Docket: 2003-1383(IT)I

BETWEEN:

JACQUES BEAUCHAMP,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on April 19, 2004, at Baie-Comeau, Quebec

Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Yves Langlois

Counsel for the Respondent: Julie David

JUDGMENT

The appeal of the assessment under the *Income Tax Act* for the 1998 taxation year is dismissed without costs.

Signed at Ottawa, Canada, this 14th day of May 2004.

"Alain Tardif"

Tardif J.

Translation certified true
on this 28th day of September 2004.

Shulamit Day, Translator

Citation: 2004TCC371
Date: 20040514
Docket: 2003-1383(IT)I

BETWEEN:

JACQUES BEAUCHAMP,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Tardif J.

[1] This is an appeal related to the 1998 taxation year. The Appellant presented his appeal as follows:

> [TRANSLATION]
>
> In a letter dated March 15, 1999, André Pruneault C.A. informed us that the investment of $20,000 in 2759063 Canada Inc. could be claimed as small business investment loss at 75% of the amount lost.
>
> Château Cornwall:
> A verbal agreement was reached on July 16, 1999, for the 1993-94 95 and 1998 files for the amount of $8,000. The amount was paid, but Revenue Canada did not keep its end of the agreement.

[2] In her response, the Respondent asserted that the assessment had been based on an assumption of the following facts:

[TRANSLATION]

CHÂTEAU CORNWALL

(a) Château Cornwall Limited Partnership is a limited partnership (hereinafter referred to as the "limited partnership");

(b) The limited partnership was created under an agreement dated April 15, 1988, and modified on December 1, 1988;

(c) Château Cornwall General Partner Ltd. is the general partner (hereinafter referred to as the "general partner") of the limited partnership and directs the limited partnership;

(d) The general partner is held fully by Château Cornwall Inc.;

(e) The general partner and Château Cornwall Inc. are related and therefore do not deal with one another at arm's length;

(f) The project of the limited partnership was the acquisition, development and operation of a seniors' centre (hereinafter referred to as the "real estate project");

(g) According to the application forms signed in December 1988:

(i) each investor was required to subscribe to a minimum of three units of the project at a purchase price of $150,000;

(ii) each investor had to pay $40,476 in cash;

(iii) with the limited partnership, each investor had to sign a mortgage assumption warranty, prorated to their participation [$109,524 ($36,508 per unit x 3 units)];

(h) The Appellant bought 3 of the 252 units of the limited partnership;

(i) There are two mortgage assumption warranty agreements:

(i) a first agreement dated December 30, 1988:

(A) this agreement indicated that each of the eighty members was required to sign the mortgage assumption, prorated to their participation, or $109,524;

(B) this agreement was between the subscribers and the limited partnership and granted the general partner the authority to carry out the contents of the agreement at a later date;

(C) according to the mortgage assumption warranties, the subscribers (investors) agreed absolutely and unconditionally to pay, on demand, to the limited partnership or to anyone authorized by it, the entirety of their interest in the first and second mortgages [maximum $36,508 per unit ($36,508 x 3 = $109,524)] with interest and other costs incurred;

(D) the mortgage assumption warranty should not be executed except upon request by the limited partnership, in case the latter defaulted on payment;

(ii) a second agreement dated August 1, 1989:

(A) this agreement was signed between the subscribers, the Toronto-Dominion Bank, the general partner and the limited partnership;

(B) this agreement relates to a loan not to exceed $9,200,000 ($109,524 x 84 members);

(C) this loan would be guaranteed, *inter alia*, by a first mortgage on the property held by the Toronto-Dominion Bank;

(D) according to clause 1 of the agreement, the subscribers (investors) agreed absolutely and unconditionally to pay the Bank, as a primary debtor and not as surety, the principal assumed and the interest and other costs incurred; this obligation was limited to an amount of $36,508 per unit;

(E) according to paragraphs 7, 8, 9, 10 of this agreement, the Bank retained the right to sue the limited partnership as primary creditor according to the loan agreement;

(F) the total cost of the project would therefore be financed as follows:

Cash contribution	$ 3,400,000
1st mortgage with Toronto-Dominion Bank	$ 4,000,000
Loans from the proponent ($1.7M+$3.5M)	$ 5,200,000

TOTAL	$12,600,000

(j) On or about July 1996, the Toronto-Dominion Bank contacted the investors to make the payments provided for in the loan contracts;

(k) After this request, the subscribers (investors) did not make any payments to the Toronto-Dominion Bank;

(l) In accordance with the terms of the application form of December 1988, the Appellant committed to purchasing an amount of $109,524 in the limited partnership through a mortgage assumption in the amount of $109,524;

(m) However, the Appellant's mortgage assumption with the Bank was limited to $52,857;

(n) The Appellant owed an amount of $56,667 to the limited partnership;

(o) The Appellant mentioned to the Minister's representative that he had invested an additional $10,000 through his credit line with the Caisse populaire;

(p) At no time was the Appellant able to prove that he invested this additional amount in the limited partnership;

(q) The Minister granted the Appellant the following amounts as net losses from the limited partnership for 1988 to 1995, related to the Château Cornwall Limited Partnership:

Year	(Net losses from the limited partnership in $)
1988	(3,384)
1989	(5,088)
1990	(16,869)
1991	(33,189)
1992	(26,727)
1993	(11,499)
1994	(9,012)
1995	(2,052)

(r) As a function of the foregoing, the Minister decreased the balance of the at-risk amount of the Appellant's interest in the limited partnership by the assumed but unpaid mortgage balance in the amount of $56,667 for the 1996 taxation year (see Appendix II attached to this Reply);

(s) The balance of the at-risk amount of the Appellant's interest in the limited partnership was therefore reduced to zero for 1996;

(t) Since the at-risk amount of the Appellant's interest in the limited partnership was reduced to zero, the Appellant cannot claim losses related to his investment in the limited partnership for the 1996 taxation year;

(u) At the objections phase, the Appellant presented documentation proving investments of $1,500 for the 1996 taxation year and $2,000 for the 1997 taxation year;

(v) The Minister therefore granted additional amounts of $1,500 in 1996 and $2,000 in 1997 as net losses from the limited partnership;

(w) At no time was the Appellant able to prove that he invested additional amounts in the limited partnership, other than those already considered by the Minister for the 1988 to 1997 taxation years;

(x) In light of the foregoing, the Minister refused to deduct the amount of $13,308 claimed by the Appellant as a net loss from the limited partnership for the 1996 taxation year;

(y) The Appellant is not challenging the amount of $12,668 he claimed, that was refused by the Minister, for his 1997 taxation year as a net loss from the limited partnership;

(z) Furthermore, a decision was made on May 7, 2003, by the Honourable Justice François Angers, in JACQUES BEAUCHAMP – CASE: 2001-4537(IT)I for taxation years 1996 and 1997 refusing the amount of $13,308 as a net loss from the limited partnership for the 1996 taxation year for the following reasons:

> [TRANSLATION]
>
> The Appellant only succeeded in establishing that his payment of $10,000, made in 1996, went to reimburse the debt of the limited partnership for which he had a guarantee with the Caisse populaire de Notre-Dame-du-Chemin in 1994. According to the evidence presented, it is therefore more likely that he received a credit for this amount in 1994. Justice Angers cites: I cannot therefore conclude that the Appellant invested an additional amount of $10,000 in 1996 in the limited partnership. The Minister therefore correctly calculate the at-risk portion of the Appellant's interest in the said company for the 1996 taxation year and thus was right to refuse the amount of $13,308 claimed by the Appellant as a net loss for the same taxation year. The appeal is therefore dismissed and the decision of the Minister is confirmed.

[3] All these facts were subject to a general admission by Counsel for the Appellant.

[4] The facts assumed by the Respondent and not admitted by the Appellant are as follows:

> [TRANSLATION]
>
> (aa) At no time was the Appellant able to prove that he invested additional amounts in the limited partnership for the 1998 taxation year;
>
> (bb) As a function of the foregoing, the Minister decreased the balance of the at-risk amount of the Appellant's interest in the limited partnership by the assumed but unpaid mortgage balance in the amount of $56,667 for the 1998 taxation year (see Appendix II attached to this Reply);
>
> (cc) The balance of the at-risk amount of the Appellant's interest in the limited partnership was therefore reduced to zero for 1998;
>
> (dd) Since the at-risk amount of the Appellant's interest in the limited partnership was reduced to zero, the Appellant cannot claim losses related to his investment in the limited partnership for the 1998 taxation year;
>
> <u>BUSINESS INVESTMENT LOSS</u>
>
> (ee) In his income tax return for the 1998 taxation year, the Appellant claimed a deductible business investment loss of $15,000 ($20,000 x 75%);
>
> (ff) This loss is allegedly the result of:
>
> > (i) the assumed disposal, at $0, of the shares in 2759063 Canada Inc., these shares having an adjusted cost base (hereinafter referred to as the ACB) of $100;
> >
> > (ii) and a debt obligation of 2759063 Canada Inc., for which the ACB is $19,900;
>
> after this company ceased operation;

(gg) 2759063 Canada Inc. was not a company operating a small business because the assets of this company were used to earn investment income; the company's only assets were the shares in and loans of money to Château Cornwall Inc.;

(hh) Château Cornwall Inc. was not a company operating a small business since all or substantially all of the fair market value of its assets were not used to earn business income;

(ii) The assets of Château Cornwall Inc. were also used to earn investment income since its assets were used to lend funds to Château Cornwall Limited Partnership and this limited partnership was not a company operating a small business. It was in fact a group of individuals who invested funds in order to achieve a common goal;

(jj) The Appellant cannot claim the $15,000 ($20,000 x 75%) as a deductible business investment loss for his 1998 taxation year;

(kk) Therefore the Minister granted this amount of $15,000 ($20,000 x 75%) as a net capital loss for the 1998 taxation year.

[5] In support of his appeal, the Appellant essentially advanced two arguments. He first claimed that the Respondent, through Yolaine Couturier, and her representative, a Quebec tax expert by the name of André Côté, concluded a transaction within the meaning of article 2631 of the *Civil Code of Québec* (C.C.Q.).

[6] The Appellant affirmed that he had spoken with Ms. Couturier and had himself concluded that an agreement had been reached. According to the Appellant, the agreement involved the payment of $8,000, in eight cheques of $1,000 each, as full and final settlement of the tax debt.

[7] To support these claims, he submitted Exhibits A-1 and A-2, the texts of which are reproduced here:

[TRANSLATION]

Exhibit A-1

Forestville, July 16, 1999

Revenue Canada

2251 boul. de la Centrale
Jonquière, Quebec
G7S 5J1

To Whom It May Concern:

Following the telephone conversation between my accountant, Mr. André Côté, and Ms. Yolaine Couturier of the Québec office, I am sending you eight (8) cheques of one thousand (1,000) dollars as a result of the agreement reached on July 16, 1999.

Balance due:	$13,649.38
Amendment for 1998:	$6,000.00
Balance:	$7,649.38

I trust this is satisfactory.

Sincerely,

Jacques Beauchamp
9-8th Avenue. P.O. Box 116
Forestville, Quebec
G0T 1E0

[TRANSLATION]

Exhibit A-2

Forestville, December 27, 2001

Canada Customs and Revenue Agency
Jonquière Tax Centre
2251 boul. René Lévesque
Jonquière, Quebec
G7S 5J1

To Whom It May Concern:

Enclosed are the T5013s from 1998 that were not included with my 1998 return.
Please make the necessary corrections. Thank you.

Jacques Beauchamp
9-8th Avenue
Forestville, Quebec
G0T 1E0

[8] He also made a second argument that he had lost $20,000 after investing in 2759063 Canada Inc., and thus declared a business investment loss.

[9] These are the Appellant's only arguments. He did not have the testimony of the tax expert whose services he had retained and who had spoken with Ms. Couturier.

[10] During the cross examination of Ms. Couturier, the Appellant primarily tried to elicit her admission that an agreement had been reached for the settlement of the assessment.

[11] Ms. Couturier explained her duties at the time and remembered having had at least one telephone call with the Appellant and one with his Agent. At the time, in July 1999, she was an information officer. In that capacity, she answered the telephone and gave information to taxpayers regarding their files.

[12] She was also authorized to make payment agreements. At the beginning, this was for small amounts. At the time of the telephone conversations with the

Appellant and his Agent, she had the power to make payment agreements in the cases of files for which the tax debt was between $3,000 and $50,000. In such cases, the payment period could not exceed eight months.

[13] In this case, since this was a file in which the amount at issue was within allowable limits, she made the payment agreement.

[14] Along with the payment agreement, there was also the issue of whether an amended return would be filed, so that it could be analyzed anew, and possibly result in an outcome to the Appellant's advantage; thus it would have been possible that the payment agreement, depending upon the results of this analysis, would coincide with full settlement of the tax debt.

[15] Despite many attempts to have Ms. Couturier recognize that she did indeed reach an agreement with the Appellant or Agent Côté, or that she could have given the impression that this was a settlement, she did not admit anything to the effect that an agreement had been reached or even to the effect that she might have given the impression that this was the case.

[16] The replies given by Ms. Couturier were clear and specific and did not leave room for any doubt; she understood the details and, above all, the limits of her responsibilities with respect to the files in which she intervened.

[17] Although well within the scope and limits of her work, she also explained that she did had neither the authorization nor the skill to analyse and assess the correctness of an assessment nor to make a decision in this respect. Never having received any documents, she did not conduct an analysis of any file; furthermore she did not have the authority to do so.

[18] With respect to the content of the telephone conversations, both with the Appellant or his Agent, she admitted to having perhaps said that the possible result of analyzing an amended return may have an effect on the tax debt, and nothing more. However she did add that she had nothing to do with the processing of the amended return.

[19] The Appellant relied on article 2163 of the C.C.Q. for his claim that Ms. Couturier, as a result of her attitude and behaviour, made the Respondent liable such that the tax debt was extinguished. Article 2163 of the C.C.Q. reads as follows:

> **2163.** A person who has allowed it to be believed that a person was his mandatary is liable, as if he were his mandatary, to the third person who has contracted in good faith with the latter, unless, in circumstances in which the error was foreseeable, he has taken appropriate measures to prevent it.

[20] To dispose of the Appellant's argument, it seems useful to me to recall some portions of relevant decisions.

[21] The Appellant wanted to benefit from the doctrine of estoppel *in pais* of certain persons in authority; this doctrine has been thoroughly handled by the courts. In other words, can the doctrine of estoppel be applied in this case?

[22] The Supreme Court of Canada, in *Canadian Superior Oil Ltd v. Paddon-Hughes Development Co.*, [1970] S.C.R. 932, repeats the conditions required to apply the doctrine of estoppel *in pais*:

> I do not propose to consider this aspect of the case any further, because, in any event, I am in agreement with the concurrent findings of the Courts below that no estoppel was proved. The appellants adopted, in argument, the legal principles stated in *Greenwood v. Martins Bank* [[1933] A.C. 51.], at p. 57:
>
> > The essential factors giving rise to an estoppel are I think:
> >
> > (1) A representation or conduct amounting to a representation <u>intended to induce a course of conduct on the part of the person to whom the representation is made</u>.
> >
> > (2) An act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation is made.
> >
> > (3) Detriment to such person as a consequence of the act or omission.

(Emphasis added)

[23] In light of this decision, it appears that intention is an extremely important dimension in the application of the doctrine of estoppel *in pais*. In other words, intention to induce a course of conduct is a basis of the doctrine of estoppel by representation.

[24] In this case, there was neither direct nor any secondary evidence of intent. Furthermore, this dimension is completely absent from the evidence.

[25] The courts have also ruled on several occasions that an error in law cannot bind the Crown. In *Guerriero v. Canada* IN THE MATTER OF *The Unemployment Insurance Act, 1971* [1987] T.C.J. No. 821, the Honourable Justice Miller of this Court dismissed the taxpayer's appeal because the taxpayer did not discharge the burden of proof and because an error in law cannot bind the Crown. Miller J. referred to the following passage from *Blackmore*:

> In *Blackmore versus M.N.R.*, NR 519, the learned judge in dealing with this same issue stated:
>
> "Legally I am bound to say that notwithstanding any mistake or error or wrong advice on the part of the personnel of the Commission, the Commission is not prevented from seeking to carry out the provisions of the *Unemployment Insurance Act*, 1971. This has been held repeatedly by umpires in the past. There is the well-established principle that an estoppel will not arise when the conditions of the statute are not met. Put tritely, estoppel does not lie against the Crown and further estoppels of all kinds are subject to the general rule that they cannot override the law of the land."

[26] The Honourable Justice Cattanach, in *Stickel v. M.N.R.*, [1972] F.C. 672 (Q.L.), provides a correct summary of the law on the issue:

> 70. In short, estoppel is subject to the one general rule that it cannot override the law of the land.

[27] In *Goldstein v. Canada*, [1995] T.C.J. No. 170 (Q.L.), the Honourable Justice Bowman examined the correctness in law of an interpretation of paragraph 146(1)(*c*) of the *Act* and also responded to the issue of estoppel. This decision by Bowman J. is one of the major decisions addressing the issue of estoppel with respect to tax matters. Bowman J. said the following:

> Estoppel is no longer merely a rule of evidence. It is a rule of substantive law. Lord Denning calls it "a principle of justice and of equity."
>
> It is sometimes said that estoppel does not lie against the Crown. The statement is not accurate and seems to stem from a misapplication of the term estoppel. The principle of estoppel binds the Crown, as do other principles of law. Estoppel *in pais*, as it applies to the Crown, involves representations of fact made by

> officials of the Crown and relied and acted on by the subject to his or her detriment. The doctrine has no application where a particular interpretation of a statute has been communicated to a subject by an official of the government, relied upon by that subject to his or her detriment and then withdrawn or changed by the government. In such a case a taxpayer sometimes seeks to invoke the doctrine of estoppel. It is inappropriate to do so not because such representations give rise to an estoppel that does not bind the Crown, but rather, because no estoppel can arise where such representations are not in accordance with the law. Although estoppel is now a principle of substantive law it had its origins in the law of evidence and as such relates to representations of fact. It has no role to play where questions of interpretation of the law are involved, because estoppels cannot override the law.
>
> The question of the interpretation of paragraph 146(1)(*c*) is a matter of law and I must decide it in accordance with the law as I understand it. I cannot avoid that obligation because the Department of National Revenue may previously have adopted an interpretation different from that which it now propounds. The question is not whether the Crown is bound by an earlier interpretation upon which a taxpayer has relied. It is more to the point to say that the courts, who have an obligation to decide cases in accordance with the law, are not bound by representations, opinions or admissions on the law expressed or made by the parties.

[28] In *Hawkes v. Canada*, [1995] T.C.J. No. 1507 (Q.L.), Margeson J. cites a passage from *Phipson On Evidence* which reads as follows: "Estoppels of all kinds, however, are subject to one general rule: they cannot override the law of the land. Thus, where a particular formality is required by statute, no estoppel will cure the defect."

[29] In *Holitzki v. Canada*, [1998] T.C.J. No. 1146, at paragraph 7 (Q.L.), Rowe J. explained that "[t]he law is clear that stoppel will not lie to override a statutory provision; in this case the *Income Tax Act*."

[30] Associate Chief Justice Bowman, in *Moulton v. Canada*, [2002] T.C.J. No. 80, at paragraph 11 (Q.L.) recently stated:

> The appellant argues with great conviction that he should be entitled to rely on advice given by the CCRA and relied upon by him in good faith. I agree that the result may seem a little shocking to taxpayers who seek guidance from government officials whom they expect to be able to give correct advice. Unfortunately such

> officials are not infallible and the court cannot be bound by erroneous departmental interpretations. Any other conclusion would lead to inconsistency and confusion.

[31] Since this case was heard in Quebec, it is important to mention *Alameda Holdings Inc. v. Canada*, [1999] T.C.J. No. 839 (Q.L.) and *Houde v. Canada*, [2001] T.C.J. No. 130 (Q.L.). These decisions reveal that the doctrine of estoppel *in pais* cannot be applied in cases heard before courts in the province of Quebec. Moreover, in Quebec, *fin de non-recevoir* has essentially the same effect as does estoppel *in pais*, but relies on article 1457 of the C.C.Q. At paragraph 70 of *Alameda Holdings Inc.*, *supra*, the Honourable Justice Dussault said the following with respect to this issue:

> Counsel for the appellant pleaded the doctrine of estoppel and that of fins de non-recevoir. According to counsel, the characteristics and conditions of application of these two institutions are similar, and so should be their effects. This is an over-simplification in my view. I believe that the doctrine of estoppel cannot be pleaded in the instant case and that it is the Civil Code of Quebec that applies. In *Soucisse, supra*, Beetz J. of the Supreme Court of Canada distinguishes between the two concepts, while recognizing that there has often been confusion between the two and that both terms are used. He refers in particular to Mignault J.'s opinion in *Grace and Company, supra*, that the concept of estoppel, as applied in the English system, is unknown to the civil law. However, he expressly acknowledges the existence of fins de non-recevoir in civil law and recognizes that one possible legal basis for a fin de non-recevoir might be the wrongful conduct of a party under articles 1053 et seq. of the Civil Code of Lower Canada (articles 1457 et seq. of the Civil Code of Quebec).

[32] Since the doctrine of estoppel cannot be applied to cases from Quebec, this file must be reviewed in light of article 1457 of the C.C.Q., which reads as follows:

> 1457. Every person has a duty to abide by the rules of conduct which lie upon him, according to the circumstances, usage or law, so as not to cause injury to another.
>
> Where he is endowed with reason and fails in this duty, he is responsible for any injury he causes to another person by such fault and is liable to reparation for the injury, whether it be bodily, moral or material in nature.
>
> He is also liable, in certain cases, to reparation for injury caused to another by the act or fault of another person or by the act of things in his custody.

[33] The testimony and cross-examination of Ms. Couturier does not permit the conclusion that there was any wrongful or even negligent conduct on her part; on the contrary, the evidence has clearly established that she was fully aware of the parameters of her responsibility and that she in no way exceeded her powers or in fact gave such an impression.

[34] With respect to the second argument, the Appellant neither explained nor justified his claims to the effect that he had the right to a deductible business investment loss of $20,000.

[35] On this issue, the Respondent had auditor Claude Goulet testify. He explained that the loss declared by the Appellant was not eligible since the amount had not been invested in a company operating a small business, since the assets of the company that benefited from the Appellant's $20,000 investment was used essentially to earn investment income. Furthermore, the evidence demonstrated that the assets of 2759063 Canada Inc. were shares in and loans to Château Cornwall Inc.

[36] The only projected income was property income, or, more specifically, the interest on the loan or loans.

<u>Analysis</u>

[37] An income tax assessment is assumed to be correct. When there is an appeal, the taxpayer challenging the correctness assumes the burden of proof required to invalidate or modify it.

<u>The transaction argument</u>

[38] Article 2631 of the *Civil Code of Québec* reads as follows:

> **2631.** Transaction is a contract by which the parties prevent a future contestation, put an end to a lawsuit or settle difficulties arising in the execution of a judgment, by way of mutual concessions or reservations.

[39] Showing there has been a transaction is more than an issue of perception; there must be reliable evidence that makes it possible to draw reasonable conclusions. Otherwise, it would suffice simply to claim that there has been a transaction to relieve oneself of the evidentiary obligation.

[40] Certain factors are required for a transaction to have taken place. First, the parties in a transaction must have the requisite authority and competency. There must be a clearly defined and specified purpose, failing which it is not a transaction, but a negotiation.

[41] The settlement amount, the payment method and the payment guarantee are also equally essential factors. In this case, the Appellant wanted the Court to disregard the written document he himself had prepared and which, by its very words, contradicts his claims; in fact, the amount is unclear, and on the other hand the written document anticipates an outcome (the result of an analysis of an amended return) which is also uncertain.

[42] Ms. Couturier, an intelligent and articulate individual, is fully aware of the scope and limits of her work; it would have been very surprising if she had given instructions of the nature alleged by the Appellant.

[43] Although the difference between a payment agreement and a settlement in the sense of a transaction may seem slight, Ms. Couturier well understood the difference between the two scenarios; furthermore, she submitted a relevant example that leaves no doubt with respect to her ability to make the distinction. Her clear and precise testimony is consistent on every point with the written document signed by the Appellant (Exhibit A-1) and reproduced above.

[44] Did it not mention the balance due of $13,649.38? Did it not mention the amendment for 1998 and, finally, a balance due of $7,649.38?

[45] This written document signed by the Appellant confirms every point made by Ms. Couturier to the effect that the results of the amended return could possibly mean that the tax debt would be practically extinguished.

[46] It follows from the review and analysis of the modified return that the Canada Customs and Revenue Agency did not accept the Appellant's interpretation. As a result, the anticipated credit of $6,000 was never granted and the tax debt remained the same, namely $13,649.38 in July 1999.

[47] The $8,000 paid by eight cheques of $1,000 each was therefore, and with reason, handled as a deposit on the amount of taxes due, which is consistent with the explanations given by Ms. Couturier and the written document signed by the Appellant himself.

[48] With respect to the business investment loss of $20,000 declared by the Appellant, he did not submit any evidence to justify it. The Respondent explained why the loss had been refused as a business investment loss and accepted as a net capital loss for the 1998 taxation year.

[49] In this respect, the testimony of Claude Goulet was determinative; he indicated that he analyzed the file and noted, without any difficulty, that the company that received the $20,000 investment from the Appellant did not meet the requirements in order to be considered a company operating a small business.

[50] The auditor, in fact, noted that the company involved used its assets not to earn business income but essentially to receive income generated by property.

[51] These are the only two elements of evidence brought forward by the Appellant who was required to show that the assessment, which benefits from the presumption of validity, was not correct in law. After analysis of the evidence submitted, I conclude that the Appellant did not show the correctness of his claims with respect to the contested assessment.

[52] Therefore the appeal is dismissed, the whole without costs.

Signed at Ottawa, Canada, this 14th day of May 2004.

"Alain Tardif"

Tardif J.

Translation certified true
on this 28th day of September 2004.

Shulamit Day, Translator