande à ce moment de la contrepartie donnée pour le bien,

(ii) le total des montants représentant chacun un montant que l'auteur du transfert doit payer en vertu de la présente loi (notamment un montant ayant ou non fait l'objet d'une cotisation en application du paragraphe (2) qu'il doit payer en vertu du présent article) au cours de l'année d'imposition où les biens ont été transférés ou d'une année d'imposition antérieure ou pour une de ces années.

Toutefois, le présent paragraphe n'a pas pour effet de limiter la responsabilité de l'auteur du transfert en vertu de quelque autre disposition de la présente loi ni celle du bénéficiaire du transfert quant aux intérêts dont il est redevable en vertu de la présente loi sur une cotisation établie à l'égard du montant qu'il doit payer par l'effet du présent paragraphe.

[...]

227.1 (1) Lorsqu'une société a omis de déduire ou de retenir une somme, tel que prévu aux paragraphes 135(3) ou 135.1(7) ou aux articles 153 ou 215, ou a omis de verser cette somme ou a omis de payer un montant d'impôt en vertu de la partie VII ou VIII pour une année d'imposition, les administrateurs de la société, au moment où celle-ci était tenue de déduire, de retenir, de verser ou de payer la somme, sont solidairement responsables, avec la société, du paiement de cette somme, y compris les intérêts et les pénalités s'y

(2) A director is not liable under subsection 227.1(1), unless

(a) a certificate for the amount of the corporation's liability referred to in that subsection has been registered in the Federal Court under section 223 and execution for that amount has been returned unsatisfied in whole or in part;

(b) the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the corporation's liability referred to in that subsection has been proved within six months after the earlier of the date of commencement of the proceedings and the date of dissolution; or

(c) the corporation has made an assignment or a bankruptcy order has been made against it under the *Bankruptcy and Insolvency Act* and a claim for the amount of the corporation's liability referred to in that subsection has been proved within six months after the date of the assignment or bankruptcy order.

(3) A director is not liable for a failure under subsection 227.1(1) where the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

(4) No action or proceedings to recover any amount payable by a

rapportant.

(2) Un administrateur n'encourt la responsabilité prévue au paragraphe (1) que dans l'un ou l'autre des cas suivants :

a) un certificat précisant la somme pour laquelle la société est responsable selon ce paragraphe a été enregistré à la Cour fédérale en application de l'article 223 et il y a eu défaut d'exécution totale ou partielle à l'égard de cette somme;

b) la société a engagé des procédures de liquidation ou de dissolution ou elle a fait l'objet d'une dissolution et l'existence de la créance à l'égard de laquelle elle encourt la responsabilité en vertu de ce paragraphe a été établie dans les six mois suivant le premier en date du jour où les procédures ont été engagées et du jour de la dissolution;

c) la société a fait une cession ou une ordonnance de faillite a été rendue contre elle en vertu de la *Loi sur la faillite et l'insolvabilité* et l'existence de la créance à l'égard de laquelle elle encourt la responsabilité en vertu de ce paragraphe a été établie dans les six mois suivant la date de la cession ou de l'ordonnance de faillite.

(3) Un administrateur n'est pas responsable de l'omission visée au paragraphe (1) lorsqu'il a agi avec le degré de soin, de diligence et d'habileté pour prévenir le manquement qu'une personne raisonnablement prudente aurait exercé dans des circonstances comparables.

(4) L'action ou les procédures visant le recouvrement d'une somme payable

director of a corporation under subsection 227.1(1) shall be commenced more than two years after the director last ceased to be a director of that corporation.

(5) Where execution referred to in paragraph 227.1(2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

(6) Where a director pays an amount in respect of a corporation's liability referred to in subsection 227.1(1) that is proved in liquidation, dissolution or bankruptcy proceedings, the director is entitled to any preference that Her Majesty in right of Canada would have been entitled to had that amount not been so paid and, where a certificate that relates to that amount has been registered, the director is entitled to an assignment of the certificate to the extent of the director's payment, which assignment the Minister is hereby empowered to make.

(7) A director who has satisfied a claim under this section is entitled to contribution from the other directors who were liable for the claim.

par un administrateur d'une société en vertu du paragraphe (1) se prescrivent par deux ans à compter de la date à laquelle l'administrateur cesse pour la dernière fois d'être un administrateur de cette société.

(5) Dans le cas du défaut d'exécution visé à l'alinéa (2)a), la somme qui peut être recouvrée d'un administrateur est celle qui demeure impayée après l'exécution.

(6) Lorsqu'un administrateur verse une somme à l'égard de laquelle la société encourt une responsabilité en vertu du paragraphe (1), qui est établie lors de procédures de liquidation, de dissolution ou de faillite, il a droit à tout privilège auquel Sa Majesté du chef du Canada aurait eu droit si cette somme n'avait pas été payée et, lorsqu'un certificat a été enregistré relativement à cette somme, il peut exiger que le certificat lui soit cédé jusqu'à concurrence du versement et le ministre est autorisé à faire cette cession.

(7) L'administrateur qui a satisfait à la créance en vertu du présent article peut répéter les parts des administrateurs tenus responsables de la créance.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-189-19

**STYLE OF CAUSE:** HER MAJESTY THE QUEEN v.  
CAROLINE COLITTO

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 26, 2020

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

**CONCURRED IN BY:** STRATAS J.A.  
LASKIN J.A.

**DATED:** APRIL 2, 2020

**APPEARANCES:**

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Kristen Duerhammer

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