

Docket: 2003-3361(IT)G

BETWEEN:

PATRICK FORTIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeal of
2960-0731 *Québec inc.* (2003-3362(IT)G) on October 13, 2005, at
Nicolet, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: François Daigle

Counsel for the Respondent: Janie Payette

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for the 1998, 1999 and 2000 taxation years is dismissed, with costs to the respondent, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 21st day of July 2006.

"Alain Tardif"

Tardif J.

Translation certified true
on this 29th day of January 2008.

Erich Klein, Revisor

Docket: 2003-3362(IT)G

BETWEEN:

2960-0731 QUÉBEC INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeal of
Patrick Fortin (2003-3361(IT)G) on October 13, 2005,
at Nicolet, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: François Daigle

Counsel for the Respondent: Janie Payette

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for the 1997, 1998, 1999, 2000 and 2001 taxation years is dismissed, with costs to the Respondent, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 21st day of July 2006.

"Alain Tardif"

Tardif J.

Translation certified true
on this 29th day of January 2008.

Erich Klein, Revisor

Citation: 2006TCC270
Date: 20060721
Dockets: 2003-3361(IT)G
2003-3362(IT)G

BETWEEN:

PATRICK FORTIN,
2960-0731 QUÉBEC INC.,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Tardif J.

[1] The appeal in the matter of *2960-0731 Québec inc.*, 2003-3362(IT)G, pertains to the 1997, 1998, 1999, 2000 and 2001 taxation years. The appeal in the matter of Patrick Fortin, 2003-3361(IT)G, pertains to the 1998, 1999 and 2000 taxation years.

[2] Since all the facts are common to both matters, the parties agreed to have both cases heard on common evidence.

[3] 2960-0731 Québec inc. (the "Corporation") is contesting the assessments made on October 25, 2002, by which the Minister of National Revenue (the "Minister") added unreported income to its reported income for the 1999, 2000, and 2001 taxation years, as well as assessing the penalty contemplated in subsection 163(2) of the *Income Tax Act* (the "Act").

[4] For his part, Patrick Fortin is contesting the assessments made on November 25, 2002, by which the Minister, in computing his income for the 1998, 1999 and 2000 taxation years, included additional income in the form of benefits

conferred by the Corporation, under subsection 15(1) of the Act, and amounts representing benefits in respect of the use of an automobile. The penalty set out in subsection 163(2) of the Act was also applied to these assessments.

[5] In making the reassessments, the Minister assumed the facts stated in the Reply to the Notice of Appeal in each case. The facts so assumed in appeal number 2003-3362(IT)G are as follows:

[TRANSLATION]

- (a) The Appellant is in the business of used car sales.
- (b) During the taxation years in issue, Patrick Fortin was the sole shareholder of the Appellant.
- (c) During the taxation years in issue, Patrick Fortin's only identifiable source of income was the business carried on by the Appellant.
- (d) In her audit of the Appellant, the auditor noticed that its accounting system was unreliable and that several advances to the Appellant by Patrick Fortin and by third parties could not be substantiated. Likewise, several accounting entries could not be justified either by Mr. Fortin or by the Appellant's accountant.
- (e) The auditor proceeded to analyze the deposits and the different transactions on the bank accounts of the Appellant, Patrick Fortin, and his spouse, Manon Dufour, for the years in issue.
- (f) This audit, which was conducted using the transaction method, revealed that the Appellant made a clerical error in the 2001 taxation year, and that it failed to report the following income for the 1999, 2000, and 2001 taxation years:

| | <u>1999</u> | <u>2000</u> | <u>2001</u> |
|---|-----------------|-----------------|------------------|
| Net income reported | (\$18,975) | \$6,219 | \$13,432 |
| Unreported income | \$15,147 | \$39,996 | \$89,250 |
| Disallowed purchases, clerical error | | | \$20,330 |
| Discrepancy | \$15,147 | \$39,996 | \$109,580 |
| Revised net income | (\$3,828) | \$46,215 | \$123,012 |

- (g) The addition of \$15,147 in unreported income affects the business loss reported by the Appellant for the 1999 taxation year as well as the carry-back of the loss to the 1997 and 1998 taxation years. Consequently, the Minister reduced the amount available for carry-back to the 1997 and 1998 taxation years, as follows:

| | <u>1997</u> | <u>1998</u> | <u>total</u> |
|--|-------------|-------------|-----------------|
| Reduction in the non-capital loss carry-back | \$10,301 | \$4,846 | <u>\$15,147</u> |

Taxation year ended February 28, 1999

- (h) The amount of \$15,147 which the Appellant failed to report in its income for the taxation year ended February 28, 1999, consists of an amount of \$12,147 and an amount of \$3,000.

The amount of \$12,147

- (i) This amount of \$12,147 was credited to the "advance from Manon Dufour" account on or about December 31, 1998.
- (j) Neither Manon Dufour nor Patrick Fortin was able to prove the source of this amount.
- (k) This amount did not come from Manon Dufour's bank accounts.
- (l) Patrick Fortin's only identifiable source of income is the Appellant.
- (m) Consequently, the Minister considered this amount of \$12,147 to be unreported income of the Appellant which Patrick Fortin appropriated and credited to the "advance from Manon Dufour" account.

The amount of \$3,000

- (n) This amount of \$3,000 was credited to the "advance from shareholder" account on June 30, 1998.
- (o) Patrick Fortin did not prove the source of this amount.
- (p) Consequently, the Minister considered this amount of \$3,000 to be unreported income of the Appellant which Patrick Fortin appropriated and credited to the "advance from shareholder" account.

Taxation year ended February 29, 2000

- (q) The amount of \$39,996 which the Appellant failed to report in its income for the taxation year ended February 29, 2000, consists of an amount of \$31,996 and an amount of \$8,000.

The amount of \$31,996

- (r) This amount of \$31,996 was credited to the "advance from individuals" account (account 1020) by means of adjusting entry #14.
- (s) The source of this amount was not proven by Patrick Fortin or by the Appellant's accountant.
- (t) The Appellant's accountant made the adjusting entry because the deposits did not balance at the end of the fiscal year, and he did so after Patrick Fortin explained that the amount consisted of advances from individuals.
- (u) The analysis of the "advance from individuals" account shows that the individuals who lent money to the Appellant, and the amounts lent, are properly identified therein. The entries for this account are generally substantiated by deposit slips and reimbursement cheques, unlike adjusting entry #14.
- (v) Consequently, the Minister considered this amount of \$31,996 to be unreported income of the Appellant which Patrick Fortin appropriated and credited to the "advance from individuals" account.

The amount of \$8,000

- (w) This amount of \$8,000 was credited to the "advance from Manon Dufour" account on May 6, 1999.
- (x) Neither Manon Dufour nor Patrick Fortin was able to prove the source of this amount.
- (y) This amount did not come from Manon Dufour's bank accounts.
- (z) Patrick Fortin's only identifiable source of income is the business carried on by the Appellant.

- (aa) Consequently, the Minister considered this amount of \$8,000 to be unreported income of the Appellant which Patrick Fortin appropriated and credited to the "advance from Manon Dufour" account.

Taxation year ended February 28, 2001

- (bb) The amount of \$89,250 which the Appellant failed to report in its income for the taxation year ended February 28, 2001, consists of an amount of \$23,044 and an amount of \$66,206.

The amount of \$23,044

- (cc) This amount of \$23,044 was credited to the "advance from individuals" account by means of adjusting entry #2.
- (dd) The source of this amount was not proven by Patrick Fortin or by the Appellant's accountant.
- (ee) The Appellant's accountant made this entry in order to balance the books.
- (ff) Consequently, the Minister considered this amount of \$23,044 to be unreported income of the Appellant which Patrick Fortin appropriated and credited to the "advance from individuals" account.

The amount of \$66,206

- (gg) This amount of \$66,206 was credited to the "advance from shareholder" account by means of adjusting entry #1.
- (hh) Patrick Fortin's bank accounts were analyzed, but it was impossible to trace the source of this amount.
- (ii) Neither Patrick Fortin nor the accountant was able to prove the source of this amount.
- (jj) Patrick Fortin asked the accountant to make this entry in order to balance the books, without providing the accountant with supporting documents.
- (kk) Consequently, the Minister considered this amount to be unreported income of the Appellant which Patrick Fortin appropriated and credited to the "advance from shareholder" account.

Clerical error of \$20,330

- (ll) The Minister reduced the purchases by \$20,330 in order to take account of a clerical error in the Appellant's book of account.
- (mm) Patrick Fortin admitted that a data entry error was made and that this amount should have been credited to the purchases account.
- (nn) Patrick Fortin therefore accepted the changes made to the purchases account.

[6] The assumptions of fact in appeal number 2003-3361(IT)G are as follows:

[TRANSLATION]

- (a) During the taxation years in issue, the Appellant was the sole shareholder of 2960-0731 Québec inc. (**the "Corporation"**).
- (b) The Corporation is in the business of used car sales.
- (c) During the taxation years in issue, the Appellant's only identifiable source of income was the business carried on by the Corporation.
- (d) In her audit of the Corporation, the auditor noticed that the Corporation's accounting system was unreliable and that several advances to the Corporation by the Appellant and by third parties could not be substantiated. Likewise, several accounting entries could not be justified either by the Appellant or by the Corporation's accountant.
- (e) The auditor proceeded to analyze the deposits and the different transactions on the bank accounts of the Corporation, the Appellant, and his spouse, Manon Dufour, for the years in issue.
- (f) This audit, which was conducted using the transaction method, revealed that the Appellant appropriated funds of the Corporation and failed to report the following benefits for his 1998, 1999 and 2000 taxation years:

| | <u>1998</u> | <u>1999</u> | <u>2000</u> |
|--------------------------|-----------------|-----------------|-----------------|
| Total income reported | nil | \$7,500 | \$12,000 |
| Plus: Appropriated funds | \$20,547 | \$27,163 | \$95,947 |
| Auto benefit | \$5,141 | \$5,141 | \$2,815 |
| Discrepancy | \$25,688 | \$32,304 | \$98,762 |
| Revised net income | \$25,688 | \$39,804 | \$110,762 |

1998 taxation year: \$25,688

- (g) The amount of \$25,688 which the Appellant failed to report in his income for the 1998 taxation year consists of the following amounts:

| | | | | |
|---------|---------|----------|---------|---------|
| \$2,900 | \$2,500 | \$12,147 | \$3,000 | \$5,141 |
|---------|---------|----------|---------|---------|

The amounts of \$2,900 and \$2,500

- (h) The Appellant claims that the amounts of \$2,900 and \$2,500 were advances to the Corporation by Jean Daneau and Réjean Desjardins and that both amounts were repaid.
- (i) These amounts were debited to the Corporation's "advance from individuals" account.
- (j) These amounts were paid to the Appellant by the Corporation in the form of cheques made out to him.
- (k) The Appellant cashed both cheques.
- (l) The Appellant did not show that these amounts were repayments of advances that Jean Daneau and Réjean Desjardins had made.
- (m) Consequently, the Minister considered both amounts appropriations of funds by the Appellant, and added them in computing his income.

The amount of \$12,147

- (n) This amount of \$12,147 was credited to the Corporation's "advance from Manon Dufour" account on or about December 31, 1998.

- (o) Neither Manon Dufour nor the Appellant was able to prove the source of this amount.
- (p) This amount did not come from Manon Dufour's bank accounts.
- (q) The Appellant's only identifiable source of income is the Corporation.
- (r) Consequently, the Minister considered this amount of \$12,147 to be unreported income of the Corporation which the Appellant appropriated and credited to the "advance from Manon Dufour" account. This amount was included in computing the Appellant's income.

The amount of \$3,000

- (s) This amount of \$3,000 was credited to the Corporation's "advance from shareholder" account on June 30, 1998.
- (t) The Appellant did not prove the source of this amount.
- (u) Consequently, the Minister considered this amount of \$3,000 to be unreported income of the Corporation which the Appellant appropriated and credited to the "advance from shareholder" account. This amount was included in computing the Appellant's income.

Benefit in respect of the use of an automobile: \$5,141

- (v) During the 1998 taxation year, the Corporation made a 1997 Chevrolet Blazer Tahoe automobile available to the Appellant.
- (w) The value of the benefit to be included in respect of this automobile in computing the Appellant's income was established at \$5,141.

1999 taxation year: \$32,304

- (x) The amount of \$32,304 which the Appellant failed to report in his income for the 1999 taxation year consists of the following amounts:

| | | | |
|----------|---------|---------|--------------------------|
| \$26,663 | \$8,000 | \$5,141 | Total \$39,804 |
|----------|---------|---------|--------------------------|

- (y) From this total of \$39,804, the Minister subtracted the \$7,500 that the Appellant reported as commission income in his 1999 income tax return.

The amount of \$26,663

- (z) An amount of \$31,996 was credited to the Corporation's "advance from individuals" account (account 1020) by means of adjusting entry #14.
- (aa) The source of this amount was not proven by the Appellant or by the Corporation's accountant.
- (bb) The Corporation's accountant made this adjusting entry because the deposits did not balance at the end of the fiscal year, and he did so after the Appellant explained that the amount consisted of advances from individuals.
- (cc) The analysis of the Corporation's "advance from individuals" account shows that the individuals who lent money to the Corporation, and the amounts lent, are properly identified therein. The entries in this account are generally substantiated by deposit slips and reimbursement cheques, unlike adjusting entry #14.
- (dd) Consequently, the Minister considered this amount of \$31,996 to be unreported income of the Corporation which the Appellant appropriated and credited to the "advance from individuals" account.
- (ee) The amount of \$31,996 is allocated to the Appellant's 1999 and 2000 taxation years on a prorated basis, according to the relevant number of months (namely, 10 in 1999 and two in 2000), since the Corporation's fiscal year ends on February 28 of each year.
- (ff) Thus, for 1999, the amount that the Minister included as appropriated funds in computing the Appellant's income is \$26,663 ($10/12 \times \$31,996$).

The amount of \$8,000

- (gg) This amount of \$8,000 was credited to the Corporation's "advance from Manon Dufour" account on May 6, 1999.
- (hh) Neither Manon Dufour nor the Appellant was able to prove the source of this amount.
- (ii) This amount did not come from Manon Dufour's bank accounts.
- (jj) The Appellant's only identifiable source of income is the business carried on by the Corporation.

- (kk) Consequently, the Minister considered this amount of \$8,000 to be unreported income of the Corporation which the Appellant appropriated and credited to the Corporation's "advance from Manon Dufour" account. This amount was included in computing the Appellant's income.

Benefit in respect of the use of an automobile: \$5,141

- (ll) During the 1999 taxation year, the Corporation made a 1997 Chevrolet Blazer Tahoe automobile available to the Appellant.
- (mm) The value of the benefit to be included in respect of this automobile in computing the Appellant's income was established at \$5,141.

2000 taxation year: \$98,762

- (nn) The amount of \$98,762 which the Appellant failed to report in his income for the 2000 taxation year consists of the following amounts:

| | | | | | | |
|----------|---------|----------|----------|---------|---------|---------------------------|
| \$22,725 | \$5,514 | \$55,172 | \$19,203 | \$5,333 | \$2,815 | Total \$110,762 |
|----------|---------|----------|----------|---------|---------|---------------------------|

- (oo) From this total of \$110,762, the Minister subtracted the \$12,000 that the Appellant reported as commission income in his 2000 income tax return.

The amount of \$22,725

- (pp) The Corporation's "advance to shareholder" account indicates that this amount of \$22,725 was attributed to the Appellant between January 1 and December 31, 2000.
- (qq) During this same period, the "advance to shareholder" account was credited with \$20,330, although this amount should have been credited to the Corporation's purchases account.
- (rr) The Appellant admitted that a data entry error was made, and that this amount should have been credited to the Corporation's purchases account.
- (ss) As a result of this change, \$22,725 was debited to the Corporation's "advance to shareholder" account, and this was a benefit that the Corporation conferred on the Appellant.

The amount of \$5,514

- (tt) This amount of \$5,514 was added in computing the Appellant's income because the Corporation's adjusting entry #15, dated February 28, 2001, shows that it was a refund of tax to the Corporation that was collected by the Appellant.

The amount of \$55,172

- (uu) An amount of \$66,206 was credited to the Corporation's "advance from shareholder" account by means of adjusting entry #1.
- (vv) The Appellant's bank accounts were analyzed, but it was impossible to trace the source of this amount.
- (ww) Neither the Appellant nor the accountant was able to prove the source of this amount.
- (xx) The Appellant asked the accountant to make this entry in order to balance the Corporation's books, without providing the accountant with supporting documents.
- (yy) Consequently, the Minister considered this amount of \$66,206 to be unreported income of the Corporation which the Appellant appropriated and credited to the Corporation's "advance from shareholder" account.

- (zz) The amount of \$66,206 is allocated to the Appellant's 2000 and 2001 taxation years on a prorated basis, according to the relevant number of months (namely, 10 in 2000), since the Corporation's fiscal year ends on February 28 each year.
- (aaa) Thus, for the year 2000, the amount that the Minister included as appropriated funds in computing the Appellant's income is \$55,172 ($10/12 \times \$66,206$).

The amount of \$19,203

- (bbb) An amount of \$23,044 was credited to the Corporation's "advance from individuals" account by means of adjusting entry #2.
- (ccc) The source of this amount was not proven by the Appellant or by the Corporation's accountant.
- (ddd) The Corporation's accountant made this entry in order to balance the books.
- (eee) Consequently, the Minister considered this amount of \$23,044 to be unreported income of the Corporation which the Appellant appropriated and credited to the Corporation's "advance from individuals" account.
- (fff) The amount of \$23,044 is allocated to the Appellant's 2000 and 2001 taxation years on a prorated basis, according to the relevant number of months (namely, 10 in 2000), since the Corporation's fiscal year ends on February 28 each year.
- (ggg) Thus, for the year 2000, the amount that the Minister included as appropriated funds in computing the Appellant's income is \$19,203 ($10/12 \times \$23,044$).

The amount of \$5,333

- (hhh) This amount of \$5,333 is included in computing the Appellant's income for the 2000 taxation year because it is part of the amount of \$31,996, referred to in subparagraphs 13(z) through (ff) of this Reply, allocated to the Appellant's 1999 and 2000 taxation years on a prorated basis, according to the relevant number of months (namely, 10 in 1999 and 2 in 2000).
- (iii) For the year 2000, the amount that the Minister added to the Appellant's income as appropriated funds is \$5,333 ($2/12 \times \$31,996$).

Benefit in respect of the use of an automobile: \$2,815

- (jjj) During the 2000 taxation year, the Corporation made a 1999 Chevrolet Blazer Tahoe automobile available to the Appellant.
- (kkk) The value of the benefit to be included in computing the Appellant's income in respect of this automobile was established at \$2,815.

[7] Having observed that the Corporation's accounting system was utterly defective, the auditor proceeded using the indirect method; she accordingly analyzed the deposits and various transactions on the bank accounts of the Corporation, Patrick Fortin and his spouse. Thus, the assessments are based on this analysis and on the entries in the various bank records.

[8] The Minister found that there were many unexplained large deposits into the Corporation's bank account. On the basis of this finding, he determined that the Corporation had failed to declare substantial amounts of income and that Mr. Fortin had appropriated funds of the Corporation.

[9] In other words, the respondent claims that the Corporation failed to report significant amounts of business income and that Patrick Fortin appropriated unreported income.

[10] In view of the various findings and the lack of sufficient data to carry out an analysis, the auditor concluded that both appellants had shown gross negligence and wanton disregard warranting the imposition of the penalties set out in subsection 163(2) of the Act.

[11] For their part, the two appellants and their witnesses (Messrs. Daneau and Desjardins, and Manon Dufour, Mr. Fortin's ex-spouse) provided different explanations to account for the various deposits and withdrawals. Broadly speaking, the explanations were somewhat vague and imprecise; they were essentially circumstantial explanations.

[12] The evidence disclosed that Patrick Fortin and the Corporation of which he was the sole shareholder and director purchased and sold used vehicles.

[13] During the taxation years in issue, Mr. Fortin's only source of income was the Corporation; in other words, his sole source of income was the activities of the Corporation, whose business was buying and selling used cars.

[14] Jean Daneau, an unemployed independent worker, and Réjean Desjardins, a salesperson, both said that they had been involved in various transactions with Patrick Fortin, the Corporation, or both. Both witnesses said that they had on several occasions been involved in commercial transactions as lenders, borrowers or investors in the Corporation, through loans, or as partners or associates, or with respect to the purchase or sale of cars.

[15] Neither witness spoke about specific, detailed transactions. They spoke in general terms and did not refer to any document or writing capable of confirming their very vague testimony. They had known each other for many years, did business in the same field, and exchanged all kinds of financial services.

[16] Manon Dufour, Patrick Fortin's ex-spouse, also testified. She said that she had been very much involved in his business because she advanced money to him and co-operated unreservedly; once, for example, she agreed to act as *prête-nom* on the purchase of a boat. She explained that she had received a large sum of money from an insurance company following the loss of her vehicle.

[17] She also said that she had looked after Patrick Fortin's travel for a while because his driver's licence had been suspended.

[18] As for Patrick Fortin's testimony, which was the main component of the evidence, he explained the circumstances that led to his purchase of the used-car business and the difficulties that he had faced in operating it. He stated that it was generally always difficult. He explained that he turned to the services of Messrs. Daneau and Desjardins and his then spouse.

[19] First, his car inventory was confiscated, and, later, a crime was committed at his place of business.

[20] He asserted that, while he had absolutely nothing to do with either of them, these far-from-ordinary incidents had an adverse effect on his business. In fact, I wondered why he stayed at this location rather than moving, especially since he claimed that these incidents had been very bad for business.

[21] Describing himself as a neophyte in accounting and adding that such things held no interest at all for him, he said that he relied on his accountant, who performed work for him throughout the periods in issue.

[22] The evidence on this point disclosed that the accountant had a very limited mandate, which was essentially confined to the closing process, and that the day-to-day and routine activities were entrusted to a woman who clearly had little or no skill.

[23] Patrick Fortin also explained that he exaggerated the number of cars in his inventory so that the overall picture of the business would look better. He also submitted false and misleading documents to the financial institution with which he did business in order to avoid having his line of credit called. In general, his testimony was ambiguous and did not refer to any specific, documented fact that could substantiate certain explanations.

[24] On the other hand, the work of the auditor, Jannette Mercier, was absolutely impeccable. She obtained all the available documents, and this enabled her to do serious and responsible work. She considered the explanations that the parties concerned submitted to her and verified the information provided to check whether it made sense and, above all, was plausible.

[25] Since she was unable to obtain all the reliable information from the accountant, and as her auditing work was limited to attempting to make sense out of incomplete, inadequate and totally unreliable data, the auditor analyzed all available documents, particularly the most reliable ones, namely, the microfiches obtained from the Caisse populaire.

[26] Using the microfiches and the various bank statements of Patrick Fortin's spouse, the auditor tried to follow the trail of the activities and connect the various dots in a reasonable manner. The results that she obtained were not consistent with the appellants' contentions, and thus, the explanations that were provided could not be considered plausible.

[27] In my opinion, it is difficult, if not impossible, to draw any conclusion at all from the explanations of Patrick Fortin and his witnesses.

[28] The assessments pertained to very specific transactions that could or should normally have been explained or justified rather easily if Patrick Fortin had had a basic accounting system or had managed his business with a modicum of order.

[29] The accountant, who was called to the rescue, was unable to clarify or explain a thing. He made several references to numerous shortcomings or deficiencies in the accounting, and added that he could practically never obtain

information, and therefore constantly and regularly had to make adjusting entries, the bases of which were frequently arbitrary in that he could not verify their accuracy or veracity with the people involved.

[30] The accountant claims that from the first year that he worked for Patrick Fortin, he strongly recommended that Mr. Fortin replace the person who did his bookkeeping, but this was never done.

[31] In response to the Court's questions, the accountant, Claude Caron, said that no consideration would be enough for him to accept such a mandate today, given the impossibility of producing work that is of a certain quality and that is acceptable according to the standards of his profession.

[32] Neither the accountant, nor the two witnesses, nor Patrick Fortin were able to provide probable or reliable explanations. They referred to certain transactions such as the sale of a boat and a \$40,000 insurance settlement, and to vague explanations provided by friends, in an attempt to show that everything was transparent or consistent and aboveboard.

[33] In other words, relying on a small number of isolated facts, Patrick Fortin and his witnesses sought to use certain data that were incomplete, albeit precise in some respects — for example, the sale of the boat and the insurance settlement — to claim that they explained all the inconsistencies and all the discrepancies in the figures.

[34] For her part, the auditor, Jannette Mercier, specifically analyzed each contention and quickly realized that they were patently improbable and contained numerous inconsistencies and implausibilities.

[35] In fact, the auditor correctly noted that it was mathematically impossible for Patrick Fortin to have advanced money on a regular basis when his reported income was utterly marginal, indeed ridiculously low.

[36] Patrick Fortin placed considerable emphasis on the fact that business had always been very difficult because he was the victim of devastating publicity, notably following an enormous seizure of allegedly stolen vehicles in 1995, following his acquisition of the used-car business in 1994 from a person who had had some trouble with the law.

[37] Having had absolutely nothing to do with the charges at the root of that seizure, Patrick Fortin held on to the establishment and continued to deal with his vendor, that is, the former owner.

[38] What is more, it appears that they did business frequently: their transactions included advances, remittances, loans, reimbursements, co-ownership of vehicles, and so forth.

[39] If the situation was that difficult for his business, it is hard to understand why Patrick Fortin continued to operate at that location, especially since perception is often a very important factor in the success of a commercial endeavour.

[40] There was also gunfire at the same location in 1999, another incident that would have led to a dubious reputation and been very detrimental to the success of the business.

[41] According to Patrick Fortin, business was not very good. He said that in order to avoid having his line of credit called in, he falsified his inventory so that he could submit acceptable figures.

[42] Since he believed himself to be of questionable solvency, he used his spouse as a *prête-nom* for certain transactions, such as the purchase of a boat and a snowmobile.

[43] In order to secure financing from the Caisse populaire, he submitted a false balance sheet in which he exaggerated the value of certain assets considerably.

[44] He stated that he paid \$18,000 for a boat when the actual amount laid out was \$12,000. When taking out a loan, he put the boat's value at \$16,000. He did not recall the name of the seller, but he did remember that the false annotation "advance" was simply intended to avoid taxes on the transaction.

[45] When the questions became technical, Patrick Fortin's memory failed him; he said that he did not understand figures. It was all Greek to him, he added.

[46] He also said that he spoke very little with the accountant other than to tell him to arrange things so that they would look good.

[47] He said that his financial statements showed completely fictitious and generally inflated inventory. Cash played an important role in his activities; cash

inflows and outflows were frequent and the amounts often large, but Patrick Fortin said that they were absolutely necessary.

[48] The taxation system is based on the principle of self-assessment. Most Canadian taxpayers have very little leeway in terms of the exact amount of income that they must report as they are taxed at the source, so the income they receive has generally already been taxed.

[49] However, other taxpayers, including Patrick Fortin during the years in issue, must keep accounting records that make it possible to establish their revenues and expenditures.

[50] Those records must be complete, clear and consistent in order that expenditures and revenues may be explained. The fact that audits are often conducted and requests for information often made a few years after transactions have taken place makes it all the more important to keep such accounting records.

[51] While it is not essential that such accounting be so absolutely perfect as to be a veritable model of conformity with good practice in the field, it does have to enable plausible and reasonable determinations to be made; otherwise, it might be extremely difficult to prove anything.

[52] All assessments are presumed to be accurate, and those who wish to challenge the validity of an assessment have the burden of proof, except in certain situations, such as those involving penalties, where the burden is on the Canada Customs and Revenue Agency.

[53] Indirect or circumstantial evidence obviously is not as reliable and certain as direct evidence, so it is necessary, even essential, that its incomplete or partial bases be of very high quality, as opposed to being simplistic, vague and general assertions by a person who does not hesitate to submit false and misleading explanations and documents to avoid certain troubles or inconveniences.

[54] Such a burden of proof is demanding; it requires evidence that rests on credible and reasonable foundations. If necessary, such evidence can be derived essentially from oral explanations, in which case there is little room for confusion or inconsistencies; moreover, the person who adduces such evidence must be very credible, otherwise his testimony risks being limited or incomplete in scope.

[55] In addition, the explanations must be clear, consistent and complete; they must not be outlandish, confused or even implausible or unreasonable.

[56] There is nothing exceptional about these requirements; essentially, they provide a measure of fairness and justice for all of the country's taxpayers.

[57] Anyone who disregards basic accounting rules or who recklessly flouts administrative discipline risks, through his recklessness, negligence and carelessness, being unable to meet his burden of proof and consequently having his contentions rejected.

[58] With respect to the shareholder benefit, it is important to consider the particular facts of the case. There can obviously be explanations or justifications that will compel us not to treat certain entries as benefits within the meaning of subsection 15(1) of the Act.

[59] However, this assumes the existence of a context, circumstances and precise, relevant facts that are validated ideally by documentary evidence.

[60] Where such evidence does not exist and the facts reveal a patent lack of care on the part of the actors involved in processing the data, accepting the mostly verbal representations would have the effect of rewarding negligence, carelessness and recklessness.

[61] In the case at bar, Patrick Fortin and the Corporation whose shares were all owned by him operated informally and without the slightest administrative discipline.

[62] Moreover, even if Patrick Fortin had succeeded in showing that his claims were reasonable, he would have had to demonstrate through his conduct that he was credible.

[63] The fact that he admitted to falsifying the inventory in order to present a more favourable picture, that he altered the financial statements submitted to the financial institution that financed him, that he disregarded the accountant's instructions on how to do his bookkeeping, and that he used the services of an accountant essentially to make things look good all point, in case of doubt, to a finding that he was not credible.

[64] With a modicum of good will and a genuine intention to meet his tax obligations, it would have been easy and straightforward for Patrick Fortin to present adequate and coherent accounting records that would have made it possible for the questions raised in any tax audit to be answered.

[65] Not only did such accounting records not exist, but Patrick Fortin had the audacity to claim that his accountant was responsible for certain instances of confusion or error, and to hide behind the accountant's work, claiming that his affairs were well organized and that everything had been properly justified with cogent evidence considering the skill of the accountant, whom he did not call as a witness.

[66] Actually, the accountant did testify, at the respondent's request. Moreover, this Court does not read the accountant's testimony as the appellants do, and it definitely does not share the appellants' interpretation of that testimony. A few excerpts from the accountant's testimony are very revealing and clearly show the appellants' interpretation of that testimony to be quite simply inappropriate, indeed wrong-headed.

Pages 157-58 of the transcript:

[TRANSLATION]

Q. . . . you mean that cash inflows and outflows could be shown that would have the effect . . . all other things being equal, of lowering all that?

A. Yes.

Q. O.K. So, if, for example, the \$20,722 came from . . . In other words, the \$66,000 minus the \$20,000, those are net transactions on this account?

A. Mm-hmm.

Q. So \$40,000 more at the end of the year, is that right?

A. Yes.

Q. O.K. Great. Could you tell me why you advised Mr. Fortin to change accountants, bookkeepers, as they are called?

A. Well, listen, it wasn't complicated: things were a complete mess. The first year that Patrick came to my office, I suggested he find someone else. But it went on for four, five years . . . I don't know, I don't remember anymore. And, at some

point, because you have to understand that the more a client does things right, the less it will cost him at our firm.

So at some point, when you want to do a notice to reader that is supposed to be a financial statement that costs maybe \$1,000, but it winds up costing \$2,500 or \$3,000 because you try to locate everything and track everything down; the client isn't happy. And it's a sure thing that at some point, that you can't produce . . . It has to be brought to a conclusion somewhere along the line. So you put time, you put time into trying to balance everything. And the cash doesn't balance. The cash, it's like the number one item in a file. If the cash account doesn't balance, you have serious problems afterwards. So that was why. And I wasn't sure his bookkeeper understood what she was doing.

Q. O.K. And the inventory portion, could that have had an impact? Let's say Mr. Fortin inflated his inventory, could that have affected the "advance" account?

A. No, not at all.

Q. No?

A. No, because in that case the inventory, the figure corresponding to inventory goes into purchases. Cars are bought and there is no outflow of money there. Even if I affect the inventory somewhat by changing my figure as I feel like it, I don't have any cash inflows or outflows . . .

Page 86 of the transcript:

[TRANSLATION]

Q. All right. Now, you said earlier that the accountant for the taxation years 99, 2000, and 2001, among others, told you it didn't balance, didn't you say that earlier?

A. Well, as he said, it never balanced. He often criticized me for that.

Q. What do you mean by "not balancing"?

A. Well, probably because of my inventory, which was inflated.

Q. Your inventory was inflated?

A. Yes, he always asked me for a list of my inventory. So I gave him a list and topped it up.

Q. You topped it up?

A. Yes, to show a profit at year-end.

Q. Did your accountant ever tell you there was an enormous number of deposits into the company that weren't accounted for?

A. No. His only criticism was . . . the person who did my bookkeeping . . .

[67] Patrick Fortin claimed that the accountant never spoke to him about the significant carry-overs and never justified or explained anything, whereas the accountant expressly stated that his accounting was deficient, that he often had to ask questions, and above all, that he strongly recommended that Patrick Fortin change bookkeepers.

- The financial statements show advances from third parties but provide no details; the third parties in question did not testify.
- Patrick Fortin spoke about losing his driver's licence, but provided no evidence in this regard despite a formal undertaking at the examination for discovery.
- He says that he knows nothing about accounting, but stated that he personally inflated the inventory so that the accounting would look better.
- Despite the accountant's strong and very serious recommendation regarding the quality of the work based on which he had to prepare the financial statements, Patrick Fortin did not change his habits in the slightest.
- He has a disconcerting knack for providing false and misleading information.
- He has little compunction about preparing and submitting false documents.
- There is a complete lack of simple, clear, consistent explanations.

[68] Only one conclusion can be drawn from all these factors: the circumstantial evidence adduced by the appellants is not plausible and must quite simply be rejected.

[69] With respect to the penalties, the evidence disclosed that Patrick Fortin had no compunction about falsifying certain documents; in fact, he was prepared to do anything to achieve his ends. He was much more aware and informed in the field of accounting than he claimed, and he managed his business in a way that clearly only he understood. He used external resources such as an accounting clerk and an actual accountant solely to submit accounting documents that appeared correct and acceptable. Such conduct is utterly unacceptable and is tantamount to gross negligence because he completely disregarded his obligations.

[70] Accordingly, the appeals are dismissed in that the assessments and penalties are confirmed on the basis that they are wholly in accordance with the Act. The respondent is entitled to her costs.

Signed at Ottawa, Canada, this 21st day of July 2006.

"Alain Tardif"

Tardif J.

Translation certified true
on this 29th day of January 2008.

Erich Klein, Revisor

CITATION: 2006TCC270

COURT FILE NOS.: 2003-3361(IT)G and 2003-3362((IT)G

STYLES OF CAUSE: PATRICK FORTIN v. THE QUEEN
2960-0731 QUÉBEC INC. v.
THE QUEEN

PLACE OF HEARING: Nicolet, Quebec

DATE OF
Hearing: October 13, 2005
Submissions by Appellants: November 30, 2005
Written submissions by Respondent: January 30, 2006

REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif

DATE OF JUDGMENT: July 21, 2006

APPEARANCES:

Counsel for the Appellants: François Daigle

Counsel for the Respondent: Janie Payette

COUNSEL OF RECORD:

For the Appellants:

Name: François Daigle, M. Fisc.
Firm: Heenan Blaikie
City: Trois-Rivières (Quebec)

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Ontario