

Docket: 2007-2677(IT)G

BETWEEN:

ANDRÉ RAIL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on November 29 and 30, 2010, at Rouyn Noranda, Quebec

Before: The Honourable Justice C.H. McArthur

Appearances:

For the appellant:	The appellant himself
Counsel for the respondent:	Christina Ham

JUDGMENT

The appeals from the assessments under the *Income Tax Act* for the 2001, 2002 and 2003 taxation years are allowed, without costs, and the reassessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the appellant is entitled to the deduction of his expenses for earning a professional income in the amount of \$33,349.50 for 2001, \$42,959.25 for 2002 and 47,011.59 for 2003.

Signed at Ottawa, Canada, this 1st day of March 2011.

"C.H. McArthur"

McArthur J.

Translation certified true
on this 9th day of May 2011

François Brunet, Revisor

Citation: 2011 TCC 130
Date: 20110301
Docket: 2007-2677(IT)G

BETWEEN:

ANDRÉ RAIL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

McArthur, J.

[1] This is an appeal from reassessments made under the *Income Tax Act* (the Act) for the 2001, 2002 and 2003 taxation years. The Minister of National Revenue (the Minister) disallowed expenses of \$52,259 for 2001, \$60,745 for 2002 and \$77,449 for 2003. The Notice of Appeal deals only with the disallowed expenses. The total amount at issue in this appeal is approximately \$41,232.

[2] For the years in question, Dr. Rail (the appellant) reported a gross income ranging from \$308,000 to \$336,000. The gross income amounts were all accepted by the Minister, but the expenses mentioned above were disallowed. The reassessments were issued based on the results of a Revenu Québec audit.

[3] More specifically, the Minister alleges that the appellant is unable to justify the following expenses:

	<u>2001</u>	<u>2002</u>	<u>2003</u>
Purchase	\$5,877	\$12,193	\$12,818
Maintenance – office	\$6,406	\$5,873	\$9,214
Renovations	\$1,314	\$2,548	\$3,270
Equipment – office	\$1,152	\$1,206	\$1,231
Books/magazines	\$359	\$458	\$857
Courses/conferences	\$4,651	\$3,163	\$4,551
Clothing – office	\$5,243	\$4,515	\$3,776
Stamps/stationery	\$1,924	\$2,466	\$3,111
Telephone	\$1,040	\$1,029	\$1,186
Advertising	\$4,325	\$3,724	\$3,696
Insurance	\$12,039	\$11,065	\$12,658
Rental of equipment	\$3,500	\$3,500	\$4,475
Miscellaneous/other	\$1,305	\$4,003	\$9,074
Donations	<u>\$3,124</u>	\$4,427	\$6,766
Professional fees		<u>\$575</u>	\$310
Furniture			<u>\$456</u>
Total disallowed expenses	<u>\$52,259</u>	<u>\$60,745</u>	<u>\$77,449</u>

[4] The Minister assumed that the appellant was unable to demonstrate the existence of these expenses, that they were personal or that they had been claimed twice. For example, among other things, the appellant claimed telephone bills for his cottage and his home and purchases of clothing, perfume, jewellery and alcohol.

[5] By disallowing those expenses, the Minister brought the appellant's profit margin to the Canadian average. Indeed, the appellant's net profit margin earned from his profession between the 1997 and 2004 taxation years was always lower than that of dental professionals in Canada (10% to 25% for the appellant compared to about 30% on average in Canada). With the adjustments proposed by the Canada Revenue Agency (CRA), the appellant's net profit margin would be adjusted to 36%. The numbers vary somewhat depending on the data and documents produced by the appellant and the respondent. The Minister did not provide valid explanations as to why he had based himself solely on a national average in making the appellant's reassessment.

[6] The appellant is a dentist who has been practicing dentistry in La Sarre, Quebec (population 9,000) since 1976. In 1982, he practiced dentistry with 4 other dentists in about 12 employees. Over the years, the dentists parted their separate ways and the clinic closed down. Fierce competition to keep the staff and clients ensued

between former partners. The appellant thus decided to lower his rates to 20% below the recommended rates.

[7] During the years at issue, the appellant worked without a hygienist because there was a shortage in Quebec. He did the hygienist's work himself, which took up a large part of his time. A significant number of his clients were covered by the Quebec health insurance plan the rates for which are lower than the rates normally charged by dentists. From 1997 to 2003, the appellant had cataracts. He was forced to reduce the number of hours he worked. According to the appellant, these facts largely explain his lower profit margin.

[8] The appellant employed his spouse, his two teenage children as well as a fourth person to help him practice his profession. The appellant attended dentistry conferences twice a year in the Québec, Montréal and Trois-Rivières areas, accompanied by the members of his team.

[9] The appellant claims to have operated an administrative office at his residence. He also deducted in his expenses the cost of gasoline and the cost of operating his vehicle to travel between his dentist office and his private home (14 kilometres between the two).

[10] The appellant testified that he does not work naked with only a lab coat for clothing. He wears pants, shirts and ties. He deducts from his gross income the cost of clothes that he classifies as [TRANSLATION] "for office use only". The clothes come mostly from stores such as Holt Renfrew and Georges Rech. The appellant explained that he buys his clothes from those stores because they can handle being washed at high temperatures, which he had to do frequently.

[11] As a dentist, the appellant is subject to very high standards of hygiene and asepsis in accordance with article 3.01.06 of the *Code of ethics of dentists*. The information document on infection control for dentists states on page 6 that staff must wear [TRANSLATION] "a lab coat or another clean protective garment". The appellant stated that buying clothes from high-end stores constitutes a necessary expense to satisfy the standards of hygiene.

[12] During the years at issue, the appellant spent several hundred dollars on gifts for his employees. Most of those gifts were given to his former spouse who worked with him. The gifts were not small: for example, expensive clothes and perfume from Holt Renfrew and Parfumerie Paris, jewellery from Bijouterie Pépites d'Or and

products from SAQ. He considers that those expenses had to be incurred in order to keep his staff.

[13] At the preliminary stages of the hearing, the appellant submitted a box containing all the invoices without organizing them first. In addition, on February 3, 2010, Justice Jorré held a case management conference. The respondent asked at that time that the appellant meet his undertakings. They consisted in providing his financial statements and submitting supporting documents for the expenses in an organized manner. They had to be attached to an explanatory page describing the amount and the nature of the expense in detail and also be categorized by expense type.

[14] Justice Jorré granted the appellant an extension to enable him to meet his undertakings. The appellant undertook to provide the requested items in an organized manner.

[15] The appellant stated that he had spent evenings and weekends over a three-month period organizing his files. He appeared at the hearing accompanied by his former spouse and his accountant with a very impressive and orderly testimonial aid. Most of the expenses referred to were accompanied by either a proof of purchase such as an invoice or a proof of payment such as a copy of a cheque. At the hearing, he spread out on the table invoices and receipts in chronological order. The appellant and the witness were easily able to find the documents when they were asked to justify the expenses.

[16] The audit had been conducted by Revenu Québec accounting officers, who, unfortunately, were not called as witnesses. The respondent's witness, Mr. Pageau, was a CRA officer, who relied on the conclusions of his peers from the provincial agency, and it seems that he had never met them. He admitted that he had not thoroughly analyzed the available documents. It would seem that no Crown representative had done more than quickly glance at the voluminous documents.

[17] Although the appellant came to Court with the documents organized and accompanied by detailed explanatory pages, some of the expenses were put in the wrong category of supporting documents. For example, in the office maintenance category can be found invoices for employee expenses, gifts to employees and representation expenses. In the [TRANSLATION] "Stamps and stationery" category, for 2001, a \$172.54 purchase from Holt Renfrew and a \$330.69 purchase of men's clothing from Georges Rech can be found. In 2001 and 2002, employees' RRSP payments of over \$1,000 are entered under advertising and donations. Mistakes of

those types are frequently found throughout the appellant's files. The appellant acknowledged this but, for the sake of clarity, preferred not to change the categories of expenses that are at issue in this case. He also acknowledged that some of the expenses were not business expenses.

[18] The appellant explained that he had been forced into bankruptcy by the Province of Quebec and, under the circumstances, he does not have the means to pay for adequate representation.

Issues

[19] The issues are as follows:

- (1) Can the appellant submit his evidence at the hearing even though no relevant facts were alleged in the Notice of Appeal?
- (2) Was the Minister justified in issuing a notice of reassessment for the 2001 taxation year outside of the normal reassessment period?
- (3) Is the appellant entitled to the expenses that were disallowed?
- (4) Can the penalties be imposed?
- (5) What class of proceedings does this appeal belong to?

Analysis

(1) Submission of evidence at the hearing

[20] The respondent alleges that the appellant could not submit evidence at the hearing because no relevant facts that could serve as the basis for his appeal had been alleged in the Notice of Appeal. It is true that the Notice of Appeal does not allege many facts. The appellant simply stated that he objects to the assessment, would demonstrate that he had incurred the expenses claimed and requested that the notices of assessment be vacated or reduced.

[21] There is a duty to allege relevant facts in the pleadings since the opposing must be cognizant of the case it will have to meet at the hearing; thus the parties are not to be taken by surprise. If one of the parties does not disclose any relevant facts, it does not have the right to provide any evidence relative to those facts at the hearing.

[22] However, this is not a case where, having disclosed the facts on which he was going to base his appeal, the appellant failed to note some important facts, taking the opposing party by surprise. In this case, the appeal contains no facts, but the respondent has been cognizant of the situation since the commencement of the proceedings and she suffered no harm.

[23] In addition, although the application does not really set out any material facts, the Notice of Appeal clearly discloses a reasonable cause of action. The appellant stated in his Notice of Appeal that he had incurred expenses in earning a professional income and that he had the appropriate supporting documents. That is a material fact (having supporting documents), which can be proven in Court.

[24] It was open to the respondent to file a motion with the Court in order to force the appellant to allege more facts relevant to the appeal and, if he refused to comply, request that the appeal be dismissed. It is too late at the hearing stage to request that the appeal be dismissed on the basis of a technical objection to the pleadings.

(2) Reassessment

[25] Was the Minister justified in issuing a notice of reassessment for the 2001 taxation year outside of the normal reassessment period?

[26] The reassessment for the 2001 taxation year was made outside of the normal reassessment period. In her Reply to the Notice of Appeal, the respondent presented the relevant facts clearly enough so that the appellant would know the facts on the basis of which the reassessment was made after the normal reassessment period. I am of the opinion that the respondent has discharged her burden of proof with respect to making a reassessment outside of the normal reassessment period.

[27] The appellant has not been acting with due diligence in calculating his income. First, it is clear that his accounting system was deficient and that errors were inevitable. Second, an order from Justice Jorré was necessary to ensure that the cheques, invoices and other proofs of payment were systematically categorized and organized. Some categorization errors remain to this day. That disorder resulted in the fact that the documents supporting the expenses were inaccessible thus complicating the CRA's auditing work. This disorder is equivalent to negligence.

[28] In addition, several thousand dollars in expenses for each year were not business expenses, according to the appellant himself. Those sums are not insignificant and should not have been disputed in Court. It was not until the day of the hearing that the appellant made these admissions. In short, although it was done in good faith, it is clear that the appellant showed a certain degree of negligence. The Minister was thus justified in making a reassessment outside the normal reassessment period for 2001.

(3) Expenses

[29] The most difficult question that must be answered is whether the appellant is entitled to the expenses that had been disallowed.

[30] Subsection 18(1) of the Act reads as follows:

General limitations

18(1) In computing the income of a taxpayer from a business or property no deduction shall be made in respect of

General limitation

18(1)(a) an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property;

[31] That subsection of the Act very clearly provides that personal expenses are not deductible in calculating income earned from a business or profession. Only expenses made or incurred by the taxpayer for the purpose of gaining or producing income from a business or property are deductible.

[32] Section 67 of the Act reads as follows:

General limitation re expenses

67. In computing income, no deduction shall be made in respect of an outlay or expense in respect of which any amount is otherwise deductible under this Act, except to the extent that the outlay or expense was reasonable in the circumstances.

[33] Several comments should be made before I review the expenses. This matter should never have been taken all the way to the Tax Court of Canada as it was presented. It should have been settled when the appellant had organized his files in an orderly manner sometime before the hearing. It is a waste of time for the Court to be individually examining hundreds of documents. I am not an auditor or an accountant.

As Judge Bowman pointed out in *Merchant v. Canada*,¹ ". . . the court is not the place to perform an income tax audit". In this type of case, Judge Bowman recommended the following approach:

7 Where a large number of documents, such as invoices, have to be proved it is a waste of the court's time to put them in evidence *seriatim*. The approach set out in *Wigmore on Evidence* (3rd Ed.) Vol IV, at s. 1230 commends itself:

s. 1230(11): ... Where a fact could be ascertained only by the inspection of a large number of documents made up of very *numerous detailed statements* -- as, the net balance resulting from a year's vouchers of a treasurer or a year's accounts in a bank-ledger -- it is obvious that it would often be practically out of the question to apply the present principle by requiring the production of the entire mass of documents and entries to be perused by the jury or read aloud to them. The convenience of trials demands that other evidence be allowed to be offered, in the shape of the testimony of a competent witness who has perused the entire mass and will state summarily the net result. Such a practice is well-established to be proper.

8 This passage was cited with approval by Wakeling J.A. in *Sunnyside Nursing Home v. Builders Contract Management Ltd. et al.*, (1990) 75 S.R. 1 at p. 24 (Sask. C.A.) and by MacPherson J. in *R. v. Fichter, Kaufmann et al.*, 37 S.R. 128 (Sask. Q.B.) at p. 129. I am in respectful agreement.

[34] Unfortunately, we do not have testimony of a competent and independent witness who has perused the entire mass of documents and who can state summarily the net result. The respondent did not call as witness the Revenu Québec auditor who had conducted the audit.

[35] A reassessment based on a provincial average without a more thorough analysis of the file is fundamentally flawed. I believe it is a question of common sense. A general average cannot be used to ignore the particular constraints of an individual. In addition, there no evidence has been offered as to the manner in which the averages have been calculated. For example, the analysis does not seem to take into account the differences that might exist between a dentist practicing in outlying areas and one practicing in downtown Montréal.

[36] The appellant clearly demolished the Minister's assumptions, on which he had based himself in disallowing the expenses at issue. The appellant has *prima facie* shown that the majority of the expenses has been incurred for the purpose of earning

¹ [1998] T.C.J. No. 278, para. 57.

² *Merchant v. Canada*, [1998] T.C.J. No. 278, paras 7 and 8, affirmed by the Federal Court of Appeal.

an income and that they had not been claimed twice. The burden of proof has thus shifted to the respondent. She did not file any rebuttal documentary evidence and did not call any witnesses with personal or direct knowledge of the case. Therefore, she has not refuted the evidence *prima facie* established by the appellant.

[37] Accordingly, I assume that all of the expenses at issue are eligible business expenses except those that are clearly not, that are unreasonable or that were not sufficiently justified. I will discuss in more detail those expenses that must be disallowed below.

[38] It is unfortunate that the appellant represented himself and did not call witnesses to corroborate some of his evidence. It would have been wise for the appellant to call his children as witnesses. I am sceptical about the nature of some of the payments. For example, his teenage son and daughter had employee expense accounts and the appellant also contributed to their RRSP accounts. The appellant presented his expenses and other bonuses as expenses aimed at retaining his workforce. In the absence of more convincing evidence, I cannot accept that the amounts given to the children were incurred for the purpose of earning an income or were reasonable.

[39] In addition, he is seeking to deduct gifts given to employees (most of which were given to his former spouse), which included perfume, jewellery, hairdresser, cosmetics, baby accessories, alcohol and clothes bought at various high-end stores. Those items clearly appear to be personal expenses, and unreasonable in all cases. Those items are found throughout the various categories of invoices. I therefore deduct these amounts from the various categories.

[40] The expenses for courses and conferences were necessary to the appellant in order for him to continue his training in accordance with accepted practices and to attract clients who are interested in his dentistry skills. Those are expenses incurred in order to earn an income. Nonetheless, it seems that part of those expenses is not business expenses. Indeed, the presence of the appellant's entire family at the seminars, especially the two children, seems quite questionable. The children did not testify in Court, and it is difficult to see why they needed to attend dentistry seminars. Under these circumstances, 25% of the expenses disallowed for the courses and conferences will be upheld.

[41] I do agree with the appellant when he says that his work requires him to wear clothes under his lab coat. However, in most cases, personal expenses such as clothes, food and lodging do not constitute business expenses within the meaning of

paragraph 18(1)(a) of the Act because they are proscribed by paragraph 18(1)(h) of the Act.

[42] In *Rupprecht v. Canada*,³ a certified financial planner, alleging that he needed appropriate clothing, tried to pass off as business expenses suits, ties, shirts and accessories bought at Ermengildo Zegna, an exclusive men's wear shop. The expenses totalled over \$6,000 in 1999 and \$2,400 in 2001. Justice Paris ruled that clothes are *prima facie* a personal expense and added the following:

19 It is necessary to determine whether an expense is of a personal nature regardless of whether it relates to any property maintained by the taxpayer. Expenses relating to one's personal appearance are the very essence of a personal expense and involve choices made by a taxpayer in preparing him or herself for work. I conclude that the clothing in issue was used by the appellant as personal wear in everyday business and therefore its cost is not deductible.

[43] The documents filed in evidence by the appellant mention nothing about the clothes that a dentist should wear under his lab coat or other protective garment. The recommendation for weekly cleaning concerns only the protective garment. I would also point out that the document filed by the appellant states that the protective garment must be bleached. Common sense tells me that surely the appellant did not bleach his suits, ties and shirts. In the absence of more convincing evidence, the clothing expenses must be disallowed.

[44] Alleging to have an administrative office in his home, the appellant is claiming expenses related to his principal residence such as his personal telephone line and travel between his home and the dental office. For instance, the appellant cites *Cumming v. MNR*,⁴ where it was stated that a doctor's travel expenses for travel between his home and the hospital where he works are accepted as a deduction if he has no office at the hospital and has to take care of the administrative part of his practice at his home.

[45] Subsection 18(12) of the Act, which was not in effect when the decision in *Cumming* was rendered, provides as follows:

18(12) Work space in home
Notwithstanding any other provision of this Act, in computing an individual's income from a business for a taxation year,

³ *Rupprecht v. Canada*, [2006] T.C.J. No. 586, affirmed by the Federal Court of Appeal.

⁴ *Cumming v. Minister of National Revenue*, 67 D.T.C. 5312.

(a) no amount shall be deducted in respect of an otherwise deductible amount for any part (in this subsection referred to as the “work space”) of a self-contained domestic establishment in which the individual resides, except to the extent that the work space is either

- (i) the individual’s principal place of business, or
- (ii) used exclusively for the purpose of earning income from business and used on a regular and continuous basis for meeting clients, customers or patients of the individual in respect of the business;

[46] The appellant's home is not his principal place of business and is not used on a regular and continuous basis for meeting clients. Under these circumstances, the appellant had no administrative office at his home and all the expenses claimed in relation to that office must be disallowed.

[47] The appellant made several donations to various organizations such as the Église Évangélique Mennonite de Rouyn-Noranda, Canadian Cancer Society, Club de l'amitié des handicapés Secteur La Sarre, The War Amps, etc.

[48] Unfortunately, the evidence does not show that those expenses were incurred for the purpose of earning an income from them or that they were part of the appellant's business development plan.

[49] Finally, the appellant is seeking to add some invoices that were not considered at the time of his audit. I am not prepared to accept those amounts. First, they are not at issue in this appeal. Secondly, the amounts that are being added are, for the most part, non-deductible. Thus, the expenses that the appellant added to his income, such as those related to the administrative office and those incurred for the appellant's travel between his dental office and the administrative office are not eligible business expenses as seen earlier.

[50] In conclusion, I found the appellant and his former spouse to be credible witnesses. I am of the view that the appellant has proven that most of the disallowed expenses for the years at issue, namely, \$52,259 in 2001, \$60,745 in 2002 and \$77,449 in 2003 are business expenses deductible from his income. Only some of the expenses are not deductible business expenses. I will therefore subtract the expenses shown in the table above that are not deductible for the reasons stated above. In addition, the expenses that were not deductible, according to the appellant himself, and had been added by mistake should be reduced. I will therefore address the expenses by category and in the order they are listed in the table at the beginning of the judgment (see Appendix A for calculations).

(4) Penalties

[51] Another issue I must rule on is that of the assessment of a penalty under subsection 163(2) of the Act. Subsection 163(3) provides that the burden of establishing the facts justifying the assessment of a penalty is on the Minister. The auditors who had conducted the audit were not called as witnesses, and it is not sufficient that someone else, in this case, Mr. Pageau, who had nothing to do with the audit or the original assessment, testified that the appellant had been grossly negligent. Such testimony amounts to hearsay and is not admissible in evidence. Therefore, the Minister has not discharged his burden of proof.

(5) Class of proceedings for the appeal

[52] Under subparagraph 1(a)(i) of Tariff A of Schedule II of the *Tax Court of Canada Rules (General Procedure)*, the class of proceedings for this appeal is class A because the aggregate of all amounts in issue in this appeal is \$41,232. No evidence to the contrary has been adduced.

[53] For all of these reasons, Dr. Rail's appeals for the 2001, 2002 and 2003 taxation years are allowed, without costs, and the reassessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the appellant is entitled to the deduction of his expenses for earning a professional income in the amount of \$33,349.50 for 2001, \$42,959.25 for 2002 and 47,011.59 for 2003.

Signed at Ottawa, Canada, this 1st day of March 2011.

"C.H. McArthur"

McArthur J.

Translation certified true
on this 9th day of May 2011

François Brunet, Revisor

Appendix A

Purchase	2001	2002	2003
Non-deductible expenses according to the Agency	\$5,877	\$12,193	\$12,818
Non-deductible expenses according to the appellant	\$0	\$0	\$0
Other non-deductible expenses according to the Court	\$0	\$0	\$0
Total expenses disallowed by the Court	\$0	\$0	\$0

Office maintenance	2001	2002	2003
Non-deductible expenses according to the Agency	\$6,406	\$5,873	\$9,214
Non-deductible expenses according to the appellant	\$191.67	\$247	\$956.07
Other non-deductible expenses according to the Court	\$1,985.29	\$1,291.44	\$2,257.92
Total non-deductible expenses	\$2,176.96	\$1,538.44	\$3,213.99

Renovations	2001	2002	2003
Non-deductible expenses according to the Agency	\$1,314	\$2,548	\$3,270
Non-deductible expenses according to the appellant	\$0	\$8.31	\$0
Other non-deductible expenses according to the Court	\$0	\$0	\$606.83
Total non-deductible expenses	\$0	\$8.31	\$606.83

Office equipment	2001	2002	2003
Non-deductible expenses according to the Agency	\$1,152	\$1,206	\$1,231
Non-deductible expenses according to the appellant	\$0	\$0	\$0
Other non-deductible expenses according to the Court	\$0	\$0	\$700.81
Total expenses disallowed by the Court	\$0	\$0	\$700.81

Books/Magazines	2001	2002	2003
Non-deductible expenses according to the Agency	\$359	\$458	\$857
Non-deductible expenses according to the appellant	\$0	\$0	\$0
Other non-deductible expenses according to the Court	\$0	\$0	\$711.44
Total expenses disallowed by the Court	\$0	\$0	\$711.44

Courses and conferences	2001	2002	2003
Non-deductible expenses according to the Agency	\$4,651	\$3,163	\$4,551
Non-deductible expenses according to the appellant	\$0	\$0	\$0
Other non-deductible expenses according to the Court	25%	25%	25%
	\$1,162.75	\$790.75	\$1,137.75
Total expenses disallowed by the Court	\$1,162.75	\$790.75	\$1,137.75

Clothing	2001	2002	2003
Non-deductible expenses according to the Agency	\$5,243	\$4,515	\$3,776
Non-deductible expenses according to the appellant	\$2,318.29	\$2,279.83	\$1,572.05
Other non-deductible expenses according to the Court	100%	100%	100%
Total non-deductible expenses	\$5,243	\$4,515	\$3,776

Stamps and stationery	2001	2002	2003
Non-deductible expenses according to the Agency	\$1,924	\$2,466	\$3,111
Non-deductible expenses according to the appellant	\$0	\$0	\$1,538.96
Other non-deductible expenses according to the Court	\$347.17	\$929	\$399.71
Total expenses disallowed by the Court	\$347.17	\$929	\$1,938.67

Telephone	2001	2002	2003
Non-deductible expenses according to the Agency	\$1,040	\$1,029	\$1,186
Non-deductible expenses according to the appellant	\$925.10	\$906	\$1,044
Other non-deductible expenses according to the Court	100%	100%	100%
Total non-deductible expenses	\$1,040	\$1,029	\$1,186

Advertising	2001	2002	2003
Non-deductible expenses according to the Agency	\$4,325	\$3,724	\$3,696
Non-deductible expenses according to the appellant	\$0	\$419.37	\$1,004.66
Other non-deductible expenses according to the Court	\$1,919.54	\$120.77	\$1,629.85
Total non-deductible expenses	\$1,919.54	\$540,14	\$2,634.51

Insurance	2001	2002	2003
Non-deductible expenses according to the Agency	\$12,039	\$11,065	\$12,658
Non-deductible expenses according to the appellant	\$0	\$0	\$0
Other non-deductible expenses according to the Court	\$0	\$0	\$0
Total non-deductible expenses	\$0	\$0	\$0

Leased equipment (car and fuel)	2001	2002	2003
Non-deductible expenses according to the Agency	\$3,500	\$3,500	\$4,475
Non-deductible expenses according to the appellant	\$0	\$0	\$0
Other non-deductible expenses according to the Court	100%	100%	100%
Total non-deductible expenses	\$3,500	\$3,500	\$4,475

Miscellaneous/other	2001	2002	2003
Non-deductible expenses according to the Agency	\$1,305	\$4,003	\$9,074
Non-deductible expenses according to the appellant	\$0	\$79.07	\$2,438.54
Other non-deductible expenses according to the Court	\$396.08	\$429.04	\$851.87
Total non-deductible expenses	\$396.08	\$508.11	\$3,290.41

Donations	2001	2002	2003
Non-deductible expenses according to the Agency	\$3,124	\$4,427	\$6,766
Non-deductible expenses according to the appellant	\$0	\$0	\$0
Other non-deductible expenses according to the Court	100%	100%	100%
Total non-deductible expenses	\$3,124	\$4,427	\$6,766

Professional fees	2001	2002	2003
Non-deductible expenses according to the Agency	-	\$575	\$310
Non-deductible expenses according to the appellant	-	\$0	\$0

Other non-deductible expenses according to the Court	-	\$0	\$0
Total expenses disallowed by the Court	-	\$0	\$0

Furniture	2001	2002	2003
Non-deductible expenses according to the Agency	-	-	\$456
Non-deductible expenses according to the appellant	-	-	\$0
Other non-deductible expenses according to the Court	-	-	\$0
Total expenses disallowed by the Court	-	-	\$0

Total	2001	2002	2003
Total non-deductible expenses according to the Agency	\$52,259	\$60,745	\$77,449
Total expenses disallowed by the Court	\$18,909.50	\$17,785.75	\$30,437.41
Total expenses accepted by the Court	\$33,349.50	\$42,959.25	\$47,011.59

CITATION: 2011 TCC 130

COURT FILE NO.: 2007-2677(IT)G

STYLE OF CAUSE: ANDRÉ RAIL AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Rouyn-Noranda, Quebec

DATES OF HEARING: November 29 and 30, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice C.H. McArthur

DATE OF JUDGMENT: March 1, 2011

APPEARANCES:

For the appellant: The appellant himself
Counsel for the respondent: Christina Ham

COUNSEL OF RECORD:

For the appellant:

Name: N/A

Firm: N/A

For the respondent: Myles J. Kirvan
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