Court File No. C47229
C47230

COURT OF APPEAL FOR ONTARIO

B E T W E E N :

HER MAJESTY THE QUEEN

Respondent

-and-

PETER EICKEMEIR and HALINA JAWOR

Appellants

RESPONDENT'S FACTUM

PART I: RESPONDENT'S STATEMENT AS TO FACTS

I. Overview

1. The appellants claim to have discovered a lawful way of getting something for nothing. They urge this Court to adopt an interpretation of the *Excise Tax Act* that would turn tax collection on its head. The appellants contend that the mere invention of commercial transactions on paper – where nothing is really sold, and no business actually conducted – entitles them to get free money from the government in the form of GST input tax credits ("ITCs"). In the appellants' case, they invented commercial activity that enriched them to the tune of over $3.2 million in free money from the government.

2. The appellants were committed for trial on 138 counts for offences under the ss. 327(1)(a) and (d) of *Excise Tax Act* (respectively, making false or deceptive statements, counts 1-69, and obtaining or attempting to obtain rebates to which they were not entitled, counts 70-138). Each set of 69 charges relate to monthly GST reporting periods from September 1995 to May 2001. The appellants allegedly attempted to obtain $5,206,889.88 in refunds, by making claims for ITCs. The government issued the appellants refunds in the amount of $3,289,112.87. Pursuant to s.548(1)(a) of the *Criminal Code*, the preliminary inquiry judge, Watson J., also committed them for trial on a single global count of fraud over $5000.

3. The appellants sought review of their committal for trial by way of *certiorari*. Quinn J. dismissed that application, finding that Watson J. had correctly interpreted the *Excise Tax Act* and that she did not make any findings inconsistent with the statutory regime. Quinn J. also found that there was some evidence implicating the appellant Jawor in the offences.[1]

4. Both appellants attack their committal for trial on the grounds that no offence was committed. The thrust of their argument is that Watson J. misinterpreted the *Excise Tax Act*'s definitions of "commercial activity," "business", "sale" and "supply." In short, the appellants say that they were

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[1] Quinn J. also dismissed the appellants' argument that the preliminary inquiry judge ought to have considered competing exculpatory inferences from the evidence and, essentially ought to have applied the rule in *Hodge's Case*. The appellants do not advance that argument as a distinct ground on this appeal, although it does find its way into their main submissions, particularly those of the appellant Jawor.

entitled to ITCs for transactions even if the transactions "were constructed to create an impression or appearance of commercial activity the sole purpose of which was to obtain money from the government."[2] [emphasis added] Further, the appellant Jawor takes issue with her committal on the grounds that, if the appellant Eickmeier engaged in a scheme to defraud the government, there was insufficient evidence to find that she was part of such a scheme.[3]

5. The appellants were properly committed for trial. There was compelling evidence that they were engaged in a scheme to defraud the government of money by creating phony business transactions. Watson J. interpreted the *Excise Tax Act* correctly. The appellants' contention that the *Act* requires the government to pay ITCs to those engaged in phony business transactions that are "constructed to create an impression or appearance of commercial activity" is preposterous and is antithetical to the notion of tax collection (while being consistent with the notion of fraud perpetration). Finally, there was ample evidence that the appellant Jawor was a party to the offences and therefore implicated in the tax fraud schemes.

II. **The Charges**

6. The Crown's case alleged that the appellants engaged in two schemes to fraudulently obtain ITCs. The first scheme, called the "Patriot Forge Transaction," was the subject matter of counts 1,2, 70 & 71. The second

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[2] *Eickmeier Factum* para. 30; *Jawor Factum* para 28.
[3] *Jawor Factum*, cover page.(prior to page 1).

scheme, called the "Heavy Metal Software Transactions," was the subject of the remaining counts in the information, namely counts 3 to 69 and 72 to 138.

7. Both schemes involved the appellants' company, Sheffield International Corporation, purporting to buy goods in Canada for resale to Frontier Metals, a U.S. company controlled by the appellant Eickmeier. Because a U.S. company does not pay GST to buy goods from a Canadian company, a Canadian company is normally entitled to claim an ITC as a refund of the GST it paid to purchase the goods in Canada. In the appellants' case, they (through Sheffield International) allegedly never really purchased any goods in Canada, let alone re-sold those goods to the United States, and were therefore not entitled to any GST refund.

III. The Appellants' Alleged Schemes

8. For ease of reference, the various business names referred to herein are listed below:

Sheffield International Corporation: This is the Ontario company that formed the hub of both schemes. The company's bank records reflected that its sole income was from ITCs. The appellants used this company to claim ITCs from the purported sale of metal and software. The appellant Jawor was the incorporator and sole officer of the company. The appellant Eickmeier claimed to use this business, starting in 1996, to sell software.

Frontier Metals Inc: A U.S. company owned and operated by Eickmeier and the sole customer of Sheffield's software sales in the Heavy Metal Software Transactions.

Heavy Metal Software: A sole proprietorship, owned and operated by the appellant Eickmeier, which, on paper, sold software to Sheffield.

Patriot Forge: A metal company located in Brantford not owned by or affiliated with either of the appellants.

A. The Patriot Forge Transaction

9. The "Patriot Forge Transaction" involved Sheffield International's claim to have purchased a large amount of steel from Patriot Forge which was, in turn, sold to Eickmeier's own U.S. company Frontier Metals. There was evidence, however, that Patriot Forge never parted with the steel.[4] Patriot Forge also apparently gave back the money it received from the "sale." Based on written instructions from the appellant Jawor, Patriot Forge's chairman did a cheque exchange with Sheffield, in which neither party ended up with more money than at the beginning of the transaction.

10. Moreover, there was no evidence in Sheffield International's banking records that Sheffield International was paid for the "sale" of the steel to Frontier Metals.[5] The appellants are alleged to have made a fraudulent ITC claim in the

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[4] That is to say, it never permanently parted with the steel. If the steel ever left the company, it was returned immediately thereafter.

[5] As mentioned above, Sheffield's own banking records, indicated that its sole income was from the Federal treasury.

amount of $12,762.75 for the reporting period ending September 30, 1995 that was repeated and inflated to $13,337.20 for the period ending October 31, 1995.

B. The Heavy Metal Software Transactions

11. The "Heavy Metal Software Transactions" involved the purported sale of millions of dollars in software from Eickmeier's sole proprietorship Heavy Metal Software to Sheffield International (that Eickemeier was operating), which then "sold" that software to Eickmeier's U.S. company Frontier Metals. Sheffield International's banking records reflected no payment to Eickmeier or Heavy Metal Software for this software nor did they reflect any payment to Sheffield from Frontier Metals. Rather, financial records showed that the money flowed in the opposite direction, from Sheffield International to Frontier Metals – from seller to purchaser.

12. There was also no evidence on computers seized from Eickmeier's residence of any of the software (which he claimed was delivered by e-mail). The only evidence of any sales of software were computer generated invoices and purchase orders. Finally, a handwritten document, essentially summing up the scheme, was found during a search of Eickmeier's home. It contained the notations "Sheff" and "Frontier" and "payment never happens."

IV. Reasons for Committal

13. Watson J. framed the Crown's case for committal in the following way:

> *The Crown's case is that based upon the evidence called it would be a reasonable inference for a trier of fact to find that Sheffield was not really in the business of selling metal or software and that any paperwork generated was generated solely to further a sham being perpetrated on the government and public in order to extract money for the defendant's own purposes.*[6]

14. In response to the appellant Eickmeier's submission that the *Stubart Investments*[7] case applied to his case, Watson J. correctly observed that the issue in the case was not whether the appellants "were involved in allowable tax planning activity," but rather "whether or not there is evidence of dishonest deprivation." Her Honour then set out the criteria for eligibility for ITCs

> *In order to be eligible for an input tax credit pursuant to the Act, property or services must be acquired or imported by the registrant for consumption, use or supply in the course of the registrant's commercial activity (see Section 169 of the Excise Tax Act). Commercial activity s it relates to this case is further defined as any business carried on, except to the extent in involves the making of exempt supplies and any adventure or concern in the nature of trade except to the extent that it involves the making of exempt supplies.*[8]

15. Watson J. found that the evidence called "strongly supports a reasonable finding that Sheffield International was never involved in a 'commercial activity' and that the paperwork generated was for the purpose of maintaining the appearance of commercial activity in order to defraud the government and public

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[6] Reasons for Committal, Watson J. para 147, *Appeal Book*, Tab 3p. 83-84.

[7] [1984] 1 S.C.R. 536. The case is generally understood to stand for the proposition that a taxpayer is entitled to structure his or her affairs to as to avoid tax liability. The case also explains that a sham transaction would arise where "The transaction and the form in which it was cast by the parties and their legal and accounting advisers [can] be said to have been so constructed as to create a false impression in the eyes of a third party specifically the taxing authority." see *Canada v. Antosko*, [1994] S.C.J. No 46 at para 20-21.

[8] Reasons for Committal, Watson J. para 147, *Appeal Book* Tab 3 p.83.

of GST refunds".[9] Her Honour further found that both of the appellants were directly involved in the activity of Sheffield International.[10] Watson J. therefore committed the appellants for trial on all counts.

PART II: RESPONSE TO APPELLANT'S ISSUES

V. There was Sufficient Evidence to Commit the Appellants for Trial

16. The standard of review on an application to quash an order to stand trial is a very limited one. Neither this appeal, nor the original certiorari application, involves a *de novo* review of the preliminary hearing justice's ruling. A court reviewing the propriety of a committal order should not interfere with that order if there is a "*scintilla* of evidence" respecting each essential element of the offence charged.[11]

A. The Preliminary Inquiry Judge Properly Interpreted the *Excise Tax Act*

17. The appellants contend that Watson J. erred in her interpretation of the *Excise Tax Act*. Specifically, they complain that Her Honour did not give proper effect to the term "commercial activity" and "business", which they note includes the term "undertaking." Further they claim that she did not properly interpret "sale" as recognizing that the mere transfer of ownership of property. The

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[9] Reasons for Committal, Watson J. para. 152, *Appeal Book*, Tab 3 p. 85.
[10] Reasons for Committal, Watson J. paras. 153, 163 , *Appeal Book*, Tab 3 p. 86, 89.
[11] *Skogman v. The Queen* (1984), 13 C.C.C. (3d) 161 (S.C.C) at 172-173. *R. v. Hickey* 2007 ONCA 845 at para 5. Where a preliminary inquiry judge misinterprets an essential element of an offence, certiorari may be available where the error leads to committal in the absence of evidence on an essential element: see *R. v. Russell* 2001 SCC 53 at para 22.

conclusion of the appellants' lengthy exercise in statutory interpretation leads them to conclude that a business is entitled to receive rebates "even if the transactions were constructed to create an impression or appearance of valid commercial activity the sole purpose of which was to obtain public money from the government."[12] [emphasis added]

18. Watson J.'s interpretation of the aforementioned terms in the *Excise Tax Act* was correct. The appellants' submission that the definition of "commercial activity" includes an "undertaking" whose sole purpose is to obtain GST refunds is untenable. The appellants' technical and involved interpretation of the *Act's* terms is devoid of a rather important context – the purpose behind tax collection. Tax collection is intended to raise money for the government, not pay those who are in the business of obtaining free money from the government.

B. The GST Tax Collection and Credit Regime

19. To understand the nature of the alleged fraud, and the absurdity of the interpretation of the regime urged by the appellants, it is useful to review the GST collection and credit regime.

20. Lamer C.J.C. described the GST collection and rebate regime succinctly in *Reference Re: Goods and Services Tax (GST) (Can):*[13]

> *The GST is designed to be a tax on consumption. To this end, the GST Act contemplates three classes of goods and services.*

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[12] *Eickemeier Factum* para 30; *Jawor Factum* para 28.
[13] *Reference Re: Goods and Services Tax (GST) (Can)*, [1992] S.C.J. No. 62 at paras 3-4.

> *Taxable supplies attract the tax of seven percent each time they are sold. To the extent that the purchaser of a taxable supply uses that good or service in the production of other taxable supplies, it is entitled to an "input tax credit" and can recover the tax it has paid from the government.*
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> * * *
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> *By definition, to the extent that taxable supplies are not used by the purchaser to produce other taxable supplies, they are consumed by the purchaser. To this extent, the purchaser cannot recapture the tax already paid through the input tax credit mechanism. Hence, the GST is collected and refunded down through each stage of the production process to the ultimate consumption of a taxable supply, at which stage the tax paid is not recoverable by the purchaser.*

C. The Legislation Governing ITCs

21. Section 169 of the *Excise Tax Act* sets out the regime for claiming ITCs. It is those credits, when claimed in a GST Report, which result in refunds to the registrant. The ITC is the GST paid or payable for property or services received in the course of commercial activities (known as a "taxable supply") times the extent (expressed as a percentage) that the supply was used in the course of commercial activities.[14]

22. In order to claim an ITC, then, one must have received a taxable supply, and one must have used that supply in the course of commercial activities.

23. Section 123 of the *Excise Tax Act* sets out the definitions to be used. "Supply" is defined as "the provision of property or a service in any manner, including sale, transfer, barter, exchange, license, rental, lease, gift or

[14] *Excise Tax Act* R.S., 1985 c. E-15, s.169.

disposition". "Sale" is defined to include "any transfer of the ownership of the property and a transfer of the possession of the property under an agreement to transfer ownership of the property".[15]

24. "Commercial activity" is defined to include "a business carried on by the person". "Business" is defined to include "a profession, calling, trade, manufacture or undertaking of any kind whatever, whether the activity or undertaking is engaged in for profit".[16]

25. As Lamer C.J.C. commented in *Reference Re: Goods and Services Tax (GST) (Can), supra,* the foregoing regime is set up to ensure that the GST remains a retail tax. The definition of "commercial activity" is clearly designed to enact a distinction between private or consumer transactions and commercial transactions. While consumers are not entitled to register and claim GST refunds for goods and service, businesses are entitled to register and collect and claim GST refunds in the process of bringing goods and service to market. The regime is premised on the type of business activity in which the payment of GST would equal the collection of GST until the product or service reached the ultimate consumer.[17] Not surprisingly, it is not set up for the purpose that the appellants claim -- for the government to lose money, by paying ITCs to businesses that will never charge or collect the GST for which they are being credited.

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[15] *Excise Tax Act, supra* at s.123.
[16] *Excise Tax Act, supra* at s.123.
[17] *Reference Re: Goods and Services Tax (GST) (Can), supra.*

26. The appellants reliance on the case of *Canada Trustco Mortgage Co. v. Canada*[18] is misplaced. In that case a corporation engaged in a legitimate transaction in order to avail itself of tax benefits flowing from that transaction. Justice Quinn correctly found that that case has no application to the case at bar. Justice Quinn found that while one may organize one's activities to obtain a tax benefit, "the organization itself must not be a sham".[19] In other words, there is a difference between conducting a transaction in order to get a tax benefit and *pretending* to conduct a transaction in order to get a tax benefit.[20]

VI. There was Sufficient Evidence to Implicate the Appellant Jawor

27. The appellant Jawor argues that there was insufficient evidence to implicate her in the offences. Her submissions (found at paragraphs 87 to 116 of her factum) essentially amount to disputes with the inferences that Watson J. drew from the evidence.

28. As Watson J. highlighted in her judgment, there was sufficient evidence to find that Jawor was part of both the Patriot Forge and Heavy Metal Software Schemes. The fact that the evidence gave rise to inferences that were not inculpatory does not affect the validity of committal.

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[18] *Canada Trustco Mortgage Co. v. Canada*, [2005] S.C.J. No 56
[19] Superior Court of Justice Endorsement, Quinn J., *Appeal Book*, Tab 9 p. 136.
[20] In this regard, see *Antosko*, *supra*, at footnote 7.

29. The following evidence cited by Watson J. easily supported the appellant Jawor's committal for trial on all counts:[21]

- Jawor was the sole director and incorporator of Sheffield International, had sole signing authority over Sheffield's bank accounts, and signed all of Sheffield's cheques;
- Jawor signed and certified the first seven GST returns and was directly involved in the first transaction;
- Jawor was a beneficiary of the proceeds of the GST funds to a large degree;
- The relationship between Jawor and Eickmeier was close;
- Jawor signed and certified the corporate tax returns for Sheffield;
- She ran a business and has an MBA and by all accounts is intelligent and capable of understanding the workings of such a scheme
- Jawor made direct deposit arrangements for Sheffield's GST refunds with the Bank of Nova Scotia and she directed that future refunds got to that Bank. In 2002, she wrote to the Bank of Montreal on behalf of Sheffield, to close the company's account saying that "we no longer need it."

[21] Reasons for Committal, Watson J., paras. 163-164 *Appeal Book*, Tab 3p. 90.

PART III: ADDITIONAL ISSUES

30. There are no additional issues.

PART IV: ORDER REQUESTED

31. The appeals should be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto, this 29th day of February, 2008

Moiz Rahman
Counsel for the respondent
Director of Public Prosecutions

Jeremy Streeter
Counsel for the respondent
Director of Public Prosecutions

SCHEDULE A: AUTHORITIES TO BE CITED

Canada v. Antosko, [1994] S.C.J. No 46

Skogman v. The Queen (1984), 13 C.C.C. (3d) 161 (S.C.C)

R. v. Hickey 2007 ONCA 845

R. v. Russell 2001 SCC 53

Reference Re: Goods and Services Tax (GST) (Can), [1992] S.C.J. No. 62

Canada Trustco Mortgage Co. v. Canada, [2005] S.C.J. No 56

SCHEDULE B: RELEVANT LEGISLATIVE PROVISIONS

Excise Tax Act R.S.,1985, c. E-15

Division I

Interpretation

Definitions

123. (1) In section 121, this Part and Schedules V to X

business"
«*entreprise* »

"business" includes a profession, calling, trade, manufacture or undertaking of any kind whatever, whether the activity or undertaking is engaged in for profit, and any activity engaged in on a regular or continuous basis that involves the supply of property by way of lease, licence or similar arrangement, but does not include an office or employment;

"commercial activity"
«*activité commerciale* »

"commercial activity" of a person means

(*a*) a business carried on by the person (other than a business carried on without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the business involves the making of exempt supplies by the person,

(*b*) an adventure or concern of the person in the nature of trade (other than an adventure or concern engaged in without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the adventure or concern involves the making of exempt supplies by the person, and

(*c*) the making of a supply (other than an exempt supply) by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply;

"sale"
«*vente* »

"sale" , in respect of property, includes any transfer of the ownership of the property and a transfer of the possession of the property under an agreement to transfer ownership of the property;

Input tax credits

General rule for credits

169. (1) Subject to this Part, where a person acquires or imports property or a service or brings it into a participating province and, during a reporting period of the person during which the person is a registrant, tax in respect of the supply, importation or bringing in becomes payable by the person or is paid by the person without having become payable, the amount determined by the following formula is an input tax credit of the person in respect of the property or service for the period:

A × B

where

A is the tax in respect of the supply, importation or bringing in, as the case may be, that becomes payable by the person during the reporting period or that is paid by the person during the period without having become payable; and

B is

(*a*) where the tax is deemed under subsection 202(4) to have been paid in respect of the property on the last day of a taxation year of the person, the extent (expressed as a percentage of the total use of the property in the course of commercial activities and businesses of the person during that taxation year) to which the person used the property in the course of commercial activities of the person during that taxation year,

(*b*) where the property or service is acquired, imported or brought into the province, as the case may be, by the person for use in improving capital property of the person, the extent (expressed as a percentage) to which the person was using the capital property in the course of commercial activities of the person immediately after the capital property or a portion thereof was last acquired or imported by the person, and

(*c*) in any other case, the extent (expressed as a percentage) to which the person acquired or imported the property or service or brought it into the participating province, as the case may be, for consumption, use or supply in the course of commercial activities of the person.

Determining credit for improvement

(1.1) Where a person acquires or imports property or a service or brings it into a participating province partly for use in improving capital property of the person and partly for another purpose, for the purpose of determining an input tax credit of the person in respect of the property or service,

(*a*) notwithstanding section 138, that part of the property or service that is for use in improving the capital property and the remaining part of the property or service are each deemed to be a separate property or service that does not form part of the other;

(*b*) the tax payable in respect of the supply, importation or bringing in, as the case may be, of that part of the property or service that is for use in improving the capital property is deemed to be equal to the amount determined by the formula

A × B

where

A is the tax payable (in this section referred to as the "total tax payable") by the person in respect of the supply, importation or bringing in, as the case may be, of the property or service, determined without reference to this section, and

B is the extent (expressed as a percentage) to which the total consideration paid or payable by the person for the supply in Canada of the property or service or the value of the imported goods or the property brought in is or would be, if the person were a taxpayer under the *Income Tax Act*, included in determining the adjusted cost base to the person of the capital property for the purposes of that Act; and

(*c*) the tax payable in respect of that part of the property or service that is not for use in improving the capital property is deemed to be equal to the difference between the total tax payable and the amount determined under paragraph (*b*).

(1.2) and (1.3) [Repealed, 1997, c. 10, s. 161]

Credit for goods imported to provide commercial service

(2) Subject to this Part, where a registrant imports goods of a non-resident person who is not registered under Subdivision d of Division V for the purpose of making a taxable supply to the non-resident person of a commercial service in respect of the goods and, during a reporting period of the registrant, tax in respect of the importation becomes payable by the registrant or is paid by the registrant without having become payable, the input tax credit of the registrant in respect of the goods for the reporting period is an amount equal to that tax.

Restricted credit for selected listed financial institutions

(3) No amount shall be included in determining an input tax credit of a person in respect of tax that becomes payable by the person under subsection 165(2) or section 212.1 while the person is a selected listed financial institution unless

(*a*) the input tax credit is in respect of

(i) tax that the person is deemed to have paid under subsection 171(1), 171.1(2), 206(2) or (3) or 208(2) or (3), or

(ii) an amount of tax that is prescribed for the purposes of paragraph (*a*) of the description of F in subsection 225.2(2); or

(*b*) the person is permitted to claim the input tax credit under subsection 193(1) or (2).

Required documentation

(4) A registrant may not claim an input tax credit for a reporting period unless, before filing the return in which the credit is claimed,

(*a*) the registrant has obtained sufficient evidence in such form containing such information as will enable the amount of the input tax credit to be determined, including any such information as may be prescribed; and

(*b*) where the credit is in respect of property or a service supplied to the registrant in circumstances in which the registrant is required to report the tax payable in respect of the supply in a return filed with the Minister under this Part, the registrant has so reported the tax in a return filed under this Part.

Exemption

(5) Where the Minister is satisfied that there are or will be sufficient records available to establish the particulars of any supply or importation or of any supply or importation of a specified class and the tax in respect of the supply or importation paid or payable under this Part, the Minister may

(*a*) exempt a specified registrant, a specified class of registrants or registrants generally from any of the requirements of subsection (4) in respect of that supply or importation or a supply or importation of that class; and

(*b*) specify terms and conditions of the exemption.

Offences

327. (1) Every person who has

(*a*) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, application, certificate, statement, document or answer filed or made as required by or under this Part or the regulations made under this Part,

(*b*) for the purpose of evading payment or remittance of any tax or net tax payable under this Part, or obtaining a refund or rebate to which the person is not entitled under this Part,

(i) destroyed, altered, mutilated, secreted or otherwise disposed of any documents of a person, or

(ii) made, or assented to or acquiesced in the making of, false or deceptive entries, or omitted, or assented to or acquiesced in the omission, to enter a material particular in the documents of a person,

(*c*) wilfully, in any manner, evaded or attempted to evade compliance with this Part or payment or remittance of tax or net tax imposed under this Part,

(*d*) wilfully, in any manner, obtained or attempted to obtain a rebate or refund to which the person is not entitled under this Part, or

(*e*) conspired with any person to commit an offence described in any of paragraphs (*a*) to (*c*),

is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

(*f*) a fine of not less than 50%, and not more than 200%, of the amount of the tax or net tax that was sought to be evaded, or of the rebate or refund sought, or, where the amount that was sought to be evaded cannot be ascertained, a fine of not less than $1,000 and not more than $25,000, or

(*g*) both a fine referred to in paragraph (*f*) and imprisonment for a term not exceeding two years.

Prosecution on indictment

(2) Every person who is charged with an offence described in subsection (1) may, at the election of the Attorney General of Canada, be prosecuted on indictment and, if convicted, is, in addition to any penalty otherwise provided, liable to

(*a*) a fine of not less than 100%, and not more than 200%, of the amount of the tax or net tax that was sought to be evaded, or of the rebate or refund sought, or, where the amount that was sought to be evaded cannot be ascertained, a fine of not less than $2,000 and not more than $25,000, or

(*b*) both a fine referred to in paragraph (*a*) and imprisonment for a term not exceeding five years.

Penalty on conviction

(3) A person who is convicted of an offence under this section is not liable to pay a penalty imposed under any of sections 280.1 and 283 to 285.1 for the same evasion or attempt unless a notice of assessment for that penalty was issued before the information or complaint giving rise to the conviction was laid or made.