

TAX COURT OF CANADA

BETWEEN :

SHEFFIELD INTERNATIONAL CORPORATION

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

* * * * *

**ORAL REASONS FOR JUDGMENT
BY THE HONOURABLE ASSOCIATE CHIEF JUSTICE ROSSITER**

at the Tax Court of Canada
180 Queen Street West, 6 Floor, Toronto, Ontario
on Tuesday, September 27, 2011, at 1:33 p.m.

* * * * *

APPEARANCES:

Mr. Andrew Pelletier for the Appellant

Mr. Laurent Bartleman for Respondent

Also Present:

William O'Brien Court Registrar

Eugene Wong Court Reporter

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1 Toronto, Ontario

2 Upon commencing the excerpt on Tuesday,

3 September 27, 2011 at 1:33 p.m.

4 ORAL REASONS FOR DECISION:

5 ASSOCIATE CHIEF JUSTICE ROSSITER:

6 This is an appeal from the assessment by the
7 Minister of National Revenue whereby the appellant
8 was assessed net tax pursuant to the Excise Tax Act
9 for the period of September 1, 1995 to May 31,
10 2001. In the assessment, the Minister denied
11 Sheffield International Corporation's claim of ITCs
12 of \$5,194,127.13 for the period. It assessed
13 \$1,298,538 in penalties pursuant to Section 285 of
14 the Excise Tax Act; and assessed \$1,537,728.95 in
15 penalties pursuant to Section 280 of the Excise Tax
16 Act; and assessed \$959,732.37 of interest charges
17 in respect of Sheffield's failure to return
18 \$3,288,292.91 of refunds of net tax that it had
19 fraudulently obtained as and when required. The
20 Minister pleaded detailed assumptions of fact in
21 paragraphs 9 and 10 of the reply and has no need
22 for me to review the assumptions in detail.

23 Essentially the issue is this:

24 Was Sheffield entitled to the net tax refunds? Or
25 were the transactions shams that do not qualify as

1 bona fide transactions? The appellant described
2 the matter in dispute as three issues -- and
3 technically, they may be correct -- but it all
4 comes down to: Was Sheffield entitled to the net
5 tax refunds? Or were the transactions shams that
6 do not qualify as bona fide transactions? If the
7 answer to that question is "yes", then were the
8 gross negligence penalties under Section 285
9 properly imposed?

10 Let me go into the facts. First
11 of all, generally, Sheffield International
12 Corporation -- I'll refer to them as Sheffield --
13 incorporated in 1995 by a Halina Jawor as a sole
14 shareholder and officer. According to the
15 corporate records, she remained so until 2004. It
16 appears in the first year or so, Jawor was the
17 operator of the company with Peter Eickmeier acting
18 as manager, but then he apparently took over the
19 operations of the company during the relevant
20 period of time.

21 September 1, 1995 to May 31, 2001,
22 Sheffield filed a number of GST returns claiming \$5
23 million-plus in ITCs. The corporation received
24 \$3.2 million-plus in net tax refunds plus some
25 minor amount of interest. Mr. Eickmeier signed all

1 the GST returns filed between May 1, 1996 and May
2 31, 2001, while Jawor signed GST returns for August
3 8, 1995 to April 30 1996 and all corporate tax
4 returns from 1995 through to 2001.

5 The ITCs at issue can be divided
6 into two periods. The first relates to supposed
7 purchases and sales of metal materials, and the
8 second relates to supposed purchase and sales of
9 software. During the first period, from September
10 1, 1995 to January 1996, Sheffield claims
11 \$12,796.50 in ITCs for a supposed purchase of
12 \$182,325 in metal materials from Patriot Forge Inc.
13 and then purported to sell the metal materials to
14 Frontier Metals, Inc., an American corporation of
15 which Mr. Eickmeier was the sole director,
16 shareholder, and officer, and Sheffield's only
17 customer.

18 In January of 1996, the metal
19 materials were apparently returned to Patriot after
20 a series of transactions took place. First,
21 Patriot arranged to have \$195,087.75 deposited into
22 Frontier's account. Frontier then paid Sheffield
23 that same amount which Sheffield used to buy a bank
24 draft payable to Patriot, thereby providing Patriot
25 the same amount that it originally paid to

1 Frontier, along with returning the ownership -- if
2 they ever exchanged -- of the metal materials. The
3 \$12,762.75 difference between the purchase price of
4 \$182,325 and the \$195,087.75 purportedly represents
5 GST paid by Sheffield.

6 During the second period, from
7 1996 to 2001, Sheffield claimed \$5,179,573.08 in
8 ITCs and \$74,810,856 in reported sales in software
9 purportedly purchased by Sheffield from Heavy Metal
10 Software, a sole proprietorship operated by Mr.
11 Eickmeier and subsequently sold to Frontier. A Mr.
12 Singh -- I'll call him Mr. Singh 1 -- was the
13 individual who approached Mr. Eickmeier at the
14 Sheffield offices with the arrangements for the
15 software purchase and sale. And then a second Mr.
16 Singh, who worked for Frontier, the company of
17 which Mr. Eickmeier was the sole shareholder,
18 officer, and director, on the ultimate sale or
19 licensing of the software in the United States.

20 Mr. Eickmeier could not give
21 either Singh 1 or Singh 2 any first name or
22 identification. He paid or arranged to be paid
23 over a million dollars to Singh 1 for his software.

24 And Singh 2 worked for the company of which he was
25 a sole shareholder, officer, and director and

1 purportedly issued licences or granted licences
2 with respect to the software in question.

3 Now, I think it's important that I
4 review in detail the record before Madam Justice L.
5 Walters on Monday, April 14, 2008, which is filed
6 as an exhibit as Tab 5 in Exhibit R1. This record
7 speaks for itself and of the facts as alleged were
8 agreed by Mr. Eickmeier, the principal operating
9 mind of Sheffield International Corporation, the
10 appellant. There are additional facts which are
11 not really disputed by Mr. Eickmeier, but I have
12 reviewed the essence of the facts before the Tax
13 Court of Canada. I'm going to read this
14 extensively because I think it's important for the
15 record.

16 Page 47, April 14, 2008, Mr. Frost
17 is the prosecutor; Mr. Lefurgey is the counsel for
18 Halina Jawor; Mr. Eickmeier is self represented.
19 And the Court is Madam Justice L. Walters. Page
20 47:

21 "MR. FROST: Your Honour, I
22 can indicate to you there's
23 been a substantial change in
24 the circumstances in relation
25 to this matter. I've been in

1 discussions with Mr. Lefurgey
2 and Mr. Eickmeier. And the
3 result, I believe this case
4 has been resolved. I
5 anticipate there will be a
6 plea of guilty entered this
7 morning. As the matters
8 stand, the plea of guilty
9 will be entered by Mr.
10 Eickmeier and the matter
11 would, subject to your
12 agreement and understanding
13 of our circumstances, be
14 adjourned until some
15 convenient time at the end of
16 May for you to impose
17 sentence.
18 Because Mr. Eickmeier is
19 unrepresented, he has sought
20 out and received some legal
21 advice -- you may recall we
22 broke early on Friday for
23 that purpose -- from local
24 criminal counsel. He has
25 however --he remains

1 unrepresented. I also
2 understand he has spoken to
3 duty counsel this morning.
4 Notwithstanding that, I would
5 like rather to simply launch
6 into a plea of guilty, which
7 Mr. Eickmeier has confirmed
8 to me he's willing to do, is
9 that I'd like to hold the
10 matter down for approximately
11 an hour so that Mr. Eickmeier
12 can complete the review of
13 the proposed statements of
14 facts, which would be read in
15 support of that plea and so
16 that myself and Mr. Misiak --
17 and if Mr. Eickmeier agrees,
18 Mr. Lefurgey can spend some
19 time ensuring that he
20 understands the process and
21 implications of entering the
22 plea of guilty before you
23 today. And that's so that
24 did as much as we could over
25 the weekend, but I wanted to

1 make sure that we -- I spent
2 some time face to face with
3 Mr. Eickmeier about this
4 before it took place this
5 morning, so please -- so
6 subject to your approval, I
7 respectfully suggest that
8 trial be held down for
9 approximately an hour."

10 So the matter was then adjourned.

11 Page 49, the court reconvenes:

12 "MR. FROST: Thank you for
13 your indulgence, your Honour.
14 Your Honour, I have been able
15 to confirm this matter will
16 be resolved. I anticipate
17 that you'll be hearing a plea
18 of guilty from Mr. Eickmeier.

19 We have reviewed a set of
20 facts with him that I expect
21 will be accepted as correct.

22 There is a joint submission
23 which will be made in
24 relation to the sentence.

25 However, we will not be

1 seeking that sentence to be
2 imposed today. Rather, I've
3 agreed with Mr. Eickmeier
4 that subject to your
5 availability -- and he
6 understands all of this is
7 subject to your anointment --
8 that the matter be adjourned
9 to some convenient time at
10 the end of the month of May
11 for imposition of sentence.
12 And that in the meantime, Mr.
13 Eickmeier who is simply here
14 in a summons, will enter into
15 an undertaking which will
16 only have a couple of
17 conditions, the first of
18 which he not apply for a
19 passport. Or if he's in a
20 possession of a passport,
21 that he shred it. And the
22 only other thing being that
23 he will report every Monday,
24 starting next Monday, to the
25 detachment of the Niagara

1 regional police. Is that
2 what's they're called in
3 which I understand is the
4 detachment in Grimsby where
5 he lives.
6 So that's the order of
7 events. The conclusion of
8 this process, when the
9 sentence is imposed, I've
10 agreed that the charge
11 against Ms. Jawor will be
12 withdrawn at the request of
13 the Crown so that then the
14 result Mr. Eickmeier would be
15 pleading guilty and would be
16 sentenced pursuant to the
17 joint submission which I
18 could tell you now would be a
19 term of three years and a
20 fine -- I'll give you the
21 precise figure when the time
22 comes -- of approximately of
23 \$3.2 million, which is to be
24 paid within two years, which
25 is subject to a term of

1 imprisonment and to follow
2 two years imprisonment.
3 So that is what we
4 anticipate. I can also tell
5 you that we have taken steps
6 to ensure Mr. Eickmeier, who
7 is self represented, has been
8 given an opportunity to
9 obtain legal advice and
10 assistance. He has, although
11 not represented today, he has
12 availed himself of that
13 opportunity to meet with
14 counsel. In addition, we met
15 this morning. We reviewed
16 with all with Mr. Eickmeier
17 in Mr. Misiak's presence and
18 also Mr. Eickmeier's
19 agreement with Mr. Lefurgey's
20 presence as well. So that
21 all of the circumstances that
22 pertain to the plea of guilty
23 in this matter like this were
24 addressed, and any questions
25 Mr. Eickmeier had, we

1 endeavoured to answer for
2 him, he being fully cognizant
3 of the fact that neither
4 myself nor Mr. Lefurgey can
5 or do provide him with any
6 legal advice. So that's all
7 been said. If Mr. Eickmeier
8 could be arraigned, we'd be
9 prepare to proceed to court.
10 THE COURT: All right, so Mr.
11 Eickmeier, before we proceed,
12 we have heard from -- Mr.
13 Frost has said so I just --
14 MR. EICKMEIER: Yes.
15 THE COURT: -- want to
16 confirm, sir, that you are
17 agreeable that all of this is
18 going to take place and
19 unfold the way Mr. Frost has
20 indicated.
21 MR. EICKMEIER: Yes (and he
22 indicated).
23 THE COURT: All right. And
24 so I just want to make sure,
25 sir, because you are not

1 represented by counsel. I
2 understand you have had an
3 opportunity to speak with a
4 lawyer.

5 MR. EICKMEIER: Yes, I have.

6 THE COURT: And you have
7 spoken again to Mr. Frost and
8 Mr. Lefurgey today. You have
9 gone through all the terms --

10 MR. EICKMEIER: Yes.

11 THE COURT: -- the conditions
12 that they're suggesting, but
13 I still to need confirm, sir,
14 that you understand that this
15 means that you are waiving
16 your right to a trial, so we
17 did not finish your trial.

18 You understand that? And you
19 are waiving your right to a
20 trial. As well, your
21 understanding, by pleading
22 guilty, you are saying to the
23 Crown that they do not have
24 to prove their case again
25 beyond a reasonable doubt.

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You understand that?

MR. EICKMEIER: Yes.

THE COURT: And you are aware, sir, of the maximum penalty with respect to the charge that you are going to plead guilty to?

MR. EICKMEIER: Well, I'm not really aware of that. If there is a --

THE COURT: Mr. Frost?

MR. FROST: You know, I don't think I told Mr. Eickmeier. The maximum penalty never came up in our discussions, but certainly I'm content to inform him now. For the offence of fraud over, the maximum penalty is a penalty of ten years imprisonment.

THE COURT: Just so that you know, sir, the worst-case scenario. I want to make sure you understand that and you understand I am being

1 told that there's a joint
2 submission.

3 MR. EICKMEIER: Yes.

4 THE COURT: You understand,
5 though, it is the Court's
6 discretion. I make that
7 decision.

8 MR. EICKMEIER: Yes.

9 THE COURT: I am not bound by
10 any agreements that you have
11 with Mr. Frost, Mr. Lefurgey,
12 Mr. Misiak. I make the
13 decision. You understand
14 that?

15 MR. EICKMEIER: Yes.

16 THE COURT: All right, sir.
17 On the basis, then, of all
18 these factors and all of the
19 things we have just talked
20 about, I want to make sure
21 that you still to want plead
22 guilty as Mr. Frost has
23 indicated.

24 MR. EICKMEIER: Yes."

25 The court registrar then reads the

1 charge:

2 "That between the first day
3 of September 1995, the 28th
4 day of June 2001, at or near
5 the city of Toronto, in the
6 Toronto region and elsewhere
7 in the province of Ontario,
8 unlawfully did by deceit or
9 other fraudulent means
10 default the public of money
11 by claiming excessive input
12 tax credits of \$5,206,889.88
13 in relation to Goods and
14 Services Tax for Sheffield
15 International Corporation in
16 violation of the Excise Tax
17 Act, thereby committing an
18 offence contrary to paragraph
19 380(1)(a) of the Criminal
20 Code of Canada. Upon this
21 indictment, how do you plead?
22 Guilty or not guilty?
23 MR. EICKMEIER: Guilty."

24 Now, the guilty plea was entered
25 after that explanation given to Mr. Eickmeier by

1 the judge.

2 There is no doubt, no doubt in my
3 mind that Mr. Eickmeier fully understood and
4 comprehended the proceedings. There was no
5 extortion, there was no threat. There was no
6 indication of anything whatsoever of any pressure
7 put on Mr. Eickmeier to plead guilty to the offence
8 in question. So as far as the evidence of Mr.
9 Eickmeier presented with respect to that particular
10 -- that this was involuntarily, that he felt
11 extorted by the judge, totally and absolutely not
12 correct. He was dead wrong and for him to say that
13 was totally wrong.

14 Continuing on, with respect to the
15 facts which were presented, and I'm going to read
16 these extensively because they capsulize the entire
17 transactions in question. And they are facts to
18 which Mr. Eickmeier agreed to.

19 "MR. FROST: Your Honour, I
20 have prepared a document
21 entitled plea of guilty in
22 relation to this matter which
23 contains the facts supporting
24 the plea of guilty. If I can
25 provide you with a copy, I

1 have one which I am
2 eventually going to be asked
3 as exhibit in sentence.
4 Your Honour, if it pleases
5 the Court then, you have
6 before you a 12-page document
7 containing 21 paragraphs in
8 the matter of Her Majesty the
9 Queen v. Peter Eickmeier
10 entitled, as I say, Plea of
11 Guilty. It indicates that
12 what follows constitutes a
13 summary of the fact that are
14 alleged to support a plea of
15 guilty by the accused, Peter
16 Eickmeier. The first
17 paragraph which your Honour
18 states that Peter Eickmeier,
19 whom I will refer to Mr.
20 Eickmeier..."

21 It goes on. Page 2:

22 "MR. FROST: Continue with
23 paragraph 1, confirm that
24 they are originally charged
25 with 140 counts, alleging

1 offences pursuant to Section
2 327(1), (a), and (d) of the
3 Excise Tax Act. Each of the
4 70 charges related to monthly
5 GST reporting periods between
6 September of 1995 and May of
7 2001. It was alleged that
8 the accused attempted to
9 obtain \$5,206,889.88 in
10 refunds by making false
11 claims for input tax credits.

12 An ITC is a credit claimed
13 by a registrant for GST paid
14 or payable on purchases. The
15 agency issued \$3,289,112.87
16 in refunds. None of the
17 money has been recovered.

18 If I can stop there for a
19 moment, as part of the joint
20 submission, there will be a
21 submission to you that a fine
22 in that amount be paid as
23 part of the sentence.

24 Paragraph 2:

25 Although there is some

1 variation in the method used
2 to defraud the public,
3 generally the accused
4 followed a repetitive pattern
5 of conduct involved in the
6 filing of monthly GST returns
7 on behalf of the company
8 called Sheffield
9 International Corporation.
10 The accused, Eickmeier, set
11 up Sheffield. The accused,
12 Jawor, was of the titler,
13 incorporator and only officer
14 of the company. Sheffield
15 was incorporated in Ontario,
16 August 8, 1995 and registered
17 for GST purposes on the same
18 date.
19 Sheffield identified its
20 major business as metal
21 distribution. The first
22 fraud is a GST return,
23 occurred shortly after
24 Sheffield was incorporated,
25 was in relation to a

1 fictitious purchase and sale
2 of metal during the month of
3 September 1995 resulting in a
4 fraudulent claim for GST
5 refund in the amount of
6 \$12,762.75. That claim was
7 the subject of a prepayment
8 audit.
9 During the course of the
10 audit, false representations
11 ... were made to the auditor,
12 suggesting that the sale of
13 the metal had occurred, that
14 the metal had been sold to a
15 purchaser in the United
16 States. In fact, the day
17 before meeting with the
18 auditor, Sheffield had
19 exchanged cheques and money
20 orders for the company
21 selling the metal, Patriot
22 Steel, creating the
23 impression and documentation
24 supporting the impression
25 that an actual sale had taken

1 place. Only the
2 documentation supporting the
3 fictitious transaction was
4 provided to the auditor.
5 This initial claim was denied
6 on the basis that the
7 documentation provided in
8 support of this claim
9 suggested that the ITC could
10 not be claimed until October
11 of 1995. The claim for the
12 refund was resubmitted as
13 part of Sheffield's GST
14 return for October of 1995
15 and the refund was issued.
16 The accused, Eickmeier,
17 knowingly planned and
18 encouraged and assisted
19 Sheffield in making these
20 false refund claims. He
21 drafted documentation,
22 presented them to Halina
23 Jawor for her signature. He
24 authorized the use of
25 Frontier Metals bank account

1 and signed the cheque payable
2 to Sheffield International on
3 January 24, 1996.
4 Thereafter, Eickmeier
5 concocted a series of
6 transactions whereby
7 Sheffield purported to
8 purchase software from a
9 business operating as Heavy
10 Metal Software, TM, which was
11 . in fact the sole
12 proprietorship owned and
13 operated by Eickmeier.
14 Sheffield purported to resell
15 the software to a U.S.
16 company called Frontier
17 Metals, Inc., which also
18 owned and operated by
19 Eickmeier. The U.S. company,
20 Frontier Metals, Inc., was
21 not required to and therefore
22 did not pay GST. The result,
23 Sheffield was apparently
24 required to pay the GST to
25 Heavy Metal or Eickmeier

1 while not collecting from
2 Frontier, thus generating the
3 input tax credits that were
4 being claimed to support the
5 refunds to Sheffield. In
6 fact, no such software
7 existed, let alone was
8 purchased or sold.
9 No such software was
10 discovered during the course
11 of the investigation and no
12 record of actual transactions
13 has been identified. No
14 software was paid for, nor
15 was any GST paid or collected
16 from any party to these
17 fictitious transactions. The
18 only money located consistent
19 of GST refunds deposited into
20 Sheffield's bank account by
21 Canada Revenue Agency. The
22 majority of the refund
23 cheques were deposited into
24 Sheffield at the Bank of Nova
25 Scotia at 44 King Street West

1 in Toronto and was
2 distributed into other
3 accounts controlled by
4 Eickmeier. Much of the money
5 appears to have made its way
6 to U.S. companies and
7 eventually to the benefit of
8 Jawor and Eickmeier who were
9 operating businesses in the
10 United States, which were in
11 need of cash infusions.
12 In April of 2000, Sheffield's
13 GST returns for the period
14 ending February 29, 2 000, was
15 selected for audit.
16 Sheffield was claiming a
17 refund of \$117,419.76. Mr.
18 Ashish Patel was assigned the
19 audit. The CRA computer
20 system identified the contact
21 person at Sheffield as Pat
22 Irvine. In fact, the name
23 appears in many GST returns
24 filed by Sheffield as the
25 contact person. There was no

1 Pat Irvine at Sheffield.
2 Eickmeier provided that name
3 so that he could identify any
4 calls for Pat Irvine as being
5 from CRA in relation to GST.
6 Originally, the contact
7 person had been Halina Jawor;
8 however, after the audit of
9 Sheffield's first refund
10 claim, the CRA was given the
11 fictitious name of Pat Irvine
12 as his contact person.
13 April 6, 2000, Mr. Patel
14 called Sheffield and left a
15 message for Pat Irvine to
16 call. On April 7, he
17 received a call from the
18 person who he believed to be
19 Pat Irvine. Mr. Patel agreed
20 to provide Mr. Irvine with a
21 list of information and
22 documentation required.
23 On April 11, 2000, Patel
24 wrote to Irvine that the
25 Sheffield request to

1 information to "process your
2 GST/HST refund claim."
3 On April 12, 2000, Mr. Patel
4 received a response by
5 facsimile from Sheffield
6 International. Thereafter,
7 Mr. Patel attempted to set up
8 a meeting with the
9 representative of Sheffield
10 International by exchanging
11 voice messages with Mr.
12 Eickmeier. It was April 17,
13 2000 when he received a call
14 from a person who identified
15 himself as Eickmeier, who
16 told him that they were
17 trying to gather information
18 for the meeting. On April
19 18, 2000, Eickmeier called
20 Patel and suggested to meet
21 him on May 8, 2000.
22 On May 8, 2000, Patel met
23 with Mr. Eickmeier at
24 Sheffield International's
25 office on University Avenue

1 in Toronto. Eickmeier told
2 him: First, Sheffield buys
3 and resells computer software
4 via e-mail to the United
5 States and customer Frontier
6 Metals in Amherst New York.
7 This has been its only
8 customer since 1996 when
9 Sheffield International
10 shifted from metal
11 distribution to software
12 distribution.
13 Second, no export
14 documentation exists or is
15 required to be filed with
16 Canada customs.
17 Third, that there is no cash
18 records which can confirm the
19 export sale. Eickmeier that
20 said he goes to the United
21 States to pick up the cash,
22 no cheque is issued, and
23 invests all the money that he
24 receives in USA for Sheffield
25 International.

1 Eickmeier could not provide
2 any records of those
3 transactions and had no idea
4 why investments did not
5 appear on the financial
6 statements that he had
7 provided. He said that he
8 would look into the matter.
9 Next, Eickmeier said that the
10 person in New York from whom
11 he picks up the cash, leases
12 the software to businesses
13 and receives periodic
14 payments which he then gives
15 to Eickmeier. In addition,
16 Eickmeier told him that
17 Sheffield purchases the
18 software from a single
19 supplier, Peter A. Eickmeier,
20 a sole proprietor, and has
21 done so from the outset, that
22 there was no cancelled
23 cheques for their transaction
24 as a supplier. Peter A.
25 Eickmeier had not been paid

1 due in return to the fact
2 that the customer had not
3 paid for the software; that
4 the supplier's address is a
5 post office box; that
6 Eickmeier explained and he
7 described the nature of the
8 business as a metal supplier.
9 And his correspondence was he
10 does not believe the business
11 could be described as a
12 software reseller until the
13 money has been fully
14 received.
15 He also explained that
16 Sheffield International
17 shifted from metal
18 distribution to consumer
19 software because the owner of
20 Sheffield, Jawor, filed for
21 personal bankruptcy in the
22 United States. He explained
23 that the name Pat Irvine was
24 used as a contact person to
25 the CRA as a code to identify

1 calls from the CRA regarding
2 GST refund matters. He
3 conceded that no such person
4 exist in the relation to
5 Sheffield International. Mr.
6 Patel requested sale and
7 purchase invoices to
8 substantiate the
9 transactions. Eickmeier
10 could only produce a single
11 sale and purchase invoice.
12 He provided summary of sale
13 invoices, explained that the
14 invoices were computer
15 generated.
16 Mr. Patel confirmed that the
17 supplier of the software,
18 Peter A. Eickmeier, was not
19 and has not remitted any
20 amount to CRA reflecting any
21 taxable sales of that
22 software. On May 15, 2000,
23 Mr. Patel called Mr.
24 Eickmeier. Mr. Eickmeier
25 stated that he can an

1 acknowledgement of receipt
2 from the customer, that there
3 was no cash receipt vouchers
4 from the bank, but a copy of
5 a receipt from the customer
6 is possible and that further
7 payment can be by cashier
8 cheque instead of cash, that
9 he can provide share
10 certificate for the U.S.
11 investments, that no export
12 documentation exists since
13 none is required.
14 Mr. Eickmeier acknowledged
15 that he is the supplier to
16 Sheffield International. He
17 claimed to have filed all the
18 GST returns to the supplier.
19 When asked to produce
20 remittance payments related
21 to those returns, he replied
22 that there were none as he
23 has not received any money
24 from Sheffield International.
25 He was reminded of his

1 obligations to calculate
2 remitted taxes owing at the
3 time and invoices issued. He
4 claimed to be unaware of
5 that. He was told that Mr.
6 Patel would review the
7 manager with his manager,
8 that he would be receiving
9 correspondence by facsimile
10 requesting further
11 information.
12 On May 23, Mr. Patel wrote
13 Sheffield International
14 explaining that the audit had
15 expanded to cover the period
16 June 1, 19 9 6 to February 29,
17 2000. He asked that a number
18 of books and records be
19 available. On June 7, 2000,
20 Mr. Eickmeier responded by
21 letter on behalf of Sheffield
22 International. Amongst other
23 things, he admitted that
24 Sheffield International had
25 no general ledgers at trial.

1 He described the software as
2 originating outside of Canada
3 and arrived via the Internet.
4 His developer has not been
5 disclosed. The capabilities
6 of the software was not
7 known. Sheffield
8 International does not have
9 any brochures or marketing
10 information. There is no
11 trademark or copyright
12 agreements. The cost of the
13 software was based on the
14 gross of what price will
15 maximize profits.
16 A search of the bank records
17 of Sheffield International
18 confirmed that during the
19 periods in question, there
20 were no deposits into the
21 bank account at the Bank of
22 Nova Scotia made by or on
23 behalf of Frontier Metals.
24 Payments were made by
25 Frontier Metals to Sheffield

1 International's bank of
2 Montreal account, principally
3 to cover Sheffield
4 International's operating
5 expenses. Similarly there
6 were no payments made to
7 Sheffield International
8 account for the purchase of
9 the software from Peter A.
10 Eickmeier or Heavy Metal.
11 Money was moving from
12 Sheffield to Frontier.
13 In other words, the evidence
14 will show that the money was
15 flowing in the opposite
16 direction that one would
17 expect. The recipient of the
18 software, Frontier Metals, is
19 a New York company,
20 incorporated and controlled
21 by Peter Eickmeier.
22 Therefore, the software was
23 sold by Peter A. Eickmeier to
24 Sheffield International who
25 in turn sold to Frontier

1 Metals, Inc. No money was
2 exchanged between these
3 entities. The only money
4 received by any of these
5 entities in relation to the
6 sale of the software was
7 money paid by the way of a
8 refund to Sheffield
9 International by Canada
10 Revenue Agency.
11 This scheme involved the
12 creation of documentation
13 designed to create the
14 impression of actual
15 commercial activity in the
16 absence of any actual sales
17 or purchases of any products.
18 Similarly, Eickmeier's
19 representations to Patel were
20 false and misleading to the
21 extent that they were
22 representing that there were
23 true commercial activities as
24 opposed to mere pretense of
25 commercial activity.

1 An examination of the bank
2 records of Sheffield
3 International disclosed that
4 during the period in
5 question, monies deposited
6 into these accounts were
7 transferred by cheques
8 completed by Eickmeier and
9 signed by Jawor to the
10 account of Frontier Metals
11 and from there, were
12 deposited as follows."

13 First of all, the first heading,
14 "The Conversion of Funds Into Cash or Untraceable
15 Financial Vehicles." I won't refer to the actual
16 amounts.

17 Secondly, a category found
18 "Personal Payments and Expenses Relating to
19 Eickmeier and Jawor." I won't refer to the
20 amounts.

21 The third outlay was outlays
22 relating to the operation of Sheffield
23 International.

24 And the fourth category was the
25 payments related to corporations.

1 And the final was other payments
2 and disbursements.

3 All of these are found on page 63,
4 64, of Tab 5 of Exhibit R1.

5 "In April and May of 2000,
6 Peter Eickmeier opened a bank
7 account at HSBC in Nassau,
8 Bahamas. On May 8, 2000, the
9 day he first met with Mr.
10 Patel, he transferred 330,000
11 U.S. dollars to that account
12 from the CitiBank account of
13 Rockwell Design in Buffalo,
14 New York and the declaration
15 of source of funds dated
16 April 28, 2005 to HSBC.
17 Eickmeier declared the funds
18 to be deposited were from
19 "business earnings from
20 manufacture and sale of metal
21 products." Funds were
22 apparently transferred from
23 Nassau's accounts to accounts
24 in the United States. As of
25 today's date, this is the

1 date of the Agreed Statement
2 of Facts, investigators have
3 been unable to ascertain how
4 much money remains, either in
5 the United States, America or
6 elsewhere. The offence was
7 apparently particularly
8 motivated by a desire to
9 create businesses to create
10 with Ms. Jawor's former
11 employee."

12 And then it goes on in paragraph
13 19 and 20 about the companies in which Mr.
14 Eickmeier and Ms. Jawor might have an interest and
15 some steps taken by Mr. Eickmeier in relation to
16 Ms. Jawor, in relation to her former employment.

17 Paragraph 21, page 66:

18 "Therefore, your Honour,
19 Peter Eickmeier played a
20 central role in creating and
21 implementing the scheme which
22 he pursued between August of
23 1995 and September of 2001,
24 whereby false, misleading,
25 and fraudulent GST returns

1 were filed on a monthly basis
2 and CRA auditors were
3 deliberately mislead. False
4 claims totaling \$5,206,889.88
5 were made, and a total of
6 \$3,289,112.87 in refunds were
7 issued, none of which has
8 been recovered.
9 Those are the facts upon
10 which the Crown relies on in
11 support of guilty.
12 THE COURT: Mr. Eickmeier,
13 you have had an opportunity
14 to hear the facts read out.
15 And then I understand you've
16 had an opportunity to view
17 this document before this
18 morning. Are those facts
19 essentially correct, sir?
20 MR. EICKMEIER: Yes.
21 THE COURT: Thank you. So on
22 the basis of these facts, Mr.
23 Eickmeier, you will be found
24 guilty of count 1 as set out
25 in the indictment and the

1 conviction will be
2 registered."

3 The transcript continues on for a
4 page and a half and is then concluded.

5 This record speaks for itself and
6 the facts as alleged were agreed to by Peter
7 Eickmeier, the principal and operating mind of
8 Sheffield International Corporation, the appellant.

9 There are additional facts which are not really
10 disputed by Peter Eickmeier, but I've reviewed the
11 essence of the facts which are before the Tax Court
12 of Canada, and I don't mean to have to go any
13 further.

14 What I have before me is basically
15 the following: First of all, the assumptions that
16 the Minister of National Revenue found in the reply
17 9 and 10 of the reply.

18 Secondly, the evidence of Mr.
19 Misiak. And in particular, Exhibit R1, which we
20 reviewed in detail with him in terms of the flow of
21 funds as between Mr. Eickmeier, Sheffield
22 International Corporation, Frontier, and others.

23 And finally, number three, the
24 evidence of Peter Eickmeier.

25 Mr. Eickmeier, when he was giving

1 his evidence, was candid when he had to be. But
2 not so candid in other points which required
3 frankness and honesty, especially given the
4 criminal proceedings that he had participated in,
5 in which he admitted the whole of the transactions
6 involving the metal and the software were
7 fraudulent for the sole purpose of defrauding the
8 Government of Canada via GST rebate claims.

9 The credibility of Mr. Eickmeier
10 is important to the appellant's case. Number one,
11 Mr. Eickmeier, on behalf of Sheffield International
12 Corporation, suggesting that so long as an
13 agreement is entered into, there is a deemed
14 supply. And even if the agreement is not
15 fraudulent and not a bona fide agreement, the
16 appellant is still entitled to input tax credits.
17 To present this argument and to really believe it
18 goes to the heart of the person's credibility.
19 What Peter Eickmeier is saying is "Fraud is okay to
20 support a claim against the Government of Canada."
21 And this is even after he pled guilty to the
22 offence described and proclaimed remorse and was
23 sentenced.

24 I find this view totally
25 incredible, totally incredible, especially from a

1 person who was a lawyer in a previous life.

2 Number two, I did not find Mr.
3 Eickmeier particularly truthful. He now finds
4 excuses as to why he agreed to the Agreed Statement
5 of Facts in the criminal proceedings. He felt
6 extorted by the judge because of the possible
7 maximum sentence he faces. The record, as I
8 indicate, does not support this view, in my view
9 and in any manner whatsoever.

10 Mr. Eickmeier is a lawyer. He
11 consulted with legal counsel before agreeing to the
12 plea bargain, yet he made the plea bargain. He
13 claimed remorse at the sentencing hearing. Mr.
14 Eickmeier strikes me as a person who will say
15 anything at any particular point in time to get out
16 of a particularly unfavorable situation. And this
17 is also shown in his communications with CRA,
18 referred to earlier.

19 Number three, in giving his
20 evidence, Mr. Eickmeier has a problem focusing on
21 the question presented, even from his own counsel.
22 He wandered; he rambled; he appeared confused on
23 occasion in giving his evidence because he was only
24 wanting to look at what he thought was an
25 interpretation of the Excise Tax Act according to

1 some dictionary. He made outrageous comments such
2 as the judge dealing with his preliminary hearing
3 was just taking dictation in the course of the
4 preliminary hearing from the prosecutor.

5 Number four, Mr. Eickmeier
6 participated in a transaction whereby he was buying
7 software from a Mr. Singh, no identity. No records
8 were processed in \$1 million paid to him and Mr.
9 Singh didn't want a receipt and dropped the price
10 because to avoid tax on the software and so on.

11 Also, the person at the other end
12 of the entire transaction, Singh 2, supposedly sold
13 the software and licensed the software or entered
14 into licence arrangements for it. No documents,
15 didn't know who this fellow was, no money received,
16 all for a fellow who worked for a company of which
17 he was the sole shareholder, director, or officer.

18 I shouldn't say "no money received" because he
19 purports to have received cash in an envelope,
20 stuffed in a mailbox. Almost like Watergate.

21 Number five, the whole series of
22 transactions, that is the software transactions
23 from Singh 1 to Mr. Eickmeier purchasing the
24 software, to selling it to Sheffield and never
25 getting payment, to Sheffield then giving it to

1 frontier without getting payment, frontier then
2 having an employee, Singh 2, licensing the product.
3 All of these entities basically controlled in
4 person by Mr. Eickmeier. And that's assuming that
5 Mr. Singh 1 and 2 even existed. I don't believe
6 they existed.

7 In terms of the metal transaction,
8 all that happened in the metal transaction was the
9 money simply went around in a circle from the
10 original Patriot, right back to Patriot, all
11 basically in one day. And as the reply shows and
12 specifically pleaded, to which there has been no
13 evidence to show otherwise, the metal was
14 eventually returned to Patriot.

15 Number six, Mr. Eickmeier's
16 demeanor in Court did not impress me. He was not
17 focused on the facts, but like a lawyer, he was
18 looking for that one argument, that one narrow
19 interpretation in Section 133 of the Excise Tax Act
20 that was going to be his pot of gold. He pleaded
21 ignorance of the facts that he should have known
22 about, in particular, Mr. Singh 1 and Mr. Singh 2
23 and Patriot's involvement in the metal deal.

24 Number 7, Mr. Eickmeier avoided
25 contact with CRA using a false identity as a

1 lawyer. And as a lawyer, he should have known that
2 deception is not the way to go. He perpetrated
3 this deception even with CRA in order to avoid
4 contact with CRA and selectively discuss whatever
5 matters he may have wanted to talk to them.

6 Having said all that, and I could
7 go into more detail, I did not find Mr. Eickmeier
8 credible at all. And I totally discount his
9 evidence, except where it is confirmed by
10 independent documents or other evidence.

11 The appellant has the burden to
12 prove that the Minister's assumptions of facts are
13 wrong. And this, I think in this particular case,
14 would turn largely on the credibility of any
15 evidence the appellant presents that the
16 transactions occurred were commercial activity and
17 were not a sham.

18 In a case called Orly Automobiles
19 Inc. v. Canada, 2004 TCC 86, this is a leading
20 course case where the court had to consider whether
21 a GST registrant was indeed eligible for ITCs or
22 the transactions were merely part of a sham to
23 fraudulently obtain net tax refunds.

24 In reaffirming Associate Chief
25 Justice Bowman's, as he then was, decision, the

1 Federal Court of Appeal with Justice Létourneau,
2 speaking for himself, Justice Nadon and Justice
3 Pelletier emphasized that the appellant had failed
4 to meet the burden to prove a transaction of bona
5 fide purposes.

6 "The appellant skilfully
7 contends that the Minister
8 has failed to prove that the
9 GST has not been paid for
10 each and every one of the 307
11 cars in litigation. The
12 Minister, it is alleged, has
13 also failed to prove that in
14 each and every case of a
15 purchase the sums that
16 appeared on the contracts as
17 GST were returned to the
18 appellant. As we just said,
19 the burden was on the
20 appellant to rebut the
21 Minister's assumptions to
22 that effect.

23 In the course of all these
24 transactions, the appellant
25 made numerous payments to

1 third parties amounting to at
2 least three million dollars.

3 It is astonishing that it
4 could not say or would not
5 know who these third parties
6 were to whom it was giving
7 these substantial sums and
8 paying the GST. It did not
9 call at the hearing any of
10 these third parties. It
11 would not even inquire who
12 these companies were to whom
13 they were paying GST rather
14 than to the alleged vendors
15 or suppliers."

16 Does that sound familiar with
17 respect to the answers Mr. Eickmeier gave the
18 Crown, Mr. Bartleman, when he inquired as to Singh
19 1 and Singh 2 and the adverse inferences that he
20 requested that should be drawn. Where were these
21 other witnesses?

22 Did Sheffield engage in commercial
23 activities as defined in Section 123 of the Excise
24 Tax Act during the periods in question, and if so,
25 is GST paid or payable in relation to these

1 activities? I refer to the defined commercial
2 activities in Section 274, the definition of tax
3 benefit, tax consequences, and transactions. What
4 the appellant needs to do is demonstrate that the
5 commercial transactions were genuine and not
6 undertaken primarily to obtain net tax refunds.
7 And the relevant section is similar to the sections
8 of the GARR rules in the Income Tax Act. Section
9 274 of the Excise Tax Act specifically requires
10 that all transactions be for bona fide purposes;
11 otherwise, they're considered avoidance
12 transactions and the tax benefits are denied. And
13 I refer you to Section 274 of the Excise Tax Act in
14 detail.

15 Now, the Supreme Court of Canada
16 test for the sham doctrine is well known. It's in
17 the Canada Trustco Company v. Canada. And I'm not
18 going to refer to that anymore, other than I am
19 going to refer to the Stubart case referred to by
20 Mr. Bartleman at Tab 1 in his authorities. Tab 1
21 of his authorities is a case called 2529-195 Quebec
22 Inc. v. Canada, decision of the Federal Court of
23 Appeal, 2009 DCT 5023. And in that particular
24 case, reference was made to the Stubart decision,
25 paragraph 57. I'll read it as follows:

1 However, courts have always felt
2 authorized to intervene when confronted with what
3 can properly be labelled as a sham. The classic
4 definition of "sham" is that formulated by Lord
5 Diplock in *Snook*, supra, and reiterated by the
6 Supreme Court on a number of occasions since. In
7 *Stubart Investments Ltd. v. The Queen*, Estey J.
8 said the following (page 545):

9 ... This expression comes to
10 us from decisions in the
11 United Kingdom, and it has
12 been generally taken to mean
13 (but not without ambiguity) a
14 transaction conducted with an
15 element of deceit so as to
16 create an illusion calculated
17 to lead the tax collector
18 away from the taxpayer or the
19 true nature of the
20 transaction; or, simple
21 deception whereby the
22 taxpayer creates a facade of
23 reality quite different from
24 the disguised reality."

25 And also, this particular test, I

1 don't know if it was qualified, it was further
2 expanded upon in *Antle v. Canada*, 2010 DTC 5172.
3 That decision, paragraph 20, the court stated as
4 follows -- the Federal Court of Appeal if I'm not
5 mistaken:

6 "In so holding, the Tax Court
7 judge misconstrued the notion
8 of intentional deception in
9 the context of a sham. The
10 required intent or state of
11 mind is not equivalent to
12 mens rea and need not go so
13 far as to give rise to what
14 is known at common law as the
15 tort of deceit. It suffices
16 that parties to a transaction
17 present it as being different
18 from what they know it to be.

19 That is precisely what the
20 Tax Court judge found."

21 As in the *Orly* case, the appellant
22 must overcome the Minister's assumptions that no
23 GST was ever paid or payable and that the sales and
24 purchases were not shams. Section 274 of the
25 Excise Tax Act is quite decisive. The Excise Tax

1 Act cannot be used to obtain tax benefits unless
2 the transactions are for bona fide purposes,
3 period. As emphasized by the Federal Court of
4 Appeal in affirming the Tax Court of Canada's
5 decision in Orly, quote paragraph 26:

6 "In addition, we agree with
7 the A.C.J. that where the
8 transaction upon which the
9 claim for ITCs is asserted is
10 a sham and the money
11 purportedly paid as GST is
12 never paid or is rerouted
13 back to the claimant, that
14 claimant cannot base a claim
15 for ITCs on the fact that the
16 tax has become payable. The
17 A.C.J. found on the basis of
18 the evidence that the
19 appellant was involved in a
20 sham of this kind. The Act
21 and the Regulations were
22 devised for bona fide
23 transactions between bona
24 fide businessmen. They were
25 never intended to enable

1 participants in a sham
2 involving fictitious
3 transactions to doubly
4 benefit from it by
5 successfully claiming input
6 credits on a tax payable."

7 To succeed, then, the appellant
8 will have to show that the ITCs were claimed as
9 genuine transactions as defined under particular
10 sections of the Act. And the relevant section for
11 ITCs and the Excise Tax Act are Section 169.

12 Now, the appellant had made some
13 creative arguments with respect to the
14 interpretations and definitions of business,
15 commercial activity, person, personal property,
16 sale under Section 123 or undertaking, but the
17 burden of the appellants is to prove that the
18 transaction were for bona fide commercial purposes
19 and do not fall under the sham doctrine as
20 outlined. This would require proper evidence of
21 GST paid in true sales in a commercial context.
22 The appellant would suggest the GST funds were
23 reinvested into a business of Mr. Eickmeier and
24 paid for some of his living expenses. And these
25 submissions do nothing for his case and do not

1 address the crux of the legal issues at hand. Were
2 the transactions genuine commercial activity?

3 Also equally unsatisfying, as far
4 as I'm concerned, are the appellant's suggestions
5 to Mr. Eickmeier that he made supplies to Sheffield
6 are deemed by section 141.1(2) to be supplies made
7 in the course of commercial activities. This
8 section is irrelevant if it's found that the
9 transactions were not for bona fide purposes.

10 Now, I've already reviewed the
11 evidence in considerable detail. And I reiterate
12 some of the respondent's submissions in closing.
13 We have a difficulty plea here by Mr. Eickmeier.
14 Mr. Eickmeier was the controlling mind of Sheffield
15 International Corporation. He used a fake name for
16 contact purposes with CRA. Would a normal bona
17 fide commercial enterprise carry out a commercial
18 transaction in this way? I cannot imagine in my
19 wildest dreams or nightmares any bona fide
20 organization carrying out a commercial transaction
21 in this way, not if it was to be bona fide, not if
22 it was to be truly commercial.

23 There is nothing in this series of
24 transactions which give me any confidence
25 whatsoever that this transaction was a truly bona

1 fide commercial nature. Not Sheffield
2 International, not Frontier, not Mr. Eickmeier's
3 conduct, nothing. Did the goods even exist? In
4 the metal transaction, they likely existed. But
5 the money went around in a circle right back to
6 Patriot, and the reply states the metals go right
7 back to Patriot, so it's as if the metals didn't
8 even exist in the first place because they went
9 right back whence they came.

10 In terms of software, no. I don't
11 think that the evidence shows that the software
12 existed. There was nothing in the evidence as far
13 as I can assess that that they existed, except what
14 Mr. Eickmeier had said. And he didn't even know
15 what the software purported to do. There was no
16 records of the software, no paperwork, nothing.

17 And you always come back in a
18 transaction of this nature and you ask the
19 question: Follow the money. Follow the money.
20 Follow the money. And when you follow the money,
21 it comes right back to where it was in the first
22 place, Mr. Eickmeier, right through the whole
23 transactions. And this was all done for the sole
24 purpose of defrauding the Government of Canada; the
25 transaction was not commercial in nature. They

1 were not bona fide. The transactions were a sham.
2 Put quite simply, Sheffield International
3 Corporation was not entitled to the net tax refund.
4 The transactions were shams. They do not qualify
5 as a bona fide transaction, and the appeal is
6 dismissed.

7 Now let me turn to the gross
8 negligent penalties. The issue with respect to
9 gross negligence penalties is basically the
10 penalties would be imposed if there were false
11 statements or admissions were made knowingly or
12 under circumstances amounting to gross negligences.

13 Given that the ITCs were received as a part of a
14 sham organized fraudulently to obtain net tax
15 refunds, I am of the view that gross negligent
16 penalties are clearly appropriate.

17 The Federal Court of Appeal in
18 *Lacroix v. Canada*, 2008 FCA 2401, emphasized that
19 the burden is on the Minister to prove that
20 penalties should be imposed. I believe that the
21 respondent did provide sufficient evidence and more
22 than sufficient evidence to prove that the false
23 GST returns were filed to the knowledge and under
24 circumstances amounting to gross negligence.

25 In paragraph 28 of the *Lacroix*

1 decision, the court stated in part when they were
2 quoting *Farm Business Consultants Inc. v. Her*
3 *Majesty the Queen*, Judge Bowman, as he then was:

4 A court must be extremely cautious
5 in sanctioning the imposition of penalties under
6 subsection 163(2). Conduct that warrants reopening
7 a statute-barred year does not automatically
8 justify a penalty and the routine imposition of
9 penalties by the Minister is to be discouraged...
10 Moreover, where a penalty is imposed under
11 subsection 163 (2) although a civil standard of
12 proof is required, if a taxpayer's conduct is
13 consistent with two viable and reasonable
14 hypotheses, one justifying the penalty and one not,
15 the benefit of the doubt must be given to the
16 taxpayer and the penalty must be deleted...

17 In the circumstances of this case,
18 I do not find that there were two viable and
19 reasonable hypotheses. What I find is one viable
20 and reasonable hypothesis. Peter Eickmeier was
21 going to defraud the Government of Canada through
22 whatever vehicles he had to use, including
23 Sheffield International Corporation. And Sheffield
24 International Corporation, through the mind of
25 Peter Eickmeier, knowingly and with deceit, took

1 all steps that it could in order to fraudulent
2 obtain funds from the Government of Canada.

3 I also refer the parties to Can-Am
4 Realty Limited v. the Queen, 94 DTC 6069, which
5 described the type of conduct that would be
6 required to support gross negligence as exceptional
7 and a flagrant conduct. In Venne v. HMQ, 84 DTC
8 6247, the decision of Mr. Justice Strayer described
9 gross negligence as follows:

10 "With respect to the
11 possibility of gross
12 negligence, I have with some
13 difficulty come to the
14 conclusion that this has not
15 been established either.
16 'Gross negligence' must be
17 taken to involve greater
18 neglect than simply a failure
19 to use reasonable care. It
20 must involve a high degree of
21 negligence tantamount to
22 intentional acting, an
23 indifference as to whether
24 the law is complied with or
25 not. I do not find that high

1 degree of negligence in
2 connection with the
3 misstatements of business
4 income."

5 Here, gentlemen, I find, based
6 upon the evidence before me and the facts, that
7 there was a high degree of negligence tantamount to
8 intentional acting and an indifference as to
9 whether or not the law is complied with or not.
10 And this is clearly enunciated through the evidence
11 of Peter Eickmeier as corroborated by the other
12 research and documentation and evidence put forth
13 by the respondent.

14 Did the corporation knowingly or
15 in circumstances amounting to gross negligence file
16 returns with respect to failed false statements and
17 admissions? Having found that the transactions are
18 indeed shams in the manner described, it is
19 difficult to conceive how the appellant could
20 succeed in the appeal on the gross negligence
21 penalties.

22 An additional issue that might
23 arise is subsection 327(3) of the Excise Tax Act,
24 bars penalties imposed in this case when a person
25 has been convicted of an offence under Section 327.

1 I won't refer to the section more. Subsection
2 327(3) is not relevant. Mr. Eickmeier was
3 convicted under the provision. Sheffield
4 International Corporation was a separate corporate
5 entity has no such conviction, and as a result that
6 particular provision is of no help.

7 So I also allow the gross
8 negligence penalties and up hold the gross
9 negligence penalties as assessed by the Minister.

10 Now, gentlemen, as to costs. Mr.
11 Pelletier, the Crown wants me to fix costs. I am
12 inclined to fix costs. There's no need me going
13 home and having the costs taxed somewhere else. So
14 I might as well make the decision here today, or I
15 can come back. Do you want time to make
16 submissions on costs, or are you pretty well
17 decided all you have to say?

18 MR. PELLETIER: No, thank you,
19 your Honour.

20 ASSOCIATE CHIEF JUSTICE ROSSITER:
21 Under the general procedure rules, Rule 147 states
22 as follows:

23 (1) The Court may determine the
24 amount of the costs of all parties involved in any
25 proceeding, the allocation of those costs and the

1 persons required to pay them.

2 (2) Costs may be awarded to or
3 against the Crown.

4 (3) In exercising its
5 discretionary power pursuant to subsection (1) the
6 Court may consider

7 (a) the result of the proceeding

8 (b) the amounts in issue

9 (c) the importance of the issues

10 (d) any offer of settlement made

11 in writing

12 (e) the volume of work

13 (f) the complexity of the issues

14 (g) the conduct of any party that

15 tended to shorten or to lengthen unnecessarily the

16 duration of the proceeding

17 (h) the denial or the neglect or

18 refusal of any party to admit anything that should

19 have been admitted

20 (i) whether any stage in the

21 proceedings was

22 (i) improper, vexatious, or

23 unnecessary, or

24 (ii) taken through negligence,

25 mistake or excessive caution

1 (j) any other matter relevant to
2 the question of costs.

3 Mr. Bartleman, was there any
4 offers of settlement in writing?

5 MR. BARTLEMAN: No, your Honour.

6 ASSOCIATE CHIEF JUSTICE ROSSITER:
7 Mr. Pelletier, was there any offers of settlement
8 in writing?

9 MR. PELLETIER: No, your Honour.

10 ASSOCIATE CHIEF JUSTICE ROSSITER:
11 Mr. Bartleman, you allege that there was any
12 conduct that would have tended to shorten or
13 lengthen unnecessarily the duration of the
14 proceedings?

15 MR. BARTLEMAN: Yes, your Honour.

16 In cross-examination I repeatedly had to refer Mr.
17 Eickmeier back to the answers he gave under
18 undertaking. I give an example where he --

19 ASSOCIATE CHIEF JUSTICE ROSSITER:
20 Other than that?

21 MR. BARTLEMAN: Your Honour, there
22 was the motion which I had to grant to have Mr.
23 Eickmeier removed as counsel of record in this
24 matter. Mr. Eickmeier had filed a notice of
25 hearing prematurely. I submit that Mr. Eickmeier's

1 conduct while he was still representing the company
2 tended to prolong the proceeding.

3 ASSOCIATE CHIEF JUSTICE ROSSITER:
4 Mr. Pelletier, was there any conduct by any party
5 that tended to shorten or lengthen unnecessarily
6 the duration of the proceedings?

7 MR. PELLETIER: The only thing I
8 note, your Honour, was that it was start in
9 informal procedure.

10 ASSOCIATE CHIEF JUSTICE ROSSITER:
11 In the informal?

12 MR. PELLETIER: I apologize -- and
13 the Minister brought it to general procedure.

14 ASSOCIATE CHIEF JUSTICE ROSSITER:
15 Yes. The denial or neglect or refusal of any
16 party to admit anything that should have been
17 admitted, Mr. Bartleman? Was there anything of
18 that nature other than the appeal itself?

19 MR. BARTLEMAN: Your Honour, in
20 light of the fact of Mr. Eickmeier's guilty plea, I
21 submit that all facts should have been admitted
22 forthwith.

23 ASSOCIATE CHIEF JUSTICE ROSSITER:
24 Mr. Pelletier?

25 MR. PELLETIER: No submission.

1 ASSOCIATE CHIEF JUSTICE ROSSITER:

2 Was there any steps, Mr. Bartleman, in your mind,
3 that were at any stage which were improper,
4 vexatious or unnecessary or taken through
5 negligence, mistake or excess of caution?

6 MR. BARTLEMAN: Sorry, your
7 Honour?

8 ASSOCIATE CHIEF JUSTICE ROSSITER:

9 Were there any stage in the proceedings that were
10 improper, vexatious, or unnecessary or taken
11 through negligence, mistake or excess of caution?

12 MR. BARTLEMAN: And again, I refer
13 your Honour to not the first bump up motion, but
14 the second motion. My predecessor in the file, Ms.
15 Diana Aird, I believe, was the one who bumped it
16 from the informal to the general, but at that
17 stage, Mr. Eickmeier was not removed as counsel of
18 record. I had to bring a second motion to have Mr.
19 Eickmeier removed.

20 ASSOCIATE CHIEF JUSTICE ROSSITER:

21 Mr. Pelletier? You want to respond to that?
22 Anything?

23 MR. PELLETIER: Just that the
24 first motion was unsuccessful, your Honour, for
25 removing Mr. Eickmeier.

1 ASSOCIATE CHIEF JUSTICE ROSSITER:

2 Okay. Considering the general principles under
3 Rule 147, first of all, the result of the
4 proceedings, the respondent has been totally and
5 completely successful in all aspects of the appeal.

6 Number two, the amounts in issue.

7 The amounts in issue here are quite significant,
8 staggering when you consider the level of the fraud
9 and the deceit which occurred on this particular
10 file, over \$3.2 million, none of which has been
11 recovered.

12 The importance of the issues.
13 Every time a case comes before the Court, the
14 issues are important to the parties. That always
15 goes without saying. But in some cases, the issues
16 are more important than simply to the parties. In
17 a case of this nature, where you had the magnitude
18 of the sham which occurred, the fact that monies
19 were paid out from the Government of Canada, the
20 fact that none of these monies were basically
21 recovered and doesn't appear -- I don't know if
22 there's any hope of ever recovering them --
23 certainly would indicate that this case is of
24 tremendous importance to indicate the significance
25 that the Court attaches to cases of this nature and

1 the frauds that are committed upon the Government
2 of Canada when there was a misapplication and
3 intentional abuse of the provisions of the various
4 acts, including the Excise Tax Act.

5 The volume of the work on the
6 file. I think that given the nature of the
7 transaction, given the flow of the funds, I think
8 there was considerable amount of volume of work has
9 gone into this file, separate and apart from the
10 prosecutorial aspect of Mr. Eickmeier in his
11 prosecution.

12 The complexity of the issues. The
13 issues could be complex in the terms the facts were
14 fairly complex, but the issue itself was fairly
15 straightforward and simple from that point of view.

16 The conduct of any party that
17 tended to shorten or lengthen unnecessarily the
18 duration of the proceedings. I think that Mr.
19 Pelletier made the proceedings shorter than they
20 otherwise would by the way he handled the case and
21 he's to be commended in that regard. I think that
22 the only way that it could have been shortened
23 earlier is if that nothing -- is if there was
24 basically admission right from the front, and there
25 was just a question as to the question that Mr.

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1 Eickmeier wanted answered in the first place, that
2 was the interpretation he wanted to give Section
3 133.

4 Having considered all of those
5 factors, in particular the importance of this case
6 to the Court and to the public at large, I think
7 that the proposed costs as presented by the
8 respondent is fair and reasonable, and I would fix
9 costs in the amount of \$10,000, payable forthwith.

10 Okay, gentlemen. Mr. Pelletier,
11 do you have any questions?

12 MR. PELLETIER: No, your Honour.
13 Thank you.

14 ASSOCIATE CHIEF JUSTICE ROSSITER:
15 Thank you, gentlemen, for a well argued case, done
16 in a professional manner. The Court always
17 appreciates that.

18 _____Whereupon the Oral Reasons for Decision
19 concluded at 2:34 p.m.

I HEREBY CERTIFY THAT I have, to the best of my skills and abilities, accurately recorded by shorthand, and transcribed therefrom, the foregoing proceeding.

Eugene Wong, Court Reporter

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