

Docket: 2004-757(IT)G

BETWEEN:

RÉGENT LACROIX,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on September 28 and 29, 2006, and on February 26, 2007,
at Montréal, Quebec

Before: The Honourable Justice Paul Bédard

Appearances:

Counsel for the Appellant: Philip Nolan

Counsel for the Respondent: Simon-Nicolas Crépin

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 1997, 1998 1999 and 2000 taxation years are allowed, and the assessments are referred to the Minister of National Revenue for reconsideration and reassessment taking into consideration the fact that the appellant's income must be reduced by \$11,851 for the 1997 taxation year and by \$31,624 for the 1998 taxation year, with costs to the respondent in accordance with the attached reasons for judgment.

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

"Paul Bédard"

Bédard J.

Translation certified true
on this 19th day of February 2008

François Brunet, Revisor

Citation: 2007TCC376
Date: 20070614
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REASONS FOR JUDGMENT

Bédard J.

[1] The appellant challenges the reassessments made by the Minister of National Revenue (the "Minister") for the years 1997 to 2000 (the "relevant period") using the net worth method. Based on the details given in the Reply to the Notice of Appeal, the Minister added the following unreported income to the appellants' income: \$145,667 for 1997, \$231,570 for 1998, \$155,333 for 1999 and \$26,103 for 2000. In addition, for each one of these years, the Minister imposed the penalty provided for in subsection 163(2) of the *Income Tax Act* (the "Act"). The reassessments for the years 1997 and 1998 were determined after the normal reassessment period.

[2] It should be noted at this point that counsel for the respondent admitted at the hearing that the Minister had overassessed the appellant's unreported income by \$11,851 for the 1997 taxation year and \$31,624 for the 1998 taxation year. Therefore, the appellant's unreported income for the relevant period which is the subject of these appeals is approximately \$516,000.

[3] The appellant essentially submits that the Minister erred in calculating his income using the net worth method by failing to account for loans made to him by Gilles Pronovost totalling \$500,000 as at June 12, 1996.

[4] The appellant testified. Francine Jobin, the appellant's spouse, and Gilles Pronovost also testified in support of the appellant, while Charles LeBlanc, the auditor from the Canada Customs and Revenue Agency (the "Agency") in this case, and Jacques Heppell, Mr. LeBlanc's team supervisor, testified in support of the respondent.

Appellant's testimony

[5] The appellant described the circumstances surrounding the cash loans made to him by Gilles Pronovost as follows:

(i) While he was fishing on the Richelieu River near the St. Ours campground during the summer of 1991, he heard Mr. Pronovost's screams of panic. Mr. Pronovost was in a small boat approximately 500 feet from where the appellant was fishing. He started up his boat's motor and raced to the scene. He saw that a young teenager, Mr. Pronovost's son, Patrice, was on the verge of drowning. He dove in the water and saved Patrice from drowning. The appellant's testimony on this point deserves to be cited:

[TRANSLATION]

BÉDARD J.:

42. Q. On the verge of drowning.

A. His son was on the verge of drowning. I was maybe about four, five hundred (400–500) feet from there; I started my motor and went there. His son's arm was caught in the boat's motor because he had a type of . . . at that time, there were small bracelets, kind of made of material, and while he was lowering the foot of the motor, his wrist got caught in the foot of the motor, and he was quite small, so when he lowered the motor, he fell into the water and he was caught there, drowning. The man didn't know how to swim and was completely panicked. I jumped into the water and freed the youngster from the motor. So it was

from that time on that I developed a good relationship with Mr. Pronovost.

The appellant explained that nobody else witnessed the incident. He added that Mr. Pronovost asked him not to speak to anyone about the incident, apparently because he felt guilty for not having asked his son to wear a lifejacket.

(ii) Following this incident, he met Mr. Pronovost on several occasions. He spoke to him about his dream of acquiring a real estate portfolio for investment purposes, a dream that had remained unfulfilled because he did not have the financial means. Mr. Pronovost agreed to finance his project. The appellant's explanations on this point are also worth quoting:

[TRANSLATION]

51 A. Following that, we called and met each other from time to time, and we had lunch together. Mr. Pronovost came to see me at my office on several occasions. I told him . . . of course we were getting to know each other, and Mr. Pronovost is in the steel business, and I'm in the field of heat pumps. I buy things like heat pumps for swimming pools. I introduced him to the man that he, Mr. Pronovost, does business with. With that, of course, my dream was still the same, because I didn't want to sell heat pumps. What I wanted was a real estate portfolio. So, I had prepared a kind of real estate program I used to build up a nice real estate portfolio. I presented it to Mr. Pronovost, who found it very interesting, because he also thought that the future was in real estate.

However, Mr. Pronovost had a problem with his son, because he couldn't see what field his son could work in. So, Mr. Pronovost spoke to me and offered to finance my real estate project on condition that I teach his son everything I know. How to purchase real estate, how to manage properties and everything that entails.

52. Q. When you say that Mr. Pronovost wanted . . . I'm sorry, I don't remember the verb you used, to sponsor or support your project, what does that mean?

A. To finance me . . .

BÉDARD J.:

He said "finance".

A. Really finance my project. I had explained to Mr. Pronovost . . . the amount I wanted to have to be able to build up a good real estate portfolio was \$500,000.

(iii) From 1993, over a period of two to three years, Mr. Pronovost made cash loans to the appellant totalling \$500,000 as of June 12, 1996. It is useful to note that the appellant was unable to specify the amount of each of the loans and the date they were paid, except to allege that the first loan was for \$50,000. He added that all the cash from the loans was put in a safe in his home.

(iv) Upon each loan disbursement, Mr. Lacroix signed a new acknowledgement of debt, and the previous acknowledgement of debt was destroyed. On this point, the appellant tendered in evidence (Exhibit A-4), the original of the most recent acknowledgement of debt, signed on June 12, 1996 (the "note"), which reads as follows:

[TRANSLATION]

Longueuil, June 12, 1996

The total of the advances to date for private investments in real estate is five hundred thousand dollars (\$500,000), on the understanding that there will be no endorsements and no security in favour of Gilles Pronovost.

Réjean shall pay Gilles from the 50% profits from his real estate. If there are no profits, Réjean will make no repayment.

To help the start-up, the repayments shall commence after the fifth year,

and we have signed "Gilles Pronovost"
GILLES PRONOVOST
323 Louis St-Narcisse

"Régent Lacroix"
RÉGENT LACROIX
555 St-Pierre
St-Roch

(v) Between July 23, 1996, and February 27, 1998, the appellant purchased several properties. He explained that the funds required to purchase and renovate the properties came from his line of credit, which was in turn replenished using the \$500,000 in cash which he had in his safe. The appellant's testimony on this point is worth quoting:

[TRANSLATION]

354 Q. Let's try to take an example, Mr. Lacroix. You buy a property. I don't know . . . Let's take the first property, or at least a property you remember well. Tell us how it happened.

A. For example, a property I purchased, on Joliette Street, for example. I needed \$50,000 cash. I used my lines of credit and my personal account to write a cheque for \$50,000 to buy the property.

BÉDARD J.:

355 Q. So, you wrote a cheque for \$50,000?

A. Exactly, \$50,000 or \$55,000, the amount they wanted from me . . .

356 Q. It's your example.

A. And from then on, every week, I'd go make a \$4,000 or \$5,000 deposit on my line of credit to bring it down to zero.

He thus explained why he did not want to use the \$500,000 in cash to purchase or renovate properties:

[TRANSLATION]

360 Q. If I understand correctly, you didn't want to show your bankers that you had too much money, because they would have demanded higher down payments on the properties . . .

A. Exactly . . .

It should be noted at this point that the appellant explained at the examination for discovery that the \$500,000 was mainly used to renovate the properties.

(vi) In 1999 or 2000, an Agency representative contacted him. He asked his accountant, Ms. Cloutier, to call the representative and give him any information or documents he might ask for.

(vii) From the time when Mr. Pronovost met with Mr. LeBlanc and Mr. Heppell in April 2002, when they allegedly drew to his attention that the note had little security, Mr. Lacroix felt that Mr. Pronovost was afraid of losing his money. A little later on, during a telephone conversation, Mr. Pronovost formally asked him for security. He invited Mr. Pronovost to his office and gave him a cheque for \$26,000 to reassure him. He explained that a day or two after he gave him this cheque, Mr. Pronovost left a letter at the reception desk of his office (Exhibit A-8), in which he asked Mr. Lacroix to repay the loans he had made to him as soon as possible. I note that the cheque for \$26,000 is dated July 1, 2003, that Mr. Pronovost's letter (Exhibit A-8) is dated July 2, 2003, and that this letter does not in any way mention the partial repayment of \$26,000. I also note that Mr. Pronovost signed a receipt dated July 2, 2003, in connection with the \$26,000 repayment. Finally, the appellant explained that he had repaid the loans as follows:

\$26,000 on July 1, 2003
\$540,000 on July 8, 2003
\$510,000 on July 31, 2003
\$500,000 on September 1, 2003
\$69,000 on February 2, 2004
\$80,000 on April 5, 2004
\$100,000 on April 9, 2006

I note that at the time of the hearing, the appellant still owed \$70,000 on the loans.

Testimony of Mr. Pronovost

[6] Mr. Pronovost explained the circumstances surrounding the loans he made to the appellant as follows:

(i) During the St-Jean-Baptiste holiday weekend in 1991, around 8:00 a.m., the appellant saved his son 16-year-old son, Patrice, from drowning. The incident happened on the Richelieu River near the St. Ours campground. He explained the circumstances of the alleged rescue of his son Patrice as follows:

[TRANSLATION]

413 Q. Could you explain to the Court the context of this rescue?

A. We had gone camping. It was the St-Jean-Baptiste weekend. We went camping at the St. Ours campground, and there's a landing for small boats. That morning, my son's allergies were acting up, so we went boating on the river because there was less pollen there, and all that. Then, when we put the boat in the water, we pushed it, and the foot of the boat motor lifted up, and we pushed the boat. Then, when we were deep enough in the water, we had to lower the foot of the boat, which was quite long. So . . .

BÉDARD J.:

414 Q. The foot of the boat or the foot of the motor, I mean.

A. The foot of the motor, excuse me, yes. And then there is a lock to release it, and when he tried to release it, above the foot of the motor, there's a place, maybe to change the foot, there's a sort of bolt, we had put like a . . . in French, in English a "counter pin" that's used to attach a cover when you're on the road and so on . . . And he had a bracelet, a cord, it was in fashion at that time . . . and when he released the motor, it got caught, and he wasn't very big so he fell into the water and he was caught with that, it sort of twisted, like. He was caught. Then I saw he was in a bad position, he was struggling, trying to get free. And of course, you get all panicked in a situation like that. I yelled, and Régent arrived. He jumped into the water, and I was at the back of the boat, so he arrived and, like, lifted up, saying to me: "Go to the front". I went to the front, and that's how he rescued him.

He added that no one else witnessed the incident and that he never mentioned it to anyone. When cross-examined about why he still had

not yet told his spouse about their son's rescue, even though he died in 1997, Mr. Pronovost gave the following explanation:

[TRANSLATION]

716 Q. So, why didn't you mention this to your wife?

A. We didn't want anyone to worry.

717 Q. It was over.

A. It was negligence . . . Yes, I know, but it was really negligence. You don't want to brag about that.

(ii) Following this incident, he met with the appellant on several occasions and developed a business relationship with him. Mr. Pronovost described the relationship he developed with the appellant during these meetings:

[TRANSLATION]

422 Q. What was the relationship like between you?

A. Well, it became a business relationship. We discussed business, it was more that. He said he wanted money to invest in real estate . . .

(iii) At the end of 1991 or the beginning of 1992, the appellant told him about his plan to acquire a real estate portfolio for investment purposes (the "project") and asked him to lend him between \$400,000 and \$500,000. He was immediately interested in the project. To thank the appellant for what he did for his son, and to have the appellant help his son gain relevant experience in the field of real estate, he agreed to finance the project.

(iv) From the summer of 1992 to June 12, 1996, he made several cash loans to the appellant totalling \$500,000 as at June 12, 1996. It should be noted at this point that Mr. Pronovost did not have any recollection of the individual amounts of the loans or the dates on which they were made, apart from the amount of the first loan, which was supposedly \$50,000. Mr. Pronovost explained that when each loan was made, the

appellant signed a new acknowledgment of debt which included a statement of the total amount of the loans made as at that date, and the previous acknowledgement of debt was destroyed. The appellant then made a photocopy of the new acknowledgment of debt. He usually kept the original of the document, while the appellant kept a photocopy. His testimony on this point is worth quoting:

[TRANSLATION]

757 Q. You say that . . . who kept the original?

A. We made a photocopy; the original, usually it's for me.

758 Q. Usually, you kept the original?

A. Usually, yes.

759 Q. And Mr. Lacroix would make himself a photocopy.

A. Yes.

760 Q. Yes.

A. I never paid attention to whether I had the original or not.

761 Q. It didn't seem important to you to have the original?

A. You can't tell the difference between a copy and the original, unless you're an expert.

Mr. Pronovost and the appellant signed the note on June 12, 1996. It should be noted at this point that the evidence clearly showed that the appellant has always had the original note in his possession. The explanations given by Mr. Pronovost concerning the possession of the note are so implausible that they merit quoting:

[TRANSLATION]

808 Q. I will get back to that in a minute, Mr. Pronovost, about the repayment Mr. Lacroix made to you. But, in order to stick to the chronology of events, let's turn from the note dated June 12, 1996, to your meeting with the Agency

representative. This meeting took place in April 2002, correct?

A. Possibly.

809 Q. Do you have difficulty with the month of April or with the month of April or with the year, you seem hesitant?

A. I don't know if it's during the month of April, and I don't know if it's in 2002. I know that I met them, I met them in Trois-Rivières, I certainly did meet them.

810 Q. O.K.

A. But the time, the date and the year, that's . . .

811 Q. You were told that the reason for the meeting was to discuss the loan you made to Mr. Lacroix?

A. Possibly.

812 Q. Is it true that you didn't bring any documents with you for that meeting?

A. I don't think I brought any documents.

813 Q. Is it true that you didn't even have a copy of the note dated June 12, 1996, with you?

A. It's quite possible.

814 Q. Is it true that you told the Agency representatives that you didn't even have a copy of that note?

A. No, I didn't have the original, that I didn't have a copy, that surprises me. I had a copy, I think it was Ms. Cloutier who had the original.

815 Q. You told them that your copy had been destroyed in a fire?

A. Yes, that's true, that's for sure, my documents were there, my documents burned.

816 Q. When did the fire happen, Mr. Pronovost?

A. The fire happened . . . '97, January '97.

817 Q. So, from January 1997 to the month of April 2002, you didn't even have a copy of the note?

A. Maybe it was at Métalite. You know, I didn't have it with me.

BÉDARD J.:

818 Q. Maybe it was?

A. At Métalite, the Métalite company . . . When I sold Métalite, all my personal papers and all that, I had the company, Métalite, I had a secretary, Simone Gagnon, who took care of . . .

819 Q. But you stated that it had burned . . .

A. In '97, all my documents were destroyed. But that document was in what year. If it's before '97, it's burned, and if it's after, well, they're at Métalite. What year are we talking about?

SIMON-NICOLAS CRÉPIN:

820 Q. Mr. Pronovost, you have before you a copy of the note dated June twelve (12), 1996.

A. That's it, I don't have it, all my documents burned . . .

BÉDARD J.:

821 Q. It was destroyed in '97?

A. In '97, I had . . .

822 Q. That's what you're saying . . .

A. Yes, that's exactly it.

SIMON-NICOLAS CRÉPIN:

823 Q. And from the month of January '97 to the month of April 2002, when you met with the Agency representatives, you no longer had a copy of the note with you?

A. You'll be surprised . . . I didn't realize that this note was there, you know I didn't . . . I had a fire, my documents were there.

824 Q. Mr. Pronovost, you didn't give any thought at all to what would happen . . . I don't want to mention this, but if something unfortunate happened to Mr. Lacroix, and if you didn't have a copy of the note, how were you going to collect the money you lent him?

A. Ms. Cloutier had a copy, the accountant, I felt totally safe.

825 Q. How did you know that Ms. Cloutier had a copy?

A. Well, you know . . . she had the original.

826 Q. She had the original or a copy?

A. I think she had the original.

827 Q. If something happened to the original . . .

A. Well, anything could happen at any time.

828 Q. That's true.

A. I don't bother about things like that. I've moved on in life, but if I had to play it safe like that, I wouldn't have done anything, I wouldn't have had the time.

(v) As regards the origin of the \$500,000 in cash which was loaned to the appellant, he explained that in 1991 he had between \$250,000 and \$300,000 in cash in a safe in his home, including \$150,000 from cash gifts which Mr. Cadrin and Ms. St-Arnaud had given him, as he was a little like a son to them. It should be noted that these two persons are unfortunately deceased. The balance of the cash (between \$200,000 and

\$250,000) was from the repayment of advances made to his company. His testimony on this point is also worth quoting:

[TRANSLATION]

630 Q. Tell me, Mr. Pronovost, you had \$500,000 in cash when you met Mr. Lacroix in 1991, is that true?

A. I had it, not necessarily in cash, I had it. I had some in my safe, and I probably took some out of the company, I paid myself back for some advances, I'm certain of that. At one time, I had advances, I paid myself back, I cashed in cheques and I was going to bring that.

It is worth noting that no documentary evidence was submitted to confirm that these advances existed, were repaid and were converted into cash. In addition, I note that Mr. Pronovost explained that at the time he made these loans to the appellant, he was a prosperous businessman who had approximately \$4 million in assets.

(vi) In April 2002, he met with Mr. Heppell and Mr. LeBlanc, who wanted to question him about the loans. At this meeting, Mr. Heppell and Mr. LeBlanc pointed out to him that the note had little security attached to it to ensure repayment. Following this meeting, he became very worried about the repayment of his loans, especially considering that his business was not doing so well. His testimony in connection with the events following this meeting is also worth quoting:

[TRANSLATION]

866. Q. At what point did you begin to talk to Mr. Lacroix about your worries and your need to be paid back?

A. As I said earlier, following the meeting, it . . . They woke me up, they created doubt and worry. I was uncomfortable talking to Régent about that, I was uncomfortable asking for security and all that. At one point, at Métalite, things were not going as well . . . Métalite went bankrupt in 2003. And things were not going well, and the salaries were cut. So I sort of panicked, and I phoned Régent, I said: "Régent, I'd like to have security".

BÉDARD J.:

867 Q. That was at what time, when . . .

A. I don't know.

868 Q. One month, six months after . . .

A. Maybe six months after . . .

I note at this point that Mr. Pronovost testified that he had sold his shares in Métalite in 1999. It is therefore difficult for me to understand the connection between Métalite's financial difficulties and the request for security and repayment of the loans. I note that the first cheque for repayment of \$26,000 was dated July 1, 2003, that the receipt for this repayment, signed by Mr. Pronovost, was dated July 2, 2003, and that the letter related to the request for repayment was dated July 2, 2003. I also note that this letter dated July 2, 2003, does not make any mention whatsoever of the \$26,000 repayment.

Testimony of Francine Jobin

[7] The appellant's spouse, Ms. Jobin, essentially corroborated certain aspects of her spouse's testimony, particularly concerning the cash placed in the safe, the photocopies of the acknowledgements of debt and the repayment of the line of credit using the cash allegedly in her spouse's safe.

Testimony of Michel Hamelin

[8] Michel Hamelin, the appellant's expert, testified that his mandate involved analyzing and explaining the net worth of the appellant during the relevant period. He explained that, assuming that the \$500,000 in loans had been made by Mr. Pronovost to the appellant, his report showed that these loans had been almost exclusively used to purchase real estate and automobiles, to make loans and to make investments through brokerage firm Nesbitt Burns. Thus, these loans had not been used by the appellant to pay for his living expenses. In my opinion, Mr. Hamelin's testimony and report do not in any way show that the \$500,000 used by the appellant came from the loans made by Mr. Pronovost. However, it is interesting to note that Mr. Hamelin's testimony and report clearly establish that the purchase of the real estate was almost entirely financed by the appellant's bank and

lines of credit. I also note that Mr. Hamelin never checked to see how the appellant's lines of credit had been repaid.

Testimonies of Charles LeBlanc and Bruno Heppell

[9] Among other things, the very credible testimony given by Mr. Heppell and by Mr. LeBlanc show the following:

(i) Mr. LeBlanc telephoned Mr. Pronovost to make an appointment with him. During this telephone conversation, Mr. LeBlanc explained to Mr. Pronovost that wanted to meet with him at some point to ask him questions about the loans he allegedly made to the appellant. Mr. LeBlanc also asked him to bring all the documents related to these loans.

(ii) The meeting was held at the Agency's office on April 23, 2002. Only Mr. LeBlanc, Mr. Heppell and Mr. Pronovost attended this meeting, although Mr. Pronovost was given the option of attending with his representatives.

(iii) At this meeting, Mr. Heppell and Mr. LeBlanc first of all questioned Mr. Pronovost about the amount of the loans he made to the appellant. Mr. Pronovost answered that he was not certain about the amount of the loans made. Mr. Pronovost vaguely mentioned an amount of \$125,000 and another amount of \$80,000 which were allegedly loaned to the appellant.

(iv) Mr. Pronovost did not bring any documents related to these loans to the meeting, as he explained that all the relevant documents had been destroyed in a fire. When Mr. LeBlanc and Mr. Heppell showed him a photocopy of the note, Mr. Pronovost seemed to be surprised by the amount of \$500,000 mentioned in that note, as this amount seemed to him to be very high.

(v) Still at that same meeting, Mr. LeBlanc and Mr. Heppell questioned Mr. Pronovost about the origin of \$500,000 in cash loaned to the appellant. The answers given by Mr. Pronovost were vague, imprecise and ambiguous.

(vi) At this meeting, Mr. LeBlanc and Mr. Heppell asked Mr. Pronovost if there was another document granting him security for these loans. Mr. Pronovost answered that he did not have any security other than what was mentioned in the note.

Analysis and conclusion

[10] The appellant's evidence about the existence of the cash loans allegedly made to him by Mr. Pronovost was essentially based on his testimony, that of his spouse and that of Mr. Pronovost. The only documentary evidence adduced by the appellant to prove the existence of the loans consisted of the following:

(i) The note (Exhibit A-4);

(ii) The letter from Mr. Pronovost in which he asked the appellant *inter alia* for the repayment of the loans he had made to him. I note that this letter was dated July 2, 2003, therefore after his April 2002 meeting with Mr. LeBlanc and Mr. Heppell;

(iii) Documents (Exhibits A-10 to A-13) showing that Mr. Pronovost had cashed cheques totalling \$430,000 drawn on the bank account of Fiducie de placements RL from July 1, 2003, to August 9, 2006, therefore after the beginning of the audit of the appellant by Mr. LeBlanc.

[11] Counsel for the appellant submits that the appellant has discharged the burden of proving on a balance of probabilities that Mr. Pronovost extended him loans totalling \$500,000. On this point, counsel for the appellant argues that his client's testimony was credible, especially since this testimony was supported by the equally credible testimonies of the appellant's spouse and Mr. Pronovost and by documentary evidence (Exhibits A-4, A-8, A-11, A-12 and A-13) which clearly showed the existence of the loans and their repayment. Counsel for the appellant adds that these testimonies were not contradicted by other testimony or documentary evidence.

[12] The assessment of the credibility of the appellant and of Mr. Pronovost have played an important role in my decision, given the almost complete lack of documentary or objective evidence as to how the appellant used the \$500,000 in cash or where the \$500,000 in cash allegedly held by Mr. Pronovost came from. I would like to point out that I attach little probative value to the testimonies of the appellant, his spouse and Mr. Pronovost. In this regard, I note at this point that courts are not required to believe witnesses, even if they are not contradicted. Their version may be implausible as a result of circumstances revealed by the evidence, or simply on the basis of common sense.

[13] In addition to the implausibility of the appellant's story, I note that the explanation he gave during his testimony about how he used the \$500,000 in cash allegedly loaned to him by Mr. Pronovost contradicted the answer given on this point on examination for discovery. I would point out that on discovery, the appellant answered that the \$500,000 was essentially spent [TRANSLATION] "on renovations made to the properties". However, I note that the appellant testified that the \$500,000 in cash had been used to pay off his line of credit, which had been used to purchase the properties and renovate them. I would also point out that the appellant's expert very clearly showed that the money from the loans made by Mr. Pronovost had not been used to renovate the buildings and that only part of this money was used to make down payments when the real estate was purchased. I also note that the appellant did not submit any documentary evidence showing that he had made several cash deposits (ranging from \$4,000 to \$5,000) to pay off his line of credit in full. I infer from this that this evidence would have been unfavourable to him.

[14] Besides the implausibility of Mr. Pronovost's story, I note that his answers were generally evasive, imprecise, ambiguous, elusive, equivocal, unintelligible and laborious. The time he took to answer questions, his hesitations, his facial expression and his frequent memory gaps only added to my doubts about his credibility. Of course, the fact that the events took place several years ago may explain certain inaccuracies or memory gaps, but it is quite a stretch to accept this as a reason for his inability to tell Mr. Heppell and Mr. LeBlanc the amounts of the loans he allegedly made to the appellant. He could have occasionally substantiated his allegations and established his credibility with adequate and serious evidence, especially concerning the value of his assets, which apparently was \$4 million when he made the loans, and concerning the advances repaid to him by his company. I note that these advances were allegedly used to make some of the loans to the appellant.

[15] In any event, I am of the opinion that the whole story about the loans as told by the appellant, his spouse and Mr. Pronovost is implausible. I am also of the opinion that the note and the request for the repayment of the loan were written and signed after the beginning of the audit for the purpose of hiding the truth. I am also of the opinion that the payment in the amount of \$430,000 was made for the same purpose.

[16] On this point, Mr. Pronovost's story about the rescue of his son, Patrice, who was then 16 years old, seemed to me to be simply implausible and not very credible. First of all, his testimony about the circumstances explaining how his son fell into the Richelieu River leave me perplexed to say the least. I also have a lot of difficulty imagining that a 16-year-old teenager whose fragile state was solely due to allergies could almost drown while the motor of the boat from which he fell was stopped. I find this story all the more implausible because Mr. Pronovost explained that he had not yet informed his spouse of the heroic act performed by the appellant to rescue their son, who died in 1997, I would point out. He did not tell this story because, according to him, he was afraid that his wife would accuse him of having been negligent during this incident.

[17] It seems to me to be just as implausible that, over a period of three years, Mr. Pronovost made a series of cash loans which according to him and the appellant totalled the modest sum of \$500,000 on June 12, 1996. I cannot understand how a businessman with as much experience and acumen as Mr. Pronovost could make a series of loans which, I would point out, were interest-free and were to be repaid from June 12, 2001, on condition that the appellant first of all purchase properties and then turn a profit from their operation or resale. It is even more difficult to convince how such loans could be made even before a single property had been purchased. The fact that the appellant saved the life of Patrice could explain some gratitude shown to the appellant by Mr. Pronovost, but to then make loans to him which were essentially gifts is a large step to take. Mr. Pronovost tried to have me believe that he drafted the note himself in these terms because he did not have the training or education to understand that the note offered little protection. He even had the audacity to claim that Mr. Heppell and Mr. LeBlanc were the ones who made him aware that the note offered little protection. Once again, it seems to me to be just as implausible that a businessman as experienced and successful as he is did not himself realize that the note offered little protection. In my opinion, any person with the least bit of sense would have been able to realize that such loans were actually gifts. If Mr. Pronovost was as oblivious and unaware as he claimed he was, then I wonder why his immediate

reaction was not to at least seek advice from his legal counsel or his accountants, as he regularly did when doing business, before drafting the note.

[18] How may it be explained that Mr. Pronovost did not tell anyone, not even his spouse or advisers, that he had made cash loans to the appellant, and how is it that he did not tell anyone about where the note was kept?

[19] There is another disturbing point which adds to the long list of implausibilities in this case: On June 12, 1996 Mr. Pronovost drafted the note himself. The appellant's spouse then made a photocopy of the note. She supposedly gave Mr. Pronovost the photocopy of the note by mistake and kept the original. Mr. Pronovost did not realize the mistake made by the appellant's spouse because he did not pay attention to the document given to him, especially since, as he said, [TRANSLATION] "You can't tell the difference between a copy and the original, unless you're an expert". He even had the audacity to claim that it did not matter to him whether he had the original of an acknowledgement of debt. I am still wondering how a businessman that ignorant could be a success.

[20] My analysis of the evidence leads me to find that it is more likely than not that these loans never existed and that the notes (Exhibit A-4), the request for repayment (Exhibit A-8) and the cheques made out to Mr. Pronovost were merely a sham to hide the truth. Accordingly, it is difficult to arrive at any other conclusion than that the appellant deliberately failed to report \$516,000 in income. In my opinion, the Minister has discharged the burden of proof on him and was therefore entitled to impose penalties under subsection 163(2) of the Act on the appellant's unreported income. Since the Minister's burden of proof is less under subsection 163(2) of the Act than under subsection 152(4), I am also of the opinion that the Minister was entitled to make reassessments. Finally, I note that the Minister does not, in my opinion, have to identify the source of the appellant's unreported income when this income is established using the net worth method.

[21] For these reasons, the appeals from the assessments made under the Act for the 1997, 1998, 1999 and 2000 taxation years are allowed, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment to the extent that the appellant's income must be reduced by \$11,851 for the 1997 taxation year and by \$31,624 for the 1998 taxation year. Costs are allowed to the respondent.

Signed at Ottawa, Canada, this 14th of June 2007.

"Paul Bédard"

Bédard J.

Translation certified true
on this 19th day of February 2008

François Brunet, Revisor

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REASONS FOR JUDGMENT BY: The Honourable Justice Paul Bédard

DATE OF JUDGMENT: June 14, 2007

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