Docket: 2008-125(IT)I

BETWEEN:

DARRELL G. LESNICK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 27, 2008, at Toronto, Ontario

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Rickey Tang

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the Appellant's 2000 taxation year is allowed, with costs fixed at $600, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled to claim an allowable business investment loss of $19,005 in the year 2000.

Signed at Ottawa, Ontario, this 16th day of September 2008.

"Wyman W. Webb"

Webb J.

Citation: 2008TCC522
Date: 20080916
Docket: 2008-125(IT)I

BETWEEN:

DARRELL G. LESNICK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb J.

[1] The Appellant has filed an appeal in relation to the amount of the allowable business investment loss that he incurred in the year 2000 for the purposes of the *Income Tax Act*. The Respondent does not dispute that the Appellant had incurred an allowable business investment loss in 2000 but does dispute the amount of such loss that was incurred.

[2] The Appellant is claiming that the amount of his business investment loss was $38,011 while the Respondent submits that the amount of the Appellant's business investment loss was $1,861. The business investment loss of the Appellant will be the amount that is equal to the amount that was owing to the Appellant by Lescom Investments Limited, when it ceased operations in June 2000. The Appellant was a shareholder of Lescom Investments Limited and the Respondent does not dispute that whatever amount was owing to the Appellant became a bad debt in 2000 and was a business investment loss, but, as noted above, states that this amount was only $1,861.

[3] In filing his tax return for 2000 the Appellant claimed an allowable investment business investment loss of $25,340, which is two-thirds of the amount of his

claimed business investment loss of $38,011. The position of the Respondent is that the amount of any allowable business investment loss arising as a result of the amount owing to the Appellant by Lescom Investments Limited becoming a bad debt in 2000 should only be one-half of the amount of the business investment loss.

[4] Prior to 1996, the Appellant was working as a manager of a Tim Horton's store in Prince Edward Island. The Appellant decided to approach The TDL Group Ltd. about opening a franchise in Cheticamp, Nova Scotia. The Appellant indicated that the initial cost for a franchise was approximately $350,000. The Appellant did not have any funds to invest in this project, but he did have the expertise as the manager of another Tim Horton's location. The Appellant arranged for three of his relatives to provide most of the initial capital that was required. The Appellant stated that he initially borrowed $5,800 from the Royal Bank and advanced these funds to the company.

[5] Only the Appellant and his brother Kim were shareholders of Lescom Investments Limited, which was the company that was formed to purchase the franchise rights. The Appellant stated that the TDL Group Ltd. would not approve the granting of the franchise if all four individuals, who were involved, were shareholders.

[6] The Appellant indicated that the franchise encountered problems from the outset. He indicated that it was his intention to have the building open and available for business in the spring of 1996, but it did not open until July 3, 1996. The company encountered cash flow problems from the beginning and additional cash was required. A significant amount of cash was required in 1997 and the other three individuals who were involved were unable or unwilling to fund the entire additional amount that was required.

[7] The Appellant's mother testified during the hearing, and I accept her testimony. She indicated that when she heard from the Appellant that they would require additional cash for their company in 1997, she agreed to refinance her house and to lend the Appellant the sum of $24,000. The Appellant's mother switched financial institutions to arrange for this. She had been with the Toronto Dominion Bank and switched to Canada Trust (this was prior to the merger of these two institutions). The Appellant submitted a copy of the PowerLine Commitment Letter from Canada Trust dated April 3, 1997. This document shows that the principal amount of $52,500 was borrowed by the Appellant's mother and that this amount was split into two parts – one was a closed amount of $24,000 and the other was an open amount of $28,500. The Appellant's mother confirmed that the $24,000 closed amount was the amount

that she lent to the Appellant. The loan amount was split into two parts so that they could identify the portion that was being advanced to the Appellant and so that they could keep track of the amounts that he was repaying on the loan. The Appellant's mother testified that the Appellant has fully repaid this loan to her.

[8] There were certain costs incurred in arranging this financing and the amount that the Appellant advanced to Lescom Investments Limited from the $24,000 that was borrowed by the Appellant's mother from Canada Trust was $22,850.

[9] The company continued to struggle financially and additional funds were required. The Appellant stated that he advanced an additional $12,500 to the company prior to the company collapsing in June of 2000 when the franchise was taken over by The TDL Group Ltd. After the franchise was taken over by The TDL Group Ltd., the company no longer had any assets.

[10] The position of the Respondent is that the Appellant did not produce sufficient evidence to establish that he was owed $38,011 by Lescom Investments Limited when this company lost its Tim Horton's franchise to The TDL Group Ltd. and no longer had any assets.

[11] In *The Continental Insurance Company v. Dalton Cartage Company Limited*, [1982] 1 S.C.R. 164, Chief Justice Laskin stated as follows:

> Where there is an allegation of conduct that is morally blameworthy or that could have a criminal or penal aspect and the allegation is made in civil litigation, the relevant burden of proof remains proof on a balance of probabilities. So this Court decided in *Hanes v. Wawanesa Mutual Insurance Co.*, [1963] S.C.R. 154. There Ritchie J. canvassed the then existing authorities, including especially the judgment of Lord Denning in *Bater v. Bater*, [1950] 2 All E.R. 458, at p. 459, and the judgment of Cartwright J., as he then was, in *Smith v. Smith and Smedman*, [1952] 2 S.C.R. 312, at p. 331, and he concluded as follows (at p. 164):
>
> > Having regard to the above authorities, I am of opinion that the learned trial judge applied the wrong standard of proof in the present case and that the question of whether or not the appellant was in a state of intoxication at the time of the accident is a question which ought to have been determined according to the "balance of probabilities".
>
> It is true that apart from his reference to *Bater v. Bater* and to the *Smith and Smedman* case, Ritchie J. did not himself enlarge on what was involved in proof on a balance of probabilities where conduct such as that included in the two policies herein is concerned. In my opinion, Keith J. in dealing with the burden of proof could properly consider the cogency of the evidence offered to support proof on a balance of probabilities and this is

what he did when he referred to proof commensurate with the gravity of the allegations or of the accusation of theft by the temporary driver. There is necessarily a matter of judgment involved in weighing evidence that goes to the burden of proof, and a trial judge is justified in scrutinizing evidence with greater care if there are serious allegations to be established by the proof that is offered. I put the matter in the words used by Lord Denning in *Bater v. Bater*, supra, at p. 459, as follows:

> It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion.

I do not regard such an approach as a departure from a standard of proof based on a balance of probabilities nor as supporting a shifting standard. The question in all civil cases is what evidence with what weight that is accorded to it will move the court to conclude that proof on a balance of probabilities has been established.

(emphasis added)

[12] In *Hickman Motors Limited v. The Queen*, [1997] 2 S.C.R. 336, Justice L'Heureux-Dubé stated as follows:

> 92 **It is trite law that in taxation the standard of proof is the civil balance of probabilities: *Dobieco Ltd. v. Minister of National Revenue*, [1966] S.C.R. 95, and that within balance of probabilities, there can be varying degrees of proof required in order to discharge the onus, depending on the subject matter: *Continental Insurance Co. v. Dalton Cartage Co.*, [1982] 1 S.C.R. 164; *Pallan v. M.N.R.*, 90 D.T.C. 1102 (T.C.C.), at p. 1106**. The Minister, in making assessments, proceeds on assumptions (*Bayridge Estates Ltd. v. M.N.R.*, 59 D.T.C. 1098 (Ex. Ct.), at p. 1101) and the initial onus is on the taxpayer to "demolish" the Minister's assumptions in the assessment (*Johnston v. Minister of National Revenue*, [1948] S.C.R. 486; *Kennedy v. M.N.R.*, 73 D.T.C. 5359 (F.C.A.), at p. 5361). The initial burden is only to "demolish" the exact assumptions made by the Minister but no more: *First Fund Genesis Corp. v. The Queen*, 90 D.T.C. 6337 (F.C.T.D.), at p. 6340.
>
> 93 This initial onus of "demolishing" the Minister's exact assumptions is met where the appellant makes out at least a prima facie case: *Kamin v. M.N.R.*, 93 D.T.C. 62

(T.C.C.); *Goodwin v. M.N.R.*, 82 D.T.C. 1679 (T.R.B.). In the case at bar, the appellant adduced evidence which met not only a prima facie standard, but also, in my view, even a higher one. In my view, the appellant "demolished" the following assumptions as follows: (a) the assumption of "two businesses", by adducing clear evidence of only one business; (b) the assumption of "no income", by adducing clear evidence of income. The law is settled that unchallenged and uncontradicted evidence "demolishes" the Minister's assumptions: see for example *MacIsaac v. M.N.R.*, 74 D.T.C. 6380 (F.C.A.), at p. 6381; *Zink v. M.N.R.*, 87 D.T.C. 652 (T.C.C.). As stated above, all of the appellant's evidence in the case at bar remained unchallenged and uncontradicted. Accordingly, in my view, the assumptions of "two businesses" and "no income" have been "demolished" by the appellant.

94 Where the Minister's assumptions have been "demolished" by the appellant, "the onus . . . shifts to the Minister to rebut the prima facie case" made out by the appellant and to prove the assumptions: *Magilb Development Corp. v. The Queen*, 87 D.T.C. 5012 (F.C.T.D.), at p. 5018. Hence, in the case at bar, the onus has shifted to the Minister to prove its assumptions that there are "two businesses" and "no income".

95 Where the burden has shifted to the Minister, and the Minister adduces no evidence whatsoever, the taxpayer is entitled to succeed: see for example *MacIsaac*, supra, where the Federal Court of Appeal set aside the judgment of the Trial Division, on the grounds that (at p. 6381) the "evidence was not challenged or contradicted and no objection of any kind was taken thereto". See also *Waxstein v. M.N.R.*, 80 D.T.C. 1348 (T.R.B.); *Roselawn Investments Ltd. v. M.N.R.*, 80 D.T.C. 1271 (T.R.B.). Refer also to *Zink*, supra, at p. 653, where, even if the evidence contained "gaps in logic, chronology, and substance", the taxpayer's appeal was allowed as the Minister failed to present any evidence as to the source of income. I note that, in the case at bar, the evidence contains no such "gaps". Therefore, in the case at bar, since the Minister adduced no evidence whatsoever, and no question of credibility was ever raised by anyone, the appellant is entitled to succeed.

(emphasis added)

[13] In the recent decision of the House of Lords of *In re Doherty*, [2008] UKHL 33, Lord Carswell stated as follows:

25. The phrase “degree of probability” was picked up and repeated in a number of subsequent cases – see, for example, *In re Dellow’s Will Trusts* [1964] 1 WLR 451, 455, *Blyth v Blyth* [1966] AC 643, 669 and *R v Secretary of State for the Home Department, Ex p Khawaja* [1984] AC 74, 113-4 – and may have caused some courts to conclude that a different standard of proof from the balance of probabilities or a higher standard of evidence was required in some cases. In so far as such misunderstanding has occurred, it should have been put to rest by the frequently-cited remarks of Lord Nicholls of Birkenhead in *In re H (Minors)*. Immediately after the passage which I have quoted from his opinion, he went on at pages 586-7:

> "When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had non consensual oral sex with his under age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.
>
> Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. **It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established** … No doubt it is this feeling which prompts judicial comment from time to time that grave issues call for proof to a standard higher than the preponderance of probability."
>
> …

27. Richards LJ expressed the proposition neatly in *R (N) v Mental Health Review Tribunal (Northern Region)* [2005] EWCA Civ 1605, [2006] QB 468, 497-8, para 62, where he said:

> "Although there is a single civil standard of proof on the balance of probabilities, it is flexible in its application. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities."

In my opinion this paragraph effectively states in concise terms the proper state of the law on this topic. I would add one small qualification, which may be no more than an explanation of what Richards LJ meant about the seriousness of the consequences. That factor is relevant to the likelihood or unlikelihood of the allegation being unfounded, as I explain below.

> 28. **It is recognised by these statements that a possible source of confusion is the failure to bear in mind with sufficient clarity the fact that in some contexts a court or tribunal has to look at the facts more critically or more anxiously than in others before it can be satisfied to the requisite standard.** The standard itself is, however, finite and unvarying. Situations which make such heightened examination necessary may be the inherent unlikelihood of the occurrence taking place (Lord Hoffmann's example of the animal seen in Regent's Park), the seriousness of the allegation to be proved or, in some cases, the consequences which could follow from acceptance of proof of the relevant fact. The seriousness of the allegation requires no elaboration: a tribunal of fact will look closely into the facts grounding an allegation of fraud before accepting that it has been established. The seriousness of consequences is another facet of the same proposition: if it is alleged that a bank manager has committed a minor peculation, that could entail very serious consequences for his career, so making it the less likely that he would risk doing such a thing. These are all matters of ordinary experience, requiring the application of good sense on the part of those who have to decide such issues. They do not require a different standard of proof or a specially cogent standard of evidence, merely appropriately careful consideration by the tribunal before it is satisfied of the matter which has to be established.
>
> (emphasis added)

[14] In the recent decision of the House of Lords of *In re B (Children)*, [2008] UKHL 35, Lord Hoffmann stated as follows.

> 14. Finally, I should say something about the notion of inherent probabilities. Lord Nicholls said, in the passage I have already quoted, that —
>
> > "the court will have in mind as a factor, *to whatever extent is appropriate in the particular case*, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability."
>
> 15. I wish to lay some stress upon the words I have italicised. Lord Nicholls was not laying down any rule of law. There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. **Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities.**
>
> (emphasis added)

[15] And in the same case Baroness Hale of Richmond stated as follows.

> 70. …Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in

> determining the facts. **The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies.**
>
> (emphasis added)

[16] It seems to me that these cases are consistent and the issue in a civil case (which will include the current appeal) will be whether the evidence as presented is sufficient to satisfy the trier of fact, on a balance of probabilities, that the person who has the burden of proof has established what is required of him or her. In analyzing the proof or evidence that has been presented, the probability or improbability of the event that is in issue is a factor that can be taken into account in this analysis. The more improbable the event the stronger the evidence that would be required. Conversely it would also seem to me that a person may be able to establish, on a balance of probabilities, that a highly probable event occurred based on weaker evidence than would be required to establish that an improbable event had occurred.

[17] In this particular case, the Respondent did not dispute that Lescom Investments Ltd. was in financial trouble, or that it ceased operations in 2000 as result of The TDL Group Ltd. reacquiring the franchise and the other operating assets. That a shareholder would be required to provide initial capital to a new company that is acquiring a franchise for approximately $350,000 and additional capital if that company is in financial trouble, is a highly probable event. Therefore it seems logical that the level of evidence required of the Appellant to establish that he was owed $38,011 (which is slightly less than 11% of the cost of the franchise without taking into account the working capital requirements of the company) by Lescom Investments Limited would be less than if the event was improbable.

[18] In this case the Appellant and his mother (who lent him $24,000) testified and there were additional documents that supported the claim being made by the Appellant. The loan application documents related to the refinancing arranged by the Appellant's mother indicated that the amount that she borrowed from Canada Trust was split into two separate parts.

[19] Counsel for the Respondent had submitted that the Appellant had not produced any documentation to show that the net amount borrowed ($22,850) by the Appellant's mother from Canada Trust was lent by her to the Appellant and then advanced by him to the company. The advance of the funds to the company was arranged through the lawyer's office who arranged the financing. His office burned and his records were destroyed. While there was no written loan agreement between the Appellant and his mother, I accept their oral testimony that she was borrowing

this amount from Canada Trust to lend to the Appellant so that he could lend this money to the company. It is not an improbable event that a mother would lend her son money if he needed the money and not document the loan with a written loan agreement.

[20] The General Ledger for the company also confirmed that the Appellant had advanced $22,850 to the company in 1997. In my opinion, since there was no contradictory evidence and since the advancing of funds to a company in financial trouble by its shareholder is a highly probable event and since it is also highly probable that the Appellant's mother would help her son, the Appellant should succeed in this case based on the testimony of the Appellant and his mother and the general ledger records. In my opinion, this is sufficient to establish, on a balance of probabilities, that the Appellant's mother borrowed $24,000 from Canada Trust and lent this amount to the Appellant and that $22,580 of this amount was advanced by the Appellant to the company in 1997.

[21] There were also additional amounts that the Appellant had stated were advanced by him to the company. There was an initial advance of $5,800 that the Appellant stated that he had borrowed from the Royal Bank. There was also the sum of $12,500 (comprised of two amounts of $5,000 each and a separate advance of $2,500) that the Appellant stated that he had borrowed from the credit union after he had advanced the money he received from his mother and before the company ceased operations.

[22] The balance sheet of the company stated that the outstanding shareholder loans were $152,818 after the company ceased operation. The General Ledger in detail for the Appellant's shareholder's loan (taking into account the handwritten adjustment of $139.08) indicated that the Appellant was owed $28,510.92 as of the end of September 1997 which was determined as follows:

JE # 163	03/03/97	$5,800
JE # 172	23/03/97	$22,850
Hand written adjustment:		($139.08)
Net Amount:		$28,510.92

[23] The shareholder loan account statement for the fiscal year of Lescom Investments Limited ending September 30, 1998 indicated that the Appellant was then owed $25,510.92 as a result of a repayment to him of $3,000. The journal entries posted in 2000 were also introduced and these entries indicated that the Appellant advanced an additional $12,500 that would not have been reflected in the balance indicated as of September 30, 1998. Although the dates of the journal entries

do not correspond to the dates that the Appellant indicated that he advanced funds to the company, these entries do confirm the amounts that were advanced and it is plausible that a company that is in financial trouble may not be as diligent about documenting shareholder advances as it should be.

[24] The Appellant also had copies of the loan applications for loans that the Appellant had received from the credit union but he did not have any documentation related to the amount that he had borrowed from the Royal Bank to fund his initial advance to the company. In the loan documentation related to the credit union loans, the amounts identified as the amounts borrowed were not equal to the amounts that the Appellant stated were advanced by him to the company and the purpose for the loans did not reveal that the Appellant would be lending the money to Lescom Investments Limited. The Appellant was borrowing money from the credit union for other purposes which would explain why the amount on the loan form would not be equal to the amount that the Appellant lent to the company. The Appellant also stated that it was his understanding that the credit union would not have lent him money if the stated purpose was to allow the Appellant to lend money to Lescom Investments Limited. Therefore in some of the credit union loan application forms the generic term “miscellaneous” is used to describe the purpose for the loan. The Appellant is also not certain whether all of the loan application forms have been submitted into evidence.

[25] In my opinion the Appellant has introduced sufficient evidence for him to establish, on the balance of probabilities, that he advanced the $5,800 and the $12,500 (in addition to the $22,850 that is referred to above) to the company. As noted the inherent probability that a shareholder would be required to provide initial capital to a new company and additional capital to a company that is in financial trouble is very high. These amounts are also relatively small amounts in comparison to an initial franchise cost of approximately $350,000, which would not take into account any working capital requirements.

[26] As a result I find that the Appellant had advanced the following amounts to Lescom Investments Limited prior to June 30, 2000:

Source of Funds	**Amount**
Borrowed from the Royal Bank	$5,800
Borrowed from the Appellant’s mother	$22,850
Borrowed from the Credit Union	$5,000
Borrowed from the Credit Union	$5,000
Borrowed from the Credit Union	$2,500

Total:	$41,150

[27] The General Ledger also indicates that an adjustment of $139.08 in 1997 reduced the amount outstanding to the Appellant and that $3,000 was repaid to the Appellant in 1998. The Appellant could not explain these adjustments and therefore they will remain as adjustments to the amount outstanding. As a result, the amount that would be payable by the company to the Appellant as of June 30, 2000 would be:

Item	**Amount**
Total amount advanced by the Appellant	$41,150
Less: adjustment in 1997:	($139)
Less: amount repaid in 1998	($3,000)
Net amount owing to the Appellant:	$38,011

[28] As a result, I find that the amount of the debt owing by Lescom Investments Limited to the Appellant as of June 30, 2000 was $38,011. As noted above, the Respondent does not dispute that any amount that was owing to the Appellant by Lescom Investments Limited would be a business investment loss since the Appellant was a shareholder of Lescom Investments Limited (and therefore the amounts would have been advanced by him to this company to earn income) and since the debt would have become a bad debt after the company ceased operations in 2000. However, the Respondent submitted that the allowable business investment loss should only be one-half and not two-thirds of the amount of the debt.

[29] Subsection 50(1) of the *Income Tax Act* provides, in part, as follows:

> 50. (1) For the purposes of this subdivision, where
>
> > (a) a debt owing to a taxpayer at the end of a taxation year (other than a debt owing to the taxpayer in respect of the disposition of personal-use property) is established by the taxpayer to have become a bad debt in the year, or
>
> …
>
> and the taxpayer elects in the taxpayer's return of income for the year to have this subsection apply in respect of the debt or the share, as the case may be, **the taxpayer shall be deemed to have disposed of the debt** or the share, as the case may be, **at the end of the year** for proceeds equal to nil and to have reacquired it immediately after the end of the year at a cost equal to nil.
>
> (emphasis added)

[30] This subsection applies when a taxpayer establishes that a debt owing to such taxpayer at the end of the taxation year is a bad debt. In this case since the Appellant is claiming the allowable business investment loss, it is the Appellant who established that the amount owing to him by Lescom Investments Limited at the end of his 2000 taxation year had become a bad debt in 2000.

[31] Therefore the Appellant was deemed on December 31, 2000 to have disposed of the debt owing to him at the end of his 2000 taxation year for the purposes of determining the amount of his business investment loss for the purposes of the *Income Tax Act*. During the year 2000, the rate applied to a business investment loss to determine the allowable business investment loss changed from three-quarters to two-thirds of the business investment loss and then from two-thirds to one-half of the business investment loss. On December 31, 2000 an allowable business investment loss was one-half of the business investment loss. Since the deemed disposition of the debt owing to the Appellant by Lescom Investments Limited did not occur until December 31, 2000, the allowable business investment loss is equal to one-half of the business investment loss and this is not affected by any of the grandfathering provisions found in subsection 22(5) of SC2001, c. 17. Therefore the Appellant's allowable business investment loss for 2000 will be one-half of $38,011 which is $19,005.

[32] As a result the appeal is allowed, with costs fixed at $600, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled to claim an allowable business investment loss of $19,005 in the year 2000.

Signed at Ottawa, Ontario, this 16th day of September 2008.

"Wyman W. Webb"

Webb J.

CITATION:	2008TCC522
COURT FILE NO.:	2008-125(IT)I
STYLE OF CAUSE:	DARRELL G. LESNICK AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	August 27, 2008
REASONS FOR JUDGMENT BY:	The Honourable Justice Wyman W. Webb
DATE OF JUDGMENT:	September 16, 2008

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Rickey Tang

COUNSEL OF RECORD:

For the Appellant:

Name:	
Firm:	

For the Respondent:	John H. Sims, Q.C. Deputy Attorney General of Canada Ottawa, Canada