Federal Courts Reports

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A-246-20

2022 FCA 126

Ryan Edmond Soulliere (*Appellant*)

v.

Her Majesty the Queen (*Respondent*)

INDEXED AS: SOULLIERE V. CANADA

Federal Court of Appeal, Gleason, Rivoalen and Monaghan JJ.A.—Toronto, April 26; Ottawa, July 7, 2022.

Income Tax — Administration and Enforcement — Appeal from Tax Court of Canada decision upholding assessments against appellant as director of Metro Catering & Vending Services (2010) Inc. (Metro 2010) for unremitted income tax source deductions, levied under Income Tax Act (ITA), s. 227.1, unremitted net GST/HST, levied under Excise Tax Act (ETA), s. 323 — Metro 2010 incorporated under Ontario Business Corporations Act (OBCA), ran same operations as another family business, Metro (Windsor) Enterprises Inc. (Metro Windsor), while Metro Windsor was in receivership — Appellant was also involved in operation of both Metro Windsor, Metro 2010 — Appellant not shareholder of Metro 2010, but was its sole incorporating director — No other directors were ever appointed or elected — After accepting role of incorporating director, appellant resigning as director a few weeks later — Tax Court determining that appellant's resignation not effective by virtue of combined effect of OBCA, ss. 115(4), 119(2) — Holding that appellant remained director of Metro 2010 after delivery of his letter of resignation — Appellant submitted that Tax Court erred in its interpretation of OBCA, ss. 115(4), 119(2) because deemed director may be said to be "appointed" within meaning of s. 119(2); that accordingly, his resignation was effective when letter tendered — Whether Tax Court erred in interpretation of OBCA — Few cases existing where interplay of OBCA, ss. 115(4), 119(2) examined — Tax Court's interpretation respected ordinary meaning of OBCA, ss. 115(4), 119(2) — On plain meaning, deeming provision not constituting "election" or "appointment", thus supporting Tax Court's interpretation — Other provisions in OBCA dealing with election, appointment of directors entirely consistent with Tax Court's interpretation — Purpose of provisions examined, which was in particular to improve investor protections — Therefore, text, context, purpose of provisions supported Tax Court's interpretation — Tax Court not erring in rendering decision as it did — Appeal dismissed.

Corporations —Tax Court of Canada upholding assessments against appellant as director of Metro Catering & Vending Services (2010) Inc. (Metro 2010) for unremitted income tax source deductions, levied under Income Tax Act (ITA), s. 227.1, unremitted net GST/HST, levied under Excise Tax Act (ETA), s. 323 — Metro 2010 incorporated under Ontario Business Corporations Act (OBCA), ran same operations as another family business, Metro (Windsor) Enterprises Inc. (Metro Windsor), while Metro Windsor was in receivership — Appellant was also involved in operation of

both Metro Windsor, Metro 2010 — Was not shareholder of Metro 2010 but its sole incorporating director — No other directors were ever appointed or elected — After accepting role of incorporating director, appellant resigning as director a few weeks later — Tax Court determining that appellant's resignation not effective by virtue of combined effect of OBCA, ss. 115(4), 119(2) — Appellant submitting Tax Court erring in interpretation of provisions at issue, in decision rendered —Tax Court's interpretation respected ordinary meaning of OBCA, ss. 115(4), 119(2) — On its plain meaning, deeming provision not constituting an "election" or "appointment", thus supporting Tax Court's interpretation — Other provisions in OBCA dealing with election, appointment of directors consistent with interpretation of Tax Court — Provisions such as OBCA, ss. 119(4), 120 regarding appointment or election of directors all requiring deliberate acts — Are thus inconsistent with notion that an appointment could result from deeming provision contained in s. 115(4) — Purpose of ss. 115(4), 119(4) examined — Nothing in legislative record indicating that s. 115(4) was intended to override or circumscribe s. 119(2) — Therefore, text, context, purpose of provisions supported Tax Court's interpretation of those provisions.

This was an appeal from a Tax Court of Canada decision upholding assessments against the appellant as a director of Metro Catering & Vending Services (2010) Inc. (Metro 2010) for unremitted income tax source deductions, levied under section 227.1 of the *Income Tax Act* (the ITA), and unremitted net GST/HST, levied under section 323 of the *Excise Tax Act* (the ETA). Metro 2010 was incorporated under the Ontario *Business Corporations Act* (the OBCA) on November 1, 2010, and ran substantially the same operations as another family business, Metro (Windsor) Enterprises Inc. (Metro Windsor), while Metro Windsor was in receivership. The Tax Court assumed in its reasons that the appellant's father was responsible for overall management of the business of Metro 2010 but did not make a factual finding on this point. The appellant was also involved in the operation of both Metro Windsor and Metro 2010. He was not a shareholder of Metro 2010 but was its sole incorporating director. No other directors were ever appointed or elected. The appellant accepted the position of incorporating director, at the behest of his father, for specific reasons. According to Metro 2010's corporate profile report, the appellant was also the president and the secretary of Metro 2010. A few weeks after he accepted the role of incorporating director, the appellant signed a letter, addressed to Metro 2010, stating that he was resigning as a director, effective the date of the letter. He provided the letter to his father. The appellant tendered his resignation after he realized that, as sole director, he could be liable for the debts of Metro 2010. The Tax Court assumed that the appellant's resignation letter was delivered to Metro 2010 on December 10, 2010, when the appellant gave the letter to his father. The sole issue before the Tax Court was whether the appellant's resignation was effective. The Tax Court held that it was not by virtue of the combined effect of subsections 115(4) and 119(2) of the OBCA. The Tax Court held that the appellant remained a director of Metro 2010 after delivery of his letter of resignation for two reasons: first, because, sequentially, the deeming provision under subsection 115(4) of the OBCA can only operate if all the directors have previously resigned or been removed without replacement; and, second, because the operation of the deeming provision in subsection 115(4) does not constitute an appointment under subsection 119(2) of the OBCA. Thus, because a first shareholders' meeting had not taken place, the appellant's resignation was ineffective and he was subject to liability for the unremitted amounts under section 227.1 of the ITA and section 323 of the ETA.

The appellant submitted that the Tax Court erred in its interpretation of subsections 115(4) and 119(2) of the OBCA because a deemed director may be said to be "appointed" within the meaning of subsection 119(2) and, accordingly, the appellant's resignation was effective when it was tendered.

The issue was whether the Tax Court erred in its interpretation of the OBCA.

Held, the appeal should be dismissed.

There were relatively few cases where the interplay of subsections 115(4) and 119(2) of the OBCA was examined and none of them were from the Federal Court of Appeal or the Ontario Court of Appeal. After considering the text of the provisions, it was concluded that the Tax Court's interpretation respected the ordinary meaning of subsections 115(4) and 119(2) of the OBCA. On its plain meaning, a deeming provision does not constitute an "election" or "appointment", thus

supporting the interpretation of the Tax Court. The other provisions in the OBCA dealing with election and appointment of directors are inconsistent with the appellant's proposed interpretation but entirely consistent with that of the Tax Court's. Provisions such as subsection 119(4) and section 120 of the OBCA regarding the appointment or election of directors all require deliberate acts. They are thus inconsistent with the notion that an appointment could result from the deeming provision contained in subsection 115(4) of the OBCA. Additional context in the OBCA also supported the Tax Court's interpretation. Relevant context included subsections 115(1), 117(1), 119(1), 119(9) and 119(10), paragraph 121(1)(a) and subsection 121(2) of the OBCA.

Those who are deemed to be directors by virtue of subsection 115(4) of the OBCA may often be unaware that they have been deemed to hold that office. If incorporating directors are allowed to resign before the first meeting of the corporation's shareholders where permanent directors are elected, the person deemed to be a director could well be unaware of their fiduciary obligations to the corporation and the steps mentioned in subsection 117(1) of the OBCA may not be completed. The OBCA, however, contemplates that a meeting must be held at which the steps mentioned in subsection 117(1) may be taken. This favoured the Tax Court's interpretation of subsections 115(4) and 119(2) of the OBCA under which the likelihood of failing to meet the requirements of subsection 117(1) of the OBCA is substantially lessened. Subsections 119(1) and 119(2) further supported the Tax Court's interpretation in that both use mandatory language with respect to incorporating directors. This was consistent with a narrow interpretation of "appointment" to exclude deemed nominations made under subsection 115(4) of the OBCA.

In sum, a contextual analysis supported the Tax Court's interpretation of subsections 115(4) and 119(2) of the OBCA.

As to the purpose of the provisions, subsection 119(2) of the OBCA was introduced as part of a bill with the stated goal of improving investor protections. It would be inconsistent with investor protection if incorporating directors could resign without a guaranteed replacement. This would leave investors vulnerable at the outset of a corporation's life before subsequent directors were named and consented to act as directors. Subsection 119(2) of the OBCA was amended in 1994 to limit its application to purported resignations where no first shareholders' meeting has taken place. At the same time, subsection 115(4) was added to the OBCA. There was nothing in the legislative record to indicate that subsection 115(4) was intended to override or circumscribe subsection 119(2). Rather, subsection 115(4) serves to provide additional protection to investors and debtors.

Therefore, the text, context and purpose of these provisions supported the Tax Court's interpretation. There was no error in the Tax Court's decision.

STATUTES AND REGULATIONS CITED

Business Corporations Act, R.S.O. 1990, c. B.16, ss. 115(1)(4), 117(1), 119(1)(2)(4)(9)(10), 120, 121(1)(a)(2), 124(1)(4), 186(3)(b), 248(3)(e).

Excise Tax Act, R.S.C., 1985, c. E-15, s. 323.

Income Tax Act, R.S.C., 1985 (5th Supp.), c. 1, s. 227.1.

Statute Law Amendment Act (Government Management and Services), *1994*, S.O. 1994, c. 27.

CASES CITED

APPLIED:

Canada Trustco Mortgage Co. v. Canada, 2005 SCC 54, [2005] 2 S.C.R. 601.

CONSIDERED:

Giocoechea v. The Queen, 2010 TCC 539; *Doncaster v. The Queen*, 2015 TCC 127.

REFERRED TO:

Housen v. Nikolaisen, 2002 SCC 33, [2002] 2 S.C.R. 235; *Grupp v. The Queen*, 2014 TCC 184.

AUTHORS CITED

Ontario. Legislative Assembly. *Official Report of Debates (Hansard)*, 32nd Parl., 1st Sess. (April 24, 1981)(Gordon Walker).

Sullivan, Ruth. *Sullivan on the Construction of Statutes*, 6th ed. Markham, Ont.: LexisNexis, 2014.

APPEAL from a Tax Court of Canada decision (2020 TCC 67) upholding assessments against the appellant as a director of Metro Catering & Vending Services (2010) Inc. for unremitted income tax source deductions, levied under section 227.1 of the *Income Tax Act* and unremitted net GST/HST, levied under section 323 of the *Excise Tax Act*. Appeal dismissed.

APPEARANCES

Craig J. Allen for appellant.

Meaghan Mahadeo and *Jason Stober* for respondent.

SOLICITORS OF RECORD

Craig Allen Law, Windsor, for appellant.

Deputy Attorney General of Canada for respondent.

The following are the reasons for judgment rendered in English by

GLEASON J.A.:

I. Introduction

[1] The appellant appeals from the judgment of the Tax Court of Canada in *Soulliere v. The Queen,* 2020 TCC 67 (*per* Jorré, D.J.) in which the Tax Court upheld assessments against the appellant as a director of Metro Catering & Vending Services (2010) Inc. (Metro 2010), for unremitted income tax source deductions, levied under section 227.1 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the ITA), and unremitted net GST/HST, levied under section 323 of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the ETA).

[2] For the reasons that follow, I would dismiss this appeal, with costs.

II. Background and Reasons of the Tax Court

[3] Metro 2010 was incorporated under the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 (the OBCA) on November 1, 2010, and ran substantially the same operations as another family business, Metro (Windsor) Enterprises Inc. (Metro Windsor), while Metro Windsor was in receivership.

[4] The Tax Court assumed for purposes of its Reasons that the appellant's father was responsible for overall management of the business of Metro 2010, but did not make a factual finding on this point, which was unnecessary to the Tax Court's analysis.

[5] The appellant was also involved in the operation of both Metro Windsor and Metro 2010. The Tax Court accepted the appellant's testimony that he ran the day-to-day operations of both companies, "… with much of his time devoted to, metaphorically, fire fighting" (Reasons, at paragraph 21).

[6] The appellant was not a shareholder of Metro 2010, but was its sole incorporating director. No other directors were ever appointed or elected. The appellant accepted the position of incorporating director, at the behest of his father, who told the appellant that he needed to sign the documents naming him as an incorporating director of Metro 2010 because this was necessary to allow Metro 2010 to carry on the business of Metro Windsor after Metro Windsor was placed into receivership. According to Metro 2010's corporate profile report, the appellant was also the president and the secretary of Metro 2010.

[7] Metro 2010 did not ever hold a first meeting of shareholders.

[8] A few weeks after he accepted the role of incorporating director, the appellant signed a letter, addressed to Metro 2010, stating that he was resigning as a director, effective the date of the letter. He provided the letter to his father. The appellant tendered his resignation after he realized that, as sole director, he could be liable for the debts of Metro 2010. The Tax Court assumed that the appellant's resignation letter was delivered to Metro 2010 on December 10, 2010, when the appellant gave the letter to his father, although, once again, it was not necessary for the Tax Court to decide on this point.

[9] Before the Tax Court, the sole issue was whether the appellant's resignation was effective. The Tax Court held that it was not by virtue of the combined effect of subsections 115(4) and 119(2) of the OBCA. They provide:

> **115** (1) …
>
> **Deemed directors**
>
> (4) Where all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the corporation shall be deemed to be a director for the purposes of this Act.
>
> …
>
> **119** (1) …
>
> **Resignation**
>
> (2) Until the first meeting of shareholders, the resignation of a director named in the articles shall not be effective unless at the time the resignation is to become effective a successor has been elected or appointed.

[10] The Tax Court held that the appellant remained a director of Metro 2010 after delivery of his letter of resignation for two reasons: first, because, sequentially, the

deeming provision under subsection 115(4) of the OBCA can only operate if all the directors have previously resigned or been removed without replacement; and, second, because the operation of the deeming provision in subsection 115(4) does not constitute an appointment under subsection 119(2) of the OBCA. Thus, because a first shareholders' meeting had not taken place, the appellant's resignation was ineffective and he was subject to liability for the unremitted amounts under section 227.1 of the ITA and section 323 of the ETA.

III. Analysis

[11] Before us, the appellant submits that the Tax Court erred in its interpretation of subsections 115(4) and 119(2) of the OBCA because a deemed director may be said to be "appointed" within the meaning of subsection 119(2) of the OBCA and, accordingly, the appellant's resignation was effective when it was tendered.

[12] The Tax Court's interpretation of the OBCA raises a legal issue and is therefore reviewable by this Court for correctness (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paragraph 8).

[13] There have been relatively few cases where the interplay of subsections 115(4) and 119(2) of the OBCA has been examined and none of them are from this Court or the Ontario Court of Appeal. In *Goicoechea v. The Queen,* 2010 TCC 539 and *Doncaster v. The Queen*, 2015 TCC 127, the Tax Court interpreted subsections 115(4) and 119(2) of the OBCA in the same way as the Tax Court did in the case at bar. Contrary to what the appellant alleges, the Tax Court did not endorse his interpretation in *Grupp v. The Queen*, 2014 TCC 184. Given the paucity of binding authority on the point, it is necessary to undertake a statutory interpretation exercise.

[14] The principles of statutory interpretation are well known and were summarized by the Supreme Court of Canada in *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at paragraph 10 as follows:

> It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

[15] I turn first to consider the text of the provisions and conclude that the Tax Court's interpretation respects the ordinary meaning of the subsections 115(4) and 119(2) of the OBCA. On its plain meaning, a deeming provision does not constitute an "election" or "appointment", supporting the interpretation of the Tax Court.

[16] This textual interpretation is also supported by the interpretive presumption of consistent expression, which would require, unless the context dictates otherwise, that the terms "elected" and "appointed" be given a meaning in subsection 119(2) that is

consistent with other provisions in the OBCA where these terms are used: R. Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham: LexisNexis 2014), at 11.2-11.3.

[17] The other provisions in the OBCA dealing with election and appointment of directors are inconsistent with the appellant's proposed interpretation but entirely consistent with the Tax Court's interpretation.

[18] More specifically, directors may be elected under subsection 119(4) and section 120 of the OBCA at a shareholder meeting called by the directors or under subsection 124(4) of the OBCA at a meeting called by the shareholders to fill a vacancy on the board of directors. These provisions state:

> **119** (1) …
>
> **Election of directors**
>
> (4) Subject to clause 120 (a), shareholders of a corporation shall, by ordinary resolution, elect, at the first meeting of shareholders and at each succeeding annual meeting at which an election of directors is required, directors to hold office for a term expiring not later than the close of the third annual meeting of shareholders following the election.
>
> …
>
> **Cumulative voting for directors**
>
> **120** Where the articles provide for cumulative voting,
>
> (a) each shareholder entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by the shareholder multiplied by the number of directors to be elected, and the shareholder may cast all such votes in favour of one candidate or distribute them among the candidates in any manner;
>
> (b) a separate vote of shareholders shall be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting two or more persons to be elected by a single resolution;
>
> (c) if a shareholder has voted for more than one candidate without specifying the distribution of the shareholder's votes among the candidates, the shareholder is deemed to have distributed the shareholder's votes equally among the candidates for whom the shareholder voted;
>
> (d) if the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled;
>
> (e) each director ceases to hold office at the close of the first annual meeting of shareholders following his or her election;
>
> (f) a director may not be removed from office if the votes cast against the director's removal would be sufficient to elect him or her and such votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected;
>
> (g) the number of directors required by the articles may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director and such votes could

be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected; and

(h) the articles shall require a fixed number and not a minimum and maximum number of directors.

…

124 (1) …

Where elected by class of shareholders

(4) Where the holders of any class or series of shares of a corporation have an exclusive right to elect one or more directors and a vacancy occurs among those directors,

(a) subject to subsection (5), the remaining directors elected by that class or series may fill the vacancy except a vacancy resulting from an increase in the number of directors for that class or series or from a failure to elect the number of directors for that class or series; or

(b) if there are no such remaining directors, any holder of shares of that class or series may call a meeting of the holders thereof for the purpose of filling the vacancy.

[19] A person can be appointed as a director under the OBCA either by a quorum of directors, under subsection 124(1), or, in certain circumstances, by the Ontario Superior Court of Justice under paragraphs 186(3)(b) and 248(3)(e) of the OBCA. These provisions state:

Vacancies

124 (1) Despite subsection 126 (6), but subject to subsections (2), (4) and (5) of this section, a quorum of directors may fill a vacancy among the directors, except a vacancy resulting from,

(a) an increase in the number of directors otherwise than in accordance with subsection (2), or in the maximum number of directors, as the case may be; or

(b) a failure to elect the number of directors required to be elected at any meeting of shareholders.

...

186 (1) …

Auxiliary powers of court

(3) Where a reorganization is made, the court making the order may also,

…

(b) appoint directors in place of or in addition to all or any of the directors then in office.

...

248 (1) …

…

Court order

(3) In connection with an application under this section, the court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,

…

(e) an order appointing directors in place of or in addition to all or any of the directors then in office;

[20] The foregoing provisions regarding the appointment or election of directors all require deliberate acts. They are thus inconsistent with the notion that an appointment could result from the deeming provision contained in subsection 115(4) of the OBCA.

[21] Additional context in the OBCA also supports the Tax Court's interpretation. Relevant context includes subsections 115(1), 117(1), 119(1), 119(9) and 119(10), paragraph 121(1)(a) and subsection 121(2) of the OBCA. They state:

Directors

115 (1) Subject to any unanimous shareholder agreement, the directors shall manage or supervise the management of the business and affairs of a corporation.

…

First directors meeting

117 (1) After incorporation, a meeting of the directors of a corporation shall be held at which the directors may,

(a) make by-laws;

(b) adopt forms of security certificates and corporate records;

(c) authorize the issue of securities;

(d) appoint officers;

(e) appoint one or more auditors to hold office until the first annual or special meeting of shareholders;

(f) make banking arrangements; and

(g) transact any other business.

…

First directors

119 (1) Each director named in the articles shall hold office from the date of endorsement of the certificate of incorporation until the first meeting of shareholders.

…

Consent required

(9) Subject to subsection (10), the election or appointment of a director under this Act is not effective unless the person elected or appointed consents in writing before or within 10 days after the date of the election or appointment.

Later consent

(10) If the person elected or appointed consents in writing after the time period mentioned in subsection (9), the election or appointment is valid.

When director ceases to hold office

121 (1) A director of a corporation ceases to hold office when he or she

(a) dies or, subject to subsection 119(2), resigns;

…

Idem

(2) A resignation of a director becomes effective at the time a written resignation is received by the corporation or at the time specified in the resignation, whichever is later.

[22] Subsection 115(1) of the OBCA sets out the general duty of directors to manage or supervise the management of the affairs of a corporation—an important duty. In discharge of this duty, directors owe fiduciary obligations to the corporation.

[23] Subsection 117(1) of the OBCA sets out the steps that the directors of a corporation will typically take to properly set up the affairs of a corporation. The subsection requires that a directors' meeting be held during which these steps may be taken.

[24] As the respondent rightly notes, those who are deemed to be directors by virtue of subsection 115(4) of the OBCA may often be unaware that they have been deemed to hold that office. If incorporating directors were allowed to resign before the first meeting of the corporation's shareholders where permanent directors are elected, the person deemed to be a director could well be unaware of their fiduciary obligations to the corporation and the steps mentioned in subsection 117(1) of the OBCA may not be completed. The OBCA, however, contemplates that a meeting must be held at which the steps mentioned in subsection 117(1) may be taken. This favours the Tax Court's interpretation of subsections 115(4) and 119(2) of the OBCA under which the likelihood of failing to meet the requirements of subsection 117(1) of the OBCA is substantially lessened.

[25] The combined effect of subsections 119(1), 119(2), 119(4), 119(9) and 119(10) of the OBCA is that directors who replace the incorporating directors must be aware of their nomination by the shareholders at the first shareholders' meeting and must consent to their election or appointment. This, once again, favours the Tax Court's interpretation.

[26] Subsection 119(1) further supports this interpretation. The subsection uses the mandatory expression "shall" to indicate that incorporating directors must hold office until the first meeting of the shareholders. This mandatory language also appears in subsection 119(2), which prevents resignations before the first shareholders' meeting unless a replacement for the incorporating director has been appointed or elected. This mandatory language is consistent with a narrow interpretation of "appointment" to exclude deemed nominations made under subsection 115(4) of the OBCA.

[27] Paragraph 121(1)(a) of the OBCA makes it clear that it is superseded by subsection 119(2) such that a resignation cannot be effective until after the first shareholders' meeting. Carving out incorporating directors from the ability to resign in

subsection 121(2) also favours a narrow interpretation of “appointment” in subsection 119(2) of the OBCA.

[28] In sum, a contextual analysis supports the Tax Court’s interpretation of subsections 115(4) and 119(2) of the OBCA.

[29] As concerns the purpose of the provisions, subsection 119(2) of the OBCA was introduced as part of a bill with the stated goal of improving investor protections: *Ontario Legislative Assembly*, 32:1 (April 24, 1981) discussing *An Act to Revise the Business Corporations Act, 1982*, S.O. 1982, c. 4. When the bill was introduced, the Minister responsible for its introduction advised the Ontario Legislative Assembly as follows:

> I am vitally interested in investor protection in this province. I want everyone to get a fair shake in the marketplace. This bill has several provisions which will enhance that protection.

[30] It would be inconsistent with investor protection if incorporating directors could resign without a guaranteed replacement. This would leave investors vulnerable at the outset of a corporation’s life, before subsequent directors were named and consented to act as directors. As the respondent notes at paragraph 61 of its Memorandum of Fact and Law, under the appellant’s interpretation, “[t]here would be no continuity of corporate management and no way to ensure that the corporation would have a director *de jure* in the early days after incorporation”.

[31] Subsection 119(2) of the OBCA was amended in 1994 to limit its application to purported resignations where no first shareholders’ meeting takes place. At the same time, subsection 115(4) was added to the OBCA (*Statute Law Amendment Act (Government Management and Services)*, *1994*, S.O. 1994, c. 27). There is nothing in the legislative record to indicate that subsection 115(4) was intended to override or circumscribe subsection 119(2). Rather, subsection 115(4) serves to provide additional protection to investors and debtors.

[32] I therefore conclude that the text, context and purpose of these provisions supports the Tax Court’s interpretation.

IV. Proposed disposition

[33] I accordingly see no error in the decision of the Tax Court and therefore would dismiss this appeal, with costs.

RIVOALEN J.A.: I agree.

MONAGHAN J.A.: I agree.