Docket: 2013-1447(IT)I

BETWEEN:

RENÉ COUSINEAU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on August 29, 2013, at Ottawa, Canada

Before: The Honourable Justice Paul Bédard

Appearances:

For the appellant:	The appellant himself
Counsel for the respondent:	Natasha Wallace

JUDGMENT

The appeals from the reassessments under the *Income Tax Act* are allowed, without costs, to permit the deduction of an expense in the amount of $719 and $1,249 for the 2008 and 2009 taxation years respectively, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment, in accordance with the attached Reasons for Judgment.

The appeal from the reassessment made under the *Income Tax Act* for the 2010 taxation year is dismissed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 27th day of November 2013.

"Paul Bédard"

Bédard J.

Translation certified true
on this 15th day of January 2014
Mary Jo Egan, Translator

Citation: 2013 TCC 375
Date: 20131127
Docket: 2013-1447(IT)I

BETWEEN:

RENÉ COUSINEAU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Bédard J.

[1] On December 5, 2011, the Minister of National Revenue (the Minister) issued notices of reassessments to the appellant for the 2008, 2009 and 2010 taxation years, reflecting the following corrections:

	2008	2009	2010
Adjustment to gross rental income	-	$6,600	-
Insurance expenses disallowed (allowed)	$104	(383)	-
Interest expenses allowed	-	(2,127)	-
Maintenance and repair expenses disallowed	-	21,811	-
Professional fee expenses disallowed	2,200	-	-
Property tax expenses disallowed	-	422	-
Other disallowed expenses	1,650	-	-
Total discrepancies	3,954	26,324	
Unreported taxable capital gain	-	-	$11,324

The taxable capital gain of $11,324 had been computed as follows:

Deemed proceeds of disposition	$207,000

Adjusted cost base	184,352
Total capital gain	22,648
Taxable capital gain	**11,324**
Computation of adjusted cost base	
Purchase price	$154,900
Transfer tax	1,850
Notarial fee	2,021
CMHC insurance premiums	6,247
Capitalizable expenses	19,334
Adjusted cost base	184,352

Mr. Cousineau is appealing these reassessments.

[2] To establish and maintain the reassessments, the Minister made the following findings and assumptions of fact:

[TRANSLATION]

(a) on June 5, 2008, the appellant acquired, as sole owner, an immovable property whose municipal address is 472 Cameron Court, Gatineau, Quebec;

(b) the appellant acquired the immovable for the purpose of renting it;

(c) the immovable generated gross rental income of $2,000 for 2008 and $6,000 for 2009;

(d) in filing his income tax returns for the 2008 and 2009 taxation years, the appellant reported rental losses from the rental of this immovable in the amount of $11,990 and $36,595 respectively.

(e) in 2008 and 2009, the immovable was rented to Ms. Carmen Delisle;

(f) beginning in 2010, the appellant and Ms. Delisle reported that they were common-law partners;

(g) during 2010, the immovable changed use and became the appellant's principal residence;

(h) expenses totalling $3,954 in 2008 and $22,233 in 2009 were disallowed for the following reasons:

Insurance: the amount disallowed is the difference between the amount of $896 claimed by the appellant and the invoices submitted of $792;

Maintenance and repairs: of the disallowed amount of $21,811, $19,334 constitutes capital expenses that were considered in the adjusted cost base used to compute the capital gain. The difference represents expenses that the appellant did not incur.

Professional fees: the amount of $2,200 was disallowed because it constitutes a capital expenditure that was considered in the adjusted cost base used to compute the capital gain;

Property taxes: the amount disallowed represents the difference between the amount of $3,113 claimed by the appellant and the invoice submitted of $2,691;

Other expenses: the amount was disallowed because the appellant did not incur the expense;

(i) the insurance premiums paid in 2008 to the CMHC in the amount of $6,247 represents a capital expenditure that was considered in the adjusted cost base used to compute the capital gain;

(j) the deemed proceeds of disposition were established on the market value of the immovable in September 2009, which is in the appraisal report that the appellant provided.

Issues

[3] The issues were as follows:

3.1 Was the Minister justified in capitalizing the expenditures of $19,334 incurred by the appellant in the 2009 taxation year?

3.2 Was the Minister justified in considering as a capital expenditure the $6,247 that the appellant paid to the Canada Mortgage and Housing Corporation (CMHC) in 2008 as a mortgage insurance premium?

3.3 Was the Minister justified in not considering the change in use of the immovable located at 472 Cameron Court in Gatineau (the Immovable) in 2009? and

3.4 Was the Minister justified in adding a taxable capital gain of $11,324 to the appellant's income for the 2010 taxation year?

[4] In this proceeding, only the appellant testified.

Appellant's testimony

[5] The appellant essentially referred to the following facts:

(i) he was a professor at the University of Ottawa;

(ii) on June 5, 2008, the appellant acquired the immovable;

(iii) he purchased the Immovable through real estate agent Francine Delisle (then employed by Royal Lepage) for the purpose of renting it;

(iv) the inspection of the Immovable took place on May 20, 2008. Present at the inspection were the appellant, Normand Mailloux (the building inspector whose services the appellant had retained to inspect the Immovable), Francine Delisle (the real estate agent) and her sister, Carmen Delisle, who was interested in renting the Immovable at that time;

(v) beginning in July 2008, Carmen Delisle and her son occupied a part of the Immovable (roughly 75% of the superficie of the Immovable) as tenants. The oral lease provided that it would terminate on August 30, 2009, that the first two months of rent would be free and that thereafter the monthly rent would be $500. The unrented part of the Immovable (described by the appellant as a loft with no kitchen) was occupied by the appellant while he was repairing the Immovable;

(vi) when the lease expired, Carmen Delisle renewed the lease on a monthly basis from September to December 2009. The parties agreed to a monthly rent of $500;

(vii) as of September 1, 2009, the appellant and Carmen Delisle lived together in the Immovable; as of that date, the appellant occupied 75% of the superficie of the Immovable, and the rest of the superficie of the Immovable was occupied by Carmen Delisle and her son who, we note, continued to pay the full rent of $500. From that point on, the appellant considered the 75% of the superficie of the Immovable as his principal residence.

(viii) in January 2010, Carmen Delisle (and her son) moved to Montréal to continue her studies;

(ix) in July 2010, Carmen Delisle left Montréal to live with the appellant (who, as of then, also became her common-law partner) in the Immovable;

(x) from May 2007 to August 2009, the appellant lived with his parents in Ottawa at 200 Lafontaine Street;

(xi) the furniture in the Immovable for the period from July 2008 to January 2010 (with the exception of a bedroom set belonging to the appellant) belonged to Carmen Delisle.

Analysis and conclusion

[6] In assessing the appellant's evidence, it is necessary to make observations about the failure to call certain persons as witnesses and the failure to submit documentary evidence to support the appellant's statements. In *Huneault v. Canada*, [1998] T.C.J. No. 103 (QL), 98 DTC 1488, my colleague Judge Lamarre referred, at paragraph 25, to remarks made by Sopinka and Lederman in *The Law of Evidence in Civil Cases*, which were cited by Judge Sarchuk of this Court in *Enns v. M.N.R.*, 87 D.T.C. 208, at page 210: (2010TCC597)

> In *The Law of Evidence in Civil Cases*, by Sopinka and Lederman, the authors comment on the effect of failure to call a witness and I quote:
>
> > In *Blatch v. Archer*, (1774), 1 Cowp. 63, at p. 65, Lord Mansfield stated:
> >
> > - 'It is certainly a maxim that all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted.'
> >
> > The application of this maxim has led to a well-recognized rule that the failure of a party or a witness to give evidence, which it was in the power of the party or witness to give and by which the

> facts might have been elucidated, justifies the court in drawing the inference that the evidence of the party or witness would have been unfavourable to the party to whom the failure was attributed.
>
> In the case of a plaintiff who has the evidentiary burden of establishing an issue, the effect of such an inference may be that the evidence led will be insufficient to discharge the burden. (*Levesque et al. v. Comeau et al.*, [1970] S.C.R. 1010, (1971), 16 D.L.R. (3d) 425).

[7] In this case, before analyzing the pertinent facts in detail, it is useful to make some general observations about the credibility of the appellant who, I repeat, was the only person to testify in support of his appeal. I note that the appellant really introduced only one document to support his position, an invoice regarding the inspection of the Immovable. In my view, it would be risky to find the appellant's testimony credible in the absence of consistent and probative evidence such as documents or the testimony of credible witnesses, for the following reasons:

(i) first, the appellant repeatedly testified that he had acquired the Immovable for the purpose of renting it. However, in the contract of sale for the Immovable (see Exhibit I-6, page 4), he states that [TRANSLATION] "his principal residence will be at 472 Cameron Court, Gatineau, J8L 2S3), i.e. the municipal address of the Immovable". To explain the contradiction on this point between his testimony and his statement in the contract, the appellant simply said that [TRANSLATION] "it was an error" without explaining the rationale for [TRANSLATION] "such an error". I note that the appellant acknowledged having read the contract before signing it. I also point out in this regard that the appellant's answer to question 4 of a questionnaire (Exhibit I-7) that the Canada Revenue Agency (the CRA) had sent to the appellant (which reads as follows: What was the initial purpose of acquiring the property?) was [TRANSLATION] "Principal residence." Again, the appellant explained the contradiction by stating that the answer was incorrect. It is difficult for me to understand that a university professor gave an incorrect answer to such a simple, if not simplistic, question. These repeated contradictions, at the very least, planted a serious doubt in my mind about the appellant's credibility;

(ii) the appellant testified that Ms. Delisle became his common-law partner as of August 2010. However, a newspaper article filed in evidence by

the respondent (Exhibit I-8) indicates that the relationship dates back to 2008. In addition, in his income tax return for the 2010 taxation year, the appellant made an election for the purpose of splitting his pension income. The appellant designated Ms. Delisle as his common-law partner and split his pension income for the period from August 1, 2010, to December 31, 2010 (see Exhibit I-3). This type of splitting is possible only if Ms. Delisle had been the appellant's common-law partner for a 12-month period, which is not the case as the appellant himself admits. I emphasize that the appellant did not see fit to give an explanation in this regard. Moreover, the respondent put in evidence a number of invoices (see Exhibit I-4) for the purchase of materials on which the appellant and Ms. Delisle are listed as purchasers. Why then does Ms. Delisle's name appear on these invoices? The appellant explained the rationale for listing Ms. Delisle's name on these invoices in this way: [TRANSLATION] "Ms. Delisle had an account in those stores, and because the purchases were for the Immovable, the address of the Immovable reflected Ms. Delisle's name. The invoice was therefore printed in her name." The appellant also noted that it was [TRANSLATION] "Ms. Delisle who acknowledged receipt of the materials since she was living in the Immovable, and that this was also the reason why her name appeared on the invoices." However, on the Home Depot invoices, only Ms. Delisle's name appears, and her address is not that of the Immovable. Accordingly, it is apparent that the appellant's explanations are inconsistent. All these contradictions and inconsistencies only added to my doubts about the appellant's credibility and the real relationship between the appellant and Ms. Delisle beginning in June 2008. Given all these factors, including the fact that Ms. Delisle continued to pay the full rent as of September 2009 although she occupied only 25% of the Immovable as of that date, I believe that I must find that the appellant and Ms. Delisle were common-law partners during the entire period at issue;

(iii) The appellant testified that he began renting the Immovable in August 2008. Moreover, in a letter (Exhibit I-1) that the appellant sent to the CRA, he stated: [TRANSLATION] "I took possession of this house in June 2008 and rented it in July of that year. The rental continued until the end of December 2009. The tenant terminated the lease and moved to Montréal because she went back to school." I also note in this regard that his answer to question 5 of a questionnaire (Exhibit I-7) that the CRA had sent to the appellant (which reads as follows: When did you

> begin to rent the property?) was "01/01/09". Again, this question was the subject of contradictions that supported my assessment of the appellant's credibility.

Capital expenditures of $19,334

[8] In 2009, the appellant deducted $21,811 for repair and maintenance expenditures. Of that amount, the Minister disallowed $19,334 on the basis that those expenditures were capital expenditures. The appellant submits that those expenditures were current expenditures. Accordingly, the controversy relates to the characterization of those expenditures.

[9] The relevant section of the *Income Tax Act* reads as follows:

> 18. (1) In computing the income of a taxpayer from a business or property no deduction shall be made in respect of
>
> General limitation
>
> *(a)* an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property;
>
> Capital outlay or loss
>
> *(b)* an outlay, loss or replacement of capital, a payment on account of capital or an allowance in respect of depreciation, obsolescence or depletion except as expressly permitted by this Part;

[10] The characterization of expenditures is not based on a rigid test. Instead, the nature of the expenditures must be examined (*Marklib Investments II-A Ltd. v. R.*, 2000 D.T.C. 1413 (T.C.C.) (A.G.) para. 18).

[11] The primary test with respect to capitalizable or operating expenditures is the intention and purpose of the expenditures.

[12] Judge Lamarre Proulx in *Bergeron v. M.N.R.*, 90 D.T.C 1511 (T.C.C.) para. 33, noted the relevant jurisprudence:

> The principles I draw from these cases are the following:

> -- income-related expenses include repairs the purpose of which is to make the part or the property repaired suitable for normal use again;
>
> -- capital expenses include work the purpose of which is to replace an asset by a new one and work which involves such a degree of improvement to an asset that it becomes a new one. This asset must have significant value compared to the rest of the property or be an asset in itself; work to change the use of premises or a room or to add new premises or a new room is usually capital in nature; the same is true of a change in the heating system;
>
> -- although the factor of recent purchase is not significant when there is no change of use, the increase in value of the real property over the purchase price, as a result of the repairs, is an indication that the cost or part of the cost of the expenses is in the nature of the purchase price of property;
>
> -- expenses must also be reasonable in the circumstances (section 67 of the Act): the question is whether they were reasonably incurred to derive income or to increase the value of the property, and in what proportion; future profits can be taken into account if the expenses in question reduce subsequent expenses and also I suppose the unforeseen scale of the costs.

[13] To find this purpose, the Court must ascertain whether the repairs were designed to improve the existing building or make it different (*Hare v. R*, 2011 TCC 294 para. 16). If, as a result of the repairs, something is created that did not exist previously, the expenditure will tend to be capitalizable. "If the repairs resulted in virtually the same old building as before the repairs were undertaken then such should be properly expensed" (*Chambers v. R.*, [1998] 1 C.T.C. 3273 (T.C.C.) para. 14).

[14] To determine whether the repairs improved the building to the point of creating something new, the Court may take into account the appearance, whether or not the building had to be vacated while repairs were undertaken and the dollar amount of the repairs in relation to the value of the building (*Chambers v. R.*, [1998] 1 C.T.C. 3273 (T.C.C.) para. 15). One may also verify whether the expenditures were aimed only at repairing the defect (*Marklib Investments II-A Ltd. v. R.*, *supra*, para. 27).

[15] The Court may also consider whether the repairs were usual repairs on a property in rental condition or were repairs to make the property rentable (*Leclerc v. R.*, [1998] 2 C.T.C. 2578 (T.C.C.) para. 12). In *Hare v. R.*, *supra*, the expenses had been incurred before the building was rented. The expenses were held to be capitalizable because they had been incurred for the purpose of preparing the property to be rented.

[16] The timing of the repairs may also be taken into account in determining the purpose of the expenses at issue.

[17] The CRA has also identified a number of criteria that the jurisprudence has considered, i.e. (CRA, Interpretation Bulletin IT-128R, *Capital Cost Allowance – Depreciable Property* (May 21, 1985) No. 4):

- Enduring benefit;
- Maintenance or betterment expenditure;
- Expenditure on an integral part of the property or to acquire a property;
- Value of the expenditure in relation to the value of the whole property or in relation to average maintenance and repair costs;
- Used property requiring repairs at time of acquisition to put it in suitable condition;
- Repairs in anticipation of a sale.

[18] The appellant submits that the work done was aimed at repairing the immovable, not improving it. On this point, the appellant testified that the bulk of the expenses were the result of a water leak from the bathroom located on the main floor. According to the appellant, the water penetrated to the ground floor leading to repairs to the bathroom floor, the shower and the main floor ceiling. The appellant added that he had to replace some windows because they were rotten.

[19] The only basis for the appellant's evidence in this respect was, to say the least, his vague and imprecise testimony. Given my findings on the probative value of the appellant's testimony, I have no choice but to consider the expenditures to be capital expenditures. The appellant could have introduced into evidence adequate documentary proof (invoices for the work) to support his testimony. He could also have called as witnesses Ms. Delisle and Normand Mailloux (the person hired by the appellant to inspect the Immovable prior to the purchase (see Exhibit I-5)). These individuals could have shed light on the condition of the premises before and after the repairs. The appellant did not do so. I infer from that that this type of evidence would have been unfavourable to him.

[20] I would add that the appellant admitted in his testimony that real estate agents had advised him to make certain repairs to increase the value of the Immovable. Indeed, did the value of the Immovable not increase by 34% in two years? This suggests that a significant part of that increase was a result of the repairs that were done, not the improvement of the market since, as the appellant himself admitted, the market increased by only 5%.

Invoice from the Centre de liquidation

[21] An expenditure of $1419.20 that the appellant allegedly made at the Centre de Liquidation (see Exhibit I-9) to purchase materials to be used in repairing the stairs in the Immovable was disallowed by the Minister on the basis that the appellant did not make it. Moreover, the Minister noted that the invoice did not contain a description of the materials purchased or the purchaser's name, and also because the appellant had not been able to provide evidence that the invoice had been paid. In this case, the appellant's only evidence in this regard was his testimony. Given my finding on the probative value of the appellant's testimony, I must conclude that the Minister was entitled to disallow this expenditure.

Change in use of the Immovable

[22] Now, we will determine whether the change in use of the Immovable occurred in September 2009 when the Immovable became the appellant's principal residence (appellant's position) or in 2010 as the Minister submits.

[23] The appellant's only evidence that the Immovable became his principal residence as of September 1, 2009, consisted solely of his testimony (see para. 7(v), 7(vi) and 7(vii)). Having regard to my findings on the probative value of the appellant's testimony, I must conclude in this case that the Minister was justified in not accepting the change in use in 2009. I will add that in this case it was within the appellant's power to produce witnesses (including Carmen Delisle and her son), who could have perhaps shed light on the facts. The appellant did not do so. I infer that this evidence would have been unfavourable to him.

Insurance premium

[24] We will now determine whether the Minister was justified in deeming the $6,247.12 that the appellant paid to CMHC in 2008 to be a capital expenditure (see Exhibit I-2).

[25] In my opinion, the mortgage insurance premium paid by the appellant is a financing expense incurred in the course of a borrowing of money that the appellant used for the purpose of earning income from a property. The relevant provisions of the Act that deal with the deduction of financing expenses are found at paragraphs 20(1)(*e*) and 20(1)(e.1):

Deductions permitted in computing income from business or property

20. (1) Notwithstanding paragraphs 18(1)(*a*), 18(1)(*b*) and 18(1)(*h*), in computing a taxpayer's income for a taxation year from a business or property, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto

. . .

Expenses re financing

(e) such part of an amount (other than an excluded amount) that is not otherwise deductible in computing the income of the taxpayer and that is an expense incurred in the year or a preceding taxation year

(i) in the course of an issuance or sale of units of the taxpayer where the taxpayer is a unit trust, of interests in a partnership or syndicate by the partnership or syndicate, as the case may be, or of shares of the capital stock of the taxpayer,

(ii) in the course of a borrowing of money used by the taxpayer for the purpose of earning income from a business or property (other than money used by the taxpayer for the purpose of acquiring property the income from which would be exempt),

(ii.1) in the course of incurring indebtedness that is an amount payable for property acquired for the purpose of gaining or producing income therefrom or for the purpose of gaining or producing income from a business (other than property the income from which would be exempt or property that is an interest in a life insurance policy), or

(ii.2) in the course of a rescheduling or restructuring of a debt obligation of the taxpayer or an assumption of a debt obligation by the taxpayer, where the debt obligation is

(A) in respect of a borrowing described in subparagraph 20(1)(*e*)(ii), or

(B) in respect of an amount payable described in subparagraph 20(1)(*e*)(ii.1),

and in the case of a rescheduling or restructuring, the rescheduling or restructuring, as the case may be, provides for the modification of the terms or conditions of the debt obligation or the conversion or substitution of the debt obligation to or with a share or another debt obligation,

(including a commission, fee, or other amount paid or payable for or on account of services rendered by a person as a salesperson, agent or dealer in securities in the course of the issuance, sale or borrowing) that is the lesser of

(iii) that proportion of 20% of the expense that the number of days in the year is of 365 and

(iv) the amount, if any, by which the expense exceeds the total of all amounts deductible by the taxpayer in respect of the expense in computing the taxpayer's income for a preceding taxation year,

and for the purposes of this paragraph,

(iv.1) "excluded amount" means

(A) an amount paid or payable as or on account of the principal amount of a debt obligation or interest in respect of a debt obligation,

(B) an amount that is contingent or dependent on the use of, or production from, property, or

(C) an amount that is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation,

(v) where in a taxation year all debt obligations in respect of a borrowing described in subparagraph 20(1)(*e*)(ii) or in respect of indebtedness described in subparagraph 20(1)(*e*)(ii.1) are settled or extinguished (otherwise than in a transaction made as part of a series of borrowings or other transactions and repayments), by the taxpayer for consideration that does not include any unit, interest, share or debt obligation of the taxpayer or any person with whom the taxpayer does not deal at arm's length or any partnership or trust of which the taxpayer or any person with whom the taxpayer does not deal at arm's length is a member or beneficiary, this paragraph shall be read without reference to the words "the lesser of" and to subparagraph 20(1)(*e*)(iii), and

(vi) (vi) where a partnership has ceased to exist at any particular time in a fiscal period of the partnership,

(A) no amount may be deducted by the partnership under this paragraph in computing its income for the period, and

(B) (B) there may be deducted for a taxation year ending at or after that time by any person or partnership that was a member of the partnership immediately before that time, that proportion of the amount that would, but

> for this subparagraph, have been deductible under this paragraph by the partnership in the fiscal period ending in the year had it continued to exist and had the partnership interest not been redeemed, acquired or cancelled, that the fair market value of the member's interest in the partnership immediately before that time is of the fair market value of all the interests in the partnership immediately before that time;
>
> Annual fees, etc.
>
> (e.1) an amount payable by the taxpayer (other than a payment that is contingent or dependent on the use of, or production from, property or is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation) as a standby charge, guarantee fee, registrar fee, transfer agent fee, filing fee, service fee or any similar fee, that can reasonably be considered to relate solely to the year and that is incurred by the taxpayer
>
> (i) for the purpose of borrowing money to be used by the taxpayer for the purpose of earning income from a business or property (other than borrowed money used by the taxpayer for the purpose of acquiring property the income from which would be exempt income),
>
> (ii) in the course of incurring indebtedness that is an amount payable for property acquired for the purpose of gaining or producing income therefrom or for the purpose of gaining or producing income from a business (other than property the income from which would be exempt or property that is an interest in a life insurance policy), or
>
> (iii) for the purpose of rescheduling or restructuring a debt obligation of the taxpayer or an assumption of a debt obligation by the taxpayer, where the debt obligation is
>
> (A) in respect of a borrowing described in subparagraph 20(1)(*e.1*)(i), or
>
> (B) in respect of an amount payable described in subparagraph 20(1)(*e.1*)(ii),
>
> and in the case of a rescheduling or restructuring, the rescheduling or restructuring, as the case may be, provides for the modification of the terms or conditions of the debt obligation or the conversion or substitution of the debt obligation to or with a share or another debt obligation.
>
> . . .

[26] Paragraph 20(1)(e.1) of the Act authorizes the deduction of annual fees, such as a standby charge, guarantee fee or any similar fee that can reasonably be considered to relate solely to the year of borrowing. Here, the insurance costs do not

relate to only one taxation year. Accordingly, in my opinion, reference must be made to paragraph 20(1)(*e*)(ii) of the Act, which essentially permits the deduction of the $6,247 premium over a five-year period at a rate of 20% per year.

[27] Specifically, paragraph 20(1)(*e*)(iii) of the Act permits the deduction in 2008 of an amount equal to that proportion of 20% of $6,247 that the number of days in the year is of 365, i.e.:

$$(\$6{,}247 \times 20\%) \times \frac{210}{365} = \$719$$

[28] Moreover, the amount deductible in 2009 in this regard was $1,249 (20% of $6,247).

[29] As a result, only the amount of $4,279 (instead of $6,247) should have been added to compute the adjusted cost base on disposition of the Immovable in 2010.

Computation of capital gain

[30] We will now determine whether the Minister was justified in adding a taxable capital gain of $11,324 to the appellant's income for the 2010 taxation year.

[31] The appellant is challenging the fair market value (FMV) of the Immovable as established by the Minister when the change in use occurred on January 1, 2010. The appellant stated that two real estate agents (one of whom was the sister of Carmen Delisle, the appellant's common-law partner, and the other a friend of the appellant) had told him that the FMV of the Immovable had increased by only 5% from the time it was acquired to the time its use changed.

[32] In this regard, I point out that it appears from the evidence that the Minister established the FMV of the Immovable by relying, *inter alia*, on the appraisal report for the Immovable as of September 1, 2007, prepared by an accredited appraiser. In my opinion, the Minister was entitled to use this value as the proceeds of disposition. In any event, the appellant must understand that he cannot demolish the Minister's assumptions by simply alleging that two real estate agents do not agree with the Minister's appraisal.

[33] Having regard to my finding on the deductibility of the expenditure for the mortgage insurance premium paid to CMHC (see para. 27 and 28), I am of the

opinion that the amount of $6,247 added in computing the adjusted cost base of the Immovable should be reduced by the deductible amounts, i.e. $1,968. However, given that my decision must not result in increasing the amount assessed, the Minister can always issue a new assessment for the 2010 taxation year to take into account the adjustment to the adjusted cost base.

[34] For all these reasons, the appeal is allowed to permit the deduction of an expense in the amount of $719 and $1,249 for the 2008 and 2009 taxation years respectively. In addition, the appeal is dismissed for the 2010 taxation year.

Signed at Ottawa, Canada, this 27th day of November 2013.

"Paul Bédard"

Bédard J.

Translation certified true
on this 15th day of January 2014
Mary Jo Egan, Translator

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APPEARANCES:

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Name:	
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