Docket: 2003-648(IT)G

BETWEEN:

CARLO VENNERI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on April 13, 2005, at Montréal, Quebec

Before: The Honourable Judge Pierre R. Dussault

Appearances:

Counsel for the Appellant: Serge Fournier

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 1998, 1999 and 2000 taxation years are dismissed, with costs to the Respondent, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 20th day of May 2005.

"P.R. Dussault"

Dussault J.

Translation certified true
on this 15th day of March 2006.

Garth M^c^Leod, Translator

Citation: 2005TCC329
Date: 20050520
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REASONS FOR JUDGMENT

Dussault J.

[1] These are appeals from assessments made under the *Income Tax Act* (the "*Act*") for the 1998, 1999 and 2000 taxation years.

[2] Three points are at issue.

- The first is whether a loss incurred in 1998, when a claim that the Appellant held against 2959-5451 Québec Inc. became a bad debt, was a business investment loss or simply a capital loss. This characterization also has an impact on the 2000 year, since the Appellant carried forward to that year a non-capital loss resulting from a business investment loss incurred in 1998.

- The second issue concerns the proceeds of disposition, in 1999, of a rental property located at 100 Île de Mai and the determination of the resulting terminal loss and capital loss.

- The third issue concerns the claim for interest expenses of $5,707 for 1999.

[3] In making the assessments, the Minister of National Revenue (the "Minister") relied on the assumptions of fact found in subparagraphs 12(a) to (ss) of the Amended Reply to the Notice of Appeal (the "Reply"). These subparagraphs read as follows:

> [TRANSLATION]
>
> (a) The Appellant is a dental surgeon; during the years in issue, he carried on his activities at his clinic located on Jean-Talon Boulevard East, in Montreal;
>
> (b) His spouse, his two sisters and another employee worked with him;
>
> (c) Apart from his professional income, he reported rental income and conducted real estate transactions;
>
> (d) At the time of the audit by an officer of the Minister of National Revenue, the auditor found that internal control of the business was insufficient and that there was a lack of control over computerized records;
>
> (e) The Appellant held personal and business bank accounts, which were used independently of the transactions performed;
>
> (f) For example, a personal line of credit account could be used as a personal liability in one year and a professional liability in the following year;
>
> (g) Monitoring the transactions conducted by the Appellant was a complex matter, since he could use a number of accounts for a single transaction;
>
> (h) The Appellant often used members of his family as nominees to conduct his real estate and financial transactions;
>
> (i) By the notices of assessment issued on May 7, 2002, the Minister of National Revenue in particular disallowed the business investment loss for 1998, the terminal loss and capital loss resulting from the disposition of 100 Île de Mai and interest expenses, for the reasons explained below:
>
> **Business investment loss in 1998**
>
> (j) In computing his income for the 1998 taxation year, the Appellant claimed a business investment loss of $247,929, representing the balance of loans made to 2959-5451 Québec Inc., plus certain adjustments;
>
> (k) 2959-5451 Québec Inc. was incorporated on July 15, 1992, and the sole shareholder of the corporation at that time was the Appellant's spouse;
>
> (l) The corporation's economic activity was landholding;

(m) On September 3, 1992, the corporation purchased the mortgage receivable of $650,995 on a vacant lot in Ste-Marthe-sur-le-Lac;

(n) That purchase was financed by a mortgage with the National Bank, guaranteed by the Appellant;

(o) That same vacant lot had initially been acquired in 1988 by 160441 Canada Inc., of which the Appellant was a 25 percent shareholder;

(p) The lot was the sole asset of 160441 Canada Inc. and was subject to a mortgage;

(q) On February 4, 1993, 2959-5451 Québec Inc. exercised its mortgage creditor's right and seized the vacant lot;

(r) 160441 Canada Inc. declared bankruptcy after the lot was seized, and there has been no further activity in that corporation since November 30, 1991;

(s) The vacant lot was transferred from 160441 Canada Inc. to 2959-5451 Québec Inc.;

(t) On June 3, 1993, the Appellant bought back the shares of 2959-5451 Québec Inc. belonging to his spouse for the sum of $1, subsequently becoming the sole shareholder of that corporation;

(u) The Appellant repaid the first mortgage and replaced it with a second out of a personal line of credit of $435,000 with the Laurentian Bank;

(v) Those transactions enabled the Appellant to protect his investment and not to operate a business;

(w) No other transaction was conducted by 2959-5451 Québec Inc.;

(x) No employee was hired by the company;

(y) No business activity other than landholding was carried on by the corporation;

(z) 2959-5451 Québec was not a small business corporation within the meaning of the *Act*;

(aa) On July 31, 1998, 2959-5451 Québec Inc. sold the vacant lot;

(bb) The transaction was of a capital nature and a capital loss of $230,952 was allowed on the disposition of the lot;

(cc) For the 2000 taxation year, a non-capital loss of $67,147 carried forward from 1998 was disallowed in view of the fact that the business investment loss had been disallowed;

Capital loss and terminal loss (100 Île de Mai)

(dd) In computing his income for the 1999 taxation year, the Appellant claimed a terminal loss of $113,000 and a capital loss of $63,600 on the disposition of a property located at 100 Île de Mai, in Boisbriand;

(ee) The property at 100 Île de Mai was acquired by the Appellant and his spouse on July 31, 1998, for $473,600, that is, $303,100 for the building and $170,500 for the lot;

(ff) In 1999, the Appellant reported that he had sold that property for $300,000, that is, $190,100 for the building and $106,900 for the lot;

(gg) The contract of sale entered into on July 14, 1999, before Pierre Girard, notary, states that the selling price of the immovable was $456,000 and that the tax base for the land transfer tax was equal to the municipal assessment of $473,000;

(hh) On May 3, 1999, a promise of purchase and sale in the amount of $456,000 was accepted by the vendor;

(ii) The Appellant submitted a promise of purchase and sale dated June 3, 1999, stating a purchase price of $300,000;

(jj) The Appellant also submitted a signed counter letter dated July 14, 1999, which states that the actual price of the transaction was $300,000;

(kk) Another document, dated May 19, 1999, cites a selling price of $272,000;

(ll) In view of the major discrepancies between the documents submitted and of the explanations obtained by the Appellant, the disposition price of the Île de Mai property was set in accordance with the contract of sale entered into before Pierre Girard, notary;

(mm) The terminal loss on disposition of the building was corrected to $16,458;

(nn) The capital loss on disposal of the land was corrected to $9,258;

Interest expenses

(oo) In computing his income for the 1998 taxation year, the Appellant claimed interest expenses, which were disallowed in part, as it appears from the following table:

Interest expense	Claimed	Allowed	Disallowed
Professional income	$15,899	$15,899	$0
Personal	$13,675	$130	$13,545
Rental income	$4,133	$2,096	$2,037
Total:	$33,707	$18,125	$15,582

(pp) In computing his income for the 1999 taxation year, the Appellant claimed interest expenses, which were disallowed in part, as it appears in the following table:

Interest expense	Claimed	Allowed	Disallowed
Professional income	$17,406	$14,699	$2,707
Personal	$12,662	$2,355	$10,307
Rental income	$3,737	$1,898	$1,839
Total:	$33,805	$18,952	$14,853

(qq) An analysis of the interest expenses claimed for 1998 and 1999 shows that the disallowed expenses are those that the Appellant was unable to show were incurred for the purpose of earning income from a business or property;

(rr) The interest expense deductions of $15,582 for 1998 and $14,853 for 1999 are not permitted under the *Income Tax Act*;

(ss) for the 1998 taxation year, interest of $10,428 was capitalized in the cost of the vacant lot in Sainte-Marthe-sur-le-Lac;

[4] Certain adjustments and clarifications are necessary concerning the first point in issue. According to counsel for the Respondent, the Minister found that the sale by 2959-5451 Québec Inc. of the lot located in Sainte-Marthe-sur-le-Lac resulted in a capital loss. Furthermore, and this point is not reflected in the Reply, the Appellant was allowed a capital loss under subsection 50(1) of the *Act* in the amount of his

claim on 2959-5451 Québec Inc., since the loans that he had made to that corporation became bad debts. However, the Appellant believes that that capital loss should be considered as a business investment loss, since he contends that 2959-5451 Québec Inc. was a small business corporation.

[5] On the subject of interest expenses disallowed in 1998 and 1999, the Appellant now disputes only the disallowance of the deduction of $5,707 of the $10,307 amount disallowed in 1999 on the ground that it consisted of interest expenses for personal loans.

(1) Loss in respect of the loans made to 2959-5451 Québec Inc.

(a) Summary of the evidence

[6] In his testimony, the Appellant explained the circumstances in which the lot in Sainte-Marthe-sur-le-Lac, Quebec, was acquired by 160441 Canada Inc. The lot, of nearly 500,000 square feet, ran along Boulevard des Promenades over a distance of nearly 1,000 feet. It was approximately one kilometre from the municipal limits of Deux-Montagnes and three kilometres from the site of a commuter train station planned for that municipality. The lot, 30 percent of the area of which was located in a commercial zone and 70 percent in a residential zone, not far from a shopping centre, was, according to the Appellant, in a highly strategic position favourable to its development. He said that the part located in the residential zone, which he wanted to develop first, would have allowed for the construction of approximately 60 houses on lots of 5,000 square feet each.

[7] It was thus for the purpose of entering into a partnership with a builder to construct and sell the residences that the Appellant and three other persons, one of whom was a real estate agent, acquired the lot in 1988 through 160441 Canada Inc., of which they had each become 25 percent shareholders. The real estate market was rising at the time and financing of $500,000 was obtained from the Ace Mortgage company. Each shareholder, except for the Appellant, had to mortgage his residence as a guarantee. The Appellant provided a personal guarantee.

[8] According to the Appellant, the project was to build single-family residences worth $70,000 to $100,000. The cost to install municipal services was estimated at $1,000,000, and the total profit anticipated was in the order of $450,000. The Appellant stated that he knew a builder who was already working on another development project in the surrounding area and who subsequently could have become a partner in theirs.

[9] In early 1989, land surveyors were contacted about the development. They purportedly presented a project and submitted a plan. At the same time, the shareholders learned that the municipality was considering realigning Boulevard des Promenades and that it was suspending the issuing of building permits. According to the Appellant, the realignment of Boulevard des Promenades was likely to make the acquired land less attractive and to increase the cost of municipal services. Meetings were thus held with the director general, urban planners and elected municipal representatives, as well as with the owners of other lots along Boulevard des Promenades, for the purpose of preventing the contemplated change. As the Appellant said, they had to wait and hope that the alignment of Boulevard des Promenades would not be altered.

[10] As he explained, subsequently, in 1990, the real estate market declined so that the project had to be put on hold. In his view, it was then illogical to go ahead with a project that would not sell. They therefore had to wait until the market rebounded. In the meantime, the corporation was financed through investments by the shareholders, but that became increasingly difficult, to such an extent that two shareholders had to declare bankruptcy. The Appellant stated that he had in fact been the only one who could continue. The hypothecary creditor, Ace Mortgage, demanded payment. According to the Appellant, its claim amounted to $690,000 in 1992, and the balance of the selling price of the land, $170,000, which was guaranteed by a second hypothec, was also payable.

[11] In 1992, on his lawyer's advice, the Appellant incorporated 2959-5451 Québec Inc., of which his spouse, Caroline Walton, was the sole shareholder, in order to negotiate with Ace Mortgage through a person that Ace Mortgage did not know. Negotiations indeed began, and, in September 1992, 2959-5451 Québec Inc. bought back Ace Mortgage's mortgage loan for $560,000, which was advanced by the Appellant. The land owned by 160441 Canada Inc. was seized by 2959-5451 Québec Inc. and was subsequently the subject of a court sale. 2959-5451 Québec Inc. was the purchaser. The court sale had the effect of extinguishing the second mortgage. 2959-5451 Québec Inc. acquired the lot without incurring any outlay, since it then became the sole mortgage creditor. In 1993, the Appellant became the sole shareholder of that corporation by acquiring the shares held by his spouse.

[12] As to the sum of $560,000 lent to 2959-5451 Québec Inc. to acquire the mortgage from Ace Mortgage, the Appellant stated that he had obtained it through a loan backed by mortgages on a condominium, a lot and a two-unit house that he owned at the time. He purportedly also provided as a guarantee a $50,000 term deposit acquired with the funds from a bank line of credit.

[13] The Appellant said that he had asked the co-shareholders of 160441 Canada Inc. to join with him in the new corporation, 2959-5451 Québec Inc., and to make new investments in order to pursue the initial project, but, he said, they no longer had the means or the desire to do so.

[14] In 1993, the issuing of building permits was still suspended, and the Boulevard des Promenades realignment project was still under study. The Appellant said that more meetings were held with the general manager of the municipality to defeat the proposed change. He said that he still believed in his project and that, at that time, he had met with a number of builders who might eventually be interested in becoming partners with him in order to develop it.

[15] In 1996, the Appellant purportedly disputed the municipal assessment of the land, which was reduced from $500,000 to $341,700 at that time.

[16] The decision to realign Boulevard des Promenades was ultimately made in 1997. As a result of the new alignment, the land lost all access to Boulevard des Promenades. The Appellant then tried to get the municipality at least to build a street providing the lot with an access route to the new alignment of the boulevard. Exhibits A-2, A-3 and A-4 filed in evidence are letters showing that that request was made in late 1997 and early 1998. However, according to the Appellant, the municipality never responded to them favourably.

[17] The Appellant also stated that the Boulevard des Promenades realignment work began in May 1998. In July 1998, 2959-5451 Québec Inc. disposed of the land at a loss in response to an unsolicited offer. The Appellant also said that he did not remember whether the land had been put up for sale at any time in the previous years.

[18] The Appellant filed two other documents in evidence showing the action he had taken. Exhibit A-5 is a bill for fees of $113.96, dated September 20, 1995, which is addressed to him, for a copy of the plans that were purportedly prepared by the land surveyors in 1988 or 1989. Those plans were not filed in evidence.

[19] Exhibit A-1 is a report sent to the Appellant by Qualilab Inspection Inc. entitled "Environmental Soil Characterization" concerning the land in Sainte-Marthe-sur-le-Lac. The report, dated February 24, 1998, had been requested by the Appellant to ensure that the land was not contaminated. A bill for fees of $2,070.45 was attached to the report.

[20] In cross-examination of the Appellant, counsel for the Respondent drew attention to the resolution of 2959-5451 Québec Inc. dated January 22, 1993, authorizing it, following the seizure of the land, to act as purchaser in the court sale in order "to protect its claim" (Exhibit I-1, Tab 15, second last page). The Appellant's comment on this point was that the idea had essentially been to retake possession of the land in order to develop it.

[21] In addition, the financial statements filed by 2959-5451 Québec Inc. with its returns of income for its 1996 to 1998 taxation years show that the corporation had no turnover and that the only transaction conducted was the sale of the land in 1998 (Exhibit I-1, tabs 16 to 19). The Appellant confirmed that no other transactions had been conducted with respect to the land and that the land had no municipal services. However, he stated that provisions had been made for them.

[22] The Appellant reiterated that the anticipated development could not be carried out as a result of circumstances beyond his control, that is to say the decline in the real estate market, as well as the problems caused by the realignment of Boulevard des Promenades and the suspension of the issuing of building permits. It should also be noted that the corporation never acquired any other lands or assets.

[23] Pierre Gagnon, the Appellant's accountant, stated, for his part, that the Appellant had consulted him concerning the Sainte-Marthe-sur-le-Lac land, in particular regarding the shareholders' contributions to 160441 Canada Inc. and the solvency problems the latter had experienced between 1989 and 1992. He said that the Appellant had had no debt and that he was the only one able to continue financing the purchase of the land. In his view, it was therefore logical for the Appellant to take control of the investment and to enter into a partnership with a builder to develop his project, with the land representing his contribution.

[24] The sale of the Sainte-Marthe-sur-le-Lac land by 2959-5451 Québec Inc. was one of a series of transactions conducted on July 31, 1998. First, the Sainte-Marthe-sur-le-Lac land was sold by 2959-5154 Québec Inc. to Georges Labonté for $341,700 (Exhibit I-1, Tab 24). Lucille Lafond, Mr. Labonté's spouse, then sold a property located at 194 Rue Félix Leclerc, in Boisbriand, Quebec, to Ida Venneri, the Appellant's sister, for $149,500 (Exhibit I-1, Tab 26). Then Mr. Labonté sold a property located at 100 Île de Mai, in Boisbriand, Quebec, to the Appellant and Caroline Walton, his spouse, for $473,600 (Exhibit I-1, Tab 27). Mr. Labonté paid the Appellant $20,376 to cover tax adjustments. The Appellant stated that he had obtained the sum of $332,121 from mortgage loans taken out at the time of those transactions. He explained that he

had turned $265,696 over to 2959-5451 Québec Inc. and paid the difference, that is $66,425, for the purchase of the two properties located at 194 Rue Félix Leclerc and 100 Île de Mai (Exhibit I-1, Tab 25). Subsequently, 2959-5451 Québec Inc. purportedly paid the balance of a line of credit of the Appellant guaranteed by a mortgage in the amount of $262,094.18.

(b) Positions of the parties

[25] With respect to the nature of the loss related to the loans made by the Appellant to 2959-5451 Québec Inc., counsel for the Appellant contended that it was a business investment loss since, that corporation operated a small business. In his view, the corporation was not created to earn income from property or to realize capital gains. It was essentially created to acquire a lot and to develop a project in partnership with a builder and thus to make a profit on the sale of subdivided lots. Counsel for the Appellant ruled out any secondary intent to resell the land at a profit.

[26] He emphasized that if the business did not generate a profit this was as a result of circumstances beyond the Appellant's control, that is to say unfavourable economic conditions and the Boulevard des Promenades realignment project, together with the suspension that accompanied it. The realignment project greatly affected the value of the land. He also recalled the steps the Appellant had taken with the municipality to oppose the proposed realignment.

[27] Counsel for the Appellant also mentioned the plans that were purportedly prepared and the negotiations conducted with builders.

[28] He also noted the negotiations with the mortgage lender Ace Mortgage to reduce the loan and the repossession of the land by 2959-5451 Québec Inc. to continue the project, in an attempt to show the Appellant's determination and tenacity in pursuing his development project despite the difficulties encountered.

[29] According to counsel for the Appellant, these various factors point to the establishment of a business for the purpose of the construction of residences by 2959-5451 Québec Inc., as a result of which the loss incurred by the Appellant should be considered a business investment loss.

[30] In support of his position, counsel for the Appellant referred to the decisions in *Belzile v. The Queen*, 2004 DTC 2418, *Barrette et al. v. The Queen*,

2004 DTC 2951, *Gill et al. v. M.N.R.*, 98 DTC 2048, and *Lake Superior Investments Limited v. M.N.R.*, 93 DTC 898.

[31] For her part, counsel for the Respondent claimed that 2959-5451 Québec Inc. was not a small business corporation since no business was in fact carried on.

[32] On that point, she emphasized the utter lack of any revenues or operations of the corporation, whose only expenses shown in the financial statements were taxes, interest and professional fees.

[33] According to counsel for the Respondent, there was no evidence of any land development activity whatever. Nor were there any documents showing any real partnership with a builder in order to develop the land. She also pointed out that the land was a vacant lot that had no water or sewer services.

[34] She stated that neither 160441 Canada Inc. nor, subsequently, 2959-5451 Québec Inc. had had a business plan, and no one had conducted a market study. She also emphasized that the Appellant had no experience in the real estate development field.

[35] In short, according to counsel for the Respondent, 2959-5451 Québec Inc. did not carry on a business. She questioned the Appellant's intention to engage in land development, recalling 2959-5451 Québec Inc.'s resolution of January 22, 1993, which stated that the corporation would bid in the court sale of the land in order "to protect its claim". She also stated that the difficulties encountered until 1992 had not subsequently disappeared and that the Appellant himself had stated that that development was even less feasible in 1993, so that, from that moment on, the project could have seemed unrealizable. She referred as well to the financial statements of 2959-5451 Québec Inc. for the fiscal year ended August 31, 1996, which state, with respect to the nature of the activities, that the corporation "is holding a piece of land for speculation and development purposes" (Exhibit I-1, Tab 16, page 5, of the financial statements).

[36] In support of the argument that 2959-5451 Québec Inc. carried on no business, counsel for the Respondent relied on the decision of the Federal Court of Appeal in *Boulanger v. Canada*, 2003 DTC 5630, [2003] F.C.J. No. 1336 (Q.L.) and on that same court's decision in *Hudon v. Canada*, 2001 DTC 5630, [2001] F.C.J. No. 1616 (Q.L.), which was cited in the first decision. She also relied on

Interpretation Bulletin IT-218R of September 16, 1986,[1] which states, in particular, the factors that must be considered in determining the nature of gains from the sale of real estate, in concluding that no business was carried on in relation to the Sainte-Marthe-sur-le-Lac land.

(c) Analysis

[37] Under paragraph 39(1)(*c*) of the *Act*, for the Appellant's loss to be considered a business investment loss, it must be in respect of a debt owing by a Canadian-controlled private corporation that is a "small business corporation". That expression is defined in subsection 248(1) of the *Act* as follows:

> "small business corporation", at any particular time, means, subject to subsection 110.6(15), a particular corporation that is a Canadian-controlled private corporation all or substantially all of the fair market value of the assets of which at that time is attributable to assets that are
>
> (*a*) used principally in an active business carried on primarily in Canada by the particular corporation or by a corporation related to it,
>
> (*b*) shares of the capital stock or indebtedness of one or more small business corporations that are at that time connected with the particular corporation (within the meaning of subsection 186(4) on the assumption that the small business corporation is at that time a "payer corporation" within the meaning of that subsection), or,
>
> (*c*) assets described in paragraphs 248(1) "small business corporation" (*a*) and 248(1) "small business corporation" (*b*),
>
> including, for the purpose of paragraph 39(1)(*c*), a corporation that was at any time in the 12 months preceding that time a small business corporation, and, for the purpose of this definition, the fair market value of a net income stabilization account shall be deemed to be nil.

[38] The only asset of 2959-5451 Québec Inc. was the vacant lot located in Sainte-Marthe-sur-le-Lac, which it disposed of in 1998. It must therefore be determined whether that lot was used in an active business of the corporation.

[39] Subsection 248(1) defines the expression "active business" as follows:

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[1] Profit, Capital Gains and Losses from the Sale of Real Estate, Including Farmland and Inherited Land and Conversion of Real Estate from Capital Property to Inventory and Vice Versa.

> "active business", in relation to any business carried on by a taxpayer resident in Canada, means any business carried on by the taxpayer other than a specified investment business or a personal services business.

[40] In *Boulanger v. Canada*, 2003 DTC 5630, [2003] F.C.J. No. 1336 (Q.L.), 2003 FCA 332, Létourneau J.A. of the Federal Court of Appeal made the following comments on the concept of active business, at paragraphs 4 and 5:

> 4 The Act does not define the concept of an "active business." Determining the requirements applicable to the definition of this concept is a question of law. But the application of the definition itself to the facts of the case is a mixed question of fact and law: *Hudon v. Canada*, 2001 FCA 320, at paragraph 43.
>
> 5 The substance of the concept of carrying on an active business is itself somewhat elusive. As our colleague Madam Justice Desjardins stated in *Hudon*, *supra* at paragraph 62, at one end of the spectrum there are businesses which have not begun operations and at the other there are dormant businesses, while in between there are many activities "which are signs that a company is operating and which should fall within the spectrum of the concept of carrying on business, even though, for example, the activities are carried on for the purpose of reaching an agreement which eventually is not reached or even though they do not result in the earning of income." It follows from this assertion that each case should be examined on its individual merits and factual circumstances. [...]

[41] In addition, the following comments appear in Interpretation Bulletin IT-364 of March 14, 1977, *Commencement of Business Operations*, at paragraph 2:

> 2. It is not possible to be specific about the point in time when a contemplated business becomes an actual business. Generally speaking, it is the Department's view that a business commences whenever some significant activity is undertaken that is a regular part of the income-earning process in that type of business or is an essential preliminary to normal operations. In order that there be a finding that a business has commenced, it is necessary that there be a fairly specific concept of the type of activity to be carried on and a sufficient organizational structure assembled to undertake at least the essential preliminaries. This requirement is applicable whether the projected business is intended to be a continuing one or is to be a single transaction in the form of an adventure in the nature of trade. Where an activity consists merely of a review of various business possibilities in the expectation or hope that information will be obtained to justify going into a business of some kind, such an activity does not represent the commencement of a business. A business would be reviewed as being merely contemplated for

> the future if no serious or reasonably continuous efforts are being made to begin normal business operations. The comments in this paragraph do not apply, of course, to an existing business that is considering expansion or diversification as distinct from the undertaking of a new and separate business.
>
> [Emphasis added.]

[42] The evidence brought by the Appellant and his accountant, Pierre Gagnon, established beyond a shadow of a doubt that the Sainte-Marthe-sur-le-Lac land was acquired by 160441 Canada Inc., then by 2959-5451 Québec Inc., for the sole purpose of developing it, mainly for residential housing, in partnership with a builder. The anticipated income was the profit to be shared with the builder at the time of the sale of the residences. There was no question of reselling the land itself at a profit. Moreover, the Appellant stated that the land had never previously been put up for sale.

[43] The evidence reveals no actual activity that could establish that 2959-5451 Québec Inc. had an active business. The Appellant clearly stated that 160441 Canada Inc. had initially requested plans from land surveyors. However, no plans were filed in evidence. Only an invoice for $113.96 dated September 20, 1995, for a copy of the plans was filed in evidence (Exhibit A-5). The Appellant also stated that he had met with builders who might have been interested in his project and in entering into a partnership with 160441 Canada Inc. and, later on, with 2959-5451 Québec Inc. for the purpose of engaging in the planned development. Here again, it must be noted that these were preliminary steps that culminated in no real partnership or any contract whatever. In fact, there is every reason to believe that, as a result of the Boulevard des Promenades realignment proposed by the municipality and suspension of the issuing of building permits, the decision to proceed with the development and commence the business was never made. As the Appellant said, it was necessary to wait. Nor was the action taken with the municipality to oppose the proposed realignment in order to protect the value of the land and its development potential of an activity that may be considered as relating to the carrying on of a business. It was action taken to protect the value of an asset.

[44] In 1992, following a difficult economic period and problems relating to the financing of 160441 Canada Inc. by its shareholders, 2959-5451 Québec Inc. was created. It acquired the mortgage loan from Ace Mortgage and purchased the land at the court sale. The Appellant subsequently became the sole shareholder of that new corporation. Although he stated that he had wanted to pursue his initial project to develop the land in partnership with a builder, here again only preliminary steps in

that direction can be observed. As the issue of the Boulevard des Promenades realignment had not yet been resolved, no decision on the development of the land was taken, and 2959-5451 Québec Inc. remained completely inactive until the land was sold in 1998. In fact, from start to finish, no activity that was likely to generate income was carried on, precisely because the decision to proceed with the development and to commence the business was never made. It is true that the circumstances in which that decision was never made were beyond the Appellant's control. However, that does not alter the situation. The mere intention eventually to develop a residential project on the acquired land once conditions became favourable is not sufficient grounds for stating that a business was commenced. While preliminary plans were indeed prepared for 160441 Canada Inc. shortly after the land was acquired, 2959-5451 Québec Inc. did nothing new when it acquired the land itself. There is nothing surprising in that since the Appellant was still awaiting, and continued until the end to await, a favourable decision from the municipality not to realign Boulevard des Promenades, or, at the very least, to build a street providing access to the land from the newly realigned boulevard. In the circumstances, it is not surprising either that the Appellant was unable to provide a specific business plan or market study for proceeding with the land's development. The only study that was conducted was one entitled, "Environmental Soil Characterization", to determine whether or not the land was contaminated, the report on which was submitted to the Appellant in February 1998, a few months after the land was sold by 2959-5451 Québec Inc. (Exhibit A-1). As the decision to realign Boulevard des Promenades had been taken by that time and was unfavourable to the corporation (see Exhibits A-2, A-3 and A-4), it cannot reasonably be considered that that study was commissioned by the Appellant with a view to selling the land rather than eventually undertaking its development.

[45] I therefore find that 2959-5451 Québec Inc. did not carry on an active business. Accordingly, the loss incurred by the Appellant in respect of his claim on that corporation may not be considered a business investment loss under the definition of paragraph 39(1)(*c*) of the *Act*.

(2) Sale of the property located at 100 Île de Mai, in Boisbriand

(a) Summary of the evidence

[46] As noted above, this property was acquired by the Appellant and his spouse on July 31, 1998, for $473,600, an amount that corresponded at the time to the municipal assessment value. However, the Appellant stated "that an assessment had been made at $300,000 or $350,000", since renovations proved to be

necessary. However, no assessment was filed in evidence. The property was acquired by the Appellant and his spouse as a rental property. As the vendor had expressed his intention to rent it out for a few months, the Appellant agreed to do so for $1,000 a month. However, that rental proved to go on longer than initially anticipated. According to the Appellant, following the renovations, the property could have been rented for $2,500 a month.

[47] On July 14, 1999, the property was sold to Lidia Zanon and Jean-Pierre Beauchamp. The selling price stated in the notarial deed is $456,000 (Exhibit I-1, Tab 28). The allocation made by the notary was based on that amount, which was purportedly used, in particular, to repay a mortgage loan the stated balance of which was $405,485.18. The Appellant stated that he had never seen the distribution document intended for the purchaser and that he thought the balance of the mortgage loan was $105,000. The notary's statement of distributions shows that an amount of $105,485.18 was "supplemented by the vendors' financing on the property located at 2940 Hill Park Circle, Montreal". That same document also shows an amount of $300,000 in parentheses ($300,000) and notes that the vendor gave $11,250 to the purchaser "for work to be done on the property". However, on the same date, the parties signed a counter letter setting the actual amount of the transaction at $300,000. According to that counter letter, the price of $456,000 stated in the notarial deed "was determined solely for the purpose of obtaining mortgage financing." The Appellant stated that the notary himself had prepared that counter letter. The last sentence of the counter letter reads: [TRANSLATION] "The parties agree that the actual price of the transaction is $300,000 and that that amount shall be used for the purpose of any tax return." (Exhibit I-1, Tab 32)

[48] In his testimony, the Appellant stated that the actual amount of the transaction was indeed $300,000, which was the maximum amount that the purchaser was prepared to pay. In addition, he said, one of the conditions was that he himself lend the purchaser $28,000. Thus, the offer of purchase and sale of May 3, 1999, for an amount of $456,000 was made by Jean-Pierre Beauchamp solely for the purpose of obtaining greater mortgage financing (Exhibit I-1, Tab 29). An initial counter letter of May 19, 1999, signed by the Appellant and Mr. Beauchamp, states that the offer "of $456,000, with a cash payment of $114,000" was made so that Mr. Beauchamp could obtain a mortgage of $342,000. That initial counter letter states that the price that should appear on the notarial deed would be $272,000 (Exhibit I-1, Tab 30).

[49] In his testimony, Jean-Pierre Beauchamp stated that the offer of purchase and sale for $456,000 had indeed been made for the purpose of obtaining a larger

mortgage loan from the bank in order to finance the purchase of $300,000, as well as renovations, the cost of which he had estimated at between $40,000 and $50,000. He was unable to say anything about the discussions or negotiations that had taken place between May 3 and July 14, 1999, saying that he did not remember any details and that his spouse could do that better than he. Nor did he explain the counter letter of May 19, 1999, stating that the price in the contract would be set at $272,000 (Exhibit I-1, Tab 30). However, he acknowledged the $28,000 loan made by the vendors and mentioned that that loan was still not entirely repaid (Exhibit I-1, Tab 33).

[50] In fact, if the $28,000 loan is added to the sum of $272,000 to which reference is made in the counter letter of May 19, 1999, the result is the $300,000 amount stated in the counter letter of July 14, 1999, which, according to both the Appellant and Mr. Beauchamp, was the price actually paid. Another document signed by the parties on June 3, 1999, states that the vendor would receive $272,000 at the notary's office and that the balance of the selling price would be $28,000, with interest at the rate of three percent per annum and repayment of the principal at the end of a period of two years (Exhibit I-1, Tab 31).

[51] In an affidavit signed on September 26, 2002, Mr. Beauchamp explained the observed discrepancies a little more clearly. He stated that he had obtained a loan of only $311,000 backed by a first mortgage. As the Appellant had granted a mortgage for the balance of the selling price, that is $28,000, it was thus $272,000 out of the $311,000 amount obtained that Mr. Beauchamp said he had paid the Appellant. The balance of $39,000 was purportedly used to do renovation work on the property (Exhibit I-1, Tab 38).

[52] Lastly, Mr. Beauchamp stated that he did not remember saying at the time of the audit that the selling price had been $339,000. However, in her testimony, the auditor from the Canada Customs and Revenue Agency said that, in an interview with Mr. Beauchamp on July 17, 2001, he had said that he purchased the property at 100 Île de Mai for $339,000, that is the amount of a mortgage loan of $311,000 obtained from the Bank of Montreal and a loan of $28,000 bearing interest at the rate of three percent obtained from the vendor.

(b) Positions of the parties

[53] Counsel for the Appellant first stated that, if Mr. Beauchamp had given the auditor a price of $339,000, that could be explained by the fact that he had obtained a mortgage loan of $311,000 and that the Appellant and his spouse had lent him $28,000. That was how he might have explained that his total cost was $339,000.

[54] Counsel for the Appellant contended that the price paid was indeed $300,000, as stated in the counter letter, not $456,000, the figure stated in an offer of purchase and sale and in the notarial deed. Both Mr. Beauchamp and the Appellant stated that the purpose of the price of $456,000 stated in those documents was to enable Mr. Beauchamp to obtain a mortgage loan of a higher amount, having regard to the renovations contemplated.

[55] He said that, although article 1452 of the *Civil Code of Quebec* ("*C.C.Q.*") provides that a counter letter is not enforceable on a third person, in some decisions, a distinction has been drawn between the role of the minister (or deputy minister in Quebec) as tax assessor and his role as tax collector. Thus it has been held that, in his role as assessor, the minister (or deputy minister in Quebec) shall not be considered as a third person who can suffer prejudice as a result of a counter letter, since his obligation is to determine income tax on the basis of taxpayers' actual transactions, not apparent or fictitious transactions. However, in his capacity as tax collector, under section 160, for example, he takes on the role of a third party on whom the counter letter may not be enforced if it is prejudicial to him. The decisions in *Richelieu c. Québec (Sous-ministre du Revenu)*, [2002] R.D.F.Q. 303 (rés.) (C.Q.), *Québec (Sous-ministre du Revenu) c. Dussault-Zaidi*, [1996] R.D.F.Q. 73 (C.A. Québec) (Deschamps J. dissenting), and *Bolduc v. The Queen*, 2003 DTC 221, were cited in support of this argument.

[56] Counsel for the Respondent contended for her part that the price of $456,000 stated in the notarial deed must prevail. She relied first on articles 2819 and 2821 of the *C.C.Q.* and contended that the Appellant could contradict the terms of an authentic deed only by improbation, which he did not do. On this point, she cited the decisions in *Leclerc v. Canada*, [2002] GSTC 97, [2002] T.C.J. No. 422 (Q.L.), *Vigneault v. Canada*, 2003 DTC 1516, [2001] T.C.J. No. 880 (Q.L.), and *Corriveau v. Canada*, 2004 DTC 3100, [2004] T.C.J. No. 415 (Q.L.).

[57] Counsel for the Respondent also claimed that the price of $300,000 stated in the counter letter was unrealistic in view of the fact that the property had been

acquired one year earlier for $473,600, which corresponded to the municipal assessment value. She emphasized that no assessment had been conducted, and that, although Mr. Beauchamp had stated that the renovation work would cost $40,000 to $50,000, the total cost would be far less than the municipal assessment. She stated that she did not understand the Appellant's position or the urgent need to sell at a loss, when the real estate market had recovered in 1999. She further noted that there was a balance payable on the mortgage loan. She also thought that Mr. Beauchamp's testimony was not very credible, that he had filed no documents and that his memory was poor.

(c) Analysis

[58] Contrary to the claim of counsel for the Respondent, the question concerning the selling price of the property at 100 Île de Mai does not in any way open the door to the improbation procedure. In *Précis de la preuve*, (5e éd., 1996, Wilson et Lafleur Ltée, Montreal), Léo Ducharme writes, in particular, at page 100, paragraph 307:

> [TRANSLATION]
>
> 307. As a public officer, a notary does not guarantee the truth of the statements that the parties have made to him; he guarantees only that they are faithfully reported. That is to say that there is never any reason to resort to improbation where the point is solely to show that a statement that the notary reported faithfully in his deed is false.
>
> [Footnotes omitted.]

[59] He continues, at paragraph 308, by citing situations in which there are no grounds for resortingt to improbation. One of those is where one wishes to show "that a notarial deed does not state the true price, or the actual consideration."

[60] In *La preuve civile*, 3rd ed. (Cowansville, Quebec: Les Éditions Yvon Blais Inc., 2003), Jean-Claude Royer writes as follows at page 183, paragraph 288:

> [TRANSLATION]
>
> [...] Article 2821 *C.C.Q.* codifies a well-settled case law rule by providing that improbation is necessary only to contradict the recital in the authentic act of the facts which the public officer had the task of observing. A pleader can always prove, without action or improbation, the falsehood of a statement made by a party or a third person, where the public officer has faithfully reported the terms

> of that statement in an authentic act. The action or improbation is required only where the truth of the public officer's evidence is in question.
>
> [Footnotes omitted.]

[61] It is quite clear that the facts in the instant case are in no way similar to those in *Leclerc v. Canada*, *supra*, in which I held that the improbation procedure should have been used since the claim had been made that a gift recorded by a notarial deed did not faithfully reflect the intentions of the parties.

[62] I find this sufficient to show that there is no reason to resort to improbation in the instant case, since the notary apparently stated in the deed of sale the amount of $456,000, which both parties wished to see in it so that, according to them, the purchaser, Mr. Beauchamp, could obtain a mortgage loan enabling him to finance the purchase of the property and the planned renovations. I do not have to rule as to whether such a practice was lawful. Furthermore, I think it important to emphasize that, as regards evidence, a counter letter may be admitted to contradict even the content of a notarial deed. In *La preuve civile*, *supra*, Jean-Claude Royer states the following at page 1158, paragraph 1530:

> [TRANSLATION]
>
> From an evidentiary standpoint, the writing setting forth the actual agreement is admissible for the purpose of contradicting the express content of the apparent act, even if it is an authentic writing. The filing of a writing under private seal setting forth the secret agreement will alone be sufficient to contradict the apparent act, if the counter letter is identified as such or if it results from its terms that it sets forth the actual agreement entered into by the contracting parties. Furthermore, the filing of a writing stating the secret agreement may be supplemented by testimonial evidence. That evidence is admitted to resolve the ambiguity resulting from the two writings, particularly since the counter letter may serve as a commencement of proof.
>
> [Footnotes omitted.]

[63] There now remains the task of clarifying the rights of tax authorities with respect to the notarial deed and the counter letter. Under the title "Simulation", articles 1451 and 1452 of the *C.C.Q.* read as follows:

> **1451.** Simulation exists where the parties agree to express their true intent, not in an apparent contract, but in a secret contract, also called a counter letter.

> Between the parties, a counter letter prevails over an apparent contract.
>
> **1452.** Third persons in good faith may, according to their interest, avail themselves of the apparent contract or the counter letter; however, where conflicts of interest arise between them, preference is given to the person who avails himself of the apparent contract.

[64] The circumstances in *Haeck c. Québec (Sous-ministre du Revenu du Québec)*, [2002] R.D.F.Q. 73 (C.Q.), were similar to those of the instant case. The point for determination was the amount of a capital loss resulting from the disposition of two immovables. The parties had agreed in notarial deeds on a selling price of $175,000 to enable the purchaser to obtain more financing. However, in a counter letter, the parties agreed on an actual selling price of $148,750. The vendor had claimed a loss on the basis of that amount. Quebec's deputy minister of revenue (the "deputy minister") had relied on the notarial deeds, thus on the price of $175,000, in disallowing the loss claimed and refusing to calculate the loss based on that amount. The deputy minister objected to the evidence provided by the counter letter, contending, in particular, that the improbation procedure should have been used, that the counter letter could not be used to contradict an authentic deed and that it was not enforceable on him in view of article 1452 of the *C.C.Q.* I have already addressed these first two reasons, which counsel for the Respondent also raised in the instant case.

[65] Furthermore, in that case, Côté J. of the Court of Quebec (Civil Division) analyzed the deputy minister's position and interest as a third person under article 1452 of the *C.C.Q.*, depending on whether he acted as a tax assessor or as a tax collector. Referring more particularly to the dissenting opinion of Deschamps J.A. of the Quebec Court of Appeal in *Dussault-Zaidi*, *supra*, and to the decision by Lamarre Proulx J. in *Transport Desgagnés Inc.*, 91 DTC 264 (T.C.C.), Côté J. held that, in his role as assessor, the deputy minister had to ensure that there was a genuine legal relationship between the parties and to assess accordingly, particularly in the event the purpose of the taxpayer's actions was not to deceive tax authorities. In her view, his sole interest was that the tax be determined on the basis of taxpayers' actual, not fictitious transactions. She moreover stated that, in his collection role, he could not be prevented by a counter letter from collecting the previously determined tax. She wrote as follows at page 76, paragraphs 29, 30 and 32 to 34 of her decision:

[TRANSLATION]

> [29] Applying the terms of article 1452 of the *C.C.Q.*, allowing the deputy minister the choice between the apparent deed and the counter letter, could result in an absurd situation: in the vendor's case, the deputy minister could favour the apparent deed and disallow a larger capital loss based on the counter letter, and, furthermore, in the purchaser's case, in a subsequent sale, use the counter letter to assess on the basis of a larger capital gain.
>
> [30] In the Court's view, the deputy minister's role is not to choose those contracts that are likely to enable him to collect the largest amount of tax possible, but rather to establish the amount of tax actually owed on the basis of the transactions conducted in good faith and proven in accordance with the requirements of the law.
>
> [...]
>
> [32] Thus the deputy minister's interest, where he acts in the role of assessor, is to determine the actual legal relationship between the parties and to assess them accordingly.
>
> [33] Furthermore, once the tax owed has been determined, it is normal for the taxpayer not to be able to enforce on the deputy minister a counter letter preventing him from collecting that tax. The deputy minister is thus a third person who has an interest in using the apparent deed to protect the right that he holds against the taxpayer: the right to obtain, from the taxpayer's patrimony, payment of the tax actually owed.
>
> [34] On the other hand, in his role as assessor, he has no other right than the right to establish the tax on the basis of the parties' actual situation.

[66] I find this analysis valid and believe that the point for determination in the instant case is the true selling price of the property located at 100 Île de Mai.

[67] Both the Appellant and Jean-Pierre Beauchamp claim that the actual amount of the transaction of July 14, 1999, was $300,000, the amount stated in the counter letter, not $456,000, that indicated in the notarial deed. The Appellant had acquired the property on July 31, 1998, for $473,600, which corresponded to the amount of the municipal assessment. However, it is known that that purchase was part of a series of transactions the purpose of which was to exchange the Sainte-Marthe-sur-le-Lac land for two properties, including 100 Île de Mai. As the exchange was made using the municipal assessment amounts as a basis, one may well wonder what price was actually paid, particularly since the Appellant himself

stated that the property at 100 Île de Mai was not worth more than $300,000 to $350,000, since it required renovations. Mr. Beauchamp, for his part, stated that renovations in the order of $40,000 to $50,000 had to be made, but no one described the necessary renovations. Nor did the Appellant try to explain, in any way whatever, the great discrepancy between the $300,000 amount stated in the counter letter and the municipal assessment of $473,600 that was used as a basis at the time of the purchase of the property one year earlier. Since a selling price of $300,000 represents a loss of more than 35 percent in one year, I find that an adequate explanation should have been provided to show that that price was the actual price and the only price that could be justified in the circumstances. An independent assessment or detailed explanation of the status of the property with regard to the real estate market and the municipal assessment at the relevant time could also have dispelled the serious doubt I face. It is true that a number of documents cited support the version of the Appellant and Mr. Beauchamp (Exhibit I-1, tabs 30, 31, 32, 34 and 38). Furthermore, the notarial deed showing the price of $456,000 was also based on an offer signed by the parties (Exhibit I-1, tabs 28 and 29). However, in my view, the explanation provided by the Appellant and Mr. Beauchamp is insufficient to show that selling at $300,000 rather than at $456,000 was the only plausible and justified option in the circumstances. When individuals engage in simulation, they must expect that they will have to provide sound evidence in support of their claim that the secret deed should take precedence over the apparent deed. The Appellant's interest in seeing the counter letter of July 14, 1999, take precedence is clear. Moreover, it is expressed in the last sentence of that counter letter, which reads: "The parties agree that the actual price of the transaction is $300,000 and that this amount will be used for any tax return." (Exhibit I-1, Tab 32) However, selling at $300,000 appears suspect and implausible in the circumstances. I must therefore conclude that the evidence adduced is insufficient to satisfy me, on a balance of probabilities, that the amount of $456,000 stated in the notarial deed and accepted by the Minister was not the true amount of the transaction. The terminal loss and the capital loss determined by the Minister in respect of the sale of that property are therefore upheld.

(3) Interest expenses

(a) Summary of the evidence

[68] In 1999, the Appellant claimed a deduction of $10,306 for interest paid on loans. That deduction was disallowed on the ground that the amount was interest paid on amounts borrowed for personal purposes. The Appellant's objection concerns an amount of only $5,707.

[69] On July 14, 1999, the day on which the property located at 100 Île de Mai, in Boisbriand, was sold, the Appellant borrowed $365,000 from Société hypothécaire Scotia; the loan was guaranteed by a first mortgage on his residence at 2940 Hill Park Circle, in Montreal.

[70] Pierre Gagnon, the Appellant's accountant, explained that the sale of the property at 100 Île de Mai was transacted at a price of $300,000, but that the Appellant had received only $272,000 from the purchaser, since the Appellant had lent him the balance of the selling price of $28,000 guaranteed by a second mortgage. There was thus a shortfall of $133,000 for the purpose of repaying the existing mortgage of $405,000. The interest expense on that amount was $2,886 in 1999. According to the auditor, Aïcha Hkim, the interest deduction was disallowed on the ground that the money was used to finance a loss on the sale of 100 Île de Mai and to finance a loan of $28,000 to the purchaser at an interest rate of three percent.

[71] According to Mr. Gagnon, $80,000 of the $365,000 borrowed was used to repay an $80,000 loan guaranteed by a property located on Rue Des Érables, a loan initially taken out to purchase the land in Sainte-Marthe-sur-le-Lac. The amount of the interest deduction disallowed in respect of the $80,000 amount was $1,736 in 1999.

[72] According to Aïcha Hkim, the interest deduction claimed by the Appellant amounted to $3,737. She said that the interest deduction disallowed amounted to $1,823. The deduction was disallowed on the ground that a portion of the loan had been used to repay the line of credit used at the time the Sainte-Marthe-sur-le-Lac land was purchased. That amount was capitalized, that is to say that it was added to the cost of the land under subsection 18(2) of the *Act*.

[73] Lastly, an amount of $50,000 was purportedly used to repay a line of credit of the same amount at the National Bank of Canada. The $50,000 amount debited from the line of credit had been used to acquire a term deposit given to the bank as a collateral. Interest amounting to $1,085 was claimed in respect of that amount in 1999. According to Pierre Gagnon, that line of credit was also related to the loan initially taken out in order to acquire the land in Sainte-Marthe-sur-le-Lac. According to Ms. Hkim, the deduction of that amount was also disallowed.

(b) Positions of the parties

[74] On the $2,886 claim relating to the $133,000 amount needed to repay the mortgage loan at the time the property at 100 Île de Mai was sold, counsel for the

Appellant contended that that amount was fully deductible under paragraph 20(1)(*c*) of the *Act*, since it was interest paid pursuant to a legal obligation to pay interest on borrowed money used for the purpose of earning income from a business or property.

[75] Counsel for the Respondent claimed that no evidence was brought concerning the amount paid to the notary or to the bank to settle the balance of $133,000. She emphasized that the balance of the loan was $105,485.18, according to the distribution submitted by the Appellant. Lastly, she noted that the property was sold at a loss and that the Appellant was unable to show that the money had been borrowed for the purpose of earning income from a business or property.

[76] With regard to the amount of $1,736 disallowed in respect of the repayment of a mortgage loan of $80,000 on a property located on Rue Des Érables, counsel for the Appellant emphasized that it should be deductible under paragraph 20(1)(*c*) and that the limitations of subsection 18(2) of the *Act* in no way concern a shareholder of a land-holding corporation.

[77] Counsel for the Respondent simply noted that no explanation or documentary evidence had been filed concerning the use of the loan. She further emphasized that the deduction of a portion of the interest had been allowed, that is an amount of $1,898 for a $90,000 loan guaranteed by a mortgage on the property located on Rue Des Érables, and that an amount of $1,823 had been capitalized under subsection 18(2) of the *Act* in respect of the land located in Sainte-Marthe-sur-le-Lac.

[78] As to the amount of $1,085 paid in respect of a sum of $50,000 borrowed and used to repay a line of credit at the National Bank, counsel for the Appellant emphasized that the line of credit had initially been used to acquire a term deposit given as collateral in relation to the acquisition of the land in Sainte-Marthe-sur-le-Lac by 2959-5451 Québec Inc.

[79] Counsel for the Respondent contended that the $50,000 amount did not come from the $365,000 loan that was taken out on July 14, 1999, and secured by a mortgage on the property at 2940 Hill Park Circle, but from an amount of $147,000 obtained at the time of the sale of the property at 100 Île de Mai that same day, according to the notation made by the Appellant on his bank transaction record (Exhibit I-1, Tab 47, page 27).

(c) Analysis

[80] The submissions of counsel for the Appellant on the deductibility of the interest of $5,707 in 1999 are far from clear. First, the $133,000 amount purportedly used to repay in full the mortgage loan on the property at 100 Île de Mai can hardly be considered as having been borrowed for the purpose of earning income from a business or property. That property was sold at a loss in 1999, and I do not see how it could have continued to be a source of income for the Appellant. I therefore find that the interest of $2,886 paid in respect of that amount does not meet the conditions stated in paragraph 20(1)(*c*) of the *Act*.

[81] As to the interest paid on the $80,000 used to repay a mortgage loan on the property on Rue Des Érables, the Appellant's accountant, Pierre Gagnon, linked the initial loan to the acquisition of the land in Sainte-Marthe-sur-le-Lac. However, according to the testimony of the Appellant himself, the money he borrowed in 1992 in order to advance funds to 2959-5451 Québec Inc. was used by that company to redeem the debt held by the Ace Mortgage company. According to the Appellant, 2959-5451 Québec Inc. subsequently bought the land in a court sale without having to disburse any additional money, since it became both creditor and debtor of the same amount and the court sale had the effect of discharging the second mortgage. However, there is no evidence that the Appellant's loans to 2959-5451 Québec Inc. bore interest or that they were made for the purpose of earning income from a business or property. Furthermore, while it could be claimed that the Appellant's advances to 2959-5451 Québec Inc. were ultimately made for the purpose of recovering the land so that it could eventually develop it and possibly earn income for the Appellant from property, in the form of dividends, for example, it must be admitted that that was an indirect use of the moneys advanced to the corporation for the purpose of earning income. Assuming that such an argument could be accepted, which I doubt, it cannot, in any case, apply to the interest paid by the Appellant in 1999, since 2959-5451 Québec Inc. disposed of the land in Sainte-Marthe-sur-le-Lac at a loss in 1998 and that was its only asset. Thus, in my view, it is impossible to link the use of the $80,000 amount to any source of income whatever for the Appellant. I therefore find that the interest of $1,736 paid in 1999 in respect of that $80,000 amount does not meet the conditions stated in paragraph 20(1)(*c*) of the *Act*.

[82] Lastly, with respect to the interest of $1,085 relating to the use of an amount of $50,000 to repay a line of credit at the National Bank of Canada, I find that it does not meet the conditions stated in paragraph 20(1)(*c*) of the *Act* for the same reasons, since the argument of counsel for the Appellant is that the use of that line

of credit was initially related to the purchase of the land in Sainte-Marthe-sur-le-Lac by 2959-5451 Québec Inc.

Conclusions

[83] In summary, my conclusions on the three points at issue are as follows:

- The loss incurred by the Appellant in 1998 relating to the loans made to 2959-5451 Québec Inc. was not a business investment loss, but simply a capital loss.

- The terminal loss and the capital loss incurred at the time of disposition of the property at 100 Île de Mai were therefore correctly determined by the Minister on the basis of proceeds of disposition of $456,000, not $300,000.

- The interest amounts of $2,886, $1,736 and $1,085, that is a total of $5,707, paid in 1999 on the amounts of $133,000, $80,000 and $50,000 respectively are not deductible under paragraph 20(1)(*c*) of the *Act*.

Decision

[84] As a consequence of the foregoing, the appeals from the assessments made under the *Act* for the 1998, 1999 and 2000 taxation years are dismissed, with costs to the Respondent.

Signed at Ottawa, Canada, this 20th day of May 2005.

"P.R. Dussault"

Dussault J.

Translation certified true
on this 15th day of March, 2006.

Garth M[c]Leod, Translator

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DATES

Hearing:	April 13, 2005
Written submissions of counsel for the Appellant on interest deductibility	April 22, 2005
Written submissions of counsel for the Respondent on interest deductibility	May 3, 2005

REASONS FOR JUDGMENT BY:	The Honourable Judge Pierre R. Dussault
DATE OF JUDGMENT:	May 20, 2005

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