

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Cite as: R. v. Cromwell, 2015 NSPC 64

Date: October 5, 2015

Docket: 2365376 -

2365484

Registry: Halifax

BETWEEN:

HER MAJESTY THE QUEEN

v.

CHRISTOPHER CROMWELL and 3020636 NOVA SCOTIA LIMITED

TRIAL DECISION

BEFORE THE HONOURABLE JUDGE ANNE S. DERRICK

HEARD: July 14, 15, 16, 17; December 8, 9, 2014; January 7; April 7, 8, 9; May 4, 6, 13, 22, June 8, 22, July 27, August 14, September 10, 17 and 21, 2015

DECISION: October 5, 2015

CHARGES: sections 239(1)(a) and (d), *Income Tax Act* and sections 327(1)(a)(c) and (d), *Excise Tax Act*

COUNSEL: Constantin Draghici-Vasilescu, for the Crown

Christopher Cromwell representing himself and 3020636 Nova Scotia Limited

Introduction

[1] Christopher Cromwell and the numbered company, 3020636 Nova Scotia Limited, through which he operates his hair styling business, have been charged with a total of 57 offences under the *Income Tax Act* (“*ITA*”) (4 counts) and the *Excise Tax Act* (“*ETA*”) (49 counts). Mr. Cromwell has also been charged with *Income Tax Act* offences as an individual (4 counts). The offences are alleged to have occurred in 2004 and 2005. The Crown alleges that Mr. Cromwell and his numbered company failed to declare income, thereby evading the payment of income taxes, and failed to report net tax, thereby evading the remittance of GST/HST (“HST”).

[2] The Crown’s focus is on cheques and cash which, in the Crown’s submission, the evidence establishes came from Mr. Cromwell’s clients. The Crown has presented considerable evidence tracking deposits of cheques and cash into Mr. Cromwell’s personal and corporate accounts, cheques and cash that did not get reported in his and his company’s 2004 and 2005 income tax returns. What did get reported were Visa and debit payments to Mr. Cromwell for hairstyling services.

[3] The unreported cheques and cash allegation is also relevant to the *Excise Tax Act* charges. The Crown submits that the evidence establishes that Mr. Cromwell’s HST returns for January through December 2004 and January through December 2005 were calculated on the basis of Visa and debit payments only with no HST remitted for income from cheques and cash.

[4] The Crown has conceded there is no evidence in relation to one count, Count #53, which alleges that Mr. Cromwell and 3020636 Nova Scotia Limited willfully obtained a GST/HST rebate or refund to which the numbered company was not entitled. As there is no evidence establishing that the rebate was obtained, I am entering an acquittal on this charge.

[5] Mr. Cromwell denies any wrongdoing. He submits the evidence does not support an inference that he intentionally did not report income. He says what looks to CRA like intentional non-reporting was simple innocent inadvertence. Mr. Cromwell says several factors resulted in income from his business not being reported to CRA: (1) his accountant, Wayne Beno credited any deposits in the

business accounts that could not be accounted for to a shareholder's loan account; (2) Mr. Cromwell did not understand how the shareholder's loan account operated and thought that any income tax implications associated with the amounts in the shareholder's loan account would be addressed by Mr. Beno; and (3) Mr. Cromwell gave explicit verbal instructions to Mr. Beno's assistant, Fred Reese, that deposits made to his personal bank account should be treated as income by Mr. Beno, only to discover subsequently that these instructions never reached Mr. Beno.

[6] Furthermore, Mr. Cromwell submits that the cash deposits in his business and personal accounts include significant loans from his brothers, George and Gregory Cromwell, made during 2004 and 2005. It is Mr. Cromwell's submission that the Crown has failed to prove beyond a reasonable doubt that the cash it claims as unreported payments for hairstyling came from clients and were not loans from his brothers.

[7] As for the HST returns which the Crown alleges were wilfully under-reported, Mr. Cromwell has said he expected his HST obligations to be addressed by Mr. Reese and Mr. Beno at the same time the rest of his business and personal accounting was being done.

[8] Mr. Cromwell and his numbered company are presumed to be innocent of the charges. The burden lies on the Crown to prove beyond a reasonable doubt that the alleged offences were committed.

The Charges

[9] I do not intend to recite *verbatim* the charges in the Information. What follows are encapsulated descriptions using amounts that were described in the evidence. In all cases where the evidence produced different amounts from those in the original charges, the new amounts are lower.

- Counts 1 and 2 charge Mr. Cromwell and the numbered company with committing offences contrary to section 239(1)(a) of the *ITA* by making, participating in, assenting to or acquiescing in the making of false or deceptive statements in a T2 Return of Income (corporate income tax return)

filed for 2004 and 2005 by failing to declare income in the following amounts and thereby evading taxes:

- 2004 \$20,208.73 (unreported income)
- 2005 \$26,355.29 (unreported income)
- Counts 3 and 4 charge Mr. Cromwell and the numbered company with committing offences contrary to section 239(1)(d) of the *ITA* by wilfully evading the payment of taxes by failing to declare income in the following amounts:
 - 2004 \$20,208.73(unreported income)
 - 2005 \$26,355.29(unreported income)
- Counts 5 through 16 charge Mr. Cromwell and the numbered company with committing offences contrary to section 327(1)(a) of the *ETA* by making, participating in, assenting to or acquiescing in the making of false or deceptive statements in the HST returns of the numbered company for the months of January through December 2004. The net tax amounts that the Crown alleges Mr. Cromwell and the numbered company failed to report are:

○ January 2004	\$153.09
○ February 2004	\$115.24
○ March 2004	\$142.50
○ April 2004	\$57.61
○ May 2004	\$107.24
○ June 2004	\$415.70
○ July 2004	\$301.77
○ August 2004	\$331.90
○ September 2004	\$434.23
○ October 2004	\$329.75
○ November 2004	\$304.31
○ December 2004	\$337.95
- Counts 17 through 28 allege the same section 327(1)(a) *ETA* offences for January through December 2005, the net tax amounts for each month that the Crown alleges were not reported as follows:

○ January 2005	\$388.47
○ February 2005	\$359.07

- | | |
|------------------|----------|
| ○ March 2005 | \$156.03 |
| ○ April 2005 | \$378.86 |
| ○ May 2005 | \$321.70 |
| ○ June 2005 | \$326.93 |
| ○ July 2005 | \$202.08 |
| ○ August 2005 | \$364.97 |
| ○ September 2005 | \$449.45 |
| ○ October 2005 | \$392.55 |
| ○ November 2005 | \$284.17 |
| ○ December 2005 | \$329.01 |
- Counts 29 through 40 allege that Mr. Cromwell and the numbered company committed offences contrary to section 327(1)(c) of the *ETA* by wilfully evading the remittance of taxes in each month of 2004 in the amounts indicated above for January through December 2004.
 - Counts 41 through 52 allege that Mr. Cromwell and the numbered company committed offences contrary to section 327(1)(c) of the *ETA* by wilfully evading the remittance of taxes in each month of 2005 in the amounts indicated above for January through December 2005.
 - Counts 54 and 55 allege that Mr. Cromwell committed offences contrary to section 239(1)(a) of the *ITA* by making, participating in, assenting in or acquiescing in the making of false or deceptive statements in a T1 Return of Income (personal income tax return) for 2004 and 2005 respectively by failing to declare income in the following amounts, thereby evading taxes:
 - 2004 \$22,790.95 (unreported income)
 - 2005 \$29,722.91 (unreported income)
 - Counts 56 and 57 allege that Mr. Cromwell committed offences contrary to section 239(1)(d) of the *ITA* by wilfully evading the payment of taxes in 2004 and 2005 by failing to declare income in the following amounts:
 - 2004 \$22,790.95 (unreported income)
 - 2005 \$29,722.91 (unreported income)

Canada Revenue Agency's Random Audit and Subsequent Investigation – An Overview

[10] The charges against Mr. Cromwell and his company emerge from an investigation conducted by the Canada Revenue Agency (“CRA”) following a

random audit. The CRA first concerned itself with Mr. Cromwell's hairstyling business in November 2007 through a CRA auditor, Jennifer Jones. She reviewed the three bank accounts controlled by Mr. Cromwell – business accounts identified as the Bedford ("Bedford") and Spring Garden Road ("SGR") accounts and his personal account – and formed the view that there were many unreported sales from Mr. Cromwell's hairstyling business.

[11] The activity in Mr. Cromwell's three bank accounts during 2004 and 2005 have been the focus of intensive examination in the audit and investigation stages and in the evidence led by the Crown at this trial.

[12] Ms. Jones made a referral of Mr. Cromwell's file to Enforcement in May 2009. (*Exhibit 7, Tab 4, page 27 and Tab 5, page 31*) The investigation that followed was conducted by CRA investigator, Sandra Denny. Sandra Denny was a key Crown witness.

[13] Through a production order Ms. Denny obtained back-up documents for the deposits to Mr. Cromwell's corporate accounts in 2004 and 2005 and the cheques that were written by clients for hair services. Mr. Cromwell's 2004 personal bank statements were seized by Ms. Denny from the auditor who had obtained them from Wayne Beno. Mr. Beno operates an accounting/book-keeping business and provided accounting services to Mr. Cromwell for the taxation years 2004 and 2005, preparing the required financial statements and corporate and personal income tax returns for these years.

[14] Mr. Cromwell's 2005 personal bank account statements were not produced from the seizure of documents from Mr. Beno. Ms. Jones obtained the statements from Mr. Cromwell. Ms. Denny then seized them from Ms. Jones for her investigation.

[15] Ms. Denny also reviewed all the work done by Wayne Beno for 2004 and 2005 and compared it to the source information (working summaries/worksheets) provided to Mr. Beno by Mr. Cromwell, and the corporate bank statements. Mr. Cromwell had provided Mr. Beno with documentation in 2006 for the preparation of financial statements and income tax returns for the years 2004 and 2005. By 2006 Mr. Cromwell was under pressure from CRA to get his returns filed as they were overdue.

[16] In her review of Mr. Beno's work, Ms. Denny found some errors in calculations, including arithmetic errors, items being counted twice or left out, and errors in how certain items were treated by Mr. Beno. None of these errors, whether made by Mr. Cromwell or Mr. Beno, were used by CRA against Mr. Cromwell. Ms. Denny testified that she took "a very conservative" approach in dealing with Mr. Cromwell's file and did not include in the quantum being pursued by CRA any amounts that she determined had been calculated or classified in error.

[17] Ms. Denny's analysis led her to conclude that Mr. Cromwell's figures for sales from his hairstyling business, provided to Mr. Beno for the preparation of the financial statements and income tax returns, were comprised solely of Visa and debit payments. It is Ms. Denny's evidence that no cheques or cash used to pay for Mr. Cromwell's hairstyling services were included in Mr. Cromwell's calculations on the working summaries he prepared for Mr. Beno or the notations he made on the corporate bank statements. Ms. Denny testified she never came across any written instructions to Mr. Beno concerning Mr. Cromwell's personal bank account. All of Mr. Cromwell's instructions to Mr. Beno were contained on the worksheets he prepared. (These worksheets are found in Exhibit 11 which are documents Ms. Denny obtained from Mr. Beno by production order.)

[18] Ms. Denny also concluded that the HST amounts Mr. Cromwell had calculated and which were represented on the HST returns were based exclusively on the sales reported in Mr. Cromwell's worksheets, that is, Visa and debit sales only. Aside from a few errors that were not taken into account by CRA, Mr. Cromwell's HST calculations were correct, that is, they were correct based on the Visa and debit sales. There was no HST calculated for any sales other than the Visa and debit sales which Ms. Denny concluded were the only types of sales Mr. Cromwell reported.

[19] Mr. Cromwell did not take issue with Ms. Denny's numbers. He said of her evidence there was not really anything he wanted to address. "She did a very good accounting job; everything is pretty cut and dried."

Mr. Cromwell's Description of Misunderstanding and Missed Instructions

[20] Mr. Cromwell acknowledges that 3020636 Nova Scotia Limited's corporate income tax returns and his own personal tax returns for the years 2004 and 2005 do not reflect all the cash and cheques he received as payment from clients. He admitted in his evidence that in 2004 and 2005 he deposited client payments – cheques and cash – into his personal account as well as his business accounts. He did so, he says, because his book-keeping practices were haphazard and he was simply trying to stay on top of personal and business financial obligations. Mr. Cromwell testified that he was a busy hairstylist, not a bookkeeper.

[21] It was Mr. Cromwell's evidence that his chaotic book-keeping caught up to him by 2006. CRA was demanding that he file his overdue corporate and personal tax and HST returns. He engaged Mr. Beno and tried to compile the information Mr. Beno required to prepare the corporate financial statements and the tax returns for 2004 and 2005. Mr. Cromwell says he had no intention of not reporting income to CRA. He testified that he intended Mr. Beno would take these deposits into account when preparing the tax returns.

[22] It was Mr. Cromwell's evidence that he did not understand the operation of the shareholder's loan account into which Mr. Beno placed any amounts from the business accounts whose origins he could not determine.

[23] Mr. Cromwell testified that he gave explicit instructions to Mr. Beno's assistant, Fred Reese, for the deposits in his personal account to be treated as income from his business. According to Mr. Cromwell he gave these instructions in September 2006, when Mr. Beno was working on the company's 2004 and 2005 financial statements and preparing the corporate and personal income tax returns. Mr. Cromwell testified that he expected his instructions to be communicated to Mr. Beno. He said that up until he was charged he was unaware the instructions he gave Mr. Reese had failed to reach Mr. Beno and was therefore unaware that income had not been reported.

Christopher Cromwell's Hairstyling Business

[24] Mr. Cromwell has been a hair stylist for many years. In the mid-1990's he owned a hair salon on Spring Garden Road. In approximately 2002 he sold the assets of his business – chairs and inventory – to John Stappas who owns the Sykea salon. Sykea also took over Mr. Cromwell's Spring Garden Road lease. Mr.

Cromwell continued to work out of the salon space as an independent contractor, paying Mr. Stappas a daily chair rental. He operated his own business in this fashion at Sykea for approximately two and a half years.

[25] During this time, Sykea had a Bedford location as well as the salon on Spring Garden Road. Mr. Cromwell also worked at the Bedford location as an independent contractor. As Mr. Stappas explained in his testimony, Mr. Cromwell was “a full-time renter dividing his time between the two locations.”

[26] Late in 2002, the hair stylists at the Sykea Bedford location decided to leave Sykea and set up a new salon. Mr. Cromwell went with them as this exodus closed the Bedford salon. The new salon, Zig Zag, started operating immediately. Mr. Cromwell’s relationship with Sykea at the Spring Garden Road location continued until 2005.

[27] Mr. Stappas described how the relationship with Mr. Cromwell worked at Sykea: a client would call for Mr. Cromwell and the Sykea receptionist would make the appointment. When a client arrived for an appointment, he or she would be greeted by Mr. Cromwell who would then perform the required services. He had his own Visa/debit machine, set his own prices and collected his own payments. He was responsible for his own HST remittances. Mr. Cromwell paid Sykea at the end of each week for the chair rental based on how many days he had worked.

[28] It was Mr. Stappas’ evidence that in the period of 2002 – 2005 payment for hairstyling services by debit and cheque was popular although clients also paid with cash. He testified that “not to [his] knowledge” was Mr. Cromwell sharing his Visa/debit machine with anyone else in the salon.

[29] Mr. Stappas recalls that Mr. Cromwell was busy during the 2002-2005 years with 4 – 8 clients per day.

[30] As with the clients and former clients who testified at this trial, Mr. Stappas made no loans to Mr. Cromwell nor did he borrow any money from him.

[31] Dana Sharkey worked for Mr. Cromwell as a hair stylist during the time Mr. Cromwell owned his Spring Garden Road salon. Upon the sale of the salon to Sykea, Ms. Sharkey worked for Mr. Stappas, including at the Bedford location. She is a co-owner of the Zig Zag salon that opened in late 2002. Mr. Cromwell

rented a chair from Zig Zag for a fee of \$50 per week. Ms. Sharkey recalls that Mr. Cromwell worked on Mondays or Thursdays at Zig Zag or both.

[32] At Zig Zag, Mr. Cromwell looked after his own clients and had his own Visa/debit machine. He did not share his machine with anyone at the salon. Ms. Sharkey testified that at the time there were more cash payments from clients than there are now and fewer debit payments.

Payment for Services - Christopher Cromwell's Current and Former Clients

[33] The Crown called 76 current and former clients ("clients") of Mr. Cromwell's as witnesses. In the Crown's submission these clients represent only a sampling of the business Mr. Cromwell did in 2004 and 2005.

[34] The client-witnesses described a variety of payment options that were available in 2004 and 2005. Clients paid Mr. Cromwell by Visa and debit and with cheques and cash.

[35] Mr. Cromwell's clients were shown copies of cheques made out to "Christopher Cromwell" in 2004 and 2005 which they identified as cheques they had written to pay for hairstyling services he provided. Most of these clients tipped Mr. Cromwell for his services. Tips were paid in various ways: as part of a rounded-up cheque payment or as a percentage of the service or sometimes, simply as cash. Percentages ranged from 10 – 20 percent. Cash tips were as low as \$2 and as high as \$25.

[36] In many cases, clients were unable to be specific about how much of the cheque payment was a tip or if the difference between the amount of the cheque and the cost for the service was a tip or the cost of a hairstyling product. Many clients guessed at whether the cheques they were asked to identify included an amount for a tip, or they had no recollection at all. Often the evidence was that "probably" or "likely" a tip had been included or paid.

[37] Some clients expressly stated that they had a practice of not tipping the owner of the salon. Other clients simply said they did not tip without explaining any reason for not doing so.

Wayne Beno's Retainer

[38] Mr. Cromwell became Mr. Beno's client some time in 2002/2003. Mr. Beno does not have an accounting designation but has been providing accounting services for individuals and small businesses since 1991. He also did accounting in the military, has a university accounting degree, a Bachelor's in Business Administration, and has completed a number of the requirements for a CMA designation. He ultimately decided not to complete the program as it was unnecessary for his purposes.

[39] Through his business, Padgett Business Service, a franchise Mr. Beno purchased in 1991, Mr. Beno has access to customized software which he used to do the work required for Mr. Cromwell. Mr. Beno's work for Mr. Cromwell extended from 2003 to 2005, and to a limited extent in 2006. Unlike Mr. Beno's typical clients who brought their financial information on a month-to-month basis, Mr. Cromwell was more sporadic.

[40] In the preparation of the accounting work for 2004 and 2005, Mr. Beno relied on information provided to him by Mr. Cromwell which included handwritten summary sheets ("worksheets") in which Mr. Cromwell had detailed income, transfers between Mr. Cromwell's Bedford and Spring Garden Road bank accounts, loans made to Mr. Cromwell by the corporation and loans from Mr. Cromwell to the corporation, and calculations for HST. Mr. Beno also referred to the bank statements for the Bedford and Spring Garden Road corporate accounts.

[41] The terms of Mr. Beno's retainer are set out in "A Notice to Reader" attached to the front page of the numbered company's financial statements for 2004. (*Exhibit 13*) It states:

We have prepared the accompanying financial statements of CHRISTOPHER CROMWELL HAIR SALON INC for the year ending 12-31-04 from the books and records of the corporation and from other information supplied to us by management. We have not performed an audit, a review or a verification of the information contained in such books records or otherwise supplied to us for accuracy or completeness. Accordingly, we do not express any opinion in respect of such statements.

[42] Mr. Beno testified that his terms of engagement for doing the statements for Christopher Cromwell's hair styling business was to prepare the financial documents based on the information that Mr. Cromwell prepared for him. He was not tasked with preparing the statements for an audit. He prepared "a compilation" of Mr. Cromwell's numbers and was under no obligation to prepare reviewed or audited financial statements.

[43] Mr. Beno testified that Mr. Cromwell's source documentation was "much more meticulous" than he usually saw. Mr. Cromwell had taken care to ensure that Mr. Beno could see what the transactions were between the two business accounts. When Mr. Beno received the corporate bank account statements from Mr. Cromwell, notations had been made on them.

[44] It was Mr. Beno who did the accounting work on Mr. Cromwell's file. He recalls assigning to his associate, Mr. Reese, only the amalgamation of the Bedford and Spring Garden Road accounts on an Excel document for the corporate income tax return. CRA regarded it as all one company so Mr. Beno had the accounts amalgamated by "adding the numbers together."

[45] Mr. Beno testified that the source documentation provided by Mr. Cromwell was what Mr. Cromwell expected him to use in preparing the accounting records. The source documents were intended to assist Mr. Beno determine the nature of the transactions that were indicated. He does not explain the accounting transactions to his clients. In discharging his retainer Mr. Beno would discuss any discrepancies with the client. He does not recall any major issues coming up in relation to the work he did for Mr. Cromwell. It was not in the terms of his retainer to verify the amounts that Mr. Cromwell reported to him.

[46] As for the sources of the deposits into the accounts, Mr. Beno testified that looking at deposit slips was the only way he would have known what the amounts deposited into the Cromwell bank accounts were for. It was Mr. Beno's evidence that he had never looked at any of Mr. Cromwell's deposit slips and said in response to Mr. Cromwell: "You may not use deposit slips." Mr. Cromwell never said anything to Mr. Beno about any loans or assistance from family or friends.

[47] Mr. Beno's retainer did not include dealing with the HST obligations of 3020636 Nova Scotia Limited. He did not prepare or file HST returns for Mr.

Cromwell. Mr. Cromwell was collecting HST at the time when Mr. Beno was providing services. His HST obligations included the requirement to charge HST on hairstyling services and remit the HST to Revenue Canada. Mr. Beno testified that he did not know from looking at the source documents supplied by Mr. Cromwell how he was tracking the HST.

[48] Mr. Beno recalls that there was urgency with respect to preparing Mr. Cromwell's tax returns for 2004 and 2005. CRA collections had called him looking for information.

The Evidence of Jennifer Jones – the CRA Auditor

[49] Jennifer Jones conducted an income tax and HST audit of Mr. Cromwell. She explained that an auditor looks at books and records to assess compliance with the *Income Tax Act* or *Excise Tax Act* or both. A taxpayer is being compliant if they are reporting all revenue and if the expenses they are claiming are allowable.

[50] The audit of Mr. Cromwell was a "core" audit. While totally random in relation to Mr. Cromwell, it targeted an industry which the CRA had decided to examine.

[51] On December 21, 2007 Ms. Jones received records she requested from Mr. Beno. These were invoices, copies of bank statements, HST returns, receipts for expenses by month and copies of the personal and corporate tax returns.

[52] In his cross-examination of Ms. Jones Mr. Cromwell asked if Mr. Beno had discussed with her the fact that certain deposits that did not belong in Mr. Cromwell's personal account should have been attributed to the corporate account. Ms. Jones testified that Mr. Beno had not had any such discussion with her. This evidence is consistent with what Mr. Cromwell has conceded, that Mr. Beno did not receive any such instructions.

[53] Ms. Jones conducted her audit in accordance with an Audit Plan which involved considerable "desk" work in preparation for interviewing Mr. Cromwell. She kept a running file of the work she did on the audit. (*Exhibit 7, Tab 3*) Her desk review discovered that Mr. Cromwell had not filed HST returns in 2004 and 2005. (*Exhibit 7, Tab 6, page 40*) Mr. Cromwell had told her in a telephone conversation on November 27, 2007 that due to financial issues he had not filed

HST in years. He repeated this when Ms. Jones interviewed him on December 10, telling her that he had gotten so far behind on his HST filings because he “didn’t have the money to pay them.”

[54] In a conversation in April 2008, Mr. Cromwell and Ms. Jones had a discussion about her filing his outstanding HST returns. Mr. Cromwell wanted this done but advised he did not have the money to cover the returns and asked for an estimate of the amount owing so he could take out a line of credit. Ms. Jones did ultimately facilitate the filing of Mr. Cromwell’s returns.

[55] Ms. Jones also referred Mr. Cromwell’s HST file to Enforcement. As required, Ms. Jones filed separate reports for each referral to Enforcement – Tabs 7 (corporation), 8 (HST) and 9 (Mr. Cromwell personally) of Exhibit 7. Other than a meeting with the CRA investigator, Sandra Denny about the work she had done on the audit Ms. Jones had no further involvement with the files once they were referred to Enforcement.

The Evidence of Sandra Denny, the CRA Investigator

[56] Sandra Denny obtained Mr. Cromwell’s Toronto Dominion corporate bank records by production order. She mined them to calculate the cheques that were deposited into Mr. Cromwell’s Spring Garden Road (SGR) and Bedford bank accounts. She identified cheques that were not recorded on the worksheets Mr. Cromwell prepared for Mr. Beno. Whatever was not provided to Mr. Beno did not make it on to the General Ledger and therefore was not reported to Revenue Canada for taxation purposes. (Mr. Beno explained that a General Ledger was a listing of all the transactions in a corporation separated by classification.)

[57] Ms. Denny also looked at Mr. Cromwell’s personal bank account for 2004 and 2005 and analyzed the activity in that account for those years.

[58] Ms. Denny also made calculations relating to unreported cash and HST.

[59] I will be broadly reviewing Ms. Denny’s evidence relating to her investigation into unreported cheques and cash and HST. Ms. Denny testified over six days and referred to a considerable amount of paperwork she generated in her analysis of Mr. Cromwell’s accounts. Her worksheets are found in Exhibits 21, 21-

A through F, 21-G and 21-GA. These exhibits together constitute over 100 pages of calculations and analysis.

[60] Ms. Denny's worksheets for 2004 and 2005, dealing with her analysis relating to cheques, cash and HST, are found in Exhibit 21, at pages 45 – 52 (with the appropriate substitutions of Exhibits 21-D, 21-E, and 21-F for the original pages 49, 51 and 52 on which Ms. Denny identified errors she had made, errors that came to light during her lengthy testimony.) Ms. Denny's analysis is also found in Exhibit 21-G, additional worksheets she prepared, at pages 71 – 75. (I note that in the course of Ms. Denny's testimony, it was discovered that page 72 which dealt with HST was found to contain errors. Ms. Denny prepared a corrected work sheet in substitution for page 72 which was filed by consent as Exhibit 21-GA.)

[61] At page 89 of Exhibit 21-G, Ms. Denny determined what happened to the cheques paid by clients who testified, that is, where they were deposited. Copies of the cheques can be found in Exhibit 3. The evidence in Exhibit 3 was obtained by production order and formatted according to the production order (*Exhibit 1*). The tabbed sections of Exhibit 3 provide a roadmap for the deposits and where they were made. For example, Exhibit 3, Tab 97, pages 695 – 700 is the paper trail for a deposit made on June 14, 2004.

How Busy was Mr. Cromwell's Hairstyling Business in 2004 and 2005?

[62] Although Mr. Cromwell has testified that his hairstyling business took a significant downturn after he sold it in 2002, I do not accept that Mr. Cromwell's business was struggling during 2004 and 2005, the years relevant to this case.

[63] In pages 92 – 94 of Exhibit 21-G, Ms. Denny extrapolated from the client testimony (which she analyzed in Exhibit 21-G at pages 89 to 91) what Mr. Cromwell's hairstyling business generated. She calculated a total of 431 visits in 2004 and 2005 with a total each year of \$32,100.60 paid. She included in this amount \$2439.03 for tips based on an average tip rate of 7.8% calculated from the sample of witnesses who testified about tipping. She generated a figure of \$74.48 as the cost of the average visit to Mr. Cromwell for hairstyling services. These figures are reflected on page 95 of Exhibit 21-G.

[64] Ms. Denny estimated that Mr. Cromwell would have worked 46 weeks a year in 2004 and 2005, taking 6 weeks off for holidays and vacation. Working 5 days a week this would mean 431 appointments would work out to under 2 appointments per day worked. (1.89) It was Ms. Denny's evidence that it is unreasonable to assume that there were on average only 2 clients per day in 2004 and 2005 obtaining services from Mr. Cromwell. This would also not accord with the evidence of John Stappas and Ms. Sharkey which I referred to earlier in these reasons and which I accept.

[65] Ms. Denny concluded from her analysis that the 76 clients who testified were far from enough for projecting Mr. Cromwell's income.

[66] Ms. Denny had very limited access to appointment books for Mr. Cromwell. She was able to find a list of appointments for Mr. Cromwell from January 2 to January 23, 2004. This provided a snapshot of a more likely average client-load as does the evidence of Mr. Stappas and Ms. Sharkey.

[67] Ms. Denny testified that Mr. Cromwell's average was more likely to have been 7.6 clients per day than 2 clients per day. Working 5 days per week for 46 weeks – 230 days per year would have meant 1748 client visits (7.6×230) which, on the basis of an average of \$74.48 per appointment would have brought in \$130,191.04 per year, an estimate of Mr. Cromwell's earnings, including tips and HST.

[68] Ms. Denny's assessment of Mr. Cromwell's business activity is consistent with other evidence, Mr. Stappas and Ms. Sharkey as I have noted, and that of Mr. Cromwell himself who said that when he was preparing his documentation for Mr. Beno in 2006 he was a "busy hairstylist". As I will be discussing, Mr. Cromwell's brothers also knew him to have a very successful business in 2004 and 2005.

The Cheques for Hairstyling that Did Not Get Reported as Income

[69] Ms. Denny testified that, as part of her investigation, she had to determine that the deposited cheques were not from a non-taxable source, like gifts or loans.

[70] Ms. Denny's summary of the cheques for 2004 and 2005 that went into Mr. Cromwell's three accounts is found in Exhibit 21 at page 53. Here Ms. Denny

calculated the unreported cheques deposited in the business accounts (SGR and Bedford) and Mr. Cromwell's personal account.

[71] The total cheque deposits included in the quantum (*Exhibit 21-G, page 73*) include cheques written by Cromwell clients who did not testify. On pages 54 and 55 of Exhibit 21 Ms. Denny itemized the cheques of those Cromwell clients.

[72] I am being asked to determine as a fact that the "no-witness" cheques were payment for hair-related services and therefore taxable. The Crown is relying on the consistent amounts and the frequency of payment to establish the taxable nature of the income and the fact that there is no evidence of Mr. Cromwell providing any services that were not hair related. For example, on page 55, the repetitiveness of L.S.'s payments supports the taxable nature of the services she was purchasing.

[73] None of the client witnesses who testified loaned Mr. Cromwell money. Mr. Cromwell testified to receiving loans in 2004 and 2005 only from his brothers. The only reasonable inference is that payments made by Mr. Cromwell's clients, including the clients who did not testify and whose cheques Ms. Denny reviewed in her investigation, were for hairstyling services, that is to say, were taxable income.

[74] This accords with Mr. Cromwell's testimony that he deposited client payments into both his personal and business accounts and that these deposits only didn't get reported as income because his instructions were not communicated by Mr. Reese to Mr. Beno. Mr. Cromwell never said that any of these cheque deposits were gifts or loans from clients and I find they were not.

[75] In Exhibit 21-G at page 74 Ms. Denny calculated that a total of 149 of 152 cheques in 2004 (98%) were not reported as income by Mr. Cromwell's numbered company. Mr. Cromwell characterized them as loans to the business. Of the 149 cheques, 60 percent (92 cheques) were deposited into Mr. Cromwell's personal account. 40 percent were deposited into one or the other of the business accounts. (42 – SGR and 18 – Bedford)(*Exhibit 21-G, page 74*)

[76] It was Ms. Denny's evidence that during 2005, none of the 153 customer cheques were reported as income of the company. 67 percent (102 cheques) were

deposited into Mr. Cromwell's personal account, and 33 percent into the SGR (44 cheques) and Bedford (7 cheques) corporate accounts. (*Exhibit 21-G, page 88*)

[77] On cross-examination by Mr. Cromwell Ms. Denny acknowledged that he had never denied he was depositing business income into his personal account. She agreed there were a number of business transactions going through the personal account. As I have noted, Ms. Denny found that the majority of client cheques were deposited to Mr. Cromwell's personal account with debit and Visa payments going into the business accounts.

The Shareholder's Loan Account

[78] The Crown, relying on the evidence of Ms. Denny and the analysis she conducted with respect to Mr. Cromwell and the numbered company, asserts that Mr. Cromwell disguised income he received for providing hairstyling services as loans from him to 3020636 Nova Scotia Limited.

[79] Page 74 in Exhibit 21-G is Ms. Denny's worksheet of the "loans from Christopher" to the business for 2004. This Denny worksheet was prepared from the worksheets Mr. Cromwell provided to Mr. Beno. Ms. Denny's investigation led her to conclude that what Mr. Cromwell showed as shareholder's loans were actually cheques and cash paid by clients for hair services he rendered. According to Ms. Denny's investigation, what Mr. Cromwell characterized as a loan to the corporation was actually income of the business.

[80] Page 88 of Exhibit 21-G is Ms. Denny's analysis of what were identified as loans to the business by Christopher Cromwell for 2005. Ms. Denny testified that the amounts identified by Mr. Cromwell on the worksheets for Mr. Beno included cheque and cash deposits that Ms. Denny concluded were unreported income of the numbered company, as well as some personal loans to the business.

The Shareholder's Loan Account – the Evidence of Mr. Cromwell and Wayne Beno

[81] Mr. Cromwell and Mr. Beno each testified that where money couldn't be accounted for in the business accounts, Mr. Beno put it under the shareholder's loan account. Mr. Cromwell says he did not understand how this worked. He says Mr. Beno told him it would be figured out later.

[82] It was Mr. Beno's evidence that he accounted for all the money that moved through Mr. Cromwell's business. Loans to Mr. Cromwell, income, and certain expenditures were placed by Mr. Beno into a shareholder's loan account, a running account. At the end of the year, the shareholder's loan account would be examined for the purpose of determining how to calculate it – how to classify the entries – as bonuses, dividends, or wages. If, at the end of the year, the corporation owed the shareholder money, then this would be reflected in a liability account. If the shareholder owed the corporation money, then it would be moved to a corporate asset account.

[83] Mr. Beno explained in his evidence that if a shareholder takes money from a business to pay a personal expense, it is treated as a loan that the shareholder has 180 days from year end to repay. After that, if the money hasn't been repaid it is treated as income, i.e., it rolls into income after the 180 day deadline.

[84] If there is money coming out of the business accounts that is greater than the amount going in, Mr. Beno would be querying where that money came from and recording it as unreported sales until advised differently by the client.

[85] Mr. Beno testified that if the shareholder misrepresents sales as loans to the corporation from the shareholder this means: (1) the shareholder is misrepresenting the amount of sales by the corporation; and (2) the shareholder can "write off" the loans as tax-free money when withdrawn. Mr. Beno testified that in preparing the accounting work for Mr. Cromwell he relied on his detailed notations about the money he said he had loaned the business.

[86] Mr. Beno determined the amount of sales to use in his accounting for Mr. Cromwell from the notations made by Mr. Cromwell at the top of the corporate bank statements. He recalls that Mr. Cromwell's written notations were prepared when he first brought the work in to be completed. The notes were not prepared under Mr. Beno's instructions. He agreed the notes indicated that Mr. Cromwell had some understanding of the shareholder's loan account. Mr. Beno did not explain it to him.

[87] Mr. Beno used a cash clearing/cash in transit account in the accounting work he did for Mr. Cromwell. He testified that if there was a balance at the end, he assumed that represented unrecorded sales unless the client said that he had

invested that money. He testified that Mr. Cromwell was given an explanation for the amounts in the cash clearing account. If Mr. Cromwell had indicated on the corporate bank account statements that an amount was a “loan from Christopher” then it would go into the shareholder’s loan account.

[88] Mr. Beno did not have to “sit down” with Mr. Cromwell to discuss the cash in transit account because the shareholder’s loan account balanced and Mr. Cromwell told him “how to allocate it”. He relied on Mr. Cromwell’s indication of how much money he had loaned the company. Mr. Beno testified that when Mr. Cromwell paid money back to the corporation, “it was indicated on the top of the bank statements...it was clearly indicated by [Mr. Cromwell]”.

The Allegation of Unreported Cash Income

[89] From pages 57 – 70 of Exhibit 21, Sandra Denny dealt with the issue of cash. There was a lot of cash activity every month in Mr. Cromwell’s business and personal accounts. (*see, Exhibit 21-G, pages 57 - 62 (2004); pages 64 – 69 (2005)*) Ms. Denny looked at all three accounts – the Bedford and SGR accounts and Mr. Cromwell’s personal account. She listed all the cash deposits. She then looked at the withdrawals from the accounts and listed them. She looked at other sources of income, for example, Mr. Cromwell’s rental income. She looked at credit card payments.

[90] Where Ms. Denny found a withdrawal from an account that preceded a deposit to another account by “a couple of days” she did not include the amount in cash not accounted for, that is cash not reported as income from the business. I accept this confirms that, as she testified, in analyzing Mr. Cromwell’s accounts she took a very conservative approach to the issue of unreported cash.

[91] In Exhibit 21-G at page 63 it is indicated that the Crown is seeking to prove less than half (41%) of the cash deposits for 2004 is unreported income. In Exhibit 21-G at page 70 it is indicated that the Crown is seeking to prove that just over half (51%) of the cash deposits for 2005 is unreported income. The Crown’s position reflects an acknowledgment that some of the cash deposits into Mr. Cromwell’s accounts were from rental income and loans his brothers made to him.

[92] Ms. Denny calculated a total of \$12,145 as unreported cash income from Mr. Cromwell's business for 2004. (*Exhibit 21-G, page 62*) Her summary sheets are found at pages 57 – 63 of Exhibit 21-G. For 2005, Ms. Denny calculated unreported cash deposits of \$19,765. (*Exhibit 21-G, page 70*) Her summary sheets are found at pages 64 – 70 of Exhibit 21-G.

[93] These amounts - \$12,145 for 2004 and \$19,765 for 2005 are included in the amounts alleged by the Crown to be unreported income - \$20, 208.73 for 2004 and \$26,355.29 for 2005.

Mr. Cromwell's Evidence about the Cash Deposits

[94] Mr. Cromwell says he is now unable to identify the origin of any of the cash that CRA claims is undeclared income for 2004 and 2005. He testified that he doesn't know where all the cash came from. No deposit books were kept in which the origin of the cash deposits was recorded. It is Mr. Cromwell's evidence that not a lot of clients paid cash. He says at the time he was "running" to his brother George "all the time" for loans. He says he has borrowed \$200,000 from George, \$70,000 from his other brother, and \$25,000 - \$40,000 from his mother. This money was deposited as cash into his personal and business bank accounts. The individual amounts could be quite small, from \$50 to \$300. It was Mr. Cromwell's evidence that he cannot shed any more light on the cash deposits. He testified that CRA's calculations as to the number of clients he had per day is "speculation" to account for the extra cash. I find it is not. As I have already explained, Ms. Denny's assessment of how busy Mr. Cromwell was in 2004 and 2005 is supported by other evidence.

[95] There is no evidence that anyone else, other than Mr. Cromwell's brothers and clients paying for hairstyling services, would have provided cash that went into Mr. Cromwell's accounts. Clients universally confirmed that they did not loan or borrow money from Mr. Cromwell and that he only ever provided hair services or products to them. That leaves the issue of whether the unexplained cash could have come from Mr. Cromwell's brothers. I will examine the evidence from the brothers next.

Loans from Mr. Cromwell's Brothers

[96] Mr. Cromwell's brothers – Gregory and George Cromwell – were called as witnesses by the Crown. They testified to loaning Mr. Cromwell money in the period of 2003 – 2005. The Crown concedes that Mr. Cromwell's brothers were each a source of cash deposits for Mr. Cromwell during 2004 and 2005. The Crown says the evidence only supports the brothers being a “modest” source of cash.

[97] Gregory Cromwell (“Gregory”) loaned Mr. Cromwell significant money on two occasions in 2003 – 2005, a total of \$11,000 which Mr. Cromwell repaid. Gregory has also loaned Mr. Cromwell smaller amounts when asked and, five years ago in 2009, co-signed a line of credit for him. Gregory pays \$700 per month on the line of credit. He described this as the interest payment on the line of credit. He had expected that Mr. Cromwell would be making the monthly payments but within six months of the line of credit being arranged, he was unable to do so.

[98] On cross-examination by Mr. Cromwell, Gregory explained that he was not being repaid the \$700 per month because Mr. Cromwell's business is “at an all-time low” and he is unable to meet all his financial obligations. Gregory offered his opinion, based on what Mr. Cromwell had told him, that the involvement of CRA has had “a negative impact” on Mr. Cromwell's business, his reputation and his clients. According to Gregory Cromwell, Mr. Cromwell owes him close to \$60,000 for the line of credit payments over the past five years.

[99] But the current level of financial support provided to Mr. Cromwell by Gregory Cromwell does not represent what was happening, according to Gregory's evidence, in the relevant years of 2004 and 2005. During those years Gregory made loans to Mr. Cromwell in several hundred dollar amounts. Gregory testified on direct examination that Mr. Cromwell would “always” pay on time, sometimes with cash and sometimes by cheque. Gregory's evidence on re-examination establishes that amounts still owed to him by Mr. Cromwell are from loans made since 2009. He testified that Mr. Cromwell was “very good at repayment up to a point when he fell off being always able to pay.” I take from this that in 2004 and 2005 Mr. Cromwell was repaying the small loans made to him by Gregory. It was later on that he fell into arrears.

[100] Gregory was asked about a statement he had given investigators in October 2010 when he said that during 2003 – 2005 he had not loaned Mr. Cromwell cash. He explained that what he had been referring to was his more common practice of loaning Mr. Cromwell money by writing cheques. If it was a small amount and he didn't have access to his cheque book, he would give Mr. Cromwell cash. He said he was not intending to mislead in his October 2010 statement.

[101] Mr. Cromwell's brother, George Cromwell, ("George") also testified to lending him money, very significant amounts of money in recent years which Mr. Cromwell still owes. I find that although George Cromwell gave somewhat inconsistent testimony about whether he loaned Mr. Cromwell money in the 2004/2005 period, if he did, the amounts were inconsequential. George was very clear that since 2009 he has loaned Mr. Cromwell substantial amounts of money. That fact is irrelevant to the issue of concern in this case which is whether cash deposits in Mr. Cromwell's accounts came from loans made by his brothers in 2004 and 2005 or client payments during this period.

[102] According to George, he has been supporting Mr. Cromwell for some time. George testified that before 2009 he did not lend money to Mr. Cromwell in "any great amount" and was not giving him "daily loans" in 2003, 2004 and 2005. As George put it: "I assumed he was doing good at that point." When asked by the Crown if he had loaned money to Mr. Cromwell in 2004 – 2005, George testified: "I'm not quite sure. I can't say yes or no to that."

[103] George Cromwell testified on direct examination by the Crown that he did not "have a clue" how his brother's business was doing before 2009. He testified that Mr. Cromwell had operated a very lucrative hairstyling business and believes that the downturn in his brother's business "came about as a result of his clients being interviewed by CRA" which "hurt his reputation and drove clients away." This opinion is irrelevant. What is relevant is that there was no CRA involvement in Mr. Cromwell's affairs in 2004 and 2005. George Cromwell's evidence is that before the CRA came into the picture, his brother was a very successful hairstylist and did not need his financial assistance.

[104] On cross-examination by Mr. Cromwell, George agreed that he had loaned him large amounts of money since 2009 and small amounts of money in 2004 and

2005. George agreed with Mr. Cromwell's suggestion that in 2004/2005 he had loaned Mr. Cromwell money for equipment and renovations for his hairstyling business.

[105] On re-direct examination George testified that in 2004/2005 he had not made loans daily or weekly to Mr. Cromwell. The loans were made at the start or the end of the month when Mr. Cromwell was short. It was George's evidence that the loans were "definitely not that often" and that Mr. Cromwell was paying him back. According to George, the 2004/2005 loans were "not a great amount of money" so he did not keep track of them.

[106] The evidence from Gregory and George Cromwell amply satisfies me that in 2004 and 2005 Mr. Cromwell did not receive large amounts of cash from them. That eliminates them as a significant source of the cash deposits in Mr. Cromwell's accounts. Any substantial loans were made since 2009. I find the brothers were not a significant source of cash for Mr. Cromwell in 2004 and 2005 and yet there was significant cash deposited by Mr. Cromwell into his accounts during those years – \$29,520 in 2004 (*Exhibit 21-G, page 63*) and \$38,740 in 2005. (*Exhibit 21-G, page 70*)

Totals – Unreported Cheques and Cash

[107] Exhibit 21-G at page 73 is Ms. Denny's evidence of the total cash and cheques that represent the unreported income being alleged. The total net unreported cash and cheque income alleged for 2004 is \$20,208.73 and for 2005 - \$26,355.29. These figures represent the income the Crown alleges was unreported, income that was deposited into the corporate accounts and Mr. Cromwell's personal account for 2004 and 2005 and not included on the worksheets Mr. Cromwell prepared for Mr. Beno. It is these amounts that are alleged in Counts 1 and 2 (section 239(1)(a), *ITA*) and Counts 3 and 4 (section 239(1)(d), *ITA*), respectively.

[108] Also found in Exhibit 21-G at page 73 are the amounts Ms. Denny has calculated were unreported cheques and cash with HST and then tips added back in - \$22,790.95 for 2004 and \$29,722.91 for 2005. It is these amounts that are alleged in Counts 54 and 55 (section 239(1)(a), *ITA*) and 56 and 57 (section 239(1)(d), *ITA*), respectively.

The Unreported HST Charges

[109] Exhibit 21-GA is Ms. Denny's worksheet calculating the HST on the cash and cheques which CRA alleges were not reported by Mr. Cromwell. The HST amounts for January to December 2004 and January to December 2005 are found in Exhibit 21-GA by month. Ms. Denny calculated the total HST on unreported income (cash and cheques) in 2004 to be \$3,031.30 and in 2005 (cash and cheques) to be \$3,953.29. The monthly amounts in Exhibit 21-GA are what I have identified in paragraph 9 of these reasons where I have itemized the 48 charges under the *Excise Tax Act*.

[110] Ms. Denny's worksheets for the 2004 HST calculations by month are found in Exhibit 21-G, pages 57 – 62 (cash) and Exhibit 21, page 53 (cheques). Her worksheets for the 2005 HST calculations by month are found in Exhibit 21-G, pages 64 – 69 (cash) and Exhibit 21, page 53 (cheques).

The Preparation of the HST Returns by Mr. Cromwell

[111] Mr. Cromwell was asked on cross-examination about the preparation of the HST returns for 2004 and 2005. He testified that he cannot remember if he instructed Mr. Reese to file revised HST returns. It was his evidence that he provided the HST returns and paperwork to Mr. Reese and assumed if Mr. Beno needed to adjust something he would have done so.

[112] The evidence establishes that Ms. Jones asked Mr. Cromwell if he wanted her to file his HST returns and he agreed to have her do so. Mr. Cromwell testified that when the HST returns were filed he was not aware that his personal account had business income in it. He testified he was just trying to get the paperwork done that was required for him to file with CRA. "I wasn't clue-ing to how to put it all together...It was a mess. I am not a bookkeeper."

[113] It was put to Mr. Cromwell that when he prepared his HST returns he prepared them exclusively based on his business account and made no effort to include the deposits from the personal account. Mr. Cromwell responded by saying that he was doing the HST calculations over two intense weekends when he was preparing his work summaries for Mr. Beno. He says when he realized how much work was involved he handed everything over to Mr. Beno and Mr. Reese to

complete. The work to be done was overwhelming and he left it in his accountant's hands with instructions to combine the personal account with the business account. He agreed he had "corresponded" the HST to the business account.

Mr. Cromwell's Personal Account

[114] The remaining evidence to be discussed is the evidence that relates to income from Mr. Cromwell's hairstyling business that ended up in his personal bank account, was never reported to CRA and never made it into any calculations for HST for the years 2004 and 2005.

Mr. Cromwell's Book-keeping Practices and Meeting CRA's Demands

[115] Mr. Cromwell acknowledges that he deposited income from his hairstyling business, in the form of cheques and cash from clients, into his personal bank account. He testified that he had knowingly deposited business income into his personal account to cover expenses and bills. He was just trying to stay on top of his financial obligations. In his words, he was "stressing to get funds into the account to cover bills." He testified that he deposited cheques and cash paid to him by clients and cash loaned to him by family members.

[116] Why those cheques and cash were never recorded as income was, according to Mr. Cromwell, because he completed his book-keeping under intense pressure and relied on Mr. Beno's accounting service to complete the work when it got to be too much.

[117] Mr. Cromwell testified that in 2006 he was not keeping his books up-to-date. This included not filing his HST returns. Up to 2002 he had staff who did all the book-keeping but when he sold his business and down-sized, he took over these responsibilities himself. By 2006 when he was being confronted by deadlines from CRA, there was a lot of catch-up.

[118] It was Mr. Cromwell's recollection that in August and September 2006, faced with deadlines from CRA, he was working to compile the records of transactions that had occurred several years earlier, in 2004 and 2005. He says he did the paperwork over two weekends, working intensively. What he produced were meticulously detailed worksheet summaries by month and HST calculations. (*Exhibit 11*)

[119] I note that Mr. Cromwell's filed personal tax returns – T1's – which are found in Exhibit 20 at Tabs 5 (2004) and 7 (2005) were signed by him and dated, in the case of his 2004 T1, on October 24, 2005 and in the case of his 2005 T1, on March 7, 2007. He claimed his business income in 2004 as \$24,234.46 and in 2005 as \$24,672.00.

[120] I don't quite understand these signing dates in relation to the rest of the evidence but have concluded nothing turns on them. There is no dispute about the fact that the returns did not report all of Mr. Cromwell's income.

[121] Mr. Cromwell testified that he made mistakes in preparing the documentation for Mr. Beno. He says he "didn't know to include certain things." He says he was conversing "back and forth" with Mr. Reese and Mr. Beno, having forewarned them that he was about to deposit a significant amount of work on them to be completed under a tight timeline. He wanted to make sure they could accommodate getting the required work done for the tax filings.

[122] It was Mr. Cromwell's evidence that he dropped material off at Mr. Beno's office on specific dates in September 2006: September 4, 11, 14, and 18. He testified that Mr. Beno was not in the office when he went by and that he left the documentation with Mr. Reese.

[123] Mr. Cromwell testified that he dealt directly with Mr. Reese whom he described as Mr. Beno's book-keeper. He referred to Mr. Reese as the "go to" person and as always being at the office when he went by between 8:45 and 9 a.m. Mr. Beno was not there. Mr. Cromwell would drop off whatever documentation was required based on what Mr. Reese had said was needed. They would have some polite conversation and Mr. Reese always seemed fine. Mr. Cromwell testified that it was only much later, in October that he learned from Mr. Beno that Mr. Reese had been and was struggling with an alcohol addiction. By the time he heard about Mr. Reese's issues, he had already dropped all the documentation off at Mr. Beno's office.

[124] It is Mr. Cromwell's evidence that he gave explicit, "strict" verbal instructions to Mr. Reese that he wanted Mr. Beno's office to finish the book-keeping work he had been doing as the timeline for the work was presenting a problem for him. He had run out of time. He just wanted to get the accounting

work done and filed as required by CRA. He asked Mr. Reese if it was possible for Padgett Business Service to take the deposits in the personal bank accounts and add them into accounts being prepared for the business. Mr. Cromwell testified he expected his instructions – he explained “all details” to Mr. Reese - to be communicated to Mr. Beno and that the mess his accounts were in would be straightened out accordingly. He says he did not know Mr. Reese was battling a serious alcohol abuse problem at the time.

[125] Mr. Cromwell confirmed he provided no written instructions to Mr. Reese or Mr. Beno of what he required to be done. He testified on cross-examination that his verbal instructions were that all the deposits in the personal account were to be included as business income. In his words: “I said to Fred Reese that you’ll have to take all deposits in and account for them.”

[126] Mr. Cromwell testified that he did not realize a mistake had been made, that his instructions for the deposits in his personal account were not followed. He says he signed the tax returns without knowing they were inaccurate. He places the blame for this squarely on Mr. Reese and his alcohol addiction. Mr. Cromwell has said, in effect, that Mr. Reese turned out to be an unreliable alcoholic who failed to communicate his instructions to Mr. Beno. Mr. Cromwell says had he known there was an error he would have “run back to Mr. Beno and said you have to fix this.”

[127] According to Mr. Cromwell it was not until the CRA audit that he realized the personal account had not been integrated into the business account and therefore had not been calculated into the income reported for tax filing purposes. He says he pleaded with CRA to be permitted to fix the problem but was rebuffed.

[128] Mr. Cromwell testified to his belief that when Mr. Beno told him about Mr. Reese’s alcohol abuse problems he was covering up for his employee. Mr. Cromwell says that by telling him Mr. Reese’s issues had not affected Mr. Cromwell’s file he was “protecting his business.” As Mr. Cromwell stated it: “We are here today because there was a problem with Mr. Beno’s office.” In his words: “I’m a busy man, I don’t have time to worry about Mr. Beno’s employees.” He says he feels misled about the problems at Mr. Beno’s office. At the time he assumed everything was fine.

The Evidence of Mr. Beno and Mr. Reese on the Issue of Mr. Cromwell's Instructions

[129] Mr. Beno's evidence about Mr. Cromwell's personal bank statements addressed two main themes: (1) that he did not consider the statements when doing the accounting for Mr. Cromwell's business; and (2) that he never received any instructions to treat any money that flowed into the personal account as income from the business.

[130] Mr. Cromwell's personal bank statements were exhibited in evidence. There are no markings on them. Mr. Beno testified that the statements would not have been useful to him. "Generally I would make no use of personal statements...I had corporate records and direction concerning those bank statements." It was Mr. Beno's evidence: "The numbers looked good." The numbers from Mr. Cromwell's worksheets and the corporate bank statements matched up. Mr. Beno testified that he would not have been able to tell from the personal bank statements what, if anything, in them had to do with Mr. Cromwell's business.

[131] Mr. Beno testified that he does not recall any discussion with Mr. Cromwell about taking business-related deposits out of Mr. Cromwell's personal account and depositing them into the business account and "merging" the two accounts. Mr. Beno told Mr. Cromwell on cross-examination that he does not recall Mr. Cromwell coming back to him to say he had discussed something with Fred Reese that was not followed up on by Mr. Reese. Indeed there is no evidence of any such conversation. When Mr. Cromwell testified he did not say that he spoke with Mr. Beno about the instructions he claims to have given Fred Reese to pass along. It was Mr. Cromwell's evidence that it was only once CRA became involved that he learned income had not been reported.

[132] Mr. Beno testified that preparing Mr. Cromwell's corporate and personal tax returns were separate exercises. He would not have looked at Mr. Cromwell's personal bank statements when preparing Mr. Cromwell's corporate returns. That was not part of the terms of his engagement.

[133] Mr. Beno prepared the corporate and personal returns based on the information Mr. Cromwell provided to him. He prepared them separately. He rejected the suggestion that there was a miscommunication over 3 years on the

issue of using information from Mr. Cromwell's personal bank statements in the preparation of the corporate returns. Mr. Beno testified that he did not receive a message to take Mr. Cromwell's personal bank statements into account in preparing the corporate returns. That would have involved a significant amount of additional work. Mr. Beno said that to do that he would have had to sit down with Mr. Cromwell to go over the personal bank statements "line by line". That, Mr. Beno, said would have been asking for a substantially larger amount of accounting than contemplated by his terms of engagement. He posed the question of how he would have known what deposits, in the personal bank statements, were related to the business.

[134] Mr. Beno testified that he probably did look at Mr. Cromwell's personal bank account statements for information unrelated to the business, e.g. rental unit information for Mr. Cromwell's rental property. Mr. Beno also said he may have used Mr. Cromwell's personal bank statements for determining the expenses associated with Mr. Cromwell operating an office in his home for his business.

[135] When Mr. Cromwell insisted in his questioning of Mr. Beno that there was business "stuff" in the personal bank statements Mr. Beno responded by saying nothing had jumped out at him as relevant to the business.

[136] What the evidence establishes clearly is that Mr. Beno never received any instructions to take deposits in Mr. Cromwell's personal account and treat them as business income. In actual fact, Mr. Cromwell does not dispute this. As I have noted already what he says is that his instructions in this regard never made it beyond Mr. Reese.

Telephone Messages in 2006 at Mr. Beno's Office

[137] Although he agreed that Mr. Cromwell seemed busy at the relevant time, Mr. Beno did not consider there to have been a problem with obtaining his instructions. He does not recall any messages with substantive instructions coming from Mr. Cromwell.

[138] In the course of this trial, Mr. Beno was called to testify both by the Crown and Mr. Cromwell. After giving evidence under a Defence subpoena, Mr. Beno returned to the witness box on August 14, 2015 to clarify how messages were

received at his office in 2006, a subject he had testified to when he appeared on July 27, 2015. Mr. Beno explained that he had been mistaken in earlier testimony when describing how telephone messages were handled at his office.

[139] Following his testimony on July 27, 2015, Mr. Beno had located a message pad book from his office which he felt shed light on what he had testified about earlier. He realized that what he had previously described in his evidence was a message-taking protocol that applied currently, not in 2006. The newly-discovered message pad made him realize that in 2006 his messages were taken by Terry Paris, who worked for him full-time. Mr. Draghici-Vasilescu thought Mr. Cromwell, who had received disclosure of the message pad book, might want to further examine Mr. Beno.

[140] A copy of the relevant messages was entered as Exhibit 24.

[141] Mr. Beno testified that the 2006 message pad “explained the whole situation” to him. He had been concerned by Mr. Cromwell’s suggestion during his examination on July 27 that there had been a message left by Mr. Cromwell that Mr. Beno never got and therefore failed to act on. Mr. Cromwell had indicated the message had been left with Mr. Reese. Mr. Cromwell also suggested to Mr. Beno that he had encountered Mr. Reese working alone at the office in October 2006 during the time period the tax returns were being prepared.

[142] None of the messages in Exhibit 24 fit the description given by Mr. Cromwell of leaving a message with instructions for Mr. Beno. Mr. Beno testified that none of the messages in Exhibit 24 were prepared by Fred Reese.

[143] On October 2, 2006 a message was taken for Mr. Beno by Terry Paris. Mr. Beno recognized Ms. Paris’ handwriting on the messages. The October 2 message was transcribed from a voice mail left by Mr. Cromwell. The message stated:

Re: 2005 taxes, personal and business. Is my 2004 completed?
CRA has given 10 days to submit. Tabitha will drop by more
information tomorrow

[144] Also noted on the message was a separate message to Mr. Beno asking him to “please call” CRA for Mr. Cromwell to get “an extension until (sic) thurs.”

[145] On October 25 at 8 a.m. a voice mail was left by Mr. Cromwell about the 2004 – 2005 returns. Mr. Beno noted that he had written Mr. Cromwell's phone numbers on the message which indicated to him that he must have tried to call Mr. Cromwell back.

[146] On October 30, Mr. Reese left a message for Mr. Beno indicating he would not be in "today" because he had appointments. This message was also in Ms. Paris' handwriting. Mr. Beno testified these would not have been client appointments but private appointments of Mr. Reese's.

[147] Mr. Reese was asked about the messages. His evidence is relevant to Mr. Cromwell's assertion that he was given instructions he failed to communicate to Mr. Beno. The relevant issue is whether Mr. Reese was even working at Mr. Beno's office in September and October 2006 when Mr. Cromwell says he encountered him there. I will return to that issue shortly.

[148] In 2006 Mr. Reese was having serious problems with alcohol. He squarely and bravely acknowledged this throughout his evidence. He testified that seeing the October 30 message about him not coming in "today" did not refresh his memory about why he would have been going into the office. The "appointments" reference could have been an excuse to cover up his drinking although he had started to see an addictions counsellor around this time. It was his evidence that he could have had many reasons for a visit to the office, a visit that he called to cancel. I note the evidence establishes that he and Mr. Beno were and are friends and that Mr. Beno was compassionate and supportive toward Mr. Reese during the time he was struggling to deal with his alcoholism. Mr. Reese has made a successful recovery and they are now working together again, a testament to the strength of their friendship.

[149] The telephone messages indicate that Mr. Reese's problems with alcohol continued throughout the fall of 2006. Exhibit 24 contains a message left by Mr. Reese's uncle for Mr. Beno. The family was worried as they had not heard from Mr. Reese in a few weeks. Mr. Reese does recall that during a time when the weather was cold he relapsed and went wandering about Nova Scotia and Newfoundland, eventually contacting his family.

[150] A subsequent message from December 1 to Mr. Beno from Mr. Reese indicates he was spending a lot of time with his new girlfriend. Mr. Reese confirmed that on November 25, 2006 he met his now wife.

[151] There is no evidence that a message with substantive instructions from Mr. Cromwell was received at the Padgett offices during the material time.

Mr. Reese's Presence at Mr. Beno's Office in 2006

[152] Furthermore, and contrary to Mr. Cromwell's evidence, Mr. Beno testified that Mr. Reese was not working full-time at his office in the fall of 2006. He testified that it was unlikely that Mr. Cromwell encountered Mr. Reese at his office in 2006. When Mr. Reese was not in the office, Mr. Beno took the precaution of double-locking it which denied him access.

[153] Mr. Cromwell disputes the evidence that Mr. Reese was not at Mr. Beno's office in September and October 2006. He testified that from August to probably mid-October 2006 he encountered Mr. Reese there, alone, and Mr. Cromwell gave him the instructions for Mr. Beno.

[154] Mr. Cromwell suggested that Mr. Reese's difficulties coincided with the period when the tax returns were being prepared and that he was working during this time at Mr. Beno's office. Mr. Reese however has testified that in the fall of 2006 he was focused on his recovery, having spent six months in a residential facility in Cape Breton for the treatment of alcoholism. In September that year he moved into an apartment in Halifax. It is his recollection that after that he did not go back to work with Mr. Beno in 2006. It was his evidence: "I know I did not work after that" referring to his time in rehab. Mr. Reese testified: "From April to the end of the year, I don't think I was employed at all at the office." He says he couldn't work because he was "recovering from alcoholism. That was the dominant feature in my life that year. My job was to keep myself alive that year and not to work on someone's file."

[155] Mr. Reese's recollection is supported by evidence Mr. Beno produced of the payments he made to Mr. Reese in 2006, a total of \$640 by way of six \$100 cheque payments on March 3, March 9, April 7, May 5, July 22, and October 27 (and a \$40 cash payment.) This confirmed to Mr. Beno that Mr. Reese was working for

him only sporadically that year. Mr. Beno testified that some of these payments were likely for work Mr. Reese did but some of them were just to help Mr. Reese out and had nothing to do with any provision of services at the firm. It was Mr. Beno's evidence that the October 2006 payment was probably for charitable reasons.

[156] Although Mr. Reese's evidence indicates he did go into the office on occasion having used alcohol during the time when he was struggling with his alcohol addiction, there is no evidence when he did this nor is there any evidence it had any implications for Mr. Cromwell's file.

Mr. Reese's Contact with Mr. Cromwell at the Padgett Offices

[157] Mr. Reese does recall occasions when Mr. Cromwell would appear at the front counter of the office, get Mr. Beno's attention and go into his office. "That would be all." If Mr. Beno was not present, Mr. Reese would have taken records that Mr. Cromwell was dropping off but would not look at the contents of the package and would hand them on to Mr. Beno.

[158] Mr. Reese testified that Mr. Cromwell was "rarely" in the office and said he "absolutely" does not remember him coming into the office in 2006 with documentation. This is consistent with the evidence that indicates Mr. Reese was not in the office much in 2006 and not in the fall of 2006.

[159] Mr. Reese went on to say that he had seen Mr. Cromwell so rarely he did not recognize him when he first came to court to testify.

[160] Mr. Reese confirmed that the only work he ever did on Mr. Cromwell's file was, as described by Mr. Beno, the combining of the two business accounts on an Excel spreadsheet. He testified that it was "Wayne's file" and "Wayne's client." He never dealt with Mr. Cromwell's personal bank statements.

[161] Mr. Reese admitted that memory is affected by alcohol abuse but I do not find that his memory of what he was doing in 2006 has been impaired. He recalls his focus being on recovery and that he was not working for Mr. Beno when Mr. Cromwell's income tax returns were being prepared. The preponderance of the evidence indicates he was not at the office. Furthermore, I am satisfied the

evidence establishes that Mr. Reese had nothing to do with how Mr. Beno prepared the accounting.

The Conduct and Fault Components of the ITA and ETA Charges

[162] In an opening statement before calling evidence, Mr. Cromwell indicated his understanding that the Crown had to prove beyond a reasonable doubt that he had intentionally filed “a false statement” or that he should have known he was “making a false statement” and was wilfully blind. He said he has heard no evidence that speaks to his intention or to wilful blindness. He went on to say that what occurred in relation to his tax filings was due to “mistake, miscommunication, and misunderstanding.”

[163] At one point in the trial, when Mr. Cromwell was testifying to having given instructions to Mr. Reese about income in his personal account, I wondered if he might be trying to advance a type of “due diligence” defence. The defence of due diligence does not apply to tax evasion charges. Due diligence does not apply where there is a requirement to prove intent, knowledge or wilful blindness.

[164] The offences created by section 239(1) of the *Income Tax Act*, including tax evasion, are true criminal offences. (*R. v. Klundert*, [2004] O.J. No. 3515 (C.A.) paragraph 32; leave to appeal refused [2004] S.C.C.A. No. 463; *R. v. Kennedy*, [2004] B.C.J. No. 2588; leave to appeal refused [2006] S.C.C.A. No. 15) As Doherty, J.A. noted in *Klundert*:

...A determination of the constituent elements of the offence of tax evasion must be informed by the criminal law nature of that offence. For analytical purposes, the constituent elements of a crime are divided into the elements which describe the prohibited conduct (*actus reus*) and those which describe the requisite fault (*mens rea*). For most true crimes, the fault component consists of a culpable state of mind which must accompany the prohibited conduct and relate to some if not all of the elements of the prohibited conduct: see *R. v. Sault Ste. Marie* (1978), 40 C.C.C. (2d) 353 at 362 (S.C.C.)

...

The offence requires proof of an act or course of conduct which has the effect of evading or attempting to evade payment of taxes actually owed under the Act. In normal parlance, the word evade can refer to the act of deliberately avoiding something, or it can carry a sinister connotation meaning an underhanded or devious way of avoiding something. (*paragraph 35*)

[165] Doherty, J.A.'s formulation of the "conduct component" of tax evasion contrary to section 239(1)(d) is authoritative: the voluntary act or course of conduct by an accused that avoided or attempted to avoid payment of taxes owing under the Act. (*Klundert, paragraph 40*) The proof beyond a reasonable doubt of such a voluntary act or course of conduct establishes the *actus reus* or conduct component of tax evasion.

[166] As for the fault or *mens rea* component, this is determined by an analysis of the accused's state of mind. The tax evader intends to avoid the payment of tax that he or she knows is owed under the Act. (*Klundert, paragraph 41*)

[167] As in *Klundert*, the conduct component of the crime of tax evasion is not the issue in Mr. Cromwell's case. Mr. Cromwell did not declare his income or pay his income taxes or those of his numbered company for the 2004 and 2005 taxation years as required. As the evidence indicates, these filings did not occur until CRA started to breathe down his neck. In Doherty, J.A.'s words:

...The functioning of the Act depends on accurate self-assessment of tax owing through timely reporting of income and calculation of tax owing. Where tax is owed under the Act, a failure to report income and properly calculate the tax owing on that income has the inevitable effect of avoiding, at least for a time, the payment of tax required under the Act...(*Klundert, paragraph 42*)

[168] As with *Klundert*, Mr. Cromwell's liability turns on his state of mind. What must be proven by the Crown beyond a reasonable doubt is that Mr. Cromwell intentionally violated a known legal duty, the duty to report all his income from his hairstyling business.

[169] In *Klundert*, Doherty, J.A. held that the fault component of section 239(1)(d) of the *ITA* is “twofold.”

...First, the accused must know that tax is owing under the Act and second, the accused must intend to avoid or intend to attempt to avoid payment of that tax. An accused intends to avoid, or intends to attempt to avoid, payment of taxes owing under the Act where that is his purpose, or where he knows that his course of conduct is virtually certain to result in the avoiding of tax owing under the Act. (*cite omitted*) (*paragraph 46*)

[170] There is a discussion in *Klundert* about how a factual mistake, a legal mistake or a combination of both factual and legal mistakes can operate as a defence to tax evasion, especially given the complexity of the *Income Tax Act*. I find that no such mistakes were in play in Mr. Cromwell’s case. His testimony makes it clear he understood that client payments for his services were income for tax purposes. This clear understanding is evidenced by what Mr. Cromwell said about his purported instructions to Mr. Reese, instructions that the deposits in his personal account were to be taken into account in preparing the corporate and personal income tax returns. It was Mr. Cromwell’s evidence that he deposited business income to his personal account because his book-keeping practices were rather chaotic. He never said or implied that it was because he was confused about whether this was income.

[171] The charges against the numbered company for the unreported HST are under sections 327(1)(a) and 327(1)(c). The section 327(1)(a) charges are general intent charges; the section 327(1)(c) charges are specific intent charges alleging wilfulness on Mr. Cromwell’s part. The same conduct and fault component principles I have been discussing apply to the section 327(1)(c) *ETA* charges.

Assessing the Evidence

[172] This is a case that requires the application of the Supreme Court of Canada’s decision in *R. v. W.(D.)*, [1991] *S.C.J. No. 26*. *W.(D.)* provides that an accused must be acquitted if his evidence is believed, but that even if it is not, a trial judge must determine if there is a reasonable doubt left by his evidence, and ultimately,

even if the accused's testimony does not leave a doubt, the determination must be made whether on the whole of the evidence there is a reasonable doubt on the issue of guilt. (*W.(D.)*, paragraph 28) A conviction can only occur where, on the whole of the evidence, guilt is established beyond a reasonable doubt. (*R. v. Dinardo*, [2008] S.C.J. No. 24, paragraph 23)

[173] Ultimately, in order to convict, a trial judge must be satisfied that on the totality of the evidence there is no reasonable doubt as to the accused's guilt. The task of adjudication is to assess the evidence for reasonable doubt.

[174] An accused does not have to be believed to be acquitted. (*R. v. J.H.S.*, [2008] S.C.J. No. 30, paragraph 13) The burden of proof is borne not by Mr. Cromwell but exclusively by the Crown. I have to examine all the evidence, including Mr. Cromwell's testimony, to determine if there is reasonable doubt.

[175] The evidence establishes that Mr. Cromwell's instructions to Mr. Beno were via the corporate bank statements and the worksheets he prepared for Mr. Beno which Ms. Denny has established through her evidence only included Visa and debit payments from clients, and not cheques or cash.

[176] It was Mr. Beno's evidence that Mr. Cromwell balanced his accounts on the basis of month-to-month calculations, "so there was not a lot left for us to do" in terms of analysis, "because you did it for us". Mr. Cromwell balanced his bank accounts and the flow of money in the accounts and provided "a good summary of accounts". Mr. Beno testified that Mr. Cromwell "did a good job telling us how much HST".

[177] The documentation that Mr. Cromwell provided Mr. Beno for the preparation of the 2004 and 2005 corporate financial statements and the corporate and personal tax returns was thoroughly reviewed at trial. It satisfies me that Mr. Cromwell understood very well what Mr. Beno needed – monthly breakdowns of the income from his hairstyling business and the associated HST calculations.

[178] On his worksheets and corporate bank statements, Mr. Cromwell identified amounts of money as loans he had made to the business. Ms. Denny established through her evidence that these so-called loans were income earned from hairstyling.

[179] I find that Mr. Cromwell systematically excluded from his summary worksheets any income that was not Visa or debit. The only reasonable inference to be drawn from all the evidence is that this was deliberate, that Mr. Cromwell intentionally did not report all his income for 2004 and 2005.

[180] As the client-witness evidence establishes, Mr. Cromwell would have been well aware in 2004 and 2005 that he was receiving significant income on a consistent basis in the form of payments by cheque. Mr. Cromwell's own evidence confirms this: he admitted that in 2004 and 2005 he was depositing cheques from his hairstyling business into his personal bank account as well as his business accounts. The cheques are in evidence. In 2004 only 3 cheques were reported. In 2005 no cheque income was reported.

[181] I also find that Mr. Cromwell had a busy hairstyling business in 2004 and 2005 and regularly received cash payments for his services. Ms. Denny's evidence confirms there was a lot of cash activity every month in Mr. Cromwell's business and personal accounts. Mr. Cromwell has not disputed that he was paid in cash. His clients were a significant source of cash deposits, deposits that I find he did not report as income to CRA. The Crown's conservative assessment of the amount of unreported cash is well within what I infer would have been client payments during those years.

[182] There can be no mistaking the deliberate manner in which Mr. Cromwell prepared his worksheets – effectively his written instructions to Mr. Beno – nor how he calculated his HST remittance numbers. His worksheets and HST documentation were all based on debit and Visa payments. They were meticulously prepared according to the same format for each month. Mr. Cromwell systematically identified, with very few exceptions, every other deposit – cash and cheques – as loans to the business from him. I find the evidence establishes that Mr. Cromwell deliberately chose to identify, with very few exceptions, cash and cheque amounts as loans to the business notwithstanding that he was being paid for hairstyling services by cheque and cash and was well aware of this and that these purported loans were in fact income.

[183] Exhibit 21-G, page 74 shows that in 2004 of 152 cheques, 149 or 98% were not reported as income and were characterized as loans to the business by

Christopher Cromwell. Sixty percent of the cheques for 2004 were deposited into Mr. Cromwell's personal account.

[184] Exhibit 21-G, page 88 indicates that in 2005 no cheques were reported as income and 67 percent of them were deposited into Mr. Cromwell's personal account.

[185] Mr. Cromwell did his HST calculations on the same basis of debit and Visa deposits only. No cheques or cash were included in his calculations. (*Exhibit 21, page 26 - 2004*)

[186] Mr. Cromwell took the same approach to 2005. With the exception of one transposition error made unintentionally by Mr. Beno, the amounts reported by Mr. Cromwell were from debit and Visa payments only. (*Exhibit 21, page 42*)

[187] I also find that the cash which the Crown alleges Mr. Cromwell did not report was business income that he has tried to explain away as loans from his brothers. I have already discussed this evidence in paragraphs 96 - 106 of these reasons. As the Crown has noted: Mr. Cromwell had \$29,520 in cash deposits for 2004 (*Exhibit 21-G, page 63*) and \$38,740 in 2005 (*Exhibit 21-G, page 70*). Such a large amount of cash for each year cannot be explained on the basis of the evidence given by Gregory and George Cromwell.

[188] As for the business income that Mr. Cromwell has admitted was deposited to his personal bank account and not reported to CRA, I reject his evidence about the purported verbal instructions to Mr. Reese. I do not believe that any such discussion ever took place. I find that Mr. Cromwell never intended to achieve what he says he told Mr. Reese had to be done. Mr. Cromwell's credibility is dealt a fatal blow by the fact that the documentation he prepared for Mr. Beno very carefully detailed the activity in his business accounts to the sole extent of the Visa and debit payments. His documentation was well-organized, better than the norm in Mr. Beno's experience. These written instructions were specific and clear. It is apparent from Mr. Cromwell's worksheets that he was knowledgeable about what is and is not income. The documentation Mr. Cromwell provided to Mr. Beno leaves no doubt that what he wanted reported to CRA was only debit and Visa payments.

[189] Mr. Draghici-Vasilescu points to exactly the same pattern of calculation being employed by Mr. Cromwell in 2003. Mr. Cromwell was asked on cross-examination about the 2003 T2 return. Contrary to Mr. Cromwell's recollection that it was filed in 2006 along with the 2004 and 2005 returns, it appears to have been filed in November 2005. (*Exhibit 11, Tab 35, page 239*: although dated for signature January 14, 2005, *Exhibit 11, Tab 35, page 252*) The upshot of this evidence's relevance to the issue of whether Mr. Cromwell instructed that the deposits into his personal account be taken into account in preparing the 2004 and 2005 returns is that no such instructions were provided for the 2003 corporate return. Mr. Cromwell testified that his explicit instructions to Mr. Reese were given in 2006 only. Those instructions were given during the two weeks when Mr. Cromwell did the intensive book-keeping work. He says he didn't "clue in" to the personal account issue when he was having the 2003 T2 prepared. What the evidence about the 2003 T2 return shows is that Mr. Cromwell's non-reporting of the business income in his personal account had a precedent.

[190] Mr. Cromwell not only limited what he provided to Mr. Beno to Visa and debit payments, he prepared his HST remittances on exactly the same basis. I am left with no doubt that Mr. Cromwell had no intention of reporting the business income in his personal account to CRA. His HST remittances are clear evidence of this.

[191] The evidence of Mr. Beno and Mr. Reese satisfies me that Mr. Reese was not working at Padgett Business Service during the time when Mr. Cromwell dropped off, what I find to have been his intentionally incomplete documentation. I find that Mr. Beno and Mr. Reese to have been credible and reliable witnesses. They were both careful and thoughtful in giving their evidence which was straightforward and without embellishment. Mr. Reese spoke candidly about his struggles with alcohol. This cannot have been easy. Mr. Beno returned to the witness box to correct the record about the practice of telephone message-taking at his office. I find they each did their best to be honest and accurate about their recollections. Where their evidence differs from Mr. Cromwell's, I accept their evidence. I find Mr. Beno and Mr. Reese to have been credible, reliable witnesses whereas I find Mr. Cromwell not credible.

[192] Not only do I find that Mr. Cromwell never gave the verbal instructions he claims to have given about the business income in his personal account, I find that Mr. Cromwell never intended to report any other business income to CRA than the income he provided in the documentation he gave Mr. Beno for the financial statements and the tax returns.

[193] Mr. Beno bears no responsibility for the non-reporting of income in Mr. Cromwell's personal account. The accounting that would have been required for Mr. Beno to factor in Mr. Cromwell's personal bank account was never part of the terms of Mr. Beno's retainer. To the extent that he looked at Mr. Cromwell's personal bank statements, he would have had no idea there had been business income deposited into the account. Without any explanation for what was happening in the account, Mr. Beno would have no idea of the origin of deposits. The personal bank account statements had no notations to identify the source of any of the deposits. Mr. Cromwell's corporate bank statements had some notations on them but the personal bank statements had none.

[194] I find that in 2004 and 2005 Mr. Cromwell was a busy hairstylist. He received only modest loans from his brothers because he did not need their financial help. His clients paid him by cheque and with cash as well as by Visa and debit. He deposited client payments in both his corporate accounts and his personal account. He prepared summaries for Mr. Beno based on his business accounts only. The amounts he calculated for Mr. Beno's use in preparing the financial statements of 3020636 Nova Scotia Limited and the 2004 and 2005 corporate and personal income tax returns included only Visa and debit payments.

[195] The evidence supports only one reasonable inference: Mr. Cromwell knowingly supplied false information to Mr. Beno, that is, he supplied a deliberately incomplete picture of his income. He knew the information he provided to Mr. Beno would be used to prepare his corporate and personal income tax returns. He relied on Mr. Beno using the information he was given. Income that should have been reported was deliberately concealed to evade the payment of tax. Mr. Cromwell's efforts achieved what he intended, the payment of less tax than he owed on the business income he had earned in 2004 and 2005.

[196] The same goes for Mr. Cromwell's HST returns. As I have already found, he calculated HST on only some of his hairstyling income. He deliberately prepared his HST returns without factoring in income he knew should be taken into account.

Conclusion

[197] On the basis of these reasons, I find Mr. Cromwell and 3020636 Nova Scotia Limited guilty of Counts 3 and 4 and Counts 29 through 52 inclusive. As I previously indicated I am entering an acquittal on Count 53. On the basis of *Kienapple* I am staying convictions on the remaining jointly-charged counts on the Information, Counts 1 and 2 and Counts 5 through 28 inclusive. In relation to the charges against Mr. Cromwell alone, I am convicting him on Counts 56 and 57 and entering stays of conviction pursuant to *Kienapple* on Counts 54 and 55. I accept Mr. Denny's evidence concerning the relevant quantum for 2004 and 2005 referred to in these reasons and detailed in the Exhibits submitted in the course of her evidence. There is no evidence that casts any doubt on her calculations and Mr. Cromwell does not dispute them or the quantum they have produced.