

Docket: 2014-3893(GST)I

BETWEEN:

630413NB INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on February 22, 2016, at Moncton, New Brunswick.

Before: The Honourable Justice Sylvain Ouimet

Appearances:

Counsel for the Appellant: Edward J. McGrath

Counsel for the Respondent: Jill Chisholm

JUDGMENT

The appeal from the assessment made under Part IX of the *Excise Tax Act* for the period from July 1, 2008 to December 31, 2009, from April 1, 2010 to June 30, 2010, and from January 1, 2011 to March 30, 2011 is dismissed.

Signed at Ottawa, Canada, this 23rd day of June 2016.

“Sylvain Ouimet”

Ouimet J.

Citation: 2016 TCC 156
Date: 20160623
Docket: 2014-3893(GST)I

BETWEEN:

630413NB INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Quimet J.

I. Introduction

[1] This is an appeal under the *Excise Tax Act* (“ETA”) from an assessment by the Minister of National Revenue (the “Minister”) that denied, pursuant to section 169 of the ETA, the claim of 630413NB Inc. (the “Appellant”) for input tax credits (“ITCs”) relating to legal fees paid between July 1, 2008 and March 30, 2011.

[2] The amounts of ITCs disallowed by the Minister are set out in the table below:

Period in Issue	ITCs			Assessment Date
	Claimed	Disallowed	Allowed	
Jul 1 – Sep 30, 2008	\$9,062.16	\$8,347.60	\$714.56	April 17, 2013
Oct 1 – Dec 31, 2008	\$3,137.53	\$2,707.07	\$430.46	April 10, 2013
Jan 1 – Mar 30, 2009	\$1,107.17	\$674.70	\$432.47	April 10, 2013
Apr 1 – Jun 30, 2009	\$2,266.03	\$1,867.06	\$398.97	April 10, 2013
Jul 1 – Sep 30, 2009	\$670.65	\$575.22	\$95.43	April 10, 2013
Oct 1 – Dec 31,	\$5,252.19	\$1,490.05	\$3,762.14	April 10, 2013

2009				
Apr 1 – June 30, 2010	\$13,237.12	\$13,039.00	\$198.12	April 10, 2013
Jan 1 – Mar 30, 2011	\$1,137.08	\$1,032.10	\$104.98	April 9, 2013
Total	\$35,869.93	\$29,732.80	\$6,137.13	

[3] All of the ITCs disallowed by the Minister are in respect of GST/HST paid by the Appellant on legal fees. The table below contains further details on the legal fees for which ITCs were disallowed by the Minister:

Period	Date	Paid to	GST/HST
Jul 1 – Sep 30, 2008	Jul 22, 2008	Murphy, Murphy and Mollins	\$7,800.00
	Sep 9, 2008	Murphy, Murphy and Mollins	\$547.60
Oct 1 – Dec 31, 2008	Nov 14, 2008	Anderson Sinclair	\$2,018.07
	Nov 27, 2008	Murphy, Murphy and Mollins	\$689.00
Jan 1 – Mar 30, 2009	Feb 17, 2009	Murphy, Murphy and Mollins	\$674.70
Apr 1 – Jun 30, 2009	May 4, 2009	Anderson Sinclair	\$1,300.00
	Jun 22, 2009	Murphy, Murphy and Mollins	\$567.06
Jul 1 – Sep 30, 2009	Sep 10, 2009	Anderson Sinclair	\$575.22
Oct 1 – Dec 31, 2009	Nov 5, 2009	Anderson Sinclair	\$1,300.00
	Dec 31, 2009	Murphy, Murphy and Mollins	\$190.05
Apr 1 – June 30, 2010	May 20, 2010	Anderson Sinclair	\$13,039.00
Jan 1 – Mar 30, 2011	Mar 24, 2011	McGrath Boyd	\$1,032.10

Total: \$29,732.80

II. Issue

[4] The issue raised in this appeal is the following:

Whether the Minister properly disallowed the ITCs claimed by the Appellant in relation to the legal fees paid during the periods at issue.

III. The Relevant Legislative Provisions

[5] The key applicable provisions of the ETA are:

DIVISION I — INTERPRETATION

123.(1) Definitions — In section 121, this Part and Schedules V to X,

“business” includes a profession, calling, trade, manufacture or undertaking of any kind whatever, whether the activity or undertaking is engaged in for profit, and any activity engaged in on a regular or continuous basis that involves the supply of property by way of lease, licence or similar arrangement, but does not include an office or employment;

“commercial activity” of a person means

(a) a business carried on by the person (other than a business carried on without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the business involves the making of exempt supplies by the person,

(b) an adventure or concern of the person in the nature of trade (other than an adventure or concern engaged in without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the adventure or concern involves the making of exempt supplies by the person, and

(c) the making of a supply (other than an exempt supply) by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply;

“recipient” of a supply of property or a service means

(a) where consideration for the supply is payable under an agreement for the supply, the person who is liable under the agreement to pay that consideration,

(b) where paragraph (a) does not apply and consideration is payable for the supply, the person who is liable to pay that consideration, and

- (c) where no consideration is payable for the supply,
 - (i) in the case of a supply of property by way of sale, the person to whom the property is delivered or made available,
 - (ii) in the case of a supply of property otherwise than by way of sale, the person to whom possession or use of the property is given or made available, and
 - (iii) in the case of a supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be read as a reference to the recipient of the supply;

“**supply**” means, subject to sections 133 and 134, the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition;

Subdivision b — Input tax credits

169. (1) General rule for credits — Subject to this Part, where a person acquires or imports property or a service or brings it into a participating province and, during a reporting period of the person during which the person is a registrant, tax in respect of the supply, importation or bringing in becomes payable by the person or is paid by the person without having become payable, the amount determined by the following formula is an input tax credit of the person in respect of the property or service for the period:

$$A \times B$$

where

A is the tax in respect of the supply, importation or bringing in, as the case may be, that becomes payable by the person during the reporting period or that is paid by the person during the period without having become payable; and

B is

(a) where the tax is deemed under subsection 202(4) to have been paid in respect of the property on the last day of a taxation year of the person, the extent (expressed as a percentage of the total use of the property in the course of commercial activities and businesses of the person during that taxation year) to which the person used the property in the course of commercial activities of the person during that taxation year,

(b) where the property or service is acquired, imported or brought into the province, as the case may be, by the person for use in improving capital property of the person, the extent (expressed as a percentage) to which the person was using the capital property in the course of commercial activities of the person immediately after the capital property or a portion thereof was last acquired or imported by the person, and

(c) in any other case, the extent (expressed as a percentage) to which the person acquired or imported the property or service or brought it into the participating province, as the case may be, for consumption, use or supply in the course of commercial activities of the person.

[My emphasis.]

IV. The Relevant Facts

[6] William Charles West (“Mr. West”) and Paul Gagnon (“Mr. Gagnon”) testified at trial for the Appellant. The Respondent did not produce any witnesses.

A. Context

[7] In 1995, Mr. West began operating a Peruvian lottery business; he also had lottery businesses in New Brunswick.¹ The New Brunswick businesses were incorporated as 047438NB Inc. and 055455NB Inc. (together, the “NB Corporations”). The Peruvian businesses are referred to as Loterias del Peru S.A. (“LDP”) and World Lottery Consultants Corporation (“WLCC”) (together, the “Peruvian Corporations”).

[8] Mr. West controlled the shareholdings of the NB Corporations. The NB Corporations controlled the shareholdings of LDP.² It is unclear from the evidence if the NB Corporations also controlled the shareholdings of WLCC, but WLCC was controlled by Mr. West.

[9] In 1999, the accountant of the NB Corporations left and Mr. Gagnon, an accountant and a long-time friend of Mr. West, was hired through an accounting company called PG2 to look after the NB Corporations' books.³ At that time, there were financial irregularities at the Peruvian Corporations. Mr. Gagnon's mandate eventually also included providing help with the Peruvian Corporations' accounting, which he did until 2001.⁴ Mr. West also hired a lawyer to help him with the Peruvian Corporations' financial irregularities. While doing so, the lawyer allegedly gained control of the Peruvian Corporations by acquiring all the shares of those corporations. Mr. West testified that he filed a legal action against the lawyer

¹ Transcript, p 78, examination-in-chief of Mr. West.

² Transcript, p 28, examination-in-chief of Mr. Gagnon.

³ Transcript, p 4, examination-in-chief of Mr. Gagnon; transcript, pp 78-79, examination-in-chief of Mr. West.

⁴ Transcript, pp 79-82 examination-in-chief of Mr. West.

for breach of trust and breach of fiduciary duty and sought the remedy of disgorgement of the shares. The file number of the action was M/C/0835/01.⁵

[10] According to Mr. West, in February 2007, a decision was rendered in M/C/0835/01 that ordered the return of the shares to Mr. West.⁶ Once control of the Peruvian Corporations was regained, an accounting was required as the business was in disarray.⁷

[11] In 2007, the Appellant was involved in the business of management consulting, accounting, and marketing, and its sole shareholder and director was Mr. Gagnon.⁸ On September 14, 2007, Mr. Gagnon was hired by WLCC through the Appellant, and an agency agreement was signed between the Appellant and WLCC. The Appellant was hired to locate various pieces of equipment, to collect on loans and accounts receivable, to restructure various assets and debts, and to reorganize the Peruvian Corporations.⁹ In exchange for its services, the Appellant would receive 10% of the money it recovered.¹⁰ Mr. Gagnon also indicated that the Appellant was involved in M/C/0835/01.¹¹ The nature and the extent of the involvement of the Appellant in the M/C/0835/01 case are unclear from the evidence.

[12] According to Mr. Gagnon, the Appellant declared as income the 10% it received under the agency agreement signed with WLCC. The Appellant did not file as evidence any of its financial records. Mr. Gagnon also said that the remaining 90% of the funds was returned to the Peruvian Corporations and that the Appellant was allowed to use some of them (the exact amounts were not mentioned by Mr. Gagnon during his testimony) to pay the legal fees relating to M/C/0835/01 and the other actions that would eventually be assigned to the Appellant in 2008.¹²

⁵ Transcript, pp 79-80 examination-in-chief of Mr. West.

⁶ Transcript, p 80, examination-in-chief of Mr. West. This decision, cited as *West v Wilbur*, 2007 NBQB 67, was not presented in evidence. A follow-up decision was rendered on March 13, 2007 and it is cited as *West v Wilbur*, 2007 NBQB 95.

⁷ Transcript, pp 80-81, examination-in-chief of Mr. West.

⁸ Transcript, p 23, examination-in-chief of Mr. Gagnon.

⁹ Transcript, p 8, examination-in-chief of Mr. Gagnon; transcript, p 81, examination-in-chief of Mr. West.

¹⁰ Transcript, pp 8-9, examination-in-chief of Mr. Gagnon.

¹¹ Transcript, pp 11-12, examination-in-chief of Mr. Gagnon.

¹² Transcript, pp 25-30, examination-in-chief of Mr. Gagnon.

[13] Mr. West testified that, in 2008, his corporations had exhausted their finances and that he decided to play his last card. He executed assignment agreements giving the Appellant the right to any proceeds from four different legal actions in which he or the NB Corporations were still involved.¹³ According to the agreements, the Appellant was to pay all of the legal fees and costs and would be entitled to all proceeds from the assigned actions. According to Mr. Gagnon, the Appellant gained full rights and control over the legal proceedings, including full control over strategy, decisions regarding the proceedings, and settlement.¹⁴

[14] The assignment agreement created an additional task for the Appellant, namely, helping to resolve the legal disputes.¹⁵ According to Mr. Gagnon, the amount of \$200,000 received as a settlement in one of the legal actions assigned to the Appellant was declared as income by the Appellant and used to pay the legal fees.¹⁶

B. First Assignment: M/C/0402/07

[15] The first assignment agreement was signed on May 7, 2008 and concerned court file No. M/C/0402/07.¹⁷ The Appellant paid \$1,000 to Mr. West, the assignor, for this assignment. The legal action was instituted on June 15, 2007 and it involved Mr. West. It was discontinued on March 10, 2010.¹⁸

C. Second Assignment: M/C/0835/01, M/C/0720/04, and M/C/0042/05

[16] A second assignment agreement was signed on May 28, 2008 and concerned the cases numbered M/C/0835/01, M/C/0720/04, and M/C/0042/05.¹⁹ The Appellant paid \$3,000 to Mr. West, the assignor, for the assignment.

[17] With respect to M/C/0835/01, the action was brought on September 5, 2001 and involved Mr. West. A judgment was rendered on February 21, 2007.²⁰ The remedy of disgorgement of the Peruvian Corporations shares was granted.

¹³ Transcript, pp 82-83, examination-in-chief of Mr. West.

¹⁴ Transcript, pp 13-14, 34, 37, examination-in-chief of Mr. Gagnon.

¹⁵ Transcript, pp 12-13, examination-in-chief of Mr. Gagnon.

¹⁶ Transcript, p 16, examination-in-chief of Mr. Gagnon.

¹⁷ Exhibit R-5.

¹⁸ Exhibit A-2, Tab 1.

¹⁹ Exhibit R-5.

²⁰ Exhibit A-2, Tab 1.

[18] With respect to M/C/0720/04, the action was brought on August 13, 2004 and involved the NB Corporations.²¹ A judgment was rendered on November 24, 2015, the neutral citation being 2015 NBQB 231. Costs in the amount of \$56,875 per defendant, plus disbursements, were awarded against the NB Corporations.²² Mr. West paid part of these costs with a security deposit he had provided to his lawyers.²³

[19] Two decisions on motions were also rendered in M/C/0720/04 and they were submitted in evidence. The first decision was rendered on January 16, 2014.²⁴ In that decision, the court quoted an affidavit sworn on December 12, 2013 by Mr. West, in which Mr. West states the following:

I instructed the plaintiffs' solicitors of record to set this case down for trial. Attached and marked as Exhibit "A" is letter of my solicitors, Murphy, Murphy & Mollins, April 4, 2013, in which my solicitor estimates 10 days for the trial of this action.²⁵

[20] The second decision was rendered on May 28, 2014.²⁶ In it, an affidavit sworn on March 14, 2014 by Mr. West is quoted. Mr. West states the following in that affidavit:

1. I am a director of both Plaintiffs and have at all times during the course of this litigation represented the Plaintiffs and have been solely responsible for giving instructions to counsel.²⁷

[21] With respect to M/C/0042/05, the action was instituted on January 12, 2005 and involved 047438NB Inc. It was discontinued on May 26, 2010.²⁸

V. Analysis

[22] Generally speaking, a business carrying on a commercial activity can claim ITCs. Three conditions must be met in order for a person to be entitled to claim ITCs pursuant to subsection 169(1). They are as follows:

²¹ Exhibit A-2, Tab 1.
²² Exhibit R-8, pp 35-36.
²³ Transcript, p 95, cross-examination of Mr. West.
²⁴ Exhibit R-7, pp 4-5.
²⁵ Exhibit R-7, p 5.
²⁶ Exhibit R-6. No costs were awarded.
²⁷ Exhibit R-6, p 1.
²⁸ Exhibit A-2, Tab 3.

- 1) the claimant must have acquired the supply;
- 2) the goods and services tax ("GST") must be payable or have been paid by the claimant on the supply; and
- 3) the claimant must have acquired the supply for consumption or use in the course of its commercial activities.²⁹

[23] The first two conditions of subsection 169 of the ETA were not at issue in this case; only the third condition was. The third condition refers to commercial activities. The term “commercial activity” is defined in subsection 123(1) of the ETA. Pursuant to the relevant portion of the definition, a person’s commercial activity includes a business carried on by the person with a reasonable expectation of profit.

[24] To be entitled to claim ITCs for the legal services paid for during the period at issue, the Appellant must prove to this Court, on the balance of probabilities, that it acquired the legal services in the course of one of its commercial activities. The Appellant must also prove, on the balance of probabilities, that it carried on the commercial activity with a reasonable expectation of profit.

[25] According to the evidence, the Appellant carried on several commercial activities. Prior to 2007, the Appellant was involved in the business of management consulting, accounting, and marketing.³⁰ It is not clear from the evidence if these commercial activities were still ongoing during the relevant period. In 2007, prior to the assignment agreements being signed, the Appellant was engaged in three distinct commercial activities. The first activity consisted in developing software for LDP.³¹ The second activity consisted in collecting receivables and loans, locating various pieces of equipment, restructuring various assets and debts, and reorganizing the Peruvian Corporations as an agent of WLCC.³² The third activity consisted in taking control of legal proceedings in which either Mr. West or the NB Corporations were involved, pursuant to the two assignment agreements dated May 7 and May 28, 2008.³³

[26] The Appellant argued that the legal services were acquired and used in the course of the third commercial activity. Therefore, I must firstly determine whether

²⁹ See *General Motors of Canada Ltd v The Queen*, 2008 TCC 117 at para 30.

³⁰ Transcript, p 23, examination-in-chief of Mr. Gagnon.

³¹ Exhibit R-1 and transcript, p 57, cross-examination of Mr. Gagnon.

³² Exhibit R-2, transcript, p 8, examination-in-chief of Mr. Gagnon; transcript, p 81, examination-in-chief of Mr. West.

³³ Transcript, pp 13-14, 34, 37, examination-in-chief of Mr. Gagnon.

the Appellant was engaged in a commercial activity that consisted in controlling the legal proceedings assigned to the Appellant.

[27] In *Kaye v The Queen*,³⁴ this Court expressed the following view on the issue of whether a business is being conducted:

[4] . . . It is the inherent commerciality of the enterprise, revealed in its organization, that makes it a business. Subjective intention to make money, while a factor, is not determinative, although its absence may militate against the assertion that an activity is a business.

[5] One cannot view the reasonableness of the expectation of profit in isolation. One must ask "Would a reasonable person, looking at a particular activity and applying ordinary standards of commercial common sense, say 'yes, this is a business'?" In answering this question the hypothetical reasonable person would look at such things as capitalization, knowledge of the participant and time spent. He or she would also consider whether the person claiming to be in business has gone about it in an orderly, businesslike way and in the way that a business person would normally be expected to do.

. . .

[7] Ultimately, it boils down to a common sense appreciation of all of the factors, in which each is assigned its appropriate weight in the overall context. One must of course not discount entrepreneurial vision and imagination, but they are hard to evaluate at the outset. Simply put, if you want to be treated as carrying on a business, you should act like a businessman.

[28] I agree with this view. Whether an activity may be considered a commercial activity is a question of fact. On the evidence before me and on the balance of probabilities, I believe that the Appellant did not carry on a business with respect to a commercial activity that consisted in controlling legal proceedings. I come to this conclusion for the following reasons:

- 1- There is no evidence that, prior to the assignment agreements being signed, the Appellant had any experience with legal proceedings or their management. I was not provided with any evidence of the Appellant's knowledge of the costs associated with the preparation of a trial or with actually going to trial. I was not presented with any evidence of the Appellant's knowledge of the potential financial outcome of any legal proceedings, including the legal actions assigned to the Appellant. Mr. Gagnon testified that the Appellant was only involved in the business of management consulting, accounting, and marketing prior to the assignments

³⁴ *Kaye v The Queen*, [1998] TCJ No 265 (QL), 98 DTC 1659.

being signed. Mr. Gagnon is not a lawyer; there is no evidence that he or the Appellant had ever been involved in a legal action prior to the assignments being signed; and there is no evidence of any business plan or of any financial projections having been done for this alleged commercial activity.

- 2- The files assigned to the Appellant involved Mr. West or the NB Corporations. The extent of the Appellant's knowledge of Mr. West's or the NB Corporations' businesses was not submitted in evidence.
- 3- According to Mr. West the M/C/0835/01 file had been resolved by February 21, 2007, approximately 15 months before the file was assigned to the Appellant. While related proceedings remained outstanding, they were separate and distinct actions. There was no evidence submitted to show that any commercial activity was possible in relation to M/C/0835/01.³⁵
- 4- With respect to M/C/0720/04, Mr. West had control over this legal proceeding, as stated in his affidavits dated December 12, 2013 and March 14, 2014. This is in contradiction with the testimony of Mr. Gagnon and also with what is stated in the Appellant's Pre-hearing Brief. The Appellant states in its brief that "Neither Mr. West, nor his numbered companies retained any financial interest or decision making abilities with respect to the Assigned Actions."³⁶ Besides Mr. West and Mr. Gagnon, no other witness testified as to whether Mr. West or the Appellant was controlling the proceedings. Any lawyer who had been instructed respecting the legal actions assigned to the Appellant could have testified on the matter, but none did.
- 5- M/C/0042/05 was discontinued on May 26, 2010. According to Mr. West, that case resulted in a settlement of a couple of hundred thousand dollars. Mr. West was present in the lawyer's office when discussions concerning the actions were taking place, which further indicates his involvement in the legal proceedings assigned to the Appellant.³⁷

Apart from the testimony of Mr. Gagnon and Mr. West, the Appellant did not submit any evidence that a settlement (amount) was received or any evidence that a settlement was reached. I believe that a person in the

³⁵ Transcript, pp 79-80 examination-in-chief of Mr. West. Exhibit A-2, Tab 3.

³⁶ Appellant's Pre-hearing Brief, p 3, para 12.

³⁷ Transcript, pp 93-94, cross-examination of Mr. West.

business of controlling legal proceedings would keep detailed records concerning such things.

- 6- Mr. West paid the costs awarded by a court decision in the M/C/0720/04 case. Neither Mr. Gagnon nor Mr. West were able to provide an explanation as to why the Appellant was not the one who paid the entire amount of those costs even though it was required to do so pursuant to the assignment agreement. This is also in contradiction with facts set out in the Appellant's Pre-hearing Brief, in which the Appellant states: "Neither Mr. West, nor his numbered companies retained any financial interest . . . with respect to the Assigned Actions."³⁸
- 7- With respect to the M/C/0402/07 and M/C/0042/05 actions, Mr. Gagnon testified that these were settled in the course of the Appellant's commercial activities. Yet the Appellant was unable to provide any documentation to support any settlement. Furthermore, Mr. Gagnon stated that the settlement amount was reported in the Appellant's income, but no financial statements or tax returns were presented to this Court. I believe that a person in the business of controlling legal proceedings would have also kept detailed records concerning such things.

[29] Mr. Gagnon testified that the Appellant's business consisted in controlling legal proceedings and involved paying the legal fees and costs associated with those proceedings in the hope of being rewarded by obtaining favourable court decisions or settlements. I believe it would not have made any commercial sense for the Appellant to get involved in a business that, according to the evidence, it knew nothing about. The evidence is that prior to 2007 the Appellant was involved in the business of management consulting, accounting, and marketing: nothing remotely close to controlling/managing legal actions. As previously mentioned, no evidence was adduced regarding the Appellant's knowledge of Mr. West or the NB Corporations or of the subject matter of the legal actions assigned to the Appellant.

[30] I believe that it would make no commercial sense to go into a business/commercial activity without having made proper financial projections and drawn up a business plan. I believe that a person in the business of controlling legal proceedings would keep detailed records concerning settlements and also keep proper financial and accounting documentation. With the exception of an invoice³⁹ from Anderson Sinclair dated May 20, 2010 and the assignment

³⁸ Appellant's Pre-hearing Brief, p 3, para 12.

³⁹ Exhibit A-1.

agreements, no documents showing that a commercial activity was potentially being conducted were submitted in evidence.

[31] I believe that it would not have made any commercial sense for the Appellant to sign an assignment agreement giving it control of a legal action that had already been resolved. Nor would it have made any commercial sense for the Appellant to give back the control of the legal proceedings to Mr. West while paying the legal fees and costs associated with those proceedings, unless there was a commercial/business reason for doing so. At trial, I was not provided with any explanation for such conduct by the Appellant and that conduct was in contradiction with the terms of the assignment agreements.

[32] Finally, it would have made no commercial sense for the Appellant to let Mr. West pay the costs awarded by a court decision in relation to one of the assigned proceedings unless there was a commercial/business reason for so doing, and none was suggested to me at trial. Clearly, this was also inconsistent with the terms of the assignment agreements.

[33] In light of the above, I conclude, on the balance of probabilities, that the Appellant did not carry on a business that consisted in controlling legal proceedings, including making decisions regarding strategy and settlement. On the basis of the facts and reasons set out in paragraphs 29 to 33 above, I believe that the Appellant did not act in the way that a business person would normally be expected to act in conducting such a business. On the basis of those facts and reasons, I also believe that a reasonable person, applying ordinary standards of commercial common sense, would not conclude that the Appellant was carrying on a business that consisted in controlling legal proceedings.

[34] Having concluded that the Appellant was not carrying on a commercial activity, it is not necessary for me to determine whether there was a commercial activity that was carried on with a reasonable expectation of profit.

[35] For these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 23rd day of June 2016.

“Sylvain Ouimet”

CITATION: 2016 TCC 156
COURT FILE NO.: 2014-3893(GST)I
STYLE OF CAUSE: 630413NB INC v HER MAJESTY THE QUEEN
PLACE OF HEARING: Moncton, New Brunswick
DATE OF HEARING: February 22, 2016
REASONS FOR JUDGMENT BY: The Honourable Justice Sylvain Ouimet
DATE OF JUDGMENT: June 23, 2016

APPEARANCES:

Counsel for the Appellant: Edward J. McGrath
Counsel for the Respondent: Jill Chisholm

COUNSEL OF RECORD:

For the Appellant:

Name: Edward J. McGrath

Firm: McGrath Boyd
Moncton, New Brunswick

For the Respondent:

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada