Docket: 2002-4812(IT)G

BETWEEN:

NAJI ABINADER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on September 6, 7, 8, 12, 13, 14, 15 and 16, 2005,
at Roberval, Quebec.

Before: The Honourable Justice François Angers

Appearances:

Counsel for the Appellant:	Martin Dallaire Sebastien Talbot
Counsel for the Respondent:	Nathalie Lessard Simon-Nicolas Crépin

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JUDGMENT

The appeals from the assessments made under the *Income Tax Act* in respect of the taxation years 1989 through 1995 are dismissed, with costs to the Respondent.

Signed at Ottawa, Canada, this 23rd day of February 2007.

"François Angers"

Angers J.

Translation certified true
on this 27th day of June 2008.

Erich Klein, Revisor

Citation: 2007TCC111
Date: 20070223
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REASONS FOR JUDGMENT

Angers J.

[1] These are appeals from reassessments dated June 20, 1997, and confirmed on September 13, 2002. By these reassessments, the Minister of National Revenue ("the Minister") disallowed all the tax credits that the appellant had claimed for the taxation years 1989 through 1995 in respect of charitable gifts to the Ordre antonien libanais des Maronites (OALM), and imposed penalties for each of those taxation years. The reassessments concerning the taxation years 1989 through 1993 were made after the normal reassessment period.

[2] During the years in issue, the appellant obtained receipts from the OALM for the following amounts: $60,000 for 1989, $64,000 for 1990, $60,000 for 1991, $60,200 for 1992, $50,000 for 1993, $50,000 for 1994, and $50,000 for 1995. The appellant also obtained receipts for charitable donations to other registered charities, the amounts involved being $456, $1,915, $2,500, $0, $200, $250 and $30 for the taxation years 1989 to 1995 respectively. The appellant's income tax returns disclose that he claimed charitable gift credits of $53,788, $54,171, $52,319, $66,284, $61,388, $61,571 and $50,030 for the years 1989 to 1995 respectively.

[3] The respondent alleges that the appellant did not donate to the OALM during the years in issue the amounts shown on any of the receipts because the receipts and the amounts indicated thereon are false. The respondent maintains that during the years in issue, the OALM operated a scheme whereby it issued official

receipts for charitable gifts in exchange for the payment of 20%, on average, of the amount stated on those receipts, or whereby, in some cases, it issued a receipt to the taxpayer showing a cash donation of an amount equal to the amount that the taxpayer paid to the OALM by cheque, but of which the OALM later returned 80%, on average, to the taxpayer in cash. As well, according to the respondent, the OALM sometimes issued a receipt to a taxpayer who had not donated anything or had paid a minimal (20%) cash amount. The respondent further maintains that the appellant was a participant in this OALM scheme and that all the receipts for the years in issue were issued under this scheme.

[4] For his part, the appellant submits that he genuinely made charitable donations to the OALM, that the amounts of his donations are consistent with his professional income, that his financial situation—meaning his assets—is inconsistent with the respondent's allegations, and that he cannot possibly have enriched himself at the respondent's expense. In addition, citing the *Canadian Charter of Rights and Freedoms*, the appellant objects to the admission of evidence obtained as a result of the execution of search warrants at his home and on the OALM's premises. However, the appellant dropped his objection to the admission of the evidence obtained through a search at his home, his office and his cottage. The appellant is pleading the expiry of the limitation period and invoking procedural fairness, and questions the relevance of similar facts referred to by some of the respondent's witnesses.

[5] The involvement of the Canada Revenue Agency ("the Agency") began in late March 1994 when Isabelle Mercier, with the help of her accountant, arranged a meeting with representatives of the Agency in order to tell them about her participation, and that of her husband (Samir El-Boustany), the appellant, Dr. Fadi Basile and Antoine Hani in a scheme set up by the OALM. Ms. Mercier was accompanied by her accountant, and the Agency was represented by auditor Colette Langelier, Gaetan Ouellet of the special investigations service, and team leader Raymond Galimi. At the meeting, she explained her situation and that of the others named above. She said that she had arranged the meeting because she was having a lot of problems with her husband at the time. They had in fact been separated since September 1993, and they had three children. Her husband had donated his entire salary in one taxation year, and the amount was deposited back into their joint account a few days later. Fearing reprisals from the Agency, she preferred to meet with its representatives in order to make them aware of this modus operandi.

[6] Ms. Mercier married Samir El-Boustany, a radiology technician, in December 1984. A Lebanese Catholic and a member of the OALM's board of directors, he attended the order's church and was friends with its priests in Montreal. Thus, Ms. Mercier was familiar with the OALM and moved in OALM circles during the first years of her marriage; she made charitable gifts to the OALM in the years 1988 through 1990, and got four or five receipts. The amount of her first donation to the OALM, which she made in 1988, was $200, and she was given a receipt for that amount. However, for the gifts that she made in subsequent years, which ranged from $3,000 to $5,000, she was given a receipt for the donation amount along with a cash amount varying between 50% and 80% of the donation amount. Her husband deposited this cash in their joint account, and it was used to pay the mortgage on their home. In fact, Ms. Mercier says that her husband was the intermediary between her and the OALM, and played the same role between other donors and the organization. On several occasions, she was present as he attempted to attract donors and explained the scheme to them; most of the people that he approached were physicians and friends of his, a few of whom were identified. She was also present one Sunday, after Mass, when her husband and Father Antoine Sleeman discussed the scheme. After Father Sleeman left, around 1989, she became acquainted with Father Youssel El-Kamar, who became a personal friend of her husband's. He was the person who signed the receipts for the OALM. He was very familiar with the scheme and discussed it in her presence at her home. Ms. Mercier also knew Fathers Jean Slim and Claude Nadras.

[7] As for the appellant, Ms. Mercier met him early in her marriage. He was of Lebanese origin, was married to Nicole Leduc, a Quebecer, and was a resident at the Hôtel-Dieu hospital in Montreal. The two couples became friends and visited each other even after the appellant left Montreal to take up residence in Roberval. They went on trips down south together, and the appellant and his family visited them whenever they were visiting Nicole Leduc's parents in Brownsburg, Quebec. In addition, they saw each other during summer vacation.

[8] Ms. Mercier testified that the appellant participated in the scheme set up by the OALM. She had receipts issued to her by the OALM, as well as cash, in a drawer in her bedroom. Her husband would receive a cheque from the appellant, go to the church, and come back with an envelope addressed to the appellant, a receipt, and cash. She said that she saw this happen several times. Most of the time, the cash totalled $16,000, because she counted the money on one or two occasions. The money consisted of $100 and $1,000 bank notes. From the receipt and the thickness of the envelope, she knew what the amount was. Her husband always

placed the envelope in his desk drawer. After a few days, the appellant or his father-in-law would come to pick up the envelope in her presence; this happened several times. She testified that she was aware that this was being done from 1990 through 1992. She is less certain about 1993, because she and her husband separated in September of that year.

[9] In discussions she had with the appellant about the cash, he told her that he used it to cover his expenses for conferences abroad, that he purchased a Porsche, that he renovated the second floor of his house and paid the workers in cash, and that he purchased a plot of land. She testified that Ms. Leduc was probably aware of what was going on, because the money had to be spent on something, and they spoke about it. Ms. Mercier also found in the family vehicle an OALM envelope containing two receipts made out to the appellant: one receipt, for $20,000, was dated July 23, 1991 and bore the number 1752; the other, for the same amount, was dated August 20, 1991 and bore the number 1761. She told her husband about this, and he replied that it did not matter because both receipts had been reissued (Exhibit I-24).

[10] Ms. Mercier met the same representatives of the Agency, with the exception of Mr. Ouellet, a second time in September 1994 in order to clarify what she had said. She brought documents such as receipts and cheques. On August 23, 1995, she signed a statement before Mr. Ouellet and Ms. Langelier in which she informed them of what she knew about the OALM scheme. On January 31, 1997, she signed a second statement containing essentially the same assertions regarding the scheme and the appellant's participation therein. However, she added that during the summer, on visits to the appellant's home, her husband brought envelopes from the OALM containing cash and receipts, and that her husband brought back cheques that the appellant had made out to the OALM. It should be remembered that Ms. Mercier's husband was an OALM promoter who sought donations, and such donations allowed donors to take advantage of one of the schemes put in place by the OALM.

[11] Following the meeting with Ms. Mercier in September, the team leader decided to audit the OALM through the Charities Division in Ottawa, and he entrusted this task to Colette Langelier. Ms. Langelier has been working for the Agency for about 30 years. She learned that the Ottawa office was preparing to suspend the OALM's registration. She obtained the T3010 statements containing the names of the OALM's donors, and its audit report, and, after familiarizing herself with their contents, she noticed several anomalies in how the OALM did

things, which made it possible to make connections with Ms. Mercier's assertions. Therefore, it was decided to audit the OALM, and she was assigned that task.

[12] As we know, Ms. Langelier met Ms. Mercier again on September 8, 1994, along with team leader Raymond Galimi. At this meeting, she obtained documents from Ms. Mercier, including copies of her ex-husband's cheques and deposit slips. Among these documents was a cheque for $15,000 issued to the OALM by her ex-husband, which the OALM cashed. The OALM gave him 15 thousand-dollar bills, which he immediately deposited, because the money for the donation had been taken from his line of credit. Moreover, the audit enabled Ms. Langelier to confirm the information provided by Ms. Mercier, and to reassess her ex-husband for the taxation years 1989 through 1992.

[13] So Ms. Langelier contacted the leaders of the OALM and began an audit for the years 1989 through 1993. She completed the audit for 1994 and 1995 later on. Ms. Langelier obtained copies of accounting documents, monthly bank statements, cancelled cheques, deposit slips and receipt books from Ralph Nahar, the OALM's accountant. All of this information was reconciled in the document filed as Exhibit I-28, which contains the name of each donor, the amount and date of the cheque, the date on which it was deposited, and the number, date and amount of the receipt issued. The document makes it possible to compare the total deposits made by the OALM with the receipts issued and the amount of the withdrawals made by the OALM using cheques payable to "Cash" written shortly after the donations were deposited. Ms. Langelier also noticed that there were very few deposits of cash donations. The OALM was unable to show that the donations received were actually sent to Lebanon as it claimed. Apparently, the OALM's representatives explained to Ms. Langelier that the money withdrawn through the cheques payable to "Cash" was kept in the safe and given to people who were travelling to Lebanon, or to priests who were going there. However, the OALM was unable to provide any names or dates, or to indicate any amounts thus sent to Lebanon or any conversion from Canadian to Lebanese currency. Ms. Langelier was unable to determine the use of over 90 of the amounts on the receipts issued by the OALM.

[14] Her audit work and, in particular, the reconciliation in Exhibit I-28, enabled Ms. Langelier to identify the three different forms of the scheme. Under the first, a donation was received by cheque and a receipt for the same amount was issued. The cheque was deposited, and this was followed by a withdrawal by means of a cheque made out to "Cash" by the OALM. The amount withdrawn, which was 80% of the donation amount, was given to the donor. The second form of the

scheme consisted in issuing an antedated receipt for payments made by cheque that represented only a fraction of the amount shown on the receipt. In the third form of the scheme, a receipt was issued for which no corresponding inflow of cash could be found in the OALM's bank accounts. Each of these techniques is illustrated by an example in Exhibit I-28. Ms. Langelier also noted that most of the donors from 1989 to 1994 made charitable donations only to the OALM and that a number of them claimed 20% of their net income.

[15] Gaetan Ouellet is now retired. He was the investigator on the OALM file, but his involvement only really began in late June 1995, specifically, on June 29, when Ms. Langelier signed the referral to the investigations unit. His only involvement before then was to attend the first meeting with Ms. Mercier in March 1994, a meeting that did not affect him at all because Mr. Galimi, the section head, kept the file. Thus, Mr. Ouellet was not involved until Ms. Langelier's referral. Mr. Ouellet says that he had no contact with Ms. Langelier, Mr. Galimi or Ms. Mercier from March 1994 to June 1995, and that he obtained no documents concerning the matter.

[16] The file was accepted by, and transferred to, the investigations unit, and it was by chance that Mr. Ouellet inherited it. He thus began his investigation into the OALM's schemes in late August 1995. He examined Ms. Langelier's work and the OALM's tax returns and obtained the file that was in the possession of the Charities Division in Ottawa. He submitted a summary report, but had trouble getting his superiors to authorize a search.

[17] He therefore met with Ms. Mercier twice, and obtained from her an affidavit dated August 23, 1995 (Exhibit I-25) in support of a request for warrants to search the OALM's premises. A warrant was in fact executed on November 8, 1995. Another search warrant, dated July 10, 1996, was executed at the residence of Ralph Nahar, the OALM's accountant, and the residence of Samir El-Boustany, who was Ms. Mercier's husband and a friend of the OALM's priests and leaders.

[18] Through the investigation, Mr. Ouellet was able to determine that the OALM was engaged in the same types of schemes as those that were uncovered in the audit. Receipts were issued without donations having been made, donations were made and the donors were given back, in cash, 80% of their donations along with a receipt for the full amount of the donation, or donors were given receipts for a certain amount but actually paid only 20% of that amount.

[19] The search enabled the investigator to obtain the OALM's deposit slips, the cheques that the OALM had made out to "Cash", the cheque stubs, the receipts, and the receipt books for the period from 1989 to 1995. All of these documents are, moreover, covered by counsel for the appellant's objection based on the *Charter* and on the argument that the documents are not relevant to the instant case. I shall deal with this issue further on in my reasons.

[20] The documents that were seized include a computer diskette containing a receipt library called "biblio-reç" (Exhibit I-11, Tab 3). "Biblio-reç" holds information regarding the issuance of 354 receipts by the OALM. Mr. Ouellet's investigation enabled him to understand how "biblio-reç" worked, and thus to explain its different columns and the information in each. Column "L" shows the percentage of the donation that the OALM kept, namely 20%. "Biblio-reç" also shows the receipt number, the donor's first and last name, the donor's telephone number, the amount of the receipt, the amount payable, the amount paid, and, in some cases, the amount remaining to be paid. In his testimony, Mr. Ouellet gave as an example the fact that the appellant's name appears in "biblio-reç" twice for the years in issue. The first donation was $10,000; he was apparently paid back $8,000 and the OALM apparently kept $2,000; the receipt bears the number 81 and the name of the person who recruited the appellant is "SAMR", which, according to Mr. Ouellet, stands for Samir El-Boustany. The appellant's second donation was $20,000 and the receipt bears the number 292. It can be seen that the OALM gave him $16,000 in cash, but the part of the donation that OALM retained is not shown, and further on, the word [TRANSLATION] "replace" appears.

[21] The other seized documents, in particular those seized at the residence of the accountant, Mr. Nahar, include a "biblio-avant moi" and another "biblio-reç" (Exhibit I-11, Tab 58), albeit one from which certain columns are omitted. On the other hand, it does contain the names of donors who pleaded guilty to offences under the *Criminal Code* and of others who admitted that they participated in the OALM scheme. In fact, the exhibits tendered in evidence include several admissions. There appears in "biblio-reç" (Exhibit I-11, Tab 58, No. 435) an entry for receipt number 474—issued to the appellant—together with the annotation [TRANSLATION] "replacement".

[22] Mr. Ouellet said that he found in boxes of discarded material photocopies of cheques, including two signed by the appellant and payable to the OALM: one for $20,000 dated November 1, 1994, and another for $10,000 dated December 1, 1994 (Exhibit I-11, Tab 128). Another document seized at the same location contains a two-page document on the first page of which it says that

$16,000 has already been returned to the appellant. On the second page, the amount of $20,000 is entered next to the appellant's name, and the year indicated is 1994 (Exhibit I-11, Tab 56, Item 6).

[23] Among the cheque stubs seized at the OALM's premises is one with the number 285, dated July 31, 1992, and showing an amount of $25,000 payable to "Cash". The object is identified by the name Ziad Saba and by the annotation [TRANSLATION] "bank cheque". Ziad Saba was the appellant's brother-in-law at the time, and he lived in Lebanon. Mr. Ouellet also found in the OALM's documents a copy of a $25,000 bank draft dated July 22, 1992, payable to Ziad Saba. The copy of this bank draft was found in an OALM envelope bearing the appellant's name.

[24] Mr. Ouellet gave other examples during his testimony. As a result of the investigation, 1,000 to 1,200 donors were reassessed for the years 1989 to 1995, and all the donors who gave more than $100,000, including the appellant, were criminally prosecuted. The appellant's file was accordingly transferred to the Agency's Quebec City office in late 1996 and given to Jean-Claude Delisle, an investigator. A copy of a letter of solicitation by the OALM was seized during the search that was conducted. The letter made it very clear that the OALM needed funds to meet its financial obligations in Montreal, not to send to Lebanon.

[25] The respondent called one witness and tendered transcripts of testimony given by two witnesses in other proceedings. All three witnesses testified that they had received receipts from the OALM for amounts higher than their actual donations.

[26] The first witness is Michel Yazbeck, who was born in Lebanon and has been a dentist since 1988. He got three receipts from the OALM: a receipt for $10,000 in 1990, another for $10,000 in 1991 and one for $8,000 in 1992. In each case, an OALM priest gave him a receipt for the full amount, and 80% of the donation was returned to him in cash about two weeks later.

[27] The second witness is Elias Farhat. He is an engineer living in Montreal, but is originally from Lebanon. He learned about the OALM's scheme through a friend. He obtained three charitable gift receipts from the OALM: one for $10,000 in 1993, and one for $5,000, and another for $4,500, both in 1994. He paid only 20% of the amounts stated on the receipts.

[28] The last witness is Marcel Thibodeau. He learned of the scheme through his accountant, who, in March or April 1993, suggested making a donation to the OALM as a way to reduce his income tax. He thus made a $1,250 gift in 1993, for which he received a $5,000 tax receipt for his 1992 taxation year. Mr. Thibodeau knows nothing about the OALM. Toward the end of 1993, acting on instructions he had been given, he went to a restaurant and walked up to small counter to get into the back. He gave $2,000 to a person unknown to him and received a receipt from the OALM for $8,000. The same scenario occurred again in 1994. Mr. Thibodeau made no donation in 1995 because nobody contacted him. He became aware of the scheme later upon reading an article about it and the OALM in a January 1996 issue of the newspaper *La Presse*.

[29] Jean-Claude Delisle is an investigator with the Agency's Quebec City office. The appellant's file was sent to him in April or May 1996, whereupon he undertook an examination of all the documentation relevant to the schemes implemented by the OALM as well as of the work done by Ms. Langelier and Mr. Ouellet, including the information obtained from Ms. Mercier and the photocopies of the two cheques which the appellant had made out to the OALM, that is to say, the cheque for $20,000 dated November 1, 1994, and the $10,000 cheque dated December 1, 1994.

[30] Mr. Delisle then set about obtaining search warrants, which he did in fact obtain on July 3, 1996. On July 10, 1996, he searched the appellant's residence and office and the appellant's accountant's office. Later he obtained another warrant, to be executed at the appellant's secondary residence in Quebec City. A list of all the documents that were seized was tendered in evidence along with the information on which the requests for the search warrants were based. In addition to the documents, a sum of $10,000 in cash was found in the appellant's safe.

[31] At the same time that the search warrants were executed, the appellant was charged with two offences under paragraph 239(1)(*a*) of the *Criminal Code*. In November 2001, after lengthy proceedings before the courts, particularly with respect to the validity of the search warrants and the admissibility of the evidence obtained in the searches, the Department, despite a decision that was favourable to it in the sense that a new trial was ordered, chose not to resume the proceedings against the appellant. This is the very evidence that the appellant states in his pleadings was obtained in violation of his rights and so should be excluded. As stated above, the appellant abandoned this ground of appeal at the trial insofar as the evidence obtained through the execution of the search warrants at his home was concerned.

[32] Mr. Delisle prepared a list of the items and documents that were seized, and he examined them. The items seized at the appellant's home were his banking records, credit card statements, bank statements, receipts, purchase invoices and everything related to financial transactions. In his testimony, Mr. Delisle established connections between the appellant's gifts to the OALM during the taxation years in issue and certain purchases or expenditures made by the appellant in cash around the same dates as those on which he made the gifts. Mr. Delisle's aim in so doing was to show that the appellant was a participant in the schemes implemented by the OALM. I will come back to these different connections later on in these reasons.

[33] Naji Abinader was born in Lebanon. He is a physician and his specialty is orthopedics. He arrived in Canada in 1981 and settled in Montreal to finish his studies. This is how he became acquainted with Montreal's Lebanese community. His father had told him to contact a relative named Fadi Basile and a cousin who was living in Quebec City. Once he finished his residency in his area of specialization, the appellant and his spouse, a Canadian, moved to Roberval in 1986 in order to fulfil the requirement that graduates from foreign countries practise in a remote area for four years. He received a relocation incentive and a 20% premium on his fees for each medical procedure he performed. The appellant chose to remain in Canada because living conditions in Lebanon were seriously compromised by the protracted war. The appellant says that he sent his father $10,000 in 1987 to help the parish. He does not remember the form in which this gift was sent. However, during his testimony at his examination for discovery, the appellant said that it was a gift of $15,000 or $20,000. The amount of $10,000 was confirmed by a letter obtained from the St-Élie Maronite parish and signed by Father Paul Youssef. However, Father Youssef did not testify at the trial.

[34] It was during a visit to Fadi Basile's home in Montreal that the appellant was informed by Mr. Basile about the possibility of making donations through a charity and receiving a receipt for income tax purposes. The charity in question was the OALM. Fadi Basile told the appellant that Samir El-Boustany was a member of that organization and that he should talk to him about it. The appellant knew Samir El-Boustany because he was the brother of one of the appellant's friends in Lebanon. In fact, the appellant had met Mr. El-Boustany during the first year of his residency in Montreal; and they have been friends ever since and saw each other socially. They both married Canadians and they each have three children of the same age. As stated earlier, Samir El-Boustany was Isabelle Mercier's husband. The two families were friends and saw each other socially. Mr. El-Boustany's

family went to Roberval during the summer and Mr. Abinader's family went to Montreal from time to time. They have also travelled outside Canada together. During his examination for discovery, the appellant testified that Samir El-Boustany was the one who introduced him to the OALM and suggested that he make donations to the organization in order to obtain receipts. However, the appellant says that he misspoke at the examination for discovery.

[35] So in 1998, the appellant told his father that he would send money to Lebanon, but would proceed differently, that is to say, through the OALM. The appellant says that his father, moreover, looked into the organization in Lebanon and that it appeared to be involved in charitable works.

[36] The appellant thus decided that he would contribute an amount equal to the premium on his professional fees, that is, 20%, to the OALM. The tax consequences actually made it possible for him to be more generous.

[37] The appellant says that he did not verify anything. He did not know the priests and he relied totally on Samir El-Boustany. He was aware of the fact that Mr. El-Boustany and his wife donated to the OALM and that Dr. Fadi Basile did so as well. However, only his wife, his accountant, Mr. and Mrs. El-Boustany and Fadi Basile knew that the appellant was making donations to the OALM.

[38] The appellant did not have a fixed schedule for making donations each year to the OALM. At his examination for discovery, the appellant testified that his donations were made when he had enough money to make them. At trial, he stated that he sometimes used his line of credit to make his donations to the OALM. The amount of his annual gifts was tied to the 20% premium that he received from the Régie for practising in an outlying area. The appellant acknowledges that his accountant had explained that he was entitled to deduct charitable gifts amounting to 20% of his income.

[39] All the cheques for donations to the OALM for the period in issue were delivered to Samir El-Boustany, either by mail or by personal delivery at his home. The receipts from the OALM were either sent to the appellant by mail or given to him by Mr. El-Boustany himself or Gaetan Leduc, Mr. El-Boustany's father-in-law. The appellant also asserts that the dates on the cheques corresponded to the dates on which the donations to the OALM were made. He says that he never wrote any antedated or postdated cheques. All the receipts prior to 1993 bore the appellant's office address.

[40] The appellant says that he made his personal purchases, paid his expenses and did his financial transactions by cheque or credit card. He also says that his wife, not he, manages his money. He explained that his wife brings him the cheques and he signs them, and that she looks after the finances with the accountant.

[41] The appellant testified that all his income is reported. He acknowledges that he received an average of $400 per week in cash at his office. The cash was for medical care not covered by the Régie, such as certain injections (*infiltrations*) or the preparation of medical reports. This cash was in small bills, and he never received a $1,000 bill. The money was rarely deposited at the bank or *caisse populaire*; rather, it was placed in a safe at his office. The money was used for groceries and other family needs. The appellant says that as much as $10,000 could accumulate in his safe.

1989

[42] In 1989, the appellant donated a total of $60,000 to the OALM. The amount was donated in four instalments. According to the receipts issued by the OALM, the first donation was $12,000 and the receipt was issued on May 4, 1989, the second donation was $16,000 and the receipt was issued on August 14, 1989, the third donation was $16,000 and the receipt was issued on October 4, 1989, and the last donation was $16,000 and the receipt was issued on December 28, 1989.

[43] According to Jean-Claude Delisle and the documentation seized at the appellant's home, the first cheque, for $12,000, cleared on April 18, 1989. On May 19, 1989, the appellant allegedly settled an invoice (Exhibit I-3, Tab 136) for the purchase of a piano by making a second payment of $7,900 by cheque and paying the balance of $4,900 in cash. Mr. Delisle did not find any cash withdrawal from the appellant's bank accounts that could cover the $4,900 cash payment, even though he audited the bank and credit card accounts. He was missing the March and November 1989 statements for one credit card, but he had everything else.

[44] Mr. Delisle also said that the $16,000 cheque for the third donation to the OALM in 1989 cleared on October 4, 1989. On the previous day, the appellant had paid an invoice (Exhibit I-3, Tab 136) for $1,370 using cash, and no cash was withdrawn from any of the appellant's accounts. On December 22, 1989, a cheque for $16,000 cleared, and on January 3, 1990, the appellant paid $1,000 in cash toward $3,275.25 in purchases from Serge Charest (Exhibit I-3, Tab 136); the difference was paid by credit card. Mr. Delisle did not check whether a $1,000

withdrawal was made by the appellant. However, he noted that his audit disclosed that the OALM sometimes made cash remittances in advance of receiving a donation or making a deposit.

1990

[45] In 1990, the appellant made four donations to the OALM for a total of $64,000. The first receipt, for $20,000, is dated July 6, 1990; the second, for $20,000, is dated August 1, 1990; the third receipt, for $12,000, is dated October 23, 1990; and the last, also for $12,000, is dated December 28, 1990.

[46] During the same year, the appellant bought a billiard table for $1,798.20, all but $500 of which he paid in cash (Exhibit I-3, Tab 136) on February 7, 1990. Mr. Delisle did not find any corresponding cash withdrawal from any of the appellant's accounts. On February 10, 1990, the appellant purchased furniture for $4,750 and made a $750 cash deposit (Exhibit I-3, Tab 136). On August 3, 1990, the appellant paid $1,750 in cash on that purchase, and on August 21, 1990, he paid the balance by means of a cheque for $2,250.

[47] The appellant made another purchase, this time for $750, on March 16, 1990. Mr. Delisle was unable to find evidence of the payment method (cheque or credit card) during his audit and therefore concluded that the payment was made in cash. The invoice (Exhibit I-3, Tab 136) indicates that the goods were delivered to the appellant's home on August 3, 1990.

[48] The appellant also had renovation work done at his office and at his home in the summer of 1990. The cost of the labour, $11,200, was paid in cash (Exhibit I-17). In fact, the contractor confirmed this, and acknowledged that he did work for the appellant from 1990 to 1994 under the same arrangement, namely, payment in cash so as not to have to report anything to the tax authorities. He testified that he received at least $3,000 cash for work done in 1993. The appellant acknowledged that he paid these amounts in cash, but said that the money came from his safe. He added that he made very few cash withdrawals during the period in issue because he is not the sort of person who goes and withdraws money.

1991

[49] The appellant made two donations of $20,000 and two donations of $10,000 in 1991. He received two receipts for $20,000 from the OALM: one on

July 23, 1991, and the other on August 20, 1991. Two receipts for $10,000 were issued to him by the OALM on October 30, 1991 and November 12, 1991.

[50] The auditor, Jean-Claude Delisle, found a connection with the July 24, 1991, donation. He noticed that two plane tickets to Beirut, Lebanon were purchased on July 27, 1991, for Mr. and Mrs. Gaetan Leduc, the appellant's in-laws, and were paid for in cash. Moreover, the appellant and his family travelled with Mr. and Mrs. Leduc on this trip. Their own tickets were paid for by cheque. The seven tickets and two receipts were mailed to the appellant in Roberval on August 6, 1991, and that is in fact where they were found. They were purchased from a Montreal travel agency (Exhibit I-3, Tab 126).

[51] Gaetan Leduc testified in reply at the trial that he had personally purchased and paid for the two plane tickets in question. However, in a written statement signed before the auditor Delisle on April 15, 1997, Mr. Leduc solemnly affirmed that the appellant had defrayed the cost of his and his wife's plane tickets. He does not remember purchasing the tickets, and he never contacted the Agency to say that he was uncomfortable with the contents of his statement. With respect to the conveyance of envelopes containing cash and cheques to the appellant, he testified that he only went to Samir El-Boustany's house once, where he picked up an envelope containing photographs and a letter for the appellant.

[52] During the trip to Lebanon in September 1991, the appellant opened a joint bank account with his brother-in-law Ziad Saba at the American Express Bank, where his brother-in-law worked. The appellant claims that he deposited US$20,000 from his safe into the account. He took the money to Lebanon in Canadian currency and converted it to U.S. currency in Beirut. He opened the account in order to have a foothold in, and a material connection with, the country. He trusted his brother-in-law and so, if the situation deteriorated in Lebanon, he would be there to look after the account. The appellant also testified that it was on his father's recommendation that he opened the account, and that he told him that he would try to check with the OALM priests to see whether he could have his donations to the OALM sent directly to Lebanon without going through the mother house.

[53] Upon returning to Canada, the appellant contacted Samir El-Boustany to implement this scenario. I reproduce here an excerpt from the appellant's testimony on this point:

[TRANSLATION]

. . . Once I was back here, I called Samir and said: "Listen, Samir, I've been to Lebanon, I've just got back, and my relatives and my parish aren't managing to get a share of those donations." I said: "I saw that things are being done but they are not able to get their share." I said: "Personally, I'd like to have it sent directly; I'd like the organization here to send part of the money directly over there so that I can be sure that my relatives will . . . that my relatives, my parish, will be able to benefit from it." He said: "I'll look into it with the priests." They looked into it and after that he called me back and said: "Yes, we can do that." So, between '91 and '93, he said: "How can we work things to send the money?" I said: "Listen, I have an account in Lebanon, a joint account with Ziad. You send the money there, and if anything happens, Ziad will be able to protect it, and the next time I go to Lebanon, I will give it out." So he said: "Yes, but, I don't know, will they trust you?" I said: "Listen. I have trusted them since '88 and have been sending . . . I've never said a word. "I said: "I want my people over there, my little parish, they want to build a church and a school, and they need money, and I want to get involved." I said: "I, we . . . in our family, it has always . . . I said: "My grandfather made a donation when the church was built. He made a donation; he gave the two . . . the little altars." I said: "My father was in the construction business and he made . . . he helped when there was a need for concrete, cement, stones, etc. He gave." And I said: "I want to help them too. I want to do my part."

So that was successful. He sent money into my joint bank account in Lebanon from '91 to '93. In '93, I went back there with my wife and we took the money from the donations and gave it directly to the St-Élie parish.

[54] However, the Lebanese bank statement (Exhibit I-3, Tab 107) discloses two deposits made on September 5, 1991: a deposit of US$6,000 and a deposit of US$13,800. The auditor, Mr. Delisle, said that for those US dollar amounts an amount of C$22,508 would have been required. When cross-examined about this bank statement, the appellant now said that Ziad deposited the US$6,000 and that he himself deposited the US$13,800. The appellant did not retain any details of the transactions on his bank account in Lebanon. One thing is certain according to Mr. Delisle: there is no withdrawal from any of the appellant's bank accounts in Canada that corresponds to the said deposits made by the appellant in Lebanon.

[55] On the same trip to Lebanon, the appellant purchased US$9,600 (C$10,900) worth of jewellery on September 12, 1991. The bill for that purchase was found at the appellant's home. According to the auditor, Mr. Delisle, the total amount spent by the appellant in September 1991, after the exchange rate is applied, was $33,400: US$19,800 (C$22,508) for the deposits into the Lebanese bank account and US$9,600 (C$10,900) for the purchase of the jewellery. This total corresponds to 80% of the donations that the appellant made to the OALM in July and August 1991, that is, $32,000 for donations of $40,000. The expenditures are thus within $1,400 of this percentage. The appellant says that his father purchased the jewels.

[56] The appellant's father's testimony on this point was that it is a tradition for Lebanese men to give women jewellery. He wanted to purchase a gift for his daughter-in-law and said he bought for her jewellery worth US$4,800, consisting of a bracelet, a ring, a necklace with a ring and a diamond. However, he cannot read the bill issued to the appellant (Exhibit I-3, Tab 111). That bill is for gold earrings, a man's solitaire ring and a woman's solitaire ring. Thus, this is clearly not the same purchase.

[57] The documents seized from the appellant's safe included a $10,000 bank draft dated December 4, 1991, payable to Ziad Saba. The draft was in an OALM envelope along with Ziad Saba's business card (Exhibit I-3, Tab 102). In my opinion, this must have represented the implementation of the appellant's wish to have the money from his OALM donations transferred into his personal account in Lebanon, as he testified above. On cross-examination, the appellant was confronted with the answers that he gave at his examination for discovery, and what he had said then was something quite different. I reproduce below the answers that he gave at his examination for discovery.

> [TRANSLATION]
>
> [78] Q. So, as an aside, Mr. Abinader, reading the transcript, look at Tab 102 on the first page; is that a bank draft that you recognized?
>
> A. Yes.
>
> [79] Q. The second page is a photocopy of a business card . . .
>
> A. A business card, yes.
>
> [80] Q. Of Mr. Ziad Saba.
>
> A. Yes.
>
> [81] Q. The third page is . . .
>
> A. The envelope.
>
> [82] Q. . . . a photocopy of an envelope of the Ordre antonien libanais des Maronites.
>
> R. Exactly.
>
> [83] Q. OK?
>
> R. Yes.

[84] Q. I will continue reading.

So, since those two documents were seized at your home, do you know whether the Ordre antonien libanais des Maronites sent money to Ziad Saba?

I am going to ask you to read your answer aloud.

A. I know that at one point, they . . . Boustany asked me if I knew someone reliable over there to handle monetary transactions, and I said yes, I have a brother-in-law who works . . . who has a senior position at the American Express Bank. He's a reliable person, you can count on him. I gave him his business card and said "Listen, you can do business with him, no problem."

Shall I continue?

[85] Q. Yes, do continue.

A. I know that they used him as a go-between to send money from Montreal to Lebanon, so that he would take the money and give it to the Ordre des Maronites there. It happened a few times, I'm not exactly sure when and I don't know how many times. I know that they asked me about it; I gave his business card; I said: "Call him, make arrangements with him, he's a reliable guy."

[86] Q. Did you say anywhere in that excerpt, Mr. Abinader, that it was your money that was going from the Ordre antonien libanais des Maronites to Lebanon?

R. No.

[87] Q. Not in that excerpt.

A. In fact, it wasn't my money that they were dealing with, it was money from . . . it was money from the donations, not my own money.

[88] Q. OK, let's continue reading at page 118, Mr. Abinader.

A. Yes.

[89] Q. I will continue reading. You said that to Mr. Boustany, did you?

That was the question.

Answer: Yes, yes.

Question:

And how is it that a copy of a bank draft that the Order made payable to Ziad Saba was found in your safe, with an envelope of the Order with your name on it?

> Answer:
>
> They probably sent it to me to show that they did business with him, as proof or something, but I couldn't tell you more.
>
> Question: They would have sent it to you as proof, but you don't really know why?
>
> Answer:
>
> I can't answer that question, why that copy wound up at our home. Maybe . . . maybe to prove to me that they did business with him.
>
> Question: So why did you put it in your safe?
>
> Answer: It wasn't me who put it in my safe; probably . . .
>
> Question: Who did? [Answer:] My wife, she kept all the papers, all the bills, everything. She kept absolutely everything.

[58] That same year, the appellant purchased vegetable oil for shipment to his father in Lebanon. According to Exhibit I-2, the order was placed on March 21, 1991, and the invoice is dated March 22, 1991. Under the heading [TRANSLATION] "order number", the name "Samir" appears. This was an $18,716 purchase from a corporation in Laval, Quebec. A handwritten note states that the order was paid for with a cheque for $16,000 on March 1, 1991 and indicates the balance payable. Exhibit I-2 also contains a copy of a cheque for $16,000 dated February 26, 1991, written by the appellant and payable to the seller.

[59] The oil appears to have been shipped to the appellant's father in Lebanon, and the father appears to have sent the appellant money to purchase it. The appellant's father testified that the purchase price was somewhere between US$10,000 and US$12,000. He sent this money through his son-in-law Ziad Saba. According to the appellant's father, the transaction took place in 1989.

1992

[60] In 1992, the appellant donated a total of $60,200 to the OALM. Three receipts for $20,000 each were issued by the OALM on May 19, July 18 and September 2, 1992, and one receipt for $200 was issued on November 2, 1992. However, the appellant made a $20,000 donation on May 28, 1992 and a $40,000 donation on July 21, 1992. The appellant does not know why he got two receipts

for $20,000 in July and September when his cheque was for $40,000. Bank drafts from the OALM payable to Ziad Saba were subsequently issued, and were deposited into the appellant's account, just as the appellant's $10,000 donation of November 13, 1991 was followed by a bank draft from the OALM payable to Ziad Saba. According to Mr. Delisle, the total of the 1992 donations and the $10,000 donation in November 1991 is $70,000, 80% of which is $56,000. The total of the bank drafts issued by the OALM is $55,000, that is, $1,000 less than the amount that would be arrived at under the OALM scheme.

[61] On April 10, 1992, the appellant purchased a 1974 Porsche for $27,000. However, the contract of sale (Exhibit I-3, Tab 122) indicates a purchase price of $11,000. The appellant's explanation for this was that the seller suggested that the contract be drawn up in this manner so that he would not have to pay taxes on the total amount since the car was not worth more than $11,000. Doing that did not bother the appellant and he saw nothing illegal in it.

1993

[62] In 1993, the appellant made $50,000 in donations to the OALM. He got receipt #2908 for $20,000 from the OALM (Exhibit I-1, Tab 26) on May 20, 1993, whereas his cheque was dated May 25, 1993. A second receipt for $20,000 (#2897) was given to him on November 24, 1993. A third receipt for $20,000, dated December 31, 1993, was prepared but cancelled. Another receipt, for $10,000, dated December 31, 1993, was also prepared but cancelled. The appellant explained this by stating that he recalled that he did not receive those receipts, that they had been misplaced by Samir El-Boustany, and had had to be replaced. A last receipt, for $10,000, dated December 31, 1993, completes the donations. The three receipts dated December 31, 1993 bear the numbers 81, 292 and 474, and are signed by the same person on behalf of the OALM. Two of the receipts indicate the appellant's home address, and on the other his office address appears. The cheque associated with receipt #474 for $10,000 was only deposited by the OALM on January 28, 1994. The appellant has no explanation for this and does not know when he wrote the cheque.

[63] On April 8, 1993, the appellant purchased a 27-foot travel trailer for an agreed price of $8,500. According to the auditor, Mr. Delisle, and according to what his investigation showed, the appellant paid the purchase price in cash. The appellant says that it is possible that the money came from his safe or from a bank withdrawal, but he cannot confirm this. It will also be recalled that in September 1993, the appellant paid $3,200 in cash for renovation work and that the cash came

from his safe. The appellant apparently also paid $1,431 in cash on August 31, 1993 for a trip.

[64] The appellant testified that he gave the donation money to his parish, the St-Élie parish, on a trip to Lebanon in 1993. It was also during this trip that the appellant learned of a construction project of his father's. At his father's request, he lent his father $60,000, which he took from his line of credit. He forwarded the money by means of a transfer from the National Bank of Canada to his joint account in Lebanon. The loan was to be repaid as soon as his father could sell the project.

[65] The appellant says that his father later called him back to announce that someone had come to see him about purchasing one of his apartments for his brother, who was living in Montreal and was planning to return to Lebanon. The purchaser was liquidating his assets in Montreal and would pay for the apartment gradually. This purchaser, whom the appellant called [TRANSLATION] "Mr. So-and-so", thus contacted the appellant and they agreed that when Mr. So-and-so had a certain amount of money and the appellant was in Montreal to do his Lebanese grocery shopping, they would arrange to meet so that a payment could be made. The appellant testified that he received three payments from Mr. So-and-so in 1994 and 1995 and that he deposited this money into his account to pay down his line of credit.

[66] On cross-examination, the appellant had to admit that he never mentioned this method of reimbursement by his father through the sale of a condominium to a Mr. So-and-so living in Montreal. In fact, at his examination for discovery, the appellant did not remember how his father repaid the loan, but merely said that he was reimbursed. He did not do a rigorous follow-up, but he testified that his wife noted these things in her personal papers. The appellant said that his father made his payments in Canadian dollars.

[67] On being questioned again regarding the loan, the appellant now said that Mr. So-and-so's name was Antoine. The issue came up once more when the appellant was questioned about an $11,130 bank deposit consisting of 10 thousand-dollar bills, with cheques making up the balance. The appellant testified that Mr. Antoine gave him the 10 thousand-dollar bills toward the purchase of his condominium in Beirut, whereas he had no explanation regarding the source of these ten bank notes at his examination for discovery.

[68] A second deposit, of $18,546, was made into his account on January 10, 1995. The deposit consisted of 20 hundred-dollar bills and 13 thousand-dollar bills, and the remainder was in cheques. The appellant now recalls that this was another payment by Mr. Antoine toward the purchase of the condominium from the appellant's father.

[69] The appellant's father also testified concerning the $60,000 loan that the appellant gave him in 1993. He received the loan money upon the appellant's return to Canada. It was in Canadian currency, which he converted into American currency. He purchased some land and built apartments or condominiums on it. In late 1993, the appellant's father received some money and offered to send the appellant part of it. However, he sold a condominium for US$5,000, and that purchaser's brother, a Montrealer, made the payment to the appellant in Canada. The appellant, according to his father, was repaid in full, but none of the payments came directly from his father. The appellant's father kept a record of his transactions, but it does not indicate any transaction between him and the appellant. The father has no details of the amounts that the Montrealer paid the appellant, but he suggests that the loan was repaid.

[70] Also in 1993, the appellant purchased a hunting cabin. He paid $4,000 in cash for it. The money came from his safe, and he explained that the seller had built the cabin using cash and did not want a cheque because he did not want there to be a record of the payment. The seller in question was bankrupt.

[71] The appellant's father testified that, in the spring of 1993, the appellant gave the St-Élie parish the sum of US$32,000 to complete the construction of the church. This is, in fact, confirmed by the letter of Fr. Boulas Youssef of that parish. Fr. Youssef did not testify, however, although he does specify that the donation was made in July 1993.

[72] The appellant closed the joint bank account in Lebanon in 1993. He explained that his brother-in-law Ziad was now working for another bank and that American Express was no longer in Beirut. There is no document concerning the transactions on the joint account. When the documents were seized at the appellant's home, Mr. Delisle, the auditor, took possession of a document from the American Express Bank confirming the renewal of term deposit No. 2 21 00787 007 (Exhibit I-3, Tab 108), in the amount of US$50,000, for the period from June 3, 1993, to July 6, 1993, in accordance with instructions sent by telex. Upon maturity, the payment was to be made by crediting the appellant's account No. 099120010. According to the appellant, this was not a term deposit,

but, rather, the amount of money that had accumulated in his account with American Express from 1991 to 1993. He testified that it included the money in the account that he opened in 1991 and the money transfers made by the OALM priests. He added that the above-mentioned document was an updated statement reflecting the state of his account on that date.

[73] When cross-examined regarding this document, the appellant was confronted with his testimony given on examination for discovery and his initial answer upon being shown the document called [TRANSLATION] "Certificate of Deposit" (Exhibit I-3, Tab 108). I reproduce excerpts from the transcript of his testimony at trial:

> [TRANSLATION]
>
> Q. Do you recall your initial reaction when you saw this document at the examination for discovery?
>
> R. No.
>
> Q. I will read you what you said, Mr. Abinader.
>
> R. Yes.
>
> Q. To refresh your memory.
>
> R. Yes.
>
> . . .
>
> Q. Actually, I will read the question . . .
>
> R. Yes.
>
> Q. . . . which begins at page 96 . . .
>
> R. Yes.
>
> Q. *OK. So we will resume with document 108 on our list of documents, and I will lend you a copy. So I'll give you time to look at it. It looks to me like a confirmation of renewal of a US$50,000 investment in your name at the American Express Bank. Is that your recollection?*
>
> Your answer:
>
> *Just give me time to read it a bit . . . well, you have to be* innocent *to keep documents like that, eh? Damn, was I ever* innocent. *OK. So you want an explanation?*

Why did you make that statement on seeing the document and before responding, Mr. Abinader?

A. What does the French word *innocent* mean? I've found two explanations for the word. It can be either *innocent* dumb or *innocent* not guilty.

Q. Uh-huh.

A. If I take the meaning "dumb", if I were guilty and kept that document, I would be dumb.

Q. Uh-huh.

A. I think that yesterday you said that I have a university degree and that I'm a specialist, so that wouldn't "fit" with the definition.

Q. Uh-huh.

A. So that leaves the other definition: you'd have to be *innocent* not guilty to keep all those documents when you know that if you've committed a crime someone could come and ask questions about those documents. So, it was more or less in that context.

Q. So the same excerpt could be rephrased to read: *Well, you have to be not guilty to keep documents like that, eh? Damn, was I ever not guilty.* Is that right?

R. When I said that, I wasn't thinking about the definition, and as to whether it was *innocent* not guilty or *innocent* dumb, I was somewhere between the two, I was somewhere between the two possible explanations. And in any case I must say that it was a spontaneous reaction when I said . . . I don't think I can give any more of an explanation.

Q. All right. . . .

[74] One thing is certain: according to Mr. Delisle, there is no withdrawal from the appellant's bank accounts in Canada corresponding to this amount of $50,000.

[75] On July 1, 1993, that is to say, during the same period that money was transferred to his father and the aforementioned term deposit was renewed, the appellant was given a US$5,000 bank draft payable to him (Exhibit I-3, Tab 110) from the American Express Bank in Beirut. At trial, the appellant testified that this money was withdrawn from his account to cover personal expenses during his trip to Lebanon. In testifying at his examination for discovery, he had explained that the money was used to purchase Mazola oil. However, that purchase was made in 1991. His explanation for this anomaly is that he did not have the two documents in front of him and was trying to think of an explanation,

and thought that perhaps it was for the purchase of that oil, which took place in 1991.

1994

[76] In 1994, the appellant donated a total of $50,000 to the OALM. The first receipt is dated September 8, 1994, and is for $20,000. The second receipt is dated November 4, 1994, and is for the same amount, and the third is dated December 13, 1994, and is for $10,000. However, the appellant claimed $61,571 in donations for 1994 because, as in previous years, he used his surplus donations to the OALM in order to obtain the maximum credit to which he was entitled on the basis of his income.

[77] Yet, according to the testimony of the auditor, Mr. Delisle, the appellant made a $10,000 donation to the OALM on January 28, 1994. And Mr. Delisle drew a possible connection between that donation and a $13,133.47 deposit made by the appellant on March 21, 1994, which consisted of two thousand-dollar bills and 80 hundred-dollar bills (Exhibit I-5, Tab 129, at page 90). He continued his testimony by referring to the $10,000 receipt issued on December 13, 1994. According to OALM records, a cash withdrawal of $3,000 was made on December 16, 1994, and another cash withdrawal of $95,000 was made on December 22, 1994. The latter withdrawal consisted of 41 thousand-dollar bills, 340 hundred-dollar bills and 400 fifty-dollar bills. According to Mr. Delisle, there may be a connection with an $18,545 deposit made by the appellant into his bank account on January 10, 1995. Of this deposit, $15,000 was in cash and consisted of 13 thousand-dollar bills and 20 hundred-dollar bills. An annotation reading [TRANSLATION] "Money Father Lebanon" was found in the appellant's accounting records.

[78] The receipt for $20,000 dated November 4, 1994, and the receipt for $10,000 dated December 13, 1994, total $30,000. According to Mr. Delisle, since one of the schemes concocted by the OALM was to give 80% of the donation back to the donor, the two donations added together should have resulted in $24,000 coming back to the donor. Mr. Delisle drew a connection with the aforementioned cash deposit of January 10, 1995 and another deposit on November 14, 1994, to which the appellant referred earlier. So we have $25,000 total in cash for these two deposits, which is only $1,000 off the amount that one of the OALM schemes would have yielded.

[79] The appellant purchased a parcel of land in Stoneham in December 1994, roughly two years after he had purchased a cottage at the same location. However, the deed of sale is dated February 6, 1995 and states that the selling price is $4,000 although the appellant paid $9,000 for the land. The appellant's explanation for this anomaly is that the seller insisted on it.

1995

[80] The appellant made his last donation to the OALM in 1995. It was a $50,000 donation, and the receipt for the same amount is dated December 28, 1995. The appellant had, however, contacted Samir El-Boustany at the beginning of the year to make a donation, but Mr. El-Boustany allegedly told him not to do so because the OALM was being investigated by the tax authorities. A few months later, the appellant learned from Claude Ménard that he himself was under investigation.

[81] However, the auditor, Mr. Delisle, did find a document (Exhibit I-3, Tab 135) showing a telephone transfer of US$20,422.61 by Ziad Saba to the appellant on March 6, 1996. The document says [TRANSLATION] "as requested" and the amount was deposited into the appellant's account on March 7, 1996. According to Mr. Delisle, this deposit is probably connected with the last donation made in 1995. The appellant provided no clarification regarding this deposit.

[82] Upon being questioned concerning the fact that the donation was made so late in the year, the appellant had no explanation. He said that he had not been told a search had in fact been carried out at the OALM in November 1995, and that he did not discuss it with Samir El-Boustany during a conversation with him in the spring of 1996. The appellant testified that he was informed of the search at the OALM's premises after his home was searched in July 1996. At the examination for discovery, he testified that his father-in-law had called him to tell him that he had read about it in the *Journal de Montréal*.

[83] The Appellant made no other donations to the OALM. He was audited, and, in July 1996, the investigations branch searched his home.

[84] The evidence discloses that during the years in issue, the appellant travelled outside Canada at least once a year, either on vacation or to attend orthopedics conferences.

[85] The appellant tendered an expert report prepared by Gratien Ouellet, a chartered accountant with the firm Mallette. Mr. Ouellet's mandate was to clearly and accurately draw up the appellant's balance sheet and determine his income and annual expenses from 1989 through 1995, and thus show the changes in the appellant's net worth. According to Mr. Ouellet, the objective was to show that all of the appellant and his wife's income came from clearly identifiable sources. It can be seen from the report that the method used consisted in entering all the transactions appearing on the appellant's bank statements. The cash accounting method was used in order to facilitate the analysis and the reconciliation with the available documents and vouchers. The report also indicates that in addition to the entry of data in a computer, the work consisted essentially in gathering information, in analytical procedures and in discussions concerning the information provided by the appellant.

[86] According to Mr. Ouellet, the conclusion drawn from this exercise is that the appellant's [TRANSLATION] "cost of living" and that of his wife are consistent with the income that they reported, that the appellant did not receive any income or incur any expenses other than those reported in his tax returns, and, lastly, that the appellant's donations to the OALM were real and most probably no money was returned to him under the scheme described above, which generally involved returning 80% of the donation to the donor in cash.

[87] The respondent objected to this evidence being adduced through expert testimony. Counsel for the respondent contend that it is simply a compilation of factual data that depend on the credibility of the information used. They submit that the preparation of a net worth assessment is not an act reserved for members of a professional body, and that the Canadian Institute of Chartered Accountants does not specify how net worth assessments are to be prepared.

[88] It is known that the net worth method is a last-resort method for auditing a taxpayer's income, and that it depends on the credibility of the information used (See *Bastille v. Canada*, [1998] T.C.J. No. 1080 (QL) (T.C.C.)). In addition, it is recognized that this method is far from precise, which is why it is used as a last resort. This type of evidence is used in part in audits by the Canada Revenue Agency where the equation stating that a taxpayer's income is equal to his cost of living and his expenses or assets does not balance. Since it is a compilation of factual data based on information whose production can be compelled, such evidence is admissible through the person who has done the compilation, and it is not necessary for that person to have any expertise whatsoever. In fact, the taxpayer is the person best able to defend the management of his income and

expenses and the growth of his assets. J. C. Royer, in *La preuve civile*, 2d ed., defines an "expert witness" as one who possesses specialized skill in a given field, and whose role is to enlighten the court and assist it in assessing evidence regarding scientific or technical matters. In my opinion, Gratien Ouellet is not such a witness. He need not be declared an expert in order to tender a report showing that the appellant did not receive income or incur expenses other than those reported in his income tax returns. Therefore, Mr. Ouellet's testimony and report are admissible, but not as expert evidence.

[89] This said, Mr. Ouellet's testimony depends in large part on the credibility of the information obtained from the appellant and his spouse. On cross-examination, Mr. Ouellet acknowledged that his analysis did not take account of the amounts held by the appellant in Lebanon because that information was not revealed to him. In fact, he admits that he did not ask the appellant about his assets in Lebanon and that he was not aware that the appellant had a bank account there. He was told, however, about the $60,000 that the appellant says he lent his father on July 8, 1993. In fact, Mr. Ouellet identified this amount, plus the transfer fees, on the appellant's personal balance sheet under the heading [TRANSLATION] "amount receivable" for 1993. For 1994, the balance sheet shows that the amount owing was now $27,109, which means that some $33,000 had been repaid.

[90] When cross-examined on where the money used to repay the loan came from, Mr. Ouellet said that he relied on the appellant's wife's journal entries. He said that he identified four repayment amounts for 1994. The first was $5,000 and, according to the records, it was made on April 21, 1994. An annotation reads [TRANSLATION] "Money from father Lebanon". It can also be seen that there is an additional amount of $1,600.05 on the same date under the heading [TRANSLATION] "Other". Mr. Ouellet acknowledges that he did not see the deposit slip dated April 21, 1994. The deposit that it records consists of a series of cheques for various amounts totalling $6,600.05. The deposit slip does not correspond to the alleged $5,000 repayment.

[91] The second repayment amount was allegedly paid on June 23, 1994. The journal kept by the appellant's wife shows a $10,000 deposit identified as [TRANSLATION] "Loan money Father" and a further amount of $2,134.95. Mr. Ouellet said that he considered the amount of $12,134.95 a loan repayment. The deposit slip dated June 27, 1994, does indeed say $12,134.95 (Exhibit I-5, Tab 129A, page 79A) and the deposit appears to have consisted of a single cheque. However, Exhibit I-5, Tab 130A, page 53A contains copies of the cheques making up the deposit of June 27, 1994, and none of these cheques is from the appellant's

father. Mr. Ouellet admits that he did not see the cheques and must accordingly acknowledge that this was not a loan repayment by the appellant's father.

[92] According to Mr. Ouellet, the third repayment amount was deposited on October 27, 1994. The appellant's wife's journal identifies an amount of $8,000 as [TRANSLATION] "Loan money Father Lebanon", and another amount of $637 is entered under the heading [TRANSLATION] "Other". The deposit slip for the date in question shows that the amount of $8,637 consisted of the cheques found at Tab 130 of Exhibit I-5 and which have nothing to do with a repayment by the appellant's father. Mr. Ouellet was forced to admit that all of this was confusing.

[93] According to Mr. Ouellet, the last loan repayment amount was a deposit made on November 14, 1994. The amount of the deposit was $11,130 (Exhibit I-8, page 197); it appears under the heading [TRANSLATION] "Other" and relates to [TRANSLATION] "Loan Father Lebanon". Mr. Ouellet did not see the deposit slip (Exhibit I-4, Tab 98, page 1) corresponding to this amount and did not know that the amount consisted of 10 thousand-dollar bills. He acknowledges that if he had seen it, he would have had doubts. The balance of $1,130 was made up of various cheques.

[94] Mr. Ouellet considered a $10,000 deposit, made in 1995, to be a loan repayment. He based this on a deposit made on January 10. According to the records (Exhibit I-8, page 201), the deposit consisted of $10,000 (shown under the heading [TRANSLATION] "Money Father Lebanon") and $8,546 (shown under the heading [TRANSLATION] "Other"). The deposit slip (Exhibit I-4, Tab 98, page 2) does indeed record a deposit of $18,546. The deposit consisted of various cheques totalling $3,546 as well as $15,000 in cash in the form of 13 thousand-dollar bills and 20 hundred-dollar bills. Mr. Ouellet admits that he did not see the deposit slip and that he relied on the appellant's wife's journal in crediting the loan-to-the-appellant's-father account.

[95] Mr. Ouellet also acknowledges that if the appellant received cash amounts, did not deposit them, and used them to pay for groceries, those amounts would not show up in his report. In fact, he cannot say whether the appellant's fees received in cash at the clinic were reported in his income because he did not see the receipts that the clinic issued for cash payments. He also admits that if any amounts did not go through the appellant's bank account, they would not show up anywhere in his accounting analysis. As for the US$50,000 term deposit that the appellant held in Lebanon in 1993 (Exhibit I-3, Tab 103), Mr. Ouellet acknowledges that he never

saw this document prior to his testimony in Court, and that he did not take account of it in his report.

[96] Colette Langelier also testified regarding certain aspects of Mr. Ouellet's report, and pointed out a number of errors therein, which were in fact covered in the respondent's cross-examination of Mr. Ouellet. In addition, her audit showed that the appellant's professional fees collected in cash were never deposited, and that certain other income was not reported by the appellant.

The exclusion of evidence

[97] The appellant is asking that a series of documents obtained in the search of the OALM's premises in November 1995 be excluded from the evidence. The documents consist of an OALM receipt book for the year 1989 (Exhibit I-11, Tab 56, items 3, 4, 5, 6, 7, 8, 9, 12 and 13; Exhibit I-11, Tabs 57 and 58; Exhibit I-12, Tab 50, items 1 through 6; Exhibit I-13, items 7 through 15; and Exhibit I-14, Tabs 83, 83A and 84). The appellant relies on section 24 of the *Canadian Charter of Rights and Freedoms* (the *Charter*), section 40 of the *Canada Evidence Act* and article 2858 of the *Civil Code of Québec* (C.C.Q.). He submits that he has the requisite interest for making this request because the use of the evidence in question would bring the administration of justice into disrepute.

[98] The appellant's submissions are based primarily on the argument that the circumstances of the case at bar show that the Agency was conducting a criminal investigation, that Ms. Langelier's conduct was such as to lead one to believe that she was acting as an agent of the investigators, and that the principal objective of her work was to establish the OALM's criminal liability. The objection as regards the conduct of Ms. Langelier is that she asked Isabelle Mercier to issue an information for her at a meeting with her on September 8, 1994. The appellant submits that the purpose of Ms. Langelier's actions was to refer the file to the special investigations unit.

[99] The respondent, for her part, maintains that the evidence in question was obtained in the course of an audit and a search on the OALM's premises, not the appellant's. The appellant cannot raise for his own benefit the infringement of a right or freedom belonging to the OALM. The respondent contends that not even the OALM was a victim of any violation or denial of a *Charter* rights and freedoms. She submits that the appellant cannot rely on the protection granted by article 2858 C.C.Q. because that provision applies only to disputes between private parties and does not apply where government action is in issue. Moreover, she

contends that relief under either the *Charter* or the C.C.Q. is only available to the person whose protected rights have been infringed.

[100] In his memorandum, counsel for the appellant submits that all his legal protections under the *Charter* should apply without limitation. However, he does not refer to any specific section of the *Charter*. As well, the Notice of Appeal refers solely to subsection 24(2) of the *Charter*. However, the Notice of Appeal does specify that the seizures resulted in information and documents being obtained that could not have been obtained by other means. In other words, it is submitted that the evidence was obtained indirectly through the infringement of a constitutional right, and its relevance was only apparent following that infringement.

[101] The relevant provisions read as follows:

> ***Canadian Charter of Rights and Freedoms***
>
> *Enforcement*
>
> 24.(1) . . .
>
> (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.
>
> ***Canada Evidence Act***
>
> 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.
>
> ***Civil Code of Québec***
>
> 2858. The court shall, even of its own motion, reject any evidence obtained under such circumstances that fundamental rights and freedoms are breached and that its use would tend to bring the administration of justice into disrepute.
>
> The latter criterion is not taken into account in the case of violation of the right of professional privilege.

[102] Subsection 24(2) of the *Charter* sets out the relief available to any person whose *Charter* rights have been infringed or denied. Thus, the Court would have to find that evidence was obtained in a manner that infringed or denied the person's

rights and freedoms. In the case at bar, the evidence sought to be excluded is that obtained from the premises of the OALM and the premises of its accountant during searches conducted by the Agency. Thus, it is the OALM's rights and freedoms that are involved. Can the appellant rely on the infringement of another person's rights in order to obtain the relief contemplated in subsection 24(2)? Have the appellant's rights and freedoms been infringed in such a manner as to trigger the application of subsection 24(2) of the *Charter*?

[103] In my opinion, the appellant has not shown any infringement at all of his *Charter* rights and freedoms. He has in no way demonstrated that he had any reasonable expectation of privacy with respect to the documents seized on the OALM's or its accountant's premises. In fact, the evidence clearly shows that the audit and the search targeted the OALM only. The decision in *R. v. Jarvis*, [2002] 3 S.C.R. 757, limits the expectation of privacy with respect to records and documents that must be held and retained for the purposes of the Act and that are subject to inspection by the government (see subsection 230(2) of the Act). Moreover, in *R. v. Edwards*, [1996] 1 S.C.R. 128, it was held that this protection generally confers a right solely on the accused who is challenging a violation thereof. Cory J. stated the following, at paragraph 45, with regard to the nature of the right guaranteed by section 8 of the *Charter*:

> . . . A claim for relief under s. 24(2) can only be made by the person whose *Charter* rights have been infringed. . . . Like all *Charter* rights, s. 8 is a personal right. It protects people and not places. . . . The right to challenge the legality of a search depends upon the accused establishing that his personal rights to privacy have been violated. . . . First, has the accused a reasonable expectation of privacy. Second, if he has such an expectation, was the search by the police conducted reasonably. . . .

[104] The appellant was not involved in the OALM or its internal management. He exercised no authority and had no power over its activities. Consequently, he had no reasonable expectation of privacy with respect to the search of the OALM's premises.

[105] As for the information and evidence obtained during the Agency's audit at the OALM and in the investigation that ensued, I find, on the basis of the evidence that I have heard, that all of it was so obtained without infringement of the rights guaranteed by the *Charter*. In *R. v. Jarvis*, *supra*, the Supreme Court of Canada enunciated a number of factors to consider in order to distinguish between the Agency's audit and investigation functions. In my opinion, it is helpful to reproduce the guidelines that the Supreme Court has put in place for this purpose. At paragraphs 88, 89 and 90, that Court states:

88 In our view, where the predominant purpose of a particular inquiry is the determination of penal liability, CCRA officials must relinquish the authority to use the inspection and requirement powers under ss. 231.1(1) and 231.2(1). In essence, officials "cross the Rubicon" when the inquiry in question engages the adversarial relationship between the taxpayer and the state. There is no clear formula that can answer whether or not this is the case. Rather, to determine whether the predominant purpose of the inquiry in question is the determination of penal liability, one must look to all factors that bear upon the nature of that inquiry.

89 To begin with, the mere existence of reasonable grounds that an offence may have occurred is by itself insufficient to support the conclusion that the predominant purpose of an inquiry is the determination of penal liability. Even where reasonable grounds to suspect an offence exist, it will not always be true that the predominant purpose of an inquiry is the determination of penal liability. In this regard, courts must guard against creating procedural shackles on regulatory officials; it would be undesirable to "force the regulatory hand" by removing the possibility of seeking the lesser administrative penalties on every occasion in which reasonable grounds existed of more culpable conduct. This point was clearly stated in *McKinlay Transport*, *supra*, at p. 648, where Wilson J. wrote: "The Minister must be capable of exercising these [broad supervisory] powers whether or not he has reasonable grounds for believing that a particular taxpayer has breached the Act." While reasonable grounds indeed constitute a necessary condition for the issuance of a search warrant to further a criminal investigation (s. 231.3 of the ITA; *Criminal Code*, s. 487), and might in certain cases serve to indicate that the audit powers were misused, their existence is not a sufficient indicator that the CCRA is conducting a *de facto* investigation. In most cases, if all ingredients of an offence are reasonably thought to have occurred, it is likely that the investigation function is triggered.

90 All the more, the test cannot be set at the level of mere suspicion that an offence has occurred. Auditors may, during the course of their inspections, suspect all manner of taxpayer wrongdoing, but it certainly cannot be the case that, from the moment such suspicion is formed, an investigation has begun. On what evidence could investigators ever obtain a search warrant if the whiff of suspicion were enough to freeze auditorial fact-finding? The state interest in prosecuting those who wilfully evade their taxes is of great importance, and we should be careful to avoid rendering nugatory the state's ability to investigate and obtain evidence of these offences.

[106] The factors to be considered are set out at paragraph 94:

(a) Did the authorities have reasonable grounds to lay charges? Does it appear from the record that a decision to proceed with a criminal investigation could have been made?

(b) Was the general conduct of the authorities such that it was consistent with the pursuit of a criminal investigation?

(c) Had the auditor transferred his or her files and materials to the investigators?

(d) Was the conduct of the auditor such that he or she was effectively acting as an agent for the investigators?

(e) Does it appear that the investigators intended to use the auditor as their agent in the collection of evidence?

> (f) Is the evidence sought relevant to taxpayer liability generally? Or, as is the case with evidence as to the taxpayer's *mens rea*, is the evidence relevant only to the taxpayer's penal liability?
>
> (g) Are there any other circumstances or factors that can lead the trial judge to the conclusion that the compliance audit had in reality become a criminal investigation?

[107] The appellant contends that the principal objective of Ms. Langelier's purported audit was to transfer the file to the special investigations unit in order to establish the OALM's penal liability, and that Ms. Langelier was the extension of investigator Gaetan Ouellet because he used her work as a basis for obtaining the warrants to search the OALM's premises. He submits that by March 30, there were sufficient grounds to commence an investigation and that it is not an auditor's function to obtain a statement.

[108] The appellant referred to Exhibit I-26, entitled "*Dénonciation*". That document is not actually an information; rather, it contains the minutes of the initial meeting with Ms. Mercier. It must be remembered that Ms. Mercier was accompanied by the spouse of her accountant, Gaétan Picard, who knew Raymond Galimi, the team leader who attended the meeting. The investigator, Gaetan Ouellet, was present because he was part of the investigations unit liaison team. His testimony regarding the meeting is that the information obtained was uncertain and lacked specifics. Ms. Mercier spoke of the Ordre St-Antoine-le-Grand at the time, and had no documents to confirm her assertions. The file was kept by team leader Raymond Galimi, and Mr. Ouellet had no involvement until Ms. Langelier referred the matter to the special investigations unit on June 29, 1995. Mr. Ouellet testified that from March 30, 1994, to June 29, 1995, he had no contact with anyone about this file, including Mr. Galimi, Ms. Langelier and Ms. Mercier, and did not examine any documents. Moreover, Ms. Langelier confirmed this.

[109] Ms. Langelier and Mr. Galimi met with Ms. Mercier again on September 8, 1994. Ms. Mercier had sent them documents, and the purpose of the meeting was to go over certain points and clarify certain methods used by the OALM. Page 3 of Exhibit I-26 refers to a question that Mr. Galimi asked Ms. Mercier: in the event of an audit, would she agree to repeat what she had said, and sign a statement in that regard? Ms. Mercier responded that she was prepared to sign a statement and testify in court if necessary. Ms. Mercier signed a first affidavit on August 23, 1995, and a second affidavit on January 31, 1997.

[110] It was indeed after that meeting that Ms. Langelier got the mandate to audit the OALM from the Ottawa office; she learned that a letter was about to be prepared for the revocation of the OALM's registration. She therefore obtained the

T3010 statements and the auditor's report. She examined the income tax returns and, following a discussion with Mr. Galimi, it was decided to undertake an audit of the OALM. Ms. Langelier contacted the OALM later in September 1994; she testified that she had no contact with the investigator, Mr. Ouellet, before the file was transferred in late June 1995.

[111] In my opinion, the information obtained from Ms. Mercier during the two above-mentioned meetings served only to commence a compliance audit, not an investigation to establish the OALM's or anyone else's penal liability. Ms. Langelier's job was to analyze the data from the OALM's records by attempting to establish what happened to the money collected through donations to the OALM, and to verify whether all was in accordance with the Act. There is no evidence that would enable me to find that she was the investigators' agent. It was only after this audit, and what it revealed, that the matter was referred to the special investigations unit. In my opinion, the steps taken in the case at bar are consistent with those set out by the Supreme Court of Canada in *Jarvis*, *supra*.

[112] Thus, neither the OALM's nor the appellant's rights and freedoms have been infringed or denied. Consequently, the impugned evidence should not be excluded.

The relevance of certain evidence

[113] Counsel for the appellant also asks that Tabs 56 and 59 of Exhibit I-11, the minutes from other files that he identified as item 2, and the statements identified as items 10 and 11, be excluded on the basis that evidence that other persons committed crimes and reprehensible acts consisting of claiming deductions with false receipts, adduced in order to associate the appellant with such crimes and acts, is neither permissible nor relevant. He raises the same objection concerning Marcel Thibodeau's testimony.

[114] First of all, I wish to make it clear that Tab 56 of Exhibit I-11 was not tendered in evidence, nor was item 2 to which counsel for the appellant refers. As for items 10 and 11, they are actually Exhibits I-18 and I-19, that is, the testimony of Élias Farhat and Michel Yazbeck given in other proceedings; counsel for the appellant consented to the excerpts from their testimony being tendered in evidence, though they did not admit that these excerpts are relevant.

[115] I agree with counsel for the appellant that the fact that a group of people was involved in an alleged scheme does not mean that the appellant was involved in it. On the other hand, if the evidence in question serves to establish the existence of

such a scheme, its workings, its scope, the names of the participants, the persons who signed the receipts, the extent or duration of the scheme and the number of people who were involved in it, it is my opinion that this makes the evidence relevant and therefore admissible. The testimony of Ms. Langelier, and that of Gaetan Ouellet, demonstrates the existence of a scheme which was implemented by the OALM and in which were involved priests, who signed receipts, as well as hundreds of participating taxpayers. There could not have been so many participants unless the existence of the scheme was known, and, in fact, the testimony in question confirms such knowledge. Another fact that cannot be disregarded is that the actors involved in the appellant's case also played a role in the cases of these witnesses, in that involving Ms. Mercier, and in hundreds of others. Thus, this evidence is relevant and admissible.

Procedural fairness

[116] Counsel for appellant brings up a series of events that allegedly occurred from August 13 to September 13, 2002, when the Minister confirmed the assessment. Among the arguments raised by counsel are facts which, in the opinion of counsel for the respondent—an opinion that I share—were not adduced in evidence. Despite this anomaly, I find that this ground cannot succeed in the case at bar. The Federal Court of Appeal has held in several cases that the Tax Court of Canada does not have jurisdiction to vacate an assessment on the basis that it constitutes an abuse of process recognized by law. In other words, in an appeal from an assessment, the Tax Court of Canada cannot take account of the conduct of the Agency. An assessment cannot be vacated for lack of diligence in processing it. (See *Ginsberg v. Canada*, [1996] 3 F.C. 334, and *Lassonde v. Canada*, 2005 FCA 323.) Thus, my role is limited to deciding, on the basis of the facts and the applicable provisions, whether the assessment is in compliance with the Act (see *Main Rehabilitation Co. v. Canada*, 2004 FCA 403).

The evidence

[117] The parties agree that the onus is on the respondent to prove that the appellant made a misrepresentation that is attributable to neglect, carelessness or wilful default during the taxation years 1989 through 1993, since the reassessments for those years were made after the normal reassessment period (see subparagraph 152(4)(*a*)(i) of the Act). The same applies to the penalties assessed against the appellant under subsection 163(2) of the Act in respect of all the taxation years.

[118] The requisite degree of proof is proof on a balance of probabilities. In *Kiwan v. The Queen*, 2004 TCC 136, Dussault J., at first instance, summarized very well the manner in which a court must assess the evidence under different circumstances applicable to these proceedings. I shall reproduce here the following excerpt:

> [201] Provision is made in section 2804 of the *Civil Code* for the level of proof required in civil cases as follows:
>
> > Evidence is sufficient if it renders the existence of a fact more probable than its non-existence, unless the law requires more convincing proof.
>
> [202] In his textbook entitled *La preuve civile* [civil evidence] 3rd edition, Les Éditions Yvon Blais Inc., 2003, writer Jean-Claude Royer points out in paragraph 174 on page 113 that "the requisite degree of evidence is a matter of quality, not quantity" and that "evidence is not assessed in terms of the number of instances of testimony; rather, it is based on the persuasiveness."
>
> [203] In paragraph 175 on the same page, he points out that direct evidence directly involving the fact in dispute is generally preferable to indirect evidence or proof by circumstantial evidence consisting of relevant facts that allow the existence of litigious facts to be inferred, but adds that under certain circumstances, the court may prefer circumstantial evidence to direct evidence.
>
> [204] In paragraph 178 on page 116, Jean-Claude Royer also points out that the testimony of one person may be enough to discharge the burden of persuasion. He also points out that a judge is not required to believe a witness who is not contradicted. In this connection, he cites the Quebec Court of Appeal decision in *Légaré v. The Shawinigan Water and Power Co. Ltd*., [1972] C.A. 372. In this case, the court wrote the following on pages 373 and 374:
>
> [TRANSLATION]
>
> > [...] However, tribunals are not required to believe witnesses, even if they are not contradicted by other witnesses. Their version may be unlikely because of circumstances shown in the evidence or as a result of good common sense [...]

Analysis

[119] There is no doubt that the OALM set up a scheme whereby it could issue false donation receipts during each of the taxation years in issue. In addition, there is no doubt that several hundred taxpayers took advantage of this scheme and that knowledge of its existence was not confined solely to the Lebanese community. The documentation obtained during the audit and through the investigation, that is to say, the various forms of "biblioreç", provides a good illustration of the way the scheme worked and the benefits obtained by the participants, just as all the reconciliation work done by Ms. Langelier and Gaetan Ouellet provides a basis for concluding that there were other participants in the scheme whose names did not

appear in the "biblioreçs". Considering this level of organization, one wonders how many receipts issued by the OALM reflected the true amount of the donation.

[120] The discovery of this scheme by the tax authorities is attributable to Isabelle Mercier. She participated in it herself, along with her husband, Samir El-Boustany, who also encouraged his colleagues and acquaintances to make donations and take advantage of the rebates that the OALM offered. Mr. El-Boustany was also a member of the OALM's board of directors and a friend of the priests who signed the receipts. So Ms. Mercier met with the tax authorities, and, true to her commitment to them, she testified in several matters involving taxpayers. Her testimony was straightforward and honest, so that, despite a few slight inaccuracies, there is no reason to reject any of it. Although she is separated from her husband, I see no reason to believe that Ms. Mercier is in "vengeance mode" and would make assertions intended to harm anyone. Ms. Mercier was very close to the appellant and his wife for a few years, and notwithstanding her separation from her spouse, I detect on her part no vindictiveness toward the appellant which could imperil her credibility.

[121] Her testimony points to the appellant's participation in the OALM's scheme. I do not want to repeat the whole of her testimony because its content has already been set out earlier on in these reasons, but suffice it to say that she and her spouse were friends of the appellant and his spouse. They discussed things together. She saw in her home the cash refunds intended for the appellant, and witnessed the manner in which the refunds were made. She saw the large bank notes. She saw receipts with the appellant's name in her spouse's car. Her spouse was a promoter of the scheme. For his part, the appellant says that he lives in Roberval, does not know the OALM's priests, and knew nothing of the scheme. In my opinion, it is very difficult to believe that the appellant did not know of the scheme because it is almost inconceivable that his friend Samir El-Boustany would not have spoken to him about it and at least invited him to take advantage of it. Ms. Mercier also tells us in her affidavit of August 23, 1995, that Fadi Basile, another acquaintance of the appellant's, was also a promoter, indeed the initiator, of the scheme. Can it be believed that the appellant knew nothing about the scheme? The appellant was made aware of the OALM by Fadi Basile or Samir El-Boustany and yet he would have us believe that neither of them ever spoke to him about the scheme even though they were promoting it!

[122] Ms. Mercier testified concerning the appellant's participation, which commenced in 1990. The appellant would notify Ms. Mercier's spouse about the date of his visit, and, on that date, he would hand over a donation cheque. Her

husband would take the cheque to the OALM and bring back the money. In addition, on three or four occasions, envelopes containing $100 and $1,000 bank notes were taken to the appellant by Ms. Mercier's husband when he visited the appellant during the summer, and her husband brought back one or more cheques that the appellant had made payable to the OALM. Ms. Mercier confirms that the envelopes contained $16,000, and we know that several of the appellant's donations amounted to $20,000. That bears a close resemblance to the scheme.

[123] Ms. Mercier also noted that Mr. Leduc, the appellant's father-in-law, brought a cheque payable the OALM to her home for her spouse and picked up an envelope containing the receipt and cash refund. In his testimony at trial, Mr. Leduc denied that this ever took place. He testified that the envelope contained only photographs and a letter, and that he never picked up an envelope containing cash at Samir's home to give it to the appellant. Mr. Leduc also testified that he personally paid for the airline tickets for his trip to Lebanon in 1991, although in April 1997 he swore an affidavit stating that the appellant had paid for the tickets. I consider this to be a major contradiction, and it lessens considerably the weight that I can give to Mr. Leduc's testimony.

[124] Gaetan Ouellet's testimony, which I set out at paragraph 20 of these reasons, puts the appellant on the list of people who received money back from the OALM after making a donation; according to Mr. Ouellet, the person who recruited the appellant was Samir, and Samir is Ms. Mercier's spouse's first name. Nor can I disregard the discovery made by Mr. Ouellet in the boxes of discarded material, as described in paragraph 22 of these reasons, and which, once again, indicates that the appellant had already received an amount of $16,000 from the OALM. This discovery among the OALM's documents shows with sufficient certainty that the appellant was a participant in the OALM's scheme.

[125] The thing that I find strangest in all of this is the power that the appellant was able to exercise over his friend Samir El-Boustany and the OALM in succeeding in persuading them to send him the money he had given the OALM in donations; this money was deposited in a personal account in Lebanon that he held jointly with his brother-in-law. The evidence is clear that, in 1991 and 1992, the OALM transferred $55,000 to the appellant's brother-in-law by means of bank drafts, and the appellant says that he gave the money to his former parish. The gift was $32,000. The respondent's assertion that these transfers (three in all) were very close in time to the dates of the appellant's actual donations —a $10,000 cheque was cashed on November 13, 1991 and a $10,000 transfer was effected on December 4, 1991; a $20,000 cheque was cashed on May 28, 1992 and a transfer

was effected on the same day; a $40,000 cheque was cashed on July 21, 1992 and $25,000 was transferred the following day — and that the transfers amounted to 78% of the total donations and thus of the total shown on the receipts, is not so implausible considering that this was one of the methods allegedly used in the scheme.

[126] Since when has it been possible for a taxpayer who has made a gift to a charity to dictate how the donation money will be spent and, what is more, to have the money deposited into his personal account so that he can spend it as he sees fit? I would like to believe that he gave $32,000 to his parish, but that depended on him alone. He was free to do what he wanted with the money.

[127] The appellant was unable to explain the fact that he got two receipts for $40,000, or how he got a receipt dated May 20, 1993 (Exhibit I-1, Tab 26) when his cheque (Exhibit I-3, Tab 114, page 2) was dated May 25, 1993. He was also unable to explain the receipt dated November 24, 1993 (Exhibit I-1, Tab 27), six months after the appellant's cheque dated June 21, 1993 (Exhibit I-3, Tab 114, page 3). Lastly, the receipt dated December 31, 1993 (Exhibit I-1, Tab 30) was issued following a cheque written by the appellant dated December 22, 1993 (Exhibit I-3, Tab 114, page 4), but that cheque was only cashed on January 28, 1994, although the audit showed that the OALM deposited its cheques on a regular basis.

[128] Jean-Claude Delisle's testimony not only established a connection between certain cash purchases made by the appellant and the cashing of donation cheques issued by him to the OALM, but also dealt with the banking transactions, such as those reflected in the deposit slips and in the annotations in the appellant's personal records concerning these deposits. I do not want to repeat his testimony, but those details are summarized in these reasons. It has been shown that these deposits could not have been loan repayments by the appellant's father. Mr. Delisle's evidence also shows that, contrary to the appellant's testimony that he paid for all his purchases by cheque or credit card, he made many cash purchases or made cash deposits on purchases. One also has to wonder about the source of the $1,000 and $100 bank notes that he deposited into his account. He himself admitted that the $1,000 bank notes were not payments for professional services rendered at his clinic, which payments, moreover, were placed in his safe, not deposited into a bank account, and he made very few cash withdrawals from his bank account. Ms. Langelier's detailed testimony shows that the appellant did not report this money as income.

[129] Instances of the appellant contradicting himself can be found throughout the evidence. Some of the appellant's contradictions have been summarized in my reasons. Suffice it, however, to refer to a few of them here to show how little reliability I can attach to the statements made by the appellant and certain other witnesses:

1. At his examination for discovery, the appellant testified that his first donation was made in 1987 to the St-Élie Maronite parish and that this donation of $15,000 to $20,000 was made through his father. At trial, the appellant testified that the donation was C$10,000 in cash. The receipt (Exhibit A-3) indicates a donation of $10,000 made in two instalments.

2. The appellant contradicted himself as to whether it was Samir El-Boustany or Fadi Basile who told him about the opportunity to make donations to the OALM. In addition, the appellant testified that his father (paragraph 33 of these reasons) had told him to contact Fadi Basile upon arriving in Canada. The appellant's father testified that he did not know Fadi Basile.

3. The appellant testified that he did not have a precise schedule for making donations to the OALM. At his examination for discovery, he asserted that he donated to the OALM according to his financial means. Yet the donations were essentially the same each year.

4. The appellant says that he pays for his purchases by cheque or credit card when a number of purchases and invoices show that he often paid cash. Renovation work done by Mario Tanguay was paid for in cash on two occasions. The important thing to bear in mind is that in most cases there are no cash withdrawals from his bank accounts explaining the source of the money that was used to make the payments. The appellant also said that the money in his safe was used for things like buying groceries and paying the babysitter.

5. The appellant claims that all his income was reported, whereas the evidence shows that the fees he was paid in cash at his clinic, and even some from the Régie de l'assurance-maladie du Québec, were not reported.

6. The appellant testified that he lent his father $60,000 in 1993 in order to enable him to carry out a construction project. According to the appellant, his father repaid him the entire amount through a Mr. So-and-so, or—as he finally stated—through a person named Antoine from Montreal, who wanted to return to Lebanon. He said he received three payments from Antoine in 1994 and 1995 and the money was deposited into his account to pay down his line of credit. It will be recalled that the appellant never spoke about this repayment method at his examination for discovery, where he testified that he did not remember how his father had repaid him. As for his father, he testified that the $60,000 loan was repaid in full by late 1993. We also know that the annotations in the appellant's journal identifying the repayment amounts are wrong because the deposits were actually of money that was unrelated to such a loan.

7. An invoice for US$9,600 for the purchase of jewellery by the appellant was found at his home. The appellant maintains that it was a wedding present from his father. He says that the price on the invoice reflected the value of the jewellery, not the price paid. His father testified that it is traditional to give women jewellery. He purchased US$4,800 worth of jewellery for his daughter-in-law, but the jewellery that he described does not all match that described on the invoice found at the appellant's home. What was this invoice doing at the appellant's home, and if the father made the purchase, why is the appellant's name on the invoice?

8. The OALM made bank drafts that were deposited into the bank account held by Ziad Saba and the appellant in Lebanon. Was this the money from his donations, as the appellant testified at trial, or was it simply the way that the OALM transferred money to Lebanon, and was Ziad Saba merely an intermediary whom the appellant recommended to Samir El-Boustany? If the latter, why was a copy of a bank draft that the OALM made payable to Ziad Saba, along with an envelope bearing the appellant's name, found in the appellant's safe?

9. The appellant says that the $50,000 term deposit (Exhibit I-3, Tab 108) was not in fact a term deposit but, rather, an update of the amount in his account at the date in question, namely, June 3, 1993. The document speaks for itself and, in my opinion, refers to the renewal of a deposit because it identifies the source of the funds as the

transfer of a "maturing deposit" held by the appellant at the bank. If his bank account were involved, the name of the joint account holder, Ziad Saba, should also be mentioned. However, at his examination for discovery, the appellant never answered the question and seemed more concerned with the fact that one had to be "*innocent*" to keep documents of this sort. If the appellant did nothing wrong, why did he react in this manner?

10. The US$5,000 bank draft from the American Express Bank in Beirut, payable to the appellant, is dated July 1, 1993. He testified that this was money that he withdrew from his account to defray expenses during his trip to Lebanon. At his examination for discovery, he testified that this money was used to purchase Mazola oil that he shipped to Lebanon, but that oil was purchased in 1991.

[130] The appellant tendered no documents showing the activity on his Lebanese bank account. The appellant contradicted himself with respect to the opening of the account and the initial deposits (did he alone make deposits, or did Ziad Saba deposit money as well, and what were the amounts?), and one has to wonder why the appellant never told his accountant, Gratien Ouellet, about this Lebanese bank account or the US$50,000 term deposit. In my opinion, Ziad Saba's testimony could certainly have clarified many things, and the mere tendering of his affidavit (Exhibit A-5) confirming the opening and closing of the account and the fact that no official document could be found is clearly not enough to explain the reason for the account, Ziad Saba's involvement, the deposits and withdrawals attributable to him and those of the appellant, Ziad Saba's role with the OALM, his contact, and the OALM's turnover of funds. Given the importance of this information, I can infer that his testimony would not have helped the appellant's case.

[131] The same is true of the appellant's spouse. While illness may have prevented her from testifying at the trial, she could have testified at another time, but no request was made in this regard. In my opinion, her testimony could also have provided many explanations regarding the appellant's purchase transactions, his office accounting, the journal keeping and the significance of the deposits, among other things. In fact, the appellant himself twice said at trial that it was his spouse who looked after the finances and managed his money. He merely signed the cheques. I conclude from this that her testimony would not have been favourable to the appellant either.

[132] There is no doubt that the appellant has a good reputation in his community and at his workplace. However, his testimony is fraught with contradictions and his explanations are implausible and totally inconsistent. It is impossible for me to find that he knew nothing of the scheme and did not participate in it during each of the years in issue. I am therefore satisfied, on a balance of probabilities, that the appellant participated in the scheme and took advantage of it during each of the years in issue. The respondent has thus discharged her burden of proof with respect to the years that fall outside the normal reassessment period.

[133] It is therefore clear that in the present case there were no donations within the meaning of the Act, but rather purchases of receipts for the purpose of fraudulently obtaining a tax benefit. For these reasons, I confirm the assessments for all the years in issue. Since the appellant participated in the scheme set up by the OALM, he must have been aware of the fact that his tax credits were based on false receipts, and have proceeded wilfully and with full knowledge of the facts. For these reasons, the respondent was justified in imposing penalties.

[134] The appeal is accordingly dismissed, with costs to the respondent.

Signed at Ottawa, Canada, this 23rd day of February 2007.

"François Angers"

Angers J.

Translation certified true
on this 27th day of June 2008.

Erich Klein, Revisor

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