Docket: 2010-3047(IT)G

BETWEEN:

MARY KHRISTINE TORRES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard consecutively with the Appeals of
Mary Torres (2012-258(IT)G), Eva Torres (2011-4103(IT)G), Michael McNulty (2011-3223(IT)G), Andre Gautier (2011-3321(IT)G), Carrol Strachan (2010-3044(IT)G) and Ansel Hyatali (2011-4093(IT)G)
on November 4, 5, 6 and 8, 2013, at Toronto, Ontario

By: The Honourable Justice Campbell J. Miller

Appearances:

Counsel for the Appellant:	Dale Barrett
Counsel for the Respondent:	H. Annette Evans, Rishma Bhimji, Kathleen Beahen, Lindsay Beelen

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JUDGMENT

The Appeal from the assessment made under the *Income Tax Act* for the 2007 taxation year is dismissed.

Signed at Toronto, Ontario, this 2nd day of December 2013.

"Campbell J. Miller"

C. Miller J.

Docket: 2012-258(IT)G

BETWEEN:

MARY TORRES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard consecutively with the Appeals of
Mary Khristine Torres (2010-3047(IT)G), Eva Torres (2011-4103(IT)G), Michael McNulty (2011-3223(IT)G), Andre Gautier (2011-3321(IT)G), Carrol Strachan (2010-3044(IT)G) and Ansel Hyatali (2011-4093(IT)G)
on November 4, 5, 6 and 8, 2013, at Toronto, Ontario

By: The Honourable Justice Campbell J. Miller

Appearances:

Counsel for the Appellant:	Dale Barrett
Counsel for the Respondent:	H. Annette Evans, Rishma Bhimji Kathleen Beahen, Lindsay Beelen

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JUDGMENT

The Appeal from the assessment made under the *Income Tax Act* for the 2008 taxation year is dismissed.

Signed at Toronto, Ontario, this 2nd day of December 2013.

"Campbell J. Miller"

C. Miller J.

Docket: 2011-4103(IT)G

BETWEEN:

EVA TORRES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard consecutively with the Appeals of
Mary Khristine Torres (2010-3047(IT)G), Mary Torres (2012-258(IT)G), Michael McNulty (2011-3223(IT)G), Andre Gautier (2011-3321(IT)G), Carrol Strachan (2010-3044(IT)G) and Ansel Hyatali (2011-4093(IT)G)
on November 4, 5, 6 and 8, 2013, at Toronto, Ontario

By: The Honourable Justice Campbell J. Miller

Appearances:

Counsel for the Appellant:	Dale Barrett
Counsel for the Respondent:	H. Annette Evans, Rishma Bhimji Kathleen Beahen, Lindsay Beelen

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JUDGMENT

The Appeal from the assessment made under the *Income Tax Act* for the 2008 taxation year is dismissed.

Signed at Toronto, Ontario, this 2nd day of December 2013.

"Campbell J. Miller"

C. Miller J.

Docket: 2011-3223(IT)G

BETWEEN:

MICHAEL McNULTY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard consecutively with the Appeals of
Mary Khristine Torres (2010-3047(IT)G), Mary Torres (2012-258(IT)G), Eva Torres (2011-4103(IT)G), Andre Gautier (2011-3321(IT)G), Carrol Strachan (2010-3044(IT)G) and Ansel Hyatali (2011-4093(IT)G)
on November 4, 5, 6 and 8, 2013, at Toronto, Ontario

By: The Honourable Justice Campbell J. Miller

Appearances:

Counsel for the Appellant:	Dale Barrett
Counsel for the Respondent:	H. Annette Evans, Rishma Bhimji Kathleen Beahen, Lindsay Beelen

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JUDGMENT

The Appeals from the assessments made under the *Income Tax Act* for the 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2008 taxation years are dismissed

Signed at Toronto, Ontario, this 2nd day of December 2013.

"Campbell J. Miller"

C. Miller J.

Docket: 2011-3321(IT)G

BETWEEN:

ANDRE GAUTIER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard consecutively with the Appeals of
Mary Khristine Torres (2010-3047(IT)G), Mary Torres (2012-258(IT)G), Eva Torres (2011-4103(IT)G), Michael McNulty (2011-3223(IT)G), Carrol Strachan (2010-3044(IT)G) and Ansel Hyatali (2011-4093(IT)G)
on November 4, 5, 6 and 8, 2013, at Toronto, Ontario

By: The Honourable Justice Campbell J. Miller

Appearances:

Counsel for the Appellant:	Dale Barrett
Counsel for the Respondent:	H. Annette Evans, Rishma Bhimji Kathleen Beahen, Lindsay Beelen

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JUDGMENT

The Appeal from the assessment made under the *Income Tax Act* for the 2008 taxation year is dismissed.

Signed at Toronto, Ontario, this 2nd day of December 2013.

"Campbell J. Miller"

C. Miller J.

Docket: 2010-3044(IT)G

BETWEEN:

CARROL STRACHAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard consecutively with the Appeals of
Mary Khristine Torres (2010-3047(IT)G), Mary Torres (2012-258(IT)G), Eva Torres (2011-4103(IT)G), Michael McNulty (2011-3223(IT)G), Andre Gautier (2011-3321(IT)G) and Ansel Hyatali (2011-4093(IT)G)
on November 4, 5, 6 and 8, 2013, at Toronto, Ontario

By: The Honourable Justice Campbell J. Miller

Appearances:

Counsel for the Appellant:	Dale Barrett
Counsel for the Respondent:	H. Annette Evans, Rishma Bhimji and Kathleen Beahen, Lindsay Beelen

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JUDGMENT

The Appeal from the assessment made under the *Income Tax Act* for the 2007 taxation year is dismissed.

Signed at Toronto, Ontario, this 2nd day of December 2013.

"Campbell J. Miller"

C. Miller J.

Docket: 2011-4093(IT)G

BETWEEN:

ANSEL HYATALI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard consecutively with the Appeals of
Mary Khristine Torres (2010-3047(IT)G), Mary Torres (2012-258(IT)G), Eva Torres (2011-4103(IT)G), Michael McNulty (2011-3223(IT)G), Andre Gautier (2011-3321(IT)G) and Carrol Strachan (2010-3044(IT)G)
on November 4, 5, 6 and 8, 2013, at Toronto, ON

By: The Honourable Justice Campbell J. Miller

Appearances:

Counsel for the Appellant:	Dale Barrett
Counsel for the Respondent:	H. Annette Evans, Rishma Bhimji Kathleen Beahen, Lindsay Beelen

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JUDGMENT

The Appeal from the assessment made under the *Income Tax Act* for the 2009 taxation year is dismissed.

Signed at Toronto, Ontario, this 2nd day of December 2013.

"Campbell J. Miller"

C. Miller J.

Citation: 2013 TCC 380
Date: 20131202
Docket: 2010-3047(IT)G

BETWEEN:

MARY KHRISTINE TORRES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

and

Docket: 2012-258(IT)G

MARY TORRES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

and

Docket: 2011-4103(IT)G

EVA TORRES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

and

Docket: 2011-3223(IT)G

MICHAEL McNULTY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

and

Docket: 2011-3321(IT)G

ANDRE GAUTIER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

and

Docket: 2010-3044(IT)G

CARROL STRACHAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

and

Docket: 2011-4093(IT)G

ANSEL HYATALI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent

REASONS FOR JUDGMENT

C. Miller J.

[1] This is a sad and sorry tale of taxpayers, Mary Khristine Torres, Eva Torres, Michael McNulty, Andre Gautier, Carrol Strachan and Ansel Hyatali, who are just six of many taxpayers who were led down a garden path, with the carrot at the end of the garden being significant tax refunds. The tax refunds were the result of claiming fictitious business losses. All the Appellants put their unwavering faith in representatives of Fiscal Arbitrators to prepare their returns in a manner that would produce the sought after refunds. The Canada Revenue Agency ("CRA") denied the losses and penalized the taxpayers pursuant to subsection 163(2) of the *Income Tax Act* (the "*Act*"). These cases pertain only to the penalties.

[2] The issue is simply whether the taxpayers either knowingly, or in circumstances that amounted to gross negligence, made or acquiesced in the making of false statements.

FACTS

Mary Khristine Torres

[3] Ms. Mary Torres presented as a forthright, credible witness. She completed three years of a university degree in the Philippines, and in Canada she completed a Bachelor of Science in nursing and qualified as a registered practical nurse.

[4] In 2006, 2007 and 2008, Ms. Mary Torres worked as a nurse in the long-term care sector, specifically completing health assessments. She dutifully reported her employment income from this work as well as some interest income. She always had tax preparers do her returns as she indicated she did not understand accounting, tax returns or even business. For the years 2002 to 2006, she filed and received refunds of $1,029, $814, $1,061, $1,312 and $29. In 2008, Ms. Mary Torres filed her 2007 return, again prepared by a tax preparer, reporting her employment income and investment income of $70,991 and $267. Shortly thereafter, however, she was introduced to Mr. Larry Watts with Fiscal Arbitrators. He was a co-worker of Ms. Mary Torres' mother. According to Ms. Mary Torres, Mr. Watts had been able to obtain tax refunds for several of her mother's friends.

[5] Ms. Mary Torres had a couple of meetings with Mr. Watts which led to her filing an adjustment request on May 26, 2008 for her 2007 tax return. It showed as follows:

Gross Business Income $15,800
Net Business Income ($113,426)

She certified this information as correct. On being asked whether she reviewed this document before signing, she gave the same answer she would give to all documents she signed and submitted to the CRA, and that is, Mr. Watts prepared it, she read it and signed it without asking anything about it. She trusted him. He was a professional. She claims she understood so little of the tax return, she did not know what questions to ask.

[6] It is helpful to review the documents and correspondence flowing back and forth between the CRA and Ms. Mary Torres, always bearing in mind that she never drafted the materials submitted to the CRA, though always read them, claiming not to understand.

[7] On September 19, 2008, the CRA responded to Ms. Mary Torres' adjustment request with a request to complete and return a business questionnaire, attaching receipts for the claimed expenses of $129,226. Mr. Watts prepared a letter dated October 14, 2008, for Ms. Mary Torres to send, in response, to the CRA. It forwarded no information the CRA were seeking.

[8] On January 21, 2009, the CRA again wrote Ms. Mary Torres advising they were proposing to deny the business loss and considering the imposition of penalties.

[9] Again, Ms. Mary Torres read the letter, provided it to Mr. Watts, who provided her with a letter of February 9, 2009, to send back to the CRA again providing no information and rejecting their proposal.

[10] On April 29, 2009, the CRA wrote to Ms. Mary Torres with their final position with respect to the losses and indicating they were applying gross negligence penalties. Again, Mr. Watts provided Ms. Mary Torres with a response dated May 2, 2009, to the CRA rejecting the CRA's position and seeking compensation from the CRA.

[11] In going over these documents, Ms. Mary Torres stated repeatedly that although she read them she did not understand what they meant, though acknowledging that she knew she was not engaged in any business activity.

[12] The communications with respect to the 2008 taxation year were similar, and it is unnecessary to repeat a document by document review. I do note, however, that she signed the 2008 return claiming $30,000 in business losses on March 20, 2009, two months after she had been notified by the CRA they were considering gross negligence penalties with respect to the 2007 taxation year. She signed her name on her return after putting in "per". The tax preparer did not complete the box in the return for professional tax preparers. She held firm in her testimony that, though she read the correspondences from the CRA, she simply forwarded everything to Mr. Watts without question, and then followed his instructions, including, for example, putting a three cent stamp on the bottom of one of the letters to the CRA, writing her name diagonally across it. She never contacted the CRA on her own accord or asked her former tax preparer to review the situation.

[13] To give a flavour of the verbiage used by Mr. Watts in the letters he instructed Ms. Mary Torres to sign, I reproduce part of a letter dated September 8, 2011, from Ms. Mary Torres, which she wrote with "ens legis" after her name. (translated as "an artificial being")

> Any and all opinions offered in your letter are expressly rebutted for cause.
>
> Please provide within 30 days to avoid Full Estoppel of any variance from your stated duty – the facts, reasons and assumptions and all presumptions upon which you are relying to make your offer only on a "under *your* penalty of perjury" and "under *your* full commercial and equitable liability under international law" basis to verify your accountability and uprightness, as previously agreed, and send all such information to the address as noted above for verification.

[14] Ms. Mary Torres, understandably, could not explain any of what Mr. Watts prepared for her, including her returns, adjustment requests or correspondences.

[15] The CRA denied her business losses for 2007 and 2008 and imposed penalties.

Eva Torres

[16] Ms. Eva Torres is an insurance broker with Canada Protection Plan, dealing with health, dental and travel insurance. She has a Bachelor of Commerce and Economics from the Philippines. Mr. Watts, a representative of Fiscal Arbitrators, was also a broker with the insurance company. They had worked in the same company for approximately 18 months when Ms. Eva Torres was advised by a colleague that Mr. Watts was successfully obtaining tax refunds for others. Ms. Eva Torres hired Mr. Watts to prepare her 2008 return in March of 2009. She reported approximately $40,000 of employment income, $13,647 of commission income and a business loss of $39,523 on gross business income of $71,828. The Statement of Agent Activities, filed with her return, indicates:

Business Service:	Agent			
	Gross receipts:			
A.		*Money Collected as Agent for Principal and reported by third parties and Already Posted on lines 101-130 via T4's, T5's, T3's, other slips, etc.	$47,223.55	
		*T4a's and other money reported by 3rd Parties and collected as agent		$13,647.83
		*TOTAL Money Collected as Agent for Principal and Reported by third parties:		$60,871.38
*Additional Money Collected as Agent for principal and NOT Reported by third parties:				$10,956.85
B.	Line 162	*Total money collected as Agent for Principal:		$71,838.23
	Minus			
		Sub contracts and labour *Amount to principal in exchange For labour		$50,456.85
		Gross profit		$21,371.38

	Subtract: (from 'A.' above)		
	*Money Collected as Agent for Principal and Reported by third parties and Already Posted On lines 101-130 via T4's, T5's, T3's, Other slips, etc.		$60,871.38
C.	Line 135	Net Amount (- Loss)	($39,500.00)

[17] Ms. Eva Torres acknowledged she was not in any agent business. She could not say what any of the numbers represented. She did not understand how the business losses arose.

[18] Ms. Eva Torres did read her return before certifying it correct. She never questioned Mr. Watts about any of it, as she was confident what he was doing was correct. She, like the others, followed Fiscal Arbitrators' instructions to sign her name after "per" on her return. The box for completion by professional tax preparers was left blank.

[19] In a letter of November 2009, the CRA asked Ms. Eva Torres for information supporting the business losses, including completing a business questionnaire. She simply handed this on to Fiscal Arbitrators who provided a form of response which she signed and dated December 4, 2009, providing no further information.

[20] In June 2009, the CRA proposed denying the business losses and imposing penalties. Ms. Eva Torres again simply forwarded this correspondence to Fiscal Arbitrators who again provided a template response, which Ms. Eva Torres signed and, as requested by Fiscal Arbitrators, affixed a three cent stamp with her name across it at the bottom of the letter. She never attempted to contact CRA of her own accord, nor did she ask Fiscal Arbitrators about the response she was told to sign.

[21] Ms. Eva Torres, after receiving the Notice of Assessment dated March 3, 2011, denying losses and imposing penalties, had Fiscal Arbitrators prepare a Notice of Objection. She read it and signed it. It still maintained the returns were accurate.

[22] The CRA wrote to Ms. Eva Torres in response to the Notice of Objection asking again for support for the $39,500 business loss claimed. In accordance with her *modus operandi* she simply signed what Fiscal Arbitrators told her to. The response letter of September 8, 2011 read the same as that sent by Ms. Mary Torres on the same date (see paragraph 13).

[23] In the five years prior to 2008, Ms. Eva Torres' tax returns showed she was entitled to a $310 refund in 2003 and owed $576, $1,423, $5,168 and $7,822 respectively in the subsequent years.

[24] By Notice of Confirmation dated November 10, 2011, Ms. Eva Torres was assessed penalties of $4,127 for the 2008 taxation year.

Michael McNulty

[25] Mr. McNulty has a Bachelor of Arts in Civil Engineering and a diploma in Civil Technology. For many years, he acted as a project manager on construction sites for Taggart Construction. Until filing his 2008 return, he had always prepared and filed his own returns, obtaining refunds anywhere from $100 to $2,500. In filing such prior returns, he never reported any business income or loss. As with all the other Appellants, he claimed to be adverse to risk.

[26] In October 2008, Mr. McNulty attended a Fiscal Arbitrators seminar at St. Paul's University in Ottawa, where he first met Mr. Watts. The meeting was private, and participants were asked to sign a form of non-disclosure. Mr. McNulty testified that Fiscal Arbitrators described a new way to file taxes by somehow separating the person from his social insurance number. The ultimate result would be substantial refunds. Mr. McNulty was skeptical but went to a second presentation with a friend. At that meeting, Mr. Watts advised that he was a former CRA officer and that CRA were aware of this arrangement. Mr. McNulty decided to go ahead feeling there was no downside, but recognizing it was not the type of thing he would normally do. He did not tell his wife as, according to Mr. McNulty, she would have set him straight.

[27] Mr. McNulty signed his 2008 return, prepared by Fiscal Arbitrators, on May 21, 2009, certifying it as correct. It, too, did not indicate it was prepared by professional tax preparers. He testified he browsed the return and, as requested by Fiscal Arbitrators, put "per" before his signature.

[28] The return listed business income as $128,147 with business losses of $392,880. Mr. McNulty said he knew he did not have a business and could not have spent $392,880. He also signed as correct a request for loss carrybacks to 2006 and 2007. Mr. McNulty did not understand his return which referred to business as an agent. He believed Fiscal Arbitrators, as former CRA officials, were legitimate and knew what they were doing.

[29] Mr. McNulty also submitted to the CRA an adjustment request, seeking adjustments to his 1998 to 2001 taxation years, by claiming losses ranging from $61,000 to $89,000, resulting in a request for a refund of $104,000 against which Fiscal Arbitrators charged a fee of $18,000.

[30] On March 29, 2010, CRA reassessed the 1998 to 2001 taxation years imposing penalties. Upon receiving those reassessments, which totalled approximately $110,000 in penalties and interest, Mr. McNulty said he felt like a dead man. He sought no other advice, but felt had to rely on Fiscal Arbitrators and respond their way as he "desperately needed them to get him out of this crap". He felt tied into them. He felt he had no choice. So, Mr. McNulty signed the letters and Notice of Objection prepared by Fiscal Arbitrators, followed their instructions to a tee (including not talking to the CRA), but confessed to being uneasy and worried.

[31] In July 2008, the Minister of National Revenue (the "Minister") issued a Notice of Confirmation confirming the penalties for 1998 to 2004 of approximately $42,537 as well as a penalty of $56,749 for 2008.

Andre Gautier

[32] Mr. Gautier is an HVAC technician having qualified as such at a trade school. He has worked in that industry for over 30 years, the last few years as a service manager. He is the sole shareholder of a holding company which has a 10% interest in his employer's company. He would always have tax preparers, specifically an accountant by the name of Mr. Gervais, complete his tax returns for him, which he said he usually simply signed and sent off. He obtained refunds in the prior several years of between $500 and $2,500. During 2008, he and his brother owned a rental property but carried on no other business.

[33] Mr. Gautier was introduced to Fiscal Arbitrators through a contact of his brother. He attended an office where he met Carlton Branch of Fiscal Arbitrators, who explained how the process worked; in effect, people got refunds due to the individuals' social insurance number being a business entitled to some expenses such as clothes, food and other personal expenses. Mr. Gautier never provided Fiscal Arbitrators with any dollar amount representing such expenses. As Mr. Gautier stated, he was not exactly sure of all the details, but he was satisfied Fiscal Arbitrators were professionals and knew what they were doing. He felt no need to run it by anyone else.

[34] Fiscal Arbitrators prepared Mr. Gautier's 2008 return which Mr. Gautier signed (again, after "per", as requested), and certified as correct on May 28, 2009. The return showed his employment income of $81,538, rental income of $9,000 and a business loss of $301,000. He had no idea what that represented.

[35] A Statement of Agent Activities was attached to his return. Mr. Gautier acknowledged he did not know why it showed an agent business or what subcontractors of labour referred to. He believed it was all just part of the process, as he called it.

[36] Mr. Gautier also claimed loss carrybacks to 2005, 2006 and 2007, of $62,423, $71,942 and $76,953 respectively, which, if allowed would have resulted in a refund of all taxes for those years.

[37] On April 9, 2010, the CRA sent Mr. Gautier a letter requesting information with respect to his business losses, including a business questionnaire for him to complete. He did not fill it out but simply had Fiscal Arbitrators prepare responses for him. Fiscal Arbitrators told him it was all part of the process. He was starting to have concerns and went to Mr. Gervais, his previous accountant, who could not explain the numbers to him.

[38] Several correspondences went back and forth between the CRA and Mr. Gautier in 2010. All Mr. Gautier's responses were crafted by Fiscal Arbitrators. He followed their instructions, including placing a stamp with his name through it at the bottom of his response letter, which read in part:

> The terms of the private contract of agency between the free will man commonly called Andre, of the Gautier family, who is the principal, the contributing beneficiary and the real party in interest for the fictional entity/person/trust called ANDRE GAUTIER, which, by necessity, has become the agent in commerce for the principal; is not subject to the scrutiny of a third party entity, and therefore; any private dealings between the principal and agent cannot be released to the Canada Revenue Agency.

Again, he was advised it was all part of the process. He did not contact the CRA though indicated he and his wife had concerns. He continued, however, to rely on Fiscal Arbitrators who prepared his Notice of Objection, again, a template in which the reason for the objection read in part as follows:

> - This notice is rescinding all signatures and/or assumed acceptances regarding this reassessment of this taxation year, nunc pro tunc

- Proper notice was not received to provide the opportunity to reject and dispute the terms of the proposal or offer.
- All information received by CRA was certified as correct, complete and fully discloses all income.

[39] Mr. Gautier acknowledged that it did not make sense at the start and he is embarrassed by his involvement with Fiscal Arbitrators.

[40] The CRA issued a Confirmation July 22, 2011, confirming penalties of $14,117 with respect to the 2008 taxation year.

Carrol Strachan

[41] Ms. Carrol Strachan is a long time Air Canada flight attendant who claimed to have a fair to good understanding of accounting, though did not prepare her own tax returns. She has never owned or operated her own business that yielded any reportable income. Before 2007 she never claimed any business loss. She would typically receive tax refunds of between $1,000 to $2,400. For a number of years, Ms. Strachan had Carlton Branch prepare her returns without any problem. She described him as a former CRA official who prepared tax returns and handled mutual funds. In 2008, she was introduced by Mr. Branch to Mr. Watts at Fiscal Arbitrators. He came to her home to make a presentation explaining he used to work for the CRA. He advised her that he could get more back on taxes and had done so successfully for others. She recalled him explaining something about principals and agents entitled to deductions, though described them as "dancing around a lot of stuff". Although they wanted her to "do more years" she decided to just do the one year, 2007. As she indicated - "I am cautious".

[42] Ms. Carrol Strachan had Fiscal Arbitrators prepare her 2007 return. Mr. Branch advised her to sign after "per". She reviewed the return, but not in detail. The return reported her employment income of $76,998 as well as gross business income of $15,000 and business losses of $62,068. She confessed she does not know what that means. At the time, Fiscal Arbitrators told her she was entitled to monies back from the Government, and that they made it sound believable. She felt she did not need to pay tax as both Mr. Branch and Mr. Watts said she did not have to. She trusted them but displayed some concern even prior to her return.

[43] In going over the Statement of Business Activities filed with her return, it was clear Ms. Carrol Strachan did not understand the use of agent or monies collected as agent for principal or other expenses described as paid to principal as agent. This is

not surprising given it is basically nonsense. She maintains that though not understanding, she felt it was legal. She indicated she filed a "normal" return for 2008.

[44] In December 2008, Ms. Carrol Strachan received a request from the CRA for information with respect to the business losses. She called Mr. Branch and Mr. Watts who indicated they would take care of it. She asked them what did you get me into. However, she signed the responses to CRA they prepared for her.

[45] What followed was the correspondences back and forth between the CRA and Ms. Carrol Strachan, each time Ms. Strachan relying on the template provided by Fiscal Arbitrators. She kept being advised they would take care of it, and that she remained entitled to the monies. This continued right up to Fiscal Arbitrators drafting her appeal after the Notice of Confirmation. Even in an Answer to the Reply she is still being referred to as a fictional entity.

[46] Ms. Carrol Strachan did get a refund though kept it in the bank as she was not comfortable spending it.

[47] Ms. Carrol Strachan never called the CRA to inquire of the correctness of the arrangement. She never saw or heard of any warning from the Government about this, but neither did she search for anything on their website.

[48] The Minister issued a Notice of Confirmation June 25, 2010, denying the losses and applying penalties against her 2007 taxation year.

Ansel Hyatali

[49] Mr. Ansel Hyatali has worked as a lead hand at a paint distribution centre for 25 years. He has a Grade 12 education and a welding certificate. He has never owned or operated a business and consequently never, until the years in issue, reported business losses, just employment income. He normally got a $2,000 to $4,000 refund on his returns. Prior to 2007, he used the firm of Steve Tax Services to prepare his returns.

[50] Mr. Ansel Hyatali had been put in touch with Mr. Carlton Lewis in 2007 by a workmate who advised Mr. Hyatali that Mr. Lewis attended church. There is some confusion from Mr. Hyatali's testimony as to who prepared what returns, though it seems Mr. Lewis prepared Mr. Hyatali's 2007 return, someone else prepared his 2008 return and a Mr. Frikki prepared the 2009 return, the return in question. Mr. Hyatali testified, however, that it was Mr. Lewis who told him to simply sign the 2009 return. Mr. Hyatali gave no evidence of Mr. Frikki's background.

[51] In the 2007 and 2008 returns, Mr. Ansel Hyatali claims some significant charitable donations, which were questioned by the CRA. Mr. Hyatali asked Mr. Lewis to assist him with that issue. Mr. Hyatali claims to have never had any contact with Fiscal Arbitrators, though was advised by Mr. Lewis that correspondence from the CRA to Mr. Hyatali would be passed on to Fiscal Arbitrators.

[52] Mr. Ansel Hyatali did not prepare his 2009 return though he did sign it and certify it. It did not show that it was prepared by a professional tax preparer. The 2009 return indicated Mr. Hyatali's employment income was $64,881 and that he also had business income of $76,910 and a business loss of $232,159. Mr. Hyatali has no idea where that came from. He had no business. He did not ask anyone about the numbers. Similarly, he had no idea what the numbers on the Statement of Business Activities meant. He just signed where told, without reviewing the documents. He knew he did not have a business when he signed. Likewise, in claiming loss carrybacks of $57,402, $60,021 and $52,152 he had no idea what it meant.

[53] In October 2010, Mr. Ansel Hyatali received a request for more information from the CRA regarding the business losses. He simply handed this over to Mr. Lewis, who said he would take care of it. He was given a letter to sign in response to the CRA on October 14, 2010, which read in part:

> These proposals are conditionally accepted upon receipt of truthful answers to each of the questions below by close of business, thirty (30) days from the date of this letter; absent the answer to any one of the questions, acknowledges your office's agreement to compensate the animator pursuant to the animator's fee schedule for responding to any review or audit.

Mr. Ansel Hyatali had no idea who the animator was, referred to in the letter. He never spoke to the CRA directly. The usual back and forth correspondences followed between the CRA and Mr. Hyatali, who relied totally on answers provided by Mr. Lewis. Mr. Hyatali never questioned why he owed money. He never sought additional help. He simply let Mr. Lewis deal with it. In the Notice of Objection of April 28, 2011, which Mr. Lewis had Mr. Hyatali sign, there is reference to establishing a home business. Mr. Hyatali acknowledged he had no idea why that was put in.

[54] Mr. Ansel Hyatali never went to the CRA website or contacted the CRA directly. He agreed that he blindly followed Mr. Lewis' advice.

[55] By Notice of Confirmation November 1, 2011, the Minister denied the business loss of $232,159 and levied penalties of $28,111.

CRA Publications

[56] The CRA introduced into evidence several excerpts from their website. Many indicated they were modified in 2011 or 2012 so it cannot be determined if they were on the site in 2007, 2008 or 2009. There are a handful, however, that appear to have been on the website during the relevant period. I will reproduce some excerpts from the CRA website:

a) Tax Alert: Aggressive Tax Planning (2005-11-10)

> If it sounds too good to be true, or whenever you are dealing with a situation that is out of the ordinary for you, you might want to consult with a trusted and knowledgeable tax advisor who will explain to you the risks and consequences of various tax planning arrangements.

b) Tax Alert: Warning: Schemes that promote big tax losses or deductions are not worth the risk.

If it sounds too good to be true, it probably is. Unregistered tax shelters can take many forms, but they typically involve buying a tax loss that is well in excess of the cash investment. ...

However, don't be fooled; simply buying a tax loss does not mean it is deductible. …

Get professional, independent advice…

Come to us before we come to you.

c) News Release: The CRA takes action to enforce tax laws – April 3, 2009

Some Canadians are finding out the hard way that they cannot avoid paying their share of taxes. …

The CRA is reminding all taxpayers when they file their 2008 return to be sure to report their income, deductions and credits accurately.

d) Tax Alert: Don't get involved in illegal tax filing.

If you hear about a tax preparer offering larger refunds than other preparers, don't be fooled! While most preparers provide excellent service to tax filers, a few unscrupulous return preparers file false and fraudulent tax returns and ultimately defraud their clients. Remember that even if someone else prepares your tax return, you are the one responsible for all the information on the return. …

Failure to follow tax laws will result in consequences. In addition to fines imposed by the courts, which can represent up to 200% of the taxes evaded, and in jail time, you still have to pay the taxes owed and all other civil penalties and interest imposed the CRA.

Issue

Are the Appellants subject to penalties pursuant to subsection 163(2) of the *Act*?

Analysis

[57] Subsection 163(2) of the *Act* reads in part as follows:

> 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

[58] There are two elements necessary to find liability for penalties in the cases before me:

a) a false statement;

b) knowledge or gross negligence of making, assenting to or acquiescing in the making of a false statement in a return.

[59] The Appellants' counsel also raised the defence that, as the CRA did not warn taxpayers of the Fiscal Arbitrators' scam, as required to do under the provisions of the taxpayers Bill of Rights, the taxpayers had no reason to question the convincing presentations of Fiscal Arbitrators and cannot therefore be found to be grossly negligent, and should therefore be absolved of any liability.

[60] In all cases there is no question there is a false statement. None of the Appellants had losses arising from a business.

[61] Turning then to the issue of whether the Appellants knew or acted in a grossly negligent manner, I will review some case law with respect to gross negligence penalties generally and then refer to the few Fiscal Arbitrator cases that our Court has already heard.

[62] Justice Bédard in the case of *Laplante v Canada*[1] provides a good summary of the general principles regarding gross negligence:

> 11. The concept of "gross negligence" accepted in the case law is that defined by Mr. Justice Strayer in *Venne v. Canada (Minister of National Revenue - M.N.R.)*(F.C.T.D.), [1984] F.C.J. 314:
>
> > ..."Gross negligence" must be taken to involve greater neglect than simply a failure to use reasonable care. It must involve a high degree of negligence tantamount to intentional acting, an indifference as to whether the law is complied with or not....
>
> 12. In *Da Costa v. Canada* , [2005] T.C.J. No. 396 (TCC informal procedure), the Honourable Chief Justice Bowman referred to the decision in *Undell v. M.N.R.* , [1969] C.T.C. 704, 70 DTC 6019 (Ex. Ct.), and two other decisions by Mr. Justice Ripp (as he then was) and made the following remarks:
>
> …
>
> > 11. In drawing the line between "ordinary" negligence or neglect and "gross" negligence a number of factors have to be considered. One of course is the magnitude of the omission in relation to the income declared. Another is the opportunity the taxpayer had to detect the error. Another is the taxpayer's education and apparent intelligence. No single factor predominates. Each must be assigned its proper weight in the context of the overall picture that emerges from the evidence.
>
> …
>
> 13. Further, in *Villeneuve v. Canada* , 2004 DTC 6077, the Federal Court of Appeal made it clear that "gross negligence" could include wilful blindness in addition to an intentional act and wrongful intent. In that decision, Mr. Justice Létourneau said the following in this regard, at paragraph 6:
>
> > With respect, I think the judge failed to consider the concept of gross negligence that may result from the wrongdoer's wilful blindness. Even a wrongful intent, which often takes the form of knowledge of one or more of the ingredients of the alleged act, may be established through proof of wilful blindness. In such cases

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[1] 2008 TCC 335.

> the wrongdoer, while he may not have actual knowledge of the alleged ingredient, will be deemed to have that knowledge.

[63] The Federal Court of Appeal addressed the concept of wilful blindness in more detail in the case of *Panini v Canada*,[2] also citing Justice Létourneau in the *Villeneuve v Canada*[3] case, but going on to draw on the criminal case of *R. v Hinchey*:[4]

> 42 In *R. v. Hinchey*, [1996] 3 S.C.R. 1128, Cory J. discussed the concept of "wilful blindness" in the context of criminal law. At paragraphs 112 to 115 of that decision, he wrote the following:
>
> …
>
> > In other words, there is a suspicion which the defendant deliberately omits to turn into certain knowledge. This is frequently expressed by saying that he "shut his eyes" to the fact, or that he was "wilfully blind."
>
> …
>
> > 114. In *Sansregret, supra,* this Court held that the circumstances were not restricted to those immediately surrounding a particular offence but could be more broadly defined to include past events. McIntyre J. distinguished wilful blindness from recklessness and quoted with approval a passage from Glanville Williams with regard to its application (at pp. 584 and 586):
> >
> > > Wilful blindness is distinct from recklessness because, while recklessness involves knowledge of a danger or risk and persistence in a course of conduct which creates a risk that the prohibited result will occur, wilful blindness arises where a person who has become aware of the need for some inquiry declines to make the inquiry because he does not wish to know the truth. He would prefer to remain ignorant.
>
> …

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2 251 N.R. 55 (FCA).

3 2004 D.T.C. 6077 (FCA).

4 [1996] 3 S.C.R. 1128.

> 43. Although Cory J.'s comments were made in the context of a criminal law case, they are nonetheless, in my view, entirely apposite to the facts of the present case. Consequently, the law will impute knowledge to a taxpayer who, in circumstances that dictate or strongly suggest that an inquiry should be made with respect to his or her tax situation, refuses or fails to commence such an inquiry without proper justification.

[64] The Tax Court of Canada has had several occasions to apply the concept of wilful blindness to Fiscal Arbitrator type cases, and there has developed a similarity of approach and result.

> *Bhatti v Canada* [5]
>
> 22. … Mr. Bhatti saw and signed his return. I believe he saw the $1,000,000 income and $477,000 loss. He knew they were simply not true. He knowingly made a false statement in this regard.
>
> 23. Even if I accept his explanation that he did not review the return in such detail as to have known the refund was drawn from made up numbers, then his conduct was so wilfully blind, not caring whether or not he complied with the law, that it constituted gross negligence.
>
> 24. The reason I reach this conclusion is because:
>
> a) The magnitude of the claim was huge compared to his overall income.
>
> b) He had many opportunities to detect the false assertion:
>
> i) just the size of the refund alone should have raised suspicions.
>
> ii) both his wife and his accountant told him it smacked of fraud.
>
> iii) a cursory review of the return itself would reveal the completely unaccountable $500,000 loss.
>
> iv) the request to sign the return with the insertion of "per".
>
> These are not subtle signs of a possible problem, but glaring flashing red lights. Mr. Bhatti did nothing.

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[5] 2013 TCC 143.

c) Mr. Bhatti was not inexperienced when it came to knowing what business income and losses were. He not only had employment income, but also business income from his construction business. As well, he had some investment income and rental income. He was not inexperienced commercially.

He had the opportunity, the experience and the knowledge to appreciate this $31,000 could only be triggered by false assertions. This is a classic case of wilfull blindness to which penalties should apply.

Brochu v HMQ [6]

20. Since *Villeneuve*, the issue is no longer confined to determining whether a taxpayer was aware of the specialist's negligence and whether he or she was indifferent, but also includes cases where the taxpayer blindly trusts the person preparing the return. In this case, even though the appellant had no intentional and deliberate knowledge of Ms. Tremblay's errors, she was still wilfully blind.

…

22. The appellant testified that she had quickly leafed through the return but that she did not understand the words "business income" and "credit". Considering her education level and the fact that she had prepared her original return for the 2001 taxation year herself, it is difficult to believe that the appellant did not understand those words. If it is true that she did not understand them, she cannot use that as an excuse to avoid her liability. She should have tried to understand by asking Ms. Tremblay questions or by getting information from others in order to ensure that her income and expenses were properly accounted. For some reason, she did not think it necessary to get informed, and it is that carelessness which constitutes gross negligence, in my opinion. The penalty is thus justified under the circumstances.

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6 2011 TCC 75.

Brisson v Canada [7]

30. Mr. Brisson stated that he did not make an omission or a false statement in his 2008 income tax return. The evidence contradicted his testimony. It showed that he claimed a business loss of $876,260.10 in his return and yet in cross-examination he admitted that he did not have a business and the business loss he claimed did not occur. This is exactly the type of false statement that subsection 163(2) is intended to penalize and deter.

…

35. Considering Mr. Brisson's business experience, that he had prepared his own income tax returns for 35 years and the magnitude of the false statement he reported in his 2008 income tax return, I have concluded that Mr. Brisson knew that the amounts he reported in his return were false and I have concluded that the gross negligence penalties were properly imposed.

36. … If Mr. Brisson truly did not know that he was participating in a scam on the tax system, then he was wilfully blind. He was willing to sign his income tax return and join in the deception in exchange for a refund of all the taxes he had paid in 2005, 2006, 2007 and 2008.

Chénard v Canada [8]

21. … In this case, the magnitude of the reported business losses is an overwhelming factor because, even with little formal education and even without understanding our tax system, a reasonable person could have easily questioned the legitimacy of these losses.

22. The appellant also admitted never having run a business. However, even if he thought he was part of a "corporation" through which he had invested in Mr. Joannis' business projects, the amounts of the reported losses were not at all consistent with reality. The concepts of business and loss are not so obscure that a reasonable person could think it was legal to report unrealistic business losses.

…

27. The evidence presented by the respondent shows that the appellant had been careless and even indifferent and that his behaviour was tantamount to gross

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7 2013 TCC 235.

8 2012 TCC 211.

> negligence. The appellant had never run a business and while he thought he was part of a company, he had never sustained substantial losses. He could not speak English, the language in which this proposal was offered. He did not understand how he could be entitled to such tax refunds, but chose to believe the people making the proposal because they were experts.
>
> 28. The appellant should have made an effort to consult other people besides those proposing the plan. …

Janovsky v Canada [9]

> 18. I agree with counsel that gross negligence includes the concept of wilful blindness. However, it is my view that the evidence in this appeal demonstrates that the Appellant knowingly made the false statement.
>
> …
>
> 23. Considering the Appellant's education and the magnitude of the false statement he reported in his 2009 return, it is my view that the Appellant knew that the amounts reported in his return were fake.
>
> 24. If I am incorrect and the Appellant did not knowingly make the false statement, then I find that he was wilfully blind. If he indeed did not understand the terminology used by FA in his return and if he did not understand how FA calculated his expenses, then he had a duty to ask others aside from FA. In a self-assessing system such as ours, the Appellant had a duty to ensure that his income and expenses were correctly reported. Our system of taxation is both self-reporting and self-assessing and it depends on the honesty and integrity of the taxpayers for its success: *R v McKinlay Transport Ltd.*, [1990] 1 SCR 627. The Appellant's cavalier attitude demonstrated such a high degree of negligence of wilful blindness that it qualified as gross negligence: *Chénard v The Queen*, 2012 TCC 211.

[65] Based on this jurisprudence and the evidence that I have heard in the six Appeals before me, I draw the following principles:

a) Knowledge of a false statement can be imputed by wilful blindness.

b) The concept of wilful blindness can be applied to gross negligence penalties pursuant to subsection 163(2) of the *Act* and it is appropriate to do so in the cases before me.

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9 2013 TCC 140.

c) In determining wilful blindness, consideration must be given to the education and experience of the taxpayer.

d) To find wilful blindness there must be a need or a suspicion for an inquiry.

e) Circumstances that would indicate a need for an inquiry prior to filing, or flashing red lights as I called it in the *Bhatti* decision, include the following:

i) the magnitude of the advantage or omission;

ii) the blatantness of the false statement and how readily detectable it is;

iii) the lack of acknowledgment by the tax preparer who prepared the return in the return itself;

iv) unusual requests made by the tax preparer;

v) the tax preparer being previously unknown to the taxpayer;

vi) incomprehensible explanations by the tax preparer;

vii) whether others engaged the tax preparer or warned against doing so, or the taxpayer himself or herself expresses concern about telling others.

f) The final requirement for wilful blindness is that the taxpayer makes no inquiry of the tax preparer to understand the return, nor makes any inquiry of a third party, nor the CRA itself.

[66] Did the Appellants act with wilful blindness?

Education and experience

[67] All the Appellants presented as intelligent individuals, who understood what a business was, though professed to not understanding accounting principles (although Ms. Strachan indicated a limited to fair understanding) or the complexities of tax returns. Apart from Mr. Hyatali, all had some post-high school education, university or trade school. All appeared to have had steady employment. Apart from Mr. McNulty, all had had tax preparers file previous returns up to the years in question, though Ms. Strachan had Mr. Branch (later associated with Fiscal Arbitrators) prepare hers. I consider none of the Appellants so lacking in education or basic understanding of concepts such as business, or tax as to claim ignorance. The worst that can be said is that they shared an unfortunate level of gullibility, and I can only conclude that was fed upon by Fiscal Arbitrators, appreciating no doubt the motivating strength of substantial refunds. Education, experience and intelligence are not factors that could relieve these Appellants of a finding they knowingly or under circumstances amounting to gross negligence made false statements.

Suspicion or need to make an inquiry

[68] It is in this respect that Mr. Barrett argues the Appellants are not wrongdoers upon whom such harsh penalties should be levied. They were confident they were entitled to the refunds: they had been completely and utterly convinced so by superb conmen. According to Mr. Barrett, the Appellants are blameless: they neither knew nor suspected there was anything untoward about how these former CRA officials were preparing their returns. They were satisfied CRA were aware of the process and that others had successfully obtained refunds. There were no warning signs Mr. Barrett stresses that would have caused the Appellants to feel any need to make an inquiry. I disagree.

Warning signs

[69] Addressing the factors I identified above that suggest a need for inquiry:

a) Magnitude of the advantage.

In all cases the Appellants were seeking a complete refund. In all cases this was significantly different from prior years' filings. In all cases the amount of the loss claimed was significant in relation to the other income, in some cases (Hyatali, Gautier, McNulty) substantially so.

b) Blatantness of false statement – readily detectable.

In all cases the nature of the falsehood, large business losses when none of the Appellants were actually engaged in business, is so blatantly untrue that no matter how firmly the Appellants believed that, pursuant to some process, they were entitled to refunds of all their taxes, they could not have believed they incurred large business losses. Being convinced of the refund does not automatically imply they believed they had business losses. They simply did not address their minds to it. Mr. Barrett suggested that tax experts could read the return and understand that reporting such business losses made no sense, but these people were not experts. I do not accept that argument. These are all intelligent people with good jobs with a given tax return filing history. None of their returns were elaborate with multiple sources of income. They (with the exception of Mr. Hyatali) all saw the major source of income showed up as an employment income on page 2 of their return. There were not many other numbers on page 2 of their returns and the negative number beside business income does not require a tax expert to comprehend. It is not that complicated. It is easily detectable. In and of itself this is sufficient to cause a suspicion, demanding an inquiry.

But in and of itself, is this sufficient to find actual knowledge of the false statement? If a taxpayer reads a line on a return that indicates clearly a loss from a business, with the knowledge the taxpayer had no business, how can it be said the taxpayer did not know that was false? In the context of the con job done on these Appellants, I can accept they may not have appreciated the significance of the outright lie, and I am therefore pursuing the wilful blindness analysis. So, to be clear, I am looking on the blatantness of the false statement as a warning sign invoking the concept of wilful blindness and imputed knowledge, rather than finding actual knowledge.

c) Tax preparer does not acknowledge preparing return.

Although this may seem a minor point, combined with the many other factors, it should have raised a suspicion. In none of the returns did the tax preparer complete the box for tax professionals. This box, on the last page of the return, is right beside the box signed and dated by each Appellant certifying the information is correct. It is difficult not to see it. It was left empty.

d) Tax preparer makes unusual requests.

The Appellants were asked to sign their returns after the word "per". None of the Appellants suggested they had ever done so before. They were simply following instructions. None of them questioned this odd request.

e) Tax preparer previously unknown to taxpayer.

In most of the cases, Fiscal Arbitrators were unknown to the Appellants. Ms. Eva Torres' and Mr. Watts' time working at Canada Protection Plan overlapped for about 18 months. Ms. Strachan had Mr. Branch do her returns for a few years, though not until the year in question, did he do so in conjunction with Fiscal Arbitrators. Again, this is one of those factors that by itself does not raise strong alarms, but when taken in conjunction with all the other factors, the alarm bell is deafening.

f) Explanation by tax preparer regarding false statement is incomprehensible.

None of the Appellants could explain how the process worked. While they all professed to have the utmost confidence in their tax preparers, they clearly did not understand what they had confidence in, other than an entitlement to large refunds. Some tried to explain that they were led to believe their social insurance number was a separate entity and could somehow incur expenses deductible to them as individuals, or in Fiscal Arbitrator terms, as fictional entities. The language is absurd, the concept is absurd. I can only conclude that the desire for money back outweighed the need to understand.

Mr. Barrett argues that the lack of understanding goes to the complexity of the tax system, and whereas he and I might appreciate the tomfoolery of it all, in the complex world of tax filings, otherwise intelligent people may actually believe they and their social insurance number are separate entities, that they are fiction, that they can legitimately claim business losses without a business and that they can receive full refunds that they had never ever received before. Mr. Gautier believed it had something to do with claiming household expenses yet never submitted any expense numbers to Fiscal Arbitrators. No, I simply do not buy it. Something as completely inexplicable as the Fiscal Arbitrators' scam can only be accepted holus-bolus by an indifference to the comprehension of it. As long as the refund is forthcoming there is no need to understand the detail appears to be the approach, no need to understand the Statement of Business Activities or Agent Activities, for example, which the Appellants certified as correct. This is simply not good enough.

g) Others do not do it or the taxpayer is warned against it or the taxpayer is fearful of telling others.

Ms. Strachan only bit for one year; something was cautioning her against doing more. Mr. McNulty was skeptical after the first meeting with Fiscal Arbitrators; he did not tell his wife as she "would have set him straight". This is an acknowledgment of having seen the signs and yet still made no further investigation. Mr. McNulty perhaps best explained this by saying he believed there was simply no downside. While this is an understandable response, it does not serve to relieve him of a finding of wilful blindness.

[70] I readily conclude there were sufficient warning signs to cause the Appellants to make further inquiries of the tax preparers themselves, independent advisers or even the CRA, prior to signing their returns. None of the Appellants made such inquiries before making the false statements. Mr. Barrett argues there were no warnings justifying an inquiry. As I have made clear, the evidence does not support that argument. He then seems to suggest the warnings were not so evident or strong as to demand an inquiry. Again, I have found otherwise - the evidence simply does not support that position. Then he suggests that even if there were warnings, the Appellants were so conned by Fiscal Arbitrators they may have been blind to those warnings, but they were not wilfully blind. There was no wilful or intentional wrongdoing punishable by such harsh penalties. Negligence perhaps, Mr. Barrett would argue, but not such cavalier disregard for the law as to attract gross negligence. They were simply duped.

[71] The Appellants argument in this regard would be more persuasive where the circumstances do not suggest so strongly the need to inquire. It is difficult to counter wilful blindness with a defence of no wrongful intention when the concept of wilful blindness imputes knowledge regardless of intention (see *Panini*). Perhaps it might be better stated that such strong circumstances as I find exist here, that scream for an inquiry, impute the wilful element of wilful blindness. Blindness is evident. The strong circumstances effectively preclude a defence that "I believed what I was doing was okay", even where that belief arises from being duped by others.

[72] As is clear from a review of the evidence, as well as a review of the factors that indicate an inquiry was warranted, there are significant similarities amongst the six Appeals. The circumstances surrounding the preparation, review, signing and filing of the returns are not so dissimilar to reach any different results. The difference in circumstances are minor. I will identify a few.

Mr. Hyatali may not have read the return to see the glaring large business loss staring him in the face. That was negligent: combined with the other warning signs, all ignored by Mr. Hyatali, there is more than enough to conclude he too was wilfully blind.

Ms. Mary Torres not only should have suspected something amiss when filing her 2007 return, she clearly knew something was wrong when she filed her 2008 return, given the CRA had been in touch with her regarding her 2007 return.

While Ms. Eva Torres indicated Mr. Watts worked at the same organization for 18 months, she did not suggest there was any close working relationship that might have alleviated any suspicion.

CRA warnings

[73] I turn now to the Appellants' argument that based on the taxpayers' Bill of Rights, the Government had a duty to warn taxpayers and it failed to do so. Its failure therefore precludes it from now seeking penalties from the Appellants. An intriguing argument but it too must fail.

[74] First, if the taxpayers' Bill of Rights imposes a duty on the Government, a failure to meet that duty might be cause of action against the Government, but it does not go to the correctness of the penalty assessment. At most, it can be considered in the context of whether or not there were any warning signs that would demand an inquiry by the Appellants. A failure of the Government to provide warnings suggests there were not sufficiently strong circumstances to find wilful blindness. I have, however, concluded that even without any warning from the CRA, the circumstances of the Fiscal Arbitrators prepared returns strongly justified further inquiry.

[75] Yet, I would go further. Had any of the Appellants done some minimal snooping on the CRA's website to their Tax Alert section, they would have readily found the types of warnings set out earlier in these Reasons. If something is too good to be true, guess what? Mr. Barrett argues the warnings were not explicit enough, not publicized enough. He suggested a full page ad in the Globe and Mail specifically referring to Fiscal Arbitrators may be considered sufficient warning. In this modern age of electronic communication and websites for pretty much everything, it is not unreasonable to expect the CRA would have a website and warnings, if any, would be posted on that website.

[76] I reject Mr. Barrett's argument that the CRA failed to warn. I further reject the notion that if they did fail to warn, penalties cannot be assessed. They can be assessed.

Conclusion

[77] It is difficult to feel a great deal of sympathy for the Appellants notwithstanding some presented as most sympathetic characters, simply duped by the bad guys. Yet, underlying this purported duping is a motivation attributable to all of them to not have to pay taxes. Fiscal Arbitrators was not hired just to prepare their returns – it was hired to prepare their returns in such a way as to produce a significant refund; in fact, a refund that would result in no tax in the year in question, and with respect to some, prior years as well. I question how an individual, regardless of the level of education, who has worked in Canada, paid taxes and benefited from all the country has to offer, can without question enter an arrangement where he or she claims fictitious business losses and therefore simply does not have to pay his or her fair share, indeed, does not have to pay any share of what it takes to make the country function. I am not unsympathetic to spouses and family who may suffer from the significant negative financial consequences these penalties will heap upon them by the actions of the Appellants: the Appellants' penalties are indeed harsh. I however cannot pretend the specific 50% penalty called for by subsection 163(2) of the *Act* can be something less. That is only something the Government can consider.

[78] It was clear to me these Appellants have paid a huge price, not just economically, as a result of Fiscal Arbitrators' deceitful ways. I have concluded, however, that penalties are clearly justified, though I am concerned about the devastating effect the magnitude of the penalties will have on the Appellants. I recognize this consideration is not a factor cited in Rule 147 of *Tax Court of Canada Rules (General Procedure),* but I do not view the list of factors as exhaustive. Add to this the fact that few General Procedure cases have been heard regarding Fiscal Arbitrators, that I view these matters akin to test cases, though acknowledging the Parties did not present them as such, and that a novel argument was presented by the Appellants' counsel, I exercise my discretion to not award costs. Having said that, I make no representation that not awarding costs is something I would consider in future Fiscal Arbitrators' cases.

[79] The Appeals are dismissed.

Signed at Toronto, Ontario, this 2nd day of December 2013.

"Campbell J. Miller"

C. Miller J.

CITATION:	2013 TCC 380
COURT FILE NO.:	2010-3047(IT)G, 2012-258(IT)G, 2011-4103(IT)G, 2011-3223(IT)G, 2011-3321(IT)G, 2010-3044(IT)G and 2011-4093(IT)G
STYLE OF CAUSE:	MARY KHRISTINE TORRES AND HER MAJESTY THE QUEEN, MARY TORRES AND HER MAJESTY THE QUEEN, EVA TORRES AND HER MAJESTY THE QUEEN, MICHAEL McNULTY AND HER MAJESTY THE QUEEN, ANDRE GAUTIER AND HER MAJESTY THE QUEEN, CARROL STRACHAN AND HER MAJESTY THE QUEEN and ANSEL HYATALI AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	November 4, 5, 6 and 8, 2013
REASONS FOR JUDGMENT BY:	The Honourable Justice Campbell J. Miller
DATE OF JUDGMENT:	December 2, 2013

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