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BETWEEN:

SHARAN GOLDEN,  
ALLAN R. GOLDEN,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

#### **Boyle J.**

##### **I. Introduction**

[1] These appeals by Mr. and Mrs. Golden are from so-called net worth reassessments issued by the Canada Revenue Agency (“CRA”) in respect of their 1989, 1990 and 1991 taxation years. The CRA resorted to a net worth audit of the taxpayers following searches and seizures once it was determined that adequate books and records had not been maintained by the appellants or their businesses to permit a conventional audit of their returns.

[2] Although this was a lengthy trial of almost four weeks, it was not particularly complex. It involved the financial and business affairs of the two taxpayers individually and their three family-owned and controlled businesses, Transcona Country Club, Riverside Inn (originally named the St. Vital Hotel) and Provincial Vending. The first two businesses were carried on by two corporations in each case, an operating company and a real estate holding company. Provincial Vending Ltd. carried on its cigarette vending machine business directly by itself.

[3] There was extensive documentary evidence, including personal financial information of the individual taxpayers related to Mr. Golden's Visa statements for the period and Mrs. Golden's minivans.

[4] There was also evidence of various predecessor businesses and the financial interests of the Goldens prior to the 1989 taxation year that contributed to their closing net worth as at December 31, 1988, being the starting point for the determination by the CRA of their increased net worth during the three years in question.

[5] There was no evidence excluded by me during the trial as a result of my orders of March 26, 2008 relating to the application of the doctrines of issue estoppel and abuse of process against the relitigation aspects of this case.

[6] Mr. Golden was an elected city councillor for the city of Winnipeg in the years in question. By all accounts he was both a popular and successful city councillor. In the years in question he reported modest income and in 1989 the only income he reported was his \$15,000 annual salary as a city councillor. Prior to being elected as city councillor and throughout the period in question Mr. Golden was a very driven and active entrepreneur in local businesses. All the evidence is that prior to the years in question many of Mr. Golden's other business and real estate activities were very successful. That was clearly not the case for the Transcona Country Club, the Riverside Inn and Provincial Vending.

[7] Much of the taxpayer's evidence and argument in this case appeared to have been focused on what Mr. Golden should have, would have or could have done if adequate or proper business records, books and accounts, and other documentation had been maintained which, by and large, they were not. Few if any of the tax returns of the Goldens and their corporations for the years in question were filed without the CRA's demands therefor. Returns were filed by the Goldens only after the searches and seizures. Many remain unfiled.

[8] Mr. Golden was convicted of tax evasion criminal charges in respect of the 1989 taxation year based on the very net worth reassessments for that year of himself and his wife that are before this Court. The jury's conviction and the judge's sentence were upheld by the Manitoba Court of Appeal. In separate orders dated March 26, 2008, I ruled that the matter for which Mr. Golden was convicted of tax evasion could not be relitigated in this proceeding by Mr. Golden by virtue of the application of the doctrine of issue estoppel nor by Mrs. Golden as to do so would be an abuse of process. Since the hearing of this matter, my orders were

upheld by the Federal Court of Appeal (*Golden v. the Queen*, 2009 FCA 86, 2009 DTC 5079).

[9] Mr. Golden and his business entities had been convicted criminally of tax evasion several times prior to the years in question. In none of these cases did he plead guilty. In addition to criminal income tax non-compliance, there were also convictions for tax evasion in respect of unpaid retail sales taxes and unpaid tobacco taxes by Provincial Vending. One such amount was not paid until the trial judge apparently found Mr. Golden in contempt and sentenced him to five months in jail which imprisonment was reversed on appeal. Mr. Golden has also been convicted after a guilty plea of an offence under the *Immigration Act* relating to an employee of one of his businesses. In short, Mr. Golden is a serial tax offender. He and companies with which he is involved have a sad tax history, including tax evasion convictions, failures to file returns and unreported shareholder appropriations. He and his wife were repeatedly warned in writing each year by one of their accountants that they were not in compliance with tax requirements and needed to make changes lest they find themselves in just the sort of predicament they are in. Mr. Golden is somewhat of a scofflaw and the author of their misfortune.

## II. Net Worth Assessments

[10] The *Duke of Westminster* principle entitles Canadians to arrange their affairs to minimize their tax burden as a general rule. Arranging affairs however requires demonstrably evident and credible arrangements being put in place. Taking the position with respect to sources of income that are not to any extent reported that things could have, should have or would have been reported or characterized a certain way simply does not constitute arranging one's affairs.

[11] In the case of a net worth assessment, it is open to the taxpayer to attack whether the net worth assessment is needed or the most appropriate method of computing the taxpayer's income from any source. In this case the taxpayer is not doing that. If the taxpayer does attack whether a net worth assessment is needed or the most appropriate, a taxpayer would need to prove to the satisfaction of the Court with what evidence there is, what records there are and other credible evidence, what the income of the taxpayer is from the source or sources in question. The taxpayer has not done that nor laid the groundwork in the evidence for that.

[12] The alternative is for the taxpayer to challenge specific aspects of the net worth assessment calculations. In this case the taxpayer challenges the following:

- 1) Loans to Mr. Golden from third parties, such as (i) Mr. Brock Cordes and his companies, (ii) Mr. Alf Skowron and his company Propensity Properties Ltd., (iii) Mr. Baranyk and his company Pratt's Wholesale Ltd., and (iv) Mr. Sam Katz;
- 2) Loans to Mr. Golden from third parties funded by loans from the Royal Bank of Canada ("RBC");
- 3) Loans to and from Mr. Salvaggio separate from his RBC funded loan;
- 4) Any personal benefit from the Counsel Trust financing repaying an overdraft on one of Mr. Golden's bank accounts;
- 5) Deductibility of bank interest charges on that same account;
- 6) Mrs. Golden's ownership or use of the Transcona Country Club's minivans;
- 7) Paid down debt in respect of the Orion "Golden Retriever" bus;
- 8) Charges appearing on Mr. Golden's Visa statements treated as personal expenditures; and
- 9) Several expenditures treated as personal by the CRA, including audio and video equipment purchases from Multi-Tech.

[13] In addition Mr. Golden maintains that penalties should not have been assessed against him. No penalties were assessed against Mrs. Golden.

[14] In the notices of appeal, the taxpayers pleaded that the CRA net worth assessments overlooked significant amounts of cash that had been available to the Goldens from the expropriation of two of their businesses, Core Industries and Rubin's Deli. The Crown put in evidence two statements of adjustments from the Goldens' law firm on those expropriations which make it clear that in fact no money was available to the Goldens from the expropriations after their directed payments to mortgagees, lenders, lawyers' fees, etc.

[15] Taxpayers who do not keep proper records, do financial reporting, file tax returns or do other tax reporting are not entitled to have the CRA or the Court take on the obligation to reconstruct the most favorable scenario for the transactions that is not inconsistent with the evidence, such as it exists, gathered by the Crown, and submitted to the Court by the taxpayer. In most all circumstances, this would amount to retroactive tax planning.

[16] In any event, in this case the taxpayer's evidence and submissions did not provide a consistent, coherent and demonstrable explanation or theory for how the financial transactions were, or were intended at the time, to be effected or accounted for. It is clear that little if any thought was given at the time to financial reporting, accounting or tax reporting. Clearly, the distinct legal person existence was largely ignored by Mr. Golden who appears to have instead treated all available cash flowing from all of his businesses and corporations as cash available to him from his own different wallets.

[17] In many respects, the evidence raises doubts in my mind about the correctness of the net worth computations and hence the assessments, but few of these doubts rise to the level needed to be presented by the taxpayer in order to satisfy the burden of proof of demonstrating on a balance of probabilities that things were not as the CRA assumed when they issued the assessments. Net worth assessments are inherently inaccurate last resort approaches to the computation of income. In situations as convoluted as this, net worth assessments may be even less accurate than can normally be expected.

[18] The balance of probability burden may as a practical matter prove difficult to satisfy when a taxpayer chooses to run at least three different businesses involving millions of dollars without maintaining records, preparing financial statements or filing returns. This is especially so where businesses have high degrees of cash receipts and where the business dealings amongst themselves and with third parties are very intermingled. In this case, nothing should be presumed to be done logically or reasonably and little should be ruled out on the basis there would be no apparent reason to do it that way. There is no need to resort to why one would or would not have done things a certain way when it is clear little thought went into how things should be done in the first place. Every different aspect of this dispute held factual surprises.

[19] With respect to the opening balance of shareholder loans, the taxpayer did not present any evidence of their value or of the corporations' ability to repay them although this arguably may have been relevant. The taxpayers did not provide any

evidence of the value or costs of the equity of those corporations, or, very importantly, whether the cash flows of the companies could support the assessments on this basis or otherwise.

[20] It is clear from the evidence that the financial records of the Goldens and their businesses and companies were in shambles. At times they were intentionally misleading; for example the \$300 chits for cash to Sharan Golden and the cheques to Sharan Golden that described rent payments and advances. At other times they were misleading perhaps due to seemingly virtual total indifference or incompetence; for example the financial statements of Provincial Vending that do not show Provincial Vending's loans to Transcona Country Club as assets. I find that the CRA clearly had no other choice but to use net worth assessments.

[21] Taxpayers are perfectly entitled to commingle business and personal cash by using a single bank account. As is evident in this case, this can give rise to any number of evidentiary and tracking problems if inadequate records are maintained, timely financial and tax reporting does not occur and the CRA comes asking.

[22] Taxpayers should not put themselves in this position where they are stuck with the imprecision inherent in the limitations of the net worth assessment method. When they do the task remains to ascertain or estimate the best we can the unreported income from the source or sources. Avoidable, identifiable, inappropriate injustices should not be upheld. The vans, perhaps the bus, and the shareholder loans need to be reviewed with this in mind.

[23] It is acknowledged that this trial has occurred almost twenty years after the period in question. Obviously memories fade and blur after twenty years or thereabouts. Similarly, some documents may have been lost, misplaced or destroyed. However, the criminal charges were in 1998 and the document seizure by the CRA and the RCMP occurred prior to that. One would not expect any documents that existed at that time to have since been destroyed or misplaced. Indeed, one would expect a very thorough search by the taxpayers in the subsequent intervening years for their documents and the documents of their business associates.

[24] I received very little corroborating evidence of how the third-party counterparties to the transactions accounted for the transactions for tax or accounting purposes. Where the transaction was between the Goldens and one of their businesses or corporations, the evidence often did not exist since in most cases financial statements were not prepared and tax returns were not filed.

### III. The Testimony of Mr. and Mrs. Golden

[25] Mr. Golden sought to explain all of this away. He was not able to do so in a credible and convincing manner and his testimony and supporting evidence in most respects fell far short of satisfying the onus on the taxpayer to show the Minister's reassessments were incorrect. Mr. Golden's testimony was nothing short of an attempt to spin what evidence there is into a possible if not plausible version of events which would virtually explain away all of the reassessed income.

[26] I must address the inconsistencies in the testimony of Mr. Golden. The most glaring was his insistence on several occasions that he and his wife made very certain to separate their business and their personal affairs. This is belied by the general failure to keep any records at all, his attempts to explain away evidence that points to advances being made to his companies and not to him personally as sloppy paperwork, and his credit card statements in which business and personal expenses both appear.

[27] Mr. Golden is clearly sharp, literate and financially numerate. I find his attempt to hide behind his limited education an affront. While he did not complete high school, he did study part-time at university as an adult.

[28] I do not accept Mr. Golden's testimony on any material aspect that is not corroborated clearly by the written evidence or by the oral evidence of persons other than his wife, Mr. Cordes or Mr. Skowron. Mr. Golden's oral evidence was self-serving and he struck me consistently as a person who, after all of this, remains in complete denial and wants to try to explain everything away in large measure by blaming others. I do not accept that he reasonably continued to rely on his outside accountant Mr. Storey once he became aware of Mr. Storey's past serious shortcomings with Mr. Golden's personal and business tax returns. Mr. Golden still believes Mr. Storey was responsible for at least one of his earlier tax convictions, yet paradoxically maintains he was reasonable in continuing to rely on him.

[29] With respect to Mrs. Golden's income inclusions, her success depends almost entirely upon the evidence of and relating to Mr. Golden. Mrs. Golden only testified for twenty minutes in chief and twenty-five minutes in cross-examination in a four-week trial.

#### IV. Loans from Mr. Brock Cordes

[30] Mr. Brock Cordes gave his evidence very carefully. Most of the amounts advanced by Mr. Cordes and his companies were not advanced to Mr. Golden but rather were advanced by cheque to one of the Golden's corporations involved with the Transcona Country Club or Riverside Inn or their divisions. Few of the advances were by way of cheques made out to Mr. Golden.

[31] Mr. Golden and Mr. Cordes both said it did not work that way, however there was little to no corroborating evidence that things were really as they testified. Their position is that, although the cheques were made out to those corporations, this was a shortcut for Mr. Cordes advancing those loans to Mr. Golden personally to then on-lend them to the operating companies.

[32] I would expect to see corroborating evidence that should reasonably be available, for example lender's financial statements, etc. A number of key documents were inconsistent with what the taxpayers' witnesses say was really happening. The contemporaneous written evidence in the form of Provincial Drywall's general ledger and tax returns in the years in question does not support the loans being reported in that way by the lender. Mr. Cordes' statements of personal net worth filed with the banks are not consistent with the testimony of Mr. Golden and Mr. Cordes either. They support the reassessments and show very modest loans to Mr. Golden personally. Some of the cheques which Mr. Cordes signed actually referenced "company loan". I am also especially mindful of the fact Mr. Cordes said several times that he was always careful in implementing effective tax structures.

[33] I would also expect to have heard evidence regarding who accounted for the losses for accounting and tax purposes since Mr. Golden and his companies did not fully repay all of these loans. I am mindful of the fact that for tax losses, especially "allowable business investment losses" or "ABILs", accounting and banking issues and evidence can affect how such loan accounts are treated. I was not given many of the companies' financial statements to help corroborate this. While Mr. Cordes did mention the fact that at no times were any of the loans treated as a bad debt by him, this was not corroborated by any continuity analysis of any financial records, there was no other supporting evidence for it, and he did not address whether he would be able to at some time in the future.



[34] In the circumstances, where Mr. Cordes' evidence is inconsistent with the reassessments and the written evidence, I do not accept Mr. Cordes' evidence as sufficient to establish that amounts actually advanced to the Golden's companies were in reality loans to Mr. Golden.

[35] Mrs. Kellendonk worked as the office manager and bookkeeper for Mr. Brock Cordes and his group of companies other than Provincial Drywall. She was responsible for keeping the general ledger for Seabrook and his companies up-to-date amongst other things. She testified that the money advanced to Mr. Golden and his companies by Mr. Cordes' companies would be reflected on the company's books as a reduction in the shareholder loan owing by Mr. Cordes' company to him. It was then tracked also as a loan owing by Mr. Golden and his companies; this would presumably be owing to Mr. Cordes but, for some reason, kept track of at the corporate level. While Mrs. Kellendonk said it was kept track of at Mr. Cordes' company, little if any documentary evidence was put in to support that statement. There were Cordes corporate cheques to Mr. Golden and his companies as well as amounts corresponding to many of those cheques being transferred to Mr. Cordes' shareholder loan account. Mrs. Kellendonk seemed most unclear on this point as she would describe the amounts being transferred to a shareholder loan account and from the account of Mr. Golden at the same time or interchangeably. She ended her examination-in-chief by saying she did not recall if she ever received directions from Mr. Cordes regarding the loans to Mr. Golden and his companies and Mr. Cordes' shareholder account.

[36] Mrs. Kellendonk said that neither she nor the other staff did the Provincial Drywall financial work or bookkeeping. That work was done elsewhere and the information was provided to her to roll up into the Cordes holding company. She did not speak of or know anything about the Provincial Drywall advances to Mr. Golden or his company.

[37] Mrs. Kellendonk also testified that she did not do any work for the Golden's or their businesses. However, the Crown put to her on cross-examination a Riverside Inn/Comedy Oasis letter to the Royal Bank confirming she is one of the three persons with signing authority for the Riverside Inn. Her signature appears on that letter beside her name. Mrs. Kellendonk said she vaguely recognized it.

[38] I do not find Mrs. Kellendonk's evidence helpful in trying to establish whether any particular advance by Mr. Cordes or one of his companies to Mr. Golden or his companies or businesses were advances to Mr. Golden personally or to the named payee of the cheques. Her evidence does appear to

confirm that it was Mr. Cordes personally advancing these funds since corresponding amounts reduced the amount of Mr. Cordes' shareholder loans to these companies, but that is not relevant to the Golden's reassessments.

[39] Ms. Elisabeth Silva was the bookkeeper for Provincial Drywall Ltd. in the years in question. Her testimony is that, in that capacity, she reported to Ken Golden (one of Mr. Golden's brothers) as well as to Brock Cordes. She took all direction on financial matters from Mr. Cordes. The Provincial Drywall general ledger introduced through Ms. Silva showed that Provincial Drywall was funded in part by shareholder loans from Mr. Cordes to it and also showed that it loaned money at various times in 1991 to Mr. Golden, the Transcona Country Club, to Riverside Inn and the Comedy Oasis as well as other persons and businesses unrelated to this appeal. They also showed that the debts of Mr. Golden and his businesses were no longer owing to Provincial Drywall at the end of 1991. It may be that at year end they were rebooked as loans directly from Mr. Cordes to Mr. Golden and his businesses, and Mr. Cordes' shareholder loans reduced accordingly, but the evidence fell far short of even beginning to explain that. In any event, the loans and advances to Mr. Golden by Provincial Drywall were very small as compared with those made to his businesses. While the businesses are not identified as necessarily being one of the operating companies, no attempt was made to line up the testimony about these advances, or the other documentary evidence such as the cheques, to the general ledger and similar entries. Ms. Silva testified that she did not actually recall any of the details of any of Provincial Drywall accounts for its loans to Mr. Golden's Transcona Country Club, Riverside Inn or Comedy Oasis.

[40] Some Provincial Drywall monthly general ledger pages were put forward as corroborative of the testimony of Mr. Cordes, Mrs. Kellendonk and Ms. Silva. They are highly confusing at best and misleadingly so. There are missing steps and these general ledger printouts are not consistently prepared with the result that apples are potentially being compared to oranges. For example, the November ledger shows a number of loans to Mr. Golden and his companies as at November 30. The December general ledger, clearly prepared on an entirely different basis, begins with opening balances in these accounts of zero. Either something entirely inexplicable happened at midnight, these documents are not what they purport to be, were not prepared when they purport to be prepared, or one or more of them is manifestly incorrect.

[41] My conclusion with respect to the amounts advanced by Mr. Cordes or his companies directly to the Golden's companies or businesses is that I am not satisfied that those represented back-to-back loans via Mr. Golden. However, the

reassessments should be revised to recognize those advances that were in fact made to Mr. Golden personally by Mr. Cordes or his companies as additional liabilities of Mr. Golden and, when used in the Golden's businesses, as additional assets.

V. Mr. Alf Skowron and Amounts Received from Propensity Properties Ltd.

[42] Mr. Golden was a Winnipeg city councillor. One of his material witnesses, who allegedly loaned money to him, was a fellow Winnipeg city councillor at the time, Mr. Alf Skowron.

[43] Mr. Skowron is now 75 years old. He testified candidly and forthrightly. However Mr. Skowron's recollection of these events that occurred twenty years ago had largely completely faded as was evidenced by his common refrain of "I don't know" and "I don't recall" to questions of both counsel. His testimony does not help to lead me to the conclusion that Mr. Skowron ever loaned any money personally to Mr. Golden.

[44] I do not accept that any of the amounts paid directly or indirectly by Mr. Skowron's Propensity Properties company were loans to Mr. Golden, including those where the payment was made to Mr. Golden. The Propensity Properties banking, financial and tax records in evidence were insufficient to corroborate any such claim.

[45] The majority of the Skowron advances were not to Mr. Golden; they were to the operating companies. These amounts and the amounts paid by cheque from Mr. Skowron to Mr. Golden do not appear to be loan transactions. No interest was provided for or paid, there was no provision for repayment of the principal, there were never any repayments of principal and, surprisingly, Mr. Skowron never asked for any payment.

[46] Mr. Skowron testified he never loaned money on this basis to anyone but Mr. Golden. Mr. Skowron had no recollection of what any of the cheques were made out for or why. He said it was as simple as Mr. Golden asking him for a cheque. Most of the time Mr. Golden would tell him why; sometimes he just asked to leave him a cheque. He could not describe why some of the Propensity Properties cheques were described as the payment of loan interest or the repayment of loans in part and in full.

[47] I stopped counting the number of times Mr. Golden's answer to why people loaned him money was "because I asked him". Mr. Cordes similarly said he made the cheques out to Mr. Golden "because he asked me to". Mr. Skowron similarly said "he needed it and I gave it to him". Mr. Skowron said he did not know and did not need to know what Mr. Golden used the money for.

[48] Mr. Skowron said several times in his testimony that he made these loans because he valued the work Mr. Golden did for him in respect of the Tenth Avenue property owned by Propensity Properties which in turn was owned by Mr. Skowron.

[49] It is not clear what happened to Mr. Skowron's Tenth Avenue building. He testified that he "gave up the building" at some point indeterminate at which point he washed his hands of it and never gave a thought to seeking repayment from Mr. Golden. The Tenth Avenue redevelopment project appears to have been Propensity Properties' only activity.

[50] While I do not have to decide the matter beyond that the amounts were not loans, they could have been fees for services or profit participations. I could in any event not make sense of any characterization since Mr. Skowron paid \$450,000 for the Tenth Avenue property and it seems substantial renovations were done to it which amount was not put in evidence. In any event, making payments to Mr. Golden in the hundred thousands of dollars by way of what can at best be described as non-repayable loans is, simply put, not credible given the lack of corroborating evidence, and the lack of consistent evidence from Mr. Golden and Mr. Skowron regarding the Propensity Properties amounts.

[51] Propensity Properties also used Mr. Storey as its accountant in the relevant years. Mr. Skowron changed that when he became frustrated with Mr. Storey's compliance shortcomings. Propensity Properties' tax returns do show a \$200,000 plus loan being made to a Golden Hospitality and Convention Corporation, not Mr. Golden. Mr. Skowron admitted in cross-examination that the information and documents used by Mr. Storey to prepare the returns were provided by Mr. Skowron from the information he kept at his home office. Mr. Skowron said he had no knowledge of the Golden Hospitality corporation referred to in the notes to the financial statements attached to the tax return he had verified as being true and correct.

[52] A retired chartered accountant, Mr. Storey, had also done the financial books for Mr. Skowron's Propensity Properties in the years in question. He described

Propensity Properties as a corporation with meticulous records. The Propensity Properties financial statement shows its loan as owed to it by Golden Hospitality and Convention. This is the same corporate name as that to which Mr. Storey had thought his company Vortex Management Ltd. had loaned the money it borrowed from RBC. Propensity Properties recorded the loan as to one of Mr. Golden's corporations, the one understood to be operating the Transcona Country Club business. Propensity Properties did not record it as a loan to Mr. Golden.

[53] With respect to the amounts advanced by Propensity Properties, the evidence does not satisfy me that it was a loan at all. In any event, if it was a loan, there is little and inadequate evidence to support it as a loan to Mr. Golden and not to the Golden's companies which operated their businesses. Whatever it was it was not a loan to Mr. or Mrs. Golden.

#### VI. Financial Dealings with Mr. Baranyk and Pratt's Wholesale

[54] I am not sure why Mr. Baranyk, the owner and operator of Pratt's Wholesale, testified. Mr. Golden testified that Pratt's had also loaned some money to Transcona Country Club. Pratt's was one of the major suppliers for Provincial Vending's tobacco and confectionery products. It is owned by Mr. Baranyk who is an accountant. Mr. Golden testified that Mr. Baranyk may have taken title to some Transcona Country Club land and mortgaged it though no further details much less a mortgage was tendered. There is also some suggestion in Mr. Golden's testimony and documents that Pratt's, which I assume to be a corporation, may have been one of the sources of funds for the purchase price of the St. Vital Hotel. This appears to have been done through Provincial Vending who lent the money to the Transcona Recreation Centre which took title to the Hotel but this was far from clear.

[55] In any event, Mr. Baranyk testified that in the period 1992 to 1994 he advanced \$100,000 to Mr. Golden to purchase a hundred acres of land in Transcona, perhaps adjacent to the golf course which was adjacent to the Transcona Country Club. He said he took security of \$150,000 to cover that \$100,000 loan as well as Provincial Vending's account receivable.

[56] Neither the loan documentation nor the security documentation was put in evidence so the Court has no knowledge of whether the loan was advanced by Mr. Baranyk or by Pratt's, whether the borrower was Mr. Golden, Provincial Vending or another of the Golden's companies associated with the Transcona

Country Club, nor whether the security was granted by Provincial Vending or one of the Transcona Country Club companies and/or the Goldens personally.

[57] Given the paucity of evidence relating to the Baranyk/Pratt's loan and repayments, including the lack of corroborating written evidence, I am not satisfied the taxpayers have been able to discharge the onus on them to satisfy the Court on a balance of probabilities that the Baranyk/Pratt's transactions are not properly reflected in the reassessments, to the extent they are even relevant.

## VII. The Royal Bank Back-To-Back Loans

[58] Mr. Gustal was the RBC manager at the branch where Mr. Golden and his companies banked at the time that these indirect loans for Mr. Golden's benefit were made. When Mr. Gustal became Branch Manager, Mr. Golden was already indebted to the branch for more than \$400,000. Mr. Gustal arranged for a further \$50,000 interim financing pending a third-party financial institution refinancing for Mr. Golden.

[59] There is no evidence from Mr. Gustal that he approved any further loans to Mr. Golden. Instead he spoke of the loans made to others that he knew would be on-loaned to Mr. Golden. These included Mr. Golden's friends, relatives and associates.

[60] Mr. Gustal was very familiar with Mr. Golden and his businesses. He had occasion to meet with him three to four times a week in the branch, the main reason for which was that Mr. Golden always needed money. Mr. Gustal also testified that the loans already advanced to Mr. Golden were "risky" and while they had been approved at the branch, they had not been authorized by the District Office downtown. The indirect loans were necessary because Mr. Gustal could not get downtown's approval for any further loans to Mr. Golden or his businesses.

[61] To facilitate these transactions, Mr. Gustal would have RBC make loans to creditworthy people that Mr. Golden would send or bring in. He acknowledged this was not exactly a correct thing to do. He did sit down and meet with each of these borrowers and received their personal statement of financial information and their credit application. They were told they would be fully responsible for the loans and the bank would take action against them if Mr. Golden did not repay the bank. The loans were only interest-bearing. All of these credits were duly authorized as

required by the RBC's policies and promissory notes were taken from the borrowers.

[62] Mr. Gustal understood clearly that Mr. Golden would be the person repaying the loans. However, he consistently avoided answering questions related to whether, to his knowledge, the borrowers were aware of that even though it seems reasonable to conclude they were. He cannot remember if he was ever told by Mr. Golden why he or his businesses needed the money being loaned through these other individuals. He had already concluded the RBC's loans to Mr. Golden and his businesses were risky and approval could not be obtained for them being increased.

[63] Mr. Gustal does not remember anything about any payments or missed payments on these loans except that interest was generally paid on time or they would have gone into default.

[64] I place little reliance on Mr. Gustal's testimony in the circumstances in determining whether the RBC's borrowers went on to lend money to Mr. Golden or to the Golden's business corporations. No banking records were introduced through him nor was anyone else from RBC used for this purpose. Mr. Gustal seemed very careful in his testimony as related to the indirect loans and Mr. Golden. He acknowledged he did not do things correctly. There were some inconsistencies in his testimony and considerable vagueness. Some inconsistencies were misleading. He had little recollection of these loans except he was certain they were made in full compliance with the bank's requirements notwithstanding his acknowledgment they were not done correctly.

[65] Mr. Gustal left the bank and took "early retirement" from RBC very shortly after these loans were made although he continued to work for another fifteen years. His retirement was in December 1989 although negotiations for his departure took until April 1990. He had been at the bank for most of the period since 1952.

[66] All of the RBC loans in question were the subject of a Settlement Agreement among the RBC, the borrowers and the Golden's and some of their companies. Mr. Gustal did not have any knowledge of the RBC Settlement Agreement since it occurred after his time. Little evidence was received with respect to the RBC Settlement Agreement. There was some suggestion the RBC amounts were repaid but with borrowed money. There was no evidence as to where this borrowed money came from.

[67] I find much of the evidence regarding the RBC loans lacking. Notably, the taxpayer did not call anybody from RBC other than Mr. Gustal and, with one exception, did not produce any RBC loan applications or similar documents. While Mr. Gustal did testify, clearly Mr. Gustal was doing unconventional if not unauthorized lending on RBC's behalf. He as much as admitted to that in his evidence. I am therefore left without any corroborating evidence from the lender, RBC, as to what its records of the borrower/lender relationship were, nor what the declared use of funds was for the loans. No one from RBC was called to testify that RBC no longer had such records.

[68] At best, these loans are exactly what they purport to be. Loans made by RBC to individual and corporate borrowers other than the Golden or any of their companies. The existence or not of loans from these associates and colleagues of Mr. Golden to Mr. Golden or any of the Golden's companies remains to be addressed. Mr. Gustal did not know if any of the third-party loans were in fact advanced, to whom they were advanced or if they were repaid.

[69] While the RBC-funded loans have that much in common, they each have to be looked at individually. An important distinction between them is that some were made by persons who had no other financial dealings with Mr. Golden and his businesses while others, such as Mr. Salvaggio and Mr. Katz, had a historic and continuing practice of having financial transactions, including advances, with Mr. Golden and his businesses. With the second group it becomes much more difficult for me to conclude that monies moving between those individuals and Mr. Golden and his companies necessarily were sourced in or were payments of the RBC-funded advances from these individuals to Mr. Golden or his companies.

[70] Clearly, there is some evidence that there are a number of loans made by third parties either to Mr. Golden or to his corporations during the period in question. It also appears that at least some of those funds were advanced to Mr. Golden and then found their way from Mr. Golden to his businesses. The taxpayer's theory and evidence is that, notwithstanding most of the funds were actually advanced directly from the third parties to the businesses, this was done at the unwritten direction and understanding of Mr. Golden that the funds were being borrowed by him and being on-loaned by him to his corporations. If that is the case, the third-party loans increased Mr. Golden's and Mrs. Golden's joint liabilities and, to the extent that these monies were the source of what the CRA added to their assets on account of shareholder loans due to them from the books and records and financial statements of



their companies, constitute an offset which would reduce dollar-for-dollar the shareholder loan assets.

[71] Another interpretation of the evidence would be that the RBC-sourced funds advanced by third parties directly to Mr. Golden's businesses were in fact loans to the corporations and the businesses and did not flow to them via back-to-back loans at the Mr. Golden level. In that case, it brings into question seriously whether the CRA's schedule has the correct asset value down for shareholder loans since, in such a case, it would be inappropriate to attribute a cash cost to Mr. Golden of a shareholder receivable if he in fact did not advance the money. For example, in the case of Provincial Vending, the company's accountant, with Mr. Golden's concurrence, recorded all amounts that did not relate to Provincial Vending's business as advances from Mr. Golden regardless of their source or as repayments of those advances regardless of the payee or recipient.

[72] Either way, to the extent I accept that amounts were loaned directly or indirectly to Mr. Golden's businesses by third parties either his assets are overstated or his liabilities are understated.

[73] I do not accept that all of the RBC-sourced borrowings were made either as loans to Mr. Golden on-loaned to his businesses or were loaned directly to his businesses. Specifically, I am not satisfied on a balance of probabilities that I have received satisfactory explanations in respect of the amounts involving Mr. Katz or Mr. Salvaggio. These people had other significant financial dealings with Mr. Golden and his businesses and the records simply do not exist or were not produced that could meet the onus.

[74] With respect to Mr. Storey's Vortex Management, Mr. Alegro, Mr. Nyborg, and the numbered company owned for the benefit of the Golden's children, where the RBC-funded advances were the only significant financial transactions, I am satisfied adjustments need to be made in the taxpayer's favour to reflect any amounts originally advanced by RBC to these persons only where there is also corroborating documentary evidence that the same amount was paid on to Mr. Golden or his corporations.

[75] While it is possible that in some circumstances the creation of a shareholder loan account for an amount in excess of the advances from the shareholders will be a taxable event, in this case it would not be appropriate to treat it as a valuable asset at its face amount for purposes of a net worth assessment of the shareholders. The amount in question, if the debt was not back-to-back via Mr. Golden, never flowed

through them or to them. It flowed from RBC to the third-party lender to the corporation and was used in its business. Therefore a necessary adjustment to the Minister's characterization of any RBC-funded loans as direct to the Golden's companies is that there was no valuable asset of an equivalent amount to the shareholders. The shareholders did not fund any such advances nor is there is any reason to think they were worth their face amount. Such further adjustments will have to be made to the net worth computations on which the assessments are based. These will be significant and will be in favour of the taxpayers. A similar adjustment also needs to be made in respect of the loans made by Mr. Cordes and his companies directly to the Golden's companies or businesses.

[76] The cases relied upon by the Crown to defend the shareholder loans are readily distinguishable. Several did not involve net worth assessments or corporations in financial difficulty, but the timing of benefits recognition. Importantly, the two that involved net worth assessments were cases where the funds advanced to the corporation as shareholder loans were the corporation's own money. In the Golden's case there was, on the Crown's theory, nothing advanced or paid for the shareholder loan accounts. They were mere entries that did not cost the Golden and the amounts appeared to have been used in the business not withdrawn or used personally.

#### VIII. Financial Dealings with Mr. Salvaggio

[77] Mr. Salvaggio worked with the Golden at the Transcona Country Club and at the Riverside Inn once it was purchased. He was a manager and went on to purchase the shares of the corporation that owns the Riverside Inn from Mrs. Golden for a nominal amount.

[78] Mr. Salvaggio borrowed money from RBC to be "loaned to Mr. Golden toward the Transcona Country Club". He later described \$28,000 of his debt to RBC as a "loan for the Transcona Country Club". I noted that Mr. Salvaggio related the loan to Transcona Country Club although, in her question to him, taxpayers' counsel referred to the loan as being to Mr. Golden.

[79] The only written evidence of this loan is Mr. Salvaggio's demand promissory note to RBC which does not indicate what Mr. Salvaggio did with the money.

[80] In describing his RBC loan, Mr. Salvaggio said that he was merely the "warm body" under whose name the loan was made. Mr. Salvaggio did not intend

to repay it. He intended that Mr. Golden would repay it and when Mr. Golden did not make the payments the bank telephoned Mr. Salvaggio to pursue him for payment. Mr. Salvaggio did not make any payments.

[81] Mr. Salvaggio's testimony, combined with the other evidence, is insufficient to establish that his loans were to Mr. Golden personally to be on-loaned to the Transcona Country Club corporations.

[82] Separate from Mr. Salvaggio's RBC-funded loan, there is an issue raised by the taxpayers in respect of a \$108,000 receivable from Mr. Salvaggio that the CRA assumed to be an asset of Mr. Golden. Mr. Salvaggio acknowledged in part, and it was clear to me, that he had little understanding that he was able to vocalize of how the cash flows of the Riverside Inn found their way into and out of his personal account. While he may have been the owner of the hotel, having bought it from Mrs. Golden via a share purchase for a nominal amount, Mr. Golden was clearly still the brains behind it and, in spite of neither him or his wife having any equity or debt interest in it, he continued to work very hard at it. Mr. Salvaggio appears to have continued to be a bar manager level person even after he bought the hotel.

[83] While a considerable amount of cash left Mr. Salvaggio's account to or for the benefit of the Riverside Inn, the evidence does not satisfy me that this was probably in repayment of a debt of the monies going into his account from the hotel. Nor, turning things around, did the evidence satisfy me that the money was going into his account as reimbursements for monies that he had first advanced to the hotel.

[84] While the assessments may well be wrong in this respect, the inability of Mr. Golden and Mr. Salvaggio to satisfy me on a more likely than not basis that it is different than the CRA assumed, results directly from factors within their own choosing, including using the personal account to also run a high cash flow business and failing to keep anything approaching adequate records. Mr. Salvaggio's unsupported and undocumented assertions are not sufficient.

[85] It remains unclear what these large amounts of cash going into Mr. Salvaggio's bank account, and from Mr. Salvaggio's account to the hotel's account, were. There are a large number of possible explanations consistent with the very limited evidence on this point. Surprisingly, Mr. Golden had little to say in his testimony regarding the Riverside Inn transactions involving Mr. Salvaggio's personal bank account. There was no evidence that Mr. Salvaggio had any other available sources of income to explain the deposits.

[86] The CRA's Mr. Bailey concluded he could not establish the source of the deposits to Mr. Salvaggio's account and he discounted the Riverside Inn as being a possible source of the cash. At this point the CRA had the business and banking records of the Riverside Inn, the Comedy Oasis, the Transcona Country Club, the Goldens and others, including Mr. Salvaggio.

[87] The \$108,000 reflected only the cash amounts being deposited into Mr. Salvaggio's account. The deposits included a \$1,600 deposit by Ken Golden, who was involved in the Provincial Vending business, which included \$500 in coins. Another deposit included one hundred \$100 bills; Mr. Salvaggio acknowledged Riverside Inn would not accumulate one hundred \$100 bills in a very long time. Somehow money from the Goldens and their businesses was deposited in cash to Mr. Salvaggio. CRA's net worth assessment treated it as a loan or advance from Mr. Golden to Mr. Salvaggio. At the time Mr. Golden had signed the purchase agreement for the hotel but it did not close and he or his company was operating the hotel prior to closing under an interim agreement with the vendor. That agreement was not put in evidence. If Mr. Golden was operating it directly, he is the person who is entitled to the revenues of the Riverside Inn operations and it would be entirely reasonable to assume that the Salvaggio transactions represented loans or advances from Mr. Golden directly to Mr. Salvaggio. Even if one of Mr. Golden's companies, which was incorporated about the same time to acquire the hotel, operated the hotel under the interim arrangements, nothing precluded the Minister from assuming the Salvaggio transactions represented distributions to or appropriations by Mr. Golden of the company's cash which he in turn loaned or advanced to Mr. Salvaggio.

[88] Mr. Salvaggio testified that his account was commonly used for Riverside Inn business before and after the period covered by the CRA schedule which focused on a four-month period of significant cash deposits detected by the CRA. No corroborating evidence was put in by the taxpayer in support of that. In contrast, Mr. Bailey said that his schedule only summarized the four months because based upon his review of Mr. Salvaggio's banking records this was the only period of significant cash transactions.

[89] The taxpayer did not satisfy his burden given the limited evidence was primarily that of Mr. Salvaggio whose ability to describe the financial aspects of his involvement with the bars and inn he managed was very limited. I have considered the fact that amounts in excess of this left Mr. Salvaggio's account by cheque or transfers to the Riverside Inn. I am not satisfied on the evidence that I have reason to believe on a balance of probabilities that those amounts constituted repayment, reimbursement or return of the cash received by Mr. Salvaggio. I may doubt whether

the \$108,000 impact of the Salvaggio transactions is the correct one, and I may consider it reasonable to think that some of the transactions out of Mr. Salvaggio's account to the Riverside Inn should reduce this impact in one way or another, but I was simply not given the tools to even make an estimate of a proper characterization or amount.

[90] I had expected credible evidence of how or why the money went to Mr. Salvaggio to conclude it was not loaned by Mr. Golden or that the amounts transferred from Mr. Salvaggio's account to the Riverside Inn were repayments of a loan from any of the Golden's individually or their corporations. Mr. Salvaggio's evidence alone was simply insufficient, especially in light of Mr. Golden's silence in his testimony.

[91] There may well be a bigger story which could help explain this and help the taxpayers satisfy their burden but they have chosen not to share it with me. Given the conflicting testimony, the absence of corroborating evidence and the limitations of Mr. Salvaggio's evidence, the taxpayers did not discharge this burden. I am unable to conclude that the CRA's characterization or quantification is not correct.

[92] No changes to the reassessments are required in respect of either Mr. Salvaggio's RBC-funded advances or the \$108,000 receivable of deposits to his account.

#### IX. Mr. Storey and Vortex Management Ltd.

[93] Mr. Storey is a chartered accountant who was involved with Mr. Golden at various times as bookkeeper and accounting advisor. He had retired from his chartered accountancy practice before the years in question and therefore had only minor roles with Transcona Country Club, Provincial Vending, and Rubin's Deli.

[94] Mr. Storey described the Transcona Country Club business as one where money was moving in and out and it was not obvious where it came from or went and he therefore had to sit down with someone to figure it out. He said it was not a horrific issue but one that needed regular attention and time with the Golden's. He passed on advice to this effect to Transcona Country Club's next bookkeeper Mr. Simpson regarding what he described to be suspense accounts which is where unidentifiable receipts and payments were parked until they were sorted out. Mr. Storey confirmed that Transcona Country Club was undercapitalized and had cash flow problems as was the case with many of Mr. Golden's ventures.

[95] Mr. Storey described the sorting out of the suspense accounts entries as it related to advances to the business. Ideally they would be shown as a liability of the company to whoever loaned or advanced money. However, he thought the “spirit” was that Mr. Golden borrowed money and then on-loaned it to the company so that is how it would show. The relevance of this evidence of Mr. Storey is minimal since he had done very little in the years in question for the Golden’s companies.

[96] Mr. Storey was able to provide information on the Vortex Management RBC loan arranged through Mr. Gustal. Apparently, RBC loaned approximately \$80,000 to Vortex even though it only had a small five to ten thousand dollar line of credit facility at the bank. Mr. Storey was asked by Mr. Gustal, not Mr. Golden, to borrow money to help Mr. Golden’s current financial crisis which was expected to be refinanced shortly thereafter. Mr. Storey apparently had Vortex borrow the money and make the loan without ever talking to Mr. Golden about it. According to Vortex’s financial net worth statements his loan from RBC comprised virtually all of its liabilities and its loan to Golden Hospitality and Convention Services Limited constituted virtually its only asset. The loan was recorded by Vortex as being made to one of Mr. Golden’s companies. In fact there is no company with that name. However, based upon Mr. Storey’s evidence and the documents, I find that this was intended to be, and was, a loan to one of the corporations carrying on the Transcona Country Club business or the hotel business and not a loan directly to Mr. Golden personally.

[97] Since the Vortex Management loan was not to Mr. Golden personally, no adjustment is needed to the CRA’s net worth computations in respect of it, except to the extent the CRA increased Mr. Golden’s assets by a corresponding amount.

#### X. Mayor Sam Katz

[98] Mr. Sam Katz is the mayor of the city of Winnipeg at this time. He met Mr. Golden in the mid-1970s and in the late 1980s Mr. Katz borrowed money for one or more of Mr. Golden’s businesses which loans he described as having been “accommodated” by RBC. Mr. Golden asked Mr. Katz if he would borrow from RBC to advance the funds needed for the Riverside Inn to stock up on beer before a price increase from the supplier. Mr. Katz said the money went to the Riverside Inn and he understood the money was to be repaid from the Riverside Inn. He merely went to the bank and signed the paperwork for the loan to himself.

Mr. Katz said that, pursuant to the Settlement Agreement, he repaid RBC the money. Mr. Katz's testimony was clear that the \$75,000 he borrowed from RBC was advanced by him to the Riverside Inn. He did not describe what he meant by Riverside Inn but neither did he provide any evidence that the advance was to Mr. Golden from him for Mr. Golden to on-loan to the corporation operating the Riverside Inn. No adjustment is needed to the CRA's net worth computations in respect of Mayor Katz's RBC-funded advance.

[99] Separate from his RBC-funded advance, Mayor Katz advanced \$122,000. The taxpayer argues that what little evidence there is of Mayor Katz's \$122,000 advance, as distinct from his RBC-funded advance, may be as consistent with it having been advanced in 1989 as in 1988. Since it is clear that Mr. Katz thought it was to be used for the hotel renovations in part, and since the renovations to the hotel began when Mr. Golden acquired the rights to operate the hotel in 1988, the taxpayers are unable to satisfy me that the amount was not advanced in 1988 or even prior. I also remain unsatisfied that all of it even necessarily related to the hotel. I am far from certain that the amount even existed to this extent and that there is no double-counting with Mr. Katz's RBC-funded loan. In any event, this makes no difference. Since the \$122,000 loan was owed at the end of 1988 and continued to be owed through 1989, 1990 and 1991, being the three taxation years in question, it will have no impact one way or the other on the net worth assessments.

#### XI. Mr. Gino Alegro

[100] Mr. Alegro testified with respect to the \$100,000 RBC indirect loan he took out at Mr. Golden's request. The letter given to Mr. Alegro by the Goldens guaranteeing repayment of the loan made with the proceeds of his RBC loan clearly identifies Mr. Alegro's use of the proceeds as a debt investment, potentially convertible to equity, in Transcona Recreation Centre Limited, the company which owned the Transcona Country Club real estate. This letter was prepared at Mr. Alegro's request at the time in order to protect his interest in getting repaid. The letter includes the personal guarantees of the Goldens for repayment of the debt.

[101] Recognizing that the advances occurred almost twenty years ago, I nonetheless find Mr. Alegro's recollection of the events and his testimony less forthcoming than I would expect. One would generally expect the receipt of a demand letter from a major bank's large law firm claiming in excess of \$100,000 to be part of a saga that was a memorable event. In his examination-in-chief

Mr. Alegro said his only dealings with RBC regarding this loan were arranging for the loan, receiving calls from RBC that payments were late at which time Mr. Alegro contacted Mr. Golden who made a late payment directly, and signing the Settlement Agreement which he did not participate in negotiating. In cross-examination, when presented with a cheque from the Transcona Country Club for approximately \$4,000, he testified that he believed it was probably the repayment to him of loan arrears payments he made to the bank. Further, in cross-examination he confirmed that he had no other contact from the bank regarding the loan except the phone calls regarding the payment arrears for late payments. When presented by Crown counsel with a demand letter to him from the bank's lawyers for repayment of \$105,000 plus accruing interest within 30 days, Mr. Alegro suddenly clearly remembered receiving this letter and clearly remembered immediately calling Mr. Golden.

[102] Although in his testimony Mr. Alegro said the proceeds of the RBC loan were immediately transferred to Mr. Golden's account, I find that this is not accurate and that Mr. Alegro in fact loaned the money to one of the companies owning or operating the Transcona Country Club. Notably Transcona Country Club Limited, mentioned in the letter evidencing his loan, does not exist. There was Transcona Recreation Centre Ltd. and Golden Sports Recreation and Convention Services Ltd. I take the reference to Transcona Country Club Ltd. to be properly a reference to one of these two corporations.

[103] The net worth computations supporting the assessments should not reflect, as put forward by the taxpayers, that Mr. Alegro made a loan to Mr. Golden personally. However, they should also not record as an asset of either taxpayer a corresponding shareholder loan from any of the Golden's companies since the loan was owed to Mr. Alegro.

## XII. Mr. Eric Nyborg

[104] Mr. Nyborg was the manager of the Transcona Country Club. With respect to his RBC-funded advance, I am satisfied that on a balance of probabilities he did borrow the money from RBC and either loaned it to Mr. Golden or his corporations. However, since this amount was used to refinance other third-party loans, it will be of no effect to the quantum of the reassessments.



XIII. 71839 Manitoba Ltd.

[105] This numbered company was owned for the benefit of the Golden's minor children. It borrowed money from RBC via its available overdraft. The money was used in one of the Golden's businesses and was repaid out of one of the refinancings. However, I do not have sufficient evidence to conclude on a balance of probabilities that the Golden's financial dealings with this related corporation are not correctly reflected in their net worth assessments prepared by the CRA.

XIV. The Counsel Trust Mortgage Financing

[106] The entire proceeds of the Counsel Trust one-million dollar mortgage on the Transcona Country Club that was advanced, some \$850,000, was deposited to Mr. Golden's bank account. It was not deposited to the Transcona Country Club's bank account. More significantly, it was never shown on the Transcona Country Club financial statements nor did it go through its bank account. While much of it would appear to have been invested in the businesses or used to refinance existing business debt, even after years of reconstruction of the events by the CRA investigators, the Golden and their advisors, some amounts appear to have stuck to the Golden's.

[107] The repayment of the \$30,000 overdraft in Mr. Golden's personal account, which was used throughout for business and personal use out of Counsel Trust mortgage, does not appear to have been properly accounted for in the reassessments.

[108] Most of the amount drawn on this mortgage was in fact deposited into this same account. The CRA satisfied itself that all but \$30,000 of the amount deposited in this account was used for business purposes by cheques following the deposit of the mortgage proceeds. When those cheques had left the account it had a nil balance. Before the deposit of the proceeds of the mortgage, the account was \$30,000 overdrawn. The CRA's net worth computation equated that to a personal use of the funds since the account was in Mr. Golden's name. However, since the account was used by Mr. Golden for personal and business purposes, if any tracing or allocation of the expenditures giving rise to the overdraft incurred in the short period of time prior to the deposit of the mortgage proceeds is able to be done it should be. There is no reason in principle to treat any business expenses drawn on the account which accrued into overdraft any differently than any cheques drawn on the account after the mortgage deposit. The same principles surely should apply. The Counsel Trust mortgage proceeds were used to fund both, although any expenses initially funded by

way of overdraft was originally funded by RBC because it was an RBC account and shortly thereafter refinanced with the proceeds of the Counsel Trust mortgage. The CRA did not take this additional step and try to identify whether the expenses giving rise to the overdraft were for personal or business purposes. The review of the banking records available to the CRA put into evidence by the taxpayers satisfies me that a portion of this overdraft was the direct result of business expenditures paid out of the RBC account. The CRA net worth schedules and computation need to be revised to reflect this.

[109] The documents in evidence indicate the \$30,000 overdraft can be traced directly back to include at least some expenditures on behalf of the Golden's businesses which were not accrued on personal uses of the RBC account. This would include the cheques to the City of Winnipeg and to the financial institution. However, I am not on the evidence satisfied that any of the cheques to the Transcona Country Club and to the Riverside Inn comprising much of this overdraft were for business purposes even though they were made out to the Transcona Country Club and the Riverside Inn by Mr. Golden. They do not have a reference line for example although some of his cheques to these businesses do have reference lines referring to loans. Also, there is far too much doubt created by the continual circling of cash among Golden entities for me to be satisfied that money Mr. Golden paid to his corporations or businesses should be presumed to have been used for business purposes. The taxpayer did not introduce evidence even attempting to connect these amounts with payments by the Transcona Country Club and Riverside Inn of business expenses.

[110] The net worth computations should reflect the deductibility of interest on the overdraft on this same basis.

#### XV. The Multi-Tech Purchases

[111] The amounts evidenced by sales receipts from Multi-Tech should be allowed as business expenses. Mr. Golden provided satisfactory explanations of the use of the large amount of high-end audio and video equipment in the Transcona Country Club, the Riverside Inn and in particular, the Comedy Oasis at the Riverside Inn.

#### XVI. Mrs. Golden's Vans

[112] With respect to the vans, the value of which was included in income as appropriations, I am not satisfied on the Golden's evidence that they were entirely

vans of the business. However, some adjustment does need to be made to reflect the financing in respect of one vehicle.

[113] The two vans in question were both registered in Mrs. Golden's name, not that of Transcona Country Club. They were insured in Mrs. Golden's name but there is no evidence that she disclosed any business use of them. There is no evidence that the Transcona Country Club or other business name appeared on those vans. They were each described in the financial entries that were entered as "Mrs. Golden's van".

[114] I accept the Goldens' version of events that the vans were frequently used by Mrs. Golden to transport several hundred tablecloths and related items back and forth from the Country Club for laundering and repair by her personally at her home. There was little evidence of use by others of the vans during the day while they were at the Transcona Country Club. The vans went home with Mrs. Golden at the end of each day and spent every night in the Goldens' laneway.

[115] The evidence of the other vehicles owned by the Goldens, a 1979 Lincoln and a 1950 Dodge, does not persuade me otherwise. Mr. Golden testified that Mrs. Golden drove the Lincoln and he drove the Dodge a lot. Mrs. Golden said Mr. Golden took the Lincoln back and forth to work at the Transcona Country Club and elsewhere and that she took the van. I accept Mrs. Golden's version and conclude Mr. Golden's to be more spin of what could have been.

[116] With respect to the minivans, Mr. Golden acknowledged he has since received advice that the Goldens should have included a stand-by charge in their income in respect of the availability and their use of these vehicles.

[117] There were other vehicles registered to Transcona Country Club. The Sharan Golden vans were purchased and financed by Transcona Country Club then registered or re-registered in her name. The Goldens' net worth statement prepared for their lenders shows a van as their personal asset. I was not provided with credible, consistent or thorough evidence that this was otherwise.

[118] The Transcona Country Club's 1987 Voyager van debt was paid down during the period in question. In the CRA's computations this increased Mr. Golden's net worth because he was the debtor personally. It is not clear that the source of cash for the payments came from or through Mr. Golden but the taxpayer did not provide any credible evidence to the contrary.

[119] I am satisfied that the 1989 Dodge Caravan is not properly accounted for on the CRA net worth assessments. I do not accept the taxpayers' position that there is evidence sufficient to rebut the presumption that Sharan Golden was the owner of that vehicle. It is therefore properly an asset at its cost on the net worth schedules. However, it was virtually fully financed at the time of acquisition and, while the CRA had a reasonable position that she took the Dodge van but left the debt behind in the company, on balance I am satisfied that the offsetting debt should be shown as one of the Golden's liabilities. Further, this vehicle was sold in the following year to a third party who assumed the balance of the payments. This too should be reflected in the net worth statements.

#### XVII. The Golden Retriever Orion Bus

[120] Mr. Golden has challenged the impact of the Golden Retriever Orion Bus financing on the CRA's net worth computation of him. The fact that the bus is shown as an asset of his does not affect the amount assessed because its value (cost) does not change once it is acquired and in the year it was acquired it was fully offset by the corresponding amount of the debt liability of Mr. Golden's.

[121] The amount of the liability is reduced during the period which has an unfavorable impact to the taxpayer since he is presumed to have received the cash from one of his business sources. While there is evidence that the bus was acquired to be transferred to a corporation to be incorporated for use in a transportation business on a non-profit basis, the taxpayer did not provide satisfactory evidence that the debt was not paid down by Mr. Golden and was paid down by that corporation. Indeed, there was virtually no evidence regarding that corporation's operations or revenues or cash outflows.

[122] While there are doubts in my mind, this is another example of the occasional harshness or rough justice inherent in net worth assessments. In this case it also results directly from the taxpayer carrying the burden of proof, legally as regards the Minister's assumptions, and practically in any event in the circumstances.

[123] With respect to the Orion Bus, I am satisfied that Mr. Golden did acquire it as described in his purchase agreement for the benefit of a corporation to be incorporated. The corporation was incorporated as Golden Retriever Services Ltd. and did sufficiently evidence its ratification of that purchase as provided for in the *Manitoba Companies Act*. The result of this is it should not be shown as an asset of the Golden's on the CRA net worth assessments.

[124] While it is reasonable to conclude that Golden Retriever also assumed the outstanding debt as at that time, such that the debt should not be shown as debt of the Goldens during the period, the evidence does not satisfy me that the amounts paid down on that debt during the period were not paid down by the Goldens and were paid down by the not-for-profit bus service. I did not receive evidence on that point. Indeed, Golden Retriever and two of its original members, Mr. Golden and Mayor Katz, are involved in this Court in another tax appeal involving Golden Retriever's taxes. Since no evidence was presented to me that the debt was paid down by Golden Retriever, and since Golden Retriever has an appeal pending in front of this Court, I am unwilling, as well as unable on the evidence, to make any determinations of what if any financial transactions were entered into by Golden Retriever.

[125] Mr. Golden's motivation for ensuring the bus was acquired was political. He described pledging to his constituents during the election that he would make better seniors' transportation available in St. Vital. He therefore might well have had personal reasons to assist with the financing for the bus owned and operated by Golden Retriever.

[126] The result of this is that no adjustment needs to be made in respect of the Orion Bus debt.

#### XVIII. Mr. Golden's Visa Purchases

[127] I am largely not satisfied on the evidence of the taxpayers that the Minister's reassessments are incorrect in treating certain amounts on Mr. Golden's Visa card as personal expenditures for purposes of the net worth audit and assessments. There was no credible evidence of any detail with respect to the cash advances on those statements. There clearly were a number of purchases that were personal (Neiman Marcus, toy store, clothing stores) so I cannot accept that Mr. Golden only used his card for business expenses. The only purchases I find to be business expenses which should therefore reduce the net worth assessments are:

- (i) a portion of the expenses related to vehicle operation and maintenance. While Mr. Golden said only business-related vehicle expenses were charged on his card, I do not accept that and, given the number of vehicles owned by the Goldens and the Transcona Country Club, I am prepared to recognize only 20% of these expenses as business expenses for purposes of the net worth assessments; and

- (ii) 50% of the expenses associated with the trips to Toronto and Montreal to visit their local comedy clubs and meet with the local comedy act players, etc. I consider the Vancouver trip to be too remotely connected with the businesses on the evidence. I did not hear enough persuasive and credible evidence of the Las Vegas and other United States trips to conclude that any business aspect was more than incidental.

#### XIX. Adjustments Conceded By the CRA

[128] In addition there were several minor concessions by the CRA which were detailed at the hearing and need to be incorporated into the revised net worth assessments.

#### XX. Penalties Assessed Against Mr. Golden

[129] The testimony of Mr. Hogberg, the chartered accountant chosen by Mr. Golden to compile the financial statements of Provincial Vending, is particularly damaging to the question of penalties.

[130] Mr. Hogberg testified in a most professional, forthright and credible manner. He appears to be an honest, reliable and most diligent accountant. Mr. Hogberg gave Provincial Vending and the Goldens very sound, written, understandable and consistent advice that, had it been followed by the Goldens with respect to their businesses, would have avoided the problems now faced altogether. His comments to them were professional and polite. He even gave the Goldens the benefit of the doubt with respect to his suspicious observations by suggesting that perhaps they were too distracted or did not understand the need for better accounting records.

[131] The numerous Hogberg letters are a testament to why I am not receiving evidence that makes sense on any consistent basis.

[132] Based on the evidence relating to the Transcona Country Club and the Riverside Inn, I have no doubt that, had an accountant such as Mr. Hogberg been engaged to have financial statements prepared, similar qualifications would certainly have followed.

[133] Mr. Hogberg was retained by Mr. Golden to prepare reviewed but unaudited financial statements for Provincial Vending's fiscal year ending in 1982. As part of his engagement he agreed to review the system of accounting records and recommend improvements if necessary. Shortly thereafter, he wrote again to state that he would be unable to prepare financial statements on a review basis due to their very poor records. He would only be able to compile financial statements with a notice to reader. He goes on in that letter to conclude:

I hope, through my conversation with you, you can appreciate the extent of the problems I encountered in completing this job and even more, I hope you can appreciate the need for improvement in your records. Although we have done what we could under the circumstances, as I have mentioned to you several times, the tax department would no doubt disagree with many of your descriptions of financial activities and likely would raise additional tax liabilities. Three main problem areas would be:

1. The lack of records supporting expenses, 2. Personal appropriation of company property (cash), 3. Mixing of monies to/from other people and businesses without keeping proper records. . . .

[134] Mr. Hogberg's 1985 letter to the Golden's begins:

1. As in previous years, accounting records are in a very poor or non-existent condition. As a result and because much of the financial activity is of a cash nature, we again have resorted to your estimates of missing information to arrive at the necessary figures. Although we have based many of our calculations on what you know to be reasonable factors, I must remind you again that Revenue Canada, Taxation can and will demand corroborative substantiation in the form of written documents. For example, vehicle gas expenses can be estimated but only a small part of that expense is supported by invoices. Also many of your vendor commissions are paid in cash with no record kept.

As we have discussed before, you are in a very vulnerable position as far as Revenue Canada is concerned.

2. While it is obvious that the three families involved in the business, yours and you two brothers', all draw funds to live on, the records show no drawings other than a small amount at the year end recorded to eliminate a cash clearing short-fall. Again, I must warn you that Revenue Canada may well determine that everyone involved has earned and not reported income from the Company and if they do so, the consequences would be serious including substantial penalties. I cannot overestimate my concern in this area and would strongly recommend that you place tighter controls on cash collections to insure they all reach the bank intact. All wages should be taken by cheque after

appropriate deductions for income tax, C.P.P. and U.I.C. Wages would also be subject to Workers Compensation costs.

3. The blending of monies from various sources in the Company bank account without any identification causes an ongoing dilemma for which I can only suggest that you start labelling all deposits. . . .

[135] His letter ends:

In conclusion, I would recommend that you commence documenting as much of the financial activity of the business as possible and convert cash transactions to cheque transactions wherever you can. Without records supporting expenses and without proper recording of income from the company by shareholders and employees, serious problems with the tax department are unavoidable. . . .

[136] Mr. Hogberg's 1986 letter to the Goldens is much shorter but also to the point. It includes:

As is my custom, I had intended to write another detailed letter to you outlining problems and solutions regarding the company's financial records and activities but on reviewing my letter to you dated July 23, 1985 in which I discuss the same topics affecting the 1984 fiscal period, it was apparent to me that all my comments are still applicable so there is no point in repeating myself.

In short, I would request that you review the copy of that letter I have herein enclosed and seriously consider the consequences of ignoring my recommendations to maintain reasonable records. . . .

[137] Mr. Hogberg's working papers for Provincial Vending's 1986 taxation year include his following notes:

Wages! Ridiculous to continue to ignore that no one draws a wage. Allan is fully aware that money is kept by all involved with no accounting done whatsoever. What does he want to do about it?

After all, the fact that the F/Ss show continuing substantial losses is ridiculous. . . .

[138] In reporting on that 1986 year, Mr. Hogberg's 1987 letter to the Goldens includes:

. . . I would like to point out a few things for your consideration:



- Revenue Canada, Taxation would, in my opinion, not accept many of the components of the statement of income and expenses, should they ever do an audit. In particular, your estimated cash expenses for which you have no bills, like vehicle gas, would be disallowed.
- Your vehicle and office-in-home rental charges against the company should be added to your personal income from which you could then deduct specific business expenses which, I doubt, would offset the income due mainly to not being able to provide documents.
- The largest problem I see is that no one has ever shown more than a token income from Provincial Vending Ltd. and it is obvious that people cannot work for years without an income. The company has never maintained payroll records and I predict problems in this area. The only solution is to start a proper payroll and pay employees by cheque instead of tolerating cash draws from the collections.
- The incoming and outgoing flow of unidentified funds from/to various personal activities of Allan and is bound to attract attention and possibly a Revenue Canada interpretation that some of the incoming money is revenue. This is a large, ongoing problem and should be rectified. I am not in a position to interpret this flow of money but you are.
- Inventory totals may or may not be reasonable but the records of inventory are non-existent. This gives Revenue Canada the opportunity to make their own interpretation of a figure and you can be sure that any change they make will not be to your advantage. Please attend to preparation of some form of written computation of inventory on hand at the next year end. Eg. number of machines in service x average number of packages in a machine x cost price @ October 31, 1987 plus goods counted in trucks or in storage.
- Financial statements showing continual losses will attract the interest and skepticism of your banks, your major supplier and Revenue Canada particularly considering that virtually no wages are being shown as having been paid. If the business produces income for no one, why does it continue? If it continues, what is not being reported properly?

As I explain each year, I can only assemble the records and information that I am provided with but the resulting financial statements do not look reasonable. Sooner or later, these problems must be faced and corrected. Please consider my comments and do what you can to improve your accounting records. . . .

[139] Finally, Mr. Hogberg's 1990 letter to Allan Golden's attention includes the following:

We have discussed the numerous problems encountered with corporate records in the past and it would serve no useful purpose on my part to reiterate the details but I feel obliged to at least repeat the major categories and any new problems. Please consider the following:

1. As I have always pointed out in the past, I take no responsibility whatsoever for the accuracy, completeness or reasonableness of the company's financial statements and tax returns. I have assembled the information I have been given and have followed your instructions in estimating, where documents were missing. As I mentioned, estimates had to be used as Revenue Canada's demands dictated that no more time could be wasted waiting for documents.
2. The sales journal for 1988 and all of 1989 no longer shows vendors' commissions paid. This journal had been the basis of your expense claim. I had to resort to approximations of expenses. Please see that the sales journal is completed properly for coming years.
3. Two months sales journal pages in 1989 were missing so I had to estimate sales for these months based on other months averages.
4. I had Pratt's Ltd. courier over copies of their statements as I was missing about half of them. Had I not done so, I would have had no knowledge of the direct 1989 payment by you to Pratt's of \$150,000. Please insure you keep all of Pratt's statements.
5. Missing bank statements and cancelled cheques necessitated more guessing using statement copies obtained from the bank.
6. Amounts transferred to Sharan and Ken from the company bank or withdrawn by cheque or amounts paid on their behalf total about \$100,000 from 1987 to 1989. As there was no evidence that any amounts had been reported by them as income, I charged all such amounts against the balance owing to you from the company. You should consider these to be personal loans.
7. Your sales continue to decline and I would recommend you review the accuracy of your sales reporting mechanism. It appears likely that sales are not all being reported, whether through theft of merchandise or cash, faulty vending machines or bookkeeping errors, this area would no doubt be reviewed by Revenue Canada if the opportunity arose. . .

[140] Towards the close of his letter he writes:

Provincial Vending Limited does not need complicated records but rather than improving to an acceptable level, they are worse than before. My efforts have not been productive. You need a good sales journal showing commissions paid. You need all of your bank statements, cancelled cheques and deposit slips. You need

all bills or statements paid by company (including Pratts). You need a list of cash expenses. You need a written inventory. You need a proper payroll set-up.

[141] Lastly in this letter Mr. Hogberg included his account for preparing the tax returns and financial statements. As it turned out, he was never paid. However, it is my view that this did not affect his testimony and, in any event, his earlier letters speak volumes for themselves.

[142] With respect to the subsection 163(2) penalties the Crown must satisfy the Court that Mr. Golden has knowingly, or under circumstances amounting to gross negligence, made false statements or omissions in his returns. This has been interpreted to mean intentional acting or a high degree of negligence tantamount to intentional acting, an indifference as to whether the law is complied with or not. It can in certain circumstances include wilful blindness.

[143] Mr. Golden has handily cleared the bar of indifference. His level of indifference could best be described as total. A video replay might be needed to see if he actually clears the intentional threshold but that is not necessary in the circumstances. I am disappointed that a serial tax offender with a long history of non-filing, who has been found guilty of tax evasion in respect of the 1989 assessment in front of me, would, based on what evidence he put in during the three weeks of evidence preceding argument, have the gall to spend time seriously arguing that penalties were not appropriate.

[144] Mr. Golden's position is that he was diligent in relying on his chosen accountants. With respect to Mr. Hogberg, it is very clear that Mr. Golden did not rely on his advice and did not follow it but continually ignored it. With respect to Mr. Storey, Mr. Golden was aware of his personal and professional shortcomings, and it was simply not reasonable for Mr. Golden to assume that Mr. Storey had been able to file proper returns based on the records Mr. Golden gave him. Mr. Golden knew that for earlier years when returns were filed, but perhaps not on time, Mr. Storey would have a large number of items in a "suspense account" which served the equivalent purpose of Mr. Hogberg's shareholder loan account that required Mr. Golden to explain whether the amounts related to the businesses or did not. Mr. Golden knew he had not had such a meeting, knew he did not sign a tax return, and knew that Mr. Storey had not asked him for a cheque to pay any taxes owing nor told him to anticipate a refund nor was a refund received. Indeed, I am left wondering if Mr. Golden even gave Mr. Storey records since it appeared most of the records were seized by the CRA and the RCMP from places other than Mr. Storey's offices.

[145] As already noted, Mr. Golden in his notice of appeal stated that the Rubin's Deli and Core Industries expropriations were sources of cash available to him at the opening of the net worth period but were not accounted for by the CRA and which explained some of the cash flows. However, with respect to penalties, his counsel argues that he would have been aware he had losses resulting from Core Industries and/or Rubin's Deli and therefore would not have expected to be having to pay taxes by writing a cheque to make available to his accountant when the returns were supposed to be filed. It would seem odd that he thought he lost money when his tax returns were due, he thought he had cash available from the success of those dispositions when his pleadings were drafted then, after being faced with a statement of adjustments for both expropriations showing no net proceeds, remembers the loss and uses that as justification for not being considered to have been indifferent to whether his tax returns were filed and taxes were paid.

[146] I am also mindful of the fact that on his tax return Mr. Golden only reported \$15,000 of income as city councillor. In his testimony, he said "I don't spend the kind of money that I was earning. We live relatively modestly and, in fact, for a person that is earning the kind of money that we were earning, we were living very modestly". I must say there was nothing about the evidence which suggests the Golden's lived very modestly as compared with Canadians earning \$15,000 dollars a year in 1989. I need do no more than refer to the Neiman Marcus charges on the Visa statements and cheques, the Lincoln in the laneway and the vintage car in the garage.

[147] The evidence left me with no doubt in my mind whatsoever that penalties were properly assessed in this regard.

## XXI. Conclusion

[148] The appeals are allowed in part only to the extent described above. There is nothing else that this Court can do. Mr. Golden is the author of his own misfortunes and those of his wife.

[149] The Crown is entitled to one set of costs.

[150] I will delay signing judgment for 60 days following the date of signing these reasons to allow the parties time to try to agree on the wording of the order needed.

Signed at Toronto, Ontario, this 20<sup>th</sup> day of August 2009.

"Patrick Boyle"

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Boyle J.

CITATION: 2009 TCC 396

COURT FILE NOS.: 2004-26(IT)G, 2004-27(IT)G

STYLE OF CAUSE: SHARAN GOLDEN v. H.M.Q.,  
ALLAN R. GOLDEN v. H.M.Q.

PLACE OF HEARING: Winnipeg, Manitoba

DATES OF HEARING: March 31 to April 4, 2008, April 7, 8 and  
10, 2008, October 21 to 24 and 28 to 31, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: August 20, 2009

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