Docket: 2011-225(GST)I

BETWEEN:

MARIE BOUCHARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on September 28, 2012, at Montréal, Quebec.

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

Counsel for the appellant:	Stéphane Rivard
Counsel for the respondent:	Philippe Morin

JUDGMENT

The appeal from the assessment made under Part IX of the *Excise Tax Act*, notice of which is dated July 27, 2010, and bears number F-026628, for the taxation period from March 1, 2004, to December 31, 2005, is dismissed.

Signed at Kingston, Ontario, this 1st day of February 2013.

"Rommel G. Masse"

Masse D.J.

Translation certified true
on this 18th day of March 2013
Margarita Gorbounova, Translator

Citation: 2013 TCC 31
Date: 20130201
Docket: 2011-225(GST)I

BETWEEN:

MARIE BOUCHARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Masse D.J.

[1] This is an appeal from an assessment dated July 27, 2010, and bearing number F-026628, made under subsection 323(3) of the *Excise Tax Act* (ETA) in respect of the appellant, Marie Bouchard, in her capacity as a director of a corporation. The corporation in question is 9127-8168 Québec inc. which operated a business in the restaurant sector under the name California Dream (the corporation, the company or the restaurant). The assessment was for a total of 25,976.43 made up of goods and services tax (GST) that the corporation should have remitted under subsection 228(2) of the ETA for the period from March 1, 2004, to December 31, 2005, and related interest and penalties. The assessment was confirmed by a decision on the objection dated December 7, 2010. Hence this appeal.

[2] The appellant was the sole director of the corporation during the time when the corporation operated the restaurant. Michel Bolduc was its sole shareholder. It is undisputed that the corporation is a legal person duly incorporated and registered for the purposes of Part IX of the ETA. The company collected GST without remitting it to the respondent during the period in question. Therefore, it failed to remit the amounts of tax that it ought to have remitted. On February 22, 2008, a judgment was rendered in respect of the company. On July 29, 2008, a writ of seizure of

immovables was reported as not having been executed or impossible to execute. Thus, the appellant was assessed as a director under subsection 323(1) of the ETA.

[3] The appellant alleges that she ceased to be a director more than two years before the assessment date. Therefore, she is relying on subsection 323(5) of the ETA as a defence, which provides that an assessment shall not be made more than two years after the person last ceased to be a director of the corporation.

Factual background

[4] In April 2003, a new restaurant called California Dream opened in Old Montréal. One could say it was the appellant's restaurant. The appellant, who describes herself as a retired lawyer, was the sole director of the corporation that operated the restaurant. She dedicated herself entirely to the restaurant, as the restaurant had been her dream. She took care of all aspects of running the business. She stated that she had worked at the restaurant 100 hours per week. Unfortunately, the restaurant was not a success. The appellant had health problems and business management problems. Her employees robbed her. In addition, her marriage was failing. She was extremely stressed out. Unfortunately for her, her dream became a nightmare, and the restaurant closed on April 23, 2006 for the last time.

[5] She testified that she had informed Michel Bolduc, the sole shareholder, that she no longer wanted anything to do with the restaurant and that she could no longer be a director. Therefore, she resigned. She alleges that, after April 23, 2006, she did nothing as a director of the corporation and, according to her, she was no longer really the business's director. Instead she focused on taking care of herself and on recovering her health. She testified that, since then, she had been seeing a psychologist and taking antidepressants.

[6] Mr. Bolduc mandated Jacques Matte, the appellant's spouse, to sell the restaurant's assets. Mr. Matte is also the appellant's partner in a law firm called Matte Bouchard. In May 2007, Mr. Matte asked the appellant to come to the office in order to sign a resolution authorizing the sale of assets. That was when she realized that she was still a director on the company's books. She went to the company's main office, which is at the same address as the Matte Bouchard law firm, in order to sign a resolution authorizing the sale. She also signed a resignation letter on the same day, May 20, 2007 (see Exhibit A-1). Since that day, the restaurant was finished for her and she spent her time in the country with her dogs in order to take care of her health. She wanted to just forget and know nothing more about it.

[7] One day in July 2008, the paralegal from the Matte Bouchard law firm called her to get information about the restaurant. The paralegal asked her to come to the office to sign some documents. On July 25, 2008, the appellant went to the office and signed a questionnaire dated July 25, 2008, for Revenu Québec (see Exhibit A-4). The handwriting on the document is not her own but rather that of the paralegal who had filled out the questionnaire. The appellant said that the paralegal did not take the time to explain the questions in the questionnaire to her. The paralegal told her that she had just taken the information that the appellant had provided to her on the telephone to fill out the questionnaire. She signed the document without reading it. The appellant really had no time to waste because there were only a few minutes left on the parking meter and she did not want to get a parking ticket. In that state of mind, she had not read the document – at that time she was signing documents without looking at them; she did not want to know anything. She said that, when someone asked her to sign documents, [TRANSLATION] "made her sick" because of her state of mind. All of that stressed her out. To her, documents were not at all important.

[8] The appellant testified that the answers to the questionnaire are inaccurate. For example, she said that the answer to the second question is false because the corporation ceased its activities on April 23, 2006, not March 31, 2006. She has no idea why the paralegal wrote March 31. She answered "yes" to the question: [TRANSLATION] "Are you currently a director of the corporation?" but to her, that question was referring to 2006, not July 25, 2008, which is the date of the document. I cannot accept this explanation. The question, [TRANSLATION]. "Are you <u>currently</u> a director of the corporation?" can have only one meaning and it is: [TRANSLATION] "In current circumstances, at the present time, today, presently" (see *Le nouveau Petit Robert,* 1993 Dicorobert inc., Montréal).

[9] In cross-examination, the appellant admitted that she had training in law, and we can therefore presume that she knows the importance of carefully reading all business documents. However, she did not read the questionnaire (Exhibit A-4) and she did not familiarize herself with the document's contents. She signed it without reading it. The paralegal filled out the document based on the information that the appellant had apparently provided to her on the telephone. She trusted the paralegal, who had explained the document to her on the telephone. According to her, all of the questions in Exhibit A-4 refer to 2006, not 2008. The next question states the following: [TRANSLATION] ". . . indicate the date on which you ceased to be a director. Please provide supporting documentation." No answer was provided to this question. However, it is clear from the appellant's testimony that the appellant ceased to be a director on May 20, 2007, at the latest. The appellant could have provided

supporting documents – her resignation letter dated May 20, 2007 (see Exhibit A-1), the shareholders' resolution (see Exhibit A-2) and the resolution of the board of directors (see Exhibit A-3) – but these documents, although favourable to her, were not provided. This leads me to doubt the authenticity of her resignation letter dated May 20, 2007, as well as of the corresponding resolutions.

[10] She said that, after May 20, 2007, the date of her resignation, she did not sign any other documents for the company [TRANSLATION] "to the best of her knowledge". She signed no power of attorney and no resolutions. She admitted that she is currently a director of Matte Bouchard, which is a law firm. She said that it is a firm of paralegals. She testified that she was in no way involved in the process of cancelling the GST and QST numbers. Mr. Matte took care of it. Mr. Morin, who is acting for the respondent, presented Exhibit I-4 to the appellant. It is a resolution of the company's board of directors. This undated document authorizes Jacques Matte to represent the company before the Ministère du Revenu du Québec regarding GST and QST. This document bears a signature that is allegedly that of the appellant, who signed the document in her capacity as sole director. The appellant categorically denied having signed this document. Mr. Morin also presented Exhibit I-5 to the appellant. That document is a power of attorney supposedly signed by the appellant in her capacity as president. That document dated September 3, 2008, authorizes the Minister of Revenue of Quebec to communicate information to Matte Bouchard, avocats. The appellant denied having signed this document as well. However, she admitted having signed an amending declaration for the purposes of the Quebec Enterprise Register, dated April 1, 2003 (see Exhibit I-1, tab 3, page 36), and she also admitted having signed another amending declaration dated December 23, 2003 (see Exhibit I-1, tab 3, page 30). She obviously also signed her resignation dated May 20, 2007 (see Exhibit A-1). She agreed that she had not followed up with Mr. Matte or the company to find out if her resignation had been published in the Enterprise Register in accordance with the *Companies Act*. She did not contact Revenu Québec or the Quebec Enterprise Register to inform them that she was no longer a director.

[11] Jacques Matte told us that he is a tax advisor. Like the appellant, he is a lawyer, and both of them practised law under the name Matte Bouchard. Their office is located at 1 Westmount Square, suite 2000, Westmount, Quebec. The company's main office is also located at this address. He testified that the restaurant closed in the spring of 2006. Then, Michel Bolduc, the sole shareholder of the company, asked Mr. Matte to take care of selling the restaurant. After the restaurant closed, Mr. Matte was only a contact person, no more, no less. His mandate was to sell the business's assets. The assets were finally sold on May 18, 2007. Mr. Matte signed the deed of sale in accordance with a resolution authorizing the sale signed by the appellant. At

the time of the sale, the appellant wondered why she had to sign the resolution in her capacity as a director given that she had nothing to do with the restaurant. Consequently, the appellant officially resigned as director and president of the company by submitting a letter to that effect on May 20, 2007 (see Exhibit A-1). The appellant's resignation was accepted by Michel Bolduc, the sole shareholder of the company, by means of a resolution of the company's shareholders signed by Mr. Bolduc on May 21, 2007 (see Exhibit A-2). Mr. Matte was appointed a director and president of the company by a resolution of the board of directors (see Exhibit A-3) signed by Mr. Matte and dated May 21, 2007. Thus, he testified that the appellant remained the company's director until May 20, 2007, after which date he took over as director at Michel Bolduc's request. After May 20, 2007, all administration was done by him and only by him. The appellant performed no administrative duties at all for the company after that date. He learned about the Notice of Assessment because the Notice was sent to the office after the restaurant had been sold. There had been no assessment before the appellant left her role of director. The profits from the sale of the assets were paid to the bank and to the lessor, not to Revenu Québec.

[12] In cross-examination, Mr. Matte acknowledged that he is a lawyer and that he has a master's degree in law and a bachelor's degree in accounting. Mr. Matte and the appellant were married but are now separated. He admitted that he had spoken with collections officers at Revenu Québec in the fall of 2007 when they called the office. He admitted that he had informed in writing neither Revenu Québec nor the Quebec Enterprise Register that the appellant was no longer the company's director. He had no power of attorney signed by the appellant because he thought that he was a director of the company even though the appellant resigned only on May 20, 2007. Clearly, he failed to inform the Quebec Enterprise Register about the change of director until July 2009, that is, over two years after he had assumed the role of director and president (see Exhibit I-1, tab 3, pages 9 and 10). He said that it was an error on the part of one of the paralegals at the office. At the end of 2007 or the beginning of 2008, Mr. Matte took the steps necessary to retroactively cancel the tax numbers as of June 1, 2007. When the restaurant's assets were sold, there was nothing left to remit to Revenu Québec.

Appellant's argument

[13] The appellant argues that she was no longer the company's director since the restaurant closed at the end of April 2006. Since that date, the appellant's spouse, Jacques Matte, looked for a buyer for the company's assets. Although the appellant had nothing to do with the restaurant, she signed and submitted her resignation only

on May 20, 2007, at Mr. Matte's request. The questionnaire (see Exhibit A-4) that she signed had not been prepared by her, and she signed it without reading it because of the precarious state of her physical and mental health. Her state of mind was such that she could no longer be a director. She categorically denies having signed the resolution authorizing Mr. Matte to represent the company before the Ministère du Revenu du Québec (Exhibit I-4) and the power of attorney dated September 3, 2008 (Exhibit I-5) – that is not her signature. She did not sign those documents, and, in fact, she has signed nothing as a director since May 20, 2007, when she signed and submitted her resignation. She has taken no actions as director since that day. She argues that she was no longer the corporation's director since the end of April 2006, when she had closed the restaurant. At the latest, she last ceased to be a director on May 20, 2007, when she resigned, and she has done nothing since that date, over two years before the assessment date. Therefore, she has no obligation to pay the tax, interest and penalties under subsection 323(1) of the ETA, given that this obligation is statute-barred under subsection 323(5).

The respondent's position

[14] The respondent claims that the appellant still acted as a director of the company during the periods when the company was liable to pay net tax to the respondent. The appellant was liable to pay the net tax that the company had failed to remit to the respondent. The respondent argues that, despite her resignation, the appellant never ceased to be a director of the company. The appellant was a *de jure* and *de facto* director at all relevant times. The respondent claims that the appellant did not really resign in 2007, but that she resigned only in July 2009. The resolution that removes the appellant as a director and replaces her with Mr. Matte was dated retroactively to a date over two years before the assessment date. The respondent argues that the appellant signed the documents in Exhibits I-4 and I-5 even though the appellant denies that the signature on those documents is hers. Signing either a resolution or a power of attorney is an act of a director. The power of attorney, Exhibit I-5, was signed on September 3, 2008, less than two years before the assessment date. Even if Exhibit A-1 is a resignation letter, the appellant continued to act as a director and therefore she was a *de facto* director because she granted power of attorney and signed the company's resolution. In addition, the resignation was not submitted to the Enterprise Register until July 20, 2009. Therefore, she is presumed to have been a director unless she can rebut this presumption. Given that she had continued to be a director of the company until September 3, 2008, a date that is less than two years before the assessment date, the appellant cannot raise the defence of prescription in subsection 323(5) of the ETA. Therefore, the appellant is solidarily

liable together with the company to pay the assessment amount as well as interest and penalties relating to it under subsection 323(1).

Statutory provisions

[15] The relevant provisions of the ETA are as follows:

> **323.** (1) If a corporation fails to remit an amount of net tax as required under subsection 228(2) or (2.3) or to pay an amount as required under section 230.1 that was paid to, or was applied to the liability of, the corporation as a net tax refund, the directors of the corporation at the time the corporation was required to remit or pay, as the case may be, the amount are jointly and severally, or solidarily, liable, together with the corporation, to pay the amount and any interest on, or penalties relating to, the amount.
>
> (2) A director of a corporation is not liable under subsection (1) unless
>
> > (*a*) a certificate for the amount of the corporation's liability referred to in that subsection has been registered in the Federal Court under section 316 and execution for that amount has been returned unsatisfied in whole or in part;
> >
> > (*b*) the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the corporation's liability referred to in subsection (1) has been proved within six months after the earlier of the date of commencement of the proceedings and the date of dissolution; or
> >
> > (*c*) the corporation has made an assignment or a bankruptcy order has been made against it under the *Bankruptcy and Insolvency Act* and a claim for the amount of the corporation's liability referred to in subsection (1) has been proved within six months after the date of the assignment or bankruptcy order.
>
> (3) A director of a corporation is not liable for a failure under subsection (1) where the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.
>
> (4) The Minister may assess any person for any amount payable by the person under this section and, where the Minister sends a notice of assessment, sections 296 to 311 apply, with such modifications as the circumstances require.
>
> (5) An assessment under subsection (4) of any amount payable by a person who is a director of a corporation shall not be made more than two years after the person last ceased to be a director of the corporation.

[16] The question of the date on which a person ceases to be a *de facto* director often arises in the context of subsection 323(5) of the ETA. This subsection provides that an assessment under subsection (4) of any amount payable by a person who is a director of a corporation shall not be made more than two years after the person last ceased to be a director of the corporation. Therefore, the date on which a person last ceases to be a director of a company is very important and is sometimes difficult to determine. Everything depends on the facts of the case.

[17] In this case, the assessment was issued on July 27, 2010. Therefore, the only issue to address is whether the appellant last ceased to be a director before July 27, 2008, that is, two years before. If that is the case, the assessment is statute-barred under subsection 323(5) of the ETA, and the appellant is in no way obliged to pay the respondent the assessment amount. If the appellant last ceased to be the director after July 27, 2008, she is liable to pay the assessment amount as well as the penalties and interest associated with it.

Analysis

[18] I have read and considered the following decisions, provided to me by Mr. Morin, who is acting for the respondent: *Bouchard c. Services financiers Excellence Inc.*, [1998] J.Q. no 1351, by Judge Gobeil, April 1, 1998; *Jean-Rock Dodier Inc. c. Robert Champagne et al*, C.Q. Québec 200-22-019076-017, by Judge Vézina, May 29, 2002. These decisions deal with the situation where a director or shareholder fails to file an amending declaration with the companies register of the province in question or of the federal government. This failure to file a notice of change of director form with the responsible body results in the presumption that the person entered in the register as a director continues to act as such, unless there is evidence to the contrary. Mr. Rivard, who is acting for the appellant, provided me with the following decisions: *Gagnon c. Québec (Sous-ministre du Revenu)*, 2004 CanLII 5287, C.Q. 160-22-000194-030, by Judge Tremblay, May 26, 2004; *Burton v. The Queen*, 2005 TCC 762, by Justice McArthur, December 5, 2005; *Québec (Commission de la construction) c. Marin*, 2005 CanLII 50228, C.Q. 605-22-000889-014, by Judge Lemoine, December 14, 2005. These decisions provide examples where the presumption was rebutted. Needless to say, it all depends on the facts of the case.

[19] I have also consulted case law dealing with *de facto* and *de jure* directors. A director who continues to act as a director of a company and to hold him or herself out to third parties as such may be considered a *de facto* director despite his or her resignation. Such a director remains subject to the responsibilities imposed by

section 323 of the ETA. The issue is to identify the relevant factors for being considered a *de facto* director. According to the Federal Court of Appeal in *Kalef v. The Queen*, [1996] 2 C.T.C. 1 (F.C.A.) and *Wheeliker v. Canada*, [1999] 2 C.T.C. 395 (F.C.A.), a person who has resigned from his or her position may nonetheless be deemed a *de facto* director if he or she exercises the prerogatives and responsibilities normally assigned to directors. The author Paul Martel explains this as follows:

> [TRANSLATION]
> As the name suggests, a *de facto* director will be considered a director where, in effect, the person usurps the position by engaging in acts that are normally reserved for directors, such as participating in meetings of the board of directors, signing resolutions of the board, making or taking part in management or disposition decisions, giving instructions on behalf of the company, holding himself or herself out to third parties as a director, etc. (Paul Martel. *La société par actions au Québec, Volume I, Les aspects juridiques*. Loose-leaf. Montréal, QC: Éditions Wilson & Lafleur, Martel Ltée, March 2012, at paras 21-68.)

[20] In *McDougall v. Canada*, [2000] G.S.T.C. 99 (T.C.C.), confirmed by [2002] G.S.T.C. 127 (F.C.A.), the three founders of the company including the appellant signed bank forms that indicated that the appellant was the director of the corporation. The appellant also provided information to Revenue Canada, including the corporation's GST registration, and signed documents as a director. The Federal Court of Appeal confirmed the decision made by the Tax Court of Canada that the appellant was a *de facto* director for the purposes of section 323 of the ETA.

[21] In the decision *Dufault Hattem v. The Queen*, 2008 TCC 32, Justice Lamarre Proulx ruled that, if a director continues to communicate with the tax authorities without informing them of his or her resignation, he or she may be considered a *de facto* director. More specifically, my colleague stated the following at paragraphs 31 and 33 of her Reasons for Judgment:

> [31] If a director resigns from the board of a corporation that is a tax debtor, and wishes the resignation to be a juridical act that is valid as against the Minister, then, according to the Quebec *Companies Act*, that director must notify the Minister of his resignation in the course of the exchanges of correspondence regarding the corporation's tax debt and the liability of its directors. I do not think that statutes of the other provinces or the federal Act concerning companies are any different in this regard.
>
> . . .
>
> [33] A person who holds himself out to third parties as a director becomes by virtue thereof a *de facto* director. . . .

[22] In *Ustel v. The Queen*, 2010 TCC 444, the appellant had resigned from his position in 2002 but signed tax returns as a director in 2003-04. The appellant admitted that he had resigned from his position of director in order to limit his liability in respect of the corporation's unpaid tax debts. In addition, the appellant failed to notify the Canada Revenue Agency following his resignation and failed to enter his resignation in the corporation's books. My colleague Justice Hogan ruled that, in 2008, when the assessment was issued, the appellant was still a *de facto* director. Accordingly, Justice Hogan found that the Canada Revenue Agency had reasonable grounds to believe that the appellant continued to be a director in 2008, and therefore he could not rely on the two-year limitation period under subsection 323(5) of the ETA.

[23] Did the appellant last cease to be a director of the corporation before or after July 27, 2008? Did she take any actions in her capacity as director after July 27, 2008? The question of who signed which documents and when these documents were signed is an issue of key importance to the decision I have to make. It is the authenticity of the supposed signature of Marie Bouchard on the documents at issue or on file that is at issue. I must decide whether she signed the two documents the authenticity of which she is disputing, namely, Exhibits I-4 and I-5.

[24] In *R. v. Cunsolo*, [2011] O.J. No. 4204 (QL), 277 C.C.C. (3d) 435, Justice Hill, a very respected judge of the Ontario Superior Court, ruled that a judge or jury may perform a handwriting comparison without necessarily needing evidence from a handwriting expert. Justice Hill stated the following at paragraph 246 et seq.:

> [246] A trier of fact is entitled, and indeed not precluded, as a matter of common law, to undertake a comparative analysis of handwriting specimens without the intervention of witnesses interpreting or identifying the relevant writing – a deliberative and fact-finding process which is not ousted by s. 8 of the *Canada Evidence Act* which provides:
>
> - Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by witnesses, and such writings, and the evidence of witnesses respecting those writings, may be submitted to the court and jury as proof of the genuineness or otherwise of the writing in dispute.
>
> See *R. v. Abdi* 1997 CanLII 4448 (ON CA), (1997), 116 C.C.C. (3d) 385 (Ont. C.A.), at paras. 13-23, 25; *R. v. Malvoisin* (2006), 36 M.V.R. (5th) 187 (Ont. C.A.), at para. 4.

> [247] It is important as an aspect of the accused knowing the case to be met, that he or she be on notice that the trier of fact may engage in comparative handwriting identification analysis: *R. v. Flynn*, 2010 ONCA 424 (CanLII), 2010 ONCA 424, at para. 20; *R. v. Anderson*, 2005 BCCA 143 (CanLII), 2005 BCCA 143, at paras. 11-14.
>
> . . .
>
> [250] . . . a trier of fact is entitled to use his or her "own eyes and ... common sense" in making "an educated and reasonable comparison" of handwriting properly tendered in evidence (*Abdi*, at paras. 26, 29). . . .

It must be noted that *Cunsolo* was a criminal case where the burden of proof is very heavy. Therefore, the same principles may certainly be applied in a civil case.

[25] Let us consider the supposed signatures of the appellant, Marie Bouchard. Exhibit I-1, tab 3, contains copies of documents from the Quebec Enterprise Register concerning the company. The signature "Marie Bouchard" may be seen at pages 13, 15, 24, 30 and 36. The signatures at pages 24, 30 and 36 are all very similar to each other. Therefore, I can conclude that the same person probably signed at pages 24, 30 and 36. The appellant admitted that the signature at page 36 is hers; therefore, I can conclude that the signatures at pages 24 and 30 are probably hers as well. Indeed, there is no reason why someone other than Marie Bouchard would have signed these documents.

[26] The signatures at pages 13 and 15 are very similar to each other. Therefore, I can conclude that the same person signed at pages 13 and 15. However, the signatures at pages 13 and 15 are completely different from those at pages 24, 30 and 36. Thus, we may conclude that someone other than the appellant signed pages 13 and 15. Why? I do not know.

[27] The appellant categorically denied having signed Exhibit I-4 (undated resolution of the board of directors authorizing Jacques Matte to represent the company with the Ministère du Revenu du Québec regarding GST and QST) and Exhibit I-5 (power of attorney authorizing Revenu Québec to communicate information to Matte Bouchard). But she admitted having signed Exhibits A-4 (the questionnaire), the amending declaration (see Exhibit I-1, tab 3, page 36) and her resignation letter (Exhibit A-1). A comparison of the documents that she admitted having signed (Exhibits A-1 and A-4 and Exhibit I-1, tab 3, page 36) with the documents that she denied having signed (Exhibits I-4 and I-5) shows that all the signatures are very similar. Marie Bouchard's signature is very distinctive and

complex. The shape of the letters in each of the signatures is similar. Although there are some small differences and variations among the signatures in the Exhibits, they are insignificant differences and variations. We may certainly expect differences and variations in our writing from one day to the next as no one signs their name in exactly the same way twice. Marie Bouchard's signature has such unique, distinctive and complex characteristics, that it would be very difficult for a person other than Marie Bouchard to copy her signature precisely and exactly. All of this leads me to find that Marie Bouchard probably signed the documents at issue or on file in Exhibits A-4 and A-5 despite her protestations to the contrary. In addition, we must ask ourselves who else would have a reason to sign resolutions of the company's board of directors and who else would have a reason to sign a power of attorney or authorization as the company's president?

[28] There is another aspect of this case that militates against the appellant's argument and which satisfies me even further that the signatures on Exhibits I-4 and I-5 are probably those of Marie Bouchard. On September 3, 2008, Jacques Matte as the company's agent sent a letter dated September 3, 2008, to Revenu Québec, asking that all of the company's GST and QST numbers be cancelled (Exhibit I-6). We can see that Exhibit I-5, the power of attorney, allegedly signed by the appellant authorizing Revenu Québec to communicate with Matte Bouchard is also dated September 3, 2008. Coincidence? I think not. In addition, the letter (Exhibit I-6) was faxed to Revenu Québec on September 17, 2008, at 15:48. The fax number is 514-937-2971, which is the fax number of Matte Bouchard. Exhibit I-5 was sent to Revenu Québec by means of the same fax machine on the same date and at the same time: September 17, 2008, at 15:48. The undated resolution of the board of directors supposedly signed by Marie Bouchard (see Exhibit I-4) bears the same date, time and fax number. Fax machines are quite ubiquitous and are so omnipresent in all business offices across Canada that I can take judicial notice of the fact that the date, time and fax number of the sender of a document are printed on the copy of the recipient of the document. It is difficult to resist the conclusion that Mr. Matte obtained the appellant's signature on Exhibits I-4 and I-5 with the aim of sending them to Revenu Québec. Jacques Matte and Marie Bouchard are the only people who have any reason to send these documents to Revenu Québec. I agree with Mr. Rivard that the two documents at issue should have been shown to Mr. Matte, like they were shown to Marie Bouchard, so that the Court could at least have had his explanations, but this was not done. In any case, I doubt that Mr. Matte could have given a satisfactory explanation. Either Exhibits I-4 and I-5 were signed by Marie Bouchard or someone forged her signature on the exhibits.

[29] Unfortunately, I have come to the conclusion that, when Mr. Matte tells me that Marie Bouchard has done nothing as a director of the company after May 20, 2007, I do not believe him. Similarly, when Marie Bouchard tells me that she has done nothing as a director after May 20, 2007, I do not believe her. When Marie Bouchard tells me that she did not sign Exhibits I-4 and I-5, I do not believe her. Their testimony to that effect is not credible.

Conclusion

[30] I find that the appellant, Marie Bouchard, did not discharge her burden of proof and rebut the Minister's exact assumptions: see *Hickman Motors Ltd. v. Canada*, [1997] 2 S.C.R. 336. I am satisfied that, despite her alleged resignation dated May 20, 2007, the appellant continued to be a director of the company signing resolutions and a power of attorney in her capacity as president and director of the company until September 3, 2008, at the latest, which is less than two years before the assessment date. She was therefore a *de facto* director if not a *de jure* director. Therefore, she cannot rely on the defence of prescription under subsection 323(5) of the ETA. The fact that the change of director was published in the Quebec Enterprise Register only two years after her supposed resignation even further satisfies me of this fact.

[31] For these reasons, the appeal is dismissed.

Signed at Kingston, Ontario, this 1st day of February 2013.

"Rommel G. Masse"

Masse D.J.

Translation certified true
on this 18th day of March 2013
Margarita Gorbounova, Translator

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REASONS FOR JUDGMENT BY:	The Honourable Rommel G. Masse, Deputy Judge
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APPEARANCES:

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