Docket: 2019-1830(IT)G

BETWEEN:

MICHAEL POCE,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on common evidence with the appeals of Lisa Dozzi 2019-1839(IT)G, GTA Siteworks Inc. 2019-1827(GST)G and 2019-1838(IT)G, Patrick Poce Holdings Limited 2019-1825(IT)I and 2019-1829(GST)G, and 2170144 Ontario Inc. 2019-1820(IT)I on April 15, 17, 18, 22 and 25, 2024, at Toronto, Ontario

Before: The Honourable Chief Justice Gabrielle St-Hilaire

Appearances:

Counsel for the Appellant:	Leigh Somerville Taylor
Counsel for the Respondent:	Acinkoj Magok

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2010, 2011, 2012, 2013, 2014 and 2015 taxation years are allowed, with costs, and the reassessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Costs are awarded to the Appellant. The parties shall have 30 days from the date of this Judgment to reach an agreement on costs and to so advise the Court, failing which the Appellant shall have a further 30 days to serve and file written submissions on costs and the Respondent shall have a further 30 days to serve and file a written response. These submissions shall also address costs ordered in appeals

numbered 2019-1839(IT)G, 2019-1838(IT)G, 2019-1827(GST)G. Any such submissions shall not exceed ten (10) pages in length. If the parties do not advise the Court that they have reached an agreement and no submissions are received within the applicable time limits, costs shall be awarded in accordance with the appropriate Tariff.

Signed this 17th day of February 2026.

"Gabrielle St-Hilaire"

St-Hilaire C.J.

Docket: 2019-1839(IT)G

BETWEEN:

LISA DOZZI,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on common evidence with the appeals of Michael Poce 2019-1830(IT)G, GTA Siteworks Inc. 2019-1827(GST)G and 2019-1838(IT)G, Patrick Poce Holdings Limited 2019-1825(IT)I and 2019-1829(GST)G, and 2170144 Ontario Inc. 2019-1820(IT)I, on April 15, 17, 18, 22 and 25, 2024, at Toronto, Ontario

Before: The Honourable Chief Justice Gabrielle St-Hilaire

Appearances:

Counsel for the Appellant:	Leigh Somerville Taylor
Counsel for the Respondent:	Acinkoj Magok

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2010, 2011, 2012, 2013, 2014 and 2015 taxation years are dismissed, with costs to the Respondent.

The parties shall have 30 days from the date of this Judgment to reach an agreement on costs and to so advise the Court, failing which the parties shall make submissions on costs together with the submissions as ordered in Michael Poce's appeal numbered 2019-1830(IT)G. If the parties do not advise the Court that they

have reached an agreement and no submissions are received within the applicable time limits, costs shall be awarded in accordance with the appropriate Tariff.

Signed this 17th day of February 2026.

"Gabrielle St-Hilaire"

St-Hilaire C.J.

Dockets: 2019-1827(GST)G
2019-1838(IT)G

BETWEEN:

GTA SITEWORKS INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeals heard on common evidence with the appeals of Michael Poce 2019-1830(IT)G, Lisa Dozzi 2019-1839(IT)G, Patrick Poce Holdings Limited 2019-1825(IT)I and 2019-1829(GST)G, and 2170144 Ontario Inc. 2019-1820(IT)I
on April 15, 17, 18, 22 and 25, 2024, at Toronto, Ontario

Before: The Honourable Chief Justice Gabrielle St-Hilaire

Appearances:

Counsel for the Appellant:	Leigh Somerville Taylor
Counsel for the Respondent:	Acinkoj Magok

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the taxation years ending on November 30, 2010, 2011, 2012, 2013, 2014 and 2015 are allowed and the reassessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

The appeals from the assessments made under the *Excise Tax Act* for the reporting periods ending on December 31, 2013, 2014 and 2015 are allowed to the extent of any adjustments consequential to the adjustments made to the reassessments made under the *Income Tax Act* and the assessments are referred back

to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Costs are awarded to the Respondent. The parties shall have 30 days from the date of this Judgment to reach an agreement on costs and to so advise the Court, failing which the parties shall make submissions on costs together with the submissions as ordered in Michael Poce's appeal numbered 2019-1830(IT)G. If the parties do not advise the Court that they have reached an agreement and no submissions are received within the applicable time limits, costs shall be awarded in accordance with the appropriate Tariff.

Signed this 17th day of February 2026.

"Gabrielle St-Hilaire"

St-Hilaire C.J.

Dockets: 2019-1825(IT)I
2019-1829(GST)G

BETWEEN:

PATRICK POCE HOLDINGS LIMITED,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeals heard on common evidence with the appeals of Michael Poce 2019-1830(IT)G, Lisa Dozzi 2019-1839(IT)G, GTA Siteworks Inc. 2019-1827(GST)G and 2019-1838(IT)G, and 2170144 Ontario Inc. 2019-1820(IT)I on April 15, 17, 18, 22 and 25, 2024, at Toronto, Ontario

Before: The Honourable Chief Justice Gabrielle St-Hilaire

Appearances:

Counsel for the Appellants:	Leigh Somerville Taylor
Counsel for the Respondent:	Acinkoj Magok

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the taxation years ending on February 28, 2014 and 2015 and on February 29, 2016 are dismissed, without costs.

The appeals from the reassessments made under the *Excise Tax Act* for the reporting periods ending on February 28, 2014 and 2015 and on February 29, 2016 are dismissed. Given that the Respondent's related concessions led to a mixed result, no costs are awarded.

Signed this 17th day of February 2026.

"Gabrielle St-Hilaire"

St-Hilaire C.J

Docket: 2019-1820(IT)I

BETWEEN:

2170144 ONTARIO INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on common evidence with the appeals of Michael Poce 2019-1830(IT)G, Lisa Dozzi 2019-1839(IT)G, GTA Siteworks Inc. 2019-1827(GST)G and 2019-1838(IT)G, and Patrick Poce Holdings Limited 2019-1825(IT)I and 2019-1829(GST)G, on April 15, 17, 18, 22 and 25, 2024, at Toronto, Ontario

Before: The Honourable Chief Justice Gabrielle St-Hilaire

Appearances:

Counsel for the Appellant:	Leigh Somerville Taylor
Counsel for the Respondent:	Acinkoj Magok

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the taxation year ending on November 30, 2013 is allowed and the reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis of the Respondent's concession that the amount of $17,142.17 shall not be included in income.

The appeals from the reassessments made under the *Income Tax Act* for the taxation years ending on November 30, 2014 and 2015 are dismissed.

Given the mixed result, no costs are awarded.

Signed this 17th day of February 2026.

"Gabrielle St-Hilaire"

St-Hilaire C.J.

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MICHAEL POCE,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

2019-1839(IT)G

AND BETWEEN:

LISA DOZZI,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

2019-1827(GST)G
2019-1838(IT)G

AND BETWEEN:

GTA SITEWORKS INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

Dockets: 2019-1825(IT)I
2019-1829(GST)G

AND BETWEEN:

PATRICK POCE HOLDINGS LIMITED,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

2019-1820(IT)I

AND BETWEEN:

2170144 ONTARIO INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

St-Hilaire C.J.

I. Introduction

[1] These seven appeals, heard on common evidence, involve five Appellants, two individuals and three corporations. The two individuals, Michael Poce and Lisa Dozzi are former spouses and shareholders of the corporate Appellants. Counsel for the Appellants described GTA Siteworks Inc. (GTA) as the operating corporation, 2170144 Ontario Inc. (217) as the equipment company and Patrick Poce Holdings Limited (PPHL), as the name suggests, the holding company. I will refer to these corporations as GTA, 217 and PPHL respectively.

[2] At the beginning of trial, Counsel for the Appellants advised that she would refer to the individual appellants as Michael and Lisa. I will do the same in these reasons.

[3] In the early 1900s, Michael's grandfather started an excavating business. When Michael's father and uncles were old enough, they worked in the family

business doing concrete curbs and laneways, and eventually branching out into sewer and water main work. Michael began working for the family business on a full-time basis after finishing his university studies in the 1970s. In 1991, the business experienced financial trouble and had to be shut down. For several years after that, Michael worked in a small Italian sandwich shop that his father set up for him and he dabbled in small construction projects. After working with a partner for a year and being dissatisfied with his partner's output, and at Lisa's urging, Michael decided he should strike out on his own.

[4] Lisa testified that after discussions with a lawyer, it was decided that she would be the sole shareholder and sole director of GTA, the company set up to do site development work including sewers and water mains. Lisa stated that she trusted the lawyer and Michael that it was the right thing to do. Michael explained that after the previous company was shut down in 1991, creditors were left unpaid such that he could not get credit from the suppliers and subtrades.

[5] Michael added that when GTA began its operations, they rented equipment to start working on site development projects, much smaller projects than those carried out by the previous family business. Later, rather than renting equipment, 217 was incorporated to be the purchaser and owner of the equipment. Lisa was the sole shareholder of 217.

[6] The Minister reassessed the Appellants under the *Income Tax Act*, RSC, 1985, c 1 (5th Supp) (ITA) for shareholder benefits, unreported income and disallowed expenses. Some of the corporate appellants were assessed under the *Excise Tax Act*, RSC, 1985, c E-15 (ETA) for underreported HST and/or disallowed input tax credits (ITCs). Some of the taxation years are statute-barred but not all of them. In addition, in reassessing Michael and Lisa, the Minister imposed penalties under subsection 163(2) of the ITA. Further, in reassessing GTA, the Minister imposed penalties under subsection 163(2) of the ITA and section 285 of the ETA.

II. Issues

[7] The issues to be determined are as follows:

i) Was the Minister justified in reassessing Michael, Lisa and GTA beyond the normal reassessment period for the 2010, 2011 and 2012 taxation years?

ii) Was the Minister justified in reassessing the Appellants under the ITA to include shareholder benefits and other unreported income and/or to disallow the deduction of expenses in the relevant taxation years?

iii) Was the Minister justified in assessing or reassessing GTA and PPHL under the ETA for underreported HST and/or disallowed ITCs?

iv) Was the Minister justified in imposing penalties pursuant to subsection 163(2) of the ITA on Michael, Lisa and GTA and pursuant to section 285 of the ETA on GTA?

III. Analysis

A. The Books and Records and the Audit

[8] At the very beginning of the hearing, Counsel for the Appellants forewarned the Court that the books and records of the corporate appellants were difficult to reconcile. Counsel stated that "this group of Appellants did what many taxpayers do, which is to live through a corporate account and discharge the shareholder loan account by paying dividends and salaries, and by incurring expenses on behalf of the corporation, and we will see that there were mistakes made" (Transcript [T.] April 15 at 11). Counsel asserted the Appellants made mistakes but not 2.4 million dollars' worth of mistakes. Counsel added that despite the copious documents put before the Court there was actually very little financial information.

[9] To state that the books were a mess would be an understatement. I will add that the fact that Michael and Lisa lived through corporate accounts, to borrow their counsel's words, created such commingling between their personal expenses and accounts and that of the corporations that it is fair to say that after 5 days of hearing, we still do not know exactly what happened. I hasten to add that the evidence about the transactions, the movement of funds in and out of the accounts, including the shareholder accounts, was at times confusing and near impossible to reconcile as between the accounts and between the documentary and testimonial evidence. In my respectful view, it is not an exaggeration to state that the books and records were utterly inadequate, a pathetic attempt at record-keeping.

[10] To make matters worse, the audit was sloppy. So sloppy that, at the hearing, Counsel for the Respondent had little choice but to make several significant concessions. And in my view, in some cases, concessions were made not because amounts should not have been included in income but because the auditor's basis for

their inclusion was flawed. I note that the auditor was examined at length and, to her credit, was quite candid in her testimony which led her to answer several questions by saying she was not sure, or not exactly sure, what she did. I hasten to add, in fairness, that the difficulties in conducting these audits were caused, in large part, by the state of the books and records she was provided with by the Appellants.

[11] The Court also heard brief testimony from Michael and Lisa. They shed little light on the books and records and were of little to no assistance in providing information that could assist the Court in determining the correctness of the assessments. I note that the Appellants' first accountant, Mr. Frank Merle, was issued a subpoena but he did not attend. After discussions with the Court, the Appellants' counsel withdrew her application for the issuance of a warrant for Mr. Merle's arrest. Although the Appellants' Counsel had intended on calling the Appellants' second accountant, Mr. Pal Ghumman, after canvassing the evidence that was before the Court, she concluded that he would not likely add any information to the materials that were already before the Court.

B. Appeals by Patrick Poce Holdings Limited and 2170144 Ontario Inc.

[12] In light of the concessions made by both Counsel at the hearing, the appeals by PPHL and 217 can be disposed of quite simply. Hence, I will address these appeals before turning to the appeals by Michael, Lisa and GTA.

B.1 Appeals by Patrick Poce Holdings Limited (PPHL)

[13] PPHL appealed from reassessments made under the ITA, for its taxation years ending on February 28, 2014 and 2015 and on February 29, 2016. PPHL also appealed from its reassessments made under the ETA for reporting periods ending on February 28, 2014 and 2015 and on February 29, 2016.

[14] The only issue in these appeals relates to the disallowance of a deduction for management fees in the amounts of $66,000, $123,000 and $66,000 that PPHL claimed to have paid to GTA and to two other corporations that are not before the Court, for the three years under appeal respectively. At the beginning of trial, Counsel for the Appellants indicated that PPHL was consenting to the disallowance of the deduction of the management fees by PPHL and the corresponding disallowance of the ITCs (T. April 18 at 2-4).

[15] I hasten to add that the Respondent agreed to consequential adjustments to GTA's reassessments to account for the disallowance of a deduction of $66,000

claimed by PPHL for management fees related to GTA. More specifically, the income of GTA assessed under the ITA will be reduced by $66,000 for its taxation years ending in 2014 and 2015 but not for the taxation year ending in 2016 as the latter is not before the Court. In addition, the Respondent agreed that a corresponding adjustment would be made to GTA's assessment under the ETA, as the underreported HST is reduced by the amount collectable on the management fees. I note that the parties agreed to make related adjustments regarding corporations and taxation years or reporting periods that are not before the Court through minutes of settlement (T. April 22 at 9).

[16] Consequently, the appeals of PPHL's reassessments made under the ITA for the taxation years ending on February 28, 2014 and 2015 and on February 29, 2016 and the reassessments made under the ETA for the reporting periods ending on February 28, 2014 and 2015 and on February 29, 2016 are dismissed, all without costs as explained below.

[17] As the appeal under the ITA was launched under the *Tax Court of Canada Rules (Informal Procedure)*, no costs shall be awarded to the Respondent in respect of this appeal as I do not find that the Appellant unduly delayed the prompt and effective resolution of the appeal. Given what I view as a mixed result, more specifically that PPHL lost its appeal of the denial of a deduction for management fees, but the Respondent conceded the consequential adjustments to GTA's assessments, no costs are awarded with respect to the appeal under the ETA made under the *Tax Court of Canada Rules (General Procedure)*.

B.2 Appeals by 2170144 Ontario Inc. (217)

[18] 217 appealed from reassessments made under the ITA for its taxation years ending on November 30, 2013, 2014 and 2015 for unreported income and disallowed expenses.

[19] 217 was reassessed to include additional income of $21,331, $10,813 and $829 for the three years under appeal respectively. For the taxation year ending in 2013, the Respondent conceded that the additional income should be $4,188.83 and not $21,331 (T. April 25, at 98-101). For the taxation years ending in 2014 and 2015, the Appellant conceded that the amounts assessed should be included in income (T. April 25 at 58).

[20] The only other issue for 217 involves the disallowance of a deduction for the insurance payments on a Mercedes vehicle and on the Ford trucks in the amount of

$2,213 per year for each the three years under appeal. According to the Reply for 217, at paragraphs 10k) and 10l), the Respondent acknowledged that 217 made these payments. Paragraphs 11 and 14 of the Reply indicate that the Minister disallowed 100% of the insurance paid for the Mercedes used by Lisa and 20% of the insurance paid for the Ford trucks used by Michael. The amount of $2,213 disallowed was comprised of a disallowance of $1,823 per year for the Mercedes and a disallowance of $390 per year for the Ford trucks.

[21] The evidence before the Court is that the Mercedes was used by Lisa as her personal vehicle. Regarding the Ford trucks, the Minister accepted that Michael used the trucks 80% of the time for business purposes and consequently, allowed a deduction for 80% of the insurance costs. There was no evidence presented in the form of logs or otherwise to support a finding that the proportion of business use was different than what was assumed by the Respondent. I conclude that the Minister was justified in disallowing a deduction in the amount of $2,213 per taxation year under appeal for the costs of insurance.

[22] To summarize, the appeal of 217 from its reassessment under the ITA for the taxation year ending on November 30, 2013 is allowed to the extent of the Respondent's concession that the amount of $17,142.17 shall not be included in income ($4,188.83 will be added to its income and not $21,331). The appeals of 217 from its reassessments made under the ITA for the taxation years ending on November 30, 2014 and 2015 are dismissed.

[23] In light of the mixed success of the parties and noting in particular that each party's success on the amounts in issue is largely similar, parties shall bear their own costs.

C. Appeals by Michael, Lisa and GTA Sitework Inc.

[24] Michael and Lisa appealed from reassessments made under the ITA for the 2010, 2011, 2012, 2013, 2014 and 2015 taxation years. In addressing the first issue in these appeals, the Court must determine whether the Minister was justified in reassessing Michael and Lisa beyond the normal reassessment period for the 2010, 2011 and 2012 taxation years. This issue was raised in their notices of appeal and addressed in the replies. The parties made submissions albeit brief, on this issue.

[25] I note that GTA did not raise any issues regarding reassessments having been made, or potentially made, beyond the normal reassessment period in its notices of appeal under the ITA nor the ETA. The Respondent did not include this in the issues

to be addressed in its Replies. Although there is some information in the Reply for GTA's reassessments under the ITA regarding dates of initial assessment and dates of reassessments, there is no such information regarding the reporting periods ending in 2013, 2014, 2015 in the Reply for GTA's appeals under the ETA. I note that, in its Notice of Appeal, GTA refers to *reassessments* while the Respondent refers to *assessments* and not to any reassessments in the Reply. There is no mention by either Counsel of GTA's (re)assessments under the ETA having been made beyond the normal reassessment period, not in the pleadings, not in the evidence introduced at trial, not in the submissions. Hence, I will not consider this issue with respect to GTA's appeals under the ETA.

[26] A careful review of the transcript reveals that, with respect to the GTA appeals, Counsel for the parties did not make submissions regarding the reassessments under the ITA having been made beyond the normal reassessment period with any specificity. However, Counsel for the Respondent acknowledged that GTA had been reassessed beyond the normal reassessment period under the ITA for its taxation years ending in 2010, 2011 and 2012. In light of this acknowledgment, and even if not properly raised as an issue in the pleadings, I will address the issue of GTA's reassessments beyond the normal reassessment period with respect to the ITA further below.

C.1 Legal framework for reassessments made beyond the normal reassessment period under the ITA

[27] Subsection 152(4) of the ITA sets out the Minister's right to reassess a taxpayer beyond the normal reassessment period. For appeals under the ITA, the normal reassessment period is defined in subsection 152(3.1). For the Appellants in this case, it is the period that ends three years after the sending of a notice of original assessment.

[28] More specifically relevant to these appeals, subparagraph 152(4)(a)(i) of the ITA provides as follows:

152 (4) The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect of the year only if	**152 (4)** Le ministre peut établir une cotisation, une nouvelle cotisation ou une cotisation supplémentaire concernant l'impôt pour une année d'imposition, ainsi que les intérêts ou les pénalités, qui sont payables par un contribuable en vertu de la présente partie ou donner avis par écrit qu'aucun impôt n'est payable pour l'année à toute personne qui a produit une déclaration de revenu pour une année d'imposition. Pareille cotisation ne peut être établie après l'expiration de la période normale de nouvelle cotisation applicable au contribuable pour l'année que dans les cas suivants :
(a) the taxpayer or person filing the return	**a)** le contribuable ou la personne produisant la déclaration :
(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act, or	**(i)** soit a fait une présentation erronée des faits, par négligence, inattention ou omission volontaire, ou a commis quelque fraude en produisant la déclaration ou en fournissant quelque renseignement sous le régime de la présente loi,

[29] Under subparagraph 152(4)(a)(i) of the ITA, the Minister bears the burden of establishing both that the Appellants made a misrepresentation *and* that it is attributable to neglect, carelessness, wilful default or fraud. In these appeals, the Minister has not alleged fraud.

[30] In previous cases such as *MF Electric Incorporated v R*, 2023 TCC 60, at paras 31-36 [*MF Electric*], (see also *Fuhr v R*, 2024 TCC 43 at para 21 [*Fuhr*] and *Yadgar v R*, 2023 TCC 104 at para 12 [*Yadgar TCC*], conf 2024 FCA 107 [*Yadgar FCA*]), I set out what I believe to be the principles applicable to a determination of whether the Minister is justified in reassessing beyond the normal reassessment period, as follows:

> [31] The wording of subparagraph 152(4)(a)(i) is such that it is sufficient for the Minister to establish neglect or carelessness without having to consider whether there was wilful default or fraud (see *Deyab v Canada*, 2020 FCA 222 at paras 58-61 [*Deyab*]). Having said this, the burden is on the Minister to establish both that the taxpayer or the person filing the return has made a misrepresentation and that it

is attributable to neglect, carelessness, wilful default or fraud (see *Vine v R*, 2015 FCA 125 at paras 23-24).

[32] The Minister's burden is to establish that there has been a misrepresentation at the time the return is filed. In commenting on the issue of timing in *Nesbitt v Canada*, 96 DTC 6588 at para 8, the Federal Court of Appeal expressed its view of the purpose of subsection 152(4) as follows:

> It appears to me that one purpose of subsection 152(4) is to promote careful and accurate completion of income tax returns. Whether or not there is misrepresentation through neglect or carelessness in the completion of a return is determinable at the time the return is filed. A misrepresentation has occurred if there is an incorrect statement on the return form, at least one that is material to the purposes of the return and to any future reassessment. It remains a misrepresentation even if the Minister could or does, by a careful analysis of the supporting material, perceive the error on the return form. It would undermine the self-reporting nature of the tax system if taxpayers could be careless in the completion of returns while providing accurate basic data in working papers, on the chance that the Minister would not find the error but, if he did within four years, the worst consequence would be a correct reassessment at that time.
>
> [Underlining added]

[33] Courts have consistently held that the threshold for establishing misrepresentation is low. In support of this view, in *Francis & Associates v R*, 2014 TCC 137 at para 20, Justice Bocock wrote as follows:

> A misrepresentation is any statement that is "incorrect.": *Minister of National Revenue v. Foot*, [1964] C.T.C. 317 (Can. Ex. Ct.). Also, several cases have indicated that "any" error made in a return filed is tantamount to a misrepresentation, *Minister of National Revenue v. Taylor*, [1961] C.T.C. 211 (Can. Ex. Ct.), *Nesbitt v. R.*, and *Ridge Run Developments Inc. v. R.*, [2007] 3 C.T.C. 2605 (T.C.C. [General Procedure]). Therefore, the threshold to establish a misrepresentation is low.

[…]

[35] […] Courts have found that "where a taxpayer thoughtfully, deliberately and carefully assesses the situation and files on what he believes *bona fide* to be the proper method there can be no misrepresentation as contemplated by section 152" (see *Regina Shoppers Mall Ltd v R* [1991] F.C.J. No 52 (FCA) at para 7 [*Regina Shoppers*]). […]

> [36] To borrow the words of Justice Muldoon in *Reilly v R*, [1984] CTC 21 at para 51 (FCTD), "wisdom is not infallibility and prudence is not perfection". However, in the present case, the Appellant has fallen far short of exercising reasonable care (see *Venne* v R, [1984] FCJ No 314 (FCTD) at para 16). In *Regina Shoppers*, *supra* at para 7, the Federal Court of Appeal agreed that it had been established "that the care that must be exercised must be that of a wise and prudent person and that the report must be made in a manner that the taxpayer truly believes to be correct". […]

[31] In addition, regard must be had for the application of subparagraph 152(4.01)(a)(i) of the ITA. In *Fuhr*, *supra*, at para 29, I expressed my view of this provision as follows:

> In addition, pursuant to subparagraph 152(4.01)(a)(i) of the ITA, a finding of misrepresentation does not justify reopening statute-barred taxation years to reassess any or all amounts of income or expenses that were assessed. Subsection 152(4.01)(a)(i) provides that a reassessment under subsection 152(4) may be made to the extent, but only to the extent, that it can reasonably be regarded as relating to a misrepresentation attributable to neglect, carelessness, wilful default or fraud. […]

[32] I note that in light of subsection 152(4.01), a reassessment under subsection 152(4) is confined to matters as to which a taxpayer has misled the Minister (see *Fuhr*, *supra* at paras 29-30; *Hans v R*, 2003 TCC 576 at para 8). Hence, a reassessment under subsection 152(4) can be made to the extent and only to the extent that it can be reasonably regarded as relating to a misrepresentation. However, although subsection 152(4.01) limits the Minister's authority to reassess under subsection 152(4), it permits adjustments that can *reasonably be regarded as relating to a misrepresentation*. In the circumstances of these appeals, it is my view that the Minister does not have the burden of establishing misrepresentation for every transaction or unidentified deposit at issue, of which there are many. It is sufficient that the adjustments the Minister made can be reasonably regarded as relating to a misrepresentation.

[33] These are the principles I will have in mind in addressing the issue of misrepresentation, and to what it can be attributed, to determine whether the Minister was justified in reassessing the Appellants beyond the normal reassessment period under the ITA.

C.2 Reassessments made beyond the normal reassessment period for Lisa and Michael

[34] The Respondent submitted that Michael and Lisa were in receipt of funds, whether through appropriations or undeclared shareholder benefits in excess of funds that they declared as income in their respective returns and they do not have a credible explanation regarding the source of those funds. The Respondent argued that Michael and Lisa did not report all their income for the 2010, 2011 and 2012 taxation years such that there was misrepresentation. Further, the Respondent argued that this misrepresentation was attributable to carelessness because the Appellants failed to make reasonable efforts to comply with the ITA.

[35] With respect to Lisa, the Respondent submitted that Lisa acknowledged that her personal expenses were paid through GTA, that she did not make inquiries as to whether her personal expenses were being accounted for and trusted that everything was done correctly in keeping the books and filing her returns. She did not review her personal returns nor did she, as director of GTA, review GTA's returns. Lisa stated she had never seen the shareholder account and could not shed any light on any of the adjustments that were made in that account. This, the Respondent argued, is conduct that falls short of what can be expected of a reasonable person as it relates to her returns and those of GTA.

[36] With respect to Michael, the Respondent submitted that he was candid in acknowledging that the extent of his review was to get to the bottom line because the company needed money. Michael testified he had never seen the shareholder account, never looked at the general ledger. I would note here that Michael was a shareholder of PPHL but not of GTA. The Respondent submitted that the alleged shortcomings of Mr. Merle, the accountant, could not shield Lisa and Michael from a finding of neglect or carelessness, relying on *Encore Cellular Inc. v R*, 2024 TCC 35, in support of this position.

[37] If I understood the argument made by the Appellants' counsel correctly, she submitted that we should not expect Michael and Lisa to have known that the adjustments to offset debits and credits between the loan accounts were improper. Counsel added, "the only way we get to a misrepresentation is if the Court accepts that the Minister has established on a preponderance of evidence that all of the amounts that were assessed ought to have [been] included [in] the taxpayer's income" and then reminded the court of all the Respondent's concessions (T. April 25 at 129, confirmed with the recording). I disagree. The Respondent does not have to establish that *all* amounts assessed were appropriately assessed to establish misrepresentation and I reiterate that courts have consistently found that the threshold to establish misrepresentation is low.

[38] As will become clear below, I find that both Lisa and Michael failed to report all their income during the years under appeal. There was misrepresentation, in profusion. Both were neglectful or careless, oblivious to their obligations under the ITA. The commingling of their personal accounts with those of the corporations and the failure to keep adequate books and records is astounding. They carelessly moved money around between those accounts. I will refer to some examples below for both Lisa and Michael.

Analysis regarding Lisa's reassessments beyond the normal reassessment period

[39] Lisa's counsel took her through a list of mortgages to show that she was borrowing money in 2012 and subsequent years by taking second and perhaps third mortgages against her home. When asked why she was borrowing this money, Lisa stated, "I don't recall entirely. Generally, money was borrowed to – to put into the business" (T. April 22 at 26). That may be true but there was no evidence introduced to link those mortgages to specific deposits in corporate accounts, whether GTA's or others. Lisa's counsel then took Lisa to a series of cheques, some of which were made out of GTA's account, payable to her and signed by her. She explained one of them as probably being to buy paint for her house (Exhibit A-1, Vol 5, Tab 63 at 1092) and another as being likely for salary she sometimes received for work done for GTA (T. April 22 at 34). Other cheques introduced into evidence showed that some deposits to her accounts were related to money received from family members for personal reasons. This only served to explain that some deposits in her accounts were not appropriations from GTA. They are not helpful in providing a clear picture of what amounts should be included in her income.

[40] GTA and PPHL had a bookkeeper, Ms. Sharon Roberts, and an accountant, Mr. Frank Merle for some of the years under appeal and Mr. Pal Ghumman for the later years.

[41] When asked about GTA paying her personal expenses under cross-examination, Lisa asserted that this was how they ran their household, that the expenses were paid through the company and she trusted that the bookkeeping was properly done adding she did not really understand bookkeeping. She acknowledged she never sat down with Sharon Roberts or the accountant, Frank Merle to do review the bookkeeping. She also did not review her income tax returns before filing them. She stated she thought everything was being done as it was supposed to be and wouldn't even have given it another thought. Lisa also had no contact with the subsequent accountant, Mr. Pal Ghumman, and specifically said she did not review the returns he filed for her and for GTA. Lisa testified that she did not look at the

shareholder loan account for any of the years under appeal and agreed that it was very fair to say that she could not explain any of the debits and credits entered into the shareholder account.

[42] The above review of the evidence amply supports a finding that Lisa made misrepresentations in her return by failing to report all of her income and further, was careless, and even cavalier, in the way that she had money coming in and out of accounts without properly accounting for it, and in particular, in allowing such commingling between personal expenses and accounts and corporate accounts, that it was next to impossible to ensure compliance with her obligations under the legislation. Did Lisa thoughtfully, deliberately and carefully assess the situation before filing her returns? I say no, and I find that she has fallen short of exercising reasonable care. Her counsel argued that prudence is not perfection and added that is why pencils have erasers. I say, although perfection is not required, prudence is. Was the care she exercised that of a wise and prudent person? Again, I say no. Lisa was content to rely on her bookkeeper and accountants and cannot reasonably say that her reports were made in a manner that she truly believed to be correct. That is not possible, in particular, in light of the mess the books and records were in.

[43] I will repeat what I stated in *Yadgar*, a comment that was quoted with approval by the Federal Court of Appeal: "the Appellant cannot simply throw his hands up and say that he blindly relied on his accountant, without making any attempts at seeking a better understanding of his obligations and without making any effort to verify the accuracy of the income reported in his income tax returns" (*Yadgar TCC*, *supra* at para 35; *Yadgar FCA*, *supra* at para 6). And with respect to subsection 152(4.01), the Minister's adjustments can reasonably be regarded as being related to a misrepresentation. I conclude that the Minister was justified in reassessing Lisa beyond the normal reassessment period for the 2010, 2011 and 2012 taxation years.

Analysis regarding Michael's reassessments beyond the normal reassessment period

[44] Michael explained the process they would go through to do a job, from getting quotes, obtaining permits, identifying locates for the utilities, and eventually, beginning construction. He stated that a file was opened for every job, every single project. Michael added that it was very difficult to run the company as suppliers would generally insist on being paid before providing any materials. He asserted that, in a lot of cases, he had to write a personal cheque or pay cash.

[45] Michael's counsel took him to a series of documents, for example cheques made to him personally. I will reference a few. For example, Crown Canada Automotive Co. Ltd. made a cheque in the amount of $2,800 to Michael personally (Exhibit A-1, Vol 1, Tab 3 at 9). He explained that the corporation was renting space from a building owned by PPHL and he did not know why they made the cheque to him and assumed they were simply unsophisticated. I note that there were several other cheques from Crown Canada made payable to him personally. Another corporation made two cheques to Michael in the amounts of $300 each. He explained that this corporation also rented space from PPHL (Exhibit A-1, Vol 1, Tab 3 at 31 and Tab 5 at 63).

[46] As a final example, there was a cheque in the amount of $9,500 made to Michael personally (Exhibit A-1, Vol 1, Tab 5 at 96). He explained that the homeowners were clients for whom GTA did some work. He stated that the cheque was made payable to him because he needed to access money to do the job and the easiest way was to put the money in his account to draw the cash he needed to pay suppliers. I would add that with respect to other cheques made to him personally, for significant amounts like $9,560, he had no recollection but stated that it appeared to be for work GTA did for clients. Michael stated that cheques related to jobs done by GTA would have been in the job files, cheques related to PPHL would have been in the office.

[47] Under cross-examination, Michael acknowledged that a lot of the business transactions were in cash. He stated that he relied on Ms. Roberts, the bookkeeper, to do the reconciliation and that he did not review it, nor did he review the financial statements, shareholder accounts or journal entries. Regarding his returns, Michael would look at a draft for a couple of minutes and then it was done. Michael asserted that his real concern was the bottom line, that is, whether they were making money or not. He acknowledged that his personal expenses were paid through PPHL, but he did not review his personal expenses, nor did he review any documents to ensure that expenses were properly reconciled.

[48] A review of the evidence fully supports a finding that Michael made misrepresentations and that they were attributable to neglect or carelessness. The evidence shows that there was extensive commingling between Michael's personal accounts and those of PPHL and no evidence to support that there was appropriate reconciliation of accounts, including to ensure that amounts that were paid personally to him and that should have been paid to PPHL were reconciled and that there was proper accounting for PPHL's payment of his personal expenses. I reiterate that household expenses were paid through GTA as well. Query whether

Michael thoughtfully, deliberately and carefully assessed the situation before filing his returns. He did not. He did not review any documents, and he did not care whether the bookkeeper and accountants actually ensured there was appropriate reconciliation, content to assume that there was. I reiterate perfection is not required but prudence his. He was not prudent. He did not care that the books and records were a mess, he cared only about the bottom line. Without repeating it, I reference my earlier comments from the *Yadgar* matter. I conclude that the Minister was justified in reassessing Michael under the ITA beyond the normal reassessment period for his 2010, 2011 and 2012 taxation years.

C.3 Reassessments made beyond the normal reassessment period for GTA

[49] Earlier in these reasons, I found that GTA had not raised any issues regarding whether the Minister was justified in reassessing them beyond the normal reassessment period. With respect to assessments under the ETA, this was not addressed in the pleadings nor at trial. Hence, it will not be addressed in these reasons.

[50] With respect to the ITA, although not raised in the pleadings and not specifically addressed at trial, the Respondent did acknowledge that GTA had been reassessed beyond the normal reassessment period for its taxation years ending in 2010, 2011 and 2012. Out of an abundance of caution, I will address the issue of whether the Minister was justified in reassessing GTA beyond the normal reassessment period under the ITA for these taxation years. And I will do so by adopting my findings above regarding Lisa's conduct as she was the sole director of GTA.

[51] As will be clear from my reasons below, I find that GTA did not report all of its income. GTA's books and records were, as I said, utterly inadequate, a futile attempt at record-keeping. Such a mess, that volumes and volumes of documents and days of testimony shed little light on what should have been appropriately accounted for, in particular, as personal expenses paid for by the corporation. GTA and its director did not thoughtfully, deliberately and carefully assess the situation before filing GTA's returns. They were content to rely on the trust they had in their bookkeeper and accountants. That is not the conduct of a wise and prudent person. I note that courts have held that the failure to keep adequate business records constitutes negligence (see *Lacroix v R*, 2008 FCA 241 at para 13).

[52] I find that the Minister was justified in reassessing GTA under the ITA beyond the normal reassessment period for its taxation years ending in 2010, 2011 and 2012.

C.4 Michael Poce's Reassessments

[53] For convenience, I reiterate that Michael appealed from his reassessments made under the *Income Tax Act* for his 2010, 2011, 2012, 2013, 2014 and 2015 taxation years.

[54] The Respondent made several concessions at the hearing. I will now summarize them before addressing the amounts that remain in issue.

Concessions by the Respondent

[55] The Minister assessed Michael for shareholder benefits received from GTA pursuant to subsection 15(1) of the ITA. Michael was not a shareholder of GTA such that this aspect of the reassessment cannot stand and the Respondent was correct in making this concession (T. April 25 at 7, 104-106). I note that in asking the Court to vacate the assessment of these amounts, Counsel for the Appellants acknowledged it is "a tough ask, because there are amounts that were withdrawn by him and there were clearly errors" (T. April 25 at 16). I do want to note that this is not a finding that those amounts should not have been assessed as income for Michael under another provision, or perhaps for Lisa, but only that they cannot be assessed as income under subsection 15(1) of the ITA for Michael.

[56] Hence the following amounts assessed as shareholder appropriations from GTA will not be added to Michael's income for the 2010 to 2015 taxation years:

2010	$128,645
2011	$78,823
2012	$94,453
2013	$98,639
2014	$142,295
2015	$69,908

[57] Michael was also assessed for shareholder benefits under subsection 15(1) of the ITA in respect of the insurance payments made for his personal use of the Ford trucks. The pleadings were unclear on whether these amounts were related to benefits received from GTA or from 217, but that is irrelevant as Michael was not a shareholder of GTA nor was he a shareholder of 217. Hence the amounts of $390 shall not be included in his income for his 2013, 2014 and 2015 taxation years (T. April 25 at 105).

[58] Michael was assessed a shareholder benefit under subsection 15(1) of the ITA for an amount of $15,837 appropriated from PPHL for his 2014 taxation year. The Respondent has conceded this amount. Hence the amount of $15,837 shall not be included in Michael's income for his 2014 taxation year (T. April 25 at 111).

Dividend of $187,500 added to Michael's income in 2011

[59] Michael was reassessed for the inclusion of a cash dividend in his income for the 2011 taxation year on the basis that an amount of $150,000 was recorded as a dividend credited to his shareholder account with PPHL (Exhibit A-1, Vol 2, Tab 25).

[60] Clearly, there was a misrepresentation regarding this amount as it was not in fact a dividend. The evidence introduced at trial was clear that there was no resolution declaring dividends in 2011 nor was a T5 issued. Generally, based on basic corporate law and related jurisprudence, dividends are not payable until declared (see *Trower v R*, 2019 TCC 77). Sometimes, in small private corporations, transactions are papered later. There is no evidence of that in this case. Hence the Minister's assumption that an amount of $150,000 credited to Michael's shareholder account was a dividend, and which was assessed as such with the resulting inclusion of the grossed-up amount of $187,500 and corresponding dividend tax credit of $25,000 has been demolished.

[61] At trial, the Respondent argued, in the alternative, that the amount of $150,000 assessed as a dividend should then be included as an appropriation under subsection 15(1) of the ITA. However, not only is there no assumption in the Reply that it could have been an appropriation under subsection 15(1), but the Respondent's position as set out at paragraph 15 of their Reply is that Michael received a dividend. No alternative position was put forth. In these circumstances, I find that the assessment of a dividend received in 2011 cannot stand. Consequently, the amount of $187,500 will be removed from his income for his 2011 taxation year as will the corresponding credit in the amount of $25,000.

Shareholder appropriation of $320,000 added to Michael's income in 2013

[62] The Minister assessed Michael for a shareholder appropriation under subsection 15(1) of the ITA in the amount of $320,000 in his 2013 taxation year. This amount is made up of two amounts of $150,000 and $170,000 respectively (Exhibit A-1, Vol 2, Tab 37).

[63] The first amount of $150,000 was recorded as a dividend in PPHL's books (Exhibit A-1, Vol 8, Tab 145 at 1952). However, the auditor testified that she treated it as a shareholder appropriation after being told that it was not a dividend and that the corporation had revised its financial statements to show no dividend (T. April 15 at 41-42). The auditor testified that she accepted the second explanation – that it was not a dividend – and included it as an appropriation as it was credited to Michael's shareholder account (T. April 15 at 43).

[64] The second amount of $170,000 was recorded as a contribution to Michael's shareholder account and was assessed as a shareholder appropriation under subsection 15(1) of the ITA.

[65] I note that counsel for the Appellant took the auditor to several documents regarding entries and reversals, some of which were requested by the Appellant's accountant, but this testimony shed little light on what actually transpired. Michael has not persuaded the Court that the $150,000 and $170,000 credited to his shareholder account ought not to be included in his income for the 2013 taxation year. They will be and the assessments of these amounts shall stand.

Shareholder loans included under subsection 15(2)

[66] When an individual like Michael receives a loan from the corporation of which he is a shareholder, he must include that loan in his income under subsection 15(2) of the ITA unless an exception applies. One such exception is provided in subsection 15(2.6) for amounts that are repaid within one year after the end of the taxation year of the lender (and the repayment is not part of a series of loans and repayments).

[67] Michael was assessed for shareholder loan benefits pursuant to subsection 15(2) with respect to loans received from 2204919 Ontario Inc. The Respondent has conceded those amounts as it appears they are the result of a purchase of shares in PPHL by 2204919 Ontario Inc. Hence, the amounts of $103,850 and $164 shall not be included in Michael's income for the 2010 and 2011 taxation years and the credit in the amount of $38 for the 2012 taxation year shall be removed (T. April 25 at 109).

[68] Michael was also assessed for shareholder loan benefits pursuant to subsection 15(2) with respect to loan amounts received from PPHL. An amount of $436,903 was included in Michael's income for the 2010 taxation year. The Respondent has conceded that a portion of this amount ought not to be included in

his income. This concession is based on an acknowledgment that the amount should have been included in Michael's income for the 2009 taxation year, which I note, is not before the Court (T. April 25 at 109). I believe that Counsel for the Respondent misspoke when she said that the amount conceded was $344,000 as the documentary evidence (Exhibit A1, Vol 8, Tab 145 at 1971) showed that the amount was $334,000 and there were several references to that amount at the hearing. Hence, the amount of $436,903 included in Michael's income for the 2010 taxation year will be reduced by $334,000.

[69] Regarding the amounts assessed under subsection 15(2) as shareholder loan benefits received from PPHL, Michael's counsel conceded that the assessment for the 2013, 2014 and 2015 taxation years should stand because she has no information to the contrary but submits that the Respondent has not met its burden to reopen the 2010, 2011 and 2012 taxation years which she submits are statute-barred. It is worth pointing out that the Appellant's position amounts to not including amounts totalling more than half a million dollars in the years his Counsel submits are statute-barred but allowing deductions under paragraph 20(1)(j) totalling almost half a million dollars in the non-statute-barred years.

[70] During her testimony, the auditor was able to show where she got the amounts that added up to the inclusions under subsection 15(2) for shareholder loan amounts received from PPHL for the 2010 to 2012 taxation years, with specific and detailed examples matching the amounts in her working paper with PPHL journal entries (Exhibit R3, Tab 24 at 230; Exhibit A-1, Vol 8, Tab 145, at 1957-1958; T. April 18, 83-85). I find that other than the amount of $334,000 conceded by the Respondent for the 2011 taxation year, the Minister was justified in including the amounts assessed as shareholder loan benefits under subsection 15(2) for the 2010, 2011, 2012 and 2014 taxation years as well as allowing a deduction pursuant to paragraph 20(1)(j) for the shareholder loan amounts that were repaid for the 2013 and 2015 taxation years.

Interest assessed under section 80.4

[71] Section 80.4 of the ITA provides for the inclusion of an interest benefit for shareholder loans granted interest free or at low interest. However, subsection 80.4(3) specifically excludes loan amounts that were included in income under subsection 15(2).

[72] The Appellant's Counsel argued that the amounts included as interest benefits should not be included in income because they are all related to amounts assessed

under subsection 15(2). The auditor testified that the interest benefit included pursuant to section 80.4 was assessed on loan amounts that were not captured by subsection 15(2). This is reflected in the documentary evidence (Exhibit A-1, Vol 2, Tab 32 for the 2010, 2011 and 2012 taxation years and Exhibit A-1, Vol 2, Tab 37 for the 2013, 2014 and 2015 taxation years; Exhibit R-3, Tab 24). Michael has not provided clear evidence to support a finding that the interest benefit was not correctly calculated. Hence, the assessment of interest benefits pursuant to section 80.4 stands.

C.5 Lisa Dozzi's Reassessments

[73] Lisa appealed reassessments made under the *Income Tax Act* for her 2010, 2011, 2012, 2013, 2014 and 2015 taxation years.

[74] Lisa was reassessed for shareholder appropriations pursuant to subsection 15(1) of the ITA as well as for shareholder loan benefits pursuant to subsection 15(2). The amounts assessed under subsection 15(1) were set out in the Reply in a manner that can best be organized under the following three categories: director's fees, automobile benefits and other shareholder appropriations. I will address them in that order.

Director's fees

[75] The Minister reassessed Lisa to include the amounts of $50,000, $36,150 and $25,000 as funds appropriated from GTA for her 2010, 2011 and 2012 taxation years respectively. These amounts were credited to Lisa's shareholder account (Exhibit R-2, Tab 4). Although not described as director's fees in the Reply, they were characterized as such at the hearing (see for example T. April 25 at 50).

[76] Lisa testified that she did not receive director's fees. Assuming I understood correctly, Lisa's Counsel argued that the credits to her account do not confer a benefit under subsection 15(1). Counsel for the Respondent relied on *Cléroux v R*, 2013 TCC 365 at para 15, for the proposition that even if a shareholder does not have access to the funds, it does not alter the fact that they received a benefit. Access to the funds is not a requirement of the application of 15(1). Hence, the Respondent submitted, the amounts credited to Lisa's shareholder account should be included in her income.

[77] I would like to point out that GTA deducted amounts for director's fees paid to Lisa. As discussed in the reasons related to GTA's appeals below, I have allowed a deduction for the amounts GTA claims to have paid to Lisa as director's fees. I note that the amounts referred to above and included in Lisa's income as appropriated funds do not exactly match the amounts that GTA claims it paid Lisa as director's fees.

[78] There was no evidence introduced at trial to show that the amounts of $50,000, $36,150 and $25,000 credited to Lisa's shareholder account should not be included in her income for the 2010, 2011 and 2012 taxation years respectively. They will be.

Automobile benefits

[79] Lisa was reassessed to include shareholder automobile benefits in the amount of $20,303, $19,223, and $19,223 in her income for the 2013, 2014 and 2015 taxation years respectively (Exhibit R-2, Tab 7). I note that GTA claimed a deduction for lease payments made for the rental of a Mercedes.

[80] Lisa testified that the Mercedes was the family car and that she used it as her personal vehicle. She stated she used it to do deliveries at times, but not even weekly. Business use was thus negligible. And there was no evidence in the form of a log or otherwise to support a finding of business use. Although the Appellant's counsel alluded to the possibility that Lisa received automobile benefits as an employee, there was no evidence introduced at trial to support such a finding nor was there any real debate during the hearing regarding this possibility.

[81] I find that the Minister was justified in including automobile benefits in Lisa's income for the 2013, 2014 and 2015 taxation years pursuant to subsection 15(1) of the ITA.

Other amounts assessed under subsection 15(1)

[82] Lisa was also reassessed for shareholder appropriation of funds under subsection 15(1) in the following amounts:

2010	$800
2011	$1,010
2012	$2,500
2013	$25,175
2014	$28,420

2015 $40,420

[83] The auditor testified that she did a bank deposit analysis of Lisa's and Michael's personal accounts because she could not rely on the books and records (T. April 15 at 92 and 114). The auditor explained that in doing her bank deposit analysis, she went through the bank and visa card statements and made the appropriate adjustments, removing non-taxable amounts and amounts accounted for as shareholder loans. Amounts that could not be substantiated, namely amounts for which the auditor could not identify the source, were included as subsection 15(1) appropriations.

[84] In her submissions, Counsel for the Appellant referred to Lisa's testimony regarding the deposits to her personal bank account which could not be traced to any other accounts. For example, she referred to an amount received from a friend as her share of a gift to another friend, a cheque from her aunt and uncle and an advance from a mortgage lender. I reviewed some of Lisa's evidence earlier in these reasons when addressing the issue of reassessments having been made beyond the normal reassessment period and will not repeat that exercise. Counsel submitted that on their face, none of those amounts were appropriations from GTA and added that the amounts assessed by the Minister were not established by the evidentiary record.

[85] Counsel for the Respondent submitted that the amounts assessed as unidentified deposits were included in the auditor's schedule to her proposal letters requesting Lisa's representations (T. April 25 at 75). The Respondent argued that it was incumbent on Lisa to provide documents and credible explanations regarding the source of the unidentified deposits referring to the decision in *Buday v R*, 2019 TCC 128 at para 20, in support of her position. The Respondent asserted that it was up to Lisa to respond with documents and detailed explanations to satisfy the auditor that the amounts were from a non-taxable source and not up to the Minister to go searching for the information.

[86] It may be that some of the unidentified deposits which were assessed as shareholder appropriations had a non-taxable source. However, I agree that it was up to Lisa to provide documents and explanations to support that position. She did not. I would add that Lisa is the author of her own misfortune, if any, as there was such commingling between accounts, between individuals and corporations, that it is impracticable, if not impossible, to get a true picture of Lisa's income. I find that the Minister was justified in including shareholder appropriations in Lisa's income for the 2010, 2011, 2012, 2013, 2014 and 2015 taxation years.

Shareholder loan benefits

[87] Lisa was reassessed for shareholder loan benefits pursuant to subsection 15(2) of the ITA for loans received from GTA and not repaid within one year after the end of the taxation year of the lender. Shareholder loan amounts were included in the 2010, 2011, 2013 and 2015 taxation years while deductions under paragraph 20(1)(j) were allowed for the 2012 and 2014 taxation years.

[88] The Respondent quoted from the Federal Court of Appeal's decision in *Lust v R*, 2007 FCA 62 at para 8, to argue that "[t]he purpose of subsection 15(2) is to include in a shareholder's income amounts received from a corporation in the guise of loans or other indebtedness". In *Lust*, *supra*, the Court found that the Appellant was indebted to the corporation for the amount of the advances used for his personal expenses. At the beginning of the hearing, counsel for the Appellants acknowledged that Lisa and Michael lived through their corporations. The evidence before the Court is that Lisa's personal expenses were paid through GTA and that she trusted that the bookkeeping was properly done to account for that. In addition, it bears repeating that Lisa testified that she never looked at the shareholder account and could not explain any of the debits and credits entered into that account. The Respondent submitted that the burden was on Lisa to explain the credits made in her shareholder loan account. I agree.

[89] With respect, the submissions made by Lisa's counsel regarding the amounts assessed under subsection 15(2) of the ITA were somewhat difficult to follow but she did zero in on one particular amount. Lisa's counsel submitted that of the $234,778 included in income for the 2010 taxation year, there is a loan amount of $112,354 that ought not to be included (Exhibit A-1, Vol 5, Tab 57 at 985). Counsel submitted that there was a verbal agreement between Lisa and Michael to transfer this loan to his account, although it was not clear which account was being referred to. When pressed in cross-examination, the auditor stated she could accept that there was a verbal agreement between Lisa and Michael and added that if the loan amount was moved, it would result in an increase to Michael's loan receivable. In the end, the auditor did not accept that the transfer actually occurred. Michael had no recollection of this transfer. A review of the evidence does not reveal any support for a finding that the $112,354 amount credited to Lisa's shareholder account was transferred to another account to reflect that Michael was taking over this loan.

[90] I agree that it was incumbent on Lisa to provide evidence that the amounts assessed as shareholder loan benefits were incorrect. She could not. She said so very clearly. In the circumstances, I find that the Minister was justified in reassessing Lisa

to include shareholder loan benefits in her income under subsection 15(2) for the 2010, 2011, 2013 and 2015 taxation years and in allowing corresponding deductions pursuant to paragraph 20(1)(j) for the 2012 and 2014 taxation years.

Interest assessed under section 80.4

[91] In reassessing Lisa, the Minister included interest benefits pursuant to section 80.4 in the amount of $817 and $329 for the 2010 and 2011 taxation years respectively. Lisa's counsel made very brief submissions on this issue, asserting that the assessments were not supported in light of the issues she raised concerning the auditor's adjustments under subsection 15(2) as well as the limitation within subsection 80.4(3), meaning I assume, the fact that the latter provision specifically excludes interest on amounts included under subsection 15(2). Counsel for the Respondent pointed to the calculations for these interest benefits showing that amounts assessed under subsection 15(2) were not included (Exhibit A-1, Vol 9, Tab 191 at 2217 and 2219). I note that the loan in the amount of $112,354 discussed earlier is specifically excluded.

[92] There was no evidence before the Court to support a finding that the calculation of interest benefits under section 80.4 was erroneous. I find that the Minister was justified in including shareholder interest benefits in Lisa's income for the 2010 and 2011 taxation years.

C.6 GTA Sitework Inc.'s Reassessments

[93] GTA appealed reassessments made under the ITA for its taxation years ending on November 30, 2010, 2011, 2012, 2013, 2014 and 2015. GTA also appealed assessments made under the ETA for its reporting periods ending December 31, 2013, 2014 and 2015.

[94] At the hearing, the Respondent made concessions regarding the deductibility of wages and construction material expenses. I will summarize them below before addressing the amounts still at issue.

Wages paid to Lisa

[95] In reassessing GTA, the Minister denied the deduction of wages paid to Lisa in the taxation years ending in 2011 to 2015 in the following amounts:

2011 $5,900

2012	$31,523
2013	$23,241
2014	$4,393
2015	$54,401

[96] The Respondent conceded that these amounts, which Lisa reported in her income on the basis of T4 slips that were issued to her, should be allowed (T. April 25 at 93). They will be.

Construction material expenses

[97] The deduction by GTA of an amount of $62,854 for the purchase of construction material was disallowed for the 2015 taxation year. The Respondent conceded that, on the basis of the auditor's testimony, the deduction of this amount should be allowed (T. April 25 at 94-95). It will be.

Director's fees paid to Lisa

[98] In reassessing GTA, the Minister disallowed the deduction of director's fees it claimed to have paid to Lisa in the following amounts:

2010	$50,000
2011	$25,000
2012	$66,600

[99] In its Reply, the Respondent submitted that the deduction for director's fees was properly disallowed on the basis that GTA had not incurred these fees to gain or produce income pursuant to paragraph 18(1)(a) of the ITA. At the hearing, the auditor stated that she disallowed the deduction because, after verifying Lisa's tax return, she concluded that she had not reported these amounts in her income and they were unreasonable. She further testified that the amounts showed up as credits to Lisa's shareholder account thereby reducing her debt to GTA (T. April 18 at 45).

[100] I will reiterate the view I expressed at the hearing that there are over 100 statutes that impose responsibilities on directors, who are therefore on the hook for significant liability if they do not fulfill their responsibilities. Hence, it is difficult for me to accept that a director is not entitled to compensation and that the payor corporation is not entitled to a deduction for those expenses. In her submissions, counsel for the Respondent acknowledged that it was difficult to maintain that Lisa was not entitled to compensation as the appointed director but added that it was then

a question of reasonableness under section 67 of the ITA. No questions were put to Lisa about what she did in her role as director such that there is no evidence before the Court to support a finding that the amounts, which on their face appear reasonable, are not so.

[101] The Respondent conceded that the director's fees should be allowed in the amounts of $50,000, $25,000 and $25,000 for the 2010, 2011 and 2012 taxation years respectively, these amounts being based on the auditor's testimony (T. April 25 at 87). Hence, this meant that she took the position that only $25,000 of the $66,600 claimed by GTA should be allowed for the 2012 taxation year.

[102] A review of the auditor's testimony regarding the amounts that GTA deducted as director's fees and some of the associated documents introduced at trial including her proposal letter are confusing at best. The auditor appears to suggest that these were the amounts credited to Lisa's shareholder loan account as management fees but that they could also have been the director's fees that GTA sought to deduct and given that there was no information allowing her to assess the reasonableness of the increase in fees from the previous two years, only $25,000 of the $66,600 should be allowed. With respect, this makes little sense. I find that it is impossible, based on the evidence at trial, to accept the auditor's explanations of what the amounts paid as director's fees actually were. What I have are the Minister's assumptions and the grounds on which the deduction was disallowed. In the circumstances, I find that the Minister assumed that GTA deducted the amounts of $50,000, $25,000 and $66,600 for the 2010, 2011 and 2012 taxation years respectively and refused those deductions on the basis that GTA had not incurred these fees to gain or produce income. I find that the Minister was not justified in denying the deduction of the amounts claimed by GTA as director's fees. I conclude that the director's fees paid in the amounts of $50,000, $25,000 and $66,600 for the taxation years ending in 2010, 2011 and 2012 respectively are deductible.

Equipment rentals

[103] In reassessing GTA, the Minister disallowed the deduction of the following amounts related to the rental of vehicles, a Mercedes and two Ford Trucks:

2013	$23,790
2014	$22,836
2015	$21,042

[104] The disallowed deduction for the vehicles include rental fees paid for a Mercedes in the amounts of $16,350, $15,396 and $15,396 for the taxation years ending in 2013, 2014 and 2015 respectively. The evidence before the Court supports a finding that Lisa made personal use of the Mercedes. Any business use was negligible and further, there was no evidence in the form of a log or otherwise to support a finding of business use.

[105] The balance of the disallowed amounts relates to the proportion of 20% personal use of the trucks by Michael. There was no evidence presented in the form of logs or otherwise to support a finding that the proportion of business use was different than what was assumed by the Respondent.

[106] It is well established that businesspeople who use personal vehicles for business need to keep accurate logs if they expect to be entitled to a deduction (see for example *Dore v R*, 2004 TCC 638). Here, not only do we not have any logs but we have admissions by Lisa that the Mercedes was the family car and admissions from Michael that he did not use the Mercedes and that he used the trucks to get to and from work, the latter characterized as personal use in the case law.

[107] I note that the fact that an amount may have been assessed as a benefit to a shareholder under subsection 15(1) of the ITA is not determinative of the deductibility to the corporation of the cost of providing that benefit, the principle always being that to be deductible, an amount must be shown to be part of the income-earning process. There can be double taxation.

[108] I conclude that the Minister was justified in disallowing 100% of the rental fees paid for the Mercedes and 20% of the rental fees paid for the trucks.

The conceded management fees

[109] As discussed earlier, based on concessions made by the parties regarding PPHL's reassessments, I found that PPHL was not entitled to a deduction for management fees. The parties agreed that a corresponding adjustment would be made to GTA's income to remove those amounts. Hence, the management fees of $66,000 are to be removed from GTA's income for the 2014 and 2015 taxation years.

Unreported Income by GTA

[110] The Minister reassessed GTA for unreported income for each of the taxation years under appeal on the basis that cash and cheques deposited in Lisa and Michael's accounts represented unreported sales.

[111] The auditor testified that when she looked at a sample of invoices for GTA, all those sales had been reported. The amounts included as unreported income were based on the information provided by the bookkeeper, that is, that Michael received cash that he deposited in his account and that at some point, the bookkeeper was supposed to reconcile the books. The auditor completed her bank deposit analysis and sent it to Lisa and Michael to identify the source of the unidentified deposits. However, the documents came back annotated with several transactions simply identified as "cash" and "miscellaneous" (see for example Exhibit R-3, Tabs 5-6). The Respondent submitted that because of the lack of internal controls in GTA, the cash deposits may not have been captured.

[112] The Appellant's counsel submitted that there was no intention to deceive. She acknowledged that amounts were deposited in Michael's account so that he could pay suppliers and get work done. Counsel submitted that the auditor agreed that she could not assert with any degree of certainty that amounts not included in GTA's reported income were not reported elsewhere. With respect, it is my view that it was incumbent on Lisa and Michael to identify what these cash transactions related to, which file, which invoice, and show that they had been included in income elsewhere. The Appellant's counsel acknowledged as much when she stated that "[t]o the extent that the Court should find that it was the Appellant's burden to establish that they were included in income elsewhere, we submit that the statute-barred years of 2010, '11 and '12 should be vacated" (T. April 25 at 61-62). Although the issue of statute-barred years was not the subject of the pleadings for GTA nor of any evidence introduced at trial, I addressed that issue earlier in these reasons and found that the Minister was justified in assessing GTA beyond the normal reassessment period.

[113] I find that GTA has not established that the amounts assessed as unreported income were included in another taxpayer's income. I wish to note that the Appellant is the author of its own misfortune as the state of its books and records is such that it is next to impossible to reconcile the accounts based on the evidence before the Court. I note that the Respondent conceded that 13% of the unreported income should be deducted to allow for the GST which was assessed under the ETA (T. April 25 at 95). Hence, the amounts assessed as unreported income will be reduced to reflect this concession.

GTA's reassessments under the ETA

[114] As mentioned earlier, GTA also appealed assessments made under the ETA. The auditor testified that she had not done the GST audits, but it was her

understanding that a consequential audit had been performed meaning that adjustments made to the assessments under the ETA were based on the adjustments made to the assessments under the ITA. The Respondent submitted that the HST assessments were consequential assessments such that any adjustments to the HST assessments would flow from the adjustments made to the amounts assessed under the ITA. Consequently, the assessments under the ETA for the reporting periods ending in 2013, 2014 and 2015 will be adjusted as required by the adjustments made to the reassessments under the ITA as a result of these reasons for judgment.

C.7 Penalties

[115] Lisa and Michael were assessed for gross negligence penalties under the ITA while GTA was assessed for such penalties under both the ITA and the ETA. I will first set out the legislative framework applicable to the assessment of penalties.

(i) Legal framework

[116] Subsection 163(2) of the ITA reads as follows:

(2) Every person who, knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a "return") filed or made in respect of a taxation year for the purposes of this Act, is liable to a penalty of the greater of $100 and 50% of the total of…	(2) Toute personne qui, sciemment ou dans des circonstances équivalant à faute lourde, fait un faux énoncé ou une omission dans une déclaration, un formulaire, un certificat, un état ou une réponse (appelé « déclaration » au présent article) rempli, produit ou présenté, selon le cas, pour une année d'imposition pour l'application de la présente loi, ou y participe, y consent ou y acquiesce est passible d'une pénalité égale, sans être inférieure à 100 $, à 50 % du total des montants suivants…

[117] As provided by subsection 163(3) of the ITA, the Minister bears the burden of establishing the facts that justify the assessment of the penalty. Hence, the Minister must show that the Appellants made, participated in, assented to, or acquiesced in, the making of a false statement *and* did so knowingly or did so under circumstances amounting to gross negligence.

[118] In previous decisions, I have set out the principles that I believe ought to apply in determining whether gross negligence penalties are justified under the ITA (see for example *MF Electric*, *supra*; *Yadgar TCC*, *supra*). I will summarize them below.

[119] Since the seminal case in *Venne*, [1984] FCJ No 314 (FCTD), courts have consistently held that "gross negligence" requires greater neglect than simply failing to exercise reasonable care, which might otherwise be sufficient for the application of subparagraph 152(4)(a)(i) of the ITA discussed earlier. In *Venne*, *supra* at para 37, the Federal Court stated that gross negligence "must involve a high degree of negligence tantamount to intentional acting, an indifference as to whether the law is complied with or not". This was confirmed by the Federal Court of Appeal in *Khanna v R*, 2022 FCA 84 at para 7. It has been previously found to mean "akin to burying one's head in the sand" (see *Guindon v Canada*, 2015 SCC 41 at para 60).

[120] In *Wynter v Canada*, 2017 FCA 195 [*Wynter*], the Federal Court of Appeal asserted that the Minister could meet its burden of showing that the false statement was made knowingly by demonstrating that the taxpayer was wilfully blind such that knowledge could be imputed to the taxpayer. Further, in *Wynter*, the Federal Court of Appeal asserted that gross negligence, which is distinct from wilful blindness, "arises where the taxpayer's conduct is found to fall markedly below what would be expected of a reasonable taxpayer. Simply put, if the wilfully blind taxpayer knew better, the grossly negligent taxpayer ought to have known better" (*Wynter*, *supra* at para 18).

[121] For reasons that will become clear further below, I have applied the gross negligence standard and will therefore not provide a detailed analysis of the distinction between wilful blindness and gross negligence. Neither will I comment on the individual Appellants' personal attributes in relation to their assessments of gross negligence penalties. I find the remarks of Justice Owen, in *Peck v R*, 2018 TCC 52 at paras 50 and 51, instructive regarding the relevance of a taxpayer's personal attributes. He wrote as follows:

> [50] The subjective nature of the wilful blindness standard also means that the personal attributes of the individual may be considered in determining whether the individual is wilfully blind.
>
> [51] In contrast, the objective nature of the gross negligence standard means that the personal attributes of the individual are not relevant unless the individual establishes that he or she is incapable of understanding the risk the individual has failed to avoid (see *R. v. Beatty*, 2008 SCC 5, [2008] 1 S.C.R. 49 at paragraph 40). […]

[122] Section 285 of the ETA provides as follows:

285. Every person who knowingly, or under circumstances amounting to gross negligence, makes or participates in, assents to or acquiesces in the making of a false statement or omission in a return, application, form, certificate, statement, invoice or answer (each of which is in this section referred to as a "return") made in respect of a reporting period or transaction is liable to a penalty of the greater of $250 and 25% of the total of…	285. Toute personne qui, sciemment ou dans des circonstances équivalant à faute lourde, fait un faux énoncé ou une omission dans une déclaration, une demande, un formulaire, un certificat, un état, une facture ou une réponse — appelés « déclaration » au présent article — établi pour une période de déclaration ou une opération, ou y participe, y consent ou y acquiesce, est passible d'une pénalité de 250 $ ou, s'il est plus élevé, d'un montant égal à 25 % de la somme des montants suivants : …

[123] Hence, to justify the imposition of penalties under section 285 of the ETA, the Minister must establish that the appellant made, participated in, assented to, or acquiesced in, the making of a false statement *and* did so knowingly or did so under circumstances amounting to gross negligence. As the language of section 285 of the ETA is nearly identical to that of subsection 163(2) of the ITA, courts have applied the same principles as those set out above applicable to gross negligence penalties imposed under the ITA (see *Encore Cellular Inc*., *supra* at para 87).

[124] These are the principles I will apply in determining whether the Minister was justified in assessing penalties under subsection 163(2) of the ITA and section 285 of the ETA.

(ii) Penalties imposed on Lisa, Michael and GTA

[125] The Appellant's counsel made brief and very general submissions regarding the imposition of penalties on Lisa, Michael and GTA. She argued that if the Court finds that Michael's conduct fell below the expected standard of conduct, the Court should find that Lisa's conduct did not and she quoted *Khanna*, *supra*, in support of her position without elaborating on how that decision was of any assistance.

[126] Counsel for the Appellant concentrated her observations regarding the penalties on the correctness of their calculation. She argued, based on this Court's decision in *Hans v R, supra*, that no evidence had been led to establish the correction of the calculations of the penalties such that the Minister had not met its burden of showing that the penalties were justified.

[127] I find that there *were* a number of documents introduced in evidence which referred to the income that was the subject of the gross negligence penalties (see for example, Exhibit A-1, Vol 2, Tabs 33-35, Exhibit R-1, Tabs 46-51, Exhibit R-2, Tabs 24-29, Exhibit R-3, Tabs 38-40). Further, I find that the Minister sufficiently pleaded the penalties such that the Replies indicated to what amounts the penalties applied (see *Encore Cellular Inc*., supra at para 95). In *Kalwa v R*, 2025 TCC 89 at paras 38-39, Justice Bocock addressed the alleged deficiency in information concerning the penalty by referring to the pleadings and concluding the penalties were ascertainable. He found that together with other pleaded facts, the amount of the penalties was cumulatively pleaded in the Replies and although some math may be required to ascertain the precise methodology and amount of the penalties, all the elements were there. This, in Justice Bocock's view, was sufficient for the Court's purposes. I adopt those remarks. I find that there was sufficient information in the Respondent's reply for Lisa (see for example paras 5, 6, 12g), 22 and 23), in the Respondent's reply for Michael (see for example paras 5, 6, 12h), 22 and 23) and in the Respondent's replies for GTA (see for example paras 7, 8, 14f), 23 and 24 of the Reply for the appeal under the ITA and paras 8, 11, 12 and 13 of the Reply for the appeal under the ETA) to provide all the elements necessary to ascertain the penalties. In my view, there is sufficient information in the pleadings and in the documentary evidence to conclude that the penalties are ascertainable. Of course, any penalties found to apply will have to be recalculated to take into account the amounts that will not be included in the Appellants' income either based on the Respondent's concessions or on the findings of this Court.

[128] In my reasons above, I have already concluded that Lisa, Michael and GTA all made false statements in their returns by failing to report all of their income, by not reporting appropriated funds and other shareholder benefits and by deducting some expenses that were found not to be deductible. The more pressing question is whether the Appellants made the false statements "knowingly" or "under circumstances amounting to gross negligence".

[129] For the reasons that follow, I conclude that Lisa, Michael and GTA made false statements under circumstances amounting to gross negligence.

[130] The Appellants' counsel suggested that we should not expect Lisa and Michael to have known that credits were being made in their loan accounts and queried whether they should have asked to see their shareholder loan account entries. In her opening statement, the Respondent's counsel referred to Lisa and Michael approach as cavalier. I find that descriptor appropriate.

[131] I find that Lisa's conduct involves a high degree of negligence tantamount to intentional acting, an indifference as to whether the law was complied with or not. She knew that her personal expenses were paid through GTA, something that the Respondent submitted should have served as a red flag. Yet, she did not make any enquiries of her accountants, did not review the books and records, did not review the shareholder accounts or any other accounts for that matter, did not review her returns, content to assume that things were being appropriately accounted for. This, I find, is what the Supreme Court of Canada found to be akin to burying one's head in the sand (*Guindon*, *supra* at para 60). This is conduct I find to be markedly below what would be expected of a reasonable taxpayer (*Wynter*, *supra*). I conclude that the Minister was justified in imposing gross negligence penalties pursuant to subsection 163(2) of the ITA on Lisa for her 2010, 2011, 2012, 2013, 2014 and 2015 taxation years.

[132] Much the same can be said of Michael. Earlier, I found that the evidence introduced at trial supports a finding that his personal expenses were paid by PPHL. Michael did not review these expenses with his accountant. When documents were put to him at the hearing, he stated he had never seen them in his life. He never reviewed the books with his accountants, not with Mr. Merle, not with Mr. Ghumman. In fairness, documents put to him in cross-examination were a decade old. However, it is also fair to say that at the relevant time he did not care enough to review any documents and to ask questions before filing his returns. He never asked for a breakdown of any items on a statement. Like Lisa, he trusted that things were correctly done. I find that Michael's conduct involves a high degree of negligence tantamount to intentional acting, an indifference as to whether the law was complied with or not. He did not care about his tax obligations, interested only in the bottom line. I conclude that the Minister was justified in imposing gross negligence penalties on Michael pursuant to subsection 163(2) of the ITA for his 2010, 2011, 2012, 2013, 2014 and 2015 taxation years.

[133] Neither the Appellant nor the Respondent made specific submissions regarding the penalties imposed on GTA. In fact, there was no reference to section 285 of the ETA and the principles that should apply to determine whether gross

negligence penalties under the ETA were justified. However, as noted earlier, I found that the principles that apply to the justification of penalties under section 285 of the ETA are the same as those that apply to subsection 163(2) of the ITA.

[134] From the very beginning, when GTA was incorporated, Lisa knew from her meeting with the lawyer that she was the sole director of GTA and she knew why the corporation was being set up that way. She was paid director's fees for this role. As the sole director of GTA, Lisa was responsible to ensure that GTA met its tax obligations. She knew the extent to which the personal accounts were commingled with those of the corporations. She knew that GTA was paying her personal and household expenses. She knew that the Mercedes was a personal use vehicle and she ought to have known GTA should not be deducting expenses related to the Mercedes. It bears repeating that she did not review GTA's books and records and did not review GTA's returns. Hence, GTA's conduct demonstrates an indifference as to whether the law is complied with or not. Further, in my view, GTA's conduct represents a marked departure from the conduct one would expect of a reasonable person placed in the same circumstances, those of a corporation with significant amounts of money moving through its accounts. For these reasons, I find that the Respondent has established that GTA made false statements in its returns and did so under circumstances amounting to gross negligence. Hence, the penalties imposed on GTA under the ITA for the taxation years ending November 30, 2010, 2011, 2012, 2013, 2014 and 2015 are justified as are the penalties imposed under the ETA for the reporting periods ending December 31, 2013, 2014 and 2015.

IV. Conclusion

[135] In light of the number of appeals addressed in these reasons, I will not summarize the conclusions above. I will only reiterate that the sorry state of the books and records and the astounding commingling of personal and corporate expenses and accounts made it next to impossible to get a true and clear picture of what exactly transpired. And the errors made during the audit, which led to significant concessions by the Respondent, only made matters worse. Having said that, the individual Appellants have only themselves to blame for the circumstances they found themselves in, having been content to live through the corporations for years, indifferent as to whether they complied with their tax obligations. Costs and any submissions on costs are addressed separately in each judgment.

Signed this 17th day of February 2026.

"Gabrielle St-Hilaire"

St-Hilaire C.J.

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