Docket: 2024-388(CPP)

BETWEEN:

563768 ALBERTA INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

2026 TCC 181 (CanLII)

---

Appeal heard on September 4, 2024, at Calgary, Alberta

Before: The Honourable Justice Bruce Russell

Appearances:

Agent for the Appellant: Jason Isaman

Counsel for the Respondent: Tanzeel Bhaidani

---

**JUDGMENT**

IT IS ORDERED THAT:

1. the appellant's appeal of *Canada Pension Plan* assessments confirmed December 7, 2023 for its 2020, 2021 and 2022 (January 1 to July 31) is hereby dismissed;

2. the said assessments are valid; and,

3. the whole without costs.

Signed this 19th day of October 2026.

"B. Russell"

Russell J.

2026 TCC 181 (CanLII)

Citation : 2026 TCC 181
Date: 20261019
Docket: 2024-388(CPP)

BETWEEN:

563768 ALBERTA INC.,

Appellant,

and

MINISTER OF NATIONAL REVENUE,

Respondent.

2026 TCC 181 (CanLII)

## REASONS FOR JUDGMENT

Russell J.

I. Introduction:

[1] The Notice of Appeal of the appellant, 563768 Alberta Inc. (563Inc), consists of one paragraph:

> A notice of assessment was issued on [sic] for a T4 that was amended on February 4, 2021. CRA agreed to adjust the T4 to agree with the amendment that was filed in order to reclassify (previously self-employment) income as dividend income. Despite this agreement, CRA has yet to process the amendment filed by the taxpayer's accountant.

[2] On April 2, 2024, the respondent Crown filed a Reply to the Notice of Appeal, of which paragraph 1 states:

> 1. With respect to the notice of appeal, the Attorney General of Canada has no knowledge of a notice of assessment being issued for a T4 slip amended on February 4, 2021 and puts in issue whether there was any agreement to adjust the T4 slip in order to reclassify employment income as dividend income.

II. Appealed Assessments:

[3] The appellant's Notice of Appeal was filed February 23, 2024, after receipt of letters dated December 7, 2023 from the Minister of National Revenue (Minister),

sent to the appellant and its two shareholder workers, spouses Mr. William Tanish (WT) and Ms. Faye Tanish (FT).

[4] These letters confirmed 563Inc assessments raised by the Minister per the *Canada Pension Plan* (CPP), for 563Inc's 2020 and 2021 years and the year 2022 for its first seven months (January 1 to July 31, 2022).[1]

[5] These confirmed assessments of 563Inc were raised August 23, 2022, for failure to remit CPP contributions respecting its workers WT and FT, in the amounts of $5,594 and $2,071 for, respectively, its 2020 and 2021 years. These assessments were based on those workers' CPP contributions as reported on their respective T4 slips that 563Inc had filed.[2]

[6] On the following day, August 24, 2022, the Minister assessed 563Inc for failure to remit CPP contributions respecting workers WT and FT totaling $2,899.40 for the said seven-month 2002 period. As no current CPP contributions had been remitted, the Minister utilized the 2021 T4 slips as an estimate for assessing that period.[3]

[7] On September 7, 2022, 563Inc objected to these 2020, 2021 and 2022 partial year assessments.[4]

[8] On February 7, 2023, the Minister reduced the 2022 partial year assessment to $2,166.[5]

[9] On November 28, 2023, the Minister raised a revised assessment for the 2020 year, so as to allow 563Inc appeal rights on the full $7,665 of CPP contributions made respecting workers WT and FT; this as initially a credit of $2,071 had been applied to the 2020 year, later transferred to the 2021 year.[6]

III. Issues:

[1] Reply, para. 9
[2] Reply, para. 4
[3] Reply, para. 5
[4] Reply, para. 6
[5] Reply, para. 8
[6] Reply, para. 7

2026 TCC 181 (CanLII)

[10] The first of the two issues identified by the parties is whether WT and FT were engaged in pensionable employment with 563Inc as their employer during the entire period of January 1, 2020 to July 31, 2022.

[11] The latter issue is, as expressed in the Notice of Appeal, whether 563Inc was entitled to "adjust" T4 slips it had issued, to reclassify the income paid to WT and FT from being employment pay to being dividend payments in their 563Inc shareholder capacities. This latter option would not trigger CPP obligations.

IV. Parties' Positions:

[12] On the first issue, 563Inc's representative conceded that WT and FT were employees of 563Inc. In its Notice of Appeal, 563Inc submits that CRA had agreed to accept adjustment of the issued T4 slips, to reflect the desired reclassification of the nature of the income paid out to WT and FT.

[13] The respondent Crown's position is that WT and FT were employed by 563Inc in pensionable employment per paragraph 6(1)(a) of the CPP. The appellant 563Inc did not oppose this. Consequently, per the T4 slips if not adjusted as sought by the appellant 563Inc, 563Inc was required to deduct and remit CPP contributions in respect of pensionable earnings paid to employees WT and FT.

[14] With respect to the second issue, respondent's counsel submitted that seeking to reclassify *ex post facto* the type of income paid to WT and FT was unacceptable as it would constitute retroactive tax planning.

V. Analysis:

[15] At the hearing, 563Inc's representative conceded that WT and FT were employees of 563Inc. There had been some suggestion that they were self-employed but that was not pursued at the hearing. Further and in any event, no evidence was led at the hearing to demolish the Minister's assumptions respecting the employee status of WT and FT as being employees of 563Inc.

[16] Thus, the remaining issue was could 563Inc reclassify the nature of the income earlier indicated on the T4 slips issued to WT and FT.

[17] In *Shell Canada Ltd. v. R.* [1999] 3 SCR 622, the Supreme Court of Canada (SCC) held that it was not the court's role to prevent taxpayers from structuring their affairs in the way they saw fit, provided that the relevant provisions of the *Income*

2026 TCC 181 (CanLII)

*Tax Act* (Act) were met. The Supreme Court further held (para. 45) that, unless otherwise provided by the Act:

> …a taxpayer is entitled to be taxed based on what it actually did, not based on what it could have done, and certainly not based on what a less sophisticated taxpayer might have done.

[18] The SCC in later cases elaborated upon its above phrase, "not based on what it could have done". In *Canada v. Fairmont Hotels Inc.*, 2016 SCC 56, at para. 23, Brown J. stated that while the above cited statement from *Shell Canada*,

> …was applied to support the proposition that a taxpayer should not be denied a sought-after fiscal objective merely because others had not availed themselves at the same advantage, it cuts the other way, too: taxpayers should not be judicially accorded a benefit based solely on what they would have done had they known better.

[19] Finally, in *Canada v. Collins Family Trust*, 2022 SCC 36, para.1, the SCC interpreted the aforementioned statements from *Shell Canada* and *Fairmont Hotels* as standing for the proposition that:

> …taxpayers should be taxed on what they actually agreed to do and did, and not on what they could have done or later wished they had done. (underlining added)

[20] 563Inc was entitled to distribute income to WT and FT in a way that it saw fit - be it through dividend payments or employment income. However, based on the above jurisprudence, 563Inc could not, after the fact, have adjusted already issued T4 slips to reclassify the type of the subject income, whether to avoid CPP remittance obligations or not. As held by the SCC, taxpayers are to be taxed on what they actually did; not on what they later wished they had done.

VI. Conclusion:

[21] Accordingly, this appeal will be dismissed. The Minister's December 7, 2023 written confirmations of CPP assessments are valid.

2026 TCC 181 (CanLII)

[22] The respondent Crown did not seek costs, nor does this Court's *Canada Pension Plan* Appeals Rules allow for costs other than for vexatious proceedings, which this was not.

Signed this 19th day of October 2026.

"B. Russell"

Russell J.

2026 TCC 181 (CanLII)

| | |
|---|---|
| CITATION: | 2026 TCC 181 |
| COURT FILE NO.: | 2024-388(CPP) |
| STYLE OF CAUSE: | 563768 ALBERTA INC. AND M.N.R. |
| PLACE OF HEARING: | Calgary, Alberta |
| DATE OF HEARING: | September 4, 2024 |
| REASONS FOR JUDGMENT BY: | The Honourable Justice Bruce Russell |
| DATE OF JUDGMENT: | October 19, 2026 |

APPEARANCES:

| | |
|---|---|
| Agent for the Appellant: | Jason Isaman |
| Counsel for the Respondent: | Tanzeel Bhaidani |

COUNSEL OF RECORD:

For the Appellant:

| | |
|---|---|
| Name: | Jason Isaman |
| Firm: | Isaman & Isaman Professional Accountants |
| For the Respondent: | Marie-Josée Hogue<br>Deputy Attorney General of Canada<br>Ottawa, Canada |

2026 TCC 181 (CanLII)