

Docket: 2013-4655(GST)G

BETWEEN:

TRICOMCANADA INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard January 26, 27, 28 and 29, 2015,  
May 11, 12, 13, 14 and 15, 2015, and  
June 17, 18 and 19, 2015, at Montreal, Quebec.  
Before: The Honourable Justice Robert J. Hogan

Appearances:

Counsel for the Appellant: Basile Angelopoulos  
Virginie Paquet

Counsel for the Respondent: Antoine Lamarre  
Nicolas C. Ammerlaan

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**JUDGMENT**

The appeal from the assessment made under Part IX of the *Excise Tax Act* for the periods from April 2012 to November 2012 inclusive is dismissed in accordance with the attached Reasons for Judgment. Costs are awarded to the Respondent.

Signed at Ottawa, Canada, this 11th day of January 2016.

“Robert J. Hogan”

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Hogan J.

Citation: 2016 TCC 8  
Date: 20160111  
Docket: 2013-4655(GST)G

BETWEEN:

TRICOMCANADA INC.,

Appellant,

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HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Hogan J.

#### I. Overview

[1] This is an appeal from an assessment made by the Quebec Minister of Revenue (the “Minister”), acting for and on behalf of the Minister of National Revenue, under Part IX of the *Excise Tax Act*<sup>1</sup> (the “Act”) for the reporting periods from April 2012 to November 2012 inclusive (the “Relevant Period”).

[2] In its returns for the Relevant Period, the Appellant reported the goods and services tax (“GST”) it collected from its sole client, Diverse Equities Inc. (“Diverse Equities”), from the sale of used gold jewelry and impure gold bars (hereinafter referred to as “Scrap Gold”). The Minister denied the Appellant input tax credits (“ITCs”) of \$994,730.97 claimed under the Act with respect to its purchases, as follows:

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<sup>1</sup> RSC 1985, c E-15.

Reporting Period	GST Collected (\$)	GST Paid (\$)	Net GST (\$)
April 2012	13,903.11	13,432.96	470.15
May 2012	102,696.54	99,288.10	3,408.44
June 2012	116,638.16	111,473.63	5,164.53
July 2012	149,906.33	143,609.13	6,297.20
August 2012	214,381.51	205,881.03	8,500.48
September 2012	194,767.88	185,023.61	9,744.27
October 2012	192,551.75	184,424.24	8,127.51
November 2012	53,529.52	51,598.27	1,931.25
	<u>1,038,374.80</u>	<u>994,730.97</u>	<u>43,643.83</u>

[3] The Appellant's claim for ITCs was denied on the grounds that the Appellant did not trade in gold or, alternatively, that it acquired gold from persons other than the alleged suppliers listed on its purchase invoices. The Minister alleges that the Appellant knowingly, or acting with willful blindness, participated in a false invoicing scheme. The Respondent now labels that scheme a sham.

[4] In support of the assessments, the Minister also contends that the purchase invoices produced as part of the Appellant's documentary evidence do not satisfy the requirements set out in paragraph 169(4)(a) of the Act and section 3 of the *Input Tax Credit Information (GST/HST) Regulations*<sup>2</sup> because they do not identify the Appellant's true suppliers.

[5] The Appellant claims it purchased and resold Scrap Gold in bona fide commercial transactions. The Appellant points out that its officers regularly verified the registration status of its alleged suppliers, retained copies of photo identification and photocopied the batches of gold that it purchased. If the Appellant's alleged direct suppliers were not the owners of the gold the Appellant purchased, the Appellant had no way of knowing this.

## II. Factual Assumptions made by the Minister

[6] The Minister relied on the following assumptions of fact in making the assessments against the Appellant:

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<sup>2</sup> SOR/91-45.

[TRANSLATION]

...

- (c) the appellant has been a registrant for the purposes of Part IX of the ETA since April 23, 2012, which is the alleged date on which its business began operating;
- (d) the appellant operates or claims to operate a gold-trading business consisting essentially in acquiring scrap gold for resale to a refiner in Alberta;
- (e) during the relevant period, the appellant's net tax returns were filed on a calendar monthly basis;
- (f) the appellant acquired, or allegedly acquired, during the relevant period, taxable supplies of goods and services for consumption, use or supply in the operation of its business—a commercial activity—for which supplies GST was paid or payable by the appellant to the suppliers;
- (g) the appellant entered as an ITC in its books and accounting records an amount of \$994,853.70 in GST so paid or payable and, in calculating the net tax reported by it to Revenu Québec for the relevant period, claimed—and subsequently received—the said ITC amount;
- (h) of the total ITC of \$994,853.70 claimed—and subsequently received—in the computation of its net tax reported to Revenu Québec for one or another of the monthly reporting periods in the relevant period, the appellant claimed a total amount of \$994,730.97 in respect of purported supplies of goods (scrap gold) that it claims to have received during the said relevant period from four different alleged suppliers, namely:

6650261 Canada inc. (Bijouterie Tiara)	\$45,463.98
9103-2045 Québec inc. (Liz [ <i>sic</i> ] Trading)	\$9,670.07
Bijouterie Palo inc. and 9261-1201 Québec inc. [combined]	\$939,596.92
<b>TOTAL</b>	<b>\$994,730.97</b>

- (i) this ITC amount of \$994,730.97 corresponds to a consideration of some \$19,894,619.42 for such supplies, which the appellant claims to have acquired during the relevant period from those four alleged suppliers, namely:

6650261 Canada inc. (Bijouterie Tiara)	\$909,279.62
9103-2045 Québec inc. (Liz [sic] Trading)	\$193,401.30
Bijouterie Palo inc. and 9261-1201 Québec inc. [combined]	\$18,791,938.50
<b>TOTAL</b>	<b>\$19,894,619.42</b>

- (j) the appellant did not provide to Revenu Québec when required to do so sufficient information, including prescribed information, to establish the aforementioned \$994,730.97 ITC amount claimed by it—and subsequently received—in calculating its net tax for the relevant period;
- (k) more particularly, to establish the said ITC amount the appellant provided supporting documents that did not meet the requirements of the ETA and the regulations thereunder;
- (l) essentially, the supporting documents (invoices) provided to Revenu Québec in support of the ITC claim and relating to supplies of scrap gold that the appellant allegedly acquired during the relevant period are false in that the appellant did not acquire the supplies of scrap gold it claims to have acquired or acquired them from a supplier other than the suppliers indicated on the supporting documents, and these supporting documents constitute “accommodation” invoices;
- (m) the object of the scheme at issue is to enable the appellant, through the use of so-called “accommodation” invoices, to make, in the computation of its net tax for the relevant period, ITC claims that are unjustified in light of the requirements set out in the ETA;
- (n) in the present case, the appellant—the “accommodated” party—resorted to the services of third parties—the “accommodation” parties—that is, the four alleged suppliers in question, regardless of whether they were carrying on real businesses or not; these third parties issued invoices to the appellant for supplies of scrap gold that they did not make to the appellant and which the appellant did not acquire from any of them;
- (o) as regards any or all of the four suppliers in question, they do not have the knowledge, the personnel or the equipment to make the supplies of scrap gold that they allegedly undertook to make to the appellant;
- (p) as regards any or all of the four suppliers in question, the appellant is unable to adequately identify the individual it dealt with despite the numerous meetings that took place;

- (q) as regards any or all of the four suppliers in question, according to the records of the Société de l'assurance automobile du Québec, during the relevant period they did not own, nor did they possess under long-term leases from third parties, road vehicles that would have enabled them to make the purported supplies of scrap gold that they allegedly undertook to make to the appellant;
- (r) immediately following its registration for the purposes of Part IX of the ETA and despite its lack of expertise in the area of activity in question, the appellant began operating its business with an impressive quantity of scrap gold supplies, which it received uninterruptedly and without having done any advertising at the very beginning of that business's operation and without having done much newspaper advertising thereafter;
- (s) as regards one of the four suppliers in question, namely, 9103-2045 Québec inc. (Liz Trading), that supplier was delinquent in its dealings with Revenu Québec with respect to Part IX of the ETA and with respect to the AQST in that it failed to produce any net tax return;
- (t) the cheques drawn, or the bank drafts used, by the appellant to pay for the purported supplies it allegedly acquired from any or all of the four alleged suppliers in question were in almost all instances presented to be cashed at a cheque-cashing centre by those suppliers;
- (u) there are anomalies in the chronological sequence of the invoices issued by any or all of the four alleged suppliers in question;
- (v) the appellant, knowingly or under circumstances amounting to gross negligence in the carrying out of a duty or an obligation imposed by or under Part IX of the ETA, made a false statement or omission in its returns of net tax in claiming as an ITC, in computing the net tax it reported during the relevant period, an amount of \$994,730.97 in respect of the purported supplies acquired from the four alleged suppliers in question;
- (w) the appellant is accordingly liable to Revenu Québec for the amount of the adjustments made to its reported net tax for the relevant period, plus interest and penalties.<sup>3</sup>

[Emphasis added.]

[7] The structure under which the Appellant allegedly acquired Scrap Gold is illustrated in Schedule A of my Reasons for Judgment.

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<sup>3</sup> The Minister's Reply to the Notice of Appeal was filed in French. The parties agreed that the judgment should be rendered in English. The above is the Court's translation of the Minister's assumptions at paragraph 5 of the Reply to the Notice of Appeal.

### III. Respondent's position

[8] The Respondent argues that the Appellant knowingly participated in a false invoicing scheme that allowed clandestine suppliers of gold to sell their gold for cash. To incentivize the participants in the false invoicing scheme, GST and QST was not remitted by the Appellant's alleged indirect suppliers. Significant input tax credits were claimed by the Appellant for the purpose of generating tax refunds. As a consequence of this false invoicing scheme, both levels of government were asked to refund tax that they had not received. This additional cash flow was shared among the participants in the arrangement allowing the Appellant to purchase gold from persons willing to sell their gold for cash in untraceable transactions. This afforded the Appellant the opportunity to purchase its gold at a substantial discount in relation to its market value.

[9] The Respondent observes that the gross margins earned by Diverse Equities, the Appellant, and the other intermediaries in the chain were unusually high, as demonstrated by the following table:

<b>Party</b>	<b>Spot-rate purchase</b>	<b>Spot-rate sale</b>	<b>Margin</b>
Diverse Equities (purchaser and reseller)	93%	98.5% - 99.0%	5.5% - 6.0%
Tricomcanada (Appellant) (purchaser and reseller)	90.5%	93.0%	2.5% - 4.75% <sup>4</sup>
Tricom alleged suppliers (purchaser and reseller)	n/a	90.5%	Approximately 2.5% <sup>5</sup>
Chèque Express (financial intermediary)			2.25% for cheque cashing services

[10] According to the Respondent, the aggregate gross profit margin of all of the participants in the chain was approximately equal to the unremitted GST and Quebec sales tax ("QST"), which was only partially refunded in connection with

<sup>4</sup> Tricom earned an additional 0.75% when it paid its alleged suppliers by bank draft and 2.25% when it paid cash. The Appellant reported gross revenue of \$20,683,182 with a cost of goods sold of \$20,197,602 calculated on the assumption that it would receive a full credit for the QST and GST that it paid. The Appellant's gross margin on its total sales (cash and non-cash) works out to 3.19%. Its operating income or net profit reported in its financial statements was 3.09%, which takes into account the administrative and financial costs incurred by the Appellant to earn its profit.

<sup>5</sup> Costs estimate based on the evidence available for Bijouterie Tiara.

the transactions at issue in this appeal. The combined federal-provincial sales tax rate in the province of Quebec in 2012 was 14.975%.<sup>6</sup>

[11] The Respondent argues that the inflated profit earned by the Appellant, locked in by virtue of a significant discount from the spot price, is a disguised portion of the unremitted sales tax that the Appellant sought to recover as refunds through its ITC claims. The Respondent reasons that the false invoicing scheme orchestrated by the Appellant allowed the Appellant's true suppliers of gold to sell their gold at the same price as that available to them in an open-market transaction. The amounts purported to have been collected as QST and GST by the Appellant's alleged direct or indirect suppliers were diverted with the knowledge of the Appellant. The funds were then put to a different use. Because the tax was not remitted, the Appellant's alleged direct and indirect suppliers had sufficient funds to pay their transaction costs, subtract their commissions, and pay the true suppliers roughly the same price as that which they would have received in a fully disclosed transaction. The QST and GST paid by the Appellant was not an expense for it, because the Appellant expected a full refund of the QST and GST allegedly paid under the arrangement.<sup>7</sup> The expected refund was intended to secure a profit for the Appellant under the arrangement. Under this arrangement the Appellant's true suppliers ended up ahead because they avoided income tax on their profit from the sales.

#### IV. Appellant's position

[12] The Appellant notes that its shareholders, Marc ("Mr. Bishara") and Carl Bishara, are businessmen who are adept at pursuing new business opportunities. The Scrap Gold business was just the latest instalment in a series of business ventures pursued by the cousins. The timing of the cousins' involvement with the gold business coincided with a period which saw world gold prices rise rapidly.

[13] The Appellant also claims that it acted with reasonable care and took all precautionary measures to ensure that it conducted its affairs in a prudent and diligent manner, above and beyond what is required by law. Mr. Bishara conducted extensive due diligence. In particular, he had several conversations with Stan Wright, an experienced precious metals wholesaler. Mr. Bishara also collected a large quantity of documentation on each of the Appellant's alleged suppliers,

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<sup>6</sup> GST at 5%. QST at 9.5%, applied to the selling price including GST.

<sup>7</sup> The Appellant received a full credit for the GST that it allegedly paid because it offset that tax against the GST collected from Diverse Equities. Revenu Québec refused to process the Appellant's claim for the reasons noted below.



including photo identification, articles of incorporation, and proof of sales tax remittances. If the Appellant's alleged suppliers were not the true suppliers of the Scrap Gold, the Appellant claims it had no way of discovering for whom its alleged suppliers were acting. The Appellant contends that it is unfair to hold it accountable for the alleged fraudulent activities of its alleged indirect suppliers. Only the Minister has the power to conduct audits and investigations to ferret out complex tax frauds.

[14] The Appellant also contends that the significant economic risk it bore during the Relevant Period runs contrary to what is normally observed in sham transactions. Although the Appellant's gross profit margin was between 2.5% and 4.75%, depending on whether it paid in cash or by bank draft, it suffered negative cash flow because it paid out almost 15% in combined GST and QST, which was only partially offset by the taxes it collected from Diverse Equities.<sup>8</sup>

#### V. Issues in dispute

[15] In her written representations, the Respondent frames the issues in dispute as follows<sup>9</sup>:

- a. Did the Appellant acquire scrap gold?
- b. Was the Appellant carrying on a business?
- c. Did the Appellant acquire the scrap gold from the suppliers indicated on the invoices?
- d. Did the Appellant knowingly participate in a scheme intended to deceive the Minister?
  - i. Does the documentary formalism detract from the substance of the transactions such that the transactions constitute a sham?
  - ii. Did the Appellant knowingly participate in a scheme?
  - iii. Was the Appellant willfully blind to the fact that he participated in a scheme?

[16] I agree with the Respondent's summary of the issues.

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<sup>8</sup> The Appellant collected GST from Diverse Equities throughout the Relevant Period, but only collected QST from July 13, 2012 to October 31, 2012.

<sup>9</sup> Written Submissions, page 14, paragraph 48.

## VI. Summary of Evidence and Credibility Findings

### A. Tricom

[17] Mr. Bishara testified on behalf of the company at trial. Carl Bishara, the co-shareholder of the Appellant, was not called as a witness.

[18] Mr. Bishara observed that he and his cousin Carl Bishara are entrepreneurs. They are prepared to consider, and where the opportunity is interesting, quickly commit time, effort and capital to, new ventures. In 2004 they purchased an interest in three pharmacies from the estate of their fathers, and have since sold one of them. Through a pharmaceutical holding company the cousins also operate a wholesale business which sells medication to hospitals, clinics, and doctors worldwide.

[19] In 2008, Mr. Bishara, Carl Bishara, and another family member purchased two dry cleaners. Mr. Bishara explained that he and his cousin Carl Bishara have also been involved in real estate for most of their lives.

[20] Mr. Bishara alleged that, prior to concluding the Appellant's first Scrap Gold transaction on April 24, 2012, he conducted extensive research on the gold trade. He did some Internet research, but most of the information he gathered came from conversations he had with knowledgeable individuals with experience in the business. One such individual was Stan Wright, with whom Mr. Bishara came into contact through a mutual friend. Mr. Wright is the president and joint shareholder of Diverse Equities, a large precious metals dealer that has been operating in Alberta since 1992. He has over forty years of experience in the coin, jewelry, and precious metals trade.

[21] Mr. Wright corroborated Mr. Bishara's testimony on this point. He testified that Mr. Bishara had called him several times to inquire about the Scrap Gold business. Mr. Bishara testified that counterfeit product was one of his biggest concerns at the outset.

[22] The witness alleges that he also consulted with Hercules Nikolopoulos, whose company 6650261 Canada Inc., operating under the name Bijouterie Tiara ("Bijouterie Tiara"), would eventually become the Appellant's first alleged supplier. Mr. Bishara testified that he was introduced to Mr. Nikolopoulos by Mr. Nikolopoulos' brother-in-law, Peter Mentzelos, who is a good friend.

Mr. Nikolopoulos testified that his brother-in-law introduced him to Mr. Bishara around August 2011.

[23] The evidence shows that Mr. Nikolopoulos became active in the gold business in the spring of 2011, acting through Bijouterie Tiara. Mr. Bishara testified that he had asked Mr. Nikolopoulos many questions relating to the gold business and was impressed with his prudent business practices. When asked about those practices, Mr. Bishara explained that Mr. Nikolopoulos would take pictures of the gold he purchased. Mr. Bishara would later do the same when carrying out transactions on behalf of the Appellant.

[24] Before settling on Diverse Equities as a purchaser for the Appellant's gold, Mr. Bishara claims, he contacted Québec Fonte Inc. ("Quebec Fonte"), a wholesale purchaser and smelter of gold and other precious metals, located in St-Eustache, Quebec, to obtain certain information, including pricing, volume requirements, and general terms and conditions.

[25] The evidence shows that Bijouterie Tiara supplied gold to Quebec Fonte before Mr. Nikolopoulos decided to do business with the Appellant. Mr. Bishara claims he decided not to do business with Quebec Fonte because of pricing, security and travel concerns. Mr. Nikolopoulos also claims that he stopped doing business with Quebec Fonte for similar reasons. However, the evidence suggests that Mr. Nikolopoulos had a different motive for abandoning his activities with Quebec Fonte. He and his company, Bijouterie Tiara, and Quebec Fonte were already, or on the verge of being, under audit by Revenu Québec with respect to their gold transactions when Mr. Bishara and Mr. Nikolopoulos first discussed doing business together.

[26] The evidence shows that Mr. Nikolopoulos was informed of Bijouterie Tiara's audit on October 13, 2011.<sup>10</sup> I infer that Quebec Fonte was already under audit by that date, as Bijouterie Tiara's audit report states that Mr. Nikolopoulos' company, which was a supplier of gold to Quebec Fonte, was selected for audit on the basis that it had a relationship with several businesses which were believed to have participated in a false invoicing scheme.<sup>11</sup> The audit report also indicates that Quebec Fonte was under audit as at the date of the report.<sup>12</sup> These events preceded the first transaction between the Appellant and Bijouterie Tiara by many months.

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<sup>10</sup> Exhibit I-35, p 3, section 5.7.

<sup>11</sup> *Ibid.*, p 4, section 5.8.

<sup>12</sup> *Ibid.*, p 8, section G.2.7.

[27] The Appellant was incorporated on March 19, 2012. On April 23, 2012, it obtained registration certificates for GST and QST. It began operating the following day.

[28] Mr. Bishara testified that he placed ads in several newspapers beginning on May 11, 2012 to recruit suppliers of Scrap Gold. Ads were also placed online. After initially telling the auditor assigned to audit the Appellant that all of the Appellant's alleged suppliers were recruited through those ads, Mr. Bishara changed his answer at trial after hearing Mr. Nikolopoulos testify that he introduced Mr. Al-Romhein to the Appellant. Mr. Al-Romhein was the sole shareholder of 9261-1201 Québec Inc. ("9261 Quebec"), which became the Appellant's largest alleged supplier of Scrap Gold.

[29] Mr. Bishara testified that the Appellant's alleged suppliers were asked to satisfy certain criteria before the Appellant would agree to do business with them. For example, he told prospective suppliers that he insisted on receiving an invoice for all purchases. Mr. Bishara also required that the alleged suppliers provide a copy of their "incorporation documents", proof of GST and QST remittances, and a copy of photo identification. Mr. Bishara would also obtain a copy of the alleged supplier's information from the website of the Registraire des entreprises du Québec ("REQ") and regularly validate their GST and QST numbers with the tax authorities. If an alleged supplier's sales tax number was shown as inactive, Mr. Bishara claimed, the Appellant would not do business with that supplier.

[30] According to Mr. Bishara, the Appellant would purchase Scrap Gold as follows. Mr. Bishara would receive a phone call or text message from one of the Appellant's alleged suppliers indicating how much Scrap Gold the supplier had available to sell. The amount of gold was expressed in dollar value, not units of weight. Mr. Bishara explained that, before agreeing to purchase the gold, he would confirm and reserve a spot price using a mobile application called Gold Tracker. To protect the Appellant from fluctuations in the price of gold, Mr. Bishara would hedge by confirming a spot price with Diverse Equities immediately after booking a price with the alleged supplier. Mr. Bishara testified that the spot price he quoted to Diverse Equities would virtually always be accepted. Once the spot price was agreed upon with Diverse Equities, Mr. Bishara explained, the Appellant's alleged

supplier had a commitment to deliver the gold and the Appellant in turn had an obligation to deliver the gold to Diverse Equities.<sup>13</sup>

[31] According to Mr. Bishara, later that day, the alleged supplier would present itself at the Appellant's place of business with the agreed amount of Scrap Gold. The gold would generally be delivered by all of the alleged suppliers in plastic Ziploc bags separated by carat, with the weight of the contents indicated on each bag. When the gold arrived, Mr. Bishara would check the contents of the bags and make a photocopy of them. The Appellant produced photocopies of substantially all of the bags of Scrap Gold that it purchased during the relevant period.

[32] On most occasions, Mr. Bishara or his cousin Carl Bishara signed the ostensible supplier invoices and took possession of the gold.

[33] Mr. Bishara would package the Scrap Gold in a FedEx box that would be picked up and delivered to Diverse Equities on the following business day. Mr. Bishara would include a copy of the Appellant's invoice in the box, and would email a copy to Mr. Wright so that he knew what he was getting in advance. Diverse Equities would pay Mr. Bishara by wire transfer the day it received the gold.

[34] The Appellant earned a profit by purchasing Scrap Gold at a significant discount from the spot price of gold, which was used to determine the purchase price of the Scrap Gold according to its gold content (10 carat, 14 carat, etc.). It resold the gold to Diverse Equities at a pre-agreed price per unit of weight, which generally reflected a discount of approximately 7% on the spot price of gold. Mr. Bishara testified that the discount received by the Appellant from its alleged suppliers was agreed upon with each of the alleged suppliers individually.<sup>14</sup>

[35] Mr. Bishara's explanation is inconsistent with the evidence. The evidence shows that the Appellant consistently bought Scrap Gold at the same discounted value, regardless who supplied the gold.<sup>15</sup> This suggests that the discount was dictated to the alleged suppliers rather than the other way around. The Appellant received a further discount from its alleged suppliers depending on the method of

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<sup>13</sup> Curiously, with the exception of Mr. Nikolopoulos, to whom Mr. Bishara frequently spoke by cell phone, the cell phone records of Mr. Bishara and the individuals allegedly acting on behalf of the Appellant's other alleged suppliers do not indicate that their communications took place by cell phone.

<sup>14</sup> Transcript (January 29, 2015), pp 72, 167.

<sup>15</sup> The price determined was based on the spot price of gold. The Appellant paid its alleged suppliers a price equal to 90.5% of the spot price of the pure gold content of the Scrap Gold that they allegedly supplied to it.

payment it used. The evidence shows that the Appellant was granted a discount of 0.75% when it paid by bank draft or 2.25%<sup>16</sup> when it paid cash, on top of the 9.5% discount it received as a base discount.

[36] All of the bank drafts used for payment were cashed by the Appellant's alleged suppliers at the same Chèque Express ("Cheque Express") cheque-cashing branch located in Laval, Quebec. Cheque Express charged the Appellant's alleged suppliers 2.25% to cash the Appellant's bank draft. According to Mr. Bishara, this is why they were willing to offer the Appellant a 2.25% discount when it paid the purchase price for the gold in cash instead of by bank draft. Approximately 50% of the Appellant's Scrap Gold purchases were paid in cash.

[37] Mr. Bishara claims he negotiated a higher discount for cash payments after he had learned that the Appellant's alleged suppliers were paying Cheque Express a 2.25% transaction fee for its cheque-cashing services. I note that Mr. Bishara's oral evidence appears to be inconsistent with the documentary evidence. The documentary evidence shows that the Appellant initially purchased gold from Bijouterie Tiara for cash. All purchases from April 24, when the parties completed their first transaction, to May 3 were paid for in cash. The Appellant received a cash payment discount on each of those transactions. It was only on May 4 that the Appellant paid Tiara by bank draft for the first time. Therefore, Mr. Bishara must have known in advance of Bijouterie Tiara's preference for cash.

[38] Mr. Bishara testified that the Appellant changed its practice of cash payments when the Appellant's bank manager indicated that he was uncomfortable with the Appellant's large cash withdrawals. Apparently he informed Mr. Bishara that he should opt for a safer method of payment. Mr. Bishara testified that this advice made him reflect on the wisdom of making large cash withdrawals without proper security arrangements. These events led Mr. Bishara to set up an account with Brinks for secure delivery of cash.

[39] The Appellant paid an amount shown as GST and QST on all of its purchases from its alleged suppliers and claimed ITCs for the GST and QST that it paid. The Appellant's only client, Diverse Equities, was located in Calgary, Alberta. Initially Mr. Bishara was told that the Appellant did not have to collect QST from Diverse Equities because the gold was being exported to Alberta, where Diverse Equities was located. Mr. Bishara testified that in July 2012 Revenu

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<sup>16</sup> The one exception was Bijouterie Tiara. The cash discount was 1.25% in the case of Bijouterie Tiara.

Québec advised him that the Appellant should collect QST from Diverse Equities because Diverse Equities took possession of the gold in Quebec.

[40] After Mr. Bishara informed Mr. Wright that the Appellant would now be collecting QST from Diverse Equities, Mr. Wright arrived in Montreal to discuss how that would affect Diverse Equities' business. It was the first time the two had met face-to-face. Mr. Bishara explained that at the time of their meeting the Appellant still had not received the QST refund it was counting on. Charging QST to Diverse Equities worked out to the Appellant's advantage because it improved its cash flow. The Appellant would be able to offset the QST it paid to its alleged suppliers against the QST it collected from Diverse Equities. It would then be up to Diverse Equities to obtain a refund from Revenu Québec because the Scrap Gold it acquired was exported from Quebec to Alberta. Mr. Wright agreed to this new arrangement.

[41] Thereafter, the Appellant began charging QST to Diverse Equities on all of its sales. This continued until October 2012, at which point Revenu Québec once again changed its advice. Nathalie Bouchard, who was auditing the Appellant, informed Mr. Bishara that the Appellant should stop collecting QST from Diverse Equities. No explanation was given as to why Revenu Québec changed its advice. I suspect that by July 2012 Revenu Québec had reason to believe that the Appellant had a role in the diversion of the funds allegedly collected as QST. I surmise that Revenu Québec preferred dealing with a taxpayer that resided in Quebec for the purpose of deciding a QST refund claim. Revenu Québec did however refuse Diverse Equities' claim for the refund of the QST it had paid. Soon thereafter, the Appellant returned to its initial practice of collecting only the GST from Diverse Equities.

[42] During their meeting in Montreal, Mr. Bishara and Mr. Wright also discussed credit terms. In July 2012, as noted above, the Appellant was waiting on a refund from Revenu Québec. It did not have sufficient funds to continue its business. In order to maintain their prior level of business, Mr. Wright agreed to provide the Appellant with a revolving credit facility of up to \$600,000 in exchange for a promissory note secured by a building owned in part by Mr. Bishara.

[43] Despite this access to a credit facility, the Appellant's cash flow continued to deteriorate, in large part because Revenu Québec refused to process the Appellant's refund claim. Given its lack of funds, the Appellant suspended its activities in November 2012.

[44] Several weeks later, towards the end of November 2012, Mr. Bishara learned that the Appellant's tax numbers had been revoked by Revenu Québec. This prompted Mr. Bishara to hire counsel with a view to having the Appellant's tax numbers reinstated. On April 5, 2013, the Quebec Superior Court ordered Revenu Québec to reissue the Appellant's QST registration certificate. The Federal Court issued a similar order on April 15, 2013 in respect of the Appellant's GST certificate. Both courts held that there was *prima facie* evidence that the Appellant was carrying on a "commercial activity" as defined in the Act.

[45] The evidence shows that Ms. Bouchard, a Revenu Québec auditor, began her audit of the Appellant on August 23, 2012 following receipt from her manager, Serge St-Laurent, of an internal Revenu Québec document drafted by Véronique Roy. The document mentioned that the Appellant was suspected of receiving and/or providing so-called "accommodation invoices" and called for a more thorough review of its activities. Ms. Bouchard testified that Ms. Roy suggested that an audit be conducted because several of the Appellant's alleged suppliers had not filed tax returns or remittances in several years, had no financial statements, or had had their sales tax numbers revoked.

[46] On August 28, 2012, Ms. Bouchard made a surprise visit to the Appellant's place of business to conduct her initial audit interview. She was accompanied by Karine Giroux, the auditor who was responsible for the audit of 9261 Quebec, the Appellant's largest alleged supplier. Ms. Bouchard testified that surprise visits are generally recommended for audits in the gold industry and whenever "accommodation invoices" are suspected. It permits the tax authorities to uncover situations where products and services are not actually supplied, but exist only on paper.

[47] Ms. Bouchard and Ms. Giroux were greeted by the Appellant's bookkeeper, who led the auditors to an administrative office adjacent to one of Mr. Bishara's pharmacies. Mr. Bishara arrived approximately fifteen minutes later and provided them with a room to work in. Ms. Bouchard asked Mr. Bishara to provide purchase invoices, sales invoices, and bank statements for the period from April 23 to July 31, 2012 that she and Ms. Giroux had reviewed.

[48] During Ms. Bouchard's surprise visit, 9261 Quebec's representative, Mr. Al-Romhein, arrived to sell Scrap Gold. Mr. Bishara introduced Mr. Al-Romhein to Ms. Bouchard and explained that she was an auditor with Revenu Québec. Mr. Bishara testified that Mr. Al-Romhein had brought bags of gold with an invoice, as he usually would. Mr. Bishara weighed the gold and



compared that weight to the weight on the invoice. Mr. Bishara paid Mr. Al-Romhein, packaged the gold in a FedEx box, and placed it on a counter until it was picked up by a FedEx driver. Ms. Bouchard witnessed the delivery of the gold and the Appellant's payment.

[49] On September 18, Ms. Bouchard called Mr. Bishara to schedule a follow-up visit, which took place a week later on September 25, 2012. The purpose of the visit was, among other things, to obtain information on the Appellant's alleged suppliers. At this meeting Ms. Bouchard was once again accompanied by Ms. Giroux. Ms. Bouchard asked Mr. Bishara how he had met the Appellant's four alleged suppliers. She claims that she was told that they were all recruited through newspaper ads.<sup>17</sup> Ms. Bouchard testified that she and Ms. Giroux questioned how the Appellant's four alleged suppliers could have been recruited through newspaper ads when such ads only began appearing on May 11, 2012, several weeks after the Appellant had started its operations with Bijouterie Tiara. At that time, while Ms. Bouchard had good reason to believe that Bijouterie Tiara was not recruited as a supplier through advertisements, she did not know that, in addition, Mr. Nikolopoulos had introduced Mr. Al-Romhein to the Appellant. At best, only two of the Appellant's alleged suppliers could have responded to the Appellant's ads, contrary to what she testified Mr. Bishara claimed to be the case.

[50] During the course of the meeting, Ms. Bouchard asked Mr. Bishara to let her witness another transaction if during her audit visit an alleged supplier happened to come to sell Scrap Gold. Mr. Bishara advised her that an alleged supplier had just completed a transaction with the Appellant. Mr. Bishara offered to replay for Ms. Bouchard the video footage from a security camera that had captured images of the individual acting on behalf of the alleged supplier. Ms. Bouchard declined Mr. Bishara's offer. She testified that witnessing the transaction would not have changed the results of her audit.

[51] During her visit, Ms. Bouchard noticed that four bags of gold were stored in a filing cabinet. Mr. Bishara informed Ms. Bouchard that they were bags of Scrap Gold that he had forgotten about. He said that it would happen on occasion, especially when someone showed up unexpectedly.

[52] During a meeting held on February 4, 2013 with the Appellant's counsel, Mr. Bishara informed Ms. Bouchard that the gold in the bags found in the cabinet

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<sup>17</sup> Ms. Giroux's initial audit interview questionnaire, however, indicates that the Appellant's alleged suppliers were recruited both by newspaper ads and by word of mouth (Exhibit A-27).

had been purchased from the public. Ms. Bouchard testified that this was the first time Mr. Bishara had mentioned that the Appellant bought gold from the general public. On the two previous occasions they had met, Mr. Bishara allegedly told Ms. Bouchard that the Appellant did not deal with the general public. Ms. Bouchard later traced the gold that was found in the cabinet to a gold purchase by the Appellant from Bijouterie Palo on August 23, 2012. Ms. Bouchard's testimony on this point was not challenged by the Appellant.

[53] Before conducting her audit, Ms. Bouchard spoke with her audit team and solicited advice from others at Revenu Québec. The auditors responsible for auditing the Appellant's alleged suppliers all arrived at the same conclusion. The individuals behind the Appellant's alleged suppliers did not have the financial resources, experience and infrastructure to supply large quantities of gold to the Appellant.

[54] Ms. Bouchard testified that her concern did not lie as much with the Appellant's client as with its alleged suppliers. She explained that, while she could not be certain that the gold sold by the Appellant to Diverse Equities was eventually melted at the Royal Canadian Mint, her priority was determining whether or not the Appellant's alleged suppliers were the true suppliers of the Scrap Gold. She concluded that they were not.

#### B. Tricom and Diverse Equities

[55] Mr. Giuseppe Santella, a driver with FedEx, was called as a witness by the Appellant. He testified that he would initially receive requests once or twice a week for pick-ups at the Appellant's place of business. Mr. Santella informed the Court that the Appellant would ship packages in small or medium-sized FedEx boxes weighing several kilos each, and that sometimes more than one box was shipped per day. He explained that the boxes were always for shipment to an address in Calgary, Alberta. Although he did not know it initially, Mr. Santella testified that the boxes he picked up contained used jewelry in plastic bags. I attach significant weight to Mr. Santella's evidence and accept that Scrap Gold was indeed shipped from the Appellant to Diverse Equities as the Appellant claims. I found him to be a credible and reliable witness. He is an independent third party who has no interest in the outcome of this matter.

[56] Mr. Wright testified that Diverse Equities regularly received shipments of FedEx boxes from the Appellant. This was corroborated by Alexander Cook, a Diverse Equities employee who also testified at trial. Mr. Wright explained that he

or one of his employees would inspect the boxes upon receipt. Mr. Wright explained that the boxes received from the Appellant contained bags of Scrap Gold separated by carat. The bags would be weighed to verify the weight indicated on the bags and on the Appellant's invoice. The gold would then be inspected for fake jewelry through visual analysis and by performing acid tests. Mr. Wright would only make adjustments to amounts paid to the Appellant if there was a significant discrepancy in weight or if fake pieces of gold were spotted. According to Mr. Wright, this rarely occurred.

[57] After being examined, the Scrap Gold would be re-bagged and sent to Albern Coins using the Appellant's invoice number for tracking purposes. Each lot of gold sent to Albern Coins would be identified using the corresponding invoice number from the Appellant.

[58] Mr. Wright testified that Diverse Equities would book spot prices and ship Scrap Gold in increments of 50 ounces. For example, if the Appellant sold 85 ounces of Scrap Gold to Diverse Equities on a given day, the latter would lock in a price for 100 ounces of gold with Albern Coins and wait for a subsequent shipment from the Appellant to complete the order. Ian Laing, the president of Albern Coins and its parent company, Gatewest Coin Ltd. ("Gatewest"), testified that Diverse Equities sold Scrap Gold to Albern Coins throughout 2012 but that there was a noticeable increase in volume from April to October, which corresponds to the period during which the Appellant carried on its activities.

[59] The Scrap Gold received by Albern Coins would subsequently be sent to the Royal Canadian Mint for refining under Gatewest's account. Albern Coins would pay Diverse Equities prior to receiving the assay report from the Mint. After the completion of the refining process, Albern Coins would forward the assay report to Diverse Equities and hold the latter responsible for any shortages in the net amount of pure gold.

[60] Mr. Laing corroborated all of Mr. Wright's evidence on the circumstances surrounding their business dealings with respect to the Scrap Gold supplied by the Appellant. I found both Mr. Laing and Mr. Wright to be reliable and credible witnesses.

[61] Ms. Bouchard acknowledged at trial that there is no evidence to suggest that the Scrap Gold sold by the Appellant to Diverse Equities found its way back to the Appellant or any of its alleged suppliers. This eliminates the possibility of a so-called "carousel scheme". In a "carousel scheme" money flows in a

predetermined manner opposite to the direction of flow of token goods. The tax authorities are then asked to refund taxes that have not been remitted to them by the participants in the arrangement. I am satisfied that this did not occur in the instant case.

### C. The Appellant's alleged suppliers

[62] The amount of Scrap Gold allegedly supplied by the Appellant's alleged suppliers is as follows:

Alleged Supplier	No. of Transactions	Period	Sales to Appellant	
			\$	%
Bijouterie Tiara	17	April 24 – May 15	909,279	4.56
LZ Trading	4	May 15-18	193,401	0.97
Bijouterie Palo	119	May 22 – October 12	6,708,969	33.66
9261-1201 Québec Inc.	217	May 14 – November 9	12,119,832	60.81
	<b>357</b>		<b>19,931,481</b>	<b>100.00</b>

[63] Mr. Nikolopoulos was the sole shareholder, director and officer of Bijouterie Tiara during the Relevant Period. Mr. Nikolopoulos testified that he was introduced to the gold business in early 2011 by a friend who knew Bijouterie Tiara's previous shareholder, Ropen Bijakjian. In 2011, Mr. Bijakjian was interested in selling the shares of his company. Mr. Nikolopoulos bought Mr. Bijakjian's shares on April 12, 2011 for \$100.

[64] Mr. Nikolopoulos claims that, prior to entering into a share purchase agreement with Mr. Bijakjian, he did his homework on the gold business. He spoke to several other jewelers operating out of a building located in downtown Montreal, as well as two of his cousins in New York and a close friend, all of whom are jewelers. On the strength of the advice he had received from these sources, Mr. Nikolopoulos concluded that there was money to be made from buying and selling gold, provided he booked a spot price on the sale of the gold he acquired in order to hedge his exposure to fluctuations in market prices.

[65] Mr. Nikolopoulos claims that he met six or seven potential suppliers through advertisements he had received at his Phillips Square office in downtown Montreal. Of those potential suppliers, only three agreed to issue an invoice.

Mr. Nikolopoulos testified that he wanted to run a legitimate business and therefore did not want to deal with anyone who would not agree to issue an invoice.

[66] There are notable contradictions and inconsistencies between Mr. Nikolopoulos' declaration of his desire to conduct legitimate business and the circumstances surrounding Bijouterie Tiara's dealings with its two clients: first Quebec Fonte and then the Appellant. The circumstances surrounding Bijouterie Tiara's conduct of its business with its alleged suppliers also cast doubt on Mr. Nikolopoulos' claim that he wanted Bijouterie Tiara to comply with its obligations under the Act.

[67] The audit of Bijouterie Tiara reveals that it dealt exclusively with individuals who did not have the financial resources, experience or profile to trade in large quantities of gold over an extended period. The three alleged suppliers it dealt with were, successively, Natasha Roberge, Todd McGregor and 9209-3228 Québec Inc., which operated under the name GK Avanti Jewelry ("GK Avanti").

[68] The audit of Bijouterie Tiara revealed that Ms. Roberge was held out to be Bijouterie Tiara's first alleged supplier of Scrap Gold. Prior to her involvement with Bijouterie Tiara, she was a supplier for Quebec Fonte. Ms. Roberge declared income of \$7,999, \$8,108, \$6,648 and \$8,030 in respect of her 2007, 2008, 2009 and 2010 taxation years respectively. All of her reported income was paid by the Ministère de l'Emploi et de la Solidarité sociale ("MESS"), as it was then called, as social assistance. Mr. Tremblay, who audited Bijouterie Tiara, testified that it was apparent that Ms. Roberge was seriously ill when he interviewed her.

[69] Mr. Nikolopoulos claims he met Ms. Roberge through an advertisement that she had left under the door of his office and which indicated that she wanted to become a supplier of gold to Bijouterie Tiara.<sup>18</sup> Mr. Nikolopoulos alleged that he later met Ms. Roberge and a person he believed to be her partner or spouse at the café located on the first floor of the building where he maintained an office. They discussed how they would do business together. Mr. Nikolopoulos acknowledged during his testimony that this was the only time he saw Ms. Roberge. The person he believed was Mr. Roberge, whose name Mr. Nikolopoulos could not recall despite their having done nearly \$6,000,000 worth of transactions with each other, was the person he dealt with to acquire and pay for gold allegedly sold by Ms. Roberge. Revenu Québec revoked the sales tax registration certificates of

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<sup>18</sup> Transcript (January 28, 2015), p 36; Exhibit I-35, p 20.

Ms. Roberge on November 28, 2011. Bijouterie Tiara stopped dealing with Ms. Roberge on or around that date.

[70] Bijouterie Tiara resumed its operations several weeks later after securing a second alleged supplier, Todd McGregor. Like Ms. Roberge, Mr. McGregor had supplied Quebec Fonte prior to doing business with Bijouterie Tiara. Mr. Tremblay's audit report shows that Mr. McGregor declared income of \$17,612 and \$29,700 in 2007 and 2008 respectively. His 2009 and 2010 personal income tax returns had not been filed at the date of the audit report.

[71] At trial, Mr. Nikolopoulos explained that he met with Mr. McGregor to inquire about suppliers after Bijouterie Tiara stopped doing business with Ms. Roberge. Mr. Nikolopoulos testified that it was during this meeting that Mr. McGregor agreed to supply gold to Bijouterie Tiara instead of Quebec Fonte. He was unable to explain why.

[72] Mr. Nikolopoulos' account of the end of Bijouterie Tiara's relationship with Mr. McGregor is contradictory. At trial, Mr. Nikolopoulos told the Court that Bijouterie Tiara terminated its relationship with Mr. McGregor after the latter failed to provide proof of sales tax remittances to the tax authorities, as Mr. Nikolopoulos had requested.<sup>19</sup> However, during the audit Mr. Nikolopoulos explained that the end of the relationship was triggered by Mr. Nikolopoulos discovering that Mr. McGregor's tax numbers had been revoked or were invalid.<sup>20</sup> Mr. McGregor's tax numbers were revoked by Revenu Québec on February 20, 2012.

[73] Bijouterie Tiara's final alleged supplier was GK Avanti, which was Bijouterie Tiara's sole alleged supplier over the period during which Bijouterie Tiara supplied Scrap Gold to the Appellant. The invoices issued from GK Avanti to Bijouterie Tiara from April 24 to May 15, 2012 were generally sequential, which suggests that GK Avanti did not have any other clients.<sup>21</sup>

[74] Bijouterie Tiara began doing business with GK Avanti on February 28, 2012. Mr. Nikolopoulos claimed to have dealt with a man named George, but could not recall his complete name. Mr. Nikolopoulos explained that he met George at the café located in Bijouterie Tiara's office building. When Bijouterie Tiara stopped doing business with Mr. McGregor, Mr. Nikolopoulos called GK

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<sup>19</sup> Transcript (January 27, 2015), p 115; Transcript (January 28, 2015), p 23.

<sup>20</sup> Exhibit I-35, p 21.

<sup>21</sup> Exhibit I-36.

Avanti to purchase gold. Their relationship continued until Bijouterie Tiara's final transaction on May 15, 2012.

[75] Following Revenu Québec's audit, Bijouterie Tiara's sales tax numbers were revoked on June 12, 2012.

[76] Mr. Nikolopoulos testified that Bijouterie Tiara's decision to sell gold to the Appellant instead of Quebec Fonte was motivated by convenience. More specifically, the Appellant offered to pay in cash rather than by check, and its place of business in Montreal spared Mr. Nikolopoulos the trouble of having to travel to the suburb of St-Eustache. Curiously, however, the evidence shows that Bijouterie Tiara dealt simultaneously with both the Appellant and Quebec Fonte on at least two consecutive days.<sup>22</sup>

[77] Other inconsistencies were also noted during Mr. Nikolopoulos' testimony. He explained to the Court, for example, that he would test the quality of the alleged suppliers' gold with acid,<sup>23</sup> but during the audit he informed Mr. Tremblay that he never did.<sup>24</sup>

[78] Furthermore, Mr. Nikolopoulos stated during the audit that he had daily working capital of approximately \$75,000, although at trial he testified that it was \$48,000, obtained through personal savings and family loans. In the absence of any credible evidence from Mr. Nikolopoulos substantiating the origins of the money, it is difficult to believe that he could have amassed either amount, given his personal circumstances during and immediately prior to the Relevant Period. The evidence shows that Mr. Nikolopoulos declared personal bankruptcy in 2007, went through a divorce around that time, made child support payments, and lived with his parents for four years. This, combined with the modest income he earned and reported prior to 2012—\$43,794.07, \$21,341.47, and \$24,400 in taxation years 2009, 2010, and 2011, respectively—leads me to believe that Mr. Nikolopoulos was less than forthright when testifying about Bijouterie Tiara's financial capacity to conduct business.

[79] As mentioned above, the evidence shows that Bijouterie Tiara acquired gold from at least two alleged suppliers that previously had dealt directly with Quebec Fonte. Mr. Nikolopoulos offered no credible explanation as to why these

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<sup>22</sup> Exhibit I-24.

<sup>23</sup> Transcript (January 27, 2015), pp 123 and 159.

<sup>24</sup> Exhibit I-35, p 18.

individuals agreed to sell gold to Bijouterie Tiara, a supplier to Quebec Fonte, rather than deal with Quebec Fonte directly.

[80] Considering all of the above, I did not find Mr. Nikolopoulos to be a credible witness.

[81] I also did not find Mr. Al-Romhein to be a credible and reliable witness. For example, Mr. Al-Romhein's account of how he met Mr. Bishara contradicted an earlier response he had provided to Revenu Québec auditors during the audit of 9261 Quebec. At trial, Mr. Al-Romhein claimed that he was introduced to Mr. Bishara by Mr. Nikolopoulos,<sup>25</sup> but during an interview with Ms. Giroux of Revenu Québec he indicated that he had met Mr. Bishara through a newspaper ad placed by the Appellant.<sup>26</sup>

[82] Mr. Al-Romhein testified that he did not have the necessary working capital to carry on the activities of 9261 Quebec. He stated that 9261 Quebec's alleged supplier, Mr. Iera, would provide him with Scrap Gold of considerable value, sometimes exceeding \$100,000, without a deposit, and he further testified that he would return to pay Mr. Iera later in the day. This is difficult to believe.

[83] Mr. Al-Romhein also showed a willingness to engage in, or facilitate, black market activity during the final month of 9261 Quebec's activities by agreeing to purchase Scrap Gold from his alleged supplier without an invoice or any sort of supporting documentation. Mr. Iera's company, Les Produits et Services Excelsi-Or Inc. ("Excelsi-Or"), was 9261 Quebec's exclusive alleged supplier of Scrap Gold during the Relevant Period. Although Excelsi-Or had its GST registration certificate revoked on October 2, 2012,<sup>27</sup> 9261 Quebec continued purchasing gold from Mr. Iera and supplying Scrap Gold to the Appellant until November 9, 2012. Mr. Iera acknowledged to Revenu Québec auditors that he continued selling Scrap Gold after October 2, 2012, despite the revocation of Excelsi-Or's tax numbers. The evidence shows that Excelsi-Or's final invoice to 9261 Quebec was dated October 5, 2012,<sup>28</sup> as was the last invoice received by Excelsi-Or from its alleged supplier, 9258-0554 Québec Inc. ("9258").

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<sup>25</sup> Transcript (January 28, 2015), pp 65-67.

<sup>26</sup> Exhibit I-27, p 10.

<sup>27</sup> Exhibit I-35, Exhibit I-7, Tab 17, p 2. Excelsi-Or's QST registration certificate was revoked one day earlier on October 1, 2012.

<sup>28</sup> Exhibit I-14.



[84] Mr. Al-Romhein was also unable to provide any documentary evidence to support 9261 Quebec's purchases, as he explained that he threw out all of 9261 Quebec's books and records.<sup>29</sup> Following an audit of 9261 Quebec, Revenu Québec revoked its tax numbers on or around March 15, 2013.

[85] The Appellant's third alleged supplier, 9103-2045 Québec Inc., operating under the name LZ Trading, was wholly owned by Leon Zoboyan during the Relevant Period. LZ Trading was the only alleged supplier which was not audited by Revenu Québec. In 2008 and 2009, Mr. Zoboyan reported income of \$6,625 and \$6,771 respectively, received from the MESS. He did not declare any income in 2010 and 2011. In addition, Mr. Zoboyan had declared personal bankruptcy in 1991. His financial profile is similar to that of the individuals behind the Appellant's other alleged suppliers. Similarly to 9261 Quebec and Bijouterie Palo, LZ Trading allegedly purchased Scrap Gold from Mr. Iera's company, and had its tax numbers revoked by Revenu Québec.

[86] Bijouterie Palo was wholly owned by Zaven Lapachian during the Relevant Period. The evidence shows that Bijouterie Palo operated a jewelry business from 2005 until Mr. Lapachian became ill during 2007. The company remained dormant until it began dealing with the Appellant in May 2012. Following an audit by Revenu Québec, Bijouterie Palo's tax numbers were revoked on October 22, 2012.

[87] Mr. Bishara testified that he first came into contact with Bijouterie Palo when Mr. Lapachian responded to the Appellant's newspaper ad.

[88] Mr. Bishara claims he never met Mr. Lapachian. They communicated only by telephone. Gold would be delivered by Maral Kajapachian (Mr. Lapachian's ex-wife) and Loukenson Philogene on behalf of Bijouterie Palo. Mr. Bishara testified that one or the other, or both, would deliver gold to the Appellant's place of business.

[89] At trial, Mr. Lapachian, Ms. Kajapachian, and Mr. Philogene all denied selling Scrap Gold to the Appellant on behalf of Bijouterie Palo, or having any kind of involvement whatsoever. However, credible third party evidence suggests that all three were actively involved in Bijouterie Palo's day-to-day operations during the Relevant Period.

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<sup>29</sup> Transcript (January 28, 2015), p 86.

[90] Despina Drizos was the manager of the Cheque Express location where Bijouterie Palo cashed cheques and bank drafts received from the Appellant. At trial, she provided documentation regarding all of the Appellant's alleged suppliers, including Bijouterie Palo.

[91] The evidence shows that Bijouterie Palo's account at Cheque Express was opened by Mr. Lapachian on May 22, 2012,<sup>30</sup> the date of Bijouterie Palo's first transaction with the Appellant. Cheque Express also had in its possession a photocopy of Mr. Lapachian's driver's licence and health insurance card, as well as various corporate documents relating to the company. At trial, Mr. Lapachian initially claimed that he had never visited a cheque-cashing establishment, but later conceded that it was indeed his signature on a document held by Cheque Express. He also maintained that he had never dealt with the Appellant, but acknowledged having seen the Appellant's newspaper ad.

[92] Cheque Express's file also contained a proxy which allowed Mr. Lapachian's daughter, Palik Lapachian, to cash cheques on the company's behalf. The proxy was signed by both Palik Lapachian and her father. A photocopy of Ms. Lapachian's driver's licence is also shown on the proxy. At trial, Palik Lapachian repeatedly denied having any involvement with Bijouterie Palo, including ever having visited a cheque-cashing establishment. Ms. Drizos' evidence strongly suggests otherwise.

[93] Ms. Drizos testified that Mr. Lapachian and Ms. Lapachian were the only two persons authorized to conduct transactions on behalf of Bijouterie Palo. The evidence shows that a second proxy was prepared with respect to Bijouterie Palo's account and it would have authorized Mr. Philogene to cash cheques on the company's behalf.<sup>31</sup> Ms. Drizos explained that Mr. Lapachian had asked her to prepare that proxy for Mr. Philogene, but said that it was never executed.<sup>32</sup>

[94] Ms. Drizos explained that, in order for a company to open an account at Cheque Express, the majority shareholder was required to be present in person and to provide two pieces of photo identification.<sup>33</sup> Furthermore, no cheque or bank draft could be cashed without there being a valid picture on file.<sup>34</sup>

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<sup>30</sup> Exhibit I-15.

<sup>31</sup> Exhibit I-20.

<sup>32</sup> Transcript (May 13, 2015), p 168.

<sup>33</sup> *Ibid.*, pp 163-65.

<sup>34</sup> *Ibid.*, pp 166-67.

[95] Documentary evidence shows that Bijouterie Palo cashed cheques or bank drafts totalling \$3,888,243.03<sup>35</sup> at Cheque Express from May 22 to October 11, 2012.<sup>36</sup> All but one of the cheques or bank drafts were issued by the Appellant.

[96] Ms. Kajapachian and Mr. Philogene were also actively involved with Bijouterie Palo. The manager of Mr. Bishara's pharmacies, Paul-Émile Castonguay, testified that he occasionally received gold from the Appellant's alleged suppliers when Mr. Bishara or Carl Bishara were unavailable to meet them. Mr. Castonguay confirmed that he saw Ms. Kajapachian and Mr. Philogene more than once,<sup>37</sup> and he appeared to recognize a driver's licence picture of Mr. Philogene.

[97] The evidence also shows that Mr. Bishara and Ms. Kajapachian exchanged text messages confirming the spot price of gold on various dates.<sup>38</sup> Ms. Kajapachian was listed as a contact for Bijouterie Palo in Mr. Bishara's cell phone. Mr. Philogene's name appears in that same contact information.<sup>39</sup>

[98] The representatives of Bijouterie Palo—Mr. Lapachian, Ms. Lapachian, Ms. Kajapachian, and Mr. Philogene—were not credible witnesses. At trial, it was shown that at least two Bijouterie Palo representatives—Mr. Lapachian and Ms. Kajapachian—were welfare recipients during the Relevant Period. Admitting that they earned undeclared income would undoubtedly have a deleterious effect on any future government assistance and could trigger an administrative review of past payments. I surmise that this is why they denied all involvement with the Appellant.

[99] Maurizio Iera supplied Scrap Gold to three of the Appellant's four alleged suppliers—9261 Quebec, LZ Trading, and Bijouterie Palo—through two entities. He first sold gold as a sole proprietor under the trade name Les Fontes Montréal from May 14 to May 31, 2012. He then sold gold through Excelsi-Or, a wholly-owned corporation, from June 1 to October 5, 2012. As mentioned earlier, Excelsi-Or's QST registration certificate was revoked by Revenu Québec on October 1, 2012. Its GST registration certificate was revoked the following day. Despite this, Mr. Iera continued to supply gold to 9261 Quebec and Bijouterie Palo after those dates. Mr. Tremblay's audit report indicates that on October 11, 2012

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<sup>35</sup> Exhibit I-7, Tab 21, p 3.

<sup>36</sup> Exhibit I-24.

<sup>37</sup> Transcript (January 28, 2015), p 174.

<sup>38</sup> Exhibit A-19.

<sup>39</sup> *Ibid.*

Mr. Iera informed Revenu Québec that he was continuing to carry on business despite Excelsi-Or's tax numbers being revoked.<sup>40</sup>

[100] Mr. Iera testified that all of the Scrap Gold he acquired was purchased from a business named Bijouterie Villeray. He claims to have met Bijouterie Villeray's owner through a high school acquaintance.

[101] Mr. Iera testified that his work essentially consisted of delivering gold from Bijouterie Villeray to his alleged clients. He claimed that Bijouterie Villeray provided him with Scrap Gold packaged in plastic bags, with the number of karats and the weight both indicated in writing on each bag.

[102] Mr. Iera also stated that his alleged supplier dictated the price at which the gold would be bought. However, he would only pay his alleged supplier after receiving cash payments from his clients. Mr. Iera claimed that he would meet an acquaintance of the owner of Bijouterie Villeray at an agreed-upon location and hand over the money in a pouch. The acquaintance apparently did not count the money before departing with it.

[103] Mr. Iera stated that he would receive cash payments from his clients when they took possession of the gold. However, this version contradicted the testimony of Mr. Al-Romhein, who claimed to have only paid his alleged supplier (Mr. Iera) after receiving payment from the Appellant.

[104] Mr. Iera claims he earned a 0.25% commission on each sale. Similar to the Appellant's alleged suppliers, Mr. Iera was a person of limited financial means. He declared employment income of \$4,613.66, \$19,212.05, and \$24,649.06 in 2009, 2010, and 2011 respectively. Furthermore, Mr. Tremblay's audit report states that Mr. Iera's income in 2012 was derived entirely from benefits received from the *Commission de la santé et de la sécurité du travail* ("CSST"). Mr. Iera testified that he had no prior experience in the gold business. I did not find Mr. Iera to be a credible or reliable witness.

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<sup>40</sup> Exhibit I-30, p 4.

## VII. Analysis

Did the Appellant acquire Scrap Gold in the course of carrying on a “commercial activity”?

[105] The evidence shows that the Appellant did in fact purchase the Scrap Gold in respect of which it claimed the disputed ITCs. All of the gold was subsequently resold to Diverse Equities. It then travelled from Diverse Equities to Gatewest and from there to the Royal Canadian Mint where it was refined into gold bars that were resold to the public.

[106] First, there is substantial documentary evidence that tracks the Scrap Gold from the Appellant to its client, Diverse Equities, from Diverse Equities to Albern Coins and Gatewest, and from Gatewest to the Royal Canadian Mint. Independent third parties, namely, Mr. Santella (the FedEx driver who picked up gold at the Appellant’s premises) and Mr. Castonguay (the manager of Mr. Bishara’s pharmacies) confirmed that the Appellant purchased and resold Scrap Gold.

[107] During her testimony, Ms. Bouchard conceded that there was no evidence to suggest that any of the Scrap Gold that was purchased by Diverse Equities was returned to the Appellant or, for that matter, to its alleged direct or indirect suppliers.

[108] During cross-examination,<sup>41</sup> Ms. Bouchard confirmed that she had witnessed Mr. Al-Romhein, the owner of 9261 Quebec, deliver Scrap Gold and receive payment from Mr. Bishara during her surprise audit visit. The Appellant’s representatives were not aware that Ms. Bouchard would show up unannounced. Therefore, I am satisfied that 9261 Quebec actually delivered Scrap Gold to the Appellant and received payment for it.

[109] Mr. Castonguay, the manager of Mr. Bishara and Carl Bishara’s two Uniprix pharmacies, testified that he received, on behalf of the Appellant, Scrap Gold delivered by Mr. Al-Romhein and Mr. Nikolopoulos at the Uniprix store located on Avenue du Parc on at least three occasions when Mr. Bishara and Carl Bishara were not present to take delivery of the gold. Mr. Castonguay spent most of his time at that store. He also confirmed that Mr. Al-Romhein and Mr. Nikolopoulos visited that location to deliver Scrap Gold to Mr. Bishara and Carl Bishara.

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<sup>41</sup> Transcript (June 18, 2015), p 55.

[110] He performed, on occasion, other tasks. This included verifying whether the information on the invoices received corresponded with that found on the Ziploc bags that contained the Scrap Gold received from the Appellant's alleged suppliers. He also testified that on at least three occasions he paid the alleged suppliers on behalf of the Appellant.

[111] I found Mr. Castonguay to be a reliable and credible witness. His evidence was not challenged on cross-examination. There is no evidence to suggest that he had an economic interest in the transactions at issue in this appeal.

[112] I also found Ms. Drizos to be a credible and reliable witness. She managed the Cheque Express cheque-cashing branch in Laval where representatives of all of the Appellant's alleged suppliers cashed the bank drafts received from the Appellant.

[113] Under Cheque Express's policies in effect at that time, a corporation was required to open beforehand an account at the branch in order to cash a bank draft. For that purpose, a new corporate client was required to produce its certificate of incorporation and documentation authorizing one or more of its representatives to cash bank drafts on its behalf. The authorized representatives were required to be present for the account to be opened. They were also required to produce photo identification.

[114] According to Ms. Drizos, each of Bijouterie Palo, Bijouterie Tiara, LZ Trading and 9261 Quebec complied with these procedures. Also according to Ms. Drizos, Mr. Lapachian and his daughter, Ms. Lapachian, were authorized to cash bank drafts on behalf of Bijouterie Palo. Mr. Al-Romhein was the only person authorized to sign on behalf of 9261 Quebec. Mr. Nikolopoulos was the only person authorized to sign on behalf of Bijouterie Tiara. Mr. Zoboyan was the only person authorized to cash bank drafts on behalf of LZ Trading.

[115] Ms. Drizos testified that she saw Mr. Lapachian, Mr. Al-Romhein and Mr. Nikolopoulos acting on behalf of their respective corporations. Her evidence confirms the Appellant's version that each of these individuals received payment on behalf of their respective corporations and made arrangements to cash the bank drafts that they had received from the Appellant.

[116] Often, when false invoices are used to obtain tax benefits, the issuer of the false invoice returns the payment to the "accommodated party" after deducting a commission for the issuer's service. There is no evidence to suggest that this

occurred with respect to the transactions at issue in this appeal. In fact, the evidence supports the opposite conclusion.

[117] Revenu Québec had full access to the Appellant's bank records, which show the source and use of the Appellant's funds. These records confirm that the Appellant received wire transfers from Diverse Equities for Scrap Gold that the Appellant sold to it. Furthermore, the Appellant would draw funds from its bank account either to cover bank drafts drawn on its bank or to make transfers to Brinks which would deliver the funds to the Appellant's business office on Avenue du Parc. Cash payments would be made directly to the representatives of the Appellant's alleged suppliers. Brinks' records indicate that Brinks delivered approximately \$11,000,000 in cash to the Appellant during the relevant period. Needless to say, if cash was being returned to the Appellant, the Appellant would not have required large cash deliveries from Brinks.

[118] From its evidence I conclude that the Appellant purchased and resold Scrap Gold in the quantities and for the prices that it reported on its GST reports. This was all done in the course of carrying on a "commercial activity" as defined in subsection 123(1) of the Act (paragraph (a) of the definition).

[119] The question that remains to be examined is in what capacity the Appellant's alleged suppliers acted in delivering Scrap Gold to, and receiving payment from, the Appellant. Were they acting as principles or as agents for undisclosed principles, or, as suggested by the Respondent, were the Appellant and its alleged suppliers active participants in an elaborate paper ruse designed to allow the Appellant to purchase gold for cash from clandestine suppliers.<sup>42</sup>

### VIII. Sham

[120] The Respondent's theory of its case has evolved significantly from that initially spelled out in her pleadings. In her written submissions, the Respondent now relies on the following formulation of her theory of sham to defend the Minister's assessment:

1. Tricomcanada acts as one link in a chain constituting what is commonly known as a "missing trader" scheme, whereby the initial supplier goes "missing" and fails to remit to tax authorities the GST it has collected and

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<sup>42</sup> The Appellant's theory of its case is based on the claim that its alleged suppliers owned the gold they delivered to the Appellant. The Appellant did not advance the theory, or lead evidence to establish, that its alleged suppliers were intermediaries or agents for undisclosed principles.

against which subsequent ITC claims are usually offset without loss<sup>43</sup> to the treasury. In order for these schemes to work, the misappropriated tax is rerouted through to the upstream suppliers in one way or another.

...

475. All of the transactions qualify as a sham because:
- a. All of the Appellant's direct suppliers were posing as figureheads slotted in to the chain to conceal the true origin of the token gold.<sup>44</sup> They were promised a regular stipend in exchange for observing elementary formalities enabling Tricom to invoke a façade of legitimacy.
  - b. The substance and purpose behind the formal transactions is that the token gold was acquired to allow each supplier to qualify for ITCs and partake in the distribution of the defrauded tax.

[Emphasis added.]

[121] The Appellant complains that this theory was not spelled out in the Respondent's pleadings. While I agree that the Respondent did not specifically refer to the false invoicing scheme as a sham, I also agree with the Respondent's counsel's oral observations that "accommodation invoices" are often used to perpetrate a sham for the purpose of obtaining fraudulent refunds of the GST.

[122] Nonetheless, I do have sympathy for the Appellant's counsel's argument that the lack of clarity in the Respondent's pleadings made it difficult for him to gauge the case that his client was required meet. The Appellant's task was made all the more difficult because the Respondent pleaded factual assumptions in the alternative: either gold was not purchased and resold or it was not purchased from the Appellant's alleged suppliers. A motion for particulars or a motion to strike may have addressed the shortcomings of the Respondent's reply in this regard.

[123] There appears to be no dispute between the parties as to the meaning of sham. The parties referred me to the classic definition of sham set out to in the often-cited case of *Snook v. London & West Riding Investments, Ltd.*<sup>45</sup> In *Snook*, Lord Diplock stated that "sham":

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<sup>43</sup> I believe the Respondent meant to say "with" rather than "without loss".

<sup>44</sup> As previously noted the evidence shows that large quantities of Scrap Gold were purchased and resold by the Appellant. The gold was subsequently refined at the Mint and then resold by Gatewest to the public.

<sup>45</sup> [1967] 1 All ER 518.



. . . means acts done or documents executed by the parties to the "sham" which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create. One thing I think, however, is clear in legal principle, morality and the authorities . . . that for acts or documents to be a "sham", with whatever legal consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating. No unexpressed intentions of a "shammer" affect the rights of a party whom he deceived. . . .<sup>46</sup>

[124] Canadian courts adopted the *Snook* definition of sham in 1972.<sup>47</sup> This definition of sham was reaffirmed by the Supreme Court of Canada in *Stubart Investments Ltd. v. The Queen*.<sup>48</sup> In *Stubart*, Justice Estey defined a sham as “a transaction conducted with an element of deceit so as to create an illusion calculated to lead the tax collector away from the taxpayer or the true nature of the transaction; or, simple deception whereby the taxpayer creates a facade of reality quite different from the disguised reality”.<sup>49</sup> Under these principles, a sham will be found to exist where the parties attempt to deceive the tax authorities by holding out as real transactions or arrangements that they know are different from the actual concealed transactions.

[125] Two recent decisions of the Federal Court of Appeal discuss the concept of deceit in the realm of sham. In *Antle v. Canada*,<sup>50</sup> Justice Noël said, in *obiter*, “[t]he required intent or state of mind is not equivalent to *mens rea* and need not go so far as to give rise to what is known at common law as the tort of deceit . . . . It suffices that parties to a transaction present it as being different from what they know it to be.”<sup>51</sup> In *2529-1915 Québec Inc. v. Canada*,<sup>52</sup> Justice Noël said:

59 It follows from the above definitions that the existence of a sham under Canadian law requires an element of deceit which generally manifests itself by a misrepresentation by the parties of the actual transaction taking place between them. When confronted with this situation, courts will consider the real transaction and disregard the one that was represented as being the real one.

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<sup>46</sup> *Snook*, at p 528.

<sup>47</sup> *M.N.R. v. Cameron*, [1974] SCR 1062.

<sup>48</sup> [1984] 1 SCR 536.

<sup>49</sup> *Stubart*, at pp 545-46.

<sup>50</sup> 2010 FCA 280.

<sup>51</sup> *Antle*, at paragraph 20.

<sup>52</sup> 2008 FCA 398.

[126] The auditors assigned to audit the transactions at issue in the present case were instructed to quickly terminate their audit. I surmise that this was done because the Minister's representatives were preoccupied with the substantial tax leakage that they had discovered. The evidence shows that Albern Coins received a full refund of the GST that it paid on its purchases. The refined gold that it sold was an exempt supply. No GST was remitted with respect to the gold that is traceable to the Appellant.

[127] The Appellant's counsel complained that if tax fraud was occurring with respect to the actions of one of the Appellant's alleged indirect suppliers, the Minister had the power to unmask the guilty parties.<sup>53</sup> The Appellant could not. This may be true, but it has no bearing on the correctness of the Minister's assessment. The tax authorities require some latitude in order to protect public revenue. If tax is not remitted as required by law, often the Minister's representatives must act quickly to ensure that it is. They are answerable for their conduct if they act in a cavalier fashion. While this is not the proper forum in which to determine the issue, I do not believe that continued efforts on the part of the tax authorities would have allowed them to discover the origins of the gold at issue in this matter.

[128] Mr. Wright offered a glimpse into the origins of the Scrap Gold that was sold by the Appellant to Diverse Equities. I was impressed with his knowledge of the precious metals industry in Canada.

[129] According to Mr. Wright, Montreal is home to the largest number of jewelers who produce custom jewelry. It is common knowledge that many jewelers are clustered in the office buildings surrounding Phillips Square in Montreal, where Mr. Nikolopoulos coincidentally maintained an office. This is what Mr. Nikolopoulos had to say regarding how his office neighbours conducted their gold-trading businesses:

Q. How does one go about getting involved in that? Where did you first hear or learn or start in this business?

A. Originally with a friend of mine he came to -- one of his friend's [*sic*] was selling a business. They were making costume jewellery, like fake earrings, rings, bracelets, things like that, and selling to flea markets. And he asked me if I'd be interested in trying it with him, and I said whatever, sounds good, it's

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<sup>53</sup> In the case of sham transactions, the tax authorities often have difficulty identifying individuals who have benefited from the receipt of cash payments.

better than washing dishes or whatever, cooking all day and smelling like hot dogs when you go home. So I decided to try it.

And when I first went -- walked into the building on Phillips Square the first thing I noticed was right when you walk into the hallway there was literally -- it was wall to wall we buy we sell gold. Every address in the building, every door was basically buying and selling gold.

And like I said, that's the time when gold was peaking where like even you go to Insta-Cheques and everybody was buying and selling gold -- everybody. So I just -- I did my homework and I found out how everybody was doing it and that's what made me get into it.

Q. How was everybody doing it? Who was everybody, by the way?

A. Well, like I said, even you go to Western Union to cash a cheque they're buying gold. All jewellers, we pay best prices. Everywhere -- in that building in Phillips Square where I was almost every single door was doing it with a catch. Nobody wanted to do it with invoices. Everybody was saying if you want to do business with me I ain't giving you a bill. That's ---

[Emphasis added.]

[130] According to Mr. Wright, it is a common practice for jewelers to store large quantities of gold as inventory on their premises. They often purchase jewelry from former clients who purchase new items from them. Jewelers who have accumulated significant inventories of gold would likely take advantage of favourable market conditions to liquidate their stock to finance their retirement. I surmise that the cost of gold accumulated by jewelers over many years prior to the significant run-up in price would have been low. This may have created an incentive for jewelers to sell their gold for cash in untraceable transactions. This is the theory that the Respondent defends.

[131] The evidence shows that the Appellant purchased its Scrap Gold at an average price equal to approximately 90.5% of the spot price of gold at the time of each transaction. It paid its alleged suppliers that amount plus QST and GST totalling 14.975% of the purchase price. Altogether it paid approximately 104% of the spot price of gold to its alleged suppliers, leaving the Appellant's alleged suppliers with sufficient funds to pay the true owners of the gold the same price that they could have expected to receive had they sold their gold in fully disclosed transactions. The Respondent emphasized this point in her oral and written submissions. In its written rebuttal submissions, the Appellant's counsel argues that this is incorrect because, for example, Bijouterie Tiara had to pay its alleged

supplier GST and QST when it acquired gold. If one assumes that this was the case, Bijouterie Tiara would have offset the amount it paid as taxes against the QST and GST that it alleges it collected from the Appellant.

[132] I will now review the evidence that the Respondent alleges supports its theory of sham.

[133] The Respondent, unable to establish who the Appellant's true suppliers were, asks the Court to draw inferences from the circumstances surrounding the Appellant's dealings with its alleged suppliers. In particular, the Respondent emphasizes that Mr. Bishara and Mr. Al-Romhein both tried to conceal how they came to do business together. The Respondent also asks the Court to take a close look at the evidence regarding the profile of the individuals acting on behalf of the Appellant's alleged suppliers and the circumstances surrounding those individuals' dealings with the Appellant and their dealings with their own alleged suppliers.

[134] The evidence shows that Mr. Nikolopoulos sold gold to Quebec Fonte before he decided to do business with the Appellant. Bijouterie Tiara did most of its business with Quebec Fonte. The evidence shows that Quebec Fonte paid Bijouterie Tiara with cheques that were cashed at the cheque-cashing branch that Mr. Nikolopoulos used when dealing with the Appellant. Also, Bijouterie Tiara paid its alleged suppliers solely in cash.

[135] Mr. Nikolopoulos' testimony left many things unexplained. When questioned on how Bijouterie Tiara was able to finance its operations, he claimed that he managed to provide it with working capital of \$48,000. According to Mr. Nikolopoulos, approximately \$20,000 of that came from his savings. He borrowed the rest of the funds from close family members. Mr. Nikolopoulos further testified that he was divorced and living rent-free with his parents. He paid child support. He claims he made very little money from his gold-trading activities. He drove a vehicle that was in poor condition. He also acknowledged that he had declared bankruptcy in 2007. Bijouterie Tiara filed for bankruptcy soon after it was assessed for GST and QST due in connection with its gold-trading activities.

[136] I do not believe that Mr. Nikolopoulos had access to the funds that he claims to have used to fund Bijouterie Tiara's activities. No documentary evidence was produced to corroborate Mr. Nikolopoulos' testimony. Family members were not called as witnesses to confirm that they had loaned funds to Mr. Nikolopoulos. This being the case, Mr. Nikolopoulos could not have acquired large quantities of

Scrap Gold, as he described, through Bijouterie Tiara from the persons he claims were Bijouterie Tiara's alleged suppliers.

[137] The evidence shows that Bijouterie Tiara's first alleged supplier, Ms. Roberge, was living on welfare. She was ill. The evidence shows that she did not have the financial resources, skill or infrastructure to trade in gold. Mr. Nikolopoulos acknowledged that he had met Ms. Roberge only once. He allegedly dealt with someone that he believed was Ms. Roberge's husband. I have great difficulty believing that Ms. Roberge was the person who actually supplied gold to Mr. Nikolopoulos.

[138] Mr. Nikolopoulos suggested that he stopped doing business with Quebec Fonte because it was too far for him to travel. Allegedly this is why he decided to do business with the Appellant. The circumstances surrounding how Mr. Nikolopoulos and Mr. Bishara came to do business together suggest an entirely different motive. The evidence shows that Quebec Fonte was under audit at the same time as Bijouterie Tiara.<sup>54</sup> I believe that Mr. Nikolopoulos had good reason to believe that Quebec Fonte would soon be unable to continue to purchase gold from Bijouterie Tiara. The audit of Quebec Fonte and Bijouterie Tiara had commenced around the time Mr. Nikolopoulos and Mr. Bishara met to discuss how they could do business together. Conspicuously, Bijouterie Tiara started to sell gold to the Appellant towards the end of its QST and GST audit, which had commenced six and a half months earlier.

[139] The Respondent produced the cellular ("cell") phone records of Mr. Bishara for the Relevant Period along with those of some of the other individuals who acted on behalf of the Appellant's alleged suppliers.

[140] Mr. Bishara's cell phone records from 2011 and 2012 show that he did not contact representatives from 9261 Quebec, Bijouterie Palo, or LZ Trading, except on one occasion.<sup>55</sup> When re-examined by his counsel on this evidence, Mr. Bishara explained that he had no reason to call the Appellant's alleged suppliers.<sup>56</sup> It was they who would solicit him by phone call or text message,<sup>57</sup> not vice versa. However, Mr. Bishara failed to explain why he had reason to call Mr. Nikolopoulos on 64 occasions in 2012, despite the fact that only 17 transactions were carried out between Bijouterie Tiara and the Appellant.

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<sup>54</sup> Exhibit I-35, p 8, section 6.2.7.

<sup>55</sup> Mr. Bishara called Mr. Al-Romhein on October 9, 2012.

<sup>56</sup> Transcript (June 18, 2015 – sealed), p 8.

<sup>57</sup> Transcript (January 29, 2015), pp 71-72.

[141] Furthermore, Mr. Bishara's phone records show that the majority of the phone calls to Mr. Nikolopoulos were made after the Appellant and Bijouterie Tiara had concluded their final transaction on May 15, 2012. Mr. Bishara made 40 of the 64 phone calls at regular intervals from June 12 to December 10, 2012.<sup>58</sup> This, at the very least, suggests an ongoing relationship of some sort. Surprisingly, when Mr. Bishara was re-examined by the Appellant's counsel on this new evidence, he was not asked why he continued to speak to Mr. Nikolopoulos throughout the Relevant Period.

[142] Mr. Bishara's testimony on re-examination is also inconsistent with his earlier testimony on how he communicated with the Appellant's alleged suppliers. When he was cross-examined by the Respondent's counsel following his earlier examination in chief, he stated that he would call or text Bijouterie Palo once or twice a day to confirm the spot price of gold.<sup>59</sup> Mr. Bishara testified that he used only one phone number to communicate with Bijouterie Palo, and that that number was provided by Ms. Kajapachian.<sup>60</sup> Mr. Bishara's phone records show that he never called the number provided by Ms. Kajapachian during the Relevant Period.

[143] Finally, the cell phone records from the representatives of the Appellant's alleged suppliers simply do not support Mr. Bishara's assertion that the alleged suppliers would call him to sell Scrap Gold. Records from all of the individuals who allegedly acted on behalf of Bijouterie Palo, including those of Ms. Kajapachian, show that no phone calls were made to Mr. Bishara's cell phone number. Phone records belonging to Mr. Al-Romhein show that he called Mr. Bishara only once, on August 28, 2012. Phone records belonging to Mr. Zoboyan and Mr. Nikolopoulos were not adduced in evidence.

[144] If it is true that Bijouterie Palo and 9261 Quebec communicated through phone calls, in addition to text messaging, surely this would be supported by more than one phone call from Mr. Al-Romhein to Mr. Bishara's cell phone in light of the fact that Bijouterie Palo and 9261 Quebec concluded a combined 336 transactions with the Appellant. In contrast, Bijouterie Tiara was involved in only 17 transactions, yet Mr. Bishara spoke with Mr. Nikolopoulos at least 64 times. It is implausible that the Appellant's alleged suppliers would have contacted Mr. Bishara using his pharmacy's general phone number, as they conveniently had access to his personal cell phone number. Mr. Bishara insinuated that this is how they may have communicated with him. I surmise that had they

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<sup>58</sup> Exhibit I-46.

<sup>59</sup> Transcript (May 15, 2015), p 75.

<sup>60</sup> Transcript (May 11, 2015), p 105; Transcript (May 15, 2015), p 108.

called the general line, they would have been greeted by an automatic answering service requiring that one respond to numerous prompts before a person would answer. No evidence was adduced to show that Mr. Bishara had a direct phone line at the pharmacy.

[145] As previously noted, when asked by Ms. Bouchard how the Appellant recruited its clients, Mr. Bishara claimed all of the Appellant's alleged suppliers were recruited through ads or by word of mouth. On cross-examination on an affidavit which was submitted as part of a motion filed in Quebec Superior Court to have the Appellant's QST number reinstated, Mr. Bishara stated that he recruited all of his alleged suppliers, except Bijouterie Tiara, through newspaper ads.<sup>61</sup> At trial, after Mr. Nikolopoulos stated that he had introduced Mr. Al-Romhein to him, Mr. Bishara acknowledged that this was how they had met. Mr. Nikolopoulos told the Court that he had met Mr. Al-Romhein at Mr. Al-Romhein's shisha café in Laval. He was a frequent visitor. Mr. Bishara also acknowledged that he was a client of the café. He admitted that he played cards there in the years preceding his business dealings with Mr. Al-Romhein. In fact, the evidence shows that Mr. Nikolopoulos, Mr. Iera and Mr. Bishara were all former clients of the café. The Appellant would have the Court believe that four individuals who frequented the same café came to do business together by mere chance.

[146] Mr. Al-Romhein also misled the auditor of 9261 Quebec with regard to how he came to do business with Mr. Bishara. He claimed that he had responded to the Appellant's advertisement offering to buy Scrap Gold from wholesalers. This, according to Mr. Al-Romhein, was the catalyst for 9261 Quebec and the Appellant doing business together. At trial, however, Mr. Al-Romhein changed his version and told the Court that he was introduced to Mr. Bishara by Mr. Nikolopoulos.<sup>62</sup>

[147] Considering the evidence as a whole, I conclude that Mr. Bishara and Mr. Al-Romhein tried to conceal that they got together to discuss business for the first time at a meeting arranged by Mr. Nikolopoulos. This suggests to me that they had something to hide.

[148] I pause to observe that 9261 Quebec soon became the Appellant's largest alleged supplier after Bijouterie Tiara quickly faded from the picture. Bijouterie

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<sup>61</sup> Exhibit I-7, Tab 8, pp 34-36, 48, 61, 67.

<sup>62</sup> Transcript (January 28, 2015), pp 65-67.

Palo and LZ Trading followed soon after. This does not appear to be a coincidence, as the Appellant would have the Court believe.

[149] Ms. Drizos testified that she often saw Mr. Al-Romhein and Mr. Nikolopoulos talking together at the Cheque Express outlet where she worked in Laval. The Appellant chose not to recall Mr. Al-Romhein or Mr. Nikolopoulos after hearing Ms. Drizos' evidence. The inference that I draw from this evidence and from the fact that Mr. Nikolopoulos and Mr. Bishara continued to speak with each other throughout the Relevant Period is that Mr. Nikolopoulos played a key role in helping the Appellant source Scrap Gold.

[150] Similarly, I do not believe Mr. Al-Romhein's evidence regarding how 9261 Quebec allegedly became the Appellant's largest alleged supplier. Ms. Bouchard's audit report provides information on Mr. Al-Romhein's income tax returns for the 2008, 2009, 2010 and 2011 taxation years. He and his wife declared very little income.<sup>63</sup> Mr. Al-Romhein acknowledged that he had no capital available to fund 9261 Quebec's activities. Yet throughout the period from May 14 to November 9, 2012, 9261 Quebec purchased and resold on average \$100,000 of gold each day that it conducted transactions.

[151] I also attach no weight to Mr. Iera's claim that he was the person who actually supplied 9261 Quebec and Bijouterie Palo with the gold that they resold to the Appellant.

[152] Mr. Iera testified as follows on the origin of the gold that he allegedly sold to 9261 Quebec and Bijouterie Palo:

MR. IERA: It was in the gold business.

MR. LAMARRE: What did you do in the gold business?

MR. IERA: Actually, I was purchasing.

MR. LAMARRE: Okay. From whom?

MR. IERA: Well, that's it. This is Bijoutier Villeray. It was through an acquaintance that I got to know this guy, not ---

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<sup>63</sup> Mr. Al-Romhein's income tax returns show that he reported income of \$6,141, \$12,240, \$17,998 and \$20,300 for the taxation years 2008, 2009, 2010, and 2011 respectively. Mr. Iera, 9261 Quebec's alleged supplier, who delivered thousands of dollars' worth of Scrap Gold to Mr. Al-Romhein on a daily basis, also reported very modest income. For the taxation years 2009, 2010, and 2011, Mr. Iera reported income of \$4,613.66, \$19,212.05 and \$24,649.06 respectively.



MR. LAMARRE: Villeray?

MR. IERA: That's what they told.

MR. LAMARRE: Just to be sure, what's the name?

MR. IERA: Yes. I think.

MR. LAMARRE: And what is it called? You said -- if you say it again?

MR. IERA: It could be Villeray. I really don't recall, sir.

[153] Mr. Iera also testified that the person would drop off the gold and that he would return later to receive payment when he and his corporation had received payment from Bijouterie Palo and 9261 Quebec.<sup>64</sup> I cannot imagine that a legitimate supplier of gold would be willing to take such a large credit risk. I suspect that the owner of the gold and the true seller to the Appellant stayed largely in the background until the transaction with the Appellant was completed. I cannot imagine how Mr. Iera could forget the name of the person who allegedly supplied him with over \$20,000,000 worth of gold in at least 122 transactions.

[154] Finally, after recounting an unbelievable story, Mr. Iera stated: "I was like a puppet on a string actually". He acknowledged that he was unemployed when he began trading in gold on his own behalf. He claims to have earned a small commission of 0.25% for his minor role in the transactions.

[155] The evidence shows that Mr. Al-Romhein declared personal bankruptcy in July 2014, after he was reassessed for QST and GST owed by 9261 Quebec in connection with the transactions at issue in this matter and for income tax due in connection with funds that he allegedly appropriated from 9261 Quebec. He chose not to contest the Minister's reassessments. He also admitted that he threw out all of 9261 Quebec's financial and accounting records along with all supporting documents. These are not the actions of a person without reproach.

[156] Considering Mr. Al-Romhein's and Mr. Iera's evidence as a whole, I infer that 9261 Quebec did not purchase Scrap Gold and resell it to the Appellant. From the evidence, the only reasonable inference that I can draw is that 9261 Quebec, Mr. Iera, and Mr. Iera's corporation Excelsi-Or were inserted into the supply chain to mask the identity of the Appellant's true suppliers. To the extent that they

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<sup>64</sup> Mr. Iera claims he sold gold personally at first, and then through a corporation called Excelsi-Or.

delivered gold and received payment for it, they did so on behalf of someone else. All of this was done with the Appellant's knowledge.

[157] A brief observation on Bijouterie Palo's alleged role as a supplier is also warranted. Notwithstanding Mr. Lapachian's, Ms. Kajapachian's and Mr. Philogene's claims to the contrary, I conclude that they played a role in Bijouterie Palo's dealings with the Appellant. While the evidence suggests that they did deliver Scrap Gold to the Appellant, it does not support the Appellant's contention that Bijouterie Palo was having it delivered on its own account.

[158] Ms. Kajapachian and Mr. Lapachian were welfare recipients before they became involved in what the evidence shows to be a false invoicing scheme. I surmise that they refused to acknowledge their role in the scheme because they are aware that they may, on account of their actions on behalf of Bijouterie Palo, be required to repay the social assistance that they have received. They did not declare the profit that they earned from their role in the false invoicing scheme.

[159] None of the witnesses called to testify offered a credible explanation as to why Bijouterie Palo and 9261 Quebec would source their gold from the same alleged supplier. None of the witnesses offered a credible explanation as to how they came to sell gold on the same day and at the same price. None of the witnesses explained why the discount negotiated with the Appellant was always the same.

[160] The Cheque Express records produced by the Respondent show that 9261 Quebec and Bijouterie Palo often cashed bank drafts on the same day. In a few cases, Mr. Lapachian and Mr. Al-Romhein cashed bank drafts within minutes of each other. None of the witnesses called to testify explained why they chose to use the services of the same cheque-cashing branch.

[161] Ms. Drizos testified that she saw Mr. Al-Romhein and Bijouterie Palo's authorized signatory, Mr. Lapachian, speak to each other in the parking lot when they were sometimes required to wait for payment.<sup>65</sup> No credible explanation was provided as to why they were seen to be present at the same time.

[162] The Appellant would have the Court believe that individuals of very modest financial means could somehow acquire millions of dollars' worth of gold over a very short period of time, all to be resold to the Appellant. The Appellant would

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<sup>65</sup> This occurred when Cheque Express did not have enough cash on hand to cash their bank drafts.

have the Court believe that it is mere coincidence that its alleged suppliers sold gold to the Appellant on the same terms and conditions, while all the time using similar business practices. The Appellant would also have this Court believe that it was a mere coincidence that the Appellant could suddenly source gold from a new alleged supplier when an old alleged supplier's business was disrupted by a tax audit. This is beyond all reasonable belief.

[163] The Appellant complains that the Respondent's case rests mainly on circumstantial evidence. This being the case, the only reasonable inference that I can draw from the evidence is that the Appellant, with the help of individuals acting on behalf of its alleged suppliers, put in place an elaborate paper ruse to mask the identity of the Appellant's true suppliers.

[164] The Appellant, in its written rebuttal representations, criticizes the Respondent for failing to have called other persons who could have shed light on these matters. The Appellant appears to overlook the fact that the burden of proof in tax matters resides initially with the appellant. It is well established that the Minister can rely on factual assumptions when raising an assessment. In the case at hand, the Minister assumed that the Appellant's purchase invoices are false because they do not identify the Appellant's true suppliers. After hearing the evidence, it is apparent to the Court that this assumption was made because the auditors assigned to audit the transactions at issue in this appeal concluded that the Appellant's alleged suppliers were incapable of trading in large quantities of gold. The Appellant had the burden of showing on a *prima facie* basis that the Minister's assumptions are incorrect. In my view, the Appellant has failed to do so. If other persons could have shed light on the circumstances surrounding the Appellant's gold-trading business, it was incumbent on the Appellant, and not the Respondent, to call them as witnesses to corroborate the Appellant's version of the events.

[165] Considering the evidence as a whole, I conclude that the purchase invoices relied on by the Appellant to claim its ITCs were indeed false. The Appellant used these invoices to knowingly mask the identity of its true suppliers. Likely the Appellant's true suppliers will remain unidentified because of the sophistication of the false invoicing scheme that was put in place to hide their identity.

[166] For all these reasons, the Appellant's appeal is dismissed with costs.

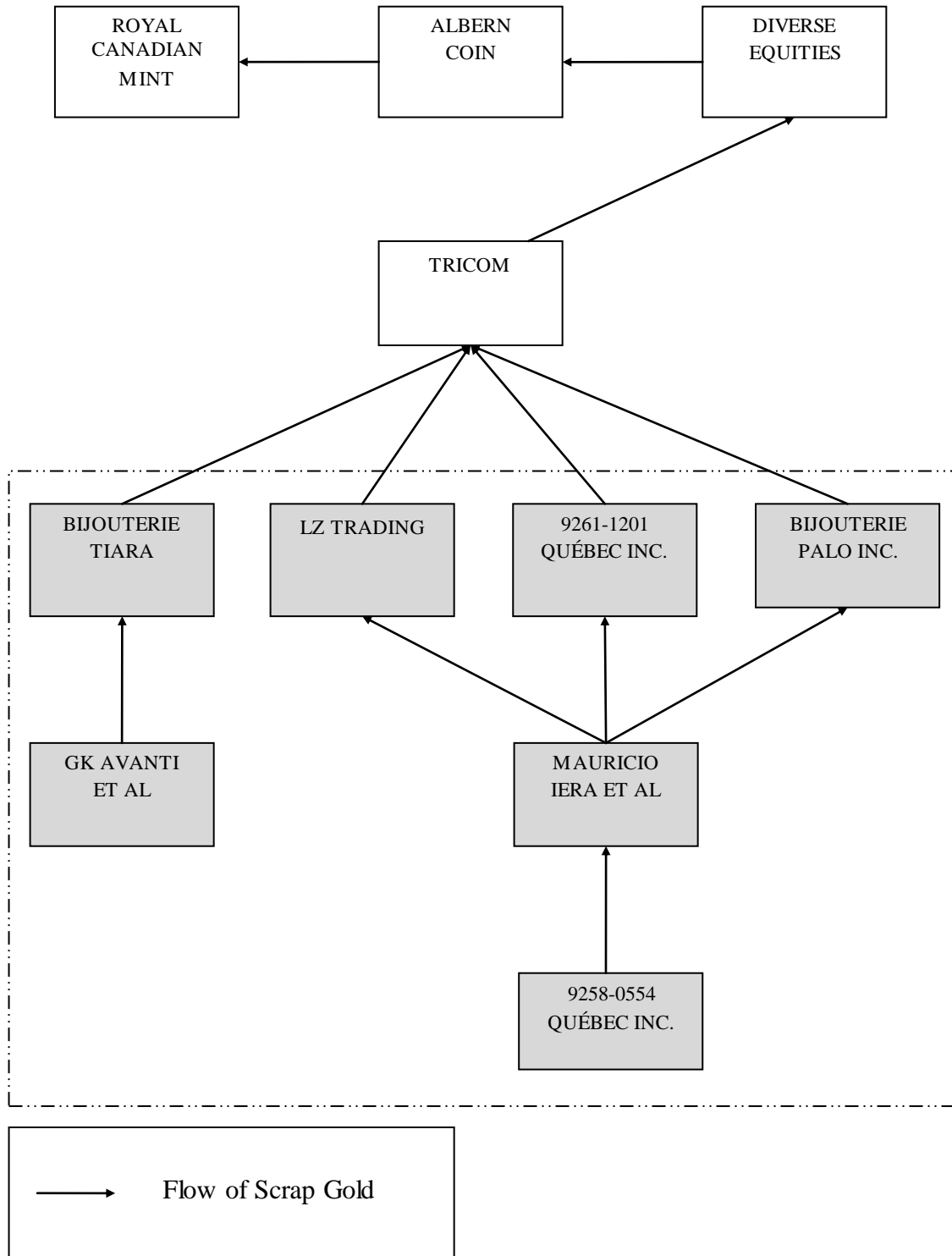
Signed at Ottawa, Canada, this 11th day of January 2016.

“Robert J. Hogan”

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Hogan J.

SCHEDULE A



CITATION: 2016 TCC 8

COURT FILE NO.: 2013-4655(GST)G

STYLE OF CAUSE: TRICOMCANADA INC. v. HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Montreal, Quebec

DATES OF HEARING: January 26, 27, 28, 29, 2015,  
May 11, 12, 13, 14, 15, 2015, and  
June 17, 18, 19, 2015

REASONS FOR JUDGMENT BY: The Honourable Justice Robert J. Hogan

DATE OF JUDGMENT: January 11, 2016

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