Docket: 2009-1047(IT)I

BETWEEN:

ROBERT MAILHOT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeal of Robert Mailhot (**2009-1170(IT)I)**, on October 21, 2009, at Montréal, Quebec

Before: The Honourable Justice François Angers

Appearances:

For the appellant:	The appellant himself
Counsel for the respondent:	Ilinca Ghibu Christa Akey

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2004 taxation year is allowed in part, and the assessment is referred back to the Minister for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 22nd day of April 2010.

"François Angers"

Angers J.

Translation certified true
On this 20th day of July 2010

François Brunet, Revisor

Docket: 2009-1170(IT)I

BETWEEN:

ROBERT MAILHOT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeal of Robert Mailhot (**2009-1047(IT)I)**, on October 21, 2009, at Montréal, Quebec

Before: The Honourable Justice François Angers

Appearances:

For the appellant:	The appellant himself
Counsel for the respondent:	Ilinca Ghibu Christa Akey

JUDGMENT

The appeal from the reassessment under the *Income Tax Act* for the 2005 taxation year is dismissed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 22nd day of April 2010.

"François Angers"

Angers J.

Translation certified true
On this 20th day of July 2010

François Brunet, Revisor

Citation: 2010 TCC 165
Date: 20100422
Dockets: 2009-1047(IT)I,
2009-1170(IT)I

BETWEEN:

ROBERT MAILHOT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Angers J.

[1] The appellant is appealing from a reassessment dated January 26, 2009, in respect of his 2004 taxation year, and from a reassessment dated January 21, 2008, in respect of his 2005 taxation year. Both appeals were heard on common evidence.

[2] When he filed his income tax return for the 2004 taxation year, the appellant, in computing his income, reported $15,339 ($30,678 x 50%) as taxable capital gains from securities transactions. Following an audit by the Canada Revenue Agency (CRA), the Minister of National Revenue (the Minister) issued a reassessment in respect of the 2004 taxation year, increasing the taxable capital gains from the securities transactions to $149,070. In addition, the Minister disallowed the appellant's claim of a capital loss resulting from the sale of 1,000 common shares of Agenda du Sportif Ltée in 2004, on the basis that the company's most recent income tax return, which was for the 2001 taxation year, reported that there were only 100 common shares in its capital stock.

[3] With respect to his 2005 taxation year, the appellant reported $159,560 in income from a registered retirement savings plan (RRSP) and deducted an amount equal to that income. In making the initial assessment, the Minister, in computing the appellant's income, included, among other things, a total of $267,479 in RRSP

income, but granted only a $25,000 deduction from that income. In computing the appellant's professional income, the Minister refused to allow any deduction whatsoever in respect of bad debts, or on account of a cost allowance on the appellant's motor vehicles. The appellant had also reported a taxable capital gain of $20,677 in respect of his 2005 taxation year, but, in the Minister's view, the appellant was not entitled to carry forward any capital loss because, in the 2004 taxation year,

(a) the appellant had already deducted $9,839 on account of a net capital loss carry-forward from another year (1994), and
(b) the Minister allowed a loss carryback deduction from another year (2007).

[4] In addition, and for the same reason as he cited for the appellant's 2004 taxation year, the Minister disallowed the appellant's request for an adjustment that would have permitted him to deduct $38,002 on account of a capital loss ($50,670 x ¾) resulting from the sale of 2,000 common shares of Agenda du Sportif Ltée in 2003 and 2004.

[5] The four issues are as follows:

1 - Did the Minister properly add $133,734 to the appellant's income on account of a taxable capital gain from the disposition of certain shares?
2 - Did the Minister properly disallow the appellant's deduction of $38,002 on account of a deductible business investment loss from an alleged disposition of shares in Agenda du Sportif Ltée?
3 - Did the Minister properly disallow the appellant's deduction of $14,150 on account of bad debts?
4 - Did the Minister properly disallow the appellant's deduction of $9,600 on account of a capital cost allowance on motor vehicles?

[6] The appellant is a lawyer. He disposed of certain securities in 2004, and reported $321,316 as his total proceeds of disposition. However, after analyzing the documents provided by the appellant's broker, the CRA auditor found that the total amount of the dispositions made on behalf of the appellant was actually $588,784, which meant that there was an unreported discrepancy of $267,468.

[7] On June 20, 2007, the CRA wrote the appellant a letter notifying him that his 2003 and 2004 income tax returns were being examined, and asking him to provide, among other things, the transaction statements issued by his broker and showing the costs of acquiring and disposing of the securities, and to include the T5008 forms.

On July 16, 2007, the appellant wrote a handwritten letter to CRA auditor Robert Villemure, who had been assigned to the appellant's file. In the letter, he stated that he contacted his broker, and that the copies of the transaction statements would only be sent in five to eight weeks, assuming they could actually be obtained. However, he provided the details of the transactions that concerned him personally; as for the other transactions, he referred to other [TRANSLATION] "entities" and said that these [TRANSLATION] "entities" were responsible for their own taxes. One of those [TRANSLATION] "entities" was his daughter. He did not name the other.

[8] Three days later, the appellant wrote Mr. Villemure again. This time, it was a typed letter, containing more details about the securities transactions. Enclosed with the letter was a trust deed dated February 19, 1999, duly registered under the name of the Mailhot Family Trust (the Trust). In his letter, the appellant specified that he did not have that deed when he wrote his first letter on July 16, 2007. The appellant also enclosed a copy of forms called "Renseignements sur un compte en fiducie" [trust account information], issued by TD Waterhouse, dated January 28, 2001, concerning the Trust. Furthermore, he enclosed a copy of the securities transaction statement for 2004, issued by TD Waterhouse under the Trust's name and addressed to the appellant in his capacity as its trustee. And finally, he enclosed a copy of his own securities transaction statements for 2004, prepared by TD Waterhouse. The total value of the securities transactions attributable to the Trust was $194,574.31. The total value of the transactions attributable to the appellant personally was $391,211.47. Commissions, in the amount of $777 for the Trust's transactions and $1,189 for the appellant's transactions, must be added to these proceeds of disposition.

[9] Mr. Villemure never received the letter dated July 19, 2007, since he wrote the appellant again, on October 12, 2007, to remind him that he needed to provide the statements from his brokers. Attached to Mr. Villemure's letter were the statements that Mr. Villemure had prepared for the years 2004 and 2005, showing the discrepancies in relation to the amounts that the appellant had reported. In fact, Mr. Villemure testified that the first time he saw the letter dated July 19, 2007, the trust deed, and the documents at pages 33, 34, 35, 36, 38, 39. 40, 41, 42, 43, 44 and 45 of Exhibit A-1, was the morning of the hearing. He allegedly learned of the existence of the trust one week prior to the hearing, when he was given a copy of the Notice of Appeal. He then looked up the Trust in the CRA's files to find out whether it had filed a tax return, and found nothing. In the conversations between Mr. Villemure and the appellant, the appellant always referred to third parties, but never mentioned the word [TRANSLATION] "trust" in connection with transactions attributable to the Trust. Mr. Villemure also pointed out that the letter of

July 19, 2007 is the only letter that the appellant typed, whereas all the other letters are handwritten.

[10] In his testimony, Mr. Villemure explained that he was forced to base the assessment on the disposition price, because the appellant did not give him any documentation showing the acquisition costs. The only information regarding acquisition costs were the costs that the appellant provided in his letter to Mr. Villemure dated July 16, 2007. The T5008s did not specify the acquisition costs.

[11] In a handwritten letter dated November 20, 2007 (Exhibit A-1, page 60) to the attention of Mr. Villemure, the appellant challenged the discrepancies calculated by Mr. Villemure, because he had no way to verify their accuracy, and because Mr. Villemure had attributed amounts to him which belonged to third parties whose account statements he was unable to obtain. Even more strangely, the appellant wrote that TD Waterhouse never sent him the copies that he requested, when they had in fact already been enclosed with his letter of July 19, 2007. Moreover, one of the third parties to which the appellant referred is the Trust, of which he himself is the trustee.

[12] I find it rather strange that, at first, the appellant stated, in his handwritten letter of July 16, 2007, that he had contacted the brokerage firm to obtain the copies, and that they would only be available in five to eight weeks, and that three days later, in a typewritten letter, he was able to provide rather pertinent information about the Trust's securities transactions and the personal securities trading activity in his Canadian and US accounts.

[13] Even more strangely, after sending this information (including the deed of trust appointing him as trustee) on July 19, 2007, the appellant, in a letter to the CRA dated November 20, 2007, wrote:

> [TRANSLATION]
>
> I confirm receipt of your letter dated October 12, 2007, and must say that I challenge your figures and entries, whose nature and accuracy I cannot verify. Specifically, you appear to be imputing amounts to me which belong to third parties, and since I do not have access to those account statements, I challenge your reports and your statement, which show erroneous discrepancies.

[14] This is a glaring contradiction that casts serious doubt on the credibility of the appellant's assertions regarding the existence and sending of the letter of July 19, 2007, and its alleged attachments, and regarding the alleged impossibility for him to get access to the statements of the Trust, of which he is the trustee. All of the

Trust's statements were addressed to him as trustee, and, according to his letter of July 19, 2007, where he wrote as follows, the documents were in his possession:

> [TRANSLATION]
>
> In addition to the documents that I gave you on July 16, 2007, I enclose, herewith, a copy of the trust deed dated February 19, 1999, duly registered under the name Mailhot Family Trust (I did not have this copy on July 16, 2007). I was acting solely as trustee of that trust. I also enclose a copy of the trust account information form, dated January 28, 2001, and issued by TD Waterhouse Bank to the Mailhot Family Trust account. That form indicates its settlor and beneficiaries. Lastly, I enclose a copy of the 2004 securities trading statement issued by TD Waterhouse Bank under the name of the Mailhot Family Trust and addressed to me, in trust, as trustee.

[15] On the sole basis of the document submitted at the hearing, a trust was created on February 19, 1999, and it sold its securities holdings in 2004. According to the evidence, the Trust did not report its income in 2004 and other years, since it never filed an income tax return. In my opinion, the appellant tried to hide the existence of the Trust until the last minute, when he no longer had the choice, and had to divulge its existence lest its 2004 income be attributed to him.

[16] Despite the appellant's attitude and conduct, I find that the Trust did exist, so the capital gain attributed to the appellant, but actually realized by the Trust, must be taxed in the Trust's hands. The taxable amount was $133,734, which is one-half the total sales of $267,468. However, we now know that the amount of these sales is $197,574.

[17] Indeed, in his income tax return, the appellant reported $321,316 in total proceeds from his securities dispositions. During the audit, he was attributed an additional $267,468, of which half, $133,734, was a taxable capital gain, because there was no evidence as to the cost of acquiring those shares. The shares that were sold belonged to the Trust. The evidence adduced at the hearing shows that the appellant failed to report a $60,000 transaction ($59,700 plus a $300 commission) involving shares, because the appellant's total securities sales for 2004 amount to $392,399.96 including commissions, or $391,211.47 not including commissions. The capital gain from this unreported sale of shares must therefore be added to the appellant's income for the 2004 taxation year, while taking into consideration the cost of acquisition, which was $47,400. If the gain is calculated without including the commission, it is not necessary to subtract the amount of the commission.

[18] The second issue, which concerns the 2004 and 2005 taxation years, is the Minister's refusal to allow the appellant to deduct a capital loss resulting from the sale of 2,000 common shares of Agenda du Sportif Ltée (hereinafter Agenda) on the basis that the capital stock reported in its last income tax return consisted solely of 100 common shares. The shares were sold in 2003 and 2004. The appellant says that he sold 1,000 shares in 2003 and obtained $3,300 in proceeds from those shares, which cost $30,000 to acquire. This would mean that he incurred a loss of $26,670. The proceeds from the 2004 disposition were $1,000, and, since the stated acquisition cost was $25,000, there was a $24,000 loss. The loss from both transactions combined was therefore $38,002 ($55,000 - $4,330 = $50,670 x ¾ = $38,002).

[19] Agenda was allegedly incorporated on April 25, 1986. In the CIDREQ business registry, the company's activity is described as sporting goods retail, and the only two directors are the appellant and his sister. According to the appellant, Agenda promoted sporting events. According to CIDREQ, Agenda's head office address at the time its incorporation was the same as the appellant's office address, and was never changed.

[20] The appellant described Agenda as a client. He said that while he might have been its founding director in 1986, he was never its accountant, and therefore never looked after its bookkeeping or income tax returns. He added that he had represented Agenda in a trademark opposition. Upon being shown the CIDREQ printout, the appellant was stunned to see that his name was still in the business registry as at October 8, 2009. He added that he resigned a few months after Agenda was incorporated, but produced no documentation in support of this assertion.

[21] The appellant is listed as the contact person in Agenda's tax return for the taxation year spanning from May 1, 1998, to April 30, 1999 (Exhibit I-2). The return states that the company is inactive. The appellant signed it as the authorized executive, and reported that his personal address was the same as Agenda's.

[22] In view of Agenda's tax return for the taxation year spanning from May 1, 2000, to April 30, 2001 (Exhibit I-3), Agenda's address was still the appellant's address, and was where the accounting records were kept. The return states that Agenda ceased its activities in 1999, and that the appellant was its president and held 90% of its 100 common shares. According to the balance sheet attached to the return, Agenda had $20,000 in short-term liabilities, a $35,000 debt to the shareholder, and a $20,000 promissory note to pay. The return is signed by the appellant, who declares that Agenda is in liquidation. According to the appellant, he signed as Agenda's agent, and was not the person who prepared the balance sheet.

The balance sheet was supposedly given to him by someone else, whom he did not name.

[23] The appellant said that he acquired 1,000 common shares of Agenda on June 1, 1989, and 1,000 more on August 1, 1991. The consideration paid, namely $30,000 for the first 1,000 shares purchased and $25,000 for the second 1,000, supposedly corresponds to the fees that the company owed him for services rendered.

[24] The contract of June 1, 1989 (Exhibit A-2, page 7), concerning the first share purchase, was prepared by the appellant with the help of a notary. Agenda is named as the seller, and the purchase price is $30,000, payable by the appellant's delivery of professional services to the company over the course of a two-year period following the date of the contract. The services in question were those required for the preparation of a trademark application. In the contract, the seller, namely Agenda, declares that it is the registered shareholder of the issued common shares of the company's capital stock. The appellant signed the contract both personally and on behalf of Agenda, without attaching an affidavit by the person who witnessed the signature. He testified that he signed the letter as director and that he ceased to be a director in August or September 1989. The contract also provides that assets sold include Agenda's rights to its business names and other [TRANSLATION] "corporate" names as well as the rights associated with the trademarks.

[25] The contract of August 1, 1991 (Exhibit A-2, page 12), concerning the second share purchase, was supposedly not drafted by the appellant, though he allegedly made some unspecified corrections to it. However, that second contract is almost identical to the first, with the exception of the price, which is $25,000 for 1,000 common shares. In the contract, Agenda, which is named as the seller, declares that it is the registered holder of the said shares. Once again, the sale includes all rights inherent in the shares sold, and in particular the rights to the business names and other [TRANSLATION] "corporate" names as well as the rights associated with the trademarks. The consideration, $25,000, is payable by the appellant's delivery of professional services to the company, namely, the services required to preserve and defend the trademark application. The signatures are illegible, so the appellant acknowledged that one of them is his, and stated that the person who signed on behalf of the company is one J. Bolf who, the appellant claims, became a shareholder and director of the company after him. The appellant referred the Court to a list of the company's shareholders (Exhibit A-2, page 23) which contains his name, and, under the heading [TRANSLATION] "registration", an effective date of August 1, 1991. Also on the list are Lina Mailhot, the appellant's sister, with an effective date of July 1, 1991, J. Bolf, with an effective date of October 30, 1998, and Mr. Assaraf, with an effective date of June 26, 2000. The appellant testified that he was a shareholder from 1986 to 2004 and that J. Bolf and Mr. Assaraf were the directors. The last shareholder on the list is an entity called En direct TV. Its effective date under the heading [TRANSLATION] "registration" is December 15, 2003.

[26] En direct TV is a client of the appellant's. It acquired Agenda's common shares in two steps. The first was to purchase 1,000 of them on December 15, 2003, and the second step, undertaken roughly 30 days later on January 15, 2004, was to purchase the other block of 1,000 common shares belonging to the appellant. Two contracts were entered into evidence as proof of the two transactions (Exhibit A-2, pages 17 and 20). The appellant said that he did not draft the contracts, but that he made unspecified corrections to them. The two contracts are very similar to the ones under which the appellant purchased Agenda's shares — so similar, in fact, that they are both printed in the same font. The appellant says that he convinced his client En direct TV to purchase his shares because this would be beneficial to En direct TV.

[27] The selling price for the first 1,000 common shares was $3,330, payable by means of

(a) the past and future delivery, by the purchaser to the seller (namely the appellant), of telecommunications services and television programming from the American channels HBO, Disney Channel, Cinemax Speed and other channels, in both Canada and the United States, throughout the following year, that is to say, from January 1, 2003, to December 31, 2003, for a total value of $3,330,
(b) the provision in Canada, by the purchaser to the seller, on consignment, of all equipment required to receive the said American programming, and all necessary access cards, over the course of the year in question, and
(c) the provision by the purchaser, to the seller, of its payment services, on consignment, to defray the costs generated by the supply of the said American programming during the year in question.

[28] Moreover, the seller (the appellant) told the purchaser that he would continue to look after the promotion of Agenda on his own. The contract expressly provided that in addition to the 1,000 common shares, the sale included all the rights inherent in the shares, such as the rights to the business names and other [TRANSLATION] "corporate" names of Agenda du Sportif Ltée, the rights associated with the trademarks (whether registered or eligible for registration), the inventions and patents (whether or not registered) and the use of the company's graphics, advertising processes, and other publicity materials.

[29] The second contract for the sale of 1,000 common shares (January 15, 2004) contains identical clauses stipulating that the transaction includes the rights associated with the trademarks, etc., except that the price is $1,000, and the purchaser must provide its services so that programming can be received from the American television stations HBO 2 and Cinemax throughout the 2004 calendar year.

[30] The appellant signed both contracts in his personal capacity. The purchaser's illegible signature appears above "En direct TV." There is no affidavit from the person who witnessed the signature, and no corporate seal. The appellant says that the signature is that of a Mr. Lono, a shareholder and director of Lono T.V. The contracts state that En direct TV is a legal entity that carries on business in Plattsburgh, New York.

[31] Auditor Robert Villemure testified that the appellant did not claim business investment loss deductions in his 2003 and 2004 tax returns. Right after such

deductions were claimed, he audited Agenda's tax returns, and noticed that, according to its 1998, 1999 and 2001 tax returns, the appellant held 100% of the company's shares. He noticed from Agenda's financial statements that it reported a capital stock of $3,000 in 1994, $0 in 1995, $5,000 in 1996 and $0 in 1997, $0 in 1998 (company reported inactive), and $0 in 1999 (company reported to have ceased operations). For 2000-2001, the financial statement (Exhibit I-3) declares an authorized share capital of $100, with three issued shares and three shareholders. The statement is signed by the appellant, and, once again, it glaringly contradicts the two purchases of 1,000 Agenda shares by the appellant in 1989 and 1991.

[32] It is also a contradiction that a company is able to hold and to sell its own shares. A subscription in a company's shares is usually an investment. Here, Agenda sold its own shares; moreover, under both contracts, the sale included the rights to the business and other "corporate" names and the rights associated with the trademarks. Thus, Agenda was selling them twice. Are we to conclude that Agenda no longer wanted to carry on business? This was more than a sale of shares. One must also ask why the appellant acted for both parties to these contracts. The appellant first said that he resigned as director in 1986, a few months after Agenda was incorporated, and yet he signed both purchase contracts (the 1989 and 1991 contracts) for Agenda. If Agenda was, as the appellant claims, his client, and he was the purchaser, then the appellant, a lawyer, was clearly in conflict of interest. It should be recalled that he also signed Agenda's income tax return for 2000-2001.

[33] How can one buy 2,000 shares that have never been issued? How can one offer future professional services in payment of a purchase price, without the contract containing any accountability mechanism in that regard?

[34] Agenda was inactive in 1998, and ceased operations in 1999. According to the financial statements, in 2000, there were only three issued shares. Moreover, Agenda's share capital was only $3,000 in 1994. So what happened between 1991 and 1994 that would explain why Agenda's share capital decreased from $55,000 after the transactions of 1989 and 1991, to $3,000, in 1994? One must also ask what might have motivated En direct TV to buy the appellant's 2,000 shares in 2003 and 2004. There is no evidence that the shares had any value whatsoever, given that Agenda had ceased its activities in 1999. The appellant submits that it was advantageous for En direct TV to make this purchase, but he provided no specifics regarding this alleged advantage.

[35] The two share purchase agreements under which the appellant sold shares to En direct TV also contain a condition that, in addition to the shares, the sale

encompasses the rights to the business names and other [TRANSLATION] "corporate" names, and to the trademarks, inventions, patents, etc. Why should these assets be included in the two contracts? And did the appellant actually own them? It should be recalled, in this regard, that the appellant is a lawyer. Despite the two sales, the contract provided that the appellant would continue to look after the promotion of Agenda, which had ceased its operations in 1999. No share certificates were tendered in evidence.

[36] In my opinion, all those transactions, and the related documentation, are complete shams, fabricated by the appellant in order to create deductions to which he is not entitled. All of these transactions are entirely implausible. The appellant has not discharged his burden of proving that he is entitled to the loss deduction that he claimed.

[37] For 2005, the appellant was not allowed to deduct $14,175 from his professional income on account of bad debts. This amount is the sum of three invoices, the details of which are as follows:

	Date	**Client**	**Amount**
Invoice #1	May 31, 2005	Mr. Assaraf	$1,500
Invoice #2	September 1, 2005	En direct TV	$12,175
Invoice #3	December 1, 2005	—	$500

[38] Although the appellant did not invoke professional secrecy to prevent the disclosure of his clients' names, I will not identify the client named in the third invoice. I have chosen to reproduce the name of the first two clients because it is known that one of them is a shareholder and director of the company, and the other is the purchaser of the appellant's shares.

[39] In his 2005 income tax return, the appellant did not claim a deduction on account of bad debts. He reported $15,250 in gross professional income, and claimed deductions which would have brought his net professional income down to nil. It was only at the objection stage, on April 21, 2006, that the appellant filed an amended income and expense statement, in which he claimed a deduction for bad debts (Exhibit A-2, page 49) and a net loss of $24,900. As for the other initially reported income, there was $159,560.58 in a RRSP income and a deduction equal thereto. The audit disclosed that the amount withdrawn from the appellant's RRSP was

actually $267,000, and the CRA allowed a $25,000 deduction from this amount. On cross-examination, the appellant said he did not recall his RRSP income having been increased to $267,000. It must also be pointed out that it was after he was notified of this increase that he sought to deduct bad debts from his 2005 income.

[40] The appellant said that his low professional income is attributable to an accident that allegedly occurred in 2005. However, he acknowledged that he went on several trips for clients in 2004, 2005 and 2006, but said that he billed his clients later, because the amounts in question were all-inclusive.

[41] The debt of May 31, 2005, was the subject of a demand letter dated July 4, 2005. Allegedly, after he sent the letter, the client contacted the appellant to tell him that he would pay only $500, when he could, and that he was going back to live with his family in California. The appellant supposedly followed up in December, whereupon he learned that the client had left Quebec without leaving a forwarding address.

[42] The second invoice, addressed to En direct TV, was followed by a demand letter to Mr. P. Lono, whose address was the same as En direct TV's. In response, the client supposedly notified the appellant that it had ceased its Canadian activities following a loss of its permit, and therefore had no assets in Canada. Allegedly, the appellant then consulted an attorney in Plattsburgh, but it was supposedly too expensive for the appellant to continue pursuing the matter.

[43] The third invoice, dated December 1, was followed by a demand letter dated December 22, 2005, demanding payment within three days, failing which proceedings would be instituted. The client allegedly informed the appellant that he was recovering from a personal bankruptcy and was unable to pay because he was depending on his brother for support.

[44] I must specify from the outset that I find it rather strange that the appellant did not see fit to deduct these three bad debts in his 2005 income tax return, waiting instead for the CRA to increase his RRSP income and disallow his other expense deductions. And he did not even provide any explanations. Apart from his testimony that the three bad debts were part of his reported $15,250 professional income from 2005, the appellant provided no details regarding his 2005 professional income. After the deduction for bad debts, his remaining professional income would amount to $1,075. Despite his 2005 accident, I find this rather implausible, and the whole scenario casts doubt on his assertion that the three bad debts were reported as professional income for his 2005 taxation year. The bad debts would account for almost all his professional income for 2005.

[45] I want to believe the appellant when he says that he made efforts to get paid and that he sent demand letters — in my view, the last measure was undertaken very shortly after the invoices were issued — but why did he not deduct them in his 2005 income tax return? In my opinion, these three bad debts suffer from the same flaws as the business investment losses. The appellant has not discharged his burden of proof.

[46] For the 2005 taxation year, the Minister also disallowed the appellant's motor vehicle capital cost allowance (CCA) claim because the appellant was unable to provide a travel log or a calculation of the distance driven for professional purposes.

[47] In a letter to the appellant, dated May 18, 2007, appeals officer Célyne Houde asked the appellant to give her a duly completed form T2032 calculating his motor vehicle CCA. The appellant sent the form on June 4. In his covering letter, the appellant stated that he used two cars for his work and that 50% of their use in 2005 was work-related. The total depreciation calculated on the form does not even approximate the CCA deduction in respect of the two automobiles in his 2005 income tax return. Excluding the CCA on furniture, the total on the form is $22,860.21, whereas the amount stated in the return is $9,600. Ms. Houde did not accept the form that the appellant sent in, because the maximum depreciable value for an automobile was $30,000, and she received no evidence regarding the kilometres driven and no log from the appellant, apart from the log for 2004.

[48] In his testimony at the hearing, the appellant said that he only used one car for business n 2005 and that 100% of its use was business-related, since he had two other cars that he used for personal purposes. He said that the $9,600 represented 30% of the purchase price of the vehicle that he used for business purposes, namely, a car that he purchased in 2005 or 2003 for $38,901.46, (Exhibit A-2, pages 34-35), and he

provided a trip and distance log, but only for 2004. The document at pages 34-35 of Exhibit A-2 is practically illegible, and therefore confirms nothing.

[49] When he was cross-examined about his 2005 accident, the appellant stated that he went on several trips in 2004, 2005 and 2006, and that even though he billed flat fees, the expenses in question were genuine.

[50] It is impossible to understand what the appellant deducted on account of motor vehicle CCA in his tax return for the 2005 taxation year; the only thing that we know is that he deducted $9,600. Only after the appeals officer made a request did the appellant provide details about the calculation of the deduction, which was now $22,860 for two cars. He also provided the number of kilometres driven for business purposes in 2004, but no such figure for 2005. No legible invoice showing the purchase cost of the cars was produced. Moreover, the appellant is now saying that he only used one car for business purposes, and that the other two were used for personal purposes. This contradicts what he told Ms. Houde, namely, that two cars were used for business, and that the business-use percentage for each of those cars was 50%.

[51] All of this leaves the veracity of the appellant's contentions in doubt. In my opinion, the Minister properly refused the CCA deduction because there was no way for him to determine the amount of such a deduction based on the information provided by the appellant. And it is impossible for me to grant him the deduction based on the evidence that he adduced.

[52] The appellant did not raise the question of the CCA for his furniture in his Notice of Appeal, so it is not in issue.

[53] The appeal from the assessment against the appellant for the 2004 taxation year is allowed in part, and the assessment is referred back to the Minister for reconsideration and reassessment. The appeal from the assessment for the 2005 taxation year is dismissed.

Signed at Ottawa, Canada, this 22nd day of April 2010.

"François Angers"

Angers J.

Translation certified true
On this 20th day of July 2010

François Brunet, Revisor

CITATION:	2010 TCC 165
COURT FILE NOS.:	2009-1047(IT)I, 2009-1170(IT)I
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DATE OF JUDGMENT :	April 22, 2010

APPEARANCES:

For the appellant:	The appellant himself
Counsel for the respondent:	Ilinca Ghibut Christa Akey

COUNSEL OF RECORD:

For the appellant:	
Name:	
Firm:	
For the respondent:	Myles J. Kirvan Deputy Attorney General of Canada Ottawa, Canada