Docket: 2011-2692(GST)G

BETWEEN:

LES PLANCHES MURALES JENLEAU INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Docket: 2011-2695(GST)G

AND BETWEEN:

LES RÉSIDENCES CHAMBRU INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on November 2, 3, 4, 5, 9, 10, 12, 16, 17, 18, 19, 23, 24, 25, 26 and 30, 2020, at Montréal, Quebec, and on January 12 and 13, 2022, by videoconference at Ottawa, Ontario; written submissions filed on March 18, 2022, April 19, 2022, and May 16, 2022.

Before: The Honourable Justice Guy R. Smith

Appearances:

Counsel for the Appellants:	Soleil Tremblay Michel Latendresse
Counsel for the Respondent:	Nadja Chatelois Gabriel Déry

JUDGMENT

In accordance with the attached reasons, the appeals are allowed and the assessments are referred back to the Minister for reconsideration and reassessment, it being understood that the assessments in connection with the ITCs claimed for the invoices of Les systèmes intérieurs L.V.C. inc. are time-barred. However, the assessments disallowing the ITCs for the other Suppliers are confirmed.

Costs are awarded to the Respondent, prorated on the basis of his success in all of the assessments.

Signed at Ottawa, Canada, this 17th day of August 2023.

"Guy R. Smith"

Smith J.

Translation certified true
On this 30th day of April, 2025

Vera Roy, Senior Jurilinguist

Citation: 2023 TCC 120
Date: 20230817
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<u>**REASONS FOR JUDGMENT**</u>

<u>Smith J.</u>

I – Overview

[1] Les Planches murales Jenleau inc. ("Jenleau") and Les résidences Chambru inc. ("Chambru") operated in the construction and renovation industry and were registered under Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15 ("ETA"). In the course of their business, they filed net tax returns and claimed input tax credits ("ITCs") for supplies from 11 subcontractors that Agence du revenu du Québec characterized as suppliers of accommodation invoices ("SAIs") or invoices of convenience (collectively, the "Suppliers").

[2] Jenleau is appealing two assessments made on October 15 and October 20, 2010, by Agence de revenu du Québec ("ARQ") on behalf of the Respondent ("the Minister") disallowing ITCs in the amount of $192,794.84 that were [TRANSLATION] "claimed and obtained in excess, in error or without entitlement" and imposing penalties for gross negligence and late remittance, plus interest, for the quarterly periods between September 1, 2003, and May 31, 2010.

[3] Chambru is appealing an assessment made on January 11, 2011, disallowing ITCs in the amount of $89,147.41 that were [TRANSLATION] "claimed and obtained in excess, in error or without entitlement" or that it [TRANSLATION] "collected or was required to collect" in the amount of $1,673.00, for a total amount of $90,820.41, and imposing penalties for gross negligence and late remittance, plus interest, for the quarterly period between December 1, 1999, and August 31, 2009.

[4] In short, the Appellants maintain that the assessments were ill-founded in fact and in law, since the Suppliers were genuine subcontractors who performed the services and since the supporting documentation contained all the elements required by the ETA, with the result that they were entitled to the ITCs claimed.

[5] The issue of delays warrants a brief comment. The hearing of these appeals was supposed to take place in November 2015. However, the Court ordered a stay of proceedings while waiting for the conclusion of the criminal prosecutions that will be discussed below. At the start of this hearing, the Appellants brought an interlocutory motion asking that the appeals be allowed because of the significant delays. That motion was dismissed for reasons delivered orally that need not be repeated here.

[6] These appeals were heard together on common evidence.

II – Issues

The Court must consider the following issues:

(i) Were the Appellants entitled to the ITCs claimed in connection with the invoices issued by the Suppliers?
(ii) If so, was the Minister entitled to make the assessments beyond the normal assessment period?
(iii) Was the Minister entitled to impose penalties for gross negligence?
(iv) Finally, the Court must address the impact of the guilty pleas in the context of certain criminal prosecutions.

III – Assumptions of Fact

[7] On the basis of the assumptions of fact, the Minister disallowed the ITCs in question because the Appellants did not provide sufficient information to meet the requirements of the ETA, and because the supporting documentation relating to the supplies from the Suppliers was false or was constituted by [TRANSLATION] "accommodation invoices or invoices of convenience" in that the Appellants (i) did not acquire the supplies of goods or services that they claimed to have acquired, or (ii) acquired said supplies from a supplier other than the those shown on the supporting documentation.

[8] In addition, the Minister assumed that the Appellants had participated in a scheme with the goal of being able to apply for ITCs to which they were not entitled under the requirements of the ETA in computing their net tax by using [TRANSLATION] "accommodation" invoices or invoices [TRANSLATION] "of convenience", and that they did so [TRANSLATION] "to pay some of its employees' wages in cash" without the employees reporting their wages to the Minister and complying with [TRANSLATION]"their legal obligations in that regard".

[9] The Minister maintains that the Appellants, that is, the [TRANSLATION] "accommodated" persons, used the services of third parties regardless of whether or not they operated genuine businesses; these third parties were the [TRANSLATION] "accommodating" persons, that is, certain Suppliers that issued invoices to the Appellants for supplies of goods or services that they had not provided and that the Appellants had not acquired from any of them.

[10] In Jenleau's case, the Minister identified the following Suppliers, all of which were registered under the ETA/QST at the time they performed the services, indicating the time period and the amount paid for the purposes of computing the ITCs claimed:

Jenleau's Suppliers

Dates	"Subcontractors"	Amount paid
2003-11-03 to 2004-03-22	Les systèmes intérieurs L.V.C. inc.* ("LVC inc.")	$ 76,220.56
2003-03-29 to 2005-10-24	9125-9853 Québec inc.* ("9125") ("Energypse / Canagypse / Nikita")	$ 1,056,144.71
2004-05-20	Finitions Pro-Techni inc. ("Finitions Pro")	$ 9,524.07

2005-10-31 to 2006-11-06	9158-7154 Québec inc.* (“9158”) (or Construction Lachapelle)	$ 1,045,069.03 $ -22,887.43
2005-11-10 to 2006-01-13	Construction Lubac inc. (“Lubac”)	$ 17,713.15
2005-12-09 to 2005-12-22	Construction Aspro inc. (“Aspro”)	$ 2,924.14
2006-05-02	9137-6483 Québec inc. (“9137”) (“Cie Gypse.com”)	$ 18,979.13
2006-11-13 to 2008-09-02	9108-2347 Québec inc. (“R2LM”)*	$ 902,843.50 $ -33,832.67
2008-09-11 to 2009-09-02	9145-3126 Québec inc. (“9145”) (“Construction Technopro inc.”)	$ 168,097.75
2008-09-08 to 2009-09-28	9178-6467 Québec inc.* (“9178”) (“Construction RL”)	$ 433,245.23
2009-10-05 to 2009-11-30	Les entreprises M. St-Pierre inc.* (“Entreprises St. Pierre”)	$ 73,552.60
Total		$ 3,747,593.77

Chambru’s Suppliers

Date	“Subcontractor”	Amount paid
2000-12-13 to 2003-09-25	Les systèmes intérieurs L.V.C. inc.* (“LVC inc.”)	$ 1,153,511.79
2002-03-28 to 2002-07-04	A.R. Construction (“Argypse”)	$ 19,122.38
2004-05-13 to 2005-03-24	9125-9853 Québec inc.* (“Energypse / Canagypse / Nikita”)	$ 170,802.36
2005-12-19 to 2006-09-26	9158-7154 Québec inc.* (“Construction Lachapelle”)	$ 10,973.52
2007-11-12 to 2008-07-18	9108-2347 Québec inc. (“R2LM”)*	$ 110,381.72
2008-09-02	9145-3126 Québec inc. (“Construction Technopro inc.”)	$ 2,448.89
2008-12-01 to 2009-06-30	9178-6467 Québec inc.* (“Construction RL”)	$ 12,057.31
Total		$ 1,479,337.97

[11] Without reproducing all of the assumptions of fact, the following list provides a non-exhaustive summary of the assumptions of fact that relate to all of the Suppliers:

i. They were registered with the Commission de la Construction du Québec (“CCQ”) for a very short period of time, but did not file reports and declared few or no contracts;

ii. The officers, directors or shareholders declared little or no income from employment or a business, and some of them were long-standing social assistance recipients or had no connection with the company;

iii. They have no known business addresses or the address is invalid, or it is a post office box, a mail counter, or a motel with no connection with the company, and in many cases the Minister was unable to reach the company by letter or telephone;

iv. They have no (or few) vehicles registered with the Société de l'assurance automobile du Québec ("SAAQ");

v. They cashed cheques for several million dollars at cheque-cashing centres located primarily in Quebec, but they report no income and do not file tax or income tax returns;

vi. They have few or no employees, there are no deductions at source ("DAS"), and no (or almost no) wages are reported to the Commission de la santé et de la sécurité du travail ("CSST");

vii. The companies do not have the capacity—the human and material resources—to supply the services for which they invoiced.

[12] For the six Suppliers identified with an asterisk (*) above, the Minister assumed that the invoices had been prepared and submitted by Louis Couture ("Mr. Couture"), a long-standing employee. The Appellants had only copies of the invoices, which were prepared on a "blueline pad" and filled out by hand. They gave very few details regarding the nature of the services performed and virtually all of the invoices contained no address or contact information for the Suppliers, and the same "blueline pad" was used for a subsequent new supplier with the same number sequence.

IV – Relevant Statutory Provisions

The relevant statutory provisions are as follows:

Part IX of the Excise Tax Act, R.S.C. 1985, c. E-15 ("ETA")

169(4) A registrant may not claim an input tax credit for a reporting period unless, before filing the return in which the credit is claimed,

(a) the registrant has obtained sufficient evidence in such form containing such information as will enable the amount of the input tax credit to be determined, including any such information as may be prescribed;

…

False statements or omissions

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 ….

Period for assessment

298 (1) Subject to subsections (3) to (6.1), an assessment of a person shall not be made under section 296

…

more than four years after the later of the day on or before which the person was required under section 238 to file a return for the period and the day the return was filed.

Exception

...

Idem

(4) An assessment in respect of any matter may be made at any time where the person to be assessed has, in respect of that matter,

> **(a)** made a misrepresentation that is attributable to the person's neglect, carelessness or wilful default;
>
> **(b)** committed fraud in making or filing a return under this Part, or in making or filing an application for a rebate under Division VI, or in supplying, or failing to supply, any information under this Part; or
>
> **(c)** filed a waiver under subsection (7) that is in effect at that time.

Input Tax Credit Information (GST/HST) Regulations, SOR/91-45 (the "Regulations")

Definitions
2. In these Regulations, …

intermediary of a person, means, in respect of a supply, a registrant who, acting as agent of the person or under an agreement with the person, causes or facilitates the making of the supply by the person; (*intermédiaire*)

…

3. For the purposes of paragraph 169(4)(a) of the Act, the following information is prescribed information:

…

(c) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is $150 or more,

(i) the information set out in paragraphs (a) and (b),
(ii) the recipient's name, the name under which the recipient does business or the name of the recipient's duly authorized agent or representative,
(iii) the terms of payment, and
(iv) a description of each supply sufficient to identify it.

V. The Appellants' Position

[13] The Appellants contend that the invoices issued by the Suppliers meet the requirements set out in the ETA and the regulations.

[14] They add that the invoices reflect the supplies that were actually acquired and so they had a legal obligation to pay them. They further note that these expenses were not disallowed for income tax purposes.

[15] The Appellants maintain that they acted in good faith, that they were diligent to the best of their knowledge in verifying the Suppliers, and that they had a verification mechanism that enabled them to check the GST/QST number, the enterprise number (NEQ), the registrations with the Commission de la construction du Québec ("CCQ") and the CSST, and the licence issued by the Régie des bâtiments du Québec ("RBQ"). They maintain that they did not have to do further verifications.

[16] The Appellants add that they had no knowledge and could not have known whether the Suppliers were tax offenders or SAIs or did not have the financial or material capacity to make supplies, or that the directors and officers were fictitious or social assistance recipients. That information was held by the government, as the Respondent's witnesses in fact admitted. They contend that they had no control over how the cheques given to the Suppliers were deposited and that they had no control

and could not have known that the Suppliers were negotiating their cheques at various cheque-cashing centres for cash.

[17] They maintain that they structured their business to have a minimum number of employees and that the workers were all subcontractors working for the Suppliers. They deny participating in any scheme to pay their employees under the table and say they were workers for whom the Suppliers or Mr. Couture and companies he did business with were responsible. They add that there is no evidence that the employees were paid under the table and that ultimately this issue is not relevant to eligibility for the ITCs.

[18] The Appellants maintain that they have always been in good standing with the tax authorities, they have always filed their income tax and tax returns, and they were audited at least three times during the period in issue, but nothing concrete was found and nothing was said about Suppliers being offenders.

VI. The Respondent's Position

[19] The Respondent maintains that the Appellants had to show, by positive evidence on a balance of probabilities, that the Suppliers were [TRANSLATION] "real subcontractors" or "intermediaries" that facilitated the "making" of the supply (i.e., the work). Since they failed to establish that the companies shown on the invoices represented the ones that had actually performed the services, the invoices did not meet the regulatory requirements under the ETA and the Appellants were not entitled to the ITCs claimed.

[20] The Respondent maintains that the Appellants' evidence was composed of [TRANSLATION] "testimony from persons with a direct interest in the outcome of the case", adding that [TRANSLATION] "good faith and diligence are not grounds justifying entitlement to inputs".

[21] The Respondent contends that the Appellants should necessarily have called the workers who were on their work sites or the [TRANSLATION] "contact person" for each of the Suppliers to testify. The Respondent asks that the Court draw a negative inference from the absence of those witnesses, including Mr. Couture.

[22] The Respondent adds that he met his burden regarding the facts that were [TRANSLATION] "solely within the Minister's knowledge", that the evidence presented, in particular that adduced by the ARQ auditors, clearly established that the various Suppliers were SAIs and, what is more, that several of them had already

been determined to be SAIs. The Respondent maintains that the Appellants have not submitted evidence that could indicate the contrary.

[23] The Respondent submits that the workers and Mr. Couture were actually "employees" of the Appellants and that the Appellants have failed to rebut the Minister's presumptions concerning the status of the workers or the under-the-table employee payment scheme. The Respondent essentially maintains that the workers were all under the supervision of Mr. Couture, who was an employee of the Appellants [TRANSLATION] "or directly under the direction of the Champagnes" and that they never had any contact with the SAIs or their managers. The Respondent adds that it is unlikely that the [TRANSLATION] "workers", whom the Appellants submit were employees of the Suppliers, all changed employers at the same time as Mr. Couture or when there was a change of Supplier.

[24] The Respondent asks the Court to place considerable weight on the extrajudicial admissions made by Jenleau and Mr. Champagne, specifically, the guilty pleas entered on June 20, 2017, stating that they [TRANSLATION] "made, or participated in or assented to the making of, false or deceptive statements in a return … filed ... representing the tax allegedly paid or payable" for at least two of the Suppliers. The Respondent maintains that those guilty pleas constitute extrajudicial admissions that benefit from a presumption of truthfulness and adds that Mr. Champagne did not comment in this respect. Only Bruno testified, stating that they wanted to get both the criminal and tax proceedings over with.

[25] The Respondent adds that Mr. Couture also pleaded guilty to a number of counts in connection with at least three of the Suppliers for the same period, and that the Appellants did not try to summon him to testify at the trial even though he was their [TRANSLATION] "contact person" for several SAIs. The Respondent asks the Court to draw a negative inference from Mr. Couture's absence and adds that his testimony would have been [TRANSLATION] "unfavourable to the Appellants".

[26] Essentially, the Respondent submits that good faith and due diligence are not grounds justifying entitlement to inputs. He maintains that there was no evidence of due diligence, since the checks done were limited to the Suppliers' registration numbers and did not include the names of the officers listed in the enterprise register. Moreover, there was no evidence of a contractual relationship between the Appellants and the Suppliers.

[27] The Respondent maintains that the Appellants' statements were made knowingly, since they knew that the names of the Suppliers that appeared on the

invoices were not in any way connected with the workers who performed the services. The Respondent adds that if the situation did not involve fraud or knowingly making false statements, there was wilful blindness. The Respondent concludes by saying that the Minister was justified in assessing outside the normal assessment period and in imposing the penalties.

VII. The Appellants' Witnesses

[28] There were three witnesses for the Appellants: founder and president of the Appellants, Réjean Champagne ("Mr. Champagne"), his wife, Nicole Groleau ("Ms. Groleau"), and their son, Bruno Champagne ("Bruno").

Réjean Champagne

[29] He incorporated Jenleau in 1983 and Chambru in 1989. They specialized in finishing work on the interior systems in apartment buildings. The head office was in the Champagne family home until 2007, when they set it up in a commercial space.

[30] Mr. Champagne was 74 years old when he testified in Court. He completed grade seven and, before starting the "family businesses" in issue here, had always worked in construction.

[31] Over time, he established a reputation for his honesty and the quality of his work, and as a result he was able to expand his clientele of apartment building builders. They gave him the plans and specifications, and he prepared a bid for the labour and materials. However, the work was done by subcontractors who followed him from site to site. It was necessary to draw the lines, attach metal dividers, install insulation, hang drywall, finish the joints, and so on, [TRANSLATION]"unit by unit" and "floor by floor".

[32] He and his son Patrice Champagne ("Patrice") went to the different sites nearly every day to check on the work done by the workers and make sure it was of good quality and compliant with the plans and specifications. He was very demanding when it came to the quality of the work. If the work was not done well, the workers were responsible. That said, they were never sued for [TRANSLATION] "poor workmanship" or construction defects.

[33] Mr. Champagne and Patrice went to the sites on Mondays to collect the invoices, which showed the details of what had been done, with the unit number.

Sometimes the invoices were delivered to the office. Ms. Groleau and Bruno checked the details on the invoices and made adjustments, particularly when the subcontractors were paid [TRANSLATION] "by the job" or by square foot of work done.

[34] Mr. Champagne had known Mr. Couture for over 30 years. He had worked under the supervision of their site foreperson. Mr. Couture eventually replaced him, but he wanted to create his own company. Les Systèmes intérieurs L.V.C. inc. ("LVC inc.") was incorporated in 1993. Through that company and the companies that succeeded it, L. Couture hired almost all the workers as employees, including his two sons, Sébastien and Christian.

[35] On cross-examination, Mr. Champagne said that Mr. Couture was [TRANSLATION] "his employee" and that he was [TRANSLATION] "paid by the hour", but also that he had his own company. He also confirmed that Mr. Couture hired his own workers, some of whom had worked for him for 10 to 15 years, in addition to his two sons.

[36] He had not personally verified the Suppliers' tax or other registration numbers, but he was certain that those searches had been done by his wife or Bruno, and he said that this was the accounting department's responsibility, not his. They made sure that the subcontractor [TRANSLATION] "existed" and obtained the necessary letters from the CCQ. They realized that this was necessary [TRANSLATION] "to be legal". He had no recollection of the Suppliers' corporate names or of the directors or officers; he explained that he operated instead with the name of the Supplier's contact person, such as Mr. Couture, for example.

[37] He could not explain why Mr. Couture had changed companies several times, but for him, the contact person was always the same. Over time, new workers or workers who had been [TRANSLATION] "his" employees all became employees of the Suppliers and of Mr. Couture's company in particular. Even though they mainly worked for the Appellants, the explanation given was that they could have more flexibility or more work on other sites. The names of the workers, with their billable hours or the details of their service, were shown on the invoices prepared by Mr. Couture in the name of a Supplier. The materials were almost always supplied by the Appellants, to comply with standards and the requirements in the plans and specifications for the bid.

Nicole Groleau

[38] Ms. Groleau, who completed grade six, was 72 years old when she testified. She was responsible for the Appellants' [TRANSLATION] "administration" and "invoicing", but she had no training and had [TRANSLATION] "learned on the job".

[39] She checked the subcontractors' information, making sure they had their GST/QST numbers, a CCQ number, a licence from the RBQ, a CSST registration number, and an NEQ. All the subcontractors had to have those registration numbers or else she did not pay their invoices. Even if that information was provided by the subcontractor, she took the time to check it and entered the data in her computer program. She did not check the Registre des entreprises du Québec ("REQ") to identify the directors or officers.

[40] On Mondays, Mr. Champagne [TRANSLATION] "collected the invoices" from the subcontractors. Once Bruno had reviewed and approved them, she prepared the cheques, which were delivered to the site on Thursdays. All the subcontractors were paid by cheque signed by Mr. Champagne. At the end of the month, she verified that the cheques had been cashed, to do the bank reconciliation. When she did that, she sometimes checked the endorsement on the cheques, but not always. She recalled one time when she did not recognize the financial institution's stamp. She asked the subcontractor in question about it and he replied that he had not had time to go to the bank and that it had been more practical to cash it at the location indicated. She was satisfied with the answer given.

[41] She also kept a computerized record of the amounts paid to the subcontractors. At year end, she produced a "Statement of Contract Payments", or T5018 form, which she delivered to the subcontractors to help them fill out their income tax returns. The T5018 form with the names of all the subcontractors was then attached to the Appellants' tax returns.

[42] To protect itself against claims, and at Mr. Champagne's request, the builder withheld 10% of the total contract until the end of the project, and the Appellants withheld the same amount from the subcontractors until they delivered a compliance letter [TRANSLATION] "in due form" from the CCQ and the CSST, without which they were not paid. Sometimes, if there were problems, the amount withheld from a subcontractor was remitted directly to the CCQ or the CSST.

[43] On cross-examination, Ms. Groleau emphasized that the Appellants had long had the practice of withholding 10% for all the Suppliers, even those associated with Mr. Couture. She also stressed that she required the registration numbers of [TRANSLATION] "new" subcontractors and then did a "complete" check on the

government registers, and then redid the same checks every six months to make sure they were "legal". If a subcontractor did not have a number, she withheld their cheque until they were in good standing. She did the same thing for new companies that Mr. Couture did business with. She confirmed that she verified the existence of a company by obtaining the NEQ but did not verify the names of the directors or officers. She knew that Mr. Couture was a director or officer of LVC inc., his first company, but not of the subsequent companies, and that he was also no longer the [TRANSLATION] "guarantor" with the CCQ or RBQ. However, she always insisted that they had to be in good standing.

[44] On re-examination, Ms. Groleau specifically acknowledged that she did the verifications for the subcontractors, including each of the Suppliers, and that the information was saved in a computer system. These verifications were done on the government websites when there was a new subcontractor, and then again every six months or at the beginning of the fiscal year.

Bruno Champagne

[45] Bruno first worked on construction sites when he was a teenager, and then, after getting a degree in civil engineering in the late 1990s, had a more administrative role that included preparing estimates and bids.

[46] After a certain time, the Appellants acquired a computer program to calculate materials and labour. Depending on the size of the project, he had his calculations verified by his father and his brother Patrice.

[47] For the materials, they had a choice of about four different suppliers. For the workers, however, they knew their rates, so there was no actual negotiating. Part of their [TRANSLATION] "recipe for success" was to try to keep the same group of workers, including "metal installers", "joint finishers", "drywall hangers", and so on. When the contract with the builder was over, the workers had to be moved on.

[48] Bruno confirmed that Mr. Couture was an exceptional worker. He was well known in the interior finishing industry for his expertise and his ability to "read" plans and specifications and draw lines for the various projects. He also played an important role in managing projects and workers.

[49] In particular, Bruno confirmed the process with the CSST and the CCQ for obtaining a [TRANSLATION] "letter of good standing" or a "status report" that they had to provide to the client in order to be paid. For each project, he had to submit a

report to the CSST, state the name of the client, the location of the project, the work done, the duration of the work, and the amounts paid, and identify the subcontractors. The subcontractors had to submit their own report and provide a letter of good standing or else the amount withheld would not be released. A similar process was in place for obtaining a [TRANSLATION] “status report” from the CCQ. That way, they made sure they were in good standing. Sometimes, they had to remit a subcontractor’s withholding directly to the CSST to obtain the letter of good standing and then provide everything to the client to get paid.

[50] Bruno confirmed that the subcontractors had to be in good standing and that it was mainly Ms. Groleau who had put a [TRANSLATION] “structure” in place to do the verifications. They had prepared a form for new subcontractors, to speed up the verification process. However, even the numbers provided by the subcontractors were verified. Those verifications were sometimes repeated at the start of a new project, and even quarterly. If there was a problem, he followed up with the subcontractor in question.

[51] To verify the work, Mr. Champagne and Patrice were regularly at the sites, so they could validate the invoices by making sure the work had actually been done. If not, the invoice was not paid.

[52] In 2007, Bruno became a shareholder in the Appellants with his brother Patrice. The purpose was to acquire all of their parents’ shares, but gradually, so the parents could eventually retire. That was the career plan.

[53] Bruno stated that the Appellants could not have known whether a Supplier had failed to file a tax or income tax return, that this information was confidential to the Minister, and that it was not possible to do a search to find out whether the Supplier had the financial or human resources capacity to perform the services. They did not check whether the Supplier had vehicles registered with the SAAQ, [TRANSLATION] “as long as the subcontractor was on the site”. They could not have known about all of a Supplier’s contracts or the amounts of the cheques cashed at cheque-cashing centres. They could not have known whether a director or officer was receiving employment insurance. In his opinion, a Supplier was in good standing at the time it performed the services and was entered in the GST/QST returns and on the T5018 form. The checking stopped there. The same was true for all the Suppliers.

VIII. The Respondent’s Witnesses

[54] The Court heard testimony from a number of audit professionals at the CRA, including Pierre-Luc Gosselin, Jessica Gagnon, Hélène Constantineau, Nancy Grenier, Anousorn Senaphanh (support officer), and the Chief Auditor, Sonia Brin.

[55] Their testimony validated the Minister's assumptions of fact for each of the Suppliers and confirmed that they were SAIs. On cross-examination, they all acknowledged that some of this information was confidential and would not have been accessible to the Appellants.

Les systèmes intérieurs L.V.C. inc. ("LVC inc.")

[56] This company was incorporated in 1993 and registered with the CCQ that year. Mr. Couture is director and shareholder with his spouse, Lynne Veilleux. The company has not filed an income tax return since 1999 or a tax return since 2007. It has not reported many contracts to the CCQ. Since 1999, it has not had vehicles registered with the SAAQ. The auditors were not able to reach the company's representatives by letter or telephone. The company did not have the capacity or the human and material resources to supply the services invoiced. The company cashed cheques in the amount of $2,498,000 at cheque-cashing centres between January 2001 and September 2003.

9125-9853 Québec inc. (Energypse)

[57] This company registered with the CCQ on November 26, 2003, but has not been in business since October 2005. The company has never filed income tax returns and filed three zero tax returns. A fake name with a fake social insurance number was declared as president. The company cashed cheques in the amount of $2,970,762 at cheque-cashing centres, and ultimately the CRA representatives concluded that it did not have the capacity or the human and material resources to supply the services invoiced.

9158-7154 Québec inc. (Construction Lachapelle)

[58] This company registered with the CCQ on October 31, 2005, but has not been in business since the end of August 2007. The Minister's representatives were not able to reach the company's representatives by letter or telephone, and during the audit, they found that the sole director has been a social assistance recipient for several years. The company's address is a UPS counter, and no vehicles are registered with the SAAQ. It has not filed a tax return, a source deduction statement or an income tax return since registering. It cashed cheques in the amount of $1,060,000 at cheque-cashing centres between October 2005 and November 2006.

9108-2347 Québec inc. (R2LM)

[59] This company registered with the CCQ on August 20, 2004, but has not been in business since the end of August 2009. The company's address corresponds to a Canada Post box. The Minister's representatives were not able to reach the company's representatives by letter or telephone. They found that a number of people had acted as directors and some of them had been social assistance recipients for several years. The company has not reported income or source deductions since October 2006. It cashed cheques in a total amount of $15,758,500 at five different cheque-cashing centres and three chartered banks.

Les entreprises M. St. Pierre inc.

[60] This company registered with the CCQ on May 21, 2009, but the RBQ number is incorrect. The Minister's representatives were not able to reach the company's representatives by letter or telephone, and they found that there was a change of director in December 2009. At the time of the audit, the sitting director was a social assistance recipient. The company has no vehicles registered with the SAAQ, and it has not reported any income or source deductions since 2006. The audit showed that the company cashed cheques for more than $2,930,458 at cheque-cashing centres.

Finitions Pro-Techni inc.

[61] This company registered with the CCQ on March 9, 2004, but has not been in business since the end of December 2004. The Minister's representatives were not able to reach the company's representatives by letter or telephone, and when they visited the company's address, the president refused to speak to them. The company has never filed tax or income tax returns, and its president and sole shareholder has not reported income from employment or a business. It has no vehicles registered with the SAAQ. The company has not reported the Appellants as clients. The Appellants have not reported the company to the CCQ and have not requested a status report letter. No CCQ inspector has seen the alleged workers on the Appellant's construction sites, and CCQ records indicate that the company operates without a licence. The company has cashed cheques in the amount of $2,989,726 at cheque-cashing centres. It also deposited cheques for over $3,211,300 in an account at the Laurentian Bank, but the money was immediately withdrawn at the counter. In the Appellant's file, the contact person is an individual named "Éric Tremblay", but no person by that name is associated with the company.

Construction Lubac inc.

[62] This company registered with the CCQ on June 8, 2005, but has not been in business since January 28, 2006. In that period, it cashed cheques totalling $3,727,513 at a cheque-cashing centre. Its president and guarantor to the CCQ reported hours as a [TRANSLATION] "drywall hanger", but has been receiving social assistance for several years. It has no vehicles or employees, according to the registers. The company has not reported the Appellants as clients. The Appellants have not reported the company to the CCQ and have not requested a status report letter. No CCQ inspector has seen the alleged workers on the Appellant's construction sites. It has filed only one tax return, seeking a GST/QST refund of a few dollars, but not reporting any income. In the Appellant's file, the contact person is a "Gaétan", but no person by that name is associated with the company.

Construction Aspro inc.

This company registered with the CCQ on March 5, 2005, but the licence from the RBQ was cancelled on May 10, 2006. The guarantor to the CCQ and the president of the company reported being a [TRANSLATION] "bricklayer". The company has not filed a tax or income tax return. The Minister's representatives were not able to reach the company's representatives by letter or telephone. It cashed cheques in the amount of $10,985,417 at cheque-cashing centres. The invoicing is suspect, in that the invoices vary [TRANSLATION] "from client to client", the invoice numbers are not sequential, and the addresses and telephone numbers shown on the invoices are invalid. It has no vehicles registered with the SAAQ, and everything indicates that it does not have the capacity or the human and material resources to supply the services invoiced to the Appellants. In the Appellants' file, the contact person is a "Frédéric Dupont", whereas no person by that name is associated with the company.

9145-3126 Québec inc. (Construction Technopro inc.)

[63] This company registered with the CCQ on June 12, 2008. The Minister's representatives were not able to reach the company's representatives by letter or telephone. The director's address is invalid. From 2006 to 2009, it reported net tax of less than $500, but it cashed cheques for over $1,931,000. It reported to the REQ that it had no employees and it did not register for any source deductions. The invoicing is suspect, in that the company has three different types of invoices and the invoice numbers are not sequential. The company did not report any remittances to the CCQ, and the Minister's representatives concluded that it did not have the capacity or the human and material resources to supply the services invoiced to the Appellants. In the Appellants' file, the contact person is a "Bob Ryan", whereas no person by that name is associated with the company. The company submitted

invoices totalling $148,823, and each cheque from the Appellants was endorsed. However, the Appellants stated that they were not aware of this.

[64] The Appellants produced three types of sale invoices for this supplier. The first ones are completely computerized, while the others are printed invoices filled out by hand, but for which the contact person or addresses and telephone numbers are different.

Testimony of Sonia Brin

[65] Ms. Brin produced her audit report for Jenleau (Exhibit I-14) and Chambru (Exhibit I-13). In the initial audit, she had not identified anomalies between the accounting records and the financial statements.

[66] However, she noted that several of the supporting documents for the subcontractors contained downward adjustments of the amounts shown on the invoices. In addition, several of the invoices from the subcontractors gave very few details in the description of the services performed. The audit then revealed several invoices from subcontractors that came from companies known as suppliers of accommodation invoices. That was when she integrated the audit reports for the various Suppliers.

[67] She found that the invoices from LVC inc. were all prepared by hand using an invoice book that she described as a “blueline pad”, available at office supply stores. Those invoices contained very few details apart from the names of the workers and the hours billed. The name of the subcontractor was entered by hand or with a stamp.

[68] The numerical sequence of the invoices prepared in the name of LVC inc. continued for the “new” Suppliers associated with Mr. Couture. She found that when a Supplier had problems with the CCQ or the CSST, or when the tax numbers were cancelled, Mr. Couture changed Suppliers. She noted that the relationships with the Suppliers got shorter and shorter.

[69] Following her discussions with Mr. Champagne and Bruno, Ms. Brin found that Mr. Couture had a very close, even special, relationship with the Appellants. Although he billed his services in a company name, he worked solely for the Appellants, and most often his work was billed by the hour.

[70] Ms. Brin found that Mr. Couture was the manager of a number of projects and filled out the [TRANSLATION] “official work sheets” for the other workers, which were delivered to the Appellants on Monday mornings. She also found that the workers reported themselves to the CCQ as “employees” of a Supplier, changing employers at the exact moment when Mr. Couture associated with a new Supplier. Ultimately, she concluded that the “workers” were all actually employees of the Appellants.

[71] For the other Suppliers, Ms. Brin was not able to identify a contractual relationship with the Appellants, who did not know the directors or officers and dealt solely with the contact persons. She observed in the Appellants’ file that the contact person for these Suppliers was an individual with no connection with the Supplier in question.

[72] In the course of her audit, she interviewed a Supplier’s representatives and asked whether they had records or accounting books. They simply provided a box containing printed invoices in the name of the company with the tax, CCQ and RBQ numbers.

[73] Ultimately, Ms. Brin found that each Supplier had a similar *modus operandi*: they had blank invoices printed with the company name, which were distributed to the workers or companies on the construction sites to be completed with their hours worked, in order to bill a client. The cheque issued by the client, in this case the Appellants, was then cashed at a cheque-cashing centre in exchange for a commission, and the cash was given to a network of people whom they may or may not have known, to pay the workers.

Testimony of Louise Joly

[74] Ms. Joly read her stenographic notes (Exhibit I-5, 10 of 26) where it said she had an initial meeting with Mr. Couture concerning “Construction Lachapelle”. She told him that the inspectors had identified the same workers on the Appellants’ construction sites, but the workers stated that they were “employees” of different Suppliers. She explained to Mr. Couture that he had to report the hours of all the workers.

[75] Ms. Joly then reviewed her notes, which stated that [TRANSLATION] “Mr. Couture says he has only spoken twice” with the director of Construction Lachapelle “… since he started billing through them…” and, later, that “Mr. Couture

states that he bills through Construction Lachapelle and now R2LM" and "he gives 6% of the total to the owner for using their licence".

[76] The Appellants objected to this statement on the ground that it was "hearsay" since Mr. Couture was not present to be cross-examined. They maintained that the statement was presumed inadmissible under article 2870 of the *Civil Code of Québec*.

[77] The Court took the issue under advisement and rendered a decision the next day. It accepted the analysis in *CMLF c. RBC Dominion valeurs mobilières*, 2005 CanLII 44085 (QC CS) ("CMLF"), in which the Superior Court of Quebec relied on [TRANSLATION] "the rule established in *O'Brien*" (*R. v. O'Brien*, 1977 CanLII 168 (SCC), [1978] 1 S.C.R. 591), that a statement made out of court is "inadmissible when the object of the evidence is to establish the truth of what is contained in the statement; it is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement but the fact that it was made".

[78] In *CMLF*, the Court added that testimony is admissible if it [TRANSLATION] "explains the chronological framework of the events that he witnessed by recounting… the existence of certain out-of-court statements to which he reacted... although that testimony will not be admissible to establish the truth of the out-of-court statements" (para. 14).

[79] Second, the Court noted that article 2870 of the C.C.Q. provides an exception to the hearsay rule where "the reliability of the statement is sufficiently guaranteed by the circumstances in which it is made". That provision states: "Reliability is presumed to be sufficiently guaranteed with respect… to documents… entered in a register required by law to be kept".

[80] The Court therefore found that the statement made by Mr. Couture was entered in a register prepared by Ms. Joly in the course of her duties and was therefore an exception to the hearsay rule. In the alternative, the Court accepted that Ms. Joly could explain [TRANSLATION] "the chronological framework" and report the out-of-court statement not as evidence of its truth, but to establish that Mr. Couture had made the statement in question.

IX. Was the Minister entitled to disallow the ITCs claimed by the Appellants for the periods in question in connection with the Suppliers?

[81] To establish an appropriate analytical framework and enable the Court to decide the questions put to it, it is useful to review the basic principles laid down by the Supreme Court of Canada in *Hickman Motors Ltd. v. Canada*, [1997] 2 S.C.R. 336. Those principles were reiterated by the Federal Court of Appeal in *House v. Canada*, 2011 FCA 234 ("*House*"), in which the Court stated:

> 1. The burden of proof in taxation cases is that of the balance of probabilities.
> 2. With regard to the assumptions on which the Minister relies for his assessment, the taxpayer has the initial onus to "demolish" the assumptions.
> 3. The taxpayer will have met his initial onus when he or she makes a *prima facie* case.
> 4. Once the taxpayer has established a *prima facie* case, the burden then shifts to the Minister, who must rebut the taxpayer's *prima facie* case by proving, on a balance of probabilities, his assumptions (in this case, that Hunt River held at the end of taxation year 2002 a long-term investment of $305.000, which it transferred to the appellant in 2003).
> 5. If the Minister fails to adduce satisfactory evidence, the taxpayer will succeed.

The Court then examined the concept of a *prima facie* case, quoting *Amiante Spec Inc. v. Canada*, 2009 FCA 139, in which it stated:

> [23] A *prima facie* case is one "supported by evidence which raises such a degree of probability in its favour that it must be accepted if believed by the Court unless it is rebutted or the contrary is proved. It may be contrasted with conclusive evidence which excludes the possibility of the truth of any other conclusion than the one established by that evidence" (*Stewart v. Canada*, 2000 CanLII 426 (TCC), [2000] T.C.J. No. 53, paragraph 23).
>
> [24] Although it is not conclusive evidence, "the burden of proof put on the taxpayer is not to be lightly, capriciously or casually shifted", considering that "[i]t is the taxpayer's business" (*Orly Automobiles Inc. v. Canada*, 2005 FCA 425, paragraph 20). This Court stated that the taxpayer "knows how and why it is run in a particular fashion rather than in some other ways. He [or she] knows and possesses information that the Minister does not. He [or she] has information within his [or her] reach and under his [or her] control" (*ibid.*).
>
> [Emphasis added.]

[82] The Court added that "credible oral evidence does not need the support of source documents to establish a point" and that a sufficient *prima facie* case may be made by demolishing the Minister's assumptions, if the testimony in question "was neither challenged nor impeached" by the Respondent, who failed "to adduce evidence rebutting the Appellant's *prima facie* case" to establish, "on a balance of probabilities, that his assumptions were correct" (paras. 66 to 77).

[83] For clarity, "there may be instances where the pleaded assumptions of fact are exclusively or peculiarly within the Minister's knowledge and that the rule as to the onus of proof may work so unfairly as to require a corrective measure": *Canada v. Anchor Pointe Energy Ltd.* (F.C.A.), 2007 FCA 188. As Owen J. wrote in *Morrison v. The Queen*, 2018 TCC 220: "The word 'exclusively' is clear in its meaning: the Minister is the only person that has the information" (para. 116).

[84] In *Entreprises DRF Inc. v. The Queen*, 2013 TCC 95 ("*Entreprises DRF*"), the issue of an invoice of convenience arose, and Angers J. stated:

> [36] The applicable burden of proof where a registrant claims ITCs, when the existence of a false invoicing scheme is alleged, is summarized as follows by Justice Bédard in *Les Pro-Poseurs Inc. v. Canada,* [2011] T.C.J. No. 89, affirmed in [2012] F.C.J. No. 856:
>
> > [35] Under the doctrine of *Hickman Motors Ltd. v. Canada*, ... the Minister uses assumptions to make assessments and the taxpayer has the initial burden of demolishing the Minister's assumptions. … Consequently, Les Pro-Poseurs Inc. had to establish by *prima facie* evidence that it actually purchased the supplies from the dubious suppliers. … Finally, Les Pro-Poseurs Inc. also had to establish that the invoices allegedly issued by the dubious suppliers meet the requirements of the ETA and its regulations.
>
> [37] The appellant must, therefore, first establish by *prima facie* evidence that it did not participate in false invoicing scheme and that it did actually purchase supplies from the subcontractors. The appellant must then establish that the invoices issued by the subcontractors met the requirements of the ETA and its regulations.
>
> [Emphasis added.]

[85] Subsection 169(4) of the ETA requires that a registrant be able to provide sufficient information to claim ITCs. In particular, a registrant must be able to present supporting documentation that contains the information required by the Regulations, including the name of the "supplier" or the supplier's "intermediary". According to the definition, an "intermediary" is a person acting as agent of a registrant under an agreement with the registrant, to cause or facilitate the making of a supply.

[86] In *Systematix Technology Consultants Inc. v. The Queen*, 2007 FCA 226 ("*Systematix"*), the Federal Court of Appeal quoted the case of *Key Property Management Corp. v. R.* [2004] G.S.T.C. 32 (T.C.C.), pointing out that the purpose of the legislation is "to protect the consolidated revenue fund against both fraudulent and innocent incursions" which "cannot succeed… unless they are considered to be mandatory requirements and strictly enforced" (para. 5).

[87] As Boyle J. explained in *Comtronic Computer Inc. v. The Queen*, 2010 TCC 55 ("*Comtronic*"), when *Systematix* referred to a valid registration number, it meant a number "validly issued" to a supplier. Boyle J. added that strict application of the ETA "can result in unfairness to a purchaser who pays the GST in good faith" and that it may be necessary "to put into place risk management practices in dealing with new and continuing suppliers" and that this may require "further investigation" (para. 29).

[88] In *Entreprises DRF*, Angers J. explained that a "recipient is eligible for ITCs only if the GST number that appears on an invoice must be validly assigned to the actual supplier" (para. 47) and, "[a]ccordingly, just proving that the services were actually rendered will not suffice to be entitled to ITCs". He added that the registrant must still "prove that the subcontractors, whose registration numbers appear on the invoices…, were in fact suppliers of services" (para. 48).

[89] Similarly, in *The Queen v. Salaison Lévesque Inc.*, 2014 FCA 296 ("*Salaison Lévesque*"), the Federal Court of Appeal stated that "the only actual issue before the judge… was to determine whether Salaison had produced invoices describing the name of the service supplier of the intermediary as required by the Regulations" and that this was "a question of fact" (para. 17).

[90] In *Pépinière A. Massé v. The Queen*, 2014 TCC 271 ("*Pépinière Massé*"), Paris J. concluded that the registrant had failed to "discharge its burden of proving that the corporations and businesses in question provided it with workers or acted as intermediaries" (para. 57), and that even if it had proved "due diligence with regard to the changes in corporations by its subcontractors... the case law clearly states that, even in the absence of evidence of knowledge, connivance or collusion..., if the name and tax number of the supplier on the invoice are not those of the real supplier, the recipient is not entitled to ITCs" (para. 58).

[91] In *Agence du revenu du Québec c. Système intérieur GPBR Inc.*, 2015 QCCA 1402 ("*GPBR*"), the Court of Appeal of Quebec also concluded that the similar provisions of the *Act respecting the Québec sales tax* were mandatory. The Court noted that only invoices presented by a supplier or its agent, [TRANSLATION] "i.e. a person having the power to represent it in the performance of a juridical act with a third person, … can give rise to an ITC". The Court added that "the invoice must be issued by a registrant that has an interest in issuing the invoice, thereby automatically excluding accommodation invoices, or worse, false invoices" (para. 38).

[92] In *Agence du revenu du Québec c. Stamatopoulos*, 2018 QCCA 474 ("*Stamatopoulos*"), the Court of Appeal of Quebec reviewed the decision in *GDPR* and explained that the registrant [TRANSLATION] "had failed to prove that the invoices were issued by persons with whom it had directly contracted" and that it had "done business with 'flesh and blood' workers", that is, drywall hangers and joint finishers, working alone, whom it recognized as being its real "suppliers of services". The registrant "had not dealt directly with those companies, who had no connection with the work performed" (para. 41).

[93] In *Stamatopoulos*, however, the Court of Appeal concluded that it had to distinguish *GPBR*, since in the case before it, although the Minister had proved that the suppliers were tax offenders, the trial judge had found that the agent [TRANSLATION] "met a representative for each subcontractor", and that there were "negotiations... regarding the price, quantities and delivery deadline" (para. 55) so he could have concluded that there was a *prima facie* case that the subcontractors shown in the invoices were real "suppliers" or "intermediaries" within the meaning of the ETA and that the "the assembly work had been done by the subcontractors whose names appeared on the invoices" (para. 45).

[94] In *SNF S.E.C. v. The Queen*, 2016 TCC 12 ("*SNF*"), the issue involved suppliers who had a valid GST number but did not remit the tax. The minister had disallowed the ITCs, alleging that the suppliers did not have the necessary capacity and resources to make the supplies and that they were "prête-noms" for unknown persons and not the actual suppliers. However, the Court accepted the Appellant's evidence that it generally met the prospective supplier and obtained as many details as possible before opening an account, including tax numbers (para. 27). However, the Court stated that if a registrant "suspects the person's legitimacy as a supplier, then the registrant purchases supplies at its own risk" (para. 79).

[95] Similarly, in *Les Ventes et Façonnage de Papier Reiss Inc. v. The Queen*, 2016 TCC 289 ("*Reiss*"), the case involved a registrant who verified only the tax numbers and had no procedure for verifying the actual identity of the suppliers and did not check the REQ to identify the directors and officers. Justice Lafleur concluded that the procedure was insufficient for claiming ITCs and added: "The case law is well-settled: a registrant's good faith in claiming an ITC is of no relevance" (para. 192). See also *9194-2359 Québec Inc. v. The Queen*, 2019 TCC 179 (para. 67).

Analysis of the first issue

[96] First, the Court is of the opinion that the Appellants have made a *prima facie* case that the supplies for the periods in issue and in the amounts stated—$3,747,593 for Jenleau and $1,479,337 for Chambru—were actually made or acquired. They had put in place a relatively rigorous verification system to make sure the invoices reflected the work actually performed, and it was not in their interests to pay for services that had not actually been rendered. In fact, there is every indication that the Minister accepted the amounts paid for income tax purposes, even though the ITCs were disallowed.

[97] Second, the Court is of the opinion that the Appellants have shown a degree of diligence in repeatedly checking to obtain or confirm the NEQ and the GST/QST, CCQ, RBQ and CSST numbers. Indeed, the Respondent did not question the fact that the Appellants made the checks. That said, the issue is whether that was sufficient.

[98] To be entitled to the ITCs claimed, the Appellants had to present a *prima facie* case that the Suppliers were real suppliers. As Justice Angers stated in *Entreprises DRF*, “the evidence in that regard seems rather sparse, or even non-existent” (para. 48) for at least five of the six Suppliers associated with Mr. Couture. Ms. Groleau stated that he was a director of LVC inc., but he was not a director of the companies that succeeded it. It is clear that the other members of the Champagne family also knew it. There was no evidence that Mr. Couture was an “intermediary” or “agent” for those other Suppliers within the meaning of the definition.

[99] The Appellants did verifications to obtain the NEQ and thus confirm the legal “existence” of the Suppliers; however, they did not do a search in the REQ to identify the directors or officers. There is no evidence that they tried to communicate with them or that they made any agreements with those five Suppliers.

[100] Ultimately, the Court can conclude that the Appellants blindly accepted that Mr. Couture was the contact person or authorized representative, even though the invoices were filled out by hand using a blueline pad with numbers that followed from one Supplier to another. The Court must conclude that the blueline pad belonged to Mr. Couture, not to the Suppliers whom he claimed to represent.

[101] The Court agrees with the Respondent that the Appellants were able to benefit from this situation by avoiding any disruption in the services performed by the group of workers well known to them, who continued to work on the construction sites but who reported that they were “employed” by a new Supplier. As Mr. Champagne said, the important thing was the quality of the services. The Court can conclude that

the contractual relationship with the new Suppliers was not important, as long as the "numbers" were in order.

[102] In *Stamatopoulos*, the Minister had alleged that the suppliers were tax offenders who did not have the capacity to perform the services. However, the Court of Appeal of Quebec accepted the trial judge's conclusion that the registrant had met with the representative of each of the subcontractors to open an account. That is not the case here.

[103] The same is true for the other Suppliers. The Appellants did not adduce any probative evidence that they were genuine suppliers. They did not check the REQ, and they simply dealt with [TRANSLATION] "contact persons" whom they had trouble identifying at the hearing and for whom they had only a telephone number. Yet there was no evidence of direct communication with those Suppliers, and no evidence that they were dealing with an officer or an authorized intermediary. The Court must again conclude that the Appellants blindly agreed to do business with the person who presented an invoice in the name of a Supplier whose numbers were in order. The Court is of the opinion that the Appellants therefore acquired these supplies at their own "risk and peril", in terms of the ITCs claimed.

[104] In addition, the Court accepts the evidence of the CRA auditors that the Suppliers were all SAIs: dummy companies that did not have the resources, material or human capacity to do the work. They did not report income tax or taxes for the benefit of persons who remain unknown. The evidence shows that the sole purpose of these companies was to traffic in blank invoices and act as intermediaries for depositing cheques at cheque-cashing centres in exchange for a percentage of the amount deposited.

[105] In addition, the Respondent established that some of these Suppliers—specifically, 9137-6483 Québec inc. (Cie Gypse.com), Construction Aspro inc., Construction Lubac inc. and Finitions Pro-Techi inc.—have been held to be SAIs in other court cases (Exhibit I-19).

[106] Even if the Court accepts the Appellant's argument that they could not have known that the Suppliers were tax offenders and SAIs and that this information was confidential and accessible only to government authorities, the fact remains that they were not real suppliers, and we know from the case law that the requirements of the ETA are mandatory.

[107] In addition, even if the Appellants could not have known about all of the cheques deposited by the Suppliers at cheque-cashing centres, the evidence shows that several of their cheques had been endorsed. The Court is of the opinion that the Appellants should have noticed this and realized that a large number of the cheques written to the Suppliers had been deposited at cheque-cashing centres, and the testimony to the contrary was not credible.

[108] The Appellants stated that they did not know that the workers were paid in cash, but the Court is of the opinion that they should have known. Even if they did not participate in the scheme directly, they were nonetheless indifferent and wilfully blind.

[109] Ultimately, the Court is of the opinion that the Appellants' case was not supported by persuasive evidence and was constituted almost exclusively by the uncorroborated testimony of persons with an interest in the case. The Court must draw a negative inference from the absence of testimony from the workers or the Suppliers' contact persons.

[110] The Court must find that the Appellants failed to make a *prima facie* case that they acquired supplies from the Suppliers. That is sufficient to conclude that the supporting documentation did not meet the requirements of the ETA and therefore that the Appellants were not entitled to the ITCs claimed.

[111] This leaves us with LVC inc., which was incorporated in 1993 and ceased doing business in March 2004. This was the company belonging to Mr. Couture, who was president and shareholder with his spouse. The Respondent maintains that it was also a tax offender and an SAI. However, the Respondent has not disputed that Mr. Couture was a director and that the Appellants always dealt with him directly. Since the supporting documentation rejected by the Minister was produced during the time-barred period, the Court will address this question below.

[112] The Respondent assumed that the Appellants had participated in a scheme that aimed [TRANSLATION] "to pay some of its employees' wages in cash" without the employees reporting their wages to the Minister and complying with "their legal obligations in that regard". In the written submissions, the Respondent adds that the workers, as well as Mr. Couture, were really "employees" of the Appellants and that the Appellants have not rebutted the Minister's presumptions of fact regarding the workers' status or the scheme for paying the employees under the table. The Respondent essentially maintains that the workers were all under the supervision of Mr. Couture, who was himself an employee of the Appellants [TRANSLATION] "or

directly under the direction of the Champagnes" and that the Appellants never had any contact with the SAIs or their officers. The Respondent adds that it is unlikely that the "workers" changed employer at the same time as Mr. Couture or when there was a change of Supplier.

[113] According to the Appellants, they structured their business dealings in such a way as to reduce the payroll by minimizing the number of employees and ensuring that all the "workers" were under Mr. Couture. The evidence shows that he played an important role in the operations. In fact, Mr. Champagne stated that he was [TRANSLATION] "his employee" even though he had his own company.

[114] The evidence shows that Mr. Champagne and Patrice frequently checked the work performed, but the goal was to monitor the quality of the results so as to ensure they were consistent with the plan and specifications set out in the contract with the builder. This was, in part, the key to their success. As the Federal Court of Appeal stated in *Fédération des caisses Desjardins du Québec v. Canada (National Revenue)*, 2020 FCA 182 ("*Fédération*"), "monitoring results is not the same as controlling work performance, which is specific to the contract of service" (para. 4).

[115] Ultimately, the Court is of the opinion that the Appellants were not required to rebut an assumption of fact relating to [TRANSLATION] "the status of the workers" and the "scheme for paying the employees under the table" since it was not relevant to the case. In *SNF*, Rip J. stated:

> [72] The Minister also made some assumptions that are true but irrelevant: for example, that payment in cash prevents the tax authorities from verifying amounts in question in the hands of the alleged suppliers and that cheques by SNF to suppliers were cashed by SNF. Cash is legal tender and constitutes payment for services and goods. That it may be difficult for a third party to trace cash does not affect the purchase and sale itself or resulting in the registrant being prohibited from claiming ITCs.
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> [Emphasis added.]

X. Assessments outside the normal assessment period

[116] Paragraph 298(4)(a) provides that the Minister may make an assessment "at any time" outside the limitation period if the registrant has "made a misrepresentation that is attributable to the person's neglect, carelessness or wilful default". It is settled law that it is up to the Respondent to prove this. The limitation

period for Jenleau expired on October 1, 2006, and for Chambru, on December 1, 2007.

[117] In *MF Electric Incorporated v. The King*, 2023 TCC 60, Justice St. Hilaire analyzed a similar provision of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), explaining that a misrepresentation means any statement that is "incorrect" and that "the threshold for establishing misrepresentation is low" (para. 33). She added:

> [31] The wording of subparagraph 152(4)(a)(i) is such that it is sufficient for the Minister to establish neglect or carelessness without having to consider whether there was wilful default or fraud (see *Deyab v Canada*, 2020 FCA 222 at paras 58-61 [*Deyab*]). Having said this, the burden is on the Minister to establish both that the taxpayer or the person filing the return has made a misrepresentation *and* that it is attributable to neglect, carelessness, wilful default or fraud (see *Vine v R*, 2015 FCA 125 at paras 23–24).
>
> [Emphasis added.]

[118] In *Francis & Associates v. The Queen*, 2014 TCC 137, Justice Bocock commented on the issue of "the standard of care required of the reasonable taxpayer" (paras. 22 and 23), quoting *Regina Shoppers Mall Ltd. v. R*, [1991] 1 C.T.C. 29 in which the Federal Court of Appeal stated that "the care exercised must be that of a wise and prudent person". Justice Bocock then quoted *Reilly v. R.*, [1984] C.T.C. (para. 51), in which Justice Muldoon, also of the Federal Court, added that while "the standard of care is that of a wise and prudent person", it must be remembered that "wisdom is not infallibility" and "prudence is not perfection".

[119] In this case, the Court has already concluded that the supporting documentation did not reflect the names of the real Suppliers, and that is sufficient to conclude that the Appellants made a "misrepresentation". Even though the Appellants claim to have acted in good faith, to have demonstrated a degree of diligence, and to have acted according to the best of their knowledge, the Court cannot conclude that they acted as "wise and prudent persons" would have done. They did not do any checking or searches of the REQ to identify the real representatives of the Suppliers, and they [TRANSLATION] "blindly" accepted that Mr. Couture was the legitimate representative of the companies that succeeded LVC inc. (they also accepted his handwritten invoices on the same blueline pad). They also "blindly" accepted, without verifying, that some individuals, even though they were little known to them, were authorized representatives of the other Suppliers. They dealt with those persons at their own risk and peril.

[120] The Court is of the opinion that this is sufficient to conclude that the Appellants made a misrepresentation of the facts attributable to “neglect” or “carelessness” and that their conduct was not that of a “wise and prudent” person.

[121] We are left with LVC inc., of which Mr. Couture was a director. The Appellants did business with this company from 1983 to 2004, and made the transition to the new Suppliers only when they learned of the problems with the CCQ and the CSST. However, the Court is of the opinion that by doing business directly with Mr. Couture, an individual whom Mr. Champagne had known for almost 30 years, the Appellants acted in accordance with the “wise and prudent” person standard. Since the Respondent has not proved otherwise, the Court is of the opinion that the assessments made in connection with the LVC inc. invoices are time-barred.

[122] Even if the Court were to conclude that the supporting documentation contained few details or did not contain sufficient information to meet the requirements of the ETA and the Regulations, the Court nonetheless finds that the assessments made in connection with the LVC inc. invoices are time-barred.

XI. Penalties for gross negligence

[123] Section 285 of the ETA imposes a penalty when a person “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” or other document made in respect of a reporting period.

[124] In *Venne v. The Queen*, 1984 CanLII 5717 (FC), [1984] FCJ No. 314 (FCTD) (“*Venne*”), the Federal Court explained that the concept of “gross negligence” involves a higher degree of negligence than merely failing to exercise reasonable care, which might otherwise be sufficient for subsection 298(4)(a), referred to earlier, to apply. The Federal Court stated that “gross negligence” must involve “a high degree of negligence tantamount to intentional acting, an indifference as to whether the law is complied with or not” (para. 37).

[125] Since *Canada (Attorney General) v. Villeneuve*, 2004 FCA 20, the Federal Court of Appeal has added that the expression “gross negligence” may include “wilful blindness”. Then, in *Panini v. The Queen*, 2006 FCA 224, the Court explained that wilful blindness exists when a person who feels a need to obtain information refuses to do so because they prefer not to know the truth. In those circumstances, the law will impute knowledge to a taxpayer who, in circumstances that dictate or strongly suggest an inquiry should be made with respect to their tax

situation, refuses or fails to commence such an inquiry without proper justification (paras. 42–43).

[126] In *Wynter v. Canada*, 2017 FCA 195 ("*Wynter*"), the Federal Court of Appeal held that the Minister could meet her burden of proving that the misrepresentation was made knowingly by establishing that the taxpayer was wilfully blind so that knowledge could be imputed to him or her. Distinguishing between wilful blindness and gross negligence, the Court stated:

> [13] A taxpayer is wilfully blind in circumstances where the taxpayer becomes aware of the need for inquiry but declines to make the inquiry because the taxpayer does not want to know, or studiously avoids, the truth. The concept is one of deliberate ignorance…. In these circumstances, the doctrine of wilful blindness imputes knowledge to a taxpayer,,,. Wilful blindness is the doctrine or mechanism by which the knowledge requirement under subsection 163(2) is met.

[127] The Federal Court of Appeal added that "gross negligence" requires "an objective assessment of the comportment of the taxpayer" while wilful blindness is determined by reference to "the taxpayer's subjective state of mind" (para. 12).

[128] In those cases, the Appellants had put in place a system for checking the Suppliers' registrations and numbers, including for GST/QST, to make sure they were in good standing. By doing those checks, they exhibited a degree of diligence, so the Court cannot conclude that there was "a high degree of negligence tantamount to intentional acting" or "an indifference as to whether the law is complied with or not" as the Court explained in *Venne*.

[129] However, we are left with the concept of wilful blindness, which, according to *Wynter*, must be determined by reference to the taxpayer's subjective state of mind. The case law has established that the taxpayer's education, intelligence, knowledge and experience, the magnitude of the advantage or omission, and how readily detectable the false statement was are all relevant in determining the taxpayer's subjective state of mind: *Torres v. The Queen*, 2013 TCC 380 (aff'd *Strachan v. Canada*, 2016 FCA 60).

[130] Mr. Champagne and Ms. Groleau clearly did not have a high level of education, but they had been in business for a few decades. They had been reasonably successful, and they were reasonably well known. They had incorporated several companies. They were in contact with accountants and notaries. They could have sought advice from those professionals regarding the requirements of the ETA and supporting documentation, but they did not do so. Bruno and Patrice had

bachelor's degrees, and although they became directors in 2007, they were the Appellants' employees at the start of the period in issue.

[131] The Court can only conclude that the Appellants were not beginners or neophytes in the business world. They studied their clients' plans and specifications, and they prepared bids for materials and labour. Everything would come together with the signing of a contract in due form, one that, in Bruno's words, contained the [TRANSLATION] usual "legal verbiage".

[132] However, for the Suppliers in question, there were no meetings or negotiations that could have given rise to a contract. When Mr. Couture suddenly abandoned LVC inc. after more than ten years in business, whether "objectively" or "subjectively", the Appellants should have made efforts to confirm that he was an authorized representative. The amounts paid to these companies were substantial. The same is true for the other Suppliers. The Appellants were wilfully blind in doing business with contact persons who called themselves representatives without trying to confirm everything.

[133] To conclude, in the Court's view, the Respondent has established that the Appellants were wilfully blind in their relationship with the Suppliers. In the words of the Federal Court of Appeal in *Wynter*, the Appellants declined to make the inquiry because they did not want to know, or studiously avoided, the truth that the Suppliers were not the actual suppliers of the supplies in question.

[134] For these reasons, the Court must conclude that the Minister has established that the Appellants were wilfully blind when they claimed ITCs for the amounts paid to the Suppliers (with the exception of LVC inc.) and thus that the statements were made in circumstances amounting to gross negligence.

XII. Guilty pleas

[135] Suffice it to say, for the purposes of this analysis, that Mr. Champagne, Bruno, Jenleau and Mr. Couture were charged on April 20, 2012, with 26 counts for having [TRANSLATION] "made, or participated in or assented to the making of, false or deceptive statements in returns filed under the ETA" and "used in connection with a false invoicing scheme". Those counts relate to the period between September 1,

2005, and March 31, 2010, as set out in the summons dated April 20, 2012 (Exhibit I-8).

[136] The minutes from the Criminal and Penal Division of Quebec dated April 20, 2017 (Exhibit I-7) show that, further to a motion citing “unreasonable delay”, Mr. Champagne and Jenleau pleaded guilty to the first count, relating to 9158-7154 Québec inc. for the period between September 1 and December 31, 2005. They were each sentenced to pay a fine. The other counts, including those against Bruno, were withdrawn.

[137] In addition, Mr. Couture pleaded guilty to six counts relating to 9108-2347 Québec inc., 9178-6467 Québec inc. and Les Entreprises St. Pierre inc. for the period from September 1, 2008, to March 31, 2010. He was also sentenced to pay fines, but the other counts were withdrawn.

[138] Although Mr. Champagne did not mention those charges in his testimony, the Court accepts the testimony of Bruno, as a director of Jenleau, and his explanation that his father and Jenleau pleaded guilty in the hope of getting the criminal and tax proceedings over with.

[139] The Appellants maintain that the Court should not place any weight on the guilty pleas. They cite *Samaroo v. The Queen*, 2016 TCC 290, in which Justice Bocock declined to accept “the findings of fact in the criminal proceedings”, stating that there was nothing to prevent “the parties from adducing further evidence at the hearing of the appeals which challenges, rebuts or enhances any finding of fact” (para. 1 of the order).

[140] The Respondent maintains that the guilty pleas constitute extrajudicial admissions that benefit from a presumption of truthfulness, but whose probative value is left to the appraisal of the court. In *Desroches v. The Queen*, 2013 TCC 81 (“*Desroches*”), Justice Favreau stated:

> [41] Article 2852 of the C.C.Q. sets out the rules regarding the probative force of an admission as follows:
>
> **Art. 2852**. An admission made by a party to a dispute or by an authorized mandatary makes proof against him if it is made in the proceeding in which it is invoked. It may not be revoked, unless it is proved to have been made through an error of fact.
>
> The probative force of any other admission is left to the appraisal of the court.

> [42] Even though, according to article 2852 of the C.C.Q. the probative force of an extrajudicial admission is left to the appraisal of the court, according to legal doctrine, any extrajudicial statement in which a person admits to a fact that is against his interests is presumed to be true and a court should not be able to dismiss an extrajudicial admission by a party without a valid reason. …
>
> [Emphasis added.]

[141] More recently, in *Clermont v. La Reine*, 2017 TCC 32, Justice Lamarre quoted Justice Favreau in *Desroches* and stated that "the guilty plea entered by the Appellant before the Court of Québec and the evidence filed constitute extrajudicial admissions (article 2852 C.C.Q.)" and "the transcript constitutes a record of a court of justice and is therefore an authentic act that is proof of its content and is admissible" (para. 54).

[142] The Respondent points out that Mr. Couture did not testify, so the presumption of the truth of his guilty plea has not been rebutted and the Court must believe it. In the context of this case, the Court is of the opinion that it confirms that he was not in reality the [TRANSLATION] "contact person" for the Suppliers that succeeded LVC inc. He presented the invoices knowing that they were accommodation invoices.

[143] The Court is also of the opinion that the extrajudicial admissions by Mr. Champagne and Jenleau are probative for the purposes of this case, since the Court has already concluded that the Appellants had not done business with the actual suppliers as required by the ETA. For multiple reasons, they had to have realized that they were dubious suppliers, even if there were "flesh and blood" workers doing the work. Furthermore, even if they did not know the suppliers were tax offenders and SAIs, they closed their eyes when the cheques cashed at the cheque-cashing centres were returned. They maintain that there is no evidence that the workers were paid in cash, and yet the evidence seems to indicate the opposite.

[144] In the other respects, the Court is of the opinion that the Appellants did not produce "further evidence" and did not succeed in challenging or rebutting the presumption of validity of the guilty pleas in question. The Court must assign probative value to the pleas in the context of this case and the evidence as a whole. There is no "valid reason" to disregard them.

[145] That said, the guilty pleas relate to the period after September 1, 2005, so there is no conflict with the Court's conclusion that the assessments relating to the ITCs claimed for the LVC inc. invoices are time-barred.

XII. Conclusion

[146] For these reasons, the appeals are allowed and the assessments are referred back to the Minister for reassessment and redetermination, on the understanding that the assessments relating to the ITCs claimed for the Systèmes intérieurs L.V.C. inc. invoices are time-barred. However, the assessments disallowing the ITCs for the other Suppliers are confirmed.

[147] Costs are awarded to the Respondent, prorated on the basis of his success in all of the assessments.

Signed at Ottawa, Canada, this 17th day of August 2023.

"Guy R. Smith"

Smith J.

Acronyms:

CCQ – Commission de la construction du Québec

CSST – Commission de la santé et de la sécurité du travail

NEQ – Numéro d'entreprise du Québec

RBQ – Régie du bâtiment du Québec

REQ – Registre des entreprises du Québec

SAAQ – Société de l'assurance automobile du Québec

Translation certified true
On this 30th day of April, 2025

Vera Roy, Senior Jurilinguist

CITATION:	2023 TCC 120
COURT FILE NOS.:	2011-2692(GST)G 2011-2695(GST)G
STYLE OF CAUSE:	LES PLANCHES MURALES JENLEAU INC., LES RÉSIDENCES CHAMBRU INC. AND HIS MAJESTY THE KING
PLACE OF HEARING:	Montréal, Quebec: November 2, 3, 4, 5, 9, 10, 12, 16, 17, 18, 19, 23, 24, 25, 26 and 30, 2020, and Ottawa, Ontario: January 12 and 13, 2022
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REASONS FOR JUDGMENT BY:	The Honourable Justice Guy R. Smith
DATE OF JUDGMENT:	August 17, 2023

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