

**IN THE PROVINCIAL COURT**

**R**

**vs.**

**MARK RAMSAY PATTERSON**  
**(Cite as R v. Patterson, 2002 NSPC 14)**

**D E C I S I O N**

**The Honourable Judge C.H.F. Williams, JPC**  
**Delivered orally April 30, 2002**  
**Delivered orally April 30, 2002**  
**The Honourable C.H.F. Williams, JPC**

**Counsel: Ms. M. McQueen, Crown Attorney**  
**: Mr. J. Pink, Defence Attorney**

## **R vs Mark Ramsay Patterson**

### Introduction

The Canada Customs and Revenue Agency has charged Mark Ramsay Patterson, the accused, that he did, at or near Halifax, in the County of Halifax, Province of Nova Scotia between the 1st day of May 1997 and the 30<sup>th</sup> day of September, 1997,

**Count 1:** wilfully, in any manner, caused 3007299 Nova Scotia Limited to evade or attempt to evade compliance with this Part or payment or remittance of tax or net tax imposed under this Part, by failing to file Goods and Services Tax Returns and report \$189,135.98 Goods and Services Tax collected and did thereby commit an offence contrary to paragraph 327(1)(c) of the **Excise Tax Act**;

**Count 2:** conspired with Darren Throop, officer and director of 3006970 Nova Scotia Limited, to commit an offence described in any of paragraphs 327(a) to (c) of the **Excise Tax Act** by assisting 3006970 Nova Scotia Limited to obtain Goods and Services Tax refunds in the amount of \$69,893.50 to which it was not entitled and did thereby commit an offence, contrary to paragraph 327(1)(e) of the **Excise Tax Act**;

**Count 3:** conspired with Dale Guiney, officer and director of V.I.N. Auto Sales Limited, to commit an offence described in any of paragraphs 327(a) to (c) of the **Excise Tax Act** by assisting V.I.N. Auto Sales Limited to obtain Goods and Services Tax refunds in the amount of \$29,820.38 to which it was not entitled and did thereby commit an offence, contrary to paragraph 327(1)(e) of the **Excise Tax Act**.

### Facts Admitted

The accused, pursuant to Criminal Code ss.655 and 795 has admitted the following facts:

1. THAT he, Mark Ramsay Patterson, owned 12 Power Street, Dartmouth, Nova Scotia during the taxation year, 1997, but did not reside there. The said, Mark Ramsay Patterson, hereinafter will be referred to as the **taxpayer**.

2. THAT the time period under review and cited in the Information before this Court are the **Excise Tax Act** reporting periods of May 1997; July 1997; August 1997; and September 1997 inclusive and hereinafter referred to as the **time period**.

3. THAT all exhibits contained in Volumes 1 & 2, tendered by the Crown at this trial are fully admitted without the need of further notice pursuant to any federal or provincial evidentiary

act and that the continuity of possession of all exhibits so tendered at this trial are also fully admitted.

4. THAT all exhibits contained in Volumes 1 & 2, whether originals or copies, are equally admissible at trial without further qualification as to their proof or their authenticity and speak for themselves as to their contents and their nature, and intended to relate directly to the proof of the charges before this Court.

5. THAT the quantum of Goods and Services Tax, as cited in the charges before this Court, are correct in respect to the amounts allegedly for GST purposes under the said **Excise Tax Act** and form the basis of the application for an input tax credit applied for by Darren Throop and Dale Guiney or their numbered companies, and correspond directly to amounts listed in **Exhibits 1 to 5**, Volume I; and in **Exhibits 284 and 285**, Volume II.

6. THAT the **taypayer** is an officer and director of the numbered company, 3007299 Nova Scotia Limited, an incorporated company registered in Nova Scotia, hereafter referred to as the **company** and referred to in **Exhibits 374, 286 and 287** of Volume II.

7. THAT the **company** dealt with Darren Throop and his numbered company, 3006970 Nova Scotia Limited, an incorporated company also registered in Nova Scotia and referred to in **Exhibits 269, 270, and 271** of Volume II, and also dealt with Dale Guiney and his numbered company, 3008894 Nova Scotia Limited, an incorporated company also registered in Nova Scotia.

8. THAT Darren Throop and Dale Guiney through their said numbered companies applied for input tax credits pursuant the **Excise Tax Act** amounting to \$189,135.98 over the **time period** and sought to receive \$99,713.88 in tax refunds over the **time period** pursuant to the **Excise Tax Act, R.S.C. 1985, chapter E-15**. The said tax refunds were based on the alleged purchase of forty (40) used vehicles from the **company**. The said used vehicles were never in the possession of the **company** during the **time period** and were never sold to Darren Throop and/or his numbered company, or to Dale Guiney and/or his numbered company. The said used vehicles were also never shipped to Yukon Auto Sales, a registered company incorporated in the province of Quebec and owned and operated by Robert Arena of Montreal, Quebec, hereinafter referred to as **Yukon Auto**. The bills of lading of Classy Carriers, **Exhibits 186 to 210** inclusive, are all fraudulent. Classy Carriers never transported the said used vehicles as listed in **Exhibits 36 to 132, and 156 to 180** to **Yukon Auto**.

9. As a result of the non-existent used vehicles, no valid purchase and/or sale agreements or transactions took place; and therefore, no one was entitled to input tax credits or tax refunds pursuant to the **Excise Tax Act** as applied for by Darren Throop, Dale Guiney, or their said numbered companies as referred to in **Exhibits 1 to 5**, Volume I, and **Exhibits 283 - 284** of Volume II inclusive. The **company** never remitted any tax purportedly collected as referred to in **Exhibits 36 - 42**, Volume I, and **Exhibits 278, 282**, Volume II inclusive. **Exhibits 1 - 5**, Volume I and **Exhibits 278, 282 - 284**, Volume II inclusive, are false and deceptive statements pursuant to the said **Excise Tax Act**.

Other Relevant Evidential Findings of Fact:

On my observations and assessments of the witnesses as they testified and of their testimonies and on the total evidence, I find the relevant facts to be as follows:

1. The numbered company, 3007299 Nova Scotia Limited , the numbered company, 3006970 Nova Scotia Limited and the numbered company, 3008894 Nova Scotia Limited are Goods and Services Tax /Harmonized Sales Tax registered companies.
2. The numbered company, 3007299 Nova Scotia Limited received sums of money that corresponded to the fictitious sales to the numbered company, 3006970 Nova Scotia Limited and the numbered company, 3008894 Nova Scotia Limited, into its corporate account. The accused immediately transferred these amounts to out-of-province corporate entities.

Relevant Legislation

**Excise Tax Act**

**327.(1)** Every person who has

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

(e) conspired with any person to commit an offence described in any of the paragraphs (a) to (c) is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

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

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

Issues

It seems to me that, as submitted by the Crown, the charges are duplicitous. In my view, the term, “in any manner”, as specified in count one of the Information, is an element of the offence and embodies more than one method to commit the delict. Thus, in my view, it would also involve the act of conspiring with others to accomplish the intentional acts of the accused that are averred. The conspiracy allegations in counts number two and three would appear to have a sufficient factual nexus between them and count one and a legal nexus between the offences themselves. Further, it would also appear that the same acts of the accused ground each charge. Therefore, a

consideration and analysis of count one would result in a decision on that count and conclusions on counts two and three.

Consequently, the issues are:

1. Was the numbered company, 3007299 Nova Scotia Limited required to file a Goods and Services Tax /Harmonized Sales Tax return for Registrants?
2. Reasons on why the numbered company, 3007299 Nova Scotia Limited did not file Goods and Services Tax /Harmonized Sales Tax Returns for Registrants for the period under review.
3. What then, if any, was the role of the accused in the acts of omission and commission caused by the activities of the numbered company, 3007299 Nova Scotia Limited?

#### Analysis

The accused has admitted that he was an officer and director of the numbered company, 3007299 Nova Scotia Limited. In addition, he has admitted that the numbered company, 3007299 Nova Scotia Limited did not report any taxes purportedly collected on the sales transactions referred to in **exhibits 36-42, 278 and 282** inclusive. We recall that these are the vehicles sold by the numbered company, 3007299 Nova Scotia Limited to the numbered company, 3006970 Nova Scotia Limited and the numbered company, 3008894 Nova Scotia Limited. Also, we recall that the same vehicles were resold by the numbered company, 3006970 Nova Scotia Limited and the numbered company, 3008894 Nova Scotia Limited to Yukon Auto Sales, a company in Quebec.

Additionally, the accused has admitted that when the numbered company, 3007299 Nova Scotia Limited sold the vehicles to the numbered company, 3006970 Nova Scotia Limited and the numbered company, 3008894 Nova Scotia Limited, it never had possession of those vehicles and never did sell the vehicles as noted on the documents **exhibits 36-42, 278 and 282** inclusive. He has also admitted that they never shipped the vehicles to Yukon Auto Sales, a company in Quebec and that any such supporting documents are false.

Furthermore, the sales transactions noted in **exhibits 278**, the numbered company, 3007299 Nova Scotia Limited to the numbered company, 3008894 Nova Scotia Limited, **exhibit 282**, the numbered company, 3007299 Nova Scotia Limited to the numbered company, 3008894 Nova Scotia Limited, **exhibit 283**, the numbered company, 3008894 Nova Scotia Limited to Yukon Auto Sales are false and deceptive documents. The Retrieve Returns for the numbered company, 3007299 Nova Scotia Limited, **exhibits 1-5** inclusive and the Goods and Services Tax /Harmonized Sales Tax return for the numbered company, 3008894 Nova Scotia Limited, **exhibit 284**, are also false and misleading documents.

Further, the accused has admitted that as no valid purchases and sales ever occurred, no legal entity

or person was entitled to claim input tax credits or tax refunds based upon those fictitious purchases and sales noted in **exhibits 36-42, 278 and 282** inclusive. Any such claims would be illegal and fraudulent. All the purported sales involved a Nova Scotia registered company selling used vehicles to another Nova Scotia registered company. This transaction, on its face, required the selling company to collect Harmonized Sales Tax from the purchasing company and to file a Goods and Services Tax /Harmonized Sales Tax Return for Registrants. The purchasing company, in turn, would report this payment of taxes also on a Goods and Services Tax /Harmonized Sales Tax Return, for Registrants. However, if the purchasing Nova Scotia company, as here, sold the same vehicles out of the province, to Quebec, where there was no Harmonized Sales Tax, it would collect only the Goods and Services Tax portion of Harmonized Sales Tax from the Quebec purchaser. Since the Nova Scotia company, when buying, paid the Harmonized Sales Tax but, when reselling the same product received, only the Goods and Services Tax portion of the Harmonized Sales Tax, it would be entitled to reclaim the Provincial Sales Tax portion that it had paid on the initial purchase, as a credit.

1. *Was the numbered company, 3007299 Nova Scotia Limited required to file a Goods and Services Tax /Harmonized Sales Tax return for Registrants?*

Here, the inquiry is on the admitted fact that the numbered company, 3007299 Nova Scotia Limited did not file a Goods and Services Tax /Harmonized Sales Tax Return for Registrants for the reporting period under review. I found that the numbered company, 3007299 Nova Scotia Limited is a registered Goods and Services Tax company with a Goods and Services Tax number. It was the genesis and the foundation for all subsequent Goods and Services Tax and Harmonized Sales Tax claimed by the numbered company, 3006970 Nova Scotia Limited and the numbered company, 3008894 Nova Scotia Limited. The filing of Goods and Services Tax returns by the numbered company, 3007299 Nova Scotia Limited would have supported the legitimacy of the origin and basis of the outputs and inputs of the numbered company, 3006970 Nova Scotia Limited and the numbered company, 3008894 Nova Scotia Limited. The three companies were symbiotically related. Thus, apart from the legal requirement to file a report of the receipt of Goods and Services Tax, ethically and as a legitimate business entity, the numbered company, 3007299 Nova Scotia Limited was obligated to support its business and societal obligations.

2. *Reasons on why the numbered company, 3007299 Nova Scotia Limited did not file Goods and Services Tax /Harmonized Sales Tax Returns for Registrants for the period under review.*

Reconfiguring the admitted facts and my finding of fact in a simple manner, I find that the evidence showed that all the principals of all the involved companies, that is, the accused, Darren Throop, Dale Guiney, Robert Arena, Tony Iucalano and Joe Iucalano were experienced business people in the automobile-brokerage business. They knew each other well and before these impugned transactions did business together in one fashion or another. In fact, the accused ran an unsuccessful auto dealership in Pugwash, Nova Scotia. He subsequently went to Ontario and with

Arena's help, in late 1996, he incorporated MRP Enterprises Limited, another used auto dealership in that province. He also became an employee of Arena, first selling vehicles and then doing the banking transactions for several business in which Arena and/or the Iucalano brothers were principals, including Yukon Auto Sales Limited.

By admitting that the company generated false documents in a scheme to defraud the government, the accused, is in effect, admitting that the company in which he was the sole director and legal owner was involved in a fraudulent scheme. In his testimony, I noted that he never explained why the company never filed Goods and Services Tax returns as required. In fact, his defence concentrated totally on denying any personal involvement with others in a fraudulent scheme. Nevertheless, by admitting that the company was involved, he has raised the issue of his control and knowledge of the company's activities. This then brings into focus his *mens rea* of the company's activities that requires a careful examination of the evidence.

First, I considered how and why the company came into existence. On the evidence that I accept, while living in Ontario, the accused felt that he should return to Nova Scotia and start an auto leasing, buying and selling business. However, he had no money to do so. Nonetheless, his then employer and friend, Robert Arena, along with Tony Iucalano discussed and agreed to finance the project. Iucalano contacted a lawyer with whom he did business in Nova Scotia and, although the evidence is not clear, a reasonable inference is that he instructed that lawyer to incorporate the numbered company, 3007299 Nova Scotia Limited. In any event, the accused contacted the same lawyer and instructed the lawyer to use his, the accused, name and Nova Scotia address as the legal particulars of incorporation in Nova Scotia. The lawyer did as instructed, though the accused did not pay the legal bill for the incorporation that was perfected April 17, 1997.

Thus, it is reasonable to conclude, and I do, that the lawyer considered the accused and whoever paid the legal bill as working in collaboration to bring into legal existence the corporate entity. After all, the accused came to his office to sign the corporate papers. The accused consented to appear and to be registered as its sole shareholder and director, although he then did not reside in Nova Scotia. Further, the accused also instructed the lawyer to send the corporate papers to his residential address in Ajax, Ontario. In support of this activity, the corporate documentary history, **exhibit 274**, shows that the accused was the president and secretary, with a Halifax Regional Municipality address. It also shows that the numbered company, 3007299 Nova Scotia Limited certificate was revoked for non-payment on June 2, 1998.

When in Nova Scotia, the accused, accompanied by Tony Iucalano, opened a bank account for the numbered company, 3007299 Nova Scotia Limited at a Canada Trust local branch. However, the accused was the signing officer. In addition, the accused applied for and received a Goods and Services Tax number and declared, on application, that he was the owner of the numbered company, 3007299 Nova Scotia Limited with a Halifax Regional Municipality address. See **exhibit 288**. Therefore, for all intent and purposes, the accused had incorporated a company that described its major business activity, in Nova Scotia, was to lease and rent vehicles.

Second, I considered the company's business transactions in relation to the numbered company,

3006970 Nova Scotia Limited and the numbered company, 3008894 Nova Scotia Limited. See **exhibits 36-42, 264, 278, 281-283** inclusive. I noted that the first business transactions that the numbered company, 3007299 Nova Scotia Limited conducted were a series of fictitious auto sales to the numbered company, 3006970 Nova Scotia Limited and the numbered company, 3008894 Nova Scotia Limited. In one transaction, executed on May 22, 1997, **exhibit 36**, the accused testified that he wrote his company's name and Goods and Services Tax registration number. He claimed however that he signed the form, a Wholesale Buyer's Car Order and Agreement, in blank. However, in my view, and from the standard of a reasonable and rational person, fully informed of the circumstances and having in mind, the accused declared extensive experience in buying and selling cars, it would be obvious to him, as a reasonable and prudent businessperson, that they intended the form to effect a legal transfer of vehicles from the numbered company, 3007299 Nova Scotia Limited to the numbered company, 3006970 Nova Scotia Limited. But, he as owner and sole shareholder of the numbered company, 3007299 Nova Scotia Limited knew and must have known at the time he signed the Wholesale Buyer's Car Order and Agreement form, that the numbered company, 3007299 Nova Scotia Limited neither owned nor possessed any vehicles to transfer by way of a sales agreement to the numbered company, 3006790 Nova Scotia Limited.

Third, I considered the financial transactions of the numbered company, 3007299 Nova Scotia Limited and the accused involvement in them. The accused claimed that he was awaiting financing from Arena to operate his business. However, the numbered company, 3006970 Nova Scotia Limited deposited into the corporate account of the numbered company, 3007299 Nova Scotia Limited an amount of \$213,786.00 on May 29, 1997 at 1510 hours. **Exhibit 148**. This amount corresponded to that shown on the fictitious invoice of sales to the numbered company, 3006970 Nova Scotia Limited. **Exhibit 36**. At 1523 hours, the accused, ostensibly on the instructions of Arena, wrote a bank draft transferring this amount of money to Yukon Auto Sales, a company owned by Robert Arena. **Exhibit 153**.

Additionally, on July 31, 1997, at 1507 hours, \$ 224,250.00, **exhibit 148**, corresponding to the fictitious sales to the numbered company, 3006970 Nova Scotia Limited, **exhibit 38**, or that of the fictitious sale to the numbered company, 3008894 Nova Scotia Limited, **exhibit 282**, was deposited into the corporate account of the numbered company, 3007299 Nova Scotia Limited. At 1510 hours on the same day, the accused, again ostensibly on the instructions of Arena, signed a note transferring this amount to 1228224 Ontario Inc., **Exhibit 155**. Further, on August 8, 1977, at 1614 hours, \$208,650.00 was transferred to MRP Enterprises, a company owned by the accused in Ontario. **Exhibit 277**. A deposit for the same amount was made at 1604 hours.

A closer scrutiny of these transactions raises many questions. For example, why would the numbered company, 3007299 Nova Scotia Limited pay money to Yukon Auto Sales, Arena's company in Quebec; 1228224 Ontario Inc., and MRP Enterprises, when, on the evidence, it had no corporate dealings with them? I also bore in mind that these moneys are the product of fictitious invoices. Despite, this evidence of gross impropriety, in my opinion, the accused gave no satisfactory answer.

However, the answer could well be, and it is reasonable to conclude from the total evidence, that



Arena deposited his own money into the corporate account of the numbered company, 3007299 Nova Scotia Limited, representing the same amount of the fictitious sales invoice, with the understanding and undertaking that the defendant would immediately withdraw it and return it to him. By doing this for the purposes of the Goods and Services Tax, it would appear to the casual observer, that a legitimate sale did occur. Also, it would allow the purchaser, the numbered company, 3006970 Nova Scotia Limited, without any financial outlay, to claim that a purchase and sale transaction did occur and thus entitling it, in Nova Scotia, to try to get a Goods and Services Tax credit. Arena, in Quebec, gets back his money and the numbered company, 3006970 Nova Scotia Limited can claim a Goods and Services Tax rebate. However, the numbered company, 3007299 Nova Scotia Limited cannot declare the sale, or pay taxes on the sale, because it had returned the money for the purported sale to Arena who had fronted the deal.

The same would hold true for the other fictitious transactions. Someone or some corporation fronts the money that corresponded to the amount of a purported third party sale. The money is deposited in the account of the numbered company, 3007299 Nova Scotia Limited and is then immediately withdrawn and returned to the depositor. The third party then claimed a tax rebate on the fictitious sale. However, the numbered company, 3007299 Nova Scotia Limited cannot declare the sale as it had in effect made no sale and had no money to pay the taxes that would normally accrue as a result, if the sale had been legitimate. So, in order not to pay taxes it files no Goods and Services Tax returns.

Should it have filed and the accrued taxes demanded or paid the fraudulent scheme would not work to the advantage of the participants. Thus, the numbered company, 3007299 Nova Scotia Limited was involved in a plan that was well thought out and executed and would have required the knowledge and cooperation of all involved to ensure that it worked effectively. No one actually spends anything to buy anything but can receive money as if one had expended it in the first instance. Here, the initial and lead company, the numbered company, 3007299 Nova Scotia Limited would have to play a major and significant role in the scheme. It was not a question of awaiting financing to start a business it was to receive the seed money for an elaborate fraud.

In short, I find that the numbered company, 3007299 Nova Scotia Limited was a sham company created to operate in facilitating a fraudulent scheme. In order for the fraud to be lucrative and risk free, the numbered company, 3007299 Nova Scotia Limited could not file Goods and Services Tax returns reflecting that it had received Goods and Services Tax from the numbered company, 3006970 Nova Scotia Limited and the numbered company, 3008894 Nova Scotia Limited.

*3 What then, if any, was the role of the accused in the acts of omission and commission caused by the activities of the numbered company, 3007299 Nova Scotia Limited?*

I think that when the accused signed the Wholesale Buyer's Car Order and Agreement, **exhibit 36**, it is not truly correct to say that the form was blank when he signed it. It had, in his own hand writing, his company's name and Goods and Services Tax registration number and the registration number of the purchaser company. What was missing, perhaps, were the details of the sale. When

I consider that the sole purpose of the incorporation of the numbered company, 3007299 Nova Scotia Limited was to buy and sell vehicles, then it is rational to conclude that the accused, by signing the document, was furthering the stated purposes of the company. It also appeared that he signed similar documents, **exhibits 278 and 282**. In my view, in the circumstances, his signing the form, without the details of the sale included, had the effect of furthering a fictitious sale. Consequently, concluding that he did not know or appreciate the nature and quality of what he was signing and that he did not willingly, and voluntarily sign it with full knowledge of the consequences of his signature was difficult.

His knowledge and appreciation of the company's activities and his management of the company's affairs are put to further test and scrutiny. He declared that other sales agreements through the numbered company, 3007299 Nova Scotia Limited, were signed or written by Joe Iucalano, **exhibits 38, 41**, for the sales to the numbered company, 3006970 Nova Scotia Limited. Other corporate sales documents were created and signed by Troop and Joe Iucalano or an unknown person, **exhibit 264, 278 and 282**. However, Troop and Iucalano are not strangers to the accused. They are business associates.

Thus, if as the accused posited, that the numbered company, 3007299 Nova Scotia Limited was incorporated and funded by Arena, and the Iucalano brothers with his acquiescence and participation, then he knowingly allowed the numbered company, 3007299 Nova Scotia Limited to be stage managed by third parties for whom he was acting as a token and nominal owner. If so, he was actively facilitating and encouraging, by his significant support of the incorporation, the silent owners to accomplish their criminal purposes. See for example: *R. v. Dunlop and Sylvester* [1979] 2 S.C.R. 881; *R.v. Isaac*, [1984] 1 S.C.R. 74, *R. v. Greyeyes* (1997), 116 C.C.C.(3d) 334 (S.C.C.), *R. v. Morgan* (1993), 80 C.C.C.(3d) 16.(Ont.C.A.). Or, at the least, he was wilfully blind. *Sansregret v. The Queen* (1985), 18 C.C.C. (3d) 223 (S.C.C.). This latter proposition finds support in his own action when he signed **exhibit 36**.

If however, on the other hand, as he has admitted, that the transactions were fictitious then the writings and signatures become mere details of the overall scheme where the agreed purpose among the participants was to commit fraud. Furthermore, in my view, if the invoices were false, as admitted, then all the parties, including the accused, participated in their creation. The evidence, in my opinion, points out, that despite his denials, the accused was not a passive bystander. On the evidence that I accept, I find that the accused by his overall action, encouraged and supported the others in the admitted unlawful purposes. Thus, in my view, when shed of all the denials and obfuscation, as the hand writings highlights the involvement of the accused and others, in varying degrees, in a fraudulent scheme, the accused testimony concerning the authorship of the handwritings was a mere attempt to deflect from his involvement in the admitted fraudulent scheme.

To this accusation, however, the accused submitted that he lacked the requisite *mens rea* to constitute the essential elements of the offence to "wilfully, in any manner, caused [the company] to evade or attempt to evade compliance . . . by failing to file Goods and Services Tax returns and not reporting . . . taxes collected." He admitted to being the only shareholder of the numbered company, 3007299 Nova Scotia Limited but contends that the real owner was Arena. Further, he

admitted withdrawing the moneys but only on Arena's instructions because Arena said that he needed the money. He contended that Arena needed the money because it was his. But, how could that be when the money was supposed to be for the sale of vehicles sold to the numbered company, 3006970 Nova Scotia Limited?

In my opinion, credibility of all the witnesses was in issue. However, from the dubious testimonies emerged a picture of unscrupulous men who would lie to protect their own interest and blame others for their own misconduct. They submerged themselves in a sea of denials and half truths. Nevertheless, there were, however, kernels of truth supported by the documentary evidence that gave an impartial and impersonal testament of each of the participant's involvement in the scheme. Consequently, on my own assessment of the accused testimony when weighed and assessed with the total evidence, I concluded that his conduct was the product of an intent to evade tax that he knew or believed was payable. See: *R.v. Hefler* (1980), 42 N.S.R. (2d) 276 (N.S.Co. Ct.).

I concluded that the accused, along with others, put into place a scheme. It, required the active participation of at least three corporate entities, two in Nova Scotia, where we pay Harmonized Sales Tax and one in Quebec, where they do not combine Goods and Services Tax and Provincial Sales Tax. It also required the involvement of individuals who were familiar with the buying and selling of vehicles. Therefore, understanding the means of communicating the scheme is important as the principals who created the companies are different legal personalities to the companies themselves. However, the principals are the means by which the will or purposes of the companies are communicated or expressed.

In theory, it is a question of the act of the company versus the acts of the principals. This aspect can however be resolved in looking at the role of the principals and in particular, as here, the role and function of the accused. In my view, on the evidence that I accept, he acted as the fulcrum between the Nova Scotia companies and the Quebec company. It was through him that all the corporate entities found fulfilment of the common goal. Without him or his cooperation, the Quebec company could not fulfill its role in carrying out its part of the common enterprise and the Nova Scotia companies, in particular the numbered company, 3007299 Nova Scotia Limited, could not function or actualize their designed functions and roles. Further, I think that the purpose for the creation of the triad of companies never could have evolved separate and apart from the active participation and cooperation of the principals in the scheme.

Thus, it seems to me that the accused actions became fused or assumed in the activities of the numbered company, 3007299 Nova Scotia Limited. Although he is an individual separate and apart from the company, he voluntarily and willingly participated in its activities and vicariously in that of the other companies. His actions were contingent upon or depended upon the activities of the triad of companies. In his coordinated activity with the activity of the principals of the participating companies he benefitted from the common enterprise. His personal undeclared incomes, his offshore banking account and his lifestyle manifested this.

Because a corporation is an abstraction with no mind of its own, humans who become its directing mind must direct its activities and will. Thus, frequently, the state of mind of the human individual

is the state of mind of the corporation. Therefore, on that premise, I think that it makes no difference whether the accused, as here, is an individual or the company itself if it can be shown that he is united in his activities with that of the company that he directs. Here, I think that he, so to speak, because of his conduct, as found, became an embodiment of the company. In short, he assumed his company's personality and is therefore, in practical terms, the company and, as such, the company's purposes are manifested or realized through him. Consequently, as his company is part of the triad of companies created, as I have found, for a common purpose, he knowingly participated and helped in the furtherance of that common fraudulent scheme.

In my view, the accused knew what he was doing. I do not doubt that he knew what was involved and decided to participate for the illicit rewards that would accrue. I do not doubt that he knew that as part of the scheme the numbered company, 3007299 Nova Scotia Limited could not file Goods and Services Tax /Harmonized Sales Tax returns. As the President and Secretary of the numbered company, 3007299 Nova Scotia Limited it was his corporate responsibility and duty to file Goods and Services Tax returns. However, to avoid thwarting the scheme, I do not doubt that he wilfully caused the numbered company, 3007299 Nova Scotia Limited not to submit or file any Goods and Services Tax returns for the periods under review. He knew from the manner in which the scheme worked that the numbered company, 3007299 Nova Scotia Limited had no money to pay any taxes.

I do not doubt that he knew from the manner in which the scheme worked that the numbered company, 3007299 Nova Scotia Limited had to create false and fictitious transactions usually, but not necessarily, with his direct participation or connivance. Additionally, I do not doubt, on the evidence that I accept, that the accused knew that no money, in fact, was received by the numbered company, 3007299 Nova Scotia Limited for the transactions between it and the numbered company, 3006970 Nova Scotia Limited and the numbered company, 3008894 Nova Scotia Limited, but that money representing the fictitious sales were deposited into the corporate account of the numbered company, 3007299 Nova Scotia Limited and promptly withdrawn and returned to the depositor.

Thus, I do not doubt that he knew that no Goods and Services Taxes were, in fact, collected. However, these fictitious transactions created by the numbered company, 3007299 Nova Scotia Limited permitted the numbered company, 3006970 Nova Scotia Limited and the numbered company, 3008894 Nova Scotia Limited to claim and receive Goods and Services Tax refunds, as if in fact, the numbered company, 3007299 Nova Scotia Limited had received \$189,135.98 Goods and Services Tax from them.

#### Conclusion and Disposition

Consequently, on the evidence that I accept and on the above analysis, I am satisfied that the Crown has proved beyond a reasonable doubt the elements of the offence stipulated in count one of the information tried before me. I will enter a conviction accordingly. With respect to counts two and three, in line with the *Kienapple* rule I will enter conditional stays. Found accordingly.

