

Docket: 2008-3955(IT)G

BETWEEN:

LES PRO-POSEURS INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on common evidence with the appeals of Les Pro-Poseurs Inc. (2008-2580(GST)G) and Claude Séguin (2008-3954(IT)G), on January 12, 13 and 14, 2011, at Montréal, Quebec

Before: The Honourable Justice Paul Bédard

Appearances:

Counsel for the appellant: Martin Fortier

Counsel for the respondent: Nancy Dagenais

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**JUDGMENT**

The appeals from the reassessment made under the *Income Tax Act* for the 2001, 2003, 2004, 2005 and 2006 taxation years are dismissed, with costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 1st day of March 2011.

“Paul Bédard”

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Bédard J.

Translation certified true  
on this 29th day of June 2011.

François Brunet, réviseur

Docket: 2008-2580(GST)G

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Before: The Honourable Justice Paul Bédard

Appearances:

Counsel for the appellant: Martin Fortier

Counsel for the respondent: Nancy Dagenais

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**JUDGMENT**

The appeal from the reassessment made under Part IX of the *Excise Tax Act*, notice of which is dated June 21, 2007, for the following sixteen quarterly reporting periods, which are not all consecutive, from October 1, 2002, to December 31, 2002, from April 1, 2003, to June 30, 2003, from July 1, 2003, to September 30, 2003, from October 1, 2003, to December 31, 2003, from January 1, 2004, to March 31, 2004, from April 1, 2004, to June 30, 2004, from July 1, 2004, to September 30, 2004, from October 1, 2004, to December 31, 2004, from January 1, 2005, to March 31, 2005, from April 1, 2005, to June 30, 2005, from July 1, 2005, to September 30, 2005, from October 1, 2005, to December 31, 2005, from January 1, 2006, to March 31, 2006, from April 1, 2006, to June 30, 2006, from July 1, 2006, to September 30,

2006, and from October 1, 2006, to December 31, 2006, is dismissed, with costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 1st day of March 2011.

“Paul Bédard”

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Bédard J.

Translation certified true  
on this 29th day of June 2011.

François Brunet, réviseur

Docket: 2008-3954(IT)G

BETWEEN:

CLAUDE SÉGUIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on common evidence with the appeals of Les Pro-Poseurs  
Inc. (2008-3955(IT)G) and  
Les Pro-Poseurs Inc. (2008-2580(GST)G),  
on January 12, 13 and 14, 2011, at Montréal, Quebec

Before: The Honourable Justice Paul Bédard

Appearances:

Counsel for the appellant: Martin Fortier

Counsel for the respondent: Nancy Dagenais

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**JUDGMENT**

The appeals from the reassessment made under the *Income Tax Act* for the 2002, 2003, 2004, 2005 and 2006 are dismissed, with costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 1st day of March 2011.

“Paul Bédard”

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Bédard J.

Translation certified true  
on this 29th day of June 2011.

François Brunet, réviseur

Citation: 2011 TCC 113  
Date: 20110301  
Dockets: 2008-3955(IT)G,  
2008-2580(GST)G,  
2008-3954(IT)G

BETWEEN:

LES PRO-POSEURS INC.,  
CLAUDE SÉGUIN,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

### **REASONS FOR JUDGMENT**

Bédard J.

[1] These three appeals were heard on common evidence.

Docket 2008-2580(GST)G

[2] This is an appeal from an assessment of \$36,337.15, notice of which is dated June 21, 2007, made under Part IX of the *Excise Tax Act* (the ETA) for the sixteen quarterly reporting periods, which are not all consecutive (the 16 periods at issue), from October 1, 2002, to December 31, 2002, from April 1, 2003, to June 30, 2003, from July 1, 2003, to September 30, 2003, from October 1, 2003, to December 31, 2003, from January 1, 2004, to March 31, 2004, from April 1, 2004, to June 30, 2004, from July 1, 2004, to September 30, 2004, from October 1, 2004, to December 31, 2004, from January 1, 2005, to March 31, 2005, from April 1, 2005, to June 30, 2005, from July 1, 2005, to September 30, 2005, from October 1, 2005, to December 31, 2005, from January 1, 2006, to March 31, 2006, from April 1, 2006, to June 30,

2006, from July 1, 2006, to September 30, 2006, and from October 1, 2006, to December 31, 2006.

[3] The \$36,337.15 in question can be broken down as follows:

Adjustments in the calculation of the reported net tax [\$1,503.42 + \$231.69 + (\$98.47) + \$364.99 + \$2,243.43 + \$4,287.45 + \$3,247.57 + \$1,756.36 + \$4,639.76 + \$1,293.59 + \$517.22 + \$2,230.88 + \$898.04 + \$160.02 + \$276.00 + \$319.74]	\$23,871.69
Late remitting penalties [\$540.54 + \$78.75 + \$111.97 + \$512.86 + \$960.41 + \$650.74 + \$311.06 + \$697.41 + \$188.93 + \$46.74 + \$190.18 + \$63.39 + \$8.22 + \$6.97 + \$3.12]	\$4,371.29
Penalties under section 285 of the E.T.A. (25% of \$20,835.35)	\$5,208.84
Arrears interest [\$304.44 + \$45.65 + \$66.59 + \$311.77 + \$600.27 + \$420.42 + \$209.00 + \$490.08 + \$140.76 + \$37.56 + \$168.17 + \$62.66 + \$9.32 + \$10.10 + \$8.54]	\$2,885.33
Total [amount owing]	\$36,337.15

[4] Specifically, the adjustments, totalling \$23,871.69, in the calculation of the net tax reported by the Appellant for the 16 periods at issue can be broken down as follows:

Goods and Services Tax (“GST”) collected or collectible	\$2,884.20
Input Tax Credits (“ITCs”) over-claimed or claimed and obtained in error or without entitlement	\$20,987.49
Total	\$23,871.69

I note that the GST collected or collectible of \$2,884.20 is not challenged by the appellant. I also note that the appellant’s challenge to the disallowed ITCs only involves the ITC amount of \$20,835.35 related to the supplies of property and services it acquired from the 13 suppliers listed in paragraph 19(f) of the amended Reply to the Notice of Appeal (the dubious suppliers).

[5] In assessing the appellant in the amount of \$36,337.15, the Minister of National Revenue (the Minister) relied, inter alia, on the following findings and assumptions of fact set out at paragraph 19 of the amended Reply to the Notice of Appeal:

[TRANSLATION]

- (i) The facts admitted below;
- (ii) The appellant is a registrant for the purposes of Part IX of the ETA;
- (iii) The appellant operates a business specializing in interior systems work either as a contractor or subcontractor;
- (iv) During the 16 periods at issue, the appellant acquired taxable supplies of property and services for consumption, use or supply in the course of both its commercial activities for which the GST, and the GST was paid or payable by the appellant to the suppliers on those supplies;
- (v) The appellant recorded in its records the GST so paid or payable as an ITC and claimed, and received, in the calculation of the net tax that it reported to the Minister for the 16 periods at issue, said ITC amount;
- (vi) Of the total ITC amount claimed, and received, in the calculation of the net tax that it reported to the Minister for the 16 periods at issue, the appellant claimed an amount totalling \$20,835.35 for supplies of property and services it acquired during the 16 periods at issue from thirteen (13) distinct suppliers, namely:

Construction Lubac Inc. (Lubac)	\$215.40
Constructions Générales M.J.P. Inc. (M.J.P.)	\$451.07
9149-3114 Québec Inc. [alfa.com] (Alfa)	\$2,205.87
9137-6483 Québec Inc. [Cie Gypse.Com Inc.] (Gypse)	\$2,445.10
Système Intérieur RASTEL Inc. (Rastel)	\$2,717.81
Système Intérieur Rovac inc. (Rovac)	\$1,130.46
Les Joints Universels Inc. (Joints Universels)	\$2,782.53
J.C.M.J. Rénovation Inc. (J.C.M.J.)	\$173.51
9139-8347 Québec Inc. [Les constructions G.S.B. Inc.] (G.S.B.)	\$677.67
9158-0258 Québec Inc. [Méga Maxx Construction] (Méga Maxx)	\$160,02
Système Intérieur Kelowna Inc. (Kelowna)	\$6,609.54
Système Intérieur D.D. Inc. (D.D.)	\$666.40
9031-4410 Québec Inc. [Système intérieur Dinar Inc.] (Dinar)	\$599.97
<b>TOTAL</b>	<b><u>\$20,835.35</u></b>

- (vii) The appellant did not provide the Minister, when required to do so, with information sufficient, including any such information as may be prescribed, to enable the amount of \$20,835.35 in ITCs mentioned in the previous subparagraph that it claimed and obtained in the calculation of the net tax for the 16 periods at issue to be determined;
- (viii) Specifically, the appellant did not provide the Minister with any supporting documents that would have enabled said ITC amount to be determined or provided, to determine said ITC amount, supporting documents that did not meet the requirements of the ETA and its regulations;
- (ix) Essentially, the supporting documents provided in support of the disallowed ITCs in the amount of \$20,835.35 for supplies of property and services it acquired during the 16 periods at issue are false and constitute invoices of



convenience for the purpose of allowing the appellant to wrongfully claim ITCs in the calculation of its net tax for the 16 periods at issue;

- (x) The purpose of the scheme was to claim, through the use of the so-called invoices “of convenience”, inappropriate ITCs based on the requirements of the ETA;
- (xi) In the case at bar, the appellant, the “accommodated” person, used the services of third parties, who may or may have not operated real businesses, the “accommodator” persons, specifically the thirteen (13) suppliers in question, issued invoices to the appellant for supplies of goods and services they did not provide to the appellant and which the appellant did not acquire from any them;
- (xii) The appellant did not acquire any of the supplies of property or services in question from said thirteen (13) suppliers in question and did not acquire the supplies of property or services in question from the thirteen (13) suppliers in question; rather, the appellant acquired them from a completely different supplier than the ones indicated on the supporting documents provided for ... the 16 periods at issue;
- (xiii) The appellant was not well-known to the Commission de la construction du Québec (hereinafter CCQ) during the 16 periods at issue and reported to the CCQ having contracted with only one subcontractor;
- (xiv) Based on the information held by the CCQ, the thirteen (13) suppliers in question are not subcontractors for the appellant;
- (xv) Some of the thirteen (13) suppliers in question cannot be located;
- (xvi) Some of the thirteen (13) suppliers in question are in default to Revenu Québec with respect to several tax statutes;
- (xvii) The thirteen (13) suppliers in question do not have the staff or equipment to make the supplies of goods and services they undertook to make to the appellant;
- (xviii) The cheques written by the appellant to pay for the supplies acquired from any of the said thirteen (13) suppliers in question, if not all of the thirteen (13) suppliers, were almost always provided to cheque cashing businesses by said suppliers to be cashed;
- (xix) Some of the supporting documents in support of the ITCs claimed do not contain a sufficient and detailed description allowing adequate identification of each of the alleged supplies made by either of the said thirteen (13) suppliers in question and which were acquired by the appellant;

- (xx) Some of the supporting documents provided in support of the ITCs claimed for a given supplier have an inconsistent numerical sequence;
- (xxi) Although the thirteen (13) suppliers in question are distinct persons, the invoicing for some of them is almost identical, in all respects, except for the designation of the supplier and the GST and QST registration numbers;
- (xxii) The appellant therefore owes the Minister the amount of the adjustments to its reported net tax for the 16 periods at issue, plus interest and penalties.

[6] The first issue to address in this appeal is whether the appellant is entitled to an ITC of \$20,835.35 in the calculation of its net tax for the 16 periods at issue. To answer, the Court will first have to determine

- (i) whether the appellant actually acquired from the 13 dubious suppliers the supplies for which it claimed an ITC of \$20,835.35 in the calculation of its net tax;
- (ii) whether the invoices allegedly prepared by the appellant's suppliers meet the requirements prescribed by the ETA and the *Input Tax Credit Information Regulations* (the Regulations).

The second question to address in this appeal is whether the Minister was correct in imposing a penalty under section 285 of the Act.

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[7] There are also appeals from the reassessments made by the Minister under the *Income Tax Act* (the Act) for its 2001, 2003, 2004, 2005 and 2006 taxation years.

[8] In setting the amount payable by the appellant, the Minister relied on the following facts set out in paragraph 13 of the Reply to the Notice of Appeal:

[TRANSLATION]

- (i) The appellant's fiscal year ends on March 31 of each year;
- (ii) For the years in question, the Minister made the following changes to the appellant's income:

	<u>2001</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Net income (previous loss for income tax purposes)	\$6,384	(\$6,021)	\$18,724	\$1,776	(\$6,381)
Add					
Disallowed subcontracting expenses	\$__	\$24,868	\$21,028	\$55,866	\$49,542
Disallowed rental expenses	\$__	\$__	\$2,484	\$2,484	\$__
Disallowed purchases of materials	\$__	\$__	\$691	\$6,638	\$__
Revised net income for income tax purposes	\$6,384	\$18,847	\$42,927	\$66,764	\$43,161
Subtract					
Claimed non-capital loss	(\$6,021)	\$__	(\$6,381)	\$__	\$__
Cancelled non-capital loss	\$6,021	\$__	\$6,381	\$__	\$__
Revised taxable income	\$6,384	\$18,847	\$42,927	\$66,764	\$43,161

- (iii) The appellant is active in the construction industry;
- (iv) The appellant's sole shareholder is Claude Séguin;

#### **Disallowed subcontracting expenses**

- (v) In 2003, 2004, 2005 and 2006, the appellant deducted from its business income the expenses it says it incurred for services from various subcontractors:
  - 2003: \$24,868
  - 2004: \$21,028
  - 2005: \$55,866
  - 2006: \$49,542
- (vi) The subcontractors are in fact companies of convenience whose sole purpose was to provide invoices to their clients to allow them to deduct business expenses they did not actually incur.
- (vii) The alleged subcontractors did not render any services to the appellant.
- (viii) The alleged subcontractors cannot be found.
- (ix) The alleged subcontractors do not have the staff or equipment to make the supplies of goods and services which appear on the invoices submitted by the appellant.
- (x) The cheques written by the appellant to pay the invoices from the alleged subcontractors were provided to cheque cashing businesses by the subcontractors to be cashed.

- (xi) The appellant's shareholder appropriated the money.
- (xii) The invoices submitted do not contain a sufficient and detailed description to allow adequate identification of each of the alleged services or supplies provided.
- (xiii) Some of the supporting documents provided in support of the expenses claimed for a given subcontractor have an inconsistent numerical sequence.
- (xiv) Although the subcontractors appear as distinct persons, the invoices of some of them are almost identical in all respects except for the designation of the subcontractor and the GST and QST registration numbers.

**Disallowed rental expenses**

- (xv) In 2004 and 2005, the appellant paid rent to its shareholder, Claude Séguin, for the use of an office in his personal home.
- (xvi) The appellant paid \$4,800 to Mr. Séguin for each of the years.
- (xvii) The rent paid ought to have been \$2,316 per year, as the appellant only used 20% of Mr. Séguin's residence for business purposes.

**Disallowed purchases of materials**

- (xviii) The amounts of \$691 in 2004 and \$6,638 in 2005 are not supported by appropriate documents or are the personal and living expenses of the appellant's shareholder.

[9] In order to impose the penalty provided for in subsection 163(2) of the Act, the Minister relied on the following facts set out in paragraph 16 of the Reply to the Notice of Appeal:

[TRANSLATION]

- (i) The facts mentioned in paragraph 13 above.
- (ii) The appellant was aware that it was doing business with companies of convenience to obtain false invoices in order to deduct from its income amounts it never incurred for the purpose of gaining or producing income.

[10] I note that, in regard to the expenses disallowed, the appellant is challenging the Minister's decision only as to the following subcontractors:

- (i) Rastel
- (ii) D.D.
- (iii) Gypse
- (iv) Rovac

[11] The only issues in this appeal are the following:

- (i) did the appellant have deductible expenses for the supplies provided by Rastel, D.D., Gypse and Novac in the amount of \$24,868 in 2003, \$21,028 in 2004, \$55,866 in 2005 and \$49,542 in 2006?
- (ii) was the imposition of the penalty under subsection 163(2) of the Act justified?

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[12] This is an appeal from the reassessments made by the Minister under the Act for his 2002, 2003, 2004, 2005 and 2006 taxation years.

[13] In setting the amount payable by the appellant, the Minister relied on the following facts set out in paragraph 9 of the Reply to the Notice of Appeal:

[TRANSLATION]

- (i) The appellant is the sole shareholder of Pro-Poseurs Inc. (the Company);
- (ii) For the years in question, the Minister made the following changes to the appellant's income:

	2002	2003	2004	2005	2006
Total income previously assessed	\$34,996	\$35,224	\$40,367	\$43,705	\$46,247
Add					
Company benefits	-	-	-	-	-
(i) Subcontracting	\$24,705	\$14,662	\$63,886	\$8,196	\$11,656
(ii) Materials and Restaurant	-	-	\$5,661	\$932	-
(iii) Rent	-	-	\$2,484	\$2,484	
(iv) Automobile benefit	-	-	\$3,400	\$3,539	

**Subcontracting**

- (iii) The company works in construction.
- (iv) In 2003, 2004, 2005 and 2006, the Company deducted expenses it says it incurred for services from subcontractors.
- (v) The Company rather did business with companies of convenience whose sole purpose was to provide invoices to their clients to allow them to deduct business expenses they did not actually incur and to allow the shareholders or directors of the business clients pocket the money equivalent to the amounts of the false invoices.
- (vi) The alleged subcontractors did not render any services to the Company.
- (vii) The alleged subcontractors cannot be found.
- (viii) The alleged subcontractors do not have the staff or equipment to provide the supplies or services described in the invoices submitted by the appellant.
- (ix) The invoices submitted do not contain a sufficient and detailed description adequate identification of each of the alleged services or supplies provided.
- (x) Some of the documents provided in support of the expenses claimed for a given subcontractor have an inconsistent numerical sequence.
- (xi) Although the subcontractors appear as distinct persons, the invoice of some of them are almost identical in all respects except for the designation of the subcontractor and the GST and QST registration numbers.
- (xii) The cheques written by the appellant to pay the services of the alleged subcontractors were provided to cheque cashing businesses by the subcontractors to be cashed.
- (xiii) The appellant appropriated the amounts received following the cashing of the cheques.

**Purchases of materials and restaurant expenses**

- (xiv) The Company deducted as business expenses amounts for purchases of materials and restaurant expenses.
- (xv) It also deducted amounts for purchases, according to the ledger, at Costco.
- (xvi) None of the expenses made at Costco are supported by adequate documents.

- (xvii) The other expenses claimed for purchases of materials and restaurant-related items are the appellant's personal expenses.

**Rent**

- (xviii) In 2004 and 2005 the Company paid rent to the appellant for the use of an office in his home.
- (xix) The appellant received \$4,800 from the Company for each of the years.
- (xx) The rent paid ought to have been \$2,316 per year, as the Company only used 20% of the appellant's residence for business purposes.
- (xxi) In 2004 and 2005, the Company conferred a benefit of \$2,484 on the appellant.

**Automobile benefit**

- (xxii) In 2004 and 2005, the Company put at the disposal of the appellant a Mazda Tribute.
- (xxiii) The vehicle was also used for business purposes.
- (xxiv) At the time of the audit, the appellant proposed to the auditors to consider that the 1000 km per month was the distance he drove with the Mazda Tribute. The auditors agreed.
- (xxv) The automobile benefit conferred on the appellant was \$3,400 in 2004 and \$3,539 in 2005.

I note that the appellant is challenging the Minister's decision only as to the benefits related to subcontracting expenses.

[14] In issuing reassessments for 2002 and 2003 beyond the normal reassessment period and imposing the penalty under subsection 163(2) of the Act, the Minister relied on the following facts set out in paragraph 10 of the Reply to the Notice of Appeal:

[TRANSLATION]

- (i) The facts mentioned in paragraph 9 above.
- (ii) Only the amounts representing the benefit conferred on the appellant with respect to the false subcontracting invoices were subjected to the penalty provided for in subs. 163(2) of the ITA.

- (iii) From 2002 to 2006, the appellant did not claim the respective amounts of \$24,705, \$14,662, \$63,886, \$8,196 and \$11,656 he appropriated as part of his Company's participation in a scheme involving the issuance, by companies of convenience, of false subcontracting invoices to allow the Company to deduct amounts from his business income and to allow the appellant to pocket the amounts allegedly paid to the subcontractors.
- (iv) The appellant is actively involved in the Companies' activities.
- (v) The appellant was aware that the Company had not received the services described on the invoices of convenience.
- (vi) It was knowingly, or under circumstances amounting to gross negligence that the appellant pocketed the amounts mentioned in para. (c) above and that he did not add them to his income.

[15] The only issues are the following:

- (i) Did the appellant receive taxable benefits from the Company from 2002 to 2006?
- (ii) Was the issuance of reassessments for 2002 and 2003 under subsection 152(4) of the Act justified?
- (iii) Was the imposition of the penalty under subsection 163(2) of the Act on the amounts the appellant appropriated (corresponding to the total of the subcontracting invoices) justified?

[16] The appellant, Claude Séguin, Francis Gaudreault, George Stouraitis, Jean Vendette, Daniel Pauzé, Hermel Lanteigne (Mr. Séguin's brother-in-law), Daniel Preston (an employee of the appellant Les Pro-Poseurs Inc.), Tony Surprenant (an employee of the appellant Les Pro-Poseurs Inc.) and Priscilla Séguin (Mr. Séguin's daughter) testified in support of the appellants' position. Daniel Fugère (an audit department head at Revenu Québec) and Steve Parent (a tax auditor with Canada Revenue Agency) testified in support of the respondent's position.

#### Testimony of the appellant Claude Séguin

[17] The testimony of Claude Séguin (majority shareholder and principal officer of Les Pro-Poseurs Inc. during the periods at issue) may be summarized as follows:



- (i) Les Pro-Poseurs Inc. has been a building contractor specializing in interior systems (installation of metal partitions, installation of drywall, filling of joints and installation of acoustic ceiling tiles) since 1988. Also since 1988, the main client of Les Pro-Poseurs Inc. has been Industrie Vendette Ltée, a general building contractor specializing in office space renovation and fit-up (in commercial buildings) and hotels located mainly in Montréal.
- (ii) Claude Séguin is 52 years old. He has been married since 1981 and has two children. He has very little education (secondary III). The salary he receives from Les Pro-Poseurs Inc. is his only source of income. As an employee of Les Pro-Poseurs Inc. during the periods at issue, he was responsible for the supervision of the work of the employees of Les Pro-Poseurs Inc. and its suppliers' employees, the negotiation of the terms and conditions of contracts awarded by Industrie Vendette Ltée or others contracting out work and the negotiation of the terms and conditions of contracts awarded to the suppliers of Les Pro-Poseurs Inc. Mr. Séguin explained that he performed very few administrative tasks for Les Pro-Poseurs Inc., owing to his limited skills and knowledge in that area. He added in that regard that Les Pro-Poseurs Inc. had hired an external accountant to keep its accounting books, to draft its legal reports, to prepare and file its income tax and GST returns, and finally to prepare its financial statements. The appellant also explained that he had asked the bank of Les Pro-Poseurs Inc. to send to the external accountant the original cheques cashed by the suppliers of Les Pro-Poseurs Inc. directly so that the bank account of Les Pro-Poseurs Inc. could be reconciled.
- (iii) During the periods at issue, Les Pro-Poseurs Inc. had on average three employees (including Mr. Séguin) who regularly worked for it. When Les Pro-Poseurs Inc. had an overflow of contracts, it would award some to suppliers. The suppliers were generally selected as follows: Les Pro-Poseurs Inc. contacted (by telephone) the owner of Quincaillerie Ste-Hélène (hardware store where numerous contractors or workers specializing in interior systems work got their supplies during the periods at issue) or with certain company employees (Marie, Jacques and André) and would let them know that the appellant needed workers. I note that the appellant did not disclose that information to the two CRA auditors who asked him, in a meeting held on September 26, 2006, how he contacted the suppliers (see Exhibit I-3, page 9). I also

note that it would have been very interesting to hear the testimony of the owner of Quincaillerie Ste-Hélène or one of its employees in that regard. The appellants could have called those witnesses to testify but did not. I infer from this that the evidence would not have been in their favour.

- (iv) The contracts with the suppliers were oral. During the periods at issue, the appellant mainly awarded drywall and joint filling contracts. The remuneration generally agreed upon with the suppliers was as follows: approximately \$240 per thousand square feet of drywall installed, approximately \$300 per thousand square feet of drywall installed with joint-filling compounds, and approximately \$40 for repairs. The payment agreement was generally [TRANSLATION], “The sooner the work is completed and invoiced, the sooner one gets paid.” I note that Mr. Séguin told (see Exhibit I-3) the two CRA auditors he met with on September 26, 2006, that Les Pro-Poseurs Inc. usually paid its suppliers two weeks after receiving the invoice. I note that the cheques drawn on the bank account of Les Pro-Poseurs Inc. and payable to the suppliers were sent to the suppliers in a different way depending on whether or not it was one of the 13 dubious suppliers. In the first case, the cheque was remitted to the dubious supplier’s employee who worked with the employees of Les Pro-Poseurs Inc. at a given work site; in the other case, the cheque was sent by mail.
  
- (v) Mr. Séguin was unaware of the name of the directors, officers, foremen and shareholders of the dubious suppliers as he had only communicated with their employees. Mr. Séguin’s “modus operandi” with respect to signing contracts with the dubious suppliers was as follows: the dubious suppliers’ employees (sent to Les Pro-Poseurs Inc. by Quincaillerie Ste-Hélène) would telephone Mr. Séguin to let him know that they were available to do work for Les Pro-Poseurs Inc. The employees would therefore show up, at Mr. Séguin’s request, at the work site designated by him. Mr. Séguin then explained to the employees the nature of the work to be done, the method of remuneration and the payment terms. After having verified whether the employees had their trade cards and whether the suppliers they worked for had their permits, the appellant would orally award the contracts to the dubious suppliers the employees worked for. In the end, the dubious suppliers’ employees negotiated and concluded for their employers and in their name all the contracts Les Pro-Poseurs Inc. awarded to the

dubious suppliers during the periods at issue. In that respect, Mr. Séguin explained that

- (1) Hermel Lanteigne (Mr. Séguin's brother-in-law) negotiated and concluded for Alfa, Gypse, Rastel, Rovac and J.C.M.J. and in their name all the contracts Les Pro-Poseurs Inc. had awarded to them. Mr. Lanteigne also performed (on occasion with the help of an individual whose first name was Ben) all the contracts awarded by Les Pro-Poseurs Inc. to the five dubious suppliers. It should be noted that at the meeting of September 26, 2006, with the two CRA auditors, Mr. Séguin was unable to identify or even describe the person or persons who performed the work for three of the five dubious subcontractors (see Exhibit I-3). To explain those lapses in memory, Mr. Séguin stated that at that point he was so intimidated by the two CRA auditors that he was completely at a loss. Mr. Séguin's version of the facts in that regard (although corroborated by his daughter Priscilla) failed to convince me. In fact, to be intimidated to the point where he no longer recalled that his brother-in-law was the one who performed most of the work for the three dubious suppliers just seems unlikely to me and lacks credibility in the circumstances. I note that Mr. Séguin's lapses in memory in that respect only added to my doubts as to his credibility.
- (2) Alain Gagnon negotiated and concluded for Lubac, M.J.P., G.S.B., Méga Maxx and Dinar and in their name all the contracts that Les Pro-Poseurs Inc. had awarded them. Mr. Gagnon also performed all the contracts awarded by Les Pro-Poseurs Inc. to the five dubious suppliers. It would have been very interesting to hear the testimony of Mr. Gagnon. The appellants could have called that person to testify but did not. I infer from this that the evidence would not have been in their favour.
- (3) Bob Ryan negotiated for Joints Universels and Kelowna and in their name all the contracts that Les Pro-Poseurs Inc. had awarded them (worth approximately \$134,000). Mr. Ryan performed all the contracts awarded by Les Pro-Poseurs Inc. to the two dubious suppliers. It would have also been very interesting to hear the testimony of Mr. Ryan, a key player in these disputes. The appellants could have called that person to

testify but did not. I infer from this that the evidence would not have been in their favour.

- (4) Mr. Séguin could not recall the name of the person who negotiated and concluded for D.D. and in its name the contracts that Les Pro-Poseurs Inc. had awarded it; nor could he recall the name of the person or persons who performed the work under the contracts awarded.
- (vi) In 20% of the cases, Mr. Séguin himself completed the dubious suppliers' invoices where their employees were illiterate. It is appropriate to point out that Mr. Séguin did not identify the invoices he completed. Nor did he identify the illiterate employees.

Finally, I note that when asked to comment on certain invoices regarding the exact place where the work was performed, the exact nature of the work performed (installation of drywall, filling of joints), the number of square feet of drywall installed or installed with joint-filling compounds, and finally, the method of remuneration, Mr. Séguin was generally vague and imprecise, and often non-responsive.

#### Testimony of Francis Gaudreault

[18] The testimony of Francis Gaudreault (an electrician) may be summarized as follows:

- (i) Mr. Gaudreault has been an employee of Au Courant Électrique for some 24 years;
- (ii) During the years at issue, he often worked at the same work sites as Mr. Séguin, as Industrie Vendette Ltée almost always used the same suppliers to perform the contracts awarded to it;
- (iii) He had seen, on more than one occasion and at a number of work sites, Messrs. Ryan, Lanteigne and Gagnon work with the employees of Les Pro-Poseurs Inc. I note, however, that the testimony of Mr. Gaudreault regarding the "situs" of the work sites where he saw those individuals, how often he saw them, and when he saw them was generally laborious, vague and imprecise. I note that Mr. Gaudreau was unable to specify the status (employee or self-employed) of the three individuals when they

worked with Mr. Séguin and the name of the businesses for which they worked.

### Testimony of George Stouraitis

[19] The testimony of Mr. Stouraitis may be summarized as follows:

- (i) Mr. Stouraitis is a painter and self-employed;
- (ii) Industrie Vendette Ltée used him at almost all its work sites since 1993;
- (iii) He knows Mr. Séguin very well as they frequently worked at the same work sites;
- (iv) He had seen, on more than one occasion and at a number of work sites, Messrs. Lanteigne, Ryan and Gagnon work with the employees of Les Pro-Poseurs Inc. I note, however, that the testimony of Mr. Stouraitis regarding the “situs” of the work sites where he saw the three individuals, how often he saw them, and when he saw them was generally laborious, vague and imprecise. I also note that Mr. Stouraitis was unable to specify the status (employee or self-employed) of the three individuals when they worked with Mr. Séguin and the name of the businesses for which they worked.

### Testimony of Jean Vendette

[20] The testimony of Mr. Vendette, the main shareholder and executive of Industrie Vendette Ltée, may be summarized as follows:

- (i) Industrie Vendette Ltée has been active as a general contractor in the construction industry for the past 30 years and its annual sales vary between 3 and 5 million dollars;
- (ii) Industrie Vendette Ltée almost always uses the same suppliers to perform the contracts awarded to it;
- (iii) He knows Mr. Séguin very well through the awarding of numerous subcontracting contracts to Les Pro-Poseurs Inc. over the past twenty years;

- (iv) The contracts concluded with Les Pro-Poseurs Inc. and the suppliers it frequently uses are always oral;
- (v) He never verifies the status of its usual suppliers with the RBQ, the CCQ and the CSST. He only conducts verifications for suppliers with which it does not regularly do business;
- (vi) He goes to the work sites of Industrie Vendette Ltée once a week;
- (vii) He knows Mr. Lanteigne very well as he had seen him (at least a hundred times or so) do drywall installations with the employees of Les Pro-Poseurs Inc. at the work sites of Industrie Vendette Ltée. He recalled that Mr. Lanteigne had told him once while on break that he was self-employed. Mr. Vendette added that he never made any inquiries to verify whether the Mr. Lanteigne's statements regarding his status were true. Finally, he testified that at the periods at issue, he was aware that Mr. Lanteigne was Mr. Séguin's brother-in-law;
- (viii) He remembered having seen a person whose first name was Alain at a work site of Industrie Vendette Ltée. He remembered that person because he pointed out to him that his work ("seam caulker") had not been done properly. I note that the physical description that Mr. Vendette gave of that person corresponds with the physical description that the other witnesses gave of Alain Gagnon;
- (ix) He remembered having seen Bob Ryan work at the work sites of Industrie Vendette Ltée (as a drywall installer) with the employees of Les Pro-Poseurs Inc. I note that Mr. Vendette was unable to specify the status of Mr. Ryan when he worked with the employees of Les Pro-Poseurs Inc. at the work sites of Industrie Vendette Ltée and the name of the business for which he worked.

I note that the testimony of Mr. Vendette regarding the "situs" of the work sites where he saw the three individuals work with Mr. Séguin and the employees of Les Pro-Poseurs Inc. and regarding when and how often he saw them was generally vague and imprecise.

Testimony of Daniel Pauzé

[21] The testimony of Mr. Pauzé may be summarized as follows:

- (i) He has been working for Industrie Vendette Ltée since 1994 as a project manager;
- (ii) He has known Mr. Séguin since 1993;
- (iii) He goes to his employer's work sites every day;
- (iv) He had seen Mr. Lanteigne do drywall installations with the employees of Les Pro-Poseurs Inc. at his employer's work sites on a number of occasions. He is aware that Mr. Lanteigne was Mr. Séguin's brother-in-law;
- (v) He was unable to specify the status of Mr. Lanteigne when he worked with the employees of Les Pro-Poseurs Inc. at his employer's work sites and the name of the business for which he worked;
- (vi) He does not know Bob Ryan. I note that the testimony Mr. Séguin that Mr. Ryan had very often worked for Les Pro-Poseurs Inc. as an employee for a number of dubious suppliers to which Les Pro-Poseurs Inc. had awarded contracts during the periods at issue.

Testimony of Hermel Lanteigne

[22] The testimony of Mr. Lanteigne may be summarized as follows:

- (i) He is 60 years old. He is practically illiterate;
- (ii) He has been doing drywall installations for some 30 years;
- (iii) He had to take an oral exam to obtain his trade cards given his illiteracy. He has had his trade card for some 30 years;
- (iv) During the periods at issue, he worked for the following dubious suppliers: Alfa, Gypse, Rastel, Rovac and J.C.M.J. His contact at the five suppliers had almost always been an individual by the first name of Michel;

- (v) He had frequently worked (as an employee) for the five dubious suppliers during the periods in question. He had been paid in accordance with the applicable orders. He received about \$600 (net) per week for his 40 hours of work. Any salary received from the five dubious suppliers during the periods in question was reported as employment income. I note that the testimony of Mr. Lanteigne in that regard was flatly contradicted by the testimony of Steve Parent, an auditor with the CRA who audited the appellants. Mr. Parent testified that his audits confirmed that in 2002, 2003 and 2004, none of the dubious suppliers for which Mr. Lanteigne had worked had issued a T-4 slip and that Mr. Lanteigne had not reported any employment income from the five dubious suppliers for those taxation years. As a result, it would be hazardous to lend Mr. Lanteigne's testimony any credence without any conclusive corroborating evidence in the form of documentation or testimony by credible witnesses;
- (vi) Mr. Séguin would communicate directly with him when Les Pro-Poseurs Inc. needed a drywall installer. After reaching an oral agreement (on behalf of his employer and in his name) with Mr. Séguin with respect to the terms and conditions of the drywall contract Les Pro-Poseurs Inc. wished to award to his employer at that point in time, he would go to the work site. When he performed the contract awarded to his employer, he would call Michel and provide him with the information necessary for the dubious supplier to invoice the work he had performed for Les Pro-Poseurs Inc. Michel hand-delivered the invoice to him and in turn he hand-delivered it to Mr. Séguin. Les Pro-Poseurs Inc. immediately drew a cheque on its bank account as payment for the work, a cheque which Mr. Séguin remitted to Mr. Lanteigne, who, in turn, hand-delivered it to Michel. He explained that it was when the cheque was remitted to him that Michel wrote a cheque from the account of the dubious supplier concerned as payment for his hours of work related to the drywall installation at the work site in question;
- (vii) It was not until 2007 that he learned that the five dubious suppliers had a duty to report his hours of work to the CCQ and that they also had the obligation to pay to the CCQ, to his benefit, the contributions required from the employers under the applicable orders regarding their employees vacation pay and pension plan. Mr. Lanteigne explained that he immediately stopped working for the dubious suppliers (for which



Michel was the contact) as soon as he found out about his rights in that regard. Therefore, Mr. Lanteigne did not receive from the CCQ the vacation pay he was entitled to during the periods at issue. Mr. Lanteigne's ignorance with respect to his rights just seems unlikely to me, considering that he had been active in the construction industry for at least 30 years.

Finally, I note that the testimony of Mr. Lanteigne regarding the "situs" of the work sites where he with Mr. Séguin and the employees of Les Pro-Poseurs Inc. and regarding how often he performed his hours of work and when he did so under the contracts awarded by Les Pro-Poseurs Inc. to his employers was simply vague, imprecise and very often incomprehensible.

#### Testimony of Daniel Preston

[23] The testimony of Mr. Preston may be summarized as follows:

- (i) Mr. Preston has been an employee of Les Pro-Poseurs Inc. since 1993;
- (ii) Mr. Preston knew Bob Ryan as they had worked together during the periods at issue to perform certain contracts awarded by Industrie Vendette Ltée to Les Pro-Poseurs Inc. Mr. Preston pointed out that Mr. Ryan was a "seam caulker;"
- (iii) Mr. Preston pointed out that Mr. Ryan worked for Joints Universels as he had seen the company logo on the truck then used by Mr. Ryan;
- (iv) Mr. Preston knew Hermel Lanteigne as they had worked together on certain contracts awarded by Industrie Vendette Ltée to the appellant. Mr. Preston also stated having seen an individual, whose first name was Ben, work with Mr. Lanteigne on certain contracts awarded by Industrie Vendette Ltée to the appellant. Mr. Preston pointed out that he did not know the status of the two persons in that he did not know whether they were employees or self-employed. Nor he did he know for which companies the two individuals worked;
- (v) He knew Alain Gagnon as they had worked together during the periods at issue on certain contracts awarded by Industrie Vendette Ltée to the appellant. Mr. Preston did not know which company Mr. Gagnon worked for nor his status within the company for which he worked.

I note that the testimony of Mr. Preston regarding the “situs” of the work sites where he saw the four individuals and regarding how often and the periods during which he saw them were vague and imprecise at best.

#### Testimony of Tony Surprenant

[24] The testimony of Mr. Surprenant, an employee of Les Pro-Poseurs Inc. since 2004, bears an uncanny resemblance to the testimony of Daniel Preston.

#### Testimony of Priscilla Séguin

[25] The testimony of Ms. Séguin may be summarized as follows:

- (i) She is the daughter of Mr. Séguin and has a university degree in business administration;
- (ii) She listened to the thrust of the discussions between her father and the two CRA auditors during the meeting of September 26, 2006, held at her father’s residence. She was in the room adjacent to the kitchen where the meeting was being held. Essentially, the two auditors suggested to her father that he had committed fraud. Having the impression that her father did not understand what was happening, she went into the kitchen to tell her father the following [TRANSLATION]: “Dad, they are accusing you of fraud.” After that intervention, she left her father’s residence. In the end, she explained that her father was intimidated by the two auditors to the point where he was left completely at a loss.

#### Testimony of Mr. Parent

[26] In his testimony, Mr. Parent essentially confirmed the main elements of the audit reports of Raymond Roy (Exhibit I-1, Tab 14), in which he participated, namely:

- (i) the dubious suppliers (in this case D.D., Rovac, Rastel and Gypse) were in non-compliance with all the tax laws;

- (ii) the alleged dubious suppliers did not have the employees necessary to make the supplies listed on the invoices filed in evidence by the appellants;
- (iii) the cheques written by the appellant to pay the invoices of the dubious suppliers were provided to a cheque cashing business by the suppliers to be cashed;
- (iv) the invoices filed in evidence by the appellants do not contain a sufficient and detailed description allowing adequate identification of each of the alleged services or supplies provided;
- (v) certain invoices filed in evidence by the appellants have an inconsistent numerical sequence;
- (vi) although the suppliers hold themselves out as distinct persons, the invoices of some of them are almost identical in all respects, except for the designation of the subcontractor and the GST and Quebec Sales Tax (QST) registration numbers.

[27] Mr. Parent also presented, during his testimony, the main answers provided by Mr. Séguin to the questions posed to him by Raymond Roy and himself during the meeting of September 26, 2006 (see Exhibit I-3).

#### Testimony of Mr. Fugère

[28] In his testimony, Mr. Fugère essentially confirmed the following elements of the audit report prepared by Mark-Louis Roy (Exhibit I-2, Tab 5a) in which he participated, namely:

- (i) during the periods at issue, the thirteen dubious suppliers were all in non-compliance with all the tax laws;
- (ii) the dubious suppliers did not have the employees necessary to make the supplies listed on the invoices filed in evidence by the appellants;
- (iii) the supplies listed on the invoices filed in evidence by the appellants are not described in a sufficient and detailed manner;

- (iv) some of the supporting documents provided (in support of the ITCs claimed) by a given supplier have an inconsistent numerical sequence;
- (v) almost all the cheques written by the appellant and payable to the dubious were cashed at a cheque cashing business;
- (vi) although the suppliers are distinct persons, the invoicing for some of them is almost identical, in all respects, except for the designation of the supplier and the GST and QST registration numbers;
- (vii) certain dubious suppliers do not have permits. The permit number of some of the suppliers had been cancelled at the time services were rendered. According to the RBQ, the number appearing on the invoices of certain dubious suppliers do not appear in its records.

#### Appellants' position

[29] The appellants claim that the Minister has wrongfully relied on the profile of the dubious suppliers to allege that the invoices were fictitious; it was impossible for them to know, among things, that the suppliers were in default of their tax obligations and that in practice, they did not report any salary and had no employees. The appellants claim that they were assured that the dubious suppliers had a registration number for GST purposes and that it was all they could do, as all information pertaining to compliance with the tax laws by the supplier of services is confidential information that cannot be disclosed to the appellants. The appellants also submit that they made the proper inquiries to verify whether the dubious suppliers had their permits and if their employees had their trade cards. According to the appellants, it was the companies' conduct that contravened the tax laws. The appellants add that they should not have to bear the economic burden resulting from a failure to remit to Her Majesty all the amounts owed under all the tax laws.

[30] With respect to the cheques (drawn on the bank account of Les Pro-Poseurs Inc. and payable to the dubious suppliers) cashed at cheque cashing businesses that charged an astronomical commission, the appellants submit that the Minister could not infer from that fact that they were in bad faith considering that they were not aware of that practice. Indeed, the appellants claim that all of the cashed cheques had been sent directly to its external accountant so that he could proceed with the reconciliation of its bank accounts and that therefore it was practically impossible for them to notice that the cheques had been cashed at cheque cashing businesses.

[31] Finally, the appellants submit that the invoices, the cheques written by Les Pro-Poseurs Inc. as payment for the invoices and the credible testimony of Mr. Séguin, corroborated by the equally credible testimonies of Mr. Gaudreault, Mr. Stouraitis, Mr. Vendette, Mr. Pauzé, Mr. Lanteigne, Mr. Surprenant and Mr. Preston, according to which the services were actually rendered to the appellant by the dubious suppliers, constituted *prima facie* evidence that the invoices were not fictitious invoices and that the *prima facie* evidence is sufficient to demolish the assumptions the Minister relied upon to make the appellants' assessments.

[32] The appellants also claim that the Minister wrongfully relied on the fact that the invoices submitted do not contain a sufficient and detailed description to allow identification of each of the alleged supplies provided to allege that the invoices were fictitious, in that most of the construction workers do not have a gift for writing and that the supporting documents are not out of the ordinary in that industry. The appellants add in that regard that it is a matter of public knowledge that when suppliers are not in tax default, invoices drafted in much the same way are not subject to questioning by the Minister, which would suggest that it is much more the supplier's identity than the manner in which the invoice was drafted that underlies the action taken by the Minister.

[33] As regards the invoices whose numeric sequence is inconsistent, the appellants claim that there were very few and that the Minister could not infer from that bad faith on their part because they did not notice those inconsistencies.

[34] With regard to the invoices drafted by Mr. Séguin, the appellants submit that Mr. Séguin had been tasked by the suppliers in question to draft them and that therefore the Minister could not hold that the invoices at issue were fictitious. The appellants submit that once the assumptions are demolished, the burden of proof shifts to the Minister, who must accordingly rebut the appellant's *prima facie* evidence.

### Analysis and conclusion

[35] Under the doctrine of *Hickman Motors Ltd. v. Canada*, [1997] 2 S.C.R. 336, the Minister uses assumptions to make assessments and the taxpayer has the initial burden of demolishing the Minister's assumptions. This is met where the taxpayer makes out at least a *prima facie* case that demolishes the Minister's assumptions. Then, after the taxpayer has met the initial burden, the onus shifts to the Minister to rebut the *prima facie* case made out by the taxpayer and to prove the assumptions. As a general rule, a *prima facie* case is defined as one with evidence that establishes a

fact until the contrary is proved. In *Stewart v. M.N.R.*, [2000] T.C.J. No. 53, Cain J. stated that "[A] *prima facie* case is one supported by evidence which raises such a degree of probability in its favour that it must be accepted if believed by the Court unless it is rebutted or the contrary is proved." Moreover, in *Orly Inc. v. Canada*, 2005 FCA 425, at paragraph 20, the Federal Court of Appeal stated that "the burden of proof put on the taxpayer is not to be lightly, capriciously or casually shifted..." considering "[i]t is the taxpayer's business." The Federal Court of Appeal also stated in the same decision that it is the taxpayer who "knows how and why it is run in a particular fashion rather than in some other ways. . . . He has information within his reach and under his control." . . .” Consequently, Les Pro-Poseurs Inc. had to establish by *prima facie* evidence that it actually purchased the supplies from the dubious suppliers. Furthermore, Mr. Séguin had to establish by *prima facie* evidence that either he actually purchased the supplies from the dubious supplier or that he did not appropriate the amounts paid to the dubious suppliers. Finally, Les Pro-Poseurs Inc. also had to establish that the invoices allegedly issued by the dubious suppliers meet the requirements of the ETA and its regulations.

[36] At this stage, the issue is as follows: does the evidence submitted by the appellants constitute sufficient evidence to demolish the Minister’s assumptions of fact? As the evidence submitted by the appellants is essentially based on the testimonies of Mr. Séguin, Mr. Gaudreault, Mr. Stouraitis, Mr. Vendette, Mr. Pauzé, Mr. Lanteigne, Mr. Preston, Mr. Surprenant and Priscilla Séguin, we will analyze their probative value.

[37] Before analyzing the probative value of the testimonies of the individuals who testified in support of the appellants’ position, I would like to make certain comments with respect to the appellants’ failure to have certain important actors in the three appeals testify. The appellants had the opportunity call the officers of the dubious suppliers. Those officers could have testified that the services were actually rendered to the appellant. The respondent could have then cross-examined the witnesses the appellants could have had testify and ask them, among other things, the following questions: At which work sites did they render services? What was the exact nature of the services rendered? At what point were the services rendered and by which employees? Why did they cash the cheques at cheque cashing businesses that charged an astronomical commission rather than depositing them in their bank accounts? The appellants did not call the persons they could have had testify. Nor did the appellants prove that they attempted to have them called as witnesses. I simply infer from this that the evidence would not have been in their favour. The appellants also had the opportunity to call Messrs. Ryan and Gagnon to testify, two very important actors in that Mr. Gagnon had performed for his employers (Lubac, M.J.P.,

G.S.B., Méga Maxx and Dinar) all the contracts that had been awarded to them by Les Pro-Poseurs Inc. and in that Mr. Ryan had performed for his employers (Joints Universels and Kelowna) all the contracts that had been awarded to them by Les Pro-Poseurs Inc. The appellants also had the opportunity to call the external accountant to testify. The appellants did not do so. I also infer from this that the evidence would not have been in favour of the appellants.

[38] We will now examine the probative value of the testimonies of the individuals that supported the appellants' position. Mr. Lanteigne testified that he performed (with the individual whose first name is Ben) for his employers (Alfa, Gypse, Rastel, Rovac and J.C.M.J.) all the contracts that were awarded to them by Les Pro-Poseurs Inc. It is difficult for me to give any probative value to the testimony of Mr. Lanteigne, as his testimony regarding the "situs" of the work sites where he worked and the periods during which he worked are vague, imprecise and often incomprehensible, and as he was flatly contradicted by Steve Parent with respect to the employment income he reported during the years at issue. Finally, I note that I concluded earlier that his testimony that he was unaware he was entitled to vacation pay seemed improbable to me to say the least. All in all, I have no hesitation in calling Mr. Lanteigne a blatant liar. It was certainly not by calling such a witness that the appellants could have hoped to satisfy me that the services were actually rendered to the appellant by Alfa, Gypse, Rastel, Rovac and J.C.M.J.

[39] Moreover, what we learned at most from the generally vague and imprecise testimonies of Mr. Gaudreault, Mr. Stouraitis, Mr. Vendette, Mr. Pauzé, Mr. Preston and Mr. Surprenant is that they saw Messrs. Ryan, Gagnon and Lanteigne (some of these witnesses also saw someone named Ben) perform together with the employees of Les Pro-Poseurs Inc. contracts awarded to it by Industrie Vendette Ltée. However, what we practically did not learn anything from those testimonies as to the status of those individuals (were they employees or self-employed?) and the identity of the companies for which they worked. Indeed, only Mr. Preston pointed out that he believed that Mr. Ryan worked for Joints Universels as he had seen the company logo on the truck used by Mr. Ryan. I also note that Mr. Vendette testified that Mr. Lanteigne had stated to him that he was self-employed. I note that the appellants had to demonstrate that the services were actually rendered by the dubious subcontractors. Indeed, the testimonies of those individuals do not at all exclude the hypothesis that Les Pro-Poseurs Inc. perhaps could have had direct access to the services of the four workers (as employees or self-employed workers) and that their services were paid in cash.

[40] Nor did Mr. Séguin's testimony seem to be any more probative and credible, considering the following elements:

- (i) The numerous contradictions between his testimony and the answers provided to the two CRA auditors at the meeting of September 26, 2006;
- (ii) His vague and imprecise testimony when asked to comment on certain problematic invoices, regarding the situs of the work sites in question and the exact nature of the work carried out;
- (iii) The fact of never verifying where the cheques drawn on the bank account of Les Pro-Poseurs Inc. and payable to the dubious suppliers (about which Mr. Séguin knew almost nothing) were cashed, even after having received calls from the cheque cashing businesses who wanted to make some routine verifications (see Exhibit I-1, Tab 14, page 7). Those calls should have caused Mr. Séguin to have some suspicions and led him to verify from time to time where the dubious suppliers, about which he knew almost nothing, cashed the cheques made out by Les Pro-Poseurs Inc. A contractor with a modicum of common sense who realizes that a supplier is cashing all the cheques payable to it at a cheque cashing business should have serious questions about the honesty of that supplier. Did Mr. Séguin not state (see Exhibit I-2, Tab 14, page 7) that when he learned that a supplier was doing so, he stopped using its services? I note that the evidence establishes that almost all of the cheques drawn on the bank account of Les Pro-Poseurs Inc. and payable to the dubious suppliers were cashed at cheque cashing businesses that charged an astronomical commission. Ultimately, the appellants cannot rely on good faith in that respect, as they were informed of that practice;
- (iv) The fact that Les Pro-Poseurs Inc. complied with the payment instructions of Mr. Lanteigne without asking any questions. Indeed, Mr. Séguin, at the request of Mr. Lanteigne, wrote cheques payable to Crédit Lanaudière Inc., a cheque cashing business, when the services were rendered by Alfa. A contractor with a modicum of common sense would not have agreed to such a payment instruction without receiving a written direction from the supplier, particularly when the contractor knows almost nothing about that supplier;



- (v) The “modus operandi” of Les Pro-Poseurs Inc. differs with respect to the terms and conditions of payment of the suppliers’ invoices depending on whether or not they are dubious suppliers;
- (vi) The fact of not verifying with the CCQ and the CSST the hours of work of the employees of the dubious suppliers. I can understand the practice of those contracting out work of not conducting such checks on suppliers they regularly use and who are aware of their honesty and financial stability. Nevertheless, a failure to conduct such checks on suppliers they know almost nothing about seems to me difficult to explain considering the significant financial repercussions that could result for those contracting out the work. Indeed, anyone contracting out work who does not seek status letters from the CCQ and the CSST could be held jointly and severally liable with their subcontractors for payment of assessments that should have been paid by their subcontractors.

[41] It now remains to examine the following question: do the invoices issued by the dubious suppliers meet the requirements prescribed by the ETA and its Regulations?

[42] In turn, the two following preliminary questions must be answered:

1. What is the purpose of the Regulations?
2. Are the requirements of the Regulations mandatory and to be strictly enforced?

[43] In that regard, I concur with Bowie J. when he states as follows in *Key Property Management Corp. v. The Queen*, 2004 TCC 210:

The whole purpose of paragraph 169(4)(a) and the Regulations is to protect the consolidated revenue fund against both fraudulent and innocent incursions. They cannot succeed in that purpose unless they are considered to be mandatory requirements and strictly enforced. The result of viewing them as merely directory would not simply be inconvenient, it would be a serious breach of the integrity of the statutory scheme.

[44] In that regard, I also accept the following comments of Campbell J. in *Davis v. The Queen*, 2004 TCC 662:

Because of the very specific way in which these provisions are worded, I do not believe they can be sidestepped. They are clearly mandatory and the Appellant has simply not met the technical requirements which the Act and the Regulations place upon him as a member of a self-assessing system.

It is important to note that the Federal Court of Appeal affirmed, in *Systematix Technology Consultants Inc. v. Canada*, 2007 CAF 226, the position of Bowie and Campbell JJ. in that respect.

[45] Subsection 3 of the Regulations reads as follows:

3. For the purposes of paragraph 169(4)(a) of the Act, the following information is prescribed information:

(a) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is less than \$30,

(i) the name of the supplier or the intermediary in respect of the supply, or the name under which the supplier or the intermediary does business,

(ii) where an invoice is issued in respect of the supply or the supplies, the date of the invoice,

(iii) where an invoice is not issued in respect of the supply or the supplies, the date on which there is tax paid or payable in respect thereof, and

(iv) the total amount paid or payable for all of the supplies;

(b) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is \$30 or more and less than \$150,

(i) the name of the supplier or the intermediary in respect of the supply, or the name under which the supplier or the intermediary does business, and the registration number assigned under subsection 241(1) of the Act to the supplier or the intermediary, as the case may be,

(ii) the information set out in subparagraphs (a)(ii) to (iv),

(iii) where the amount paid or payable for the supply or the supplies does not include the amount of tax paid or payable in respect thereof,

(A) the amount of tax paid or payable in respect of each supply or in respect of all of the supplies, or

(B) where provincial sales tax is payable in respect of each taxable supply that is not a zero-rated supply and is not payable in respect of any exempt supply or zero-rated supply,

(I) the total of the tax paid or payable under Division II of Part IX of the Act and the provincial sales tax paid or payable in respect of each taxable supply, and a statement to the effect that the total in respect of each taxable supply includes the tax paid or payable under that Division, or

(II) the total of the tax paid or payable under Division II of Part IX of the Act and the provincial sales tax paid or payable in respect of all taxable supplies, and a statement to the effect that the total includes the tax paid or payable under that Division,

(iv) where the amount paid or payable for the supply or the supplies includes the amount of tax paid or payable in respect thereof and one or more supplies are taxable supplies that are not zero-rated supplies,

(A) a statement to the effect that tax is included in the amount paid or payable for each taxable supply,

(B) the total (referred to in this paragraph as the “total tax rate”) of the rates at which tax was paid or payable in respect of each of the taxable supplies that is not a zero-rated supply, and

(C) the amount paid or payable for each such supply or the total amount paid or payable for all such supplies to which the same total tax rate applies, and

(v) where the status of two or more supplies is different, an indication of the status of each taxable supply that is not a zero-rated supply; and

(c) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is \$150 or more,

(i) the information set out in paragraphs (a) and (b),

(ii) the recipient’s name, the name under which the recipient does business or the name of the recipient’s duly authorized agent or representative,

(iii) the terms of payment, and

(iv) a description of each supply sufficient to identify it.

[Emphasis added.]

[46] In the case at bar, the evidence reveals that the amount paid with respect to each of the supplies by the dubious subcontractors is \$150 or more. As a result, each of the invoices filed in evidence by the appellants (see Exhibit A-3, Tab 5) should

have also included a description of each supply sufficient to identify it. As the purpose of subsection 169(4)(a) of the ETA and its Regulations is the protection of the consolidated revenue fund against both fraudulent and innocent incursions, I am of the view that a description is sufficient if it allows the CRA to identify the work carried out by the suppliers. In my opinion, the invoices filed in evidence by the appellants cannot meet the condition provided for in subparagraph 3(c)(iv) of the Regulations unless they include at least the following information:

- (i) The exact place where the supplier at issue installed the drywall or filled the joints. By exact place I mean the civic address where the work was performed. In the case of a building with several floors, the invoice must specify the floor where the work was performed. If the floor in question includes several offices, the invoice must also identify the office where the work was performed;
- (ii) The nature of the supply. In the case at bar, if we rely on the testimonies of Mr. Séguin and of those who testified in support of the appellants' position, almost all of the services rendered by the dubious subcontractors involved with the installation of drywall or the filling of joints. As a result, each of the invoices filed in evidence by the appellants should indicate, where appropriate, whether the dubious supplier installed drywall or whether it filled joints. In my view, each invoice should also indicate the number of square feet of drywall installed or installed with joint-filling compounds, as appropriate.

[47] My review of all the invoices put in evidence by the appellants leads me to conclude that none of them meets section 169 of the ETA and the Regulations, as for each of them, at least one mandatory piece of information is missing. Accordingly, Les Pro-Poseurs Inc. cannot claim the ITCs related to those invoices. The appellants' argument that people in the construction industry should not be required to enter on their invoices a description of each supply sufficient to identify it, as they do not have a gift for writing, seems to me weak and untenable. I would add that it is not necessary to have a gift for writing to indicate the exact place where the drywall was installed and the number of square feet of drywall installed. As for the argument that the description of supplies appearing on the invoices filed in evidence by the appellants is sufficient, as it meets the industry's standards, I am of the view that is equally weak and untenable. In that respect, I first note that the appellants have not proven the alleged industry standard with respect to the description of supplies. In any case, if we were to agree with that argument, we would be giving the industry the right to determine what the legislator means by "description of each supply sufficient

to identify it.” It is for the Court and not the industry to determine what the legislator means by “description of each supply sufficient to identify it.” Furthermore, I do not see how the appellants’ position that it is common knowledge that when suppliers are not in tax default, invoices drafted in much the same manner are not subject to questioning by the Minister of Revenue of Quebec, which would suggest that that it is much more the supplier’s identity than the manner in which the invoice was drafted that underlies the action taken by the Minister of Revenue of Quebec, constitutes a valid argument. I would add in that regard that the Court, contrary to the Minister, cannot allow itself to be lax (if such is the case) in the application of the ETA and its Regulations.

[48] The following question should now be answered: did the Minister meet his burden under section 285 of the ETA? Since I am convinced that Les Pro-Poseurs Inc. did not genuinely acquire the supplies for which it claimed ITCs of \$20,835.35 in its net tax calculation, the Minister has met his burden of proof as set out in section 285 of the ETA.

[49] The following question should now be answered as to docket 2008-3955(IT)G: has the Minister met his burden under subsection 163(2) of the Act? Since I am satisfied that Les Pro-Poseurs Inc. did not genuinely acquire the supplies in question, the Minister has met his burden of proof as set out in subsection 163(2) of the Act.

[50] Are also of relevance the following questions in docket 2008-3954(IT)G :

1. Did Mr. Séguin receive benefits from 2002 to 2006? Since I am satisfied that Les Pro-Poseurs Inc. did not genuinely acquire the supplies from Rastel, D.D., Gypse and Rovac and that Mr. Séguin did not provide evidence that the amounts paid to the dubious suppliers were used by Les Pro-Poseurs Inc. to earn income from its business, I must conclude that Mr. Séguin received from Les Pro-Poseurs Inc. taxable benefits corresponding to the total of the amounts paid by Les Pro-Poseurs Inc. to the four suppliers.
2. Was the issuance of the notices of reassessment for 2002 and 2003 beyond the normal reassessment period justified? In view of my previous conclusions, I am of the view that the Minister has met his burden of proof as set out in subsection 152(4) of the Act.

3. Did the Minister meet his burden of proof as set out in subsection 163(2) of the Act? Since I am satisfied that Les Pro-Poseurs Inc. did not genuinely acquire the supplies from the four suppliers and that Mr. Séguin appropriated the amounts paid to them, the Minister has met his burden of proof as set out in subsection 163(2) of the Act.

[51] For these reasons, all of the appeals are dismissed with costs.

Signed at Ottawa, Canada, this 1st day of March 2011.

“Paul Bédard”

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Bédard J.

Translation certified true  
on this 29th day of June 2011.

François Brunet, réviseur

CITATION: 2011 TCC 113

COURT FILE NOS.: 2008-3955(IT)G, 2008-2580(GST)G,  
2008-3954(IT)G

STYLE OF CAUSE: LES PRO-POSEURS INC. and CLAUDE  
SÉGUIN AND HER MAJESTY THE  
QUEEN

PLACE OF HEARING: Montréal, Quebec

DATES OF HEARING: January 12, 13 and 14, 2011

REASONS FOR JUDGMENT BY: The Honourable Justice Paul Bédard

DATE OF JUDGMENT: March 1, 2011

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