Docket: 2003-2745(IT)G

BETWEEN:

BRIAN ELLIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on May 29 and 30, 2006, at Vancouver, British Columbia,

By: The Honourable Justice E.A. Bowie

Appearances:

| | |
|---|---|
| Counsel for the Appellant: | Roger Taylor and Al-Nawaz Nanji |
| Counsel for the Respondent: | Roger Leclaire and Jade Boucher |

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**JUDGMENT**

The appeals from reassessments of tax made under the *Income Tax Act* for the 2000 and 2001 taxation years are dismissed, with costs.

Signed at Ottawa, Canada, this 14th day of May, 2007.

"E.A. Bowie"

Bowie J.

Citation: 2007TCC289
Date: 20070514
Docket: 2003-2745(IT)G

BETWEEN:

BRIAN ELLIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

## REASONS FOR JUDGMENT

**Bowie J.**

[1] The appellant was president, CEO and a director of eDispatch.com ("the company" or "eDispatch"), a software development company, during the period between August 21, 1998 and the end of December 2000, at which time he left the company for reasons related to his health. The principal issue in these appeals is whether certain losses that he suffered on dispositions of shares of the company in the taxation years 2000 and 2001 were on income or on capital account. There is also an issue as to the Appellant's claim that he is entitled to deduct from his income in the 2000 taxation year the amount of $51,180.00 that he paid as fees to Ernst & Young, a firm of chartered accountants, to obtain professional advice.

[2] The appellant and the company entered into a written contract of employment in August 1998. It provided that Mr. Ellis would be paid $125,000.00 per year, which he testified was about one half of the amount that could be considered appropriate remuneration for the position. Upon signing the contract, he was granted 75,000 stock options at an exercise price of $0.75, the fair market value of the shares at that time. These options were fully vested. In addition, he was granted a further 300,000 options, 25% of which would vest on each of March 31, 1999, September 30, 1999, March 31, 2000 and September 30, 2000. The agreement also provided for a further 150,000 options to be granted to him on March 31, 1999, provided the employment

relationship subsisted at that time. These were in fact granted to him on May 28, 1999, at an exercise price of $0.90, which was the then current fair market value of the shares. The appellant and the company entered into an amendment to the employment contract on April 1, 2000. His annual salary was increased to $250,000.00. He was not given any additional stock options at that time.

[3] On April 28, 1999, the company issued shares and warrants through a brokered private placement. One condition of this financing arrangement would have precluded Mr. Ellis from disposing of any shares during the following 90-day period. In the latter months of 1999 and the first few months of 2000, the company entered into two more private placement arrangements that raised $12,000,000 and $31,500,000 respectively. As part of the first of these, the directors and officers agreed not to dispose of any shares of the company during the period ending on May 10, 2000. This agreement was subject to the single exception that the directors and officers were permitted to sell, in the aggregate, 500,000 common shares of the company, through the underwriter, as the offering had been oversubscribed (the “Greenshoe opportunity”). The Greenshoe opportunity was divided among the senior managers, and Mr. Ellis took advantage of his *pro rata* share of it on November 3, 1999 by exercising 109,000 options and selling all those shares to the underwriters on the same day. This gave rise to a benefit to him of $301,150.00, being the difference between the option price that he paid and the then fair market value of the shares, which was $3.55. On November 8, 1999, he was granted a further 120,000 options at an exercise price of $3.25.

[4] The third private placement also was oversubscribed. The underwriting agreement on this occasion also provided a Greenshoe opportunity, and the Appellant again took advantage of his full *pro rata* share of it. Although the underwriting agreement of January, 2000 required that the officers and directors of the company undertake not to transfer any shares during the period of 180 days following the closing date, that is until mid-August, Mr. Ellis was able under this Greenshoe opportunity to exercise 155,000 options and to sell the resulting shares. He exercised the options and sold the shares to the underwriters on February 17, 2000 at $12.30 per share, giving rise to a benefit to him of $1,788,975.00. The benefits arising out of the transactions of November 3, 1999 and February 17, 2000 were taxable under the special provisions of sections 7 and 110 of the *Income Tax Act* dealing with stock options. There is no issue between the parties as to that.

[5] When the lock-up period following the last underwriting ended on August 13, 2000, the appellant had received a total of 472,500 vested options, 264,000 of which he had exercised, selling the resulting shares in the two Greenshoe opportunities. He

had 208,500 options that remained unexercised. Of these, 71,500 had an exercise price of $0.75, 77,000 had an exercise price of $0.90, and 60,000 had an exercise price of $3.25. On August 28, 2000, he exercised a further 148,500 options, with a resulting stock benefit of $1,310,100.00, which again was taxable in his hands under sections 7 and 110 of the *Act*. He testified that he exercised these options with the intention of entering into what was called in the evidence a monetization contract.

[6] It is not necessary for me to go into the details of the various forms of monetization contracts that have been devised, beyond saying that they are, generally, strategies developed for use by people who would like to have the monetary value of certain shareholdings made available to them, while at the same time not being seen to dispose of those shares in the market place. Towards this end, Mr. Ellis sought the advice of Ernst & Young, chartered accountants, to explore for him an effective way to monetize the shares that he was in a position to acquire under his remaining unexercised options. Ernst & Young did recommend a strategy to him, and determined that of the various financial institutions that might collaborate in such a contract, the CIBC offered the most favourable terms. Mr. Ellis testified that he did not proceed with this proposed monetization contract, however, primarily because the cost of implementing it proved to be too high and because it would have left him with the downside risk if the shares declined in value.

[7] The evidence is unclear as to exactly when the appellant instructed Ernst & Young to explore monetization as a possible strategy for him, and also as to when that firm made its recommendation to him. It is clear, however, that the market price of eDispatch shares underwent a rapid decline between August and December 2000. He did not enter into a monetization contract. Instead, he held these 148,500 shares for almost 16 months, until December 21, 2001, when he sold them at the then market price of $0.40 per share. I shall return to that advice, and specifically to the issue whether the appellant may deduct the cost of it in computing his income for the taxation year 2000.

[8] The appellant suffered from severe health problems during the year 2000, one result of which was that he was asked by the board of directors to relinquish his position as president, CEO and a director of the company. He did this in mid-December 2000, after which time he held no office in the company, although he was nominally retained as a consultant for one year. He was paid consulting fees during that year, but his advice was virtually never sought by management. He kept in touch with some of the senior managers, however, and he maintained an interest in the company's fortunes throughout 2001. It was his view at the end of 2000 that the decline in the value of the stock was an overreaction on the part of the market and

that the true value of the company would see the share price recover to something in the range of $5.00 to $6.00 in the coming months if the company followed its strategic plan. In September 2001, the company was taken over by a company called Air IQ, a move that the appellant had opposed unsuccessfully. At that point, he concluded that the share price was not likely to recover, and so, on the advice of his accountants, he sold the shares acquired through the exercise of 148,500 options in August 2000, in order to realize the inevitable loss on them before the 2001 yearend.

[9] Mr. Ellis also made a number of purchases and sales of shares of the company between May 1999 and the end of 2000 that did not involve the exercise of options. His first purchase was of 51,000 shares in May 1999. That came about as the direct result of the decision of the board of directors to hire him as president and CEO. He replaced the founder of the company in that role, and one of his first tasks was to orchestrate the departure of his predecessor. That required arranging for the disposition of his substantial shareholding, and this was done by the company acquiring it and selling it to the employees on a *pro rata* basis at approximately $0.50 per share. As a senior manager, the appellant was entitled to acquire 51,000 shares at that price, and he did so in May 1999. He testified that, as the new president and CEO, it was important for him to show his confidence in the company and his commitment to it, which he did by this purchase. He transferred 7,105 of these shares to his RRSP in December 1999, and a further 927 on April 5, 2000. He also purchased 5,000 eDispatch shares on the market on April 5, 2000, and a further 5,000 on each of May 31 and June 2 of that year. The Appellant's evidence with respect to these purchases was to the effect that he made them to show to the securities market that he, as the president and CEO, had confidence in the company, and that he considered the shares to be fairly priced at around $10.00. The 15,000 shares that he bought on the market in May and June were purchased at between $8.00 and $10.00, the price having declined by some 70% since its high point of about $32.00 in March 2000.

[10] Between six and seven months later, in the latter half of December 2000, Mr. Ellis sold 57,229 of the shares that he had acquired through purchases in the market for aggregate proceeds of $71,997.00, an average of $1.26 per share. His evidence was that he was extremely angry at the way he had been treated by the company when he was forced out, and that he wanted the world to know that. The December sales were intended to make this known, although by that time he was no longer an insider, and so was not required to report his transactions to the B.C. Securities Commission.

[11] Mr. Taylor has conveniently summarized the appellant's acquisitions and dispositions of the non-option shares in the following table.

| Date | Purchase or transfer | Number of shares | Proceeds | Cost | Gain/Loss |
|---|---|---|---|---|---|
| May 1999 | Purchase | 51,000 | - | $26,236 | - |
| Dec. 1999 | Transfer to RRSP | 7,105 | $13,500 | ($3,655) | $9,845 |
| | Balance | 43,895 | | $22,581 | |
| Apr. 5, 2000 | Transfer to RRSP | 927 | $13,488 | ($477) | $13,011 |
| | Balance | 42,968 | | $22,104 | |
| Apr. 5, 2000 | Purchase | 5,000 | - | $80,285 | - |
| May 31, 2000 | Purchase | 5,000 | - | $53,500 | - |
| June 2, 2000 | Purchase | 2,100 | - | $18,745 | - |
| June 2, 2000 | Purchase | 2,900 | - | $24,715 | - |
| | Balance | 57,968 | - | $199,349 | - |
| Dec. 19, 2000 | Sale | (20,000) | $31,075 | ($68,779) | ($37,704) |
| Dec. 28, 2000 | Sale | (14,529) | $15,975 | ($49,965) | ($33,990) |
| Dec. 28, 2000 | Sale | (22,700) | $24,947 | ($78,064) | ($53,117) |
| | Balance | 739 | - | $2,541 | - |

The appellant reported the gains in his two transfers to his RRSP on capital account.

[12] Mr. Ellis also purchased and sold shares of a number of companies other than eDispatch during 2000 and 2001. In total he reported 16 sales in 2000 and 20 in 2001. Details of these were put into evidence, and none of the transactions are remarkable. In the aggregate, his gains from these transactions in 2000 were $67,211.11, and his losses in 2001 were $100,596.50. His transactions were made with advice from a stockbroker, and on the advice of his accountants, he reported the gains and losses on capital account. Nothing in the evidence suggests that any of these should be considered to be trading transactions rather than investments.

*Issues*

[13] There is no issue in this case as to the taxation of the gains that the Appellant made on the exercise of his stock options. These were declared and taxed under the special provisions in sections 7 and 110 of the *Act* that apply to the exercise of stock options. The jurisprudence recognizes that although the exercise of stock options gives rise to a gain that will be taxed under those sections in the future when the shares are sold, it is also the beginning of a second event for tax purposes – one that may be on either capital or income account, depending on the circumstances surrounding the acquisition, holding and selling of the shares acquired by exercise of options. In this case, the appellant sold the shares acquired through the exercise of stock options in November 1999, and again in February 2000, on the same day that those options were exercised, and at the same price, with the result that there was no second event in either of those cases. Those were the Greenshoe sales.

[14] The first issue concerns the exercise by the appellant of 148,500 options on August 28, 2000, and the subsequent sale of the shares in December 2001 at a substantial loss. Although he testified that he intended when he bought these shares to realize their value through a monetization contract, he in fact did not do so. Instead he held the shares for almost a year and a half as their value declined from their price of $9.65 on the date the options were exercised to $0.40 on December 21 2001, when he sold them on the advice of his accountants. He reported the loss, some $1,373,625, as a capital loss, also with advice from his accountants. Only later, in his Notice of Objection to his assessment for the 2001 taxation year, did he first take the position that the exercise of these options was an adventure in the nature of trade, and so ought to be treated as being on income account. The reasons advanced by his counsel for now taking this position are threefold. First, he says that he was that it was his intention to realize the value of the stock through a monetization contract as soon as he could after the exercise of options. Second, he says that as an insider he had knowledge of the company and its affairs that was not available to other investors. Third, he argues that under his contract of employment much of his remuneration came in the form of stock options, and that his transactions in the stock should therefore be considered to be on income account.

[15] The second issue concerns the acquisition and subsequent sale on the market of 57,229 shares of eDispatch. 51,000 of these were the shares acquired by the appellant from the holding of the former president and CEO whom he replaced. The other 6,229 were part of the 15,000 bought by him on the market between April and June 2000. The loss on their sale in December, 2000 amounted to $106,776.00. The appellant reported this loss on capital account when he filed his return for the year 2000. In his Notice of Objection for that year he took the position that the purchase

and subsequent sale of those shares was an adventure in the nature of trade, giving rise to a non-capital loss.

[16] The third issue concerns the appellant's claim to deduct fees paid to Ernst & Young of $51,180.00 in computing his income for the taxation year 2000, either under section 9 of the *Act* as an amount expended for the purpose of gaining or producing income, or under paragraph 20(1)(*bb*), which provides a deduction in these terms:

> 20(1) Notwithstanding paragraphs 18(1)(*a*), 18(1)(*b*) and 18(1)(*h*), in computing a taxpayer's income for a taxation year from a business or property, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto
>
> (*a*) …
>
> (*bb*) an amount other than a commission paid by the taxpayer in the year to a person
>
> (i) or advice as to the advisability of purchasing or selling a specific share or security of the taxpayer, or
>
> (ii) or services in respect of the administration or management of shares or securities of the taxpayer,
>
> if that person's principal business
>
> (iii) is advising others as to the advisability of purchasing or selling specific shares or securities, or
>
> (iv) includes the provision of services in respect of the administration or management of shares or securities.

[17] In *Rajchgot v. The Queen*,[1] the Federal Court of Appeal said this in respect of a taxpayer who had initially reported his gains and losses in respect of certain shares on capital account, and then in a subsequent year, when he had significant losses as the share price declined, started to report the losses on income account:

> A taxpayer who wants to change his reporting status in circumstances where it becomes more tax efficient to do so bears a heavy onus.[2]

[1] 2005 DTC 5607; 2005 FCA 289.

[2] @ para. 5.

[18] The appellant's position with respect to the losses that he incurred in disposing of his eDispatch shares is that they result in each case from an adventure in the nature of trade, and are therefore on income account. The questions of principle that arise, then, are these:

> (1) Whether the [appellant] dealt with the [shares] purchased by him in the same way as a dealer would ordinarily do, and
>
> (2) whether the nature and quantity of the subject-matter of the transactions may exclude the possibility that its sale was the realization of an investment, or otherwise of a capital nature, or that it could have been disposed of otherwise than as a trade transaction.[3]

[19] In my view, it cannot be said that the appellant dealt with any of these shares as a dealer would have done. His own evidence was that his obligation to the company and to the shareholders did not permit him to be seen as lacking confidence in the future value of the company's shares. He explored the possibility of a monetization contract so that he could have the immediate benefit of the value of the block of 148,500 shares without being required to report a sale to the B.C. Securities Commission, and thus being seen by the market as expressing pessimism for the company's future. As I have said, the timing of his instructions to Ernst & Young in that regard is not clear from the evidence, but it is clear that he exercised the options without having a definite plan in place to carry out the monetization that he said was his immediate goal. This is in marked contrast to the two occasions on which he exercised options in order to take advantage of the Greenshoe opportunities. On November 3, 1999, and again on February 17, 2000, he exercised the options and made the sales the same day. Clearly, he did not exercise the options until the arrangements for sale were completed. His plans on August 28, 2000 were much less definite, and in fact, he eventually chose not to enter into any monetization contract at all. Any sale at that point would have been inconsistent with his position as president, CEO and a director of the company, and of course it would have had to be reported. This, at a time when the share price was in rapid decline between September and December, 2000, would undoubtedly have sent a very negative message to the market. The appellant's evidence as to this specifically was:[4]

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3 *Irrigation Industries Ltd. v. M.N.R.*, [1962] S.C.R. 346 per Martland J. @ 352.

4 Transcript, p.45, l.l. 10-13.

> … when a CEO or a CFO of a public company starts selling stock, it sends a clear negative message to the market, and typically is worse than frowned upon, it'd tank the stock.

The Greenshoe sales, he said, were an exception to this general rule; the market accepted such sales as being appropriate, occurring as they did, by definition, in the context of an oversubscribed, and therefore very successful, public offering of the shares.

[20] Even taking his evidence of intention at its highest, it does not establish that he was looking to sell these shares for a quick profit. What he really wanted to do was to realize the difference between the option price and the market price, and immediately monetize the value at the time of exercising the options, without either gain or loss. This would have effectively produced the same result as he achieved on the two earlier occasions when he sold shares on the day he bought them. There would have been no opportunity for either profit or loss from the shares after the purchase, because under the monetization contract that he envisioned either the bank, or some third party, would have been the one to profit, or to lose, when the share price rose or fell. In short, entering into the monetization contract that he envisioned immediately following the exercise of the options would have negatived any possibility of dealing with the shares as a trader would do.

[21] Even after December 2000, when he was no longer an insider, and so was no longer under restraints as to dealing with the shares, Mr. Ellis' treatment of the 148,500 option shares was more consistent with an investment than with an adventure in the nature of trade. He held on to the shares, not in the likelihood that he could turn a profit, but apparently in hopes that they would recover some value, even as he was disposing of 57,229 other eDispatch shares at a fire-sale price for what he said were emotional rather than rational reasons.

[22] Mr. Ellis testified that his purchases of shares, both the block of 51,000 that he bought in May 1999 and the 15,000 that he bought between April and June, were intended to show the market that he had confidence in the company, its shares and its future. As a new CEO, he wanted to send that message to the market, and that was the motivation for his first purchase. His market purchases amounting to 15,000 between April and June 2000 were made as the market price declined from its high of about $32.00 in March through $16.00 in April to $8.35 when he bought the last of that block on June 2, 2000. It is quite inconsistent with his stated intention of

demonstrating confidence in the underlying worth of the stock to say now that he bought it as the beginning of an adventure in the nature of trade. It is notable, too, that the appellant invested his own RRSP funds in the company's shares in December 1999 and again in April 2000. This is far more consistent with an investment intention than with participation in an adventure in the nature of trade.

[23] Counsel for the appellant relied on a number of trial judgments to support his contention that these transactions were adventures, but of course all such cases must inevitably turn on their own particular facts. In *Lager v The Queen*[5], Justice Lamarre was dealing with a situation in which the taxpayer had purchased a large number of shares with borrowed money, and had no intention of keeping the shares after the loan fell due in three years. She found the purchase to be speculative. In the present case there is no such evidence from the appellant. McNair J. found in *Pollock v. The Queen*[6] that there were numerous transactions in the shares of four different companies of which the taxpayer was an insider, and that stock options were his only real form of remuneration. In contrast, Mr. Ellis effectively has only three transactions that he would like to characterize as adventures; purchases in May 1999, at the end of August 2000, and on May 31 and June 2, 2000. His other purchases involved same-day sales at the same price. By April 2000, his salary had been doubled to $250,000 per annum, which he considered to be appropriate remuneration for his position. In *Street v. The Queen,*[7] Christie A.C.J. made the important finding of fact that the appellant purchased the shares with the intention to dispose of a substantial portion of them early to liquidate debt. He had sold 5,000 of the 8,000 shares within 12 weeks.

[24] There are, of course, as many different fact situations as there are cases, but as Rip J. (as he then was) said in *Rajchgot v. The Queen*:[8]

> The critical factor in determining whether a taxpayer's acquisition of a property is for the purpose of investment or business is the intention of the taxpayer at the time of the acquisition of the property. Intention is to be ascertained from the appellant's whole course of conduct.

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5 97 DTC 431 (TCC).

6 90 DTC 6142 (FCTD); aff'd 94 DTC 6050 (FCA).

7 91 DTC 369 (TCC).

8 2004 DTC 3090 @ paras. 17-18.

> … It is not the lack or presence of one or more factors that will determine whether a transaction is on capital or income account; it is the combined force of all the factors that is important. …

In my view, the factors that I have referred to, taken in their totality, point to an investment intention on the part of the taxpayer rather than a business.

[25] In summary, neither the appellant's expressed intention to monetize the shares immediately, nor the subject matter, shares of a company of which he was a senior executive, tends to support the view that he was engaged in an adventure in the nature of trade when he exercised the 148,500 options in August 2000. As to the non-option shares, his expressed motive for buying them and the nature of the subject matter both are inconsistent with the theory that they were purchased for purposes of an adventure in the nature of trade. I find that the Minister was correct to characterize the appellant's losses as being on capital account.

[26] The appellant argues that what is described in the Amended Notice of Appeal as the "Financial Advice Fee" of $51,180.00 should be deductible in computing his income for the taxation year 2000 as an expense to be taken into account under section 9 of the *Act*. Such deductions are limited by the specific provisions of paragraph 18(1)(*a*):

> 18(1) In computing the income of a taxpayer from a business or property no deduction shall be made in respect of
>
> (*a*) an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property;

The appellant did not put into evidence either his instructions to Ernst & Young, or their written advice to him, other than to say in his oral evidence that he asked them for advice as to a monetization strategy. Ernst and Young's billings to the appellant describe the services this way in the interim bill of September 9, 2000:

> Services provided with respect to negotiating and analyzing the equity monetization contract with CIBC and with respect to our tax analysis of this matter: including meetings and review of stock options;

The final account dated December 18, 2000 describes the service as:

> Advice and assistance with restructuring personal wealth to assist in investing in diversified portfolio including borrowing against a forward exchange contract with, a put option;

Of the advice actually given by Ernst & Young, only one page was introduced into evidence, and that by the respondent. It sheds little more light than the above

descriptions from the billings on the nature of the services. The appellant has not established that the Ernst & Young billing was incurred to assist him in gaining or producing income from the property in question. It seems that it was really incurred to assist him in liquidating the investment without being seen to do so. I find that these amounts would not have been deductible under section 9 of the *Act*, even if I had found that the appellant had been engaged in an adventure in the nature of trade. Nor were they incurred for the purpose of gaining or producing income from the shares themselves.

[27] Nor are these fees deductible under paragraph 20(1)(*bb*). It does not appear to me that the services of Ernst & Young had anything to do with advice as to the purchase or sale of specific shares. Mr. Ellis consulted Ernst & Young, he said, to seek out for him a monetization arrangement that would permit him to, in effect, cash out his options, without being seen to do so. He had only eDispatch shares in mind, and it was not as to the advisability of buying or selling them, or for assistance in administration or management of the shares that he sought help from Ernst & Young. Their function was simply to obtain a monetization arrangement in respect of the shares. If the terms of the CIBC contract had been more to his liking then he would have contracted with it directly, and it might have been in the position of administering the shares, but Ernst & Young would not. Moreover, the deduction is available only if the concluding part of paragraph 20(1)(*bb*) is satisfied, that is

> if that person's principal business
>
> (iii) is advising others as to the advisability of purchasing or selling specific shares or securities, or
>
> (iv) includes the provision of services in respect of the administration or management of shares or securities.

The only evidence that the Appellant could point to as to the principal business of Ernst & Young was this extract from a letter of March 17, 2003 from Ernst & Young Corporate Finance Inc. to the Canada Customs and Revenue Agency:

> A further review of the invoices dated September 29, 2000 and December 18, 2000 from Ernst & Young indicates that a significant portion of the work was performed by the Investment Advisory Services Department, accordingly, the fees should be deductible as investment counsel fees pursuant to paragraph 20(1)(bb) of the Act. Please note Ernst & Young Investment Advisory Services is a separate corporation which provides financial advice regarding the provision of services in respect of the administration or management of shares or securities. Services

> include comparative analysis of financial institution products and contractual offerings to conclude which product provided the maximum return on investment and costs.
>
> (Exhibit A-1 Tab 24, pages 1-2)

The accuracy of this excerpt is not something that was either agreed to when the documents were admitted into evidence on consent,[9] or established by a witness. In any event, a perusal of the invoices in question indicates nothing of the kind referred to in this letter. Both invoices are on letterhead that reads:

ERNST & YOUNG

Ernst & Young L.L.P.

Chartered Accountants

Vancouver, British Columbia

They both contain the notation:

> Remit To;
>
> Ernst & Young L.L.P.
>
> Chartered Accountants

The appellant's cheques in payment of the invoices are payable simply to:

> Ernst & Young

The evidence is simply insufficient to bring either the advice or its author within the words of paragraph 20(1)(*bb*), and so the appeal must fail on this issue as well.

[28] The appeals are dismissed, with costs to the respondent.

Signed at Ottawa, Canada, this 14th day of May, 2007.

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[9] Transcript, p. 2 l. 15 to p. 3 l.15.

"E.A. Bowie"

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Bowie J.

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|---|---|
| CITATION: | 2007TCC289 |
| COURT FILE NO.: | 2003-2745(IT)G |
| STYLE OF CAUSE: | BRIAN ELLIS and<br>HER MAJESTY THE QUEEN |
| PLACE OF HEARING: | Vancouver, British Columbia |
| DATE OF HEARING: | May 29 and 30, 2006 |
| REASONS FOR JUDGMENT BY: | The Honourable Justice E.A. Bowie |
| DATE OF JUDGMENT: | May 14, 2007 |

APPEARANCES:

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| Counsel for the Respondent: | Roger Leclaire and Jade Boucher |

COUNSEL OF RECORD:

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| Firm: | Couzin, Taylor LLP |

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