

BETWEEN:

TERRY PIERSANTI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motions heard on June 17, 2010 at Toronto, Ontario

Before: The Honourable Justice Diane Campbell

Appearances:

Counsel for the Appellant:	V. Ross Morrison R. Samantha Chapman
Counsel for the Respondent:	Laurent Bartleman

ORDER

Upon Motion by the Respondent seeking an Order for the following relief:

1. directing that within 30 days of the order issuing as a result of this motion the Appellant:
 - (i) complete the undertakings that she gave at her examination for discovery in response to questions 108, 289, 311, 324, 423 and 427;
 - (ii) answer questions 23, 26, 27, 53, 55, 384 to 386, 427, 606, 608, 645, 657, 659 and 662 that she took under advisement at her examination for discovery but failed to answer; and
 - (iii) answer questions 20, 32, 34, 55, 62, 90, 133, 145, 149, 152, 182, 189, 198, 242, 246, 248, 250, 304, 549, 553, 587, 588, 601, 672 to 676, 682 to 691 that she refused to answer at her examination for discovery;
2. costs on this motion payable forthwith in any event of cause; and

3. such further and other relief as this Court may deem just.

And upon motion by the Appellant seeking an Order for the following relief:

1. Directing that within 30 days of the order issuing as a result of this motion the representative of the Respondent, John DiRito:
 - (a) answer questions 230, 234, 236, 237, 241, 247, 253, 267, 270, 282, 303, 324, 328, 347, 348, 353, 354, 474, 498, 500, 506 and 541 that he took under advisement at his examination for discovery but failed to answer;
 - (b) answer questions 62, 70, 93, 95, 98, 121, 122, 126, 128, 132, 134, 152, 161, 162, 163, 176, 179, 184, 185, 188, 189, 193, 199, 200, 201, 209, 211, 212, 213, 214, 215, 221, 222, 226, 227, 229, 239, 246, 265, 277, 279, 293, 295, 296, 299, 302, 304, 308, 334, 337, 352, 375, 450, 451, 481, 591, 692, 818, 824, 931, 958, 976 and 979 that he refused to answer at his examination for discovery; and
 - (c) complete the undertakings that he gave at his examination for discovery;
2. Costs of this motion payable forthwith in any event of the cause; and
3. Such further and other relief as to this Honourable Court may seem just.

And upon hearing submissions of the parties;

IT IS ORDERED THAT:

With respect to the Respondent's Motion:

1. The Appellant will answer the following questions and provide the requested documents and minute books:

Schedule "A"	1, 2, 3, 4, 5, 6, 7
Schedule "B"	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20
Schedule "C"	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33
Schedule "D"	Further questions that may arise from the responses contained in this schedule

The Appellant is therefore directed to respond to all of the questions in Schedules “A”, “B” and “C” attached to this Order.

With respect to the Appellant’s Motion:

2. The Respondent’s nominee will answer the following questions:

126, 128, 132, 162, 176, 185, 214, 222, 293, 304.

3. The Respondent’s nominee is also directed to answer those questions respecting the origin of the documents, subject to any claims of privilege that might arise, subject to any documents being publicly available or under the control of the Appellant: those questions include 62, 70, 93, 95, 98, 121, 193, 211, 221, 222, 229, 239, 246, 265, 277, 279, 299, 302, 308, 337, 375, 818, 824, 931 and 958.

Order of Lamarre J.

4. The timetable contained in the Order of Lamarre J., dated December 8, 2009, is amended to allow for the following:

With respect to the Respondent’s Motion:

- (a) The Respondent shall provide the Appellant with any further questions arising out of the Appellant’s written responses of May 28, 2010 by September 20, 2010;
- (b) The Appellant is directed to provide responses to the Respondent’s potential questions arising from the May 28, 2010 correspondence, together with responses to those questions/refusals which I have directed the Appellant to answer in my Reasons by October 4, 2010;
- (c) Questions arising out of the Appellant’s responses are to be provided to the Appellant by October 18, 2010; and
- (d) The Appellant shall provide those responses to the Respondent by November 1, 2010.

With respect to the Appellant’s Motion:

- (a) The Respondent shall provide responses in respect to the questions which I have directed the Respondent to answer by September 20, 2010;
 - (b) The Appellant shall forward to the Respondent any questions arising from the Respondent's responses by October 4, 2010; and
 - (c) The Respondent shall answer those questions by October 18, 2010.
5. All of the communications directed in paragraph 4 shall be made in writing.
6. Discoveries shall be completed within the established timetable. There shall be no further amendments to the dates set out in paragraph 4.
7. Costs are awarded to the Respondent, payable forthwith in any event of the cause.

Signed at Charlottetown, Prince Edward Island, this 20th day of August 2010.

“Diane Campbell”

Campbell J.

Citation: 2010 TCC 430
Date: August 20, 2010
Docket: 2008-2863(IT)G

BETWEEN:

TERRY PIERSANTI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Campbell J.

[1] The Appellant was reassessed in respect to the 1995, 1996 and 1997 taxation years and amounts were included in her income pursuant to subsection 6(1) of the *Income Tax Act* (the “Act”). The Minister of National Revenue (the “Minister”) alleges that the Appellant received benefits from a number of closely related corporations or trusts by way of cash advances paid directly to her or paid to cover third party expenses. The Appellant alleges that these cash advances were the result of repayments of loans that the Appellant had previously made to the corporations or trusts.

[2] By Order dated July 6, 2009, which was amended on July 13, 2009, Bowie J. set out a timetable for completion of exchange of lists of documents, examinations for discovery and satisfaction of any resulting undertakings. Pursuant to a Motion by the Appellant dated November 10, 2009, the timetable contained in that Order was amended by further Order of Lamarre J. dated December 8, 2009. According to this Order, the Appellant was to complete undertakings by December 31, 2009. The Order concluded by stating that: “There will be no further extensions granted in respect of the above-mentioned schedule.”

[3] The Appellant failed to complete the undertakings given at the examination for discovery by December 31, 2009. Subsequently, on January 7, 2010, the Appellant provided a written response to the Respondent which addressed some of the Appellant’s undertakings. The Respondent’s nominee, John DiRito, was examined

by the Appellant on January 26 and 27, 2010. By letter dated March 29, 2010, the Respondent provided a response to the undertakings given at this examination for discovery and to those questions taken under advisement. On May 28, 2010, the Appellant again provided further written responses which, according to the Respondent, did not fully address all of the Appellant's undertakings.

[4] On June 8, 2010, the Respondent filed a Motion pursuant to section 110 of the *Tax Court of Canada Rules (General Procedure)* (the "*Rules*") for the following:

1. directing that within 30 days of the order issuing as a result of this motion the Appellant:
 - (i) complete the undertakings that she gave at her examination for discovery in response to questions 108, 289, 311, 324, 423 and 427;
 - (ii) answer questions 23, 26, 27, 53, 55, 384 to 386, 427, 606, 608, 645, 657, 659 and 662 that she took under advisement at her examination for discovery but failed to answer; and
 - (iii) answer questions 20, 32, 34, 55, 62, 90, 133, 145, 149, 152, 182, 189, 198, 242, 246, 248, 250, 304, 549, 553, 587, 588, 601, 672 to 676, 682 to 691 that she refused to answer at her examination for discovery;
2. costs on this motion payable forthwith in any event of cause; and
3. such further and other relief as this Court may deem just.

[5] On June 11, 2010, the Appellant filed a Motion also pursuant to section 110 of the *Rules* for the following:

1. Directing that within 30 days of the order issuing as a result of this motion the representative of the Respondent, John DiRito:
 - (a) answer questions 230, 234, 236, 237, 241, 247, 253, 267, 270, 282, 303, 324, 328, 347, 348, 353, 354, 474, 498, 500, 506 and 541 that he took under advisement at his examination for discovery but failed to answer;
 - (b) answer questions 62, 70, 93, 95, 98, 121, 122, 126, 128, 132, 134, 152, 161, 162, 163, 176, 179, 184, 185, 188, 189, 193, 199, 200, 201, 209, 211, 212, 213, 214, 215, 221, 222, 226, 227, 229, 239, 246, 265, 277, 279, 293, 295, 296, 299, 302, 304, 308, 334, 337, 352, 375, 450,

451, 481, 591, 692, 818, 824, 931, 958, 976 and 979 that he refused to answer at his examination for discovery; and

- (c) complete the undertakings that he gave at his examination for discovery;
- 2. Costs of this motion payable forthwith in any event of the cause; and
- 3. Such further and other relief as to this Honourable Court may seem just.

Both Motions were heard consecutively.

ANALYSIS

[6] There is considerable case law establishing the principles that govern whether questions will be permitted in an examination for discovery. Relevancy is the key and wide latitude is generally advocated. Questions will be relevant as long as they broadly relate to or affect the matters raised in the pleadings. Such a liberal approach supports the broad purpose of examinations for discovery, which is to enable all parties to be fully informed of the issues and the respective positions on those issues in order to know the case each has to meet so that the hearing process will advance efficiently. Courts generally refrain from interfering in this process except under circumstances where questions are clearly irrelevant or where conduct is abusive or meant to be a delaying tactic.

[7] The decision in *Baxter v. The Queen*, 2004 D.T.C. 3497, at paragraph 13, summarized the principles which emerge from the case law as follows:

[13] From these and other authorities referred to by counsel, I can summarize the principles that should be applied:

- (a) Relevancy on discovery must be broadly and liberally construed and wide latitude should be given;
- (b) A motions judge should not second guess the discretion of counsel by examining minutely each question or asking counsel for the party being examined to justify each question or explain its relevancy;
- (c) The motions judge should not seek to impose his or her views of relevancy on the judge who hears the case by excluding questions that he or she may consider irrelevant but which, in the context of the evidence as a whole, the trial judge may consider relevant;

- (d) Patently irrelevant or abusive questions or questions designed to embarrass or harass the witness or delay the case should not be permitted.

[8] In addition to the above mentioned principles, V.A. Miller J. in *Kossow v. The Queen*, 2008 D.T.C. 4408, at paragraph 60, states:

[60] A summary of the general principles from the case law is as follows:

1. The principles for relevancy were stated by Chief Justice Bowman...[referring to *Baxter*].
2. The threshold test for relevancy on discovery is very low but it does not allow for a "fishing expedition": *Lubrizol Corp. v. Imperial Oil Ltd.*
3. It is proper to ask for the facts underlying an allegation as that is limited to fact-gathering. However, it is not proper to ask a witness the evidence that he has to support an allegation: *Sandia Mountain Holdings Inc. v. The Queen*.
4. It is not proper to ask a question which would require counsel to segregate documents and then identify those documents which relate to a particular issue. Such a question seeks the work product of counsel: *SmithKline Beecham Animal Health Inc. v. The Queen*.
5. A party is not entitled to an expression of the opinion of counsel for the opposing party regarding the use to be made of documents: *SmithKline Beecham Animal Health Inc. v. The Queen*.
6. A party is entitled to have full disclosure of all documents relied on by the Minister in making his assessment: *Amp of Canada v. Canada*.
7. Informant privilege prevents the disclosure of information which might identify an informer who has assisted in the enforcement of the law by furnishing assessing information on a confidential basis. The rule applies to civil proceedings as well as criminal proceedings: *Webster v. The Queen*.
8. Under the Rules a party is not required to provide to the opposing party a list of witnesses. As a result a party is not required to provide a summary of the evidence of its witnesses or possible witnesses: *Loewen v. the Queen*.
9. It is proper to ask questions to ascertain the opposing party's legal position: *Six Nations of the Grand River Band v. Canada*.
10. It is not proper to ask questions that go to the mental process of the Minister or his officials in raising the assessments: *Webster v. The Queen*.

[9] The Respondent submitted four schedules which contained a breakdown of the actual questions at issue in the Respondent's Motion. Those schedules consist of:

Schedule "A" - the Appellant's unanswered undertakings;

Schedule "B" - the unanswered questions taken under advisement by the Appellant;

Schedule "C" – the Appellant's refusals; and

Schedule "D" – the undertakings answered by the Appellant in the May 28, 2010 correspondence.

For ease of reference, I have attached these same schedules to my Reasons.

[10] In respect to the Appellant's Motion, I have attached those questions which the Appellant alleges the Respondent refused to answer as Schedule "E" and those questions which the Respondent took under advisement but failed to answer as Schedule "F". Since the Appellant's Motion neglected to attach a complete list of the questions which the Appellant alleges the Respondent refused to answer, I have attached those questions/responses from the examination of John DiRito that were attached as Schedule "C" to the Respondent's Written Representations filed on June 16, 2010.

[11] I have grouped the questions into twelve primary areas in respect to the Respondent's Motion and three areas in respect to the Appellant's Motion. I will discuss the various questions as they relate to these areas. I have dealt with the Respondent's Motion by referring to the actual numerical numbers which were assigned to each question/response in the Schedules "A", "B", "C" and "D". I addressed the Appellant's Motion by referring to the actual question numbers as they appeared in the transcript evidence.

THE RESPONDENT'S MOTION

(A) Information Requested for the Period Prior to those Years Under Appeal

- (i) Who were the officers/shareholders of the group of closely held companies including Gold Financial Corporation, Polar Property

Management Inc., 789533 Ontario Ltd. and Yonge Davis Centre Inc. prior to 1995?; and

- (ii) Information Requested respecting loans made to Gold Financial Trust prior to 1995;

Questions on Schedule “C”: 4, 5, 8, 9, 10, 12, 13, 14, 15, 17 and 18

[12] The Appellant submits that her responses should be limited to the years under appeal, 1995, 1996 and 1997. Because the Appellant has taken the position that the amounts in issue are repayments of loans made by her, the Respondent submits that the circumstances surrounding these loans as they relate to years prior to 1995 are relevant to the issues.

[13] In *Waskowec v. The Queen*, 94 D.T.C. 6149, the taxpayer was required to respond to discovery questions about the history of his business that related to years outside those under appeal where such questions might lead to the discovery of facts that could be relevant to the issues. According to the Respondent, the position, taken by the Appellant that these amounts were loans rather than income, means that the Respondent should be able to examine all of the years in which the loans were made. I agree with the Respondent’s submissions. Because of the nature of the issues and the Appellant’s position on those issues, it would be inappropriate to permit the Appellant to respond only to questions concerning the years under appeal. If the Appellant intends to rely on this position, the circumstances surrounding these loans and repayments become central to the issues and she cannot now take the position that they are irrelevant. It will take very little effort on the Appellant’s part to specify if and when she was an officer/director of one of these companies and to identify the events and particulars surrounding the loans. The Appellant will answer these questions.

(B) To provide information concerning amounts exchanged between the Appellant and Gold Financial Trust together with information on the source of the loans.

Questions on Schedule “A”: 2, 3, 4, 6 and 7

Questions on Schedule “B”: 7 and 8

[14] Because the position taken by the Appellant makes those amounts allegedly exchanged between the Appellant and Gold Financial Trust key to issues in the appeal, such questions meet the threshold test for relevancy. The Appellant is directed to answer these questions and she is reminded that providing imprecise

responses such as, “They are in the general ledger” are unresponsive and will not be tolerated should these matters make a return visit to this Court.

(C)

- (i) Who were the directors/officers/shareholders of Gold Financial Corporation?
- (ii) Was the Appellant ever an officer/trustee of Pier Properties Inc.?.; and
- (iii) Was the Appellant ever a trustee of Piersanti Financial Trust?

Questions on Schedule “A”: 1 and 5

Questions on Schedule “B”: 1, 2, 3, 4, 5, 6

Questions on Schedule “C”: 2 and 3

[15] Some of these questions relate to the issue of ownership of Gold Financial Corporation and the assumption(s) contained in the Reply to the Notice of Appeal that state that corporate disbursements were made at the direction of the Appellant for her benefit or for the benefit of third parties. These questions, as well as the questions concerning Pier Properties Inc. and Piersanti Financial Trust, meet the threshold for relevancy. The Appellant is directed to answer these questions and to respond even if the line of inquiry may lead to questions concerning years prior to 1995.

(D) Information concerning disbursements made by Gold Financial Trust / Piersanti Financial Trust.

Questions on Schedule “B”: 9 and 10

[16] At paragraph 11 of the Notice of Appeal, the Appellant asserts that any disbursements made by corporations were reported and disclosed in the T3 tax returns. Consequently, the Respondent’s requests that the Appellant identify these reported amounts are relevant. The Appellant is directed to respond, as such details should be provided.

(E) Information concerning the education and extra-curricular activities of the Appellant’s children.

Questions on Schedule “B”: 11, 12 and 14

[17] The Appellant is directed to answer these questions. They are clearly relevant, particularly in light of the Respondent's assumptions that disbursements were made to persons other than the Appellant and that the Appellant benefited from those disbursements. In addition, the Respondent's assumptions also list those third parties.

(F) Corporate Information / Minute Books

Respondent's requests for minute books/banking information and whether the Appellant had signing authority respecting Gold Financial Corporation, 789533 Ontario Ltd., Pier Properties Inc., Polar Property Management Inc. and Yonge David Centre Inc..

Questions on Schedule "B": 15, 16, 17, 18, 19 and 20

Questions on Schedule "C": 1, 6, 7, 11 and 16

[18] All of the requested information relates to corporations specifically referenced in the Notice of Appeal. The Respondent alleges that amounts were transferred under the direction of the Appellant for her benefit. The Respondent submits that the minute books would assist in ascertaining which individuals controlled these companies and, because the Appellant referred to minute books in her response to another question, she has put them in issue. In *Smithkline Beecham Animal Health Inc. v. The Queen*, 2001 D.T.C. 192, the Federal Court of Appeal confirmed that a "train of inquiry" test should be applied to documents and that documents will be relevant if they may reasonably lead to a train of inquiry that can advance the party's case or damage that of its adversary. Since these questions satisfy the train of inquiry test and would be pertinent to the issue of the origin of the disbursements, the Appellant is directed to answer the questions and provide the requested documents and minute books.

(G) Was the Appellant ever a director/officer/shareholder of Duvernay Shopping Centres Inc.?

Question on Schedule "C": 19

[19] The Respondent alleges that the disbursements were derived from "certain operations" that include commercial and rental activities (assumption 5(e) and (bbb) of the Reply). These activities are not specifically identified by the Respondent and there are no specific allegations connecting the Duvernay Shopping Centres to the corporate disbursements. The Appellant submits that this corporation is irrelevant to the appeal. While the Minister may not go on a so-called fishing expedition to

determine facts that could have been discovered during the audit, I believe that the Respondent is entitled to pursue a line of questioning where there is a possibility that if the Appellant controlled Duvernay then some of the disbursements may be traceable to it. The Respondent is entitled to ascertain whether Duvernay is part of this group of closely connected companies even though it is not named in the Reply. As the Respondent suggests, this line of questioning is not in the nature of a fishing expedition because it opens a train of inquiry rather than asking questions in the hope that they may lead to a train of inquiry. Since this question meets the broad approach to relevancy and may be relevant in the context of the evidence as a whole, I direct the Appellant to respond to this question.

(H)

- (i) Was the Appellant or her spouse a guarantor for the Greenbrook residence mortgage?; and
- (ii) Information requested concerning the business activities of Gold Financial Corporation.

Question on Schedule “B”: 13

Question on Schedule “C”: 20

[20] The question respecting guarantors is the result of the issue raised in the Reply which suggested that the Appellant was the beneficial owner of the Greenbrook residence (paragraph 7 of the Reply). It may be directly related to the Respondent’s allegation that the resources of the group of related companies were used to pay the Appellant’s personal expenses. In respect to Question 20, Schedule “C”, the Respondent makes the assumption that Gold Financial Corporation did not carry on a business or conduct business activities (Assumption 5(f) of the Reply).

[21] I think both of these questions are relevant because they fall within the wide latitude afforded questions that “may” touch on the issues. They may touch on issues which the Judge hearing the appeals may consider relevant. The Appellant is directed to respond to these questions.

(I) Questions requesting confirmation of the amounts of the disbursements as listed in charts contained in the Reply.

Questions on Schedule “C”: 21 and 22

[22] The disbursement amounts are clearly relevant to the issues in this appeal and I believe the questions surrounding the issue of amounts should be answered. The Appellant's records should support her agreement or disagreement with the amounts listed and if she disagrees with those amounts, she should be able to refer to the figures which her records do support. Therefore, the Appellant is required to respond to these questions and, in any event, it appeared that an undertaking to do so was provided at the response to Questions 602-603.

(J) Requests for credit card information.

Questions on Schedule "C": 26, 27, 28, 29, 30, 31, 32 and 33

[23] These questions are clearly appropriate and meet the threshold for relevancy because they relate to the Respondent's submissions that the corporate disbursements made to several credit cards were to pay the Appellant's personal expenditures (assumption 5(cc), (dd) and (ee) of the Reply. The Appellant is directed to respond to these questions.

(K) Questions respecting an Agreed Statement of Facts together with the guilty plea in the criminal proceeding.

Questions in Schedule "C": 23, 24 and 25

[24] These questions relate to the Appellant's guilty plea respecting several charges laid under the *Excise Tax Act* and to an Agreed Statement of Facts submitted to the Superior Court in the criminal proceedings. The Appellant submits that these questions are irrelevant in this appeal. The Respondent suggests that they open a train of inquiry that may be relevant to the issue of intent and knowledge of the operations of these closely held companies in relation to the application of penalties. Although challenges to the admissibility of documents are best left for the Judge hearing this appeal, I do not believe that the Appellant will suffer any prejudice in responding to these questions.

(L) Partial Responses

Further questions that may arise from the responses contained in Schedule "D"

[25] The Respondent submits that the Appellant's responses are vague and ambiguous because the Appellant did not clearly specify which of the Respondent's questions her responses related to. In addition, the Appellant appeared to be

providing partial responses to some of the questions. Therefore, the Respondent submits that some of the responses and/or questions may relate to some of those contained in Schedules “A”, “B” and “C”. The Appellant spent considerable time during the hearing of this Motion linking the answers to the appropriate questions. This “method” of responding is not only inappropriate but potentially misleading. Opposing counsel is entitled to have the Appellant’s responses documented in an orderly fashion that directly links the response to the question or questions. For the sake of efficiency and civility, I would strongly encourage Appellant’s counsel to respond appropriately and provide clarification to any further questions that the Respondent may have respecting the responses.

THE APPELLANT’S MOTION:

(A) “Source” Documents:

- (i) Questions relating to the criminal investigation on Schedule “E”: 62, 70, 93, 95, 337 and 931; and
- (ii) Questions relating to the source of the documents on Schedule “E”: 98, 121, 122, 152, 161, 179, 184, 193, 201, 209, 211, 221, 239, 246, 265, 277, 279, 299, 302, 308, 334, 352, 375, 818, 824 and 958.

[26] The Appellant posed several questions during discovery requesting information respecting the source of various documents, and asking how certain documents were obtained. The Appellant does not deny that one reason for this line of questioning was to confirm whether the documents being relied upon in the criminal investigation and the audit were properly obtained. As background, the Appellant pled guilty to 35 charges under the *Excise Tax Act* in respect to tax that was collected but not remitted by some of the closely held corporations. A number of the Respondent’s refusals relate to this criminal investigation.

[27] The Appellant relied on the decision in *O’Neill Motors Ltd. v. The Queen*, 98 D.T.C. 6424, to support the position that a reassessment that is based upon documents that were improperly obtained during such an investigation may be vacated.

[28] The Respondent’s refusal to answer these questions at the discovery was based on the position that the origin or source of these documents would be irrelevant. The Respondent argued that the decision in *Norwood v. The Queen*, 2001 D.T.C. 5111, provides a better indication of how to treat this type of situation when there is an

allegation of improper conduct, where documents, relied upon by the Minister in an audit, have not been procured under valid requirements. As I understood the Appellant's submissions, there is concern respecting the source of documents because of a possible breach under the *Charter of Rights and Freedoms* (the "*Charter*"), particularly section 8 of the *Charter*. The Respondent submits that the Appellant failed to specify why such questions were posed to the Respondent's nominee at the discoveries other than to state that they were relevant and went to admissibility of documents. The Respondent has now agreed to produce the requirements used in the audit in light of the Appellant's stated concerns. The Respondent advised that it was his understanding that all of these documents have already been produced during the criminal trial. It is apparent that if the Appellant had been more cooperative and provided his reasons for the questions at the discovery, they might have been answered prior to this Motion.

[29] The major concern I have is that the Appellant has not raised this as an issue in the Notice of Appeal. In *Aventis Pharma Inc. v. The Queen*, 2007 D.T.C. 1585, at paragraph 42, the Court confirmed that questions aimed at pursuing facts to support other issues not raised in the pleadings will not be permitted. Relevancy must be connected to the issues raised in the pleadings in order to prevent the parties from engaging in a fishing expedition.

[30] Although it is not clear that this line of questioning has satisfied the test for relevancy, as the pleadings are silent on this issue, in light of the Respondent's concession to produce the requirements used in the audit, I see no particular harm in having the Respondent's nominee answer those questions respecting the origin of the documents, subject to any claims of privilege that might arise, as they relate to the Appellant's concerns over a *Norwood* situation. However, some of the questions in this group are clearly irrelevant on their face as they are self-evident. Questions 122, 152 and 161 deal with publicly available corporate profile reports relating to corporations over which the Appellant had control. Questions concerning the source of the returns are irrelevant as the T1 returns are the Appellant's own documents. The authenticity of these documents was never raised in the pleadings. Again, it is totally irrelevant which individual at the Canada Revenue Agency ("CRA") may have been responsible for printing various documentation (Questions 179, 184, 201 and 209). Questions 334 and 352 relate to authenticity of documents and are best left to the discretion of the Judge hearing the appeals. The response to Question 481 is within the knowledge of the Appellant not the Respondent. Some of these questions also reference public documents such as Land Registry documentation and others reference documents produced by the Appellant or a corporation controlled by the

Appellant and need not be answered. I see no possible *Norwood* issues arising here on those points.

(B) Questions Concerning the Relevancy of the Respondent's Documents / Litigation Strategy:

Questions by the Appellant throughout the examination for discovery relating to the reasons why documents were being produced or relied on.

Questions on Schedule "E": 126, 128, 132, 134, 162, 163, 176, 185, 188, 189, 199, 200, 212, 213, 214, 215, 222, 226, 227, 229, 293, 295, 296 and 304.

[31] The Appellant's questioning of the Respondent's nominee often related to the integrity of the documents, their relevance and whether they were properly obtained. For the most part, the Respondent's refusal was based on the premise that the questions related to litigation strategy. Many of the examples offered by the Appellant also related to those questions respecting the source of the documents.

[32] In *Loewen et al v. The Queen*, 2006 D.T.C. 3543, at paragraph 7, the Court confirmed that a party is entitled to ask, "Why is this document on your list and what does it have to do with this case?" At paragraph 8 of that decision, the Court explained:

[8] ... A party is entitled to know why a document is being produced. One must bear in mind that section 81 of the *Tax Court of Canada Rules (General Procedure)*, in contrast with section 82, is rather unique in that it requires only that the party produce a list of documents that it is intended will be used in evidence. If the answers given were acceptable it would mean that a litigant could swamp the other side by producing cartons of documents and leave it to the other side to go through them in an attempt to anticipate what use, if any, will be made of them. I think a litigant is entitled to know why the other party thinks a document is relevant. It is insufficient to say, in effect, that a document is being put in the list of documents on the off chance that it may be useful to rebut some unspecified point that the other side may wish to make.

(Emphasis added)

[33] At paragraphs 9 and 10 of the *Loewen* case, the following was stated concerning litigation privilege:

[9] ... (i) ... I am not prepared to extend the concept of “litigation privilege” or “work produce of counsel” to the point of allowing a party to refuse to disclose documents or information in its possession that are relevant to the litigation.

[10] The leading case on litigation privilege is *General Accident Assurance Co. v. Chrusz*, 45 O.R. (3d) 321 (Ontario Court of Appeal). I do not propose to examine in detail the concept of litigation privilege. It is a far more restricted principle than the appellant suggests. The modern view of discovery is in favour of full disclosure and it is this principle which I think should be applied in this court. We have long since moved away from the “trial by ambush” that prevailed in the old Tax Review Board or the Tax Appeal Board. ...

The Court then quoted a summary respecting this principle contained in Sopinka, Lederman & Bryant, *The Law of Evidence in Canada*, Second Edition, Supplement.

[34] In *Shannon v. The Queen*, 2009 D.T.C. 1149, the Court held that a party may request which specific documents the opposing party will be relying upon where the documents are listed as a bundle.

[35] Generally, the Appellant may not ask such questions as, “How are you intending to use these documents?” but instead may ask the Respondent’s nominee, for example, to explain specifically how a document was used to allegedly support a particular third party disbursement.

[36] Questions 126 and 128 relate to the Appellant’s own tax return for 1997, one of the taxation years under appeal. Questions 126 and 128 should be answered.

[37] Question 132 relates to the corporation profile reports and should be answered. It appears that Question 162 also relates to the reports and seems to be a re-statement of Question 132, so it can be answered. I believe that a general question, such as Question 134, relating to how the documents are relevant is distinct from why the documents are being produced and is an improper question.

[38] Question 163 need not be answered. Questions 176 and 185 will be answered. If Question 185 is answered, I see no reason why the Respondent should further spell out for the Appellant how the document will assist or rebut an allegation of fact in the Notice of Appeal. Questions 188 and 189 need not be answered.

[39] Questions 199, 212 and 213 are improper and need not be answered. They improperly ask the Respondent’s nominee how the document establishes or rebuts a non-specific allegation.

[40] Questions 200, 226 and 227 need not be answered.

[41] Questions 214, 293 and 304 will be answered.

[42] Question 215 draws a conclusion and then asks the witness to agree. It is improper and need not be answered.

[43] Question 222 will be answered but no response is required for Question 229.

[44] Question 295 is an improper question for the same reason that questions 199, 212 and 213 are.

[45] Question 296 is an improper question as it is irrelevant why the Respondent is not relying on certain documentation.

(C) Miscellaneous Questions

[46] The Appellant seeks responses to a number of other questions that the Respondent refused to answer on the ground that they were irrelevant and appeared to be delay tactics employed by the Appellant.

[47] These questions related to:

1. the delay that occurred confirming the Assessment after the Notice of Objection was filed;
2. whether the Appellant, Terry Piersanti, was or was not a director of any of the group of closely held corporations; and
3. whether the Respondent's nominee should identify certain statements such as bank statements and credit card statements.

[48] In the decision in *Baxter*, the Court confirmed that questions that are designed to delay should not be permitted. Whether there was a delay or not after the Assessment (Questions 450 and 451) is irrelevant. Requesting the Respondent to confirm or deny that the Appellant was an officer/director of any of this group of corporations (Question 481) is inappropriate. Question 591 is an inappropriate

request. Asking the Respondent to identify bank and credit card statements (Question 692) is a waste of time which I consider to be a delay tactic. The working papers have been provided to the Appellant and it would also seem to be a delaying tactic if the Appellant were permitted to pursue a line of questioning where she attempted to pinpoint the source of each entry by referencing the working paper entry to these bank statements. This would be a tedious waste of time.

[49] In his written representations, the Respondent submits that Questions 976 and 979 should have been answered and that responses to those questions have now been provided.

Appellant's Motion Request that Questions Taken Under Advisement by the Respondent be Answered (paragraph 1(a) of the Motion)

[50] I have attached the Appellant's questions taken under advisement and the Respondent's responses in Schedule "F". After reviewing the responses, I am satisfied that the Respondent has fully answered those questions.

Appellant's Motion Request that Respondent Complete Undertakings (paragraph 1(c) of the Motion)

[51] The Appellant's Motion requests an Order of this Court compelling the Respondent to "complete the undertakings that he gave at his examination for discovery". However, in the Appellant's written submissions, it states that the Respondent has answered "most but not all" of the undertakings. Although I have not reproduced the chart of the questions and of the responses which the Respondent provided the Court and which was the same chart provided to the Appellant on March 29, 2010, after reviewing the Respondent's responses, I am satisfied that the Respondent provided complete responses and answered all of its undertakings.

[52] Finally, the Appellant takes issue with the method used by the Respondent in providing its responses in discovery. The Respondent provided some of its undertakings by referring the Appellant to specific indexed documents filed on a CD. The Appellant noted that the indices are composed of many pages of documents. The Appellant argued that this method was generally unorganized and that the indices were not numbered sequentially.

[53] In *Kossow*, the Court confirmed that it is not proper to ask a question which would require counsel to segregate documents relating to a particular issue, as that seeks work product. Although Ms. Mboutsiadis, the Respondent counsel who

conducted the examination for discovery, could have put a little more effort into organizing these responses more efficiently, the responses are sufficiently organized that I would only suggest and encourage present counsel, Mr. Bartleman, to use his best efforts to provide clarification if needed.

CONCLUSION

[54] Although the Appellant is clearly in default of the Order of this Court dated December 8, 2009, it would unfairly prejudice the Respondent if I deprived the Respondent of the Appellant's responses. I am therefore amending the Order to allow for the following:

1. The Respondent shall provide the Appellant with any further questions arising out of the Appellant's written responses of May 28, 2010 by September 20, 2010;
2. The Appellant is directed to provide responses to the Respondent's potential questions arising from the May 28, 2010 correspondence, together with responses to those questions/refusals which I have directed the Appellant to answer in my Reasons by October 4, 2010;
3. Questions arising out of the Appellant's responses are to be provided to the Appellant by October 18, 2010; and
4. The Appellant shall provide those responses to the Respondent by November 1, 2010.

[55] In respect to the Appellant's Motion:

1. The Respondent shall provide responses in respect to the questions which I have directed the Respondent to answer by September 20, 2010;
2. The Appellant shall forward to the Respondent any questions arising from the Respondent's responses by October 4, 2010; and
3. The Respondent shall answer those questions by October 18, 2010.

[56] All of the communications which I have directed both counsel to provide in the preceding paragraphs shall be made in writing.

[57] The Respondent submitted that this would be an appropriate case for elevated costs, payable forthwith and in any event of the cause. Although the Appellant has achieved some minor success in this Motion, there was a failure to comply with the December 8, 2009 Order of Lamarre J. for which the Appellant offered only a feeble excuse as to why no attempt was made to amend the Order. In addition, the Appellant, for the most part, has improperly refused to answer proper questions and to delay the discoveries by providing vague and imprecise responses. Although I am not awarding elevated costs, let this be fair warning to the Appellant's counsel that unless he complies with the timelines I have established, he may well be faced with not only elevated costs but greatly elevated costs in the next round. Costs in this Motion are awarded to the Respondent, payable forthwith in any event of the cause.

[58] It is apparent that the discoveries were conducted in a heated, adversarial manner. While some of this may reflect counsel's style, where conduct becomes overly aggressive, the proceedings will be unnecessarily hampered and the focus will shift from the purpose for which discoveries are held to the seemingly personal triumphs afforded counsel within the adversarial process.

[59] Counsel shall comply with the respective timetables contained in my Reasons. Discoveries are to end within the timetables I have established and there shall be no further amendments to the dates I have set. It is time that the parties move the appeals along in a cooperative fashion and cease all further procedural manoeuvring.

Signed at Charlottetown, Prince Edward Island, this 20th day of August 2010.

“Diane Campbell”

Campbell J.

SCHEDULE A

UNANSWERED UNDERTAKINGS FROM THE EXAMINATION OF TERRY PIERSANTI

The Appellant stated at pages 144 – 145 of the discovery transcript that the "PF Trust", "Piersanti Family Trust" and "Piersanti Financial Trust" all refer to the same trust and that any undertaking given with respect to one of those names is an undertaking with respect to all of those names.

<u>pg #</u>	<u>Q #</u>	<u>Undertaking</u>	<u>Status</u>
1 46	108	To verify and to advise me of what years you were an officer of Pier Properties Inc. and to let me know what those years were.	Unanswered
2 99 - 102	289	In paragraph 9 of the Notice of appeal, the Appellant states that the advances represent repayment of loans made by the Appellant to Gold Financial Trust. Today you've stated to me that the word "advances" means the amounts of \$108,512 in 1995, \$680,392 in 1996 and \$116,182 in 1997 and that those amounts represent repayments of loans made by the appellant to Gold Financial Trust. If after today you determine that the numerical amount of those advances are incorrect as repayments of loans made by the appellant to Gold Financial Trust, would you please advise me as to what the correct amounts are?	Unanswered

3	110 -	311	To advise me as to when the loans were made in 1995, 1996 and 1997 by Ms. Piersanti to Gold Financial Trust and the amounts of those loans? I'm asking, in particular, for dates and the specific amounts. [if the information is available]	Unanswered
4	113 -	324	Best efforts, if it's available, to advise as to the amounts of the loans that were made to the [Gold Financial Trust] and when they were made. [This is not time specific.]	Unanswered
5	147 -	423	To find out and advise me if you are or have ever been a trustee of PF Trust.	Unanswered
6	150 -	427	To identify for me where in this T3 tax return (for Gold Financial Trust's 1995 taxation year) the disbursements referenced in paragraph 11 of the Notice of Appeal are identified -- where they're disclosed.	Unanswered
7	151	427	To identify for me where in the T3 tax returns for Gold Financial Trust's 1995, 1996 and 1997 taxation years the disbursements referenced in paragraph 11 of the Notice of Appeal are identified - where they're disclosed if you have them.	Unanswered

Schedule B
QUESTIONS TAKEN UNDER ADVISEMENT FROM
THE EXAMINATION OF TERRY PIERSANTI

	<u>pg #</u>	<u>Q. #</u>	<u>Under Adviselements</u>	<u>Status</u>
1.	10 - 11	20	To find out and to advise if you were ever a director of Gold Financial Corporation.	Unanswered
2.	11	23	To find out and to advise if you were ever an officer of Gold Financial Corporation.	Unanswered
3.	11 - 12	26	To find out and to advise if you were ever a shareholder of Gold Financial Corporation.	Unanswered
4.	12	27	To find out and to advise, if you were ever a shareholder of Gold Financial Corporation, and how many shares you owned at any particular time.	Unanswered
5.	24	53	If you find out the names of the directors of Gold Financial Corporation from 1994 to 1997 and the information is also available, to provide me with the contact information, including telephone numbers for those people.	Answered, except for the contact info

6.	27	55	With respect to the directors of Gold Financial Corporation in 1995, 1996 and 1997, to find out the names of those people and the contact information, including telephone numbers, if that information is available.	Unanswered
7.	133 - 135	384 - 386	<p>But I would ask you -- I'm asking you to undertake to find out for me, to provide me with the details, of where the money came from in terms of the money that was loaned by you to Gold Financial Trust, what the source of those funds were, if you could undertake that for me?</p> <p>To clarify this undertaking is not about where the money was kept, where it was stored in bank accounts, it's actually where the money was derived from in terms of where she got the money, where Ms Piersanti got the money originally, whether it was through a disposition of an asset or employment.</p>	Unanswered

8.	134 – 135	386	<p>To provide me with any copies of any documentation you have that relates to the source of the moneys that you loaned to Gold Financial Trust</p> <p>To clarify, this undertaking is not about where the money was kept, where it was stored in bank accounts. It's actually where the money was derived from in terms of where she got the money, where Ms. Piersanti got the money originally, whether it was through a disposition of an asset or through a mortgage against an asset or employment income or something like that.</p>	Unanswered
9.	152 – 153	427	<p>To advise me as to where in the T3 tax returns for Gold Financial Trust the disbursements made from the bank accounts are disclosed, as described in paragraph 11 of the notice of appeal, for 1995, 1996 and 1997.</p>	Unanswered
10.	154	427	<p>To advise me as to where in the T3 tax returns for PF Trust it is recorded that the disbursements made from the bank accounts, as described in paragraph 11 of the notice of appeal, are disclosed – and this is with respect to the 1995, 1996 and 1997 taxation years.</p>	Unanswered

11.	205	606	To find out and advise me as to what years in 1995, 1996 and 1997 your child or children went to Appleby College and the name of that child?	Unanswered
12.	205	608	To find out for me and advise me as to which years your children attended Mississauga Private School in 1995, 1996 and/or 1997.	Unanswered
13.	212	645	To find out and to advise me as to whether you and/or your spouse were personal guarantors for the mortgage on that Greenbrook residence in 1995, 1996 and/or 1997.	Unanswered
14.	214	657	To find out and advise me as to whether Tara (appellant's daughter) attended the King Equestrian Club in 1995, 1996 and/or 1997.	Unanswered
15.	215	659	To provide me with the name of the bank that Gold Corporation has its bank accounts at, and the branch address and the branch number, as well as the account number.	Unanswered
16.	215	659	To provide me with the name of the bank that 789533 Ontario Ltd. has its bank accounts at, and the branch address and the branch number, as well as the account number.	Unanswered

17.	215	659	To provide me with the name of the bank that Pier Properties Inc. has its bank accounts at, and the branch address and the branch number, as well as the account number.	Unanswered
18.	215	659	To provide me with the name of the bank that Polar Property Management Inc. has its bank accounts at, and the branch address and the branch number, as well as the account number.	Unanswered
19.	216	662	To find out and to advise me whether you had signing authority on the bank accounts for Gold Financial Corporation, 789533 Ontario Ltd., Pier Properties Inc., and Polar Property Management Inc.	Unanswered except with respect Gold Financial Corporation
20.	217	662	And further to the question taken under advisement at Q. #662, find out and advise me as to whether you had sole signing authority on those bank accounts.	Unanswered

SCHEDULE C
REFUSALS FROM
THE EXAMINATION OF TERRY PIERSANTI

	<u>pg #</u>	<u>Q.#</u>	<u>Refusals</u>	<u>Status</u>
1.	8 – 10	20	<p>To provide a copy of the minute book for Gold Financial Corporation.</p> <p>REFUSAL: I don't see the relevance of the minute book. You're asking the question whether Mrs. Piersanti was a director of Gold Financial Corp., and she said she didn't have a specific recollection at this time.</p> <p>Then you asked for production of the minute book. I don't think the minute book is relevant.</p>	Refused
2.	14	32	<p>MS.</p> <p>MBOUTSIADIS: To determine if you ever owned shares in another corporation that has owned shares in Gold Financial Corporation.</p> <p>REF MR.</p> <p>MORRISON: So we're objecting to that. I don't see the relevance of the question.</p>	Refused

3.	17	34	To determine the name of the corporation, if you owned shares in that corporation that owned shares in Gold Financial Corporation, and advise me of the name of that corporation.	Refused
4.	25	55	Would you undertake to please find out for me who the officers of Gold Financial Corporation were from the years 1994 to 1997 and to advise me of those names.	Refused with respect to 1994 only
5.	29	62	With respect to the shareholders of Gold Financial Corporation for the year 1994, to find out for me who they were, what their names are, and their contact information, including telephone numbers, if that information is available. REF It's not one of the years under appeal.	Refused
6.	40	90	To produce a copy or the original of the minute book for Pier Properties Inc. ... REF MR. MORRISON: Refused. I'm not prepared to give you that. It's not relevant.	Refused

7.	52	133	<p>Q. To provide me with a copy of the minute book for Polar Property Management Inc.</p> <p>REF MR. MORRISON: No. Not relevant.</p>	Refused
8.	54 - 55	145	<p>Q. To find out for me who were the directors of Polar Property Management Inc. in 1994 and to provide me with their names and contact information, including telephone numbers?</p> <p>REF MR. MORRISON: Well, not for 1994. That's not relevant.</p>	Refused
9.	55	149	<p>Q. To find out for me and to advise me as to who were the officers of Polar Property Management Inc. in 1994, and to provide me with their names and contact information, including telephone numbers?</p> <p>REF MR. MORRISON: Again, not for 1994.</p>	Refused

10.	56	152	<p>Q. To find out for me who were the shareholders of Polar Property Management Inc. in 1994 and to provide me with their names and contact information, including telephone numbers?</p> <p>A. MR. MORRISON: Just a minute.</p> <p>THE WITNESS: Oh, REF MR. MORRISON: Not for 1994, no.</p>	Refused
11.	63	182	<p>Q. Would you please undertake to provide me with a copy of the minute book for 789533 Ontario Ltd.?</p> <p>REF MR. MORRISON: No, it's not relevant.</p>	Refused
12.	65	189	<p>Q. Would you please undertake to find out for me who were the directors of 789533 Ontario Ltd. in 1994 and to provide me with the names and contact information, including telephone numbers of those people?</p> <p>REF MR. MORRISON: No, not for 1994.</p>	Refused

13.	67	198	<p>Q. To find out for me who were the shareholders of 789533 Ontario Ltd. for 1994 and to provide me with their names and contact information, including telephone numbers?</p> <p>REF MR. MORRISON: No, not for 1994.</p>	Refused
14.	79	242	<p>Q. To find out for me who the directors were of Yonge Davis Centre Inc. in 1994 and to advise me of their names and contact information, including telephone numbers.</p> <p>REF MR. MORRISON: No, not for 1994.</p>	Refused
15.	80	246	<p>To find out for me who the officers were of Yonge Davis Centre Inc. in 1994 and to advise me of their names and contact information, including telephone numbers.</p> <p>REF MR. MORRISON: No, not for 1994.</p>	Refused
16.	80	248	<p>Q. To provide me with a copy of the minute book for Yonge Davis Centre Inc.</p> <p>REF MR. MORRISON: No.</p>	Refused

17.	81	250	<p>To find out for me who were the shareholders of Yonge Davis Centre Inc. in 1994 and provide me with the names and contact information, including telephone numbers of those people.</p> <p>REF MR. MORRISON: No, not for 1994.</p>	Refused
18.	10 6	304	<p>Q. To find out for me when you made loans to Gold Financial Trust prior to 1995 and the amount of those loans to Gold Financial Trust and to advise me of that.</p> <p>REF MR. MORRISON: I don't think prior to 1995 is relevant.</p>	Refused
19.	18 3	549	<p>Q. Would you please undertake to find out and to advise me if you were ever a director, an officer or shareholder of Duvernay Shopping Centres Inc.?</p> <p>REF MR. MORRISON: No, that company has nothing to do with the appeal.</p>	Refused

<p>20.</p>	<p>18 4 - 18 5</p>	<p>553</p>	<p>Q. Gold Financial Corporation, what did it do? Did it own a business? Did it own properties? Did it do anything, or was it holding company or--</p> <p>REF MR. MORRISON: I'm objecting to the question. I don't think that's a proper question.</p> <p>MS. MBOUTSIADIS: Why?</p> <p>MR. MORRISON: Because -- why are you asking it? I don't understand the reason for the question. I don't think it's relevant.</p>	<p>Refused</p>
<p>21.</p>	<p>19 7 - 19 9</p>	<p>587 - 588</p>	<p>Q. So what I'm going to ask you to do for me, please, and this is -- I'd like to ask you to undertake to look at subparagraph 5(t), as in Tom, of the reply, which provides a chart of the disbursements amounts and the persons paid, and to advise me as to which amounts you disagree with --</p> <p>A.</p> <p>Q.</p> <p>...</p> <p>REF MR. MORRISON: Then just accept it as a refusal, then. We're not prepared to give you that undertaking.</p>	<p>Refused</p>

22.	20 3	601	<p>Q. So would you please undertake to find out for me and to advise me as to whether you disagree or whether you agree that the amounts listed in the first column of this chart on page 6 of the reply under the title "Disbursement Amount" were paid out to the persons listed in this second column?</p> <p>REF MR. MORRISON: No, we're not prepared to give you that undertaking.</p> <p>MS. MBOUSIADIS: So you're refusing?</p> <p>MR. MORRISON: Yes, refusing.</p>	Refused
23.	21 9 - 22 0	672	<p>Q. Turn to tab 8 (of Exhibit #3 - the Respondent's Book of Documents) for me, please, this is an agreed statement of facts in the Superior Court of Justice between the matter of Her Majesty the Queen and Terry Piersanti, and if you could turn to the last page for me, can you tell me whose signature that is on top of the name Terry Piersanti?</p> <p>REF MR. MORRISON: Don't answer the question . . . [more]</p>	Refused

24.	22 0 - 22 1	673	<p>Q. Okay I'm also going to ask you whether you've seen the document before?</p> <p>REF MR. MORRISON: Same, don't answer the question.</p>	Refused
25.	22 1	674	<p>Q. Did you plead guilty in this matter of Her Majesty the Queen and Terry Piersanti?</p> <p>REF MR. MORRISON: Don't answer the question.</p> <p>MS, MBOUSIADIS: And that's a refusal?</p> <p>MR. MORRISON: That is a refusal.</p>	Refused

26.	22 1 - 22 3	675 - 676	<p>Q. If you could turn to tab 9, please? And on the first page of tab 9 there's, it looks like, an application for a credit card. Is that your signature there, Ms. Piersanti?</p> <p>MR. MORRISON: Just a minute. What is the source of this document, please, and again, what's the relevance?</p> <p>MS. MBOUSIADIS: You know, I actually have to say that your questions are inappropriate, because I don't have to justify where these documents come from.</p> <p>MR. MORRISON: All right. That's fine.</p> <p>MS. MBOUSIADIS: I can actually put forward -- put to your client any documents that I want in discoveries. Relevance and admissibility is left for the trial court, not for the discovery process. There is a wide scope here.</p> <p>MR. MORRISON: I disagree.</p> <p>MS. MBOUSIADIS: Yeah, I know you disagree, but you're wrong. You're very, very wrong.</p> <p>MR. MORRISON: It's fortunate that you're so knowledgeable on the subject.</p> <p>MS. MBOUSIADIS: Yes.</p> <p>MR.</p>	Refused
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27.	22 6	682	<p>Q. MR. MORRISON: Don't answer the question. Refusal, if that makes you feel better.</p>	Refused
28.	22 6	683	<p>Q. I'm looking at tab 9 of Exhibit 3 of these discoveries, and in it is an application form for a TD GM Visa card, as well as a number of account statements, and I'm asking you to verify if these are copies of account statements for a credit card that was in your name.</p> <p>REF MR. MORRISON: I'm sorry, tab 9? Don't answer the question. Refusal.</p>	Refused
29.	22 6 - 22 7	684	<p>Q. If you could turn to tab 10 of that document, now I'm looking at a document -- I'm looking at copies of account statements from the TD Green Visa card that's actually in your name, Terry M. Piersanti. Do you recognize these as copies of statements of your credit card?</p> <p>REF MR. MORRISON: Don't answer the question.</p>	Refused

30.	22 7	685	<p>Q. And now I'm turning to tab 11, and I'm looking at copies of account statements for a Visa card in the name of Terry Piersanti. Do you recognize this, Ms. Piersanti, as copies of account statements for your credit card?</p> <p>REF MR. MORRISON: Again, don't answer the question.</p>	Refused
31.	22 7	686 – 687	<p>Q. Tab 12. And this is an application form for a Royal Bank Visa card. There's three pages. Do you recognize this as an application that you filled out for your credit card?</p> <p>REF MR. MORRISON: Again, don't answer the question.</p>	Refused
32.	22 7 – 22 8	688	<p>Q. Now I'm turning to tab 13, and tab 13 contains copies of account statements for a CIBC Aerogold Visa card in the name of Terry Piersanti. Ms. Piersanti, do you recognize these documents as copies of statements for your credit card?</p> <p>REF MR. MORRISON: Don't answer the question.</p>	Refused

33.	22 8	689	<p>Q. And then if you could turn to tab 14, these are also copies of account statements for the CIBC Aerogold Visa card in your name, Terry Piersanti. Ms. Piersanti, do you recognize these documents as copies of account statements for your credit card?</p> <p>REF MR. MORRISON: Don't answer the question.</p>	Refused
34.	22 8 - 22 9	690 - 691	<p>Q.</p> <p>REF MR. MORRISON: Don't answer the question.</p>	Refused

SCHEDULE D**ANSWERED UNDERTAKINGS FROM
THE EXAMINATION OF TERRY PIERSANTI**

	<u>pg #</u>	<u>Q. #</u>	<u>Undertaking</u>	<u>Status</u>
1.	21	43	To find out and to advise as to what your exact role or relationship with Gold Financial Corporation was.	Answered
2.	21 - 22	46	To look at the available records and determine for me who the employees of Gold Financial Corporation were? [if the records are still available]	Answered
3.	23	48 - 51	[follow-up to Q. 46] And if you find out what the names of those employees were and that the information is also available, to provide me with any contact information for those people if it's available, and any telephone numbers for those people if they're available.	Answered
4.	23 - 24	53	To find out who were the directors of Gold Financial Corporation for 1994 to 1997, and to provide me with those names. [if the information is available]	Answered

5.	28 - 29	60 - 61	With respect to the officers of Gold Financial Corporation for 1995, 1996 and 1997, to find out for me the names of those people and the contact information, including telephone numbers, if that information is available.	Answered
6.	29 - 30	62 - 65	With respect to the shareholders of Gold Financial Corporation during 1995, 1996 and 1997, to provide me with the names of those people and their contact information and telephone numbers, if that information is available. [if it is available]	Answered
7.	32	71	To find out for me if Gold Financial Trust held shares of Gold Financial Corporation in trust for someone else.	Answered
8.	34	78	To determine and to advise if you were ever a director of Pier Properties Inc. [if it is available]	Answered
9.	34	83	To find out for me if you were ever an officer of Pier Properties Inc.	Answered

10.	36	85	If you determine that you ceased to be a director of Pier Properties Inc. during 1995, 1996 or 1997, to provide me with the documentation showing that you ceased to become a director.	Answered
11.	37	86	To advise as to whether you were an officer of Pier Properties Inc. during 1995, 1996 and 1997.	Answered
12.	37	87	If it turns out to be the case that you were not an officer of Pier Properties Inc. in 1995, 1996 and/or 1997, to provide me with copies of documents that relate to you no longer being an officer of Pier Properties Inc.	Answered
13.	39	90	If you determine that you were ever a shareholder of Pier Properties Inc., to advise as to what years you were a shareholder of Pier Properties Inc. and how many shares at whatever particular time you owned shares in Pier Properties Inc.	Answered
14.	42	93	If you determine that you did own shares in another corporation that owned shares in Pier Properties Inc., to advise me of the name of that corporation that you owned shares in.	Answered

15.	43	98	To find out and to advise whether you had any role in Pier Properties Inc.	Answered
16.	43	99	To advise of the particulars of that role (in Pier Properties Inc.) and when you had involvement with Pier Properties Inc.	Answered
17.	47 - 48	114 - 118	To find out for me who were the shareholders of Pier Properties Inc. in 1995, 1996 and 1997, to advise me of their names and their contact information, including telephone numbers, if that information is available.	Answered
18.	49	121	To find out for me if Piersanti Financial Trust held shares of Pier Properties Inc.	Answered
19.	49 - 50	124 - 127	To find out for me if you were ever a director of Polar Property Management Inc. and to advise me of what years you were a director, if that information is available.	Answered
20.	51 - 52	130 - 132	To find out for me whether you were a shareholder of Polar Property Management Inc. and what year or years you were a shareholder, if that information is available.	Answered

21.	52	131	To find out for me, if you were a shareholder of Polar Properties Inc., how many shares you owned at whatever particular time you owned those shares, if that information is available.	Answered
22.	53 – 54	137 – 139	To find out for me if you had any role whatsoever, such as I have just described, in or with respect to Polar Management Inc. and advise me of what that role was, if that information is available.	Answered
23.	54	142	To find out for me the names of the employees of Polar Management Inc. and their contact information, including telephone numbers and to advise me of that information, if it is available.	Answered
24.	55	146 – 147	To find out for me who were the directors of Polar Property Management Inc. in 1995, 1996 and 1997 and to provide me with their names and contact information, including telephone numbers, if it's available.	Answered

25.	55 – 56	150	To find out for me who were the officers of Polar Property Management Inc. in 1995, 1996 and 1997, and to provide me with the names of those people and their contact information, including telephone numbers, if the information is available.	Answered
26.	56 – 57	153	To find out for me who were the shareholders of Polar Property Management Inc. in 1995, 1996 and 1997, and to provide me with their names and contact information, including telephone numbers, if it's available.	Answered
27.	57	155	To find out for me if Gold Financial Trust held shares of Polar Property Management Inc., if the information is available.	Answered
28.	57 – 58	158 – 159	To confirm for me whether Piersanti Financial Trust ever held shares of Polar Property Management Inc. [if it is available]	Answered
29.	59	163	To find out for me what years you were a director of 789533 Ontario Ltd. and to advise me of that information. [if it is available]	Answered

30.	61 - 62	173	To find out for me what type of officer you were and what years you were that type of officer for 789533 Ontario Ltd., whether that be president or secretary or treasurer, what years you served as that type of officer for those years? [if it is available]	Answered
31.	62	176	To confirm for me whether you were a shareholder ever of 789533 Ontario Ltd. and to advise me of that. [if the information is available]	Answered
32.	62 - 63	178	If you do determine that you were a shareholder of 789533 Ontario Ltd., to advise me as to how many shares you owned of that corporation and in what years you owned those shares?	Answered
33.	64	184	To find out for me if you had a role in or with respect to 789533 Ontario Ltd., what that role was, and what time periods you carried out that role and advise me of that information. [if it is available]	Answered

34.	64 - 65	186 - 187	To find out for me if 789533 Ontario Ltd. had any employees and the names of those employees and their contact information, including telephone numbers, and advise me of that information. [if it is available]	Answered
35.	65	189	To find out for me who were the directors of 789533 Ontario Ltd. in 1995, 1996 and 1997 and to provide me with the names and contact information, including telephone numbers of those people. [if the information is available]	Answered
36.	66 - 67	194 - 196	To confirm that you were the only officer of 789533 Ontario Ltd., to advise as to whether that's correct and that if it's not correct to advise me of the names of the other officers of 789533 Ontario Ltd. and their contact information, including telephone numbers and the years they served as officers.	Answered
37.	68 - 69	199 - 204	To find out for me who were the shareholders of 789533 Ontario Ltd. in 1995, 1996 and 1997 and to provide me with their names and contact information, including telephone numbers. [if the information is available]	Answered

38.	70	207	To find out and advise me of the structure of Gold Financial Trust and the assets that the trust held in relation to 789533 Ontario Ltd.	Answered
39.	70 - 71	209	To advise as to whether Piersanti Financial Trust held shares of 789533 Ontario Ltd. in any way and in any capacity, including in trust for someone else.	Answered
40.	71	211	To find out and advise me if Gold Financial Trust held shares of Gold Financial Corporation in any capacity whatsoever, including in trust for someone else in 1995, 1996 and 1997. [if the information is available]	Answered
41.	72	213	To find out for me if the Piersanti Financial Trust held shares of Gold Financial Corporation in any form whatsoever, including in trust for someone else, and to advise me of that and in what years?	Answered
42.	73	216	To find out for me if Gold Financial Trust held shares of Pier Properties Inc. in any form whatsoever, including in trust for someone else, and to advise me of whether that's the case and in what years that occurred?	Answered

43.	73	217	To find out for me if the Piersanti Financial Trust held shares of Pier Properties Inc. in any form whatsoever, including in trust for someone else, and in what years that occurred?	Answered
44.	73	219	To find out for me if the Gold Financial Trust held shares of Polar Property Management Inc. in any form whatsoever, including in trust for someone else, and to advise me in what years that occurred? [if it is available]	Answered
45.	74	220	To find out for me if the Piersanti Financial Trust held shares of Polar Property Management Inc. in any form whatsoever, including in trust for someone else, and in what years that occurred?	Answered
46.	74	223	To find out for me if you were ever an employee of Yonge Davis Centre Inc. and to let me know what years you were an employee?	Answered
47.	75	225 – 226	To find out for me if you were ever a director of Yonge Davis Centre Inc. and to advise me if so, and then what years you were a director.	Answered

48.	75	229	To find out for me if you were ever an officer of Yonge Davis Centre Inc. and to advise me of that.	Answered
49.	76	230	To find out for me, in the event that you are an officer or you were an officer of Yonge Davis Centre Inc., what position as an officer that was and advise me of that.	Answered
50.	76	231	To find out for me if you were an officer of Yonge Davis Centre Inc., what years you were an officer of Yonge Davis Centre Inc.	Answered
51.	76 - 77	233 - 234	To confirm for me whether you were ever a shareholder of Yonge Davis Centre Inc., and, if you were a shareholder, to let me know the years you were a shareholder and the number of shares that you held during those years.	Answered
52.	77 - 78	237	Did you have any role whatsoever in Yonge Davis Centre Inc., including as a subcontractor or someone who just carried out tasks?	Answered
53.	78	238	If you find out that you had some sort of role in or with respect to Yonge Davis Centre Inc., to advise me as to what that role was and when you carried out that role?	Answered

54.	78	240	To find out for me if Yonge Davis Centre Inc. ever had any employees and, if available, the names and contact information, including telephone numbers of those people, and provide it to me.	Answered
55.	79	242	To find out for me who were the directors of Yonge Davis Centre Inc. in 1995, 1996 and 1997 and to provide me with the names and contact information, including telephone numbers of those people. [if the information is available]	Answered
56.	80	247	To find out for me who were the officers of Yonge Davis Centre Inc. in 1995, 1996 and 1997 and to advise me of the names of those people and the contact information, including telephone numbers. [if it is available]	Answered
57.	81	251	To find out for me who were the shareholders of Yonge Davis Centre Inc. in 1995, 1996 and 1997 and to provide me with the names and the contact information, including telephone numbers of those people. [if it is available]	Answered

58.	81 - 82	254	To find out for me if the Gold Financial Trust held shares of Yonge Davis Centre Inc. in any way whatsoever, including in trust for someone else, and what years that occurred. [if the information is available]	Answered
59.	82	257	To find out for me and to advise me as to whether the Piersanti Financial Trust ever held shares of Yonge Davis Centre Inc. in any way whatsoever, including in trust for someone else, and advise me as to what years that occurred.	Answered
60.	10 2	291	To find out for me when you first loaned funds to Gold Financial Trust.	Answered
61.	10 6	303	To find out for me when the Gold Financial Trust was settled and to advise me of that.	Answered

62.	11 6 - 11 7	330	<p>To find out, with respect to each time you loaned money to the Gold Financial Trust and each time you loaned money in each amount, how that money was transferred from you or from, I guess, something you owned or controlled?</p> <p>Basically how the money went from you to the trust, whether that be as a cheque or bank draft or anything else, if you could find out for me how that was done. [if the information is available]</p>	Answered
63.	11 7 - 11 8	331	<p>And in connection with the undertaking [given in Q. #330], to provide me with copies of any documents that you might have or might come across through your investigation relating to that undertaking with respect to how the moneys were transferred from your sphere of control to the trust. [if you have any documentation or are able to find any documentation]</p>	Answered

64.	11 9 - 12 0	336	To find out for me, in terms of every occurrence of money that you loaned to the trust, whether you paid that money to the trust or paid that money to another entity instead of the trust, or another entity controlled by the trust. [if the information is available]	Answered
65.	12 0	336	To produce for me any documentation relating to that undertaking [given to Q. #336] with respect to funds advanced to another entity, instead of directly to the trust, as a loan to the trust. [if the information is available and there is documentation that is discovered]	Answered
66.	12 1 - 12 2	344	To find out for me which bank accounts the cheques may have come out of or would have come out of or did come out of that related to the loans made to the Gold Financial Trust and advise me of that information, including the bank name, the branch name and the address and the account number. [if that information is available]	Answered

		<p>did you get that from your savings, or did you -- like, where did it come from?</p> <p>A.</p> <p>Q</p> <p>.</p> <p>O</p> <p>ur lives? So the loans didn't come just from you? It came from someone else, as well?</p> <p>A.</p> <p>Q</p> <p>.</p> <p>S</p> <p>o the loans that you made weren't actually just your funds?</p> <p>A.</p> <p>N</p> <p>o. I advanced my own funds and my husband advanced his funds. Q.</p> <p>A</p> <p>nd any of the amounts that we're talking about here, were they partly your husband's funds?</p> <p>A.</p> <p>Q</p> <p>.</p> <p>Y</p> <p>ou think they're yours?</p> <p>A.</p> <p>Q</p> <p>.</p> <p>L</p> <p>et's just go on the assumption that they're all yours for now. You said that it came from assets that you had built</p>	
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			<p>up?</p> <p>A.</p> <p>Q</p> <p>.</p> <p>S</p> <p>o which particular assets did the funds come from?</p> <p>A.</p> <p>Q</p> <p>.</p> <p>DI</p> <p>d you remember selling an asset to come up with the money to loan to the trust?</p> <p>A.</p> <p>Q</p> <p>.</p> <p>o. Did you --</p> <p>A.</p> <p>Q</p> <p>.</p> <p>B</p> <p>ut you have to understand --</p> <p>A.</p> <p>W</p> <p>e have given an undertaking as to best efforts to provide the information to you.</p>	
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71.	13 8	392	You state in paragraph 11 of the Notice of Appeal that Gold Financial Corporation held real estate as trustee for Gold Financial Trust. I want to know what that real estate was, if can you provide me with a list of what that real estate was, if that information is available.	Answered
72.	13 9	393	To find out and to advise me as to what real estate Yonge Davis Centre Inc. held as a trustee for Gold Financial Trust, if that information is available.	Answered
73.	13 9	395	To find out for me what bank accounts Gold Financial Corporation held as trustee for Gold Financial Trust, if that information is still available.	Answered
74.	13 9 – 14 0	396	To advise me of the name of the bank, the branch address and the branch number, as well as the account number of the bank accounts that Gold Financial Corporation held as trustee for Gold Financial Trust, if the information is available.	Answered

75.	14 0	398	To find out and to advise me as to what bank accounts Yonge Davis Centre Inc. held as trustee for Gold Financial Trust and to provide me with the name of the bank, the branch address and branch number and account number for the bank account, if it's available.	Answered
76.	14 1	403	To find out and advise me as to what other assets Gold Financial Corporation held as trustee for Gold Financial Trust.	Answered
77.	14 2	407	To find out, to confirm for me and advise me, as to whether Yonge Davis Centre Inc. held any other assets (other than real estate and bank accounts) as trustee for Gold Financial Trust, if there is any information available.	Answered
78.	14 5	416	To find out and advise me as to what assets 789533 Ontario Ltd. holds or held as trustee for PF Trust, if that information is available.	Answered
79.	14 8 – 15 0	426	To find out and advise me as to whether you are or have ever been a trustee for Gold Financial Trust.	Answered

80.	15 6	433	To find out and advise me how much money prior to January 1st, 1998 did you advance to PF Trust as a loan. [if that information is available]	Answered
81.	15 6	435	To find out and to advise me if you ever loaned any money to PF Trust. [if that information is available]	Answered
82.	15 7	435	To find out for me and to advise me, in the event that you did loan money to PF Trust, when those loans were made, the amount of those loans, how the moneys were transferred from you, whether it be from you directly or from a corporation or some other entity that you controlled, to PF Trust and in what method? What method was used to transfer that money, whether it be cheque or money order or bank draft or something like that? [if that information is available]	Answered

83.	15 7 – 15 8	435	And further to that undertaking [given to Q. 435] that you just gave me, I ask that you provide me with copies of any documentation that relates to any money that you, if you did, advanced or loaned to PF Trust. [if any documentation becomes available or is available]	Answered
84.	17 4	522	To find out for me what Glenwood Properties is in terms of its form, whether it's a corporation or partnership or anything like that, and advise me of that. [if it's still available]	Answered
85.	17 7	523	If Meaford Properties or Bolton Centre are not corporations, that you would identify for me what form of entity they are and to provide me with the proper name.	Answered
86.	17 8	531	To find out for me if you ever were a director of Glenwoods Properties Inc., as well as an officer, and/or a shareholder of that corporation, and to advise me of what years you were.	Answered

87.	17 8	531	To find out for me if you ever were a director of Hanlon Properties Inc., as well as an officer and/or a shareholder of that corporation, and to advise me of what years you were.	Answered
88.	17 9	531	To find out for me if you ever were a director of Tottenham Properties Inc., as well as an officer and/or a shareholder of that corporation, and to advise me of what years you were.	Answered
89.	17 9	531	And in the event that Meaford Properties and Bolton Centre are corporations, I ask for the same undertakings with respect to those two entities – that is: to find out for me if you ever were a director of Meaford Properties and Bolton Centre, as well as an officer and/or a shareholder of those corporation, and to advise me of what years you were.	Answered
90.	17 9	532	And in the event that Meaford Properties and/or Bolton Centre are not corporations, then I ask that you provide me with particulars of what your connection or relationship was with respect to those entities.	Answered

91.	19 2	566	To find out for me what Gold Financial Corporation did in terms of either owning property or conducting any sort of activities during 1995, 1996 and 1997 and to advise me.	Answered
92.	19 2	569	To find and to advise me as to whether Gold Financial Corporation had any income, revenue or expenses in 1995, 1996 and 1997.	Answered
93.	19 3	571	To find out and to advise me as to whether there were any shareholder loans made or outstanding to Gold Financial Corporation in 1995, 1996 and 1997.	Answered
94.	19 3	573	To find out for me what 789533 Ontario Ltd. did in terms of its business or property activities during 1995, 1996 and 1997 and whether it had any income, revenue or expense during those years.	Answered
95.	19 4	574	To find out for me if there were any shareholder loans made or outstanding to 789533 Ontario Ltd. in 1995, 1996 and 1997.	Answered

96.	20 5	602 – 603	<p>We're still looking at the reply, which is Exhibit 2. Now, if you could look at page 5, which is subparagraph (r), in that paragraph it provides that the disbursements were in the amounts as follows, and it provides a chart of the different amounts that the respondent says were disbursed by the various corporations during those three years.</p> <p>Would you please undertake and advise me as to whether you disagree with those amounts and, if you disagree with those amounts, what you think the correct amounts are?</p>	Answered
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SCHEDULE "E"

REFUSALS FROM THE EXAMINATION OF J. DIRITO

	<u>pg #</u>	<u>Q. #</u>	<u>Refusal</u>	<u>Comment</u>
1.	14	62	<p>Mr. Dirito, following the seizure these documents in July of 1999, did the investigation, your investigation of these companies and Christian and Terry Piersanti continue? /R</p> <p>MS. MBOUSIADIS: Objection. I don't even understand what investigation you're talking about.</p>	<p>The question is unclear and Appellant's counsel refused to clarify which investigation he was referring to. The question was properly refused as if it related to the criminal investigation then it is an irrelevant question.</p>
2.	15	70	<p>Okay. From the time of the execution of the search warrant, July of 1999, through to the time of the laying of the charges, let's say November or December of 2001, there was an investigation of these companies and Christian and Terry Piersanti which continued. /R</p> <p>MS. MBOUSIADIS: Refusal. Whatever happened prior to the civil assessment is not relevant to any of the matters at issue in this Appeal.</p>	<p>Irrelevant question related to criminal investigation</p>

3.	21	93	<p>You certainly had charge of the file in terms of investigating the file to determine whether an offence or offenses had been committed. Correct? /R</p> <p>MS. MBOUSSIADIS: Well, that's dealing with the other, the criminal charges.</p>	<p>Irrelevant question related to criminal investigation</p>
4.	21	95	<p>Now, apart from the search warrant which was executed, the one for which you swore the information in July of 1999, did you, or did CRA issue any search warrants with respect to the documents that it obtained from the various banks? /R</p> <p>MS. MBOUSSIADIS: Refusal. Actually he has already answered that, he got them by way of Requirement. He said he got bank documents by way of Requirements.</p>	<p>Irrelevant question related to criminal investigation. The question was also answered in another question.</p>

5.	22	98	<p>Okay. Were Requirements to Produce also issued to the credit companies? /R</p> <p>MS. MBOUSSIADIS: Listen, I'm going to object or refuse. You have not explained to me why these questions are relevant to anything that's in issue in this Appeal. Nothing's relevant. The questions you're asking are not relevant.</p>	Irrelevant question related to source of documents.
6.	27	121	<p>How did you obtain this document? /R</p> <p>MS. MBOUSSIADIS: Refusal on the basis that this has nothing to do with anything in issue in this Appeal.</p>	Irrelevant question related to source of documents.

7.	27	122	<p>Let's turn to the next four documents, corporation, four corporation profile reports for Pier Properties, that's number 2, Polar Property Management, that's number 3, 789533 Ontario Limited, number 4, and Yonge-Davis Centre Inc., number 5. Now, how did you obtain these documents? 1 What source? /R</p> <p>MS. MBOUSIADIS: Well, refusal on the same basis, it's irrelevant and does not pertain to any matters that are at issue in this Appeal. If you could just could explain to me what they have to do with this Appeal, then maybe you can help me understand, but I don't understand why, what these questions have to, they relate to nothing.</p>	Irrelevant question related to source of documents.
8.	28	126	<p>Mr. Drito, why did you produce the, first of all, the, why did you produce, first of all, this tax return, the 1997 tax return for Terry Piersanti in this Appeal?</p> <p>MS. MBOUSIADIS: Well, refusal. That's actually not a proper question for him. He didn't produce this in the Appeal. That's not a --</p>	Improper question related to litigation strategy.

9.	29	128	<p>Well, why is this document, why was this document produced in this Appeal? /R</p> <p>MS. MBOUSSIADIS: Refusal. We don't actually have to explain our litigation strategy.</p>	Improper question related to litigation strategy.
10.	30	132	<p>And I'd also like to know why the four corporation profile reports were produced at tabs -- /R</p> <p>MS. MBOUSSIADIS: Well, a refusal --</p>	Improper question related to litigation strategy.
11.	31	134	<p>Do these documents have any relevance to this Appeal? /R</p> <p>MS. MBOUSSIADIS: Objection. You actually can't ask the witness what's relevant or not relevant. It's not for him to decide what's relevant.</p>	Improper question related to litigation strategy.
12.	35	152	<p>Would you undertake, please, to enquire as to who obtained these corporation profile reports? /R</p> <p>MS. MBOUSSIADIS: No. It's not relevant.</p>	Irrelevant question related to source of documents.

13.	37	161	<p>Do you know how this document was obtained? /R</p> <p>MS. MBOUSSIADIS: Hold on a second. I don't know, that's not relevant to anything that's in issue in this Appeal. I'm going to refuse that.</p>	<p>Irrelevant question related to source of documents.</p>
14.	37	162	<p>All right. Why has this document been produced? /R</p> <p>MS. MBOUSSIADIS: Refusal. That's actually not an appropriate question. Refusal. That's actually not a proper question for the witness. There's no requirement for the counsel for the Respondent to reveal litigation strategy.</p>	<p>Improper question related to litigation strategy.</p>
15.	38	163	<p>Well, the List of Documents states that, "...These documents might be used in evidence to establish or to assist in establishing any allegation of fact, and any Pleading filed herein by the Respondent..." So, my question is, what allegation of fact does this document establish or assist in establishing? /R</p> <p>MS. MBOUSSIADIS: Refusal, on the same basis that I just stated.</p>	<p>Improper question related to litigation strategy.</p>

16.	40	178	<p>And why did you or CRA produce these documents in this litigation, these Option C printouts? /R</p> <p>MS. MBOUSSIADIS: Refusal. That's an improper question to ask the witness. There is no requirement for the Respondent to reveal litigation strategy.</p>	Improper question related to litigation strategy.
17.	41	179	<p>Okay. Well, who did print out these pages? /R</p> <p>MS. MBOUSSIADIS: Refusal. What's the relevance of that, what's the relevance of who printed it out?</p>	Irrelevant question related to the source of documents.
18.	42	184	<p>Well, would you please enquire as to who printed out this document? /R</p> <p>MS. MBOUSSIADIS: No.</p>	Irrelevant question related to the source of documents.
19.	42	185	<p>Would you also explain why this document was produced? /R</p> <p>MS. MBOUSSIADIS: Refusal for the same basis stated before, that's an improper question to put to the witness. There's no requirement for the Respondent to reveal litigation strategy.</p>	Improper question related to litigation strategy.

20.	43	188	<p>— is how does this document at tab 2 establish, or assist in establishing, any allegation of fact in the Respondent's Reply to Notice of Appeal? How does it do that? /R</p> <p>MS. MBOUSSIADIS: Refusal for what we just stated with respect to this document.</p>	Improper question related to litigation strategy.
21.	43	189	<p>What I would also like to know is how does this document rebut or assist in rebutting any allegation of fact in the Appellant's Notice of Appeal, if that's the case? /R</p> <p>MS. MBOUSSIADIS: Refusal, on the same basis, plus you can't ask us questions of evidence.</p>	Improper question related to litigation strategy.
22.	44	193	<p>— of the Supplementary List of Documents, Agreed Statement of Facts dated February 22, 2005. How did you obtain this document, Mr. Drito? /R</p> <p>MS. MBOUSSIADIS: No. Refusal. It's irrelevant. This does not relate to any matter that's at issue in this Appeal.</p>	Irrelevant question related to the source of documents.

23.	45	199	<p>Okay. And can you explain, please, how this document establishes or assists in establishing any allegation of fact in the Respondent's Reply, Response to Notice of Appeal? /R</p> <p>MS. MBOUSIADIS: Refusal. That's an improper question for the witness. You can't ask him questions relating to evidence and it's not up to the Respondent to reveal litigation strategy; in particular to segregate documents pertaining to a specific issue or facts. And I'm going to call that my, I'm going to call that the general refusal with respect to documents, so I don't have to repeat it all the time.</p>	Improper question related to litigation strategy.
24.	46	200	<p>So can you tell me, please, how this document, the Agreed Statement of Facts, rebuts or assists in rebutting any allegation of fact in the Appellant's Notice of Appeal? /R</p> <p>MS. MBOUSIADIS: No, refusal based on my general refusal with respect to documents.</p>	Improper question related to litigation strategy.

25.	46	201	<p>Okay. Well, do you know how this document, the Agreed Statement of Facts, was obtained? /R</p> <p>MS. MBOUSIADIS: Refusal. That's not relevant to any matter that's at issue in this Appeal.</p>	Irrelevant question related to the source of documents.
26.	48	209	<p>Okay. So how did you obtain this document? /R</p> <p>MS. MBOUSIADIS: Well, refusal. That's irrelevant. It does not relate to any issue that's, sorry, or any matter that's at issue in this Appeal.</p>	Irrelevant question related to the source of documents.
27.	49	211	<p>And the Requirement to produce was issued to what company? /R</p> <p>MS. MBOUSIADIS: No, refusal. You're asking questions that are not relevant to any matters that are at issue in this Appeal.</p>	Irrelevant question related to the source of documents.

28.	49	212	<p>All right. And again, would you tell me, please, how this document assists in establishing, or assists in establishing any allegation of fact in the Respondent's response to the Notice of Appeal? /R</p> <p>MS. MBOUSIADIS: Refusal based on the general refusal with respect to documents.</p>	Improper question related to litigation strategy.
29.	49	213	<p>Can you explain how this document assists in rebutting any allegation of fact in the Appellant's Notice of Appeal? /R</p> <p>MS. MBOUSIADIS: Refusal on the basis of the general refusal with respect to documents.</p>	Improper question related to litigation strategy.
30.	50	214	<p>Can you explain then why this document was produced in this litigation? /R</p> <p>MS. MBOUSIADIS: Refusal based on the general refusal with respect to documents.</p>	Improper question related to litigation strategy.
31.	50	215	<p>So then this document really has no relevance to the litigation? /R</p> <p>MS. MBOUSIADIS: That's not a proper question for the witness. Refusal.</p>	Improper question related to litigation strategy.

32.	51	221	<p>Okay. And how did you obtain this document? /R</p> <p>MS. MBOUTSIADIS: Objection. Refusal. That question is not relevant to any matters that are at issue in this Appeal.</p>	Irrelevant question related to the source of documents.
33.	52	222	<p>Why has this document been produced in this litigation? /R</p> <p>MS. MBOUTSIADIS: Refusal, based on the general refusal with respect to documents.</p>	Improper question related to litigation strategy.
34.	52	226	<p>I take it that with respect to each and every one of these documents, I would like to ask a question, how does this document at tab number 5 of your Supplementary List of Documents, how does this document establish, or assist in establishing any allegation of fact in your Pleading, and you're refusing that? /R</p> <p>MS. MBOUTSIADIS: Refusal on the general, on the basis of the general refusal with respect to documents.</p>	Improper question related to litigation strategy.

35.	53	227	<p>And I also would like to know, and to ask how this document rebuts or assists in rebutting any allegation of fact in the Respondent's, in the Appellant's Notice of Appeal. Are you refusing? /R</p> <p>MS. MBOUSIADIS: Yes, we're refusing on the basis of the general refusal with respect to documents.</p>	<p>Improper question related to litigation strategy.</p>
36.	53	229	<p>All right. So you can assume that I'm asking that question, those questions with respect to each and every document in the Supplementary List of Documents, and I can assume that in each and every case in responding to those questions your answer is refusal. Is that right? /R</p> <p>MS. MBOUSIADIS: Yes, you can make that assumption.</p>	<p>Improper question related to litigation strategy.</p>
37.	57	239	<p>Okay. How did you obtain this document? /R</p> <p>MS. MBOUSIADIS: Refusal on the basis that that's not relevant, does not relate to any matter that's in issue in this Appeal.</p>	<p>Irrelevant question related to the source of documents.</p>

38.	58	246	<p>245. Q. Was it obtained pursuant to a notice to produce documents issued by CRA?</p> <p>MS. MBOUSIADIS: A notice to produce documents?</p> <p>246. MR. MORRISON: A Requirement to Produce Documents issued by CRA. A Requirement to Produce Documents issued by CRA. /R</p> <p>MS. MBOUSIADIS: Well, refusal. Again, that's irrelevant. It does not relate to any matter that's in issue in this Appeal. How he got it really doesn't matter.</p>	Irrelevant question related to the source of documents.
39.	63	265	<p>How did you obtain that document? /R</p> <p>MS. MBOUSIADIS: A refusal on the basis that it's irrelevant. It does not relate to any matter that is at issue in this Appeal.</p>	Irrelevant question related to the source of documents.

40.	65	277	<p>In relation to your obtaining these documents? /R</p> <p>MS. MBOUTSIADIS: Objection. What's the relevance of this? What's the relevance of his relationship with Ms. Goldman?</p>	Irrelevant question related to the source of documents.
41.	66	279	<p>Was Ms. Goldman the person with whom you dealt, when you obtained these documents back in, sometime between 1998 and 2000 or thereabouts? /R</p> <p>MS. MBOUTSIADIS: Refusal. That has nothing to do with it, how he acquired these documents is not relevant to any matter that's at issue.</p>	Irrelevant question related to the source of documents.
42.	69	293	<p>Well, why has this income tax return been produced? /R</p> <p>MS. MBOUTSIADIS: That's a refusal on the basis of the general refusal with respect to documents.</p>	Improper question related to litigation strategy.

43.	70	295	<p>All right. Well, can you assist me then as to how, on how they relate to the facts or transactions that are described in the Reply to Notice of Appeal? /R</p> <p>MS. MBOUSIADIS: No, a refusal based on the general refusal with respect to documents.</p>	Improper question related to litigation strategy.
44.	71	296	<p>I see, for example, that the tax returns that have been produced all relate to years prior to the years that are under Appeal. And in your initial List of Documents you produced one tax return for one of the years that is under Appeal, namely 1997. Why have you not produced the tax returns for the other two years that are under Appeal, namely 1995 and 1996? /R</p> <p>MS. MBOUSIADIS: Well, refusal. That's not relevant. If the Respondents don't want to put forward other documents, they don't have to furnish an explanation as to why.</p>	Improper question related to litigation strategy.

45.	72	299	<p>And was it obtained pursuant to a Requirement to Produce? /R</p> <p>MS. MBOUSSIADIS: Well, refusal. That question is not relevant to any matter that's at issue in this Appeal.</p>	<p>Irrelevant question related to the source of documents.</p>
46.	73	302	<p>Okay. Well, would you undertake, please, to enquire as to the person or the entity from whom this document was obtained and to advise me, please? /R</p> <p>MS. MBOUSSIADIS: No, refusal on the basis that it's not relevant to any matter at issue in this Appeal.</p>	<p>Irrelevant question related to the source of documents.</p>
47.	73	304	<p>Can you tell me why this document has been produced in this litigation? /R</p> <p>MS. MBOUSSIADIS: Refusal on the basis, sorry, refusal based on the general refusal with respect to documents.</p>	<p>Improper question related to litigation strategy.</p>
48.	74	308	<p>Right. And how did you obtain this document, Mr. Drito? /R</p> <p>MS. MBOUSSIADIS: Refusal on the basis that it's irrelevant. It does not relate to any matter that's at issue in this Appeal.</p>	<p>Irrelevant question related to the source of documents.</p>

49.	79	334	<p>It was provided again pursuant to a Requirement to Produce? /R</p> <p>MS. MBOUTSIADIS: Refusal. Does not, refusal, it's not relevant to the matter at issue in this Appeal.</p>	Irrelevant question related to the source of documents.
50.	80	337	<p>And was this document produced in the prosecution, the prosecution of the various companies and Christian Piersanti and Terry Piersanti, the prosecution under the Excise Tax Act? /R</p> <p>MS. MBOUTSIADIS: Refusal. That is not relevant to any matter that's at issue in this Appeal.</p>	Irrelevant question related to the source of documents. It is also an irrelevant question related to the criminal investigation.
51.	84	352	<p>Was this document also obtained pursuant to a Requirement to Produce Documents served on a third party? /R</p> <p>MS. MBOUTSIADIS: Refusal on the basis that that question has, is improper because it's irrelevant. It does not relate to any matter that is in issue in this Appeal.</p>	Irrelevant question related to the source of documents.

52.	89	375	<p>Okay. And how did you obtain the bank statements which you are referring to in this chart? /R</p> <p>MS. MBOUSSIADIS: Refusal on the basis that it's an improper question. It's irrelevant because it does not relate to any matter that's at issue in this Appeal.</p>	<p>Irrelevant question related to the source of documents.</p>
53.	105	450	<p>Yes. Do you know why it took more than six years to confirm the reassessments following receipt of the Notice of Objection? /R</p> <p>MS. MBOUSSIADIS: Refusal. That's an improper question because it's irrelevant, it does not relate to any matters that are at issue in the Appeal.</p>	<p>Irrelevant questions related to dealing with the Appellant's objection to her reassessment</p>

54.	105	451	<p>But is there not a policy, does CRA have a policy that if criminal charges are pending against a taxpayer, civil assessments or reassessments relating to that matter are stayed pending the disposition of the criminal charges? Is there not a policy that Revenue Canada has adopted to that effect? /R</p> <p>MS. MBOUSIADIS: Well, refusal. The policy is not at issue here in this Appeal. That's an irrelevant question.</p>	<p>Irrelevant questions related to dealing with the Appellant's objection to her reassessment</p>
55.	113	481	<p>But is it fair to say that Christian Piersanti was never an officer or director of these corporations? /R</p> <p>MS. MBOUSIADIS: Well, I think that's outside of his scope of knowledge. Refusal. It's something actually within the knowledge of the Appellant and her husband.</p>	<p>Question is outside the scope of the nominee's knowledge.</p>
56.	137	591	<p>All right. Well, you're going to produce those documents. When you produce those documents, would you please highlight the entry on the bank statements? /R</p> <p>MS. MBOUSIADIS: Sorry, you want him to do what?</p>	<p>The question was not refused, but was taken under advisement. No subsequent follow up was necessary as it rendered moot by the answer given at question 592.</p>

57.	160	692	<p>Okay. Then identify the entries for Royal Bank Visa that appear on your chart at tab 8. /R</p> <p>MS. MBOUSIADIS: You know, refusal. This is a waste of time. You can do that yourself. It's listed there. The document speaks for itself. Let's move on.</p>	<p>Question is clearly a delaying tactic. It would appear that the Appellant was referring to Tab 8 of her Book of Documents, not Tab 8 of the Respondent's Book of Documents.</p> <p>The entries related to the chart are listed by source in the attached working papers. To ask the nominee to point out the listed entries is a delaying tactic.</p>
58.	197	818	<p>And are those the documents that you obtained from the Royal Bank pursuant to the Requirement to Produce that was issued by your office? /R</p> <p>MS. MBOUSIADIS: That's irrelevant. I mean, refusal, it doesn't matter where he got the documents, how he got the documents. It's not relevant to any matter that's at issue in this Appeal.</p>	<p>Irrelevant question related to the source of documents.</p>

59.	198	824	<p>All right. I asked you a moment ago about the Requirements to Produce that were served upon the various financial institutions, including the Royal Bank. Now, your counsel refused to allow you to answer that question. Just for the record, I'm asking you to produce a copy of the Requirements, the third party Requirements or Requirements to Produce, that your office issued to the various financial institutions, which resulted in these records being obtained. Various financial institutions, including Royal Bank, National Bank, the various banks that are identified in your working papers. /R</p> <p>MS. MBOUTSIADIS: Refusal. That question is not proper because it's not relevant to any matter that's at issue in this Appeal.</p>	Irrelevant question related to the source of documents.
60.	221	931	<p>And was that the same case number that you used for Terry Piersanti in connection with the GST investigation which was ongoing? /R</p> <p>MS. MBOUTSIADIS: Well, refusal. That's not relevant, it's an improper question, it doesn't relate to any of the matters that are at issue in this Appeal.</p>	Irrelevant question related to the criminal investigation.

61.	230	958	<p>Are those banking documents that you obtained from the banks pursuant to Requirements to Produce? /R</p> <p>MS. MBOUSIADIS: That doesn't matter, that's irrelevant. Refusal.</p>	<p>Irrelevant question related to the source of documents.</p>
62.	235	976	<p>Well, all right. Out of deference to you, I would like an answer to the question that allegation? I just put on the record. /R</p> <p>MS. MBOUSIADIS: Okay. Refusal.</p>	<p>The question at issue was what facts the Respondent are relying on in support of the fact listed at paragraph 6(e) of the Reply. This question is the same question that was refused at Question 979. The Respondent has answered the question.</p>
63.	236	979	<p>Subparagraph (e), page 12 of your Reply? /R</p> <p>MS. MBOUSIADIS: He can't, he can't segregate what facts he relies on in support of an assumption of fact. He can tell you what facts he's aware of. There's a significant difference there. So refusal to answer ---</p>	<p>The Respondent has answered this question.</p>

SCHEDULE "F"

QUESTIONS TAKEN UNDER ADVISEMENT AT THE EXAMINATION OF J. DIRITO

<u>U/A#</u>	<u>pg #</u>	<u>Q. #</u>	<u>Under AdviseMENTS</u>
--	--	--	** The respondent has produced the documents referred to in these answers in electronic form on the enclosed disk entitled "Respondent's Answers To U/Ts and U/As". The documents are organized under indexes. **
12.	54	230	<p>Do any of these transactions that are listed on the TD Green Visa card statement (found in Tab 10 of the Respondent's Book of Documents) relate to the transactions that are described in the Reply to the Notice of Appeal? If they do relate, to which transaction in the Reply do they relate and how do they relate?</p> <p>Answer: Yes. They relate to the disbursements to the appellant's personal credit card to pay for expenditures made by the appellant.</p>
13.	55	234	<p>Many of the transactions described in this document at Tab 4 of the Supplementary List of Documents (found in Tab 9 of the Respondent's Book of Documents), the GM card preapproved invitation to Terry Piersanti, do any of the transactions described in this document relate to the transactions that are described in the Reply to Notice of Appeal? If they do relate, to which transaction in the Reply do they relate and how do they relate?</p> <p>Answer: Yes. They relate to the disbursements to the appellant's personal credit card to pay for expenditures made by the appellant.</p>
14.	56	236	<p>Turn back to Tab 1 of the Supplementary List of Documents, the agreement dated January 1, 1994, does it relate to any of the transactions that are described in your Reply to Notice of Appeal?</p> <p>Answer: Not to our knowledge.</p>
15.	56	237	<p>The document at Tab 2, the Option C printout, does this document relate to any of the transactions that are described in the Reply to Notice of Appeal?</p> <p>Answer: Not to our knowledge.</p>
16.	57	241	Does the document in Tab 11 relate to any of the transactions that are

			<p>described in the Reply to Notice of Appeal? If it does relate, to which transaction in the Reply does it relate and how does it relate?</p> <p>Answer: Yes. They relate to the disbursements to the appellant's personal credit card to pay for expenditures made by the appellant.</p>
17.	59	247	<p>Does the document in Tab 12 relate to any of the transactions that are described in the Reply to Notice of Appeal? If it does relate, to which transaction in the Reply does it relate and how does it relate?</p> <p>Answer: See answer to U/A # 5.</p>
18.	60	253	<p>Does the document in Tab 13 relate to any of the transactions that are described in the Reply to Notice of Appeal? If it does relate, to which transaction in the Reply does it relate and how does it relate?</p> <p>Answer: Yes. They relate to the disbursements to the appellant's personal credit card to pay for expenditures made by the appellant.</p>
19.	63	267	<p>Do the transactions that appear in Tab 15 relate to any of the transactions that are set out in the Reply to Notice of Appeal? If they do relate, to which transaction in the Reply do they relate and how do they relate?</p> <p>Answer: Yes. They relate to the disbursements to the appellant's personal credit card to pay for expenditures made by the appellant.</p>
20.	64	270	<p>Do the transactions that appear in Tab 14 relate to any of the transactions that are set out in the Reply to Notice of Appeal? If they do relate, to which transaction in the Reply do they relate and how do they relate?</p> <p>Answer: Yes. They relate to the disbursements to the appellant's personal credit card to pay for expenditures made by the appellant.</p>
21.	66	282	<p>Do the documents in Tab 16 relate to any of the transactions at are described in the Reply to the Notice of Appeal? If they do relate, to which transaction in the Reply do they relate and how do they relate?</p> <p>Answer: Yes. They relate to the disbursements to pay the mortgage of the Appellant and her spouse's Residence.</p>
22.	73	303	<p>Does the document in Tab 22 relate to any transaction, or any of the transactions that are described in the Reply to Notice of Appeal? If it does relate, to which transaction in the Reply does it relate and how does it relate?</p>

			Answer: Not to our knowledge.
23.	74 - 75	309	<p>Does the document in Tab 23 relate to any transaction, or any of the transactions that are described in the Reply to Notice of Appeal? If it does relate, to which transaction in the Reply does it relate and how does it relate?</p> <p>Answer: We believe that it relates to one of the commercial operations and/or commercial rental operations that may have been a source of funds for some or all of the disbursements mentioned in the Reply.</p>
24.	77	324	<p>Does the document in Tab 24 relate to any of the transactions that are described in the Reply to Notice of Appeal? If it does relate, to which transaction in the Reply does it relate and how does it relate?</p> <p>Answer: See answer to U/A #13.</p>
25.	78	328	<p>Does the document in Tab 25 relate to any of the transactions that are described in the Reply to Notice of Appeal? If it does relate, to which transaction in the Reply does it relate and how does it relate?</p> <p>Answer: See answer to U/A #13.</p>
26.	82	347	<p>Does the document in Tab 27 relate to any of the transactions that are described in the Reply to Notice of Appeal? If it does relate, to which transaction in the Reply does it relate and how does it relate?</p> <p>Answer: See answer to U/A #13.</p>
27.	83	348	Answer: No need to answer because this U/A forms part of the previous U/As.
28.	84 - 85	353 - 357	<p>Does the document in Tab 28 relate to any of the transactions that are described in the Reply to Notice of Appeal? If it does relate, to which transaction in the Reply does it relate and how does it relate?</p> <p>Answer: See answer to U/A #13.</p>
29.	110 - 111	471	<p>Unless otherwise produced, to produce the documents that you reviewed in order to make the determination found in paragraph 5(c) of the Reply to Notice of Appeal that "...The Appellant and her spouse controlled a number of companies, Gold Corp., Pier Inc., Polar Inc., 789 Limited and Yonge Inc., which are collectively referred to as the corporations...", as follows:</p> <p>i) Bank account documents in relation to signing authorities;</p>

			<ul style="list-style-type: none"> ii) Resolution of Directives; iii) Account opening documents; iv) MCCR documents; v) Land Registry documents; vi) The bank documents themselves that you received; and vii) Corporate tax filings that showed they were an authorized signing officer of the company. <p>Answer:</p> <p>18 (i)(ii) and (iii): See the documents under Indexes 50 through 59; 60 through 69-A; 70; and 74 through 82.</p> <p>18(iv): See the documents under Index 3.</p> <p>18(v): See the documents under Indexes 10, 11, 12, 14 and 15.</p> <p>18(vi): See the documents under Indexes 50 through 59; 60 through 69-A; 70; and 74 through 82.</p> <p>18(vii): See the documents under Index 243.</p>
30.	118	488 - 500	<p>To produce the nil tax returns for the 1995, 1996 and 1997 taxation years filed by Gold Financial Corporation.</p> <p>Answer: See the documents under Index 96.</p>
31.	120	506	<p>To produce the nil tax returns filed by 789533 Ontario Limited and examined by you.</p> <p>Answer: See the documents under Index 96.</p>
32.	127	541	<p>To produce, if you have it, a copy of any memo to file within which you recorded the name of the person or persons with whom you spoke at American Express when you were carrying out this investigation.</p> <p>Answer: The names are Gaetana Schaefer and Teresita Sabarillo. See the documents under Index 238.</p>

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