Docket: 2011-771(IT)G

BETWEEN:

JANICE BONHOMME,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeal of *Janice Bonhomme* 2012-3192(IT)G on November 9, 10, 12 and 13, 2015 and April 18, 19, 20 and 21, 2016, at Toronto, Ontario

Before: The Honourable Justice David E. Graham

Appearances:

Counsel for the Appellant:	Richard A. Pharand
Counsel for the Respondent:	John Grant

JUDGMENT

The Appeal of the Appellant's 2001 to 2005 taxation years made under the *Income Tax Act* is allowed and the matter referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the subsection 15(1) benefits assessed against the Appellant in respect of her use of a house in 2001, 2002, 2003, 2004 and 2005 be reduced by $11,987, $16,460, $21,405, $20,620 and $20,272 respectively.

Costs are awarded to the Respondent.

Signed at Ottawa, Canada, this 14th day of June, 2016.

"David E. Graham"

Graham J.

Docket: 2012-3192(IT)G

BETWEEN:

JANICE BONHOMME,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeal of *Janice Bonhomme* 2011-771(IT)G on November 9, 10, 12 and 13, 2015 and April 18, 19, 20 and 21, 2016, at Toronto, Ontario

Before: The Honourable Justice David E. Graham

Appearances:

Counsel for the Appellant:	Richard A. Pharand
Counsel for the Respondent:	John Grant

JUDGMENT

The Appeal of the Appellant's 2006 to 2009 taxation years made under the *Income Tax Act* is dismissed.

Costs are awarded to the Respondent.

Signed at Ottawa, Canada, this 14th day of June, 2016.

"David E. Graham"

Graham J.

Citation: 2016TCC152
Date: 20160614
Dockets: 2012-3192(IT)G
2011-771(IT)G

BETWEEN:

JANICE BONHOMME,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Graham J.

[1] Janice Bonhomme is the sole shareholder, director and officer of 1218395 Ontario Inc. ("121"). Over the years, both Ms. Bonhomme and 121 have been involved in various capacities in the mining industry. The Minister of National Revenue reassessed Ms. Bonhomme's 2001 to 2005 tax returns to include what the Minister alleges were $666,176 in shareholder benefits from 121 in Ms. Bonhomme's income. The Minister assessed gross negligence penalties in respect of some of those benefits. The Minister also reassessed Ms. Bonhomme's 2006 to 2009 tax years to deny $430,000 in Canadian exploration expenses that Ms. Bonhomme had claimed in those years. Ms. Bonhomme appealed the two sets of reassessments. The Appeals were heard on common evidence but I will address them separately in these reasons[1].

I. 2001 to 2005 Tax Years

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[1] The Minister also reassessed 121's taxation years ending December 31, 1998 to 2005 to include alleged unreported income and deny various expenses. The Minister made a related reassessment of 121's GST reporting periods from January 1 to December 31, 2001. Appeals were filed by 121 in respect of those reassessments and were originally scheduled to be heard together with Ms. Bonhomme's appeals. I quashed 121's appeals by order dated February 19, 2016. Since my decision to quash the appeals is currently under appeal to the Federal Court of Appeal, it would be inappropriate for me to elaborate on my reasons for doing so.

[2] The alleged shareholder benefits that the Minister included in Ms. Bonhomme's income consisted of two categories: unexplained deposits to Ms. Bonhomme's personal bank accounts and shareholder benefits in respect of the occupancy by Ms. Bonhomme and her family of a house owned by 121.

[3] The issues in respect of 2001 to 2005 are:

(a) whether the unexplained deposits to Ms. Bonhomme's bank account represent unreported income;

(b) whether any unexplained deposits that occurred in Ms. Bonhomme's otherwise statute barred 2001 and 2003 tax years can be assessed;

(c) whether gross negligence penalties were properly applied to some of the unexplained deposits;

(d) whether Ms. Bonhomme had a housing benefit from her occupancy of the house owned by 121 and, if so, the amount of that benefit; and

(e) whether any such housing benefit that occurred in Ms. Bonhomme's otherwise statute barred 2001 and 2003 tax years can be assessed.

[4] I conclude that the Minister properly included the unexplained deposits in Ms. Bonhomme's income, that the deposits that occurred in 2001 and 2003 can be assessed and that gross negligence penalties were appropriately applied. I also conclude that Ms. Bonhomme had housing benefits from her occupancy of the house, although not in the amounts assessed by the Minister. Finally, I conclude that the housing benefits that occurred in 2001 and 2003 can be assessed, although also not in the amounts assessed by the Minister.

A. Unexplained Deposits

[5] The Minister conducted a bank deposit analysis of Ms. Bonhomme's accounts for her 2001 to 2005 tax years. A bank deposit analysis is an alternative method of determining income that is sometimes used by the Minister when the Minister believes that a taxpayer's records are an inadequate means of verifying the taxpayer's income. A bank deposit analysis generally involves reviewing each deposit that a taxpayer has made to his or her bank account in excess of a certain amount. The Minister asks the taxpayer to explain the source of each of those deposits. To the extent that the taxpayer either cannot explain the source, provides an explanation that the Minister does not accept or admits that the source is taxable

and was not reported, the Minister includes the deposit in the taxpayer's income. If the taxpayer is able to satisfy the Minister that a given deposit comes from a non-taxable source or has already been reported in the taxpayer's income, the Minister ignores the deposit.

[6] The CRA auditor who audited Ms. Bonhomme's 2001 to 2005 tax years testified on behalf of the Respondent[2]. I found him to be a credible witness. He provided a detailed description of how he conducted the bank deposit analysis of Ms. Bonhomme's 2001 to 2005 tax years. There is no need for me to repeat that description here. I found that the process that the auditor followed was consistent with the foregoing description of a typical bank deposit analysis. I also found him to have taken the normal and correct steps to ensure that there was no double counting, that all deposits from identifiable non-taxable sources had been removed and that all deposits from identifiable taxable sources that had previously been reported as income had also been removed.

[7] The auditor divided the deposits for which he had not received a suitable explanation into four categories:

(a) amounts that were recorded as "credit memos" in Ms. Bonhomme's bank account;

(b) amounts that Ms. Bonhomme appeared to have received from a company known as Explorers Alliance Corporation ("EAC");

(c) other deposits over $5,000; and

(d) 50% of all other deposits between $1,000 and $5,000[3].

[8] The Minister treated these unexplained deposits as amounts that Ms. Bonhomme had appropriated from 121 and thus assessed her pursuant to subsection 15(1). The Minister applied gross negligence penalties to the first three categories.

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[2] There was a different auditor for the 2006 to 2009 tax years. That auditor was not called as a witness.

[3] The auditor tracked all deposits to Ms. Bonhomme's accounts but decided not to assess amounts that were less than $1,000. In my view, this was an appropriate approach in the circumstances.

[9] There are two primary ways in which a taxpayer can challenge a bank deposit analysis. The first is to prove that his or her records were adequate and thus that his or her income should have been determined using those records. The second, and more common method, is to show that the unexplained deposits came from a non-taxable source or were already included in income. Ms. Bonhomme took the second approach.

[10] Ms. Bonhomme's primary position was that most of the unexplained deposits were repayments of her shareholder loan to 121 and thus were not taxable. She also argued that certain specific deposits came from non-taxable sources. Despite my clear suggestion that Ms. Bonhomme should address each of the unexplained deposits individually, she failed to do so. I find that none of the deposits were repayments of Ms. Bonhomme's shareholder loan and that the deposits that Ms. Bonhomme argues came from other non-taxable sources did not come from those sources.

[11] Before turning to the four categories of unexplained deposits, I will review the quality of the evidence provided by Ms. Bonhomme.

[12] Ms. Bonhomme did not testify in respect of the bank deposit analysis. All evidence in support of her appeal of the bank deposit analysis came from her husband, Lionel Bonhomme. I did not find Mr. Bonhomme's evidence to be reliable. He spoke in generalities and made sweeping statements that frequently turned out to either be wrong or require significant modification. His testimony was peppered with statements where he mixed up Ms. Bonhomme and 121. There were other occasions where he mixed up himself and Ms. Bonhomme, himself and 121, 121 and EAC, and EAC and other entities. When Mr. Bonhomme referred to documents which were in evidence, I found that he often overstated the nature or content of the documents. Mr. Bonhomme frequently failed to answer questions even when the same question was put to him a number of times. While it was sometimes difficult to tell whether he was being evasive or simply had difficulty staying on track, it was clear that he was being deliberately evasive on many of the more important questions. The way in which Mr. Bonhomme spoke in generalities and confused parties allowed him to change what appeared to have previously been his story without outright contradicting himself. That said, there were a number of occasions where he did contradict himself. As a result of all of the foregoing, I have given little weight to Mr. Bonhomme's testimony where it is not supported by documentary evidence.

[13] Despite the fact that he has a great deal of accounting experience, Mr. Bonhomme did not maintain books and records for 121. No contemporaneous accounting records were kept. When faced with a court order to file its late income tax returns, 121 prepared those returns using trial balances that did not reflect the company's actual transactions. The trial balances were prepared on a cash basis rather than an accrual basis. They do not reflect $290,000 in income that Mr. Bonhomme testified 121 had received from August 2003 to December 2005[4]. With one exception in 2002, there are no debits to the shareholder loan account. In other words, all but one of the unexplained deposits that Mr. Bonhomme says were repayments of Ms. Bonhomme's shareholder loan are not reflected as such on the trial balances. In addition, the trial balances do not reflect $339K that EAC owed 121, amounts owing on 121's line of credit, interest expenses purportedly incurred by 121 in respect of interest payable to Ms. Bonhomme, and interest income purportedly earned by 121 on amounts owing to it by EAC. There is no change in 121's "loans and notes receivable" balance from 1997 to 2005 despite the fact that Mr. Bonhomme claims 121 was advancing funds to and/or making reimbursable expenditures on behalf of EAC during this period. Finally, all adjustments to the shareholder loan account on the trial balances are clearly made as a result of plugs rather than through any actual recording of the relevant transactions.

[14] Mr. Bonhomme provided various poor explanations for the foregoing lack of detail. His primary explanation was that, faced with a court order to file its tax returns, 121 had tried to focus on the income statement aspects of the reporting rather than the balance sheet aspects. I do not accept this explanation. If 121 were truly focused on the income statement aspects of its reporting, then why did it fail to report the $290,000 in income it received from EAC? Mr. Bonhomme's explanation that 121 did not need to do so because EAC had renounced offsetting Canadian exploration expenses to 121 rings hollow. That could be an explanation of why 121 did not think it owed any tax but would not be an explanation of why it did not record its revenues. The company managed to bookkeep its expenses despite the fact that it did not think it owed any tax. It seems a bit too convenient that it happened to overlook reporting substantially all of its revenue.

[15] Even if I accepted Mr. Bonhomme's explanations of 121's accounting, I do not know how I could rely on trial balances prepared without regard for balance sheet items. If the balance sheet does not reflect the money that 121 took from its line of credit, then how can I possibly be confident that various expenditures were

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[4] This is the $10,000 per month discussed in more detail below under the analysis of the credit memos.

paid through the shareholder loan as opposed to through the line of credit? If the balance sheet does not reflect accounts payable, then how can I be sure that expenses claimed were actually paid through the shareholder loan rather than simply remaining unpaid at the end of a given year?

[16] Mr. Bonhomme provided the auditor with what he described as a reconciliation of the shareholder loan account[5]. He started with the closing balance of the account in 1997 and made adjustments to the account going forward to 2005. Ms. Bonhomme relied on this reconciliation at trial as supposed proof that, at all times, the shareholder loan account was in a credit balance and thus she had not appropriated funds from 121. I do not accept that the reconciliation shows this for a number of reasons.

(a) Like other spreadsheets prepared by Mr. Bonhomme that were entered into evidence at trial, the reconciliation appears to me to represent what Mr. Bonhomme wishes or believes the facts to be as opposed to a summary of a careful analysis of what the underlying facts and documents have shown.

(b) The shareholder loan balance is increased by various amounts described as "advances". I was not provided with any documentary evidence that those advances were made.

(c) The actual adjustments to the shareholder loan that appear in the trial balances have not been included in the reconciliation. Instead, Mr. Bonhomme has simply taken the loss reported by 121 each year and, on the assumption that the loss was financed by the shareholder loan account, credited that loss to the shareholder loan account. He did this despite the fact that the loss included amortization -- a non-cash item that could not possibly have impacted the shareholder loan.

(d) The shareholder loan balance is increased by amounts described as "interest". My understanding is that these amounts are supposed to represent interest that 121 owed to Ms. Bonhomme on amounts borrowed by her. Mr. Bonhomme made repeated reference to a director's resolution that purportedly authorized 121 to pay interest to Ms. Bonhomme at 18% until such time as Ms. Bonhomme's shareholder loan balance was nil or her personal credit cards were paid off. My understanding was that 18%

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5 Exhibit A-3, Tab 24

was to represent the interest rate paid by Ms. Bonhomme on her credit cards. No copy of the resolution was entered into evidence. No copies of Ms. Bonhomme's credit card statements showing her outstanding balances were entered into evidence. No calculation showing how the amount of interest was determined was entered into evidence. Ms. Bonhomme did not report the interest in question as income on her tax returns.

(e) Most importantly, the reconciliation is simply a reconciliation of one account in the abstract. It does nothing to address the overall concerns that I have with the trial balances. It is still not a full accounting. Whatever time pressures 121 faced to get its tax returns filed, it has had years since then to create a proper set of accounting records that could be relied upon. I draw an adverse inference from its failure to do so.

[17] The following is an analysis of each of the four categories of unexplained deposits identified by the auditor.

(1) Credit Memos

[18] The auditor testified that the amounts identified as "credit memos" on Ms. Bonhomme's bank account statements were transfers from other accounts or banks. He explained that he had eliminated all credit memos that related to transfers from Ms. Bonhomme's own accounts and those of her family and had been left with $268,470 in unexplained credit memos. He stated that he was unable to determine exactly where those amounts came from but that he thought they may have originated from EAC due to some information he had received from Ms. Bonhomme[6]. I find that the Minister properly included all of these amounts in Ms. Bonhomme's income.

[19] Many of the credit memos involved deposits of two specific amounts: $4,990 and $9,990. Mr. Bonhomme explained that those deposits represented deposits of $5,000 or $10,000 from EAC less a $10 transfer fee. Some background is needed to understand Mr. Bonhomme's explanation of these deposits. Ms. Bonhomme was a shareholder of EAC until sometime in the early 2000's. As of 2001, Ms. Bonhomme was owed $157,000 by EAC and 121 was owed $339K by EAC. In 2003, EAC found itself in financial difficulty. A Statement of Claim was filed by 121 and 121 succeeded in obtaining a Writ of Seizure and Sale. EAC then

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6 See Exhibit R-1, Vol 1, Tab 33, pg 294

entered into what Mr. Bonhomme described as a "private creditor arrangement" with its creditors including Ms. Bonhomme and 121. Mr. Bonhomme explained that, despite its bleak financial situation, there was still work that needed to be done in respect of EAC's mining interests in order to preserve those interests. He testified that, as a result, EAC entered into an agreement with Ms. Bonhomme and 121 whereby one or both of Ms. Bonhomme and 121 would provide services to EAC in exchange for a "management fee, a consulting fee" of $10,000 per month[7]. Mr. Bonhomme stated that those monthly payments were to be matched by renunciations of $10,000 in Canadian exploration expenses each month by EAC to whomever had provided the services[8].

[20] Aside from Mr. Bonhomme's testimony, the only evidence of this purported agreement came from a document described as being minutes of a meeting held on August 12, 2003. The entire agreement is described as follows[9]:

> "It was agreed that 1218395 Ontario Inc arrange for the services and take the necessary steps and the payments of exploration and other work have the flow thru credits renounced In her company or herself as required .
>
> This consideration was crucial due the amounts owed to her company and herself." [sic throughout]

[21] The minutes are unsigned. They make no reference to the payment of any money let alone $10,000 per month. They refer to renunciations but do not specify the amount of such renunciations.

[22] Ms. Bonhomme did not call either of the other people supposedly present at the meeting as witnesses. I draw an adverse inference from this fact. I specifically note that one of these individuals was the president of EAC, Jean Claude Bonhomme. Jean Claude Bonhomme is Mr. Bonhomme's cousin. He resides in Toronto where the trial was held.

[23] Mr. Bonhomme testified that 121 provided services pursuant to this purported agreement from August 2003 until December 2005 and that Ms. Bonhomme provided the services from January 2006 to July 2009.

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7 Transcript, Nov 13, pg 260

8 The Appeal of Ms. Bonhomme's 2006 to 2009 tax years deals exclusively with those alleged Canadian exploration expenses.

9 Exhibit A-4

[24] Mr. Bonhomme's testimony on these payments was inconsistent. He testified that EAC paid $10,000 each month. When confronted with the actual list of unexplained credit memos, he changed his testimony to state that a number of the first payments had actually been for only $5,000. Mr. Bonhomme also testified that the payments were made promptly each month yet there are some months where there is no deposit.

[25] Mr. Bonhomme testified that the $10,000 per month in payments made to 121 pursuant to this purported agreement were deposited to Ms. Bonhomme's personal bank account due to the fact that 121 did not have a bank account in the years in question. He stated that 121 treated the deposits as repayments of Ms. Bonhomme's shareholder loan and thus that they should not have been taxable in Ms. Bonhomme's hands. I do not accept this explanation. 121 did not report these amounts as revenue on its tax returns nor did it record them as credits to Ms. Bonhomme's shareholder loan account. The money simply went from EAC into Ms. Bonhomme's account without ever being recorded or reported by either 121 or Ms. Bonhomme. Mr. Bonhomme's explanation is nothing more than a description of what, in retrospect, he wishes had happened.

[26] Based on all of the foregoing, I conclude that the credit memos for $4,990 and $9,990 were amounts that Ms. Bonhomme appropriated from 121.

[27] There were five credit memos for $4,990 that were deposited in the months prior to the purported agreement among EAC, 121 and Ms. Bonhomme. Mr. Bonhomme provided a variety of explanations of what these amounts were. No documentary evidence was filed to support any of these explanations. I find it difficult to believe Mr. Bonhomme's explanation that these credit memos were somehow different from the identical ones that followed. Accordingly, I find that they were payments made by EAC to 121 that were appropriated by Ms. Bonhomme.

[28] Mr. Bonhomme testified that one deposit of $10,990 and one deposit of $11,590 were combinations of the $10,000 per month payments to 121 and reimbursements by EAC of amounts that 121 or Ms. Bonhomme had spent on EAC's behalf. He identified other deposits of $6,190 and $6,490 which he said were combinations of the $5,000 per month payments to 121 and reimbursements. He also testified that a deposit of $3,990 was simply a reimbursement. No documentary evidence was filed to support any of these assertions. I am not prepared to accept them simply based on Mr. Bonhomme's testimony. I find that

all of these amounts were payments made by EAC to 121 that were appropriated by Ms. Bonhomme.

[29] Mr. Bonhomme testified that two other credit memos for $7,990 and $4,990 may have been transfers from one of Ms. Bonhomme's brokerage accounts but he made no attempt to actually trace the transfers through the brokerage accounts. I am not prepared to accept this assertion solely based on Mr. Bonhomme's testimony.

[30] Mr. Bonhomme testified that an $18,990 credit memo was a payout from Ms. Bonhomme's automobile insurance company in respect of a car accident. Again, Mr. Bonhomme failed to provide supporting documentary evidence or a plausible explanation of why the day after this credit memo was deposited, the insurance company would issue a cheque, rather than a further credit memo, to Ms. Bonhomme for $19,309.76 (an amount accepted as non-taxable by the auditor). I am not prepared to accept that the $18,990 is non-taxable simply based on Mr. Bonhomme's testimony.

[31] There were two additional credit memos ($2,990 and $4,490) about which Mr. Bonhomme provided no testimony.

[32] Based on all of the foregoing, I find that the $268,470 in credit memos were appropriations that Ms. Bonhomme made from 121 and were correctly included in her income.

(2) Amounts from Explorers Alliance Corporation

[33] The auditor included $72,629 in Ms. Bonhomme's income on account of various amounts that he described as "consulting fees and EAC interest"

[34] Ms. Bonhomme stated in a fax sent to the auditor that the "amount of $72,629 consists mainly of interest payment [sic] on the 339 k"[10]. The phrase "339 k" refers to the $339,000 that EAC owed to 121. This explanation is completely inconsistent with the following explanations that Mr. Bonhomme offered at trial[11].

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10 Exhibit R-1, Vol 1, Tab 33, pg 294

11 When this inconsistency was pointed out to him, Mr. Bonhomme gave an explanation that was both incomprehensible and evasive [Transcript, Apr 19, pgs 167-169]

[35] There are eight deposits in this category. The first five deposits total $32,990. Mr. Bonhomme acknowledged that these deposits were all from EAC. In his direct testimony he explained that these deposits were payments made to Ms. Bonhomme to cover the costs of an employee of 121[12]. I do not accept Mr. Bonhomme's explanation. I note that 121's trial balance for 2001 shows that a total of $0.20 was spent on salaries in that year. On cross-examination Mr. Bonhomme provided a completely different explanation. He initially stated that these deposits were consulting fees and then changed his mind and described them as reimbursements of expenditures that 121 had made on behalf of EAC[13]. No documents were filed either evidencing the amounts expended, the invoicing of those amounts or how the five totals were determined. These disbursements were not recorded in the trial balances (either as expenses offset by revenue upon repayment or as short term loans that were repaid). Similarly, there was no entry on the shareholder loan account to record the receipt of these amounts. Accordingly, I do not accept Mr. Bonhomme's alternate explanation either. I find that these five deposits were interest payments made to 121 by EAC that were not reported by 121 and were appropriated by Ms. Bonhomme.

[36] The sixth deposit was for $26,213. Ms. Bonhomme took the position that this deposit was a repayment of her shareholder loan. Mr. Bonhomme testified that 121 had refinanced its mortgage in 2002 and that this amount represented the proceeds that were left after the refinancing. The trial balance for 2002 does show a repayment of the shareholder loan in relation to the refinancing but that repayment is for $35,288. Mr. Bonhomme did not explain why the deposit to Ms. Bonhomme's bank account would differ from the amount of the debit to the shareholder loan account. The $26,213 figure was described in Mr. Bonhomme's deposit spreadsheet as "interest EAC"[14] and, as set out above, was described in the fax to the auditor as interest. I find that this deposit was an interest payment made to 121 by EAC that was not reported by 121, is not related to the $35,388 recorded repayment of the shareholder loan account and was accordingly appropriated by Ms. Bonhomme.

[37] The seventh deposit was for $5,426. Mr. Bonhomme initially took the position that that amount was never deposited to Ms. Bonhomme's bank account and that it instead represented interest charged to 121 by its bank on its line of

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12 Transcript, Nov 12, pgs 202-204

13 Transcript, Apr 19, pgs 141-145

14 Exhibit R-1, Vol 1, Tab 62, pg 498

credit[15]. This amount does appear on the 2002 trial balance as an expense incurred by 121 under the description "interest and bank charges". However, when it was drawn to Mr. Bonhomme's attention that the same amount had been deposited in January 2003[16], he changed his testimony and described the deposit as being a reimbursement for delivering drill cores or drill bits on behalf of EAC and stated that it was a coincidence that it was the same amount as the interest on the line of credit[17]. Based on the trial balance entry and the fax originally sent to the auditor, I find that the deposit was a reimbursement by EAC of interest that 121 had incurred on its line of credit and that the deposit was appropriated by Ms. Bonhomme.

[38] Mr. Bonhomme testified that he could not recall what the remaining $8,000 deposit was. He suggested that it may have been a loan made to Ms. Bonhomme or proceeds from the sale of shares[18]. In light of the fax sent to the auditor and my conclusions in respect of the other amounts in this category, I find that it was an interest payment from EAC to 121 that was appropriated by Ms. Bonhomme.

[39] Based on all of the foregoing, I find that all of the $72,629 in deposits were appropriations that Ms. Bonhomme made from 121 and that they were correctly included in her income.

(3) Deposits of $5,000 or more

[40] The auditor included $131,749 in Ms. Bonhomme's income in respect of other unexplained deposits of $5,000 or more.

[41] Mr. Bonhomme provided very little oral testimony to support Ms. Bonhomme's position that these amounts were not appropriations from 121. This was true despite the fact that I made it very clear to Ms. Bonhomme that, if she wanted to succeed in her appeal, she needed to focus on identifying the source of each unexplained deposit.

[42] There are six deposits of $10,000 each. Mr. Bonhomme suggested that some of those deposits may have been $10,000 per month payments from EAC that were paid by cheque rather than credit memo. To the extent that Mr. Bonhomme's explanations regarding repayments of Ms. Bonhomme's shareholder loan were

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15 Transcript, Apr 19, pgs 159-162
16 Exhibit R-1, Vol 1, Tab 66, pg 569
17 Transcript, Apr 19, pgs 164-165
18 Transcript, Apr 19, pgs 165-166

intended to cover those or any other deposits in this category, I reject the explanations for the same reasons set out above.

[43] The only item in this category that Mr. Bonhomme specifically identified was a $20,000 deposit that he says was a loan from a colleague that he played poker and blackjack with. That colleague was not called as a witness. I draw an adverse inference from that fact.

[44] Mr. Bonhomme testified that various other amounts had also been lent to Ms. Bonhomme in the years in question but did not specifically identify any of the deposits as representing those amounts. I find that none of the deposits of $5,000 or more was a loan. Four documents that Mr. Bonhomme said supported the loans were entered into evidence.

(a) The first document was a handwritten letter on the letterhead of a company called Colbert Drilling and Exploration Co[19]. The letter was dated after the audit began. It is internally inconsistent. It describes an outstanding loan of $16,000 "payable to Colbert Drilling from 1218395 Ont. Inc." and then in the next line states that "[t]hese monies were loaned to Janice Bonhomme for her Comanpy". Mr. Colbert was not called as a witness. I draw an adverse inference from that fact.

(b) The second document is a handwritten list purporting to show amounts owing and repaid[20]. It appears that the total amount lent was $40,500. Mr. Bonhomme testified that this document related to a loan made personally by Mr. Colbert. The document is unsigned. The borrower is described as Mr. Bonhomme not Ms. Bonhomme. Again, I draw an adverse inference from the fact that Mr. Colbert was not called as a witness.

(c) The third document is a list of amounts purportedly lent to Ms. Bonhomme by Mr. Bonhomme's cousin, Jean Claude Bonhomme[21]. The document is unsigned. The document shows the dates that various amounts were supposedly advanced. Mr. Bonhomme did not tie those amounts into the unexplained deposits. There is only one amount that I can easily see ties into the unexplained deposits. The auditor already

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19 Exhibit R-1, Vol 1, Tab 27
20 Exhibit R-1, Vol 1, Tab 57
21 Exhibit R-1, Vol 1, Tab 58

recognized that amount as being non-taxable[22]. Again, Jean Claude Bonhomme was not called as a witness. I draw an adverse inference from that fact.

(d) The last document was a list of loans prepared by Mr. Bonhomme during the audit[23]. A list of loans prepared by a witness is hardly evidence of those loans being made. There were no documents entered into evidence to support these loans other than those already described above and the lenders were not called as witnesses[24]. The list combines amounts lent to 121 with amounts lent to Ms. Bonhomme. The list cannot be readily reconciled to the unexplained deposits and Mr. Bonhomme made no attempt to do so in his testimony. I have no way of knowing whether the amounts described thereon have or have not been included in the list of unexplained deposits. The list includes the $20,000 loan described above. The purported $16,000 loan from Colbert Drilling is shown as a loan from Mr. Colbert. There is no reference at all to the $40,500 loan advanced by Mr. Colbert personally. The list also includes various amounts on credit cards. There was no evidence indicating whether the credit card amounts were cash advances or simply an accumulation of purchases.

[45] Based on all of the foregoing, I find that the $131,749 in unexplained deposits of $5,000 or more were appropriations that Ms. Bonhomme made from 121 and were correctly included in her income.

(4) Deposits between $1,000 and $5,000

[46] The auditor included $68,362 in Ms. Bonhomme's income in respect of other unexplained deposits between $1,000 and $5,000. The auditor found $136,726 in such deposits but chose to include only 50% of them in Ms. Bonhomme's income. I find his decision to be reasonable.

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22 I am referring to the $11,500 advance dated May 3, 2002 which the auditor acknowledged as having been deposited on May 13, 2002.

23 Exhibit R-1, Vol 1, Tab 28

24 I note that on the third day of trial, counsel for Ms. Bonhomme specifically mentioned that "there may be six or more witnesses to be called with regard to those loans" [Transcript, Nov 12, pg 71]. I assume at least three of those six witnesses would have been Mr. Colbert, Jean Claude Bonhomme and the card-playing colleague. The remaining witnesses were not identified. No explanation was provided for not calling those witnesses. I draw an adverse inference for the fact that they were not called.

[47] Despite my recommendation to the contrary, Ms. Bonhomme provided no oral or documentary evidence of why any of these amounts should not be included in her income. To the extent that the explanations regarding loans from third parties or repayments of shareholder loans were intended to cover these deposits, I reject them for the same reasons set out above.

[48] Based on all of the foregoing, I find that the $68,362 in unexplained deposits were appropriations that Ms. Bonhomme made from 121 and were correctly included in her income.

(5) Statute barred years

[49] Ms. Bonhomme's 2001 and 2003 tax years are statute barred. Thus, for those years, I must determine whether Ms. Bonhomme made misrepresentations in not reporting the deposits to her bank account as income and whether those misrepresentations were attributable to carelessness, neglect or wilful default.

[50] I have no problem finding that Ms. Bonhomme made misrepresentations in not reporting the 2001 and 2003 deposits in her tax returns. Given the lack of proper books and records, I find that it was appropriate for the auditor to conduct a bank deposit analysis. That analysis revealed significant amounts of unexplained deposits. Ms. Bonhomme reported only $1,472 in income in 2001. The Minister included a further $76,210 in Ms. Bonhomme's income as a result of the bank deposit analysis. Ms. Bonhomme reported $34,349 in income in her 2003 tax year. The Minister included a further $91,557 in Ms. Bonhomme's income as a result of the bank deposit analysis. As set out in detail above, I do not accept Ms. Bonhomme's explanations of why these amounts should not be treated as income. Faced with significant unexplained deposits, identifiable sources of income that could have given rise to those deposits and no plausible alternative explanation for the deposits, it is appropriate to conclude that Ms. Bonhomme made misrepresentations by not including those amounts in her income[25].

[51] It would be difficult to describe Ms. Bonhomme as being diligent in respect of her tax affairs from 2001 to 2005. At best she was indifferent as to whether she complied with her tax obligations or not. Her 2001 tax return was the only return that she filed on time during this period. Her 2003 tax return was not filed until 2005. Her 2002, 2004 and 2005 tax returns were not filed until 2007. Ms. Bonhomme deposited amounts belonging to 121 into her personal bank account in

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[25] *Lacroix v. The Queen* 2008 FCA 241

2001 and 2002. In late 2002, the company bank account was closed and all of 121's banking from that point forward was carried on through Ms. Bonhomme's personal account. No plausible explanation was provided for why this occurred. Despite the mingling of the accounts, no records were maintained to trace the source of deposits. Ms. Bonhomme was the sole director, officer and shareholder of 121. In order for Ms. Bonhomme to properly file her 2001 to 2005 tax returns, she needed to keep proper books and records for that company. She did not do so. She did not cause 121 to maintain contemporaneous books and records. Ms. Bonhomme pled guilty in the Ontario Court of Justice to failing to file tax returns for 121 in breach of a requirement to do so. The returns that were filed were prepared based on only partial information and failed to reflect significant sources of income that Ms. Bonhomme asserts were received by 121. Ms. Bonhomme maintains that much of the money that she received from 121 was a repayment of her shareholder loan yet she failed to maintain proper books and records that would have reflected the amount of that loan and the relevant credits and debits thereto.

[52] Based on the foregoing, I find that the Minister has successfully opened Ms. Bonhomme's otherwise statute barred years in respect of the unexplained deposits.

(6) Gross negligence penalties

[53] The Minister assessed gross negligence penalties on the first three categories of unexplained deposits. In total, those three categories represent $472,848 in unreported income that arose between 2001 and 2005. This is a significant amount of unreported income. In that same period, Ms. Bonhomme reported only $101,273 in income. Thus her reported income represents approximately 20% of her total income.

[54] Ms. Bonhomme demonstrated an indifference as to whether she complied with the *Income Tax Act* or not. As set out above, she was late in filing her returns for four of the five years in question. She comingled her and 121's affairs unnecessarily. Neither she nor 121 kept proper books and records that would have allowed her to determine her income. She only filed returns for 121 when forced to do so by court order under threat of imprisonment.

[55] At a minimum, Ms. Bonhomme knew that significant amounts of money were being deposited to her personal bank account, that she and 121 were not filing tax returns and that they were being pressured by the Minister to do so. The deposits to which the penalties were applied were not insignificant deposits. With only three exceptions, they were all deposits of $5,000 or more. The primary

source of revenue for Ms. Bonhomme and her husband from 2003 to 2005 was the $10,000 per month that was received by 121. Yet neither 121 nor Ms. Bonhomme reported those amounts in their returns. Ms. Bonhomme simply took them along with the other deposits.

[56] Ms. Bonhomme provided very little testimony at trial. She merely stated that she had relied on Mr. Bonhomme to prepare her taxes and trusted that he had done so properly. She suggested that she had not reviewed her returns but had simply signed them[26]. It was clear that Ms. Bonhomme knew little, if anything, about the affairs of 121 let alone her own tax affairs. Mr. Bonhomme controlled everything to do with 121 and Ms. Bonhomme's interest therein. He was retained by either Ms. Bonhomme or 121 to provide his services to EAC and others on their behalf. He was paid a small fee for doing so. That said, I am not prepared to allow Ms. Bonhomme to use Mr. Bonhomme as a shield. Her tax returns and the maintenance of proper books and records for herself and 121 were her responsibilities, not his. Mr. Bonhomme is not an arm's length accountant who made a mistake that Ms. Bonhomme could not have detected. He is her husband. He has a clear financial interest in her paying less tax. While he has accounting experience and experience in preparing tax returns, he is not a professional and she should not have blindly relied on him. She knew that substantial amounts of money were being deposited to her bank account and that returns were not being filed but she did nothing to ensure that her income was correctly reported.

[57] I also do not accept Ms. Bonhomme's submission that the entire problem arose because she could not afford to pay an accountant to prepare her and 121's returns. I think that the entire problem arose because she and her husband chose to use their financial resources to prop up Ms. Bonhomme's mining investments rather than to comply with their obligations under the *Income Tax Act*. In essence, Ms. Bonhomme is arguing that, to the extent she earned income but did not report it, she did so because she had already spent it and thus could not afford to hire an accountant. That is not a defence.

[58] Based on all of the foregoing, I find that the gross negligence penalties imposed by the Minister were appropriate.

B. Housing Benefits

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[26] Transcript, Apr 19, pg 226-227

[59] 121 purchased a three-bedroom raised bungalow in Timmins, Ontario in 1997[27]. Initially the house was used solely for the residential purposes of Ms. Bonhomme and her family. Mr. Bonhomme testified that, beginning in September 2001 and continuing throughout the period in question, 121 began using the basement and the garage for business purposes. Ms. Bonhomme and her family continued to reside in the rest of the house. The Minister assessed Ms. Bonhomme shareholder benefits in respect of her use of the house. I conclude that the amounts assessed should be reduced in each of the years.

[60] The Federal Court of Appeal in *Fingold v. The Queen*[28] and *Youngman v. The Queen*[29] established that to determine the value of the benefit from a house, I first have to determine what the benefit is (i.e. what 121 did for Ms. Bonhomme) and then determine what price Ms. Bonhomme would have had to pay, in similar circumstances, to get the same benefit from a company of which she was not a shareholder.

[61] It is clear that the benefit that 121 conferred on Ms. Bonhomme was providing her and her family with a house that they wanted to live in in the town where they wanted to live[30]. The house was purchased by 121 in 1997 as a home for the family. At that time 121 had an office at a different location. It was not until September of 2001 that 121 left its other office and began using the basement and garage of the house as its office. The change to using part of the house for business purposes did not alter the fact that Ms. Bonhomme was receiving a benefit. The primary purpose of 121's ownership of the house was still to provide Ms. Bonhomme and her family with a place to live.

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27 There was some suggestion by the Respondent during the cross-examination of Mr. Bonhomme that the property was actually purchased by a different company named 961372 Ontario Inc. I find that the Amendment to Agreement found at Exhibit R-1, Vol 1, Tab 3, pg 5 proves that the purchaser was changed to 121 prior to the closing.

28 [1998] 1 FC 406

29 1990 CarswellNat 323, 90 DTC 6322

30 Although in *Youngman* and *Fingold*, the benefit that the taxpayer received was a custom built / designed property rather than simply a pre-existing house, the Federal Court of Appeal made it clear in *Arpeg Holdings Ltd. v. The Queen* 2008 FCA 31 that the test also applies to non-customized properties.

[62] Having established that the benefit conferred on Ms. Bonhomme was the provision of a house (or part thereof), the next step is to determine what she would have had to pay to obtain the same benefit from a company of which she was not a shareholder.

[63] 121 reported rental income of $6,000 per year from Ms. Bonhomme in its tax returns. The adjusting journal entries made by 121 indicate that Ms. Bonhomme paid this rent by purchasing goods and services for 121. Ms. Bonhomme takes the position that $6,000 per year is the amount she would have had to pay to obtain the same benefit from an unrelated company. Thus, Ms. Bonhomme submits that she should not have been assessed in respect of her use of the house as she has already paid an appropriate price for its use.

[64] The Minister assessed Ms. Bonhomme housing benefits in the range of $20,000 to $30,000 per year. The auditor calculated the benefits by adding two different components together: the imputed return on investment and the personal expenses.

(a) Return on Investment: The auditor calculated what he felt was an appropriate rate of return that 121 could have earned on the capital it had tied up in the house had it used that capital for purposes other than providing a house to Ms. Bonhomme. He did so by taking the greater of the cost of the house and what he believed to be the fair market value of the house at the beginning of each year and multiplying that amount by the average prescribed interest rate found in Regulation 4301(c) for the year.

(b) Personal Expenses: The auditor totalled all amounts paid in the year on account of property taxes, insurance, utilities, maintenance and mortgage interest and included those amounts in the housing benefit.

[65] I am not satisfied with the approach taken by either party or with the evidence provided to me. I simply have too many questions that were not addressed by the evidence. The Minister bears the onus of proof for 2001 and 2003 as those years are statute barred. Ms. Bonhomme bears the onus of proof for the remaining years. I will consider each group of years individually.

(1) Statute barred years

[66] Ms. Bonhomme's 2001 and 2003 tax years are statute barred. In those years, the Minister must prove that Ms. Bonhomme received a rental benefit in excess of $6,000 per year. I have four concerns with the auditor's approach:

(a) his calculation of return on investment;

(b) his calculation of personal expenses;

(c) his failure to consider 121's business use of the house; and

(d) his failure to account for the rent Ms. Bonhomme paid.

[67] My first concern is with how the auditor calculated the return on investment. As set out above, he took the greater of the cost of the house and its fair market value in each year and multiplied that amount by the average prescribed rate for the year. I do not have any concerns with the auditor's use of the prescribed rates[31]. I do, however, have a concern with the base to which he applied those rates.

[68] The auditor started with an assumed fair market value of $215,000 in 2001 and increased it by assumed appreciation of $5,000 per year. The Minister cannot make assumptions of fact when assessing statute barred years. The Respondent did not provide any evidence of the actual fair market values of the house in 2001 and 2003. As a result, I am not prepared to allow the Respondent to use fair market value to calculate the housing benefits in those years.

[69] Since the auditor's approach was to use the greater of cost and fair market value, in the absence of evidence of fair market value, it is appropriate for me to substitute the cost of the property into his calculations. The property was purchased for $192,329 including disbursements[32]. My adjustments as a result of this substitution are set out in the chart below.

[70] My second concern with the auditor's methodology is how he calculated the personal expenses. The auditor included the interest that 121 paid on its mortgage

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[31] The auditor used the average rates prescribed pursuant to Regulation 4301(c). Those rates essentially represent the prevailing 90 day T-Bill rates at the time. The purchase of a house in Timmins could hardly be described as an investment with the same level of risk as buying a 90 day T-Bill. I would expect a third party in 121's position would have demanded a much higher return on its investment. I find the rates used by the auditor to be generously low.

[32] Exhibit R-1, Vol 1, Tab 54

each year. I accept that it was appropriate to include that amount in 2001. The interest was paid by 121 and represents a cost that 121 incurred for the purpose of providing the house to Ms. Bonhomme. However, the property was refinanced in 2002 when 121's bank called its loans. The company originally borrowed $125,000 to purchase the house in 1997. The balance of that loan at the time of the refinancing was $96,446[33]. The company borrowed $162,056 when it refinanced. The additional $65,610 borrowed on the refinancing was clearly not used to acquire the house and thus should not have been included as part of the housing benefit. In my view, an appropriate way to determine the amount of interest to include in the housing benefit at any time after the refinancing would be to multiply the interest paid by 40.5% (being the ratio of the non-house borrowing to the total borrowing[34]). My adjustment as a result of this change is set out in the chart below.

[71] I am not entirely satisfied with the auditor's decision to include the interest payments in the benefit. He both calculated the return on investment on the borrowed funds and added the cost of those funds to the benefit. This arguably results in double counting. I believe it may have been more appropriate to use a higher rate of return and ignore the interest costs. However, as the parties made no submissions on this point and I find the rate of return used by the auditor to have been generously low in the first place, I am prepared to accept the method he used.

[72] The remaining items that the auditor included in the personal expenses were the property taxes, utilities, insurance and maintenance expenses. The auditor concluded that Ms. Bonhomme paid these expenses personally but he nonetheless included them in calculating the housing benefit. He did so on the basis that Ms. Bonhomme's shareholder loan had been improperly credited with other payments that exceeded the amount of these personal expenses. His reasoning was not challenged by Ms. Bonhomme and I accept it.

[73] My third concern is that the auditor did not take into account 121's business use of the house. Mr. Bonhomme testified that from September 2001 to December 2005, the basement and garage of the house were used for 121's business purposes. Those portions of the house appear to represent approximately 50% of its square footage. Mr. Bonhomme's evidence on this point was not seriously challenged on cross-examination. While I have, in general, found Mr. Bonhomme not to be a

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33 The trial balance for 2002 shows the opening balance of the loan as $101,616 and the principal paid prior to the refinancing as $5,170.

34 ($162,056-$96,446) / $162,056

reliable witness, I am prepared to accept his evidence on this point. Accordingly, I find that Ms. Bonhomme's housing benefit should have been reduced by 50% in the corresponding period.

[74] My final concern is that the auditor did not reduce the amount of Ms. Bonhomme's housing benefits to take into account the $6,000 per year in rental income reported by 121 as being rent received from her. The explanation that the auditor provided for not accounting for these payments was unsatisfactory. I find that the benefits should have been reduced by these amounts.

[75] The following is a summary of the adjustments that I find should be made to the statute barred years.

	2001	2003
benefit assessed	$29,688	$25,225
less: assessed return on investment	($11,825)	($6,750)
plus: proven return on investment	$10,578[35]	$5,770[36]
less: inappropriate interest expense	-	($4,605[37])
benefit before business use	$28,411	$19,640
less: business use of house[38]	($4,740)	($9,820)
adjusted benefit	$23,701	$9,820
less: rent paid	($6,000)	($6,000)
proven benefit	$17,701	$3,820

[76] Even taking into account the reductions to the benefit, I find that the remaining under-reported benefits of $17,701 and $3,820 are omissions attributable to carelessness or neglect. Ms. Bonhomme clearly did not make any attempt to properly value the benefit that she was receiving.

[77] As a result of all of the foregoing, Ms. Bonhomme's 2001 and 2003 housing benefits will be reduced by $11,987[39] and $21,405[40] respectively.

(2) Non-statute barred years

[78] The Minister made assumptions of fact that the housing benefits received by Ms. Bonhomme in 2002, 2004 and 2005 were $20,809, $24,848 and $24,396 respectively.

[79] Ms. Bonhomme provided no evidence to support her position that the appropriate benefit was the $6,000 per year that had already been reported by 121. She failed to adequately explain how the $6,000 per year figure was calculated. She made no effort to challenge the approach used by the auditor or any

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35 $192,329 cost x 5.5% average prescribed rate

36 $192,329 cost x 3% average prescribed rate

37 $11,375 interest x 40.5%

38 50% in 2003 and 16.67% in 2001 (being 50% of the use from September to December)

39 $29,688 assessed benefit less $17,701 proven benefit

40 $25,225 assessed benefit less $3,820 proven benefit

component thereof. She did not question the appropriateness of the return on investment rate used by the auditor. She did not provide any evidence as to the actual fair market value of the property in those years let alone expert evidence. She did not question whether the fair market value of a property is the appropriate starting point to determine the return on investment as opposed to its cost. She did not challenge any of the personal expenses. Finally, she did not question any of the alleged errors in the shareholder loan account which the auditor used to justify his inclusion in the housing benefit of the interest, property tax, insurance, utilities and maintenance expenses that she had paid. In summary, Ms. Bonhomme failed to demolish the Minister's assumptions.

[80] All that said, despite the fact that these arguments were not raised by Ms. Bonhomme, I cannot overlook the auditor's failure to account for the fact that a portion of the interest was not related to the purchase of the house, that 50% of the house was used for business purposes and that Ms. Bonhomme paid $6,000 in rental income. These are such glaring errors that I cannot simply ignore them.

[81] Based on the foregoing, the following is a summary of the adjustments that I find should be made to the non-statute barred years:

	2002	2004	2005
benefit assessed	$20,809	$24,848	$24,396
less: non-house interest	($110)[41]	($4,392)[42]	($4,148)[43]
benefit before business use	$20,699	$20,456	$20,248
less: 50% business use	($10,350)	($10,228)	($10,124)
adjusted benefit	$10,349	$10,228	$10,124
less: rent paid	($6,000)	($6,000)	($6,000)
appropriate benefit	$4,349	$4,228	$4,124

[82] As a result of the foregoing, the housing benefits for 2002, 2004 and 2005 will be reduced by $16,460, $20,620 and $20,272 respectively[44].

II. 2006 to 2009 Tax Years

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41 $7,109 total interest - $6,837 interest before refinancing = $272 interest to be allocated. $272 x 40.5%

42 $10,848 x 40.5%

43 $10,246 x 40.5%

44 $20,809 - $4,349 = $16,460; $24,848 - $4,228 = $20,620; and $24,396 - $4,124 = $20,272

[83] Ms. Bonhomme claimed Canadian exploration expenses of $120,000 in each of her 2006, 2007 and 2008 tax years and of $70,000 in her 2009 tax year. As set out above, Ms. Bonhomme takes the position that in 2003 EAC entered into an agreement with Ms. Bonhomme and 121 whereby one or both of Ms. Bonhomme and 121 would provide services to EAC in exchange for a payment of $10,000 per month and a matching renunciation of Canadian exploration expenses. From 2006 to 2009 those payments were made to Ms. Bonhomme personally. Ms. Bonhomme reported them in her income. She then claimed corresponding amounts of Canadian exploration expenses to offset them. I conclude that she was not entitled to do so.

[84] Ms. Bonhomme did not testify in respect of the Canadian exploration expenses that she had claimed. All evidence in support of her appeal of that issue came from Mr. Bonhomme. As set out above, I did not find Mr. Bonhomme's evidence to be reliable. His testimony in respect of this issue was particularly unreliable.

[85] Throughout her appeal, Ms. Bonhomme offered a series of inconsistent and sometimes incomprehensible explanations of why she was entitled to the Canadian exploration expenses she had claimed. The following is a summary of those explanations in the order that they were offered:

(a) The expenses were "incurred by, on behalf of, or for [her] benefit"[45].

(b) She was in a joint venture[46].

(c) She was in an "arrangement, which is like a receivership, a foreclosure, a friendly arrangement where [she] takes over the management of assets in exchange for 10,000 a month and an accompanying CEE…The principle

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45 Notice of Appeal, paras 8, 9 and 19

46 This is one position that Ms. Bonhomme took in her Notice of Appeal [para 5] and that Mr. Bonhomme initially appeared to take on the third day of trial. He described the joint venture as being "the contractual services of [Ms. Bonhomme] and/or her company to protect the interests and the assets of the company" [Transcript, Nov 12, pg 135]. It appears that the first "company" in this quotation is 121. It is unclear whether the second "company" is 121 or EAC. In either case, this relationship is not a joint venture. Mr. Bonhomme later described the joint venture as "…when you operate together under an understanding. And in this case, the understanding is a partner who is bankrupt that is not forced into bankruptcy and reaches an understanding as to a friendly arrangement to salvage the assets for everyone's benefits, versus her foreclosure, her exercise of this writ of seizure that she had…" [Transcript, Nov 12, pg 142]

is if you're managing something and there's a CEE credit available, you're entitled to a renunciation privately or as a syndicate member"[47].

(d) She held "royalty interests" and "net profit interests" over some properties operated by EAC[48] and she was acting to protect her interests in those royalties and her outstanding debt owed by EAC[49].

(e) She was in a partnership[50].

(f) She was in a limited liability partnership for Canadian exploration expenses[51].

[86] The only position that Ms. Bonhomme appeared not to adopt at one point or another was that she had received the CEE through flow-through shares. This is presumably because she was not a shareholder of EAC in the years in question.

[87] The evening before the parties were to make submissions, I informed Mr. Bonhomme's counsel that, in light of the vagueness of Mr. Bonhomme's testimony and the complexity of the Canadian exploration expense provisions of the *Act*, when he made his submissions I wanted him to walk me through the specific provisions that Ms. Bonhomme says allow her to claim the expenses. He failed to do so. He mentioned subsection 66(10.4) but was unable to offer any explanation of how it applied. His submissions on the subsection were limited to reading the preamble aloud and then moving on to discuss an alleged partnership between Ms. Bonhomme and EAC. Subsection 66(10.4) does not cover

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47 Transcript, Nov 12, pg 152

48 It is possible that some or all of these royalties were held by 121, various partnerships in which Ms. Bonhomme or 121 were partners, various joint ventures to which Ms. Bonhomme or 121 were parties, various "syndicates" to which Ms. Bonhomme, 121 or various partnerships or joint ventures belonged, various "associates" of Ms. Bonhomme, or some combination of the above. Mr. Bonhomme's explanations of the ownership of the royalties were vague and changed frequently.

49 This is the position that Mr. Bonhomme appeared to switch to later on the third day of trial. I stopped hearing about a joint venture and started hearing this position [Transcript, Nov 12, pgs, 154-155 and 167-173]

50 Without actually stating that he was doing so, Mr. Bonhomme suddenly switched to this position on the fourth day of trial [Transcript, Nov 13, pgs 246-250; 254-255 and 262-264]. He stated that there was a big difference between a partnership and a creditor arrangement but did not explain what that difference is or how 121 received Canadian exploration expenses from a creditor arrangement and Ms. Bonhomme received them from a partnership.

51 Transcript, Apr 19, pg 196

partnerships or any of the myriad of relationships that Mr. Bonhomme described in his testimony. The subsection relates to renunciations by one corporation in favour of another corporation. Since Ms. Bonhomme is not a corporation, I fail to see how the subsection could apply.

[88] Ms. Bonhomme's counsel did not direct me to any other section of the *Act*.

[89] Ultimately, it appeared to me during submissions that Ms. Bonhomme had settled on a single position as to why she believed she was entitled to claim Canadian exploration expenses. I carefully set out my understanding of that position at the end of counsel's submissions on the issue. Ms. Bonhomme's counsel agreed that the following is the reason that Ms. Bonhomme believes she is entitled to claim Canadian exploration expenses[52]:

> "Ms. Bonhomme is a partner with EAC. She is entitled to CEE from EAC's resource pool as a partner who had agreed to provide services to EAC in exchange for money and CEEs."

[90] This position can be easily disposed of. There is no reliable evidence that Ms. Bonhomme and EAC were in a partnership. There was no written partnership agreement entered into evidence nor were the terms of any such agreement described. There was no reliable description of who the partners were. No partnership tax returns were filed and no T5013's were issued. Ms. Bonhomme did not enter EAC's returns into evidence so I have no way of knowing whether it reported partnership income or not. I draw an adverse inference from the failure of anyone from EAC to testify as to the existence of a partnership.

[91] As set out above, there was no reliable evidence as to who the partners were. Ms. Bonhomme presented the argument as if she and EAC were the sole partners. However, 121 had claimed Canadian exploration expenses arising from the same relationship in its 2003 to 2005 tax returns. Therefore, if a partnership did exist, 121 would have had to have been a partner at that time. There was no mention of any change in partnership from 121 to Ms. Bonhomme which suggests that both Ms. Bonhomme and 121 would have been partners from 2003 to 2009. I heard evidence that there were other creditors who were also partners in the partnership and that the partnership was, beginning in 2006, managed by a company called EAC Creditors Inc[53]. I saw evidence that EAC disposed of "all of [its] interests in its mineral properties" to a subsidiary of EAC called International Explorers &

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52 Transcript, Apr 21, pg 430

53 Transcript, Nov 13, pg 247

Prospectors Inc. ("IEPI") in 2008 which leaves me wondering how or why EAC would have continued to be a partner after that time and how, when and whether IEPI became a partner[54].

[92] There was no indication of what business the partners were supposedly carrying on in common with a view to a profit. Ms. Bonhomme was clearly carrying on the business of providing services to EAC but that does not make her a partner of EAC. I asked Ms. Bonhomme's counsel how EAC's relationship with Ms. Bonhomme was any different than my relationship with my drycleaner – they provide a service and I pay them money. He was unable to provide me with an explanation.

[93] At a number of points, Mr. Bonhomme actually testified that Ms. Bonhomme was not in a partnership with EAC. For example, he stated that:

> "So at that time, I did not want to be a partner with [EAC]. I controlled $1.3 million of judgments according to bankruptcy and instead I reached a friendly creditor arrangement and agreed to work in exchange for the CEE…"[55]
>
> "[Ms. Bonhomme's lawyers] wanted me to state that I was a partner with [EAC]. And I said I refused that because they were bankrupt and I did a friendly creditor arrangement."[56]
>
> "I always refused to be a partner of [EAC]" [57]

[94] I find that Mr. Bonhomme's use of the word "I" in the foregoing statements was meant to refer to Ms. Bonhomme and/or 121. Mr. Bonhomme frequently had trouble distinguishing between himself, Ms. Bonhomme and 121.

[95] Even if Ms. Bonhomme were a partner in a partnership with EAC, her explanation of how she obtained the Canadian exploration expenses still makes no sense. To reiterate, Ms. Bonhomme says that "[s]he is entitled to CEE from EAC's resource pool as a partner who had agreed to provide services to EAC in exchange for money and CEEs." A partnership incurs Canadian exploration expenses and then allocates them to its partners. Ms. Bonhomme's explanation of why she should be able to claim the expenses clearly describes the expenses as being EAC's, not the partnership's. Throughout his testimony Mr. Bonhomme described

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54 Exhibit A-3, Tabs 14 and 18

55 Transcript, Apr 18, pg 23

56 Transcript, Apr 18, pg 26

57 Transcript, Apr 18, pg 32

the Canadian exploration expenses as being transferred[58], granted[59] or renounced[60] by EAC. Only once did he describe them as being something that "the partnership agreed to renounce"[61]. Furthermore, Ms. Bonhomme's explanation describes her as becoming entitled to the expenses not by virtue of her being a partner but rather in exchange for services that she provided. Ms. Bonhomme did not direct me to any mechanism in the *Act* by which a service provider could be paid with Canadian exploration expenses. Finally, there is no evidence that any such partnership incurred expenses that would qualify as Canadian exploration expenses. All of the evidence indicates that, to the extent such expenses were incurred, they were incurred by EAC or IEPI.

[96] Ultimately, it appears to me that, Ms. Bonhomme's claim of Canadian exploration expenses is little more than a convenient excuse as to why she should not have to pay tax on the $430,000 of income that she received from 2006 to 2009. I have heard no rational explanation of why she would be entitled to the expenses. There is no supporting evidence from third parties and no reliable documentary evidence. It is not my role to wade into the bog of Mr. Bonhomme's conflicting and unreliable testimony and try to extract something of substance that fits nicely into the complexities of the *Act*. It is Ms. Bonhomme's job to point me to the evidence and show me how it works with the *Act*. She has failed to do so. I am not going to go through the *Act* and rule out every possible means by which Ms. Bonhomme could have become entitled to Canadian exploration expenses under her ever shifting explanations of why she might be entitled to them. She has had ample time and opportunity to clarify her position. The foregoing position is the best that she could come up with. I have found that position to be unsupportable. That is enough to dispose of the Appeal of Ms. Bonhomme's 2006 to 2009 tax years.

[97] That said, given that Ms. Bonhomme has already appealed a decision that I made in a related matter and given her tendency to come up with new reasons why she should be able to claim the Canadian exploration expenses, I feel I should make some additional findings of fact for the benefit of the Federal Court of Appeal should she also choose to appeal this decision. Accordingly, I find that:

(a) Ms. Bonhomme was not a shareholder of EAC after 2002;

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58 Notice of Appeal, para 19; Transcript, Nov 12, pg 145
59 Transcript, Nov 12, pg 80
60 Transcript, Nov 12, pg 114
61 Transcript, Nov 13, pg 263

(b) Ms. Bonhomme became a shareholder of IEPI in 2008 as part of a debt conversion;

(c) no T101's from EAC were filed with Ms. Bonhomme's returns or entered into evidence;

(d) no T101's from IEPI were filed with Ms. Bonhomme's returns or entered into evidence;

(e) no Schedule 12's for EAC or IEPI were entered into evidence;

(f) no T1229's were filed with Ms. Bonhomme's returns or entered into evidence; and

(g) EAC did not file its tax returns for its taxation years ending December 31, 1998 to 2009 until 2011 at the earliest.

[98] I also find that, beyond what I would describe as musings or wishes during Mr. Bonhomme's testimony, there was no reliable evidence:

(a) that EAC renounced any Canadian exploration expenses to Ms. Bonhomme in the years in question;

(b) that IEPI renounced any Canadian explorton expenses to Ms. Bonhomme in the years in question;

(c) that EAC or IEPI incurred Canadian exploration expenses in the amounts claimed by Ms. Bonhomme[62];

(d) that Ms. Bonhomme incurred expenses on her own behalf that would qualify as Canadian exploration expenses;

(e) that Ms. Bonhomme was a party to a joint venture;

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[62] I do not consider the documents in Exhibit A-3, Tabs 11, 12, 15 and 23 to be reliable evidence of anything. They are described as "IEP Flowthru" yet, IEPI did not even exist in the first two years that they cover. I have insufficient evidence of where these figures came from, how they were compiled and what they represent to rely on them for anything. I similarly do not consider A-1 to be reliable evidence that EAC incurred expenses that would qualify as Canadian exploration expenses. No witness from EAC testified as to the nature of the expenses, how the figures were compiled or as to their accuracy.

(f) to the extent that Ms. Bonhomme was a member of a joint venture, that she incurred expenses as part of that joint venture that would qualify as Canadian exploration expenses;

(g) that Ms. Bonhomme was a member of a limited partnership; or

(h) to the extent that Ms. Bonhomme was a member of a limited partnership, that that limited partnership incurred expenses that would qualify as Canadian exploration expenses.

[99] Ms. Bonhomme called a chartered accountant named Michael Johnston as a witness. Mr. Johnston had reviewed and analyzed spreadsheets originally prepared by a deceased partner in his firm, Jeff Hunter. My understanding is that Mr. Hunter was the accountant for EAC. Those spreadsheets set out Canadian exploration expenses purportedly accumulated by EAC. I found Mr. Johnston to be a credible witness and do not blame him for the following findings. Despite Mr. Bonhomme's desire to hear the contrary, I find that Mr. Johnston did not testify that EAC had renounced any Canadian exploration expenses to Ms. Bonhomme. At best, Mr. Johnston was able to testify that EAC's financial records indicated that there were amounts that may have qualified as Canadian exploration expenses that were not used by EAC in the years in question and were thus potentially available to be renounced and that those amounts equalled the amounts that Ms. Bonhomme and 121 say were renounced to them from 2003 to 2009. Outside of his discussions with Mr. Bonhomme, Mr. Johnston had no independent knowledge of whether those expenses were renounced to Ms. Bonhomme and, if so, when or through what mechanism. He had not seen any documents that would indicate that any Canadian exploration expenses were renounced to Ms. Bonhomme nor had he seen anything in EAC's accounting records to that effect. He had no knowledge of the shareholdings of EAC and made no mention of a partnership whose partners included Ms. Bonhomme and EAC. It is clear to me that anything on Mr. Johnston's spreadsheets that suggests or concludes that Canadian exploration expenses were renounced by EAC, let alone renounced to a particular person, only appears on those spreadsheets because Mr. Bonhomme told Mr. Johnston or Mr. Hunter that that was the case. The information is not the result of any independent review.

III. Costs

[100] The parties agreed that I could rule on costs without the need for additional submissions.

[101] It took almost six days of court time for Ms. Bonhomme to enter her evidence. In my view, that evidence could have been entered in two days. A day of court time was wasted when Ms. Bonhomme arrived on the first day of trial with documents that had not previously been disclosed to the Respondent. Another half day was wasted by calling Mr. Johnston, a witness whose evidence added nothing[63]. A further half day was wasted when Ms. Bonhomme advised on the second day of trial that she needed time to meet with tax counsel. That counsel was never retained.

[102] When Mr. Bonhomme finally took the stand he wasted extensive court time. He was not prepared. He did not present his evidence in a logical or coherent manner. He did not know where to find the documents that he needed. His vague and inconsistent answers wasted time as did his tendency to wander completely off topic. His evasiveness only added to the wasted time.

[103] The entire Canadian exploration expense issue was without merit. The bank deposit analysis issue was something that, had Ms. Bonhomme taken the time to analyze her case, conduct examinations for discovery and marshal her evidence, could most likely have been resolved out of Court or, at the very least, substantially simplified. While Ms. Bonhomme enjoyed significant success on the housing benefits, this success represented less than 9% of the income in issue, took up relatively little court time and was entirely due to concerns that I had with the auditor's calculations as opposed to anything that Ms. Bonhomme raised.

[104] Based on all of the foregoing, I award costs to the Respondent. The two Appeals were commenced two years apart and are sufficiently different that it is appropriate to award separate costs for each Appeal. One set of costs shall be paid in each Appeal in accordance with the tariff for Class "C" proceedings for all matters prior to preparation for trial and for all services after judgment. In my estimation, the hearing of the Appeals should have been completed in the four days that were originally scheduled for trial instead of the eight days that were ultimately used. In light of the need for counsel for the Respondent to prepare twice for trial, I award two sets of costs in each Appeal in accordance with the

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63 I emphasize again that I do not blame Mr. Johnston for that fact. In my view Mr. Johnston testified honestly and efficiently. It is not his fault that Ms. Bonhomme failed to recognize that what he had to say was of no value to her appeal.

tariff for Class "C" proceedings for preparation for trial (i.e. $1,900 per Appeal). Since the Appeals were heard on common evidence, it would not be appropriate to award separate costs for the hearing of the Appeals. However, in light of the unnecessarily long trial and the resulting waste of both the Court's and the Respondent's resources, I award one set of costs in accordance with the tariff for Class "C" proceedings for the first four days of trial and double costs for the remaining four days for a total of $24,000 in hearing costs. Only one set of disbursements shall be paid.

Signed at Ottawa, Canada, this 14th day of June 2016.

"David E. Graham"

Graham J.

CITATION:	2016TCC152
COURT FILE NO.:	2012-3192(IT)G 2011-771(IT)G
STYLE OF CAUSE:	JANICE BONHOMME AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	November 9, 10, 12 and 13, 2015 and April 18, 19, 20 and 21, 2016
REASONS FOR JUDGMENT BY:	The Honourable Justice David E. Graham
DATE OF JUDGMENT:	June 14,2016

APPEARANCES:

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