Docket: 2006-884(IT)G

BETWEEN:

RICHARD HÉBERT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

---

Appeal heard on December 10, 2007, at Montréal, Quebec.
Before: The Honourable Justice Gaston Jorré

Appearances:

| | |
|---|---|
| Counsel for the Appellant: | Pierre Robillard |
| Counsel for the Respondent: | Marie-Claude Landry |

---

**JUDGMENT**

The appeal from the reassessments made under the *Income Tax Act* for the 1998, 1999 and 2000 taxation years is allowed in accordance with the attached Reasons for Judgment, and the matter is referred back to the Minister of National revenue for reconsideration and reassessments on the basis that:

(a) the additional income set out in the assessments must be reduced as follows:

| | 1998 | 1999 | 2000 |
|---|---|---|---|
| Deposits: National Bank | $4,892.00 | $1,903.00 | $1,971.00 |
| Caisse populaire ***1 | $724.80 | — | — |
| Caisse populaire ***4 | — | — | $4,712.00 |
| Total reduction of additional income | $5,616.80 | $1,903.00 | $6,683.00 |

(b) the amounts subject to the penalty under subsection 163(2) are as follows:

| 1998 | 1999 | 2000 |
|---|---|---|
| $10,894 | $12,381 | $26,680, and |

(c) the Appellant's expenses are to be increased by:

| | 1998 | 1999 | 2000 |
|---|---|---|---|
| Cellular telephone | $422.93 | $435.22 | $354.54 |
| Second line — residential | $397.35 | $353.00 | $350.10 |
| Total increase in expenses | $820.28 | $788.22 | $704.64 |

The Minister shall have two-thirds of his costs.

Signed at Ottawa, Canada, this 26th day of February 2009.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 24th day of June 2009.

François Brunet, Revisor

Citation: 2009 TCC 124
Date: 20090226
Docket: 2006-884(IT)G

BETWEEN:

RICHARD HÉBERT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

## REASONS FOR JUDGMENT

**Jorré J.**

[1] Richard Hébert is appealing from reassessments made for the 1998, 1999 and 2000 taxation years. The Appellant is a notary by profession. The Minister of National Revenue issued reassessments in respect of the Appellant, including income that the Minister claims to be unreported income, disallowed certain expenses that were claimed, and imposed penalties under subsection 163(2) of the *Income Tax Act* ("the ITA").

[2] With respect to gross income, the Minister decided to conduct an audit using the bank deposit analysis method. Under this method, deposits are assumed to be income unless there is an alternative explanation.

[3] The assessment was significantly changed in the course of the audit and objection. The table below summarizes the deposit amounts that the Minister considered income, the accounts into which the deposits were made, the expenses disallowed, and the nature of those expenses. The table takes the adjustments made at the objection stage into account.

| | 1998 | 1999 | 2000 |
|---|---|---|---|
| Unreported professional fees | | | |
| *National Bank* | $4,892 (*) | $1,903 (*) | $1,971 (*) |
| *Caisse populaire* ***6 | $9,890 (*) | $9,450 (*) | $8,696 (*) |
| *Caisse populaire* ***1 | $14,229 (*) | $2,931 (*) | $1,158 (*) |
| *Caisse populaire* ***4 | | | $21,538 (*) |
| Disallowed expenses | | | |
| *Meal expenses* | $201 | $189 | $419 |
| *Automobile expenses* | $3,760 | $2,606 | $2,392 |
| *Utilities* | $2,303 | $2,243 | $1,322 |
| *Other expenses* | $3,528 | $2,745 | $3,768 |
| Capital cost allowance | $2,763 | $3,673 | $4,831 |
| Total adjustments | $41,566 | $25,740 | $46,095 |

(*) A penalty was applied to these amounts pursuant to subsection 163(2) of the ITA.

As stated in the table, the Minister imposed a penalty on the additional income in issue. No penalty was assessed on the disallowed expenses.

[4] Caisse populaire accounts ***6 and ***4 are two different accounts at the Caisse populaire de Pointe-aux-Trembles. Account ***4 is in US dollars. Caisse populaire account ***1 is at the Caisse populaire de Tétreauville. There will be a reference below to a cheque drawn on another account at the Caisse populaire Ste-Claire.

Facts

[5] I will examine, in turn, each of the facts and grounds raised by the Appellant to challenge the assessments.

The deposits of C$21,538 (US$14,714) made on April 13, 2000

[6] The largest amounts added to the Appellant's income are amounts totalling C$21,538 (US$14,714) deposited into account ***4, a US-dollar account.

[7] The amounts were in US dollars — a US$4,500 deposit, a US$54 deposit and a US$10,160 transfer from the Appellant's trust account.[1]

[8] According to the Appellant, a man named Serge Gibeau, whom he had known for a long time, came to see him. The Appellant testified as follows:[2]

> [TRANSLATION]
>
> . . . So he says to me, "Listen," he says. "I did a small transaction in the Bahamas and I want to invest more." He tells me his story and says to me, "I have Canadian funds to send there at the moment." I said there was no problem.
>
> But at one point, since this was something that wasn't far off, I said, "Listen. There is no problem. I still have a US-dollar account." So he made a deposit into my Canadian-dollar general trust account ... the amount was, well, equivalent to, well, I don't know, let's say about $14,000 Canadian. And he asks if we could transfer that right away to, I think, the St. Moritz Club, or something like that.
>
> So then, I said "Listen. It can't be done today because I have work at the office all day." We put it off for a couple of business days, and in the meantime, he had collected funds from his children, his two sons, his wife, his brother-in-law, his friends ... it was ... it must have been an opportunity, a tremendously profitable opportunity, and I said "Listen, if you want, come meet me at the Caisse populaire on" ... well, I'm not confused about the date ... it was April 13, 2000, and I said we'd complete it then.
>
> In the meantime, when he showed up that morning, he had succeeded in raising even more funds ... but that time, he had done more careful planning ... the funds were in US dollars, and he ... well, he gave me cheques that were deposited into my account, and I transferred what he gave me from the general trust fund to the account in question and finally made a $14,500 transfer to ... I can tell you ... it was St. Moritz Holdings Limited with SUB ... UBS Bank in Stamford (inaudible) Connecticut. The transfer probably went through there.

---

1 Exhibit I-2, pages 67-68.

2 Transcript, question 197.

> So this was ... this was done in the course of my activities as a notary. It involved "in trust" accounting which, at that time, was separate from my personal accounting, so I absolutely don't see the connection there. And in fact, I submitted an affidavit from Mr. Gibeau which plainly states that these were funds that he asked me to have transferred for him, to an investment club abroad.

[9] In support of his testimony, the Appellant adduced a sworn declaration by Mr. Gibeau dated November 18, 2004.[3] Mr. Gibeau did not testify. The declaration of November 18, 2004, states:

> [TRANSLATION]
>
> - In 2000, jointly with my wife, I made an investment in bank instruments, based on the advice of my friends and acquaintances in Quebec.
> - The investment was US$14,500 (plus US$55 in bank transfer fees), which corresponds to approximately $21,000 in Canadian funds.
> - When I said that I intended to invest this sum of US$14,500, I was informed that the funds had to be transferred to the Bahamas at the express request of the advisors associated with this investment project.
> - I asked Richard Hébert, who had been my notary for more than 30 years, if he could help me transfer these funds to the Bahamas since neither my spouse nor I had a US-dollar bank account.
> - Mr. Hébert was asked to do this favour because we had known him since 1970, when I was working for the Town of Pointe-aux-Trembles and he looked after all my personal transactions and documents.
> - Mr. Hébert did not charge any fee for this favour.
> - And so, on April 13, 2000, I met Mr. Hébert in person at the Caisse populaire de Pointe-aux-Trembles, located at the corner of Notre-Dame Street East and St-Jean-Baptiste Boulevard, and, after ascertaining the current exchange rate, I handed him Canadian currency equivalent to US$14,500, in accordance with my agreement to transfer it to Nassau, Bahamas, to make the planned investment.
> - I was present with Mr. Hébert throughout the execution of the transaction, and, at my request, the funds were transferred to St. Moritz Holdings Ltd. in Nassau, Bahamas.
> - The funds transfer was executed at my request for the purpose of making a personal investment with my wife.

[10] The $4,500 deposit is from a bank draft of US$2,000 and a bank draft of US$2,500 from the National Bank of Canada.[4]

---

3 Exhbit A-4, page 5.
4 Exhibit A-4, page 2.

[11] Page 1 of Exhibit A-4 is a request dated April 13, 2000, for the transfer of US$14,500. The Appellant is named as the sender. The receiving bank is UBS (Bahamas) Ltd. in Stamford, Connecticut. The transferee of the payment is St. Moritz Holdings Ltd. Mr. Gibeau's name is not on the document.

[12] The auditor confirmed that the transfer was from the trust account. However, there is no documentary evidence regarding the trust account and the origin of the amount of US$10,160.

[13] I do not accept the Appellant's evidence regarding this deposit, because it is impossible to reconcile his testimony with Mr. Gibeau's declaration. First of all, the declaration refers to a single meeting on April 13, 2000 at which Mr. Gibeau gave the Appellant all the funds, not the two meetings that took place accordingly to the Appellant. Secondly, the declaration refers only to a Canadian-dollar amount and, contrary to the Appellant's testimony, makes no reference to a portion in US dollars.

[14] On cross-examination, the Appellant was asked to account for this discrepancy. His answer was that Mr. Gibeau no longer had the documents when he signed the sworn declaration.

[15] While I can understand how Mr. Gibeau might forget certain details, I do not accept that he could have forgotten the fact that he brought approximately C$15,000 to his notary one day, and some US$4,700 (approximately C$6,500) another day, as opposed to approximately C$21,500 on the date of the funds transfers.

[16] However, before we leave this transaction, a change must be made. The auditor, Mr. Gélinas, testified that the portion of the deposit that consists of a US$10,160 transfer into the US-dollar account comes from a C$10,160 transfer from the trust account, due to a mistake by the financial institution.[5] This error resulted in a C$4,712 gain. That $4,712 gain is not income. Consequently, the amount of $21,538 must be reduced by $4,712.

<u>The $12,500 cheque dated November 18, 1998</u>

[17] The Appellant deposited a $12,500 cheque dated November 18, 1998, into account ***1 at the Caisse populaire de Tétreauville.[6] The cheque was for the purchase of a BMW.

---

5 Transcript, questions 702 -706.
6 Exhibit I-2, page 61.

[18] The BMW belonged to 104493 Canada Ltd., a corporation of which the Appellant is a shareholder. The Respondent included this amount of $12,500 on the basis that it was an appropriation by a shareholder.

[19] According to the Appellant, the corporation, which was created long before the taxation years in issue, was never operated. However, instead of purchasing his cars himself, the Appellant decided that the company would purchase the cars that he used. He said that he had paid the purchase price of his cars, and that he used the $12,500 to pay for a part of the company's purchase of a new car on February 22, 1999.

[20] I do not accept that evidence. 104493 Canada Ltd. never filed an income tax return, and no accounting or corporate documents were adduced at trial. Although a contract of purchase between M.G.B. Auto Inc. and the company, dated February 22, 1999, was adduced,[7] the only document adduced in relation to the source of the funds and the method of payment of the price, less the trade-in value, is a $6,000 cheque from the Caisse populaire Ste-Claire, which is not where the $12,500 was deposited.[8] The remainder of the amount payable under the contract was from a cheque in the amount of $8,953.25, drawn on the account at the National Bank.[9]

[21] Even assuming that the Appellant initially paid for the BMW and that the $12,500 was in payment of part of the February 22, 1999, purchase price of the new vehicle, this is of no help to the Appellant.

[22] There are ways for a shareholder to contribute capital, and, under certain conditions, for the company to repay that contribution, but nothing in the evidence shows that this was done in relation to the $12,500 from the sale of the BMW in 1998.

[23] Moreover, nothing in the evidence demonstrates that the company asked the Appellant to keep the funds in order to use them for the purchase of a new car for the company.

[24] Consequently, it can only be an appropriation.

---

7 Exhibit A-1, page 3.
8 Exhibit I-1, tab 17, page 30.
9 Exhibit I-1, tab 17, page 3, item 4 — Appellant's letter.

The deposits into account ***6, the $4,000 cheque from Denise Legault and the $5,000 debt to Mr. Bastien

[25] According to the auditor, the Appellant made cash deposits in the amounts of $9,890, $9,450 and $8,696.18.[10] In making his assessments, the Minister assumed that these amounts were unreported income.

[26] The Appellant submits that these deposits are explained by withdrawals of funds from accounts at the National Bank and at another *caisse populaire*, by a $4,000 gift from Denise Legault-Hébert, and by a $5,000 loan from Mr. Bastien, as shown in Exhibit A-2.

[27] Denise Legault testified. She was married to the Appellant and gave him a $4,000 gift by cheque dated May 25, 1999. A copy of both sides of the cheque was tendered in evidence, and it appears that this amount was deposited into the Appellant's account at the National Bank. Ms. Legault wrote this cheque after receiving an inheritance from her father.

[28] I accept Ms. Legault's testimony, and the fact that the Appellant received the cheque in question. I will come back to this amount of $4,000 later.

[29] According to the Appellant, Mr. Bastien, a Florida resident, lent him C$5,000, as shown by the acknowledgment of debt signed by the Appellant on March 23, 1998. We have no document signed by Mr. Bastien in this regard, and Mr. Bastien did not testify.

[30] The amount of $5,000 was not deposited into account ***6 at the *caisse populaire*.[11]

[31] The Appellant has not explained how this amount got into account ***6. He has not testified as to whether it was a cheque that he received from Mr. Bastien, and, if so, where the amount was deposited, or whether it was cash, and, if so, where the cash was deposited.

[32] I do not accept the Appellant's evidence with respect to this amount.

---

[10] Exhibit I-2, pages 56- 58.
[11] Exhibit I-2, page 56.

[33] There is another reason why I cannot accept it. Since we see no such deposit into account ***6, the Appellant must have deposited it into one or more other accounts. In the list at Exhibit A-2, this amount is added to different amounts withdrawn from other accounts. This amounts to counting the same sum twice: once when it was deposited into an account, and another time when it was withdrawn from it.

[34] For the same reason, although I accept that the Appellant received $4,000 from Denise Legault, I cannot agree to its being added to the amounts withdrawn from other accounts which, according to the Appellant, are the source of the deposits into account ***6. Since the amount of $4,000 was deposited at the National Bank, this would, once again, amount to counting it twice.

[35] There remain the other amounts listed in Exhibit A-2. The Appellant has provided no explanation to reconcile the withdrawals and deposits. He has not proven that he had other sources of money to cover small day-to-day expenses.

[36] The amounts deposited into account ***6 range from $140 to $926.18. Most of the amounts are $800 or $900. There were 13 deposits in 1998, and 12 deposits in the other two years. The withdrawals listed in Exhibit A-2 are $7,047.53 in 1998, $13,383.11 in 1999 and $7,628.62 in 2000. In all, there are nine withdrawals in 1998, twelve in 1999 and five in 2000, and the dates and amounts cannot be reconciled with the deposit amounts. To cite but one example, although there was a deposit almost every month in Exhibit A-2, there were no withdrawals between October 14, 1999, when the Appellant withdrew $1,600, and September 6, 2000, when the Appellant withdrew $4,845.62.

[37] I do not accept the Appellant's evidence with respect to the deposits into account ***6. However, I will come back to the amount of $4,000 later.

The NSF cheques and the National Bank account

[38] The Appellant tendered Exhibit A-3, a list of NSF cheques which does not include certain cheques that replaced them. The total amounts of such cheques is $2,574 in 1998, $1,822.61 in 1999, and $1,958.29 in 2000.

[39] If I understand her position correctly, the Respondent accepts that the cheques bounced, but did not take them into account because she wanted evidence that they were deposited and that the amounts truly were bad debts.[12]

[12] Transcript, question 786.

[40] I have trouble understanding the first requirement, because the account statements[13] show that for each bounced cheque, the bank debited the account. The bank cannot debit the account unless the amount of the cheque was initially credited to the account.

[41] As for the second reason for not taking the bounced cheques into account, I would note that this is an assessment which, as far as the gross income is concerned, is based on a method that assumes that unexplained deposits constitute income. The income estimate involved produces a result that reflects cash accounting. I do not believe that in using this method, one can disregard the fact that certain cheques bounced. Indeed, this explains why certain deposited amounts cannot be considered income.

[42] Moreover, even if it were possible to combine a gross income estimate that is based on the unidentified deposit method with certain principles of accounting modified by the ITA which reflect a non-cash method of accounting, the fact is that under the circumstances of this case, the net amounts of the NSF cheques are at least doubtful claims, if not bad debts.

[43] Consequently, I accept that the income amounts set out in the assessments should be reduced by $2,574 in 1998, $1,822.61 in 1999, and $1,958.29 in 2000.

[44] If these amounts are deducted from the income that the Minister added on account of deposits in the National Bank, the difference remaining is only $2,318 in 1998, $80.39 in 1999, and $12.71 in 2000.

[45] The amounts in 1999 and 2000 are minimally different. There was also the deposit of the $4,000 cheque from Denise Legault into the account in 1999. Since the deposits method is an estimation method that uses cash accounting, there can very well be differences in timing between the Appellant's professional income as stated in the financials, and the amounts deposited into his business account at the National Bank. Hence, I find that there is no significant difference between the income reported by the Appellant and the deposits into the account at the National Bank. Thus, no additional income in the respective amounts of $2,318, $80.39, and $12.71, can be considered to have been deposited into the account at the National Bank.

[46] Consequently, I find that no additional income was deposited into the account at the National Bank.

---

[13] Exhibit I-1, tab 15.

Miscellaneous cheques totalling $724.80

[47] During the trial, the Appellant testified about two groups of cheques totalling $720.44 and $724.80, which were allegedly deposited on October 30, 1998, and November 4, 1998, respectively, into account ***1. The amount of $720.44 was already allowed at the objection stage.

[48] As for the amount of $724.80 consisting of cheques in the amounts of $0.14, $594.31, $99.50, $0.85 and $30.00 respectively, I accept the Appellant's evidence.[14]

[49] Consequently, the amount of additional income in account ***1 for 1998 must be reduced by $724.80.

The amount of $2,000 deposited into account ***1 on May 20, 1999

[50] According to the Appellant, this amount was related to work that the Appellant had to do for a client. The client had been billed in 1995 or 1996. The Appellant asked his son, who had been recently called to the Bar, to do the work, and he gave the fees to his son. After some time, he apparently noticed that his son had not done the work, and he did the work himself and asked his son to give him back the fees. His son gave him back the $2,000, which came from his son's trust account.

[51] I am unable to rule that this amount of $2,000 is not income. No documentary evidence concerning the client's account and the manner that the account was dealt with in the Appellant's financial statements has been provided. Moreover, if the Appellant billed the client in 1995 or 1996 and then paid his son to do the work, he may have deducted the same amount as an expense. If so, assuming that the amount was paid back by the Appellant's son in 1999 for the reasons just given, it should be included in the gross income in order to charge back the prior deduction.

The expenses

[52] In meal expenses, the Appellant claimed $931 in 1998, $1,145 in 1999, and $1,283 in 2000. Following the objection stage, the disallowed amounts were changed to $201, $189 and $419, respectively. The Minister's breakdown was based on the assumption that weekday meals were business meals and that weekend meals were not.

---

[14] Exhibit I-1, tab 17, pages 31-32; transcript, questions 133-147; Exhibit I-2, page 59.

[53] Nothing in the Appellant's evidence would lead me to rule that the breakdown should be different.

[54] As for the automobile expenses, the amounts in question were claimed as depreciation, insurance and registration expenses.

[55] The Appellant did not contest the disallowance of the depreciation, because it is clear that only the owner can claim depreciation.

[56] As for the insurance and registration, since the Appellant ultimately did not contest these two expenses, I will simply remark that I do not see how such expenses could be deductible by the Appellant. Registration is a responsibility of the company. The insurance beneficiary is the company. This is not a situation where there is a contract of lease between the company and the Appellant under which the Appellant is required to make certain payments in consideration of the lease of the car.

[57] Another type of disallowed expense was cellular telephone expenses billed to Denise Legault. According to Ms. Legault, the Appellant, her husband, used the telephone, and she had another cell phone that she did not use.

[58] The Appellant testified that he used the telephone. He also testified that the telephone was under his wife's name because he was able to obtain a relatively inexpensive contract with the help of a friend who was able to put the contract under a general contract with General Electric. According to the Appellant, [TRANSLATION] ". . . obviously, if the end-user is a notary, that doesn't exactly fit, so that's why he put the usage contract under Denise Hébert's name, and that's all there is to say."[15]

[59] The Appellant did not claim any cellular telephone expenses other than those related to the phone under Denise Legault's name.

[60] The Appellant also claimed the costs of a second telephone line in his residence. He testified that he installed a second line at the time that he was attempting to do business in Vietnam, where there is a 12-hour time difference, and that the telephone enabled him to communicate from home. He used this second line for a fax machine and a computer.

---

[15] Transcript, questions 206- 207.

[61] In her examination-in-chief, when Denise Legault was asked who used the second telephone line, she said that the Appellant and his son used it for the computer and the internet, but that she did not use it. Other than that, she was unable to say for what purpose the computer was used.

[62] With respect to the cellular telephone, I accept the Appellant's evidence. As a result, the amounts of $422.93, $435.22 and $354.54 are deductible in 1998, 1999 and 2000, respectively.

[63] As for the second telephone line, I find that the Appellant used it for business, but that his son also used it. Consequently, half this expense will be deductible, that is to say, $397.35 in 1998, $353 in 1999, and $350.10 in 2000.

The penalties under subsection 163(2)

[64] With respect to the imposition of the penalties, the issue to be determined is whether the Appellant "knowingly, or under circumstances amounting to gross negligence, has made . . . a false statement or omission in a return" within the meaning of subsection 163(2) of the ITA.

[65] I must take into account what Strayer J. stated in *Venne v. The Queen*, Docket T-815-82, April 9, 1984, 84 DTC 6247 (F.C.T.D.) "'Gross negligence' must be taken to involve a greater neglect than simply a failure to use reasonable care. It must involve a high degree of negligence tantamount to intentional acting, an indifference as to whether the law is complied with or not."

[66] I must also take into account what Nadon J.A. stated in his decision in *Panini v. Canada*, 2006 FCA 224, at paragraph 43: ". . . the law will impute knowledge to a taxpayer who, in circumstances that dictate or strongly suggest that an inquiry should be made with respect to his or her tax situation, refuses or fails to commence such an inquiry without proper justification."

[67] The Appellant reported gross income of approximately $79,000 in 1998, $86,000 in 1999 and $85,000 in 2000, and net income of approximately $25,000, $33,000 and $19,000 in the same years.

[68] The additional amounts of unreported income, after taking into account the changes that must be made to the assessments, are $10,894 in 1998 (not counting the $12,500 cheque), $12,381 in 1999, and $26,680 in 2000.

[69] These amounts — approximately $45,000 altogether during the three years in issue, or 18% of the reported gross income — are large both in absolute terms and in relation to the gross and net income reported.

[70] During the years in question, the Appellant had no employees, apart from the occasional secretarial assistance of his wife. He looked after the finances and the clerical tasks, and certainly had a good idea of the financial circumstances of his notarial practice.

[71] In view of the circumstances disclosed, I rule that there was gross negligence with respect to the deposits of unreported income in the amounts of $10,894 in 1998, $12,381 in 1999, and $26,680 in 2000.

[72] However, the situation with respect to the $12,500 from the proceeds of the sale of the car is different, and there was no gross negligence in connection with that amount.

Summary

[73] The appeal is allowed and the matter is referred back to the Minister for reconsideration and reassessment on the basis that

(a) the additional income set out in the assessments is to be reduced as follows:

| | 1998 | 1999 | 2000 |
|---|---|---|---|
| Deposits – National Bank | $4,892.00 | $1,903 | $1,971 |
| Caisse populaire ***1 | $724.80 | — | — |
| Caisse populaire ***4 | — | — | $4,712 |
| Total reduction of additional income | $5,616.80 | $1,903 | $6,683 |

(b) the amounts subject to the penalty under subsection 163(2) are as follows:

| 1998 | 1999 | 2000 |
|---|---|---|
| $10,894 | $12,381 | $26,680, and |

(c) the Appellant's expenses are to be increased as follows:

| | 1998 | 1999 | 2000 |
|---|---|---|---|
| Cellular telephone | $422.93 | $435.22 | $354.54 |
| Second line — residential | $397.35 | $353.00 | $350.10 |
| Total increase in expenses | $820.28 | $788.22 | $704.64 |

[74] Since the Appellant has been successful only in part in his challenge to the Minister's position following the objection stage, and since the outcome of these proceedings largely favours the Minister, the Minister shall have two-thirds of his costs.

Signed at Ottawa, Canada, this 26th day of February 2009.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 24th day of June 2009.

François Brunet, Revisor

| | |
|---|---|
| CITATION: | 2009 TCC 124 |
| COURT FILE NO.: | 2006-884(IT)G |
| STYLE OF CAUSE: | RICHARD HÉBERT v. HER MAJESTY THE QUEEN |
| PLACE OF HEARING: | Montréal, Quebec |
| DATE OF HEARING: | December 10, 2007 |
| REASONS FOR JUDGMENT BY: | The Honourable Justice Gaston Jorré |
| DATE OF JUDGMENT: | February 26, 2009 |

APPEARANCES:

| | |
|---|---|
| Counsel for the Appellant: | Pierre Robillard |
| Counsel for the Respondent : | Marie-Claude Landry |

COUNSEL OF RECORD:

For the Appellant:

| | |
|---|---|
| Name: | Pierre Robillard |
| Firm: | Brunet & Robillard, avocats<br>Laval, Quebec |

| | |
|---|---|
| For the Respondent: | John H. Sims, Q.C.<br>Deputy Attorney General of Canada<br>Ottawa, Canada |