

Docket: 2004-4430(IT)I

BETWEEN:

THÉRÈSE ST-HILAIRE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard October 17, 2005, at Québec, Quebec.

Before: The Honourable Justice Pierre Archambault

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Nathalie Goyette

JUDGMENT

The appeal of the assessment established under the *Income Tax Act* for the 1999 taxation year is allowed, without costs, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment taking into consideration that the amount to be included in the Appellant's income, under section 146 of the Act, must be reduced to \$30,842.54.

Signed at Ottawa, Canada, this 9th day of December 2005.

"Pierre Archambault"

Archambault J.

Translation certified true
on this 5th day of January 2006

Elizabeth Tan, Translator

Citation: 2005TCC747
Date: 20051209
Docket: 2004-4430(IT)I

BETWEEN:

THÉRÈSE ST-HILAIRE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Archambault J.

[1] This is the sad story of a woman who needed money to finance her return to school and who, after responding to a newspaper advertisement, got caught up in a scheme that was to allow her to withdraw part of her registered retirement savings plan (**RRSP**) tax free. The Minister of National Revenue (**Minister**) established a new assessment for Thérèse St-Hilaire's 1999 taxation year and, in accordance with paragraphs 146(10)(a) and 146(10)(c) of the *Income Tax Act* (**Act**), included the amount of \$48,200, the fair market value of an alleged non-qualified investment made with Ms. St-Hilaire's RRSP in the capital stock of the company 3563545 Canada Inc. (**3563**). Alternatively, in support of his assessment that the RRSP assets were used as a guarantee for a loan obtained from Financière Telco Inc. (**Telco**) and, in accordance with paragraphs 146(10)(b) and 146(10)(d), the Minister claims that the \$48,200 should be included in Thérèse St-Hilaire's income.

Facts

[2] Ms. St-Hilaire agreed to take early retirement from Bell Canada in 1996 and transferred around \$46,000 to her RRSP from her employer's retirement fund.

However, she could not touch this money before she turned 55. This type of arrangement is called a "locked-in retirement fund" (**LRF**).

[3] Since Ms. St-Hilaire could not find a new job and she had received all the employment insurance benefits to which she was entitled, she decided to go back to school. To pay for her tuition and expenses during her studies, Ms. St-Hilaire made withdrawals from her RRSP, except for the LRF. According to her statements, she claimed these withdrawals in her income. Since they were not enough and she could not touch her LRF, in October 1998, she noticed an ad in the *Journal de Québec* stating that a company offered loans from \$10,000 as long as the loans could be guaranteed by an RRSP, LRF or other investment. She made an appointment with a representative of the company, Mr. Arsenault, whom she met in an office on chemin Sainte-Foy.

[4] Mr. Arsenault testified at Ms. St-Hilaire's request.¹ He said that he had taken steps to obtain a loan to finance the construction of an apartment building to be owned by a not-for-profit organization, and that he had contacted Telco, which had a business office in Laval, Quebec. He stated that he had only worked for this company for 10 to 15 weeks. However, Mr. Arsenault did not recall meeting Ms. St-Hilaire. She, however, stated that Mr. Arsenault left a good impression because of his humanitarian goals, namely housing battered women. Mr. Arsenault then allegedly explained that she would have to transfer her LRF to the Laurentian Bank and that the lending company would manage the locked-in RRSP because under no circumstances could the funds of such an RRSP be withdrawn before the beneficiary turned 55. After asking Mr. Arsenault many questions to reassure herself that this arrangement was legitimate, and taking a few days to think, Ms. St-Hilaire met with Mr. Arsenault again on October 21, 1998, and signed the T2033 form to have her locked-in RRSP transferred from Investors Group to the Laurentian Bank—more specifically, to one of its branches in Toronto. In her March 6, 2001, letter to the Minister's auditor, Ms. St-Hilaire recounted these facts:

[TRANSLATION]

...

On October 21, 1998, Mr. Arsenault had me sign many papers including the attached T2033(F) form to have my LRF transferred from Investors Group to the Laurentian Bank.

¹ See para. 13 below for a description of the circumstances surrounding this hearing.

He informed me of the many fees for this transaction; I authorized Financière Telco to hold the following amounts: \$6,700.69 + \$469.05 GST + \$537.72 QST, for service and administration fees for the CFM consultant (attachment 2).²

The Laurentian Bank asked for \$1000.00 in my account, which would be managed by Georges Doualan (broker for CFM).

CFM kept 20% of the transaction as an additional guarantee, \$9.6K.³ Réal Arsenault came to my home to deliver my certified check on January 11, 1999. I took note of the exact amount of the check.

I signed the contract (attachment 2) with a few changes as you can see. The contract did not contain exactly what we discussed. We agreed that the first year I could repay only the interest and that I would start payments the following year.⁴

I gave Mr. Arsenault an authorization for pre-authorized payments starting on February 15, 1999, to January 15, 2000, for \$160.67 per month; and another for \$696.23 starting February 15, 2000, to January 15, 2006.

At no time did TELCO use this payment method. On many occasions, I tried to contact Mr. Arsenault but there was never any reply. Again and again, my attempts all went unanswered. On February 14, 2001, I put a stop to my pre-authorized payments (attachment 3).

The only RRSP statement is dated June 30, 1999 (attachment 4).

On February 14, 2001, further to your letter, I phoned Georges Doualan, (broker for CFM/TELCO) so ask him if my LRF was still registered, and he confirmed this. I asked him if there was someone I could speak to again from the company CFM/TELCO, and he gave me the name of Jean Leduc, who was in charge of my LRF, number [omitted for publication]. I asked him why the government wanted to tax my LRF when it was not useable. He told me to discuss this with Mr. Leduc, since he no longer made transactions for this company.

Regarding the transfer of my LRF from Investor to the Laurentian bank, I discussed this with Danielle Tremblay in Montréal at [number omitted for publication]. She was the resource person for this transaction. Mr. Arsenault was

² Consultant Financement Multiple Inc. (CFM).

³ According to Ms. St-Hilaire, this \$9,600 was to be used by Telco to generate interest income.

⁴ For a description of the loan, see para. 10, below.

responsible for recruiting through newspapers, signing contracts and delivering the check to Québec.

[5] The documentary evidence showed that the Laurentian Bank received an authorization dated December 15, 1998,⁵ to invest \$48,200 in a small company, namely 3563. In a letter to the Tax Deferral Plans Service at this bank, Ms. St-Hilaire acknowledged that the bank's responsibility was limited to signing the receipt of the shares certificate and cashing the amounts of the dividend or product of the share buyback. Ms. St-Hilaire also agreed, in case the company 3563 defaulted, to provide the necessary amounts for any legal proceeding that could be instituted by the RRSP against the company. In another letter dated the same day, addressed to the Laurentian Bank's Trust Department for individuals, Ms. St-Hilaire gave the necessary authorization to purchase 1,928 shares of capital stock in 3563 at \$25 each for a total of \$48,200.

[6] During her direct examination, Ms. St-Hilaire acknowledged her signature on each of these two letters. However, she stated that they were blank letters that she had signed and the handwritten notations indicating the number of shares, name of the company and the amount invested were made afterwards by someone else. During her cross-examination, Ms. St-Hilaire changed her version to state that some of the typed paragraphs had been added afterwards. According to Ms. St-Hilaire, she would never have authorized the purchase of these shares of 3563. In support of her claims, Ms. St-Hilaire produced a complaint she had filed with the Autorité des marchés financiers (**Authority**) on October 11, 2005, a few days before the hearing of her appeal. Counsel for the Respondent gave her a letter dated September 23, 2005, with copies of the two December 15, 1998, letters. In her complaint to the Authority, Ms. St-Hilaire asked that her file be examined to review the "authenticity" and the "non-authorization to transform [her] LRF to shares."

[7] In a letter also dated December 15, 1998, Jean-Marie St-Jacques, on behalf of 3563, informed the Laurentian Bank that Ms. St-Hilaire had purchased 1,928 category B shares of capital stock in 3563 using her self-administered RRSP and that payment of these shares, in the amount of \$48,200, was to be made to 3563 and delivered to an office in Laval, Quebec. Attached to this letter was an accountant's report, by Mr. Laniel, establishing the value of the shares of 3563 and their admissibility as investments under an RRSP. Mr. Laniel later stated, in a

⁵ See Exhibit A-1, Tab A-13, and Exhibit I-3, Tabs 1 and 2.

statutory declaration signed July 21, 2000, that his report was given without a verification of the operations of 3563 and that he was not able to justify the opinions found therein, including the one regarding the value of the shares. As for the investment in 9056-8072 Québec Inc., Mr. Laniel also stated in his statutory declaration that this company did not have any activity and that the arrangement allowed [TRANSLATION] "the investor [to receive] part [of an] amount invested as a loan." According to the auditor, who testified at the hearing, this statement was also true of 3563 (Exhibit I-10).

[8] A share certificate for 3563 delivered to the Laurentian Bank as trustee for Ms. St-Hilaire is dated December 15, 1998 (Exhibit I-3, Tab 5). The evidence does not show, however, when the check was delivered by the Laurentian Bank to 3563. All that was shown was that on January 31, 1999, 3563 purchased 336 category G shares of Telco for the amount of \$933,600. These were non-voting shares.⁶ The stock register for Telco shows that a certain Jean Tremblay held 10,000 category A shares of Telco.⁷ He also held 51% of the category A voting shares of 3563, and Mr. St-Jacques held 49%.⁸ In addition to Ms. St-Hilaire's RRSP, were those of 49 other people who held category B shares of 3563, for a total of 42,350 shares, representing a subscribed capital of \$1,058,750.⁹

[9] According to Telco's bank statements, an amount of \$222,542 was deposited on January 8, 1999. This amount was from category B shareholders of 3563 and included \$46,754 from Ms. St-Hilaire's RRSP.¹⁰ That same day, Telco's account

⁶ See stock register for Telco, Exhibit I-2, Tab 2.

⁷ A press release from the Commission des valeurs mobilières du Québec [Quebec Securities Commission] (CVMQ), dated October 23, 2002, indicates that investigators from the CVMQ carried out a search of the offices of CFM and Telco, of which Jean Tremblay was president. The same press release states that Mr. Tremblay pleaded guilty before the Court of Quebec (criminal and penal division) to 200 charges accusing him of having aided companies to invest their shares with many investors without obtaining the prospectus required by the CVMQ, and that he was sentenced to pay a fine of \$1 million. The same press release states that CFM offered financial aid to RRSP holders through advertisements published in newspapers.

⁸ Exhibit I-2, Tab 3.

⁹ *Ibid.*

¹⁰ This amount represents 97% of the \$48,200 subscribed by Ms. St-Hilaire's RRSP regarding shares of 3563. No explanation is provided, but is likely that a commission was paid to an agent.

was debited by certified check for \$30,842.54. This amount corresponds to the net amount of the loan Ms. St-Hilaire received from Mr. Arsenault.

[10] According to the alleged loan contract¹¹ signed on January 8, 1999, between Telco and Ms. St-Hilaire, she acknowledged receipt of a \$38,560 loan that day. She authorized Telco to withhold from this amount \$6,700.69 plus GST of \$469.05 and QST of \$537.72 (for a total of \$7,707.46) for service and administrative fees at CFM.¹² The amount given to Ms. St-Hilaire represents the net amount after subtracting these fees and taxes.¹³ According to the alleged loan contract, she agreed to pay interest at 5% starting January 8, 1999, and to repay \$619.70 monthly, for a seven-year period. The parties amended the repayment terms so that, contrary to what is in the contract, an amount of \$160.67 would be paid monthly for 12 months, towards the interest, and that the capital would be repaid over six years at \$696.23 per month, representing a total reimbursement of \$52,056, capital and interest.

[11] As mentioned above, Ms. St-Hilaire gave a bank authorization allowing Telco to reimburse itself every month. However, Telco did not make any withdrawals as payment of either capital or interest. Ms. St-Hilaire stated that not only did she not pay any capital or interest to Telco, but she also informed the Caisse populaire that she opposed payment on February 14, 2001, after having learned a few days earlier that the Minister was to include an additional \$48,200 to her income.

[12] In his February 8, 2001, letter, Gino Vita, Minister's auditor, justifies including the amount as follows: he gives the reason that the investment in 3563 does not meet the criterion of an "admissible investment" and that the alleged loans were offered simply in exchange for shares of 3563, which led him to conclude that, [TRANSLATION] "...if this loan really existed...the ownership of your RRSP would be the loan guarantee." (Emphasis added). Moreover, the auditor mentioned

¹¹ Exhibit A 1, Tab 2.

¹² It must be noted that the difference between \$48,200 and the \$38,560 loaned to Ms. St-Hilaire is \$9,640, or approximately 20%, which Ms. St-Hilaire believed had been given as a guarantee.

¹³ In fact, there is a difference of \$10: \$38,560 — \$6,700.69 — \$469.05 — \$537.72 = \$30,852.54.

the possible application of the anti-avoidance provision in subsection 245(1) of the Act and found that the amount of the RRSP withdrawal should be considered income under paragraph 56(1)(h) of the Act.

[13] In addition to making an opposition to the payment of capital and interest regarding her loan, Ms. St-Hilaire filed a complaint with the Québec City police on January 9, 2002, for economic fraud of \$18,000. The complaint was filed against Jean and Danielle Tremblay and Mr. Arsenault. Ms. St-Hilaire did not explain how she came to the amount of \$18,000, but the \$9,600 that CFM was to hold as a guarantee, added to the amount of the fees paid to CFM (plus taxes), namely \$7,707.46 represents a total of \$17,307.46. The \$30,842.54 she received represents 64% of the amount allegedly invested by Ms. St-Hilaire's RRSP in 3563. Moreover, in a letter dated October 14, 2005, addressed to this Court asking for a postponement of her hearing, Ms. St-Hilaire indicated that the criminal complaint filed January 9, 2002, had been suspended because Mr. Arsenault had not yet been found. Further to searches carried out by a private investigator, she managed to have him served with a subpoena requiring him to appear at the hearing of this appeal, and Ms. St-Hilaire indicated in her letter that she had advised the Québec municipal police. Finally, Ms. St-Hilaire submitted to evidence a letter from an Ontario lawyer introducing a class action against many persons, including Jean Tremblay, Telco, CFM, the Laurentian Bank and 3563. The lawyer wrote in this letter: "*The number of Defendants continues to grow as time progresses, as does the number of victims of the RRSP scam.*"

[14] During his testimony, Mr. Vita claimed that Mr. Tremblay's group of companies (**Groupe Tremblay**) had implemented a strategy to take funds from RRSPs, that the group used recruiters and advertised in local papers. The money was invested in the group's companies and the amounts returned to the RRSP holders represented 65% of the amount transferred to the group. According to an organization chart prepared by Mr. Vita, the group was made up of over ten companies Mr. Tremblay controlled. According to the findings of his investigation, the alleged loans made by Telco were not, in general, repaid by the taxpayers who had been recruited into the scheme.

[15] Mr. Vita also described the activities of 3563 and Telco to show they were not related to the operation of an active company. A letter signed by Mr. Tremblay confirms that the only activity of 3563 was to hold Telco shares (Exhibit I-7, Tab 3). As for Telco's activities, an careful analysis of its financial statements and some of its accounting records showed that Telco declared false income and deducted false expenses to give the impression it operated an active company. In

particular, "income from contracts" of \$1,213,022 appeared on the financial statements to January 31, 1999, and represented false income that was offset by expenses for "purchases and sub-contracts" of \$1,097,969 that were only accounting entries, and the operations to which they refer were for another of the Groupe Tremblay's companies (see Exhibit I-8, in particular Tabs 1, 3 and 4). Moreover, according to Mr. Vita's analysis, "interest income" of \$679,639 that appears in these financial statements was interest Telco did not receive and had no intention of collecting.

Analysis

[16] In my opinion, Ms. St-Hilaire's appeal must be allowed because the amount the Minister included in her income was erroneous. However, this does not mean that nothing should be included in her income. The Minister established an assessment for Ms. St-Hilaire based on subsection 146(10) of the Act, including \$48,2000 in the income, which represented the market value of either an alleged non-qualified investment, or the RRSP property that was used as a guarantee of an alleged loan obtained from Telco. In my opinion, there are two reasons to find that this subsection does not apply in this case. First, the Minister included \$48,2000 in the income from the 1999 taxation year, whereas he did not establish that the alleged non-qualified investment was acquired in 1999. The following is set out by subsection 146(10) of the Act:

146(10) Where acquisition of non-qualified investment by trust —

Where at any time in a taxation year a trust governed by a registered retirement savings plan

(a) acquires a non-qualified investment, or

(b) uses or permits to be used any property of the trust as security for a loan,

the fair market value of

(c) the non-qualified investment at the time it was acquired by the trust, or

(d) the property used as security at the time it commenced to be so used, as the case may be, shall be included in computing the income for the year of the taxpayer who is the annuitant under the plan at that time.

[Emphasis added.]

[17] It is either the time the non-qualified investment was acquired or the time it commenced to be used as a loan guarantee that must be considered when determining the fair market value of the property and the year this value is to be added to the income. In the statement of facts at paragraph 5 of the Reply to the Notice of Appeal (**reply**), the Respondent's agent did not indicate that the date of acquisition of the alleged non-qualified investment was in 1999 or that the payment of shares occurred in 1999. However, in subparagraph 5(e) of the Reply, there is a reference to the December 15, 1998, letter that states the Appellant had purchased shares in 3563. The burden of proof was again on the Respondent to determine the date of acquisition of Ms. St-Hilaire's alleged RRSP investments. Counsel for the Respondent claims that the shares in 3563 could not have been acquired in 1998 unless their cost had been paid in whole. Even if this argument had merit, the evidence presented by the Respondent does not establish, on a balance of probabilities, that the payment was only made in January 1999. All the evidence shows is that the check from the Laurentian Bank, where Ms. St-Hilaire's RRSP amount originated, was likely not deposited to 3563's bank account until the beginning of 1999, on January 8, 1999 (Exhibits I-4 and I-5, Tab 1). In fact, there is a deposit of \$229,425 on 3563's bank statement, but no details are provided regarding this deposit. The only deposit slip produced was that of Telco, dated January 8, 1999, regarding a deposit of \$222,542 made from 3563's funds and that likely included an amount paid from Ms. St-Hilaire's RRSP. It is therefore possible that the checks could have been delivered to 3563 by the Laurentian Bank before January 1, 1999, but that 3563 only deposited them eight days later. In such a case, the acquisition of the alleged shares of 3563 would have occurred in 1998 and not in 1999. Additionally, the certificate delivered by 3563 is dated December 15, 1998, and this date corresponds to the date that appears on a letter sent by 3563 to the Laurentian Bank, which mentioned that Ms. St-Hilaire "purchased" 1,928 category B shares of 3563. As a result, the Respondent did not establish that the Minister's assessment was valid with respect to the application of subsection 146(10) of the Act.

[18] At any rate, even if the evidence had shown that the alleged acquisition of shares in 3563 had been made in January 1999, I would still come to the conclusion that these shares were not a genuine "non-qualified investment" within the meaning of subsection 146(10) of the Act. In my opinion, Ms. St-Hilaire's RRSP did not acquire a genuine investment and Telco did not grant a genuine loan to Ms. St-Hilaire. The loan, as with the shares in 3563, was a sham since the perpetrators of the scam never genuinely intended for Ms. St-Hilaire's RRSP to hold an investment or for a loan to be granted. In fact, as counsel for the

Respondent has admitted, the true goal of the operations was to "offload" part of Ms. St-Hilaire's RRSP to her, tax-free.¹⁴

[19] The evidence that the loan was not genuine can be found in the fact that the amount given by Telco to Ms. St-Hilaire was never repaid by Ms. St-Hilaire and that Telco, although it had the authorization to debit Ms. St-Hilaire's bank account to pay the interest and capital of the loan, never did so. A loan is so defined at article 2314 of the *Civil Code of Québec*:

2314. The simple loan is a contract by which the lender hands over a certain quantity of money or other property that is consumed by the use made of it, to the borrower, who binds himself to return a like quantity of the same kind and quality to the lender after a certain time.

[Emphasis added.]

[20] Based on the evidence presented before me, I find that, on a balance of probabilities, Telco never intended on making a loan since it never intended on asking for the repayment of the capital or collecting interest. The genuine intention of Telco was to return part of Ms. St-Hilaire's RRSP to her. Telco was able to gain possession of the money held in this RRSP by setting up another sham, the purchase of 1,928 category B shares of 3563. Moreover, Ms. St-Hilaire claims she never authorized the purchase of such shares. It is true that subsection 146(1) defines a "non-qualified investment", in relation to a trust governed by a registered retirement savings plan, as "property acquired by the trust after 1971 that is not a qualified investment for the trust." Clearly, this definition and that of a "qualified investment"^{15 target} assets and investments. This term is defined in the *Canadian*

¹⁴ Another problem that could be raised regarding the application of subs. 146(10) of the Act is regarding the fair market value of such an "investment". In the circumstances of this appeal, there is no way to be sure that the alleged shares in 3563 were worth the amount paid for them. The relevant time for determining this value is at the time of acquisition and not just before the time of acquisition.

¹⁵ The expression "qualified investment" is defined as follows:

"qualified investment" for a trust governed by a registered retirement savings plan means

(a) an investment that would be described in any of paragraphs (a), (b), (d) and (f) to (h) of the definition "qualified investment" in section 204 if the references in that definition to a trust were read as references to the trust governed by the registered retirement savings plan,

(b) a bond, debenture, note or similar obligation

Oxford Dictionary as "the act or process of investing money..." and "invest," as "apply or use money (esp.) for profit". In this case, when the representative of 3563 informed the Laurentian Bank that Ms. St-Hilaire had purchased shares in 3563, he did not intend, as one of the perpetrators of the scheme, to use the capital "for profit." Rather, it was a pretext or window dressing to justify withdrawing money from the RRSP to the Laurentian Bank so that the money went from Ms. St-Hilaire's RRSP to Ms. St-Hilaire through 3563 and Telco, after a 36% "commission" deduction. This description of operations corresponds to that given by counsel for the Respondent at paragraphs 13 to 17 of her written arguments:

[TRANSLATION]

13. Financière Telco Inc. simply offloaded to people part of the investment they made in related companies through their RRSPs minus a commission that it kept. The income that appears on the financial statements of Financière Telco Inc. is mainly accounting entries that exist simply to create the illusion that activities were carried out. (*Testimony of Gino Vita, statements of income of Financière Telco Inc. and accounting documents*)
14. On or around January 7, 1999, the Appellant obtained a \$30,842.54 loan from Financière Telco Inc. (*Loan agreement*)
15. The loan arrangement was merely offered in return for the purchase of shares in 3563545 Canada Inc. through the Appellant's RRSP. (*Testimony of Gino Vita*)
16. The Appellant never repaid the loan or paid interest on this loan. (*March 6, 2001, letter*)
17. Because of the scheme described above, the Appellant could withdraw from her RRSP without paying taxes.

...

(c) an annuity described in the definition "retirement income" ...

(c.1) a contract for an annuity issued by a licensed annuities provider where

...

(c.2) a contract for an annuity issued by a licensed annuities provider where

...

(d) such other investments as may be prescribed by regulations of the Governor in Council made on the recommendation of the Minister of Finance

[Emphasis added.]

[Emphasis added.]

[21] If the Minister's assessment cannot be justified by subsection 146(10) of the Act, it could, however, be justified by subsection 146(8), which states:

146(8) **Benefits taxable.** There shall be included in computing a taxpayer's income for a taxation year the total of all amounts received by the taxpayer in the year as benefits¹⁶ out of or under registered retirement savings plans, other than excluded withdrawals (as defined in subsection 146.01(1) or 146.02(1)) of the taxpayer and amounts that are included under paragraph (12)(b) in computing the taxpayer's income.

[22] In fact, the evidence showed that Ms. St-Hilaire received \$30,842.54 by certified check on January 8, 1999, and this amount was a benefit received under an RRSP in 1999, the year referred to in the assessment. In my opinion, even if Ms. St-Hilaire did not participate with fully informed knowledge in the scheme to withdraw this amount from her RRSP, the fact is that she has held \$30,842 from her RRSP since January 8, 1999. She has never paid any interest on this alleged loan and she never had to repay the amount. Moreover, I also believe that this amount will never be repaid to Telco.¹⁷

¹⁶ The expression "benefit" is defined in subsection 146(1) as follows:

"benefit" includes any amount received out of or under a retirement savings plan other than
...

[Emphasis added.]

¹⁷ In general, Ms. St-Hilaire's testimony was convincing regarding her ignorance of the scheme implemented by the Groupe Tremblay. I believe she is sincere when she states she did not understand the true nature of this arrangement. She believed she was taking out a loan and believed she was to repay this amount. The only part of her testimony that seemed slightly disturbing was the change in the versions she gave regarding the December 15, 1998, letters. Obviously this change could lead to the belief that Ms. St-Hilaire is of bad faith. First, she stated that the handwritten notes were not there when she signed the two letters. She said she had signed blank letters. Then, when counsel for the Respondent pointed out to her that without the handwritten notes, it was clear that she authorized the RRSP to purchase shares of an unnamed company, Ms. St-Hilaire stated that the paragraphs had been added later. As counsel for the Respondent stated, the alignment of the paragraphs does not lead to this conclusion. However, I am willing to give Ms. St-Hilaire the benefit of the doubt and file this part of her testimony under nervousness, with which testimony is often conducted

[23] To me, this seems to be a more appropriate approach for assessing Ms. St-Hilaire than that adopted by the Minister. The only amount she received was \$30,842,54. Moreover, it must be noted that adding an RRSP to the income of an annuitant following the acquisition of a non-qualified investment is done to discourage the acquisition of non-qualified investments through RRSPs. As counsel for the Respondent mentioned, subsection 146(6) of the Act sets out that such annuitants have the right to deduct the lesser of the amount included in the income according to subsection 146(10) and the proceeds of disposition of the non-qualified investment when calculating their income. However, in this case, the disposition of shares of 3563 could not give a proceed of disposition equal to the amount included in Ms. St-Hilaire's income¹⁸ since the perpetrators of the scheme took part of the amount withdrawn from the RRSP (36%). Since the perpetrators profited from the trust of the taxpayers who participated in the scheme and it is unlikely that Ms. St-Hilaire's RRSP can recover this part of the amount withdrawn, the solution proposed by the prosecution is very likely to be ineffective. Taxing only the amounts Ms. St-Hilaire held seems fairer to me since the resulting effect is to not tax the amounts she lost to Groupe Tremblay.

[24] Clearly, if the class action were to allow Ms. St-Hilaire's RRSP to recover part of the \$17,307 it lost in this scheme, such an amount would not be taxable, unless it was given to her instead of her RRSP.

[25] Before concluding, it must be noted that the Minister's alternative argument cannot be considered in this case. This argument was that an amount was used by the RRSP as a guarantee for a loan to Ms. St-Hilaire. In this case, we cannot say that Ms. St-Hilaire's RRSP was used to guarantee a loan granted to her since, first of all, as I found above, there was no real loan granted to Ms. St-Hilaire. Moreover, the amount in question was not used as a guarantee since it was distributed in its entirety: 64% to Ms. St-Hilaire and 36% to the perpetrators of the scheme.

before the Court. If I had believed that Ms. St-Hilaire participated with fully informed knowledge in the scheme, for example knowing the loan was not a loan, I would have been inclined to give effect to what was indicated in the alleged loan contract, namely that Ms. St-Hilaire acknowledged having received the \$38,560, and this amount could have been included in her income.

¹⁸ Unless the fair market value amount of the alleged investment is equal to the proceed of disposition. See note 14, above.

[26] For all these reasons, Ms. St-Hilaire's appeal is allowed without costs, and the assessment is referred back to the Minister for reconsideration and reassessment taking into consideration that the amount to be included in Ms. St-Hilaire's income under section 146 of the Act must be reduced to \$30,842.54.

Signed at Ottawa, Canada, this 9th day of December 2005.

"Pierre Archambault"

Archambault J.

Translation certified true
on this 5th day of January 2006

Elizabeth Tan, Translator

CITATION: 2005TCC747

COURT FILE No.: 2004-4430(IT)I

STYLE OF CAUSE: THÉRÈSE ST-HILAIRE AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: October 17, 2005

REASONS FOR JUDGMENT: The Honourable Justice Pierre Archambault

DATE OF JUDGMENT: December 9, 2005

APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Nathalie Goyette

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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