Docket: 2019-2942(IT)G

BETWEEN:

MIRIAM WATTS,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on November 14 and 15, 2022, at Toronto, Ontario.
Before: The Honourable Justice Ronald MacPhee

Appearances:

Counsel for the Appellant:	Marco Iampieri
Counsel for the Respondent:	Hye-Won (Caroline) Ahn
	Peter Swanstrom

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeal is denied. Costs are payable by the Appellant.

The parties shall have until March 15, 2023, to reach an agreement on costs, failing which the Respondent shall have until April 14, 2023, to serve and file written submissions on costs, and the Appellant shall have until May 15, 2023, to serve and file a written response. Any such submissions shall not exceed 10 pages in length. If the parties do not advise the Court that they have reached an agreement and no submissions are received within the foregoing time limits, the parties shall bear their own costs.

Signed at Ottawa, Canada this 25th day of January 2023.

"R. MacPhee"

MacPhee J.

Citation:2023 TCC 11
Date: 20230125
Docket: 2019-2942(IT)G

BETWEEN:

MIRIAM WATTS,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

MacPhee J.

I. OVERVIEW

[1] This appeal is from an assessment made by the Minister of National Revenue (the "Minister") under section 160 of the *Income Tax Act* (the "*Act*"). The Appellant was assessed in the amount of $138,550 for what the Minister determined was an indirect transfer of property to her from her husband, Mr. Lawrence Watts ("Mr. Watts").

II. FACTS

[2] The facts in this case are relatively straightforward and, for the most part, are not in dispute.

[3] Three witnesses testified during the trial. They were:

(i) Mr. Watts, the Appellant's husband;

(ii) The Appellant;

(iii) Mr. Robert Sarracini (Mr. Sarracini), a CRA officer.

[4] The Appellant is Mr. Watts' wife. The two have been married since 1993.

[5] In 2009, Mr. Watts had an outstanding tax liability of $404,452. This tax debt arose from the Minister's assessment or reassessment of Mr. Watts' 2000, 2001, 2005, 2007, and 2009 taxation years. This amount of tax liability was not in dispute, nor was the integrity of Mr. Watts' assessments.

[6] The specifics of Mr. Watts' tax debts were set out in the Minister's assumptions and are as follows:

Date of (Re) Assessment	**Tax Year**	**Total ($)**
November 4, 2002	2000	157,171.17
April 7, 2003	2001	32,210.64
December 4, 2006	2005	544.83
May 28, 2009	2007	31,683.06
November 22, 2012	2009	182,842.47
TOTAL		**404,452.17**

[7] Mr. Watts carried on the business of Fiscal Arbitrators ("FA") as a sole proprietorship until it ceased to operate in 2013. In October 2015, Mr. Watts was found guilty of fraud, and in June 2016, he was sentenced to six years in prison due to the conduct of his FA business.[1]

[8] The bank account for Mr. Watts' sole proprietorship was registered with the Bank of Montreal. The identifying digits for the FA's bank account are 785 ("account 785"). FA's bank account 785 was a joint bank account between Carlton Branch ("Mr. Branch") and Mr. Watts.

[9] Mr. Branch was a business partner of Mr. Watts in the FA venture. Both could draw from account 785, and each had individual cheques from the account with their names on them.

[10] Very little evidence was provided concerning Mr. Branch's ownership of the cash contained in account 785. Specifically, of the funds in account 785, did he only own half, along with Mr. Branch, or was he a one hundred percent owner? Mr. Watts did testify that he and Mr. Branch were to split the revenues from FA.

[1] *R v Watts*, 2016 ONSC 4843 aff'd *R v Watts*, 2018 ONCA 148; leave to appeal to SCC refused 38141 (27 September 2018).

[11] Mr. Watts incorporated CBLW Trading Company Limited ("CBLW") in February 2007 under the *Canadian Business and Corporations Act* ("*CBCA*"). The corporation was dissolved in December 2013. During CBLW's entire corporate existence, Mr. Watts was CBLW's only director and officer. Mr. Watts was the directing mind of CBLW at all times.

[12] CBLW's bank account was also registered with BMO. The identifying digits of CBLW's bank account are 895 ("account 895"). Mr. Branch also had signing authority for CBLW's account 895 but was never a director or officer of CBLW. In his testimony, Mr. Watts agreed that it was he who decided where the funds from this account were sent.

[13] Mr. Watts testified that CBLW's purpose was to perform the administrative actions necessary to operate FA. These actions included paying rent for the FA's office space and managing expenses.

[14] Mr. Watts testified that CBLW never filed documents or updated CBLW's address with the Canada Revenue Agency ("CRA"). Mr. Sarracini also testified that this was the case. Mr. Sarracini further testified that the address listed in the CRA's record system for CBLW was ascertained by the CRA via the federal government's corporate directory database.

[15] CBLW was assessed on April 30, 2018. At the time of assessment, CBLW was a dissolved corporation and had been since 2013. Pursuant to subsection 226(2) of the *Canada Business Corporations Act* ("*CBCA"*), the Minister had only two years to issue the assessment after the corporation dissolved.[2] Otherwise, the CRA would have had to take steps to revive the corporation prior to assessing. These steps were not taken. I also note that serious issues were raised as to whether CBLW received the notice of the assessment.

[16] The Minister did not have the ability to assess CBLW when it did. It had been dissolved for five years at the time of the assessment. This is obviously longer than the two years permitted by subsection 226(2) of the *CBCA*. For that reason, I will proceed on the basis that CBLW was not properly assessed.

A. The Transfers in Question

[2] *Canadian Business Corporations Act*, RSC 1985, c C-44, s 226(2).

[17] The transfers of property to two parties are central to this case.

[18] The first transfer ("First Transfer") saw Mr. Watts direct FA's account 785 to transfer $519,206.36 to CBLW's account 895. This transfer occurred between the dates of February 2, 2009, and May 26, 2010.

[19] The second transfer ("Second Transfer") saw CBLW use account 895 to transfer a total of $138,550 to Peddle & Pollard LLP and Trust ("the Trust"). The total of $138,550 was composed of an initial transfer of a cheque issued by CBLW for $20,000 to the Trust on August 30, 2009, and a subsequent transfer of $118,550 via bank draft from CBLW to the Trust on September 18, 2009.

[20] The $138,550 transfer from CBLW to the Trust was at the direction of Mr. Watts. His signature was on both the cheque and the bank draft.

[21] The purpose of the transfer of $138,550 to the Trust was to purchase a home in Markham, Ontario. The property was purchased via a purchase and sale agreement dated August 27, 2009. The agreement indicated that the home was to be purchased in the Appellant's name alone.

[22] Mr. Watts was the directing mind who transferred the money from his bank account into CBLW's bank account and then caused CBLW to transfer money to the Trust to purchase a house in the Appellant's name. None of the transactions would have occurred if not for Mr. Watts. Mr. Watts did not dispute this conclusion in his testimony.

B. The Appellant's Work for FA or CBLW

[23] The Appellant testified that she worked for the FA during the years 2008 to 2011. She stated that her role included communicating with agents located across the country, collecting the required documents necessary to file the numerous returns, posting cheques, and other administrative duties. She further testified that during the tax season she worked close to sixty hours per week.

[24] Mr. Watts testified that the Appellant performed work for CBLW during the years in question. He described her duties as including data entry, filing documents, and performing general administrative duties. It was never clarified whether the Appellant claimed services were provided to FA or CBLW.

[25] Both Mr. Watts and the Appellant testified that her work was to be remunerated with the purchase of a home in her name. The Appellant further testified that this remuneration was included in a verbal contract between herself and Mr. Watts. This would effectively be a deferred payment, as no compensation was provided to the Appellant on a weekly, monthly, or annual basis. Although she claims to have continued working for FA until 2011, no further compensation was provided.

[26] With respect to the work performed by the Appellant for the FA or CBLW, there was no evidence provided other than the Appellant and Mr. Watts' testimony. No documentation was provided to record the number of hours the Appellant worked or what hourly rate she was to be paid. No evidence was provided to document the tasks the Appellant completed while working for FA.

[27] With respect to the remuneration provided to the Appellant by FA or CBLW for her work, there was no evidence before me of the agreement of service besides the Appellant's and Mr. Watts' testimony. There was no evidence to show that the Appellant received T4 income for her work. There was also no evidence to show that FA or CBLW recorded an expense or deduction for the remuneration of the Appellant's work. Furthermore, there was no evidence to show that the Appellant declared any employment or business income in 2009, the tax year in which she received the property in question.

[28] Finally, there was a troubling contradiction in the Appellant's assertion that she received the home as compensation for services provided to FA. In the sentencing decision for Mr. Watts' criminal conviction, Justice Bale of the Ontario Superior Court of Justice indicated that Mr. Watts provided the home as a gift for his wife, as opposed for compensation.[3] This inconsistency was put to Mr. Watts in cross-examination in the present appeal. He did not accept that he characterized the house as a gift in either his criminal trial or sentencing.

III. POSITION OF THE APPELLANT

[29] The Appellant argues that the appeal should be allowed for the following reasons:

a) The Minister has relied upon documents seized pursuant to a search warrant. An Ontario Superior Court of Justice has ordered these documents returned

[3] *R v Watts*, 2016 ONSC 4843 at para 45.

pursuant to subsection 490(9) of the Criminal Code.[4] The Appellant takes the position that the Respondent should never have had use of these documents and that the assessments therefore should be quashed**.** At the Appellant's request, I dealt with this motion at the outset of trial. I rejected the Appellant's argument in this motion. I will not refer to this argument in my decision;

b) She was in the employ of CBLW, and contractually entitled to receive remuneration. The $138,550 she received was meant to remunerate for services rendered, so subsection 160(1) should not apply;

c) The Tax Court should vacate the Appellant's subsection 160(1) assessment because the underlying assessment against CBLW was invalid. The Appellant argued that the CBLW assessment relied upon in her subsection 160(1) assessment was invalid for two reasons. First, the primary assessment was invalid because notice was not properly sent to CBLW. Second, CBLW was improperly assessed because it was a dissolved corporation under the *CBCA* at the time of assessment. These arguments focus on the assessment against CBLW and do not challenge the assessment against Mr. Watts. No evidence or argument was presented challenging the underlying assessment against Mr. Watts;

d) Counsel for the Appellant also argued the Minister incorrectly assessed the Appellant under subsection 160(1) because there was no indirect transfer of property from Mr. Watts to the Appellant.

[30] As previously noted, I am deciding this matter on the basis that CBLW was not properly assessed.

IV. POSITION OF THE RESPONDENT

[31] The Respondent stated in their submissions that:

a) Whether CBLW received a proper notice of assessment, or could even be assessed by the Minister in 2018 was not relevant because the subsection 160(1) tax liability arose at the time of property transfer to the Appellant and not from the assessment of CBLW;

[4] ONSC Order from J Cameron, 28 Jan 2021

b) The First and Second Transfers (referred to above) constituted an indirect transfer from Mr. Watts to the Appellant. Therefore the subsection 160(1) assessment should be upheld;

c) If the Court finds that there was not an indirect transfer between Mr. Watts and the Appellant through CBLW, then there was a direct transfer of property between Mr. Watts to CBLW and then to the Appellant. The Respondent argues that this would be a cascading subsection 160(1) assessment and therefore the appeal should be denied.

V. ISSUES

[32] The issue before the Court is whether, pursuant to subsection 160(1) of the *Act*, the Appellant is liable to pay $138,550 for the transfer of funds by Mr. Watts from account 785 to account 895 and then to assist in the purchase of a home for the Appellant's sole ownership.

[33] In determining whether the Appellant is liable under subsection 160(1) of the *Act*, the two determinative questions in this appeal are:

(i) Was there a transfer of property by Mr. Watts, either directly or indirectly, by means of a trust or by any other means whatever to the Appellant?

(ii) Did the fair market value of the property exceed the fair market value of the consideration given by the transferee?

VI. LEGAL ANAYSIS

A. *Onus*

[34] At the outset, I find it necessary to briefly review the onus upon each party in their pleadings and at trial. I do this because of some concerns I have regarding the evidence.

[35] *Tax Court of Canada Rules (General Procedure)* Rule 48(1) provides that for every appeal of an assessment under the *Act*, the Notice of Appeal shall be in Form 21(1)(a).[5] Form 21(1)(a) requires the taxpayer state the material facts relied upon by the Appellant in challenging the correctness of an assessment.

[5] *Tax Court of Canada Rules* (*General Procedure*), at Rule 21(1)(a) [*TCC GP Rules*].

[36] The burden is on the taxpayer to raise in the pleadings any dispute in law or fact. The Appellant must challenge the facts and assumptions pled by the Respondent in their respective pleadings. Failing to dispute facts via the pleadings leads to the Court accepting undisputed statements of fact to be true.[6]

[37] At trial, the Appellant bears the onus of demolishing the Minister's assumption of facts on a balance of probabilities.[7] If the Appellant fails to demolish the assumptions, the Minister's assumptions stand. However, it is not open to a trial judge to make a finding on a point not raised in the pleadings and where no evidence had been particularly directed to it.[8]

B. *The Appellant did not demolish the assumption that her tax liability was anything other than $138,550*

[38] The Appellant at no point challenged the ownership of the funds in account 785. This is despite the fact that Mr. Watts and Mr. Branch appear to be joint owners of this account. Therefore, I accept that Mr. Watts transferred at least $138,550 from account 785 to the eventual benefit of the Appellant.

[39] Secondly, the assumption made by the Minister concerning the transfer of funds from account 785 to account 895 is as follows:

> j) on or about February 2, 2009 to May 26, 2010, the Spouse transferred a total of $519,203.36 from BMO account number ending in "785" to BMO account number ending in "895".

[40] What is most relevant to my decision is the transfer of funds from account 785 to account 895 up to and at the time the amount then found its way to the benefit of the Appellant. The ultimate transfer of property was the money used to purchase a house in the Appellant's name. The last date of this transfer was September 18, 2009.

[41] The question becomes, how much has account 785 transferred to account 895 by September 18, 2009? While bank statements were provided at trial, this issue was not contested, nor even spoken to.

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[6] *Johnston v Minister of National Revenue*, [1948] 4 DLR 321 at para 7, [1948] 4 WLR 321.
[7] *Eisbrenner v Canada*, 2020 FCA 93.
[8] *Hollinger (Succession) v The Queen*, 2013 TCC 252 at para 23 citing *JM Voith GmbH v Beloit Corp*, [1991] FCJ No 503, 128 NR 54.

[42] In my review of the bank statements for account 895, I found total amounts transferred from Mr. Watts to CBLW between Feb 2, 2009 and Sept 18, 2009 was $104,174.97. This total is derived from the Respondent's Book of Documents that lists account 785's transfers to account 895 between the dates in question. As to whether my calculation is correct, or missing further necessary analysis, I do not know.

[43] The breakdown of the total of $104,174.97 is as follows:

No.	Date	Amount
1	Feb 2, 2009	$100
2	June 10, 2009	$2724.97
3	July 31, 2009	$5,400
4	Aug 10, 2009	$34,000
5	Aug 14, 2009	$14,500
6	Aug 27, 2009	$3,000
7	Sept 4, 2009	$23,150
8	Sept 9, 2009	$10,000
9	Sept 18, 2009	$11,300
TOTAL		**$104,174.97**

[44] In the case before me, neither party challenged the total transfer amount of $138,550 in their respective pleadings, nor did any party dispute this amount at trial. The Appellant's Notice of Appeal, in paragraphs 34 to 38 appears to accept the basis that both an indirect transfer occurred and that a cascading subsection 160(1) assessment could also be upheld (subject to the consideration the Appellant provided for the benefit). The Appellant's later amended Notice of Appeal did not dispute this characterization either.

[45] For these reasons, I find that the Appellant did not discharge her burden in showing that the assessment was incorrect in determining that $138,500 was transferred, indirectly from Mr. Watts to the Appellant.

C. *Necessary factors to uphold a subsection 160(1) assessment*

[46] Section 160 of the *Act* aims to prevent an indebted taxpayer from shielding their assets from the CRA. If a taxpayer transfers property to a non-arm's length person while owing taxes, the recipient of the transfer is liable for the taxpayer's tax debt. The transferee will owe the lesser of: (a) the fair market value of the property transferred, or (b) the transferor's debt.

[47] The leading case on section 160 is *Livingston*[3], which describes four criteria that must exist for subsection 160(1) to apply. They are as follows:

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 must exceed the fair market value of the consideration given by the transferee.[9]

[48] Of the above noted criteria, the first and third criteria are not in dispute. Key facts that apply to these criteria are as follows:

i. Mr. Watts had a total tax debt owing of $404,452.17 at the end of 2009. This underlying debt was not challenged at trial;

ii. Between February 2, 2009 to May 26, 2010 Mr. Watts transferred a total of $519,203.36 from account 785 to account 895;

iii. The Appellant is married to Mr. Watts, and was so at the time of the transfer;

iv. A cheque for $20,000 dated August 30, 2009 from account 895 was issued to Peddle and Pollard Real Estate Lawyers for the purchase of a home in Markham Ontario;

v. A bank draft of $118,550 from September 18, 2009 was issued from account 895 to Peddle and Pollard Real Estate Lawyers for the purchase of the same home in Markham Ontario;

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[9] *Canada v Livingston*, 2008 FCA 89 at para 17 [*Livingston*].

vi. The purchase and sale agreement for the Markham home was dated August 27, 2009;

vii. The property was purchased in the Appellant's name only. It was never disputed that the Appellant received a benefit from the transfer of funds from the Mr. Watts to CBLW and then on to pay a portion of the purchase of a home.

D. *Mr. Watts transferred his personal funds*

[49] Mr. Watts carried on a sole proprietorship business between 2000 to approximately 2013. This sole proprietorship business used account 785.

[50] The legal effect of a sole proprietorship is that there is no distinction between the individual's personhood and the personhood of the business. The Ontario Court of Appeal has found as follows:

> "[f]rom a legal and practical standpoint, "there is no separation between the sole proprietorship business organization and the person who is the sole proprietor". As a result, "all benefits from the business accrue to the sole proprietor and all obligations of the business are his responsibility".[10]

[51] I therefore find that the transfers from account 785 were transfers made from Mr. Watts personally.

E. *Cascading section 160 assessment*

[52] The Respondent argued that if I do not find there was an indirect transfer from Mr. Watts to Ms. Watts that I should find that a cascading section 160 assessment applies.[11]

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[10] *Security National Insurance Company v Markel Insurance Company*, 2012 ONCA 683 at para 61 citing with approval J Anthony VanDuzer, *The Law of Partnership & Corporations* (Toronto: Irwin Law, 2009) 3rd ed.

[11] As described in *Addison & Leyen Ltd v Canada*, 2006 FCA 107 at para 54: "Section 160 may be applied to a series of transfers, resulting in what is sometimes referred to as "cascading" section 160 assessments. For example, suppose that A, who owes tax of $100, makes an unconditional gift of $100 to B, who is his spouse. Then suppose that B makes an unconditional gift of $100 to C, her sister. Section 160 would permit the Minister to assess B for the $100 *Primary* tax liability of A, so that A and B would be jointly and severally liable for the $100 primary tax liability of A. Section 160 would also permit the Minister to assess C for the $100 *vicarious* liability of B. The net effect would be that A, B and C would be jointly and

[53] I do not see a necessity to explore this alternative argument in depth based on my conclusion that an indirect transfer occured. I will say that if I were to have a difficulty finding this was an indirect transfer, I would find that a cascading assessment applies in this instance. I would do so even though there was not an assessment of CBLW (for reasons noted above).

[54] The Appellant argued that CBLW not being assessed is fatal to the Minister's argument on a cascading assessment.

[55] In disputing the assessment, the Appellant points out that subparagraph 160(1)(e)(ii) was amended in 2013, after the date of the transfer. The amendment added the following (underlined):

> 160(1)(e)(ii) the total of all amounts each of which is an amount that the transferor is liable to pay under the Act (including, for greater certainty, an amount that the transfer 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.[12]

[56] The Appellant argued that since this amendment to the section was not in the legislation in 2009, the Respondent could not rely upon this provision. Specifically, the Appellant argued that without a valid assessment of CBLW, the assessment against her could not stand.

[57] I do not accept this argument for two reasons. First, the amended legislation was made to apply to assessments made after December 20, 2002.[13] Therefore, the new legislation did apply to the matter before the court.

[58] Secondly, the amendment to the legislation was made for *greater certainty*. It simply legislated what the pre-existing jurisprudence had found. That is, with or without an assessment, the liability for the tax debt exists.[14] The assessment does not

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severally liable for the same $100 primary tax liability of A. There will have been no indirect transfers, but two direct transfers, one from A to B, and the other from B to C. However, the risk to C of being assessed under section 160 is the same as if there had been an indirect transfer of $100 from A to C." [*Addison & Leyen*].

[12] *Technical Tax Amendments Act, 2012,* SC 2013, c 34 at s 313(1).

[13] *Ibid* at s 313(8).

[14] See *Jurak v Canada*, 2003 FCA 58.

create the debt. The case law shows that an assessment is merely an established procedural or administrative means for determining tax payable.[15]

[59] Therefore, even though CBLW has not been properly assessed, it still owed $404,452.17 as a result of the transfers of funds from Mr. Watts to CBLW. Then when CBLW transferred funds for the benefit of the Appellant, the Appellant became liable for the debt of CBLW up to the value of the funds transferred.

F. *Livingston Factors in Issue: Factor 2 and 4*

[60] As noted, two of the four factors listed in Livingstone have not been contested. Specifically, it has not been challenged that Mr. Watts, the transferor, was liable to pay taxes under the *Act* at the time of the transfer. It is also clear that the Appellant was Mr. Watts' spouse at the time of transfer.

[61] The remaining issues are the following:

1. Was there a transfer of property by Mr. Watts, either directly or indirectly, by means of a trust or by any other means whatever to the Appellant?

2. Did the fair market value of the property exceed the fair market value of the consideration given by the transferee?

G. *Mr. Watts indirectly transferred property to the Appellant*

[62] The word transfer is not defined in the *Act*. The word 'transfer' is not a term of art, but it rather carries the ordinary meaning of passing the possession of property from one person to another.[16]

[63] The Federal Court of Appeal ("FCA") has held that:

> "A direct transfer is a transaction by which one person transfers property to another. An indirect transfer would include a transaction by which one person transfers property to another through the hands of a third person."[17]

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[15] *Dauphinais c R*, [1993] 1 CTC 2288 at para 12, 94 DTC 1148 (TCC); *Minister of National Revenue v Parsons,* [1983] CTC 321, 83 DTC 5329 (TCC); *Dominion of Canada General Insurance Co v The Queen,* [1984] 1CTC 190 at para 27, 84 DTC 6197 (TCC), upheld on aff'd *Dominion of Canada General Insurance Co v The Queen,* [1986] 1 CTC 423, 86 DTC 6154 (FCA).
[16] *Medland v Canada*, [1998] 52 DTC 6358 at para 17, 4 CTC 293 [*Medland*].
[17] *Addison & Leyen, supra* note 11 at para 53.

[64] In other matters, this court has asked the following question in determining if there has been a transfer of property: Has the transferor divested itself from an asset in such a way that it has been impoverished and the transferee has been correspondingly enriched?[18] In this appeal, the answer is a clear yes.

[65] The movement of funds from account 785 through account 895 to eventually assisting the Appellant in purchasing a home was obviously not a direct transfer from Mr. Watts to the Appellant. However, subsection 160(1) specifically states that it also applies to indirect transfers.

[66] An indirect transfer under subsection 160(1) refers to "any circuitous way in which property of any kind passes from one person to another."[19]

[67] In the case before me, Mr. Watts was the sole director of CBLW and FA. He was the directing mind who transferred the money from his bank account, into CBLW's bank account, and then caused CBLW to transfer money to the Trust to assist in the purchase of a house for the Appellant. His signature was on both the bank draft and the cheque forwarded to the lawyer for the purchase of the home. None of the transfers of the cash would have occurred if not for Mr. Watts' direction.

H. *Does the Respondent have to prove the intention of the transferor in order to prove an indirect transfer occurred?*

[68] I reject the Appellant's argument that an indirect transfer from Mr. Watts to the Appellant did not occur because there was no proof that Mr. Watts, at the time of the First Transfer, intended to later effect the Second Transfer for the benefit of the Appellant.

[69] The Appellant's counsel based this argument on an example of an indirect transfer described by the FCA. The statement is as follows:

> "Section 160 applies to "direct" transfers and "indirect" transfers. A direct transfer is a transaction by which one person transfers property to another. An indirect transfer would include a transaction by which one person transfers property to another through the hands of a third person. For example, if A gives B a gift of $100 in cash, then A has made a direct transfer of $100 to B. If A gives B $100 in cash on the

[18] *Algoa Trust v The Queen*, [1993] 1 CTC 2294 at paras 49, 51, 93 DTC 405.
[19] *Medland*, *supra* note 16 at para 20.

> condition or with the expectation that B will give C $100 in cash, and B gives C $100 in cash, then A has made an indirect transfer of $100 to C."[20] [Emphasis added]

[70] I note that this comment is made in obiter by Justice Sharlow. Furthermore, when read in context, I do not accept that the FCA was attempting to limit the definition of an indirect transfer in this statement. Later on in the decision, Justice Sharlow notes at paragraph 65(6) that an assessment can stand even if the Minister cannot show an intent to avoid tax. If the FCA wanted to limit the scope of an indirect transfer in the manner described by the Appellant's counsel, they would have done so explicitly.

[71] The FCA was clear in *Eyeball Networks Inc v Canada* that the phrase "directly or indirectly, by any means of a trust of by any other means whatsoever" captures "all forms of transfers including those resulting from the combined effect of multiple transactions, whether preordained or not."[21] [Emphasis added].

[72] There is no question that subsection 160(1) can apply to a multi-step transfer of property such as the matter before the Court. On my reading of *Medland* and *Eyeball Networks*, the jurisprudence on this issue is clear: an indirect transfer under subsection 160(1) captures all non-direct transfers and does not require proof of an expectation for a second party to eventually effect a transfer to a third party.

[73] Additionally, the facts of this case do indicate that Mr. Watts wished to use the funds of account 785 to eventually enrich his wife. He was the party that directed the transfer of funds to CBLW. He then directed payments to go to the benefit of the Appellant in the purchase of the home. Mr. Watts testified that he intended to compensate his wife in August-September 2009 by assisting in purchasing the home for her.

[74] Even if having an intention to effect a second transfer was required to make a finding of an indirect transfer, I would find that Mr. Watts, in transferring funds to CBLW, always intended to use a portion of those funds to enrich the Appellant.

[75] Accordingly, I find that there was an indirect transfer from Mr. Watts to the Appellant for $138,550.

I. *Ms. Watts did not provide consideration*

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[20] *Addison & Leyen*, *supra* note 11 at para 53.
[21] *Eyeball Networks Inc v Canada*, 2021 FCA 17 at para 48 [*Eyeball Networks*].

[76] The Minister has assumed the following:

> No consideration was provided by the Appellant to CBLW in exchange for the funds.

[77] The FCA in *Livingston* spoke about the issue of when consideration is provided by the transferee:

> Under subsection 160(1), a transferee of property will be liable to the CRA to the extent that the fair market value of the consideration given for the property falls short of the fair market value of that property. The very purpose of subsection 160(1) is to preserve the value of the existing assets in the taxpayer for collection by the CRA. Where those assets are entirely divested, subsection 160(1) provides that the CRA's rights to those assets can be exercised against the transferee of the property. However, subsection 160(1) will not apply where an amount equivalent in value to the original property transferred was given to the transferor at the time of transfer: that is, fair market value consideration. This is because after such a transaction, the CRA has not been prejudiced as a creditor.[22]

[78] In a situation where an Appellant claims that consideration was provided for the benefit, a trial judge should conduct an analysis of the fair market value of the consideration claimed to have been provided.[23] In this instance, the evidentiary burden is on the Appellant to provide evidence that she provided services that were of sufficient consideration so that the assessment should not stand.

[79] The Appellant's Notice of Appeal and submissions at trial argued that she provided various services to CBLW that should be treated as consideration for the amounts transferred to her by Mr. Watts.

[80] However, the Appellant, in her testimony, seemed unsure as to whether she provided services to CBLW or FA. The Appellant claimed to perform numerous tasks for FA, amounting to as much as 60 hours a week. Both she and Mr. Watts provided similar testimony in this respect to the work she performed.

[81] In describing her compensation, the Appellant stated the following (which is about the best description of her compensation provided at trial):

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[22] *Livingston, supra* note 9 at para 27.

[23] In *Livingston v R*, 2007 TCC 303, the trial judge simply concluded that consideration provided by the Appellant was "adequate" with little or no analysis performed. On appeal, the FCA found this was not a sufficient analysis, and reversed the decision of the trial judge.

> Q. Okay. So Mr. Watts testified that you were paid for kind of the function rather than by an hourly or monthly wage, is that correct?
>
> A. Yes.
>
> Q. Can you tell me more about that? What- how much- how much was agreed upon for each function that you performed?
>
> A. How much was the rate?
>
> Q. Mhm.
>
> A. There was no rate.
>
> Q. Okay, so....
>
> A. It- honestly, it was just get me a deposit on the house and this is my value. I will do what it is that's, you know, that's necessary in the office. There was never any discussion of rate. I was just happy with the deposit on the house.

[82] Upon reviewing all the evidence before me, I have tried to analyze whether I accept the magnitude of services the Appellant claims to have provided and, secondly, whether the compensation she received is proportional to those services. Unfortunately, I have very little to work with in this regard. The evidence provided by the Appellant and Mr. Watts was scant and had no supporting detail and no corroboration. It was also contradicted in the criminal court sentencing decision of Mr. Watts that was put before me.[24]

[83] In addition to the lack of corroborating evidence, no explanation was given as to why the Appellant took the entirety of her payment in two lump sums, neither of which were paid directly to her. These payments were made in their entirety in August and September 2009. Yet she testified that she continued her services until 2011. Her evidence was that she did not receive payment for these future years.

[84] No evidence was provided of the Appellant taking these payments as income through a T4 slip or as business income. Mr. Watts believed the Appellant was a contractor for CBLW. No evidence of any sort was provided as to an expense taken for these payments by either CBLW or FA.

[85] Given the inconsistency of what was written by the Ontario Superior Court of Justice (the funds were a gift for his wife) and the lack of logic in the payment

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[24] *R v Watts,* 2016 ONSC 4843 at para 45.

method to the Appellant, there was an insufficient amount of evidence before me to find that the Appellant provided consideration.

[86] Ultimately, the Appellant has not adduced sufficient evidence to support her position that she provided consideration for the $138,550 transferred to her for her benefit. The lack of documentation and the vagueness of the testimony is fatal to her argument.

VII. CONCLUSION

[87] I find that Mr. Watts indirectly transferred to the Appellant, his wife, the amount of $138,550 in 2009. At the time of transfer, Mr. Watts was liable to pay tax under the *Act* for the amount of $404,452.17 (year end 2009). The Appellant was therefore properly assessed the amount of $138,550. The appeal is denied.

[88] Costs are payable by the Appellant.

Signed at Ottawa, Canada this 25th day of January 2023.

"R. MacPhee"

MacPhee J.

CITATION:	2023 TCC 11
COURT FILE NO.:	2019-2942(IT)G
STYLE OF CAUSE:	MIRIAM WATTS AND HIS MAJESTY THE KING
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	November 14, 2022
REASONS FOR JUDGMENT BY:	The Honourable Justice Ronald MacPhee
DATE OF JUDGMENT:	January 25, 2023

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