Docket: 2002-2912(GST)I

BETWEEN:

BERNARD DESROSIERS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on November 1, 2 and 3, 2005, February 13, 2007,
April 23, 24 and 25, 2007, at Rimouski, Québec
and on May 7 and May 8, 2008, at Montréal, Quebec

Before: The Honourable Justice Pierre Archambault

Appearances:

For the Appellant:	Bernard Brosseau and the Appellant himself
Counsel for the Respondent:	Michel Morel

JUDGMENT

The appeal from the assessment made under the *Excise Tax Act*, notice of which bears the number 0252606 and is dated March 13, 1998, is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that Mr. Desrosiers was entitled, in computing his ITCs, to the amount of $525 for the reporting period ended March 31, 1995, and to the amounts of $18.73 for the period ended October 31, 1995, $43.65 for the period ended December 31, 1995, $40.45 for the period ended March 31, 1996, $15.12 for

the period ended April 30, 1996, $14.26 for the period ended October 31, 1996, $386.06 for the period ended November 30, 1996, $107.24 for the period ended January 31, 1997, $10.06 for the period ended June 30, 1997, and $59.61 for the period ended November 30, 1997.

The Respondent is entitled to $500 in costs.

Signed at Ottawa, Canada, this 30th day of September 2008.

"Pierre Archambault"

Archambault J.

Translation certified true
on this 5th day of January 2009.

Brian McCordick, Translator

Citation: 2008 TCC 536
Date: 20080930
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REASONS FOR JUDGMENT

Archambault J.

[1] Bernard Desrosiers is appealing from an assessment made by the Ministère du Revenu du Québec ("MRQ") as agent for the Minister of National Revenue ("the Minister") under the *Excise Tax Act* ("ETA").

Procedural context and parties' positions

[2] Mr. Desrosiers' appeal was part of a series of appeals filed by him and by several of the corporations in which he held an interest, including Les Gazons du Bas St-Laurent Inc. ("Gazons"), Les Pelouses de l'Est Inc. ("Pelouses") and Vert-Dure Plus (1991) Inc. ("Vert-Dure"). As I stated in the reasons for my decision in *Vert-Dure* on September 14, 2007,[1] the hearing of these appeals proved to be very laborious and difficult. The appeals required ten days of hearings to address their merits and the motions, not to mention the numerous telephone conferences to deal with case management as well as postponement requests.

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[1] [2007] T.C.J. No. 364 (QL), 2007 TCC 379. The amount in issue in *Vert-Dure* was $2,829, not including penalties and interest.

[3] In addition to this, counsel for the Respondent, in a moment of great frustration, requested, and obtained from the Court, a settlement conference with another judge with a view to settling the appeals in whole or in part. Fortunately, this conference, which was held in November 2007 and was presided over by my colleague Justice Paul Bédard, resulted in the filing of discontinuances by Gazons and Pelouses. In fact, a discontinuance of the appeal from my decision in *Vert-Dure* was filed in the Federal Court of Appeal on December 3, 2007, as well.

[4] Mr. Desrosiers' appeal is the last one remaining before this Court. The Notice of Appeal bears no date, but was stamped by the Court on May 16, 2002. In it, Mr. Desrosiers states that Bernard Brosseau, C.A., is his agent in the instant appeal. He also states that the Minister did not render a decision on the objection that he had filed with the MRQ in respect of an assessment made on March 13, 1998, and bearing the number 0252606 (Exhibit I-1, tab 1, page 5). The assessment, issued by the Minister, covered the period from February 1, 1995, to November 30, 1997 ("the relevant period"). It increased the net tax by $6,049.02, an amount equal to the input tax credits (ITCs) disallowed by the Minister. It also added interest and penalties. According to the Reply to that Notice of Appeal, the notice of objection was [TRANSLATION] "filed on or about June 11, 1998."

[5] By preliminary motion, Mr. Desrosiers asked the Court to vacate the assessment because, upon receiving his notice of objection, the Minister did not, with all due dispatch, reconsider the assessment and vacate or confirm the assessment or make a reassessment, in accordance with subsection 301(3) of the ETA. On December 23, 2003, the Respondent responded to the motion by producing evidence of a reassessment dated January 28, 2000, covering the same period. By that reassessment, the Minister reduced the amount of the disallowed ITCs to $5,489.24 (not including interest and penalties). (See Exhibit I-1, tab 1, page 2.)

[6] As Justice Angers wrote at paragraph 8 of his reasons in *Desrosiers v. The Queen,* 2003 TCC 859, on December 23, 2003, "[t]his situation led Counsel for the Respondent to ask the Court to dismiss the appeal on the ground that it was filed outside the time prescribed by the Act, as the reassessment is dated January 28, 2000, and the Notice of Appeal was filed on May 16, 2002." Since Mr. Desrosiers testified that he never received the reassessment, and that there was no proof that the reassessment was sent to Mr. Desrosiers in accordance with the requirements of subsection 301(5), Justice Angers concluded that the Minister never sent the reassessment to him (see paragraph 11 of his reasons). Consequently, he dismissed the Respondent's motion. However, he also dismissed Mr. Desrosiers' motion to vacate the assessment, based on several precedents in which courts have held that the Minister's lack of dispatch does not result in the vacation of an assessment.[2] Justice Angers added, at paragraph 15: "Finally, application of the provisions set out in section 299 of the Act will preclude the assessment under appeal in this case from being vacated." And he concluded that "the appeal from the assessment dated March 13, 1998, shall be heard at a future sitting of this Court . . ."

[7] It can be seen from Justice Angers' reasons that the assessment under appeal in the case at bar is the assessment dated March 13, 1998, and, since no appeal was filed in the Federal Court of Appeal from Justice Angers' decision, the doctrine of *res judicata* applies to the two issues that he decided.

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[2] See paragraph 14 of his reasons.

[8] In his Reply to the Notice of Appeal, the Respondent framed the issue as follows: Was Mr. Desrosiers entitled to the ITC of $6,049.02 that he claimed for the period from February 1, 1995, to November 30, 1997? At subparagraphs 4 (d), (e) and (f), the Minister states:

> [TRANSLATION]
>
> (d) A tax audit revealed that the Appellant had no supporting documentation for a total of $6,049.02 in ITCs.*
>
> (e) The Appellant claimed a total of $6,049.02 in ITCs,* which were disallowed owing to the absence of supporting documentation.
>
> (f) On December 31, 1996, the Appellant notified the Minister that he was ceasing his commercial activities, and asked that his GST registration be cancelled.
>
> * Reduced to $5,489.24 in the reassessment of January 28, 2000, as counsel for the Respondent stated at the hearing.

[9] Consequently, the issue is whether Mr. Desrosiers was entitled to the $6,049.02 in ITCs that the Minister disallowed in his assessment of March 13, 1998.[3]

[10] Despite the decision of Justice Angers, who rejected the same argument in 2003, Mr. Desrosiers' new lawyer, Mr. Dury, stated as follows in his Answer to the Reply to the Notice of Appeal, filed on October 14, 2005: [TRANSLATION] "This is not an appeal from an assessment, but rather a request to vacate the assessment because the MRQ did not respond to the notice of objection, which was filed in time, within the six-month time limit set out in paragraph 306(*b*) of the ETA."[4]

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3 Interestingly, the disallowed ITCs were reduced to $5,489.24 in the reassessment of January 28, 2000. However, upon being questioned at the hearings of May 7 and May 8, 2008, Mr. Desrosiers objected to any questions from counsel for the Respondent concerning the reassessment of January 28, 2000, even though the effect of that reassessment was to grant him $559.78 in ITCs. Since I allowed Mr. Desrosiers' objection by reason of Justice Angers' decision, counsel for the Respondent was unable to ask his witness to specify the expenses that were allowed as ITCs at the objection stage.

4 At paragraph 3, Mr. Dury asserts that Mr. Desrosiers filed an application in the Federal Court of Canada, based on subsection 81.22(1) of Part VII of the ETA, to vacate the notice of assessment made on March 13, 1998. On December 7, 2001, Prothonotary Richard Morneau of the Federal Court of Canada, Trial Division, allowed the Respondent's motion to dismiss the applicant's application.

[11] Here is how counsel for Mr. Desrosiers defines the points in issue in his Answer:

> [TRANSLATION]
>
> 16. He denies paragraph 5 of the Reply filed by counsel for the Respondent. Counsel for the Respondent misunderstood the nature of the Appellant's appeal and is mistakenly asserting that the only question for determination is whether the Appellant was entitled to ITCs of $6,116.70 for the period from February 1, 1995, to November 30, 1997.
>
> 17. The main issue is based on paragraph 306(*b*) of Part IX of the ETA, which stipulates that an appellant may appeal to the Tax Court of Canada to have the assessment vacated if one hundred and eighty days (six months) have elapsed after the filing of the notice of objection and the Minister has not notified the appellant that the Minister has vacated or confirmed the assessment or has reassessed. Even though the statutory limitation is six months, 88 (eighty-eight) months have now elapsed without a decision from the MRQ on the notice of objection filed by the Appellant on or about June 11, 1998.
>
> 18. This appeal is also based on section 38 of the *Act respecting the Ministère du Revenu*, R.S.Q. 1977, c. M-31, which defines the powers of an auditor in the performance of his duties. Auditors must conduct their audits on the premises of any individual or legal person being audited. The premises of financial institutions or of customers or suppliers are not part of these premises and the auditor's audit must be limited to the accounting documents and registers on those premises.
>
> 19. The foregoing is the crux of the matter, not a supposed confirmation that the Appellant was, or was not, entitled to GST input tax credits.
>
> [Emphasis added.]

[12] At paragraph 20 of his Answer, he adds: [TRANSLATION]: "The entire dispute is limited to these sections, not to sections 165, 169 and 280 of the ETA, to which counsel for the Respondent referred in his Reply."

[13] Despite my decision in *Vert-Dure*, which rejected this argument for reasons similar to those given by Justice Angers, and despite that company's discontinuance of its appeal from that decision before the Federal Court of Appeal, Mr. Desrosiers' pleadings once again raise the same unfounded arguments that he raised throughout the numerous days of hearings in his personal appeal.

[14] At paragraph 6 of his Answer, counsel for Mr. Desrosiers asserts [TRANSLATION]: ". . . The entire assessment is based on the disallowance of input tax credits (ITCs) claimed by the Appellant. The Appellant must also point out to the Court that the ITCs . . . for most of the year 1997 were never reimbursed. How can ITCs that were never paid to the Appellant be claimed back from him?"

[15] At paragraph 34, counsel for Mr. Desrosiers asserts:[5]

> [TRANSLATION]
>
> However, the auditor made an even bigger mistake in early September 1997 when she went to the office of the financial institutions with which the Appellant was dealing at the time, and asked for information concerning the Appellant's banking transactions. Section 38 of the *Act respecting the Ministère du Revenu* sets out the powers that an auditor may exercise in the performance of her duties, and none of the paragraphs of that section indicate that the auditor may ask third parties for information. This is a fundamental error based on which the Court should be able to vacate all the notices of assessment issued by auditor Claire Desjardins on March 13, 1998. Ms. Desjardins exceeded her powers. None of the evidence illegally obtained by Ms. Desjardins at that time could be used for the purpose of her draft reassessments, nor can such evidence be admitted by the Court.

[16] Mr. Desrosiers sought an adjournment on the second day of the last session of hearings. The ground for his request was that he was missing two letters that he had left at home and that he needed so that he could show that the MRQ had obtained information from the Canada Revenue Agency (CRA). I told Mr. Desrosiers that this postponement request was completely unacceptable in view of the numerous days of hearings that had already been held in 2005 and 2007, and that he had been given every opportunity to establish all the relevant facts of his case. However, I allowed someone who had helped him with his bookkeeping to testify by telephone conference, because counsel for the Respondent objected to the admission of a sworn declaration by that person for the purpose of establishing which information the person had obtained from the CRA with respect to certain documents that the CRA was supposed to transmit to the MRQ.

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[5] It should be pointed out that this counsel ceased to represent his client after a single court appearance. On the May 2008 hearing dates, Mr. Desrosiers represented himself, with the assistance of Mr. Brosseau.

[17] It is clear that the argument based on section 38 of the *Act respecting the Ministère du Revenu* is without legal merit, because that statute is provincial, while the assessment disputed in the case at bar was made under the ETA, a federal statute.

[18] In his Answer, counsel for Mr. Desrosiers also states that the Minister improperly disallowed the ITCs because he was given all the supporting documents and because he accepted Mr. Desrosiers' expenses as legitimate expenses in computing his income under the *Income Tax Act*.

[19] During the two days of hearings held in May 2008, Mr. Desrosiers raised arguments that he had never raised before. For example, he argued that, as a status Indian, he was not required to pay any tax under the Act. In addition, citing an unreasonable audit, he sought a remedy under subsection 24(1) of the *Canadian Charter of Rights and Freedoms* ("the *Charter*").

Factual background

[20] Mr. Desrosiers testified that he was a farmer who grew hay and grain on land that he owned or leased from the Ministère des Transports du Québec. He also said that he tried to operate a greenhouse to grow ginseng. The Minister did not dispute the fact that Mr. Desrosiers operated a farming business. In fact, he granted him ITCs upon being shown supporting documentation that contained the prescribed information contemplated by subsection 169(4) of the ETA and by the Input Tax Credit (GST/HST) Information Regulations ("the Regulations").[6]

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[6] In this regard, subsections 169(1) and 169(4) of the ETA provide:

> **169(1) General rule for credits** − Subject to this Part, where a person acquires or imports property or a service or brings it into a participating province and, during a reporting period of the person during which the person is a registrant, tax in respect of the supply, importation or bringing in becomes payable by the person or is paid by the person without having become payable, the amount determined by the following formula is an input tax credit of the person in respect of the property or service for the period:
>
> $$A \times B$$
>
> where
>
> . . .

[21] Mr. Desrosiers is largely the author of his own misfortune, because he did not keep accounting records that would have enabled the Minister to audit the expenses for which he was claiming ITCs in his GST returns. After the audit began, he prepared an accounting statement to justify the ITCs that were claimed. That document provides the month during which the expense was allegedly incurred, a document number designating the invoice for which he was claiming the ITC, and the amounts of GST and QST associated with the claim (Exhibit A-30, tab E, at pages 4, 5 and 6).

Analysis

[22] With regard to the obligation to provide supporting documentation containing the prescribed information, Mr. Desrosiers cited several decisions of our Court, notably the decision of Chief Justice Bowman (as he then was) in *Les Voitures Orly Inc. / Orly Automobiles Inc. v. The Queen*, 2004 TCC 86, [2004] G.S.T.C. 57 (Eng.), and one of my decisions, *Ventes d'autos Giordano Inc. v. The Queen*, [2001] T.C.J. No. 132 (QL), 2001 GTC 358 (Eng.). I do not understand how these decisions could help Mr. Desrosiers' case. Indeed, in *Giordano*, I stated, at paragraph 47, that the supporting documentation in issue there met all the requirements of subsection 169(4) of the ETA.

169(4) Documents − A registrant may not claim an input tax credit for a reporting period unless, before filing the return in which the credit is claimed,

(*a*) the registrant has obtained sufficient evidence in such form containing such information as will enable the amount of the input tax credit to be determined, including any such information as may be prescribed; [Emphasis added.]

(*b*) where the credit is in respect of property or a service supplied to the registrant in circumstances in which the registrant is required to report the tax payable in respect of the supply in a return filed with the Minister under this Part, the registrant has so reported the tax in a return filed under this Part.

[23] As counsel for the Respondent has argued, my decision in *Systematix Technology Consultants Inc. v. The Queen*, 2006 TCC 277, [2006] G.S.T.C. 120 (Eng.) is much more relevant to the issues in dispute in Mr. Desrosiers' appeal because, in *Systematix*, I held that if a GST number contained in a supporting document is erroneous or invalid, or the number is not stated on the document as required by the Regulations, the registrant is not entitled to the ITCs. This decision was affirmed by the Federal Court of Appeal in *Systematix Technology Consultants Inc. v. Canada*, 2007 FCA 226, [2007] G.S.T.C. 74. The following statement is made at paragraph 4 of the decision of the Federal Court of Appeal:

> We are of the view that the legislation is mandatory in that it requires persons who have paid GST to suppliers to have valid GST registration numbers from those suppliers when claiming input tax credits.

[24] If a registration number that is not valid at the relevant time prevents a registrant from obtaining an ITC, it is obvious that the complete absence of a GST number would prevent a registrant from obtaining an ITC under subsection 169(4) of the ETA. Consequently, given the express requirement contained in the ETA, the Court has no flexibility to admit an invoice as substantiation for an ITC where information prescribed by the ETA and the Regulations is missing. This is the rule that I intend to apply to the ITCs claimed by Mr. Desrosiers.

- Supporting documentation for ITCs

[25] Mr. Brosseau, Mr. Desrosiers' accountant, prepared and adduced Exhibit A-38, a summary table setting out all the ITC amounts that Mr. Desrosiers is claiming. It is worth reproducing part of that table,[7] to which I shall add an "ITC" column setting out the Court's decision with respect to each of the ITC claims. The letter "A" means that the ITC was allowed, and the letter "D" means that it was disallowed. Following the hyphen after the letter "D" is the reason for disallowing the claim: "N" means that there was no GST number; "RNI" means that the recipient was not identified; "VNI" means that the vendor was not identified; "NSD" means that there was no supporting documentation; and "PE" means that the claim was for a personal expense.

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[7] I have excluded the last three columns from the table because they are neither helpful nor relevant. This includes the information concerning the ITCs claimed by the MRQ but not paid by him. I will come back to this issue later in my reasons.

Date	Supplier	GST amount	ITC	GST claim[8]	Exhibit A-32	Exhibit I-1	Exhibits tendered in court
Mar. '95	Fermes Fernand Cantin	$490.00	A[9]	P-1-95			A-3 and I-3
	Me Jacques Michaud	$35.00	A[10]	P-2-95			
		$525.00					
April '95	Excavation Dionne	$21.00	D-N	P-3-95			A-2
Oct. '95	Aménagement Yockell	$182.00	D-N[11]	P-4-95	page 66		A-10
	Aménagement Yockell	$56.55	D-N	P-5-95			A-11
	Dépanneur Irving Jessop	$8.38	A	P-6-95			A-5
	Élec Roger Desjardins	$5.95	A	P-7-95			A-4
	Gaz-O-Bar	$7.42	D-N	P-8A-95	page 51		
		$1.82	D-N[12]	P-8B-95			A-10

8 The number given by Mr. Desrosiers in support of his ITC claim, set out in Exhibit A-30, tab E, pages 1-2.

9 The Minister's auditor acknowledged that the $490 ITC was disallowed on the basis that there was insufficient evidence concerning the use of the lands acquired from Mr. Cantin in the operation of the farming business. Mr. Desrosiers testified that the lands were used in connection with his hay and grain growing, so I am giving him the benefit of the doubt. Exhibit A-3 shows that Mr. Desrosiers reported the purchase of the land and that he made a self-assessment using Form GST60F. In fact, the MRQ's accounting statement, tendered as Exhibit I-3, shows, under the column "tax payable", the amount of $490; and the "input" column reports $525, which consists of the $490 payable on the purchase of the land, plus $35 payable on the notary's fee. The "rebate" column shows that, on May 2, 1995, $35 was refunded to Mr. Desrosiers, bringing the balance to nil, which means that he appears to have been granted a $490 ITC for the land. Consequently, it can be concluded that all the conditions of Mr. Desrosiers' entitlement to an ITC of $490 were met. Not surprisingly, there was no GST number on Exhibit A-3, because the form in question was a self-assessment form, and, as stated in subsection 221(2) of the ETA, the seller is not required to collect GST on the sale of land.

10 The auditor's stated reason for disallowing it was that there was no accounting entry. It is also true that the bill issued by Mr. Michaud, the notary, which would be necessary to justify the ITC of $35, was not produced at the hearing of Mr. Desrosiers' appeal. However, the document appears to have been lost, and Mr. Brosseau, his accountant, testified that he saw the document in question and that it referred to $35 in GST. Other account statements issued by Mr. Michaud were tendered in evidence (Exhibit I-1, tab 2, pages 9 and 12) and show GST amounts. Consequently, I am satisfied that, prior to filing his GST return, Mr. Desrosiers had the requisite supporting documentation under subsection 169(4) of the ETA.

11 In addition, the Minister's auditor stated that this supplier had no registrant file with the MRQ.

Date	Supplier	GST amount	ITC	GST claim[8]	Exhibit A-32	Exhibit I-1	Exhibits tendered in court
	Papeterie Bélanger	$0.03	D[13]	P-8C-95			A-8
		$4.40	A	P-8D-95			A-22
	Canada Post	$0.25	D	P-8E-95			A-6
	Shell	$1.23	D[14]	P-16-95			A-9
		$268.03					
Nov '95	Excavation Dionne	$361.07	D-N	P-9-95			A-12
Dec '95	Canada Post	$13.68	D-N	P-10-95			A-13
	Gaz-O-Bar	$3.03	A	P-11-95			A-14
	St-Hubert	$1.86	A[15]	P-12-95			A-15
	Restaurant Deauville	$4.08	A[16]	P-13-95			A-15
	Resto Hydraulique	$28.28	A	P-14-95			A-16
	Multi Luminaire	$11.55	D-RNI	P-15-95			A-17
	Gaz-O-Bar	$1.12	A	P-17-95			A-18
	K-Mart	$4.97	A	P-18-95			A-18
	Shell Canada	$1.54	A	P-19-95		page 9	
	Service Irving Jessop	$2.49	A	P-20-95			A-19
	Excavation Dionne	$43. 97	D-N	P-21-95			A-20
		$116.57					
Mar '96	Stéréo Plus	$18.20	A[17]	P-1-96	page 48		
	Shell Canada	$2.05	D-NSD	P-3-96		page 11	
	Canada Post	$0.16	D-NSD[18]	P-4-96	page 50		

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12 In addition, the auditor submitted – correctly, in my view – that the amount was not claimed by Mr. Desrosiers in his October 1995 return, since the invoice is dated November 20, 1995, and the return is dated November 10, 1995, as shown by Exhibit I-3, page 2. Moreover, this ITC cannot be claimed in connection with the month of November 1995, because it would have needed to be claimed in a GST return, as required by subsection 169(4) of the ETA, and, under paragraph 225(4)(*b*), the claim needed to have been made within four years after the end of the month following the date of the invoice. Subsection 238(4) requires that the return be made on the prescribed form, namely Form GST-34F.

13 The invoice set out in Exhibit A-8 contains a GST number. However, it must be disallowed, because it was not reported in the return covering October 1995, since the invoice is dated November 20, 1995 (see note 12 above).

14 This amount is disallowed because the expense was incurred later than the date on which the October GST return was filed, namely, November 17. 1995. The invoice date for the Canada Post expense ($0.25) is November 27, 1995.

15 Only 38% of this amount ($0.70) was allowed. The remainder was determined to be associated with a personal expense.

16 Only 38% of this amount ($1.52) was allowed. The remainder was determined to be associated with a personal expense.

17 The Court accepts Mr. Desrosiers' testimony that the expenses were incurred to compensate people who assisted him with the operation of his business.

Date	Supplier	GST amount	ITC	GST claim[8]	Exhibit A-32	Exhibit I-1	Exhibits tendered in court
	Shell Canada	$1.06	D-NSD[19]	P-5-96	page 8		
	Uniprix	$6.24	D-N	P-6-06	page 50		
	Uniprix	$0.94	A	P-7-96	page 50		
	Uniprix	$3.79	D-N	P-8-96	page 50		
	Quinc Centre-ville	$0.94	D-NSD	P-9-96		page 11	
	Quinc Centre-ville	$1.91	D-NSD	P-10-96		page 11	
	Dickner Inc.	$3.39	D-NSD	P-11-96		page 11	
	Centre du Rasoir	$4.34	A	P-12-96			A-24
	Shell Canada	$1.66	D-NSD	P-13-96	page 8		
	Shell Canada	$2.66	A	P-14-96	page 8		
	Shell Canada	$0.94	D-NSD	P-15-96	page 8		
	Multi Luminaire	$11.51	A	P-16-96			A-26
	ADR	$2.80	A[20]	P-17-96			A-27
	Imprimerie Service	$11.49	D-N	P-18-96	page 53		
	Groupe Mallette Maheu	$32.55	D-N[21]	P-19-96	page 54		
		$106.63					
Apr. '96	Groupe Mallette Maheu	$25.20	A[22]	P-20-96		page 22	
	Bureau Service	$3.03	D-N	P-2-96	page 49		
		$28.23					
Oct. '96		$0.00		P-21-96			
	Guy Voyer, atty.	$151.08	D-PE[23]	P-22-96	page 56		
	Service Auto Bélanger	$14.26	A[24]	P-23-96			A-28
	Aménagement Yockell	$290.50	D-N	P-24-96	page 58		
		$455.84					

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18 I did not find, at page 50 of Exhibit A-32, a copy of a Canada Post invoice bearing a GST amount of $0.16. The Minister's auditor believes that the amount was already allowed by the MRQ.

19 The remarks in the previous footnote apply here as well, with the necessary adjustments.

20 Even though the name "Pelouses" is on the invoice and was replaced, in handwriting, with Mr. Desrosiers' name, I am of the opinion that Pelouses was acting as a mandatary of Mr. Desrosiers.

21 Moreover, this is a personal expense associated with Mr. Desrosiers' divorce.

22 Only a part of the $25.20 is an allowable expense, that is to say, $22.68, which is the 90% portion of the fees charged by Groupe Mallette Maheu that is attributable to Mr. Desrosiers' commercial activities. The remainder appears to be related to a personal expense. An amount of $7.56 was subtracted ($22.68 − $7.56) because the auditor had already allowed it (Exhibit I-1, tab 1, page 12).

23 For professional services that were rendered in connection with Mr. Desrosiers' divorce and were therefore unrelated to his commercial activity.

24 Even though the name "Pelouses" is on the invoice, I am of the opinion that Pelouses was acting as a mandatary of Mr. Desrosiers.

Date	Supplier	GST amount	ITC	GST claim[8]	Exhibit A-32	Exhibit I-1	Exhibits tendered in court
Nov. '96		$20.27		Adjust tax - deferral			
	MTQ	$368.06	A[25]	P-25-96	page 13 [*sic*]		

[25] The amount of $368.06 was claimed in respect of the rent expenses incurred under a lease with the Ministère des Transports du Québec (see Exhibit A-29). Although the lease was signed on May 17, 1996, it reflects a pre-existing agreement covering the period from May 1, 1994, to October 30, 1997. Since the lease also covers a period prior to the one in which Mr. Desrosiers was a registrant, the GST must be computed on the rent for the period commencing February 1, 1995, which is Mr. Desrosiers' registration date (see Exhibit I-2). Section 3.1 of the lease contains the following stipulations as to rent:

[TRANSLATION]

3.1 This lease is granted for and in consideration of a total of seven thousand eight hundred and eighty-seven dollars ($7,887), not including taxes. The Goods and Services Tax (GST) and Québec Sales Tax (QST) shall be added to the rent.

The payments shall be as follows:

File: 9-80-00834-6

May 1, 1994, to October 30, 1994 = $586.50
GST - $41.05 QST $40.79

Files: 9-80-00834-6 (6 mos.)
9-80-00833-8 (12 mos.)
9-80-00431-1 (12 mos.)

November 1, 1994, to October 30, 1995 = $2,042.50
GST - $142.97 QST - $142.05

Files: 9-80-00834-6 (12 mos.)
9-80-00833-8 (12 mos.)
9-80-00431-1 (12 mos.)

November 1, 1995, to October 30, 1996 = $2,629.00
GST - $184.03 QST - $182.84

November 1,1996, to October 30, 1997 = $2.629.00
GST - $184.03 QST - $182.84

Date	Supplier	GST amount	ITC	GST claim[8]	Exhibit A-32	Exhibit I-1	Exhibits tendered in court
		$388.33					
Dec. '96		$27.65		Adjust tax deferred			
	Guy Voyer, atty.	$89.60	D-PE[26]	P-26-96	page 59		
	Aménagement paysager D	$429.68	D-N	P-27-96	page 61		
		$546.93					
Jan. '97	MTQ	$184.03	A[27]	P-1-97	[page 22]	[page 27]	
	Aménagement paysager D	$301.47	D-N	P-27-96 bal	page 61		
		$485.50					
Feb. '97		$133.35		Jan. bal. fwd			
	Excavation Dionne	$485.50	D-N[28]	P-2-97	page 27		
	Gagnon Michaud	$17.50	D[29]	P-3-97	page 28		

> One payment of five thousand nine hundred and ninety-one dollars and seventy-five cents ($5,991.75), including taxes, covering the period from May 1, 1994, to October 30, 1996, must be received by us within thirty (30) days after the date on which this lease is received.
>
> The other payment shall be payable on November 1, 1996.

Consequently, the rent of $586.50 for the period from May 1 to October 30, 1994, does not qualify for any ITCs. As for the rent of $2,042.50 for the period from November 1, 1994, to October 30, 1995, 25% of it is related to the period preceding February 1, 1995. As a result, only 75% or $1,532 of the rent qualifies for ITCs. The rent for the period from November 1, 1995, to October 30, 1996, does not pose a problem, while the $2,629 in rent for November 1, 1996, to October 30, 1997, qualifies only if the MRQ did not revoke Mr. Desrosiers' registration effective January 1, 1997. For the reasons set out later in these reasons, I have found that the registration must be considered to have been in force at all times. Consequently, the entire rent of $2,629 for the period from Novermber 1, 1996 to October 30, 1997, qualifies. Therefore, the total eligible rent is $6,790 ($1,532 + $2,629 + $2,629), and 7% of that rent is $475.30. Since Mr. Desrosiers is claiming $368.06 in ITCs in his return for November 1996, this leaves an eligible balance of $107.24 for the month of January 1997.

26 This is the GST on professional services rendered by the attorney in connection with Mr. Desrosiers' divorce proceedings.

27 See note 25 above.

28 No GST number on invoice.

29 This ITC was disallowed because the GST was on the notary Mr. Michaud's fees for the preparation of a release that Caisse populaire Desjardins granted to Mr. Desrosiers, who had guaranteed the financing of one of his corporations. Since Mr. Desrosiers offered this guarantee in his capacity as shareholder of his corporation, and not in connection with his

Date	Supplier	GST amount	ITC	GST claim[8]	Exhibit A-32	Exhibit I-1	Exhibits tendered in court
	Aménagement Yockell	$613.65	D-N[30]	P-4-97	page 29		
		$1,250.00					
Mar. '97	Aménagement Yockell	$972.00	D-N[31]	P-5-97	page 30		
Apr. '97		$88.40	D-NSD				
Jun. '97	Groupe Mallette & Maheu	$10.06	A	P-5-97	page 31		

farming operations, the $17.50 in GST cannot qualify. The mere fact of having an investment in a corporation by virtue of being a shareholder does not constitute a commercial activity. See the definitions of "commercial activity" and "business" in section 123 of the ETA:

> **"commercial activity"** of a person means
>
> (*a*) a business carried on by the person (other than a business carried on without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the business involves the making of exempt supplies by the person,
>
> (*b*) an adventure or concern of the person in the nature of trade (other than an adventure or concern engaged in without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the adventure or concern involves the making of exempt supplies by the person, and
>
> (*c*) the making of a supply (other than an exempt supply) by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply.
>
> **"business"** includes a profession, calling, trade, manufacture or undertaking of any kind whatever, whether the activity or undertaking is engaged in for profit, and any activity engaged in on a regular or continuous basis that involves the supply of property by way of lease, licence or similar arrangement, but does not include an office or employment.

30 The document submitted in support of this ITC, namely, an invoice for $16,000 on which the GST is $1,120, contains no GST number.

31 The invoice is for $952 in total, not $972. Moreover, there is no GST number.

Date	Supplier	GST amount	ITC	GST claim[8]	Exhibit A-32	Exhibit I-1	Exhibits tendered in court
	Aménagement Yockell	$172.18	D-N[32]	P-4-97SUI	page 29		
		$182.24					
Nov. '97	Casgrain Gagnon	$8.16	A[33]	P-6-97	page 34		
	Daigle Paré	$7.00	A[34]	P-7-97	page 36		
	Groupe Aventure	$30.45	A[35]	P-8-97	page 37		
	Yvan Pelletier	$14.00	A	P-9-97	page 38		
	Aménagement Yockell	$245.87	D-N	P-4-97SUI	page 29		
		$305.48					
Assessments even though ITCs not claimed – Exhibit I-1 [(tab 2)][36]							
	Omnipaire	$253.70	D			pp. 37 & 40	
	Omnipaire	$332.50	D			pp. 37 & 40	
	Fernand mon tailleur	$28.64	D			page 47	
	Vélo plein air	$56.33	D			page 45	
	Exhibit A-7	$69.89	D				
	Exhibit A-23	$3.39	D				
	Distrival	$1 050.40	D		page 32		
	Distrival	$952.00	D		page 33		
	Mallette & Maheu	$32.55	D			page 20	
	Nutrite	$879.60	D			page 23	
	Multi Luminaire	$11.51	D		page 31		[A-26]
		$3,670.51					

32 For the same reason as note 30.

33 For fees paid in connection with a seizure of property used by Mr. Desrosiers as part of his commercial activity.

34 For legal consultation fees related to the Union des producteurs agricoles.

35 For computer equipment used in Mr. Desrosiers' business.

36 If I have understood Mr. Brosseau's reasoning, these are ITCs that the Minister disallowed, but that Mr. Desrosiers had not even claimed.

- Cancellation of the registration

[26] The issue that arises with respect to the year 1997 is related to the fact that the basis on which counsel for the Minister justified disallowing all of Mr. Desrosiers' ITCs was that he had filed a notice of cessation of business, and that his GST number had therefore been revoked. In support of this decision, the Minister filed Exhibit I-1, tab 3, a form called "Changement survenu durant la période" [notice of change during the period] in which Mr. Desrosiers checked the box corresponding to the permanent closing of the business effective January 1, 1997. The document was received by the MRQ on March 23, 1998. However, Mr. Desrosiers vehemently denies filling out the portion of the form on which the identification number and account number of his business are written by hand.

[27] Mr. Desrosiers claims to have filed this document without having filled out the registrant identification part. He claims that the MRQ entered his registration number on the document. This account of the facts strikes me as highly implausible, since it would mean that Mr. Desrosiers mailed a document without identifying the registrant business and without writing anything on the envelope. How could the MRQ have written in Mr. Desrosiers' business number in such a case? In fact, Mr. Desrosiers acknowledges having written the words [TRANSLATION] "file closed" on the GST return for the subsequent period, (March 1 to March 31, 1998) and his name is on that return. This document was filed with the MRQ on June 19, 1998. It is therefore very likely that the notice of change, and, in particular, the notice of permanent closing, was not received by the MRQ until the March-June quarter, and that the MRQ simply sent out a GST return on which Mr. Desrosiers' identifying information (name, account number and identification number) was already entered. I therefore accept the account given by the auditor, to the effect that Mr. Desrosiers filed a notice of permanent closing. This was the dispute at the hearing, and I found that the conclusion that the Minister had revoked Mr. Desrosiers' registration, as suggested by the remark [TRANSLATION] "GST Susp. Date 96-12-31" on a printout of a document from the MRQ database, was warranted.

[28] Following the hearing, I considered the provisions of the ETA that govern the revocation of a business's registration. Subsections 242(1), (2) and (3) of the ETA provide:

> **242.** (1) **Cancellation** − The Minister may, after giving a person who is registered under this Subdivision reasonable written notice, cancel the registration of the person if the Minister is satisfied that the registration is not required for the purposes of this Part.
>
> (2) **Request for cancellation** − The Minister shall cancel the registration of a person who is not carrying on a taxi business, effective after the last day of a fiscal year of the person, where
>
> (*a*) the person is a small supplier and has filed with the Minister in prescribed manner a request, in prescribed form containing prescribed information, to do so; and
>
> (*b*) the person has been registered for a period of not less than one year ending on that day
>
> (3) **Notice of cancellation or variation** − Where the Minister cancels or varies the registration of a person, the Minister shall notify the person in writing of the cancellation or variation and the effective date thereof.

[29] As stated in subsection 242(1) of the ETA, the Minister may cancel a person's registration number if he is satisfied that the registration is not required for the purposes of Part IX of the ETA. By virtue of subsection 243(3), the Minister must notify the person in writing of the cancellation and the effective date thereof. But the Minister adduced no evidence of his compliance with section 242 of the ETA. Consequently, the Court is unable to find that the cancellation of the registration was done in compliance with the ETA, if indeed it occurred at all. Under the circumstances, Exhibit I-2 does not constitute sufficient evidence of revocation: the written notice required by subsection 242(3) is lacking.

[30] It should also be added that the auditor did not raise the revocation of Mr. Desrosiers' registration as a ground for disallowing the ITCs for 1997. Rather, she cited a discrepancy between the ITCs reported and the ITCs set out in Mr. Desrosiers' documents. Moreover, contrary to what counsel for the Respondent wrote at subparagraph 4(f) of his Reply to the Notice of Appeal, the evidence adduced before the Court does not show that Mr. Desrosiers applied to have his registration cancelled. He merely said that he was ceasing to operate his business. If the Minister had asked the taxpayer to file form GST-11, "Application to Cancel Registration", the misunderstanding would undoubtedly have been avoided.

- ITCs not received

[31] Before we move away from Mr. Desrosiers' summary table, prepared by his accountant Mr. Brosseau, it is important to address an argument that Mr. Desrosiers and Mr. Brosseau raised, namely, that the MRQ, in its assessment, did not have the authority to establish an amount of ITCs greater than the amount received by Mr. Desrosiers. In my opinion, Mr. Brosseau does not understand the difference between a notice of assessment and a statement of account in which the MRQ can claim amounts payable by a taxpayer or registrant.

[32] When a registrant like Mr. Desrosiers files an appeal against an assessment before this Court, the role of this Court is to verify whether the assessment is well founded, which, in the instant case, means to verify the extent to which the Minister was entitled to disallow the ITCs that Mr. Desrosiers claimed in his GST returns. The specific question that the Court must decide is whether the Minister was justified in disallowing, in whole or in part, the ITCs claimed by Mr. Desrosiers. The issue of the ITCs received by Mr. Desrosiers is a collection matter that is simply not in issue before this Court. If there is a problem concerning the payment of rebates to which Mr. Desrosiers was entitled, or concerning the collection of an amount that he did not receive, the venue in which to debate that problem is the Federal Court of Canada, which must determine whether or not the Minister was entitled to collect from Mr. Desrosiers the amounts that the MRQ claims that he owes.

[33] Naturally, one of the important elements in determining whether Mr. Desrosiers owed a given amount of money is the assessment itself. As I stated in my reasons in *Vert-Dure*, *supra* note 1, at paragraph 6, I admitted statements of account from the MRQ's collection department in order to enable the taxpayer to better understand what amounts the MRQ might be claiming from him. However, the dispute before this Court is limited to the question of eligibility for the ITCs claimed by Mr. Desrosiers. Thus, what must be determined, among other things, is whether supporting documentation containing all the requisite information was available prior to his filing the GST return for each month or quarter in respect of which he made claims; whether the expenses were incurred as part of a commercial activity or a personal activity; and any other eligibility issue that might occur to Mr. Desrosiers. However, the fact that he did not receive an ITC payment is not among those questions.

[34] In any event, Mr. Desrosiers and Mr. Brosseau ought to consult Exhibit I-3, the MRQ statement of account dated February 1, 2006, which lists all the MRQ's accounting transactions. The sum of all amounts under the "rebates" column is $5,612.82. I believe that this must be increased by the $490 which the statement of account lists as an amount owing, but which, in my view, for the reason stated above, is a $490 ITC that the MRQ granted him and applied against his debt, given that this involved the purchase of real property and was a self-assessment.

[35] Consequently, if the amount of $490 is added, the total is $6,102.82, which is very close to the $6,116.70 in ITCs claimed by Mr. Desrosiers. Both of these amounts are higher than the $4,505.21 that Mr. Brousseau states that Revenu Québec paid, in his table in Exhibit A-38. The amount of $6,102.82, which I find that Mr. Desrosiers received or had access to, exceeds the total of the amounts set out in the last two columns of Mr. Brosseau's table (Exhibit A-38), namely $6,053.83. The adjusted amount in the March 1998 MRQ assessment was $6,049.02, and the adjusted amount from its January 2000 assessment, which was disregarded for the purposes of this appeal, was $5,489.24. Thus, Mr. Brosseau's argument that the amount contemplated by the assessment exceeds the amount that Mr. Desrosiers received is clearly wrong. In any event, the evidence before this Court has disclosed that Mr. Desrosiers was entitled to at least $1,202.18 in ITCs, which means that the amount of the ITCs disallowed by the assessment is now only $4,846.84.

- Vacation of assessment, and limitation period

[36] Two other things are worth repeating. Firstly, the question of vacating the assessment on the basis that the Minister did not act with all due dispatch in considering the notice of objection was already debated in *Vert-Dure*, and thus, I have already decided it. Secondly, Mr. Desrosiers made the same argument in the instant appeal upon his preliminary motion before Justice Angers, who rejected it. Consequently, the doctrine of *res judicata* applies to this question.

[37] Mr. Desrosiers, and his advisor, Mr. Brosseau, presented confusing arguments to this Court with regard to the limitation period. On the one hand, Mr. Desrosiers submitted that the March 1998 assessment was time-barred because the Minister did not respond to the June 1998 notice of objection within the 180-day time limit contemplated in paragraph 306(*b*) of the ETA. He argued that a reassessment could no longer be made and that a new audit was necessary. On the other hand, Mr. Brosseau submitted that the Minister could not reassess because he was outside the limitation period. The arguments are variants of the ones that Mr. Desrosiers and Mr. Brosseau made in *Vert-Dure* and before Justice Angers. In any event, I reiterate the reasons that I gave in *Vert-Dure* and I reject the arguments on that same basis. There is no need to go over those reasons here; it is sufficient simply to re-read my reasons in *Vert-Dure*.

[38] In any case, it is clear that the Minister was entitled to reassess in March 1998, because paragraph 298(1)(*a*) of the ETA allots four years after the return is filed, and the assessment covers the periods from February 1, 1995, to November 30, 1997. In March 1998, fewer than four years had elapsed even since February 1, 1995. Thus, this argument raised by Mr. Desrosiers is unfounded as well.

- The *Charter*

[39] The argument based on subsection 24(1) of the *Charter*, and citing an unreasonable search by the MRQ, is unfounded not only in law, but in fact as well. Indeed, Ms. Desjardins testified that she did not contact anyone except suppliers to obtain information. She did not consult Mr. Desrosiers' accountants with respect to his personal file, nor did she have any dealings with the Caisse populaire. As Ms. Desjardins stated, the only thing that needed to be done in Mr. Desrosiers' matter was to justify the ITCs that he was claiming. All she needed was the supporting documentation. It was up to Mr. Desrosiers to provide it. Thus, there was no need for her to contact third parties such as financial institutions.

[40] The only third-party contact that she made – and it is noted in the file – was to check with one of Mr. Desrosiers' suppliers in order to see whether the invoice that Mr. Desrosiers produced as a supporting document was valid. And the evidence disclosed major differences between the invoice that the supplier issued to Mr. Desrosiers and the invoice that Mr. Desrosiers produced. I see absolutely nothing unreasonable about the MRQ's inquiry, which consisted in checking with a supplier whether the invoice purportedly issued by that supplier was actually so issued. See the decision in *Main Rehabilitation Co.* v. *Canada*, [2004] F.C.J. No. 2030 (QL), 2004 FCA 403, which I cited at paragraph 46 of in my decision in *Vert-Dure, supra*; and the decision in *R v. McKinlay Transport Ltd*., [1990] 1 S.C.R. 627, cited in *Vert-Dure, supra*, at paragraph 41.

- Tax exemption for Aboriginals

[41] In what seemed to me to be a last resort, Mr. Desrosiers raised the fact that he is an Aboriginal. He presented his card from Développement des Peuples Aborigènes du Canada, which is a certificate of his Aboriginal status and of his membership of the Micmac Nation of the Bedeque community. Mr. Desrosiers acknowledged that he did not live on a reserve and that none of his purchases were made on a reserve. Furthermore, the goods that were purchased appear to have been used off reserve. The problem is that the exemption in section 87 of the *Indian Act* is limited to reserves. The provision states:

> **87.** (1) Notwithstanding any other Act of Parliament or any Act of the legislature of a province, but subject to section 83, the following property is exempt from taxation:
>
> (*a*) the interest of an Indian or a band in reserve lands or surrendered lands; and
> (*b*) the personal property of an Indian or a band situated on a reserve.
>
> (2) No Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (1)(*a*) or (*b*) or is otherwise subject to taxation in respect of any such property.

> (3) No succession duty, inheritance tax or estate duty is payable on the death of any Indian in respect of any property mentioned in paragraphs (1)(*a*) or (*b*) or the succession thereto if the property passes to an Indian, nor shall any such property be taken into account in determining the duty payable under the *Dominion Succession Duty Act*, chapter 89 of the Revised Statutes of Canada, 1952, or the tax payable under the *Estate Tax Act*, chapter E-9 of the Revised Statutes of Canada, 1970, on or in respect of other property passing to an Indian.
>
> [Emphasis added.]

[42] This interpretation of section 87 of the *Indian Act* has been recognized several times by the Supreme Court of Canada, notably in *Mitchell v. Peguis Indian Band*, [1990] 2 S.C.R. 85, [1990] S.C.J. No. 63 (QL), where La Forest J. held, at page 131 (S.C.R.) and paragraphs 87-88 (QL):

> In summary, the historical record makes it clear that ss. 87 and 89 of the *Indian Act*, the sections to which the deeming provision of s. 90 applies, constitute part of a legislative "package" which bears the impress of an obligation to native peoples which the Crown has recognized at least since the signing of the Royal Proclamation of 1763. From that time on, the Crown has always acknowledged that it is honour-bound to shield Indians from any efforts by non-natives to dispossess Indians of the property which they hold *qua* Indians, i.e., their land base and the chattels on that land base.
>
> It is also important to underscore the corollary to the conclusion I have just drawn. The fact that the modern-day legislation, like its historical counterparts, is so careful to underline that exemptions from taxation and distraint apply only in respect of personal property situated on reserves demonstrates that the purpose of the legislation is not to remedy the economically disadvantaged position of Indians by ensuring that Indians may acquire, hold, and deal with property in the commercial mainstream on different terms than their fellow citizens. An examination of the decisions bearing on these sections confirms that Indians who acquire and deal in property outside lands reserved for their use, deal with it on the same basis as all other Canadians.
>
> [Emphasis added.]

[43] I find Mr. Desrosiers' argument based on his Aboriginal status to be completely unfounded for several reasons. First of all, the issue in the instant appeal is not whether Mr. Desrosiers was subject to the GST or not, but rather whether he was entitled to claim ITCs. The issue is not, and never was, whether Mr. Desrosiers was required to pay the tax upon receiving supplies. Thus, Mr. Desrosiers' argument falls completely outside the scope of the issue before this Court.

[44] Mr. Desrosiers cited section 6 of the *Charter*, which states:

> **6.** (1) Every citizen of Canada has the right to enter, remain in and leave Canada.
>
> (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right
>
> (*a*) to move to and take up residence in any province; and
>
> (*b*) to pursue the gaining of a livelihood in any province.
>
> (3) The rights specified in subsection (2) are subject to
>
> (*a*) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
>
> (*b*) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.
>
> (4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

[45] Mr. Desrosiers submits that section 87 of the *Indian Act* is discriminatory because it requires him to live on a reserve in order to benefit from the tax exemption. It should be noted that Mr. Desrosiers did not serve upon each provincial Attorney General the requisite notice to challenge the validity of a federal statute. Consequently, this question could not be argued before the Court. In any event, I do not believe that this argument is well founded, having regard to the remarks by La Forest J. quoted above.

- Penalty under section 280 of the ETA

[46] With respect to the penalty, section 280 read as follows at the relevant time:

> 280(1) **Penalty and interest** − Subject to this section and section 281, where a person fails to remit or pay an amount to the Receiver General when required under this Part, the person shall pay on the amount not remitted or paid
>
> (*a*) a penalty of 6% per year, and
> (*b*) interest at the prescribed rate,
>
> computed for the period beginning on the first day following the day on or before which the amount was required to be remitted or paid and ending on the day the amount is remitted or paid.

[47] It is important to recall that the penalty in paragraph 280(1)(*a*) of the ETA is related to a strict liability offence. The case law recognizes that the defence of due diligence is available in cases of this kind. In *Corporation de l'École Polytechnique v. Canada*, 2004 FCA 127, [2004] G.S.T.C. 39, [2004] GTC 1148 (Eng.), Décary and Létourneau JJ.A. recalled the principles that govern the defence of due diligence. At paragraph 29, they wrote:

> The defence of due diligence should not be confused with the defence of good faith, which applies in the area of criminal liability, requiring proof of intent or guilty knowledge. The good faith defence enables a person to be exonerated if he or she has made an error of fact in good faith, even if the latter was unreasonable, whereas the due diligence defence requires that the error be reasonable, namely, an error which a reasonable person would have made in the same circumstances. The due diligence defence, which requires a reasonable but erroneous belief in a situation of fact, is thus a higher standard than that of good faith, which only requires an honest, but equally erroneous, belief.
>
> [Emphasis added.]

[48] In order to justify the absence of supporting documentation containing the information prescribed by the ETA and the Regulations, Mr. Desrosiers submitted that it was difficult, in regions like Mont-Joli, to obtain sufficient information to be aware that one must provide such documentation in order to be entitled to ITCs. In addition, he said that it was impossible to verify the validity of the GST numbers.[37] And yet, Mr. Desrosiers knew that one needs to fill out a GST return in order to be entitled to ITCs. Moreover, he admitted that he uses an accountant to help him produce his financial statements and income tax returns. However, he said that he does not use the services of such a professional with regard to his obligations under the ETA. He also acknowledged that he did not contact the suppliers in order to obtain their GST number from them.

[49] In addition to his hundreds of pages of submissions, Mr. Desrosiers managed to produce documents from the MRQ, case law, and Memorandum TPS 400-1-2 which describes the rules under which ITCs can be obtained (Exhibit A-39). The memorandum is dated November 8, 1990. Moreover, as counsel for the Respondent noted, Mr. Desrosiers lives in Sainte-Flavie, roughly 30 km from a tax office where he could have obtained all the relevant information.

[50] Consequently, it is clear, based on the evidence, that Mr. Desrosiers did not act with due diligence with a view to fulfilling his tax obligations. The penalty under section 280 must be maintained. Distance cannot be considered a justification for the absence of the information prescribed by subsection 169(4) of the ETA and by the Regulations, and such information includes the supplier's registration number for any sales over $30 and the name of the recipient for any sales over $150.

---

[37] Contrary to what the Minister's auditor said at the hearing, it has been possible, since June 29, 2005, to obtain a confirmation from the Canada Revenue Agency that an identified person is a registrant for the purposes of Subdivision d of Division V and that a number is indeed the business number of the identified person. (See the new subsection 295(6.1) of the ETA.)

[51] In my opinion, the circumstances of the instant case do not give rise to a defence of due diligence. A reasonable person would either have consulted a professional – for example, an accountant with a respected firm like Groupe Mallette Maheu, the one that Mr. Desrosiers was dealing with at the time – or, at the very least, have consulted the MRQ to obtain the memoranda that would have told him which documents he needed to have in order to substantiate his ITC claims. It seems that Mr. Desrosiers knew that supplies of agricultural products are exempt, but that he was nonetheless entitled to ITCs. It is very surprising that Mr. Desrosiers was not aware of the conditions that he had to fulfil in order to be entitled to those ITCs. Since he made no effort to inquire about his tax obligations, I am unable to conclude that the due diligence defence applies under the circumstances.

- Costs

[52] As I stated at the beginning of these reasons, the conduct of Mr. Desrosiers, and that of his accountant, did not favour the most efficient possible conduct of the appeal. I consider it completely unreasonable that the appeals instituted by Mr. Desrosiers and his companies took so much of the Court's time, owing to the number of days of hearings, the number of postponement requests, and the massive jumble of supporting documents, GST memoranda and arguments that they produced. Moreover, time and time again, Mr. Desrosiers stubbornly reiterated unfounded arguments that unduly prolonged the trial. As we have seen, he reprised this performance on the last two days of hearings. He reversed some of the concessions that he had made on previous hearing dates in relation to ITCs that he admitted he was not entitled to because he did not have any supporting documentation containing the information prescribed by the Regulations, thereby requiring us to reopen the argument concerning some of the ITC claims.

[53] In addition, Mr. Desrosiers was unable to prove misconduct on the part of the Respondent in his personal file, just as he had been unable to do in *Vert-Dure*. During the last two days of hearings, Mr. Desrosiers reprised this tactic, attempting to show that there had been an unreasonable search. The facts alleged in his affidavit, produced as Exhibit A-34, did not persuade the Court. The affidavit is a tissue of unproven insinuations. Mr. Desrosiers even tried to obtain a postponement because he forgot two letters which he claimed would have supported his position. This request was denied because he already had ample opportunity to adduce this evidence in the course of the various sessions of hearings held from 2005 to 2008.

[54] In my opinion, Mr. Desrosiers has drained the judicial system's resources long enough. This situation resembles the one in *Fournier v. The Queen*, [2005] GTC 1398, [2005] G.S.T.C. 91, where the Federal Court of Appeal held as follows in an appeal from one of my decisions:

> 10 The judge described the appellant's behaviour as "extreme and abusive stubbornness" and "vexatious conduct . . . [that] caused the Court to waste a great deal of time". The anticipated one-day hearing of the appeal in the Tax Court of Canada ended up taking two full 11-hour days to complete.
>
> 11 The judge stated that he had no jurisdiction to impose costs on an appellant who unnecessarily delayed an appeal process initiated within an informal proceeding. I should point out that the Tax Court of Canada has the inherent jurisdiction to prevent and control an abuse of its process: see *Yacyshyn v. Canada*, [1999] F.C.[J.] No. 196 (F.C.A.).
>
> 12 The awarding of costs is one mechanism for preventing or remedying abusive delays or procedures: see *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307, at paragraphs 179 and 183. In *Sherman v. Canada (Minister of National Revenue - M.N.R.)*, [2003] 4 F.C. 865, at paragraph 46, this Court addressed the issue in the following terms:
>
> > It is now generally accepted that an award of costs may perform more than one function. Costs under modern rules may serve to regulate, indemnify and deter. They regulate by promoting early settlements and restraint. They deter impetuous, frivolous and abusive behaviour and litigation. They seek to compensate, at least in part, the successful party who has incurred, sometimes, large expenses to vindicate its rights.

[55] I feel it important to reiterate that taxpayers have an obligation to prepare their appeal properly and as efficiently as possible, and that, barring exceptional circumstances, they must cooperate with the respondent's counsel or the Minister's representatives with a view to identifying the points in issue and coming to an agreement when possible. Only the questions on which the parties are unable to agree deserve the Court's attention. In my opinion, it is important to discourage the conduct in which Mr. Desrosiers and his accountant engaged here. Based on my impression that Mr. Desrosiers has only a modest income, and having regard to the modest relief that he was able to justify before the Court and to the fact that this appeal was under the informal procedure, I find that the sum of $500 is reasonable under the circumstances. Otherwise, the costs would have been much higher.

- Conclusion

[56] For all these reasons, Mr. Desrosiers' appeal is allowed and the assessment is referred back to the Minister for reconsideration and reassessment on the basis that Mr. Desrosiers was entitled to the following amounts in computing his ITCs:

Reporting period ending on	**ITC**
March 31, 1995	$525.00
October 31, 1995	$18.73
December 31, 1995	$43.65
March 31, 1996	$40.45
April 30, 1996	$15.12
October 31, 1996	$14.26
November 30, 1996	$368.06
January 31, 1997	$107.24
June 30, 1997	$10.06
November 30, 1997	$59.61
Total	$1,202.18

[57] The Respondent is entitled to $500 in costs.

Signed at Ottawa, Canada, this 30th day of September 2008.

"Pierre Archambault"

Archambault J.

Translation certified true
on this 5th day of January 2009.

Brian McCordick, Translator

CITATION:	2008 TCC 536
COURT FILE NO.:	2002-2912(GST)I
STYLE OF CAUSE:	BERNARD DESROSIERS v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Montréal, Quebec
DATES OF HEARING:	November 1, 2 and 3, 2005; February 13, 2007, and April 23, 24 and 25, 2007, at Rimouski, Quebec, and May 7 and 8, 2008, at Montréal, Quebec
REASONS FOR JUDGMENT BY:	The Honourable Justice Pierre Archambault
DATE OF JUDGMENT:	September 30, 2008

APPEARANCES:

For the Appellant:	Bernard Brosseau and The Appellant himself
Counsel for the Respondent:	Michel Morel

COUNSEL OF RECORD:

For the Appellant:

Name:	
Firm:	

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