

Docket: 2015-349(IT)G

BETWEEN:

DANIEL LAPLANTE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on December 12 and 13, 2016, at Montreal, Quebec.

Before: The Honourable Justice Sylvain Ouimet

Appearances:

Counsel for the appellant:	Serge Fournier Geneviève Thériault-Lachance
Counsel for the respondent:	Michel Lamarre

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2008 taxation year is dismissed, with costs.

Signed at Ottawa, Canada, this 23rd day of June 2017.

“Sylvain Ouimet”

Ouimet J.

Translation certified true
on this 26th day of September 2018.

Janine Anderson, Revisor

Citation: 2017 TCC 118
Date: 20170623
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REASONS FOR JUDGMENT

Quimet J.

I. INTRODUCTION

[1] Daniel Laplante (“Mr. Laplante”) is appealing a reassessment made by the Minister of National Revenue (“Minister”) on March 10, 2014, which added to his income for the 2008 taxation year the amount of \$2,593,412.50 as a taxable capital gain from Fiducie DL. In 2008, following the disposition of its shares in DTI Software Inc. (“DTI”), Fiducie DL realized a \$5,852,074 capital gain. The \$2,593,412.50 taxable capital gain that was added to Mr. Laplante’s income for the 2008 taxation year represents the total of the amounts (\$370,487.50 x 7) allocated by Fiducie DL to some of its beneficiaries on December 25, 2008, namely Sylvie Laplante (“Ms. Laplante”), Daniel Michaud (“Mr. Michaud”), Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Josée Rolland (“Ms. Rolland”) and Élisabeth Rondeau (“Ms. Rondeau”).

II. ISSUES

[2] The issues in this case are as follows:

1. Was the Minister correct in reassessing Mr. Laplante for the 2008 taxation year after the normal reassessment period?
2. Was the Minister correct in adding \$2,593,412.50 as a taxable capital gain to Mr. Laplante's income for the 2008 taxation year?

[3] To answer these two questions, I have to answer the following question:

1. Did Mr. Laplante, Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau participate in a simulation?

[4] The following persons testified for Mr. Laplante during the trial:

- Mr. Laplante;
- Ms. Laplante, the sister of Mr. Laplante and the spouse of Mr. Michaud;
- Mr. Michaud, the brother-in-law of Mr. Laplante;
- Marie-Claude Michaud, the daughter of Mr. Michaud and Ms. Laplante;
- Ms. Rolland, the cousin of Mr. Laplante;
- Pierre Laplante, the brother of Mr. Laplante;
- Ms. Rondeau, the spouse of Mr. Laplante.

[5] Michel Babeu, a CPA, testified for the respondent during the trial.

III. RELEVANT STATUTORY PROVISIONS

[6] The relevant statutory provisions are as follows:

Civil Code of Québec

IV. — Simulation

1451. Simulation exists where the parties agree to express their true intent, not in an apparent contract, but in a secret contract, also called a counter letter.

Between the parties, a counter letter prevails over an apparent contract.

1452. Third persons in good faith may, according to their interest, avail themselves of the apparent contract or the counter letter; however, where conflicts of interest arise between them, preference is given to the person who avails himself of the apparent contract.

2130. Mandate is a contract by which a person, the mandator, confers upon another person, the mandatary, the power to represent him in the performance of a juridical act with a third person, and the mandatary, by his acceptance, binds himself to exercise the power.

That power and, where applicable, the writing evidencing it are called power of attorney.

2184 Upon termination of the mandate, the mandatary is bound to render an account and hand over to the mandator everything he has received in the performance of his duties, even if what he has received was not due to the mandator.

The mandatary owes interest, computed from the date of default, on sums received that constitute the balance of the account.

Interpretation Act, R.S.C. 1985, c. I-21.

Rules of Construction

Property and Civil Rights

Duality of legal traditions and application of provincial law

8.1 Both the common law and the civil law are equally authoritative and recognized sources of the law of property and civil rights in Canada and, unless otherwise provided by law, if in interpreting an enactment it is necessary to refer to a province's rules, principles or concepts forming part of the law of property and civil rights, reference must be made to the rules, principles and concepts in force in the province at the time the enactment is being applied.

Canada Evidence Act, R.S.C. 1985, c. C-5

40 In all proceedings over which Parliament has legislative authority, the laws of evidence in force in the province in which those proceedings are taken, including the laws of proof of service of any warrant, summons, subpoena or other document, subject to this Act and other Acts of Parliament, apply to those proceedings.

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

38. Taxable capital gain and allowable capital loss — For the purposes of this Act,

(a) [Taxable capital gain—general] subject to paragraphs (a.1) to (a.3), a taxpayer's taxable capital gain for a taxation year from the disposition of any property is $\frac{1}{2}$ of the taxpayer's capital gain for the year from the disposition of the property;

39 (1) Meaning of capital gain and capital loss [and business investment loss] — For the purposes of this Act,

(a) a taxpayer's capital gain for a taxation year from the disposition of any property is the taxpayer's gain for the year determined under this subdivision (to the extent of the amount thereof that would not, if section 3 were read without reference to the expression "other than a taxable capital gain from the disposition of a property" in paragraph 3(a) and without reference to paragraph 3(b), be included in computing the taxpayer's income for the year or any other taxation year) from the disposition of any property of the taxpayer other than

...

40 (1) General rules [determination of gains and losses] — Except as otherwise expressly provided in this Part

(a) a taxpayer's gain for a taxation year from the disposition of any property is the amount, if any, by which

(i) if the property was disposed of in the year, the amount, if any, by which the taxpayer's proceeds of disposition exceed the total of the adjusted cost base to the taxpayer of the property immediately before the disposition and any outlays and expenses to the extent that they were made or incurred by the taxpayer for the purpose of making the disposition, or

...

exceeds

(iii) subject to subsection 40(1.1), such amount as the taxpayer may claim

(A) in the case of an individual (other than a trust) in prescribed form filed with the taxpayer's return of income under this Part for the year, and

(B) in any other case, in the taxpayer's return of income under this Part for the year, as a deduction, not exceeding the lesser of

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(C) a reasonable amount as a reserve in respect of such of the proceeds of disposition of the property that are payable to the taxpayer after the end of the year as can reasonably be regarded as a portion of the amount determined under subparagraph 40(1)(a)(i) in respect of the property, and

(D) an amount equal to the product obtained when 1/5 of the amount determined under subparagraph 40(1)(a)(i) in respect of the property is multiplied by the amount, if any, by which 4 exceeds the number of preceding taxation years of the taxpayer ending after the disposition of the property; and

...

104 (13) Income of beneficiary — There shall be included in computing the income for a particular taxation year of a beneficiary under a trust such of the following amounts as are applicable:

(a) in the case of a trust (other than a trust referred to in paragraph (a) of the definition “trust” in subsection 108(1)), such part of the amount that, but for subsections (6) and (12), would be the trust’s income for the trust’s taxation year that ended in the particular year as became payable in the trust’s year to the beneficiary, and

...

104 (24) Amount payable — For the purposes of subsections (6), (7), (7.01), (13), (16) and (20), subparagraph 53(2)(h)(i.1) and subsections 94(5.2) and (8), an amount is deemed not to have become payable to a beneficiary in a taxation year unless it was paid in the year to the beneficiary or the beneficiary was entitled in the year to enforce payment of it.

...

110.6 (2.1) Capital gains deduction — qualified small business corporation shares — In computing the taxable income for a taxation year of an individual (other than a trust) who was resident in Canada throughout the year and who disposed of a share of a corporation in the year or a preceding taxation year and after June 17, 1987 that, at the time of disposition, was a qualified small business corporation share of the individual, there may be deducted such amount as the individual may claim not exceeding the least of

(a) the amount determined by the formula in paragraph (2)(a) in respect of the individual for the year,

(b) the amount, if any, by which the individual’s cumulative gains limit at the end of the year exceeds the amount deducted under subsection 110.6(2) in computing the individual’s taxable income for the year,

(c) the amount, if any, by which the individual’s annual gains limit for the year exceeds the amount deducted under subsection 110.6(2) in computing the individual’s taxable income for the year, and

(d) the amount that would be determined in respect of the individual for the year under paragraph 3(b) (to the extent that that amount is not included in computing the amount determined under paragraph (2)(d) in respect of the individual) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(b) were qualified small business corporation shares of the individual.

152 (4) Assessment and reassessment [limitation period] — The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has

been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect of the year only if

(a) the taxpayer or person filing the return

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act, or

(ii) has filed with the Minister a waiver in prescribed form within the normal reassessment period for the taxpayer in respect of the year;

IV. FACTS

A. Context

[7] In 1995, Mr. Laplante and two partners founded DTI. In 2004, when DTI started to bring in good revenue, Mr. Laplante and his two partners participated in an information meeting offered by the Chamberland Hodge accounting firm, which handled DTI's accounting at the time. Following the meeting, Mr. Laplante and his partners each decided to constitute a trust. Mr. Laplante constituted Fiducie DL in November 2004¹ and the three newly constituted trusts acquired part of DTI's capital stock.

[8] According to Fiducie DL's deed of trust, Mr. Laplante, Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau were all beneficiaries of the trust. Mr. Laplante's three children, his parents, his in-laws and his godfather and godmother were also beneficiaries of the trust.²

[9] In January 2008, all outstanding DTI shares were sold to a German company. By disposing of its DTI shares, Fiducie DL realized a \$5,852,074 capital gain. At the time of the sale, DTI was a small business corporation according to the definition in subsection 248(1) of the *Income Tax Act* ("ITA"), and its shares were qualified small business corporation shares under subsection 110.6(1) of the ITA.

¹ Exhibit A-1, Appellant's Book of Exhibits, Vol. 1, Tab 1, p. 2.

² Exhibit A-1, Appellant's Book of Exhibits, Vol. 1, Tab 1, pp. 7-8.

In this context, in applying the relevant provisions of the ITA, half of the total capital gain realized by the trust, that is, \$2,926,037, was not taxable in the hands of the trust. The other half, \$2,926,037, was taxable in the hands of Fiducie DL unless it was allocated to its beneficiaries. In such a situation, it became taxable in the hands of the beneficiaries.

[10] On December 25, 2008, a resolution of the trustees³ was signed by the three Fiducie DL trustees, that is, Mr. Laplante, his mother and his friend. According to the resolution, Fiducie DL allocated \$258,605.31 to Mr. Laplante and \$75,000 to each of his three children. Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante and Ms. Rolland were each allocated \$370,487.50. Ms. Rondeau was allocated \$375,000. When the allocations were made, Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau were entitled to a \$375,000 capital gains exemption under subsection 110.6 (2.1) of the ITA.

[11] Further to these allocations, between December 25 and 28, 2008, Mr. Laplante gave Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau a cheque in the amount of \$370,487.50 from Fiducie DL. Within minutes of the cheques being distributed, all of the cheques were endorsed and returned to Mr. Laplante. Then Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau all signed a deed of gift gifting \$370,487.50 to Mr. Laplante.

[12] Chamberland Hodge, Mr. Laplante's accounting firm, prepared, at Mr. Laplante's expense, the income tax returns for the 2008 taxation year for Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau.

[13] Mr. Laplante paid the alternative minimum tax that had to be paid by Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau as a result of the December 25, 2008 allocations. The alternative minimum tax that was recovered in subsequent taxation

³ Exhibit A-1, Appellant's Book of Exhibits, Vol. 1, Tab 2, pp. 1-2.

years was kept by these individuals. The amounts that the beneficiaries recovered ranged from \$20,000 to \$40,000, depending on their level of income.

[14] In subsequent years, Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante and Ms. Rolland all received an additional allocation of \$4,512.50. Ms. Laplante, Mr. Michaud, Marie-Claude Michaud and Marjolaine Michaud returned that amount to Mr. Laplante. Pierre Laplante kept it and Ms. Rolland was unable to confirm whether or not she had returned the amount to Mr. Laplante.

B. Testimony

(1) Daniel Laplante

[15] Mr. Laplante is the primary trustee of Fiducie DL. In that capacity, he is the sole permanent trustee of the trust, and he is the one who appointed the two temporary trustees of the trust. In his testimony, Mr. Laplante stated that the thing that he enjoys most in life is sharing. He has always wanted to be able to share the proceeds of a possible business success with his family members. He also stated that he is not materialistic and does not think that he will live long enough to spend all of his money.

[16] Mr. Laplante said that he decided to constitute Fiducie DL after participating in an information meeting with the Chamberland Hodge accounting firm. At the information meeting, Mr. Laplante learned that since DTI's shares were qualified small business corporation shares within the meaning of subsection 110.6(1) of the ITA, the beneficiaries of a trust that held DTI shares could then take advantage of a \$375,000 capital gains exemption if amounts were allocated to them. As a result, constituting a trust allowed Mr. Laplante to give the beneficiaries of the trust \$375,000 tax-free instead of a taxable amount of \$375,000, which would have ended up being about half of that amount after taxes. Thus, he could give his family twice as much money by creating a trust.

[17] In June 2008, following the sale of the DTI shares by Fiducie DL, Mr. Babeu, an accountant with Chamberland Hodge, prepared a memorandum. Mr. Laplante said that he did not recall having received this memorandum or having asked Mr. Babeu to prepare such a memorandum. According to Mr. Laplante, Mr. Babeu probably prepared the memorandum after Mr. Laplante asked him for information on the approximate minimum tax that the beneficiaries

would have to pay in the event of an allocation, which would allow him to determine the amount he was actually going to give them. Mr. Laplante also said that he did not know whether the beneficiaries of the trust had already used their capital gains exemption at the time the memorandum was prepared and did not ask Mr. Babeu to obtain that information. However, he did say that he had presumed that Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau had not used their capital gains exemption before the December 25, 2008 allocation.

[18] According to Mr. Laplante, following a meeting with Mr. Babeu and on the advice of Mr. Babeu, a tax plan was implemented. Based on the information obtained at the meeting, Mr. Laplante was able to explain to the Fiducie DL beneficiaries what a capital gains exemption and an alternative minimum tax are.

[19] With respect to the trustees' December 25, 2008 resolution,⁴ Mr. Laplante said that the decision regarding the amount to be allocated to each beneficiary was made so as to maximize the capital gains exemption of each beneficiary, with the exception of his children.

[20] Mr. Laplante said that he met with Ms. Laplante, Mr. Michaud, Marie-Claude Michaud and Marjolaine Michaud at their residence to discuss the December 25, 2008 allocations. At the meeting, which was held shortly before December 25, 2008, he informed them that they were Fiducie DL beneficiaries and that as beneficiaries they would all soon receive an amount of money. He also explained what the tax consequences of this transaction would be for them. He also told them that they were entitled to a capital gains exemption and that they would have to pay an alternative minimum tax. During the meeting, Ms. Laplante, Mr. Michaud, Marie-Claude Michaud and Marjolaine Michaud told Mr. Laplante that they would refuse the amounts of money that were going to be allocated to them. At the December 25, 2008 family Christmas party, Mr. Laplante told them that if they wanted to give their cheques back to him, they could endorse them and gift them to him. Ms. Laplante, Mr. Michaud, Marie-Claude Michaud and Marjolaine Michaud endorsed the cheques over to Mr. Laplante. After the cheques were endorsed, Mr. Laplante printed deeds of gift and had each of these individuals sign them to formalize the gift.

⁴ *Supra*, footnote 2.

[21] With respect to Ms. Rolland, Mr. Laplante said that he met with her at a restaurant to discuss the December 25, 2008 allocation. He told her that as a Fiducie DL beneficiary, she would soon receive an amount of money. As he did with Ms. Laplante's family, he explained what the tax consequences of this transaction would be for her. He also told her that she was entitled to a capital gains exemption and that she would have to pay an alternative minimum tax. He apparently asked her what she intended to do; she told him that she would let him know.

[22] At the December 25, 2008 family Christmas party, Mr. Laplante gave Ms. Rolland the cheque in the amount of \$370,487.50, and she apparently endorsed it and signed a deed of gift.

[23] With respect to Pierre Laplante, Mr. Laplante said that the first time he discussed the December 25, 2008 allocation with him was at the December 25, 2008 family Christmas party. It was at the party that he told Pierre Laplante that he was one of the Fiducie DL beneficiaries and that as a beneficiary he would receive a cheque for \$370,487.50. Mr. Laplante discussed the tax consequences of the allocation with him as he had with Ms. Laplante's family and Ms. Rolland.

[24] Mr. Laplante said that he drafted the deeds of gift at the December 25, 2008 family Christmas party. He had an example of a deed of gift on a USB key that he had with him. He used a computer that was at the residence to make the necessary changes and print the deeds. Mr. Laplante maintained that there was an example of a deed of gift on his USB key because one of his family members, probably Ms. Laplante, had already told him that she intended to give him the allocation amount. He had thus sought advice from Mr. Babeu. Mr. Babeu had advised him to have the beneficiaries sign deeds of gift.

[25] According to Mr. Laplante, it was only after the signing of the deeds of gift that he told Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud and Ms. Rolland that he was willing to pay for the filing of their income tax returns as well as their minimum tax as consideration for their gifts.

[26] According to Mr. Laplante, all of the beneficiaries who received an allocation on December 25, 2008, were able to use their capital gains exemption, which they could not have done otherwise. According to him, they were all happy to use their exemption and gift him the amounts received from Fiducie DL. According to Mr. Laplante, the beneficiaries still benefited from the situation

because they kept the alternative minimum tax that was refunded to them. Also, with respect to the minimum tax, Mr. Laplante said that he paid the alternative minimum tax for each beneficiary and the costs related to filing their income tax returns. According to him, it was the least he could do given the gifts he had received from these beneficiaries.

[27] As for the allocations of \$4,512.50, they were made to maximize the capital gains exemption of Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau. Mr. Laplante said that they all kept this amount.

(2) Daniel Michaud

[28] Mr. Michaud is the husband of Ms. Laplante, who is Mr. Laplante's sister. He is also the father of Marie-Claude and Marjolaine Michaud. Mr. Michaud said that he was informed of the existence of Fiducie DL a year or two before the sale of Mr. Laplante's company in 2008. However, at that time, he was unaware that he was one of the beneficiaries of the trust. According to Mr. Michaud, it was not until a meeting at his residence in December 2008 that Mr. Laplante told him and Ms. Laplante that he had sold his company and that they were Fiducie DL beneficiaries. At the meeting, Mr. Michaud also learned that he, Ms. Laplante and Marjolaine and Marie-Claude would each receive an amount ranging from \$365,000 to \$375,000 from Fiducie DL.

[29] At the same meeting, Mr. Laplante talked to them about the capital gains exemption and the minimum tax that would be payable following receipt of the amounts allocated. Mr. Laplante also told them that the minimum tax would be refundable in subsequent years based on their income. During the meeting, Mr. Michaud and Ms. Laplante told Mr. Laplante that they intended to refuse the amounts that he wanted to allocate to them. Mr. Michaud and Ms. Laplante did not feel comfortable accepting this amount. According to Mr. Michaud, it was Mr. Laplante's money. As a result, he could not possibly accept the money that was to be allocated to him. Mr. Michaud stated that they had already made their decision and Mr. Laplante had been informed of it. In cross-examination, Mr. Michaud mentioned that one of the items discussed at the meeting was the possibility that he and Ms. Laplante would give Mr. Laplante the cheques that they were going to receive from Fiducie DL. In such a case, Mr. Laplante would write "a gift letter" and pay the minimum tax.

[30] At the December 25, 2008 family Christmas party, Mr. Michaud received a cheque in the amount of \$370,487.50⁵ from Mr. Laplante. At the party, Mr. Michaud endorsed the cheque and gave it to Mr. Laplante. He also signed a document, but does not recall what the document was. However, it seems that the document in question was the deed of gift because it was signed on the same day as the cheque, December 25, 2008.⁶ When Mr. Michaud was asked why he did not simply refuse the cheque, he answered that he believed [TRANSLATION] “the money was simply his” and that he wanted to [TRANSLATION] “give it to him personally”, referring to Mr. Laplante.

[31] Mr. Michaud said that it had been agreed upon with Mr. Laplante, at the first or second meeting, that if he and Ms. Laplante were to decide to make a gift to him, Mr. Laplante would look after the filing of their income tax returns for 2008 and pay the related costs. It was in fact Mr. Laplante’s accountant, Mr. Babeu, who looked after the filing of the Michaud family’s income tax returns for the 2008 taxation year. Yet Mr. Michaud testified that he did not know Mr. Babeu.

[32] In cross-examination, Mr. Michaud confirmed that Mr. Laplante paid the minimum tax. Thus, in subsequent years, Mr. Michaud recovered about \$20,000 for this minimum tax, an amount that he did not give to Mr. Laplante. Finally, Mr. Michaud also said that he received another amount from Fiducie DL in 2010. Mr. Michaud did not, however, recall the amount, but did not deny that it could have been about \$4,500. He said that this amount was returned to Mr. Laplante, but did not recall how.

(3) Sylvie Laplante

[33] Ms. Laplante is Mr. Michaud’s spouse and Mr. Laplante’s sister. She corroborated certain facts mentioned by Mr. Michaud in his testimony. Like Mr. Michaud, she said that it was at a first meeting in December 2008 that Mr. Laplante informed all of her family members, including Mr. Michaud and their two daughters, that he had sold his company and that they were Fiducie DL beneficiaries. Ms. Laplante knew that they were each going to receive approximately \$375,000. She also confirmed that the minimum tax and the capital

⁵ Exhibit A-1, Appellant’s Book of Exhibits, Vol. 1, Tab 6.

⁶ Ibid.

gains exemption were discussed at this meeting. However, Ms. Laplante's testimony is more detailed than Mr. Michaud's testimony on certain points. Ms. Laplante confirmed that her two daughters were present at the meeting, which Mr. Michaud was unable to confirm. With respect to the minimum tax, she learned from Mr. Laplante, at the meeting, that they were going to have seven years to recover it, a detail that Mr. Michaud did not provide.

[34] According to Ms. Laplante, at the first meeting in December 2008, Mr. Laplante asked her family members whether they agreed to give him their tax exemptions. Ms. Laplante also understood that in order to be able to do this, under the tax rules, they would first have to receive the amount of money from Fiducie DL. Mr. Laplante also told her that if they gave him the amount, he would pay the tax that they would be required to pay and that they could then recover and keep this tax. At the same meeting, Ms. Laplante agreed to receive the amount from Fiducie DL, to use her capital gains exemption and to gift the amount to Mr. Laplante. She said that she wanted to contribute financially to her brother's future plans because he was not talking about retirement. She said that she was very happy that he was successful and that she could help him.

[35] According to Ms. Laplante's testimony, it seems that Mr. Laplante gave her the option of keeping the money. However, Ms. Laplante stated that Mr. Laplante knew her well and that, as a result, he knew full well that she would give him the money that she was going to receive from Fiducie DL.

[36] At the second meeting in December 2008, Mr. Laplante gave her a cheque in the amount of \$370,487.50, which she apparently immediately endorsed. However, Ms. Laplante does not recall the subsequent gift, although she did confirm that the signature on the deed of gift is hers.⁷

[37] Ms. Laplante also confirmed that Mr. Laplante paid her minimum tax for 2008, which she recovered and kept in subsequent years. She recovered approximately \$20,000, which, according to her, was quite sufficient for having helped her brother and having contributed to carrying out his plans.

⁷ Exhibit A-1, Appellant's Book of Exhibits, Vol. 1, Tab 5.

[38] Ms. Laplante also stated that, in the years following the 2008 taxation year, she, her husband and their two daughters were allocated approximately \$4,500 from Fiducie DL, and each of them apparently returned that amount to Mr. Laplante in the same manner as they did for the first allocation, by giving Mr. Laplante the cheques received from the trust, to complete the \$375,000, i.e. the amount of each of their exemptions. According to Ms. Laplante, Mr. Laplante's accountant looked after preparing her family's 2008 income tax returns.

(4) Marie-Claude Michaud

[39] In 2008, Ms. Michaud was studying design at university and living with her parents. Ms. Michaud confirmed that at a first meeting in December 2008, Mr. Laplante told her family that they were each going to receive an amount of money from Fiducie DL. She said that it was a gift that she would receive as a Fiducie DL beneficiary. Unlike her parents, she said the amount of money that they were to receive was not discussed at this first meeting. Ms. Michaud also contradicted her parents on another point. She said that it was at the second meeting, not at the first meeting, that Mr. Laplante informed the members of her family that there would be a minimum tax to be paid following receipt of the cheque and that he would pay it for them. As for the capital gains exemption, she said that she did not recall what that was. Ms. Michaud does not recall having had discussions with members of her family regarding the allocations following the first meeting with Mr. Laplante.

[40] At the second meeting, Mr. Laplante gave each member of her family a cheque. According to Ms. Michaud, Mr. Laplante already knew that all of the family members were going to return the cheques to him. Apparently, it was only when she received the cheque that she and the family members asked him how they could do it. Mr. Laplante allegedly told them to sign the back of the cheque and had them sign a deed of gift. According to Ms. Michaud, Mr. Laplante already had the deeds of gift in his possession because he already knew that they were going to return the cheques to him.

[41] As to why she gave Mr. Laplante the cheque, Ms. Michaud said that it was a personal choice and added that when she handed over the cheque she was a student and would not necessarily have known how to invest it. She had therefore preferred to give the cheque back to him.

[42] Ms. Michaud also confirmed that, in subsequent taxation years, she recovered and kept the minimum tax paid by Mr. Laplante for the 2008 taxation

year. She also said that she received a second allocation from Fiducie DL in 2014 and in 2015.

(5) Josée Rolland

[43] Ms. Rolland is Mr. Laplante's cousin. During the 2008 taxation year, she was employed as a social worker at a hospital centre. In late 2008, there were two meetings between Ms. Rolland and Mr. Laplante regarding the allocation that she was to receive from Fiducie DL. The first meeting was held in a restaurant in the weeks or months preceding December 2008. At the meeting, Mr. Laplante told her that she was a Fiducie DL beneficiary and that she would soon receive an allocation. However, according to Ms. Rolland, the allocation amount was not discussed at the meeting. Between the first and second meeting, Ms. Rolland and Mr. Laplante met on several occasions. According to her testimony, it was at one of those meetings that Mr. Laplante allegedly told her the amount that was to be allocated to her and she told him that she would return it to him.

[44] Ms. Rolland claimed that when she found out that she was going to receive the cheque, she told Mr. Laplante that she felt that the amount was [TRANSLATION] "too much" and that, even though it was going to be her money, she wanted to be able to give it back to him. Mr. Laplante apparently immediately replied that he would [TRANSLATION] "consider it". Ms. Rolland said that she did not feel comfortable with the idea of keeping such a large amount of money, not having personally invested any time or money in Mr. Laplante's company. Mr. Laplante had worked [TRANSLATION] "very hard" and had taken [TRANSLATION] "many risks", which was why she wanted to give him back the money. She also confirmed that she received a second allocation in 2015 that was far smaller than the 2008 allocation—about \$40,000, as far as she could recall—and that she did not return it to Mr. Laplante.

[45] Like the other beneficiaries, Ms. Rolland said that she and Mr. Laplante discussed tax concepts during their first meeting. At that meeting, Mr. Laplante explained what a capital gains exemption is and told her that it can only be used once in a person's lifetime. With respect to the exemption, Ms. Rolland said that Mr. Laplante knew that she had never used her capital gains exemption. However, she maintains that she can no longer remember whether it was Mr. Laplante or one of his accountants who had asked her outright whether she had used it.

[46] Ms. Rolland said that the alternative minimum tax and its possible recovery were also discussed at the first meeting with Mr. Laplante. According to her,

Mr. Laplante apparently told her not to worry about it, that he would [TRANSLATION] “look after it,” and that he would pay the tax arising from the allocation. Unlike the other witnesses, Ms. Rolland submits that she was the one who asked Mr. Laplante to have his accountants prepare her 2008 income tax return because her mother usually prepared her returns, and her mother was not necessarily comfortable dealing with a return that was that complex.

[47] After the first meeting, there was a second meeting with Mr. Laplante at the December 25, 2008 family Christmas party. It was at this second meeting that Ms. Rolland received a cheque for \$370,487.50⁸ from Mr. Laplante as a result of the allocation from Fiducie DL. It was also at this meeting that she apparently immediately endorsed the cheque and returned it to Mr. Laplante. Also, since she had already told Mr. Laplante that she intended to return the money to him, he already had a deed of gift in his possession, and Ms. Rolland signed it a few minutes after returning the cheque.⁹

[48] After the deed of gift was signed, Mr. Laplante apparently provided an update on the situation and reiterated that he intended to pay the minimum tax for Ms. Rolland. Mr. Laplante did pay the minimum tax for Ms. Rolland. Ms. Rolland received the refund of this tax—approximately \$35,000—in the subsequent taxation years. She said that she kept the whole amount.

(6) Élisabeth Rondeau

[49] Ms. Rondeau is a human resources manager and is Mr. Laplante’s spouse. Ms. Rondeau’s testimony was very brief because she said that she could hardly remember anything about the circumstances surrounding the December 2008 allocations. She said that she remembered receiving a cheque for \$370,487.50 on or about December 26, 2008, endorsing it and giving it to her husband. However, she has absolutely no recollection of the deed of gift or of even signing it.¹⁰ After receiving this gift, Mr. Laplante deposited the cheque in the couple’s joint account. She remembered having had discussions with Mr. Laplante regarding the 2008 allocation, but provided no further details.

⁸ Exhibit A-1, Appellant’s Book of Exhibits, Vol. 1, Tab 8.

⁹ Ibid.

¹⁰ Exhibit A-1, Appellant’s Book of Exhibits, Vol. 1, Tab 3.

(7) Pierre Laplante

[50] Pierre Laplante is Mr. Laplante's brother. In 2008, he was working at an extended care centre in Montreal. Unlike the other beneficiaries who received an allocation in December 2008, Pierre Laplante did not have a meeting with Mr. Laplante prior to the December 25, 2008 trustees' resolution. At a family meeting held at the 2008 Christmas party, Mr. Laplante gave him a cheque in the amount of \$370,487.50,¹¹ and explained that the cheque was the result of an allocation made by Fiducie DL. It was the first time he had heard anything about this allocation.

[51] Pierre Laplante said that after he received the cheque, he thought about it for a few moments and finally decided to return it to Mr. Laplante. He had no intention of keeping the cheque because he had been raised on the adage "you reap what you sow." He had also seen Mr. Laplante stay up all night and work very hard for his company. He therefore thought it appropriate not to accept the cheque. He too was glad to be in a position to contribute to his brother's success by giving him back the cheque.

[52] Once Pierre Laplante had made that decision, Mr. Laplante allegedly suggested that he gift him the money. Mr. Laplante then printed a deed of gift and had him sign it after he endorsed the cheque that he had received from the trust. After the deed of gift was signed, Mr. Laplante told Pierre Laplante that he would pay the alternative minimum tax for him and would look after preparing his 2008 income tax return. However, it was only during a discussion with Mr. Laplante's accountants regarding the preparation of his 2008 income tax return that Pierre Laplante learned about the capital gains exemption and the alternative minimum tax.

[53] Pierre Laplante confirmed that he received and kept approximately \$40,000 as a refund of the alternative minimum tax paid by Mr. Laplante for the 2008 taxation year. In 2011, he also received and kept \$4,512, which was allocated to him by the trust. He kept this amount because it was smaller than the \$370,000 that had been allocated to him in 2008.

¹¹ Exhibit A-1, Appellant's Book of Exhibits, Vol. 1, Tab 4.

(8) Michel Babeu

[54] Michel Babeu had been a tax consultant and partner at Chamberland Hodge since 2002. He said that he met Mr. Laplante for the first time in 2005 during the creation of an estate freeze structure using a family trust. According to Mr. Babeu, negotiations were held in 2007 regarding the sale of the DTI shares. In early 2008, Mr. Babeu met with Mr. Laplante, who told him that, given the price obtained for his DTI shares, he could [TRANSLATION] “shift some income” over to the Fiducie DL beneficiaries. A memorandum was submitted to Mr. Laplante in March 2008. The memorandum was amended and resubmitted to Mr. Laplante at a meeting held between late June and early July 2008. The memorandum was a tax planning document, the purpose of which was to provide Mr. Laplante with various considerations regarding the disposition of his DTI shares, including the disposition of the DTI shares held by Fiducie DL. The memorandum also contained a scenario that would result in the maximum potential tax savings for all beneficiaries of the trust. This scenario was different from the one presented in March 2008 because Mr. Laplante wanted to [TRANSLATION] “shift more money” to members of his family.

[55] In order to be able to complete the memorandum, Mr. Babeu had to obtain certain information on the beneficiaries from the tax authorities. With Mr. Laplante’s permission, he contacted the beneficiaries to obtain their authorization. Mr. Babeu obtained this authorization from most of the beneficiaries.

[56] Also, it was recommended that in accordance with a specific timeline Mr. Laplante obtain certain information that would allow Mr. Babeu to complete the memorandum. By May 5, 2008, Mr. Babeu had to obtain from Mr. Laplante the 2007 income tax returns of the beneficiaries who were to receive an allocation and prepare authorizations to confirm their tax balances and verify their available capital gains deduction as well as their total cumulative investment losses and the losses that they could carry over.

[57] The memorandum also addressed the consequences an allocation could have for certain beneficiaries. According to the memorandum, the consequences included the possibility of having to repay their old age security pension, lose their child tax benefit, suffer a reduction in the deductibility of their medical expenses, lose their property tax refund, lose bursaries and finally, lose their GST/QST credit.

[58] The information mentioned in the memorandum was important to Mr. Babeu because it informed Mr. Laplante about the consequences of an allocation for the beneficiaries, enabling him to send them this information so as to avoid uncomfortable situations or misunderstandings. Also, the scenarios had to be completed in May 2008 for each beneficiary in order to anticipate the tax implications of the plan.

[59] Mr. Babeu confirmed that individual scenarios were prepared for most of the beneficiaries. According to Mr. Babeu, the scenarios did not reflect the trustees' wishes. They were a source of information on the consequences of the possible allocations and their purpose was to assist the trustees in making choices about future allocations.

[60] Between December 18 and 25, 2008, Mr. Laplante contacted Mr. Babeu and told him that some beneficiaries wanted to give him the amounts received from Fiducie DL. Mr. Babeu told Mr. Laplante that he needed to properly document the gifts so that they could withstand a tax audit, and he provided him with an example of a deed of gift.

V. Positions of the parties

A. Position of the respondent

[61] The position of the respondent can be summarized as follows:

1. Mr. Michaud, Ms. Laplante, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau apparently all accepted Mr. Laplante's mandate and thus acted as straw men. First, each mandate involved accepting the amount of money to be given to them by Fiducie DL as a result of the December 25, 2008 allocations. After receiving the amount, they were to return it to Mr. Laplante. To be able to return the full amount of the allocations to Mr. Laplante, they had to use their personal capital gains exemption. According to the Minister, by accepting such a mandate, they all had a legal obligation to return the amount received from Fiducie DL to Mr. Laplante.

2. The mandates were apparently given in December 2008, at the first of the two meetings with Mr. Laplante regarding the future allocations, except in the case of Pierre Laplante. In his case, the agreement was apparently

entered into on the same day as Mr. Laplante handed over the cheque, December 25, 2008.

3. According to the Minister, by accepting Mr. Laplante's mandates, Mr. Michaud, Ms. Laplante, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau participated in a simulation as defined in article 1451 of the *Civil Code of Québec*¹² (hereinafter "CCQ"). Consequently, they agreed to express their true intent in secret contracts—the mandates mentioned above—and not in the apparent contracts. In this case, the apparent contracts were the allocations and the deeds of gift in favour of Mr. Laplante.

4. Finally, with these mandates, Mr. Laplante and Mr. Michaud, Ms. Laplante, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau apparently intended to deceive the Minister. The purpose of the simulation was to allow Mr. Laplante to receive the amounts of \$370,487.50 allocated to the beneficiaries on December 25, 2008, exempt from any tax. This was possible using each beneficiary's capital gains exemption. The Minister maintained that, according to the evidence, Mr. Laplante knew that none of the beneficiaries had used their capital gains exemptions before the adoption of the trustees' resolution on December 25, 2008.

B. Mr. Laplante's position

[62] Mr. Laplante's position may be summarized as follows:

1. The Minister made the assessment that is under appeal out of time. Consequently, the Minister had to prove, on a balance of probabilities, that Mr. Laplante, in filing his 2008 income tax return, made a misrepresentation that was attributable to neglect, carelessness or wilful default, or that he committed fraud.

2. According to counsel for Mr. Laplante, the Minister failed to demonstrate, on a preponderance of evidence, that each beneficiary acted as

¹² *Civil Code of Québec*, S.Q. 1991, c. 64.

a straw man for Mr. Laplante. Also according to counsel for Mr. Laplante, the fact that each beneficiary chose to not keep the amount received from Fiducie DL and to gift it to Mr. Laplante is an unusual situation, a special case, but it is not sufficient in itself to prove that simulations existed. For the Court to make this finding, two elements must be present, a material element and an intentional element. In this case, there are no secret deeds, only actual deeds. These deeds are the trustees' allocations to the beneficiaries and the deeds of gift that they signed in favour of Mr. Laplante.

3. According to counsel for Mr. Laplante, simulation exists when the intention of the parties is not consistent with the apparent deed. In this case, he argued that the intention of the parties was consistent with the apparent deed. According to their testimony, all of the beneficiaries wanted to gift the amount received from Fiducie DL to Mr. Laplante. No evidence to the contrary was provided. Consequently, the fate of this appeal is based entirely on the credibility of the witnesses. Despite certain weaknesses in their testimony, he claimed that for the most part the witnesses did not contradict one another. Thus, the Minister did not prove, on a preponderance of evidence, the existence of the two essential elements of a simulation.

VI. ANALYSIS

[63] In principle, taxpayers' legal relationships must be respected in tax cases. However, in accordance with the principle stated in *Shell Canada Ltd. v. Canada*,¹³ the courts are not bound by the label of a legal transaction if it does not properly reflect the actual legal effects of the transaction. This is the case, for example, when the courts come to the conclusion that the legal transaction is a sham.¹⁴ In such a case, the Court may recharacterize a legal transaction between the parties on the basis of the actual legal effects of the transaction upon the parties.

[64] Under section 8.1 of the *Interpretation Act*,¹⁵ in the application of the ITA in the Province of Quebec, this Court may refer to the rules, principles and concepts in force in Quebec. Consequently, in applying the ITA in Quebec, the Minister

¹³ [1999] 3 S.C.R. 622

¹⁴ Ibid., paragraph 39.

¹⁵ R.S.C. 1985, c. I-21.

may apply the provisions of the CCQ to determine whether he is in the presence of a situation in which the characterization to be given to a legal transaction between the parties does not properly reflect the actual legal effect of the transaction between the parties. That would be the case in a simulation as defined in article 1451 of the CCQ.

[65] If the Minister demonstrates the existence of a simulation under article 1452 of the CCQ,¹⁶ he, being a third person in good faith, may, according to his interest, avail himself of the apparent contract or the secret contract. However, given the principle established in *Shell, supra*, the Minister must make the assessment based on the actual legal relationships between the parties. In the case of a simulation, the actual legal effects of a transaction between the parties are stated in the secret contract. As a result, if there is a simulation, the Minister must make the assessment based on the legal effects of the secret contract.

[66] In this case, the Minister is of the view that the legal effects of the gifts from Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau to Mr. Laplante do not properly reflect the true legal effects between the parties because these individuals had a legal obligation to return the amounts received from Fiducie DL to Mr. Laplante because they had been mandated by Mr. Laplante to receive them.

[67] I must therefore determine whether Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau accepted a mandate from Mr. Laplante and thus participated in a simulation.

A. Limitation period

[68] Under subparagraph 152(4)(a)(i) of the ITA, when the Minister makes a reassessment after the normal reassessment period, the Minister must prove that

¹⁶ In this regard, see this Court's decision in *Bolduc v. The Queen*, 2002 CarswellNat 3720, 2003 DTC 221, at paragraph 15 [TRANSLATION]: "In applying the Act in Quebec, nothing in the Act precludes the Minister from relying on the provisions of the C.C.L.C. and the CCQ regarding the effects of a contract entered into in Quebec. Also, article 1212 C.C.L.C. is an evidentiary rule applicable in proceedings under the legislative authority of the Parliament of Canada and exercised in the Province of Quebec (section 40 of the *Canada Evidence Act*). . . ."

the taxpayer has made a misrepresentation that is attributable to neglect, carelessness or wilful default in filing his or her income tax return. Consequently, the Minister first had to prove that Mr. Laplante had made a misrepresentation that was attributable to neglect, carelessness or wilful default in failing to include a \$2,593,412.50 taxable capital gain in his 2008 income tax return. However, to do this, the Minister had to prove that Mr. Laplante and Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau participated in a simulation, which is the issue that needs to be considered when addressing the second issue. The decision to be made by this Court with respect to the two issues is therefore based on the same evidence.

B. Simulation

[69] Under article 1451 of the CCQ, simulation exists where the parties agree to express their true intent, not in an apparent contract, but in a secret contract. To make a finding that simulation exists, two elements must be present: a material element and an intentional element. The material element is the existence of two separate deeds, that is, the apparent deed, which contains what the parties want third parties to believe, and the secret deed, which expresses the actual agreement. The intentional element is the intent to deceive third parties regarding the existence or the content of an agreement.¹⁷

(1) Material element

[70] In this case, the apparent deeds are the deeds of gift. Their existence was not called into question by the parties at the hearing.

[71] As for the secret deeds, according to the Minister, they were the mandates given by Mr. Laplante to Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau.

[72] Under article 2130 of the CCQ, a mandate is a contract by which a person, the mandator, confers upon another person, the mandatary, the power to represent him in the performance of a juridical act with a third person, and the mandatary, by

¹⁷ Jean-Claude Royer and Sophie Lavallée, *La preuve civile*, 4th edition, Cowansville: Éditions Yvon Blais, 2008, p.1568.

his acceptance, binds himself to exercise the power. Under the first paragraph of article 2184 CCQ, upon termination of the mandate, the mandatary is bound to hand over to the mandator everything he has received in the performance of his duties. Moreover, it was established by the Supreme Court of Canada in *Victuni v. Minister of Revenue of Quebec*¹⁸ that the true owner of the money received in the execution of a mandate is the mandator.¹⁹

[73] In this case, I am of the opinion that there is sufficient evidence to allow me to conclude, on balance of probabilities, that Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau all accepted a mandate from Mr. Laplante. The essential elements of the mandate involved receiving a \$375,000 allocation from Fiducie DL and then returning this amount to Mr. Laplante. To this end, they all had to use their capital gains exemption, which was also essential. As consideration, they were able to keep the alternative minimum tax recovered in subsequent taxation years.

[74] Of all the testimony given by the members of Ms. Laplante's family regarding what happened during the first meeting with Mr. Laplante, Ms. Laplante's testimony was the most detailed. Throughout her testimony, Ms. Laplante did not make any distinction between herself and her family. She alternated between using the singular and the plural. Because she said that Mr. Laplante met with her entire family at the same time, which Mr. Laplante confirmed, I have concluded that Mr. Laplante had the same discussion with the whole family. Nothing in the testimony of Ms. Laplante and Mr. Laplante allows me to conclude otherwise.

[75] Ms. Laplante testified that Mr. Laplante asked them to give him their capital gains exemption. She confirmed that the capital gains exemption and the minimum tax were discussed at the meeting. Ms. Laplante understood that in order to do what Mr. Laplante was asking, they first had to receive the amounts of money from Fiducie DL. Ms. Laplante knew that they were each going to receive approximately \$375,000. Ms. Laplante said that they had agreed to receive the amount from Fiducie DL, give Mr. Laplante their capital gains exemption and give

¹⁸ *Victuni v. Minister of Revenue of Quebec*, [1980] 1 S.C.R. 580.

¹⁹ *Ibid.*, page 584.

him back the amount received. She said that she was very happy to be able to help her brother.

[76] Essentially, these facts were confirmed by Mr. Michaud, but fewer details were provided. As for Marie-Claude's testimony, I give it very little weight given that she contradicted her parents on some points. Unlike her parents, she said that the amount of money that they were going to receive was not discussed at the first meeting. She also contradicted her parents when she said that Mr. Laplante did not inform her family members that they would have to pay a minimum tax until after they received the cheque, at the second meeting. She also contradicted her mother on another point. According to her, it was at the second meeting that Mr. Laplante told them that he would pay the minimum tax, not at the first meeting. As for the capital gains exemption, she said that she simply did not recall what that was.

[77] With respect to Ms. Rolland and Pierre Laplante, according to their testimony, I am of the view that Mr. Laplante proposed the same mandate to them. As in the case of Ms. Laplante's family, all of the essential elements of the mandate were covered by Mr. Laplante in the discussions that he had with Ms. Rolland and Pierre Laplante regarding the December 25, 2008 allocations. However, unlike Ms. Laplante's family members, Ms. Rolland and Pierre Laplante only accepted the mandate when the cheque from Fiducie DL was given to Mr. Laplante. I am of the view that by accepting the cheque and by giving it to Mr. Laplante after endorsing it, they demonstrated their acceptance of the mandate.

[78] With respect to Ms. Rondeau, according to her testimony, it also appears that all of the essential elements of the mandate were brought to her attention at some point in time, although it is not known when or by whom. In cross-examination, Ms. Rondeau stated that she was vaguely familiar with the concept of a gift and the concept of a capital gain, that someone had told her about that, but that she was not able to explain them because Mr. Laplante was the one who looked after the family's tax matters. She also said that she was somewhat familiar with the concept of a minimum tax, but that is all.

[79] Like all of the other beneficiaries, she accepted the cheque from Fiducie DL, endorsed it and gave it to Mr. Laplante. Given the foregoing, the self-interested nature of her testimony and the fact that her testimony was very vague, I am of the view that, on a preponderance of evidence, Ms. Rondeau also accepted a mandate from Mr. Laplante by giving him back the cheque that she had received from Fiducie DL after endorsing it.

(2) Intentional element

[80] The intentional element is the co-contracting parties' intent to deceive third parties regarding the existence or content of an agreement. However, it is not necessary to demonstrate that the co-contracting parties intended to deceive the Minister by way of the simulation.²⁰ The co-contracting parties' intent to deceive third parties is established by demonstrating the existence of a secret contract that was not disclosed to the third party, in this case the Minister.

[81] In this case, there is no evidence that Mr. Laplante informed the Minister of the existence of the mandate given to Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau. On the contrary, Mr. Laplante's position is that he never gave Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau a mandate. According to Mr. Laplante, Fiducie DL made allocations, and the amounts thus allocated were then given to him as gifts, nothing more.

[82] As for Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau, the evidence shows that they never informed the Minister that they had accepted a mandate from Mr. Laplante. They never informed the Minister that they had accepted Mr. Laplante's proposal, which involved receiving the sum of \$375,000.00 from Fiducie DL and then giving it to him.

[83] According to the evidence submitted at the hearing, the parties did not and never intended to disclose the existence of the mandates to the Minister.

VII. Conclusion

[84] Based on the evidence before me and on a preponderance of the evidence, I am of the opinion that Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau all accepted a

²⁰ *Transport H. Cordeau Inc. v. The Queen*, 99 DTC 5765 (Federal Court of Appeal), paragraph 29.

mandate from Mr. Laplante under which they were to give him the \$375,000 that was to be allocated to them by Fiducie DL. By gifting this amount to Mr. Laplante and not informing the Minister that they had accepted such a mandate, they all participated in a simulation.

[85] Consequently, the Minister was right in assessing Mr. Laplante based on the legal effects of the mandates that he gave Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau. Thus, the Minister was correct to add a \$2,593,412.50 taxable capital gain to Mr. Laplante's income for the 2008 taxation year because Mr. Laplante mandated Ms. Laplante, Mr. Michaud, Marie-Claude Michaud, Marjolaine Michaud, Pierre Laplante, Ms. Rolland and Ms. Rondeau to receive \$375,000.00 on his behalf from Fiducie DL.

[86] Given the foregoing and my comments in paragraph 69 of these reasons on the issue of the limitation period, the Minister was correct to reassess Mr. Laplante for the 2008 taxation year after the normal reassessment period.

[87] For these reasons, the appeal is dismissed, with costs.

Signed at Ottawa, Canada, this 23rd day of June 2017.

“Sylvain Ouimet”

Ouimet J.

Translation certified true
on this 26th day of September 2018.

Janine Anderson, Revisor

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THE QUEEN

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