Docket: 2005-1582(GST)I

BETWEEN:

BLAINE T. NOWOCZIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeal of *Blaine T. Nowoczin (2005-1583(IT)G)* on February 20, 2007 at Kamloops, British Columbia

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	David Everett

JUDGMENT

The appeal from the assessment made under the *Excise Tax Act*, notice of which is dated February 17, 2004 and bears number 12261001946, is allowed in accordance with the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 21st day of May 2007.

«D. W. Rowe»

Rowe D.J.

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BLAINE T. NOWOCZIN,

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Appeal heard on common evidence with the appeal of *Blaine T. Nowoczin (2005-1582(GST)I)* on February 20, 2007 at Kamloops, British Columbia

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	David Everett

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* for the 1999 and 2001 taxation years is allowed in accordance with the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 21st day of May 2007.

«D. W. Rowe»

Rowe D.J.

Citation: 2007TCC275
Date: 20070521
Dockets: 2005-1582(GST)I
2005-1583(IT)G

BETWEEN:

BLAINE T. NOWOCZIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Rowe, D.J.

[1] The appellant appealed from an assessment of income tax for the 1999 and 2001 taxation years. In computing income for those years, the appellant did not include income received from the sale of two houses he built at 1967 Englemann Court (1967 Englemann) and 1933 Englemann Court (1933 Englemann) - both in Kamloops, British Columbia. The Minister of National Revenue (the "Minister") assessed on the basis the profit from the sale of the 1967 Englemann – in 1999 - constituted business income and included the sum of $41,503 into the appellant's income for that taxation year. In 2001, the appellant sold 1933 Englemann and the Minister included the sum of $41,794 into his income for that taxation year. The Minister had allowed the appellant expenses in the sum of $130,247 in the 1999 taxation year in relation to 1967 Englemann and expenses in the sum of $126,206 in the 2001 taxation year with respect to 1933 Englemann. The Minister disallowed business expenses in the amounts of $21,710.08 and $20,468.98 in the 1999 and 2001 taxation years, respectively, in relation to those two properties.

[2] The appellant's position is that each house was built - and later sold - as a principal residence and that the profits realized were not incurred in the course of business within the meaning of the *Income Tax Act* (the *"Act"*).

[3] The appellant also appealed from a decision issued by the Minister that confirmed a Goods and Services Tax (GST) assessment issued pursuant to the *Excise Tax Act* (the *"ETA")*. The Minister decided that the appellant was a builder within the meaning assigned by subsection 123(1) of the *ETA* and that subsection 191(1) deemed him to have made and received a taxable supply by way of sale and to have paid as a recipient - and to have collected as a supplier - GST in respect of the supply calculated on the fair market value of the single unit residential complexes at 1967 Englemann, 1933 Englemann and 1948 Englemann Court at the later of the time the complexes were substantially completed or the complexes were occupied. The Minister also stated in the decision that it had not been shown that additional amounts had been incurred in the course of commercial activity and – therefore – in accordance with subsection 169(1) of the *ETA* additional Input Tax Credits (ITCs) had not been permitted.

[4] Counsel for the respondent and the appellant agreed both appeals could be heard on common evidence.

[5] Blaine Nowoczin (pronounced Novajin) testified he is a self-employed framer living at 1948 Englemann Court (1948 Englemann) in Kamloops. Almost 4 years ago, he learned that Canada Customs and Revenue Agency (CCRA) were undertaking an audit of his income with respect to the 1999 and 2001 taxation years. He obtained accounting advice and filed his own Notice of Objection and – later – the Notice of Appeal. He also held discussions with two auditors and an Appeals Officer. He stated that his position from the outset was that no amount should have been included into his income for those taxation years. Referring to the Reply to the Notice of Appeal (Reply) Nowoczin agreed the Minister's assumptions contained in the following sub-paragraphs in paragraph 14 were correct:

> (a) the Appellant is a carpenter with experience in residential construction and had worked as a framer for D & R Framing for several years;
>
> (b) D & R Framing did framing and constructed foundations for builders;
>
> (c) the Appellant's father is also experienced in residential construction and works as a foreman for Cluny Construction;
>
> (d) from January 31, 1994, to March 15, 2002, the Appellant purchased 4 residential lots in succession in Kamloops, British Columbia and constructed a house on each lot, as set out in Schedule A attached to this Reply;

(e) from June 20, 1997, to March 15, 2002, the Appellant built 3 of the 4 houses on the same street in a new subdivision in Kamloops, as set out in Schedule A attached to this Reply;

(f) the Appellant was the general contractor in the construction of all 4 houses;

[6] The appellant agreed with the Minister's assumption in subparagraph 14(g) that he did the framing, foundation, painting, finishing carpentry for all 4 houses but did not do the shingling.

[7] The appellant stated the only revisions he would make to the assumptions - in Schedule A – regarding the chronology of events concerning 4 different properties was with respect to occupancy dates which he indicated should be based on the dates of the occupancy permits issued by the City of Kamloops following an inspection. He stated the correct date for 1948 Englemann was February 13, 1998 – rather than the date of December 31, 1997 assumed by the Minister. He stated the date of the occupancy permit for 1933 Englemann was November 30, 1999 and should be preferred over the date of October 31, 1999 used by the Minister. The appellant stated the occupancy permit for 1948 Englemann – his current residence – was not issued until September 15, 2002 and that the date of March 15, 2002 assumed by the Minister is incorrect.

[8] The appellant stated the only 5-years mortgage he had obtained was for the house at 2424 Oak Hills Boulevard (2424 Oak Hills) in Kamloops where he lived for approximately 16 months. Upon selling that property, he had to pay a penalty in the sum of $1,482 in order to be released from the terms of that mortgage but the Royal Bank later effectively waived that penalty by reimbursing him in full when he took out a new mortgage on the 1967 Englemann property at the same interest rate and for the same amortization period. The payments on this mortgage were slightly more than the previous one on 2424 Oak Hills because the residential property tax was higher. Nowoczin stated he had not realized how busy the area was when he purchased the lot at 2424 Oak Hills jointly with his then wife Carole King. After that marriage dissolved, the appellant remarried and he and his current wife have a daughter born in February, 1996. He decided to sell 2424 Oak Hills – the first house he had ever built himself – and title was transferred to the purchaser on June 13, 1997. He bought the lot at 1967 Englemann on June 20, 1997 and commenced construction on August 22, 1997. He and his family moved to a rented townhouse until the new residence at 1967 Englemann was ready for occupancy. It was a 3-level house with 1,695 square feet on two levels plus a full basement that was partially developed. That house was listed for sale on July 28, 1998 and an offer

was accepted on March 11, 1999, subsequent to which title was transferred on May 3, 1999. Nowoczin stated the house had been listed for $189,900 but sold for $171,750. On May 3, 1999, he purchased the lot at 1933 Englemann subject to the successful completion of the sale of 1967 Englemann. He proceeded to construct a house thereon and the occupancy permit was issued on November 30, 1999. The appellant and his family lived there until August 29, 2001. That property was listed for sale on April 26, 2001 - at $174,900 - and the offer of purchase – in the sum of $168,000 - was accepted on July 24, 2001. On August 31, 2001, the appellant closed the transaction for the purchase of the lot at 1948 Englemann where he subsequently constructed a house in which he and his family continue to reside. During the period of construction, the appellant and his family moved into a rental property and lived there until the occupancy permit was issued for the new house on September 17, 2002. The appellant stated the date of occupancy used by the Minister – March 15, 2002 – may have been the one used in his application for a GST rebate. Nowoczin stated Englemann Court was one of the new subdivisions in Kamloops and he purchased 1967 Englemann, an irregular-shaped lot which required him to build a 2-level house - instead of a bungalow - with an entry on the main level. The house at 1933 Englemann had less space - at 1398 square feet – and was built on a hillside with a basement entry. The house at 1948 Englemann has a level entry and is smaller with 1,260 square feet of space. All 3 houses were on the same block in a cul-de-sac within the subdivision. Nowoczin stated the house at 1933 Englemann had 14 stairs from the entry to the living room which created a problem for his disabled younger brother who had to be carried upstairs when he came to visit. During the taxation years at issue in the within appeals, the appellant was employed as a framer and received Unemployment Insurance benefits when laid off from time to time. He did not have a GST number because he was an employee of D & R Framing until becoming self-employed in October, 2004. The appellant stated there were 55 houses within the subdivision containing Englemann Court, of which 50 had been constructed by the developer. The price of the lots was too high to attract other area builders, 17 of whom were involved in constructing 58 houses in the other part of the subdivision known as Aberdeen. The sale prices of the houses in Aberdeen averaged approximately $30,000 more than those situated in Englemann Court or on the other 3 streets in the same subdivision. All three Englemann houses had conventional mortgage financing in the sense he had a 25% down payment in each case – attributable to the value of the lot - and each house had been registered solely in his name. The appellant – age 41 - stated he started working as a labourer on construction sites and then became a framer, an occupation he pursued for 20 years. In his view, building one’s own house is not rocket science in that the lending institutions provide instructional material to assist people who want to be their own general contractor. In each instance, he did the framing and foundation work and then

relied on various sub-trades to perform the other work as required. At different stages of construction, the lending bank performed appraisals prior to releasing additional mortgage funds. During the construction of one house, the bank chose to issue a line of credit to the appellant to reduce the number of mortgage draws that were based on appraisals for which he had to pay. The appellant's current residence at 1948 Englemann was originally a 3-bedroom house but was renovated to eliminate one bedroom. In Nowoczin's opinion, that design change will make it more difficult to sell and he estimated the house is now worth about $300,000. There are no more vacant lots available in Englemann Court or Aberdeen. The appellant stated that during his working life as a framer, he encountered periods where framing and foundation work was scarce and that it is always dependent on the weather. If working alone, it took one month for frame a house or two weeks if he hired a crew. In Kamloops – unlike other cities in British Columbia – there were not hundreds of houses being built at more or less the same time and often only a few homes were constructed during a particular period. Nowoczin undertook research to determine that between January 1997 and August 2001, 116 houses had been constructed by commercial builders in Aberdeen since it was the newest subdivision and most of the construction was undertaken there. After only one year living at 1933 Englemann, other houses were constructed and blocked his view. He had not anticipated this problem which was caused by the new residences across the street having been built on a higher level. The appellant filed – as Exhibit A-1 – a sheet with two photographs, the top one showing the bare lot at 1933 Englemann and the bottom one depicting the street as viewed from his driveway. He also filed – as Exhibit A-2 – a sheet with 3 photographs taken from his back yard. The first two photographs illustrate the location of his neighbour's house in relation to his own property and the third was taken from the perspective of that neighbour's sundeck looking down into the appellant's own back yard.

[9] The appellant was cross-examined by counsel for the Respondent. Nowoczin confirmed he built 3 houses in Englemann Court between 1997 and 2001 and that he lives in the one at 1948 Englemann. He agreed the photograph – Exhibit R-1 – accurately depicted the view of the neighbour's house from his own back yard. The appellant stated he knew how to do framing and foundation work when building his own houses but was not skilled in other aspects of construction. His father was a construction foreman and assisted in the installation of some flooring in one house but otherwise did not provide much help during the relevant period. Counsel filed – as Exhibit R-2 - a binder titled Respondent's Book of Documents, Tabs 1-30, inclusive. Nowoczin stated that as a result of having gone through a divorce, he held the title to all 4 homes in his own name and had not added his wife – Cynthia – to the title at 1948 Englemann, their current marital residence. He stated he had never

considered any matters relating to GST arising from the sale of the houses at 1967 Englemann and 1933 Englemann. He stated he was not aware of restrictions related to assured financing whereby he would be required to wait 12 months before a purchaser could qualify for insurance provided by Central Mortgage and Housing Corporation. Counsel suggested he could have appealed to a broader market and secured a competitive advantage by enabling his homes to be purchased by buyers who had only a 10% down payment. The appellant agreed that may have been the case had he been aware of that potential. Counsel referred Nowoczin to a letter – Tab 10 – written on his behalf by Michael Parker C.A. of KPMG Chartered Accountants to Shane Jarvie - CCRA auditor - in which he disagreed with the notion that the profits from the sale of the Englemann properties constituted an adventure in the nature of trade. The matter of the sale of 2424 Oak Hills was also dealt with and an explanation offered that when the appellant acquired the interest of his former spouse - in May 1994 – it was an empty lot they had jointly acquired in February that year. The letter provided details of mortgage penalties and discharge fees - totalling $1,728.05 - arising from the sale of the residence at 2424 Oak Hills and subsequent payments of $1,645.79 and $1,474 to discharge mortgages on 1967 Englemann and 1933 Englemann, respectively. It also pointed out the mortgage on the 1933 Englemann property was more manageable - $75 less bi-weekly - than the one at 1967 Englemann. Nowoczin stated his work was sporadic and he was not generating employment income so for various reasons decided to sell 1933 Englemann and purchase a bare lot at 1948 Englemann. He was not willing to rent in the long term because he wanted to remain in the housing market. By this time, he found it had become increasingly difficult to carry his disabled brother up the stairs because he was 12 years old and had gained weight. It was not possible for his wife nor his mother nor his father to carry the boy up those stairs to the living room. He stated he had not realized the extent of the problem when the house was constructed but it became more obvious the longer they lived there. Counsel referred to typed notes - Tab 15 - by Shane Jarvie of an interview with the appellant on September 21, 2003. According to Jarvie, the appellant explained the reason for selling 1967 Englemann was because he was in an overdraft position at the bank and could no longer afford to own that house even though the mortgage payments were not that onerous. The notes indicate Nowoczin told Jarvie that 1933 Englemann was sold due to privacy concerns even though they liked the area. The appellant stated he had taken a letter with him to that meeting in which he outlined the problem arising from the stairs but became angry during the meeting with Jarvie and neglected to bring it to his attention although it was subsequently provided to the Appeals Officer. The appellant identified 3 Construction Summary Worksheets – Tabs 28, 29 and 30 – he had completed and submitted with his GST rebate applications for 1967 Englemann, 1933 Englemann and 1948 Englemann, respectively. He agreed all of those expenses

had been accepted by the auditor and that he provided additional sheets –Tab 2 – to Doug Tarbet at CCRA with respect to 1933 Englemann. On those sheets, some items were merely estimates, although some receipts were provided to Tarbet. Counsel referred the appellant to a copy of an Owner Builder Declaration and Disclosure Notice – Exhibit R-3 – signed by the appellant – in which he acknowledged that as an owner/builder he was responsible – personally or through adequate insurance coverage – for certain home warranty matters. The appellant stated he had not acquired insurance for that purpose and was aware that an owner/builder is not supposed to build another house within the next 18 months but that restriction came into effect in July 1999, and would not apply to the sale of 1967 Englemann for which title was transferred on May 3, 1999. The appellant confirmed the occupancy dates used by the respondent in Schedule A of the Reply were taken from his applications for GST rebates on those 3 Englemann houses. He stated his family moved into 1948 Englemann before it was finished but had not moved into 1967 Englemann nor 1933 Englemann until both houses were completed inside with only exterior work remaining. He reiterated that he and his family had not occupied 1967 Englemann on December 31, 1997 as assumed by the Minister but had done so on January 1, 1998. He stated that one day difference - in terms of timing - is significant and that mortgage rates are locked in only after the occupancy permit has been issued. They moved into 1948 Englemann before the interior was totally finished because the house they were renting had been listed for sale by their landlord. Nowoczin stated his daughter – born in 1996 – liked their street as so did he and his wife because their friends lived in Englemann Court. During construction periods, it was necessary to rent a storage unit to retain some household items and personal possessions while living in rental accommodation. Although he had not intended to operate his own business or hired employees, he decided to assume the operations of D & R Framing when the previous owner retired in October 2004. He stated the overall economy and the profitability of the home construction business have improved considerably since then and house prices have risen dramatically. As an example, 1967 Englemann sold recently for $370,000 even though the purchaser paid him $171,750 for it in March 1999. The appellant acknowledged that he had started to build 1967 Englemann, 1933 Englemann and 1948 Englemann on August 22, 1997, July 2, 1999 and October 7, 2001, respectively.

[10] Marilyn Nowoczin testified she resides in Kamloops and is the mother of the appellant. Her younger son was born in 1985 with spina bifida which has confined him to a wheelchair. She stated that when the appellant and his family lived at 1933 Englemann, it was difficult to carry her son – seated in the wheelchair – upstairs to the living room and other areas. She suffers from osteoporosis and her husband has heart problems. Another difficulty was created because one of the

appellant's arms was of little use when lifting heavy weights. Her disabled son became heavier as he grew and the newer wheelchair was also heavier so it became quite "scary" for him to be carried up a flight of stairs by several people. It was necessary for one person to pull the chair from the front while two others pushed from the bottom as they all climbed the stairs and it created a dangerous situation. At 1948 Englemann where the appellant and his family now reside, there are only two stairs with wide steps.

[11] Marilyn Nowoczin was cross-examined by counsel for the Respondent. She stated that when the appellant was planning the construction of the house at 1933 Englemann, he and the extended family did not give much thought to the possibility of future problems with access – by his disabled brother - to living areas.

[12] Cynthia Nowoczin testified she is the wife of the appellant. She works as a Customer Service Representative and during the construction of 1967 Englemann was able to help with interior painting, foundation work and landscaping as well as other tasks usually performed by a labourer.

[13] In cross-examination by counsel for the respondent, Cynthia Nowoczin stated their daughter – Morgan - was born in February, 1996. Morgan was 3 years old when they moved to 1933 Englemann and 5 when they occupied 1948 Englemann. She stated her daughter accepted the moves and adapted to living in rented premises during construction and that several neighbours volunteered to look after her while she and her husband worked at building those houses. Morgan also attended two different pre-schools. Cynthia Nowoczin stated she and her husband had wanted to build a rancher-style house at 1967 Englemann lot but discovered the lot did not accommodate that design and they decided to build a two-level home. She stated she was comfortable with the decision to sell that house and to construct a new one at 1933 Englemann. Initially, the problem with the stairs – at 1933 Englemann - was not serious but it worsened as her brother-in-law grew older and heavier and it also developed into an annoyance for her and her husband when they had to climb those stairs in the course of ordinary household activities.

[14] Doug Tarbet testified that he is employed by Canada Revenue Agency (CRA) and has been an Appeals Officer for 11 years. He was assigned the task of reviewing the objections filed by the appellant regarding assessments issued by the Minister for the 1999 and 2001 taxation years. By letter dated October 8, 2004 - Exhibit A-1, Tab 3 – Tarbet notified the appellant he intended to confirm a reassessment of income tax together with a GST assessment based on his opinion that the appellant was carrying on an adventure in the nature of trade with respect to the construction and sale of the

houses at 1967 Englemann and 1933 Englemann and that the self-supply rules applied for GST purposes. In the letter, he raised the possibility that additional costs of construction and ITCs may not have been taken into account and invited the appellant to provide documentation in support of these expenditures. When he received sheets from the appellant – Tab 2 – listing various items of expense, he did not make any adjustments because some items had already been claimed in the relevant application for the new housing GST rebate and other entries appeared to be personal in nature. Tarbet stated he considered the fact the appellant had constructed 4 houses in a short period and that he was an experienced framer, familiar with the construction industry in Kamloops during the relevant taxation years.

[15] In cross-examination by the appellant, Tarbet acknowledged he had constructed his own residence in 2000. He stated that he reviewed the auditor's work and took the position that construction insurance costs and interest was allowable to the date of occupancy, based on the mortgage draws advanced by the bank. Tarbet agreed he had confirmed the conclusions of the auditor including those concerning the value of appliances.

[16] The appellant submitted he had demonstrated that the assessments issued by the Minister were incorrect because he had not constructed and sold the Englemann houses in the course of a construction business and that circumstances were such that he had not been engaged in an adventure in the nature of trade. He submitted that he and his family resided in 1948 Englemann, and that he had built that house for their own use as a residence and was not a builder within the meaning of the *ETA*.

[17] Counsel for the Respondent submitted the appellant had made a profit on the sale of each Englemann house and that those amounts were taxable because it was not reasonable to conclude he had constructed the homes solely as family residences. Counsel suggested it did not make sense for someone in the appellant's position to build 1933 Englemann when his employment at that time was sporadic and he was in somewhat precarious position with his bank. Counsel submitted that attention must be paid to the matter of secondary intention since the possibility of resale must have been present at the time each of those homes was constructed.

[18] Concerning the GST assessment, counsel submitted the facts supported the conclusion the appellant was a builder as contemplated by the relevant provisions of the *ETA*. In accordance with said provisions, the appellant as a builder who subsequently occupied the home must self-assess and claim ITCs in accordance with the appropriate category which is different for a builder than an owner/builder. Counsel agreed that despite the lack of documentation concerning construction costs

and related expenditures, the evidence afforded an opportunity to allow additional expenses to be deducted from income in the 1999 and/or 2001 taxation years in the event the appellant was found to have been a builder. Counsel pointed out the inherent problem in allowing additional ITCs – for purposes of the GST appeal – because of the restrictions imposed by section 169(4) of the *ETA* and applicable regulations.

[19] The Minister in issuing the Notice of Confirmation with respect to the appellant's 1999 and 2001 taxation years decided the appellant's activity of buying real estate, building homes and selling them was a "business" as defined in subsection 248(1) of the *Act* and that the profits from the sales of 1967 Englemann and 1933 Englemann constituted income from a business under subsection 9(1) and – therefore - the amounts representing profit were included in his income in the relevant taxation year in accordance with section 3 of the *Act.*

[20] Section 248(1) of the *Act* defines "business" as follows:

> "business" includes a profession, calling, trade, manufacture or undertaking of any kind whatever and, except for the purposes of paragraph 18(2)(*c*), section 54.2, subsection 95(1) and paragraph 110.6(14)(*f*), an adventure or concern in the nature of trade but does not include an office or employment;

[21] In the case of *Genge v. Canada*, [1996] T.C.J. No. 549, the taxpayer appealed from an assessment of GST arising from the construction and sale of two houses. After living with his wife and two daughters in a rented townhouse in Maple Ridge - in 1990 - the taxpayer purchased a lot on 116A Avenue in that community on August 8, 1991 and constructed a house thereon. He and his family occupied the residence on December 1, 1991 and sold it on March 2, 1992. The explanation for the sale was that he heard about a lot being available in Pitt Meadows, a municipality in which he and his family had once lived and enjoyed because they considered it to be like a small town, suitable for families. The lot was situated only a block away from a school and their children would not have to cross any busy streets unlike the situation at Maple Ridge. On April 2, 1992, he bought a lot and constructed a home which he and his family occupied on or about September 15, 1992. The house was sold on November 24, 1992 and the taxpayer and his family leased a house for 6 months. Another lot was purchased on May 20, 1993 on 115 Avenue in Maple Ridge and the taxpayer – as he had done with the previous two houses – acted as his own general contractor to build another residence in which his family still lived during his appeal to the Tax Court of Canada. The taxpayer testified that he and his family had intended to stay at the Pitt Meadows residence because it was a nice lot located in a

quiet cul-de-sac without much traffic. However, shortly after moving into the home, other houses were constructed in the same cul-de-sac that featured living quarters in the basements and it turned out that two families were living in each of those new houses, leading to congestion and noise of the sort they had escaped from when living in the rented townhouse prior to building their first home. He had a company make a For Sale-sign which he stuck in his lawn and a buyer purchased the home about one month later. During the relevant period, the taxpayer worked in the building trade as a framer and utilized the same financing method for all 3 properties.

[22] In the course of his reasons for judgment in *Genge*, *supra*, Judge Christie - at paragraphs 18-21, inclusive stated:

> [18] Regarding the dwellings constructed on the first Maple Ridge property (the first home) and the dwelling constructed on the Pitt Meadows property (the second home). The primary question to be addressed is whether the appellant was a builder of a residential complex within the meaning of subsection 123(1) of the Act. This, in turn, raises the issue whether the appellant carried on the construction or engaged others to carry on the construction of the first and second home in the course of an adventure in the nature of trade.
>
> [19] The phrase "an adventure in the nature of trade" has been the subject of much litigation under the Income Tax Act and there are numerous reported reasons for judgment in that regard. In my opinion they can quite properly be resorted to as useful guidelines in determining appeals from assessed liability for GST under the Act.
>
> [20] It has long been settled by the Supreme Court of Canada that even a single acquisition and disposition of property can be an adventure in the nature of trade. It is a question of fact in each case: M.N.R. v. Freud, 68 D.T.C. 5279 at 5281. That the appellant has been involved in the construction of homes as a framer for many years and that at the times relevant to this appeal he earned his livelihood from that trade point to an adventure in the nature of trade. But this is not necessarily conclusive. It is simply a factor to be weighed along with all the other relevant evidence: O & M Investments Ltd. v. M.N.R., 85 D.T.C. 535 (T.C.C.) at 537; Sardo v. The Queen, 88 D.T.C. 6464 (F.C.T.D.) at 6468.
>
> [21] What is sometimes referred to as the doctrine of secondary intention [See Note 5 below] is relied on by counsel for the respondent. In regard to this doctrine it is said in Jordan v. M.N.R., 85 D.T.C. 482 (T.C.C.) at 485:
>
> > This concept appears to have originated with the judgment of Thurlow J. (as he then was) in Bayridge Estates Ltd. v. M.N.R., 59 D.T.C. 1098. The appellant was incorporated in 1951 and in its first year it purchased and resold undeveloped land and treated the profit as business income. In August 1952 it bought another parcel of undeveloped land with the intention of constructing and

> operating a motel and service station as an investment. The appellant was unable to finance the project and it sold the land in June 1953 realizing a substantial profit. It was unsuccessfully alleged that the profit was a nontaxable capital gain. Mr. Justice Thurlow stated at pages 1101-2:
>
> In the present case, the evidence, in my opinion, points to the conclusion that the property was acquired with the overall intention of turning it to account for profit. The method favoured by the directors by which this intention was to be carried out was that of developing the property as the site of a motel and service station if the moneys necessary to carry out that purpose of could conveniently be borrowed, and for that reason they turned down the early offers received for the property. They intended, however, if such moneys could not conveniently be borrowed, to turn the property to account for profit in any way that might present itself, and in my opinion such ways included sale of the property. In purchasing the property, the directors relied on their own knowledge of real estate and acted without any independent appraisal of the property, and in the transaction they committed the bulk of their company's financial resources for an unproductive, but saleable, property. I am far from satisfied that men of their ability and experience would have done this for the purpose of building a motel and service station without having arranged for the funds to finance this construction and without, at the same time, having in mind the most obvious alternative course open to them for turning the property to account for profit. Despite their optimism the possibility, if not the probability, of their not being able to obtain the necessary loan must, in my opinion, have been present in their minds, and the experience of the appellant's first project alone would have suggested both the necessity for an alternative course and the availability of the alternative course which was in fact followed less than a year after the property was purchased. To my mind, it is not without significance that course was the only alternative course considered and that it was decided upon as the only thing left to do. In my opinion, the sale of the property for profit was one of the several alternative purposes for which the property was acquired, and it was in the carrying out of that alternative purpose, when it became clear that the preferred purpose was unattainable, that the profit in question was made. It was, accordingly, a profit made in an operation of business in carrying out a scheme for profit-making and was properly assessed.

In Regal Heights Ltd. v. M.N.R., 60 D.T.C. 1041, the appellant again unsuccessfully took the position that the profit realized on the sale of land was a

nontaxable capital gain. For present purposes the relevant facts are set out in this extract from the headnote:

> The appellant private company was incorporated in 1954 and took over the assets of a partnership, the four partners becoming the sole shareholders of the new corporation. The partnership had acquired about 40 acres of land in the city of Calgary with the intention of building a shopping centre thereon for the purpose of obtaining rental income. Several large retailing organizations were approached but no definite commitment could be obtained. When it was learned that Simpson-Sears had decided to build a shopping centre some two miles from the appellant company's site, it was decided to dispose of the property and to wind up the company. The land was resold in three large parcels in 1954 and 1955, with a profit. The Minister assessed this profit as income in the company's hands.

In dismissing the appeal, Dumoulin J. said at page 1044:

> Such are the facts in this case, and before any attempt at unravelling the complexities of law involved, I feel in duty bound to say that Messrs. Cohen, Raber and Belzberg's testimonies substantiate full well the averment inserted in para. 5(b) of the Notice of Appeal, which I quote:
>
> ... The intent of the partnership was to develop and construct a shopping centre for investment purposes, and it was felt that to do this successfully it was first necessary to have a chain department store to locate in the centre and to act as nucleus.'

The primary and preponderant aim, this much I readily grant; on the other hand, was there not the alternate, unescapably foreseen loop-hole of a profiTable disposal of the land, should major expectations fail to materialize as, for instance, recently found in the matters of Fogel v. M.N.R., [1959] C.T.C. 227, [1959] Ex. C.R. 363 [59] D.T.C. 1182, and more particularly still in Bayridge Estates Limited v. M.N.R., [1959] C.T.C. 158, [1959] Ex. C.R. 248 [59] D.T.C. 1098.

His Lordship went on at page 1045:

> Does a primary purpose necessarily exclude a secondary or ancillary one, meant to save the day should a 'bolt out of the blue' shatter all else? Highly competent and experienced business men such as these surely did not ignore there was a second string to

> their bow: the estate's profitable resale, should, peradventure, the shopping centre one snap. A contrary opinion seems hardly tenable.

An appeal to the Supreme Court of Canada was dismissed: 60 D.T.C. 1270. In delivering the judgment of the majority, Judson J. said at page 1272:

> There is no doubt that the primary aim of the partners in the acquisition of these properties, and the learned trial judge so found, was the establishment of a shopping centre but he also found that their intention was to sell at a profit if they were unable to carry out their primary aim. It is the second finding which the appellant attacks as a basis for the taxation of the profit as income. The Minister, on the other hand, submits that this finding is just as strong and valid as the first finding and that the promoters had this secondary intention from the beginning. ...These efforts were all of a promotional character. The establishment of a regional shopping centre was always dependent upon the negotiation of a lease with a major department store. There is no evidence that any such store did anything more than listen to the promoter' ideas. There is, understandably, no evidence of any intention on the part of these promoters to build regardless of the outcome of these negotiations. There is no evidence that these promoters had any assurance when they entered upon this venture that they could interest any such department store. Their venture was entirely speculative. If it failed, the property was a valuable property, as is proved from the proceeds of the sales that they made. There is ample evidence to support the finding of the learned trial Judge that this was an undertaking or venture in the nature of trade, a speculation in vacant land. These promoters were hopeful of putting the land to one use but that hope was not realized. They then sold at a substantial profit and that profit, in my opinion, is income and subject to taxation.

[23] Dealing with the concept that has come to be known as the doctrine of secondary intention, Judge Christie – near the end of paragraph 21 and continuing in the next paragraph stated:

> The best exposition of the meaning and application of 'secondary intention' of which I am aware is this passage from the judgment of Mr. Justice Noël in Racine et al. v. M.N.R., 65 D.T.C. 5098 at 5103:
>
> > In examining this question whether the appellants had, at the time of the purchase, what has sometimes been called a 'secondary intention' of reselling the commercial enterprise if circumstances

> made that desirable, it is important to consider what this idea involves. It is not, in fact, sufficient to find merely that if a purchaser had stopped to think at the moment of the purchase, he would be obliged to admit that if at the conclusion of the purchase an attractive offer were made to him he would resell it, for every person buying a house for his family, a painting for his house, machinery for his business or a building for his factory would be obliged to admit, if this person were honest and if the transaction were not based exclusively on a sentimental attachment, that if he were offered a sufficiently high price a moment after the purchase, he would resell. Thus, it appears that the fact alone that a person buying a property with the aim of using it as capital could be induced to resell it if a sufficiently high price were offered to him, is not sufficient to change an acquisition of capital into an adventure in the nature of trade. In fact, this is not what must be understood by a 'secondary intention' if one wants to utilize this term.
>
> To give to a transaction which involves the acquisition of capital the double character of also being at the same time an adventure in the nature of trade, the purchaser must have in his mind, at the moment of the purchase, the possibility of reselling as an operating motivation for the acquisition; that is to say that he must have had in mind that upon a certain type of circumstances arising he had hopes of being able to resell it at a profit instead of using the thing purchased for purposes of capital. Generally speaking, a decision that such a motivation exists will have to be based on inferences flowing from circumstances surrounding the transaction rather than on direct evidence of what the purchaser had in mind.

> [22] In Crystal Glass Ltd. v. The Queen, 89 D.T.C. 5143 Mahoney J.A. speaking for the Court said: "Secondary intention requires not only the thought of sale on a profit but that the prospect of such a sale be an operating motivation in the acquisition of the capital property."

[24] In arriving at his decision, Judge Christie analyzed the facts and the relevant law at paragraphs 22 to 27, inclusive, as follows:

> [22] In Crystal Glass Ltd. v. The Queen, 89 D.T.C. 5143 Mahoney J.A. speaking for the Court said: "Secondary intention requires not only the thought of sale on a profit but that the prospect of such a sale be an operating motivation in the acquisition of the capital property."
>
> [23] What occurred in relation to the first home can be regarded as close to the line that would attract tax. I am satisfied, however, on the whole of the evidence

and on a balance of probability that the acquisition of the lot and the construction that followed was not done in the course of an adventure in the nature of trade. The appellant is therefore entitled to succeed on this aspect of the appeal.

[24] On the other hand, applying the same standard of proof in respect of the whole of the evidence, I am satisfied that an operating motivation in the acquisition of the lot at 12366 Lehman Drive, Pitt Meadows, and the construction of the home thereon was the prospect of its sale at a profit. Consequently, the appellant was a builder as defined under subsection 123(1) of the Act. It follows under subsection 191(1) that when he occupied the second home as the first individual to occupy it after substantial completion of its construction, he was deemed to have made and received at the time of occupation a taxable supply by way of sale of the complex. He was also deemed to have paid as a recipient and to have collected as a supplier, at the time of occupation, tax in respect of the supply calculated on the fair market value of the complex when he occupied it.

[25] The final question is whether the appellant is exempted from liability under subsection 191(1) of the Act by subsection 191(5). These two subsections must be read together and with the definition of "builder" in subsection 123(1). When that is done I do not think that it can be said that the purpose of subsection 191(5) is to exonerate the appellant from liability to tax when he has done precisely what creates that liability under subsection 191(1). I repeat that liability was created under subsection 191(1) when the appellant occupied the second home as his residence after its substantial completion as the first individual to do so. Can this be set aside under subsection 191(5) by the appellant having used the complex primarily as his place of residence after construction? If this question were answered yes, that would be an incongruous result.

[26] I have already indicated that the acquisition of and construction on the second property was an adventure in the nature of trade. The adventure was underway when that property was acquired on April 21, 1992 and continued in existence until the property was sold on November 24, 1992. Between the time of construction and its use as a place of residence for the appellant the primary use of the home was that of a disposable asset in an adventure in the nature of trade. This eliminates the applicability of subsection 191(5). I believe this conclusion is in accord with the reasons for judgment delivered by my colleague Judge Beaubier in Strumecki v. The Queen [1996] T.C.J. No. 266.

[27] The appeal is allowed in respect of the first home and disallowed in respect of the second.

[25] In *Happy Valley Farms Ltd. v. M.N.R.*, [1986] F.C.J. No. 465 the issue before Rouleau J., Federal Court of Canada – Trial Division, was whether the profit from the sale of 400 acres of property farm was capital gain as asserted by the taxpayer or business income as assessed by the Minister. The taxpayer’s position was that the land had been acquired for use as a farm and for personal enjoyment and recreation

for him and his family. The evidence disclosed the taxpayer had made 17 similar transactions in an 8-year period and that his primary business was the development of real estate for resale. Rouleau J. concluded the profit on the sale had been properly assessed by the Minister as business income. In arriving at that decision, Rouleau J. considered the relevant jurisprudence commencing at p. 4 of his reasons:

> Since income tax was introduced in Canada, a considerable amount of jurisprudence has arisen from the use of the phrase "adventure or concern in the nature of trade" used in the extended definition of business in subsection 248(1) of the Income Tax Act. This legislative provision states the "business" includes a profession, calling, trade, manufacture or undertaking of any kind whatever and includes "an adventure or concern in the nature of trade but does not include an office or employment." The most comprehensive analysis of the meaning of "adventure in the nature of trade" is found in Minister of National Revenue v. Taylor, [1956] C.T.C. 189 (Ex. Ct.) where the Court set out a number of tests to be applied to determine when a transaction, which is not itself a trade or business, can be held to be "an adventure or concern in the nature of trade". The decision makes it clear that the question to be answered, in cases of this nature is, was the asset acquired by the taxpayer as an investment or was it not. If not, then any gain realized by the taxpayer upon the sale of the asset is taxable as income. Whether an asset was acquired as an investment is to be determined by all the facts of a particular case including, the course of conduct of the taxpayer, the nature of the subject property, the probability of the asset producing income without the need to be turned over and the similarity of the transaction in question to a trading transaction.
>
> Several tests, many of them similar to those pronounced by the Court in the Taylor case, have been used by the courts in determining whether a gain is of an income or capital nature. These include:
>
> > 1. The nature of the property sold. Although virtually any form of property may be acquired to be dealt in, those forms of property, such as manufactured articles, which are generally the subject of trading only are rarely the subject of investment. Property which does not yield to its owner an income or personal enjoyment simply by virtue of its ownership is more likely to have been acquired for the purpose of sale than property that does.
> >
> > 2. The length of period of ownership. Generally, property meant to be dealt in is realized within a short time after acquisition. Nevertheless, there are many exceptions to this general rule.
> >
> > 3. The frequency or number of other similar transactions by the taxpayer. If the same sort of property has been sold in succession over a period of years or there are several sales at about the same

> date, a presumption arises that there has been dealing in respect of the property.
>
> 4. Work expended on or in connection with the property realized. If effort is put into bringing the property into a more marketable condition during the ownership of the taxpayer or if special efforts are made to find or attract purchasers (such as the opening of an office or advertising) there is some evidence of dealing in the property.
>
> 5. The circumstances that were responsible for the sale of the property. There may exist some explanation, such as a sudden emergency or an opportunity calling for ready money, that will preclude a finding that the plan of dealing in the property was what caused the original purchase.
>
> 6. Motive. The motive of the taxpayer is never irrelevant in any of these cases. The intention at the time of acquiring an asset as inferred from surrounding circumstances and direct evidence is one of the most important elements in determining whether a gain is of a captial or income nature.

While all of the above factors have been considered by the Courts, it is the last one, the question of motive or intention which has been most developed. That, in addition to consideration of the taxpayer's whole course of conduct while in possession of the asset, is what in the end generally influences the finding of the Court.

[26] After referring to the decision of Noël J. in *Racine et al*, *supra*, Justice Rouleau continued:

> In Armstrong v. The Queen [1985] 2 C.T.C. 179 (F.C.T.D.) I had an opportunity to consider this "secondary intention" test as laid down by Noel J. in the Racine case. As I pointed out in the Armstrong case, the notion of secondary intention is nowhere enshrined in the Income Tax Act. In Hiwako Investments Limited v. The Queen, 78 D.T.C. 6281 (F.C.A.), the Chief Justice of the Federal Court stated at 6285 that the term "secondary intention":
>
> > ... does no more than refer to a practical approach for determining certain questions that arise in connection with "trading cases" but there is no principle of law that is represented by this tag. The three principle, if not the only, sources of income are businesses, property and offices or employments (section 3). Except in very exceptional cases, a gain on the purchase and re-sale of property

> must have as its source a "business" within the meaning of that term as extended by section 139 [now section 248(1)].

[27] With respect to the need to examine the circumstances in each case, Rouleau J. – at p. 6 – commented:

> Another test developed by the jurisprudence is the frequency of similar transactions engaged in by the taxpayer. Although profit from an isolated transaction may or may not be found to be taxable, a large number of similar transactions will generally lead to the conclusion that a taxpayer is carrying on a business. In addition, the length of time an asset is held is an indicative element, with the presumption being that the longer the taxpayer held on to the asset, the more likely it is to be in the nature of an investment.

[28] Returning to the facts in the within appeals, one must keep in mind that the first house constructed by the appellant at 2424 Oak Hills was not subject to any assessment of income tax. In the same vein, it is important to recognize that the appellant still resides with his family at 1948 Englemann, the residence he started to build on October 7, 2001 and occupied on September 15, 1992 in accordance with the permit issued by the City of Kamloops, although an occupancy date of March 15, 2002 was inserted in the appellant's application for a GST housing rebate.

[29] It is worthwhile to examine the facts in the context of the tests enunciated in the *Taylor* case referred to in earlier quotes from the judgment of Rouleau J. in the *Happy Valley* decision.

> 1. The nature of both properties is residential and they were suitable only for that purpose.
>
> 2. Concerning the length of period of ownership, the lot at 1967 Englemann was purchased on June 20, 1997. The home constructed thereon was occupied by the Appellant on January 1, 1998. Although listed for sale on July 28, 1998, it did not sell until March 11, 1999, at $171,750, more than 10% below the original asking price of $189,900. The lot at 1933 Englemann was purchased on May 3, 1999, the same day as the transfer of title to the purchaser of 1967 Englemann. Construction of the home at 1933 Englemann commenced on July 2, 1999 and it was occupied pursuant to an occupancy permit issued on November 30, 1999, following an inspection. This house was listed for sale on April 26, 2001 – 17 months later – at $174,900 and the offer of $168,000 was accepted on July 24, 2001 and title transferred on July 24, 2001.

3. By removing the 2424 Oak Hills transaction from the equation and taking into account the constant inherent in the Appellant's enduring occupation of 1948 Englemann, the nature and frequency of the transactions are much less striking and not as significant as they appeared to the Minister when regarding the 4 houses – in total - strung like glistening beads on the same golden, entrepreneurial strand between January, 1996 and March 2002.

4. The subject Englemann houses were constructed by the Appellant on bare lots that he purchased and there is no evidence he advertised or made any businesslike efforts to attract purchasers or that he dealt with the houses in any way other than that expected of any homeowner when listing a residence for sale.

5. The circumstances of selling 1967 Englemann may not seem particularly compelling to an outsider but from the subjective viewpoint of the Appellant and his family – at that point - the house was too big, did not suit the lot and was becoming too expensive. Subsequent development and construction by builders on neighbouring lots left them looking at houses at a higher elevation as depicted by the photographs entered into evidence. A decision was made to sell the house and to buy another lot in Englemann Court. One does not know what a house will be truly like until it has been lived in for a while. Sometimes, it takes several months or even one or two years before it becomes obvious that there are negative aspects to the residence and then – for whatever additional reasons – the tipping point will be reached and the property may be put up for sale. The explanation for selling 1933 Englemann has a stronger, more objective foundation in that it revolved around providing access to visits by the Appellant's disabled brother. It is not difficult to understand that the transport of the brother – in the wheelchair – up the stairs did not appear difficult on paper but as time passed and the boy grew heavier and his parents ability to carry him up the stairs was diminished due to health problems, that aggravation became exacerbated to the point something had to be done. The Appellant sold that house and he and his family moved to rental accommodation until construction of the home at 1948 Englemann was finished.

6. There is no doubt that the motive of the Appellant – in each case – for the purchase of each lot was to construct a house thereon for the purpose of living in it with his wife and daughter.

[30] An important issue to be examined is whether the circumstances disclosed by the evidence give rise to application of the doctrine of secondary intention. In order to that to be present, the prospect of a resale at a profit must have been an operating motive for the purchase that existed at the point of acquisition. Whether such motive existed is a question of fact in each case to be determined from a reasonable, objective analysis of all the evidence. In the within appeals, I do not find any

activities on the part of the appellant that were consistent with an intent to buy those Englemann lots and construct houses thereon for the purpose of resale at a profit even in the sense that concept existed merely as back-up plan in the far reaches of the appellant's mind. Each lot was located in a residential subdivision that was the focus of activity in a city where – at that time – the home construction industry was not particularly robust nor steady. The appellant built the Englemann homes and lived in 1967 Englemann and 1933 Englemann for varying periods of time that were not egregiously brief in view of the circumstances and the subsequent factors which motivated their resale. The financing on those two homes was conventional in the sense the appellant had equity valued at 25% and the mortgages had a fixed term. He had to pay a penalty and discharge fee in each instance in order to be relieved from his obligation thereunder. The fact the bank reimbursed him for that cost when he continued to remain a client and obtained new financing through a line of credit and – later - another mortgage is not abnormal in light of modern banking practices in a competitive industry.

[31] When various CCRA officials examined the circumstances, they took into account the construction of 4 houses - and subsequent sale of 3 of them - between 1996 and 2001. Upon closer inspection, they noticed red flags popping up here and there in harmonic response to a persistent and compelling adagio reminiscent of an adventure in the nature of trade. However, I have had the benefit of observing the appellant and his witnesses testify in Court. The appellant was an extremely credible witness and told his story in a straightforward manner without embellishment or editorial comment disguised as testimony. His position in this regard has been consistent throughout and he acknowledged he had lost his patience when dealing with one of the auditors and did not disclose some important information regarding the sale of 1933 Englemann until he communicated with Tarbet, the Appeals Officer. The appellant was a framer for 20 years and had not ventured into the arena of business until he assumed responsibility for operating – as an owner – D & R Framing for which he had worked as a framer/employee. He found the transition to owner/operator from employee to have been challenging but was buoyed by the unanticipated growth of the home building industry expansion in the past 3 years due in large measure to an overheated real estate market throughout most of British Columbia, including Kamloops. One must be careful not to look through the wrong end of the telescope. In 1999 and 2001, Kamloops was not a hot-bed of real estate activity in terms of purchases and sales. The unanticipated and outlandish increase in prices of homes in British Columbia generally, and in Kamloops was not reasonably foreseeable by the appellant at the time of the purchase of the Englemann lots nor at any point thereafter. He sold both homes for less than the listing price and 1967 Englemann did not sell for nearly 9 months after it was put up for sale. He paid

agents real estate commissions in the amounts of $5,500 and $5,906 for selling 1967 Englemann and 1933 Englemann, respectively. The circumstances of these transactions were normal, of the sort expected when an ordinary homeowner decides to dispose of one residence and acquire another. The appellant acknowledged in the course of his testimony that he had not appreciated the problems imposed by the configuration of the lot at 1967 Englemann and had overbuilt in terms of the needs of his family. The problem with the stairs at 1933 Englemann was not considered in its proper context at the time of construction and certainly would not have been the subject of much thought when the lot was purchased. Circumstances - and people - change with the passage of time and a variety of decisions are made from time to time following an evaluation of various factors appearing to be significant at that point.

[32] Taking into account the evidence and the relevant jurisprudence, I am satisfied the appellant was not engaged in an adventure or concern in the nature of trade as defined in section 248(1) of the *Act.* As a result, the income tax appeals are allowed and the assessment for each taxation year is referred back to the Minister for reconsideration and reassessment on the following basis:

> 1999: that the sum of $41,503.00 previously included into income be deleted.
> 2001: that the sum of $41,794.00 previously included into income be deleted.

The GST appeal:

[33] The Notice of Decision issued by the Minister confirmed an assessment of GST with respect to the supply calculated on the fair market value of the single unit complexes at 1967 Englemann, 1933 Englemann and 1948 Englemann. The position of the Minister is that the appellant was a builder within the meaning assigned by subsection 123(1) of the *ETA* and that subsection 191(1) thereof required that after he occupied those residences he was under an obligation to self-assess and to claim the appropriate ITCs.

[34] The relevant portion of section 123(1) of the *ETA* is:

> "builder" of a residential complex … means a person who
>
> (a) at a time when the person has an interest in the real property on which the complex is situated, carries on or engages another person to carry on for the person
> (iii) … the construction … of the complex, but does not include

> (f) an individual described in paragraph (a) … who carries on the construction … otherwise than in the course of a business or an adventure in the nature of trade.

[35] Other significant definitions within section 123(1) of the *ETA* are as follows:

> "business" includes a profession, calling, trade, manufacture or undertaking of any kind whatever, whether the activity or undertaking is engaged in for profit, and any activity engaged in on a regular or continuous basis that involves the supply of property by way of lease, licence or similar arrangement, but does not include an office or employment;

[36] It is apparent on the evidence the appellant was not carrying on the business of a builder in the usual sense. He was an employee of a framing company who, during his free time or when unemployed, built three residences for the purpose of himself and his family. There was no evidence of conduct reasonably consistent with that of a person engaged in carrying on the commercial activity of constructing houses. Therefore, the only basis upon which he could be included in the category of builder in the within GST appeal is if his activity during the relevant period otherwise permits him to be characterized as a builder by virtue of him having engaged in an adventure or concern in the nature of trade in respect of the construction of those houses. For the reasons expressed earlier in these reasons pertaining to the appeals from assessments of income tax, I find he was not engaged in such adventure or concern and that he was not a builder within the meaning of section 123(1) of the *ETA*.

[37] The appeal is allowed and the GST assessment No. 12261001946 dated February 17, 2004 is hereby vacated.

[38] The appellant is entitled to costs which I fix in the sum of $400.

Signed at Sidney, British Columbia, this 21st day of May 2007.

"D.W. Rowe"

Rowe D.J.

CITATION:	2007TCC275
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STYLE OF CAUSE:	BLAINE T. NOWOCZIN AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Kamloops, British Columbia
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REASONS FOR JUDGMENT BY:	The Honourable D.W. Rowe, Deputy Judge
DATE OF JUDGMENT:	May 21, 2007

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	David Everett

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada