Docket: 2010-14(IT)G

BETWEEN:

SHIRLEY FOURNEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
SJC Property Management Inc. (2009-3339(IT)G and 2009-3337(GST)I),
DSD Properties Inc. (2009-3859(IT)I), and
Learning Boost Inc. (2009-3866(IT)I),
on May 9, 10 and 11, 2011, at Saskatoon, Saskatchewan.

Before: The Honourable Justice Robert J. Hogan

Appearances:

Counsel for the Appellant:	Amanda S.A. Doucette Beaty F. Beaubier
Counsel for the Respondent:	John Krowina

JUDGMENT

The appeal of the Appellant from the reassessments made under the *Income Tax Act* for the 2003, 2004 and 2005 taxation years is allowed and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached reasons for judgment.

The parties will have 30 days to agree on costs, failing which each of the Respondent, SJC Property Management Inc., DSD Properties Inc., Learning Boost

Inc. and the Appellant shall file written submissions - not to exceed 10 pages for each party - on costs.

Signed at Ottawa, Canada, this 14th day of November 2011.

Robert J. Hogan

Hogan J.

Dockets: 2009-3339(IT)G
2009-3337(GST)I

BETWEEN:

SJC PROPERTY MANAGEMENT INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence with the appeals of
Shirley Fourney (2010-14(IT)G), DSD Properties Inc. (2009-3859(IT)I),
and Learning Boost Inc. (2009-3866(IT)I),
on May 9, 10 and 11, 2011, at Saskatoon, Saskatchewan.

Before: The Honourable Justice Robert J. Hogan

Appearances:

Counsel for the Appellant:	Amanda S.A. Doucette Beaty F. Beaubier
Counsel for the Respondent:	John Krowina

JUDGMENT

The appeal of the Appellant from the reassessments made under the *Income Tax Act* for the 2003, 2004 and 2005 taxation years is allowed and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached reasons for judgment.

The appeal of the Appellant from the reassessments made under the *Excise Tax Act* is dismissed.

The parties will have 30 days to agree on costs, failing which each of the Respondent, Shirley Fourney, DSD Properties Inc., Learning Boost Inc. and the Appellant shall file written submissions - not to exceed 10 pages for each party – on costs.

Signed at Ottawa, Canada, this 14th day of November 2011.

Robert J. Hogan

Hogan J.

Docket: 2009-3859(IT)I

BETWEEN:

DSD PROPERTIES INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Shirley Fourney (2010-14(IT)G),
SJC Property Management Inc. (2009-3339(IT)G and 2009-3337(GST)I),
and Learning Boost Inc. (2009-3866(IT)I),
on May 9, 10 and 11, 2011, at Saskatoon, Saskatchewan.

Before: The Honourable Justice Robert J. Hogan

Appearances:

Counsel for the Appellant:	Amanda S.A. Doucette Beaty F. Beaubier
Counsel for the Respondent:	John Krowina

JUDGMENT

The appeal of the Appellant from the reassessments made under the *Income Tax Act* for the 2003, 2004 and 2005 taxation years is allowed and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached reasons for judgment.

The parties will have 30 days to agree on costs, failing which each of the Respondent, Shirley Fourney, SJC Property Management Inc., Learning Boost Inc.

and the Appellant shall file written submissions - not to exceed 10 pages for each party – on costs.

Signed at Ottawa, Canada, this 14th day of November 2011.

Robert J. Hogan

Hogan J.

Docket: 2009-3866(IT)I

BETWEEN:

LEARNING BOOST INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Shirley Fourney (2010-14(IT)G),
SJC Property Management Inc. (2009-3339(IT)G and 2009-3337(GST)I),
and DSD Properties Inc. (2009-3859(IT)I),
on May 9, 10 and 11, 2011, at Saskatoon, Saskatchewan.

Before: The Honourable Justice Robert J. Hogan

Appearances:

Counsel for the Appellant:	Amanda S.A. Doucette Beaty F. Beaubier
Counsel for the Respondent:	John Krowina

JUDGMENT

The appeal of the Appellant from the assessments made under the *Income Tax Act* for the 2003, 2004 and 2005 taxation years is allowed and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached reasons for judgment.

The parties will have 30 days to agree on costs, failing which each of the Respondent, Shirley Fourney, SJC Property Management Inc., DSD Properties Inc.

and the Appellant shall file written submissions - not to exceed 10 pages for each party – on costs.

Signed at Ottawa, Canada, this 14th day of November 2011.

Robert J. Hogan

Hogan J.

Citation: 2011 TCC 520
Date: 20111114
Dockets: 2010-14(IT)G
2009-3339(IT)G, 2009-3337(GST)I
2009-3859(IT)I
2009-3866(IT)I

BETWEEN:

SHIRLEY FOURNEY,
SJC PROPERTY MANAGEMENT INC.,
DSD PROPERTIES INC.,
LEARNING BOOST INC.,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Hogan J.

I. INTRODUCTION

[1] These appeals are brought by Shirley Fourney (the "Appellant"), SJC Property Management Inc. ("SJC"), DSD Properties Inc. ("DSD"), and Learning Boost Inc. ("Learning Boost") from reassessments for each of their respective tax returns for the years 2003, 2004 and 2005. The Appellant alleges that the three companies she incorporated, SJC, DSD and Learning Boost, were merely acting as her agents and bare nominees, and that she never gave up beneficial ownership of her business assets and activities. A summary of the reassessments at issue in these appeals is to be found in Schedule 1 to these reasons for judgment.

II. FACTS

[2] The Appellant received notices of reassessment dated June 7, 2007 with respect to her 2003, 2004 and 2005 personal returns as well as with respect to the corporate returns filed for SJC, DSD, and Learning Boost for those same years. On October 2, 2009, in response to the Appellant's duly filed objections to all the reassessments, the Minister of National Revenue the ("Minister") varied the reassessments and issued notices of reassessment.

[3] The Appellant is a retired teacher who has been involved in the rental property business since the late 1980s, originally as a property manager and later by purchasing and renting out part or all of various properties. She has also been running a tutorial business since her retirement as a teacher. The evidence shows that the Appellant has no formal tax or accounting training other than a 12-hour course on the accounting software QuickBooks.

[4] In the late 1990s, a conflict arose between the Appellant's mother and brother regarding a contract between them. The Appellant supported her mother and continued, as executor of her mother's estate, a legal action that her mother had brought against her brother. A decision in favour of the Appellant's mother was rendered by the Ontario Court of Justice in 2009, and is currently being appealed. The Appellant claims that her main motivation in incorporating the businesses was to have the ability to transfer to them the title to her properties in order to hide her assets from her brother, who, angry that she had sided with her mother in the legal dispute, had threatened to sue her.

[5] In 2001 and 2002, the Appellant incorporated three Saskatchewan corporations, of which she is the director and majority shareholder:

(a) SJC, described as a property management business, incorporated June 4, 2001;
(b) DSD, described as a property ownership business, incorporated June 10, 2002; and
(c) Learning Boost, described as a tutorial business, incorporated December 31, 2002.

The evidence shows that a lawyer incorporated DSD and SJC and that the Appellant then incorporated Learning Boost without legal assistance. The Appellant's two sons are listed in all the documents of incorporation and annual returns as minority shareholders, each holding 10% of the corporations' shares. The Appellant insists

this was only done to fulfil incorporation requirements, and the sons never invested money in or received income from the corporations.

[6] In 2003, the Appellant transferred the titles to all her properties (the "properties") to DSD by filing the appropriate forms at the Land Titles Registry office. The following are the properties that were transferred:

(a) 1706 – 14th Street East, Saskatoon, Saskatchewan (described by Ms. Fourney as her principal residence throughout the periods in question);
(b) 116 – 126 Edinburgh Place, Saskatoon, Saskatchewan;
(c) 1312 – 13th Street East, Saskatoon, Saskatchewan;
(d) 1333 – 14th Street East, Saskatoon, Saskatchewan;
(e) 1307 Main Street East, Saskatoon, Saskatchewan.

The Appellant asserts that she did not receive any tax advice on the implications of transferring the properties to DSD, and her accountant, Garnet Chambers, testified that he never gave her tax advice regarding the transfers. She did not receive any consideration for the properties transferred to DSD.

[7] For each of the years in question, the Appellant herself prepared her personal income tax returns, in which she claimed rental and business income and expenses. Similar or the same income, losses and expenses were reported and claimed in the corporate tax returns, which were prepared for the Appellant by Mr. Chambers and filed electronically because the Appellant could not understand how to complete the returns herself. The Appellant insists she was not aware that Mr. Chambers was also reporting and claiming the business income and expenses in the corporate returns.

[8] The Appellant provided Mr. Chambers with copies of her personal returns and financial spreadsheets every year, which, she asserts, should have made him aware that she had already reported and claimed the income and expenses personally. She claims that she never reviewed the corporate returns with Mr. Chambers before they were electronically filed and that she did not have the capacity to understand them when she did see them later. Mr. Chambers, however, testified that in the spring of 2005 he saw the Appellant's 2004 personal tax return and advised her to amend it to eliminate the amounts reported and claimed with respect to the businesses as they also appeared in the corporate returns.

[9] Mr. Chambers has worked as an accountant since 1970, but does not hold an accounting designation. While he claims to have done some tax planning, he

described the majority of his work as relating to tax filing. Mr. Chambers testified that he did not ask to see conveyance forms, that he could not recall filing any rollover forms for the Appellant, and that he thought it was unlikely that such forms were filed. Mr. Chambers did not recall working with any lawyers on the Appellant's files, but added that he did know that the Appellant's lawyer, who did not testify in this case, had little corporate law experience.

[10] At trial, Linda Nystuen, an appeals officer with the Canada Revenue Agency (the "CRA"), conceded during cross-examination that corporate tax returns are very difficult to decipher for lay people and that new employees at the CRA are provided with training specifically to enable them to read the corporate return printouts.

[11] Two previous audits were conducted regarding the Appellant before the incorporation of the appellant corporations. The subjects of the audits were expense claims, the capitalization of expense items, and unreported capital gains. The Appellant submits that those audits are not relevant because they were for minor dollar amounts and occurred prior to the incorporations. The Respondent argues that the audits indicate that the Appellant should have known her bookkeeping system and accounting knowledge were inadequate.

III. THE REASSESSMENTS

[12] The Minister's June 7, 2007 reassessments assumed that the Appellant should not have reported and claimed the rental and business income and expenses personally.

[13] From September 2008 to July 2009 the Appellant provided additional documentation to the CRA regarding the adjusted cost base of the rental properties, as well as the adjusted cost base of the Lloydminster property and details about its usage during the entire period of ownership. The Appellant also provided information supporting her claim that she never transferred beneficial ownership of her business assets and interests to DSD, SJC and Learning Boost.

[14] In March 2009, the CRA proposed reducing the capital gains assessed in 2003, reducing the capital gain assessed on the Lloydminster property in 2004, and eliminating some of the shareholder benefits assessed for each year, but found that the corporations were not mere agents and bare nominees of the Appellant. The Appellant's habitation of the property at 1706 – 14th Street East, which she argued was her principal residence, was considered a shareholder benefit.

[15] The appeals division also confirmed the significant gross negligence penalties imposed, stating that the Appellant "knew or ought to have known" that amounts were being double-claimed, since it was the Appellant's responsibility to provide the information needed to complete the tax returns. The appeals division did, however, reassess the capital gains on the rental properties to take into account the additional information provided by the Appellant regarding the adjusted cost base of the properties.

IV. ISSUES

[16] The issues are the following, and each will be dealt with in turn:

(a) Did beneficial ownership of the assets and businesses reside with DSD, SJC and Learning Boost or the Appellant?
(b) Should gross negligence penalties be imposed?

V. BENEFICIAL OWNERSHIP

Appellant's Position

[17] The Appellant submits that she always saw DSD, SJC, and Learning Boost as merely her agents and bare nominees, and that she never gave up the beneficial ownership of her rental properties and tutorial business. Throughout her pleadings and in her testimony, the Appellant claimed a lack of understanding of tax and accounting concepts and of the consequences of incorporation. The Appellant insists that a review of her behaviour with regard to the corporations clearly indicates that she did not transfer beneficial ownership to the corporations and that, therefore, many of the reassessed tax liabilities should be cancelled, including the capital gains tax on transfers of title and the tax on numerous shareholder benefits.

[18] The factors that the Appellant listed as demonstrating that she remained the beneficial owner, with DSD, SJC and Learning Boost acting as her agents and bare nominees, are as follows:

- All invoices for repairs and renovations to the rental properties were addressed to the Appellant personally.
- All of the utility bills for each of the rental properties are in the Appellant's personal name.

- SJC and DSD did not have their own bank accounts. Monies referable to SJC and DSD were transferred through chequing accounts held in the Appellant's name.
- All rent cheques and other documents pertaining to the rental properties were addressed to the Appellant personally.
- The Appellant advertised the rental properties, collected rent cheques, cleaned the properties, looked after the landscaping, completed minor repairs to the rental homes, and was listed as the "landlord" on correspondence with the Office of the Rentalsman.
- The T2s filed with respect to DSD, SJC, and Learning Boost do not reflect any asset ownership (other than a Suburban owned by SJC). More to the point, none of the properties or business interests were ever reflected in the T2s as being owned by any of the corporations. Further, no balance sheet was prepared by the accountant, Garnet Chambers, for any of the corporations during the years in issue in these tax appeals.
- The Appellant created the television and print advertisements for Learning Boost.
- The Appellant designed and created the Learning Boost logo.
- The Appellant collected the fees from Learning Boost students.
- The Appellant converted her single-car garage into a "Learning Boost Office".
- The Appellant personally contracted with tradespeople to effect renovations to the Learning Boost teaching space.
- The Appellant travelled to students' homes to sign contracts and assist with tutoring.
- The Appellant hired tutors to work with Learning Boost students.
- The Appellant used personal funds during the tax years in question to cover operating expenses for the Learning Boost business.

[19] Additional submissions and witness testimony revealed the following other factors in support of the Appellant's beneficial ownership claim:

- The audit conducted by the CRA concluded that SJC was in fact doing nothing, having no income and no expenses.
- The main reason the CRA concluded the Appellant did not meet the test for beneficial ownership was that the titles are registered in DSD's name, despite the fact that, in many real estate agency relationships, a corporation will hold legal title while beneficial ownership lies elsewhere.

- No section 85 forms were filed to roll-over the assets to the corporations.
- There is a lack of evidence of a true conveyance of the properties because there was no consideration for the transfer of title to the properties.
- There was no indication of the Appellant's documenting the transfers in order to protect herself and to clarify the impact of any transfers on the minority shareholders.
- In the absence of consideration, transfers of properties and other business assets could be considered gifts, but valid gifts require clear intention, and there is no evidence of such here.
- When DSD acquired the 1430 – 12th Street East property in 2003, the Appellant personally provided the financial backing, even though the mortgage was put in the name of DSD.
- All of the mortgages were in the Appellant's personal name until 2005.
- Throughout the years in question, the Appellant always reported and claimed the rental property and tutorial income and expenses in her own returns.

Respondent's Position

[20] The Respondent argues that the Appellant's intent in incorporating her businesses was to transfer the risks and responsibilities of ownership to the corporations. Retrospective findings of an implied agency relationship are inappropriate in this case, the Respondent argues, as the non-arms length relationship between the Appellant and the corporations requires clear documentation in support of an intention to create such an agency relationship. The Respondent calls the credibility of the Appellant into question and argues that, as a former teacher with a post-graduate degree in education and as a person having had the benefit of legal and accounting assistance, the Appellant must have known about and sought the risk-reducing benefits of incorporation. The Respondent submits that the Appellant is now attempting to recharacterize the way in which she structured her businesses because of the tax consequences she faces. On the Respondent's theory of the case, the factors listed below clearly establish that the Appellant intended to transfer both legal and beneficial ownership of her businesses to the corporations:

- SJC entered into tenancy agreements.
- The tenancy agreements were between SJC and its tenants.
- SJC issued eviction notices to its tenants on SJC letterhead.

- The SJC letterhead said "SJC Management Inc., Shirley Fourney, Manager".
- SJC identified itself as a landlord to the Office of the Rentalsman.
- SJC maintained its own e-mail address, which appeared on SJC tenancy agreements and on SJC letterhead.
- SJC was the registered holder of an HSBC bank account.
- SJC obtained and operated under a business licence issued in its name.
- SJC contracted with third parties.
- In or around March 2003, Shirley Fourney transferred title of five properties to DSD.
- In or around July 2003, DSD made an offer to purchase property located at 807 Cumberland.
- In or around July 2003 DSD purchased property at 1430 - 12th Street East.
- In or around September 2004, DSD sold 116 - 126 Edinburgh Place.
- In or around September 2005, DSD purchased a property at 1401 - 13th Street East.
- DSD had mortgages with HSBC on six properties.
- DSD was the registered owner of a GMC Suburban.
- DSD was the registered holder of an HSBC bank account.
- Building permits were issued in the name of DSD.
- A notice of lien was issued against DSD.
- Property tax notices were issued in the name of DSD.
- DSD was responsible for repairing and maintaining the rental properties.
- DSD filed its 2003, 2004 and 2005 annual returns with the Saskatchewan Corporations Branch.
- A City of Saskatoon Notice of Zoning By-law Violation was issued to DSD.
- Learning Boost filed its 2004 annual return with the Saskatchewan Corporations Branch.
- Learning Boost is the registered holder of an HSBC corporate bank account.
- Learning services contracts were between Learning Boost and parents or guardians of Learning Boost students.
- The learning service contracts were marked "© . . . Learning Boost Inc.".
- Payment for services under the learning service contracts was to be made to Learning Boost.

- The independent contractor agreements were between Learning Boost and the individual tutors the Appellant contracted with.
- The confidentiality agreements were between Learning Boost and its tutors.
- The Franchise agreement was between Learning Boost and the franchisee.
- Learning Boost obtained, and operated under, a business license issued in its name.
- T4s were issued under the name and business number of Learning Boost.
- The T4 Summary was issued under the name and business number of Learning Boost.
- Learning Boost maintained its own e-mail address, Web site and telephone number.
- Learning Boost received an invoice from SJC for one-sixth of the expenses for the residence at 1706 – 14th Street East.
- Learning Boost kept its own financial statements, including statements showing profits and loss details.

[21] The Respondent's additional written submissions and witness testimony provided the following further factors in support of the Respondent's position:

- When the Appellant purchased the 1430 – 12th Street East property in 2003, her bank at the time, ScotiaBank, refused to take on the additional mortgage. At that point the Appellant transferred all her mortgages to HSBC, which was willing to take on the new mortgage as well as the older ones, and all the mortgages were then put in DSD's name.
- Learning Boost had an account in its own name, and the Respondent argues that the DSD and SJC accounts were only using the Appellant's personal accounts because she wanted to avoid the higher banking fees on corporate accounts with numerous transactions.
- There was no agency agreement between the Appellant and the corporations, and, in this situation involving non-arm's length parties, finding an implied agency relationship is inappropriate.
- Section 35 of the Saskatchewan *Land Titles Act*, *2000*, S.S. 2000, c. L-5.1, forbids having a trustee registered on title.
- In preparation for the CRA audit, the Appellant created a contract between herself and SJC in 2006, which she backdated to 2003 and in which she describes her duties as those of property manager and holds

herself out to be an agent of SJC, contrary to her claim in this appeal that SJC is her agent.

Analysis: Beneficial Ownership

[22] Subsection 248(1) of the *Income Tax Act* (the "Act") specifically excludes certain transfers where no change in beneficial ownership occurs. In the present case, the relevant provision is as follows:

> **248(1) Definitions** — In this Act,
>
> . . .
>
> "disposition" of any property, except as expressly otherwise provided, includes
>
> (*a*) . . .
>
> but does not include
>
> (*e*) <u>any transfer of the property as a consequence of which there is no change in the beneficial ownership of the property, except where the transfer is</u>
>
> (i) from a person or a partnership to a trust for the benefit of the person or the partnership,
>
> (ii) from a trust to a beneficiary under the trust, or
>
> (iii) from one trust maintained for the benefit of one or more beneficiaries under the trust to another trust maintained for the benefit of the same beneficiaries,
>
> [Emphasis added.]

[23] Subsection 104(1) of the Act provides that references to trusts in paragraph (*e*) of the definition of "disposition" in subsection 248(1) do not include transfers to bare trusts, which will not be considered dispositions under subsection 248(1) when the trust acts entirely as the agent of the beneficiary, holding title with no change in beneficial ownership:

> **104(1) Reference to trust or estate** − In this Act, a reference to a trust or estate (in this subdivision referred to as a "trust") shall, unless the context otherwise requires, be read to include a reference to the trustee, executor, administrator, liquidator of a succession, heir or other legal representative having ownership or control of the trust property, but, except for the purposes of this subsection, subsection (1.1), subparagraph (*b*)(v) of the definition "disposition" in subsection 248(1) and paragraph (*k*) of that definition, a trust is deemed not to include an arrangement under which the trust can reasonably be considered to act as agent for all the beneficiaries under the trust with respect to all dealings with all of the trust's

> property unless the trust is described in any of paragraphs (*a*) to (*e*.1) of the definition "trust" in subsection 108(1).

[24] In this case, the Appellant argues that there was no disposition under subsection 248(1) of the Act because only the legal ownership of the business assets and interests was transferred, with no actual taxable disposition occurring because the incorporated entities were merely holding title to the properties as the Appellant's bare nominees or agents, without acquiring beneficial ownership thereof. The Appellant argues that the lack of consideration for any of the properties, combined with the lack of intent to create a trust or give a gift, shows that true ownership was never transferred. She further submits that any additional purchases or sales of property were made through the corporations in their roles as agents.

[25] In considering this argument, I will explore the meaning of beneficial ownership, the law regarding transfers of property for no consideration, and the factors required in order to establish an agent-principal relationship. First, with regard to beneficial ownership, the concept emerges from the need in equity to distinguish between a person who holds title to a property (the "legal owner") and the person who has the true right to the benefits of ownership. As recognized by the Supreme Court of Canada in *Covert et al. v. Minister of Finance of Nova Scotia*,[1] citing Hart J. in *MacKeen Estate v. Minister of Finance of Nova Scotia* (1977), 36 A.P.R. 572:

> It seems to me that the plain ordinary meaning of the expression "beneficial owner" is the real or true owner of the property. The property may be registered in another name or held in trust for the real owner, but the "beneficial owner" is the one who can ultimately exercise the rights of ownership in the property.

[26] More recently, the Supreme Court of Canada, in *Pecore v. Pecore,* addressed the meaning of beneficial ownership,[2] acknowledging the distinction between legal and beneficial ownership as emerging from equity considerations:

> Equity . . . recognizes a distinction between legal and beneficial ownership. The beneficial owner of property has been described as "[t]he real owner of property even though it is in someone else's name": *Csak v. Aumon* (1990), 69 D.L.R. (4th) 567 (Ont. H.C.J.), at p. 570.[3]

[27] When the person who has legal ownership by holding title is different from the person having beneficial ownership of the same property and the legal owner has no

---

[1] [1980] 2 S.C.R. 774, at p. 784, [1980] S.C.J. No. 101 (QL).
[2] *Pecore v. Pecore*, 2007 SCC 17, [2007] S.C.J. No. 17 (QL).
[3] *Ibid.* at para. 4.

discretion to do anything with the property, the property is understood to be held in a bare trust, whether by an agent or a trustee. In *De Mond v. The Queen*,[4] the Tax Court of Canada explored the meaning of bare trust:

> . . . Professor Waters defines a bare trust as follows:
>
> > The usually accepted meaning of the term "bare," "naked" or simple trust is a trust where the trustee or trustees hold property without any further duty to perform except to convey it to the beneficiary or beneficiaries upon demand.
> >
> > . . .
> >
> > Every fiduciary, which includes an agent holding the title to property for a principal, is a bare trustee of the property he holds for another.[5]
>
> . . . it has also been stated that a bare trustee is a person who holds property in trust at the absolute disposal and for the absolute benefit of the beneficiaries (see *Halsbury's Laws of England*, 4th ed., volume 48, paragraph 641, and *The Queen v. Robinson et al*., 98 DTC 6232 (F.C.A.)).[6]

[4] [1999] T.C.J. No. 403 (QL) (General Procedure).
[5] *Ibid.* at para. 22.
[6] *Ibid.* at para. 36.

[28] Judge Lamarre then reviewed the relationship between the concepts of bare trustee and agent:

> Bare trustees have also been compared to agents. The existence of a bare trust will be disregarded for income tax purposes where the bare trustee holds property as a mere agent or for the beneficial owner. In *Trident Holdings Ltd. v. Danand Investments Ltd*., 64 O.R. (2d) 65 (Ont. C.A.), Mr. Justice Morden, speaking for the Ontario Court of Appeal, made the distinction between an ordinary trust and a bare trust. He reproduced the following passages from Scott, *The Law of Trusts*, 4th ed. (1987):
>
> > . . .
> >
> > A person may be both agent of and trustee for another. If he undertakes to act on behalf of the other and subject to his control he is an agent; but if he is vested with the title to property that he holds for his principal, he is also a trustee. In such a case, however, it is the agency relation that predominates, and the principles of agency, rather than the principles of trust, are applicable [Vol. 1, p. 95].
>
> [38] Mr. Justice Morden also quoted with approval from an article by M.C. Cullity, "Liability of Beneficiaries - A Rejoinder", (1985-86), 7 Estates & Trusts Quarterly 35, at p. 36:
>
> > It is quite clear that in many situations trustees will also be agents. This occurs, for example, in the familiar case of investments held by an investment dealer as nominee or in the case of land held by a nominee corporation. In such cases, the trust relationship that arises by virtue of the separation of legal and equitable ownership is often described as a bare trust and for tax and some other purposes it is quite understandably ignored.
> >
> > The distinguishing characteristic of the bare trust is that the trustee has no independent powers, discretions or responsibilities. His only responsibility is to carry out the instructions of his principals --- the beneficiaries. If he does not have to accept instructions, if he has any significant independent powers or responsibilities, he is not a bare trustee.[7]

[29] For the Appellant's theory of the case to stand up, the transfers (and any subsequent purchases) of property must have resulted in legal ownership in bare trust by the corporations. Any further activity undertaken by the corporations with the

[7] *Ibid*. at paras. 37, 38.

properties held in bare trust would need to be conducted as agents of their principal, the Appellant.

[30] A transfer of property for no consideration generally results in a rebuttable presumption of a resulting trust. The transferee is obligated to prove the transferor's intent to make a gift in order to rebut the presumption that the property is merely being held in trust for the transferor. As stated by the Supreme Court of Canada in *Pecore*:

> A resulting trust arises when title to property is in one party's name, but that party, because he or she is a fiduciary or gave no value for the property, is under an obligation to return it to the original title owner: see D.W.M. Waters, M.R. Gillen and L.D. Smith, eds., *Waters' Law of Trusts in Canada* (3rd ed. 2005), at p. 362. . .
>
> 24. The presumption of resulting trust is a rebuttable presumption of law and general rule that applies to gratuitous transfers. When a transfer is challenged, the presumption allocates the legal burden of proof. Thus, where a transfer is made for no consideration, the onus is placed on the transferee to demonstrate that a gift was intended: see *Waters' Law of Trusts*, at p. 375, and E. E. Gillese and M. Milczynski, *The Law of Trusts* (2nd ed. 2005), at p. 110. This is so because equity presumes bargains, not gifts.[8]

[31] While in *Pecore*, the Supreme Court went on to evaluate the appropriate burden of proof that the transferee must meet in order to show the transferor's intent to gift, such considerations are not relevant in this case. The Appellant denies having had the requisite intent to transfer the property gratuitously, and as she was the majority shareholder of the transferee, it would lie with her to rebut the presumption that, having received the properties by way of gratuitous transfers, the corporation held those properties in resulting trust.

[32] Further, a gift will not be valid unless the donor's intention to gift was absolutely unambiguous:

> *Inter vivos* gifts are gifts from one living person to another living person, literally between the living. *Inter vivos* gifts can be oral or by deed.

[8] *Supra* note 2, at paras. 20, 24.

> (a) − Oral
>
> The intention to gift must be unequivocal. If a donor's words or actions are equivocal or consistent with a possible intention to give or not to give, the courts will not infer a gift. The difference between a complete and an incomplete gift often turns on the use of specific words (*Jones v. Lock* (1865), LR 1 Ch App 25).
>
> Delivery is not merely evidence of a gift being made. Courts demand full transfer of possession to complete an oral gift. The donor must put the good out of his control. . . .
>
> (b) −By Deed
>
> To make a gift by deed, the donor must deliver to the donee a sealed instrument in writing that states the intention to give and the subject of the gift. The seal is needed to corroborate the intent in the written document. The sealed instrument must be delivered out of the possession of the donor. It is now less clear how formal the instrument needs to be. While a sealed instrument many no longer be required, there must still be sufficient formality to corroborate an informed and considered intention to gift.[9]

[33] As the Land Titles Registry's transfer documents are deeds, it might be argued that no consideration was required when such deeds were used to transfer real property to DSD. Such an argument was considered and rejected by the Supreme Court of Canada in *Niles v. Lake*, [1947] S.C.R. 291, [1947] S.C.J. No. 13 (QL):

> . . . the mere fact of the document in question being under seal does not prevent the appellants from showing that there was no consideration. That, they have done, and the resulting trust follows.[10]

[34] In the present case, the evidence suggests that there was no meeting of the minds with regard to forming a valid contract between the Appellant and the corporations. As submitted by the Appellant:

> A contract can only arise if there is the *animus contrahendi* between the parties. With the expressed or implicit intention that a contract should emerge as a result of the language or conduct of the alleged parties, no contractual obligations can be said to exist and be capable of enforcement.[11]

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[9] Marjorie Lynne Benson, Marie-Ann Bowden & Dwight Newman, *Understanding Property: A Guide to Canada's Property Law*, 2nd ed. (Toronto: Thomson Carswell, 2008), at pp. 34, 35.
[10] [1947] S.C.R. 291, at pp. 297-8.
[11] G.H.L. Fridman, *The Law of Contract in Canada*, 5th ed. (Toronto: Thomson Carswell, 2006) at p. 27.

[35] The resulting trust doctrine should apply to all the properties transferred in this case. All transfers of business assets and interests to the corporation were done gratuitously. There is no evidence to indicate an intention to gift. Further, as outlined below, the conduct of the Appellant and the corporations over the three-year period does not indicate an intention to transfer property to the corporation. Instead, an implied agent-principal relationship is indicated, with the Appellant always maintaining beneficial ownership of the properties and businesses.

[36] The Appellant contends that although there was no written agreement, the agency relationship between her, the alleged principal, and the three corporations, her alleged agents, is implied by their behaviour during the taxation years at issue. The Federal Court of Appeal explored the meaning of the term "agency", and how an agency relationship arises, in *Kinguk Travel Inc. v. Canada*:[12]

> The term agency has been defined as:
>
> > ". . . a fiduciary relationship which exists between two persons, one of whom expressly or impliedly consents that the other should act on his behalf so as to affect his relations with third parties, and the other of whom similarly consents so to act or so acts." (*Bowstead & Reynolds on Agency* (17th edition, Sweet & Maxwell 2001)).
>
> In *Royal Securities Corp. Ltd. v. Montreal Trust Co. et. al* 59 D.L.R. (2d) 666, Gale C.J.H.C. identified the essential ingredients of an agency relationship as follows:
>
> > 1. The consent of both the principal and the agent;
> > 2. Authority given to the agent by the principal, allowing the former to affect the latter's legal position;
> > 3. The principal's control of the agent's actions.
>
> In reality, points 2 and 3 are often overlapping, as the principal's control over the actions of his agent is manifested in the authority given to the agent.[13]

[37] *Bowstead and Reynolds on Agency* explains that an agency relationship can emerge in the following ways:

> (1) The relationship of principal and agent may be constituted −

[12] 2003 FCA 85, [2003] F.C.J. No. 256 (QL).
[13] *Ibid.* at paras. 35-36.

> (a) by agreement, whether contractual or not, between principal and agent, which may be express, or implied from the conduct or situation of the parties;
> (b) retrospectively, by subsequent ratification by the principal of acts done on his behalf.[14]
>
> [Emphasis added.]

[38] The Respondent submits that the Appellant is trying to retroactively recharacterize her business transactions and calls her credibility into question, insisting that she is a capable and educated woman who chose whatever form was most convenient at various times. The Respondent argues that the Court should not now allow her to pick beneficial ownership with an agency relationship as the current most convenient choice because it avoids the adverse tax consequences she is facing. Counsel includes in his case law authorities that refer to the frequently cited passage in the Federal Court of Appeal's decision, in *The Queen v. Friedberg,* 92 OTC 6031 at page 6032, [1991] F.C.J. No. 1255 (QL), regarding the importance of form in tax matters:

> In tax law, form matters. A mere subjective intention, here as elsewhere in the tax field, is not by itself sufficient to alter the characterization of a transaction for tax purposes. If a taxpayer arranges his affairs in certain formal ways, enormous tax advantages can be obtained, even though the main reason for these arrangements may be to save tax (see *The Queen v. Irving Oil* 91 DTC 5106, *per* Mahoney, J.A.). If a taxpayer fails to take the correct formal steps, however, tax may have to be paid. If this were not so, Revenue Canada and the courts would be engaged in endless exercises to determine the true intentions behind certain transactions. Taxpayers and the Crown would seek to restructure dealings after the fact so as to take advantage of the tax law or to make taxpayers pay tax that they might otherwise not have to pay. While evidence of intention may be used by the Courts on occasion to clarify dealings, it is rarely determinative. In sum, evidence of subjective intention cannot be used to 'correct' documents which clearly point in a particular direction.

[39] The Respondent argues further that the Appellant is calling upon the Court to lift the corporate veil. As one of the Respondent's own submitted authorities notes, however, the courts have accepted agency as a suitable reason to characterize the relationship between a corporation and another entity by its substantive nature:

> The third basis on which courts have purported to disregard separate corporate personality is by finding that the corporation is merely acting as the agent of someone else, usually the controlling shareholder that is, itself, a corporation. Conceptually, the corporate form is not disregarded by a holding that it is an agent.

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[14] F.M.B. Reynolds, *Bowstead and Reynolds on Agency*, 18th ed, (London: Sweet & Maxwell, 2006) at p. 37.

> Rather, the business of the corporation or whatever activity gives rise to the claim by a third party is determined to be carried on not by the corporation directly but only as an agent of the controlling shareholder.[15]

There is no general bar to seeking to determine whether the corporations were indeed agents of the Appellant. As will be seen below, however, the test for finding an agency relationship in the absence of a written agreement is restrictive; it requires evidence of the necessary conduct.

[40] In *Denison Mines Ltd. v. Minister of National Revenue*,[16] Cattanach J. analyzed an argument that a subsidiary corporation was merely the agent of its parent company, which held all of the subsidiary's shares:

> Briefly the appellant's position is that the business of Con-Ell was in reality the business of the appellant and in contradistinction thereof the position of the Minister rests on the *Salomon* case (*Salomon v. A. Salomon & Co. Ltd.* [1897] A.C. 22) that there are two separate legal entities and the losses of one are not the losses of the other.
>
> It is well settled that the mere fact that a person holds all the shares in a company does not make the business carried out by that company the shareholder's business, nor does it make that company the shareholder's agent for carrying on the business. However it is conceivable that there may be an arrangement between the shareholder and the company which will constitute the company the shareholder's agent for the purpose of carrying on the business and so make the business that of the shareholder. It is immaterial that the shareholder is itself a limited company.[17]

[41] More recently, a corporation's ability to act as its shareholder's agent was acknowledged without question by Paris J. of the Tax Court of Canada in *Avotus Corp. v. The Queen.* Paris J. cited *Denison Mines* in support of the following assertion:

> It is established in the case law that there is no bar to a corporation acting as agent for its shareholder. In *Denison Mines* (*supra*) Cattanach J. noted at page 5388:
>
> . . . it is conceivable that there may be an arrangement between the shareholder and the company which will constitute the company, the shareholder's agent, for the purpose of carrying on the business and so make the business that of the shareholder. It is immaterial that the shareholder is itself a limited company.[18]

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[15] J. Anthony VanDuzer, *The Law of Partnerships and Corporations*, 2nd ed., (Toronto: Irwin Law, 2003) at p. 112.
[16] [1971] F.C. 295; aff'd [1977] F.C. 1324; aff'd. [1976] 1 S.C.R. 245.
[17] *Denison Mines Ltd. v. Minister of National Revenue*, *supra* note 16, at p. 320.
[18] 2006 TCC 505 (General Procedure) at para. 48.

[42] It is established, then, that corporations can act as agents, and this concept is not repugnant to the rule that corporations have separate legal personality a matter addressed in the oft-cited *Salomon* case.

[43] In the present case, in the absence of a written agreement expressing the clear intent to establish an agency relationship, what is the evidence required in order to support the Appellant's claim? In *Avotus*, there was a written agreement between the principal and the agent, although it had been drafted and signed in 1996 and the agent-principal relationship had actually begun in 1994.[19] Regardless of the timing of the agreement, Paris J. concluded that its existence was the deciding consideration:

> In *Denison Mines* (*supra*) there was no express contract of agency between the taxpayer and its subsidiary corporation, and the court declined to find that there was an implied contract of agency between them. By contrast, in this case the Appellant and Americas entered into a written agency agreement.
>
> . . .
>
> . . . It is only in the absence of a written agreement that the conduct of the parties must be examined for the purpose of determining whether an agency agreement may be implied.[20]

[44] Here, given the absence of a written agreement, the Court needs to closely examine the conduct of the parties to determine whether there was an implied intention to create an agency relationship, as described by G.H.L. Fridman in *Canadian Agency Law*:

> . . . To arrive at the conclusion that there was an agency involves an intricate analysis of the facts to elucidate the correct nature of the relationship between the parties . . . .
>
> . . . the agency relationship may be impliedly created by the conduct of the parties, without anything having been expressly agreed as to terms of employment, remuneration, *etc*. The assent of the agent may be implied from the fact that he has acted intentionally on another's behalf. In general, however, it will be the assent of the principal which is more likely to be implied, for except in certain cases, "it is only by the will of the employer that any agency may be created."

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[19] *Ibid.* at para. 13.

[20] *Ibid.* at paras. 49, 51. It is worth noting that in *Denison Mines*, *supra* note 16, the court refused to find an agency relationship specifically because the agent was engaging in activity that the principal was barred from undertaking himself. Similarly, in *Alberta Gas Ethylene Co. v. The Queen*, 90 DTC 6419, the court refused to find an agency relationship because a principal cannot allow an agent to undertake something that the principal is prohibited from doing personally, see: *Avotus*, para. 66.

> . . .
>
> Mere silence will be insufficient. There must be some course of conduct to indicate the acceptance of the agency relationship. The effect of such an implication is to put the parties in the same position as if the agency had been expressly created.[21]

[45] Here, a key consideration in reviewing the conduct of the alleged principal (the Appellant) and her agents will be determining the level of control the Appellant exerted over the corporations:

> . . . It is important that the alleged agent be under the control of the alleged principal. In the language of the court in 2000 in *Advanced Glazing Systems Inc. v. Frydenland.* "The greater the power of control over the agent/trustee, the greater the likelihood that the principles of agency … are applicable."[22]

[46] The Appellant in this case had full control over every action of the corporations. Indeed, the corporations could not act without her; even if the minority shareholders became active, the Appellant would remain the controlling party. The mere fact that she had such control, however, is not sufficient for a finding of an agent-principal relationship, otherwise many privately controlled corporations could be characterized as the agents of their majority shareholders. What, then, is the actual test to apply in determining whether an agency relationship existed?

[47] In *Otineka Development Corporation Limited et al. v. The Queen*,[23] the Tax Court of Canada emphasized the need for a high threshold of evidence for a finding that a corporation was actually acting as an agent:

> . . . Where a corporation holds itself out to third parties as owning its property and business, keeps separate financial records, files its own corporate income tax returns and acts like any other corporation that is independent of its shareholders, it would require extremely cogent evidence to establish that all along it was really just an agent or trustee for its shareholders on the basis of an unwritten oral understanding or assumption on the part of some of the shareholders or directors.[24]

[48] Here, DSD and SJC also each held itself out to third parties as owning its property and business, but only in limited instances. DSD held title to certain real property, but, as previously discussed, the properties were held in resulting (bare) trust as they were acquired through gratuitous transfers. Beginning in 2005, DSD

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[21] G.H.L. Fridman, *Canadian Agency Law* (Markham, Ontario: Lexis Nexis, 2009) at pp. 6, 33-34.
[22] *Ibid.* at p. 5.
[23] 94 DTC 1234 (General Procedure).
[24] *Ibid.* at p. 1236. This passage was cited in *The Great-West Life Assurance Company v. The Queen*, 98 DTC 2101. (TCC) at para. 57.

carried all mortgages on the properties. In 2003 and 2004, however, after DSD's incorporation, the mortgages had remained in the Appellant's name. There is no evidence that the Appellant transferred the mortgages to DSD's name in 2005 to minimize risk, rather, she continued to be the guarantor for all the mortgages, and all payments on the mortgages came out of her personal accounts. In certain limited circumstances, SJC did contract with third parties, concluding rental agreements with tenants, for example; it also handled some correspondence with tenants. SJC was found, however, in the CRA audit, to be doing essentially nothing as a corporation.

[49] Neither SJC nor DSD kept separate financial records, although it appears that the Appellant did her best, using her financial spreadsheets, to track general income and expenses. All of SJC and DSD's transactions went through the Appellant's personal accounts. While SJC's name was used on letters and contracts with tenants, rent cheques were made out to Ms. Fourney, and she was shown as the landlord on documents filed with the Office of the Rentalsman.

[50] Both DSD and SJC filed corporate tax returns, however, the Appellant reported and claimed income and expenses that were the same as or similar to those claimed by the corporations. The reporting and claiming by the Appellant personally implies an intention to act as a principal, with the corporations being mere agents and bare trustees. The Appellant's credibility is strong in this case; the accountant did not demonstrate adequate and reasonable care or professional skill when he prepared corporate returns without being able to trace any of the assets in the corporations. The double-claiming by the Appellant was not intentional and the reporting of income and claiming of expenses on the corporate returns should not be taken as evidence against an agency relationship when the Appellant's claiming of the same expenses personally provides evidence of exactly the contrary.[25]

[51] The Appellant testified that she adopted the strategy of transferring the properties to DSD in order to achieve her goal of hiding her assets from her brother. She testified that she set up the corporate structure to make it more difficult for her brother to discover what properties she owned. According to the Appellant, her brother, accustomed to managing and operating a farm, placed an inordinately high value on land. The Appellant alleges that her brother was bitter that the Appellant had stood with her mother in the latter's attempt to have her son honour his commitment to paying the debt he owed her. That debt originated from the sale to him of the family dairy farm after the Appellant's father had died. According to the Appellant, her brother stopped paying her mother because he decided unilaterally that he had

[25] *Supra* note 27 at para. 13.

paid her enough. The Appellant's concern about protecting against a possible litigation risk turned out, with hindsight, to be ill-founded. Her mother's claim was upheld by the courts, thanks in large part to the considerable assistance of the Appellant.

[52] The evidence reveals that the Appellant did not have a panoply of structures to choose among to achieve her alleged objectives. She could transfer the properties outright to DSD in exchange for less liquid shares. The beneficial and legal ownership of the properties would then reside with DSD. That is the Respondent's theory of what the Appellant in fact did. The evidence presented by the Appellant does not allow me to share this view.

[53] The other course of action was for the Appellant to transfer only registered title to DSD. DSD would hold the properties as bare trustee and would be constituted as the Appellant's agent in dealing with those properties. The Appellant could also choose not to disclose the agency agreement to third parties. This is often done for real estate transactions. Disclosure of the verbal agreement would in fact defeat the purpose of that agreement.

[54] The Appellant, in my opinion, has established that such an arrangement is what she intended, implemented, and caused the corporations to carry out on her behalf. Undoubtedly, it would have been much simpler had the Appellant caused a bare trust and agency agreement to be drawn up. She did not, and she has paid a very heavy price, including having her life turned upside down by an audit, an assessment and these appeals, all at considerable cost to her.

[55] The empowering of DSD to act on the Appellant's behalf is confirmed by numerous factors. While the bare trust and agency relationship was not totally disclosed to the lessees and suppliers of DSD, the wary certainly had reasons to believe that this relationship existed. For example, the evidence reveals that the rental cheques were made payable to the Appellant. The invoices for repairs and renovations were addressed to the Appellant. It was the Appellant who advertised the rental properties, collected the rent cheques, cleaned the properties and was listed as the landlord with the Office of the Rentalsman. The Respondent actually acknowledges that SJC did nothing.

[56] As noted earlier, the Appellant's troubles originate from the fact that both she and the corporations reported the same revenue and expenses. This led to a duplication of the claims for losses. Mr. Chambers, the person who prepared the corporations' tax returns, made a number of startling revelations during his

testimony, which explains in part how this occurred. The evidence shows that there was an absence of effective communication between the Appellant and Mr. Chambers. For example, he admitted that the Appellant was presented with copies of the corporations' 2003 and 2004 tax returns much later, after they had been electronically filed. Those returns are not comprehensible to anyone other than a person who has memorized the line codes opposite which the tax information appears. The codes correspond to an electronic coding of the information, and this coding is known only to the most skilled tax compliance professional. A taxpayer, or a tax lawyer for that matter, cannot determine what the codes mean unless they have access to a detailed coding manual which explains their meaning. The CRA officer appearing for the Respondent admitted that CRA personnel receive specialized training to enable them to understand electronically-filed tax returns. On reviewing the returns at issue, the Appellant had no way of knowing that Mr. Chambers claimed the same losses as she had claimed on her personal tax return.

[57] The most startling revelation made by Mr. Chambers is his admission that he completed and filed the tax returns without understanding how DSD acquired the properties. If the Appellant had intended to transfer the properties on a tax-deferred basis, she would have had to file an election under section 85 of the Act assuming all the preconditions had been met. Generally speaking, because the Appellant had accrued gains, she would have filed, if properly advised, a section 85 rollover election. The present value of the tax payable will always exceed the present value of the future depreciation expense. This is due to the fact that the depreciation rate is low, meaning that the future tax savings have a low present value. The Appellant did not file an election because, as the evidence shows, she intended to retain beneficial ownership. In her mind, no taxable disposition occurred. On a related-party transfer of property, a professional completing tax returns will ask to see the transfer agreement in order to discern whether the transfer qualifies for a tax-free rollover or not. I note that the Appellant's two sons were given shares in the bare trust corporation. If a true disposition had occurred and there had existed an element of gift in the form of a shifting of some of the value of the transferred properties to the shares of the Appellant's sons part of the transfer could be taxable. On the other hand, if, as Mr. Chambers admitted, he learned later that a section 85 rollover election had not been filed, he needed to know the fair market value of each property in order to determine the undepreciated capital cost (UCC) balance for DSD. Under the technical rules of the *Act*, only one-half of the accrued gain is added to the UCC balance to match the taxation on one-half in the hands of the transferor. In this case, the UCC balance is equal to the sum of the cost of the property to the transferor and one-half of the gain.

[58] A few basic questions on Mr. Chambers' part could have clarified the situation. He could have asked, for example: Where is the purchase and sale agreement? What was the consideration that was paid? Do you realize that the sale could be construed as taxable unless you document your retention of beneficial ownership? Are you aware that you will realize a taxable capital gain, which will exceed the net present value of the future tax savings from the depreciation expenses if the transaction is found to be taxable? He could have said: I need to know the foregoing to establish the UCC balance, if any, of the properties. The confusion was compounded by the fact that the electronic returns were filed twice, long before the Appellant received copies. Had Mr. Chambers done as indicated above, these matters could have been cleared up without an audit and resulting reassessments.

[59] The Appellant testified that she felt comfortable using off-the-shelf tax software to complete her personal tax returns as she had done in the past. She was, in her words, terrified by the complexity of the tax software used to prepare electronically-filed tax returns. This is understandable as it takes a great deal of sophistication to convert financial information into the tax information required in the returns. She turned to Mr. Chambers for this service. Mistakes were made but the evidence shows that it was not the Appellant who wrongly claimed the expenses, as alleged by the Respondent. It was DSD and the other corporations that did so in the returns prepared and filed by Mr. Chambers. The basis for the Respondent's claim of tax, interest and penalties against the Appellant is that the Appellant failed to report the gains from the transfers and claimed losses to which she was not entitled. With regard to DSD and SJC, the evidence clearly shows that she was entitled to do so.

[60] Learning Boost held itself out to third parties as a separate legal entity in more ways than DSD and SJC. Learning Boost did have its own bank account and did prepare financial statements every year. The Appellant however, took care of every aspect of Learning Boost's activities except the work performed by the hired tutors. She collected payments from students, took care of all advertising, and designed the Learning Boost logo. The Appellant personally took on the risk when she contracted in her own name to renovate her home for Learning Boost's office. Unlike the procedure followed for SJC, however, payments for tutorial services were made to Learning Boost and not the Appellant. Contracts with tutors were made between the tutors and Learning Boost, as were confidentiality agreements. Learning Boost had a business number and a business licence, and issued T4s under its own name. The tutorial company maintained its own phone number and Web site. Still, the Appellant continued to claim Learning Boost's income and expenses in her personal returns.

[61] The mere maintenance of a separate bank account and careful attention to budgeting for a business endeavour do not necessarily mean that such an endeavour (here, Learning Boost) is not an agent, but the number of instances of the corporation holding itself out to third parties as a separate legal entity does weaken the appearance of an implied agency relationship (in this case, with the Appellant). I believe that other tests regarding agent-principal relationships and beneficial ownership can guide me in my decision on the status of Learning Boost.

[62] J. Anthony VanDuzer in *The Law of Partnerships and Corporations*, tells us that the test for whether an agency relationship exists is as follows:

> . . . The factors referred to in *Smith, Stone and Knight Ltd. v. Birmingham Corp*, are almost universally cited as those relevant to a determination whether agency exists:
>
> - Were the profits treated as profits of the shareholder?
> - Was the person conducting the business appointed by the shareholder?
> - Was the shareholder the head and brain of the trading venture?
> - Did the shareholder govern the adventure and decide what should be done and what capital should be committed to the venture?
> - Did the shareholder make the profits by its skill and direction?
> - Was the shareholder in effectual and constant control?[26]

[63] All three corporations herein can answer each of the above questions in the affirmative. The Appellant had total control of these corporations and there is no evidence of any restraints by the minority shareholders or anyone else on her discretion to guide the business, commit (her own) capital to that business, choose what to do with profits, and so on. Still, VanDuzer goes on to stress that the mere presence of the above factors is not sufficient:

> Extensive and even complete control by a single person, however, is contemplated in the *CBCA*, so the existence of control satisfying the test in *Smith* cannot in any way be conclusive. . . .
>
> . . .
>
> There is nothing in any corporate statute which suggests that any particular degree of control is inappropriate or prohibited. In *Alberta Gas Ethylene Co. v. M.N.R.,* Madame Justice Reed observed that *Smith* does not stand for the proposition that one must ignore the separate existence of a subsidiary corporation when the six criteria are met. One must ask for what purpose the corporation was incorporated and used, and consider the overall context in which the obligation to the third party arose.[27]

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[26] VanDuzer, *op. cit., supra* note 15, at p. 113.
[27] *Ibid.* at pp. 113-114.

[64] Rip A.C.J. (as he was then) undertook in *Prévost Car Inc. v. The Queen*[28] a detailed analysis of the meaning of "beneficial owner" in Canadian common law, as that term was undefined in the agreement in question in that case. He concluded that an agency relationship in which the principal retains beneficial ownership can only exist in narrow circumstances that meet very specific criteria:

> . . .
>
> When the Supreme Court in *Jodrey* stated that the "beneficial owner" is one who can "ultimately" exercise the rights of ownership in the property, I am confident that the Court did not mean, in using the word "ultimately", to strip away the corporate veil so that the shareholders of a corporation are the beneficial owners of its assets, including income earned by the corporation. The word "ultimately" refers to the recipient of the dividend who is the true owner of the dividend, a person who could do with the dividend what he or she desires. It is the true owner of property who is the beneficial owner of the property. Where an agency or mandate exists or the property is in the name of a nominee, one looks to find on whose behalf the agent or mandatary is acting or for whom the nominee has lent his or her name. When corporate entities are concerned, one does not pierce the corporate veil unless the corporation is a conduit for another person and has absolutely no discretion as to the use or application of funds put through it as conduit, or has agreed to act on someone else's behalf pursuant to that person's instructions without any right to do other than what that person instructs it, for example, a stockbroker who is the registered owner of the shares it holds for clients. . . .[29]

[65] This is such a case: all three corporations could be characterized as mere conduits for the Appellant. They had no ability to act on their own; there is no evidence of minute books or annual meetings; the corporations had neither the discretion nor any right to use any income earned through them; they could indeed be described as mere conduits or agents of the Appellant.

[66] In *Larose v. Minister of National Revenue*,[30] this Court describes as follows the beneficial ownership test: "A property is deemed to be beneficially owned when one person possesses the three attributes of the ownership of property (*usus*, *fructus*, *abusus*). . . ."[31] *In Smedley v. The Queen*,[32] the Tax Court of Canada reiterated that ". . . the test for beneficial ownership is the date at which the party has acquired the

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[28] 2008 TCC 231, aff'd. 2009 FCA 57, [2010] 2 F.C.R., 65, [2009] F.C.J. No. 241 (QL).
[29] 2008 TCC 231 at para. 100.
[30] [1991] T.C.J. No. 910 (QL), 92 DTC 2055.
[31] *Ibid*. at para. 4.03.10.
[32] [2003] T.C.J. No. 64 (QL) (General Procedure), 2003 DTC 501.

indicia of ownership, those being risk, use and possession."[33] With respect to DSD and SJC, the Appellant clearly meets this test, as she takes on all the risk personally, using all the business assets herself and having possession of them. Only the case of Learning Boost raises some doubt in that the Appellant took risks in terms of her investment in home renovations for teaching space, but at the same time reduced her risk by using the corporate name to contract with third parties, including the tutors, in some contexts.

[67] In the specific case of Learning Boost, although it is not perfect, the evidence establishes on a balance of probabilities that Learning Boost was also acting as a bare nominee and agent of the Appellant. Indications of such a relationship include the following:

(a) The Appellant created the television and print advertisements for Learning Boost.
(b) The Appellant designed and created the Learning Boost logo.
(c) The Appellant collected the fees from Learning Boost students.
(d) The Appellant converted her single-car garage into a "Learning Boost Office".
(e) The Appellant personally contracted with tradespeople to effect renovations to the Learning Boost teaching space.
(f) The Appellant travelled to the students' homes to sign contracts and assist with tutoring.
(g) The Appellant hired tutors to work with Learning Boost students.
(h) The Appellant used personal funds during the tax years in question to cover operating expenses for the Learning Boost business.

VI. PENALTIES

Appellant's Position

[68] In the Appellant's view, gross negligence penalties should not be imposed in this case for the following reasons:

- Given the manner in which the Respondent worded her pleading, which cannot be changed without affecting the fairness of the trial, gross negligence penalties can only be imposed if the Appellant's agency claim fails. Any references to double-claiming by the Appellant of some

[33] *Ibid.* at para. 7.

of the expenses, if such references are not found in the Respondent's pleading, cannot be considered now, as the Respondent has no right to appeal her own assessment. This issue is different than the double-claiming issue raised by the Respondent to support the assessments. The issue raised in the pleading concerns the double-claiming by the corporations and the Appellant of the same expenses. At trial, the Respondent brought up the fact that the Appellant claimed some of the same expenses twice in her tax returns. This is a matter not covered by the assessments issued against the Appellant and was raised for the first time at trial. As a result, this matter did not form part of the basis of the assessment of gross negligence penalties against the Appellant.

- The burden of proof lies with the Respondent, who failed to establish the evidentiary grounds for gross negligence, having never provided the penalty calculation despite the Appellant's request and the CRA's undertaking during examination for discovery to provide the relevant documents.
- The Respondent has not proven that the Appellant had the necessary intent justifying the assessment of such penalties.
- Despite the reference to such a test in the Respondent's reply to the notice of appeal, the gross negligence penalty provisions in subsection 163(2) of the *Act* and section 285 of the *Excise Tax Act* (the "ETA") do not impose an "ought to have known" test. Rather, the phrase used is "knowingly, or under circumstances amounting to gross negligence".
- The Respondent has in no way proven that the Appellant knowingly, or under circumstances amounting to gross negligence, made false statements or omissions in her returns. The Appellant has no formal education in taxation or accounting, but she kept detailed books and records and shared that information with her accountant on the assumption that she was obtaining qualified professional assistance that would ensure that she was meeting her tax obligations.
- Although the Appellant had experienced two previous audits, they related to different issues and were prior to the incorporations.
- The Appellant never had the opportunity to review her 2004 and 2005 corporate returns before they were e-filed. While she did see the 2003 return, the Appellant did not have the requisite skill to understand the corporate returns, a claim supported by the CRA appeals officer's concession that the corporate returns require special training in order for a person to be able to read and understand them.

- Even without the double-claiming, the Appellant's returns for the years in question would still show her to be in a loss position.

Respondent's Position

[69] Gross negligence penalties should be imposed, the Respondent having proven the existence of multiple grounds for doing so, namely:

(a) "Ms. Fourney has recklessly disregarded her legal obligations with respect to personal and corporate taxation. The evidence supports a finding that Ms. Fourney chose to do whatever seemed to work for her, regardless of whether or not it conformed to the requirements of the *Income Tax Act* or the *Excise Tax Act*."[34]

(b) "Ms. Fourney's cross-examination disclosed errors in her personal tax returns and in the corporate tax returns of the incorporated Appellants, almost too numerous to mention. . . . The problem of errors in the various personal and corporate tax returns was pointed out to Ms. Fourney at the audit and appeals stages; there is no ambush."[35]

(c) The Appellant was previously audited for issues relating to the capitalization of expense items and the non-reporting capital gains.[36]

(d) The Appellant should have properly shared information with her accountant.[37]

(e) Mr. Chambers, the accountant, testified that once he noted the double-claiming, he informed the Appellant in 2005 that she needed to amend her personal return.[38]

(f) As a person who had been in business since 1994, the Appellant should have taken steps to inform herself to a greater degree about tax accounting matters.[39]

(g) The large number of errors in the Appellant's returns shows that her bookkeeping system was clearly inadequate.[40]

The amounts involved are substantial. With respect to DSD, the unreported income is substantial in relation to the reported net income for 2003, 2004, and 2005. With respect to Learning Boost, it is evident that the losses claimed are substantial in

[34] Additional Written Submissions of the Respondent, at para. 111.
[35] *Ibid*. at paras. 117 and 118.
[36] *Ibid*. at para. 119.
[37] *Ibid*. at para. 123.
[38] *Ibid*. at para. 124.
[39] *Ibid*. at para. 125.
[40] *Ibid*. at para. 128.

relation to the income reported for 2003 and 2004. With respect to Ms. Fourney, it is evident that the business losses claimed with regard to the business activities of DSD, SJC and Learning Boost are substantial. As regards SJC's GST matters, the amounts involved are substantial in relation to the total amounts reported and claimed.

Penalties Analysis

[70] It is abundantly clear from the reply to the notice of appeal, that it was the Minister's position that penalties should apply to the Appellant if and only if this Court were to find that both beneficial and legal ownership of the properties was transferred to the corporations and that the corporations were not appointed agents of the Appellant for the purposes of dealing with the transferred properties and operating the businesses on her behalf. In this regard, the reply frames the issues as follows:

> The issues are:
>
> a) whether Shirley Fourney was the beneficial owner and operator of the assets and activities of DSD, SJC and Learning Boost in 2003, 2004 and 2005;
>
> b) if Shirley Fourney was not the beneficial owner and operator of the assets and activities of DSD, SJC and Learning Boost in 2003, 2004 and 2005, whether the Minister properly assessed the appellant to:
>
> i) increase rental income by $3,824.57 in 2003 and reduce rental income by $11,151.67 in 2004;
> ii) add business income of $146,335 in 2003, $136,071.80 in 2004 and $49,215.28 in 2005;
> iii) include shareholder benefits of $10,800 in each of the 2003, 2004 and 2005 taxation years;
> iv) include taxable capital gains of $8,710.76 in 2003 and $26,412.33 in 2004 in respect of the disposition of properties; and
> v) include penalties pursuant to subsection 163(2) of the *Act* in respect of the appellant's 2003, 2004 and 2005 taxation years.

The Respondent's counsel attempted to put forward a different position at trial, which met with strenuous objections from the Appellant's counsel. The Respondent invited me to consider the fact that the Appellant admittedly double-claimed some expenses in 2003 and 2004 tax returns. This Court has stated in the past that taxpayers generally have the right to rely on the issues being as framed by the Respondent in her reply. While leave may be granted to amend the reply, the discretion to do so is generally not exercised once the trial has begun. In any event, I

note that the Respondent did not move to have her reply amended but raised the issue in argument. The purpose of the above-stated position of the Court with regard to the issues is to avoid trial by ambush and preserve the parties' right to properly prepare for trial. More generally, the Respondent's claim for penalties should be dismissed either way because the Respondent failed, for detailed reasons stated below, to establish on a balance of probabilities that the conditions giving rise to the assessment of penalties have been met.

[71] Subsection 163(2) of the Act describes the standard for imposing gross negligence penalties:

> **False statements or omissions**
>
> 163(2) Every person who, knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a "return") filed or made in respect of a taxation year for the purposes of this Act, is liable to a penalty of the greater of $100 and 50% of the total of. . . .

The subsection uses the word "knowingly" but not the phrase "ought to have known", which the Respondent uses in both her reply to the notice of appeal and her Additional Written Submissions.

[72] Section 285 of the ETA uses the same standard as the Act, again without the phrase "ought to have known":

> 285. Every person who knowingly, or under circumstances amounting to gross negligence, makes or participates in, assents to or acquiesces in the making of a false statement or omission in a return, application, form, certificate, statement, invoice or answer (each of which is in this section referred to as a "return") made in respect of a reporting period or transaction is liable to a penalty of the greater of $250 and 25% of the total of. . . .

[73] The standard referred to by the Respondent in her written submissions is wrong. Instead, the Appellant's actions need to be reviewed on the basis of whether her false statements were made "knowingly, or under circumstances amounting to gross negligence." The case law provides a road map for applying this standard to the facts herein. First, the Federal Court of Appeal's decision in *Lacroix v. Canada*,[41]

[41] 2008 FCA 241, [2008] F.C.J. No, 1092 (QL).

supports the Appellant's position in the present case that the burden is on the Minister to prove that penalties should be imposed:

> Although the Minister has the benefit of the assumptions of fact underlying the reassessment, he does not enjoy any similar advantage with regard to proving the facts justifying a reassessment beyond the statutory period, or those facts justifying the assessment of a penalty for the taxpayer's misconduct in filing his tax return. The Minister is undeniably required to adduce facts justifying these exceptional measures.
>
> In *Richard Boileau v. M.N.R.*, 89 D.T.C. 247, Judge Lamarre Proulx stated as follows, at page 250:
>
> > Indeed, the Appellant was unable to contradict the basic elements of the net worth assessments. However, in my view, this is not sufficient for discharging the burden of proof which lies on the Minister. To decide otherwise would be to remove any purpose to subsection 163(3) by reverting the Minister's burden of proof back onto the Appellant.
>
> In a similar vein, in *Farm Business Consultants Inc. v. Her Majesty the Queen*, [1994] 2 C.T.C. 2450, 95 D.T.C. 200, Judge Bowman wrote the following at paragraph 27:
>
> > 27. A court must be extremely cautious in sanctioning the imposition of penalties under subsection 163(2). Conduct that warrants reopening a statute-barred year does not automatically justify a penalty and the routine imposition of penalties by the Minister is to be discouraged. . . .
> >
> > Moreover, where a penalty is imposed under subsection 163(2) although a civil standard of proof is required, if a taxpayer's conduct is consistent with two viable and reasonable hypotheses, one justifying the penalty and one not, the benefit of the doubt must be given to the taxpayer and the penalty must be deleted . . . .[42]

[74] The Federal Court of Appeal, in *Lacroix,* went on to make a statement regarding the Minister's burden that has since caused some confusion:

> What, then, of the burden of proof on the Minister? How does he discharge this burden? There may be circumstances where the Minister would be able to show direct evidence of the taxpayer's state of mind at the time the tax return was filed. However, in the vast majority of cases, the Minister will be limited to undermining the taxpayer's credibility by either adducing evidence or cross-examining the

[42] *Ibid*. at paras. 26-28.

> taxpayer. Insofar as the Tax Court of Canada is satisfied that the taxpayer earned unreported income and did not provide a credible explanation for the discrepancy between his or her reported income and his or her net worth, the Minister has discharged the burden of proof on him within the meaning of subparagraph 152(4)(*a*)(i) and subsection 162(3).[43]

[75] When reviewing the above passage in *Dao v. The Queen*,[44] Campbell J. of the Tax Court of Canada found it confusing, that it made it unclear whether the Federal Court of Appeal was imposing a new standard for gross negligence penalties:

> . . . With respect, the reasons of Pelletier J. in *Lacroix v. The Queen*, [2008] F.C.J. 1092, leave me bewildered and somewhat perplexed when I compare his analysis to the preceding cases in both the Tax Court and the Federal Court of Appeal. At paragraphs 30 to 32 of *Lacroix*, the two provisions are essentially lumped together and the same onus is imposed upon the Minister with respect to both provisions. The effect of this would be to remove the requirement for the element of *mens rea* and, consequently, establish circumstances that would allow penalties in many unsuccessful appeals. Where a taxpayer is accused of reckless and reprehensible conduct bordering on criminal behaviour for which he may be slammed with the punishment of gross negligence penalties, the Minister under subsection 163(2) has a duty to justify its decision which will not be satisfied merely, as *Lacroix* suggests, by showing that the taxpayer has unreported income but could not provide a credible explanation.[45]

[76] I do not believe that the decision of Pelletier J.A. in *Lacroix* constitutes a departure from the principles enunciated in previous case law, as suggested by my colleague in *Dao.* Pelletier J.A.'s comments must be considered in light of the nature of the appeal he was dealing with. Mr. Lacroix was reassessed on the basis of the findings of a net worth assessment. The trial judge found that the appellant in that case had no explanation for the large discrepancy between his reported income and his significantly greater net worth. I understand Pelletier J.A.'s comment to mean that a trial judge can draw a reasonable inference from the evidence presented by the Respondent. If no reasonable explanations are given to explain the discrepancy, a trial judge can draw the inference that the taxpayer was grossly negligent in failing to report his or her income. I caution, however, that the inference must be reasonable and further, that the evidence must not allow for a different explanation. If it does, then the Minister must establish on a balance of probabilities that this explanation is untrue.

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[43] *Ibid.* at para. 32.
[44] 2010 TCC 84, [2010] T.C.J. No. 57 (QL).
[45] *Ibid*. at para. 44.

[77] Because subsection 163(2) is penal in nature, it calls for a higher degree of culpability and must be applied only where the evidence clearly justifies so doing. If the evidence creates any doubt that it should be applied in the circumstances of the appeal, then the only fair conclusion is that the taxpayer must receive the benefit of that doubt in those circumstances. In *Farm Business Consultants Inc. v. The Queen*, 95 DTC 200, a decision which was upheld by the Federal Court of Appeal (96 DTC 6085), at pages 205 to 206, Judge Bowman (as he was then), stated:

> A court must be extremely cautious in sanctioning the imposition of penalties under subsection 163(2). Conduct that warrants reopening a statute-barred year does not automatically justify a penalty and the routine imposition of penalties by the Minister is to be discouraged . . . . Moreover, where a penalty is imposed under subsection 163(2) although a civil standard of proof is required, if a taxpayer's conduct is consistent with two viable and reasonable hypotheses, one justifying the penalty and one not, the benefit of the doubt must be given to the taxpayer and the penalty must be deleted . . .

[78] An extensive body of case law refers to the need for evidence of intent or recklessness on the part of an appellant in order for gross negligence penalties to be imposed. Here, no such evidence has been provided. The Appellant sought professional accounting assistance to complete her tax returns. Mr. Chambers provided no plausible explanation showing how he could have acted with reasonable care as an accountant without having had with the Appellant a conversation about the tax consequences of transferring properties to the corporations, about the need to trace the corporate assets, and about the Appellant's intentions regarding the reporting of income and claiming of expenses personally or through the corporations. Mr. Chambers' testimony that he noticed the double-claiming in 2005 and that he told the Appellant to amend her returns at that time lacks credibility considering the general lack of care that he displayed. In any event, it was by then much too late for the returns that had already been filed. Finally, his advice was inconsistent with the factual reality that the Appellant transferred only the legal title to the properties to the corporations that acted as her exclusive agents in connection with those properties and the business.

[79] The evidence shows that the Appellant strived to become self-reliant in building her rental property business from scratch and launching Learning Boost following her retirement as a teacher. As a single mother she wanted a better life for her two sons and herself. Rental businesses are not high-profit activities. To be successful, one cannot afford to outsource all services to outside professionals. It is obvious that the Appellant went one step too far in trying to become self-reliant with respect to her tax compliance obligations. She believed that she had mastered the use

of the personal tax preparation software, when in fact she had not. Undoubtedly, she has learned from this unpleasant and costly experience. The double-claiming of expenses on her personal returns was attributable to the fact that she did not understand that she had to enter the information under either the rental property section or business section of the software, but not both, as this would lead to a duplication of her declared losses. She incorporated Learning Boost on her own to save costs. She completed the real estate transfer documentation on her own, not fully appreciating that she could have succeeded in implementing her plan by using a written bare trust and agency agreement. She had the judgment not to tackle the preparation of the electronic tax returns of DSD, SJC and Learning Boost herself because she realized that she would be out of her depth. She hired Mr. Chambers for this purpose. Rather than sitting down and gauging the Appellant's true intent, Mr. Chambers filed the returns without taking stock of the situation. It is clear that the Appellant recognizes that she needs help in meeting her tax compliance obligations. Nonetheless, the Appellant should be applauded for having succeeded in building two businesses and should not be punished for honest mistakes that clearly, in light of the evidence, do not constitute grossly negligent behaviour. In any event, the evidence shows that the Appellant retained beneficial ownership of the properties and businesses, meaning that the Respondent has failed to prove that the Appellant wrongly claimed the expenses at issue in these appeals.

[80] It is clear that the Appellant lacks basic knowledge of accounting and tax matters. Her numerous errors in her tax returns point to her lack of skill in these areas. In a self-assessing tax system, however, gross negligence penalties are not imposed for mere mistakes by a taxpayer who lacked the intention to misstate or omit. Further, the case law establishes that if there is any doubt about intent, the benefit of that doubt should go to the taxpayer since the penalty provision in question is penal in nature. The same reasoning applies to the penalties assessed against the corporate appellants under the Act.

[81] The Minister also reassessed SJC with respect to input tax credits (ITCs) claimed on taxable supplies. The evidence shows that the properties and businesses belonged to the Appellant. For these reasons, SJC was not entitled to claim ITCs and the reassessments should stand.

VI. CONCLUSIONS

[82] The Appellant's beneficial ownership claim succeeds for the reasons set out above. The resulting trust doctrine applies to all the properties transferred in this case; the corporations merely had legal ownership of property transferred gratuitously in circumstances where there was no evidence of an intention to gift. An assessment of the conduct of the Appellant and the corporations over the three-year period indicates an implied agency relationship. The Appellant always was the owner of the assets and businesses registered in the name of the corporations.

[83] For similar reasons, the Respondent's gross negligence argument fails. Evidence of intent or recklessness is required in order for gross negligence penalties to be imposed. Here the Minister has not met his burden. It is clear that the Appellant lacks basic knowledge of accounting and tax matters, but she sought professional accounting assistance and did not intend to make a misstatement or omission. In any event, the gross negligence penalties are not applicable because the Appellant has succeeded in establishing that she remained the beneficial owner of all of the assets held and of the businesses carried on by the corporations.

[84] SJC was not entitled to claim ITCs.

Signed at Ottawa, Canada, this 14th day of November 2011.

Robert J. Hogan

Hogan J.

Summary of Appeals

Taxpayer	Income Tax Appeal	Tax Year	Taxes and Penalties Owing	Penalties	GST Appeal	Tax Year	Taxes and Penalties Owing	Penalties
SJC	2009-3339(IT)G				2009-3337(GST)I			
		2003	NIL	NO		Feb. 1, 2003 - Jan 31, 2004	$3,791.50	YES
		2004	NIL	NO		P (s. 285)	$1,262.68	
		2005	NIL	NO		P(late remitting)	$908.86	
						Feb. 1, 2004 - Jan. 31, 2005	$3,433.67	YES
DSD	2009-2859(IT)I					P (s. 285)	$970.40	
		2003	NIL			P(late remitting)	$483.64	
		P	$7,159.00	YES		Feb. 1, 2005 - Jan 31, 2006	$5,247.46	YES
		2004	NIL	YES		P (s. 285)	$1,316.66	
		P	$4,755.00			P(late remitting)	$74.71	
		2005	$630.00	YES			$17,489.98	
		P	$5,630.20					
			$18,174.20					
Learning Boost	2009-3866(IT)I							
		2003	NIL					
		P	$672.00	YES				
		2004	NIL					
		P	$2,750.00	YES				
		2005	NIL	NO				
			$3,422.00					
Shirley Fourney	2010-14(IT)G							
		2003	$15,878.07					
		P	$27,620.73	YES				
		2004	$22,018.40					
		P	$25,929.88	YES				
		2005	$1,234.04					
		P	$4,872.84	YES				
			$97,553.96					
TOTAL (taxes and penalties)								$136,640.14
Taxes								$52,233.14
Penalties								$84,407.00

SCHEDULE 1

CITATION:	2011 TCC 520
COURT FILE NOS.:	2010-14(IT)G, 2009-3339(IT)G, 2009-3337(GST)I, 2009-3859(IT)I, 2009-3866(IT)I
STYLE OF CAUSE:	SHIRLEY FOURNEY, SJC PROPERTY MANAGEMENT INC., DSD PROPERTIES INC., LEARNING BOOST INC. v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Saskatoon, Saskatchewan
DATES OF HEARING:	May 9, 10 and 11, 2011
REASONS FOR JUDGMENT BY:	The Honourable Justice Robert J. Hogan
DATE OF JUDGMENT:	November 14, 2011

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