

[OFFICIAL ENGLISH TRANSLATION]

2002-1676(IT)I

BETWEEN:

DANIEL MICHAUD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on common evidence with the appeal of  
*Josée Michaud* (2002-1678(IT)I)  
on September 5, 2002, at Matane, Quebec,

by the Honourable Judge Alain Tardif

Appearances

For the Appellant: The Appellant himself

Counsel for the Respondent: Stéphanie Côté

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JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for the 1998 and 1999 taxation years is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 11th day of October 2002.

"Alain Tardif"

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J.T.C.C.

Translation certified true  
on this 29<sup>th</sup> day of December 2003.

Sophie Debbané, Revisor

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Appearances

Agent for the Appellant: Daniel Michaud

Counsel for the Respondent: Stéphanie Côté

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Date: 20021011  
Docket: 2002-1676(IT)I

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AND

Docket: 2002-1678(IT)I

BETWEEN:

JOSÉE MICHAUD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

**REASONS FOR JUDGMENT**

**Tardif, J.T.C.C.**

[1] The parties agreed to proceed on common evidence for the two cases, that is, *Daniel Michaud* (2002-1676(IT)I) and *Josée Michaud* (2002-1678(IT)I).

[2] The appeals were for the 1998 and 1999 taxation years.

[3] For both cases, the assessments were made using the net worth method and the penalties provided for under section 163 of the *Income Tax Act* (the “Act”) were added to them.

[4] The female appellant was not present to support her appeal; she had instructed her brother, also an appellant, and the accountant Richard Ruet to represent her by proxy.

[5] The appellants’ evidence was comprised of the testimony of the male appellant, his father and the accountant Richard Ruet.

[6] All testified in a sympathetic manner. The appellant explained that his father had wanted to create a job for his sister, the female appellant, when he purchased the village’s restaurant.

[7] Unreliable and even irresponsible in her new position, his sister essentially lost control of the situation and his father had to ask his son, who was working as a butcher in Montreal at the time, to help him by taking charge of the restaurant, which was not doing very well.

[8] The appellant explained that, although he had been the manager of his meat department, he had very little experience in administration and accounting. He stated he had done his best to manage the restaurant properly and satisfactorily but that, because of his lack of knowledge of and experience in the restaurant business, he was the reason behind the total confusion in the accounting.

[9] He explained that the additional income attributed to him by the net worth method was essentially derived from the restaurant’s income that did not belong to him and that had gone through his account so that his sister would not take the income for objectionable purposes.

[10] In other words, because of his sister's irresponsibility, the appellant deposited the income from the restaurant into his own account so that his sister would not have access to it. He maintained the income could not be attributed to him, as a result of which the calculation of his net worth had been distorted by an amount equivalent to the deposits belonging to the restaurant.

[11] As for the additional income attributed to his sister, Josée Michaud, the appellant explained that the respondent had confused income with disbursements made by his father. According to the appellant, his father had had to inject funds through loans and advances to ensure that the operations could continue; the restaurant was not generating sufficient income to cover all of the expenses and even less to justify additional income.

[12] In support of his claims with respect to his sister's case, he filed a document indicating the dates and various amounts disbursed by his father with clarifications and explanations (Exhibit A-1), amounts totalling approximately \$23,404.85 for 1998. Exhibit A-1 is reproduced below:

[TRANSLATION]

Restaurant du Lac

To: Lac des Aigles acknowledgment  
Josée Michaud –Lac-des-Aigles

Date: April 28, 1998

Further to the request of this date, April 28, 1998, I undertake to pay Gratien Michaud the following amounts:

April 28/ 98	given to Langis Dubé for restaurant purchase	\$5,000.00
May 4/ 98	given for revolving fund	\$3,000.00
31-7-98	paid GST and QST	\$3,000.00
30-9-98	paid for fire system	\$1,500.00
5-8-98	paid for lawyer's fee and Josée	\$1,500.00
2-11-98	paid GST and QST	\$5,000.00
3-12-98	insurance for Restaurant du Lac	\$2,904.85
4-6-98	paid for notary's contract	\$1,500.00

Total: \$23,404.85

[13] The accountant Richard Ruet subsequently confirmed the appellant's testimony. He testified that the business had not generated sufficient income to

justify the income attributed to the appellant by the net worth method. He argued that the discrepancies noted between the income that had been reported and that which had been attributed were largely the result of numerous cash infusions by the appellants' father, Gratien Michaud.

[14] He also stated that he had noted a number of obvious errors with respect to the treatment of some of the accounting data the appellants had provided to the Malette Maheu accounting firm. He indicated he had made the necessary corrections.

[15] However, he did not provide any detailed or coherent accounting information to discredit the assessments made using the net worth method. He essentially claimed that the appellants had no concept of administration and that the business did not generate sufficient income to justify the additions established by the net worth method.

[16] Lastly, the appellants' father confirmed the testimony of his son Daniel Michaud and described the circumstances surrounding the acquisition of the restaurant. He explained that at the time of the acquisition the sellers had been on the verge of bankruptcy with their business, which meant that in addition to assuming a debt of over \$75,000, he had had to pay a number of accounts, including notary's fees, the goods and services tax (GST) account and the sprinkler.

[17] Since his ability to pay was modest, he made disbursements only during the first year, in 1998, after which time he stopped intervening, having used up his available resources. He said that all of the disbursements had been made in cash and that there was no documentary evidence to attest to their accuracy, such as receipts, deposit or withdrawal slips or cheques.

[18] The auditor responsible for establishing the additional income by the net worth method explained that he had analyzed several boxes of documents, had met and spoken with the appellants, and had made a number of corrections on the basis of their explanations.

[19] In cross-examination, the appellants' accountant referred to a document that he himself had prepared and submitted in connection with the objection relating to various contributions or advances made by the appellants' father. The document in



question indicated a total of nearly \$45,000 in disbursements spread out over the two years in issue, 1998 and 1999.

[20] Although favourable, the evidence nonetheless gave rise to some very serious doubts as to the likelihood of the explanations given. How can the accountant Richard Ruet, who was perfectly familiar with the facts of the case, have submitted a document indicating that the appellants' father had invested close to \$45,000 in 1998 and 1999 when the person directly concerned unequivocally stated in response to a question from the Court that his financial participation had been solely for 1998? This is moreover attested by Exhibit A-1 and not for an amount of \$45,000 but rather for \$23,404.85. This is a significant discrepancy, especially for a retired person whose financial capacity was limited and even modest.

[21] Overall, the auditor added the following unreported income to the appellants' reported income for the years in issue:

[TRANSLATION]

**APPELLANTS' ADDITIONAL INCOME  
ESTABLISHED THROUGH THE NET WORTH METHOD**

	1998	1999	<u><b>TOTAL</b></u>
Josée Michaud	\$17,291	\$39,271	\$56,562
Daniel Michaud	\$12,113	\$ 1,719	\$13,832
Total	\$29,404	\$40,990	\$70,394

Accordingly, a total of \$70,394 in income was added to the appellants' reported income. If the accountant's explanations at the time of the objections were credible, an amount of more than \$25,000 would remain unaccounted for, representing the total income added minus all of the investments indicated.

[22] Surprisingly, during the proceedings, the advances from the appellants' father had dropped to \$23,404.85, leaving an unexplained balance of \$46,989.15, or \$70,394 — \$23,404.85.

[23] Did the appellants' father make \$45,000 or \$23,404 in advances? He himself had stated an amount of only \$23,404, while adding that a portion of that amount had not been injected into the business' operating account.

[24] Aside from those fairly surprising revelations, the evidence also established that the business' accounting operations were in a genuine muddle; everything was so confused that even the accountants were having difficulty figuring things out.

[25] The appellant also admitted he did not have a regular weekly salary; his pay consisted of withdrawals from the cash to pay expenses, such as gas and car repairs. How was this controlled and accounted for? The answers were never obtained.

[26] The appellants therefore did not discharge the burden of proof that was on them. They tried to explain the origin of some of the funds the respondent had considered to be income, but the explanations were inconsistent and above all contradictory.

[27] The evidence adduced was not only deficient but also incomplete. To prove their case, it was not sufficient to create doubt with respect to a small portion of the origin of the income attributed. The appellants had to establish in a plausible manner on a balance of probabilities that the income that was added was not justified. The only evidence adduced consisted in arguing that the appellants' father had made certain advances the amounts of which remain unclear.

### Penalties

[28] Penalties were added to the assessments under subsection 163(2) of the *Act*, which reads as follows:

#### False statements or omissions

- (2) Every person who, knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a "return") filed or made in respect of a taxation year for the purposes of this Act, is liable to a penalty of the greater of \$100 and 50% of the total of

...

[29] It was established on a balance of probabilities that the appellants were not competent to take care of the accounting properly. It seems that the income from the business was deposited periodically into the male appellant's personal account. At another point, the appellants' father had signed the cheques pertaining to the restaurant's business. The appellant admitted he paid personal expenses from the restaurant's income.

[30] All of these facts are more than sufficient to conclude that there was gross negligence.

[31] The appellant's total indifference, the ignorance and the absence of coherent accounting are elements that, when combined, constituted such carelessness that this certainly is gross negligence. The amounts added to the appellants' income were neither marginal nor insignificant; on the contrary, they were considerable having regard to the facts as a whole.

Signed at Ottawa, Canada, this 11th day of October 2002.

"Alain Tardif"

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J.T.C.C.

Translation certified true  
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Sophie Debbané, Revisor