

[OFFICIAL ENGLISH TRANSLATION]

2000-517(IT)I

BETWEEN:

ÉMILE NASRALLAH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on common evidence with the appeals of *Charbel Gebrayel*  
(2000-524(IT)I) and *Marwan Gebrayel* (2000-617(IT)I)  
on May 13, 15 and 16, 2002, at Montreal, Quebec, by

the Honourable Judge Louise Lamarre Proulx

Appearances

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Nathalie Lessard  
Simon-Nicolas Crépin

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JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 1992, 1993 and 1994 taxation years are dismissed in accordance with the attached Reasons for Judgment.

Page: 2

Signed at Ottawa, Canada, this 4th day of July 2002.

"Louise Lamarre Proulx"

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J.T.C.C.

[OFFICIAL ENGLISH TRANSLATION]

2000-524(IT)I

BETWEEN:

CHARBEL GEBRAYEL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on common evidence with the appeals of *Émile Nasrallah*  
(2000-517(IT)I) and *Marwan Gebrayel* (2000-617(IT)I)  
on May 13, 15 and 16, 2002, at Montreal, Quebec, by

the Honourable Judge Louise Lamarre Proulx

Appearances

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Nathalie Lessard  
Simon-Nicolas Crépin

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JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 1990, 1991, 1992 and 1993 taxation years are allowed with respect to the penalties, which shall be cancelled; in all other respects, the assessments are confirmed in accordance with the attached Reasons for Judgment.

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Signed at Ottawa, Canada, this 4th day of July 2002.

"Louise Lamarre Proulx"

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J.T.C.C.

[OFFICIAL ENGLISH TRANSLATION]

2000-617(IT)I

BETWEEN:

MARWAN GEBRAYEL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on common evidence with the appeals of *Charbel Gebrayel*  
(2000-524(IT)I) and *Émile Nasrallah* (2000-517(IT)I)  
on May 13, 15 and 16, 2002, at Montreal, Quebec, by

the Honourable Judge Louise Lamarre Proulx

Appearances

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Nathalie Lessard  
Simon-Nicolas Crépin

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JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 1991, 1992 and 1993 taxation years are allowed with respect to the penalties, which shall be cancelled; in all other respects, the assessments are confirmed in accordance with the attached Reasons for Judgment.

Page: 2

Signed at Ottawa, Canada, this 4th day of July 2002.

"Louise Lamarre Proulx"

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J.T.C.C.

[OFFICIAL ENGLISH TRANSLATION]

Date: 20020704  
Docket: 2000-517(IT)I

BETWEEN:

ÉMILE NASRALLAH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

AND

Docket: 2000-524(IT)I

BETWEEN:

CHARBEL GEBRAYEL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

AND

Docket: 2000-617(IT)I

BETWEEN:

MARWAN GEBRAYEL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

## **REASONS FOR JUDGMENT**

### **Lamarre Proulx, J.T.C.C.**

[1] These are appeals that were heard consecutively under the informal procedure. The respondent's evidence was common.

[2] The three appeals concern gifts that were apparently made to the Ordre Antonien Libanais des Maronites ("OALM"). In each case, the point for determination is whether the charitable gifts were actually in the amounts stated in the receipts; whether the Minister of National Revenue (the "Minister") could assess outside the normal assessment period; and whether the penalties were correctly assessed under subsection 163(2) of the *Income Tax Act* (the "Act").

[3] Emile Nasrallah was the first appellant heard. In his case, the years in issue are from 1992 to 1994.

[4] The appellant was born in Lebanon in 1960 and arrived in Canada on May 18, 1990. He married Katia Homsy in Lebanon in January 1992. She came to Canada in November of that year. In May 1995, they bought a house and, in 1999, had a daughter, Audrey.

[5] Mr. Nasrallah is an electrical engineer, a graduate of the Université St-Joseph in Beirut. He has been a member of the Ordre des ingénieurs du Québec since 1994.

[6] In the years in issue, he was employed by Alstom Canada Inc., a high voltage electrical equipment manufacturing business. He had been employed there in the customer service department since 1990.

[7] The gifts were in the amounts of \$2,000 for 1992 and \$7,500 for 1993 and 1994. The donation was made by cheque in 1993 and in cash in the other years. The gifts were dated as of the end of the year and payment was made in one single instalment. The appellant filed the donation receipts as Exhibit A-1. They all bear the date of December 31 and are signed by the same person. The receipts were not signed in front of the appellant but were apparently completed before him. Copies of those receipts also appear at tab 5 of Exhibit I-2.

[8] The appellant filed his bank account statements for the years in issue as Exhibit A-2. These indicate that eight automatic teller withdrawals totalling \$2,200 were made in December 1992. For 1993, the statement for the month of December

was not filed in its entirety. It stops at December 7. It should be noted that the teller withdrawals already amounted to \$1,300. In 1993, the gift was apparently made by cheque but, according to Exhibit A-2, it was not cashed until February 21, 1994. The explanation of the source of the cash for the donation for 1994 is that, on June 27, 1992, he withdrew \$14,017 for a one-month trip to Lebanon with his spouse from September 7 to October 6 of that year. He claims that enough cash remained from that amount to make a gift of \$7,500 at the end of the year.

[9] The appellant said that he regularly attended the Maronite Catholic church (a church that recognizes the authority of the Pope) located on Ducharme Avenue in Outremont. At one mass, the priest, Louis Hage, spoke about the reconstruction needs of Lebanon and about the assistance to refugees arriving in Canada. The gifts were made to the OALM mostly for those purposes and to defray the church's expenses. The appellant went to see the priest at the end of December of each of the years in issue. In 1992 and 1994, the priest was Father Claude Nadra and, in 1993, it was Father Louis Hage. He handed over his cash or his cheque directly to the priest in question. He explained that he had increased his donation from \$2,000 to \$7,500 because he was better off in those years.

[10] Tabs 1 to 3 of Exhibit I-2 contain the appellant's tax returns for the years from 1992 to 1994. His employment income was \$52,118.84, \$58,487.10 and \$53,052.74. Apart from the gifts made to the OALM, there were no other donations for those years. There were no substantial gifts in subsequent years. The only donations were \$20 donations to the United Way for the years from 1997 to 1999. As a result, in 1999, one \$20 donation appears in the tax return for that year (Exhibit I-2, tab 4).

[11] The appellant's spouse reported no income. The appellant was the family's only income earner. In 1992, the appellant contributed \$5,987.21 to an RRSP and claimed consulting business losses of \$10,000. In 1993, the amount contributed to the RRSP was \$7,245.55 and the amount of the losses was \$4,786. In 1994, the RRSP contribution was \$8,016.51 and the loss claimed was \$1,172.

### Marwan Gebrayel

[12] The years in issue are 1991 to 1993. The appellant is a financial security consultant. During the years in issue, he was the group manager for Les Chevrans Lavallois Inc.

[13] Marwan Gebrayel was born on November 10, 1967, and arrived in Canada from Lebanon on July 12, 1987. In Canada, he lived with his parents, two brothers

and a sister. He married Maya Slayby in Lebanon in 1990. The couple have two children, Mario and Kevin, who were born on September 15, 1991, and August 2, 1996.

[14] At the request of counsel for the respondent, he provided the information that his income was \$15,000 for 1990. He received employment income of \$15,244 and unemployment insurance benefits of \$3,676 in 1991; employment income of \$18,703 and unemployment insurance benefits of \$1,271 in 1992; and employment income of \$11,464.84 and unemployment insurance benefits of \$4,712 in 1993. The tax return for 1993 appears at tab 1 of Exhibit I-4.

[15] The appellant filed the receipts for the gifts for 1992 and 1993 as Exhibit A-5. The respondent's book of documents was filed as Exhibit I-4. Tab 7 of that exhibit also contains the receipts for the years 1991 to 1993.

[16] He made gifts to the OALM in the amount of \$1,000 for 1991 and \$2,000 for 1992 and 1993 as a result of the priests' calls for donations.

[17] The gifts were purportedly made in cash at the end of 1991 and 1993 and in November for the 1992 year. The receipts were signed by the priest who received the money, that is Father Joseph Kamar. His spouse Maya Slayby is also purported to have made gifts of \$2,000 and \$1,500 in 1991 and 1992 (Exhibit I-5). For some reason, Ms. Slayby was not reassessed.

[18] The appellant explained that the cash donations had been made from cash gifts received at his wedding and kept in a safe. In 1993, his spouse purportedly won \$10,000. The family relocated in 1994.

[19] No substantial donations were made in subsequent years. There was a gift of \$39.88 for 1997, the receipt for which was issued by the Association des diplômés des HEC. The donation was made automatically with the registration fees.

### Charbel Gebrayel

[20] The years in issue are from 1990 to 1993. Mr. Gebrayel currently operates a delivery business. In the years in issue, he was an assembler at Prime Industries Ltd., an aluminium assembly company.

[21] The appellant is the brother of Marwan Gebrayel and was born on January 3, 1966. When he arrived in Canada on June 7, 1987, he was engaged to be married.

He married Micheline Maalouly in Lebanon on August 13, 1989, and they returned to Canada together. They have three boys, Anthony, Patrick and Alex, born on November 4, 1991, April 1, 1994, and June 23, 1995.

[22] In 1990, he left his parents' home since his brother Marwan was returning to live there with his wife.

[23] The appellant encouraged his brother Marwan to make donations. He had made one a year before him. The gifts were in the respective amounts of \$2,000, \$3,000, \$3,000 and \$2,500. According to the appellant, they were made on Sundays throughout the year. He put his donations in an envelope, and the priest purportedly kept a record of the gifts made by each person during the year (no record was filed at the hearing). At the end of the year, Father Joseph Kamar apparently told him how much he needed to complete the donation, and he gave that amount: \$400 in 1990 and \$600 in 1991. In 1992, he paid one single amount. In 1993, the priest was apparently Louis Hage.

[24] The receipts were filed as Exhibit A-6. For 1992, the receipt is dated September 4 of that year. The others are dated December 31.

[25] In 1990, the appellant had employment income of \$17,764.67 and unemployment insurance benefits of \$2,978. He had employment income of \$18,933 and unemployment insurance benefits of \$4,004 in 1991; employment income of \$22,421 and unemployment insurance benefits of \$2,453 in 1992; and employment income of \$16,224 and unemployment insurance benefits of \$7,797 in 1993. In 1993, his spouse had net income of \$8,064.

[26] In subsequent years, as may be seen from Exhibit I-10, there were no charitable gifts, except a donation of \$45 in 1999 and another of \$100 in 2000.

[27] The appellant said that he did a lot of volunteer work for the church and that that work could easily be valued at \$5,000 a year.

#### Respondent's Witnesses

[28] Rim Ghorayed was called as a witness by subpoena. She is a nurse and arrived in Canada from Lebanon in 1991. Her accountant, Bassam Farès, is also the accountant of Mr. Nasrallah, who suggested that she make a donation to OALM. He explained to her that the tax credit would be greater than the amount of the gifts. At the start of 1997, she received a letter from Revenue Canada

informing her that the gift she had made in 1993 might not be legal. She responded by a letter dated February 20, 1997, which was filed at tab 11 of Exhibit I-11. That letter explains that the accountant had suggested she make a donation, of which she would pay only a percentage, and that she would obtain a tax credit for the full amount of the gift.

[29] Jean-Yves Cloutier was also called by subpoena. He is retired. At the time of the events, he was a social worker. His spouse, Marie Natchayan, who is of Armenian extraction and lived in Lebanon, put him in touch with the OALM. He obtained tax receipts for gifts in the amount of \$1,000 for 1991 to 1993 by donating \$100. The amounts were given in February, but the receipts bore the date of December 31 of the previous year. He stopped requesting such receipts because this made him uncomfortable.

[30] Gaétan Ouellet is an investigator at Revenue Canada. He started as an auditor 33 years ago, but he has been an investigator for 25 years. He began acting in the case after the spouse of a director of the OALM made a denunciation. They separated in 1994. That spouse revealed the OALM's schemes to the Minister. There was a meeting in March 1994 between that person, her accountant and Colette Langelier, an auditor of the Minister. On August 23, 1995, that person signed an affidavit (Exhibit I-15) explaining the system. I quote paragraph 3 below:

[TRANSLATION]

(3) The scheme used by the Order was, to my knowledge, as follows:

Gifts were made in cash and a portion was returned in cash to the donor; for example, a gift of \$20,000 was made for a receipt for \$60,000.

A percentage was established varying from 25 to 50 percent, which remained with the charity. A cheque for the total amount of the receipt was issued and the cash was subsequently remitted. The persons could thus prove that they had withdrawn their funds.

[31] Mr. Ouellet stated that it was Colette Langelier who had carried out the audit of the OALM. At the end of her audit, she suggested that an investigation be conducted. It was Mr. Ouellet who conducted the investigation. The search warrant was executed on November 8, 1995. Mr. Ouellet filed as Exhibit I-11 a book of documents entitled "Investigation Documents" containing 14 tabs.

[32] According to Mr. Ouellet, the investigation revealed that the procedure had been to issue receipts for an amount in exchange for 20 percent of that amount in cash or cheque, or for a cheque for the full amount with a cash rebate and, in some instances, for no sum of money at all. Criminal charges were laid against some 18 donors in respect of an amount of \$100,000 or more over the period from 1989 to 1995. The memorandums of the guilty pleas appear at tab 2 of Exhibit I-11. The other so-called donors, approximately 1,200 of them, were reassessed, and there were many settlements between Revenue Canada and the donors. There were also many admissions, which appear at tab 10 of Exhibit I-11.

[33] In particular, tab 3 of Exhibit I-11 contains a computerized statement entitled "Biblio-Reç". That nine-page document was found in the offices of the OALM. The headings of the various columns are No., Given Name, Surname, Telephone, Amount, Payable, Paid, Balance, Ours, Via. The investigator interpreted "No." as being the receipt number; "Amount" as being the amount of the receipt; "Payable" as being the amount returned to the donor; and "Ours" being the amount actually given. Thus, for the receipt bearing number 32 (the name and telephone number have been omitted), the amount is \$4,000, the amount "Payable" is \$3,200 and the amount "Ours" is \$800.

[34] Mr. Nasrallah's name appears in the document. The receipt number is 90, the amount is \$7,500 and the amount under "Ours" is \$1,500. Mr. Nasrallah's receipt filed as Exhibit A-1 and at tab 5 of Exhibit I-2 bears number 0090, is dated December 31, 1993, and is in the amount of \$7,500.

[35] Jean-Yves Cloutier's name also appears. The "Amount" is \$500 and the amount under "Ours" is \$75. His wife's name also appears in the document. The "Amount" is \$1,000 and the amount under "Ours" is \$150.

[36] The Registered Charity Information Returns (T3010) for the years from 1989 to 1994 were filed as Exhibit I-16. The total list of donors appears at the end of each return. The receipt numbers are consecutive. Each of the appellants' names appears on the lists.

[37] The collection statements for a few Sundays in 1994 were filed at tab 12 of Exhibit I-11. They show collections the total amounts of which are \$566, \$354, \$443 and \$299.

[38] Ms. Langelier filed a working document prepared at the time of the audit, which shows the significant cash withdrawals made at the time of each deposit by the Order during the years under audit (Exhibit I-17). What happened to those cash withdrawals could not be traced in any of the records made available to the auditor. Neither she nor the investigator Mr. Ouellet were able to lay hands on the record that was kept with respect to those extremely large withdrawals. In 1989, cheque deposits totalled \$845,154.23 and withdrawals totalled \$680,369.00; in 1990, they totalled \$1,111,507.99 and \$883,350.00; in 1991, they totalled \$1,337,769.96 and \$1,152,740.89; in 1992, they totalled \$1,293,502.63 and \$1,090,528.00; in 1993, they totalled \$1,169,108.60 and \$857,340.50 and in 1994, they totalled \$1,068,966.01 and \$695,250.00

[39] The deposit slips for the years from 1989 to 1994 were filed in two volumes as Exhibit I-18. Mr. Nasrallah's receipt for 1992 bears number 2675. The gift was made in cash. However, receipts 2660 to 2668 for amounts that were paid by cheque were filed on February 25 and March 4, 1993 (Exhibit I-18, tab 8, and Exhibit I-16, tab 4). The cheque for 1993 was filed in February 1994 (Exhibit I-18, vol. 2, tab 10). The receipt for \$7,500 dated December 31, 1994, was not filed since the amounts had been paid in cash. However, its number was in the sequence of those of other receipts for which the cheques were filed on March 16, 1995.

[40] Exhibit I-13 is a list of persons whose names do not appear in "Biblio-Reç" and others whose names appear in it and who admitted they had obtained false receipts.

[41] Exhibit I-14 is a list longer than the list of "Biblio-Reç". It was found in the office of an accountant and contains receipts 32 to 495. However, according to the auditor, part of the list had been removed. The elements described stop at "Amount". That list reproduces receipts 32 to 354, which was part of the "Biblio-Reç" list, with all the compromising information that it contained. That shortened list contains the name of Charbel Gebrayel at receipt number 491 and the name of Maya Slayby at receipt number 490.

[42] For each of the taxpayers, Ms. Langelier calculated the interest that each could earn from a gift of 20 percent of the amount stated on the receipt. Exhibit I-21 shows that, for an amount of \$7,500 for which an individual would have paid 20 percent, or \$1,500, total federal and provincial charitable credits amounted to \$3,645.

Analysis

[43] This case involves evidence by presumptions of fact. A presumption of fact is defined as follows in *La preuve civile*, Jean-Claude Royer, Les Éditions Yvon Blais Inc., 1987, at page 296:

[TRANSLATION]

798 – *Definition* - A presumption of fact is the conclusion the court draws from one or more known facts to an unknown fact.

[44] Counsel for the respondent referred to a decision by Marceau J. of the Federal Court, Trial Division, in *Canadian Titanium Pigments Ltd. v. Fratelli D'Amico Armatori*, [1979] F.C.J. No. 206 (Q.L.), more particularly at paragraphs 12 to 15:

12 As I mentioned, plaintiff is not able to present direct evidence for either of its two propositions: I explained in my introductory remarks on the case that it only became aware after the fact that its pipes had been broken, and was only able to associate this with the passage of the Mare Placido some time afterwards. Plaintiff sought to prove its assertions solely by indirect evidence, that is by presumptions on two levels, so to speak, for as we shall see certain of the facts which, in its submission, support its conclusions can themselves only be proven by presumptions.

13 There is certainly no need to emphasize that evidence demonstrating the existence of a fact through presumptions is admissible: in practice, it is even a means of proof which, in an area such as civil liability, can often be more effective than any other. There is also no need to dwell at any length on the principles in accordance with which evidence of this kind must be analyzed. This is all well established. The rules applicable in this area, which are derived from logic as well as from legal theory, are all essentially the same in civil law as in the common law, and that is why, be it noted in passing, I do not place any importance on the question of whether the case should be dealt with exclusively in accordance with Quebec law--as counsel for both parties assumed, undoubtedly on the assumption that the cause of action arose in Quebec and that the trial took place there--or with the law which this Court, in its admiralty jurisdiction, received from the Courts which preceded it--as might be argued.

14 It is well recognized that in order to win its case plaintiff must put forward presumptions that command acceptance in number as well as in weight, in the exactness of their application and their concurring effect -- here I adopt concepts used by commentators and the courts in Quebec and derived from Art 1353 of the French Code. However, we should not forget that this acceptance does not need to be based on incontrovertible evidence: such a level of certainty goes beyond the requirements of the civil law; it will be based merely on a relative conviction, derived from a rational deduction from the facts and circumstances.

15 I must therefore examine these facts and circumstances, disclosed by the hearing, and consider whether sufficiently convincing evidence can be rationally deduced from them of the truth of the two propositions on which the action is based.

[45] I have underscored the passages I find most enlightening.

[46] Counsel for the respondent also referred to the decision by the Supreme Court of Canada in *Lévesque v. Comeau et al.*, [1970] S.C.R. 1010, at pages 1012 and 1013:

. . . She alone could bring before the Court the evidence of those facts and she failed to do it. In my opinion, the rule to be applied in such circumstances is that a Court must presume that such evidence would adversely affect her case. . . .

[47] They argued that the appellants did not bring evidence that could lead the Court to believe that their cases were exceptions to the organized scheme, which the respondent had proven.

[48] With respect to the penalties, they referred to a decision by Reed J. in *Patricio v. Canada* (F.C.T.D), [1984] F.C.J. No. 540 (Q.L.):

. . . In my view, the extent to which he did not know what was required by the tax system was the result of purposely choosing to wear blinkers rather than mere carelessness or simple negligence. Wilful blindness by someone capable of acting in a responsible manner is in my view, in the circumstances of this case, gross negligence. . . .

[49] The appellants argued that nothing in the evidence proved that they had remitted less to the OALM than what the tax receipts state. They wanted to help

Lebanon. They asked that I rule in their cases as ruled Judge Tardif of this Court in *Abboud v. Canada*, [2001] F.C.J. No. 161, allowing the appellants' appeals. They referred particularly to paragraph 14 of those reasons:

There is nothing that can justify rejecting either appellant's testimony. They could afford to make the donations. The cause underlying the donations was noble, rational and real. If it had been a scheme to evade taxes or reduce their tax burden, I think that the amounts of the donations would have been higher than those at issue here and that the appellants would no doubt have arranged to have everything spread out over more than three years; moreover, both of them might have profited more significantly from the scheme.

### Conclusion

[50] I refer to article 2849 of the *Civil Code of Quebec*, which appears in *Chapter III, Presumptions, of Book Seven, Evidence*:

Presumptions which are not established by law are left to the discretion of the court which shall take only serious, precise and concordant presumptions into consideration.

[51] There are serious, precise and concordant presumptions in this case. The conviction I derive from a rational deduction from the facts and circumstances, in the terms of Marceau J.'s judgment, *supra*, is that the appellants were not exceptions to the system of issuing charitable receipts for a value distinctly higher than the amount actually given.

[52] Mr. Nasrallah's name appears in the "Biblio-Reç", the name of Charbel Gebrayel appears in the abbreviated list, and the receipts were not issued in accordance with the date on which the cash or cheque amounts were received. The persons whose names appear in the "Biblio-Reç" and those who were identified as having claimed tax credits for gifts to the OALM were reassessed. A certain number of those persons were even subject to criminal charges, most of whom pleaded guilty. The vast majority of persons assessed did not dispute the reassessments. A number of them made written admissions. All those persons had in their possession receipts similar to those produced by the appellants.

[53] The mere production of receipts in those circumstances could therefore not be sufficient to convince me that the entire amount had actually been donated and that the appellants were exceptions to an organized system for issuing fraudulent

charitable receipts. The decision in *Abboud, supra*, on which the appellants relied, was rendered in its own circumstances and cannot be followed in this case. The appellants' alleged generosity exceeds incomprehensibly the usual standards of generosity in circumstances of average incomes and the financial needs of young households. The generosity of subsequent years indicates the plausible and possible generosity of the appellants. The amounts of the Sunday collections are also telling.

[54] Charbel Gebrayel stated that he had done a great deal of volunteer work for the church. His brother purportedly took part in that volunteer work. That work was not confirmed, but I can accept this statement as truthful because it appeared to be so. However, as I mentioned during the hearing, volunteer work does not grant entitlement to a charitable receipt. I have previously considered this question in *Slobodrian v. Canada*, [1998] T.C.J. No. 380 (Q.L.), in which I held that volunteer work was not property capable of ownership or, in other words, was not property or a property right. It could not be the object of a gift.

[55] With respect to the penalties, I find that they were assessed correctly with respect to Mr. Nasrallah. As to Messrs. Gebrayel, it may be believed that they considered that the total amounts of those receipts had actually been earned by their volunteer work. I give them the benefit of the doubt. The penalties shall therefore be cancelled.

Signed at Ottawa, Canada, this 4th day of July 2002.

"Louise Lamarre Proulx"

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J.T.C.C.