

Docket: 2000-3420(IT)G

BETWEEN:

DAVID RAJCHGOT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Jacqueline Lacey (2000-3445(IT)G) on February 11, 2004 at Montréal, Québec

Before: The Honourable Justice Gerald J. Rip

Appearances:

Counsel for the Appellant: Nicolas Cloudier

Counsel for the Respondent: Alain Gateau

JUDGMENT

The appeal from an assessment made under the *Income Tax Act* for the 1997 taxation year is dismissed, with costs.

Signed at Ottawa, Canada, this 11th day of August 2004.

Rip J.

Docket: 2000-3445(IT)G

BETWEEN:

JACQUELINE LACEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence with the appeal of
David Rajchgot (2000-3420(IT)G) on February 11, 2004 at Montréal, Québec.

Before: The Honourable Justice Gerald J. Rip

Appearances:

Counsel for the Appellant: Nicolas Cloutier

Counsel for the Respondent: Alain Gareau

JUDGMENT

The appeals from assessments made under the *Income Tax Act* for the 1994, 1995, 1996 and 1997 taxation years are dismissed, with costs.

Signed at Ottawa, Canada, this 11th day of August 2004.

Rip J.

Citation: 2004TCC548
Date: August 11, 2004
Docket: 2000-3420(IT)G

BETWEEN:

DAVID RAJCHGOT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2000-3445(IT)G

AND BETWEEN:

JACQUELINE LACEY

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Rip J.

[1] The appellants, David Rajchgot and Jacqueline Lacey, appeal income tax assessments in which the Minister of National Revenue considered that they each incurred losses on account of capital when they sold securities of Tee-Comm Electronics Inc. ("Tee-Comm") The appellants, husband and wife, filed income tax returns claiming the losses were non-capital losses. Mr. Rajchgot appeals an assessment for 1997 and Ms. Lacey appeals from assessments for 1994 to 1997 inclusive.¹

[2] These appeals were heard together on common evidence. Mr. Rajchgot testified on his and his wife's behalf. At the outset of trial it was agreed that the control of the transactions and affairs of Ms. Lacey during the relevant taxation years was in the hands of her husband and the determination of whether the losses to the

¹ Ms. Lacey appeals earlier year assessments to permit her to carry back the losses incurred on the sales in 1997.

appellants were on capital or income account would be influenced by Mr. Rajchgot's intention and activities.

[3] Mr. Rajchgot graduated with great distinction with a degree in finance from McGill University. After receiving his Chartered Accountant designation in 1983 he began work as a junior auditor with a predecessor of Ernst & Young.

[4] In 1985, Mr. Rajchgot was employed by a junior department store as corporate controller. He quickly was promoted and became vice-president, finance and was appointed to the board of directors as secretary and treasurer. His responsibilities included all accounting matters and management of the security portfolio owned by his employer.

[5] Mr. Rajchgot later joined a company called Laura's Shoppe (P.V.) Inc. ("Laura's"). Laura's is a ladies retail chain specializing in ladies wear and accessories. At Laura's Mr. Rajchgot was a minority shareholder and Kalman Fisher, the president of Laura's, was the majority shareholder. Mr. Rajchgot was responsible for all aspects of the business except the actual purchasing of the goods. When he joined Laura's it was on the brink of bankruptcy and owned six stores in Montreal. By 1998, the company was successful and operated approximately 200 stores.

[6] In July of 1998, Mr. Rajchgot resigned from Laura's to form his own consulting company, Bunra Investment Inc. ("Bunra"). Bunra offers retail consulting and technological solutions to major corporations in Canada and the United States.

[7] From 1984 to 1993 Mr. Rajchgot was also a part-time professor at the Graduate School of Business at McGill University. He taught courses to students in the graduate accounting program, initially teaching case courses, and then teaching courses on mergers and acquisitions, as well as financing.

[8] Mr. Rajchgot started investing in the late 1980's. He testified that he initially did not have a lot of money and bought mostly "blue chip" shares in companies such as B.C.E. Enterprises Inc. and Canadian chartered banks. He invested in a conservative manner. He wanted to protect his capital. His original portfolio was neither large nor leveraged, his focus was on secure dividend-paying companies or instruments yielding guaranteed tax benefits.

[9] Over time, Mr. Rajchgot said, he started investing in shares of a more speculative nature. He took a more risk-oriented investment strategy. He purchased stocks relying on various forms of leverage, often utilizing margin accounts with his

broker. Mr. Rajchgot entered into hedge and share option transaction, as well as pursuing investment strategies involving both spreads and straddles. In order to assist his acquisitions Mr. Rajchgot studied the markets, read a variety of books and research material, such as trade magazines, and internet sites. Over the years Mr. Rajchgot reaped profits from his investments. The profits were treated on account of capital. However, in 1996 he incurred losses, which he declared as capital losses in his tax return. In 1997 he and his wife incurred significant losses of \$364,600 and \$441,091, respectively, and reported the losses on income account.

[10] The majority of the losses in 1996 and 1997 related to the dispositions of securities in Tee-Comm. Tee-Comm was a publicly held company listed on the Toronto Stock Exchange. It manufactured and distributed analogue home-satellite television systems. In 1995, Tee-Comm changed its business strategy and entered the Direct-To Home ("DTH") marketplace. Tee-Comm was developing both the hardware and software to support a new DTH television satellite system. Mr. Rajchgot stated that Tee-Comm hoped to be the first digitally transmitted television service provider in Canada. In February 1997 the Canadian Radio-Television and Telecommunications Commission approved an application by a subsidiary of Tee-Comm to operate a Canadian DTH satellite distribution service. On February 28, 1997 Tee-Comm began to ship television boxes and satellite dishes throughout Canada. However, in March of 1997 Tee-Comm reported a significant loss and investors started to abandon the stock. In May of the same year, the directors of Tee-Comm resigned and the Toronto Stock Exchange halted trading in Tee-Comm stock. At that time the Bank of Montreal demanded immediate payment of its loans from Tee-Comm and appointed an interim receiver.

[11] Mr. Rajchgot testified that he, and presumably Ms. Lacey, and Mr. Fisher started investing in Tee-Comm shares in late 1995.

[12] Mr. Rajchgot recalled that his initial investments in Tee-Comm were "passive" investments. However, he stated that during 1996 things became more hectic and he became more actively involved. At that point his investment was highly leveraged and he was closely watching every piece of information on Tee-Comm. He also testified that his position in Tee-Comm increased significantly in 1997 as he was engaging in various transactions such as the acquisition of options in great numbers. The following table describes the transactions made by the Mr. Rajchgot in Tee-Comm shares during the period of 1995 to 1997²:

² The evidence provided for acquisitions and sales of Tee-Comm shares was unclear. These transactions were taken from statements made by a brokerage house and are part of exhibit R -1. I understand a "swap" describes a transaction when a person transfers from (or to) one of his brokerage accounts to (or from) another of his own accounts.

Settle Date M/D/Y	Purchases /Sales	Description	Price	Amount
11/03/1995	2,000P	Tee-Comm Electronics Inc.	12.750	25,700.37
11/07/1995	1,000P	Tee-Comm Electronics Inc.	13.375	13,475.37
04/26/1996	3,000P	Tee-Comm Electronics Inc.	11.500	34,800.50
05/01/1996	10,000P	Tee-Comm Electronics Inc.	11.950	120,000.50
07/04/1996	3,000P	Tee-Comm Electronics Inc.	13.500	40,680.50
07/10/1996	1,100P	WTS Tee-Comm Electronics	1.900	2,165.50
08/28/1996	9,600P	Tee-Comm Electronics Inc.	10.346	99,906.74
01/31/1997	50P	Call-100 Tee-Comm Expires February 22, 1997	.900	4,650.50
01/31/1997	35P	Call-100 Tee-Comm Expires March 22, 1997	1.300	4,700.50
02/21/1997	1,500S	Tee-Comm Electronics Inc. Swap		10,000.00
02/25/1997	50S	Call-100 Tee-Comm Expired		
03/24/1997	35S	Call-100 Tee Comm Expired		
04/22/1997	5,000S	Tee-Comm Electronics Inc.	3.150	15,499.50
04/28/1997	2,800P	Tee-Comm Electronics Inc. Swap		4,760.00
04/28/1997	100S	Tee-Comm Electronics Inc	1.540	
04/28/1997	7,500S	Tee-Comm Electronics Inc	1.550	
04/28/1997	400S	Tee-Comm Electronics Inc	1.600	
04/28/1997	5,000S	Tee-Comm Electronics Inc.		5,488.87
05/14/1997	7,100S	Tee-Comm Electronics Inc.	.860	6,005.50
05/14/1997	3,000S	Tee-Comm Electronics Inc.	.860	1,802.45

[13] Mr. Rajchgot also testified that over the years he regularly spoke to the president and other representatives of Tee-Comm. He contacted officers of other companies involved with Tee-Comm in Canada and the United States. In addition he and Mr. Fisher visited the Tee-Comm facility in Milton, Ontario, and were given a

There is an additional 1500 shares that are unaccounted for; according to the statements, sometime during November 30, 1995 and March 31, 1996, an additional 1500 Tee-Comm shares were purchased. Exhibit R-2 describes the transactions for Ms. Lacey. According to the evidence, in 1996 she acquired 36,050 Tee-Comm shares.

Mr. Rajchgot's tax return for the year 1996 contains the following information:

No. of shares	Name of corporation and class of shares	Year of acquisition	Proceeds of disposition	Adjusted cost base	Gain (or loss)
10,000	Tee-Comm	1996	75,999	120,000.50	(44,001.50)
1,800	WTS-Tee-Comm	1996		8,855.50	(8,855.50)
10,000	WTS-Tee-Comm	1996		34,500.50	(34,500.50)
1,100	WTS-Tee-Comm	1996		2,165.50	(2,165.50)

Ms. Lacey's tax return for the year 1996 reports the following:

No. of shares	Name of corporation and class of shares	Year of acquisition	Proceeds of disposition	Adjusted cost base	Gain (or loss)
4,000	Tee-Comm	1996	33,349.50	54,250.50	(20,901.00)

Exhibit R-6 provides the opening and closing inventory which includes:

Date of Purchase	Quantity	Description	Amount Paid	Date of Sale	Proceeds
08/28/96	20,100	Tee-Comm	227,325	4/28/97	33,798
11/07/96	3,000	Tee-Comm	53,508	5/14/97	3,478
01/07/96	5,000	Tee-Comm	77,422	4/28/97	7835

tour. During this time Tee-Comm's president discussed the product and answered any questions. Mr. Rajchgot and Mr. Fisher were also introduced to James Wilkinson, vice-president of finance, who used to be vice-president of finance at Nortel during that company's successful years, and according to Mr. Rajchgot he informed them that commercial applicability of the product would take six months and if Tee-Comm served only one-half of one per cent of the U.S. market, it would break even. Mr. Rajchgot stated that after this meeting he and Mr. Fisher were very impressed with the product and organization and bought more shares. Mr. Rajchgot also testified that he had dinner with the president and vice-president of finance of Tee-Comm in September of 1996.

[14] The question before me is whether the appellants sustained losses from a "business". A business includes an adventure in the nature of trade: ss 248(1) of the *Income Tax Act*.

[15] In *Irrigation Industries Ltd. v. M.N.R.*, 62 DTC 1131(S.C.C.), Justice Martland, speaking for the majority, set out the "positive tests" originally considered by Thorson P. in *Minister of National Revenue v. Taylor*, [1956] C.T.C. 189:

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

[16] The Federal Court of Appeal in *The Queen v. Vancouver Art Metal Works Limited*,⁴ set out helpful factors in determining whether a taxpayer has embarked upon a trading or dealing business:

I have no doubt that a taxpayer who makes it a profession or a business of buying and selling securities is a trader or a dealer in securities within the meaning of paragraph 39(5)(a) of the *Act*. As Cattanach, J. stated in *Palmer v. R.*, [1973] C.T.C. 323, "it is a badge of trade that a person who habitually does acts capable of producing profits is engaged in a trade or business. "It is, however, a question of fact to determine whether one's activities amount to carrying on a trade or business. Each case will stand on its own set of facts. Obviously, factors such as the frequency of the transactions, the duration of the holdings (whether, for instance, it is for a quick profit or a long term investment), the intention to acquire for resale at a profit, the nature and quantity of the securities held or made the subject matter of the transaction, the time spent on the activity, are all relevant

³ At page 1133.

⁴ 93 DTC 5116 at pages 5119 and 5120.

and helpful factors in determining whether one has embarked upon a trading or dealing business.

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

[18] To find that Mr. Rajchgot (and his wife) were traders or the purchases and sales of the shares were adventures in nature of trade I have to determine Mr. Rajchgot's intention when he acquired the shares in light of his conduct. The parties agree that Ms. Lacey's intention was that of her husband. In determining Mr. Rajchgot's intention, factors such as the frequency of the transactions, the duration of the holdings (whether, for instance, it is for a quick profit or a long term investment), the nature and quantity of the securities held or made, the subject matter of the transaction, whether the securities are heavily financed, the time spent on the activity, motive and the particular knowledge he possessed all have to be taken into consideration. It is not the lack or presence of one or more factors that will determine whether a transaction is on capital or income account; it is the combined force of all of the factors that is important. There is no magic formula to determine which factors are more or less important. Some factors compliment each other. Each case is different. A judge must balance all the factors. In the appeals at bar the following factors, at least must be reviewed:

a) Frequency of The Transactions

[19] It was Mr. Rajchgot's evidence that he participated in many transactions purchasing shares of Tee-Comm over the years. Listening to his testimony during the trial I got the impression that the appellant was almost constantly buying and selling Tee-Comm shares. However, according to the exhibits produced, Mr. Rachgot engaged in approximately 11 purchases during the period 1995 to 1997. During the period under appeal he acquired two blocks of warrants, one block consisting of 50 options and the other block of 35 options. The first 50 warrants expired with no value on February 22, 1997 and the second set expired without value on March 22, 1997. Additionally the appellant engaged in a swap of 2,800 shares. Counsel for the appellants argues that the number of transactions is low because Mr. Rachgot bought large blocks of shares and that the number of transactions varies depending on whether one acquires one type of security or many different securities. These transactions are not conducive of the frequency which would indicate a trader in securities.

[20] Counsel for the appellants referred to *McGroarty v. Minister of National Revenue*, [1994] 2 C.T.C. 52. In that case the Federal Court – Trial Division concluded that the taxpayer was a trader. However, the Court stated at paragraph 21,

In the instant case, the plaintiff, engaged in a large number of transactions involving a rapid turnover of shares. As demonstrated by the Table 1, page 3, there were more than 300 different purchases of shares over this five-year period involving more than 300,000 shares. An even greater number of shares were sold during the same period. Further, the Plaintiff testified that more sales occurred as a result of price considerations, than to meet margin calls. As Pinard J. stated in *Placements Bourget Inc. v. The Queen*, 88 D.T.C. 6274 (F.C.T.D), at page 13 6278):

In the case at bar the plaintiff, as part of its principal activity, engaged in several hundred transactions to make a quick profit from the purchase and sale of shares. In the circumstances it does not matter that the plaintiff was not itself a trader in securities; it was still engaged in business of securities trading and the profit from the resulting dealings is truly business income.

[21] In the case at bar the quantity of the transaction was not so large as to exclude the possibility that the sales of the shares were realizations of an investment. The appellants were not engaged in large and frequent transactions. Prior to 1997 the appellants reported their dispositions of shares as capital transactions. Mr. Rajchgot signed his 1996 tax return on April 4, 1997. The 1996 tax return reports capital losses on dispositions of Tee-Comm shares. On or about April 4, 1997 he was aware that Tee-Comm was in a dire financial condition. In 1997 Mr. Rajchgot purchased options, exercised two swaps, and commenced selling the Tee-Comm shares, reporting the transactions on income account.

b) The Duration Of The Holdings

[22] The appellants' losses were incurred from Tee-Comm securities purchased in 1995, 1996 and 1997. The 85 Tee-Comm options purchased in 1997 were held between one to two months. Shares themselves were held by Mr. Rajchgot between one and two years in most cases.

[23] This length of holding on to the shares does not show the intention for a "quick flip" or quick profit. The 1997 options and shares were only held for a short period of time, until the market crashed

[24] Mr. Rajchgot testified that at one point Tee-Comm stocks rose to \$16 and he could have realized a significant profit but chose not to sell. This does not reflect the attitude of a trader wanting a quick profit.

c) The Nature And Quantity Of The Securities Held

[25] The evidence was that Tee-Comm has never paid dividends and was never in a position to pay dividends. The financial position of Tee-Comm rendered it unable to pay dividends

[26] The appellants argued that their intention was not to receive dividends but for a quick profit. The appellants were not looking for a safe or enduring investment; their counsel argued that they wanted to get in and out quickly while realizing a profit. The appellants submitted that Tee-Comm stocks are not investment grade but speculative. The appellants say that they were far into the realm of speculation. The appellants were aware that Tee-Comm had no product, they were building the product, they hoped that it would work, and it in fact did work some 10 years later.

[27] In determining whether shares have been acquired for purposes of capital or on account of income, the likelihood of the shares yielding a dividend is not that significant. A person may purchase shares in the hope and expectation that they will rise in value. As Lord Buckmaster stated, if the shares "[do] so rise, [their] realization does not make it income"⁵. Many people invest in "start-up" corporations or corporations with promise; they are not necessarily looking for dividends. These investors anticipate an increased value in the shares they acquired and are often not carrying on a business activity.

[28] Counsel for the appellants also referred me to the following excerpt from *Woods v. Her Majesty the Queen*, 96 DTC 1995, in which I stated at para 19:

For the purposes of these appeals the test as to the subject matter being bought and sold is also relevant. When the asset does not produce income and the only manner in which a profit may be gained is by selling that asset there is an inference that such transactions is

⁵ *Leeming v. Jones*, [1930] A.C. 415, p. 420 (H.L.).

an adventure in the nature of trade. See *Taylor v. M.N.R.*, [1956] C.T.C. 189, 56 D.T.C 1125 (Ex Ct.), and *Ruthridge v. C.I.R* (1929), 14 T.C. 490.

[29] Mr. Rajchgot declared that in 1995 Tee-Comm was passive investment. He originally invested by acquiring a few thousand shares. However, Mr. Rajchgot claims that toward 1997 the investment became active and hectic. The evidence, however, does not reflect active and hectic purchases and sales. I have no doubt Mr. Rajchgot was actively investigating Tee Comm's activities and prospects but, in my view this is not necessarily done solely by a trader; prudent investors may also actively research an investment for purposes of purchasing or selling. There was no adventure in the nature of trade.

d) The Time Spent On The Activity

[30] Mr. Rajchgot testified that he was deeply involved in Tee-Comm and that he spent a significant amount on the buying and selling of Tee-Comm shares. He was on the phone with his broker every day, he checked the stock transactions minute by minute on the Internet, and read news releases. He testified that he spoke with the President of Tee-Comm daily. Mr. Rajchgot stated that in 1996 and 1997 he spent more time on Tee-Comm than he did running Laura's, even though he was the vice-president and equity partner of Laura's and they had in excess of 100 stores. He gave evidence that in 1997 he spent three to four hours a day on the Tee-Comm shares, trying to discern information, speaking to individuals involved in Tee-Comm, and gathering information that he required to justify the investment.

[31] I agree that Mr. Rajchgot is a highly educated and knowledgeable individual. However, in this day and age it is not unusual for an investor to spend a significant amount of time researching a potential purchase on a computer or on the telephone with a broker. Mr. Rajchgot's activities in 1997 were to save a losing investment or to reduce his losses from the investment. When the initial purchases were made in 1995 and 1996 he was not spending three or four hours a day on Tee-Comm.

e) Financing

[32] The appellants leveraged their shares in Tee-Comm through margin accounts. Mr. Rajchgot borrowed from his broker and from Laura's. His tax return corroborates the fact that he was highly leveraged and paying \$14,000 of interest on his borrowings to finance the shares.

f) Particular Knowledge He Possessed

[33] Mr. Rachgot has testified that he was extremely knowledgeable in stock trading, that his knowledge in stock trading is equivalent to that of most brokers. He has the knowledge, the qualifications, the experience to manage shares and securities in the same way as a broker or trader.

[34] Mr. Rachgot also read trade magazines, such as *Audiophile* and *Tech Buff* and noticed that digital was the next wave, and he was involved with the people running the corporation. He met and spoke to both the president and vice-president of finance of Tee-Comm. He also communicated with potential business partners of Tee -Comm.

[35] In *Kane v. The Queen*,⁶ *supra* the Court applied the factors set out in *Vancouver Art Metal* and determined that the taxpayer's special knowledge was a determining factor:

In the case at hand, the Plaintiff had a special knowledge of the market in which Orell shares were traded. He was one of the directors of the corporation, its president, an insider by virtue of his holdings and a promoter as that term is defined in the *B.C. Securities Act*. But more importantly, he was directly involved in the mining ventures of Orell and in organizing its public financing offerings. As such he was in a position to anticipate market reaction to Orell's ongoing activities. That is the context in which the Plaintiff bought and sold Orell shares. His trading activities were not only stamped with the usual badges of trade which characterize the dealings of common risk takers, but they were conducted by reference to, and were driven by, the special knowledge which the Plaintiff had of the market in which the Orell shares were traded. Those in my view are the activities of a trader or dealer in securities as that term is used in subsection 39(5) of the Act.

[36] Mr. Rajchgot's special knowledge is not tantamount to such that he could anticipate market reaction. There is no evidence that his knowledge contributed to his success in the financial market or had any influence on the market. I fail to see any special knowledge. He was not connected to Tee-Comm, he was not employed by Tee-Comm; he simply purchased the company's shares after duly researching the stock. As such, he did not have any special knowledge that anyone else could not have acquired.

⁶ 94 DTC 6671 at page 6675, per Noel J., (F.C.T.D.).

Conclusion

[37] Most of the Tee-Comm shares were purchased by the appellants in 1995 and 1996. Any gains and losses on disposition of shares in those years were claimed on account of capital. In 1997 the losses were claimed as business losses. Appellants' counsel referred to *Harrison v. Minister of National Revenue*⁷ for the proposition that qualifying losses on account of capital or income when filing an income tax return is not determinative of the status of the transactions. The *Harrison* case can be distinguished. In *Harrison* the taxpayer filed his income tax return for the period under appeal and claimed a capital loss. After changing accountants an amended return was filed within which the taxpayer claimed he had sustained a business loss. In the case at bar there is no question of reclassifying the 1995 and 1996 capital losses; we are considering the taxpayer's stated intention at that period in time. While prior income tax filing may not be determinative they can be indicative of a taxpayer's intention. There should be some consistency in reporting share transactions. When a taxpayer all of a sudden changes from reporting transactions from capital to income account or from income to capital account there should be some evidence of the shares' changes in status. In some circumstances it may help

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[1976] C.T.C. 2082.

if shares owned as capital and shares held on income account were held in separate brokerage accounts. The taxpayer should be prepared to show something that distinguishes his capital from income transactions, that his transactions are not similar. This act should be done when he first makes a transaction that is not consistent with previous transactions. (There is evidence that Mr. Rajchgot did acquire 85 warrants in 1997 from a different broker.)⁸

[38] There is no evidence before me that the appellants, in acquiring the Tee-Comm shares, changed their original and principal intention. Exhibit R-6, the opening and closing inventory in 1997 of shares owned by Mr. Rajchgot, included shares in "Bell Canada", Bank of Montreal and Royal Bank of Canada, among others, as well as Tee-Comm. These bank shares, which he testified were acquired as capital assets and which remained capital assets in Mr. Rajchgot's portfolio, are mixed with the shares of Tee-Comm. All the shares are listed as "inventory". While I do not put much weight on the description of the shares as inventory, a person with Mr. Rajchgot's education and expertise ought to know that the word "inventory" connotes a business asset. I doubt that Mr. Rajchgot meant the shares of the Royal Bank and Bank of Montreal to be inventory. He testified that only the Tee-Comm shares were trading assets, his other shares remained capital assets. What happened in 1997 was that Tee-Comm shares started to fall in value and Mr. Rajchgot, in February, when he realized the shares were falling and would not return to their high values, started to sell the shares. However, this did not alter his overall purpose in purchasing the shares as capital assets.

[39] The appeals are dismissed with costs.

⁸ Copies of Mr. Rajchgot's brokerage statements were produced. He appears to have dealt with two brokers, Deacon, Barclay and Scotia McLeod. At Deacon he had two accounts, one U.S. dollar account, holding his Tee-Comm shares, and included shares in Minnesota Mining and Manufacturing and Jones Apparel Group Inc.; the other Deacon account, in Canadian dollars, held Tee-Comm shares and included shares in Abitibi-Price. A Scotia McLeod account in U.S. dollars held 5000 Tee-Comm shares as of January 1997. The Scotia McLeod Canadian dollar account was not used to acquire any Tee-Comm shares.

Signed at Ottawa, Canada this 11th day of August 2004.

Rip J.

CITATION: 2004TCC548

COURT FILE NOS.: 2000-3420(IT)G & 2000-3445(IT)G

STYLES OF CAUSE: David Rajchgot v. The Queen
Jacqueline Lacey v. The Queen

PLACE OF HEARINGS: Montréal, Québec

DATE OF HEARINGS: February 11, 2004

REASONS FOR JUDGMENT BY: The Honourable Justice Gerald J. Rip

DATE OF JUDGMENT: August 11, 2004

APPEARANCES:

Counsel for the Appellant: Nicolas Cloutier

Counsel for the Respondent: Alain Gareau

COUNSEL OF RECORD:

For the Appellant:

Name: Nicolas Cloutier

Firm: Davies Ward Phillips & Vineberg LLP

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