

Docket: 2017-2409(IT)G

BETWEEN:

SHERRY LYNN DREGER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2017-2414(IT)G

AND BETWEEN:

DORIS MARIE BIRCH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeals heard, on common evidence, on December 10, 2019  
at Hamilton, Ontario

Before: The Honourable Justice Steven K. D'Arcy

Appearances:

Counsel for the Appellants: Craig Burley

Counsel for the Respondent: Khalid Tariq

---

**JUDGMENT**

In accordance with the attached Reasons for Judgment:

1. The appeals from assessments made under subsection 160(1) of the *Income Tax Act*, the notices of which are dated July 3, 2015, are dismissed; and
2. Costs are awarded to the Respondent.

Signed at Ottawa, Canada, this 10th day of February 2020.

“S. D’Arcy”

---

D’Arcy J.

Citation: 2020 TCC 25  
Date: 20200210  
Docket: 2017-2409(IT)G

BETWEEN:

SHERRY LYNN DREGER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2017-2414(IT)G

AND BETWEEN:

DORIS MARIE BIRCH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

D'Arcy J.

[1] The Minister assessed each of the Appellants \$96,640.96 under section 160 of the *Income Tax Act* in respect of monies they each received as the named beneficiaries of a life income fund. The late father of each of the Appellants, Frederick R. Baglole, was the annuitant of the fund.

[2] Each Appellant has appealed the Minister's assessments to this Court. The appeals were heard together on common evidence. The common evidence before the Court is an Agreed Statement of Facts (the "ASF") filed at the commencement of the hearing. I have set out below the agreed facts in chronological order:

1. Frederick R. Baglole was the father of the Appellants.
2. Mr. Baglole was the annuitant of a Franklin Templeton Investments life income fund (the "Income Fund") and prior to his death he designated

- each of the Appellants as his beneficiaries under a beneficiary designation in respect of the Income Fund.
3. In his last will and testament, Mr. Baglolo named his daughters (the Appellants) as trustees, executrices and beneficiaries of his estate.
  4. Mr. Baglolo died on June 8, 2011.
  5. On or about July 26, 2011, \$96,640.96 was transferred to each of the Appellants indirectly from Mr. Baglolo.
  6. Each of the Appellants received the \$96,640.96 distribution on July 26, 2011, in satisfaction of her beneficial interest following the death of Mr. Baglolo.
  7. The Appellants provided no consideration in respect of the transfer of the \$96,640.96.
  8. On July 3, 2015, the Minister assessed each of the Appellants \$96,640.96 on the basis of subsection 160(1) of the *Income Tax Act*.
  9. As of July 3, 2015, Mr. Baglolo had an outstanding tax liability under the *Income Tax Act* of not less than \$96,640.96 with respect to his 2011 taxation year.

#### I. The Law

[3] The relevant portion of section 160 of the *Income Tax Act* reads as follows:

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:

...

(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 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.

[4] When determining the applicability of section 160, one must also consider the definition of arm's length in subsection 251(1) and the definition of related persons in subsection 251(2).

[5] Subsection 251(1) deems related persons not to deal with each other at arms length. It also deems a taxpayer and certain trusts not to deal at arm's length. Finally, it provides that, in any other case, it is a question of fact whether persons not related to each other are, at a particular time, dealing with each other at arm's length.

[6] Paragraph 251(2)(a) provides that, for the purposes of the *Income Tax Act*, related persons or persons related to each other are individuals connected by blood relationship, marriage or common-law partnership or adoption. Paragraph 251(6)(a) states that, for the purposes of the *Income Tax Act*, persons are connected by blood relationship if one is the child or other descendant of the other or one is the brother or sister of the other.

[7] The Federal Court of Appeal noted in *The Queen v. Livingston*,<sup>1</sup> at paragraph 17, that the following four criteria should be applied when considering subsection 160(1):

---

<sup>1</sup> 2008 FCA 89.

- 1) The transferor must be liable to pay tax under the Act at the time of transfer;
- 2) There must be a transfer of property, either directly or indirectly, by means of a trust or by any other means whatever;
- 3) The transferee must either be:
  - i. The transferor's spouse or common-law partner at the time of transfer or a person who has since become the person's spouse or common-law partner;
  - ii. A person who was under 18 years of age at the time of transfer; or
  - iii. A person with whom the transferor was not dealing at arm's length.
- 4) The fair market value of the property transferred must exceed the fair market value of the consideration given by the transferee.

[8] One of the purposes of subsection 160(1) of the *Income Tax Act* is to prevent a taxpayer from transferring his property to a related person in order to thwart the Minister's efforts to collect the tax that is owed by the taxpayer. The subsection acts as an important collection tool because it "thwarts attempts to move money or other property beyond the tax collector's reach by placing it in presumably friendly hands."<sup>2</sup>

## II. Issue Before the Court

[9] Counsel for the Appellants stated in his argument that the Appellants accept that three of the four criteria set out by the Federal Court of Appeal have been satisfied. Specifically, the Appellants accept that Mr. Baglole indirectly transferred property to the Appellants, that Mr. Baglole was liable to pay income tax in relation to the taxation year in which the transfer took place or a prior taxation year and that no consideration was paid by the Appellants in respect of the transfer.

[10] As a result, the Appellants and the Respondent agree that the only issue before the Court is whether the transferor (Mr. Baglole) and the Appellants were dealing with each other at arm's length at the time of the transfer.

[11] The ASF states that Mr. Baglole died on June 8, 2011 and that \$96,640.96 was physically transferred to each of the Appellants on or about July 26, 2011.

---

<sup>2</sup> See *Yates v. Canada*, 2009 FCA 50, [2010] 1 F.C.R. 436, at paragraphs 13 and 14.

[12] Counsel for the Appellant framed the Appellants' argument as follows:

The Appellants' position is that at the time of the transfer Mr. Baglolo was now dead, did not exist, and therefore he was not a related person within the meaning of Subsection 251(6), and he therefore was not in a blood relationship with them and therefore was at arm's length at all times, to the extent that he can of course again even be said to exist.

[13] The Respondent disagrees; her argument, as stated by counsel for the Respondent, is as follows:

. . . The essential issue is if the transfer was at the time of death, which it is the respondent's position that it was, did the parties have a non-arm's length relationship by blood, and I put it to the court that the appellants are daughters of the deceased, and that's a relationship that is not by contract . . . That's a relationship that cannot be taken away.

### III. Disposition of the Appeal

[14] While the parties agree that \$96,640.96 was transferred (indirectly) from Mr. Baglolo to each of the Appellants, they disagree on when, for the purposes of section 160, the transfers occurred.

[15] Counsel for the Appellants argued that the transfers occurred on July 26, 2011, the date the funds were physically transferred to the Appellants. The Respondent argues that the transfers occurred on June 8, 2011, the date of Mr. Baglolo's death.

[16] The Court in *Kiperchuk v. The Queen*<sup>3</sup> (“*Kiperchuk*”) dealt with this very issue. *Kiperchuk* involved a situation similar to the one in the appeal currently before the Court: the appellant was named as the beneficiary under a registered retirement saving plan (“RRSP”) of David Kiperchuk.

[17] At the time of his death, Mr. Kiperchuk owed significant amounts under the *Income Tax Act*. Prior to his death, Mr. Kiperchuk and the Appellant had been involved in divorce proceedings. However, at the time of his death they were still married.

---

<sup>3</sup> 2013 TCC 60.

[18] After Mr. Kiperchuk's death, the Appellant withdrew \$75,000 from the RRSP and was subsequently assessed under section 160. The issues before the Court were whether the transfer from Mr. Kiperchuk to the Appellant constituted a transfer from Mr. Kiperchuk to his spouse for the purposes of paragraph 160(1)(a) and whether the transfer constituted a transfer between persons who were not dealing at arm's length for the purposes of paragraph 160(1)(c).

[19] In answering no to both questions, Justice Lamarre (as she then was) found the following:

- The words "directly or indirectly, by means of a trust or by any other means whatever" used in subsection 160(1) are language broad enough to capture the passing of an entitlement to an RRSP from one person to another by way of a designation.
- The proceeds of the RRSP did not form part of the former husband's estate but devolved directly to the designated person.
- The status of marriage is ended by death or by a decree absolute of divorce.
- For the the purposes of subsection 160(1), the transferee (the appellant) was not the transferor's spouse at the time of transfer; the relevant time being the time at which the funds were transferred to the appellant, which occurred immediately after her husband's death.
- The appellant and Mr. Kiperchuk were dealing at arm's length at the time of the transfer.

[20] Justice Lamarre (as she then was) stated the following at paragraphs 18 and 20 in concluding that the transfer occurred at the time of Mr. Kiperchuk's death:

In *Montreuil v. R.*, 1994 CarswellNat 1522, [1996] 1 C.T.C. 2182, Judge Dussault of this Court, as he then was, concluded that the word "transfer" included the act of giving property under a will, and that the term "property" included a right to property (the term "property" being defined in subsection 248(1) of the ITA as "a right of any kind whatever"). Thus, Judge Dussault said (at paragraph 37 CarswellNat, pages 2198-99 C.T.C.), as of the moment of death, there was a transfer to the appellants of a right to claim the legacy amount provided for in the deceased's will.



...

Thus, the Respondent concluded — rightly, in my view — in the present case that, because the appellant was the designated beneficiary of the RRSP owned by her former husband, there was a transfer of property which took place at the time of his death. From that moment, the appellant had a right to claim the RRSP to which she had become entitled as the designated beneficiary.

[21] I agree with Associate Chief Justice Lamarre, that in the situation where a person is named as the beneficiary under an RRSP or, as in this appeal, an income fund, a transfer from the person who held the fund to the designated beneficiary occurs on the death of the person who held the fund. As a result, in the current appeal the transfers occurred at the time of the death of Mr. Baglole.

[22] Regardless, the timing of the transfers is not determinative of the issue before the Court. The determining factor here is the fact that the property was transferred from Mr. Baglole to the Appellants.

[23] Pursuant to paragraph 251(6)(a), persons are connected by blood relationship “if one is the child or other descendant of the other”. There is no ambiguity in the wording of this provision. A parent and his or her children are connected by a blood relationship.

[24] The Appellants are the children of Mr. Baglole. This relationship did not end on Mr. Baglole’s death. The Appellants continue to be the children of Mr. Baglole.

[25] The Appellants accept that Mr. Baglole transferred the property to them. This is a transfer from a father to his children. It does not matter that the transfer began before his death, crystallized on his death and was completed after his death. It was a transfer between persons connected by a blood relationship. Such persons are deemed under paragraphs 251(1)(a) and 251(2)(a) not to deal with each other at arm’s length. Thus the transferor (Mr. Baglole) transferred the property to persons (the Appellants) with whom he did not deal at arm’s length.

[26] As a result, subsection 160(1) applies to each of the transfers from Mr. Baglole to the Appellants.

[27] The Appellants relied on the finding in *Kiperchuk* that the appellant ceased to be the spouse of Mr. Kiperchuk on his death. I agree with Associate Chief Justice Lamarre that under the relevant provincial law the statutory status of marriage was ended by death. However, the relationship of father and child is not a

statutory relationship; it is a factual relationship. As I previously noted, as a matter of fact, the Appellants are the children of Mr. Baglole.

[28] For the foregoing reasons, each of the appeals is dismissed with costs to the Respondent.

Signed at Ottawa, Canada, this 10th day of February 2020.

“S. D’Arcy”

---

D’Arcy J.

CITATION: 2020 TCC 25

COURT FILE NOS.: 2017-2409(IT)G  
2017-2414(IT)G

STYLE OF CAUSE: SHERRY LYNN DREGER v. HER  
MAJESTY THE QUEEN  
  
DORIS MARIE BIRCH v. HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Hamilton, Ontario

DATE OF HEARING: December 10, 2019

REASONS FOR JUDGMENT BY: The Honourable Justice Steven K. D'Arcy

DATE OF JUDGMENT: February 10, 2020

APPEARANCES:

    Counsel for the Appellants: Craig Burley

    Counsel for the Respondent: Khalid Tariq

COUNSEL OF RECORD:

    For the Appellants:

        Name: Craig Burley

        Firm: Craig Burley  
Hamilton, Ontario

    For the Respondent: Nathalie G. Drouin  
Deputy Attorney General of Canada  
Ottawa, Canada