Docket: 2005-665(GST)G

BETWEEN:

FRÉDÉRIC LAVIE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on October 23, 24 and 25, 2006, at Montréal, Quebec

Before: The Honourable Justice Lucie Lamarre

Appearances:

Counsel for the Appellant:	Robert Astell
Counsel for the Respondent:	Alain-François Meunier

JUDGMENT

The appeal from the assessment made under Part IX of the *Excise Tax Act*, notice of which is dated April 20, 2004, bears the number 4135013, and is purportedly for the period from May 1, 2000 to December 31, 2000, but is actually for the period from January 1, 2000 to December 31, 2000, is allowed, and the assessment under appeal is set aside, with costs.

Signed at Ottawa, Canada, this 6th day of December 2006.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 19th day of February 2008.

François Brunet, Revisor

Citation: 2006TCC655
Date: 20061206
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BETWEEN:

FRÉDÉRIC LAVIE,

Appellant,

and

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Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Lamarre J.

[1] Mr. Lavie is appealing from an assessment made by the Minister of Revenue of Quebec ("the Minister") in the amount of $197,899.73 (including interest and a penalty) in respect of Goods and Services Tax (GST) that the Minister determined the Appellant should have collected upon allegedly supplying cocaine in the course of the year 2000 in consideration of $2,143,626.

Preliminary question

[2] The first preliminary point is that the assessment dated April 20, 2004, and bearing the number 4135013, states that the assessment period is from May 1 to December 31, 2000, instead of stating the actual period on which the amount of $197,899.73 was computed, namely January 1 to December 31, 2000. As far as this first point is concerned, if it is established that the assessment is warranted and that the amount of the assessment is validly computed on the period from January 1 to December 31, 2000, the mistake in the notice of assessment with respect to the beginning of the period in issue will be of no benefit to the Appellant. Indeed, subsections 299(2), (4) and (5) of the *Excise Tax Act* ("ETA") read as follows:

> **299. (2) Liability not affected** – Liability under this Part to pay or remit any tax, penalty, interest or other amount is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.
>
> . . .
>
> **(4) Assessment deemed valid** – An assessment shall, subject to being reassessed or vacated as a result of an objection or appeal under this Part, be deemed to be valid and binding, notwithstanding any error, defect or omission therein or in any proceeding under this Part relating thereto.
>
> **(5) Irregularities** – An appeal from an assessment shall not be allowed by reasons only of an irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Part.

[3] The ETA is clear: it is not the assessment, but the application of the statute, that creates the tax liability.

Main issue

[4] The Appellant denies selling cocaine during the period in issue, and submits that the assessment under appeal was based on information obtained during police investigations that did not tie the Appellant directly to cocaine sales, much less sales of a magnitude of $2,143,626. Furthermore, the Appellant challenges the penalty imposed under section 280 of the ETA.

Analysis of the evidence

[5] The Minister based this assessment on the assumptions of fact set out in paragraph 13 of the Reply to the Notice of Appeal:

> [TRANSLATION]
>
> (a) During the period covered by the assessment in issue, the Appellant was a "registrant" for the purposes of Part IX of the ETA even though he did not submit any application to the Minister in this regard.
>
> (b) The Appellant filed no return of net tax in respect of the period covered by the assessment in issue.
>
> (c) On October 25, 2000, police officers with the Montréal-based "Escouade Régionale Mixte" [joint regional task force] (hereinafter "ERM") searched an apartment located at 7415 Beaubien Street East in Anjou as part of the "Projet Océan" operation.

(d) In addition, on November 6, 2000, the ERM searched an apartment located at 8101 Montoire Place in Anjou.

(e) The apartments described in subparagraphs (c) and (d) were used by a criminal organization known as the Hells Angels Nomads for the purpose of trafficking in narcotics, and, in particular, to account for and store the money generated by such trafficking.

(f) On March 28, 2001, the officers searched the Appellant's residence at 338A Vallée Street in Laval, where they seized, *inter alia*, firearms, narcotics, clothing marked "Rockers Montreal" and "Support South", and $52,000 in cash.

(g) During the searches referred to in subparagraphs (c) and (d), the ERM officers seized accounting books kept by the Hells Angels Nomads with respect to the supply of cocaine and hashish.

(h) The Minister proceeded to analyze these accounting books and determined that, between May 1, 2000 and December 31, 2000, a person nicknamed "Bilav" purchased cocaine from the Hells Angels Nomads in consideration of $1,786,355.

(i) The Minister determined that the pseudonym "Bilav" designated the Appellant and that the Appellant carried out a commercial activity consisting of the sale of cocaine.

(j) The Minister also determined that the Appellant was at the second-highest level of the cocaine distribution hierarchy, and, consequently, supplied cocaine for no less than 1.2 times the value of the consideration that he paid to purchase it.

(k) The Minister therefore determined that the value of the consideration for the Appellant's supplies of cocaine during the period covered by the assessment was $2,143,626.

(l) The Minister determined that the Appellant did not collect the 7% GST on the value of the consideration for the cocaine supplies that he made during the period in issue, that he did not include this GST in computing his net tax, and that the net tax was not reported to the Minister as required by the ETA.

(m) The Minister therefore assessed the Appellant for $150,053.82 ($2,143,626 x 7%), the net tax that he should have reported and remitted for the period from May 1 to December 31, 2000.

(n) In that assessment, the Minister also included the interest and penalty contemplated in subsection 280(1) of the ETA.

[6] The Appellant specifically challenges subparagraphs (a), (f), (h), (i), (j), (k), (l), (m) and (n).

[7] With respect to subparagraph 13(f) of the Reply to the Notice of Appeal, the Appellant claims that it was not he, but, rather, Derrick Demers, who lived at 338A Vallée Street in Laval on March 28, 2001. Indeed, according to the lease tendered in evidence as Exhibit I-11, Mr. Demers was a tenant at that location commencing October 1, 2000. Simone Lavie, the Appellant's grandmother, owned the building. The Minister determined that the Appellant lived at that location because of the seizure, during the search on March 28, 2001, of an unpaid cable bill issued by Vidéotron Ltée on March 9, 2001, to Frédéric Lavie of 338 Vallée Street, Apt. A, Laval. In addition, according to a document bearing the name Louise Poitras and the title [TRANSLATION] "M.R.Q. Individual User Identification" (Exhibit I-14), the Appellant's address from September 23, 1996, to December 12, 2002, was 338A Vallée Street in Laval. Apparently, the document (Exhibit I-14) is from the Société de l'assurance-automobile du Québec ("SAAQ"); this is what Revenu Québec auditor Pascale Hébert testified to. However, I should note that there is no indication to this effect on the document, and that no witness from the SAAQ came to testify that it issues such documents. For his part, the Appellant produced a letter from Hydro-Québec stating that Frédéric Lavie held the account based at 349 Lulli Street, Apt. 6 in Laval from August 31, 2000, to August 28, 2002 (Exhibit A-2). The Appellant testified that he was living with his wife Sophie Sorel on Lulli Street in 2001, as he had been since late 1999. However, upon redirect by counsel for the Respondent, Ms. Hébert said that Sophie Sorel gave the SAAQ the address 338A Vallée Street from July 14, 1999 to April 11, 2001. No document was adduced in this regard. In addition, according to Ms. Hébert, a police officer went to 338A Vallée Street in March 2001 with a photograph of Frédéric Lavie and saw him leave that address and enter a car. She does not know precisely when the police officer made this visit, and the officer did not come to testify about it before this Court. In his submissions, counsel for the Appellant stated that the search took place on March 28, 2001 at 6:00 a.m. and that Derrick Demers was the person awakened by the police. The Appellant was not there at that time of the morning. Indeed, counsel for the Appellant emphasized that, according to the lease tendered as Exhibit I-11, 338A Vallée Street is a two-and-a-half room apartment in which it would be difficult for three people (Derrick Demers, the Appellant and his wife) to live. This was not revealed by counsel for the Respondent in his submissions.

[8] In my opinion, the evidence is sufficient to establish that the Appellant did not reside at 338A Vallée Street in Laval at the time of the search. The Appellant has submitted enough evidence to demolish, *prima facie*, this allegation by the Minister (the lease signed by Derrick Demers, and the Hydro-Québec letter establishing that the Appellant had an account based at Lulli Street). It is now up to the Minister to rebut the Appellant's *prima facie* case and prove the factual assumption that he is making.[1] For his part, the Minister invokes the unpaid cable account statement issued to the Appellant and the document that appears to be issued by the SAAQ and states 338A Vallée Street as his address until 2002. The documents before me are sparse documents from which it can barely be inferred that the Appellant might have lived either on Vallée Street or Lulli Street at the time of the search. Ms. Hébert, the Revenu Québec auditor, adds that a police officer identified Mr. Lavie through a photograph and saw him leave 338A Vallée Street. As stated earlier, it is not known precisely when the police officer in question observed this fact. It is pure hearsay, inadmissible from the start. No one disputes that 338A Vallée Street belongs to Simone Lavie, the Appellant's grandmother, and that Derrick Demers was there at the time of the search. In my opinion, on balance, the evidence actually tends to favour the Appellant's case. The fact that Mr. Demers was on the premises early in the morning during the unannounced search by the police officers suggests to me that Mr. Demers, not the Appellant, was the one who resided there at that time. Indeed, Mr. Demers is the person who was arrested during the search and was found in possession of everything that was on the premises. Thus, in my opinion, it cannot

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[1] See *Hickman Motors Ltd. v. Canada*, [1997] 2 S.C.R. 336, at paragraphs 92 to 94, which read:

> 92 It is trite law that in taxation the standard of proof is the balance of probabilities: *Dobieco Ltd. v. Minister of National Revenue*, [1966] S.C.R. 95, and that within that standard, there can be varying degrees of proof required in order to discharge the onus, depending on the subject matter: *Continental Insurance Co. v. Dalton Cartage Co.*, [1982] 1 S.C.R. 164; *Pallan v. M.N.R.*, 90 D.T.C. 1102 (T.C.C.), at p. 1106. The Minister, in making assessments, proceeds on assumptions (*Bayridge Estates Ltd. v. M.N.R.*, 59 D.T.C. 1098 (Ex. Ct.), at p. 1101) and the initial onus is on the taxpayer to "demolish" the Minister's assumptions in the assessment (*Johnston v. Minister of National Revenue*, [1948] S.C.R. 486; *Kennedy v. M.N.R.*, 73 D.T.C. 5359 (F.C.A.), at p. 5361). The initial burden is only to "demolish" the exact assumptions made by the Minister but no more: *First Fund Genesis Corp. v. The Queen*, 90 D.T.C. 6337 (F.C.T.D.), at p. 6340.
>
> 93 This initial onus of "demolishing" the Minister's exact assumptions is met where the appellant makes out at least a *prima facie* case: *Kamin v. M.N.R.*, 93 D.T.C. 62 (T.C.C.); *Goodwin v. M.N.R.*, 82 D.T.C. 1679 (T.R.B.). . . .
>
> 94 Where the Minister's assumptions have been "demolished" by the appellant, "the onus . . . shifts to the Minister to rebut the *prima facie* case" made out by the appellant and to prove the assumptions: *Magilb Development Corp. v. The Queen*, 87 D.T.C. 5012 (F.C.T.D.), at p. 5018. . . .

be inferred that the property that was on those premises during the search belonged to the Appellant.

[9] As for the assumptions of fact at paragraphs 13(h), (i) and (j) of the Reply to the Notice of Appeal, namely, that the account under the name Bilav in the Hells Angels Nomads ("Hells Angels") books belonged to the Appellant and that the Appellant was in the business of selling cocaine, these are serious allegations of narcotics trafficking by the Appellant. The books were seized during surreptitious entries into various Hells Angels hideouts by police officers who had a warrant. In order to incriminate the Appellant, the Respondent is invoking solely circumstantial evidence. In my opinion, such evidence is not sufficient to tie the Appellant to the purchase and sale of cocaine. My finding in this regard is based on the following reasoning.

[10] Lieutenant Pierre Boucher, a police officer and one of the Respondent's witnesses, entered surreptitiously into various Hells Angels hideouts as part of "Projet Océan", which commenced on September 6, 2000. On October 25, 2000, an address book (Exhibit I-8) was found in the electronic scheduling software that was installed on the computer located at 7415 Beaubien Street, Apt. 403, Anjou, one of the hideouts in question. (Exhibit I-8). In it, the code number 500 007 is associated with two telephone numbers: a home number (218-8871) and a pager number (540-9949). On November 6, 2000, during another surreptitious entry — this time, at 8101 Montoire Place, Unit 309 in Anjou, a document from the electronic scheduling software was found in which the nickname Bilav is associated with the code 500 007 as well as the telephone number 218-8871 (Exhibit I-9). A plasticized card from the Laval gang obtained by Lieutenant Boucher (Exhibit I-7), associates the name Fred with the telephone number 218-8871, and the name Hammer with the telephone number 540-9949. Stéphane Chagnon, the person who updated the accounting records concerning drug purchases and drug payments to the Hells Angels on a daily basis (a sample of these records for the Bilav account was tendered as Exhibit I-5) was arrested on January 30, 2001, and one of his pockets contained a handwritten copy of his telephone book (Exhibit I-12) in which Bilav is associated with the code 500 007 and the telephone number 540-9949. Since Lieutenant Boucher only began his investigation in October 2000, and the Bilav account was closed on July 5, 2000 (Exhibit I-5), he never knew who made the purchases or deposits associated with the Bilav account. All that we know from Exhibit I-5 and Lieutenant Boucher's testimony is that the Bilav account was transferred to Grizzly ("Grizzly" is allegedly Stéphane Plouffe's nickname), who was arrested in connection with transactions involving that account and was convicted of trafficking in narcotics.

[11] For her part, Ms. Hébert explained that she tied the Bilav account to the Appellant by making connections between different bits of information obtained during the various police investigations, especially the information obtained from Lieutenant Boucher, which is discussed above. Neither Lieutenant Boucher nor Ms. Hébert checked whether the Appellant's telephone number matched the numbers stated above. However, I note that according to the documentation found by Lieutenant Boucher, Bilav can be tied either to Fred or to Hammer, but no link with the Appellant has been made yet.

[12] At the hearing, Guy Ouellette, an expert on the structure and operations of criminal motorcycle gangs, explained the complete structure of the Hells Angels network. He discussed the successful dismantling of the Nomads, the most important chapter of the Hells Angels, as part of "Projet Océan" in the spring of 2001. Mr. Ouellette said that he was personally involved in this operation and that he knew all the Hells Angels in 2001. However, on cross-examination, he admitted that some members remain unknown to him. Indeed, his own expert report states that some of the individuals are unknown (Exhibit I-13, at page 3). Mr. Ouellette said that all the Hells Angels knew that Fred was associated with the Laval gang, which was renamed the "Connection" gang in October 2000. However, he admits that there was more than one Fred and that the gang members did not know the last names of the various Hells Angels members or the various people affiliated with the organization. Mr. Ouellette ties the Appellant to the "Hang Around" group, which is part of the "Connection" gang, because the Appellant was found on Hells Angels premises on October 16, 2000, and a card tying Fred to that group was found there. The Appellant was there along with Danny "Le Suisse" Proulx, and was arrested at that time. Weapons were found on the premises, but Danny Proulx, not the Appellant, was charged because the Crown prosecutor did not consider it useful to charge the Appellant. On that date, Ben Frenette, a senior member in the Rockers Nord chapter hierarchy in Montréal, apparently delegated his "watch" (supervision schedule) to Danny "Le Suisse" Proulx. According to Mr. Ouellette, the Rockers Nord chapter had two godfathers: Ben Frenette and Stéphane "Grizzly" Plouffe.

[13] Mr. Ouellette said that he was satisfied that the Appellant goes by the nickname Fred within the Rockers Nord, and by the nickname Bilav in the Hells Angels accounting books. He bases this assertion on the Appellant's history. On March 11, 2000, the Appellant was seen as a bodyguard during a bar tour by Hells Angels members in Laval. On June 18, 2000, when a certain Eric Morin was arrested in Laval, a plasticized card was found on his person containing the names

of the Laval-based gang members, including Fred (218-8871), but also including Hammer (540-9949) (Exhibit I-16, which is, in fact, the same card as Exhibit I-7, which was in Lieutenant Boucher's possession.) On June 28, 2000, the day after Mr. Ouellette testified as part of "Projet Océan" and revealed the names of the Laval-based gang members, that gang ceased to exist and was replaced, according to Mr. Ouellette, by the "Connection" gang, and evidence of this was found during the police search on October 16, 2000. Mr. Ouellette also noticed that the Bilav account was closed on July 5, 2000. On October 2, 2000, the Appellant was apprehended while driving a vehicle in which Jean-Yves "Chef" St-Onge was a passenger; according to Exhibit I-16, St-Onge was a senior member of the Rockers Nord, which was part of the Hells Angels. On October 16, 2000, the Appellant was on Hells Angels premises along with Danny "Le Suisse" Proulx. On October 20, 2000, he was seen in a vehicle belonging to his wife Sophie Sorel on a street near those premises. In late 2002 or thereabout (at some point between September 2002 and August 2003), an undercover agent by the name of Martin Roy recorded the Appellant as he lent him money and referred him to a location where he could purchase narcotics. The Appellant was arrested on February 26, 2004, and was charged with conspiracy to traffic in narcotics and trafficking in narcotics. He was sentenced to 18 months of imprisonment and three years of probation. It would appear, according to Mr. Ouellette, that Martin Roy identified the Appellant with Fred, a "striker" in the Rockers Nord gang.

[14] For his part, the Appellant says that he was on Hells Angels premises because he taught karate to some Hells Angels members. He says that some of them were his friends. He claims not to know Jean-Yves St-Onge, but says that he knows Martin Roy. He acknowledges that he knows some other Hells Angels members.

[15] Although it can be inferred from the evidence that the Appellant kept company with Hells Angels by 2000, I am not satisfied that the Bilav account, on which the entire assessment under appeal is based, is to be tied to the Appellant. Even if it is assumed that Fred is the Appellant, the fact that Eric Morin had a card on his person tying Fred to the number 218-8871 on June 18, 2000, does not necessarily prove that the Bilav account, seized from the Hells Angels accounting records, belonged to the Appellant. In fact, based on the evidence, the Bilav account could just as easily have been tied to Hammer, a person who was not identified as being the same as Fred. Moreover, it was established that all activity on the Bilav account ceased in July 2000 (Exhibit I-5), and this account was apparently transferred to the "Grizzly" (Stéphane Plouffe) account. Lieutenant Boucher said that Mr. Plouffe was arrested in connection with this account, and

Mr. Ouellette acknowledged that Mr. Plouffe was assessed under the ETA for purchases and sales attributed to his account, which appears to include the Bilav account.

[16] The Appellant denies the Minister's assumption that he purchased and resold cocaine in 2000. He denies being Bilav or Fred. He says that he has no knowledge of the Hells Angels accounting on which the entire assessment is based. In *Les Voitures Orly Inc. / Orly Automobiles Inc. v. Canada*, [2005] F.C.J. No. 2116 (QL), the Federal Court of Appeal made the following statements at paragraph 20 with respect to the burden of proof:

> 20 To sum up, we see no merit in the submissions of the appellant that it no longer had the burden of disproving the assumptions made by the Minister. We want to firmly and strongly reassert the principle that the burden of proof put on the taxpayer is not to be lightly, capriciously or casually shifted. There is a very simple and pragmatic reason going back to over 80 years ago as to why the burden is on the taxpayer: see *Anderson Logging Co. v. British Columbia*, [1925] S.C.R. 45, *Pollock v. Canada (Minister of National Revenue)* (1993), 161 N.R. 232 (F.C.A.), *Vacation Villas of Collingwood Inc. v. Canada* (1996) 133 D.L.R. (4th) 374 (F.C.A.), *Anchor Pointe Energy Ltd. v. Canada*, 2003 FCA 294. It is the taxpayer's business. He knows how and why it is run in a particular fashion rather than in some other ways. He knows and possesses information that the Minister does not. He has information within his reach and under his control. The taxation system is a self-reporting system. Any shifting of the taxpayer's burden to provide and to report information that he knows or controls can compromise the integrity, enforceability and, therefore, the credibility of the system. That being said, we recognize that there are instances where the shifting of the burden may be warranted. This is simply not one of those cases.

[17] In the case at bar, the Minister determined, by means of presumptions, that the Appellant personally trafficked in cocaine. The Minister's assessment is based on inferences drawn from police investigations. This is not a case involving the application of the self-reporting tax system. In view of this, it is my opinion that the Respondent cannot justify her assessment merely by presumptions which the taxpayer has little or no means to rebut. In *Gestion Yvan Drouin Inc. v. Canada*, [2000] T.C.J. No. 872 (QL), Archambault J. of this Court, at paragraphs 107 to 109 of his decision, adopted, in the following terms, the observations made by Duff J. in *Anderson Logging Co. v. British Columbia*, [1925] S.C.R. 45, 25 DTC 1209:

> [107] It should be noted as well that Duff J. in *Anderson Logging* (*supra*) spoke in similar terms at page 1211 (DTC):

The appellant may adduce facts constituting a *prima facie* case which remains unanswered; but in considering whether this has been done it is important not to forget, if it be so, that the facts are, in a special degree if not exclusively, within the appellant's cognizance; although this last is a consideration which, for obvious reasons, must not be pressed too far.

[Emphasis added.]

[108] Duff J.'s words inspired one author to write that the burden of proof may fall on the Minister when the taxpayer has no knowledge of the relevant facts. In his article "The Burden of Proof in Income Tax Cases," Can. Tax J., 1978, vol. XXVI, No. 4, p. 393, at page 410, note 86, Charles MacNab writes:

On the other hand, where a taxpayer can show that he is not in possession of the facts in respect of which the onus of proof would in the ordinary course be on him - that they are in the possession of a third party for example - it may be that the onus would shift to the Minister, in respect of those facts. This would appear to be consistent with the limitation on the extent of the onus on a taxpayer indicated by Mr. Justice Duff in *Anderson Logging Company v. M.N.R. supra*.

MacNab adds on the same page:

The principle behind the rule which requires a person to prove a matter when he has particular knowledge is, it would seem, that it serves the ends of justice, since otherwise the other party might well be denied in a practical way the opportunity of having a fair hearing of the matter. Which one is more important may well depend on the facts of each case.[87]

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[87] In a note to his reasons for Judgment in *The Queen v. McKay*, 75 D.T.C. 5178, supra, 5185, Mr. Justice Collier said, "... I am not convinced ... the so-called "onus on the taxpayer" is a rigid rule, capable of no exceptions. ... Each action should be looked at on its own issues and on its own circumstances. ... It is not sufficient, in my view, to say that tax cases are somehow different from other civil cases tried in this court".

[109**]** In *First Fund Genesis Corporation v. The Queen*, 90 DTC 6337, Joyal J. of the Federal Court Trial Division seems to share Mr. MacNab's opinion that the onus rule must be applied with fairness. At page 6340, he writes:

Numerous have been the comments by the courts on the application of the onus rule to meet the exigencies of particular cases. Counsel for the plaintiff is correct in stating that care should always be taken in its application. Counsel quotes an article by Charles MacNab in the Canadian Tax Journal, Vol. XXVI, No. 4, 1978, p. 393, where, after the author has referred to the general doctrine with respect to the burden of proof in civil matters, he remarks with reference to income tax cases at p. 411:

> There will be need for care in each case, however, to ensure that the considerations of policy and fairness which underlie all the rules are fully appreciated before a determination of the onus of proof is made.
>
> [Emphasis added.]

[18] As I have said, the assessment in the instant case is an arbitrary assessment based on presumptions made in the wake of police investigations, and in my opinion, a reversal of the burden of proof is called for here. Since the Appellant denied trafficking in cocaine and denied being the "Bilav" referred to in the Hells Angels accounting documents whose contents are unknown to the Appellant, I am of the view that it is up to the Minister to show, on a balance of probabilities, that the assessment is well-founded. While all unlawful activity should understandably not be encouraged, but, rather, denounced, it would also be improper to arbitrarily attribute sales of illicit substances, without sufficient evidence, to an individual who is suspected of trafficking in narcotics but has not been charged with such an offence. The remarks made by Associate Chief Justice Bowman (as he then was) in *Chomica v. Canada*, [2003] T.C.J. No. 57 (QL), at paragraph 16 of his decision, appear relevant to the instant case:

> [16] I start from the observation that in my view the whole business smells to high heaven. It was operated by unsavoury characters who, if they were lucky, managed to keep one jump ahead of the law and, if they were not, got caught. However just because I have or happen to dislike and distrust people who are involved in these schemes does not mean that I can totally ignore the rules of evidence and base my decision on visceral instincts and inadmissible evidence.

[19] As far as this matter is concerned, I am not satisfied that the Bilav account belonged to the Appellant. The main evidence purporting to tie the Appellant to Bilav is the fact, referred to by Mr. Ouellette, that Martin Roy, the undercover agent, personally knew the Appellant and had associated him with Fred through court-authorized surveillance (assuming that Fred is also Bilav). This was not directly put in evidence by Martin Roy himself or by incriminating documents. The Respondent's evidence, seasoned with many dashes of hearsay, is too indirect to tie Bilav to Fred, let alone the Appellant. I would, once again, follow the remarks of Justice Bowman in *Chomica*, *supra*, at paragraphs 26 to 29:

> [26] I do not intend this judgment to be a discussion of the recent developments in the hearsay rule. That it is an evolving concept is unquestioned, as is obvious from the discussion in *The Law of Evidence in Canada*, *supra*, at pages 187 to 220. The rule nonetheless continues to exist and effect must be given to it. Even if I believed that I could stretch the principles stated in the recent cases, which require at least reliability and necessity, the assessor's report and the memoranda would still

> have to be excluded. For example, no witness was able to say who prepared the memoranda found at tabs A, B and C of Tab 18. They were said to be based on material seized by the police from files from the personal computer of Alan Benlolo by a detective.
>
> [27] Such material is at best unreliable and at most wholly inadmissible as evidence.
>
> [28] Such reports of the CCRA (T-20 and T-401 reports) may be put in evidence for the limited purpose of showing the basis on which an assessment is made but not as evidence of the truth of their contents. There can be no objection to the CCRA basing its assessments on hearsay - it must of necessity base its assessing action on such material as is available, even though such material may be hearsay. However, when the respondent is called upon to justify an assessment by calling evidence it must be evidence that is admissible under the ordinary rules governing admissibility.
>
> [29] Not only must the rules of evidence be followed, particularly in cases governed by the General Procedure - but also, where serious allegations of fraud are made the court must scrutinize such evidence very carefully. Madam Justice L'Heureux-Dubé alluded to this in the second paragraph of her judgment in Hickman Motors which is quoted above.
>
> [Footnotes omitted.]

[20] In my opinion, the facts which Mr. Ouellette and the auditor Ms. Hébert believed to be true do not establish, on a balance of probabilities, that the Appellant, who went by the name Bilav, was the person who purchased narcotics from the Hells Angels in consideration of $1,786,355 in 2000. As I have said, based on the evidence, the name Bilav could just as easily be associated with Fred or Hammer. The Appellant was never seen on the premises where the money generated by cocaine trafficking was kept or where the Hells Angels' accounting was seized. No charges were brought against him upon his arrest on the Rockers Nord premises in Laval. Nor has the evidence established in a probative manner that the property found in the apartment on Vallée Street in Laval belonged to the Appellant.

[21] Therefore, it is my opinion that there is insufficient evidence to tie the Appellant to the sale associated with the purchase of the narcotics contemplated in Exhibit I-5. First of all, we do not even know whether he was the person who purchased these narcotics. Secondly, we are even less certain whether he collected the proceeds of the sale. On the contrary, the evidence suggests that the Bilav account belonged to Stéphane Plouffe (Grizzly), who has apparently already been assessed on the alleged sales related to this account. The fact that the Appellant

frequented members of the Hells Angels or that he might have been a member of the Laval gang in 2000 (which has not been actually proven) is not sufficient to conclude that he sold narcotics for the amount being attributed to him. The fact that he was charged in 2004, four years later, for conspiracy and narcotics trafficking has no bearing on my decision either, because no charges were brought against the Appellant in 2000, the year in issue here.

[22] In addition, the Minister did not establish the Appellant's net worth to verify whether he could have purchased and resold so much money's worth of narcotics. In this regard, this case is distinguishable from *Molenaar v. The Queen*, 2003 TCC 468, [2003] T.C.J. No. 465 (QL), in which the net worth method was used in order to establish that the taxpayer made money selling illegal drugs. Nothing of the kind has been proven here.

Decision

[23] Based on the evidence put before me, I am not satisfied, on a balance of probabilities, that the assessment under appeal is well-founded.

[24] The appeal is allowed and the said assessment is set aside, with costs.

Signed at Ottawa, Canada, this 6th day of December 2006.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 19th day of February 2008.

François Brunet, Revisor

CITATION:	2006TCC655
COURT FILE NO.:	2005-665(GST)G
STYLE OF CAUSE:	FRÉDÉRIC LAVIE AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	October 23, 2006
REASONS FOR JUDGMENT BY:	The Honourable Justice Lucie Lamarre
DATE OF JUDGMENT:	December 6, 2006

APPEARANCES:

Counsel for the Appellant:	Robert Astell
Counsel for the Respondent:	Alain-François Meunier

COUNSEL OF RECORD:

For the Appellant:

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