

Docket: 2017-3467(IT)G

BETWEEN:

NANDAGOPAL AYRE,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Appeal heard on common evidence with the appeals of *Nandagopal Ayre* (2017-3469(IT)G), *Kenneth Cooper* (2017-3119(IT)G), *Sharon Dockstader* (2017-2987(IT)G), *James Foran Sr.* (2017-2985(IT)G), and *Deny Johnston* (2017-440(IT)G) on October 24 to 26, 2023, October 30 to November 2, 2023, November 6 to 9, 2023, November 14 to 15, 2023, March 27 to 28, 2024, and June 10, 2024 at Calgary, Alberta

Before: The Honourable Justice David E. Spiro

Appearances:

Counsel for the Appellant: Joel Scheuerman  
Nicole Lynx  
Adèle Desgagné  
Dorian Fenton  
Catherine Liu

Counsel for the Respondent: Mary Softley  
Jeffrey Z. H. Tran  
Levi Smith

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See the list of Bound Appellants at Schedule “A” to this Judgment.

**JUDGMENT**

The appeals from the reassessments issued by the Minister of National Revenue for the Appellant's 2009 and 2010 taxation years are dismissed with costs.

The Respondent is granted an opportunity to reach a negotiated settlement on costs with the Lead Appellants, the Bound Appellants, and Profitable Giving Canada settling the quantum of costs and the appropriate allocation of those costs, including the potential role of Profitable Giving Canada in collecting and remitting costs payable to the Respondent from the Lead Appellants and the Bound Appellants.

If no such agreement has been reached before May 30, 2025, then:

1. By June 30, 2025, the Respondent shall serve on Profitable Giving Canada, the Lead Appellants and the Bound Appellants, and shall file with the Court, a Consolidated Bill of Costs accompanied by written submissions of 30 pages or less setting out submissions in support of the Consolidated Bill of Costs and in respect of the appropriate allocation of those costs, including the potential role of Profitable Giving Canada in collecting and remitting costs payable to the Respondent from the Lead Appellants and the Bound Appellants.
2. By July 31, 2025, Profitable Giving Canada, the Lead Appellants and the Bound Appellants may serve and file written submissions of 20 pages or less in response to the Respondent's Consolidated Bill of Costs and accompanying submissions.
3. By August 29, 2025, the Respondent may serve and file a response of 10 pages or less to the written submissions of Profitable Giving Canada, the Lead Appellants and the Bound Appellants.

Signed this 10<sup>th</sup> day of March 2025.

“David E. Spiro”

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Spiro J.

**Schedule "A"**

<b>Appellant</b>	<b>Appeal</b>
Chaulk, Rob	2015-2108(IT)I
Boyle, Christine	2015-2296(IT)G
Selvakaralan, Ravichandra	2016-4747(IT)I
Malley, John Paul	2016-5399(IT)G
Jewell, Christine R.	2017-1463(IT)G
Spelliscy, Brett P.	2017-1903(IT)I
Keizer, Mike	2017-207(IT)G
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Lauzon, Andrew	2017-2992(IT)G
Styles, Bruce	2017-2994(IT)G
Cooper, Kenneth	2017-3112(IT)G
Smyth, David	2017-3123(IT)G
Smyth, David	2017-3125(IT)G
Woo, Danny	2017-438(IT)G
Cote, Venence	2017-441(IT)G
Lederhos, Gilbert L.	2017-442(IT)G
Spark, Gary	2017-445(IT)G
Martinez, Andres	2018-2740(IT)I
Amoah, Ebenezer D	2018-2882(IT)I
Liao, Peter J.C.	2018-3357(IT)I
Torres, Alvin	2018-4149(IT)I
Wirachowsky, Michael	2019-1013(IT)I
Anusic, Ivica	2019-4345(IT)I
Anusic, Ivica	2019-4346(IT)I
Larocque, Normand	2019-4545(IT)I
Lacasse, Linda	2019-4546(IT)I
Lanthier, Lyne	2020-2415(IT)I
Stec, Andrzej	2021-593(IT)I
Pinter, Joanne Marie	2022-2269(IT)G
Ursulak, Aaron	2022-2509(IT)I
Popovich, Alice Joan	2022-2540(IT)I
Ali Beiki, Mahnaz	2022-2690(IT)I
Macartney, Michael	2022-2716(IT)I
Campbell, Yvonne A.	2022-3006(IT)I

Gaces, Villa	2022-3128(IT)I
Gaces, Villa	2022-3129(IT)I
Arndt, Dan	2022-341(IT)I
Monk, Jeffrey M.	2023-1022(IT)G
Curran-Fotopoulos, Colleen	2023-1023(IT)G
Voth, Shirley	2023-1086(IT)G
Styles, Vanessa	2023-1093(IT)G
Styles, Jordan	2023-1121(IT)G
Lachance, Denis	2023-1157(IT)I
Pinter, Philip Doug	2023-1179(IT)G
MacDonald, Tanis	2023-1193(IT)I
Marcoux, Daniel L.	2023-1217(IT)G
Cote, Sandra	2023-1236(IT)I
Vandra, Rimple	2023-129(IT)I
Wiens, Barbara	2023-141(IT)G
Lowe, Stephen	2023-1729(IT)G
Murray, Gunda	2023-1737(IT)G
Chan, Shui Keung	2023-1745(IT)G
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Collin, Margaret	2023-1780(IT)G
Rioux, Jean-Luc	2023-1824(IT)I
Popma, Marius	2023-1834(IT)G
Popma, Joyce	2023-1835(IT)G
Balash, Steve	2023-1953(IT)I
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Tokeson, Wendy	2023-222(IT)I
Joyal, Derek	2023-263(IT)I
Chartrand, Shelia	2023-29(IT)G
Chartrand, Real	2023-30(IT)G
Leitao, Timothy J	2023-331(IT)I
Rampurawala, Rashida	2023-333(IT)I
Rampurawala, Murtuza	2023-336(IT)I
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Huard, Yvon	2023-899(IT)I
Knister, Ray G.	2023-900(IT)I
Semchuk, Dorian	2023-933(IT)G
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Nicole Lynx  
Adèle Desgagné  
Dorian Fenton  
Catherine Liu

Counsel for the Respondent: Mary Softley  
Jeffrey Z. H. Tran  
Levi Smith

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See the list of Bound Appellants at Schedule “A” to this Judgment.

**JUDGMENT**

The appeal from the reassessment issued by the Minister of National Revenue for the Appellant's 2011 taxation year is dismissed with costs.

The Respondent is granted an opportunity to reach a negotiated settlement on costs with the Lead Appellants, the Bound Appellants, and Profitable Giving Canada settling the quantum of costs and the appropriate allocation of those costs, including the potential role of Profitable Giving Canada in collecting and remitting costs payable to the Respondent from the Lead Appellants and the Bound Appellants.

If no such agreement has been reached before May 30, 2025, then:

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Signed this 10<sup>th</sup> day of March 2025.

“David E. Spiro”

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Spiro J.

**Schedule "A"**

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Lebid, Jodi	2023-96(IT)G
Dugan, Gord	2023-999(IT)G

BETWEEN:

KENNETH COOPER,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Appeal heard on common evidence with the appeals of *Nandagopal Ayre* (2017-3467(IT)G and 2017-3469(IT)G), *Sharon Dockstader* (2017-2987(IT)G), *James Foran Sr.* (2017-2985(IT)G), and *Deny Johnston* (2017-440(IT)G) on October 24 to 26, 2023, October 30 to November 2, 2023, November 6 to 9, 2023, November 14 to 15, 2023, March 27 to 28, 2024, and June 10, 2024 at Calgary, Alberta

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Nicole Lynx  
Adèle Desgagné  
Dorian Fenton  
Catherine Liu

Counsel for the Respondent: Mary Softley  
Jeffrey Z. H. Tran  
Levi Smith

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See the list of Bound Appellants at Schedule “A” to this Judgment.

**JUDGMENT**

The appeals from the reassessments issued by the Minister of National Revenue for the Appellant’s 2010, 2011, and 2012 taxation years are dismissed with costs.

The Respondent is granted an opportunity to reach a negotiated settlement on costs with the Lead Appellants, the Bound Appellants, and Profitable Giving Canada settling the quantum of costs and the appropriate allocation of those costs, including the potential role of Profitable Giving Canada in collecting and remitting costs payable to the Respondent from the Lead Appellants and the Bound Appellants.

If no such agreement has been reached before May 30, 2025, then:

1. By June 30, 2025, the Respondent shall serve on Profitable Giving Canada, the Lead Appellants and the Bound Appellants, and shall file with the Court, a Consolidated Bill of Costs accompanied by written submissions of 30 pages or less setting out submissions in support of the Consolidated Bill of Costs and in respect of the appropriate allocation of those costs, including the potential role of Profitable Giving Canada in collecting and remitting costs payable to the Respondent from the Lead Appellants and the Bound Appellants.
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Signed this 10<sup>th</sup> day of March 2025.

“David E. Spiro”

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Spiro J.

**Schedule "A"**

<b>Appellant</b>	<b>Appeal</b>
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Counsel for the Respondent: Mary Softley  
Jeffrey Z. H. Tran  
Levi Smith

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See the list of Bound Appellants at Schedule “A” to this Judgment.



**JUDGMENT**

The appeals from the reassessments issued by the Minister of National Revenue for the Appellant's 2009, 2010 and 2011 taxation years, and from the assessment issued for the Appellant's 2012 taxation year, are dismissed with costs.

The Respondent is granted an opportunity to reach a negotiated settlement on costs with the Lead Appellants, the Bound Appellants, and Profitable Giving Canada settling the quantum of costs and the appropriate allocation of those costs, including the potential role of Profitable Giving Canada in collecting and remitting costs payable to the Respondent from the Lead Appellants and the Bound Appellants.

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“David E. Spiro”

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Dugan, Gord	2023-999(IT)G

BETWEEN:

JAMES FORAN SR.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Appeal heard on common evidence with the appeals of *Nandagopal Ayre* (2017-3467(IT)G and 2017-3469(IT)G), *Kenneth Cooper* (2017-3119(IT)G), *Sharon Dockstader* (2017-2987(IT)G), *James Foran Sr.* (2017-2985(IT)G), and *Deny Johnston* (2017-440(IT)G) on October 24 to 26, 2023, October 30 to November 2, 2023, November 6 to 9, 2023, November 14 to 15, 2023, March 27 to 28, 2024, and June 10, 2024 at Calgary, Alberta

Before: The Honourable Justice David E. Spiro

Appearances:

Counsel for the Appellant: Joel Scheuerman  
Nicole Lynx  
Adèle Desgagné  
Dorian Fenton  
Catherine Liu

Counsel for the Respondent: Mary Softley  
Jeffrey Z. H. Tran  
Levi Smith

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See the list of Bound Appellants at Schedule “A” to this Judgment.

**JUDGMENT**

The appeals from the reassessments issued by the Minister of National Revenue for the Appellant's 2009, 2010 and 2011 taxation years, and from the assessment issued for the Appellant's 2012 taxation year, are dismissed with costs.

The Respondent is granted an opportunity to reach a negotiated settlement on costs with the Lead Appellants, the Bound Appellants, and Profitable Giving Canada settling the quantum of costs and the appropriate allocation of those costs, including the potential role of Profitable Giving Canada in collecting and remitting costs payable to the Respondent from the Lead Appellants and the Bound Appellants.

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2. By July 31, 2025, Profitable Giving Canada, the Lead Appellants and the Bound Appellants may serve and file written submissions of 20 pages or less in response to the Respondent's Consolidated Bill of Costs and accompanying submissions.
3. By August 29, 2025, the Respondent may serve and file a response of 10 pages or less to the written submissions of Profitable Giving Canada, the Lead Appellants and the Bound Appellants.

Signed this 10<sup>th</sup> day of March 2025.

“David E. Spiro”

---

Spiro J.

**Schedule "A"**

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Boyle, Christine	2015-2296(IT)G
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Keizer, Mike	2017-207(IT)G
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Lauzon, Andrew	2017-2992(IT)G
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Cooper, Kenneth	2017-3112(IT)G
Smyth, David	2017-3123(IT)G
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BETWEEN:

DENY JOHNSTON,

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and

HIS MAJESTY THE KING,

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Appeal heard on common evidence with the appeals of *Nandagopal Ayre* (2017-3467(IT)G and 2017-3469(IT)G), *Kenneth Cooper* (2017-3119(IT)G), *Sharon Dockstader* (2017-2987(IT)G), and *James Foran Sr.* (2017-2985(IT)G) on October 24 to 26, 2023, October 30 to November 2, 2023, November 6 to 9, 2023, November 14 to 15, 2023, March 27 to 28, 2024, and June 10, 2024 at Calgary, Alberta

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Levi Smith

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See the list of Bound Appellants at Schedule “A” to this Judgment.

**JUDGMENT**

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Signed this 10<sup>th</sup> day of March 2025.

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Spiro J.

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Appendix “A” – Relief Lending Group Inc. Program Schedule (May 2009)

Appendix “B” – MissionLife Financial Inc. Donation Schedule (January 2010)

Appendix “C” – Alleged Program Debt of Each Lead Appellant

Appendix “D” – Interest Rates Charged to the Lead Appellants (table)

Appendix “E” – Interest Rates Charged to Each Lead Appellant (graph)

Appendix “F” – Ordinary Charitable Donations of Each Lead Appellant

Citation: 2025 TCC 41  
Date: 20250310  
Dockets: 2017-3467(IT)G  
2017-3469(IT)G  
2017-3119(IT)G  
2017-2987(IT)G  
2017-2985(IT)G  
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BETWEEN:

NANDAGOPAL AYRE, KENNETH COOPER,  
SHARON DOCKSTEADER, JAMES FORAN Sr., and DENY JOHNSTON,

Appellants,

and

HIS MAJESTY THE KING,

Respondent.

### **REASONS FOR JUDGMENT**

Spiro J.

#### **Overview**

[1] These six appeals are lead cases under section 146.1 of the *Tax Court of Canada Rules (General Procedure)*. Behind these lead cases is a group of ninety-nine other appeals bound under a Re-Amended Order issued on January 16, 2019 by Justice Hogan, as case management judge.<sup>1</sup> Those other appeals will be bound by the final decision in these six lead cases.<sup>2</sup>

[2] In these Judgments and Reasons for Judgment, I have called the five lead appellants the “Lead Appellants” and the ninety-nine other appellants, all of whom

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<sup>1</sup> Sadly, Justice Hogan passed away in January, 2025. Among his many contributions to the work of the Court was his exemplary case management of this group of appeals.

<sup>2</sup> A final decision is one from which there is no further right of appeal.



have agreed to be bound by the final decision in the lead appeals, the “Bound Appellants”.<sup>3</sup>

[3] The Bound Appellants have filed notices of appeal with the Court challenging assessments made by the Minister of National Revenue (the “Minister”) denying their claims for charitable donation tax credits under section 118.1 of the *Income Tax Act* for donations made through one or more of the following programs:

- Relief Lending Group Inc. (“RLG”);
- MissionLife Financial Inc. (“MLF”);
- Canadian Organization for International Philanthropy (“COIP”); and
- PharmaGifts International (“PGI”).

[4] The Lead Appellants participated in registered tax shelter and gifting arrangements created, promoted, marketed, and administered by RLG (the “RLG Program”) or MLF (the “MLF Program”). The evidence before the Court related to the RLG Program in 2009 and 2010 and the MLF Program in 2009, 2010, 2011, and 2012.<sup>4</sup>

[5] The Lead Appellants raise the following questions for consideration by the Court:

- a. Did they make valid gifts of cash and pharmaceuticals?
- b. Were the financing arrangements for the purchase of pharmaceuticals a sham?
- c. If they did make a valid gift of pharmaceuticals through the RLG and MLF Programs:

---

<sup>3</sup> In the cover letter sent by counsel for the Crown enclosing the agreement to be bound by the final decision in the lead cases, each of the Bound Appellants was informed that “the trial judge could direct you to pay a share of any costs awarded in favour of the Respondent.”

<sup>4</sup> The six lead cases did not involve the RLG Program for 2008 or the COIP or PGI programs at all.

- i. What is the fair market value of the pharmaceuticals they donated to the charities? Is it their cost as set out in the financing agreements or is it something else?
- ii. Was the eligible amount of the gift of pharmaceuticals nil pursuant to subsections 248(31) to 248(41) of the *Income Tax Act*?
- iii. Did financing arrangements made through the RLG and MLF Programs result in the receipt of a prescribed benefit under paragraph 3100(1)(d) of the *Income Tax Regulations*, such that the charitable donation amount is nil pursuant to section 237.1 of the *Income Tax Act*?
- iv. Was the cost of the pharmaceuticals nil pursuant to subsection 143.2(6) of the *Income Tax Act* because the amount of their expenditures under the financing agreements does not exceed the limited recourse debt amount relating to the expenditures?

[6] The position of the Lead Appellants on each of those questions is:

- a. They made valid charitable donations and are entitled to the corresponding tax credits.
- b. The financing arrangement entered into by participating in the RLG and MLF Programs was legally binding and was not a sham.
- c. The fair market value of the donated pharmaceuticals was not overstated.
- d. The eligible amount of the gift was not nil under the *Income Tax Act*.
- e. The charitable donation amount was not nil under the *Income Tax Act*.
- f. The cost of the pharmaceuticals was not nil under the *Income Tax Act*.

[7] The position of the Crown on each of those questions is:

- a. The Lead Appellants did not make any valid charitable donations.
- b. The financing arrangement entered into by participating in the RLG and MLF Programs was a sham.

- c. The fair market value of the donated pharmaceuticals was overstated.
- d. The eligible amount of gift was nil under the *Income Tax Act*.
- e. The charitable donation amount was nil under the *Income Tax Act*.
- f. The cost of the pharmaceuticals was nil under the *Income Tax Act*.

[8] After hearing fifteen days of evidence, receiving written submissions from the parties, and hearing one day of oral argument, I have concluded that the answer to the very first question is dispositive. None of the Lead Appellants made valid gifts of cash and pharmaceuticals as they lacked the requisite donative intent when they donated cash and pharmaceuticals through the RLG and MLF Programs in 2009, 2010, 2011, and 2012.

[9] It is well-established that donative intent is an essential element of a charitable gift. As Justice Pizzitelli noted in *Mariano v The Queen*, 2015 TCC 244:

[19] The Respondent has argued that the principle of donative intent then has an essential element that the donor must intend to impoverish himself or "grow poorer" from the gift. I agree that this is accepted law.

[20] It is clear that the element of "impoverishment" is the crucial element to be found in determining donative intent, and that it is often couched in the language of "impoverishment", or "not enriching one's self" or "profiting from the gift"...

[10] The Lead Appellants never intended to impoverish themselves by donating cash and pharmaceuticals through the RLG or MLF Programs. On the contrary, they intended to enrich themselves. For that reason alone, the Lead Appellants are not entitled to the tax credits they claimed for 2009, 2010, 2011, and 2012 under section 118.1 of the *Income Tax Act*. In arriving at that conclusion, I have made two central findings of fact.

[11] First, I have found that neither RLG nor MLF made any loans to the Lead Appellants. The Lead Appellants purchased the pharmaceuticals using only the cash they paid to RLG and MLF in the guise of four years of prepaid interest. My reasons for making that finding are set out below.

[12] Second, I have found that the fair market value of the donated pharmaceuticals could not have exceeded the price paid for them by the Lead Appellants, namely, the cash they paid to RLG and MLF in the guise of four years of prepaid interest. My reasons for making that finding are set out below.

[13] This table shows the outlay made by each Lead Appellant for each taxation year and the tax credits they claimed for that year. It summarizes the financial benefits that each Lead Appellant received, and expected to receive, from participating in the Programs:<sup>5</sup>

Lead Appellant	Taxation Year	Total Outlay <sup>6</sup>	Total Tax Credits Claimed <sup>7</sup>
Mr. Ayre	2009	\$2,450.00	\$7,495.00
	2010	\$4,628.32	\$10,484.83
	2011	\$9,641.60	\$27,474.16
<b>Total:</b>		<b>\$16,719.92</b>	<b>\$45,453.99</b>
Mr. Cooper	2010	\$4,096.80	\$7,232.86
	2011	\$6,907.20	\$13,246.89
	2012	\$4,914.40	\$8,255.72
<b>Total:</b>		<b>\$15,918.40</b>	<b>\$28,735.47</b>

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<sup>5</sup> More detailed tables for each Lead Appellant are found below under the heading “Why the Lead Appellants Failed the Credibility Test”.

<sup>6</sup> “Total Outlay” is the sum of (a) the cash paid by each Lead Appellant to participate in one of the Programs and (b) the cash paid by each Lead Appellant to one of the four designated charities.

<sup>7</sup> “Total Tax Credits Claimed” is the sum of (a) federal tax credits and (b) provincial tax credits claimed by each of the Lead Appellants on their return of income for the particular taxation year arising from their participation in one of the Programs for that year.

Lead Appellant	Taxation Year	Total Outlay	Total Tax Credits Claimed
Ms. Dockstader	2009	\$2,041.20	\$3,487.28
	2010	\$2,167.20	\$5,333.70
	2011	\$2,458.00	\$6,652.56
	2012	\$4,914.40	\$13,352.40
	<b>Total:</b>		<b>\$11,580.80</b>
Mr. Foran	2009	\$4,204.80	\$8,817.48
	2010	\$13,262.40	\$28,869.45
	2011	\$17,206.00	\$41,686.22
	2012	\$9,828.80	\$39,084.90
	<b>Total:</b>		<b>\$44,502.00</b>
Mr. Johnston	2009	\$43,002.00	\$94,584.91
	2010	\$52,668.90	\$150,504.21
	2011	\$20,494.80	\$38,776.76
	2012	\$9,828.80	\$28,414.15
	<b>Total:</b>		<b>\$125,994.50</b>
<b>Grand Total:</b>	<b>2009-2012</b>	<b>\$214,715.62</b>	<b>\$533,753.48</b>

[14] In light of my conclusion, it is unnecessary to address the other questions presented by the Lead Appellants.

## The Scope of the RLG and MLF Programs

[15] Several of the ministerial assumptions of fact pleaded by the Crown reflect the financial footprint of the RLG and MLF Programs as RLG and MLF represented them to the Minister. Those assumptions included:

- For 2009, RLG sent tax shelter information slips to 1,679 taxpayers reflecting an aggregate stated fair market value of pharmaceuticals donated through that Program for that year of \$53,777,890.<sup>8</sup>
- For 2010, RLG sent tax shelter information slips to 1,170 taxpayers reflecting an aggregate stated fair market value of pharmaceuticals donated through that Program for that year of \$38,652,292.<sup>9</sup>
- For 2009, MLF sent tax shelter information slips to 2,353 taxpayers reflecting an aggregate stated fair market value of pharmaceuticals donated through that Program for that year of \$63,829,500.<sup>10</sup>
- For 2010, MLF sent tax shelter information slips to 3,812 taxpayers reflecting an aggregate stated fair market value of pharmaceuticals donated through that Program for that year of \$114,067,920.<sup>11</sup>
- For 2011, MLF sent tax shelter information slips to 4,128 taxpayers reflecting an aggregate stated fair market value of pharmaceuticals donated through that Program for that year of \$135,294,740.<sup>12</sup>
- For 2012, MLF sent tax shelter information slips to 728 taxpayers reflecting an aggregate stated fair market value of pharmaceuticals donated through that Program for that year of \$23,440,500.<sup>13</sup>

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<sup>8</sup> Amended Reply in *Ayre v The King*, 2017-3467(IT)G at para 14(n).

<sup>9</sup> Amended Reply in *Ayre v The King*, 2017-3467(IT)G at para 14(o).

<sup>10</sup> Amended Reply in *Ayre v The King*, 2017-3469(IT)G at para 14(l). The same assumption of fact is pleaded at the same paragraph in the other Amended Replies.

<sup>11</sup> Amended Reply in *Ayre v The King*, 2017-3469(IT)G at para 14(m). The same assumption of fact is pleaded at the same paragraph in the other Amended Replies.

<sup>12</sup> Amended Reply in *Ayre v The King*, 2017-3469(IT)G at para 14(n). The same assumption of fact is pleaded at the same paragraph in the other Amended Replies.

<sup>13</sup> Amended Reply in *Ayre v The King*, 2017-3469(IT)G at para 14(o). The same assumption of fact is pleaded at the same paragraph in the other Amended Replies.

[16] The stated fair market value of the pharmaceuticals donated through the Programs between 2009 and 2012 was just under \$430,000,000.<sup>14</sup> In addition, evidence was led at trial that in a single year (2010), one of the four charities involved (Trinity Global Support Foundation) boasted of having collected pharmaceuticals with an aggregate fair market value of \$69,000,000.<sup>15</sup>

### **Agreed Statements of Fact and the Witnesses Who Testified**

[17] These lead appeals were heard on common evidence. Agreed facts were put before the Court by way of an Agreed Statement of Facts (Partial)<sup>16</sup> and a Joint Supplemental Schedule of Agreed Facts.<sup>17</sup>

[18] It was common ground that the Lead Appellants purchased pharmaceuticals and donated them to charities in 2009, 2010, 2011, and 2012.<sup>18</sup> In particular, it was agreed that the pharmaceuticals purchased by the Lead Appellants and donated to the four charities through the RLG and MLF Programs were:

- a. 250mg Ciprofloaxacin pill;
- b. 150mg Fluconazole pill;
- c. 3-in-1 antiretroviral pill (600mg Efavirenz, 200mg Emtricitabine, and 300mg Tenofovir Disoproxil Fumarate);
- d. 3-in-1 antiretroviral pill (Lamivudine 150mg, Stavudine 30mg, and Nevirapine 200mg);
- e. 2-in-1 antiretroviral pill (150mg Lamivudine and 300mg Zidovudine);
- f. 200mg Nevirapine pill; and
- g. 3-in-1 antiretroviral pill (150mg Lamivudine, 300mg Zidovudine, and 200mg Nevirapine).

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<sup>14</sup> The precise total, based on the tax shelter information slips set out above, is \$429,062,842.

<sup>15</sup> Exhibit A-129, page 1141. Even in the absence of those assumptions, a similar inference could be drawn from that evidence alone.

<sup>16</sup> Exhibit J-1.

<sup>17</sup> Exhibit J-2.

<sup>18</sup> See the Agreed Statement of Facts (Partial) at paragraph 18 for the MLF Program and paragraph 19 for the RLG Program. These Crown concessions regarding the purchase and donation of the pharmaceuticals distinguish these appeals from those heard by this Court in *Morrison v The Queen*, 2018 TCC 220, *aff'd sub nom. Eisbrenner v Canada*, 2020 FCA 93.

[19] The brochures prepared by the designated charities suggest that the pharmaceuticals were intended to be used to treat children with HIV/AIDS in Sub-Saharan Africa. I have no reason to question that. But I do not accept the proposition advanced by the Lead Appellants that the fair market value of the pharmaceuticals decreased by 90% from 2009-2012 when they purchased their pharmaceuticals through RLG and MLF to 2013 when they purchased the very same pharmaceuticals through Justice Trading.<sup>19</sup>

[20] The Court heard from twelve lay witnesses and two expert witnesses over the course of the trial:

Sharon Dockstader	Lead Appellant (2009, 2010, 2011, and 2012 taxation years with the MLF Program).
Kenneth Cooper	Lead Appellant (2010, 2011, and 2012 taxation years with the MLF Program).
Deny Johnston	Lead Appellant (2009, 2010, 2011, and 2012 taxation years with the MLF Program).
Nandagopal Ayre	Lead Appellant (2009 and 2010 taxation years with the RLG Program and 2011 taxation year with the MLF Program).
James Foran Jr.	Lead Appellant (2009, 2010, 2011, and 2012 taxation years with the MLF Program).

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<sup>19</sup> In the absence of evidence from Mr. Pipa, Mr. Paradis, or another knowledgeable witness as to the nature, extent, and cause of the alleged 90% diminution in the fair market value of the pharmaceuticals from 2009-2012 to 2013, I draw the inference that the fair market value of the “replacement pharmaceuticals” purchased by each of the Lead Appellants in 2013 through Justice Trading would have been no different than the fair market value of the identical pharmaceuticals purchased by the Lead Appellants between 2009 and 2012 through RLG and MLF. For the role of the replacement pharmaceuticals, see the final step under the heading “How the RLG and MLF Programs Pretended to Work”.



Paul Lauzon	Authorized representative of MLF and financial advisor to Mr. Cooper, Ms. Dockstader, and Mr. Foran Sr.
Lance Simonin	Authorized representative of MLF and financial advisor to Mr. Johnston.
Grahame Green	Authorized representative of RLG and MLF and financial advisor to Mr. Ayre.
Robert John Pipa	Directing mind of the firms that supplied pharmaceuticals to the Lead Appellants through the RLG and MLF Programs.
Miki Rozen	Officer of Justice Trading Ltd. through which the Lead Appellants exited the RLG and MLF Programs starting in 2013 by purchasing pharmaceuticals identical in type and quantity to the pharmaceuticals they purchased through RLG and MLF for taxation years between 2009 and 2012 (“replacement pharmaceuticals”).
Mussarat Ziaiedana	Officer of the Canada Revenue Agency.
Mona Eng	Officer of the Canada Revenue Agency.
Pierre Paradis	Expert in applied economics called by the Lead Appellants on the fair market value of the pharmaceuticals.
Dr. Ernst Berndt	Expert in applied economics called by the Crown on the fair market value of the pharmaceuticals.

## The RLG and MLF Promotional Schedules

[21] Two documents – the RLG and MLF promotional schedules – demonstrate that the Programs were designed to deliver tax credits exceeding the total outlay of the participants in the Programs and the fair market value of the pharmaceuticals they donated. The promotional schedules formed an integral part of the promotion of the Programs which included, depending on the Program and the authorized representative, a PowerPoint presentation, a video presentation, as well as brochures. For example, a PowerPoint presentation from RLG offered the following definition of “Tax Sheltering”:

“Your out of pocket expense is less than or equal too [sic] what you receive back in the form of a tax credit or refund” (ITA)<sup>20</sup>

[22] It will be helpful to have Appendix “A” and Appendix “B” alongside while reading the next paragraphs.

## The Relief Lending Group Inc. Promotional Schedule

[23] The first promotional schedule was prepared by RLG.<sup>21</sup> It was intended for prospective clients in Ontario and would have been presented to them in May of 2009 or shortly before then.<sup>22</sup> It is reproduced at Appendix “A” to these reasons.

[24] Assuming that the prospective client signed up in May of 2009, their interest rate was set at 4.10%. The client’s “Total Initial Cash Outlay” was their “3% Cash Donation” plus their “Prepaid Interest”. There was no suggestion of the need for any subsequent cash outlay.

[25] Take an example at the low end of the scale. Assume that the prospective client had less than \$1,200 in cash available but wanted to generate a 141% rate of return from participating in the RLG Program. In that case, the principal amount of their loan would have been \$6,100 but their cash outlay would be only \$1,183 (\$183 as their 3% cash donation plus \$1,000 as prepaid interest). Their anticipated

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<sup>20</sup> Exhibit A-215, at page 965. The provision of the *Income Tax Act* from which RLG drew this particular quote remains a mystery.

<sup>21</sup> Last page of Exhibit R-10.

<sup>22</sup> I draw the inference that similar charts were shown to prospective clients of RLG in other provinces and at other times.

tax credits, however, would be \$2,848 causing their rate of return to be 141%. In consideration for a total outlay of \$1,183 they expected tax credits of \$2,848.

[26] At the highest end of the scale, if a client had just under \$148,000 available, they were presented with an opportunity to generate the very same 141% rate of return by participating in the RLG Program. In that case, the stated amount of their loan would be \$762,500 but the amount paid would have been only \$147,875 (\$22,875 as their 3% cash donation and \$125,000 as prepaid interest). Their anticipated tax credits, however, would be \$356,000 causing their rate of return to be 141%. In consideration for a total outlay of \$147,875, they expected tax credits of \$356,000.

#### The MissionLife Financial Inc. Promotional Schedule

[27] The other promotional schedule in evidence was prepared by MLF.<sup>23</sup> It bears a striking similarity to the promotional schedule prepared by RLG, leading me to infer that both were prepared by the same person or group. It was intended for prospective clients in British Columbia and would have been presented to them in January of 2010 or shortly before then.<sup>24</sup> That promotional schedule is reproduced at Appendix “B” to these reasons.

[28] Assuming that the client signed up in January of 2010, their interest rate was set at 3.5%. The client’s “Total Initial Cash Outlay” was their “3% Cash Donation” plus their “Prepaid Interest”. There was no suggestion of the need for any subsequent cash outlay.

[29] Take an example at the low end of the scale. Assume that the client had less than \$2,200 in cash but wanted to generate a 158% rate of return from participating in the MLF Program. In that case, their borrowing would have been stated as \$12,840 but they would only pay \$2,186 (\$386 as their 3% cash donation and \$1,800 as prepaid interest). Their anticipated tax credits would be \$5,645 causing their rate of return to be 158%. They would have paid \$2,186 to obtain tax credits of \$5,645.

[30] At the highest end of the scale, if a client had \$273,150 in cash, they were presented with an opportunity to generate the very same 158% rate of return by

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<sup>23</sup> Last page of Exhibit A-88.

<sup>24</sup> I draw the inference that similar charts were shown to prospective clients of MLF in other provinces and at other times.

participating in the MLF Program. In that case, the stated amount of their loan would be \$1,605,000 but their cash outlay would have been only \$273,150 (\$48,150 as their 3% cash donation and \$225,000 as prepaid interest). Their anticipated tax credits would be \$705,594 causing their rate of return to have been 158%. They would have paid \$273,150 to obtain tax credits of \$705,594.

[31] The promotional schedules were professionally done. They were clear, straightforward, and to the point. They were meant to be read, understood, and acted on. The same cannot be said, however, for some of the other marketing material which was apparently dictated but not read. For example:

- RLG and MLF brochures spoke of the charities designated by the Programs having to meet or surpass “disbursement obligations”.<sup>25</sup>
- RLG and MLF brochures explained that the pharmaceuticals were not imported into Canada because of certain costs including GST and “excised tax”.<sup>26</sup>
- RLG and MLF brochures spoke of the “principle amount” of the loan.<sup>27</sup>

### **How the RLG and MLF Programs Pretended to Work**

[32] How the MLF and RLG Programs pretended to work is illustrated by the following example based on RLG’s promotional material.<sup>28</sup> The headings are those used by RLG:

#### **Borrow**

- The taxpayer borrows \$10,976 from RLG repayable after eight years after making a cash donation to a registered charity in the amount of \$329.28 (3% of \$10,976).

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<sup>25</sup> For RLG, see Exhibit R-10 at page CAN0250\_0001. For MLF, see Exhibit A-39, page 185, Exhibit A-88 at page 383, Exhibit A-125 at page 1115, and Exhibit A-143 at page 679. Under subsection 149.1(1) of the *Income Tax Act*, charities have a “disbursement quota” each taxation year. No charity has ever had any “disbursement obligation” under the *Income Tax Act*.

<sup>26</sup> For RLG, see Exhibit R-10 at page CAN0250\_0006. For MLF, see Exhibit A-39, page 190, Exhibit A-88 at page 388, and Exhibit A-125 at page 1120.

<sup>27</sup> For RLG, see Exhibit R-10 at page CAN0250\_0008. For MLF, see Exhibit A-39, page 192, Exhibit A-88 at page 390, and Exhibit A-125 at page 1122.

<sup>28</sup> Exhibit A-215 at page 972.

- RLG issues a certificate to the taxpayer as evidence of the taxpayer's loan from RLG.
- The taxpayer prepays the first four years of interest on the eight-year loan by way of a cheque in the amount of \$2,000.

#### Buy

- Using the borrowed funds, the taxpayer buys pharmaceuticals having a fair market value of \$10,976 to be supplied to a registered charity.

#### Donate

- The taxpayer receives a charitable donation receipt reflecting a donation of pharmaceuticals with a fair market value of \$10,976.
- The taxpayer receives a charitable donation receipt for their cash donation in the amount of \$329.28 (3% of \$10,976).

#### Settle

- At the conclusion of the eight-year loan term, the taxpayer repays the loan of \$10,976 in cash or by purchasing and supplying replacement pharmaceuticals.

### **How the RLG and MLF Programs Actually Worked**

[33] Based on all the evidence, the Programs did not work the way they pretended to work. Instead they worked this way:

#### Taxpayer Pays to Enter the Program

- The taxpayer pays to enter the Program by way of a cheque made out to RLG or MLF in the amount of \$2,000. This amount is paid in the guise of four years of prepaid interest on a fictitious eight-year loan. It is the only amount the taxpayer ever pays, or expects to pay, in consideration for the tax credits they expect to receive between 2009-2012.

#### The Program Pretends to Lend Money to the Taxpayer

- RLG or MLF pretends to lend the taxpayer \$10,976 repayable after eight years in cash or pharmaceuticals.

- RLG or MLF provides the taxpayer with a package of pseudo-legal documents purporting to reflect an eight-year loan from RLG or MLF to the taxpayer of \$10,976 (including what appears to be a loan agreement, coupon, credit certificate, and promissory note).
- The taxpayer makes a cash payment to a designated charity in the amount of \$329.28 (3% of \$10,976).

#### The Cash Outlay Funds the Taxpayer's Purchase of Pharmaceuticals

- The cash outlay to RLG or MLF funds the taxpayer's purchase of pharmaceuticals at a fraction of the fair market value shown on the tax receipt that the taxpayer expects to receive in consideration for their cash outlay.

#### Taxpayer Receives a Tax Receipt Reflecting a "Profitable Gift"

- In consideration for their cash outlay, the taxpayer receives, as expected, a tax receipt reflecting a donation of pharmaceuticals having a fair market value of \$10,976.

#### Taxpayer Pays an Unexpected Additional Fee to Exit the Program

- Following the termination of the RLG and MLF Programs, the erstwhile authorized representatives of RLG or MLF, who are now authorized representatives of Justice Trading, instruct their clients to ignore letters sent on behalf of their supposed creditors, RLG or MLF. Starting in 2013, a new entity called Profitable Giving Canada persuades the taxpayer that RLG and MLF are bad actors and instructs them to make a cash payment to Justice Trading in order to fund the purchase of replacement pharmaceuticals.
- The taxpayer writes a cheque to Justice Trading for about 10% of \$10,976, or \$1,100.

### **Two Central Findings of Fact**

[34] Two central findings of fact emerge, on a balance of probabilities, from the evidence as a whole:

- a. the RLG and MLF loans never existed; and

- b. the fair market value of the pharmaceuticals did not exceed the amount the Lead Appellants paid for them in the form of their cash outlay to RLG or MLF in the guise of four years of prepaid interest.

### Fictitious Loans

[35] I have found that none of the Lead Appellants took out a loan from, or became indebted to, RLG or MLF.<sup>29</sup> I have made that finding of fact in light of the following:

- Nowhere in the promotional schedules is there reference to an obligation to pay any loan or the remaining four years of interest.<sup>30</sup>
- There is no evidence that RLG or MLF performed credit checks on any of the Lead Appellants.
- The amounts of the loans exceeded a realistic level of borrowing for any of the Lead Appellants, most of whom were retired, semi-retired, or approaching retirement. A review of the income level of each Lead Appellant demonstrates that the claimed loan amounts were implausible.<sup>31</sup>
- The rate of interest charged on each loan depended on the month in which the loan was taken out. The rate of interest increased incrementally each month from the lowest in January to the highest in December. That is not how rates of interest work. The rates of interest offered to the Lead Appellants were all over the map.<sup>32</sup>
- As we have already seen, the total stated fair market value of the pharmaceuticals said to have been donated through both Programs was just under \$430,000,000. The purchase price of the pharmaceuticals was said to have been financed by \$430,000,000 in loans. How were RLG and MLF able to lend out \$430,000,000 between 2009 and 2012? That question remains unanswered.<sup>33</sup>

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<sup>29</sup> The Lead Appellants either knew or were wilfully blind to the fact that they did not actually borrow anything from RLG or MLF.

<sup>30</sup> See Appendix "A" and Appendix "B".

<sup>31</sup> See Appendix "C".

<sup>32</sup> See Appendix "D" and Appendix "E" for a table and a chart illustrating the rates of interest.

<sup>33</sup> RLG and MLF represented that they actually had that amount of cash available. See, for example, the RLG brochure (Exhibit R-10 at page CAN0250\_0006) in which RLG represents

- The Lead Appellants purported to repay their loans by delivering pharmaceuticals. Why would any *bona fide* lenders with cash receivables of \$430,000,000 enter into an arrangement obligating them to accept delivery of commodities, such as pharmaceuticals, in lieu of cash?<sup>34</sup>
- Why would borrowers ignore letters sent to them on behalf of *bona fide* creditors? Each of the Lead Appellants did precisely that after receiving a letter from a collection agency acting on behalf of RLG or MLF. Why not deal directly with their creditor to pay off their loans?
- The Lead Appellants did not call anyone from RLG or MLF to testify at trial, though the Crown pleaded that the financing arrangements were a sham. This strongly suggests that the officers of RLG or MLF would have given evidence unfavourable to the Lead Appellants. If the officers of RLG and MLF were nowhere to be found, that speaks volumes. In any event, the non-appearance of any officer of RLG or MLF at trial does not enhance one's confidence in the *bona fides* of the loans or the lenders.

[36] Taken together, the most plausible explanation for all of the above – on a balance of probabilities – is that there were never any loans at all.<sup>35</sup>

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that it backs the credit certificates which are “fully redeemable for cash.” See also the MLF brochures (Exhibit A-39 at page 190 and Exhibit A-143 at page 684) in which MLF represents that it backs the credit certificates which are “fully redeemable for cash”. This claim is difficult to accept in light of MLF’s representation that it “derives its revenue from the interest paid on loans granted” (Exhibit A-88, page 382). It is more likely than not that the cash paid in the guise of four years of prepaid interest was the only money used to purchase pharmaceuticals between 2009 and 2012.

<sup>34</sup> In oral argument, counsel for the Lead Appellants urged the Court to accept Mr. Lauzon’s opinion that “the ability to repay in-kind is commercially reasonable and fairly common” (transcript of oral argument, June 10, 2024, page 64, lines 20-21). The Court declines counsel’s invitation as Mr. Lauzon was not qualified as an expert in the field of commodities and futures trading (transcript of oral argument, June 10, 2024, page 65, lines 16-19) let alone consumer lending and repayment practices in Canada from 2009 to 2013.

<sup>35</sup> No single factor referred to above is determinative. All of them taken together lead to the conclusion, on a balance of probabilities, that there were no loans at all. With a view to rehabilitating the discredited loans, the Lead Appellants offered up hearsay documents and hearsay testimony from Mr. Rozen of Justice Trading in order to persuade me of the *bona fides* of the lenders and the loans. Notwithstanding their efforts to fit that evidence within a hearsay exception, they failed to do so. But even if I had ruled all of their hearsay evidence admissible, they would still have failed. All of that evidence, even if admitted, would not have tilted the balance of probabilities. That evidence would have carried little weight as Justice Trading and its



[37] Although the Lead Appellants testified that they *believed* they took out loans, they either knew that did not take out any loans or were wilfully blind to the fact.<sup>36</sup> Although I have not based my finding on the Crown’s sham theory, the Minister’s assumption that the financing arrangements were a sham finds ample support on the evidence.<sup>37</sup> As Justice Noël of the Federal Court of Appeal stated in *obiter* in *Antle v Canada*, 2010 FCA 280, at para 20, a sham is where “parties to a transaction present it as being different from what they know it to be.” In this context, there is no difference between actual knowledge and wilful blindness. As Justice Boyle observed in *Harvard Properties Inc. v The King*, 2024 TCC 139 (emphasis in original):

[145] In cases involving the avoidance of tax, willful blindness is equated to intentionally participating in an unsuccessful tax avoidance venture. In *Wynter v. Canada*, 2017 FCA 195, Justice Rennie of the FCA wrote:

[13] A taxpayer is wilfully blind in circumstances where the taxpayer becomes aware of the need for inquiry but declines to make the inquiry because the taxpayer does not want to know, or studiously avoids, the truth. The concept is one of deliberate ignorance: *R. v. Briscoe*, 2010 SCC 13 at paras. 23-24, [2010] 1 S.C.R. 411 (*Briscoe*); *Sansregret* at para. 24. In these circumstances, the doctrine of wilful blindness imputes knowledge to a taxpayer: *Briscoe* at para. 21. Wilful blindness is the doctrine or mechanism by which the knowledge requirement under subsection 163(2) is met.

...

[16] In sum, the law will impute knowledge to a taxpayer who, in circumstances that suggest inquiry should be made, chooses not to do so. The knowledge requirement is satisfied through the choice of the

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officer, Mr. Rozen, lost all credibility by promoting the baseless theory that the fair market value of the pharmaceuticals had decreased by 90% from 2009-2012 to 2013.

<sup>36</sup> The wilful blindness of the Lead Appellants is reflected by the fact that none of them consulted a lawyer or accountant on any aspect of the Programs, including the *bona fides* of the lenders or the loans. They asked no questions of any lawyer or accountant as they did not want to hear anything that would stand in the way of their single-minded pursuit of profit.

<sup>37</sup> Amended Reply in *Ayre v The King*, 2017-3467(IT)G at paras 14, 15, and 16; Amended Reply in *Ayre v The King*, 2017-3469(IT)G at paras 14, 15, and 16; Amended Reply in *Cooper v The King*, 2017-3119(IT)G at paras 14, 15, and 16; Amended Reply in *Dockstader v The King*, 2017-2987(IT)G at paras 14, 15, and 16; Amended Reply in *Foran v The King*, 2017-2895(IT)G at paras 14, 15, and 16; Amended Reply in *Johnston v The King*, 2017-440I(IT)G at paras 14, 15, and 16. Ultimately, it matters not whether one finds that the loans never existed or that the financing arrangements were a sham – the result is exactly the same.

taxpayer not to inquire, not through a positive finding of an intention to cheat.

[38] In *Wynter*, Justice Rennie also noted that:

[15] The jurisprudence does not support the conclusion that an intention to cheat is a prerequisite for a finding of knowledge, and in particular, of wilful blindness.

[39] As Justice Hogan observed in *Paletta v The Queen*, 2019 TCC 205, objective reality plays a significant role in the determination of sham:

[126] In considering sham, the Court must examine the objective reality surrounding the arrangements to discern whether the transaction documents truly reflect the parties' intent. Direct evidence of sham is rare where a case proceeds to court; in the absence of an admission, the court is left to weigh circumstantial evidence.

[40] The Lead Appellants knew, or were wilfully blind to the fact, that their pharmaceuticals were purchased with the cash they paid in the guise of four years of prepaid interest. That brings us to the question of fair market value.

### Fair Market Value

[41] In *Canada (Attorney General) v Nash*, 2005 FCA 386, at para 8, Justice Rothstein quoted the meaning of "fair market value" as stated by Justice Cattanach in *Henderson Estate*:

[8] The well-accepted definition of fair market value is found in the decision of Cattanach J. in *Henderson Estate and Bank of New York v. M.N.R.* 1973 CanLII 2406 (FC), 73 D.T.C. 5471 at 5476:

The statute does not define the expression "fair market value", but the expression has been defined in many different ways depending generally on the subject matter which the person seeking to define it had in mind. I do not think it necessary to attempt an exact definition of the expression as used in the statute other than to say that the words must be construed in accordance with the common understanding of them. That common understanding I take to mean the highest price an asset might reasonably be expected to bring if sold by the owner in the normal method applicable to the asset in question in the ordinary course of business in a market not exposed to any undue stresses and composed of willing buyers and sellers dealing at arm's length and under no compulsion to buy or sell. I would add that the foregoing understanding as I have expressed it in a general way includes what I conceive to be the essential element which is an open and unrestricted market in which

the price is hammered out between willing and informed buyers and sellers on the anvil of supply and demand.

Although Cattanach J. expressed the caution that his words did not constitute an “exact” definition, the extent to which his words have been adopted in the jurisprudence without change over some thirty years suggests that his approach, although not necessarily exhaustive, is now considered to be the working definition.<sup>38</sup>

[42] In the same decision, Justice Rothstein went on to observe that:

[17] In applying the *Henderson* definition of fair market value, the first step is to accurately identify the asset whose fair market value is to be ascertained. It is only once the asset is identified that the market in which the asset is normally sold in the ordinary course of business can be determined.<sup>39</sup>

[Emphasis added]

[43] The Lead Appellants and the Crown called an expert in applied economics to support their respective cases on fair market value. The economist called by the Lead Appellants, Mr. Paradis, looked primarily at retail sales of pharmaceuticals. He imagined a world in which the participants in the RLG and MLF Programs walked into their local pharmacies and purchased \$430,000,000 worth of pharmaceuticals between 2009 and 2012.

[44] The Crown’s economist, Dr. Berndt, looked primarily at sales of pharmaceuticals by the manufacturers. He imagined a world in which the participants in the RLG and MLF Programs dealt directly with pharmaceutical manufacturers to purchase their pharmaceuticals between 2009 and 2012.

[45] As neither of those two markets appeared to me to have been the appropriate market, I posed a question to each expert as part of a panel.<sup>40</sup> I asked the following question of Mr. Paradis:

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<sup>38</sup> *Canada (Attorney General) v Nash*, 2005 FCA 386 at para 8.

<sup>39</sup> *Ibid* at para 17.

<sup>40</sup> See subsections 145(17) to (20) of the *Tax Court of Canada Rules (General Procedure)* and Practice Note No. 22 (amended). See also Judge’s Panel (Hon. Eugene P. Rossiter, Hon. David E. Spiro, Montano Cabezas, and Remi Danylo), Canadian Tax Foundation, *2023 Conference Report*, 4:1-16 at 4:14:

As for expert testimony and panels, recent experience has demonstrated the effectiveness of convening expert panels, particularly when experts hold conflicting views on the same question. Differences between experts warrant panel discussions

JUSTICE: ... isn't what the tax shelter pharmaceutical donors actually paid for the pharmaceuticals the best indication of either fair market value, or market value, or value?<sup>41</sup>

... assume that they're dealing at arm's length with the party from which they purchased the pharmaceuticals. ... we assume a market that's large enough so that there are enough transactions, so that we can draw on that data of actual transactions in that particular market. And the question is whether that's the best indicator of whether you call fair market value, or market value, or value. Would it be, Mr. Paradis?

WITNESS PARADIS: I believe so ... the price for this should be a good indication of its fair market value.<sup>42</sup>

[46] That answer is consistent with Mr. Paradis' expert report in which he wrote (citations omitted):

31. To estimate the fair market value for a given product, one must analyze data on the economic agents who purchased the product ("buyers") and those [who] sold it ("sellers") on the market in question.<sup>43</sup>

[Emphasis added]

[47] After noting that pharmaceuticals are commodity products, a proposition with which Dr. Berndt agreed,<sup>44</sup> Mr. Paradis went on to write that in respect of such products (citations omitted):

34. ... the notion of "highest price" translates into the market price at which the product in question is sold to a specific group of buyers under specific market conditions.<sup>45</sup>

[Emphasis added]

[48] I asked the same question of Dr. Berndt as part of the same panel:

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to pinpoint areas of agreement and difference in real time, with both experts ready to answer the judge's questions. Careful planning during trial management conferences can facilitate the strategic timing of expert witness testimony to ensure the experts' availability for panel discussions.

<sup>41</sup> Transcript of November 9, 2023, page 136, lines 6-9.

<sup>42</sup> Transcript of November 9, 2023, page 136, line 15 to page 137 line 8.

<sup>43</sup> Report of Mr. Paradis, page 11, Exhibit A-279.

<sup>44</sup> Report of Dr. Berndt, para 28 at page 15, Exhibit R-13.

<sup>45</sup> Report of Mr. Paradis, page 12, Exhibit A-279.

JUSTICE: ... in a market in which the tax shelter pharmaceutical donors, who are the ultimate -- who are the buyers that we're concerned with there, they deal at arm's length with whoever sold the pharmaceuticals to them ... there's a large enough market that we have data on the actual transactions, on the actual prices paid by those tax shelter pharmaceutical donors, would those prices actually paid by those arm's length donors be the best indicator of either fair market value, or market value, or value?

WITNESS BERNDT: I agree that it would be a very good indicator.<sup>46</sup>...

JUSTICE: ... this is a voluntary transaction, in an open market, in an unrestricted market, people choose to enter the market, people choose to either buy or not buy as they wish, and to sell or not to sell as they wish. ... What do you say to the proposition that the best indicator of fair market value, or market value, or value would be the actual prices paid by the tax shelter pharmaceutical donors, that would be the best indicator? Do you agree with that?

WITNESS BERNDT: I agree with that.<sup>47</sup>

[49] Dr. Berndt's answers are consistent with his expert report (citations omitted):

27. There are a number of different concepts of "fair market value," and value can often be a somewhat subjective concept depending on perspective. ... I adopt here an economist's perspective on value, which I define as the price at which a willing buyer and seller voluntarily enter into a transaction for a good or service in an unregulated market. In essence, the transaction price paid for a product is a signal of its underlying value. This is consistent with standard economic theory.

28. Estimating the price of a good falls into the category of market-based approaches to valuation, that is, based on observable data available from marketplace transactions.<sup>48</sup>

[Emphasis added]

[50] Rather than imagining a world in which the participants in the Programs *might have purchased* the pharmaceuticals from their local pharmacy or directly from the manufacturer, the correct approach is to look to the market in which the participants *did purchase* their pharmaceuticals from 2009 to 2012. As Justice Rothstein observed in *Nash*:

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<sup>46</sup> Transcript of November 9, 2023, page 137, lines 13-26.

<sup>47</sup> Transcript of November 9, 2023, page 138, line 18 to page 139, line 2.

<sup>48</sup> Expert Report of Dr. Berndt, page 14, Exhibit R-13.

[24] ... where there is a market in which assets of the description of the asset being valued are traded, there is no need for the use of a proxy.

[51] In *Klotz v Canada*, 2005 FCA 158 [*Klotz* (FCA)], the Federal Court of Appeal upheld the decision of Associate Chief Justice Bowman of this Court (reported at 2004 TCC 147 *sub nom. Klotz v The Queen*) [*Klotz* (TCC)] and dismissed the taxpayer's appeal from the bench. In so doing, Justice Sexton noted:

[4] The Tax Court Judge refused to accept the appraisal evidence of the taxpayer of the fair market value of the prints, on the basis that the appraiser had examined the wrong market. He held that the "magnitude of the mass market art donation program created its own market", and that the relevant market was not, as the taxpayer alleged, retail art galleries where pieces of art are sold individually.

[5] The Tax Court Judge held that even if the retail art galleries were the proper market, the evidence adduced by the taxpayer did not justify the fair market value that he claimed. The Judge found, for example, that the evidence of actual sales of identical or similar prints was virtually non-existent.

[6] In the result, the Tax Court Judge held that the best evidence of the fair market value of the prints was the price paid by the taxpayer - that is \$75,000.

[7] The Appellant argued that the Tax Court Judge made a legal error in refusing to find fair market value based on the retail market (ie. sales by art galleries of just one print at a time). We disagree.

[8] Fair market value and how it is calculated are questions of fact. The determination of the appropriate market is part of determining fair market value and is an issue of fact [citations omitted].

[9] We are unable to conclude that, in determining the fair market value of the prints, the Tax Court Judge made any error of law, or any palpable and overriding error in his findings of fact.

[Emphasis added]

[52] I find that the appropriate market here was the market in which the Lead Appellants actually purchased their pharmaceuticals. I also find that the fair market value of the pharmaceuticals purchased by the Lead Appellants in that market could not have exceeded the amount they actually paid for them, namely, the amount paid by each Lead Appellant in the guise of four years of prepaid interest.<sup>49</sup>

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<sup>49</sup> The cash outlay made by each Appellant for each taxation year is set out in the tables below under the heading "Why the Lead Appellants Failed the Credibility Test".

[53] Authorized representatives of the RLG and MLF Programs gave the Lead Appellants the opportunity to make “profitable gifts” by participating in the Programs. Each of them testified at trial.

### **The Authorized Representatives of the RLG and MLF Programs**

#### **Mr. Paul Lauzon**

[54] Mr. Lauzon was the authorized representative of MLF who sold Mr. Cooper, Ms. Dockstader, and Mr. Foran on the concept of “profitable giving”.

[55] He began his career in the 1970s as an insurance salesman. By the early 1990s, he had become a financial planner selling various investment products. He also invested in the products himself. The products in which he invested came to include those marketed by MLF which he described as financial tools providing his clients with immediate cash flow.<sup>50</sup> He soon assumed the role of an authorized representative of MLF.

[56] Mr. Lauzon testified that the MLF Program would help his clients achieve “cash flow creation”<sup>51</sup> by using “for-real loans”.<sup>52</sup>

[57] Mr. Lauzon’s commission started as 25% of the cash paid in the guise of four years of prepaid interest for each client who signed up for the MLF Program. His commission later increased to 33% of that amount.

[58] Mr. Lauzon’s involvement in marketing and selling the MLF Program ended in the spring of 2012 when the MLF Program concluded. He then became an authorized representative of a new program called Justice Trading. He advised his clients to ignore letters sent to them by a collection agency on behalf of MLF and, instead, urged them to purchase replacement pharmaceuticals from Justice Trading. In consideration for recommending Justice Trading to his clients, Mr. Lauzon received a fee of 12% of the cash paid for the replacement pharmaceuticals.

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<sup>50</sup> Transcript of October 30, 2023, page 15, lines 26-28, and page 16, lines 1-6.

<sup>51</sup> Transcript of October 30, 2023, page 23, lines 26-28.

<sup>52</sup> Mr. Lauzon used the phrase “for-real loan” several times in his testimony (transcript of October 30, 2023, page 48, lines 17-19 and page 56, lines 17-20).

Mr. Lance Simonin

[59] From 2010 to 2012, Mr. Simonin was a salesman with the Fast Track Group. The Fast Track Group had several divisions, one of which promoted tax shelter investments, including the MLF Program.

[60] Mr. Simonin was responsible for client relations at the tax shelter division of the Fast Track Group. That division promoted the MLF Program and bore the name: “Fight Aids Save Taxes”. He helped clients, including Mr. Johnston participate in the MLF Program.<sup>53</sup> His commissions were based on his sales.

[61] In December, 2010, he helped Mr. Johnston participate for a second time that year in the MLF Program. Mr. Johnston needed to obtain additional tax credits in order to avoid having to pay income tax of \$54,000 for that taxation year.<sup>54</sup>

Mr. Grahame Green

[62] Mr. Green was, at various times, an authorized representative of the RLG Program, the MLF Program, and Justice Trading. He operated from Calgary where he held a dozen seminars each year for 50 to 70 prospective clients. Mr. Green would invite representatives of RLG, MLF and, later on, Justice Trading to speak at those seminars. For each client he signed up for the RLG or MLF Program, he would receive a commission of 35% of the cash paid in the guise of four years of prepaid interest.

[63] From 2009 to 2010, Mr. Green was an authorized representative of the RLG Program. From 2011 to 2012, he was an authorized representative of the MLF Program. In 2013, he became an authorized representative of the Justice Trading program. Mr. Ayre participated in all three.

[64] By the time Mr. Green was introduced to Mr. Ayre, Mr. Ayre had already participated in the 2009 RLG Program through his father. When Mr. Ayre moved to Airdrie, Alberta in 2010, Mr. Green became Mr. Ayre’s authorized RLG representative. Like Mr. Lauzon, Mr. Green himself participated in the Program.

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<sup>53</sup> Transcript of November 6, 2023, page 7, lines 15-22.

<sup>54</sup> Transcript of October 31, 2023, page 140, line 14 to page 141, line 10. See also Exhibit A-164C, page 783.



[65] When RLG terminated its Program in late 2010, Mr. Green became an authorized representative of the MLF Program. Once again, his commission was 35% of the cash paid in the guise of four years of prepaid interest.

[66] MLF stopped offering its Program in Alberta in 2011. In late 2012, Mr. Green became an authorized representative of Justice Trading. Mr. Green's commission was 10% of the cash paid by each of his clients for their replacement pharmaceuticals.

### **The Charities Selected by the RLG and MLF Programs**

[67] Each year they participated in the RLG or MLF Program, the Lead Appellants were required to donate a modest amount of cash to a registered charity from this list:

- African Computer Technology Literacy Awareness Program;
- Canadian Friends of Pearl Children;
- Help Eliminate Disease and Addiction Canada; or
- Trinity Global Support Foundation.

[68] From the first donations of the Lead Appellants in 2009 to their last donations in 2012, each of those charities was registered under the *Income Tax Act*. Their registrations were later revoked by the Minister.

### **The Testimony of the Lead Appellants**

[69] The testimony of the Lead Appellants was, in a word, astonishing. No one had the honesty to admit that they participated in the RLG and MLF Programs in order to enrich themselves. Their lack of candour with the Court on that central point caused them to lose all credibility.

### **The Credibility Test**

[70] Why would I decide not to accept the evidence of the Lead Appellants? In the 8<sup>th</sup> edition of *The Law of Evidence*, the authors explain (citations omitted):

Simply because evidence has been admitted does not mean it will be used. The entire enterprise of admitting evidence is undertaken to furnish the trier-of-fact with

the data for decision making. Once evidence is admitted, the trier of fact must decide what to make of it.

A critical determination in discharging this obligation is for the trier of fact to decide what admitted information it will accept and act upon. There is no presumption that witnesses are credible or that their testimony is accurate, or that evidence that has been admitted will be accepted and utilized. ... The trier of fact is free to accept some, all, or none of the admissible evidence offered by a witness.

In deciding what weight to give testimony, triers of fact should evaluate that evidence at the end of the case in the context of all other evidence. When deciding whether to accept testimony as accurate, triers of fact will consider both “credibility” (the honesty of the witness when relating the testimony) and “reliability” (the accuracy of the testimony given by an honest witness). They will do so by considering a range of things, including ... the plausibility of the testimony (as measured through “the probabilities that surround the currently existing conditions”); the internal and external consistency of the witness’s evidence; and whether there is supporting information (in other words, how the testimony “stacks up” to other available information).<sup>55</sup>

[Emphasis added]

[71] One of the earliest Canadian statements on credibility was made in 1948 by Justice O’Halloran of the British Columbia Court of Appeal in *R v Pressley*:

The most satisfactory judicial test of truth lies in its harmony or lack of harmony with the preponderance of probabilities disclosed by the facts and circumstances in the conditions of the particular case.<sup>56</sup>

[72] But what if the evidence of a witness is uncontradicted? Must I accept it? Three years later, in *Faryna v Chorny*, Justice O’Halloran addressed that very question:

... the validity of evidence does not depend in the final analysis on the circumstance that it remains uncontradicted, ...<sup>57</sup>

[73] And as Chief Justice Tremblay of the Quebec Court of Appeal said in *Légaré c The Shawinigan Water and Power Co. Ltd.*:

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<sup>55</sup> Paciocco, David M., Palma Paciocco, and Lee Stuesser. *The Law of Evidence*, 8th ed. Toronto: Irwin Law, 2020, at 592-593.

<sup>56</sup> 1948 CanLII 353 (BCCA) at 34.

<sup>57</sup> 1951 CanLII 252 (BCCA) at 356.

... les tribunaux ne sont pas tenus de croire les témoins, même s'ils ne sont pas contredits par d'autres témoins. Leur version peut être invraisemblable par suite de circonstances révélées par la preuve ou par suite des règles du simple bon sens.<sup>58</sup>

[74] In English, this passage reads:

... courts are not required to believe witnesses, even if they are not contradicted. Their version may be implausible as a result of circumstances revealed by the evidence, or simply on the basis of common sense.<sup>59</sup>

[75] A judge may find a witness lacking in credibility, particularly where their story is contradicted by other evidence. As Justice Saunders of the Nova Scotia Court of Appeal noted in *R v DDS*:

Experience tells us that one of the best tools to determine credibility and reliability is the painstaking, careful and repeated testing of the evidence to see how it stacks up. How does the witness's account stand in harmony with the other evidence pertaining to it, while applying the appropriate standard of proof in a civil or a criminal case?<sup>60</sup>

[76] And what about witnesses, such as the Lead Appellants, who have a direct financial interest in the outcome of the litigation? In *Faryna v Chorny*, Justice O'Halloran struck a cautionary note:

The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.<sup>61</sup>

[77] In *Nichols v The Queen*, Justice Valerie Miller noted that in assessing credibility we may consider, among other things:

... external inconsistencies (that is, whether the evidence of the witness is inconsistent with independent evidence which has been accepted by me).<sup>62</sup>

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<sup>58</sup> [1972] CA 372 (QCCA) at 373–374.

<sup>59</sup> *Lacroix v The Queen*, 2007 TCC 376 at para 12.

<sup>60</sup> 2006 NSCA 34 at para 77.

<sup>61</sup> 1951 CanLII 252 (BCCA) at 357.

<sup>62</sup> 2009 TCC 334 at para 23.

[78] Justice Miller also noted that in assessing credibility, we may consider whether the witness has a motive to fabricate evidence or mislead the Court.<sup>63</sup> Finally, she noted that we are able to consider:

... the overall sense of the evidence. That is, when common sense is applied to the testimony, does it suggest that the evidence is impossible or highly improbable.<sup>64</sup>

### Why the Lead Appellants Failed the Credibility Test

[79] It is clear from all the evidence, including the promotional schedules and the amount of tax credits they claimed, that the Lead Appellants expected to enrich themselves by entering the Programs. But in telling their stories, they left that part out. To be fair to each, I have reproduced their stories exactly as they appear at paragraphs 21 to 51 of their own written submissions:<sup>65</sup>

ii. **Each of the Appellants Were Primarily Motivated by the Desire to Make Charitable Donations**

21. During their testimony, the Appellants gave credible and consistent testimony that they were primarily motivated by the desire to make charitable donations.

22. Each of them also testified that they expected to receive donation tax credits as a result of the Donations, as they would be entitled for any donation.

a) **Mrs. Dockstader**

23. From 2009 to 2012, Mrs. Dockstader made her Donations to CFPC.

24. Ms. Dockstader repeatedly testified that she was particularly interested in CFPC because it was helping children:

Q: And who -- can you please explain who is CFPC, or Canadian Friends of Pearl Children?

A: It was a Canadian charity that was donating pharmaceuticals to Uganda, and in Africa there was a huge -- well, there still is a huge AIDS epidemic going on there, and I think it peaked around 2000, but as a lab and x-ray technician, the AIDS epidemic meant something to me, plus the fact it was

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<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> Written Representations of the Appellants, pages 4-12.

helping children, which, to me, is a big part of my life is to -- if we can get the children started, they can work from there.

25. She further explains why she donated to CFPC in the following terms:

Q: And during this meeting, what did Mr. Lauzon say about the MLF program?

A: He told me about -- looked at brochures. He told me there was two different charities I could donate to. I obviously picked the one with the name children in there, because that's my passion. He said I had to attend the seminar and -- to see what it was about. And also, if I'm donating to a charity, I should be able to receive tax credits.

26. Ms. Dockstader provided compelling testimony that her primary motivation for donating to the CFPC was to help children affected by AIDS.

**b) Mr. Cooper**

27. From 2010 to 2012, Mr. Cooper donated Cash and Pharmaceuticals to TGSEF, a faith-based organization which he described as providing HIV and AIDS medication to people in Africa.

28. Mr. Cooper testified that he was excited about the charitable aspects of the program, specifically the opportunity to save lives. When asked why he donated through the MLF Program, he explained his motivations were as follows:

Q: Why did you participate in those years?

A: I -- when I heard about the program, I was fairly -- fairly excited about the opportunity to save some lives because the program involved the provision of HIV AIDS medication to people in Africa. I was quite pleased with the -- the structure of the program. The -- and I also was hoping to gain a tax benefit, of course, that should be available to me. But I also felt more than anything else underlying those two motives, the program had to be legal and ethical.

29. Additionally, Mr. Cooper explained the significance of the particular pharmaceuticals that he donated:

Q: Do you recall the pharmaceuticals that you donated to Trinity?

A: I do. They were medications to support people with HIV AIDS. They consisted of antiretroviral drugs, as well as drugs to prevent secondary diseases.

So in 2010, I donated 138 treatment units, each consisting of one dose of ciprofloxacin, an antibiotic. One dose of fluconazole, an antifungal. And seven doses of this ARV cocktail made up of lamivudine, stavudine and nevirapine.

In 2011, it changed slightly, I gave again one dose of ciprofloxacin in each of the treatment units. And that was 252 treatment units.

30. When asked why he increased his Donations in later years, Mr. Cooper replied:

MR. SCHEUERMAN: What was the reason for the -- the increased number of treatment units that you donated?

A: I was hoping to do as much good as I could with the -- with my donation.

31. Mr. Cooper's consistent and credible testimony proves that he was primarily motivated by a desire to save the lives of people affected by AIDS.

**c) Mr. Johnston**

32. Mr. Johnston donated Cash and Pharmaceuticals to ACTLAP in 2009, CFPC in 2010 and 2012, and TGSF in 2011.

33. Mr. Johnston took a particular interest in donating through the MLF Program, because he felt like he wanted to give back to society:

Q: So why did you decide to participate in the MLF program after attending these seminars?

A: Well, as I said, as a child, I was -- we relied quite often on and quite heavily on welfare and social assistance, and throughout my life I felt that I wanted to give back to society to help other people and that I would do that when I was financially able to do it, and when the MLF program was presented, I felt that this would be the time to do it because my income at that time was quite good, and I would -- I'd like to do it before I retired, and so that's when I started to do it.

34. Mr. Johnston further testified that he decided to donate through the MLF Program because it was doing an admirable job and distributing pharmaceutical where they were needed the most:

Q: Yeah, in this brochure. Is there anything else that helped you make your decision?

A: Well, to me, it seemed like a -- a good program. From the literature that I read here in this program, MLF seemed to be doing a (sic) admirable job in providing this program so we could donate the charities to these -- or donate the pharmaceuticals to these charities, and my -- my understanding was that they -- they dealt with reputable charities and vendors to provide pharmaceuticals and that they would get them to where they were needed the most.

35. Particularly, when making his Donations in 2009, Mr. Johnston was motivated by the fact that ACTLAP was providing HIV pharmaceuticals to children in need:

Q: Why did you choose to donate to ACTLAP in 2009?

A: Well, that was the -- one of the charities that MLF was supporting, and the brochure that I read about ACTLAP, I felt it was a good cause.

Q: In what sense?

A: Well, they -- they distribute computers and help people learn on these computers, as well, and they also donate the HIV pharmaceuticals to help the children and those that need it.

36. During cross-examination, when asked why he donated twice in the same year, Mr. Johnston explained:

So I put to you, again, Mr. Johnston, was your purpose in approaching Mr. Simonin for a second donation to make sure you were donating enough to cover all of your taxes for the 2010 year?

A: No, actually I did want to cover the taxes, but the -- I wanted to donate more and I -- I knew that the -- the previous donations, that there was going to be tax credits provided, so my intent was to -- to make a larger donation to the charities which I wanted to support.

And I knew that I -- I -- I was only allowed a certain amount to donate, so that's the numbers that I came up with.

37. The fact that Mr. Johnston was aware of the tax incentives for charitable donations set out in the Act does not contradict his testimony explaining that he was primarily motivated by the desire to give to charity.

**d) Mr. Ayre**

38. Between 2009 and 2010, Mr. Ayre donated Cash and Pharmaceuticals through the RLG Program to HEDAC, a charity that Mr. Ayre understood to be helping families and victims affected by diseases such as AIDS.
39. In 2011, Mr. Ayre donated Cash and Pharmaceuticals through the MLF Program to TGSSF, a charity Mr. Ayre understood as having a faith-based approach in delivering pharmaceuticals to those in need.
40. Mr. Ayre repeatedly testified that he was interested in donating through the RLG Program and MLF Program because it allowed him to donate on a greater scale. With respect to the RLG Program, Mr. Ayre testified:

Q: And what did your father tell you about the program in inviting you to this seminar?

A: He said this was an opportunity to do some good philanthropic work and to be able to donate to a charity greater than what I would have been able to do on my own.

And I -- I did peak my interest because it kind of followed my values. We had grown up doing a lot of service in the community, collecting food for the homeless shelter and then also serving food at the homeless shelters.

41. Mr. Ayre further testified:

Q: And when you arrived at the seminar and heard Mr. Allen speak, how did Mr. Allen explain the program?

A: Mr. Allen explained the program as an opportunity to be able to do some great charitable work on a much larger scale than I would have been able to do individually. And we would -- I would then also receive tax credits by participating in the program.

42. Mr. Ayre donated a second time through the RLG Program, because he genuinely believed that the donated Pharmaceuticals were delivered to those in need and that his Donations were helping others:

Q: MR. SCHEUERMAN: And after you participated in RLG the first time, why did you then later decide to participate a second time?

A: I decided to participate a second time because I believed that the charity and the philanthropy had actually occurred. And because I received an invoice from the pharmaceutical



company, as well as I received a receipt from the charity that they had received the pharmaceuticals and I saw it as an opportunity to do some greater good.

43. Additionally, Mr. Ayre believed that the MLF Program presented an opportunity for more philanthropy and for him to do more good:

Q: Thank you. Okay, after you participated in RLG in 2009 and 2010, why did you participate in MLF in 2011?

A: MLF was a brand-new program. And the -- one of the big differences in the program was that all three medications were being included as part of the -- as part of the pledge (sic) units -- sorry, the -- the care units, so that -- that, Your Honour, just so that were -- in MLF, they use some different terminology. So care unit and pledge units -- or they use treatment units and care units.

So the -- and there was another change was that you could choose between three different charities that -- and I saw that it was an opportunity to do some more good and some more charitable work and more philanthropy.

44. Mr. Ayre provided credible and consistent testimony that his primary motivation was to do good by donating pharmaceuticals on a greater scale.

**e) Mr. Foran**

45. Between 2009 and 2012 Mr. Foran made donations of Cash and Pharmaceuticals through the MLF Program to CFPC, a charity that Mr. Foran understood to be helping people living with AIDS in Africa.

46. Mr. Foran testified that he was particularly motivated to support causes that assisted victims of the AIDS pandemic because both he and his wife had family members who passed away from AIDS:

And one of the programs that I eventually did participate with was the Canadian Friends of Pearl Charity, and what impressed me about that charity was that it -- it was taking pharmaceuticals for AIDS, the AIDS pandemic -- pandemic in Africa. It was dealing with orphans and families of -- of AIDS. And that struck both my wife and I because both of us have family -- have lost family to AIDS. It's a terrible disease. When it first came out, there was no cure for it. There's no cure now. You can -- you can only maintain. But it's a terrible disease to have happen to a family -- besides the stigma that's attached to it.

47. Mr. Foran was interested in donating to CFPC because of his family history with AIDS, but also because CFPC assisted children, and helping children was a cause that was close to his wife's heart.
48. Mr. Foran was also motivated by the fact that he could donate in-kind Pharmaceuticals to CFPC instead of just cash because then he knew that 100 percent of what he was donating was going to the end user because the Pharmaceuticals could only be used to treat patients with AIDS:

And -- and just a little bit, I -- the reason that it -- it was important to me is because by donating pharmaceuticals, I could -- I could maximize what my donation was doing. It was 100 percent of what I was donating was going to the end use, unlike a cash donation where you have no control on where that cash goes. Does it go to salaries? Does it go to advertising? Where does it go? And I -- which is why I -- I kind of shied away from charities in the past. This, though, I -- I could -- I -- I could, with 100 percent, know that it was going to there because the drugs were -- were no good for anything else. They -- you couldn't sell them for profit. You know, nobody's -- nobody needs AIDS pharmaceuticals unless you have AIDS.

49. Mr. Foran was motivated to keep making donations through the MLF Program to CFPC when he attended a presentation in Kelowna in 2010 where Sister Agnes, a nun who was administering the donated pharmaceuticals in Africa, spoke about all the good the pharmaceuticals were doing:

And further, in, I -- I believe it was 2010, there was a presentation given in Kelowna where one of the sisters, I believe it was Sister Agnes, came over and gave a presentation on one of the centres in Uganda that was receiving the drugs, the pharmaceuticals, and showing us how the pharmaceuticals were affecting the people in -- in that area. And it was just -- it was really proof to the pudding that you could see your donations were working.

50. Mr. Foran also testified that Sister Agnes' presentation made him appreciate the importance of his gifts and the impact he made through such donations.

Q: And what did you -- what do you recall from that seminar where Sister Agnes presented?

A: There -- the program was presented. Again, the Mission Life Program was presented to new donors that -- or possible new donors that wanted to become involved, and part

of the program was Sister Agnes, who was one of the nuns that worked in Africa, was there to show us, tell us how the pharmaceutical donations were affecting positively the people in -- I'll just call it her mission, the people that she was looking after, the people that were coming, the children and adults that were living -- had AIDS, that were living with AIDS, or were orphaned by AIDS. It was a -- it was a -- a very good presentation and it -- it really made me feel that what I was doing was valid and worthwhile.

51. In light of Mr. Foran's credible testimony, his primarily motivation was to help children affected by AIDS.

[80] Based on all the evidence – and contrary to the intentionally incomplete and blatantly misleading narratives they offered – I find that the Lead Appellants participated in the RLG and MLF Programs in the expectation of profit. As the courts have noted, objective manifestations of intention carry more weight than self-serving statements of subjective intention. In *Chad v The King*, 2024 TCC 142 (under appeal to the Federal Court of Appeal, File No. A-384-24), Justice Sommerfeldt cited a number of authorities on the point (citations omitted):

[127] Turning to the manner of proving a taxpayer's intention, the Supreme Court of Canada has provided helpful guidance. In *Symes*, Justice Iacobucci stated:

As in other areas of law where purpose or intention behind actions is to be ascertained, it must not be supposed that in responding to this question, courts will be guided only by a taxpayer's statements, *ex post facto* or otherwise, as to the subjective purpose of a particular expenditure. Courts will, instead, look for objective manifestations of purpose, and purpose is ultimately a question of fact to be decided with due regard for all of the circumstances.

[128] Several years later, in *Ludco Enterprises*, Justice Iacobucci returned to this topic:

In the interpretation of the Act, as in other areas of law, where purpose or intention behind actions is to be ascertained, courts should objectively determine the nature of the purpose, guided by both subjective and objective manifestations of purpose.

[129] Thus, as was stated by Justice Côté (in dissent) in *MacDonald*:

We are bound to follow *Symes'* and *Ludco's* authoritative statements that intent is a question that requires an assessment both of the taxpayer's subjective intention and of the presence or absence of

objective manifestations of that intention. Neither the objective nor the subjective element is determinative on its own.

[130] However, as indicated by the majority in *MacDonald*, where the subjective statements of intention and the objective manifestations of intention do not coincide, greater weight should be given to the latter.

[81] In *Herring v The Queen*, 2022 TCC 41, my colleague Justice Smith applied those principles to the question of donative intent:

[118] It is established that the presence of ‘donative intent’ is ultimately a question of fact that cannot be determined on a subjective basis. As stated by Justice Iacobucci in the decision of *Symes v. The Queen* 1993 CanLII 55 (SCC), [1993] 4 SCR 695, para. 74 (“*Symes*”):

As in other areas of the law where purpose or intention behind actions is to be ascertained, it must not be supposed that in responding to this question courts will be guided only by a taxpayer’s statement ex post facto or otherwise, as to the subjective purpose of a particular expenditure. Courts will, instead, **look for objective manifestation of purpose, and purpose is ultimately a question of fact to be decided with due regard for all of the circumstances.**”

[Emphasis added]

[82] The Lead Appellants had done precious little to support any particular charity before deciding to participate in the RLG or MLF Programs. In earlier years, they would typically make small donations.<sup>66</sup> None of the Lead Appellants had given to any of the charities that RLG or MLF required them to support and, in their ordinary charitable giving, none had donated anywhere near the amounts reflected on the tax receipts at issue in these appeals.<sup>67</sup>

[83] The only new element the RLG and MLF Programs offered to the Lead Appellants was the opportunity to receive tax credits exceeding their total outlay which is the very essence of “profitable giving” that each of them fully expected to enjoy.

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<sup>66</sup> The only exceptions were Mr. Cooper who regularly tithed at his place of worship and Mr. Foran who had earlier participated in the CHT Program.

<sup>67</sup> See Appendix “F”.

[84] Exactly how each Lead Appellant came to the decision to enrich themselves by participating in the RLG and MLF Programs is briefly set out below.

Ms. Sharon Dockstader

[85] Ms. Sharon Dockstader was the first Lead Appellant to testify. She was 75 years old and semi-retired. She lives in Grand Forks, British Columbia. She had given relatively small amounts to other charities over the years, never larger than \$800, primarily through her local Rotary Club.

[86] Mr. Lauzon told her about the MLF Program in December 2009. Her daughter had recommended Mr. Lauzon to her. She attended a seminar that Mr. Lauzon hosted in Kelowna, British Columbia promoting the MLF Program. Ms. Dockstader signed her document package a few days after attending the seminar. She was required to choose between two charities selected for her by MLF. She chose Canadian Friends of Pearl Children.

[87] The table below reflects, among other things, the total amount Ms. Dockstader spent to participate in the MLF Program for each taxation year and the total amount she claimed in tax credits:

Taxation Year	Cash Paid to Enter the Program	Cash Paid to Charity	<i><b>Total Outlay</b></i>	<i><b>Total Tax Credits Claimed</b></i>	Donations Claimed	Fictitious Debt
2009	\$1,800.00	\$241.20	<b>\$2,041.20</b>	<b>\$3,487.28</b>	\$8,088.24	\$8,040.00
2010	\$1,800.00	\$367.20	<b>\$2,167.20</b>	<b>\$5,333.70</b>	\$12,313.44	\$12,240.00
2011	\$2,000.00	\$458.00	<b>\$2,458.00</b>	<b>\$6,652.56</b>	\$15,331.44	\$15,240.00
2012	\$4,000.00	\$914.40	<b>\$4,914.40</b>	<b>\$13,352.40</b>	\$30,662.88	\$30,480.00
Grand Total:	\$9,600.00	\$1,980.80	<b>\$11,580.80</b>	<b>\$28,825.94</b>	\$66,396.00	\$66,000.00

[88] In 2013, Ms. Dockstader went along with the baseless theory promoted by Justice Trading that her fictitious debt of \$66,000 had been discharged for \$6,600 which was the amount she paid to Justice Trading. Her wilful blindness continued to the very end.

Mr. Kenneth Cooper

[89] Mr. Kenneth Cooper testified next. He is a retired gentleman who works part-time as an appliance salesperson at a Home Depot in Kelowna, B.C. Before then, he worked part time at an electronics store. And before then, he was a health inspector with the B.C. government. He regularly tithed at his place of worship but, other than that, had never made any significant charitable donations.

[90] Mr. Cooper first met Mr. Lauzon in the latter's capacity as a life insurance salesman. He later met with Mr. Lauzon about the MLF Program and was shown a PowerPoint presentation on the MLF Program at Mr. Lauzon's office in the fall of 2010. After that, Mr. Lauzon presented Mr. Cooper with a document package. Mr. Cooper was required to choose one of two charities – Canadian Friends of Pearl Children or Trinity Global Support Foundation. He chose the latter.

[91] The table below reflects, among other things, the total amount Mr. Cooper spent to participate in the MLF Program for each taxation year and the total amount he claimed in tax credits:

Taxation Year	Cash Paid to Enter the Program	Cash Paid to Charity	<i><b>Total Outlay</b></i>	<i><b>Total Tax Credits Claimed</b></i>	Donations Claimed	Fictitious Debt
2010	\$3,600.00	\$496.80	<b>\$4,096.80</b>	<b>\$7,232.86</b>	\$16,659.36	\$16,560.00
2011	\$6,000.00	\$907.20	<b>\$6,907.20</b>	<b>\$13,246.89</b>	\$30,421.44	\$30,240.00
2012	\$4,000.00	\$914.40	<b>\$4,914.40</b>	<b>\$8,255.72</b>	\$19,000.00	\$30,480.00
Grand Total:	\$13,600.00	\$2,318.40	<b>\$15,918.40</b>	<b>\$28,735.47</b>	\$66,080.80	\$77,280.00

[92] In 2013, Mr. Cooper went along with the baseless theory promoted by Justice Trading that his fictitious debt of \$77,280 had been discharged for \$7,535 which was the amount he paid to Justice Trading. His wilful blindness continued to the very end.

Mr. Deny Johnston

[93] Mr. Deny Johnston of Grande Pointe, Manitoba testified next. He worked as an electrician and later became a project manager for an electrical contractor. He owned several rental properties and was always looking for new investment opportunities. He would donate small amounts to charities each year, but nothing large enough to justify a charitable tax receipt.

[94] His search for investment opportunities brought him to a series of investment seminars put on by an organization called “FAST” or “Fast Track to Success”. He made four different investments through FAST before learning about the MLF Program at one of their seminars in late 2008 or early 2009. After attending more seminars, he decided to participate in the MLF Program in late 2009. He was required to choose among three charities: Canadian Friends of Pearl Children, Trinity Global Support Foundation, or the African Computer Technology Literacy Awareness Program. He chose the last. When asked why he decided to write a cheque for just over \$7,000 to the African Computer Technology Literacy Awareness Program in 2009, he said that it “was required to participate in the MLF program.”<sup>68</sup>

[95] For 2010, he directed his gifts of cash and pharmaceuticals to the Canadian Friends of Pearl Children. Toward the end of 2010, he was surprised to learn – notwithstanding his donation earlier that year – that he would be liable to pay income tax of \$54,000 for that taxation year. For that reason, he decided to participate in the MLF Program once again in 2010 to ensure that he would avoid paying any income tax at all.<sup>69</sup>

[96] For 2011, he directed his gifts of cash and pharmaceuticals to the Trinity Global Support Foundation. In 2012, his total outlay of \$9,829 resulted in total tax credits of \$28,414, reflecting a 189% rate of return.<sup>70</sup>

[97] The table below reflects, among other things, the total amount Mr. Johnston spent to participate in the MLF Program for each taxation year and the total amount he claimed in tax credits:

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<sup>68</sup> Transcript of October 31, 2023, page 75, lines 26-28, page 76, line 1.

<sup>69</sup> Transcript of October 31, 2023, page 140, line 14 to page 141, line 10. See also Exhibit A-164C, page 783.

<sup>70</sup> Exhibit R-7.

Taxation Year	Cash Paid to Enter the Program	Cash Paid to Charity	<i>Total Outlay</i>	<i>Total Tax Credits Claimed</i>	Donations Claimed	Fictitious Debt
2009	\$36,000.00	\$7,002.00	<b>\$43,002.00</b>	<b>\$94,584.91</b>	\$203,935.59	\$233,400.00
2010	\$43,200.00	\$9,468.90	<b>\$52,668.90</b>	<b>\$150,504.21</b>	\$324,451.32	\$315,720.00
2011	\$18,000.00	\$2,494.80	<b>\$20,494.80</b>	<b>\$38,776.76</b>	\$83,658.96	\$83,160.00
2012	\$8,000.00	\$1,828.80	<b>\$9,828.80</b>	<b>\$28,414.15</b>	\$61,325.76	\$60,960.00
Grand Total:	\$105,200.00	\$20,794.50	<b>\$125,994.50</b>	<b>\$312,280.03</b>	\$673,371.63	\$693,240.00

[98] In 2015 and 2016, Mr. Johnston went along with the baseless theory promoted by Justice Trading that his fictitious debt of \$693,240 had been discharged for \$65,710 which was the amount he paid to Justice Trading. His wilful blindness continued to the very end.

#### Mr. Nandagopal Ayre

[99] Mr. Ayre testified next. He is a service worker at a provincial correctional facility in Calgary, Alberta. He participated in the RLG Program for his 2009 and 2010 taxation years and in the MLF Program for his 2011 taxation year. He typically donated small cash amounts to charity each year. None of those donations was large enough to justify a charitable donation tax receipt.

[100] Mr. Ayre's father was an authorized representative of the RLG Program. His father took him to one of his seminars, after which he decided to participate in the RLG Program. The only charity available for participants in the RLG Program for 2009 and 2010 was Help Eliminate Disease and Addiction Canada.

[101] Mr. Ayre selected the Trinity Global Support Foundation as his charity for the MLF Program for the 2011 taxation year. When asked why he chose to prepay four years of interest and make a cash donation to Help Eliminate Disease and Addiction Canada in 2009, he stated that both were required in order to participate in the RLG Program for that year.<sup>71</sup>

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<sup>71</sup> Transcript of November 1, 2023, page 65, lines 23-28 and page 66, lines 1-13.



[102] The table below reflects, among other things, the total amount Mr. Ayre spent to participate in the RLG Program for his 2009 and 2010 taxation years and the MLF Program for his 2011 taxation year and the total amount he claimed in tax credits:

Taxation Year	Cash Paid to Enter the Program	Cash Paid to Charity	<i><b>Total Outlay</b></i>	<i><b>Total Tax Credits Claimed</b></i>	Donations Claimed	Fictitious Debt
2009 (RLG)	\$2,000.00	\$450.00	<b>\$2,450.00</b>	<b>\$7,495.00</b>	\$15,090.00	\$15,000.00
2010 (RLG)	\$4,000.00	\$628.32	<b>\$4,628.32</b>	<b>\$10,484.83</b>	\$21,069.66	\$20,944.00
2011 (MLF)	\$8,000.00	\$1,641.60	<b>\$9,641.60</b>	<b>\$27,474.16</b>	\$55,048.32	\$54,720.00
Grand Total:	\$14,000.00	\$2,719.92	<b>\$16,719.92</b>	<b>\$45,453.99</b>	\$91,207.98	\$90,664.00

[103] In 2013, Mr. Ayre went along with the baseless theory promoted by Justice Trading that his fictitious debt of \$90,664 had been discharged for \$7,706 which was the amount he paid to Justice Trading. His wilful blindness continued to the very end.

Mr. James Foran Sr.

[104] Mr. James Foran was the last of the Lead Appellants to testify. Between 2009 and 2012, when he participated in the MLF Program, he was sales manager for a paper company. He lived in West Kelowna, B.C. By the time he was introduced to the MLF Program, Mr. Foran was no stranger to the concept of “profitable giving”. He had claimed tax credits in respect of the CHT Program of \$71,830 for 2006, \$101,269 for 2007, and \$11,091 for 2008.<sup>72</sup> Before 2006, Mr. Foran and his wife typically made combined charitable donations of about \$1,335 per year.

[105] Mr. Lauzon had been Mr. Foran’s financial advisor since 2006. They met several times each year to discuss investments. Mr. Lauzon raised the MLF

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<sup>72</sup> Transcript of November 2, 2023, page 155, lines 2-20.

Program with him at one of their financial planning meetings as a way to accumulate funds for retirement. Mr. Foran was impressed by the fact that Mr. Lauzon had participated in the MLF Program himself. Mr. Foran received the MLF document package in the spring of 2009 and decided to participate. Mr. Foran directed his gifts of cash and pharmaceuticals to Canadian Friends of Pearl Children. When asked why he chose to prepay interest for four years, Mr. Foran replied that “it was part of the Program”.<sup>73</sup> When asked why he decided to make a modest cash donation to Canadian Friends of Pearl Children he replied that “it was required if I wanted to participate in the program”.<sup>74</sup>

[106] The table below reflects, among other things, the total amount Mr. Foran spent to participate in the MLF Program for each taxation year and the total amount he claimed in tax credits:

Taxation Year	Cash Paid to Enter the Program	Cash Paid Charity	<i><b>Total Outlay</b></i>	<i><b>Total Tax Credits Claimed</b></i>	Donations Claimed	Fictitious Debt
2009	\$3,600.00	\$604.80	<b>\$4,204.80</b>	<b>\$8,817.48</b>	\$20,280.96	\$20,160.00
2010	\$10,800.00	\$2,462.40	<b>\$13,262.40</b>	<b>\$28,869.45</b>	\$66,171.00	\$82,080.00
2011	\$14,000.00	\$3,206.00	<b>\$17,206.00</b>	<b>\$41,686.22</b>	\$95,500.00	\$106,680.00
2012	\$8,000.00	\$1,828.80	<b>\$9,828.80</b>	<b>\$39,084.90</b>	\$89,547.32	\$60,960.00
Grand Total:	\$36,400.00	\$8,102.00	<b>\$44,502.00</b>	<b>\$118,458.05</b>	\$251,218.32	\$269,880.00

[107] In 2013, Mr. Foran went along with the baseless theory promoted by Justice Trading that his fictitious debt of \$269,880 had been discharged for \$26,985 which was the amount he paid to Justice Trading. His wilful blindness continued to the very end.

### **The Argument of the Lead Appellants**

<sup>73</sup> Transcript of November 2, 2023, page 35, lines 18-22.

<sup>74</sup> Transcript of November 2, 2023, page 37, lines 10-16.

[108] Counsel for the Lead Appellants<sup>75</sup> relied heavily on the decision of the Federal Court of Appeal in *The Queen v Friedberg*, 1991 CanLII 14017 (FCA). He summarized the tests set out in *Friedberg* for determining whether a taxpayer has made a charitable gift:

- the donated property was owned by the donor;
- the donor made a voluntary transfer of property; and
- no benefit or consideration flowed to the donor which, in later jurisprudence, has been taken to mean that the donor must have had donative intent.<sup>76</sup>

[109] It is common ground that the first two tests in *Friedberg* have been met.<sup>77</sup> The issue is whether the Lead Appellants have satisfied the third test in *Friedberg*, namely, donative intent.

[110] In oral argument, counsel advanced the novel proposition that this Court's decision in *Jensen v The Queen*, 2018 TCC 60, established that donative intent can be vitiated only by non-tax benefits.<sup>78</sup> In support of this proposition, counsel cited a passage from *Jensen* in which Justice Lyons restated the *Friedberg* tests in the context of the appeal before her:

[44] Accordingly, there must be: (1) a voluntary transfer of property by the donor; (2) the donor owned the property immediately prior to the transfer; and (3) the donor did not receive a non-tax benefit from the donation.

[Emphasis added]

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<sup>75</sup> Counsel for the Lead Appellants also acts as counsel for Profitable Giving Canada which, presumably, is responsible for managing this litigation.

<sup>76</sup> See *Mariano v The Queen*, 2015 TCC 244 at para 17.

<sup>77</sup> See the Agreed Statement of Facts (Partial) at paragraph 18 for the MLF Program and paragraph 19 for the RLG Program.

<sup>78</sup> No subsequent decisions have cited *Jensen* for this point. *Jensen* has been cited twice, both times in passing and each time for a different reason (*Van Der Steen v The Queen*, 2019 TCC 23 at footnote 44 and *Walby v The King*, 2023 TCC 164 at footnote 29). In any event, the only benefits relevant in *Jensen* were non-tax benefits. That is clear from the Court's conclusion:

[65] Based on the foregoing, the appellant did not prove or rebut through convincing evidence that he paid the Amount with donative intent thus he did not make out a *prima facie* case. I conclude he had an investment intent when he paid the Amount to Global. Accordingly, it was not a gift within the meaning of section 118.1 of the *Act* and he is not entitled to the Deduction claimed.

[111] Counsel argued that because the Lead Appellants did not receive any non-tax benefits from participating in the Programs, they had donative intent. For that reason, their gifts of cash and pharmaceuticals were valid charitable gifts.<sup>79</sup>

[112] Finally, and in the alternative, counsel contended that under paragraph 248(30)(a) of the *Income Tax Act*, Parliament has chosen to validate certain gifts even absent donative intent:

248(30) The existence of an amount of an advantage in respect of a transfer of property does not in and by itself disqualify the transfer from being a gift to a qualified donee if

(a) the amount of the advantage does not exceed 80% of the fair market value of the transferred property;...

[113] Counsel’s argument was soundly rejected by my colleague Justice MacPhee in *Walby v The King*, 2023 TCC 164 at paragraphs 49-56 and 80 (appeal heard by the Federal Court of Appeal on November 28, 2024, File No. A-357-23, under reserve). But even if – for sake of argument – that provision displaces the common law requirement of donative intent, the Lead Appellants would fail on the facts because the amount of their advantage, in the form of total tax credits, exceeded 80% of the fair market value of the property donated. Indeed, it exceeded 100% of its fair market value.

### **Analysis**

[114] Mr. Friedberg’s name is invoked by the Lead Appellants as authority for the proposition that every taxpayer is entitled to make a “profitable gift”. Indeed, the RLG PowerPoint presentation boasts that the “legal precedent” for “Profitable Gifting” is “Her Majesty The Queen vs. Albert D. Friedberg”.<sup>80</sup>

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<sup>79</sup> Justice Lyons also noted in *Jensen* (citations omitted):

[47] To demonstrate donative intent, a donor must be aware at the time of the donation that the donor will not receive any compensation other than pure moral benefit and must have intended to impoverish himself or herself from the gift in such a manner that the donor does not benefit from the deprivation.

<sup>80</sup> Exhibit A-215, at page 964.

[115] To determine whether such reliance on *Friedberg* is justified, we need to review the decisions of the Federal Court – Trial Division<sup>81</sup> and the Federal Court of Appeal<sup>82</sup> with respect to one particular collection that Mr. Friedberg donated to the Royal Ontario Museum (the “ROM”) in the late 1970s.<sup>83</sup>

[116] When considering the *Friedberg* decisions, it is important to note that the legislative scheme governing the donation of cultural property under the *Cultural Property Export and Import Act* (the “CPEIA”) is not the same as the legislative scheme governing ordinary charitable gifts. For example, tax relief for the donation of cultural property is based on the fair market value of the property up to 100% of the donor’s net income for the year. For charitable gifts, the limit is 75%. And when cultural property has been certified, capital gains realized on its disposition are not subject to tax. When making a charitable gift, capital gains *are* subject to tax. As Steven L. Nemetz has noted (citations omitted):

The Canadian *Income Tax Act (ITA)* provides a unique system of tax incentives to encourage the disposition of cultural property to public institutions by way of donation or sale. While these incentives appear to be an extension of the existing rules for charitable giving, they must be considered independently of the tax programs which support charitable giving. Unlike the charitable donation programs, the cultural property program is limited to gifts of particular property – “certified cultural property” – to “designated institutions”.<sup>84</sup>

### *Friedberg* (FCTD)

[117] In 1977, the ROM became aware of a collection of Coptic textiles consisting of 145 pieces dating from the 4th to the 9th century that its owner, Mr. Wilkinson, was prepared to sell for \$12,000.<sup>85</sup> The ROM believed the collection was of excellent quality and wanted to acquire it, but did not have the money to purchase the collection. The ROM contacted Mr. Friedberg who agreed to purchase it and donate it to the ROM.

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<sup>81</sup> *Friedberg (A.D.) v Canada*, 1989 CanLII 10158 (FC).

<sup>82</sup> *Friedberg (A.D.) v Canada*, 1991 CanLII 14017 (FCA).

<sup>83</sup> At trial, two separate collections were at issue. Only one of those collections is of interest to us (the “Wilkinson Collection”) because the other collection was not actually donated by Mr. Friedberg (the “Abemayor Collection”).

<sup>84</sup> Steven L. Nemetz, “Gifting Cultural Property in Canada: Testing a Tax Expenditure”, *Canadian Bar Review*, Vol. 85, No. 2, 2006, 457 at 460.

<sup>85</sup> Why Mr. Wilkinson was prepared to sell his collection to Mr. Friedberg for only \$12,000 is not disclosed in either set of reasons.

[118] Mr. Friedberg purchased the Wilkinson Collection for the asking price of \$12,000 and donated it to the ROM. An application for certification by the Cultural Property Review Board was made. Three independent appraisals of the fair market value of the collection in the amounts of \$142,650, \$305,000 and \$240,000 were submitted with the application. The application was successful and a tax certificate was issued based on the average of the submitted appraisals.

[119] After receiving the tax certificate, Mr. Friedberg claimed a deduction on his 1980 tax return of \$229,437 on account of his donation of the Wilkinson Collection to the ROM. The deduction was disallowed by the Minister who reduced the allowable deduction to the actual purchase price of \$12,000.

[120] In deciding that Mr. Friedberg was entitled to deduct \$229,437 in computing income for his 1980 taxation year, Associate Chief Justice Jerome commented on the work of the appraisers, noting that “comparable items were not available on the open market on a regular basis”.<sup>86</sup>

Friedberg (FCA)

[121] In the course of considering the question of whether Mr. Friedberg owned the Abemayor Collection, Justice Linden wrote:

It is clear that it is possible to make a "profitable" gift in the case of certain cultural property. Where the actual cost of acquiring the gift is low, and the fair market value is high, it is possible that the tax benefits of the gift will be greater than the cost of acquisition. A substantial incentive for giving property of cultural and national importance is thus created through these benefits. But not every gift will be found to benefit from these provisions. It all depends on how the transaction is characterized, for one cannot give what one does not own.<sup>87</sup>

[Emphasis added]

[122] A close reading of Justice Linden’s words in their context reveals the following:

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<sup>86</sup> *Friedberg* (FC) at 281. This is entirely unlike commodities which *are* generally available on the open market on a regular basis.

<sup>87</sup> *Friedberg* (FCA) at 3.

- Immediately after writing that it is possible to make a profitable gift in the case of certain cultural property, Justice Linden noted that “... not every gift will be found to benefit from these provisions”. When Justice Linden referred to “these provisions” he was referring to the provisions of the CPIEA and to the provisions of the *Income Tax Act* dealing specifically with gifts of cultural property.
- Justice Linden limited the possibility of making a “profitable” gift to gifts of “certain cultural property”, namely, cultural property meeting the tests reflected in paragraphs 23(3)(b) or (c) of the CPIEA (incorporating by reference the tests in paragraphs 8(3)(a) and (b) of the CPIEA):

8(3) Where an expert examiner determines that an object that is the subject of an application for an export permit that has been referred to him is included in the Control List, he shall forthwith further determine

(a) whether that object is of outstanding significance by reason of

(i) its close association with Canadian history or national life,

(ii) its aesthetic qualities, or

(iii) its value in the study of the arts or sciences; and

(b) whether the object is of such a degree of national importance<sup>88</sup> that its loss to Canada would significantly diminish the national heritage.

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17. The Review Board shall, upon request,

...

(c) pursuant to section 26, make determinations for the purposes of subparagraph 39(1)(a)(i.1) or paragraph 110(1)(b.1) of the *Income Tax Act*.

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23(3) In reviewing an application for an export permit, the Review Board shall determine whether the object in respect of which the application was made

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<sup>88</sup> The “national importance” test has since been repealed.

...

(b) is of outstanding significance for one or more of the reasons set out in paragraph 8(3)(a); and

(c) meets the degree of national importance referred to in paragraph 8(3)(b).<sup>89</sup>

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26(1) For the purpose of subparagraph 39(1)(a)(i.1) or paragraph 110(1)(b.1) of the *Income Tax Act*, where a person disposes of or proposes to dispose of an object to an institution or a public authority designated under subsection (2), the person, institution or public authority may request, by notice in writing given to the Review Board, a determination by the Review Board as to whether the object meets the criteria set out in paragraph 23(3)(b) and (c) of this Act.

27 Where the Review Board determines that an object in respect of which a request is made under subsection 23(1) or 26(1) meets the criteria set out in paragraphs 23(3)(b) and (c), it shall provide the person, institution or public authority that made the request with a certificate to that effect in such form as the Minister of National Revenue may by order prescribe.

- Nothing written by Justice Linden suggests that the systemic and well-organized purchase over several years of large quantities of commodities, such as pharmaceuticals, is analogous to a one-time purchase, at a bargain price, of a collection of certified cultural property. As Associate Chief Justice Bowman noted in *Klotz* (TCC):

[56] ... It is one thing serendipitously to pick up for \$10 a long lost masterpiece at a garage sale and give it to an art gallery and receive a receipt for its true value. It is another for Curated [the promoter] to buy thousands of prints for \$50, create a market at \$300 and then hold out the prospect of a tax write-off on the basis of a \$1,000 valuation. ...<sup>90</sup>

- In contrast to the Lead Appellants, who enriched themselves, Mr. Friedberg impoverished himself. In *Markou v Canada*, 2019 FCA 299, Chief Justice Noël of the Federal Court of Appeal explained how Mr. Friedberg impoverished himself by donating the Wilkinson Collection:

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<sup>89</sup> *Ibid.*

<sup>90</sup> This observation by Associate Chief Justice Bowman in *Klotz* (TCC) was characterized as “instructive” by Justice Rothstein in *Klotz* (FCA) at para 35.



[57] When the value of the gifted property is taken into account, Mr. Friedberg would have been impoverished by \$60,359.25 – that is the difference between the value of the gifted property (\$229,437) and the tax benefit (\$169,077.75). Specifically, Mr. Friedberg would have paid no tax on an otherwise taxable capital gain of \$108,718.50 ( $\$229,437 - \$12,000 = \$217,437 \div 2$ ) and would have obtained a deduction – a deduction rather than a tax credit was available at the time – of \$229,437 in computing his income, thereby giving rise to a total tax benefit of \$169,077, assuming a 50% marginal tax rate (\$54,359.25 for the capital gain exemption and \$114,718.50 for the deduction).

[123] For present purposes, the most important teaching from *Markou* is this (citations omitted):

[60] As *Friedberg* makes clear, the fact that a tax benefit is received as a result of making a gift cannot, in and of itself, invalidate the gift as to hold otherwise would mean that Parliament would have spoken in vain in providing for tax benefits consequential on making qualified gifts. However, where a person anticipates receiving tax benefits that exceed the amount or value of an alleged gift, the donative intent is necessarily lacking. Impoverishment being an essential element of a gift under both the civil law and the common law, the purported gift constituted by the cash contribution would fail on this account as well.

[Emphasis added]

[124] Even if, as counsel argued, this Court’s 2018 decision in *Jensen* stood for the proposition that only non-tax benefits are capable of vitiating donative intent, the Federal Court of Appeal made it clear in 2019 in *Markou* that a taxpayer who expects to receive tax benefits exceeding the amount, or value, of their donation lacks donative intent.

[125] Each of the Lead Appellants expected to become wealthier as a result of their donations, not poorer. That is the antithesis of a charitable gift. A taxpayer who participates in a series of transactions with the intent to gain, not to lose, lacks the donative intent necessary for charitable donation tax credits under section 118.1 of the *Income Tax Act*.

**Conclusion**

[126] None of the Lead Appellants had the donative intent required to make a charitable gift for purposes of section 118.1 of the *Income Tax Act*. The assessments and reassessments denying the charitable donation tax credits claimed by the Lead Appellants for their 2009, 2010, 2011, and 2012 taxation years are, therefore, correct. The appeals must be dismissed with costs.


Signed this 10<sup>th</sup> day of March 2025.

“David E. Spiro”

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Spiro J.

APPENDIX "A"

AUDITOR  
VERIFICATION   
DATE Nov. 4, 2011

PROGRAM SCHEDULE MAY 2009

Ontario Tax Credit Rate: 46.41%

Month	Interest Rate	Credit Certificate Amount	Approx. Tax Credit	3% Cash Donation	+ Prepaid Interest	= Total Initial Cash Outlay	Initial Cash on Cash Return
May	4.10%	\$ 6,100.00	\$ 2,848.00	\$ 183.00	\$ 1,000.00	\$ 1,183.00	141%
June	4.27%	\$ 3,950.00	\$ 2,731.27	\$ 175.50	\$ 1,000.00	\$ 1,175.50	132%
July	4.55%	\$ 3,500.00	\$ 2,567.57	\$ 165.00	\$ 1,000.00	\$ 1,165.00	120%
August	4.76%	\$ 3,250.00	\$ 2,451.14	\$ 157.50	\$ 1,000.00	\$ 1,157.50	112%
September	5.00%	\$ 3,000.00	\$ 2,334.42	\$ 150.00	\$ 1,000.00	\$ 1,150.00	103%
October	5.21%	\$ 2,800.00	\$ 2,241.05	\$ 144.00	\$ 1,000.00	\$ 1,144.00	96%
November	5.38%	\$ 2,650.00	\$ 2,171.01	\$ 139.50	\$ 1,000.00	\$ 1,139.50	91%
December	5.56%	\$ 2,500.00	\$ 2,100.98	\$ 135.00	\$ 1,000.00	\$ 1,135.00	85%

\*Donor will receive donation receipt for 20% of actual donation. Amount has been added to "Approximate Tax Credit" calculation.

Minimum donation requirement: 2 Units.  
Once minimum achieved, single units can be purchased.

Multiples for May	Interest Rate	Credit Certificate Amount	Approx. Tax Credit	3% Cash Donation	+ Prepaid Interest	= Total Initial Cash Outlay	Initial Cash on Cash Return
1	4.10%	\$ 6,100.00	\$ 2,848.00	\$ 183.00	\$ 1,000.00	\$ 1,183.00	141%
2	4.10%	\$ 12,200.00	\$ 5,695.99	\$ 366.00	\$ 2,000.00	\$ 2,366.00	141%
3	4.10%	\$ 18,300.00	\$ 8,543.99	\$ 549.00	\$ 3,000.00	\$ 3,549.00	141%
4	4.10%	\$ 24,400.00	\$ 11,391.98	\$ 732.00	\$ 4,000.00	\$ 4,732.00	141%
5	4.10%	\$ 30,500.00	\$ 14,239.98	\$ 915.00	\$ 5,000.00	\$ 5,915.00	141%
6	4.10%	\$ 36,600.00	\$ 17,087.98	\$ 1,098.00	\$ 6,000.00	\$ 7,098.00	141%
7	4.10%	\$ 42,700.00	\$ 19,935.97	\$ 1,281.00	\$ 7,000.00	\$ 8,281.00	141%
8	4.10%	\$ 48,800.00	\$ 22,783.97	\$ 1,464.00	\$ 8,000.00	\$ 9,464.00	141%
9	4.10%	\$ 54,900.00	\$ 25,631.96	\$ 1,647.00	\$ 9,000.00	\$ 10,647.00	141%
10	4.10%	\$ 61,000.00	\$ 28,479.96	\$ 1,830.00	\$ 10,000.00	\$ 11,830.00	141%
15	4.10%	\$ 91,500.00	\$ 42,719.94	\$ 2,745.00	\$ 15,000.00	\$ 17,745.00	141%
20	4.10%	\$ 122,000.00	\$ 56,959.92	\$ 3,660.00	\$ 20,000.00	\$ 23,660.00	141%
25	4.10%	\$ 152,500.00	\$ 71,199.90	\$ 4,575.00	\$ 25,000.00	\$ 29,575.00	141%
30	4.10%	\$ 183,000.00	\$ 85,439.88	\$ 5,490.00	\$ 30,000.00	\$ 35,490.00	141%
35	4.10%	\$ 213,500.00	\$ 99,679.86	\$ 6,405.00	\$ 35,000.00	\$ 41,405.00	141%
40	4.10%	\$ 244,000.00	\$ 113,919.84	\$ 7,320.00	\$ 40,000.00	\$ 47,320.00	141%
45	4.10%	\$ 274,500.00	\$ 128,159.82	\$ 8,235.00	\$ 45,000.00	\$ 53,235.00	141%
50	4.10%	\$ 305,000.00	\$ 142,399.80	\$ 9,150.00	\$ 50,000.00	\$ 59,150.00	141%
75	4.10%	\$ 457,500.00	\$ 213,599.70	\$ 13,725.00	\$ 75,000.00	\$ 88,725.00	141%
100	4.10%	\$ 610,000.00	\$ 284,799.61	\$ 18,300.00	\$ 100,000.00	\$ 118,300.00	141%
125	4.10%	\$ 762,500.00	\$ 355,999.51	\$ 22,875.00	\$ 125,000.00	\$ 147,875.00	141%

TAX SHEET ID #: DN702 OUTRAC TAX SHEET ID #: Q4889261. The identification number issued for this tax shelter shall be included in any income tax returns filed by the purchaser and/or donor. Inclusion of the identification number is for administrative purposes only and does not in any way constitute the execution of a purchase and/or a transfer of any tax benefits associated with the tax shelter.

APPENDIX "B"

MissionLife Financial Inc. Donation Schedule



January 2010

British Columbia Tax Credit Rate: 43.70%

LOAN DETAILS			TREATMENT UNITS	COST OF LOAN			TAX OUTCOME	
Month	Interest Rate	Loan Amount/ Donation Unit	No. of Treatment Units per donation unit	Prepaid Interest	3% Cash Donation*	Total Initial Cash Outlay	Tax Credit**	PPI + Donation Tax Credit
January	3.50%	\$ 12,840.00	107	\$ 1,800.00	\$ 386.00	\$ 2,186.00	\$ 5,645.00	158%
February	3.71%	\$ 12,120.00	101	\$ 1,800.00	\$ 364.00	\$ 2,164.00	\$ 5,329.00	146%
March	3.79%	\$ 11,880.00	99	\$ 1,800.00	\$ 357.00	\$ 2,157.00	\$ 5,223.00	142%
April	3.87%	\$ 11,640.00	97	\$ 1,800.00	\$ 350.00	\$ 2,150.00	\$ 5,118.00	138%
May	4.03%	\$ 11,160.00	93	\$ 1,800.00	\$ 335.00	\$ 2,135.00	\$ 4,907.00	130%
June	4.31%	\$ 10,440.00	87	\$ 1,800.00	\$ 314.00	\$ 2,114.00	\$ 4,590.00	117%
July	4.52%	\$ 9,960.00	83	\$ 1,800.00	\$ 299.00	\$ 2,099.00	\$ 4,379.00	109%
August	4.57%	\$ 9,840.00	82	\$ 1,800.00	\$ 296.00	\$ 2,096.00	\$ 4,326.00	106%
September	4.93%	\$ 9,120.00	76	\$ 1,800.00	\$ 274.00	\$ 2,074.00	\$ 4,010.00	93%
October	5.14%	\$ 8,760.00	73	\$ 1,800.00	\$ 263.00	\$ 2,063.00	\$ 3,852.00	87%
November	5.43%	\$ 8,280.00	69	\$ 1,800.00	\$ 249.00	\$ 2,049.00	\$ 3,641.00	78%
December	5.68%	\$ 7,920.00	66	\$ 1,800.00	\$ 238.00	\$ 2,038.00	\$ 3,482.00	71%

\*3% Cash donation is rounded up

\*\*Donor will receive donation receipt for 20% of second donation. Amount has been added to "Approximate Tax Credit" calculation.

LOAN DETAILS			TREATMENT UNITS	COST OF LOAN			TAX OUTCOME	
Donation Unit Multiplier for January	Interest Rate	Loan Amount for Donation	No. of Treatment Units	Prepaid Interest	3% Cash Donation	Total Initial Cash Outlay	Tax Credit	PPI + Donation Tax Credit
1	3.50%	\$ 12,840.00	107	\$ 1,800.00	\$ 386.00	\$ 2,186.00	\$ 5,645.00	158%
2	3.50%	\$ 25,680.00	214	\$ 3,600.00	\$ 771.00	\$ 4,371.00	\$ 11,290.00	158%
3	3.50%	\$ 38,520.00	321	\$ 5,400.00	\$ 1,156.00	\$ 6,556.00	\$ 16,935.00	158%
4	3.50%	\$ 51,360.00	428	\$ 7,200.00	\$ 1,541.00	\$ 8,741.00	\$ 22,580.00	158%
5	3.50%	\$ 64,200.00	535	\$ 9,000.00	\$ 1,926.00	\$ 10,926.00	\$ 28,224.00	158%
6	3.50%	\$ 77,040.00	642	\$ 10,800.00	\$ 2,312.00	\$ 13,112.00	\$ 33,869.00	158%
7	3.50%	\$ 89,880.00	749	\$ 12,600.00	\$ 2,697.00	\$ 15,297.00	\$ 39,514.00	158%
8	3.50%	\$ 102,720.00	856	\$ 14,400.00	\$ 3,082.00	\$ 17,482.00	\$ 45,159.00	158%
9	3.50%	\$ 115,560.00	963	\$ 16,200.00	\$ 3,467.00	\$ 19,667.00	\$ 50,803.00	158%
10	3.50%	\$ 128,400.00	1070	\$ 18,000.00	\$ 3,852.00	\$ 21,852.00	\$ 56,448.00	158%
15	3.50%	\$ 192,600.00	1605	\$ 27,000.00	\$ 5,778.00	\$ 32,778.00	\$ 84,672.00	158%
20	3.50%	\$ 256,800.00	2140	\$ 36,000.00	\$ 7,704.00	\$ 43,704.00	\$ 112,895.00	158%
25	3.50%	\$ 321,000.00	2675	\$ 45,000.00	\$ 9,630.00	\$ 54,630.00	\$ 141,119.00	158%
30	3.50%	\$ 385,200.00	3210	\$ 54,000.00	\$ 11,556.00	\$ 65,556.00	\$ 169,343.00	158%
35	3.50%	\$ 449,400.00	3745	\$ 63,000.00	\$ 13,482.00	\$ 76,482.00	\$ 197,567.00	158%
40	3.50%	\$ 513,600.00	4280	\$ 72,000.00	\$ 15,408.00	\$ 87,408.00	\$ 225,790.00	158%
45	3.50%	\$ 577,800.00	4815	\$ 81,000.00	\$ 17,334.00	\$ 98,334.00	\$ 254,014.00	158%
50	3.50%	\$ 642,000.00	5350	\$ 90,000.00	\$ 19,260.00	\$ 109,260.00	\$ 282,238.00	158%
75	3.50%	\$ 963,000.00	8025	\$ 135,000.00	\$ 28,890.00	\$ 163,890.00	\$ 423,356.00	158%
100	3.50%	\$ 1,284,000.00	10700	\$ 180,000.00	\$ 38,520.00	\$ 218,520.00	\$ 564,475.00	158%
125	3.50%	\$ 1,605,000.00	13375	\$ 225,000.00	\$ 48,150.00	\$ 273,150.00	\$ 705,594.00	158%

TAX SHELTER ID#: TS074385. Quebec Tax Shelter ID#: OAF-09-01308. The identification number issued for this tax shelter shall be included in any income tax return filed by the purchaser and/or donor. Issuance of the identification number is for administrative purposes only and does not in any way confirm the entitlement of a purchaser and/or donor to claim any tax benefits associated with the tax shelter.

## APPENDIX "C"

Alleged Program Debt of Each Lead Appellant

Sharon Docksteder				
Year	Appellant's Total Income (Line 150)	Program Debt Incurred in Year	Total Cumulative Program Debt	Total Cumulative Debt as a % of Income
2009	\$92,113	\$8,040	\$8,040	8.7%
2010	\$84,163	\$12,240	\$20,280	24.1%
2011	\$49,688	\$15,240	\$35,520	71.5%
2012	\$77,319	\$30,480	\$66,000	85.4%

Kenneth Cooper				
Year	Appellant's Total Income (Line 150)	Program Debt Incurred in Year	Total Cumulative Program Debt	Total Cumulative Debt as a % of Income
2010	\$130,068	\$16,560	\$16,560	12.7%
2011	\$100,787	\$30,240	\$46,800	46.4%
2012	\$64,427	\$30,480	\$77,280	119.9%

Nandagopal Ayre				
Year	Appellant's Total Income (Line 150)	Program Debt Incurred in Year	Total Cumulative Program Debt	Total Cumulative Debt as a % of Income
2009	\$94,215	\$15,000	\$15,000	15.9%
2010	\$87,478	\$20,944	\$35,944	41.1%
2011	\$95,874	\$54,720	\$90,664	94.6%

James Foran Sr				
Year	Appellant's Total Income (Line 150)	Program Debt Incurred in Year	Total Cumulative Program Debt	Total Cumulative Debt as a % of Income
2009	\$145,120	\$20,160	\$20,160	13.9%
2010	\$124,602	\$82,080	\$102,240	82.1%
2011	\$152,390	\$106,680	\$208,920	137.1%
2012	\$167,243	\$60,960	\$269,880	161.4%

Deny Johnston					
Year	Appellant's Total Income (Line 150)	Program Debt Incurred in Year	Total Cumulative Program Debt	Total Cumulative Debt as a % of Income	
2009	\$275,414	\$233,400	\$233,400	84.7%	
2010	\$433,892	\$315,720	\$549,120	126.6%	
2011	\$392,738	\$83,160	\$632,280	161.0%	
2012	\$107,906	\$60,960	\$693,240	642.4%	

## APPENDIX “D”

### INTEREST RATES CHARGED TO THE LEAD APPELLANTS

The purpose of these tables are to compare the interest rates between the Appellants and to compare the months the Appellants entered into the loan agreements.

Interest Rates Charged to Each Appellant				
Appellant	2009	2010	2011	2012
Sharon Dockstader	5.60%	3.68%	3.28%	3.28%
Kenneth Cooper		5.43%	4.96%	3.28%
Deny Johnston <span style="color: green;">Note 1</span>	3.86%	3.40%	5.41%	3.28%
Nandagopal Ayre	3.33%	4.77%	3.65%	
James Foran	4.46%	3.29%	3.28%	3.28%

Months Loans Were Entered Into by Each Appellant				
Appellant	2009	2010	2011	2012
Sharon Dockstader	December	February	January	January
Kenneth Cooper		December	September	January
Deny Johnston	April	January/December	December	January
Nandagopal Ayre	January	November	February	
James Foran	July	January	January	January

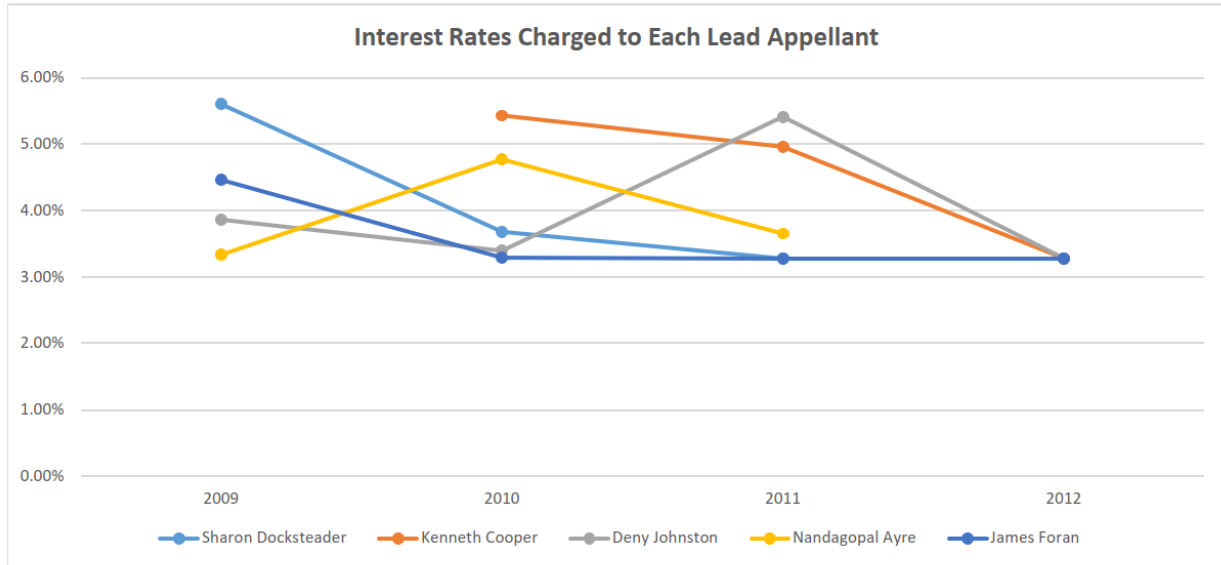
**Note 1**

For the purposes of the graph, Deny Johnston's 2010 interest rate is an average of his two separate rates. His interest rates for 2010 were as follows:

Date	Interest Rate
January 2010	3.29%
December 2010	3.50%
2010 average	3.40%



# APPENDIX "E"



APPENDIX “F”

Ordinary Charitable Donations of Each Lead Appellant

<b>Sharon Docksteader</b>				
	<b>Ordinary Charitable Donations</b>	<b>MLF Donations</b>	<b>Total Donations</b>	<b>% of Total Donations Related to MLF</b>
2009	\$325	\$8,088	\$8,413	<b>96.1%</b>
2010	\$157	\$12,313	\$12,470	<b>98.7%</b>
2011	Unknown	\$15,331	\$15,331	Unknown
2012	Unknown	\$30,663	\$30,663	Unknown

<b>Sharon Docksteader – Ordinary Charitable Donations</b>		
<b>Charity</b>	<b>2009</b>	<b>2010</b>
Rotary Foundation Canada	\$125	\$100
Rotary Club of Squamish	\$150	
Keeping Children of the World	\$50	
Gospel Mission		\$37
Cancer Society		\$20
<b>Total Ordinary Charitable Donations</b>	<b>\$325</b>	<b>\$157</b>

<b>Kenneth Cooper</b>				
	<b>Ordinary Charitable Donations</b>	<b>MLF Donations</b>	<b>Total Donations</b>	<b>% of Total Donations Related to MLF</b>
2010	\$26,049	\$16,659	\$42,708	39.0%
2011	\$16,824	\$30,421	\$47,245	64.4%
2012	\$12,759	\$30,663	\$43,422	70.6%

<b>Kenneth Cooper – Ordinary Charitable Donations</b>			
<b>Charity</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Westside Alliance Church	\$22,815	\$14,575	\$10,560
Unicef Canada	\$120	\$120	\$120
World Wildlife Fund Canada	\$120	\$120	\$130
The Salvation Army	\$200	\$100	\$200
World Vision	\$2,200	\$970	\$720
Canadian Breast Cancer Foundation	\$120	\$120	\$120
Mission Without Borders	\$324	\$324	\$324
Canadian Cancer Society	\$120	\$120	\$120
BC Cancer Foundation	\$30		
Heart Stroke Foundation		\$15	\$10
BC SPCA		\$120	\$120
Samaritan's Purse		\$150	
Jews for Jesus		\$30	
Kelowna General Hospital Foundation		\$50	
Bethesda Christian Association		\$10	\$20
Eagle Bay Camp			\$20
BCIT Foundation			\$30
The Christian and Missionary Alliance in Canada			\$50
Canadian Red Cross			\$110
Prairie Bible Institute			\$50
Cops for Kids			\$20
United Nations World Food Programme			\$15
The Gideons International in Canada			\$20
<b>Total Ordinary Charitable Donations</b>	<b>\$26,049</b>	<b>\$16,824</b>	<b>\$12,759</b>

<b>James Foran</b>				
	<b>Ordinary Charitable Donations</b>	<b>MLF Donations</b>	<b>Total Donations</b>	<b>% of Total Donations Related to MLF</b>
2009	Unknown	\$20,281	\$20,281	Unknown
2010	\$1,808	\$82,572	\$84,380	<b>97.9%</b>
2011	\$448	\$107,320	\$107,768	<b>99.6%</b>
2012	\$1,247	\$61,326	\$62,573	<b>98.0%</b>

<b>James Foran – Ordinary Charitable Donations</b>			
<b>Charity</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Our Lady of Lourdes Parish	\$1,035		\$700
Chalice (Canada), a Catholic Sponsorship Programme	\$448	\$448	\$448
Passionist Missions (Canada)	\$75		\$24
The Princess Margaret Hospital Foundation	\$250		
St. Joseph's Lifecare Foundation			\$50
Okanagan Valley Pregnancy Care Centre			\$25
<b>Total Ordinary Charitable Donations</b>	<b>\$1,808</b>	<b>\$448</b>	<b>\$1,247</b>

<b>Deny Johnston</b>				
	<b>Ordinary Charitable Donations</b>	<b>MLF Donations</b>	<b>Total Donations</b>	<b>% of Total Donations Related to MLF</b>
2009	\$0	\$234,800	\$234,800	<b>100.0%</b>
2010	Unknown	\$317,614	Unknown	Unknown
2011	\$50*	\$83,659	\$83,709	<b>99.9%</b>
2012	\$0	\$61,326	\$61,326	<b>100.0%</b>

\*The name of the charity Mr. Johnston donated to is not legible.

CITATION: 2025 TCC 41

COURT FILE NOS.: 2017-3467(IT)G  
2017-3469(IT)G  
2017-3119(IT)G  
2017-2987(IT)G  
2017-2985(IT)G  
2017-440(IT)G

STYLES OF CAUSE: NANDAGOPAL AYRE AND  
HIS MAJESTY THE KING

KENNETH COOPER AND  
HIS MAJESTY THE KING

SHARON DOCKSTEADER AND  
HIS MAJESTY THE KING

JAMES FORAN SR. AND  
HIS MAJESTY THE KING

DENY JOHNSTON AND  
HIS MAJESTY THE KING

PLACE OF HEARING: Calgary, Alberta

DATES OF HEARING: October 24 to 26, 2023  
October 30 to November 2, 2023  
November 6 to 9, 2023  
November 14 to 15, 2023  
March 27 to March 28, 2024  
June 10, 2024

REASONS FOR JUDGMENT BY: The Honourable Justice David E. Spiro

DATE OF JUDGMENT: March 10, 2025

APPEARANCES:

Counsel for the Appellants: Joel Scheuerman  
Nicole Lynx  
Adèle Desgagné  
Dorian Fenton  
Catherine Liu

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Levi Smith

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