Docket: 2002-1092(IT)G

BETWEEN:

ALAIN PARENTEAU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeal of
Gilles Daoust (2002-1087(IT)G) on June 14, 2004, at Sherbrooke, Quebec.

Before: The Honourable Justice François Angers

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Agathe Cavanagh and Marie-Aimée Cantin

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JUDGMENT

The appeal from the assessment established under subsection 227.1(1) of the *Income Tax Act*, the notice of which is dated April 18, 2001, is allowed with costs and the assessment is vacated, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of November 2004.

"François Angers"

Angers J.

Translation certified true
on this 25th day of February 2005.
Elizabeth Tan, Translator

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GILLES DAOUST,

Appellant,

and

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Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Alain Parenteau (2002-1092(IT)G) on June 14, 2004 at Sherbrooke, Quebec.

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on this 25th day of February 2005.

Elizabeth Tan, Translator

Citation: 2004TCC724
Date: 20041110
Dockets: 2002-1092(IT)G
2002-1087(IT)G

BETWEEN:

ALAIN PARENTEAU and
GILLES DAOUST,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Angers J.

[1] The two appeals were heard on common evidence. They concern the assessments issued April 18, 2001, to the two Appellants, holding them jointly and severally responsible for failing to remit $29,669 in source deductions for the April 1999 to March 2000 period for the company Horizon Travail Inc (**Horizon Travail**). This is the amount due for all Horizon Travail's source deductions (SD) for income tax, employment insurance contributions, interest and penalties. The assessment was issued under subsection 227.1(1) of the *Income Tax Act* (the "Act") and subsection 83(1) of the *Employment Insurance Act* (EIA). A certificate dated May 31, 2000, was filed by the Respondent with the Clerk of the Federal Court of Canada attesting to the amount payable.

[2] Horizon Travail was incorporated on November 22, 1996, under Part III of Quebec's *Companies Act.* This part applies to non-share, not-for-profit companies. On February 26, 1998, through additional letters patent, Horizon Travail changed its name and purposes. At that time, the two Appellants were board members. The company name became Horizon Travail after additional new letters patent were issued on May 20, 1998. In the June 1998 general regulations, the purposes were defined as follows:

- obtain training and encourage work placement for land-management workers;
- manage and develop land with sustainable development in mind;
- obtain and make the equipment required for the purposes stated above available as soon as possible;
- canvass for and receive donations, bequests and other contributions to continue its mission;
- these purposes do not give donators or their assigns the right to recourse, in any form, to the money given to the company;
- the company will function with no monetary gain for its members and all profits or growth will be used towards the accomplishment of its purposes.

[3] During the relevant period, Paul Champagne and Patrick Michaud were also officers of the company. Moreover, Paul Champagne worked for Horizon Travail as director general. As for the two Appellants, they were not paid by the company except when their professional services were required or when they received fees for participating in board meetings. Paul Champagne was therefore the only person who took care of the company on a daily basis.

[4] The company's income came mainly from government subsidies. Some of the subsidies were given at the beginning of the projects, another part when the projects were underway, and the last 20% was given at the end. Since there were over one hundred employees, the company was always in need of cash assets, which did not always meet the demand. It therefore negotiated a line of credit to cover periods of difficulty, and sometimes a subsidy check was requested in advance to meet the financial needs of the projects.

[5] The board met around four times per year. In the fall of 1999, the Appellant Alain Parenteau was working in Florida on other projects, Gilles Daoust was taking care of his own company and the director, Patrick Michaud, was working in Québec City. For health reasons, Paul Champagne had to resign from his position as director general on September 28, 1999. He appointed Pauline Nadeau and Michel Rodrigue acting members of the management team to carry out his duties as the company's director in his absence. He also appointed Manon Sévigny director of finances and Alain Tremblay was in charge of the companies tied to Horizon Travail. By resolution dated October 8, 1999, Paul Champagne and Gilles Daoust, Michel Rodrigue and Pauline Nadeau became signatories. The Appellant Gilles Daoust was therefore the only director on site and, according to

his testimony, was responsible for reassuring the employees and ensuring his presence.

[6] In the fall of 1999, Horizon Travail experienced financial difficulties that hindered its short-term viability. This led the acting management team to question its future and prepare a document called, [TRANSLATION] "organizational diagnosis and recommendations." Michel Rodrigue contacted the Appellant Alain Parenteau in Florida and asked him to come back and get the board together to study the document. This document is dated October 22, 1999. In addition to covering many aspects of its operations, it raises questions regarding the financial management of the company and recommends a series of measures to ensure follow-ups and monthly financial analyses. The document does not question the potential for success of Horizon Travail; it states that despite the problems it had been having with cash assets since December 1998, it managed to survive. The document recommended, however, that the working capital be refinanced and that decisions be centralized with one person.

[7] The board met on October 24, 1999. All the directors were present, including Paul Champagne, although he is not listed in the minutes. The document on the organizational diagnosis and recommendations was submitted, and the minutes show that the members were disappointed in the lack of monitoring of Horizon Travail's finances. Michel Rodrigue was appointed acting director general. He proposed hiring a controller as soon as possible so that detailed financial reports could be provided to the board. This resolution was adopted. It also states that from then until the time the controller started, the acting management team was to send documents to the Appellant Gilles Daoust, including a list of accounts payable, the priority of the accounts payable, and the payment plans for these accounts.

[8] At this same meeting, a financial report as of September 30, 1999, prepared by Manon Sévigny, and the financial statements for Horizon Travail as of March 30, 1999 were distributed. None of these documents mentioned Horizon Travail's overdue SD payments. The financial statements as of March 31, 1999, [*sic*] show an income surplus over expenses, of $29,842 and insufficient cash assets at the end of the fiscal year of $92,247 for a total gross income of close to $3,000,000.

[9] Two days after the board meeting, Manon Sévigny and Patrick Michaud resigned from their respective positions of director of finances and administrator of Horizon Travail. The acting director general, Michel Rodrigue, implemented directives that were to rectify the company's financial situation, among other

things. He gave the board three activity reports on October 29, November 5, and November 12, 1999. Only one of these reports mentioned overdue SD payments, the November 12 report. It states that they were significantly overdue and that the exact amount payable for the period in question, ending November 15, and the total amount due would be sent to them shortly. This report proposes paying the amount due for the current period. For the past due amounts, he proposed selling some of Horizon Travail's unused assets and pay as they went. He suggested depositing income checks in a special account in order to make the monthly payments after coming to an agreement with the two levels of government.

[10] A few days before this last activity report, on November 5, Horizon Travail's bank informed it that for all future credit, it was requiring a guarantee by one or some persons with personal holdings to justify the requested credit and that its operating credit was not renewed with the current conditions, thus eliminating its $75,000 line of credit.

[11] According to the Appellant Parenteau, the November 12, 1999, report was given to the Appellant Gilles Daoust by mail and his directive regarding the SD payments was that they were to be paid. However, at the end of November at Paul Champagne's return, Gilles Daoust realized that the SD had not been paid since August. He then contacted Ms. Sévigny for an explanation. As for Paul Champagne, he contacted the Appellant Parenteau in Florida to find out whether the SD payment was to be made or whether a payment proposal was to be presented to the two levels of government, so long as Horizon Travail's continuing activities would allow it to respect the agreements. According to the Appellant Parenteau, an agreement was made for six monthly payments of $12,238.07, starting in January 2000. The bank refused to cash the last three checks because, according to the Appellant Parenteau, the Canada Customs and Revenue Agency (CCRA) took control of Horizon Travail's bank account.

[12] At the time the agreement regarding the SD refund was made, the Appellants honestly believed that they could continue their activities since Horizon Travail had the right to subsidies for another year and it was waiting for one of these at the beginning of April 2000. Also, in Horizon Travail's bank account, there was $176,153.22 on November 25, 1999, which led to the belief that all of the SD could be repaid with the agreement.

[13] In the months that followed, the financial situation deteriorated and CCRA officers intervened in the case to recover the SD. All the CCRA officers' recovery actions were supported by the directors, but all their efforts did not lead to full

repayment. Moreover, the Appellant Alain Parenteau returned from Florida near the end of January in order to manage the situation. He has a bachelor's degree in education, a bachelor's degree in environment and a master's degree in administration.

[14] Alain Tremblay is practicum coordinator at the Université de Sherbrooke. He was involved with Horizon Travail from the beginning and apparently helped Paul Champagne get the project going. He returned later, in the fall of 1999, when Mr. Champagne was away for health reasons. Until November 26, 1999, he held the position of director general with Horizon Solutions Inc, a company that provided management, financing, and accounting services to Horizon Travail.

[15] He is the one who prepared the organizational diagnosis that the board reviewed at its October 24, 1999, meeting. He agrees that not one of the documents presented at this meeting made mention of the overdue source deduction payments that Horizon Travail owed the government. At this meeting, board members unanimously blamed management for the financial state, because of a lack of detailed financial information and he confirms that a resolution was adopted to hire a controller for Horizon Travail so that detailed financial reports could be provided to the board on a regular basis. Mr. Tremblay also stated that at this meeting, a list of accounts payable was requested, for financial management in the meantime, and that Manon Sévigny resigned from her duties as director of finances two days after the meeting.

[16] Mr. Tremblay met with representatives of the Bank of Nova Scotia on November 4, 1999, to discuss Horizon travail's financial situation. The next day, the Bank cancelled the $75,000 line of credit without warning, and did so after significant sums had been deposited. On that day, according to Mr. Tremblay, he did not know the amounts of the overdue government payments. It was only in the following weeks that the amounts were known and that the information could be provided to the directors.

[17] The Appellant Gilles Daoust is an environmental expert and became director at Horizon Travail because of his field of knowledge. He became the sole manager on site when Mr. Champagne left for health reasons. He testified that as soon as he was made aware of the overdue SD payments, on November 12, he obtained information from an accountant, met with the acting director and told the director to pay the debts as a priority. He implemented a series of measures such as having the rent lowered, ensuring that equipment no longer in use was sold, and ensuring that contracts were terminated and paid. According to Mr. Daoust, Mr. Champagne

was to return shortly. In fact, when he was informed of the SD situation, Mr. Champagne was to return the following week. In an e-mail to the acting director, on November 12, 1999, Mr. Daoust made the following comments regarding the SD:

> [TRANSLATION]
> Significantly overdue. What does significantly mean? I would like to remind you that I stated that the SD payment was to be A PRIORITY over other accounts. These should not be overdue at any time. Annie is to give me the amounts payable for the current period (payment on the 15th of the month, so on Monday). She is also to report on the total amount due. Get back to me on this.
>
> I propose that the amount due for the current period be paid on Monday (around $17,000) and the rest be paid as the unused assets are sold off. We could put the checks received in a special SD account in order to PAY EVERYTHING BEFORE the other accounts and make payments every month in agreement with the two levels of government.

[18] His recovery plan did not work because the bank did not renew the line of credit. Horizon Travail's activities continued in order to complete the contract and steps were taken with CCRA to pay the SD. Then, equipment and bank accounts were seized and efforts were focused on selling assets to pay the SD.

[19] Normand Davey is a CCRA auditor. In May 2000, he received the mandate to calculate the amount of Horizon travail's SD for 1999 and 2000. He met with the Appellant Alain Parenteau, who provided good collaboration. He found the T-4 and although the first contribution was close to $89,000, an adjustment considerably reduced the amount. In April 1999, Horizon Travail owed $25,000 in SD and made a payment of $16,400, leaving an unpaid balance of $8,944. In May 1999, the SD owing were paid in full. In June 1999, the SD were $15,286 and Horizon Travail paid $6,416, leaving an unpaid balance of $8,869. In July 1999, the balance was $20,389 and the payment was made in full. In August 1999, a partial payment was made, the September and October 1999 payments were not made, and the November and December 1999 payments were made in full. After the audit, and the various seizures and sales, the balance owing was $29,669.

[20] Owen Duguay testified on the steps taken during the sale of certain assets and the measures taken to pay the SD. He met with Ronald Pépin, a consultant hired by Horizon Travail, to reach agreements for the SD payments. He testified on

his involvement in some of the agreements made by Horizon Travail and other companies for using and selling some of their equipment.

[21] The relevant legal provisions in this case can be found in subsections 227.1(1), 227.1(2) and 227.1(3) of the Act and in subsections 83(1), 83(2) and 83(3) of the EIA.

[22] Subsections 227.1(1), 227.1(2) and 227.1(3) of the Act state:

> 227.1 Liability of directors for failure to deduct
>
> (1) Where a corporation has failed to deduct or withhold an amount as required by subsection 135(3) or section 153 or 215, has failed to remit such an amount or has failed to pay an amount of tax for a taxation year as required under Part VII or VIII, the directors of the corporation at the time the corporation was required to deduct, withhold, remit or pay the amount are jointly and severally liable, together with the corporation, to pay that amount and any interest or penalties relating thereto.
>
> 227.1(2) Limitations on liability
>
> A director is not liable under subsection 227.1(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 223 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 that subsection 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 receiving 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 that subsection has been proved within six months after the date of the assignment or receiving order.
>
> 227.1 (3) Idem

> A director is not liable for a failure under subsection 227.1(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.

[23] Subsections 83(1), 83(2) and 83(3) of the EIA state:

> 83(1) If an employer who fails to deduct or remit an amount as and when required under subsection 82(1) is a corporation, the persons who were the directors of the corporation at the time when the failure occurred are jointly and severally liable, together with the corporation, to pay Her Majesty that amount and any related interest or penalties.
>
> 83(2) Application of Income Tax Act provisions
> Subsections 227.1(2) to (7) of the Income Tax Act apply, with such modifications as the circumstances require, to a director of the corporation.
>
> 83(3) Assessment provisions applicable to directors
> The provisions of this Part respecting the assessment of an employer for an amount payable under this Act and respecting the rights and obligations of an employer so assessed apply to a director of the corporation in respect of an amount payable by the director under subsection (1) in the same manner and to the same extent as if the director were the employer mentioned in those provisions.

[24] The issue at hand is whether the Appellants, in accordance with subsection 227.1(3) of the Act, established on a balance or probabilities that they acted with the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

[25] The law is well summarized in the Federal Court of Appeal decision *Soper v. Canada*, [1998] 1 F.C. 124, in which Robertson J. addressed the standard of care and the obligation of directors to act while maintaining a distinction between inside and outside directors. At paragraphs 40 and 41, he states:

> This is a convenient place to summarize my findings in respect of subsection 227.1(3) of the Income Tax Act. The standard of care laid down in subsection 227.1(3) of the Act is inherently flexible. Rather than treating directors as a homogeneous group of professionals whose conduct is governed by a single, unchanging standard, that provision embraces a subjective element which takes

> into account the personal knowledge and background of the director, as well as his or her corporate circumstances in the form of, inter alia, the company's organization, resources, customs and conduct. Thus, for example, more is expected of individuals with superior qualifications (e.g. experienced business-persons).
>
> The standard of care set out in subsection 227.1(3) of the Act is, therefore, not purely objective. Nor is it purely subjective. It is not enough for a director to say he or she did his or her best, for that is an invocation of the purely subjective standard. Equally clear is that honesty is not enough. However, the standard is not a professional one. Nor is it the negligence law standard that governs these cases. Rather, the Act contains both objective elements-embodied in the reasonable person language-and subjective elements-inherent in individual considerations like "skill" and the idea of "comparable circumstances". Accordingly, the standard can be properly described as "objective subjective".

[26] At paragraphs 44, 52, and 53, he continued:

> At the outset, I wish to emphasize that in adopting this analytical approach I am not suggesting that liability is dependent simply upon whether a person is classified as an inside as opposed to an outside director. Rather, that characterization is simply the starting point of my analysis. At the same time, however, it is difficult to deny that inside directors, meaning those involved in the day-to-day management of the company and who influence the conduct of its business affairs, will have the most difficulty in establishing the due diligence defence. For such individuals, it will be a challenge to argue convincingly that, despite their daily role in corporate management, they lacked business acumen to the extent that that factor should overtake the assumption that they did know, or ought to have known, of both remittance requirements and any problem in this regard. In short, inside directors will face a significant hurdle when arguing that the subjective element of the standard of care should predominate over its objective aspect.
>
> … This is not to suggest that a director can adopt an entirely passive approach but only that, unless there is reason for suspicion, it is permissible to rely on the day-to-day corporate managers to be responsible for the payment of debt obligations such as those owing to Her Majesty. This falls within the fourth proposition in the City Equitable case: see discussion supra, at page 146-147. The question remains, however, as to when a positive duty to act arises.

> In my view, the positive duty to act arises where a director obtains information, or becomes aware of facts, which might lead one to conclude that there is, or could reasonably be, a potential problem with remittances. Put differently, it is indeed incumbent upon an outside director to take positive steps if he or she knew, or ought to have known, that the corporation could be experiencing a remittance problem. The typical situation in which a director is, or ought to have been, apprised of the possibility of such a problem is where the company is having financial difficulties…

[27] In light of these statements, it becomes important to determine whether the two Appellants in this case are outside or inside directors. The evidence presented leads me to find that at Horizon Travail, there was a management team whose key responsibility was to ensure the daily management of Horizon Travail's activities. This team was led by one of Horizon Travail's directors, Paul Champagne, who filled this position on a full-time basis. The two Appellants were not involved in the daily management of this company, at least not until Paul Champagne left in the fall of 1999 on sick leave. It was only at that time that Gilles Daoust became more actively involved, until a team of acting managers was set up to ensure Horizon Travail's operations. The two Appellants, until Paul Champagne left, attended board meetings four times per year. Their more active involvement began at the end of October 1999 when they were called upon to review the organizational diagnosis and recommendations. It must be noted that difference between inside and outside directors is not important for the purposes of releasing outside directors from their responsibility under subsection 227.1(1) of the Act, but rather to allow for some kind of flexibility in applying the standard of care to be used. This responsibility is no different for volunteer directors or not-for-profit companies. On this issue, Létourneau J. of the Federal Court of Appeal, in *Corsano v. Canada*, 99 DTC 5658, stated at paragraphs 22 to 24:

> Relying upon the decision in Soper, the respondents argued that the standard of care found in subsection 227.1(3) of the Act is inherently flexible and, therefore, there are different standards to meet different situations. Accordingly, there would be one standard for inside directors, one for outside directors, one for directors of a not-for-profit corporation, one for volunteer directors and another one for paid directors. To accept this approach begs the thorny question: which of all these different standards should [page188] a court apply if one is, at the same time, an outside director acting without remuneration in a not-for-profit corporation?
>
> It is true that in Soper, this Court wrote that "[t]he standard of care laid down in subsection 227.1(3) of the Act is inherently flexible".

> [See Note 11 below] It is obvious, however, on the reading of the decision, that it is the application of the standard that is flexible because of the varying and different skills, factors and circumstances that are to be weighed in measuring whether a director in a given situation lived up to the standard of care established by the Act. For, subsection 227.1(3) statutorily imposes only one standard to all directors, that is to say whether 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.
>
> I agree with counsel for the Appellant that the rationale for subsection 227.1(1) is the ultimate accountability of the directors of a company for the deduction and remittance of employees' taxes and that such accountability cannot depend on whether the company is a profit or not-for-profit company, or I would add whether the directors are paid or not or whether they are nominal but active or merely passive directors. All directors of all companies are liable for their failure if they do not meet the single standard of care provided for in subsection 227.1(3) of the Act. The flexibility is in the application of the standard since the qualifications, skills and attributes of a director will vary from case to case. So will the circumstances leading to and surrounding the failure to hold and remit the sums due.

[28] In this case, the two Appellants, although directors of Horizon Travail, definitely did not have a role in the daily management of its activities. In my opinion, they were therefore outside directors. Each was busy earning a living in his respective field and contributed their knowledge to the goals and objectives of Horizon Travel rather than the management aspect of staffing or financial administration. According to their testimony, Horizon Travail's financial difficulties were not alarming since its income came from government subsidies, which ensured its financial performance. Moreover, some of Horizon Travail's projects also generated additional income.

[29] A higher standard of care exists when a director is aware of the company's financial difficulties, since their risk is greater than that of other companies to default on their tax payments (see *Smith v. Canada*, 2001 F.C.A. 84). However, in this case, in spite of Horizon Travail's lack of cash assets, the SD payments were made until March 1999. Moreover, even though the financial statements of March 30, 1999, and September 30, 1999, showed insufficient cash assets, I accept the Appellants' explanation that their income came from subsidies and independent projects would stabilize the situation especially since subsidies were always slow in coming.

[30] In my opinion, the Appellants did not know that Horizon Travail had problems with its SD payments, nor did they know that such a problem could exist, in light of the evidence heard. This claim was confirmed in Alain Tremblay's testimony and in his December 23, 2002, affidavit where he states the chain of events. I will reproduce this affidavit in its entirety:

> [TRANSLATION]
> 1. Until November 26, 1999, I held the position of director general at Horizon Solutions Inc, a company that provided management, financing and accounting services to Horizon Travail Inc;
> 2. On September 16, 1999, Paul Champagne, director general of Horizon Travail Inc announced his absence from Horizon Travail Inc for an undetermined period, for health reasons;
> 3. I was a member of the acting management team at Horizon Travail Inc, appointed by Paul Champagne for the October 4, 1999, to November 24, 1999, period;
> 4. On October 4, 1999, in the presence of Manon Sévigny, Pauline Nadeau and Michel Rodrigue, Gilles Daoust, director of Horizon Travail Inc asked Manon Sévigny to send him financial reports;
> 5. In order to prepare an organizational diagnosis for Horizon Travail Inc, I received a copy of the financial statements and the report of the results prepared for Horizon Travail Inc by the finance branch of Horizon Travail, namely, Manon Sévigny, on or around October 21, 1999;
> 6. On or around October 22, 1999, with Pauline Nadeau, Michel Rodrigue and Manon Sévigny I prepared and filed an organizational diagnosis for Horizon Travail Inc, which was presented with the financial statement and the report of the results to the board of Horizon Travail Inc;
> 7. Neither the financial statements, the report of the results, or the organizational diagnosis mentioned that Horizon Travail Inc's source deductions payable to the governments were overdue;
> 8. At the October 24, 1999, meeting, the board members unanimously blamed the finance branch because of the lack of detailed financial information;
> 9. At this same meeting, it was resolved to hire a financial controller for Horizon Travail Inc so that detailed financial reports could be produced regularly for the board;
> 10. At this same meeting, the board asked Manon Sévigny to prepare a list of the accounts payable in order to manage

> the finances in the meantime, and asked Michel Rodrigue to present an activity report every week;
> 11. On or around October 26, 1999, finance director Manon Sévigny resigned from her duties and the management committee took the steps required to hire a controller;
> 12. On or around November 4, 1999, in the presence of Pauline Nadeau and Michel Rodrigue, I met with representatives from the Bank of Nova Scotia to discuss Horizon Travail's financial situation;
> 13. On or around November 5, 1999, with no advanced notice, the Bank of Nova Scotia cancelled the $75,000,000 line of credit granted to Horizon Travail Inc after large sums were deposited into the company's account;
> 14. Because of the above, when the Bank of Nova Scotia cancelled the $75,000,000 line of credit granted to Horizon Travail Inc we were not aware of the overdue amounts of the government payments;
> 15. It was only in the following weeks that the overdue amounts were known, and we passed this information on to the directors;
> 16. Given the above, it was impossible for Horizon Travail Inc to make the government payments that were owing;
> 17. All facts stated in the present affidavit are true.

[31] It must also be kept in mind that, at any rate, the standard is the one of reasonableness and not of perfection (see *Smith, supra*).

[32] The overdue SD payments go back to April 1999. During the period of April to November, they were either paid in whole (May and July), partially (April, June and August), or not at all (September and October). Once the Appellants were made aware of the situation, at the beginning of November, the November and December SD payments were made in whole. Efforts were made from this time on to rectify or fix the situation. I am not stating this fact to show the degree of responsibility the two Appellants took once they were aware of the overdue payments, since these delayed measures are irrelevant and do not respond to the standard of diligence set out in the Act. I refer to *Trann v. Canada*, [2004] F.C.A. 138, at paragraph 11:

> The Applicant, as sole director and manager had the responsibility to ensure that the remittances were made. His belated attempts to remedy the situation subsequent to the failure to remit the GST funds as they became due are not sufficient to meet the due diligence test in the Act.

[33] I am stating the fact to show that when the information was communicated to them, in particular when the Appellant Gilles Daoust had to take on increased responsibilities at the beginning of November in terms of the daily management of Horizon Travail, he assumed responsibilities equal to those of an inside director. For a strong understanding of this responsibility, he sought information from an accountant and then asked that the SD payments be made a priority. His scientific training did not prepare him for this possibility, but he showed his sense of responsibility when he became more involved in the daily management. This comment was in a November 12, 1999, activity report for Horizon Travail:

> [TRANSLATION]
> Comments
>
> DAS
>
> Significantly overdue. Annie is to give me the amounts to be paid for the current period (remittance the 15th of the month, so Monday). She is also to give me a report of total amount due.
>
> I suggest paying the amount due for the current period this Monday (around $17,000) and paying the balance as sales are made of unused assets. We could put checks received in a special DAS account and make remittances each month in agreement with the two levels of government.

[34] In this case, there was a management team to ensure that daily activities at Horizon Travail ran smoothly. This company's income is dependent upon government subsidies and, despite everything, it managed to generate income from non-subsidized projects. At times, it had over one hundred employees. The directors met four times a year and despite some financial difficulty, they had confidence in the financial viability of the program. Since this is a not-for-profit company, it was not required to make a profit, and in the fall of 1999, the organizational diagnosis and recommendations did not create doubt as to the potential for success. Up until the end of October 1999, it is my opinion that the two Appellants were not aware of the overdue SD payments and there seems to be nothing that could lead me to conclude that they should have been aware of the overdue payments. Horizon Travail was managed by a team set up by the directors so that the team could manage responsibly. Combined with sure income sources, in my opinion, concrete steps were taken to ensure the SD were made. Funds were also available at different times to pay them.

[35] For these reasons, I find that the Appellants acted with as much care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

[36] The appeals are allowed and the Minister's assessments for the Appellants are vacated, all with costs.

Signed at Ottawa, Canada, this 10th day of November 2004.

"François Angers"

Angers J.

Translation certified true
on this 25th day of February 2005.

Elizabeth Tan, Translator

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REASONS FOR JUDGMENT BY:	The Honourable Justice François Angers
DATE OF HEARING:	November 10, 2004

APPEARANCES:

For the Appellants:	The Appellants themselves
Counsel for the Respondent:	Agathe Cavanagh and Marie-Aimée Cantin

COUNSEL OF RECORD:

For the Appellants:

Name:
Firm:

For the Respondent:	Morris Rosenberg Deputy Attorney General of Canada Ottawa, Canada