

BETWEEN:

MARIAN J. ROPER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 29, 2006 at Nanaimo, British Columbia

Before: The Honourable Justice T. O'Connor

Appearances:

Agent for the Appellant: Ed R. Heese

Counsel for the Respondent: Pavanjit Mahil

JUDGMENT

The purported appeal from the reassessment made under the *Income Tax Act* for the 2003 taxation year is quashed. It is a nil reassessment and no appeal is allowed therefrom.

The appeals from the reassessments made under the *Income Tax Act* for the 2001 and 2002 taxation years are allowed to the following extent, namely:

1. In 2001 the course fees paid to Whitney Education Group, Inc. ("Whitney") and others are disallowed as the courses related to investing in real estate and the Appellant had little or no business in real estate and did not earn any revenue from that activity. The amount disallowed by the reassessment was \$ 31,179.
2. In 2002 and 2003 other course fees disallowed to the Appellant to attend Peak Potentials Training ("Peak") and others are allowed, as in my

opinion they were sufficiently related to the personal care and alternative therapies activity carried on by the Appellant. According to the Schedules annexed to the Reply the amounts disallowed were \$5,241 in 2002 and \$2,637 in 2003. For the same reason the travel expenditures to attend the courses at Peak are to be allowed. The amount of motor vehicle and travel disallowed in 2002 was \$3,678 and \$5,790. Owing to an absence of books and ledgers, and the absence of the Minister's auditor it is not possible to accurately calculate the exact amounts to be disallowed but considering the credibility of the Appellant and the evidence provided I reduce the disallowed amounts to \$1,839 for motor vehicle and \$2,895 for travel.

3. Similarly in 2003 for the same reasons I reduce the motor vehicle and travel expenses disallowed to \$371 and \$884 respectively.
4. The interest expenses disallowed in 2002 and 2003 were \$1,628 in 2002 and \$3,904 in 2003. The Appellant explained she used her credit cards and thus incurred interest for both business and personal purposes but a precise breakdown could not be furnished. On a balance of probabilities I hold that the amounts of interest disallowed, namely \$1,628 in 2002 and \$3,904 in 2003, (50% of the interest claimed) have been properly disallowed.

The matter is referred back to the Minister of National Revenue for reassessment and reconsideration on the above basis.

The whole in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 31st day of January, 2007.

"T. O'Connor"

O'Connor, J.

Citation: 2007TCC12
Date: 20070131
Docket: 2005-4095(IT)I

BETWEEN:

MARIAN J. ROPER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

O'Connor, J.

[1] This appeal heard in Nanaimo, British Columbia relates to the disallowance by the Minister of National Revenue ("Minister") in the 2001, 2002 and 2003 taxation years of certain alleged business expenses of the Appellant.

[2] At the outset counsel for the Respondent stated that the reassessment for the 2003 taxation year was a nil assessment and consequently sought an Order quashing the appeal for that year pointing out that it is well established by judgments of the Federal Court of Appeal that there can be no appeal from a nil assessment. The Minister had advised the Appellant of this fact and instructed the Appellant to request a loss determination for the 2003 taxation year, to which she could object. The Appellant did not request a loss determination but E.R. Heese, B.Comm., Accounting/Tax Services Ltd., acting for the Appellant indicated that he had been advised by the Minister's office that the Appellant could raise the 2003 taxation year after a decision had been made in this appeal with respect to the 2001 and 2002 taxation years. I make no comment on that position and trust that Mr. Heese will take that issue up further with the Minister at a later date. It is to be noted that although the Minister seeks to quash the appeal for 2003 the Reply analyzes the expenses allowed and disallowed in 2003.

[3] In any event the ruling that there can be no appeal from a nil assessment is engraved in stone and consequently the appeal for the 2003 taxation year is quashed.

[4] As a further preliminary matter I note that apparently through no one's fault, the audit that was carried out prior to this appeal was less than perfect, arising mainly from the fact that the Appellant was suffering severely from cancer at relevant times when being asked to provide various information and documentation and further by the fact that eventually the auditor acting for the Minister, after issuing the final reassessments and commentary left the Minister's department and was not available at the hearing of this appeal. Consequently, her evidence at the hearing of the appeal was unavailable.

[5] The following sets forth the three Schedules "A" annexed to the Reply to the Notice of Appeal which explain the expenses that the Minister allowed and disallowed.

Marian J. Roper v. Her Majesty the Queen
Tax Court of Canada Appeal #2005-4095(IT)I

Summary of disallowed business expenses and adjustments for 2001, 2002 and 2003.

2001	Initial Assessment <u>May13/02</u>	Audit Reassessment <u>Nov. 29/04</u>	<u>Disallowed</u>
Gross business income	\$ 54,710	\$ 54,710	
Less: Cost of goods sold			
- purchases	\$ n/a		
- direct wage	<u>n/a</u>		
	\$ n/a	<u>n/a</u>	
Gross profit	\$ 54,710	\$ 54,710	
<u>Expenses:</u>			
Advertising	n/a	n/a	
Fees, licenses, dues	165	165	
Delivery, freight	n/a	n/a	
Insurance	n/a	n/a	
Interest	1,266	1,266	
Maint. & repairs	3,760	3,760	
Meals & entertain.	788	788	
Motor vehicle	8,330	8,330	
Office expenses	8,364	8,364	
Legal, acctg, professional fees	1,752	1,752	
Travel	6,846	6,846	
Rent	4,976	4,976	

Telephone/utilities	2,475	2,475	
Other expenses (training)	34,535	3,356	31,179
Capital cost allowance	<u>1,580</u>	<u>1,580</u>	
Total expenses	\$ 74,837	\$ 43,658	
Net business income (loss)*	\$(20,131)	\$ 11,047	

Note: * Due to rounding, there is a minor difference in the mathematical result.

Marian J. Roper v. Her Majesty the Queen
Tax Court of Canada Appeal #2005-4095(IT)I

Summary of disallowed business expenses and adjustments for 2001, 2002 and 2003.

2002	Initial Assmt <u>Apr 07/03</u>	Reassmt. June 01/04	Audit Reassmt <u>Nov. 29/04</u>	<u>Disallowed</u>
Gross business income	\$ 29,741	Unchanged	\$ 29,741	
Less: Cost of goods sold				
- purchases \$ n/a				
- direct wage <u>n/a</u>				
\$ n/a	n/a		n/a	
Gross profit	\$ 29,741	Unchanged	\$ 29,741	
<u>Expenses:</u>				
Advertising	1,691		1,691	
Fees, licenses, dues	256		256	
Delivery, freight	n/a		n/a	
Insurance	n/a		n/a	
Interest	3,256		1,628	1,628
Maint. & repairs	n/a		n/a	
Meals & entertain.	n/a		n/a	
Motor vehicle	5,092		1,414	3,678
Office expenses	1,191		1,191	
Legal, acctg, professional fees	858		858	
Travel	5,790			5,790
Rent	2,000		2,000	
Salaries, wages	568		568	
Telephone/utilities	2,788		2,788	
Other expenses (training)	5,241			5,241
Capital cost allowance	<u>1,620</u>		<u>1,620</u>	
Total expenses	\$ 30,351	Unchanged	\$ 14,014	

Net business income (loss)*	\$(616)	Unchanged	\$ 15,720	
Non-capital loss carryback from 2003 and applied against income for 2002		\$ 12,344	\$ 4,822	

Note: * Due to rounding, there is a minor difference in the mathematical result.

Marian J. Roper v. Her Majesty the Queen
Tax Court of Canada Appeal #2005-4095(IT)I

Summary of disallowed business expenses and adjustments for 2001, 2002 and 2003.

2003		Initial Assessment May 20/04	Audit Reassessment Nov. 29/04	Disallowed
Gross business income		\$ 27,504	\$ 27,504	
Less: Cost of goods sold				
	- purchases \$4,037			
	- direct wage <u>350</u>			
	\$4,387	<u>4,387</u>	<u>4,387</u>	
Gross profit		\$ 23,117	\$ 23,117	
<u>Expenses:</u>				
Advertising		3,410	3,410	
Fees, licenses, dues		954	954	
Delivery, freight		435	435	
Insurance		59	59	
Interest		7,809	3,905	3,904
Maint. & repairs		1,735	1,735	
Meals & entertain.		558	558	
Motor vehicle		3,629	2,887	742
Office expenses		3,027	3,027	
Legal, acctg, professional fees		3,964	3,964	
Travel		4,205	2,437	1,768
Telephone/utilities		2,027	2,027	
Other expenses (training)		2,637		2,637
Capital cost allowance		<u>2,694</u>	<u>2,694</u>	
Total expenses		\$ 37,144	\$ 28,092	
Net business income (loss)*		\$(14,031)	\$(4,981)	

Note: * Due to rounding, there is a minor difference in the mathematical result.

[6] It is obvious that the Minister has accepted many of the expenses claimed by the Appellant. The Minister's explanation of the amounts disallowed are set forth in the Minister's assumptions contained in paragraph 13 of the Reply and all of the subparagraphs thereof which provide as follows:

13. In reassessing the Appellant for the 2001 through 2003 taxation years, and in confirming the 2001 and 2002 taxation years the Minister assumed the same facts as follows:

- a) at all material times, the Appellant operated a business providing personal care and alternative therapies (the "Business Activity");

Training expenses

- b) in 2001 the Appellant began studies in investing in real estate through courses made available by the Whitney Education Group, Inc. ("Whitney");
- c) courses provided by Whitney were held across Canada, the United States, and further abroad;
- d) the Appellant took the training for the purposes of having retirement income through passive income sources;
- e) the Appellant purchased a numbered company through Whitney, 390802 Canada Inc., for investing in real estate;
- f) 390802 Canada Inc. is inactive;
- g) the Appellant's studies in real estate investing are unrelated to the Business Activity;
- h) the amount of course fees incurred by the Appellant to attend Whitney is unknown;
- i) the Appellant did not commence a business investing in real estate;
- j) during all material times, the Appellant did not earn any revenue from real estate studying with Whitney;
- k) expenditures incurred to travel to and attend courses provided by Whitney were personal expenses of the Appellant and not incurred for the purpose of earning income from a business or property;

- l) Peak Potentials Training courses are motivational training courses geared toward personal wealth, life direction and personal fulfillment;
- m) the amount of course fees incurred by the Appellant to attend Peak Potentials Training is unknown;
- n) the Appellant's studies at Peak Potentials Training were unrelated to the Business Activity;
- o) expenditures incurred to travel to and attend courses provided by Peak Potentials Training were personal expenses of the Appellant and not incurred for the purpose of earning income from a business or property;
- p) \$3,356.36 of \$ 34,535.25 claimed as training expenses for the 2001 taxation year were incurred for the purpose of earning income from the Business Activity;
- q) expenditures claimed by the Appellant as training expenses for the 2002 and 2003 taxation years totaling \$5,241.65 and \$2,637.33, respectively, were not incurred for the purpose of earning income from a business or property;

Travel Expenses

- r) travel expenses claimed by the Appellant in the 2002 taxation year in the amount of \$5,790.78 were not incurred for the purpose of earning income from business or property;
- s) \$2,437.23 of the \$4,205.19 travel expenses claimed by the Appellant in the 2003 taxation year were incurred for the purpose of earning income from the Business Activity;
- t) travel expenses relating to the Appellant's involvement with network marketing in 2003 were not incurred for the purpose of earning income from a business or property;

Motor vehicle Expenses

- u) the Appellant did not provide proper books and records detailing the business use versus personal use of her vehicle;
- v) in 2003, 25% of the use of the Appellant's vehicle was in respect of the Business Activity;

- w) motor vehicle expenditures in excess of \$1,414.57 for the 2002 taxation year were not incurred for the purpose of earning income from a business or property;
- x) in 2003, the Appellant drove 8,248 kilometres to provide therapy sessions respecting the Business Activity;
- y) motor vehicle expenditures in excess of \$2,886.88 for the 2003 taxation year were not incurred for the purposes of earning income from a business or property;

Interest Expense

- z) interest expenses claimed by the Appellant for taxation years 2002 and 2003 were in respect of bank charges and credit card interest; and
- aa) not more than \$1,628.28 and \$3,904.89, representing one-half of the interest claimed by the Appellant for the 2002 and 2003 taxation years, respectively, were incurred for the purpose of earning income from a business or property.

[7] As further stated in the Reply the issues to be decided are set forth in paragraph 14 thereof as follows:

- a) whether the Appellant's appeal for the 2003 taxation year is valid; and
- b) whether the Minister properly disallowed business expenses claimed by the Appellant respecting the Business Activity for the 2001, 2002 and 2003 taxation years.

[8] It was established that the Appellant was well educated having attained the following degrees, namely, Registered Nurse, Bachelor of Science and Masters in Communication Studies. She worked very hard and her testimony was credible.

[9] The Appellant considerably minimized the impact of the assumptions of the Minister contained in the Reply. Without reviewing all of her testimony it will be helpful to quote extracts from her letter of October 25, 2004 to the auditor acting for the Minister in this matter. This is Exhibit R-3 and may be summarized as follows:

As to the 50/50 allocation of interest, the Appellant stated that in 2002 and 2003 a more reasonable allocation was 70% business / 30% personal.

The Appellant attempted to justify her training and related expenses:

To have a modicum of understanding of the scope of my endeavours you must incorporate all my credentials. In 1990 I completed a Master degree in Communication (MCS) Studies at the University of Calgary. This degree is only tangentially related to my Holistic Health Care practice yet provides a rich background and foundation for my continuing ventures.

...

The comments and decisions declared in the reassessment clearly take a myopic view that I am only functioning as a 1-skill healthcare therapist, whereas I have been steadily developing business skills and qualifications since I chose to leave my salaried nursing position in the late 1980's and early 1990's. The Master's Degree is an indication of my intention to expand my career. This was completed in 1990 and includes varied applied skills and qualifications. My MCS degree was academic in nature with the addition of applied experiences. In addition, I was employed as a student assistant by professors for their research and private work to pay for my education. The course and work content of the MCS experience clearly show that the Whitney Education Group (see B1-6) and Peak Potentials (B7-10) trainings were taken merely to "maintain, update or upgrade already existing skills or qualifications with respect to my business or profession" (reference Interpretation Bulletin IT-357R2).

...

Clearly both Peak Potentials and Whitney training were related at many varied levels and provided me with current practical applications to help me augment and grow my MCS foundation.

... the disallowance of the Whitney Training is also limited and erroneous. It was: (1) not real estate training in context you imply; (2) a capital expenditure connected to a numbered corporation purchased as part of the package. The corporation was an optional purchase offered there as asset protection relevant to 2001 (remember my basis came from late 80's early 90's). Further I never activated this corporation. It's defunct!

...

I clearly have well established skills and qualifications that I am endeavouring to turn into revenue, in my entrepreneurship. I also clearly require exposure to current trends, markets and perspectives to augment my educational and professional foundation in the MCS degree. I obtained this in the Whitney and Peak Potentials training. I incurred travel and motor vehicle expenses doing so clearly you can see that if I worked more than 40 hours weekly as a Hands-On Therapist and additionally participated in these and other training I was a workaholic and worked 100% of my time.

...

Once again, how could you possibly judge that these courses (Whitney and Peak Potentials) were not related to my existing skills, qualifications, business and professions ...

...

I continued to augment my holistic health care business as well. Most notably, Consegrity (D1 and 2 illustrate what this is and my brochure). During 2001, I not only attended 2 Consegrity Training sessions (St. George, Utah and Witchita, Kansas). I was instrumental in bringing this work to Canada by single-handedly organizing 2 conferences. ...

I became the Canadian coordinator for Consegrity and the 1st Certified Consegritist in Canada (see D5-8). Training, motor vehicle and travel expenditures were clearly a large part of this endeavour. I travelled alone between Alberta and BC promoting & demonstrating this work.

This endeavour boasted my own personal hand-on practice as I was featured on local radio & T.V. stations. My marketing, coordinating and speaking skills, 1st learned at University of Calgary, then enhanced through Whitney Education Group information worked well (see D5-8).

...

I turned to consulting, health care presentations and building skills I learned through the Peak Potentials courses during the remainder of 2002. I found that Peak Potentials exposed me to Network Marketing as a form of passive income development (a concept introduced at the U of Calgary) and I met many contacts who became distributors, resources & support when I worked in Network Marketing for Brain Garden.

...

Further ... you will note I was clearly seeking new business ventures for my sole proprietorship entrepreneurial business by adding this part time endeavour. My intention was to become more and more involved in related skills for my Master's Degree background with this endeavour. Peak Potential training, my Master's Degree work, my Holistic Health Care practice are all interrelated, well-defined and established credentials I had developed from the late 80's (indeed, my whole professional working life) meant I could write an appropriate resume for this work. As this was to be a part time job, it is clear that it was one more attempt at adding to my entrepreneurial base of business endeavours.

As noted in Interpretation Bulletin IT-357R2, cost incurred ... to enable a professional to learn this latest methods of carrying on her profession are allowable for a self-employed individual to continue to be viable and earn income, it is critical to have the leeway to choose which endeavours will support this endeavour. I only took training I was previously qualified to understand through my foundation built during my Masters Degree work.

...

Note 2 also references the lack of a log as being reason for disallowance of automobile expenses. I submitted my annual daytimers and computer disk. My records may not appear as a “log” that you prefer yet this is my log and my record. They are complete and extensive and I am able to access any given day and indicate Km totals, the business and personal breakdown from my activities recorded. My business percentage of vehicle use was derived this way. It is clear from the Income Tax Circular you sent me that daytimers (see GI-7) records do indeed fit within the accepted definition of “record”. Also, I understand mileage is calculated @ 42¢ / Km regular. It is absolutely valid to say I worked 90% of the time. I am a recovering workaholic and my health (present) status is the best verification of this I can submit. I learned the hard way in 2003 and am still paying the price as I attempt to recover from cancer and total collapse from stress and overwork.

...

I believe this reassessment is incomplete and lacks comprehensive awareness of what an entrepreneur such as me actually does working at generating revenue. I have a lifelong passion for learning that I have consistently applied to generate revenue in my work environment. This has meant a life of little else than work and fairly created expenses. I believe Revenue Canada must judge me in the category of worker that I fit – an entrepreneur and self-employed business person – and not attempt to keep me in the box of health care professional I have been trying to expend for years. ...

Thank you.

[10] The principal submissions of counsel for the Minister are contained in his formal argument. Extracts from the transcript reads as follows:

M. MAHIL:

...

The issue in this appeal, in the Respondent’s submission, is whether the Appellant is entitled to deduct additional business expenses in excess of the amount allowed by the Minister. ...

The Respondent's submission is that the Appellant is not entitled to deduct any additional amounts in 2001 or 2002. The Respondent submits that these amounts were either unvouched or were personal and living expenses of the Appellant.

The Respondent submits that the Appellant did not discharge her onus of establishing that these disallowed amounts were incurred for business purposes. I have included legislation. I believe the court is familiar with the Section 18, paragraph 1(a) and 1(h) dealing with the limitations on expenses. Paragraph (a) is a limitation on expenses made just to the extent that they are made or incurred to earn income from business for property. Paragraph (h) excludes any expenses that are personal or living expenses of the taxpayer.

I have also included at Tab G of my book of authorities Section 230.1 of the requirement for a taxpayer to keep adequate books and records in such form and containing such information to enable taxes to be deducted -- to allow taxes to be determined.

...

At Tab 4, a leading case in Njenga from the Federal Court of Appeal about business expenses and deductions. I have highlighted paragraph 3,

The income tax system is based on self-monitoring as a public policy matter the burden of proof of deductions and claims properly rests with the taxpayer. The Court states that the Appellant must maintain and have detailed information available to support the claims that they make. (Counsel referred to several cases).

It is the Respondent's submission that -- I will go through each category of expense now briefly. The training expense, there are two amounts. One for the year 2001, one for the year 2002, one for 2001 appears to relate to the course by Whitney Education Group. This is training for real estate investing. (Counsel discussed this issue).

...

With respect to the 2002 training the Peak Potentials, it is also the Respondent's submission that this training is also capital in nature and that the courses outlined, in evidence and in the document submitted, indicate personal wealth and motivation themes. These courses were to educate and inspire people. In the Respondent submission with these courses do not specifically apply to the Appellant's current business interests at the time. And again, this training also has lasting benefit to the Appellant and therefore, is a capital asset and again not a current deductible expense.

Accordingly, the Respondent submits that these expenses were not incurred to earn income from business or property. The travel expenses also related, in my understanding, to these courses that are claimed and to that extent the Respondent submits that these expenses -- the travel expenses that is -- were not incurred for the purpose of earning income from a business or property.

...

I have included at Tab 12 the training, the IT bulletin dealing with training expenses. I have highlighted a portion in the summary at page 1 of this bulletin. The bulletin states,

The training costs are not deductible as current expenses if they are capital expenditures. They are considered to be capital in nature when the training results in the lasting benefit to the taxpayer, i.e., where a new skill or qualification is required. Where on the other hand this training is taken merely to maintain, update or upgrade already existing skill or qualification and related costs are not considered to be capital in nature.

...

In *Cormier* and this is another decision of the Tax Court, Justice Lamar, and I highlighted paragraph 15. I would like to refer to that. The first sentence of that paragraph,

Education expenses are deductible as business expenses in computing the Appellant's income under section 9.1 of the Act. If the deduction is consistent with ordinary business principles are well recognized principles of normal business practice.

Then, at paragraph 20 the Court states that,

In order to be deductible as business expenses education expenses must have been incurred by the Appellant for the purpose of gaining or producing income from the business.

At paragraph 22 the existence of a business-related purpose within the meaning of Section 18(1)(a) is a question to be decided taking all of the circumstances into account in light of the various factors.

The Court states at paragraph 23 that the question that should be answered in other words is: does the expense fill a need of the business or a need of the taxpayer. And in this case it is the Respondent's submission this fills a need of the taxpayer and not a need of the actual business that was being pursued at the time. Accordingly then, it is a capital expense not a current expense.

I have also included at tab 9 the decision in Neville. I've highlighted portions of page 5 and page 6.

And again, at page 5 at the bottom the court refers to IT bulletin 357. In the last portion of the statement there I can think of no more apt distinction between capital and current then that made in the bulletin for the guidance of taxpayers. And the distinction there is quoted as follows on to the next page.

...

Again, the Respondent submits that in the case at bar that has an application. In the case at bar the Appellant's business was more of a holistic healthcare business, there was no real estate business per se being conducted. The fact that she wanted to acquire skills in respect of real estate investing is not a current expense.

...

In the Respondent's submission the Appellant has not established that the real estate training or personal growth training were required of her or that they would relate to business that she was providing. Accordingly, we submit that it is a capital expense.

In terms of the motor vehicle expenses, the Appellant claims motor vehicle expenses in respect of her vehicle. She claims -- it appears she claimed 90 percent business use of her vehicle. In the Respondent's submission, she has not demonstrated such high business use. She has agreed to having used that same vehicle for personal activities and the apportionment of the personal and the business travel is not clearly identifiable in the Respondent's submission. There is no adequate mileage log that would establish the amount used for business, and the amount used for personal. In the Respondent's submission, the exhibit R-6 being the calendar is not sufficient for those purposes and the Minister's decision was reasonable.

...

At paragraph 20 at Tab 6 on page 6 of the decision (Dore) the Court states, and I have highlighted this portion,

Business people who use personal vehicle for business need to keep accurate logs of their mileage actually driven if they expect to be entitled to deduct all the costs of operating those vehicles for business purposes. Estimates made at year end by subtracting an amount estimated to be their personal use from the annual total mileage driven are only that, estimates. They generally attempt to be generous to the estimator.

The Respondent's submission is well known that an automobile log is a necessity for claiming such expenses. In the Respondent's submission, the Appellant's estimate of 90 percent business use of her vehicle was indeed overly generous. It has not been shown that the car was only used 10 percent of the time for personal purposes. It is reasonable that the Appellant would have used the car for everyday errands, grocery shopping, personal banking, appointments, visiting friends or family and she did allude to the fact that she did travel to Alberta also in part to visit family.

Given the lack of documentation to substantiate these claims we submit that the Minister's decision is reasonable.

With respect to the interest and bank charges the Appellant has claimed 100 percent of these expenses. The Respondent submits that the Minister's decision to allow 50 percent is reasonable in the circumstances.

The Appellant agrees that these expenses relate both to business and personal items. She has given evidence that she lived off her credit cards during that period of time.

The Appellant agreed with the auditor to a 50 percent amount, however in her letter that was marked as exhibit R-3 she later suggested a different allocation, 70 percent business and 30 percent personal. In the Respondent's submission is that the Minister's original amount, 50 percent, is the reasonable amount in these circumstances.

The interest expense, again primarily relates to training and associated expenses that, in the Minister's submission, are not allowable as business expenses in any event.

I have explained the onus on the Appellant already. The Respondent submits, as in other business expense cases, that the provisions of the Act are clear and unambiguous that the Act requires strict interpretation and that in this case the Appellant has not established that any additional amount should be allowed in excess of that allowed by the Minister. The Respondent request that the Court dismisses this appeal for the 2001 in 2002 years and quash the appeal for the 2003 taxation year.

[11] With respect to the 2003 taxation year, the appeal as mentioned is quashed. However, as explained earlier, the Appellant's representative may address this matter further with the Minister.

[12] In conclusion, the appeal for the 2003 taxation year is quashed. The appeals for the 2001 and 2002 taxation years are allowed to the extent and on the basis of

these Reasons for Judgment and as detailed in the actual Judgment in these appeals.

Signed at Ottawa, Canada, this 31st day of January, 2007.

"T. O'Connor"

O'Connor, J.

CITATION: 2007TCC12
COURT FILE NO.: 2005-4095(IT)I
STYLE OF CAUSE: MARIAN J. ROPER AND HER MAJESTY
THE QUEEN
PLACE OF HEARING: Nanaimo, British Columbia
DATE OF HEARING: November 29, 2006
REASONS FOR JUDGMENT BY: The Honourable Justice T. O'Connor
DATE OF JUDGMENT: January 31, 2007

APPEARANCES:

Agent for the Appellant: Ed R. Heese

Counsel for the Respondent: Pavanjit Mahil

COUNSEL OF RECORD:

For the :

Name:

Firm:

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