

[OFFICIAL ENGLISH TRANSLATION]

2000-2101(IT)I

BETWEEN:

RENAUD BÉLAND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Serge Béland (2000-2097(IT)I), **Joé Béland** (2000-2098(IT)I),
Joël Béland (2000-2099(IT)I), **Chantale Béland** (2000-2102(IT)I)
and **René Béland** (2000-2103(IT)I)
on August 31, 2001, at Québec, Quebec, by

the Honourable Judge P. R. Dussault

Appearances

Counsel for the Appellant: Claude D. Marleau

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeal from the assessment made under section 160 of the *Income Tax Act*, the notice of which bears number 13339 and is dated April 23, 1999, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 25th day of September 2001.

"P. R. Dussault"

J.T.C.C.

Translation certified true
on this 17th day of February 2003.

Erich Klein, Revisor

[OFFICIAL ENGLISH TRANSLATION]

2000-2097(IT)I

BETWEEN:

SERGE BÉLAND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Renaud Béland (2000-2101(IT)I), **Joé Béland** (2000-2098(IT)I),
Joël Béland (2000-2099(IT)I), **Chantale Béland** (2000-2102(IT)I)
and **René Béland** (2000-2103(IT)I)
on August 31, 2001, at Québec, Quebec, by

the Honourable Judge P. R. Dussault

Appearances

Counsel for the Appellant:

Claude D. Marleau

Counsel for the Respondent:

Anne Poirier

JUDGMENT

The appeal from the assessment made under section 160 of the *Income Tax Act*, the notice of which bears number 13338 and is dated April 23, 1999, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 25th day of September 2001.

"P. R. Dussault"

J.T.C.C.

Translation certified true
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Erich Klein, Revisor

[OFFICIAL ENGLISH TRANSLATION]

2000-2098(IT)I

BETWEEN:

JOÉ BÉLAND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Renaud Béland (2000-2101(IT)I), **Serge Béland** (2000-2097(IT)I),
Joël Béland (2000-2099(IT)I), **Chantale Béland** (2000-2102(IT)I)
and **René Béland** (2000-2103(IT)I)
on August 31, 2001, at Québec, Quebec, by

the Honourable Judge P. R. Dussault

Appearances

Counsel for the Appellant:

Claude D. Marleau

Counsel for the Respondent:

Anne Poirier

JUDGMENT

The appeal from the assessment made under section 160 of the *Income Tax Act*, the notice of which bears number 13336 and is dated April 23, 1999, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 25th day of September 2001.

"P. R. Dussault"

J.T.C.C.

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Erich Klein, Revisor

[OFFICIAL ENGLISH TRANSLATION]

2000-2099(IT)I

BETWEEN:

JOËL BÉLAND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Renaud Béland (2000-2101(IT)I), **Joé Béland** (2000-2098(IT)I),
Serge Béland (2000-2097(IT)I), **Chantale Béland** (2000-2102(IT)I)
and **René Béland** (2000-2103(IT)I)
on August 31, 2001, at Québec, Quebec, by

the Honourable Judge P. R. Dussault

Appearances

Counsel for the Appellant:

Claude D. Marleau

Counsel for the Respondent:

Anne Poirier

JUDGMENT

The appeal from the assessment made under section 160 of the *Income Tax Act*, the notice of which bears number 13335 and is dated April 23, 1999, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 25th day of September 2001.

"P. R. Dussault"

J.T.C.C.

Translation certified true
on this 17th day of February 2003.

Erich Klein, Revisor

[OFFICIAL ENGLISH TRANSLATION]

2000-2102(IT)I

BETWEEN:

CHANTALE BÉLAND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Serge Béland (2000-2097(IT)I), **Joé Béland** (2000-2098(IT)I),
Joël Béland (2000-2099(IT)I), **Renaud Béland** (2000-2101(IT)I)
and **René Béland** (2000-2103(IT)I)
on August 31, 2001, at Québec, Quebec, by

the Honourable Judge P. R. Dussault

Appearances

Counsel for the Appellant:

Claude D. Marleau

Counsel for the Respondent:

Anne Poirier

JUDGMENT

The appeal from the assessment made under section 160 of the *Income Tax Act*, the notice of which bears number 13334 and is dated April 23, 1999, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 25th day of September 2001.

"P. R. Dussault"

J.T.C.C.

Translation certified true
on this 17th day of February 2003.

Erich Klein, Revisor

[OFFICIAL ENGLISH TRANSLATION]

2000-2103(IT)I

BETWEEN:

RENÉ BÉLAND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Serge Béland (2000-2097(IT)I), **Joé Béland** (2000-2098(IT)I),
Joël Béland (2000-2099(IT)I), **Chantale Béland** (2000-2102(IT)I)
and **Renaud Béland** (2000-2101(IT)I)
on August 31, 2001, at Québec, Quebec, by

the Honourable Judge P. R. Dussault

Appearances

Counsel for the Appellant:

Claude D. Marleau

Counsel for the Respondent:

Anne Poirier

JUDGMENT

The appeal from the assessment made under section 160 of the *Income Tax Act*, the notice of which bears number 13337 and is dated April 23, 1999, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 25th day of September 2001.

"P. R. Dussault"

J.T.C.C.

Translation certified true
on this 17th day of February 2003.

Erich Klein, Revisor

[OFFICIAL ENGLISH TRANSLATION]

Date: 20010925

Docket: 2000-2101(IT)I, 2000-2097(IT)I, 2000-2098(IT)I,
2000-2099(IT)I, 2000-2102(IT)I, 2000-2103(IT)I

BETWEEN:

RENAUD BÉLAND, SERGE BÉLAND, JOÉ BÉLAND,
JOËL BÉLAND, CHANTALE BÉLAND, RENÉ BÉLAND,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

P. R. Dussault, J.T.C.C.

[1] These appeals from assessments made under section 160 of the *Income Tax Act* ("the *Act*") were heard on common evidence under this Court's informal procedure. Counsel for the parties chose to adduce evidence with regard to **Renaud Béland's** appeal (2000-2101(IT)I), and that evidence is to apply to the other five appeals.

[2] In making the assessment against the appellant Renaud Béland, the Minister of National Revenue ("the Minister") assumed the facts set out in subparagraphs (a) to (t) of paragraph 7 of the Reply to the Notice of Appeal. Those subparagraphs read as follows:

[TRANSLATION]

7. In making and confirming the reassessment at issue, the Minister assumed the following facts, *inter alia*:
- (a) on August 27, 1979, Gaétan Béland, the appellant's father, opened an account in his own name, but with a reference to the name of his minor son Renaud, at the Caisse populaire de Cacouna, and he did the same thing for each of his other five children;
 - (b) the bank account referred to in the previous paragraph had the folio number 2447;
 - (c) when the account was opened, the appellant was four years old;
 - (d) on November 30, 1979, Gaétan Béland deposited \$3,100 in the account of each of his six children, for a total of \$18,600;
 - (e) according to the Caisse, to conduct transactions in an account, a member has to be the holder of the account or have a power of attorney with respect thereto;
 - (f) on November 20, 1990, Gaétan Béland signed a debit slip for the withdrawal of \$6,500 from each of the accounts referred to in subparagraph (a) and transferred those amounts to Les Transports Jumelés Inc., of which he was the sole shareholder and director;
 - (g) the same day, November 20, 1990, after the events described in (f), Gaétan Béland wrote the following on the membership card for account number 2447 at the Caisse populaire de Cacouna: "I hereby assign this account to my child Renaud Béland";
 - (h) on December 30, 1992, the appellant signed an application for membership and for the opening of a personal account, with the same number, however;
 - (i) in December 1992, the appellant signed a power of attorney giving his father full authority to conduct

all necessary banking transactions, including closing the account;

- (j) it should be noted that, from the time the account was opened on August 27, 1979, until December 30, 1992, the father had no power of attorney giving him authority to conduct transactions in the account;
- (k) the by-laws of the Confédération des caisses populaires et d'économie Desjardins du Québec concerning ownership of an account in a parent's name for a child state the following: [TRANSLATION] "The holder of the account is the parent who opened it, and that parent is the only person with whom the credit union is authorized to do business. In principle, the only person who can debit the account or even close it remains the parent who opened it";
- (l) the same source states: [TRANSLATION] "when the parent wishes to give the savings to his or her child, the parent can do so by:
 - (i) closing the account,
 - (ii) modifying the account and, where one of the parties insists on keeping the same account, the parent shall personally write the following on the account opening form: 'I waive my rights to this account in favour of my child.'" This is the solution that the appellant's father chose on December 30, 1992;
- (m) on March 5, 1993, Les Transports Jumelés Inc. transferred \$6,500 to each of the children, including the appellant;
- (n) that \$6,500 was deposited in the appellant's account, number 2447, without any consideration;
- (o) Les Transports Jumelés Inc. made an assignment of its property on November 6, 1995;

- (p) on the date notice of assessment 13339 was issued, Les Transports Jumelés Inc., the transferor of the funds, owed the Minister \$30,644.87 for the 1986 to 1991 taxation years;
- (q) Gaétan Béland made an assignment of his property on February 10, 1998;
- (r) the appellant was related within the meaning of subsection 251(2) of the Income Tax Act (hereinafter "the Act") to the transferor, Les Transports Jumelés Inc., with which he was not dealing at arm's length pursuant to subsection 251(1) of the Act;
- (s) the appellant, who is the transferee of the funds, and the company, which is the transferor, are jointly and severally liable to pay under subsection 160(1) of the Act an amount equal to the lesser of:

(i) Amount by which (A) exceeds (B)

(A) FMV of property at time of transfer	\$6,500.00
(B) Consideration	\$0.00

(ii) Amount owed \$30,802.26;

- (t) the amount of the assessment made against the appellant is \$6,500, being the lesser of the amounts calculated in subparagraphs (s)(i) and (ii).

[3] Subparagraphs (a), (c), (d), (h), (i), (m), (o), (p), (r) and (t) were admitted.

[4] Testimony was given by Céline Létourneau, a general clerk at the Caisse populaire de Cacouna ("the credit union"), Gaétan Béland, the appellants' father, Denise Pelletier, the appellants' mother, and the appellant Renaud Béland.

[5] Ms. Létourneau has been working at the credit union only since 1985. She was therefore not there in 1979, the year Gaétan Béland opened the accounts for his children. She explained the procedure for admitting members to the credit union by referring to procedure EP-022-2 of the Confédération des caisses populaires et d'économie Desjardins du Québec, which is dated April 1995 and which is found in the SOC manual (Exhibit A-1). She said that, when a parent

opens an account for a minor child, it involves the parent remaining the account holder as long as the child does not become a member by signing a membership application. The parent's waiver is necessary if the child wishes to keep the same account and if the parent wishes to transfer the amounts already saved to the child. This is the procedure referred to in subparagraphs 7(k) and (l) of the Reply to the Notice of Appeal.

[6] Moreover, the credit union's transactions journal (Exhibit I-1) indicates that the accounts opened for the children were in their names from 1979 to 1990. Starting in 1991, a code indicated that the accounts were under the name of the parent who opened them and that they had been opened for children. However, the membership application cards (Exhibit A-2) dated August 27, 1979, are in fact signed by Gaétan Béland, the appellants' father, as a member. The card in Renaud Béland's name for account number 2447 will serve as an example. On the card, Renaud Béland's name is written in the appropriate boxes. Above his name are the words [TRANSLATION] "Gaétan Béland for:", and below Gaétan Béland's signature appear the words [TRANSLATION] "for Renaud". Finally, the card is also signed by a representative of the credit union as a witness.

[7] The following statement dated November 20, 1990, also appears on the card:

[TRANSLATION]

I hereby assign this account to my child Renaud Béland

Gaétan Béland's signature appears again under that statement.

[8] A second card stapled to the first and signed by Renaud Béland as a member is a new membership application dated December 30, 1992.

[9] The back of that second card shows that the appellant Renaud Béland gave Gaétan Béland a power of attorney on December 30, 1992. Their signatures appear under the printed text of the power of attorney, which is very broadly worded and which, *inter alia*, authorizes the mandatary, Gaétan Béland, to withdraw, by payment order, receipt or otherwise, any or all of the amounts that are or will be in any of the savings accounts of the member, that is, Renaud Béland.

[10] The same words, statements and signatures are on the two credit union membership application cards for the other five appellants.

[11] In his testimony, Gaétan Béland explained that he opened the accounts for his children in 1979 so that they could carry on with their studies later. It was the sale of a home that enabled him to deposit an initial amount of \$3,100 in the account opened for each of his six children, who were then from four to eleven years old. He said that other smaller amounts, including family allowances and the proceeds of a life insurance policy, were subsequently deposited.

[12] Gaétan Béland stated that things were not explained to him when the accounts were opened in 1979 and that he did not know he was the only holder of the accounts. According to him, it was not until November 20, 1990, that the manager of the credit union told him he was the account holder. It was on the same date that the words "Gaétan Béland for:" were added above each child's name on the membership application card. Mr. Béland said that he then signed the waiver in favour of each of his children, which was drafted by the manager himself. Mr. Béland also said that the waiver for each account was signed before he himself transferred, on the same date, \$6,500 from each account to the account of Les Transports Jumelés Inc. ("the company"). Mr. Béland explained that his beer trucking contract with Molson had ended and that he therefore had to obtain new transportation equipment, this time to transport wood for a pulp mill. Since the equipment that the company intended to purchase was used, he could not obtain financing from the credit union. It was the manager who suggested that he use the money in the accounts opened for his children, and then pay the money back later. Mr. Béland therefore authorized the six money transfers from the accounts in his children's names at the Caisse populaire de Cacouna to the company's account at the Caisse populaire de Rivière-du-Loup.

[13] Gaétan Béland explained that, in doing some follow-up, the credit union requested that new membership applications be signed this time by the children themselves, on December 30, 1992, and that the power of attorney in his favour also be signed by the children on the same date. The purpose was to confirm what had been done on November 20, 1990. According to Gaétan Béland, it was therefore the children themselves who transferred the \$6,500 from their respective accounts to the company on November 20, 1990. Thus, the transfer by the company to their respective accounts on March 5, 1993, was merely a repayment of their money.

[14] Denise Pelletier's testimony does not really add anything important that would help decide this case. Ms. Pelletier simply confirmed that she was the one who authorized and made the money transfers from the company's account to each of the children's accounts in 1993 in order to repay the amounts that the company had needed.

[15] Renaud Béland's testimony does not really add anything new. He said that he was aware of the existence of the accounts opened by his parents but that he did not remember the 1990 transfer or even having himself signed a credit union membership card in 1992. Although he said that he used the money later for his college or university studies, it is clear that he did not authorize the 1990 or 1993 transactions and that he did not agree thereto or participate therein in any way whatsoever. All in all, what can be concluded from his testimony is that the transfers were made without his knowledge.

[16] Counsel for the appellants contended that in 1990 each appellant loaned the company \$6,500, which amount was simply repaid to each of them in 1993. According to counsel, section 160 of the *Act* cannot apply to a situation that involves merely a loan and a repayment.

[17] Counsel for the respondent argued that on November 20, 1990 Gaétan Béland transferred amounts that belonged to him. According to her, the transfers made by the company in 1993 into the account that each appellant had held since December 30, 1992, the date they signed and were admitted as members, are therefore transfers without consideration which give rise to the application of section 160 of the *Act*.

[18] In support of her argument that the amounts transferred still belonged to Gaétan Béland on November 20, 1990, when he transferred them to the company, counsel for the respondent referred to the Court of Quebec's decision in *Mathieu c. Tardif*, C.Q. No. 235-02-000130-946 (1997), which was based on the Superior Court's decision in *Matte v. Caisse populaire de Donnacona*, [1965] C.S. 535. In the latter decision, it was stated in particular, at page 539:

[TRANSLATION]

a . . . reference to the name of one of a person's children in a bank account opened by the person in his or her own name would at most be merely a reminder for the person if he or she were later to see fit to give some or all of the money deposited in the account to the child whose name was so added to the account.

[19] Counsel for the appellants argued that those two decisions are not applicable here because the issue therein concerned only the ownership of money deposited by a person who opened an account in the person's own name with a reference to the account being "for" one of the person's children. He noted that, in

the case at bar, the evidence shows that Gaétan Béland was not told that the accounts were his until 1990 and that he thereupon gave them up in favour of his children.

[20] In this case, no evidence was adduced indicating that the rights and obligations of credit union members were different in 1979 than they were in 1990, 1993 or 1995 as regards ownership of accounts opened by a parent for a minor child. On August 27, 1979, Gaétan Béland was the only person who signed, as a member of the credit union, the application for membership and application for the opening of an account cards. Below his signature on each card is the name of one of his six children "for" whom the account was being opened. In this regard, the facts are not so different from those found in the two decisions referred to above, except that in this case Mr. Béland is claiming that he was not told of his rights when he opened the accounts and that he did not learn until 1990 that he was the sole holder of the accounts. I will simply add here that ignorance of a legal situation does not mean that the situation does not exist. Moreover, this is not the point on which this case turns.

[21] On November 20, 1990, Gaétan Béland signed an assignment of account in favour of each of his children. The same day, however, he also signed a form authorizing the transfer of the amount in each child's account to the company's account. None of the children participated in any way in the assignment of the accounts to them. What is more, on that date, none of the children signed an application for membership card. Thus, none of them was a member of the credit union. They did not apply until December 30, 1992, more than two years later. Similarly, on November 20, 1990, none of the children signed a power of attorney in favour of Gaétan Béland. It was again not until December 30, 1992, when each of them became a member of the credit union, that such a power of attorney was signed.

[22] Based on these facts, the only possible conclusion is that Gaétan Béland was the only member of the credit union and thus the only holder of the accounts in question until December 30, 1992, when each of the children became a member of the credit union and the holder of one of the accounts by signing the application for membership and for the opening of an account having the same number as the account previously opened by the child's father. The assignment signed by the father on November 20, 1990, could not take effect until December 30, 1992. Moreover, on November 20, 1990, Gaétan Béland had no power of attorney from any of his children authorizing him to make a transfer to the company, since the

children were not members of the credit union, were not the real account holders and had not given him a power of attorney.

[23] Since the amounts transferred to the company on November 20, 1990, belonged to Gaétan Béland, the transfer made by the company to the accounts belonging solely to each of the appellants since December 30, 1992, cannot be considered merely the repayment of a loan. The transfers were made for no consideration, since the money obtained by the company in 1990 came from Gaétan Béland.

[24] To conclude, I will take the liberty of referring to the following comments made by Linden J.A. of the Federal Court of Appeal in *Friedberg v. Canada*, [1991] F.C.J. No. 1255:

In tax law, form matters. A mere subjective intention, here as elsewhere in the tax field, is not by itself sufficient to alter the characterization of a transaction for tax purposes. If a taxpayer arranges his affairs in certain formal ways, enormous tax advantages can be obtained, even though the main reason for these arrangements may be to save tax (see *The Queen v. Irving Oil* 91 D.T.C. 5106, per Mahoney J.A..) If a taxpayer fails to take the correct formal steps, however, tax may have to be paid. If this were not so, Revenue Canada and the courts would be engaged in endless exercises to determine the true intentions behind certain transactions. Taxpayers and the Crown would seek to restructure dealings after the fact so as to take advantage of the tax law or to make taxpayers pay tax that they might otherwise not have to pay. While evidence of intention may be used by the Courts on occasion to clarify dealings, it is rarely determinative. In sum, evidence of subjective intention cannot be used to 'correct' documents which clearly point in a particular direction.

[25] As a result of the foregoing, the appeals are dismissed.

Signed at Ottawa, Canada, this 25th day of September 2001.

"P. R. Dussault"

Page: 10

J.T.C.C.

Translation certified true
on this 17th day of February 2003.

Erich Klein, Revisor