Docket: 2005-1788(IT)G

BETWEEN:

GUY LAFLAMME,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on March 21 and March 22, 2007, at Montréal, Quebec

Before: The Honourable Justice Lucie Lamarre

Appearances:

Counsel for the Appellant:	Serge Fournier Geneviève Bergeron
Counsel for the Respondent:	Benoit Mandeville

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* (ITA) in respect of the 1999 taxation year is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the amount of $15M is not to be included in the Appellant's income for the 1999 taxation year under subsection 56(2) of the ITA.

The whole with costs to the Appellant and in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 30th day of April 2008.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 20th day of May 2008.

Brian McCordick, Translator

Citation: 2008TCC255
Date: 20080430
Docket: 2005-1788(IT)G

BETWEEN:

GUY LAFLAMME,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Lamarre J.

[1] The Appellant is contesting an assessment made by the Minister of National Revenue ("the Minister"). By this assessment, the Minister added $15M to the Appellant's income for the 1999 taxation year pursuant to subsection 56(2) of the *Income Tax Act* (ITA). In general terms, the Minister submits that the Appellant arranged for a transfer of a $15M economic interest to or for the benefit of his son Jean Laflamme, and/or the management company controlled by his son, and that this amount must consequently be included in his income under the terms of that provision.

[2] In the alternative, if subsection 56(2) does not apply, the Respondent submits that the Appellant should be taxed on a capital gain of $11.25M (75% of $15M) by reason of his disposition of a $15M economic interest to his son Jean Laflamme and/or his management company. The Respondent submits that since the Appellant received no proceeds from the disposition of this interest, and since the Appellant and his son, or the Appellant and his son's management company, are related, the Appellant is deemed, under subparagraph 69(1)(*b*)(i) of the ITA, to have received proceeds of disposition equal to the fair market value of the interest ($15M). It should be noted that the assessment is not based on this last argument; rather, it was made in the oral submissions.

[3] The Appellant is contesting both arguments. His position, stated in general terms, is that he did not confer a benefit or transfer or dispose of an economic interest worth $15M to his son or his son's management company.

Statutory provisions

[4]

◄ 56(2) ►

(2) **Indirect payments**. A payment or transfer of property made pursuant to the direction of, or with the concurrence of, a taxpayer to some other person for the benefit of the taxpayer or as a benefit that the taxpayer desired to have conferred on the other person (other than by an assignment of any portion of a retirement pension pursuant to section 65.1 of the *Canada Pension Plan* or a comparable provision of a provincial pension plan as defined in section 3 of that Act or of a prescribed provincial pension plan) shall be included in computing the taxpayer's income to the extent that it would be if the payment or transfer had been made to the taxpayer.

SECTION 69: **Insufficient considerations**

(1) Except as expressly otherwise provided in this Act,

. . .

(*b*) where a taxpayer has disposed of anything

(i) to a person with whom the taxpayer was not dealing at arm's length for no proceeds or for proceeds less than the fair market value thereof at the time the taxpayer so disposed of it

. . .

the taxpayer shall be deemed to have received proceeds of disposition therefor equal to that fair market value; and

. . .

Facts

[5] The Appellant is a businessperson who continued his father's business, which was founded in 1940. Over the years, the business, Industries Rive-Sud Limitée ("IRSL"), specialized in the manufacturing of bedroom furniture. The Appellant became its main shareholder and executive in 1968. At that time, the business made $700,000 in annual sales. This increased to $32M (net profit of $2-3M) in 1993, $46M (net profit of $4.7M) in 1996, and $99M (net profit of $19.5M) in 1999. By the time of the hearing, sales had declined considerably and the business was being operated at a loss.

[6] In 1991, the Appellant, along with his son Jean Laflamme and a third, unrelated, individual named André Lamothe, ran the business. Mr. Lamothe was the President, Jean Laflamme was the Vice-President, and the Appellant was Chairman of the Board and Chief Executive Officer. The Appellant was consulted on any decisions involving investments, outlays, or the direction of the business.

[7] In 1991, the Appellant held 50% of the share capital of IRSL through a management company called 118280 Canada Inc. ("118 Canada"), Jean Laflamme held 25% through a management company called 2165-1153 Québec Inc. ("2165 Québec") and André Lamothe personally held 25%.

[8] In 1996, after experiencing health problems, the Appellant, along with his accountant Gilles Cadieux, began to think about estate planning. The Appellant wanted his son Jean to take the reins of the business, but did not want to overlook his four other children or his wife. Mr. Cadieux spoke with the Appellant about the possibility of an estate freeze, in which the value of his shares in the business would be frozen so that the increase in their value would accrue to his children. This gave rise to the idea of creating a trust, the beneficiaries of which would be his five children ("the Trust").

[9] At that time, 118 Canada, the Appellant's management company, held 50% of the shares of IRSL (as stated above) but held other investments as well. It was therefore decided to hold all assets other than IRSL shares in 118 Canada, for the benefit of the Appellant and his wife, and to transfer the IRSL shares to a newly created company called 3325016 Canada Inc. ("332 Canada"), the shares of which were held by the Appellant and the Trust. The transfer of these shares was done in accordance with the rollover provisions of section 85 of the ITA, and there were no tax consequences at the time of the transfer.

[10] The parties to this litigation saw fit to file a Partial Agreed Statement of Facts, which summarizes all the transactions that took place at this stage of the events (that is to say, starting on December 18, 1996) in connection with the transfer of the IRSL shares, and involving the Trust, the newly created 332 Canada, and the management companies held by the Appellant, his son Jean Laflamme and André Lamothe.

[11] This partial agreement on the facts is reproduced below:

> [TRANSLATION]
>
> 1. Prior to December 18, 1996, 50% of the common shares of Les Industries de la Rive Sud Ltée (**IRSL**) were held by 118280 Canada Inc. (**118280 Canada**), 25% were held by 2165-1153 Québec Inc. (**2165-1153 Québec**) and 25% were held by André Lamothe (**Lamothe**). (subparagraph 21(a) of the Amended Reply to the Notice of Appeal)
>
> 2. At that time, the Appellant held all 300 common shares of **118280 Canada**. (subparagraph 21(b) of the Amended Reply to the Notice of Appeal)
>
> 3. At that time, the Appellant's son Jean Laflamme (**the Appellant's son**) held all the shares of **2165-1153 Québec**. (subparagraph 21(c) of the Amended Reply to the Notice of Appeal)
>
> 4. Lamothe and the Appellant are at arm's length from each other. (subparagraph 21(d) of the Amended Reply to the Notice of Appeal)
>
> 5. On or about December 18, 1996, the Guy Laflamme trust (the **Guy Laflamme Trust**) was created by Marthe Vaillancourt, the Appellant's wife. (subparagraph 21(e) of the Amended Reply to the Notice of Appeal)
>
> 6. The **Guy Laflamme Trust** deed provided that the Appellant and Robert Després would be the trustees. (subparagraph 21(f) of the Amended Reply to the Notice of Appeal)
>
> 7. The income beneficiaries of the **Guy Laflamme Trust** were the Appellant's five children (i.e. Jean, Jacques, Marc, Richard and Marie-Josée Laflamme) and their current or future children of the first degree. (subparagraph 21(g) of the Amended Reply to the Notice of Appeal)
>
> 8. The capital beneficiaries of the **Guy Laflamme Trust** were the Appellant and his five children (and their current or future children of the first degree). (subparagraph 21(h) of the Amended Reply to the Notice of Appeal)

9. Section 7.1 of the **Guy Laflamme Trust** deed provided, *inter alia*, that any decisions were to be made by majority and that, if Guy Laflamme was a trustee, he would have to be part of that majority. (subparagraph 21(i) of the Amended Reply to the Notice of Appeal)

10. On or about December 18, 1996, 3325016 Canada Inc. (**3325016 Canada**), a business corporation, was incorporated by the Appellant. (subparagraph 21(j) of the Amended Reply to the Notice of Appeal)

11. During the period in issue, the Appellant was the sole director of **3325016 Canada**. (subparagraph 21(k) of the Amended Reply to the Notice of Appeal)

12. **3325016 Canada** was incorporated for the purpose of doing an estate freeze of the Appellant's shares of **118280 Canada**. (subparagraph 21(l) of the Amended Reply to the Notice of Appeal)

13. Following the incorporation of **3325016 Canada**, the **Guy Laflamme Trust** subscribed for 100 Class A shares and the Appellant subscribed for 10 Class D shares and 500 Class E shares (subparagraph 21(m) of the Amended Reply to the Notice of Appeal)

14. The Class A shares in **3325016 Canada**, held by the **Guy Laflamme Trust**, were fully participating in the corporation's residual property in the event of a winding-up. (subparagraph 21(n) of the Amended Reply to the Notice of Appeal)

15. The shares held by the **Guy Laflamme Trust** in **3325016 Canada** gave the trust a mere 0.002%[1] of voting rights at the shareholders' meetings of **3325016 Canada**. The remaining voting rights were attached to the shares held by the Appellant. (subparagraph 21(o) of the Amended Reply to the Notice of Appeal)

16. Each Class E share of **3325016 Canada** acquired by the Appellant had 100 votes. (subparagraph 21(p) of the Amended Reply to the Notice of Appeal)

---

[1] In footnote 5, at paragraph 8 of the Respondent's written notes, counsel states that the Trust's shares in 332 Canada gave it 0.2% of the voting rights. In my view, the actual percentage is 0.002%. If each Class A share granted one vote, the Trust, with its 100 shares, therefore had 100 votes. The Appellant, with his Class E shares, had 50,000 votes (see paragraph 16 of the partial agreement on the facts and the articles of incorporation of 332 Canada, Exhibit A-1, tab 1). No other shares gave him any votes. Thus, 100 votes out of a total of 50,100 votes equals 0.002% attributable to the Trust.

17. The Appellant's Class D shares in **3325016 Canada** did not participate in the residual property, and each of these Class D shares was convertible, at the holder's option, into 1 million Class A shares. (subparagraph 21(q) of the Amended Reply to the Notice of Appeal)

18. The description of **3325016 Canada**'s share capital provided that, in the event of an actual or deemed disposition by the Appellant of his Class D shares, in whole or in part, the conversion right would automatically be cancelled. (subparagraph 21(r) of the Amended Reply to the Notice of Appeal)

19. The description of **3325016 Canada**'s share capital also provided that if the Appellant gave notice of conversion within a certain period before his death, the notice would be deemed not to have been given. (subparagraph 21(s) of the Amended Reply to the Notice of Appeal)

20. On or about December 18, 1996, the Appellant transferred 180 shares of **118280 Canada** to **3325016 Canada** in consideration of 180 Class B preferred shares of the latter corporation (the **freeze shares**) (subparagraph 21(u) of the Amended Reply to the Notice of Appeal)

21. The transfer referred to in the preceding paragraph was done as a tax rollover under section 85 of the **ITA**. The parties agreed on a total fair market value of $6.5 M for all the shares thereby transferred. (subparagraph 21(v) of the Amended Reply to the Notice of Appeal)

22. On or about December 18, 1996, **118280 Canada** transferred all its common shares in **IRSL** to **3325016 Canada** in consideration of 50 Class C preferred shares of the latter corporation. (subparagraph 21(w) of the Amended Reply to the Notice of Appeal)

23. The transfer referred to in the preceding paragraph was done as a tax rollover under section 85 of the **ITA**. The parties agreed on a total fair market value of $6.5M for all the shares thereby transferred. (subparagraph 21(x) of the Amended Reply to the Notice of Appeal)

24. Following the transfers referred to in paragraphs 20 and 22 of this Partial Agreed Statement (subparagraphs 21(u) and 21(w) of the Amended Reply to the Notice of Appeal), the shares issued in consideration of these transfers (the Class C shares held by **118280 Canada** in the share capital of **3325016 Canada** and the common shares held by **3325016 Canada** in the share capital of **118280 Canada**) were redeemed through the issuance of two $6.5M notes. The notes were then extinguished by set-off. (subparagraph 21(y) of the Amended Reply to the Notice of Appeal)

25. On or about January 23, 1997, the share capital of **IRSL** was altered by reason of the creation of new categories of Class A and Class B common shares. (subparagraph 21(z) of the Amended Reply to the Notice of Appeal)

26. **3325016 Canada** received, at that time, 50 Class A shares in exchange for its common shares, and **2165-1153 Québec** and **Lamothe** each received 25 Class B shares in exchange for their common shares. (subparagraph 21(aa) of the Amended Reply to the Notice of Appeal)

27. On or about July 27, 1999, Lamothe incorporated Placements André Lamothe Inc. (**Placements André Lamothe**) and 9079-9891 Québec Inc. (**9079-9891 Québec**). (subparagraph 21(bb) of the Amended Reply to the Notice of Appeal)

28. On or about July 27, 1999, **Lamothe** transferred his holdings (25%) in **IRSL** to **9079-9891 Québec Inc**. in consideration of 23,438 Class A shares and 1562 Class B shares of **9079-9891 Québec Inc**. (subparagraph 21(cc) of the Amended Reply to the Notice of Appeal)

29. Later that day, **Lamothe** transferred his 23,438 Class B shares of **9079-9891 Québec Inc**. to **Placements André Lamothe** in consideration of 23,438 Class A common shares of **Placements André Lamothe**. (subparagraph 21(dd) of the Amended Reply to the Notice of Appeal)

30. On July 30, 1999, **Lamothe** sold both his direct and indirect holdings (25%) in **IRSL** by transferring the shares of **9079-9891 Québec** that he held directly, and indirectly through **Placements André Lamothe**, to **2165-1153 Québec** (**the Appellant's son's** management company) for $8M. (subparagraph 21(ee) d of the Amended Reply to the Notice of Appeal)

31. For the purposes of the purchase referred to in the preceding paragraph, **2165-1153 Québec** had obtained an $8M loan from a person at arm's length (**third-party purchaser**) who, a short time later, became a shareholder of **IRSL**. (subparagraph 21(ff) of the Amended Reply to the Notice of Appeal)

32. On or about August 2, 1999, the share capital of **IRSL** was restructured, and the Class B common shares then held by **2165-1153 Québec** and **9079-9891 Québec** were split into 10 shares for each share then issued. Thus, following the split, each of these companies held 250 Class B shares of **IRSL**. As for the 50 Class A shares held by **3325016 Canada** in **IRSL**, they were converted, as part of the restructuring, into 100 Class B shares and 400 Class C shares. (subparagraph 21(gg) of the Amended Reply to the Notice of Appeal)

33. On or about August 2, 1999, the **Guy Laflamme Trust** transferred 20 of its 100 Class A shares of **3325016 Canada** to **2165-1153 Québec** in consideration of 100 Class E shares of the latter company. (subparagraph 21(hh) of the Amended Reply to the Notice of Appeal)

34. On or about August 2, 1999, **3325016 Canada** transferred 100 Class B shares of **IRSL** to **2165-1153 Québec** in consideration of 100 Class D shares of the latter corporation. (subparagraph 21(kk) of the Amended Reply to the Notice of Appeal)

35. An election under subsection 85(1) of the **ITA** was made in respect of the transfer referred to in paragraph 34 of this Partial Agreed Statement (subparagraph 21(kk) of the Amended Reply to the Notice of Appeal). The amount agreed upon was equal to the adjusted cost base of the transferred shares, and the parties agreed on a fair market value of $15M for all these shares. (subparagraph 21(ll) of the Amended Reply to the Notice of Appeal)

36. Following the transfers referred to in paragraphs 33 and 34 of this Partial Agreed Statement (subparagraphs 21(hh) and 21(kk) of the Amended Reply to the Notice of Appeal), the shares issued in consideration of these transfers (the 20 Class A shares held by **2165-1153 Québec** in the share capital of **3325016 Canada** and the 100 Class D shares held by **3325016 Canada** in the share capital of **2165-1153 Québec**) were redeemed through the issuance of two notes of $15M each (**the cross-redemptions**). These notes were then extinguished by set-off. (subparagraph 21(mm) of the Amended Reply to the Notice of Appeal)

37. The **cross-redemptions** were carried out pursuant to the Appellant's direction or with his concurrence. (subparagraph 21(nn) of the Amended Reply to the Notice of Appeal)

38. On or about August 2, 1999, **IRSL** declared a $15M dividend that was paid to **2165-1153 Québec** ($3.75M), **9079-9891 Québec** ($3.75M) and **33250156 Canada** ($7.5M). (subparagraph 21(uu) of the Amended Reply to the Notice of Appeal)

39. The loan granted to **2165-1153 Québec** by the **third-party purchaser** was repaid by **2165-1153 Québec** using an amount of $8M consisting of the $7.5M dividend received by **2165-1153 Québec** and **9079-9891 Québec** plus $500,000 advanced by **IRSL** to **2165-1153 Québec**. (subparagraph 21(vv) of the Amended Reply to the Notice of Appeal)

40. On or about September 23, 1999, the **third-party purchaser** acquired 265 Class A shares of **IRSL** for $33.15M (subparagraph 21(ww) of the Amended Reply to the Notice of Appeal)

[12] With respect to the transfer of shares that took place in 1996 and resulted in 332 Canada becoming a shareholder of IRSL in place of 118 Canada (paragraphs 20 to 24 of the Partial Agreed Statement of Facts), the Minister, in making the assessment for the 1996 taxation year, did not call into question the $6.5M fair market value agreed upon by the corporations concerned or the legitimacy of the cross-redemptions, which had no tax consequences (see the auditor's report, Exhibit A-2, at page 19 of 20).

[13] As for the July 1999 sale of the IRSL shares previously held by André Lamothe, and transferred by him to management company 9079-9891 Québec Inc. ("9079 Québec") and then to Jean Laflamme's management company ("2165 Québec") for $8M (paragraphs 27 to 30 of the Partial Agreed Statement of Facts) is concerned, as far as I know, the Minister did not call the legitimacy of these transactions into question either. The Appellant explained that, in 1999, Mr. Lamothe was ill and left the business two years prior to the expiry of his initial 10-year term. Under the shareholders' agreement, Jean Laflamme or his management company were supposed to redeem Mr. Lamothe's holdings in IRSL, whether direct or indirect. At this point, Jean Laflamme contacted the Beaudier group to finance the acquisition, by his management company 2165 Québec, of the shares of Placements André Lamothe. Actually, 9079 Québec held Mr. Lamothe's previous holdings in IRSL, and the shares of 9079 Québec were held by Placements André Lamothe. In return, Beaudier demanded a 50% stake in IRSL. An agreement valuating all of IRSL's shares at $150M was made and Beaudier promised to purchase 50% of the shares of IRSL over a five-year period. At that point, the Appellant decided it was time for him to withdraw from the business and make room for his son Jean Laflamme and the Beaudier group. The objective was to keep 50% of the business (IRSL) within the Laflamme family and transfer the other 50% to Beaudier. 332 Canada now held 50% of the shares in IRSL and the Trust held the participating shares in 332 Canada (the 100 Class A shares); thus, the Trust held $75M worth of shares ($15M per beneficiary child). Since Jean Laflamme was the only one of the Appellant's children who was involved in the business, it was decided that the Trust would attribute his $15M share to him directly. Thus, the Trust transferred to 2165 Québec, Jean Laflamme's management company, 20 Class A shares that it held in the share capital of 332 Canada in consideration of 100 Class E shares of 2165 Québec. Parallel to this, 332 Canada transferred 100 Class B shares that it held in IRSL (10% of IRSL's share capital) to 2165 Québec in consideration of 100 Class D shares of 2165 Québec. Both transfers were the subject of elections under section 85 of the ITA, and the fair market value of the shares was set at $15M. This was followed by cross-redemptions of the shares mutually held by 332 Canada and 2165 Québec and

by the extinction, by set-off, of the notes issued in consideration of the redemptions (see paragraphs 33 to 37 of the Partial Agreed Statement of Facts). The result was that 2165 Québec and 332 Canada no longer held any of each other's shares. Then, the Trust distributed its 100 Class E shares in 2165 Québec to Jean Laflamme, one of its beneficiaries, in satisfaction of his entire beneficiary interest (see Exhibit A-1, tab 21). Thus, following this capital distribution, Jean Laflamme was no longer a trust beneficiary but got his share of the estate freeze by receiving 10% of IRSL's share capital, namely 100 Class B shares of IRSL, through 2165 Québec, his management company.

Dispute

[14] It is precisely these cross-redemptions of the 20 Class A shares in 332 Canada held by 2165 Québec and the 100 Class D shares in 2165 Québec held by 332 Canada, and the issuance of the notes valued at $15M (paragraph 36 of the Partial Agreed Statement of Facts), that the Minister is contesting.

[15] In the Minister's opinion, the 20 Class A shares in 332 Canada, transferred by the Trust to 2165 Québec, were not worth $15M at the time of the transfter, and thus, a note in that amount could not have been issued upon the redemption of these 20 Class A shares. Consequently, the Minister submits that the shares cannot have been cross-redeemed for this amount, and 2165 Québec ended up with the 100 IRSL Class B shares previously held by 332 Canada, and valuated at $15M, without having paid any consideration for them. Thus, in the Respondent's submission, 2165 Québec, Jean Laflamme's management company, received a $15M benefit.

[16] The parties agree that the dispute is primarily about the value to be attributed to the 20 Class A shares in 332 Canada that the Trust held at the time of the transfer to 2165 Québec.

[17] The Respondent submits that these shares had only a nominal value. The Appellant claims that they were worth $15M.

[18] In the Respondent's view, the Class A shares in 332 Canada had only a nominal value because of the "nuisance value"[2] created by the 10 Class D shares in 332 Canada held by the Appellant. In the Respondent's submission, the right, enjoyed by the holder of the 10 Class D shares, to convert those shares, at the holder's option,

---

[2] The parties used the English phrase "nuisance value" throughout the hearing, and for the sake of simplicity, it has been used in the French version of these Reasons for Judgment.

into 10 million Class A shares in 332 Canada, stripped the 100 Class A shares in 332 Canada, held by the Trust, of any value whatsoever.

[19] The Respondent submits that it should not be assumed that the holder of the Class D shares – in this instance, the Appellant – waived or would have waived the conversion right associated with his shares. According to the Respondent's two expert witnesses, as long as the holder of the 10 Class D shares could exercise his right to convert a Class D share into a million Class A shares, he owned the corporation fully. The experts argue that the rights and privileges associated with the Class D shares stripped the remaining shares of all their value to an independent third party. Such a party would have made sure, before paying $15M for the 20 Class A shares, that the Class D shares no longer had the rights and privileges associated with the conversion right. And the fact is that the Appellant still held his 10 Class D shares and had not waived his option at the time that the Trust transferred the 20 Class A shares to 2165 Québec. In other words, even if the Class D shares, considered individually, had minimal value, they had a significant dilution power, thereby conferring a negligible value on the Class A shares. According to the experts, the entire value of the business belonged to the Appellant by virtue of his being in possession of the Class D shares.

[20] The Respondent's experts acknowledge that if the Class D shares had no conversion feature, they would be worth only $1 each (i.e. their redemption value).

[21] The Appellant's expert, for his part, disagrees with the "nuisance value" which the Respondent's experts attribute to the Class D shares, which would strip the Class A shares of any value.

[22] At pages 3 and 4 of his Report (Exhibit A-5), the Appellant's expert submits as follows:

	[TRADUCTION]
. . .	[...]
We disagree with the conclusions expressed in the 2001 CRA [Respondent] Opinion Letter. The reasons for our disagreement are illustrated with a walk-through of a potential transaction involving 20 of the Class A Shares of 3320516:	Nous ne souscrivons pas aux conclusions exprimées dans la lettre d'opinion de 2001 de l'ARC [l'intimée]. Les motifs de notre désaccord sont illustrés par l'exemple suivant d'une transaction éventuelle visant 20 actions de catégorie A de 3320516 :

- The shareholder of 3325016 decides to sell 20 of its Class A Shares in 3320516 and is able to find a potential purchaser for said shares. The potential purchaser is interested in acquiring the 20 Class A Shares for the value of 3320516's investment in IRSL.

- The potential purchaser conducts his due diligence and is confronted with the convertible Class D Shares. Understandably, the potential purchaser would refuse to purchase the Class A Shares unless he were guaranteed that the Class D Shares would not be converted and would not therefore dilute the value of his newly acquired Class A Shares.

. . .

Implicit in CRA's analysis is the assumption that the owner of the Class D Shares would not be prepared to provide a guarantee of non-conversion. As a result, no sale of the 20 Class A shares could ever be consummated. CRA's implicit assumption is incorrect in that it does not reflect the commercial realities specific to 3320516 and its investment in IRSL.

The definition of fair market value assumes that all parties to a transaction act at arm's length (i.e. "n'ont aucun lien de dépendance"). A consistent interpretation of this definition is that parties should always be considered to be at arm's length, i.e. at the creation of the relationship through the issuance of

- L'actionnaire de 3325016 décide de vendre 20 de ses actions de catégorie A de 3320516 et trouve un acheteur éventuel pour ces actions. L'acheteur éventuel est intéressé à acheter les 20 actions de catégorie A en raison de la valeur de l'investissement de 3320516 dans IRSL.

- L'acheteur éventuel effectue **ses** vérifications préalables et découvre l'existence des actions convertibles de catégorie D. Naturellement, l'acheteur éventuel refuserait d'acheter les actions de catégorie A, sauf s'il obtenait la garantie que les actions de catégorie D ne seraient pas converties et n'iraient donc pas diluer la valeur des actions de catégorie A qu'il se propose d'acquérir.

[...]

Dans l'analyse de l'ARC on suppose implicitement que le propriétaire des actions de catégorie D ne consentirait pas à fournir une garantie de non-conversion et que, par conséquent, aucune vente des 20 actions de catégorie A ne pourrait jamais se faire. Cette supposition implicite de l'ARC est erronée car elle ne tient pas compte des réalités commerciales propres à 3320516 et à son investissement dans IRSL.

La définition de juste valeur marchande tient pour acquis que l'ensemble des parties à une transaction n'ont entre elles aucun lien de dépendance. Cette définition a été interprétée, et ce, de façon constante, comme signifiant que les parties doivent toujours être présumées n'avoir aucun lien de dépendance, ce qui veut dire, en

shares, during the period that the parties hold shares in 3320516 and at the end of the relationship when one party wishes to sell its shares in 3320516. When 3320516 was created, there was a clear intention that future value accrue to the Class A Shares. It is nonsensical to think that two parties acting at arm's length would have created a class of shares (the Class A Shares) that could be stripped of all value at the whim of the holder of the Class D Shares. If this was the desire of the holder of the Class D Shares, then he would have simply issued himself the Class A Shares and not bothered with any Class D Shares.

l'occurrence, que les parties n'avaient aucun lien de dépendance au moment de la création de la relation par l'émission des actions, qu'elles n'ont pas de tel lien au cours de la période pendant laquelle elles détiennent des actions de 3320516 et qu'elles n'en auront pas à la fin de la relation lorsqu'une partie voudra vendre ses actions de 3320516. Lorsque 3320516 a été créée, l'intention manifeste des parties était que la valeur future profite aux actions de catégorie A. Il est absurde de penser que deux parties qui n'avaient aucun lien de dépendance auraient créé une catégorie d'actions (les actions de catégorie A) qui pourraient être dépouillées de toute valeur au gré du détenteur des actions de catégorie D. Si c'était ce que voulait le détenteur des actions de catégorie D, il se serait tout simplement attribué les actions de catégorie A et n'aurait pas créé d'actions de catégorie D.

Given the clear intention to create value for the Class A Shares, it is reasonable to expect that the required guarantee of non-conversion would be provided by the holder of the Class D Shares.

Compte tenu de l'intention manifeste de faire en sorte que les actions de catégorie A aient de la valeur, il est raisonnable de s'attendre à ce que la garantie exigée de non-conversion soit fournie par le détenteur des actions de catégorie D.

One might ask why the Class D Shares included the conversion feature. A possible explanation is that it was put in place as a safety measure to protect the interests of the shareholders of IRSL. If all of the Class A Shares in 3320516 were to be sold to a potential purchaser deemed unacceptable to the other shareholders of IRSL, the conversion feature provided a safety mechanism for the holder of the Class D Shares to maintain control of 3320516 and, by extension, IRSL.

On pourrait se demander pourquoi les actions de catégorie D comportent un privilège de conversion. Il se pourrait qu'il ait été accordé à titre de mesure de protection visant à protéger les intérêts des actionnaires de IRSL. Si toutes les actions de catégorie A de 3320516 devaient être vendues à un acheteur éventuel jugé inacceptable par les autres actionnaires de IRSL, le privilège de conversion constituerait un mécanisme de protection qui permettrait au détenteur des actions de catégorie D de conserver le contrôle de 3320516 et, par

Given that the contemplated transaction involved only 20 Class A Shares, no protective measures would be required and therefore there would be no reason for the guarantee of non-conversion to be withheld.	voie de conséquence, de IRSL. Comme la transaction envisagée ne visait que 20 actions de catégorie A, aucune mesure de protection n'était nécessaire et, par conséquent, il n'y avait aucune raison de refuser de donner la garantie de non-conversion.
. . . A more complete analysis of the facts, including the intentions of the parties when 3320516 was created and their actions from creation to the transaction involving the 20 Class A Shares, would justify only a marginal, if any, nuisance value for the Class D Shares in 3320516.	[...] Une analyse plus exhaustive des faits, notamment des intentions des parties lors de la création de 3320516 ainsi que de leurs actes à partir du moment de la création jusqu'au moment de la transaction visant les 20 actions de catégorie A, mènerait à la conclusion que l'existence des actions de catégorie D de 3320516 ne présente, tout au plus, que des inconvénients minimes.

[23] In his testimony, the Appellant's expert countered that there is every reason to believe that the holder of the Class D shares (in this instance, the Appellant) would do everything necessary for the Class A share sale transaction to take place if he wanted the Trust to dispose of the Class A shares. He would certainly not block the sale by threatening to use the conversion right associated with his Class D shares. On the contrary, he would waive it in order to ensure that the transaction would be consummated. If the Appellant, from the beginning, did not want the Trust to dispose of its Class A shares, he would already have exercised his conversion right so that he would no longer have to fear losing control over the number his shares in 332 Canada, which itself is a shareholder of IRSL. The entire concept behind the creation of the Trust and its holding of the Class A participating shares was precisely the Appellant's desire to let go of the business.

[24] Once this fact is understood, it is clear that once the Appellant or the Trust, of which he is one of the trustees, accepts the purchaser, the Appellant, who holds the Class D shares personally, would waive his conversion right, and the nuisance value, if there was any to speak of, would then become minimal.

[25] In the Appellant's expert's opinion, the theoretical concepts used by the Respondent should not take precedence over the reality of business activities. According to the definition of fair market value, one must look at the value to a purchaser who wishes to purchase and a seller who wishes to sell.

[26] The Appellant's expert further submits that the kind of context in which a nuisance value exists would be one in which minority shareholders are trying to block the sale, by a majority shareholder, of all the shares of the corporate entity in question. In such a case, a somewhat higher value would have to be attributed to the minority shareholders' holdings in order to persuade those shareholders to dispose of them. This, in his submission, would be defined as a nuisance value.

[27] The situation in the instant case is different, and is not typical of the situations where a nuisance value must be taken into account. Indeed, there is no minority shareholder here. We are in a situation where the Class D shareholder wants the transfer of the Class A shares to proceed. The "nuisance value" or the reduction of the value of the Class A shares would be truly minimal under the circumstances.

Analysis

[28] One of the key sentences in the report of the Respondent's expert (Exhibit I-6, page 3) reads as follows:

> [TRANSLATION]
> . . .
>
> By using this conversion power, the holder of the Class D shares can take control of the corporation at any time he chooses.
>
> Because of this, he is able to prevent a plan initiated by the majority shareholder for his own benefit. He can effectively be in a position to block the takeover sale.

[29] In the specific context of the 1996 estate freeze, the intention was to give away the increase in the value of the Class A shares, held by the Trust, and to leave the control in the Appellant's hands by giving him another class of shares, that is, the Class E shares, which had 100 votes per share (compared with 0.002% of the voting rights for the Class A shares) (see the Partial Agreed Statemetn of Facts, at paragraphs 15 and 16). Even if the Appellant exercised his right of conversion, and converted his 10 Class D shares into 10 million Class A shares, this would not in any way affect the control of 332 Canada, which was already his by virtue of his Class E shares.

[30] Consequently, the Respondent's expert is not correct when he says that the conversion power attached to his Class D shares (a power which in fact was personal to the Appellant because the established structure dictated that he alone could

exercise the power) is what enabled the holder of the Class D shares, that is to say, the Appellant, to take control of 332 Canada.

[31] Thus, it is my view that the Respondent's expert is mistaken when he asserts that [TRANSLATION] "the holder of the Class D shares . . . is able to prevent a plan initiated by the majority shareholder for his own benefit [by blocking] the takeover sale." Based on the existing structure, it is the Appellant who has control over 332 Canada by virtue of holding its 500 Class E shares, which give him 50,000 votes. He has all the powers of the majority shareholder. Whether he exercises his conversion right and appropriates the Class A shares, or, instead, agrees to the Trust's disposition of its shares to a purchaser whom he approves, it is ultimately he who decides whether the sale of the Class A shares goes through. There is no effect on the value of the Class A shares. Let us consider another context, such as where a shareholder has a preferential right to acquire shares for less than fair market value and he does not exercise that right. The fair market value of these shares is not affected in any way. If the shareholder does not exercise the right, the shares will be sold at market value. The same principle applies here. If the Appellant does not exercise his conversion right, and he assents to the transfer of the Class A shares, the unexercised conversion right has no effect on the intrinsic value of the Class A shares thereby transferred. The Appellant's former right to convert his Class D shares, and what would have resulted if he had exercised that right following the transfer of the Class A shares, becomes a purely hypothetical issue. What must be analysed are the facts as they unfolded, not as they could have unfolded.

[32] This entire structure was designed to enable the Appellant to withdraw from the business gradually while availing himself of the appropriate tax rules in order to carry out an estate freeze for the benefit of his children.

[33] From the very outset, the intent was to transfer, to the children, the increase in the value of the business. It would be illogical to claim that the Appellant would exercise his conversion right to dilute the value of the Class A shares that the Trust held for the children's benefit. This is certainly also true in the specific case where he agrees to the transfer of part of those shares to the child who has been managing the business alongside him for several years. The Class D shares appear to have been created during the first estate freeze of 1996, in case the Appellant changed his mind and decided that he did, after all, want to profit from the increase in the value of the business. The Appellant's accountant, Mr. Cadieux, asserted that this mechanism was put in place at the initiative of the person who was the tax specialist at that time, without any further consultations. The Appellant did not make an issue of it: he testified that he did not really give these shares any thought. What mattered to him

was to withdraw from the family business and transfer the increase in its value to his children. It is therefore very unlikely that he ever intended to exercise his conversion right.

[34] Even if the Appellant had been fully conscious of this conversion right, the fact that the Trust, and the Appellant personally, agreed to distribute his son Jean's share of the trust capital by initiating the transfer of 20 Class A shares, is completely consistent with the aim of the estate planning conceived by the Appellant in the first place. It is hard to imagine how the Appellant could have simultaneously intended to convert his Class D shares, as this would run directly counter to the purpose for which the Trust was created, and for which the Trust held, in trust for the beneficiaries, Class A shares that conferred the right to participate in the profits and asset distributions of 332 Canada, and, ultimately, of IRSL.

[35] This is why I agree with the Appellant's expert that, in this specific case, no nuisance value, which would strip the Class A shares of 332 Canada of all their value, should be attributed to the Class D shares.

[36] In *Corner Brook Pulp and Paper Limited v. The Queen*, 2006TCC70, [2006] T.C.J. No. 63 (QL), cited by counsel for the Appellant, Bowman C.J. of our Court stated as follows at paragraphs 28, 29 and 30:

> [28] In *Gold Coast Selection Trust, Ld. v. Humphrey (Inspector of Taxes)*, [1948] A.C. 459, Viscount Simon said at page 473:
>
> > . . . Valuation is an art, not an exact science. Mathematical certainty is not demanded, nor indeed is it possible.
>
> This quotable observation is often cited, but I must confess that I am not entirely sure just what it means. The line between science and art is an indistinct one at best and has been the subject of much learned debate by academics. The statement at least implies that valuation involves skills that go beyond the mechanical application of rules. Such skills include judgement, intuition, experience and common sense.
>
> [29] My conclusion that the non arm's length electricity contract between Deer Lake and Corner Brook should not be considered in determining the fmv of the Deer Lake shares is not a conclusion of law nor is it based particularly on expert opinions. It is, rather, simply a common sense appreciation of the fact that the valuation of business assets is not a theoretical exercise. It takes place in the real world and in a commercial context. Conclusions that a valuator reaches must be tested against the touchstone of common sense or, if you will, by reference to what the man on the Clapham omnibus might think.

> [30] Here we have a company owning assets with a value that ranges between $150,000,000 and $300,000,000 and yet because of a long term contract with the company's sole owner to supply electricity at a price that is substantially below market it is asserted that this reduces the value to about $17,000,000. I agree that if that contract were unbreakable - for example if it were with some arm's length third party, this could affect the value significantly - indeed it might even render the shares unsaleable. The enquiry is to determine what sort of a deal would be struck by an informed buyer and seller. No intelligent buyer would even consider buying the shares of Deer Lake if the 1955 electricity contract with Corner Brook remained in place. Therefore, what would Corner Brook do if it wanted to sell the shares of Deer Lake? Obviously, get rid of the contract, which it could do with the stroke of a pen. This is not a legal conclusion nor is it a matter of appraisal expertise. It is just plain common sense.

[37] Thus, share valuation is not a theoretical exercise. One must place oneself in the context and use a certain amount of common sense. In *Corner Brook*, Bowman C.J. held that Corner Brook could easily have gotten out of a contract to supply electricity to its subsidiary for well below market price if it had wanted to sell its shares to a third party so that the full value of those shares could be restored. Similarly, if the intent in the instant case had been to sell the Class A shares to a third party, the Appellant, who controlled 332 Canada, would have had no problem waiving the conversion right attached to his Class D shares so that the Class A shares could be given their full value. Common sense would dictate this.

[38] That is why I am of the view that no importance should be accorded to the Class D shares in the context of the transactions that actually took place, and that the Class A shares should be given their full value. The Respondent acknowledges that if the conversion right is disregarded, each Class D share is worth only $1.00, and Class A shares accordingly have their full value.

[39] But counsel for the Respondent also raises a new argument at paragraph 25 of his written notes:

> [TRANSLATION]
>
> 25. The Respondent submits that if, immediately prior to the transfer of equity, the entire issued and outstanding share capital of 3325016 was worth $75M (which is not contested) and the Appellant held 180 Class B shares of the share capital of 3325016 having a redemption value of $6.5M (which is not contested), the Class A shares of that capital stock could not have been worth $75M. Under no circumstances could their value have exceeded $68M ($75M minus $6.5M).

[40] In his response, counsel for the Appelant retorts as follows at paragraphs 2, 3, and 4:

> [TRANSLATION]
>
> 2. At paragraph 25 of the Respondent's Memorandum, it is claimed that the value cannot be $75M and must be limited to $68.5M.
>
> 3. But this position assumes that the preferred shares were not redeemed, and Mr. Laflamme testified that they were redeemed during the relevant period.
>
> 4. Thus, the amount of $75M is indeed the only correct one. The evidence on this issue is clear.

[41] This new argument was first made by the Respondent when her counsel filed his written notes. Nothing of the kind was raised in oral argument, and the Respondent never made the point in her evidence. The Appellant asserts that the shares were already redeemed during the relevant period. In view of the impromptu method used by counsel for the Respondent to raise this new argument, and the lack of evidence from the Respondent in support of it, I will not make any pronouncements on this point, and will accept that the value of the Class A shares of the share capital of 332 Canada was $75M during the period in issue.

[42] Moreover, given my finding with respect to the value of the Class A shares, I cannot accept the Respondent's argument that the Appellant's son received a benefit within the meaning of subsection 56(2) of the ITA.

[43] In *McClurg v. Canada*, [1990] 3 S.C.R. 1020, Dickson J., as he then was, wrote as follows for the majority, at page 1051:

> 41 In attempting to discern the purpose of s. 56(2), it is helpful to refer to the body of jurisprudence dealing with the subsection. A useful starting point is an early case dealing with the predecessor section to s. 56(2): *Miller v. M.N.R.*, 62 D.T.C. 1139 (Ex. Ct.). In that case, Thurlow J., as he then was, in examining s. 16(1) of the Act, made some general comments, at p. 1147, as to the anti-avoidance purpose of the provision which remain relevant today:
>
> > In my opinion, s. 16(1) is intended to cover cases where a taxpayer seeks to avoid receipt of what in his hands would be income by arranging to have the amount received by some other person whom he wishes to benefit or by some other person for his own benefit. The scope of the subsection is not obscure for one does not speak

> of benefitting a person in the sense of the subsection by making a business contract with him for adequate consideration.

Strayer J. noted, at p. 4, in respect of the *Miller* case:

> Two important qualifications are noted here: the first is that the taxpayer seek "to avoid receipt" of funds, presumably funds that would otherwise be payable to him; and the second is that the concept of payment of a "benefit" is contrasted to payments for adequate consideration.

> 42 In my opinion, the views of Thurlow J. and Strayer J. provide a sound foundation for the interpretation of s. 56(2). The subsection obviously is designed to prevent avoidance by the taxpayer, through the direction to a third party, of receipts which he or she otherwise would have obtained. I agree with both Thurlow J. and Strayer J. in their characterization of the purpose of the section and, specifically, I concur with their view that the section reasonably cannot have been intended to cover benefits conferred for adequate consideration in the context of a legitimate business relationship.

[44] Thus, since I have concluded that the 20 Class A shares in the share capital of 332 Canada, transferred to 2185 Québec, were worth $15M at the time of the transfer, I can find that there was sufficient consideration for the cross-redemptions challenged by the Respondent. Consequently, considering the main objective of subsection 56(2) of the ITA, reiterated above in *McClurg*, the provision should not apply. However, the Respondent seems to be seeking to subject the entire estate planning to subsection 56(2). In the Respondent's view, the effect of that planning would be that 10% of the shares of ISRL are transferred from the Appellant's control to the control of his son Jean without immediate tax consequences.

[45] Four conditions must be met in order for subsection 56(2) to apply: (1) there must be a payment or transfer; (2) the payment must be pursuant to the direction of, or with the concurrence of, the taxpayer (the Appellant); (3) the taxpayer must desire to have a benefit conferred on the transferee or payee (2165 Québec or Jean Laflamme); and (4) the amount would normally have had to be included in the payor or transferor's income.

[46] Even if it could be assumed that there was a transfer of shares with the Appellant's concurrence (thereby meeting the first two conditions), the third condition would still fail from the very start. Indeed, as we have seen, the 20 Class A shares of the share capital of 332 Canada, having a fair market value of $15M, were transferred by way of rollover to 2165 Québec, for consideration equal to their fair market value, in accordance with the rules of section 85 of the ITA.

[47] Similarly, 100 Class B shares of the share capital of IRSL, having a fair market value of $15M, were transferred by way of rollover to 2165 Québec, and the consideration therefor was also equal to the shares' fair market value. Thus, there was no benefit to speak of from these transfers, since they complied with the parameters permitted by the ITA in terms of an agreement on an amount and in terms of consideration equal to fair market value. Moreover, the Respondent did not consider the Trust's distribution to Jean Laflamme of his share of the Trust capital, that is to say, the transfer of the 100 Class E shares of the share capital of 2165 Québec, to be a transfer contemplated by subsection 56(2) of the ITA. Jean Laflamme received these shares in accordance with the trust instrument because he was one of the capital beneficiaries. The Respondent appears to be acknowledging that this distribution, which had no immediate tax consequences for Jean Laflamme, was not a benefit within the meaning of subsection 56(2) of the ITA.

[48] It is therefore difficult for the Respondent to argue that the Appellant intended to confer a benefit on his son Jean, since there are no benefits, under the terms of the ITA, resulting from the various transactions that were carried out as part of the Appellant's estate planning.

[49] As a last resort, the Respondent tried to adduce evidence showing that the Appellant previously conferred a benefit on his son. In fact, counsel for the Respondent questioned his expert at length about the market value of IRSL in 1996 when the Appellant transferred 180 of his 300 shares of 118 Canada to 332 Canada. Although the redemption value of the shares received in exchange had been established at $6.5M and the Minister did not contest that value at the time, counsel is now calling it into question. He tried, through his experts, to say that the real value in 1996 was approximately $10M, and thus, that the Appellant tried to confer the $3.5M difference on his children as a benefit.

[50] As for the Appellant's expert, he testified that the $6.5M value established at the time by the accountant Mr. Cadieux was reasonable, just as the value now established by the Respondent is reasonable with the benefit of hindsight. In the submission of the Appellant's expert, Mr. Cadieux's approach was very prudent while the Respondent's expert's approach is very audacious.

[51] In my opinion, the Respondent cannot call the 1996 valuation of IRSL into question at this stage. The Minister never contested it, and the year 1996 is now barred by the limitation period. Consequently, I find that the value decided upon by Mr. Cadieux in 1996 is to be presumed valid, and that counsel for the Respondent cannot use his own valuation, made for this litigation, with a view to proving that the Appellant tried to benefit his son in the past.

[52] The evidence has disclosed the context in which all the transactions took place. The Appellant's desire, in proceeding with an estate freeze, was to transfer the increase in the value of his equity in IRSL to the trust created for the benefit of his children. All of this was done in compliance with the rules that the ITA permits taxpayers to rely on. Thus, in view of the purpose of subsection 56(2), one cannot say that the Appellant desired to confer a benefit on his son or that he conferred such a benefit within the meaning of that provision.

[53] As for the fourth condition of subsection 56(2), namely, whether the Appellant would himself have been liable for tax if the shares had been transferred back to him, the result would not have been different if the transactions had been carried out in favour of a corporation belonging to the Appellant instead of his son. Everything would still have have been done within the parameters of the ITA with regard to rollovers.

[54] In *Winter v. Canada*, [1991] 1 F.C. 585, the Federal Court of Appeal stated as follows, at page 593:

> It is generally accepted that the provision of subsection 56(2) is rooted in the doctrine of "constructive receipt" and was meant to cover principally cases where a taxpayer seeks to avoid receipt of what in his hands would be income by arranging to have the amount paid to some other person either for his own benefit (for example the extinction of a liability) or for the benefit of that other person . . . .

[55] It is clear in the instant case that the Appellant was not seeking to avoid receiving income that was his. He availed himself of the provisions of the ITA in order to transfer his indirect holdings in IRSL to the Trust. The Trust gave Jean Laflamme his share of the capital. There was no true transfer of income by the Appellant to his son. When the 20 Class A shares were transferred, it was the Trust that was disposing of these shares, not the Appellant. As for the transfer of the 100 Class B shares of IRSL to 2165 Québec, it was 332 Canada that was disposing of its shares, not the Appellant. The Appellant would not have received the proceeds of disposition, the tax consequences of which were, in any event, covered by the provisions of the ITA that permit an immediate transfer without tax consequences. Ultimately, it is 2165 Québec that will be liable for tax on the disposition of these shares.

[56] The Respondent appears to be confused about the true nature of the transactions carried out in the case at bar. First of all, the aim of the 1996 estate freeze was to transfer the future increase in value of the business to shares that were not part of the Appellant's patrimony, but, rather, part of the Trust's distinct patrimony by appropriation.[3] The Trust instrument states that the trustee is responsible for administering the property of this distinct patrimony and distributing that property in accordance with its provisions. The Appellant's son Jean Laflamme is one of the beneficiaries of this Trust, and the transaction in issue simply had the effect of giving him the property held in his interest by the Trust. The increase in value realized on this property from 1996 to the year in issue did not belong to the Appellant, but, rather, to all the beneficiaries of the Trust.

[57] Thus, it is difficult for me to see how one could claim that the Appellant would himself have been taxable on $15M in income that could have been attributed to him. The fourth condition that must be met in order for subsection 56(2) to apply is therefore far from being met.

[58] Consequently, subsection 56(2) cannot apply under the circumstances.

---

[3] According to the terms used in article 1261 of the *Civil Code of Québec*.

[59] The last argument that the Respondent made was that the Appellant disposed of an economic interest which triggers a taxable capital gain under paragraph 69(1)(*b*). Based on my understanding, this argument is based on the Respondent's attempt to show that the entire value of 332 Canada was primarily in the hands of the person who held the Class D shares, namely the Appellant. Since I do not accept the Respondent's point of view, and I find that the Class A shares were worth their full $75M, it is not necessary either to set out or to analyse the Respondent's narrow position in this regard.

Decision

[60] The appeal is allowed, and the assessment is referred back to the Minister for reconsideration and reassessment on the basis that the amount of $15M is not to be included in the Appellant's income for the 1999 taxation year under subsection 56(2) of the ITA.

[61] The whole with costs to the Appellant, including the expert fees and the expert testimony fees, as requested by counsel for the Appellant.

Signed at Ottawa, Canada, this 30th day of April 2008.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 20th day of May 2008.

Brian McCordick, Translator

CITATION:	2008TCC255
COURT FILE NO.:	2005-1788(IT)G
STYLE OF CAUSE:	GUY LAFLAMME v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	March 21, 2007
Appellant's written submissions:	April 20, 2007
Respondent's written submissions:	May 18, 2007
Appellant's response:	May 28, 2007
REASONS FOR JUDGMENT BY:	The Honourable Justice Lucie Lamarre
DATE OF JUDGMENT:	April 30, 2008

APPEARANCES:

Counsel for the Appellant:	Serge Fournier
Counsel for the Respondent:	Benoit Mandeville

COUNSEL OF RECORD:

For the Appellant:

Name:	Serge Fournier
Firm:	Brouillette Charpentier Fortin Montréal, Quebec
For the Respondent:	John H. Sims, Q.C. Deputy Attorney General of Canada Ottawa, Canada