Federal Court of Appeal | Cour d'appel fédérale

Date: 20120307

Dockets: A-437-10
A-438-10

Citation: 2012 FCA 71

CORAM: **NOËL J.A.**
PELLETIER J.A.
GAUTHIER J.A.

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

ÉRIC DOIRON

Respondent

Heard at Ottawa, Ontario, on February 7, 2012.

Judgment delivered at Ottawa, Ontario, on March 7, 2012.

REASONS FOR JUDGMENT BY: NOËL J.A.

CONCURRED IN BY: PELLETIER J.A.
GAUTHIER J.A.

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REASONS FOR JUDGMENT

NOËL J.A.

[1] These are two appeals brought against decisions of Justice McArthur of the Tax Court of Canada (the TCC judge) allowing, on the basis of a single set of reasons, the appeal of Éric Doiron (the respondent or Mr. Doiron) from two assessments, one made under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the ITA) in A-437-10, and the other under the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the ETA) in A-438-10.

[2] The two appeals were consolidated by an order of Justice Mainville dated January 31, 2011, with the appeal in A-437-10 being designated as the lead file. In accordance with that order, these reasons will be placed in the lead file, and a copy hereof will be filed in A-438-10 to stand as the reasons in that case.

[3] At issue here are the legal fees and associated interest incurred by the respondent in the 2004 and 2005 taxation years, respectively totalling $25,320 and $45,259, and more specifically the treatment of these expenses for the purposes of the ITA and the ETA. The analysis of this issue requires a brief review of the events that led the respondent to incur these expenses. The relevant statutory provisions are reproduced in an appendix to these reasons.

BACKGROUND

[4] The respondent was a lawyer who had been a member in good standing of the Law Society of New Brunswick since 1993. On April 30, 2002, he was arrested and charged with attempting to obstruct the course of justice and with possession and use of proceeds of crime, both of which are indictable offences. After years of legal proceedings, he was found guilty of obstruction of justice and sentenced to four and a half years in prison.

[5] The respondent was suspended by the Law Society of New Brunswick, effective October 17, 2003, and has not practised law since then (respondent's testimony, Appeal Book, at pages 200 and 208). It appears that he was permanently struck off the Roll in 2010. At the time of the hearing before the TCC, he was working as a manager for a construction company.

[6] The facts that led to the respondent's conviction are described in the judgment of the Court of Appeal of New Brunswick in *R. v. Doiron* (2007 NBCA 41, [2007] N.B.J. No. 189) [*R. v. Doiron*] upholding the decision of Justice Rideout of the Court of Queen's Bench (2005 NBQB 147, [2005] N.B.J. No. 160). Mr. Dorion's defences are laid out and disposed of in three decisions by Justice Rideout (2004 NBBR 219, [2004] N.B.J. No. 208; 2005 NBBR 89, [2005] N.B.J. No. 71; 2005 NBBR 39, [2005] N.B.J. No. 29).

[7] The facts alleged against Mr. Doiron arose in the context of his relationship with a certain Éric Lefebvre. After a fire destroyed a Moncton pub owned in part by a certain Jeff Cormier, Mr. Lefebvre was arrested and eventually pleaded guilty to a charge of arson. Mr. Cormier and Mr. Doiron agreed to have Mr. Doiron represent Mr. Lefebvre (see 2005 NBQB 147, at paragraph 7).

[8] Mr. Doiron and Mr. Lefebvre met on numerous occasions at the Moncton jail. Mr. Lefebvre later revealed to police that Mr. Doiron had offered him a $35,000 bribe in exchange for not testifying against Mr. Cormier. Conversations intercepted by wiretapping confirmed these allegations.

[9] At the end of the first trial, in October 2003, Mr. Doiron was found guilty of attempted obstruction of justice and sentenced to three years in prison. Mr. Doiron appealed against that decision, and the Court of Appeal of New Brunswick ordered a new trial because of an irregularity in the jury selection process.

[10] Mr. Doiron was subsequently acquitted of the charge of possession and use of proceeds of crime, in a separate trial. At the second trial on the charge of attempted obstruction of justice, in April 2005, the jury found Mr. Doiron guilty, and Justice Rideout sentenced him to four and a half years in prison. To justify this severe sentence, Justice Rideout emphasized the fact that Mr. Doiron was a lawyer and therefore held a position of trust in the legal system.

[11] Mr. Doiron appealed against the conviction and the sentence in the Court of Appeal of New Brunswick, arguing among other things that certain pieces of evidence were inadmissible. The Court of Appeal of New Brunswick dismissed the appeal. The Supreme Court of Canada dismissed the application for leave to appeal in December 2008 ([2007] S.C.C.A. No. 413).

[12] In his tax returns for the 2004 and 2005 taxation years, the respondent claimed deductions for the legal fees he paid to defend himself against the criminal charges laid against him and for the interest incurred to finance the payment of these fees. This reduced the respondent's reported income for the 2004 taxation year to a net amount of $23,202 and created a loss of $38,908 for the year 2005, which loss was then deferred (Appeal Book, at pages 43 and 76).

[13] Although the gross incomes underlying these returns ($58,505 and $8,614 respectively) were identified as [TRANSLATION] "professional income" in the tax returns (*idem*, at pages 43, 53, 76 and 81), the respondent confirmed that none of it came from the practice of law, since his

licence to practise had been suspended. The testimony he gave on this question is as follows (respondent's testimony, Appeal Book, at pages 199 and 200):

> [TRANSLATION]
> Now on counsel's comments on the income stream in 2004 and 2005, this is uniquely not ongoing files, but what we call in English "referral fees" which were paid to me for referring clients to a lawyer.
>
> So this wasn't income that I could have earned from practising law because at that time I hadn't been practising law since October 17, 2003.

[14] This testimony shows that, from the time of his suspension, the respondent ceased practising as a lawyer and that the income he earned thereafter came from "referral fees", that is, from commissions for brokering clients.

[15] For the purposes of computing the excise tax for the periods ending December 31, 2004, and December 31, 2005, the respondent also claimed input tax credits in the amounts of $2,386.96 and $4,500.02. The evidence provides no details as to the nature of these credits other than that they relate to legal fees paid by the respondent and claimed in his two tax returns (Appellant's Memorandum, at paragraph 20). I deduce from this that the credits claimed are linked to the cost of services offered by the lawyers who represented the respondent in the criminal proceedings.

[16] The Minister of National Revenue (the Minister) disallowed the deductions claimed under the ITA as well as the credits claimed under the ETA and made the assessments at issue

here in accordance with those two statutes. In making these assessments, the Minister relied on the assumption that the expenses had not been incurred for the purpose of producing income within the meaning of subsection 9(1) and paragraph 18(1)(*a*) of the ITA and that, furthermore, these were personal expenses that cannot be deducted under paragraph 18(1)(*h*). Regarding the disallowance of the input tax credits, the Minister took the position that the services relating to the credits claimed had not been supplied in the course of a commercial activity within the meaning of subsection 169(1) of the ETA.

[17] An appeal was brought before the TCC judge. The respondent argued at the hearing that the criminal acts of which he was convicted were related to his activities as a lawyer (respondent's testimony, Appeal Book, at page 198) and that he had to be a member of the Law Society of New Brunswick to practise his profession, such that he had to defend himself if he ever wanted to earn income as a lawyer again (*idem*, at pages 198 to 200).

TCC DECISION

[18] The TCC judge agreed with the respondent's arguments and held that the expenses claimed had been incurred to earn income during the two years at issue. The reasons for judgment do not address the respondent's position to the effect that the expenses in question had been for the purpose of protecting his source of income, that is, his licence to practise.

[19] The TCC judge commented on several judgements that the parties had submitted to him, among others, *Symes v. Canada*, [1993] 4 S.C.R. 695 [*Symes*]. Drawing on the test set out in that

case, the TCC judge held that the respondent's legal fees "would not have [been] incurred had the [respondent] not been engaged in the pursuit of business income" (Reasons, at paragraphs 14 and 15).

[20] The TCC judge also cites *Rolland Paper Company Limited v. Minister of National Revenue*, 60 DTC 1095, *Vango v. Canada*, [1995] C.T.C. No. 659 and *Mercille v. Canada*, [1999] C.T.C. No. 941. Deeming this case to be "close to the line", he found in favour of the respondent, taking the view that taxpayers must be given the benefit of the doubt (*idem*, at paragraph 19).

[21] The TCC judge also held, without giving any additional explanations, that the respondent was entitled to input tax credits under the ETA and allowed both appeals with a single set of costs to be paid in the ITA file (*idem*, at paragraph 26).

POSITIONS OF THE PARTIES

[22] In support of her appeal, the appellant argues that there is no connection between the charge that was laid against the respondent and the activities he engaged in for the purpose of gaining income (Appellant's Memorandum, at paragraph 29). The appellant also criticizes the TCC judge for failing to recognize that the claimed expenses did not meet the requirements of paragraph 18(1)(*a*) (*idem*, at paragraph 30).

[23] Furthermore, the TCC judge allegedly made a palpable and overriding error in holding that the respondent's actions [TRANSLATION] "are consistent with well-accepted principles of business practice, as required by section 9 of the ITA, or were taken for the purpose of gaining income, in accordance with paragraph 18(1)(*a*) of the ITA" (*idem*, at paragraph 31).

[24] The appellant adds that by the respondent's own admission, the expenses were intended to preserve a [TRANSLATION] "key asset" of the respondent's business and therefore were not an expenditure of a current nature. Surprisingly, the appellant is raising a new argument in this Court, to the effect that the expenses are a capital outlay and therefore subject to the limit provided at paragraph 18(1)(*b*) of the ITA (*idem*, at paragraph 33).

[25] Finally, the appellant submits that the expenses stem from an offence so [TRANSLATION] "repulsive" that they cannot be justified as having been incurred to gain income. On this point, the appellant relies on the *obiter* of Justice Iacobucci in *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at paragraph 69, which states that it is conceivable that a deduction could be disallowed for such a reason (*idem*, at paragraph 32).

[26] The respondent, on the other hand, relies on the reasons of the TCC judge and submits that the TCC judge did not make any errors in law in applying sections 9 and 18 of the ITA (Respondent's Memorandum, at paragraph 2(a)). He adds that characterizing the offence as being [TRANSLATION] "repulsive" is not the applicable test for determining whether an expense may be deducted under the relevant provisions of the ITA (*idem*, at paragraph 2 b)).

[27] The respondent argues that the appellant has not identified any palpable and overriding error in the TCC judge's assessment of the evidence before him (*idem*, at paragraphs 2(c) and (d)). The respondent adds that the TCC judge did not have to consider whether the claimed expenses were capital expenditures and therefore subject to paragraph 18(1)(*b*) since this provision was not raised before him (*idem*, at paragraph 2(e)). Moreover, raising this provision at this stage of the proceedings would cause the respondent harm (*idem*, at paragraphs 58 to 61).

[28] At any rate, the respondent submits that the expenses did not concern an enduring asset and therefore were not a capital expenditure (*idem*, at paragraphs 62 to 66).

ANALYSIS AND DECISION

[29] Since this is an appeal from a judgment of the TCC, the applicable standard of review is the one set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235: questions of law are reviewable on the correctness standard, and this Court must defer to the judgment of the TCC on questions of fact and on questions of mixed fact and law unless it is shown that there was a palpable and overriding error.

[30] Bearing these standards of review in mind, I am of the opinion that the judgment of the TCC judge must be set aside because it was rendered on the basis of an inconclusive test and disregards the evidence before him in several respects.

[31] According to the TCC judge, the respondent is entitled to deduct the claimed amounts if he can establish that the expenses would not have been incurred had he not been engaged in the business (Reasons, at paragraph 15):

> . . . the arrest, criminal charges and Law Society suspension, trials and resulting legal fees would not have incurred had the [respondent] not been engaged in the pursuit of business income.

(See to the same effect paragraph 19 *in fine*, as well as paragraph 21.)

[32] It would indeed appear that none of this would have happened if not for the fact that the respondent was practising law, but as the Supreme Court explains in *Symes*, this is not one of the factors that may be relevant to consider (*Symes*, at paragraphs 68 and 70). The fundamental issue remains the following: "did [Mr. Doiron] incur [legal] expenses for the purpose of gaining or producing income from a business?" (*idem*, at paragraph 67). It is undeniable that Mr. Doiron did not practise law during the relevant period and that the expenses therefore did not serve to earn income for the business in either of the years at issue.

[33] Mr. Doiron nevertheless argues, as he did before the TCC judge, that the expenses were for the purpose of gaining income from his law practice for the two years at issue, because if he had obtained the desired verdict and the Law Society of New Brunswick had lifted his suspension at that time, he would have been able to generate income from this business for each of those years.

[34] This argument fails for several reasons. First of all, the deductions allowed under subsection 9(1) and paragraph 18(1)(*a*) are for expenses incurred for the purpose of gaining income for the year in which they are claimed. The mere fact that the expenses incurred by the respondent could earn him income outside the years at issue does not disallow them, since the only requirement is that they be incurred for the purpose of gaining income in the years in which they are claimed. However, the ITA sets a limit where an expense is aimed at acquiring or preserving what may be referred to as an enduring asset. Such an expense, described at paragraph 18(1)(*b*) using the term “capital outlay”, may not be deducted except to the extent provided in Part I.

[35] In the present case, the claimed expenses were, by the respondent’s own admission, incurred for the purpose of allowing him to regain his licence to practise. This type of benefit, had the respondent succeeded in obtaining it, would have lasted for all the years that he could have potentially practised law, which would therefore make this benefit an enduring asset subject to the limit provided at paragraph 18(1)(*b*).

[36] The respondent submitted that this Court cannot consider the appellant’s new argument according to which that this sort of expense is a capital expense and may not be deducted under paragraph 18(1)(*b*). He points out that this provision was not raised when the assessments were made or before the TCC judge.

[37] I cannot agree with this position. First of all, the respondent's position to the effect that the expenses were incurred to allow him to regain his licence to practise is inconsistent with the TCC judge's conclusion that the claimed expenses are current expenses and therefore deductible under subsection 9(1) and paragraph 18(1)(*a*) of the ITA. Considering the respondent's position, the TCC judge had to take the limit set by paragraph 18(1)(*b*) into account, his role being to determine on the basis of the facts before him whether the assessments are valid (see to this effect *Hammill v. Canada*, 2005 FCA 252, at paragraph 31).

[38] At any rate, paragraph 18(1)(*b*) has now been raised, and the respondent acknowledged at the appeal hearing that any evidence that could be adduced on this issue is before us. I would add that raising this provision now does not in any way alter the amounts assessed. In my view, this is a new argument that may be advanced at this late stage under paragraph 152(9) of the ITA.

[39] In answer to the appellant raising paragraph 18(1)(*b*), the respondent, citing the Supreme Court's judgment in *Evans v. Minister of National Revenue*, [1960] S.C.R. 391 [*Evans*], argued that an expense incurred to protect a source of income is a current expense and therefore deductible in that year (*Evans*, at page 395). As I read it, this judgment does not have the effect that the respondent ascribes to it. In that case, the issue was whether expenses incurred by Ms. Evans for the purpose of gaining income owed to her by a testamentary trust could be deducted in computing her income. Under the terms of the will, Ms. Evans was bequeathed a share of the trust income for life. Ms. Evans ran into difficulty when the trustee, refusing to pay her share of the income, disputed her right to that income under the terms of the will, which led

the trial judge to conclude that the expenses had been incurred to preserve the source of income the testamentary trust represented (*idem*, at page 395).

[40] A majority of the judges of the Supreme Court concluded that the expenses were incurred to collect the income to which Ms. Evans was entitled and thus could be deducted in computing her income for the year in which she finally won her case against the trustee (*idem*, at page 398). The majority noted that the fact that the trustee had, on ill-founded grounds, disputed Ms. Evans' right to the trust income could not transform an expense for collecting the income to which she was entitled into a capital outlay (*idem*, at page 399). According to this line of reasoning, it is clear that if Ms. Evans had lost her case against the trust on the grounds argued by the trustee, the Court would have arrived at the opposite conclusion.

[41] The respondent also referred us to the decision of the Tax Review Board in *Pierre J. Ferguson v. MNR*, 63 DTC 997-40 [*Ferguson*], but that decision does not support his position either. In fact, it has precisely the opposite effect (*Ferguson*, at page 998).

[42] There can be no doubt that a licence to practise a profession governed by a professional body is an asset (see in this regard the definition of the word "property" at paragraph 248(1) of the ITA, which includes "a right of any kind whatever"), and that this asset is of an enduring nature since it carries on over the years and must be kept in good standing in order for the holder to continue exercising the profession concerned. Consequently, the respondent was not entitled to the deductions claimed, having regard to the limit set at paragraph 18(1)(*b*).

[43] Even if we ignored the fact that the expenses were incurred for the purpose of regaining an enduring asset and are therefore capital outlays, the deduction of which is prohibited by paragraph 18(1)(*b*), the onus was on the respondent to show the connection between the expenses and his business. The TCC judge failed to consider the underlying evidence when he agreed with respondent's assertion that the expenses had been incurred to allow him to regain his licence to practise.

[44] On this point, the evidence had to show at the very least that the respondent had a plausible defence against the criminal charges and that, should he win his case, he was likely to regain his licence to practise.

[45] The evidence before us regarding the criminal trial is limited to the facts I related at paragraphs 4 to 10 of these reasons, from the four decisions of Judge Rideout and from the New Brunswick Court of Appeal's decision (*R. v. Doiron*). In his testimony before the TCC judge, the respondent simply denied the facts relied on by the Court of Appeal in dismissing his appeal. He explained that, having chosen not to testify at the criminal trial, he did not have to testify on the circumstances surrounding the charges or the defence he raised (respondent's testimony, Appeal Book, at pages 211 to 214). The respondent adopted this position despite the fact that the criminal case had been closed by the time he testified in the TCC.

[46] Since the burden of proof was on him, the respondent had to expand on his grounds for arguing that he had not committed the act of which he was convicted and, in particular, explain

how he could hope to regain his licence to practice, given the wiretapping evidence adduced against him. Because the respondent was not more forthcoming, the judicial decisions that eventually confirmed his guilt are the only source of information available to us.

[47] Clearly, a verdict of not guilty would not have prevented the Law Society of New Brunswick from concluding that, on a balance of probabilities, the respondent had attempted to bribe and had therefore committed an act inconsistent with the practice of his profession. This is especially likely when we consider the impact of the wiretapping evidence "without [which] there [could not have been a] conviction" (*R. v. Doiron*, at paragraph 112) and the arguments used by Mr. Doiron to counter this evidence, which were limited to proposing a scenario with which the contents of the intercepted conversations "simply do not fit" (*idem*, at paragraph 127) and seeking to have that evidence excluded on Charter grounds. On this point, it is useful to bear in mind that a decision to exclude evidence in a criminal context is not binding on a decision maker who is considering a related issue in a civil context (see on this point the judgment of the Court of Appeal for Ontario in *D.P. v. Wagg*, [2004] O.J. No. 2053, 71 O.R. (3d) 329, at paragraph 77).

[48] Given the extremely serious nature of the impugned act from the perspective of someone who was acting as an officer of the court, the intercepted conversations adduced in evidence against the respondent, and the arguments he used to counter this evidence, Mr. Doiron has not shown how he could hope to regain his licence to practice even if he had succeeded in having that evidence excluded so that "the . . . case would fall apart and [he] would be acquitted of a

most serious offence" (*R. v. Doiron*, at paragraph 112). In my humble opinion, if the TCC judge had considered the evidence from the criminal proceedings, he would have had no choice but to conclude that the respondent had not discharged his burden of proving the connection between the legal fees and his business.

[49] As for the excise tax aspect of the case, the TCC judge had to determine whether the inputs in the form of legal services rendered in defending him in the criminal proceedings were "in the course of" ("dans le cadre de") the respondent's "commercial activity". Again, the burden of proving this was on the respondent.

[50] To answer this question, the TCC judge first had to identify the "commercial activity" in the course of which the legal services had been rendered. Under the ETA, a "commercial activity" may be carried on by a "business", and a "business" includes a "profession" or an "activity engaged in on a regular or continuous basis" (see section 123 of the ETA).

[51] According to his testimony, the respondent was not practising law during the periods covered by the input tax credit claim. The only activity he engaged in during those periods was [TRANSLATION] "referring clients to a lawyer" in consideration of "referral fees". The respondent did not specify if the clients in question were clients of his own firm or persons he referred in another context.

[52] In the latter case, the “commercial activity” would be limited to the act of referring clients to a lawyer in return for monetary consideration, and I fail to see how the respondent could even claim that the legal services rendered in connection with the criminal case could have been rendered in the course of this activity.

[53] However, if the clients he referred were clients of his own firm, that activity could be seen as being incidental to the exercise of his profession, in which case the question would be whether the legal services at issue were rendered in the course of the “commercial activity”, namely, his law practice.

[54] The answer to this question is determined by the preceding analysis. Indeed, to establish the necessary connection, the respondent had to show that he had a plausible defence and that, should he win his criminal case, he could hope to regain his licence to practice. For the reasons I have already laid out, the respondent has not shown this.

[55] I would therefore allow the appeals with a single set of costs and, rendering the decisions that the TCC judge should have rendered, I would dismiss Mr. Doiron's appeals with costs in the file concerning the ITA and without costs in the file concerning the ETA.

"Marc Noël"

J.A.

"I agree.
J.D. Denis Pelletier J.A."

"I agree.
Johanne Gauthier J.A."

Certified true translation
Michael Palles

APPENDIX

RELEVANT STATUTORY PROVISIONS

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

Income	Revenu
9. (1) Subject to this Part, a taxpayer's income for a taxation year from a business or property is the taxpayer's profit from that business or property for the year.	**9.** (1) Sous réserve des autres dispositions de la présente partie, le revenu qu'un contribuable tire d'une entreprise ou d'un bien pour une année d'imposition est le bénéfice qu'il en tire pour cette année.
General limitations	Exceptions d'ordre général
18. (1) In computing the income of a taxpayer from a business or property no deduction shall be made in respect of	**18.** (1) Dans le calcul du revenu du contribuable tiré d'une entreprise ou d'un bien, les éléments suivants ne sont pas déductibles :
General limitation	Restriction générale
(*a*) an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property;	*a*) les dépenses, sauf dans la mesure où elles ont été engagées ou effectuées par le contribuable en vue de tirer un revenu de l'entreprise ou du bien;
Capital outlay or loss	Dépense ou perte en capital
(*b*) an outlay, loss or replacement of capital, a payment on account of capital or an allowance in	*b*) une dépense en capital, une perte en capital ou un remplacement de capital, un paiement à titre de capital ou une

respect of depreciation, obsolescence or depletion except as expressly permitted by this Part;

…

Personal and living expenses

(*h*) personal or living expenses of the taxpayer, other than travel expenses incurred by the taxpayer while away from home in the course of carrying on the taxpayer's business;

provision pour amortissement, désuétude ou épuisement, sauf ce qui est expressément permis par la présente partie;

[…]

Frais personnels ou de subsistance

h) le montant des frais personnels ou de subsistance du contribuable — à l'exception des frais de déplacement engagés par celui-ci dans le cadre de l'exploitation de son entreprise pendant qu'il était absent de chez lui;

Assessment

152.

…

Alternative basis for assessment

(9) The Minister may advance an alternative argument in support of an assessment at any time after the normal reassessment period unless, on an appeal under this Act

(*a*) there is relevant evidence that the taxpayer is no longer able to adduce without the leave of the court; and

(*b*) it is not appropriate in the

Cotisation

152.

[…]

Nouvel argument à l'appui d'une cotisation

(9) Le ministre peut avancer un nouvel argument à l'appui d'une cotisation après l'expiration de la période normale de nouvelle cotisation, sauf si, sur appel interjeté en vertu de la présente loi :

a) d'une part, il existe des éléments de preuve que le contribuable n'est plus en mesure de produire sans l'autorisation du

circumstances for the court to order that the evidence be adduced.

tribunal;

b) d'autre part, il ne convient pas que le tribunal ordonne la production des éléments de preuve dans les circonstances.

248. (1)

"property"
« biens »

"property" means property of any kind whatever whether real or personal or corporeal or incorporeal and, without restricting the generality of the foregoing, includes

(*a*) a right of any kind whatever, a share or a chose in action,

(*b*) unless a contrary intention is evident, money,

(*c*) a timber resource property, and

(*d*) the work in progress of a business that is a profession;

248. (1)

« biens »
"property"

« biens » Biens de toute nature, meubles ou immeubles, corporels ou incorporels, y compris, sans préjudice de la portée générale de ce qui précède :

a) les droits de quelque nature qu'ils soient, les actions ou parts;

b) à moins d'une intention contraire évidente, l'argent;

c) les avoirs forestiers;

d) les travaux en cours d'une entreprise qui est une profession libérale.

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

123.

"commercial activity"
« activité commerciale »

123.

« activité commerciale »
"commercial activity"

“commercial activity” of a person means

(*a*) a business carried on by the person (other than a business carried on without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the business involves the making of exempt supplies by the person,

(*b*) an adventure or concern of the person in the nature of trade (other than an adventure or concern engaged in without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the adventure or concern involves the making of exempt supplies by the person, and

(*c*) the making of a supply (other than an exempt supply) by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply;

« activité commerciale » Constituent des activités commerciales exercées par une personne :

a) l’exploitation d’une entreprise (à l’exception d’une entreprise exploitée sans attente raisonnable de profit par un particulier, une fiducie personnelle ou une société de personnes dont l’ensemble des associés sont des particuliers), sauf dans la mesure où l’entreprise comporte la réalisation par la personne de fournitures exonérées;

b) les projets à risque et les affaires de caractère commercial (à l’exception de quelque projet ou affaire qu’entreprend, sans attente raisonnable de profit, un particulier, une fiducie personnelle ou une société de personnes dont l’ensemble des associés sont des particuliers), sauf dans la mesure où le projet ou l’affaire comporte la réalisation par la personne de fournitures exonérées;

c) la réalisation de fournitures, sauf des fournitures exonérées, d’immeubles appartenant à la personne, y compris les actes qu’elle accomplit dans le cadre ou à l’occasion des fournitures.

“business”
« entreprise »

“business” includes a profession, calling, trade, manufacture or undertaking of any kind whatever, whether the activity or undertaking is

« entreprise »
“business”

« entreprise » Sont compris parmi les entreprises les commerces, les industries, les professions et toutes affaires quelconques avec ou sans but

engaged in for profit, and any activity engaged in on a regular or continuous basis that involves the supply of property by way of lease, licence or similar arrangement, but does not include an office or employment;

lucratif, ainsi que les activités exercées de façon régulière ou continue qui comportent la fourniture de biens par bail, licence ou accord semblable. En sont exclus les charges et les emplois.

General rule for credits

169. (1) Subject to this Part, where a person acquires or imports property or a service or brings it into a participating province and, during a reporting period of the person during which the person is a registrant, tax in respect of the supply, importation or bringing in becomes payable by the person or is paid by the person without having become payable, the amount determined by the following formula is an input tax credit of the person in respect of the property or service for the period:

$$A \times B$$

where

A

is the tax in respect of the supply, importation or bringing in, as the case may be, that becomes payable by the person during the reporting period or that is paid by the person during the period without having become payable; and

Règle générale

169. (1) Sous réserve des autres dispositions de la présente partie, un crédit de taxe sur les intrants d'une personne, pour sa période de déclaration au cours de laquelle elle est un inscrit, relativement à un bien ou à un service qu'elle acquiert, importe ou transfère dans une province participante, correspond au résultat du calcul suivant si, au cours de cette période, la taxe relative à la fourniture, à l'importation ou au transfert devient payable par la personne ou est payée par elle sans qu'elle soit devenue payable :

$$A \times B$$

où :

A

représente la taxe relative à la fourniture, à l'importation ou au transfert, selon le cas, qui, au cours de la période de déclaration, devient payable par la personne ou est payée par elle sans qu'elle soit devenue payable;

B

is

(*a*) where the tax is deemed under subsection 202(4) to have been paid in respect of the property on the last day of a taxation year of the person, the extent (expressed as a percentage of the total use of the property in the course of commercial activities and businesses of the person during that taxation year) to which the person used the property in the course of commercial activities of the person during that taxation year,

(*b*) where the property or service is acquired, imported or brought into the province, as the case may be, by the person for use in improving capital property of the person, the extent (expressed as a percentage) to which the person was using the capital property in the course of commercial activities of the person immediately after the capital property or a portion thereof was last acquired or imported by the person, and

(*c*) in any other case, the extent (expressed as a percentage) to which the person acquired or imported the property or service or brought it into the participating province, as the case may be, for consumption, use or supply in the course of commercial activities of the person.

B

:

a) dans le cas où la taxe est réputée, par le paragraph 202(4), avoir été payée relativement au bien le dernier jour d'une année d'imposition de la personne, le pourcentage que représente l'utilisation que la personne faisait du bien dans le cadre de ses activités commerciales au cours de cette année par rapport à l'utilisation totale qu'elle en faisait alors dans le cadre de ses activités commerciales et de ses entreprises;

b) dans le cas où le bien ou le service est acquis, importé ou transféré dans la province, selon le cas, par la personne pour utilisation dans le cadre d'améliorations apportées à une de ses immobilisations, le pourcentage qui représente la mesure dans laquelle la personne utilisait l'immobilisation dans le cadre de ses activités commerciales immédiatement après sa dernière acquisition ou importation de tout ou partie de l'immobilisation;

c) dans les autres cas, le pourcentage qui représente la mesure dans laquelle la personne a acquis ou importé le bien ou le service, ou l'a transféré dans la province, selon le cas, pour consommation, utilisation ou fourniture dans le cadre de ses activités commerciales.

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKETS:	A-437-10 A-438-10

APPEAL FROM TWO JUDGMENTS OF THE HONOURABLE MR. JUSTICE McARTHUR OF THE TAX COURT OF CANADA DATED OCTOBER 15, 2010, DOCKET NOS. 2009-2292(IT)G AND 2009-2214(GST)I.

STYLE OF CAUSE:	HER MAJESTY THE QUEEN and ÉRIC DOIRON
PLACE OF HEARING:	Ottawa, Ontario
DATES OF HEARING:	February 7, 2012
REASONS FOR JUDGMENT BY:	NOËL J.A.
CONCURRED IN BY:	PELLETIER J.A. GAUTHIER J.A.
DATED:	March 7, 2012

APPEARANCES:

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