

[OFFICIAL ENGLISH TRANSLATION]

Docket: 2001-2505(IT)G

BETWEEN:

GUY TREMBLAY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on March 18, 2005 at Québec, Quebec

Before: The Honourable Justice Paul Bédard

Appearances:

Counsel for the Appellant: Marc Bouchard

Counsel for the Respondent: Martin Gentile

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### **JUDGMENT**

The appeals from assessments made pursuant to the *Income Tax Act* for the taxation years 1991, 1992, 1993, 1994 and 1995 are dismissed, with costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 24th day of October 2005.

« Paul Bédard »

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Bédard J.

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Citation: 2005TCC277  
Date: 20051024  
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BETWEEN:

GUY TREMBLAY,

Appellant,

and

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Respondent.

### **REASONS FOR JUDGMENT**

Bédard J.

[1] These appeals, lodged under the General Procedure Rules, require that it be determined:

i) whether the Minister of National Revenue (the “Minister”) was justified in reassessing the Appellant for each of the taxation years 1991 to 1995, even though the normal period for reassessment had expired;

ii) whether the imposition of a penalty on the Appellant for these same taxation years with respect to a deduction for support payments for the years in question was justified. I stress that the Appellant did not contest the fact that he had no right to deductions for support payments for the years in question.

[2] The facts on which the Minister relied to make the assessments for the years in question are listed in Paragraph 10 of the Reply to the Notice of Appeal:

[TRANSLATION]

- a) An internal investigation concerning certain employees of the Jonquière Tax Center revealed that they had set up a scheme so certain persons, in particular the Appellant, could benefit from fraudulent tax refunds.
- b) With the help of an accomplice of an employee of the Jonquière Tax Center, during the years in question, the Appellant benefited from tax refunds to which he had no right;
- c) The Appellant benefited from deductions for support payments of \$13,500 for the taxation years 1991, 1992, 1993 and 1994 and of \$7,500 for the taxation year 1995;
- d) The Appellant did not make support payments during the taxation years 1991, 1992, 1993, 1994 and 1995;
- e) With respect to the taxation years in question, the Appellant made an erroneous presentation of facts, through negligence, inattention or voluntary omission, or committed fraud in filing his income tax returns or in submitting information under the *Income Tax Act*;
- f) With respect to the deductions disallowed for the taxation years in question, the Appellant made, knowingly or in circumstances equivalent to gross negligence, a false statement or an omission in his income tax returns for the taxation years in question, or consented, acquiesced or participated therein.

### The Appellant's testimony

[3] The Appellant stated that he was working in computer science in 1997. He would prepare and file his own tax returns. In early February 1997, he met his brother, Jean Tremblay, who would then have informed him that one of his colleagues at work, Guy Joncas, knew civil servants of the Ministry of Revenue of Canada in Jonquière who offered individuals a tax return revision service. Jean Tremblay would then have told his brother that he himself had benefited from these revision services a few months earlier and all that had to be done was to provide one's Social Insurance Number. Wanting to benefit from this service, the Appellant then gave his brother his Social Insurance Number. The Appellant testified that he had advised his brother that he did not want his tax return modified without first having been given explanations. He added that he did not know Guy Joncas nor the civil servants the Ministry of Revenue of Canada, that he had never met them and finally that he had never communicated with them. The Appellant also added that before he received the refund cheque for \$17,254.05, his brother Jean had definitely not informed him that in exchange he had to pay these civil servants for the revision

services. Jean Tremblay's testimony, to which I give little probative value in this case, also corroborated the Appellant's testimony in this regard.

[4] And thus, without having signed a document nor a modified return, the Appellant received, barely two weeks later, a tax refund cheque for \$17,254.05 from the Government of Canada. The Appellant stated that this cheque was not accompanied by a reassessment notice which, it must be recalled, usually indicates the nature of the modifications that leads to a refund. The Appellant claimed to be quite surprised to receive a cheque for such a large amount without a reassessment notice, all the more so since he had not signed a document nor a modified return.

[5] He knew then that something was amiss. He stated that after receiving this cheque, he had communicated immediately with his brother Jean in order to convey to Guy Joncas the message that he would not cash the cheque and that he wanted all steps and actions taken with respect to his tax file to be cancelled. His brother Jean would then have called him back to tell him that it was too late to back off and that if he insisted too much [TRANSLATION] "it could be dangerous". At the same time, his brother Jean would then have informed him that the civil servants who had revised his tax returns demanded a payment in return equal to two-thirds of the tax refund he had received. Frightened, the Appellant cashed the refund cheque on February 26, 1997 and transferred \$11,000 to his brother's bank account for the latter to make the payment demanded in return.

### Analysis

[6] In my view, it can be seen from the evidence and the Appellant's testimony that from the moment he received the refund cheque, he was very suspicious, if not certain, that the operation was illegal. Wasn't he surprised to receive such a large cheque, without a reassessment notice, and all the more so since he had not signed any document nor a modified return? The barely veiled threats uttered against him and the demand for a payment in return that was completely out of line with the amount normally required for such services had, in my view, dissipated any doubt he could have as to the legality of the operation. In fact, two questions arise. Firstly, is the Appellant's version of the facts believable? Secondly, if such is the case, can the Appellant be liable to a penalty under subsection 163(2) of the *Income Tax Act* (the "Act")? In other words, can a taxpayer who received serious threats be considered as a person who knowingly participated in or consented to a false statement in his tax return? Must there be a deliberate action by the taxpayer for him to be liable to such a penalty?

[7] First of all, I stress the fact that a judge is not held to believe a witness who is not contradicted. On this point, I refer to the decision of the Quebec Court of Appeal in *Légaré v. The Shawinigan Water and Power Co. Ltd.*, [1972] C.A. 372. In that case, the court stated what follows at pages 373 and 374 :

[TRANSLATION]

[...] But, the courts are not held to believe witnesses, even if they are not contradicted by other witnesses. Their version can be implausible in the light of circumstances revealed by the evidence or according to the rules of simple common sense. [...]

[8] The version of the facts given by the Appellant and by his brother Jean seemed to me to be simply implausible. Firstly, I wish to stress that the Appellant seemed to me to be an intelligent, educated and reasonable person. For this reason, I have great difficulty in convincing myself that, at their first meeting, the Appellant had not inquired of his brother Jean as to the cost of the revision services. I have even more trouble believing that Jean Tremblay, as a good brother, had not seen fit to notify the Appellant clearly as to the astronomical cost of the revision services offered by the Revenue Canada employees. Indeed, one must remember that the evidence revealed that the Appellant's brother had benefited from such revision services a few months earlier and so that he had paid the astronomical amount in return usually demanded by the architects of this scheme. It seems to me to be possible in theory but highly improbable that the refund cheque was not accompanied by a reassessment notice which, it must be recalled, indicates the nature of the modifications that give rise to a refund.

[9] Finally, the fact that the Appellant did not advance earlier (be it in his Notice of Objection or in the Notice of Appeal) that he had felt, in the threats supposedly uttered by the authors of the scheme, threats to his physical integrity only added to my doubts as to the Appellant's credibility.

[10] Was the Appellant sincere when he testified that he had wanted all the steps and actions taken in connection with his file to be cancelled? Did he really want to get out of the predicament in which he found himself? Why then did he not at the very least consult a lawyer, a tax expert, if he really wanted to get out of the predicament in which he found himself? Why did he cash the tax refund to which he had no right? These questions were left unanswered and cast a serious doubt on the Appellant's true intentions.

[11] It is my view that this is not even a case similar to the cases *Canada (Attorney General) v. Villeneuve*, [2004] FCA 20, 2004 D.T.C. 6077, and *Canada (Attorney General) v. Savard*, [2004] FCA 150, 2004 D.T.C. 6383, where the Federal Court of Appeal confirmed penalties imposed (on the basis of taxpayers' willful blindness) on other taxpayers who participated in the same scheme as the Appellant in this case.

[12] Rather, I believe that the Appellant simply made false statements knowingly in his tax returns and participated, consented or acquiesced to these false statements and so I see no useful purpose in tackling the second question, that is whether there needs to be a deliberate action by the taxpayer for him to be liable to such a penalty.

[13] I am therefore convinced that the Respondent has established, on the balance of probabilities, that she was justified in imposing a penalty upon the Appellant for each of the years in question.

[14] Therefore the appeals are dismissed with costs.

Signed at Ottawa, Canada, this 24th day of October 2005.

« Paul Bédard »

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Bédard J.

Translation certified true  
on this 1<sup>th</sup> day of March 2006.

Jean Mongenais, Translator

CITATION: 2005TCC277

COURT FILE NO.: 2001-2505(IT)G

STYLE OF CAUSE: GUY TREMBLAY AND HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: March 18, 2005

REASONS FOR JUDGMENT BY: The Honourable Justice Paul Bédard

DATE OF JUDGMENT: October 24, 2005

APPEARANCES:

    Counsel for the Appellant: Marc Bouchard

    Counsel for the Respondent: Martin Gentile

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