SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Young, 2022 NSSC 58

Date: 2022-02-24
Docket: CRS. No. 504931
Registry: Sydney

Between:

Her Majesty the Queen

v.

Georgette Young, Lydia Saker, Nadia Saker, Angela MacDonald and Latatia Advertising Incorporated, The Spaghetti Benders Limited, 25132004 Incorporated, 25132002 Incorporated, Kishk Incorporated, Maddie and Bella's Children's Clothing Incorporated, Artisan Hair Loss Therapy Incorporated, Housewives in Heels Incorporated, Juliette and John Incorporated and New and Chic Incorporated

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Trial Decision

s. 380 of the Criminal Code of Canada
s. 327 (a) and (d) of the Excise Tax Act

Judge: The Honourable Justice Robin C. Gogan

Heard: June 17, 21, 22, 24, 25, 28, 29, 30, July 5, 6, 7, 8, 9, 12, 13, 14, 19, 20, 21, 22, 23, 27, 28, 30, 2021, in Sydney, Nova Scotia

Counsel: Mark Donohue and Constantin Draghici-Vasilescu for the Crown
Georgette Young, Angela MacDonald, Nadia Saker, Lydia Saker, self-represented Defendants

By the Court :

Introduction

[1] Georgette Young, Angela MacDonald, Nadia Saker and Lydia Saker are self-represented accused. They are co-accused in this proceeding, along with ten companies, charged with a multitude of offences contrary to both the ***Criminal Code of Canada*** and the ***Excise Tax Act***. The offences are alleged to have occurred between January 1, 2011, and July 31, 2015.

[2] A copy of the Indictment dated March 11, 2021, is attached as Appendix "A" to these reasons. Each of the four individual accused face a total of ten charges under s. 380(1)(a) of the ***Criminal Code***. These counts allege that these accused defrauded the Government of Canada in various amounts. The Indictment also contains a total of 20 charges against various combinations of accused under ss. 327(1) of the ***Excise Tax Act***. Half of those charges allege false statements in Goods and Services Tax ("**GST**") Returns, an offence under s. 327(1)(a) of the ***Act***. The remaining half allege offences under s. 327(1)(d) of the ***Act***, which involve obtaining or attempting to obtain refunds which they were not entitled to receive.

[3] The trial of this matter began on June 17, 2021, and concluded on July 30, 2021. It involved a considerable volume of electronic and documentary evidence

produced by the Crown. Much of this evidence came from production orders and searches conducted of various locations. The evidence included materials from a civil audit and working papers compiled by the investigator.

[4] A number of previous decisions have been released in this proceeding. The first, ***R. v. Young***, 2021 NSSC 214, dealt with Crown applications to have certain witnesses testify virtually under s. 714 of the ***Criminal Code***. Many of these applications were allowed. The defendants applied for relief from delay pursuant to s. 11(b) of the ***Charter*** but this application was formally abandoned by them on May 27, 2021.

[5] The individual accused brought a series of ***Charter*** applications seeking exclusion of evidence. Some of these survived a ***Vukelich*** application brought by the Crown (oral decision dated June 16, 2021). The first of those alleged a breach of s. 8 ***Charter*** rights relating to the search of various locations on November 22, 2017. Those applications were dismissed in ***R. v. Young***, 2021 NSSC 220. There was also a ***Jarvis*** application that was dismissed in ***R. v. Young***, 2021 NSSC 361. These reasons should be read in conjunction with previous decisions.

[6] What follows here is a decision in this matter. I begin with some basic principles and a fairly brief review of the evidence adduced by the Crown. I note

here that none of the accused testified. I note as well that at the conclusion of the ***Jarvis*** application, all parties agreed that the evidence on that application would be trial evidence.

[7] Identity and jurisdiction were not contested but I find are established on the evidence.

Overview

[8] At the outset, I wish to review some of the basic principles that guide my decision.

Basic Principles - The Presumption and Burden

[9] The various accused in this matter enjoy the presumption of innocence, a presumption only displaced if the Crown proves guilt beyond a reasonable doubt. Suspicion of guilt or a belief in probable guilt do not displace the presumption. Only proof beyond a reasonable doubt can establish guilt. The Crown's heavy onus of proving guilt beyond a reasonable doubt never shifts.

[10] A reasonable doubt is based on reason and common sense which must be logically connected to the evidence or lack of evidence. Suspicion and probability fall far short of the reasonable doubt standard. Proof beyond a reasonable doubt

falls much closer to absolute certainty than it does to a balance of probabilities (***R. v. Lifcus***, [1997] 3 S.C.R. 320 and ***R. v. Star***, [2000] 2 S.C.R. 144).

[11] The accused do not have to prove anything to be found not guilty. The burden always rests on the Crown to prove beyond a reasonable doubt that each committed the essential elements of the offences charged against them. I note here however, that the burden on the Crown does not extend to "negativing every conjecture" (***R. v. Paul***, [1977] 1 S.C.R. 181, at p. 191).

[12] This is a largely circumstantial case. The elements of the offences and the evidence offered by the Crown will be reviewed below. Here, as a general proposition, I note that circumstantial evidence has the same evidentiary value as direct evidence. Reliance on circumstantial evidence does not change the burden of proof. I remind myself of the direction of the Supreme Court of Canada in ***R. v. Villaroman***, 2016 SCC 33, which confirmed that an inference of guilt drawn from circumstantial evidence should be the only reasonable inference that such evidence permits. Cromwell, J. elaborated at p. 3 (headnote):

> … In assessing circumstantial evidence, inferences consistent with innocence do not have to arise from proven facts. The issue with respect to circumstantial evidence is the range of reasonable inferences that can be drawn from it. If there are reasonable inferences other than guilt, the Crown's evidence does not meet the proof beyond a reasonable doubt standard. A certain gap in the evidence may result in inferences other than guilt. But those inferences must be reasonable given the evidence and the absence of evidence, assessed logically, and in light of human

> experience and common sense. When assessing circumstantial evidence, the trier of fact should consider other plausible theories and other reasonable possibilities which are inconsistent with guilt. The Crown thus may need to negative these reasonable possibilities, but certainly does not need to disprove every possible conjecture which might be consistent with innocence. Other plausible theories or other reasonable possibilities must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation.

[13] More recently, the guidance in ***Villaroman*** was applied in a fraud context in ***R. v. Ross and Dawson***, 2019 NSSC 275, at paras. 345 – 347 (see also ***R. v. Calnen***, 2019 SCC 6, and ***R. v. Murphy***, 2018 NSSC 310 at paras. 32 – 33, citing ***R. v. Delege***, 2018 BCCA 200 and a pre-***Villaroman*** decision involving similar charges ***R. v. Ingaham***, 2016 NSPC 38). Circumstantial evidence of intent is an important aspect of this case and for this reason, I rely on the words of Chief Justice Cartwright in ***Lampard v. The Queen***, [1969] S.C.R. 373 at p. 380:

> Unless the doer of the act has expressed his intention, the finding as to what that intention was will necessarily be founded on an inference drawn from all the relevant circumstances provided in evidence.

[14] This guidance on the assessment of circumstantial evidence is important to the disposition of this case, especially in light of some arguments made and theories advanced by the defendants, none of which were supported by evidence.

[15] None of the accused testified and there was no evidence tendered by any of the defendants in this case. There is however, evidence of what was said by the

individual accused during their civil audits, both in telephone conversations and interviews. There is also evidence in the form of handwritten notations on documents submitted during reviews and audits. In some respects, it could be said that these statements, if accepted, are exculpatory. For this reason, I am subject to the direction of the Supreme Court of Canada in ***R. v W.(D.)***, [1991] 1 S.C.R. 742. As recently stated in ***R. v. Mains***, 2022 ONCJ 44, at para. 90:

> In *R. v. W(D.)*, 1991 CanLII 93 (SCC), [1991] 1 SCR 742, at p. 758, Cory J. provided the well-known instructions on the relationship between proof beyond a reasonable doubt and credibility. The applicability of the guidance provided by the Court in *W(D.)* is not limited to cases where an accused person testifies. If, for example, a statement has an exculpatory aspect, a court must conduct a *W(D.)* analysis: *R. v. L.L.*, 2022 ONCA 50, at paras. 23-27.

[16] Accordingly, if I accept these statements, there may be a basis for doubt on the required intent and an acquittal must follow. If I do not believe or accept this evidence, I must still consider whether it raises a reasonable doubt. If it does not, a conviction does not inevitably follow. In the end, I must be satisfied on the evidence I do accept that the Crown has proved each and every charge beyond a reasonable doubt.

The Crown Theory – Providing Context for the Analysis

[17] Before reviewing the evidence in this case, let me comment generally on the Crown theory in this case. It is my hope that a brief outline of the Crown case will provide context and assist in understanding the reasons that follow. As the Indictment alleges, this matter involves four individual and ten corporate defendants who filed GST returns between January 1, 2011, and July 31, 2015. The four individual accused are related. Georgette Young, Nadia Saker and Angela MacDonald are sisters. Lydia Saker is their mother.

[18] Georgette Young was the sole officer and director, operating mind, recognized agent, and authorized representative of Latitia Advertising Incorporated ("**Latitia**"), 25132004 Incorporated ("**2004**"), 25132002 Incorporated ("**2002**", *a.k.a.* "**Silverfish**"), Kishk Incorporated ("**Kishk**"), and Maddie & Bella's Children's Clothing Incorporated ("**Maddie & Bella**"). Angela MacDonald was owner, recognized agent, and the lone officer and director of Juliette & John Incorporated ("**Juliette & John**") and lone officer and director for New & Chic Incorporated ("**New & Chic**"). Nadia Saker was the owner, sole officer, director and recognized agent of Housewives in Heels Incorporated ("**Housewives in Heels**") and Lydia Saker was the recognized agent and only officer and director of Artisan Hair Loss Therapy Incorporated ("**Artisan**"). The Spaghetti Benders

Limited ("**Spaghetti Benders**") was owned equally by Young, MacDonald and Nadia Saker, and all were directors along with Lydia Saker. Young was the recognized agent.

[19] Over the period in question, Young became the bookkeeper for all the defendant companies. She also became the authorized representative of each company for tax purposes. Over time, Canada Revenue Agency ("**CRA**") came to consider all of the corporate defendants related.

[20] On an escalating basis, the GST returns filed by the corporate defendants claimed refunds on the basis that their Input Tax Credits ("**ITCs**") exceeded the tax liability. The allegation generally is that these claims were fraudulent. Some of the companies at one time or another had some small measure of legitimate business activity. However, over time, the individual accused all participated in a scheme to file GST returns claiming entitlement to refund payments based on fictitious information. As the claims grew, the only way the scheme could work is if the accused worked in concert.

[21] The Crown theory alleges that some of the companies were incorporated for the sole purpose of perpetuating this fraudulent scheme. In essence, one of the companies generated the GST liability by supplying the others, and the others

claimed the cost of those supplies as ITCs, generating a potential refund. The company that incurred the tax liability was then abandoned. The scheme involved all of the defendants claiming a large quantum of business amongst the related companies. The Crown is of the view that Young was the ring leader of the scheme and that the others had knowledge and actively participated.

[22] The basics of the alleged scheme are technical but simple. It is the magnitude that is remarkable. The Crown theory is that the fraudulent claims in the early period were relatively small and survived various forms of CRA review. With this success, the scheme grew exponentially and to a massive scale with the claims advanced having no relationship to any real economic activity. The scope of the scheme was only discovered when the related companies came under a consolidated civil audit by CRA beginning in April of 2015. The matter was referred to the Criminal Investigation Directorate ("**CID**") of CRA and a formal investigation began in June of 2016. Production orders and search warrants were subsequently obtained in 2017.

[23] As a result of the criminal investigation, the Crown alleges that between January 1, 2011, and July 31, 2015, the ten companies, controlled by the four individual accused, filed GST returns claiming a combined refund of $20,628,805.06. Of that amount, CRA allocated $81,399.61 to existing corporate

tax debt. The Receiver General of Canada paid refunds totalling $275,960.04. Essentially, this means that the defendants were collectively paid $357,359.65, and claimed further payments totalling $20,271,445.40.

[24] Charges were laid on February 1, 2019, and an Indictment followed on March 11, 2021.

[25] As noted above, there are now a total of thirty charges before the court for determination. The charges can be organized into groups of three which reflects the Crown theory that all of the individual accused participated in the fraudulent scheme. The corresponding ***Excise Tax Act*** charges flow from the various GST returns filed, for the most part, claiming refunds on the basis of false information. The latter charges reflect the corporate organization and charge both the company and the individuals who served as the officers, directors and agents of each company.

[26] To be clear, however, all of the charges have the same broad basis – a scheme amongst family members and a group of related companies to defraud the Government of Canada by giving false information in order to obtain GST refunds to which none of the companies were entitled.

[27] Before analyzing the evidence offered in this case, I will review the issues and the positions taken by the parties.

Issue

[28] The main issue in this case is whether the Crown has proven each and every count of the Indictment beyond a reasonable doubt. I will say here that the Crown offered an overwhelming amount of evidence that the statements made in the GST returns were false. The real issue then becomes the determination of intent.

[29] Before analyzing the main issue, I will deal with a preliminary issue raised by the defendants.

Position of the Parties

The Crown

[30] The charges against the various accused in this proceeding can be divided into two groups. The first group, counts one to ten, are fraud charges contrary to s. 380(1)(a) of the ***Criminal Code of Canada***. The second group, counts 11 to 30, are charges brought under either ss. 327(1)(a) or (d) of the ***Excise Tax Act.*** The elements of each set of offences will be reviewed in more detail below. The Crown submits that the evidence establishes the guilt of all of the accused beyond a reasonable doubt on all charges.

[31] There is a common evidentiary basis for both sets of charges. The Crown theory was succinctly summarized in its pre-trial submission:

> In the case before the Court, the four individual defendants over the space of 4.5 years, created 10 defendant companies. The period covered by the investigation was January 1, 2011 to July 31, 2015 inclusive.
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> During this period, the four accused claimed false HST refunds for $3,628,805.00 (using the 10 corporations). The scheme was very simple: designated corporations claimed false ITCs (Input Tax Credits) vastly exceeding the HST collected and almost exclusively based on fabricated invoices, while large HST liabilities accrued in asset-less corporations against which collection would have been unfeasible.
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> Of this claimed amount, CRA paid $276,067.00. In addition, $81,399.00 was allocated as a credit to other amounts owing to CRA. An evolution of the documents provided by the taxpayers to the CRA during the audit conducted by Carol Power, led to a GST/HST position where nine of the corporations claimed the $3.6 million refund, and the defendant company 25132002 ended with an unpaid balance of $1.7 million.
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> The seized documentation from all sources uncovered in excess of $80 million in sales invoices. Of these, a total of $55.7 million, before HST, were inter company sales invoices between the corporations controlled/operated by the four women. Of the sales invoices to external customers, $25.9 million could not be verified (because of insufficient information about the alleged customer) or were determined to be false as the named customers did not exist or the address provided was false. The investigation revealed only $59,000.00 in sales to outside customers.
>
> On the expense side, documents totalling $56.8 million were found. The vast majority of these documents – totalling $55.7 million – involved intercompany invoices that overlap with the sales above. A review of the bank deposit information identified only $72,985.00 in traceable transfers between five of the related corporations. Of the remaining 1.1 million in expenses, 1 million was determined as purchases from merchants that do not exist. An additional $59,075 in alleged expenses was from two companies held by two of the participants' spouses. The investigation concluded that only $6,305.00 were likely genuine eligible expenses.
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> New & Chic, 25132004, and Artisan Hair Loss Therapy as a group had reported $9.1 million in sales, while none had an active corporate bank account. Both Kishk and 25132002 opened bank accounts in September 2015 (after the period covered

> by the investigation) while reporting a combined amount of $30.5 million in sales. Latatia Advertising, Housewives in Heels, Juliette and John, Maddie and Bella, and Spaghetti Benders reported a total of $16.3 million in sales, while the deposits identified as potential sales among the five companies totalled only $25,917.00.

[32] In its closing submissions, the Crown relied heavily on the analysis of the various forms of documentation. On this basis, it argued that the evidence established only a miniscule level of real economic activity amongst the group of companies, and demonstrated a predatory scheme in which the participants took positive steps to fraudulently claim large amounts of money from the Government of Canada. It claimed that the pivotal issue was the level of involvement of the individual participants and the corporations that they created and controlled.

[33] It was the Crown's view that the evidence established that the refunds paid were cashed or deposited and proceeds disbursed to the benefit of the individual accused. When asked to provide support for the statements made in the GST returns, they relied on fabricated invoices. The support provided to CRA in the early stages of review was subsequently abandoned or withdrawn with a variety of explanations only to be replaced by new invoices alleging enormous amounts of inter company business. None of these claims were based on real transactions. All companies operated in unison and were collectively managed with the sole purpose of

perpetuating fraud. And as the Crown submitted, when the game was up, they all stopped playing. There was no legitimate business reason to carry on operation.

[34] The Crown relied on a number of key authorities that are reviewed below. One that bears noting here is the decision in ***R. v. Villaroman***. It was the Crown's view that many of the arguments raised by the defendants were fully answered by the reasons in that decision.

[35] Further, the Crown notified of its intention to rely on both similar fact evidence and post offence conduct, the particulars of which were set out in its pre-trial conference form and pre-trial written submissions.

[36] In its closing submission, the Crown raised the issue of multiple convictions for offences arising from the same transactions and relied on the decisions in ***Kienapple v. The Queen***, [1975] 1 S.C.R. 729, and ***R. v. Lempen***, 2006 NBQB 171 (appealed on other grounds at 2008 NBCA 86). ***Lempen*** is authority for the finding that a factual nexus can exist for offences under ss. 327(1)(a) and 327(1)(d) of the ***Excise Tax Act*** such that the principle in ***Keinapple*** applies to conditionally stay some convictions. I will address this issue at the conclusion of this decision.

The Defendants

[37] The various accused presented a common defence. It was their submission, and I paraphrase, that the Crown had not discharged its burden. In their closing position, they argued that the CRA civil auditor and criminal investigator had questionable credibility and conspired to "make up this fictional event that never happened" and "there is no proof, just a story" and "they (meaning Power and Boudreau) could have easily manipulated everything to make an appearance of a fictional fraud that never happened".

[38] Continuing on, Young claimed that the case against them was wrong, saying, "We have not knowingly participated in a scheme to defraud the government of millions of dollars. It is simply not so. We are people with integrity and pride. Housewives who make cupcakes. Certainly not gangsters or fraudsters. We did not file returns with false statements to defraud the government".

[39] I note here that the accused advanced a number of ***Charter*** applications seeking to exclude evidence obtained from the searches and the civil audit. These challenges were unsuccessful. They also made numerous arguments and objections to procedural and evidentiary matters. It was their collective view that these irregularities vitiated the proceeding. Their argument that the CRA criminal referral

document was invalid was disposed of in the ***Jarvis*** decision. I will address the other issues below.

[40] Finally, I would note that although none of the accused testified, Young cross-examined key witnesses on a variety of points, theories, suggestions and accusations. These made their way into the final submissions. For example, Young argued that the GST returns could have been filed by anyone who had the Netfile access codes and these codes could have been obtained by stealing mail out of a mailbox. She claimed that Boudreau may have manipulated the PDF form of the documentary evidence and that there was no proof of who wrote the "mountains of invoices" or where they came from. Young also pointed out that Boudreau could not exclude the possibility that bank accounts existed other than those he examined.

[41] In its reply, the Crown referred to these points as pure conjecture that were not a basis for reasonable inferences other than guilt (***R. v. Villaroman***).

Analysis

[42] Turning now to my analysis, I will address preliminary issues raised by the parties, review and assess the evidence, identify key findings, discuss the elements of the offences charged, and review conclusions.

Preliminary Issues

[43] There are several issues raised by the parties that are convenient to deal with at this point.

(a) The Arraignment

[44] The defendants raised a multitude of procedural irregularities surrounding the Information and the Indictment. They were asked to provide written submissions. The Crown responded. The only issue that remained at the conclusion of the trial related to the position of the accused that they had never been arraigned. As the written submission received on June 30, 2021, indicated at paras. 12 - 13:

> 12. There was never an arraignment performed to the defendants in the Provincial Court which started the prosecution against the accused. The purpose of the arraignment is to make a public declaration of the charges against the accused and to inform the accused of the exact allegations before he decides on plea and election. The defendants were denied this right which impinges on their Charter rights Section 7 and 11.
>
> 13. The arraignment of an accused is a fundamental step in the court process where the charges are read to the accused in court. The judge asks the accused if they understand the charges and whether they pleas guilty or not guilty. We have been denied this fundamental step in the court process and therefore were not charged with the crimes to which we've been accused.

[45] On this basis, the defendants now argue that the proceeding is a nullity. In response to this submission, the Crown relied upon the decision of the Ontario Court

of Appeal in ***R. v. Mitchell***, 1997 CanLII 6321 (ONCA); 36 O.R. (3d) 643. The defendants were asked if they wished to respond to this authority. They declined, but maintained this argument in their final submission to the Court.

[46] The record reflects that the first appearance in this proceeding took place on January 30, 2019. I have no evidence as to the arraignment of the accused in the Provincial Court of Nova Scotia on this or any other date.

[47] The matter was subsequently adjourned on several occasions at defence request. On July 22, 2019, the defendants elected trial by judge and jury and the preliminary inquiry was scheduled. The defendants were present for a focus hearing, a pre-trial hearing, and various other appearances before the preliminary inquiry took place on March 1 and 3, 2021, following which they were committed to stand trial. For much of the provincial court process, including the preliminary inquiry, Young and Lydia Saker had legal counsel.

[48] The first appearance in the Supreme Court of Nova Scotia was on March 22, 2021, at which time Young and Lydia Saker discharged counsel. The second appearance took place on April 6, 2021, at which time the defendants changed their election to judge alone and the matter was assigned trial dates. During this

appearance, the Chambers judge began the arraignment process at which time the defendants said they were "familiar" with the charges and waived reading.

[49] Prior to trial, the defendants raised the issue of their arraignment not having taken place. They were then arraigned formally before this Court on June 17, 2021.

[50] A similar argument was advanced in ***Mitchell***, and dismissed. In its analysis, the Court there discussed the purpose and significance of the arraignment and concluded that the failure to properly arraign the accused was a procedural error. The reasoning at p. 6 of the decision (CanLII) follows:

> It has been authoritatively established that the failure to arraign an accused is a "procedural irregularity" which can be cured by s. 686(1)(b)(iv) in the appropriate circumstances …Section 686(1)(b) can be applied in this case if the failure to read the charges to the appellant did not cause him any prejudice.
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> Arraignment is intended to ensure that an accused is aware of the exact charges when he or she elects and pleads. Arraignment also ensures that all parties to the proceeding have a common understanding of the charges which are to be the subject-matter of the proceedings which follow. The appellant was told in summary form of the charges against him on his first appearance. More importantly, he made numerous appearances between his first appearance and his purported election … and several more before his trial started … He was represented by the same counsel throughout. Disclosure had been made by the Crown and in some of the appearances … there was reference to the substance of the charges. I have no doubt that the Appellant and his counsel were well aware of the exact charges … when counsel were asked to elect a mode of trial and … when the trial actually commenced. There is no reason to think that the proceeding's would have gone any differently had the charges been read to the appellant in February or August. The failure to read the charges to the appellant as required by s. 536(2) did not cause the appellant any prejudice and should not vitiate the convictions.

[51] In this case, the charges against the accused have been the same throughout the proceeding. Every word of every charge was read to each of the defendants before their plea was entered in this court and before the trial began. Having presided over a series of pre-trial conferences to prepare for this trial, and having now presided over a lengthy trial, I do not find any prejudice to the accused. They fulsomely contested all of the charges against them. It was and is abundantly clear that all were well aware of the nature of the charges. There is no question that this court had jurisdiction.

[52] I find no basis to vitiate the proceeding or declare it a nullity.

(b) Evidentiary Issues

[53] As noted above, the Crown gave notice prior to trial of its intention to rely upon similar fact evidence and post offence conduct. The Crown is of the view that both forms of evidence are probative of intent.

[54] In relation to similar fact evidence, the Crown seeks to rely on evidence of each count across all counts in the Indictment. It is the view of the Crown that the totality of the evidence demonstrates a pattern of conduct, a continuing plan or a scheme to perpetuate fraud against the government. Each similar act is essentially part of the continuing fraud and involves one victim, the same method, and involves

Young and some combination of the remaining defendants. The Crown argues that this evidentiary context is relevant to the assessment of each count charged.

[55] The Crown relied on the decisions in ***R. v. Handy***, 2002 SCC 56, ***R. v. Kirk***, 2004 CanLII 7197 (ONCA), ***R. v. Garrick***, 2012 ONSC 7183, ***R. v. Babbar***, 2017 ONCJ 862 and ***R. v. Tsigirlash***, 2019 ONCA 650. Propensity evidence is generally excluded from admission as the probative value is outweighed by the prejudicial impact of the evidence. It is recognized that in some instances, the balance can change such that the probity outweighs prejudice. The onus lies with the Crown to establish a basis for admission on a balance of probabilities.

[56] In ***R. v. Kirk***, the accused was charged with six counts of fraud in relation to contracts entered into with various homeowners in a discreet period. At trial, evidence on one count was admitted across counts as probative of the element of intent. The Crown argued that the totality of the evidence was "material and relevant to each count to prove motive, to negative the defence of lack of criminal intent, and to prove the existence of a plan, system, pattern, or scheme of fraud". The admission and use of the evidence was upheld on appeal, noting the following:

> [15] In the circumstances of this case, the cogency of the evidence can be best expressed in the words of Doherty, J., as he then was, in *R. v. Sahaidak*, [1990] O.J. No. 3228 (H.C.) at para. 150:

> In most cases where a multi-count indictment is before the Court, the evidence adduced on one count is not admissible for or against an accused on the other counts. Where, however, the events underlying the various counts are part of an ongoing course of dealings, and where those events are interwoven and interrelated so that as a matter of logic and common sense, the events underlying one count also enlighten and assist the trier of fact in understanding and assessing the evidence on the other counts, then evidence directly relevant to one count is admissible on the other counts as well. *R. v. McNamara et al.* (No. 1)(1981), 56 C.C.C. (2d) 193 at 284 (Ont. C.A.), aff'd without reference to this point [1985] 1 S.C.R. 662.

[57] The reasons in ***Babbar*** adopted this passage from ***Sahaidak***.

[58] In this case, as in ***Kirk***, the defendants did not testify or call evidence. Nevertheless, they too relied upon the "overall picture", saying, alternatively, that the case against them was fabricated by CRA employees, and that they had no intent to defraud the Government of Canada. For this reason, intent is very much a pivotal issue this case.

[59] In support of its view, the Crown makes the point that the methodology underlying each count is similar (if not identical) in that the defendants, employing companies that they incorporated, filed GST returns that claimed ITCs in excess of tax owed, resulting in refunds due. When CRA requested support for the claims made, the various accused supplied invoices that related mostly to transactions between the related companies. Moreover, there is evidence that Young, as

bookkeeper and authorized representative for each company, coordinated the dealings with CRA with the knowledge of the others.

[60] The Crown says that both the claims made and the invoices filed in support were false and were a dishonest effort to benefit from a GST refund. And I consider that there is evidence that, as this scheme progressed, it could only work because at all times, one of the group of companies was designated to absorb the GST liability for the group. This implies a level of coordination involving all of the defendants, individual and corporate, and is evidence relevant to knowledge and motive. This evidence also potentially negates any suggestion of coincidence, inadvertence, negligence, or some form of coordinated CRA fabrication. I find evidence of a pattern of conduct across counts highly probative and I can identify little risk of prejudice associated with its use in the circumstances.

[61] I find, on balance, that evidence of a potential pattern of conduct across counts is probative of knowledge and intent and its use is not outweighed by the potential prejudice. The evidence admitted will be considered across counts.

[62] On the issue of post offence conduct, the Crown says that there is evidence of conduct outside of the scope of the various charges which demonstrates a guilty conscious – evidence that the various defendants supplied false invoices and made

amendments to their GST claims in response to reviews and audits. The Crown says that this evidence demonstrates an effort to cover up claims that were not based on genuine business activity. The inference sought is that the accused had knowledge that their GST claims were dishonest. Such an inference would be circumstantial evidence of intent.

[63] Many decisions deal with the issue of evidence of post offence conduct. The Crown relies on ***R. v. Calnen***, 2019 SCC 6, and ***R. v. Khan and Muellenbach,*** 2015 ONSC 7283. ***Calnen***, although much different on its facts, provides a recent statement from the Supreme Court of Canada on the admissibility and permitted use of such evidence (see the discussion on admissibility at paras. 107 – 118). The basic tenets endure:

> [107] As with other types of evidence, evidence of after-the-fact conduct is admissible if relevant to a live, material issue in the case, its admission does not offend any other exclusionary rule, and its probative value exceeds its prejudicial effects.
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> …
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> [111] After-the-fact conduct is circumstantial evidence. Like other forms of circumstantial evidence, after-the-fact conduct allows a fact finder to draw particular inferences based upon a person's words or actions. This process of inductive reasoning is a cornerstone of the law of evidence, and is used frequently to draw inferences from circumstantial evidence, as well as to assess credibility and to determine the relevance and probative value of evidence.
>
> [112] In order to draw inferences, the decision maker relies on logic, common sense, and experience. As with all circumstantial evidence, a range of inferences may be drawn from after-the-fact conduct evidence. The inferences that may be

> drawn "must be reasonable according to the measuring stick of human experience" and will depend on the nature of the conduct, what is sought to be inferred from the conduct, the parties' positions, and the totality of the evidence … In most cases, it will be for the jury or judge to determine which inferences they accept and the weight they ascribe to them. "It is for the trier of fact to choose among reasonable inferences available from the evidence of after-the-fact conduct" …
>
> (citations omitted)

[64] In ***R. v. Khan v. Muellenbach***, a father and son were charged with forgery, income tax fraud, and money laundering, all associated with a business that produced false identification. There, the Crown sought to rely on two items of post-offence conduct evidence. First, there was evidence that the ID production activity carried on outside the indictment period, albeit in changed circumstances. This evidence was admitted as evidence of concealment that demonstrated both intent and control of the business enterprise. Second, there was evidence of the filing of income tax returns or "voluntary disclosures" for several tax years which were admitted as a basis to determine both knowledge and intent.

[65] Having considered these authorities, I conclude that the post offence conduct evidence in this case is admissible. It is relevant to knowledge of the previous GST filings, intent to conceal previously dishonest conduct, and control of the various business operations. It is material evidence of live issues at trial and is probative of

those issues. In my view, the probative value significantly outweighs any possible prejudice from the use of this evidence.

[66] Having addressed these preliminary issues, I turn now to a review and assessment of the evidence.

Review and Assessment of the Evidence

[67] I intend at this point to review the evidence presented in this case. My review is not intended to refer to all of the evidence, or even all of the significant evidence. I note here that I have reviewed and considered all of the evidence from the Crown witnesses, including the 83 exhibits. Much of the substance of this case is contained in the documentary and electronic evidence and it is detailed, technical and voluminous.

(a) Preliminary Points

[68] I begin with some general observations. This trial was conducted during the course of the COVID 19 pandemic and members of the public were not permitted in the courtroom. Anyone listening to the audio recording or reading a transcription may find it challenging to follow. Much of the documentation relied upon by the Crown was in an electronic format. In most, if not all instances, this provided a

convenient format to navigate a large volume of financial information from various sources. It also alleviated some health concerns by eliminating the need to distribute paper in the courtroom and the movement and proximity that would require between litigants.

[69] In order to assist the defendants to follow the presentation of evidence, the Court set up individual computer monitors. Young maintained that she could not see the documents on her monitor and a larger monitor was installed and repeatedly adjusted to further assist her. At one point, in light of ongoing complaints, the Court took a view of the monitor set up and tested the display at Young's station. There were no issues noted during this test, which was conducted on the record, but in the absence of the parties, due to COVID 19 health restrictions.

[70] There were two related issues that made the presentation of the evidence more trying. As items of evidence were introduced, the defendants consistently questioned receiving the information in their disclosure or denied receiving it. As a result, the Crown instituted a practice of introducing its evidence and also referencing its location in the disclosure materials. Disclosure was digital and the description of each item was normally an electronic folder or file pathway. This was intended to benefit the accused but slowed the proceedings and burdens the audio record of proceedings.

[71] A related issue arose when the defendants professed difficulty seeing the evidence on their computer monitors. In response to this concern, the Crown then distributed paper copies of the electronic documents which had a slightly different format and at times added a page reference to orient the defendants that is not part of the electronic evidence. All of this was to benefit the defendants and support a fair trial for the self-represented co-accused.

[72] For the benefit of these reasons and to ensure clarity for the record, all references to evidence here follow only the exhibited references. There are no corresponding references here to other evidence formats or disclosure locations.

(b) A General Overview

[73] Turning now to a review, I note that the evidence offered by the Crown fell into four broad categories, each of which I will touch on here.

[74] The first was a group of independent business people who testified about the extent of business, if any, that they had with any of the accused. The second was a group of professional CRA witnesses called to speak to continuity of evidence. The third was the evidence obtained from the civil audit work of Carol Power. Power worked with the Aggressive Tax Planning Unit at CRA. Last was the investigation

and analysis of Michael Boudreau. Boudreau was the Lead Investigator with the Criminal Investigation Directorate ("**CID**") of CRA.

[75] There was no defence evidence.

[76] As I turn to an assessment, I note that what I am reviewing largely emanates from independent or professional witnesses, acting in their various capacities – for the most part business people, accountants, and auditors all involved in this matter as a result of their business or employment. The vast majority of evidence related to the GST refund claims filed by the defendants including the documentary basis of those claims and an assessment of the actual *bona fide* economic activity generated by the companies. It is a document driven exercise skewed heavily toward financial analysis.

[77] In this context, the assessment of credibility and reliability has less significance that it normally would. That said, the defendants did call into question the credibility of both Power and Boudreau, going so far as to suggest the possibility of collusion or fabrication of evidence, as well as other types of allegations going to character. As noted earlier, the evidence also included purported statements, both oral and written, made by the individual defendants during the audit process. All of

the evidence must be considered and assessed. I note here that on such and assessment, I am free to accept all, some or none of any witness testimony.

[78] Generally, cross-examination of the Crown witnesses did not bear much fruit. Some cross-examination was not remotely relevant to the issues to be determined. Some witnesses were cross-examined with irrelevant, inflammatory, and scandalous accusations or baseless speculative theories that did not assist me in the disposition of any part of this matter. The self-represented accused were given latitude that would not otherwise have been available. They were frequently encouraged to obtain legal advice, given information to assist, and extra time to prepare or seek counsel.

(c) Review of the Crown Evidence

[79] The first group of witnesses included a number of business people. Lauchie MacLean is the President of Glenora Distillery in Cape Breton. He testified that he had purchased some items from Juliette & John that were offered for sale in the Distillery gift shop. MacLean was able to produce invoices for the items purchased with payment confirmation (*Exhibit 4*). MacLean denied doing any business with any of the other defendant companies. MacLean was shown an invoice from Juliette

& John for "corporate gifts" dated September 19, 2014, in the amount of $1200.00 (*Exhibit 5*). He denied the order or giving anyone permission to pay the invoice.

[80] Carmella Young worked at printing company in 2011. She created quotations for labels for Juliette & John in September of 2011 (*Exhibit 6*). After that, she did no further business with Juliette & John, although she acknowledged that others in her company may have had contact.

[81] Brenda Legge is a manager with Salty's restaurant in Halifax, Nova Scotia. She has worked there for 29 years. In all of that time, the restaurant has never sold cookbooks, operated in Sydney, or had any contact with Young or Nadia Saker. It has never made a purchase from or been invoiced by Kishk. Legge was shown a series of invoices as follows:

> *Exhibit 5* (p. 3) – Invoice to "Salty R" from Juliette & John dated August 4, 2014 for "10 boxes – total amount: $960.00;
>
> *Exhibit 7* (p. 12) – Invoice No. 20 from Kishk to "Salty's" dated April 29, 2015 for cases of dressing, kishk and balsamic vinegar – total amount: $40,060.59;
>
> *Exhibit 8* (p. 8) – Invoice No. 22 from Kishk to "Salty's – 209 Widad Lane, Sydney, NS" dated May 7, 2015 for 75 cases of dressing – total amount:$7,500.00;
>
> *Exhibit 9* (p. 26) – Invoice No. 36 from Kishk to "Salty's – 209 Widad Lane, Sydney, NS" dated June 30, 2015 for 50 cases (item not specified) – total amount: $5,000.00;
>
> *Exhibit 10* (p. 20) – Invoice No 47 from Kishk to "Salty's – 209 Wadid Lane, Sydney, NS" dated July 26, 2015 for 50 cases of dressing – total amount: $5,000.00;

[82] Legge said that she had never heard of Juliette & John or Kishk, and had never before seen these invoices.

[83] Johanna Gallipeau operates Sweet Pea Boutique, a women's clothing store in Halifax, Nova Scotia. She was shown what purported to be 2015 sales summaries from Juliette & John. *Exhibit 11* (pp. 5 and 7) is a summary indicating the sale of one pallet of salad dressing for $10,000.00 (on February 11th) and 20 cases of books for $7,875.00 (on February 9th) both to Sweet Pea Boutique. *Exhibit 12* (pp. 5 and 7) is another summary indicating the sale of three pallets of salad dressing for $30,000.00 (on March 10) to Sweet Pea Boutique and invoice no. 2432317 for the same transaction. Gallipeau said that she did not know anything about these transactions, that she never purchased cookbooks or salad dressing from Juliette & John, and never dealt with MacDonald or Young.

[84] Ron Marks is the owner of Italian Market located on Young Street in Halifax, Nova Scotia. He does the purchasing for his company. He testified that all his stock comes from Italy. He never purchased anything from Artisan, Juliette & John or New & Chic. He never dealt with Young, MacDonald, Nadia or Lydia Saker. He did not know of a Bigoli's Italian Market and thought he would know of a competitor

with a similar name. He said his main competitor would be Pete's Fruitique. Marks was asked about the following records:

> *Exhibit 12*(p. 5) – Sales summary for Juliette & John for March 2015 showing sale of four pallets of salad dressing totalling $40,000.00 to "The Italian Market";
>
> *Exhibit 13*(p. 4) – Invoice No. 0007 from Juliette & John to "Italian Market" for "50 pallets" and "200 cases of books" for a total amount of $578,750.00;
>
> *Exhibit 14*(p. 7) – Invoice No. 542386 dated February 25, 2015 from Artisan to "Bigoli's Italian Market, 503 Hostmann Ave" for 195 cases of lasagna totalling $70,000.00;
>
> *Exhibit 15*(p. 3) – Invoice No. 0046 dated July 30, 2015 from New & Chic to "Italian Market, 1515 Monserrat Ave, NS" for 108 cases of balsamic vinegar and olive oil and 599 cheese wheels totalling $575,000.00.

[85] It was his evidence that he did not buy any of the products in these invoices, that he makes his own salad dressings in small quantities, and he had never purchased 50 pallets of anything or 195 cases of lasagna in his life.

[86] Wade Langham of Cape Breton Fudge Co., Chris Livingston of Granny's Country Cottage and David Farmer of Breton Ability Center all testified along similar lines, confirming some small scale of legitimate business with Juliette & John, but denying the purchases recorded in various invoices (*Exhibit 5, pp. 2 and 3; Exhibit 17, pp. 10, 16 and 17*). It is important to note the origin of the invoices contained in the exhibits - all were provided to CRA as part of the various reviews and audits that took place during the period under Indictment.

[87] Scott Evans was an interesting witness. He is the Manager – Operations Contact Center, Transportation and Infrastructure Renewal. In August of 2018, he was contacted by Boudreau and asked to confirm whether a list eleven of street names ever existed in Nova Scotia (*Exhibit 24 – Asrar Ave, Bishr Street, Fadilah Street, Hissiem Street, Hostmann Avenue, Kardawiyah Street, Monserrat Avenue, Rakshan Street, Seinburg Avenue, and Widad Lane*). These addresses were taken from the invoices supplied to CRA during the audits or from the invoices seized from the search locations. Evans testified that he checked the road listing database, his GIS contact map and also googled the street names. He could not find any record of any of these road names ever existing in Nova Scotia.

[88] The next group of witnesses included Jennifer Jones, Bruce McCabe, Mike Lovell, Christina Loreirio, Jeff Rafuse, Mike Lemon, Troy Stevens, Stacey-Quinlan MacNeil, and Patti MacKinnon, all of whom played some role in the searches conducted on November 22, 2017, in Sydney, North Sydney, Leitch's Creek, Halifax and Kentville, Nova Scotia, and St. John's, Newfoundland. These witnesses all testified about the items seized (computers, documents, electronics) and spoke to the issue of continuity. All described their part of the process that ultimately delivered the items to the Halifax Tax Services Office bond room for secure storage.

[89] In my view, no issues around the continuity of any items arose from this evidence (or the continuity evidence of Boudreau which came later in the trial). All of the items seized during the various searches were in the courtroom as exhibits or available for inspection.

[90] The next evidence came from Carol Power, a CRA Aggressive Tax Planning unit auditor. Power expanded on the evidence she gave during the ***Jarvis*** application. By this point, Power had already testified for almost three days and it was agreed that her *voir dire* testimony would be trial evidence. A summary of the ***Jarvis*** evidence is found in ***R. v. Young***, 2021 NSSC 361 at paras. 19 – 46. Powers T2020 notes, Interview Questions and Interview notes were admitted, as past recollection recorded (*Exhibits 25 – 50*) (see ***R. v. Wilks***, 2005 MBCA 99). The T2020 notes document Power's interaction with the individual defendants including statements made in response to her audit inquiries (see ***R. v. Jarvis***, ***R. v. Fitzpatrick***, 1999 SCC 44, ***R. v. White***, 1999 SCC 689, ***R. v. McMahon***, 2012 ABPC 296 and ***R. v. Martin***, 2017 NSCA 39).

[91] I note that a complete inventory of all documentation received and reviewed by Power during her audit work (including the date of various amendment requests) is in evidence (*Exhibit 29*). This inventory was prepared by Power at the request of

Boudreau after the criminal investigation began. For the record, Power denied fabricating any of the documentation.

[92] Power gave evidence about the process she employed to record her interviews with the individual defendants. She prepared Interview Questions in advance as a guide to her interview (*Exhibits 43 – 50*). As she conducted each interview, she took handwritten notes on her guide. She later transcribed her notes into a T2020 form by using both the handwritten notes and her memory of the interviews. This process was complete within days after the interviews.

[93] During the course of Power's examination, it became clear that the handwritten notes she took during the interviews had not been disclosed by the Crown. Power could not say what had happened to the handwritten notes. None of the defendants requested formal relief on the basis of the missing notes. That said, the missing notes were raised repeatedly, including in the final arguments as a basis to question Power's credibility and the accuracy of her records. Having considered the totality of her evidence, I am satisfied that these missing notes are not a basis to impugn Power's credibility. I am also satisfied that the T2020s were admissible in spite of the missing notes and are an accurate record of the interviews (see ***R. v. Wilks*** and ***R. v. F.C.B.*** 2000 NSCA 35).

[94] When cross-examined, Power confirmed that she did not review any GST returns for Latitia or Spaghetti Benders, nor did she request any information from those companies. She did recall receiving invoices that indicated they had been from Latitia but that company had been scratched off and another company name entered on the invoice. Power explained how she used audit software on her work computer to upload all of the information on the various reviews. Once the audit was complete, it was stored on the CRA computer system in a read-only format – no further changes could be made to the records. She believed that she was the only person who could change her T2020. Her T2020 could be accessed by her Team Leader to review but not change.

[95] Power was asked about registrants making mistakes in their returns. Power said mistakes happen. She said she had no way of knowing who prepared the documentation that she received. She was asked if she thought things in general were "bizarre" (relating to the period May – July, 2015). She said that she has to accept what the registrant sends into CRA.

[96] Power denied being told that company records were destroyed in a flood in April 2015 other than the records for Housewives in Heels. She acknowledged that she was expecting Nadia Saker to try and obtain replacement documentation for any records lost in a flood. She said that banking records would normally be a good

starting point to document the sales and expenses. She acknowledged that this exercise may result in omissions in the records. In terms of what was ultimately sent, she just received, reviewed, and documented it. She had no information on how the registrant produced it other than one instance where she documented Nadia Saker telling her that some records had been found in "another location".

[97] Power was asked about information available on the CRA database for the various companies. She said that she had access to summaries of the returns filed on the registration database. She could request previous audit records from the audit database but did not do that as part of her review. The T2020s document any reviews she did of prior credit return information. In the event a file was transferred to her from the Refund Integrity Program, she would receive any information sent into the refund integrity officer (see for example the documents contained in *Exhibits 51, 52, 53 and 54*). If Power received documentation of this kind, she would have scanned it into her electronic files.

[98] When Power left in November 2015, her electronic file inventory was cleared and she no longer had access to it. The electronic files for this matter were transferred to Helena Evans. Power had no personal knowledge as to how these files were subsequently accessed by Boudreau.

[99] As noted in the ***Jarvis*** decision, Power interviewed the individual defendants on October 6 and 7, 2015. These interviews were in person at the business locations. Power's T2020 notes document these interviews. In my view, this evidence is significant, as is the substance of her all her interaction with the registrants as documented in the T2020 notes (*Exhibits 32 to 50*). As I noted in the *voir dire* decision, Power was a strong witness. Nothing about her trial evidence changed my assessment or called into question her credibility. She was a seasoned auditor with previous experience in investigations and her evidence was direct and eminently professional. I have a high degree of confidence in the accuracy of her work and in the recording of the details of her interactions with the accused. In my view, the totality of her evidence deserves considerable weight in the overall assessment of evidence.

[100] The final Crown witness was Michael Boudreau. Boudreau testified over nine days. He was assigned the investigation of this matter on June 8, 2016. His work began with the referral document that listed eight companies. After some research, he found two more related companies and broadened the scope of his investigation. His goal was to verify the substantial sales, and the collection of GST and ITCs as reported by the companies in their credit returns.

[101] Boudreau's initial review indicated that the related group of companies claimed a total of $53 million in sales and $39 million in expenses. In order to determine whether these transactions were legitimate and accurate, Boudreau reviewed a large volume of documentation. The bulk of his evidence dealt with outlining the information he reviewed, the source of that information and explaining his analysis and extensive efforts to verify transactions. His analysis is shown in various working papers. The working papers clear and easy to cross-reference to primary documentation.

[102] Boudreau began by speaking to the referral auditor and downloading previous audits on these companies from the CRA computer database (*Exhibit 66 – Boudreau testified about a number of items from previous audits contained in this exhibit, including high value invoices, barter agreements and property purchase agreements on which he focused his attempts to verify*). He researched various public sources to confirm the owners and corporate information for each company and viewed the relevant T2 returns (see *Exhibits 60* and *61*).

[103] Boudreau requested and received a copy of all GST returns filed by the various registrants in the Indictment period (*Exhibit 57*). All of these returns were electronically filed except one which was a paper filing. A summary of the GST returns is in evidence showing refunds claimed and received by each company for

the entire period (*Exhibit 68 – summary by company and overall summary at summary/refund tab, induvial summaries in excel tabs labelled by company name*).

[104] It was Boudreau's evidence, that in the period from January 1, 2011, to July 31, 2015, the total GST refund claimed by all companies was $3,628,805.06. Of this total, refunds were paid totalling $275,960.84 and $81,399.61 was allocated to existing tax debt. This left a balance claimed but not paid of $3,271,444.62. To be clear, these amounts were based upon the initial GST returns filed and refunds sought, and not on subsequent amendments. Boudreau later traced the disbursement of the refunds paid with reference to the bank statements and records from the Public Works Directorate (*Exhibits 58, 59 and 70*).

[105] I pause here to highlight the relationship between the summary of GST claims (*Exhibit 68 – summary/refund tab*) and the various counts in the Indictment. The charges are based upon the total refund sought by each company in all GST return periods covered by the Indictment. For example, for Spaghetti Benders, the total refund claimed is $52,900.42 (*Exhibit 68 summary/refund tab, line 4*). That total is broken down by period (*Exhibit 68 - TSBL HST Summary tab*) with further details provided (*Exhibit 68, TSBL Detail tab*) and the GST returns are available electronically to support the amounts in Boudreau's working paper (*Exhibit 57*) as are the RBC banking records (*Exhibits 58 and 59*) and the Public Works Cheque

Directorate records of cancelled cheques (*Exhibit 70*). But the total amount of the refund claimed by company is the basis for the amount set out in counts 10, 29 and 30 of the Indictment.

[106] Based on this approach, what follows is a summary, from smallest to largest refund claims, by company, referenced to the Indictment:

Company	GST refund claimed	Indictment
Latitia	$40,637.58	Counts 7, 11 and 12
Spaghetti Benders	$52,900.43	Counts 10, 29 and 30
2004	$125,467.00	Counts 2, 13 and 14
Maddie and Bella	$243,139.08	Counts 8, 19 and 20
Artisan	$282,198.50	Counts 3, 21 and 22
2002	$315,323.80	Counts 1, 15 and 16.
New and Chic	$322,940.99	Counts 9, 27 and 28
Housewives	$440,719.97	Counts 4, 23 and 24
Juliette and John	$585,344.71	Counts 5, 25 and 26
Kishk	$1,220,133.00	Counts 6, 17 and 18

[107] Boudreau also did a T4 search to determine if any of the companies had paid employees during the period under investigation. It was his evidence that the high number of sales suggested significant production resources. Boudreau tried to assess

this by determining the number of employees paid by each company. His T4 search returned only four T4s for the three and a half year period. The T4s were for Young, MacDonald and Nadia Saker, and were from Spaghetti Benders in 2011 and 2012 (*Exhibit 67 – summary at tab 1*).

[108] On November 22, 2017, searches were conducted at a number of locations and the relevant documentation seized is in evidence (*Exhibit 62 – CRA Tax Services Office, Newfoundland and Labrador – 40,000 series scan documents, Exhibit 63 – 77 Stanley Street/Georgette Young residence – 10,000 series scan documents, Exhibit 64 – 342 Leitches Creek/Nadia Saker residence – 20,000 series scan documents, Exhibit 65 – 85 Terra Nova/Angela MacDonald residence – 30,000 series scan documents*). Boudreau subsequently analysed the material seized in order to find support for the claimed business activity of each company.

[109] Boudreau did credit searches, and in combination with the information seized at the various search sites, obtained Production Orders for Royal Bank of Canada on January 31, 2018, and March 23, 2018. The information returned from the Royal Bank is in evidence (*Exhibits 58* and *59*). Eight of the companies had bank accounts with RBC. New & Chic and 2004 did not have accounts at RBC and no accounts were found elsewhere. Boudreau looked at both the business and personal accounts

(including investments and mortgages) in order to determine if the business activity claimed in the returns could be verified in any of the account activity.

[110] Boudreau's work to analyze the information sources was assembled into various working papers that summarized aspects of his investigation (see for examples *Exhibit 68 - tracing the sales and ITCs reported by each company in each period as well as tracing the GST refunds to allocation, deposit or cash and to cancelled cheque with endorsement, Exhibit 71 – tracing invoices from various sources to GST return for each company, and Exhibit 72 – analyzing bank account activity by company)*. Much of his testimony focused on these working papers and their relationship to the source documents, such as banking documents, seized documents, public documents, or documents filed by the various defendants with CRA. These working papers were an aid to navigating the source documentation.

[111] It was Boudreau's evidence that each of the companies could establish some minimal business activity but that neither the documentation obtained nor the banking records supported the claims in the returns filed. He went so far as to say that the claims advanced in the returns bore no connection to reality. Neither did the invoices later produced to support those claims.

[112] Boudreau also gave evidence relevant to knowledge and participation in the overall scheme. He began by giving examples of the distribution of various deposits. The first was a deposit into Young's personal account on January 16, 2012, in the amount of $3,083.00 by way of banking machine (*Exhibit 59, folder 63, p. 9*). The evidence indicated that this deposit was a cheque from Cape Breton Fudge Company payable to Juliette & John. A second deposit into Young's account from Housewives & Heels was made on November 24, 2011, in the amount of $ 2,933.00. The Crown later offered these as small examples of how the parties shared the proceeds of actual sales and how they operated as a group.

[113] Boudreau focused some of his evidence on Nadia Saker. He reviewed a number of amendment requests respecting returns previously filed, accompanied by a card signed by Nadia Saker (*Exhibit 62, items 41256 – 41264 amendment requests for Housewives in Heels for periods ending January 31, 2015, February 28, 2015, November 30, 2014, December 31, 2014).*

[114] These amendment requests are significant for a number of reasons. First, they were made shortly after contact from auditor Power. They were received by the processing center on June 1, 2015, shortly after Power initiated contact with Saker respecting the GST claims made by Housewives in Heels.

[115] Second, in each case, the request is to reduce sales, eliminate the ITCs claimed and eliminate the refund claim. The evidence establishes that this amendment was clearly part of a wider pattern involving all of the related companies (discussed below). Third, the requests were made to the GST processing center and not to Power who was then conducting the audit and seeking support for the existing claims. Fourth, the form of the amendments are significant in that they were made on a printed copy of the original return meaning whomever filed the original return had ongoing knowledge and control over the submission of amendments.

[116] Boudreau made a number of other significant points in relation to Housewives in Heels. The first GST filing period for this company ended September 30, 2011, and the return, filed only days after the end of that period, claimed a refund of $8,854.69 (*Exhibit 71 – HST filing to docs tab*). The Housewives in Heels bank account was opened on August 25, 2011, and the first transaction in the account was on September 1, 2011 (*Exhibit 72, folder 3 – this transaction was a small service charge*).

[117] On September 26, 2011, there is a deposit into the account of $58,000.00. This amount corresponds to the sales claimed in the first credit return ($57,341.00). The evidence then showed an GST refund was issued in the amount of $8,860.03 (*Exhibit 68 - Housewives in Heels details tab*). This was deposited into the

Housewives in Heels bank account on December 9, 2011, and endorsed by Saker. On the same day there was a cheque out of the account for $34,000.00 payable to and endorsed by Saker followed by another cheque of $24,000.00 on January 31, 2012, payable to Saker without endorsement.

[118] Boudreau traced these transactions noting that the two cheques equalled the original deposit of $58,000.00. He reviewed Nadia Saker's line of credit account (*Exhibit 59 – folder 35/36*) and confirmed that the original amount was debited from the line of credit on September 26, 2011, credited to the business account, and then later returned to the credit line with two payments of $34,000.00 and $24,000.00. I pause here to note that a strong inference arises that this series of transactions was partial cover for the claims made in the HST return which netted a return of $8,860.03. And this occurred in relation to the very first return filed by Housewives in Heels. Moreover, the transactions were clearly tied to various accounts over which Nadia Saker had knowledge and control.

[119] After reviewing this information, Boudreau noted that company bank account showed virtually no other activity, let alone evidence of business activity. There was no support in the bank account for the activity claimed in the GST return in this period (*Exhibit 71 – folder 5/Housewives, GST filing - $57,341.00 in sales and $8,854.69 in ITCs*). Boudreau testified that the ITCs claimed in this period would

be the equivalent of $67,885.00 (a conservative estimate assuming a 15% tax rate – some food items, books etc. would attract lower or zero rate of tax). There was no activity in the bank account reflecting the payment of any expenses, let alone $67,000.00 in expenses. The only real activity was the deposit and withdrawal of funds from Saker's credit line. Boudreau confirmed that he looked at all known bank accounts for evidence that they were used to pay for business expenses and could not find any. This evidence was uncontested.

[120] The Crown later argued that a strong inference was available that the person depositing the GST refund cheque of $8,860.03 into the business account would know that there was no economic activity in the business to support the receipt of refund. The only activity, as counsel put it, was the "cameo" appearance of the funds from the line of credit. The final point was that the amount of funds transferred from the credit line corresponded almost exactly to the amounts claimed as sales in the return. But, there were clearly no real sales.

[121] Boudreau reviewed various amendment requests made for various periods in 2015 for Housewives in Heels, Kishk, New & Chic, Artisan, Juliette & John, Maddie & Bella and 2002. He observed that the amendments were made on a printed copies of the "netfile" confirmation sheet, in most instances printed the same day they were netfiled. These documents came from the search of the Newfoundland tax office.

The documents at the Newfoundland tax office were the documents sent in response to Power's audit inquiries. In all instances, the amendments reduced or eliminated the tax collected and increased the refund claimed. (*Exhibit 62 – 40804 to 40821*). Some amendment requests were handwritten. For example, the amendment request for Kishk for April 2015 (*40810*). It contained a notation saying "*receipts were written in error with wrong business name on them so sales were calculated in error and also HST*".

[122] Boudreau then reviewed a number of documents related to 2002 (*Exhibit 62 – 40769 to 40771*), all of which sought amendments based upon purported increased sales. In April, May, June and July, 2015, the total claimed sales increased by about $2 million dollars. These amendments were also found amongst the documents seized from the Newfoundland tax office. I note that the handwritten amendment for the period April, 2015 (*Exhibit 62 - 40771*), contains an explanation saying that the "*changes were due to an invoicing oversight involving Kishk*". A similar handwritten note was contained on the amendment for May, 2015 (*Exhibit 62 - 40773), "invoiced the difference to the wrong company using the wrong invoice pad".* The amendment for July, 2015 had a similar handwritten explanation, *"discrepancy ... billed to the wrong company by the wrong company using the incorrect invoice pads"* (*Exhibit 62 - 40777).*

[123] It was the Crown view that these amendments were post offence conduct providing constructive evidence of knowledge and intent. To be clear, it was the Crown submission that both the original claims and the amendments had no relationship to reality. I would add that this evidence speaks to the fact that the companies clearly operated under one management umbrella.

[124] This evidence must be considered in context. The amendment requests were being made as Power's audit progressed and continued even into the interviews conducted in October 2015. Power's T2020 notes document a discussion with Georgette Young during the interview for 2004 on October 7, 2015 (*Exhibit 49 – Interview notes, p. 3*). The discussion was about the quantity of amendment requests that now reflected 2002 was the company supplying all the other family companies. Power recorded the conversation with Young as follows:

> I told her that I would have to look at the legislation and determine if 2002 should be reporting sales and claiming all the ITCs as she was now telling us that 2002 provides the finished product, most of which are zero-rated, to the other family companies to resell. We suggested that if 2002 is selling finished products that are zero rated or only GST to family-related companies, then 2002 should not be charging tax or only GST to the family-related companies on zero-rated products and children's clothing. The family-related companies would, therefore, not have any ITCs or only GST to claim as is being presented now; 2002 would claim the ITCs on the materials it purchases to provide the final products. This would decrease the ITCs substantially for the family-related companies, keeping in mind there could be some G/HST paid to 2002 for non-zero rated sales. With the ITCs being claimed by 2002, it would decrease the amount of G/HST collectible 2002 owes to CRA. She said that she did not care how much 2002 owed to CRA but questioned us to clarify that none of the family-related companies would receive

> the refunds that she expected. We told her that could be correct with this scenario … She was quite taken aback.
>
> (Emphasis added)

[125] The picture emerging here is that the family-related companies were acting in concert and that Young was the conductor. The interviews conducted by Power on October 6 and 7, 2015, confirm that MacDonald, Nadia Saker and Lydia Saker were all aware of the scheme. Other evidence shines light on their level of participation.

[126] On this point, Boudreau's evidence was highly relevant. He provided further insight into Housewives in Heels activity with focus on its last three filing periods, May, June and July, 2015. These periods saw a massive increase over previous periods in the claims made for sales, HST collected, ITCs and refunds claimed (*Exhibit 71 – folder 5 – HST filing to docs tab*). In these three periods, claimed sales reached a total of $3.4 million dollars, with $225,000.00 in tax collected.

[127] Boudreau compared these claims with the documents seized from Nadia Saker's home. The total invoiced amounts for May, 2015 was $1.5 million (*Exhibit 64 for examples of the seized zero rated invoices*). Here, there were a series of invoices from Housewives in Heels for frozen food catering for various groups of 500 people, each in the amount of $50,000.00. Boudreau looked on the dates on the invoices and noted that there were invoices for catering to 1000 people (Oliver and

Payne parties) for May 1, 2015 (*Exhibit 64 – 21117*). The total of zero rated invoices was $1,000,000.00. There were similar invoices for June and July, 2015 (*Exhibit 71 – folder 5 – May, June, July, 2015 tabs for summaries of invoices in this period*). This evidence ties into the evidence from Power, recorded in her T2020s, that the defendants advised they were filing amendments consisting of zero rated sales and essentially moving everything over to 2002. Power declined to receive these amendments. It supports that the original filings had no integrity and Power's audit triggered a massive effort to hide that reality.

[128] In terms of MacDonald, as an example, the Crown relied on a review conducted by auditor Taryn Smith on Juliette & John for the period January, 2015 (*Exhibit 75*). The contact letter dated March 24, 2015, was addressed to MacDonald at 77 Stanley Street, North Sydney (Young's home address). A reply was received April 14, 2015, accompanied by a handwritten card signed by MacDonald. The reply indicated that Juliette & John had sold books, frozen catering services and dressing in the period under review. A series of invoices were attached, none of which Boudreau could verify (Island Book Distributors, Halo Distributors, Tycoon Books, Bigoli's, Big Idea Book Distribution - no addresses or other contact information on any invoices). There was also a list of catering services to individuals on various dates and various amounts and a summary of book and dressing sales.

Finally, there was a list of mall book sales indicating daily books sales ranging from 20 to 200 books a day in the month of January, 2015. There were also a series of expense invoices, all from related companies, Housewives in Heels, 2002 or New & Chic.

[129] It was Boudreau's testimony that the end result of the Smith review for this period was that a refund was paid to Juliette & John in the amount of $25,992.54 (*Exhibit 68 – J & J detail tab*). It was the Crown's view that this kind of evidence demonstrated the vulnerability of a tax system that relied on accurate self-reporting. What had happened here was that the GST return had been filed and then flagged for review. The reviewing auditor requested support and MacDonald sent these documents. The documents were accepted at face value and the refund paid.

[130] Boudreau then traced the path of several of the refunds paid to Juliette & John (*Exhibit 68 – J & J summary tab - $12, 241.52 paid November 30, 2014, $25,992.54 paid on January 31, 2015 and $35,868.44 paid on February 28, 2015*). The evidence was that the total of three refunds, $74,102.50, was deposited into the business bank via teller on October 7, 2015, one day after the interview with auditor Power. All cheques were endorsed by MacDonald. The same day, there is a cheque from the business account to Young's husband, John Young, in the amount of $74, 102.50.

[131] Boudreau then looked at the bank statement for Juliette & John in the same period (*Exhibit 59 – statements for period October, 2014 to March, 2015*) which showed only minimal activity. At the end of the period, the bank account balance was -$5.70. Essentially, the refunds went into the accounts and were immediately distributed. The refunds were claimed, paid and deposited when the person doing so knew that the claims were false.

[132] In another example, Juliette & John received a refund in the amount of $16,228.68 on September 30, 2014 and $26,662.76 on October 31, 2014 (*Exhibit 68 – J & J summary tab*). Both these refunds were deposited into the business account as one deposit of $42,891.44 on April 6, 2015 (*Exhibit 59, p. 79*). The bank account for the relevant periods once again showed no activity in the bank other than service charges. On May 17, 2015, there is a cheque payable to John Young from the account in the amount of $40,000.00 (*Exhibit 59, folder 17, p. 82*). This amount was then endorsed by John Young and deposited.

[133] Auditor Power asked about this payment to John Young during her interview with MacDonald and Young on October 6, 2015. She questioned the payment as there was no invoice from John Young to support an expense claim. Power recorded the conversation in which MacDonald and Young admitted that the payment was made Young's husband to avoid a payment to either of them personally. When

Power asked about the fact that sales had been reported in May of 2015 but no deposits into the bank, MacDonald answered that she did not receive any payment for any of the sales.

[134] Boudreau went on to testify about other examples involving New & Chic. This company had no known bank account and no refunds claimed were paid. The total refund amount claimed was $322,940.00 (*Exhibit 71*). New & Chic made a series of amendment requests, reducing sales, ITCs, and eliminating the refund claim. Consistent with other instances involving other companies, the amendment requests were made on the netfile confirmation pages (*Exhibit 62 – 40940 to 40944*). The series of amendment requests in evidence were sent with a card signed by MacDonald apologizing for her errors in the original filing. It was received by CRA on April 24, 2015, proximate in time to the beginning of the Power audit. The envelope indicated that it had been mailed from Young's home address.

[135] The Crown's evidence on points of this kind continued for the better part of three trial days. It is fair to say that there was a considerable body of evidence offered by the Crown respecting the defendants' knowledge and participation in the overall scheme. Boudreau was an excellent witness with a compendious knowledge of the documentation. He was unimpeached on cross-examination. He was professional and proficient. I accept all of his evidence, including all of his

calculations and the summaries of evidence that he compiled into his working papers.

Findings from the Evidence

[136] On the basis of the evidence offered at trial, I make the following key findings, organized by company.

[137] Before turning to these findings, I would note that, in terms of the various items of documentation admitted, now considered in the context of all the evidence, I have no hesitation accepting them for what they purport to be. I reject, in every instance, that they are the product of any government conspiracy, collusion, or fabrication. I specifically accept that the records kept by Power are accurate recordings of her interactions with the defendants, including any documented statements made by the individual defendants.

[138] Without hesitation, I entirely accept the evidence offered by Power and Boudreau. I would characterize the testimony from both as measured and restrained in the circumstances.

[139] At this point, I also acknowledge the argument made by Young, on behalf of all defendants, that it had not been established who filed the credit returns and

amendment requests or who prepared the invoices in question. Young was correct to say that there was no direct evidence on these points. However, this is an issue that can be proven by circumstantial evidence. It was clearly established by the Crown that the returns were filed by the individual authorized to file them. The evidence was that all of the returns were filed electronically, except one signed by MacDonald and sent by mail. The electronic filing system has security measures to ensure only filing by authorized individuals. There was no evidence that mail had been tampered with or stolen or that there were issues with access to GST accounts. It is important to remember that all of these companies had ongoing responsibilities to file GST returns and if the returns filed were filed by someone other than the authorized person, there remained the obligation to file returns. In my view, all of the suggestions that some mystery person filed these claims are answered by the fact that refunds were paid, deposited into company bank accounts, and disbursed without complaint or inquiry.

[140] There is a considerable volume of circumstantial evidence on this point. Young was the bookkeeper for all of the companies and the authorized representative for CRA. The returns were the subject of discussions with auditor Power and the subject of many amendments, all of which involved Young. All of the returns and many of the amendments were discussed during the detailed interviews conducted

by Power which were preceded by many telephone calls. All of the individual defendants participated in the interviews and were aware of the substance. There is no evidence of anyone taking any course of action other than trying to substantiate or amend the claims made. To some extent, the question of who actually prepared any particular return or amendment is a red herring. Considering the totality of the evidence, I am satisfied, in all instances, that they were filed by a person authorized to file them and that the individual defendants were aware of the filings. An authorized person would be the registrant, the authorized representative, or a person given access by either of them. In instances where there is evidence in the documentation to establish who sent it to CRA, such as a note, or a signature, I find the evidence is uncontested or supported by other evidence, and I accept that it for what it appears to be.

[141] Last, I note the pattern of activity, the hallmarks of which were the extent of transactions within the related group of companies, and the consistent refund claims. When the returns were reviewed or audited, fabricated invoices were supplied and amendments made. Invoices purporting to support the transactions, or being consistent with those claims were seized from the Young, MacDonald and Saker residences. The envelopes containing amendments had return addresses that correspond to Young. It seems a strange suggestion that the defendants would do

all this work to support or amend claims that they did not make. The reality is that the opposite is true – they were "doubling down" on their claims by manufacturing support or amending the claims in the hope to cover up their fraudulent nature.

[142] I turn now to specific findings that address both the individual charges and the magnitude of activity.

(a) Spaghetti Benders

[143] Spaghetti Benders was incorporated on May 15, 1995, and operated for a period of years as a restaurant from a location in Boularderie, Nova Scotia. Later, its operation purported to change to the manufacturing of seasonings and salad dressings. Its recognized agent was Georgette Young, but each of the siblings owned one third of the shares and Lydia Saker was a director.

[144] In the period between January 1, 2011, and December 31, 2013, this company claimed total GST refunds in the amount of $52,900.43 based upon total sales of $435,365.00 (including tax of $6,150.00) and total ITCs claimed of $53,650.43. On the basis of its GST returns, Spaghetti Benders was refunded or allocated the total amount of $49,272.73 leaving unpaid refund claims of $3,627.70.

[145] Boudreau analyzed the GST claims made by Spaghetti Benders against the evidence obtained in his investigation (*Exhibit 71*). He began with tracing invoices obtained from any source and comparing those with the claims in the GST returns. In this exercise, Boudreau was concerned only with assessing the statements made in the GST returns and was not concerned with the validity of any individual invoice, nor did he eliminate duplicate invoices (for example, copies of the same invoice seized from multiple locations) at this stage of analysis. The point of this exercise was to compare the claims with the amount of invoice support available from any source.

[146] For Spaghetti Benders, the sales invoices totalled $75,780.70 compared with claimed sales of $435,365.00. GST collected on those invoices totalled $9,117.11 which was more than the claimed amount of $6,150.00. I note that the sales invoices were all to related companies (Housewives in Heels and Juliette & John). There was only one expense invoice in the amount of $10,000 to Latatia which produced an ITC of $1,500. The ITCs claimed in the credit returns were $53,650.43.

[147] The discrepancies between the invoices located and the amounts claimed are significant. The questions flowing from this evidence falls at opposite ends of the spectrum. At one end, is the more innocent explanation of very poor bookkeeping, especially pertaining to the transactions between related companies. At the other

end, is the ongoing assessment as to the validity of the invoices available (keeping in mind that even those invoices do not support the claims made in the GST returns). Boudreau's analysis of the banking and other source documentation shed some light on these questions.

[148] Before moving to the banking analysis, I note that Boudreau took a common sense approach to the analysis. In the case of Spaghetti Benders, he looked at the invoices (which are in evidence – *Exhibits 62 to 65*) and saw that the company purported to sell catering services, salad dressing, and labour. However, on the expense side, there appeared to be no employees (no T4s) and no expenses associated with the production of salad dressing or other food items. The only expense invoiced to Spaghetti Benders in this period was from Latatia for "*business and marketing plan for funding an expansion*" in the amount of $10,000.00. This invoice had been submitted to CRA during a previous review (the Lyttle audit). This lone expense did not appear to correspond with the sales invoices, nor was it consistent with news reports that Spaghetti Benders had closed sometime in 2010 (*Exhibit 69*).

[149] Boudreau turned to the bank account to try and verify the economic activity (*Exhibit 72 – RBC 052831005149 – Spaghetti Benders Summary Tab*). In order to assess sales, he focused on the deposits into the bank accounts during the period

under review. The total deposits between 2011 and 2013 were $125, 345.38 . None of the deposit activity corresponded to the invoices (supporting sales of $75,780.70) or GST claims (claiming total sales of $435.000.00).

[150] Bank records showed various forms of deposits ranging from Government of Canada refund amounts ($37,043.57) to related company and party deposits (approx. $71,000.00), cash ($13,940.00), insurance ($214.00) and non-related party deposits ($2,307.00). It was Boudreau's evidence that the banking activity, although not consistent with the invoices or GST claims, supported a minimal level of sales to third parties, perhaps in the range of $2,307.00 over three years. Boudreau noted that there was only one deposit in the bank account in 2013 – a credit memo in the amount of $29.67. This, in spite of the GST returns claiming 2013 sales of $93,548.00.

[151] I followed Boudreau's evidence carefully and have no basis to question his approach to the assessment of actual business activity in this company or any of those that follow. He began with the GST returns filed in the period under review and compared the information in those returns to the documentation provided to CRA, the documentation seized from various locations, and the banking activity he could identity as being related to the various companies or the individual defendants.

[152] I find overwhelming evidence that the GST returns filed for the Spaghetti Benders, and all the companies that follow, contain false statements about the corporate business activity. Generally, the statements made in the returns about sales are false, as are the statements made about the ITCs incurred. For this reason, I find that Spaghetti Benders, and all of the companies that follow, filed claims for refunds to which they had no entitlement.

(b) Latatia Advertising

[153] Latatia was incorporated on August 31, 2011, and dissolved on June 13, 2014. Its recognized agent and sole director was Georgette Young. Its stated business activity was advertising and marketing.

[154] In the period between August 11, 2011, and May 20, 2014, this company claimed total GST refunds in the amount of $40,637.58 with total sales of $175,317.00 (inclusive of $24,050.98 tax) and total ITCs claimed of $57,110.31. On the basis of its GST returns, Latatia was allocated the amount of $1,804.68, leaving unpaid claims of $38,832.90.

[155] Boudreau took a consistent approach to his analysis of all of the related companies. As with Spaghetti Benders, he began with the GST returns filed by

Latatia in the period under review and then compared the information in those returns with the seized documentation and the banking information.

[156] For the period August 11, 2011, to May 20, 2014, Boudreau's review of the seized documentation found sales invoices from Latatia totalling $83,200.00 (with GST on the invoices of $12,480.00) compared with claimed sales in returns of $175,317.00 with $24,050.98 in GST collected. All sales were to related companies, Housewives in Heels, Juliette & John, or Spaghetti Benders. There were only two invoices to Latatia in this period totalling $3,674.78, resulting in ITCs of $551.22. The ITCs claimed in the returns for the same period were $57,110.31. The conclusion driven by the analysis of invoices is that the business activity claimed by Latatia is nowhere near what is documented by invoices (see *Exhibit 71- Latatia summary and details tabs*).

[157] Boudreau's review of the banking information raised similar discrepancies. Based on the claims in the GST returns, Boudreau expected to see deposits in the range of $200,000.00. On review, deposits into the bank account between 2011 and 2015 totalled $92,257.00 (*Exhibit 72 – RBC 02531001536 – Latatia Summary tab*).

[158] I note that the ITCs claimed in the returns suggest that there should be almost $400,000.00 in expenses going through the bank account. The actual withdrawals

were only $91,609.96. Some of the withdrawals could be related to business expenses (Intertation Photography, MacIntyre Chev Olds, service charges and Jason Phinney). However, a total of $24,074.00 in expenses related to the purchase of a cottage property. An agreement of purchase and sale dated September 16, 2011, is in evidence showing that Georgette Young/Latatia agreed to purchase a property in Ingonish for $130,000.00 (*Exhibit 66 – Win Als tab, p. 38*). By way of Warranty Deed dated September 14, 2011, John and Georgette Young (not Latatia) took title to the property (*Exhibit 77, p. 1*). Georgette Young quit claimed her interest in the property to her husband in a Deed dated October 14, 2015, a week after auditor Power interviewed Young about the various companies (*Exhibit 71, p. 38*).

[159] A further note with respect to Latatia. Its GST returns end with the period April 1, 2014, to May 20, 2014 and it is the previous period ending March 31, 2014, that last claims any business activity (*Exhibit 68 – Latatia summary tab and details tab*). There is little to no evidence of business activity in the bank account after 2013. Notwithstanding, the seized documentation contained four invoices from Latatia to Maddie & Bella all dated in September of 2014. Boudreau noted that all these invoices had the business number for 25132004 handwritten on them signalling a transition from Latatia to 2004.

(c) Housewives in Heels

[160] Housewives in Heels was incorporated on September 9, 2011. Its recognized agent and sole director was Nadia Saker. Its stated business activity was catering.

[161] In the period between August 30, 2011, and December 31, 2015, this company claimed total GST refunds in the amount of $440,719.97. This was based upon total sales of $5,523,861.89 (inclusive of $320,298.55 in tax) and total ITCs of $734,350.52. The bulk of the claimed sales came in the months of May, June and July, 2015, a period in which this company claimed sales of $3.2 million. On the basis of its GST returns, Housewives in Heels was refunded or allocated the total amount of $38,480.91 leaving unpaid refund claims of $402,239.06

[162] In terms of the seized documentation, the sales invoices from various locations totalled $6,097,308.88 (with tax of $403,170.09) (*Exhibit 68 – Housewives in Heels summary tab*). The invoices in 2012, 2013 and early 2014 are consistent with a catering business (*Exhibit 68 – Housewives sales tab*). Those invoices are numbered and have detailed descriptions of the services provided. In the spring of 2014, the nature of the invoices change. From April 2014 until April 2015, the invoices are not numbered and are for unspecified labour provided only to related companies - Artisan, Juliette & John, Maddie & and Bella, and Kishk.

[163] In May, June and July, 2015, the nature of the invoices change once again. Significantly, in this period there are 68 invoices of $50,000.00 each for total sales in three months of $3.4 million dollars. No GST is collected on these sales. The detail on each invoice indicates that it is for the delivery of mostly frozen food product for 500 people at $100.00 per person. Each invoice was billed to a different family identified only by last name with no address or delivery instructions. These invoices were provided to Power during her audit interviews in October of 2015. Power immediately returned them to Young saying that more information was needed in support of the business activity claimed.

[164] These same invoices were amongst those seized during the searches in November of 2017. As Boudreau noted in his evidence, these catering services purportedly fed 34,000 people in three months which was then about the population of the city of Sydney. Some invoices are for the same date or consecutive days. In spite of the purported volume of business, there was no record of the business having any employees.

[165] On the basis of the claimed business activity of this company, one would expect significant activity in and out of the bank account. In terms of sales, the total deposits into the bank account from 2011 to 2015 were $147,510.21, of which Government of Canada deposits totalled $29,755.24. The other large source of

deposits was Nadia Saker. In this period, Saker deposited a total of $97,883.54 into this bank account (*Exhibit 72 – RBC 052831005420 – Housewives summary tab*).

[166] It was Boudreau's evidence that the total cash deposits of $10,450.00 (*Exhibit 72 – Housewives in Heels summary tab*) was consistent with the sales invoices ($20.00 to $2,400.00) totalling $12,136.00 (*Exhibit 71 – Housewives in Heels summary tab*) and appeared indicative of the actual business activity conducted by this company. There was no indication that any payment had been received for any of the catering functions claimed between May and July of 2015. In 2015, the total deposits were only $4,180.43. Of that, $4,000.00 were cash sales that appeared to relate to individual sales. There was no deposit evidence to support the large scale catering activity indicated by the GST returns or the invoices seized.

[167] Boudreau then looked for evidence of business activity on the withdrawal side of the bank account. The claimed sales from catering activity in May, June and July of 2015 alone should generate significant expenses. Boudreau reviewed the bank account withdrawals looking for some indication that food, packaging or transport expenses were being incurred. There is no such evidence to be found. The total withdrawals from the bank account from 2011 to 2015 were only $148,003.67. In 2015, the withdrawals totalled only $10,373.84 with the only possible source of catering expenses being the credit card payments of $6,506.25. Against this

background, it is difficult to contemplate the legitimacy of $3.4 million in sales for catering with ITCs of $470,000.00. It was Boudreau's evidence that the total ITCs claimed in the Indictment period would mean expenses incurred by the business in the range of $4.89 million.

[168] There is simply nothing in the bank account to suggest that a large scale catering business (or any catering business) was operating in 2015.

[169] There is miniscule support for the claimed related company transactions. I note that there is a 2012 payment to Spaghetti Benders of $7,600.00. The invoices seized indicate Spaghetti Benders invoiced Housewives in Heels a total of $34,477.00. On the sales to related companies, the invoices seized indicate total sales of $3,087,904.09 to Artisan, Juliette & John, Kishk, Latatia, and Maddie & Bella. The only related deposit is a 2014 payment from Maddie & Bella for $2,000.00. There are no cash deposits, no etransfers, no cheques - indicating payment from related companies to substantiate the validity of the claimed business activity.

(d) Juliette and John

[170] Juliette & John was incorporated on September 9, 2011, the same date as Housewives in Heels. The recognized agent and only director was Angela

MacDonald. Its stated business activity was the sale of food and craft products. There was evidence that MacDonald also produced cook books.

[171] In the period between July 21, 2011, and July 31, 2015, this company claimed total GST refunds in the amount of $585,344.71, with total sales of $6,431,973.05 (inclusive of $312,406.37 in tax) and total ITCs claimed of $876,019.38. On the basis of its GST returns, Juliette & John was refunded or allocated the total amount of $208,299.98, leaving unpaid refund claims of $377,044.73.

[172] The analysis of the bank account showed $201,697.64 in total deposits. The biggest deposits were refunds from the Government of Canada ($138,000.00+). There were other personal deposits. There were cash, third party sales and individual sales totalling $15,082.00 over five years that could reflect genuine business activity. This is a company that claimed sales in its GST returns of $6.7 million inclusive of GST.

[173] As with prior examples, the claims in the credit returns suggest a large volume of economic activity. One would expect that $6.7 million in sales of cookbooks and food items would require significant production expenses. The GST returns were consistent with this picture claiming $876,000.00 in ITCs. It was Boudreau's

evidence that this would equate to approximately $6.7 million in expenses, inclusive of the tax. It is with this perspective that ones reviews the company bank account.

[174] The company's bank account showed total withdrawals over five years of $201,675.27. A large proportion of the withdrawals totalling $128,000.00 went to John Young, Lydia Saker, and Steven MacDonald (MacDonald's former spouse). No individual supplied an invoice to support these withdrawals being business expenses. The related companies were paid a total of $39,000.00. There were a total of $22,414.99 in Interact and cash withdrawals and payments on RBC visa (Nadia Saker/Housewives in Heels Visa).

[175] Significant here is that there were Government of Canada refund deposits on April 6, 2016, totalling $42,891.00, and a cheque drawn on this account on May 20, 2015, to John Young for $40,000.00. On October 7, 2015, there was a total deposit of several refunds in the amount of $74,102.50. On October 9, 2015, there was a payment from this account to John Young in the amount of $74,102.50. Auditor Power asked about these payments to John Young during her interview and the answer indicates that these payments were not business expenses and do not in way support the ITCs claimed in the GST returns.

[176] The activity in the bank account supports only minimal business activity. The invoices seized indicate sales in the amount of $37,000.00. I conclude that the legitimate business activity for Juliette and John falls somewhere in the range between $15,000 to $37,000.00 in sales. This amount has no connection whatsoever to the magnitude of claims made in the GST returns for sales totalling $6.7 million.

[177] On the expense side, I note that the related companies invoiced Juliette & John a total of $8.84 million. In comparison, non-related companies invoiced amounts totalling $6,961. The former invoices appear to be gross misstatements based upon the bank account while the latter invoices could represent legitimate business activity.

[178] As noted above, there were no T4s issued by this company in the entire review period suggesting no paid employees. This is consistent with my conclusions about the extent of real business activity and inconsistent with the GST claims made on behalf of this company.

(e) New & Chic

[179] New & Chic was incorporated on October 11, 2011. Its recognized agent and sole director was Angela MacDonald. Young was the bookkeeper and authorized

representative for tax purposes. New & Chic became a GST registrant on December 13, 2014.

[180] In the period between December 1, 2014, and December 31, 2015, this company claimed total GST refunds in the amount of $322,940.99, with total sales of $4,226,269.00 (inclusive of $291,550.50 in tax), and total ITCs claimed of $589,801.49. On the basis of its GST returns, New & Chic was allocated the amount of $4,279.99, leaving unpaid refund claims in the amount of $318,661.00.

[181] Boudreau testified about the results of his examination of this company. The seized documentation indicated total sales of $6,303,029.00 exclusive of tax collected in the amount of $281,470.50. On the expense side, the seized invoices totalled $8,934,260.00, with ITCs of $1,330,140.00. By comparison, the seized documentation showed higher sales and slightly lower tax collected than the returns claimed. The tax amounts on the expenses resulted in potential ITCs of more than double the amounts claimed in the returns (*Exhibit 71*). The invoiced expenses were all from the related companies – 2002, Artisan, Juliette & John, Kishk and Maddie & Bella. On the sales side, there were sales to both related companies and other companies. However, the sales recorded to outside customers were all based on invoices to businesses with fictional addresses.

[182] Boudreau was unable to conduct an analysis of the banking information because he was unable to locate any bank account for the business. Nor was he able to find activity in any other related bank account to support the claim made.

[183] Power conducted an interview with MacDonald and Young on October 6, 2015, during which she was told that there was no bank account for New & Chic. MacDonald told Power that she "just hadn't opened one yet". It begs the question how one pays expenses of almost $9 million dollars. MacDonald also could not explain why she had opened this company when she already had Juliette & John operating a similar business. MacDonald confirmed that there were no contracts in place to support the sales claimed, that Young determined how much to invoice and that she accepted what Young does. Power reviewed all of the invoices provided from New & Chic with MacDonald and Young. In response, she was either told that they would have to provide the information or she was given a request to amend the return as there were errors in the invoices.

[184] When Power questioned MacDonald about record keeping and the amendments being requested, MacDonald said that she was aware of everything but that Young "took care of things".

(f) Maddie & Bella

[185] Maddie and Bella was incorporated on August 27, 2013. Its recognized agent and sole director was Georgette Young. Its stated business was the sale of children's clothing. It became a GST registrant on August 14, 2013.

[186] In the period between August 14, 2013, and July 31, 2015, this company claimed total GST refunds in the amount of $243,139.08, with total sales of $3,784,303.80 (inclusive of tax in the amount of $314, 790.29) and total ITCs claimed of $556,280.62. On the basis of its GST returns, Maddie & Bella was refunded or allocated the total amount of $55,222.16, leaving unpaid refund claims of $187,916.93.

[187] In terms of seized documentation, the analysis of the documents relevant to this company were not consistent with the statements in the GST returns. The sales invoices showed significantly higher sales ($5,854,096.76), tax collected ($451,297.75) and ITCs claimed ($1,217,454.61). The sales invoices show sales of $2.533,300.00 to related companies Housewives in Heels, Juliette & John, Kishk, and New & Chic with remaining sales to various shops and individuals. On the expense side, the invoices showed all expenses originating with related companies,

the largest supplier purportedly being 2002 in the amount of $6,198,514.40 (*Exhibit 71 – Maddie summary tab*).

[188] Although the GST returns and the invoices and other documentation seized are not consistent, both support a large amount of economic activity in this company. As with the previous companies, the question then becomes whether any of this activity is reflected in the company bank account. The answer to this question once again is no.

[189] The bank account information is in evidence (*Exhibits 58 and 59*) as is Boudreau's analysis of the banking activity (*Exhibit 72*). For a company claiming total sales of almost $4 million in sales (and invoicing sales of almost $6 million), it is a surprise to see only $96,103.34 in total deposits into its bank account. Of these deposits, $39,703.88 came from the Government of Canada and $8,000.00 was paid to Young from TD Waterhouse but was deposited into the Maddie & Bella bank account. There are deposits from point of sale transactions, mostly in 2014, totalling $22,492.70, and a group of individual transactions in 2013 and 2014 totalling $16,280.12 that are consistent with business activity as are cash deposits from 2013 and 2014 of $6,545.00 (*Exhibit 72 – 6 – RBC 052831006113 Maddie summary tab*). There are no deposits from related companies as payment for the $2.5 million in

invoiced sales and there is virtually no support for the almost $4 million in sales claimed in the GST returns.

[190] On the expense side of the banking analysis, one still considers the claimed sales of children's clothing and looks for some support for the expenses incurred. In the case of this company, the ITCs claimed in the GST returns were $556,280.62, suggesting total business expenses in the range of $4.26 million dollars. However, the banking activity shows total withdrawals of only $98,149.18. From that total, it is reasonable to subtract items that do not appear to be business expenses. There are payments to individuals not supported by a T4 or an invoice totalling $50,424.00. There are also credit card payments totalling $26,714.11, even though this company did not appear to have a dedicated credit card. This leaves a variety of banking fees, service charges, utility and other miscellaneous expenses in the range of $45,000.00 that could be business expenses. Obviously, this is nowhere near the claimed expenses of $4.26 million dollars. I also note that although related companies invoiced Maddie & Bella for millions of dollars, the only payments noted in the bank from that group of companies are from Latatia for $300.00 (2014) and Housewives in Heels for $2,000.00 (2014).

[191] When asked to sum up his analysis of the banking information, Boudreau said that the claims of millions of dollars in sales and expenses are "not based on reality".

[192] This company came under audit by Power on July 30, 2015. A contact letter was sent to Young on August 5, 2015, confirming the information needed to complete the review. By September, Power had not received the information requested. Instead, she began to receive amendment requests from Young. Power conducted an in person interview with Young on October 7, 2015. The interview was conducted at the Boularderie location, which was also the production facility. It was not obvious from Power's tour of the site how it could be used for production.

[193] During Power's interview there were detailed discussions about sales and expenses. At no time did Young deny filing the returns under review. In response to the detailed questions, Young presented amendment requests and claimed that there were errors in the invoicing because the "invoicing was being done at the same time".

(g) Artisan Hair Loss Therapy

[194] Artisan was incorporated on October 16, 2013. It had been a registrant since September 25, 2013. Its recognized agent and sole officer and director was Lydia Saker. Its stated business activity was hair care and the fabrication of hair prosthesis. Young had been listed as an authorized representative for this company since October 2, 2014.

[195] In the period between September 25, 2013, and December 31, 2015, this company claimed total GST refunds in the amount of $282,198.50, with total sales of $3,102,119.00 (inclusive of $178,535.10 tax) and total ITCs of $394,698.50. Artisan was not paid or allocated any refunds.

[196] Boudreau was unable to find a bank account for this company. In terms of seized documentation, the invoices indicated sales in the period under review of $3,406,735.00, exclusive of tax collected of $160,119.78. At first glace, it appears that the invoiced amounts are somewhat similar to the sales amounts claimed in the returns. However, a closer review reveals that the sales were either to related companies (Housewives in Heels, Kishk, or New & Chic) or to unrelated businesses with fictitious addresses. For example, in the seized documentation, there were invoices purporting to document over $1 million dollars in sales to AMM Grocery at 55 Hissiem Street in North Sydney. No such place exists. If it did, it is difficult to believe a grocery store in North Sydney buying over a million dollars in wigs and hair pieces. It is even more difficult to believe when one considers that this company had no employees to produce or manufacture anything on such a scale (*Exhibit 71 – folder 4 – Artisan summary tab*) .

[197] On the expense side, the seized invoices purported to document expenses of $7,360,900.59, with tax of $1,097,335.09 (*Exhibit 71 – folder 4 – Artisan summary*

tab). These amounts are more than three times what was claimed in the returns – a serious discrepancy. In any context, these are astronomical claims. All of the expenses involved related companies. In the largest example, 2002 had purportedly supplied Artisan with something worth over $4.5 million dollars. It is difficult to conceive of what a hair care business located in Boularderie would require of that magnitude. It becomes even more difficult to conceive when ones considers that there was no bank account. Saker later confirmed that she had never had a bank account for her business.

[198] Power's audit of Artisan began on July 10, 2015. A contact letter was sent to Saker on July 22, 2015, and information was requested in relation to the period January 1, 2015 to March 31, 2015. Power was unable to reach Saker but spoke to Young by telephone on July 30, 2015. During the first conversation, Young said that her mother runs the business but she did the bookkeeping. Young did not deny filing the GST returns and promised to provide Power with the requested information.

[199] By September, 2015, Power had not received the information sought but was receiving requests to amend the returns. Power and Young had a number of conversations about the information being sought before an in person interview took place on October 7, 2015. Both Young and Saker attended the interview.

[200] Power made detailed records of her interview. She began by asking Saker about the business of the company and Saker gave detailed answers about the hair products, sourcing, pricing and production. Power asked for invoices to support the supply, Saker said came from China and Italy. Saker said that Young would have them. Young said she would have to look for them.

[201] Power asked Saker about specific sales amounting to $270,000.00. Saker said that she did not recall these sales. Young then explained that these were a mistake and did not happen. She then provided Power with "replacement" invoices that would balance to the sales summaries provided. These invoices referenced the sale of food products, not hair products. Presumably, someone who produces wigs for a living would be able to distinguish one from a tray of seafood lasagna. Young also provided Power with replacement invoices for the sale of "meatballs" until Young was asked whether there was a permit for the sale of meat, at which time Power was told that the product was "meatless meatballs". Saker then said that she made the food.

[202] Power asked about a number of sales claimed between April and June of 2015. Young admitted that none of those sales happened. There were questions about expenses to Artisan from the related companies and Young answered by saying they were mistakes of various kinds.

[203] Power concluded the interview by asking about business records. She was told that both Saker and Young made sales but that Young did the invoicing. Saker was asked about whether she was aware of the amendments being requested by Artisan and she replied that "she was aware of it" and had no problem. Power noted that Saker relied on a set of notes during the interview.

(h) 25132004

[204] This company was incorporated on May 19, 2014, and dissolved in March 2, 2015. Its stated business activity was publishing, advertising and marketing. Its recognized agent and sole director was Georgette Young. It had been a GST registrant since May 19, 2014.

[205] In the period between May 19, 2014, and March 2, 2015, this company claimed total GST refunds in the amount of $125,467.00 with total sales of $1,783,125.00 (inclusive of $127,140.00 tax), and total ITCs claimed of $125,467. This company was not paid any refunds nor allocated any amounts.

[206] Boudreau conducted an analysis of the seized documentation in relation to 2004. All invoices found related to sales and totalled $5,103,425.08, exclusive of tax collected in the amount of $735,479.94, almost three times the amounts claimed

in the returns (*Exhibit 71 – folder 3, summary tab*). Boudreau was unable to locate a bank account for 2004.

[207] This company was referred to Power for review in July of 2015. She was to review the entire period of operation. She spoke to Young on July 6, 2015, to inform her and a contact letter confirming the requested information was sent to Young the same day. She offered to give Young 30 days to compile the information and Young said that was fine. She did not deny filing the returns and said that the sales claimed were accurate but there were mistakes on the expense side. By late September, no further information had been provided.

[208] Power conducted an in-person interview with Young for 2004 on October 7, 2015. Power asked Young why she had closed Latatia and 2004 as they seemed to be the same kind of business as 2002. Young replied that CRA had "closed" them because they owed money. Young confirmed that 2004 had no bank account but could not say why. Young admitted that she determined how much to invoice related companies. When Power confronted her with notes that had been submitted to a audit, she said that there were "notes to herself". The substance of these notes suggested that invoicing between related companies was left completely to Young's discretion and not connected in any way with real business activity.

[209] It was during this interview that Young expressed that "she did not care about how much 2002 owed" but wanted to know whether the other companies would be getting their refunds.

(i) Kishk

[210] Kishk was incorporated on August 25, 2015. Its stated business activity was the sale of wholesale specialty foods. Its recognized agent and sole director was Georgette Young. It became a GST registrant on January 14, 2015.

[211] In the period between January 14, 2015, and June 30, 2016, this company claimed total GST refunds in the amount of $1,220,122.00, with total sales of $14,510,569.00 (inclusive of $937,500 in tax), and total ITCs claimed of $2,157,633.00. Kishk was not paid or allocated any refund amounts.

[212] Once again, Boudreau began his investigation of the claims with an analysis of the seized documentation against the claims made in the GST returns. For Kishk, the invoiced sales were higher than the GST claims at $15,834,019.89, as was the GST collected in those invoices at $1,159,572.05. Similarly, the invoiced ITCs were higher than claimed at $2,277,486.13 (*Exhibit 71 – folder 7 0 Kishk summary tab*).

[213] The bulk of Kishk's sales were to related companies Maddie & Bella, Artisan, Juliette & John, Housewives in Heels and New & Chic. The invoiced sales to these companies totalled almost $9 million dollars (inclusive of tax). Remaining invoiced sales were to markets and grocery stores that had fabricated addresses. In terms of invoiced expenses, all of these came from the related companies with the largest purported supplier being 2002 in the amount of $8,006,875.00 (inclusive of tax)(*Exhibit 71 – 7 – Kishk summary tab*). The total invoiced expenses were $15,640,164.21.

[214] The bank account analysis for this company is simple. There is only one ATM deposit for $300.00 in 2015. On the withdrawal side, there are only service charges and a cheque printing fee, all in 2015, totalling just over $300.00. There is no bank support for the millions of dollars in claimed sales and expenses (*Exhibit 72 – 7 – RBC 052831006618 Kishk summary tab*).

[215] It was Boudreau's evidence that this was an unusual presentation even for a cash business as there are many reasons that a company should keep proper books and records, one of which is to support the GST and income tax filings. In the case of this company, the bank account did not exist until September of 2015, after the claims under review were filed, but before the interviews with Power in October of 2015. The obvious, perhaps rhetorical question, is how a company of its claimed

magnitude exists without a bank account. How does it get paid and where does the money go? How does it pay for its supplies and where is the confirmation of payment? The most obvious answer is that the claimed transactions never occurred.

[216] This company came to Power for audit on July 23, 2015. Power made contact with Young the next day and a contact letter was sent on July 27, 2015. On her initial review, Power noted that ITCs claimed and disallowed in prior periods were being claimed again, except for two suppliers, one of which was Vandalee Industries. A week later, Young contacted Power to say that records were coming in relation to Kishk. By September, Young advised that she would be sending amendment requests. Power conducted an in person interview with Young on October 7, 2015. In answer to many of the questions posed by Power, Young indicated that it would all change with the new information she was providing. In answer to other questions Young claimed to have made mistakes.

(j) 25132002 a.k.a SilverFish Publishing

[217] This company was incorporated on January 14, 2015. Its stated business activity was marketing and advertising. Its recognized agent and sole director was Georgette Young.

[218] In the period between January 14, 2015, and December 31, 2015, this company claimed total GST refunds in the amount of $315,323.80, with total sales of $16,057,358.00 (inclusive of tax in the amount of $2,097,335.05), and total ITCs claimed of $395,158.85. This company was not paid or allocated any refund amounts.

[219] The details of this company's GST returns are noteworthy given the Crown theory that 2002, as successor to Latatia and 2004, was the vehicle for all of the GST liability amongst the group of related companies (*Exhibit 71 – 25132002 – sales and expense tabs*). The returns for this company from January 31, 2015, to April 30, 2015, claim refunds. Then, from May 1, 2015, to July 31, 2015, the returns indicated a significant increase in sales with no ITCs resulting in a large quantum of GST liability.

[220] The analysis of the seized documentation in relation to this company is in evidence (*Exhibit 71 - summary tab*) and is not consistent with the GST returns filed. This company ostensibly operated for only a short period and appeared to be a successor to both Latatia and 2004 in terms of ownership and the nature of its purported business activity. The invoices seized showed sales activity totalling $37,647,175.00 (inclusive of tax), more than double what was reported in the returns. The overwhelming bulk of sales were to related companies

($37,123,579.30). There was no evidence that this company had any employees and Young herself was the only possible source of all of the business activity of the company. The sales invoices variously detailed services rendered as marketing, brand development, promotions, advertising, design work and labour (*Exhibit 71 – 2 – sales summary tab*).

[221] On the invoiced expense side, the largest supplier was 2004 ($1,227,672.00), a company which was also operated by Young, had no one else doing work for it, and ostensibly did the same kind of work as 2002 (note that the invoices from 2004 to 2002 were for marketing material, labour, branding, contract work and printing services – *Exhibit 71 – 2 – expense summary tab*). The invoiced services from 2004 together with third party invoices totalled $2,633,483.36, inclusive of ITCs of $343,497.66.

[222] Both the GST claims for this company and the invoices indicate significant business activity, especially between the related companies. It terms of the non-related business activity, it is important to note Boudreau could not verify any of those transactions. He then turned to the bank analysis (*Exhibit 71 – RBC 052831006626 – summary*). This account had one deposit on September 25, 2015, for $80.00 and a total of $18.00 in service charges between October 1, 2015, and December 1, 2015.

Summary of Key Findings

[223] Boudreau concluded his financial analysis with reference to his summary working paper (*Exhibit 73*). The point of this summary was to assess the collective business activity of the related companies relative to the GST claims. The working paper was broken down by deposits and withdrawals (*Exhibit 73 – deposit and withdrawal analysis tabs*).

[224] Boudreau's summary indicated that the largest single deposit source was the Government of Canada (*Exhibit 73 – deposit summary tab - $245,279.52 plus $2,558.38 relating to a prior period*). There were also related company deposits totalling $72,985.00 that corresponded exactly to the withdrawals. Boudreau testified that none of the related company transactions corresponded with seized invoices. He also noted that the various companies collectively withdrew more than they deposited. There was a significant deposit from TXV Tech Mechanical to Latatia in the amount of $14,950.00. TXV was a company owned by Young's husband. Boudreau testified that he did not find any invoice from Latatia to TXV. Boudreau also noted that the total deposits from the accused or their spouses to the various company accounts was $213,546.02. Looking at the withdrawals from the bank accounts, this same group withdrew $306,679.00, the point being that this group withdrew significantly more than they deposited.

[225] The total deposits from banks, credit card and point of sale terminals was $41,144.02, most of which were to Maddie & Bella (and included an $8,000.00 deposit from TD Waterhouse to Georgette Saker, endorsed by Georgette Young (*Exhibit 59, file 19, p. 32*), and a TD MBNA deposit of $6,350.00 (*Exhibit 59, file 11, p. 59)* payable to Nadia Saker and deposited to Housewives in Heels account). Boudreau testified that these deposits could be considered as evidence of business transactions. If the TD Waterhouse and the TD MBNA deposits are subtracted, the net amount ($26,794.28), is insignificant relative to the claimed sales in the HST returns.

[226] Boudreau discussed a number of the other deposit categories. He was of the view that some of the cash transactions could be evidence of business activity as could the third party sales he was able to document totalling $25,917.32. It was Boudreau's evidence these various amounts totalling $60,695.32 were some measure of the actual economic activity of the related group of companies over five years of operation. Translating this into an annual figure, this meant that actual business activity for the companies was in the range of $12,000.00 per year.

[227] This evidence is remarkable on its own indicating an overwhelming discrepancy between the claimed sales activity in the GST returns of over $56 million dollars (inclusive of HST claimed collected of more than $4.6 million

dollars)(*Exhibit 71*) and the actual business activity of the five companies with active bank accounts (in the range of $60,695.32, net of tax equals net sales of $52,778.00 exclusive of GST of $7,916.00).

[228] Boudreau took a similar approach to his analysis of the total withdrawals in order to determine any bank support for the ITCs claimed. Referencing *Exhibit 73*, he testified that he was able to identify $6,726.59 that appeared to be related to business expenses. There were also payments for credit cards, debit purchases and vehicle payments that could be business expenses. Taking the most generous approach, he calculated approximately $178,000.00 in such expenses which would generate ITCs of $23,302.14. By comparison, the total ITCs claimed in the same period was $5.94 million dollars.

[229] Looking at it another way, Boudreau testified that the $5.94 million dollars in ITCs claimed would translate into $39.6 million dollars in expenses. Boudreau testified in the most understated manner that one would hope to see some of those expenses going through the bank account. I would add even more basically, that one would expect the companies to have bank accounts. Once again, a breathtaking level of discrepancy between claims and reality.

[230] Boudreau's evidence very clearly established that the claims made in the GST returns were not real. When audited and called upon to provide support for the claims, amendments were made to the claims. When invoices were produced they fell into two broad categories – related company transactions and third party transactions. The transactions documented in the third party invoices could not be verified, either because of the scant information or clearly fabricated information. The related company transactions had no integrity whatsoever. By Young's own admission, the invoicing was completely arbitrary and the claimed transactions had no support in the bank accounts.

The Fraud Charges

[231] As noted above, the Indictment contains ten counts of fraud between January 1, 2011, and July 31, 2015. The fraud charges are brought pursuant to s. 380(1)(a) of the ***Criminal Code of Canada***:

> Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretense within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security of service,
>
> (a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years, where the … value of the subject-matter of the offence exceeds five thousand dollars.

[232] The Crown referenced a number of the leading authorities on the offence of fraud. All of these were of assistance. In ***R. v. Olan***, [1978] 2 SCR 1175, the Supreme Court of Canada took the opportunity to provide guidance on the elements of the offence of fraud at p. 1182:

> Courts, for good reason, have been loath to attempt anything in the nature of an exhaustive definition of "defraud" but one may safely say, upon the authorities, that two elements are essential, "dishonesty" and "deprivation". To succeed, the Crown must establish dishonest deprivation.

[233] The Court in ***Olan*** concluded that dishonesty of any kind was sufficient and referenced its reasons in two preceding cases at p. 1180:

> In *R. v. Lemire,* the accused was charged with having defrauded the public through the submission of fictitious expense accounts. Mr. Justice Martland, writing for the majority of the Court, dealt with the argument that no one was deceived by the expense accounts because they did not contain a detailed list of the expenditures as contemplated by the form used in making a claim. He said at pp. 185-186: "Whether or not they deceived the people who saw them, they were the necessary means used to obtain the payments and without them the payments would not have been made. They were fraudulent." See also *R. v. Renard,* at p. 358.

[234] The reasons in ***Olan*** were followed by our Court of Appeal in ***R. v. Gaetz*** (1992), 77 C.C.C. (3d) 445 (NSCA); aff'd [1993] 3 S.C.R. 645. In that case, Gaetz received loans from the bank in order to purchase vehicles for lease. When he sold the leased vehicle, he was to apply the proceeds to the bank loan. Instead, he used the money to keep his business afloat. He was convicted of fraud and appealed. In denying the appeal, Chipman, J.A., opined at para. 13:

> The word "defraud" is not defined in the Code. The use of the words, "other fraudulent means" in s. 380(1) of the Code indicates means which are not just in the nature of falsehood or deceit, but include all other means which can properly be stigmatized as dishonest … These words import a wider concept than "deceit' and "falsehood". … The extent to which the courts in Canada have breathed life into s. 380 and its predecessor sections can be appreciated from a review of Ewart on Criminal Fraud … Broadly put, the Criminal Code prohibits dishonest dealings. Thus, to paraphrase a classic statement, the categories of fraud are never closed and it is going much to far to say that mere non-disclosure, even of a material fact, can never be fraud. It may or may not be, depending on all the surrounding circumstances. … It is the element of dishonesty that is key. Non-disclosure, silence, or concealment may amount to dishonesty. *Mens rea*, the intentional or reckless state of mind, is, of course, an essential ingredient …
>
> (Citation omitted)

[235] In 1993, the Supreme Court of Canada released companion decisions in ***R. v. Theroux***, [1993] 2 SCR 5 and ***R. v. Zlatic,*** [1993] 2 SCR 29. These cases remain the leading statements on fraud in Canada. McLachlin, J. in ***Theroux***, said that the central tenant of fraud is dishonesty and dishonest dealings. She went on to clarify the elements of the offence, beginning with the required act (at pp. 15-17):

> Since the *mens rea* of an offence is related to its *actus reus*, it is helpful to begin the analysis by considering the *actus reus* of the offence of fraud. Speaking of the *actus reus* of this offence, Dickson, J, (as he then was) set out the following principles in ***Olan***:
>
> (i) The offence has two elements: dishonest act and deprivation;
>
> (ii) The dishonest act is established by proof of deceit, falsehood or other "fraudulent means";
>
> (iii) The element of deprivation is established by proof of detriment, prejudice, or risk of prejudice to the economic interests of the victim, caused by the dishonest act.

> ***Olan*** marked a broadening of the law of fraud in two respects. First, it overruled previous authority which suggested that deceit was an essential element of the offence. Instead, it posited the general concept of dishonesty, which might manifest itself in deceit, falsehood, or some other form of dishonesty. Just as what constitutes a lie or deceitful act for the purpose of the *actus reus* is judged on the objective facts, so the :other fraudulent means" in the third category is determined objectively, by reference to what a reasonable person would consider to be a dishonest act … By adopting an expansive interpretation of the offence, the Court established fraud as an offence of general scope capable of encompassing a wide range of commercial dealings.
>
> … In instances of fraud by deceit or falsehood …all that need be determined is whether the accused, as a matter of fact, represented that a situation was of a certain character, when, in reality, it was not.

[236] The more pressing question in ***Theroux*** had to do with the mental element of fraud. This was determined to be the subjective awareness that one was undertaking a prohibited act (the deceit, falsehood or other dishonest act) which could cause deprivation in the sense of depriving another of property or putting that property at risk. This state of mind can be inferred. As McLachlin noted at p. 18:

> The second collateral point is the oft-made observation that the Crown need not, in every case, show precisely what thought was in the accused's mind at the time of the criminal act. In certain cases, subjective awareness of the consequences can be inferred from the act itself, barring some explanation casting doubt on such an inference. The fact that such an inference is made does not detract from the subjectivity of the test.

[237] The guidance on the elements of the offence of fraud were summarized at p. 20:

> These doctrinal observations suggest that the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. The prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
> 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:
>
> 1. subjective knowledge of the prohibited act; and
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk)
>
> Where the conduct and knowledge required by these definitions are established, the accused is guilty whether he actually intended the prohibited consequences or was reckless as to whether or not it would occur.

[238] Subsequent decisions have not changed the fundamentals of the analysis. They are examples of the breath of circumstances that constitute criminal fraud.

[239] In ***Zlatic***, the diversion of the value of goods sold to gambling instead of debt was held to be fraud by "other fraudulent means". Interestingly, in that case, the entirety of the conduct (taking the goods and gambling away the value), was found to constitute a fraudulent scheme which was the *actus reu*s of the offence. Key to this assessment was the objective determination of dishonesty. The required *mens rea* could be inferred and there was nothing in the evidence which negated the natural inference.

[240] In ***R. v. Leuenberger***, 2014 BCCA 156, the court of appeal further considered the required actus reus of fraud and said:

> [48] The *actus r*eus of fraud is established by proving (1) deceit, falsehood, or other fraudulent means; and (2) deprivation caused by the prohibited act, whether actual loss or putting the victim's pecuniary interests at risk: *Theroux* at 20 …
>
> [49] As to the first parts of the *actus reus* of fraud, falsehood has been defined as a deliberate lie, while deceit is established when an accused induces a person to believe something that the deceiver knows is false: *R. v. Stephenson*, 2006 BCCA at para. 102.
>
> [50] As to "other fraudulent means", it is not necessary an accused personally considers his or her means to be honest. Rather, whether the conduct amounts to a fraudulent means is determined objectively, by reference to what a reasonable person would consider to be a dishonest act: *R. v. Zlatic*, 1993 CanLII 135 (SCC), [1993] 2 S.C.R. 29 at 45 …

[241] In ***R. v. DiGiuseppe***, 2010 ONCA 91, the accused was convicted of fraud based upon a finding that he had caused his companies to file false tax and GST returns, actions which "imperilled the public purse". The conviction was upheld on appeal.

[242] More recently, in Nova Scotia, the elements of fraud were considered in ***R. v. Colpitts***, 2018 NSSC 40 (affirmed on appeal at ***R. v. Potter***; ***R. v. Colpitts***, 2020 NSCA 9) and ***R. v. Ross and Dawson,*** 2019 NSSC 275 (overturned on sentence only at ***R. v. Dawson***; ***R. .v. Ross***, 2021 NSCA 29).

[243] Let me begin my determination of the fraud charges by saying that there is an overwhelming amount of evidence that the claims made in the GST returns, in the Indictment period, for all companies, are completely fabricated. In the mountains of financial evidence offered to this court for consideration, it is difficult to identify any real transaction or authentic business activity. This finding is the underpinning for those that follow.

[244] The interesting point here is that the fabricated statements were part of a group effort with a common purpose - to obtain GST refunds that could not have been obtained with truthful statements. The vehicles used to perpetuate the scheme were the companies owned and controlled by the individual defendants. As the scheme evolved and expanded to a massive scale, the companies needed to act in concert to be most effective. In my view, this is the very epitome of the dishonest dealings that is contemplated by the fraud provisions of ***Criminal Code***.

[245] In terms of knowledge and participation, I find that Young was the coordinator and perhaps the creator of the scheme. She was without question the manager of the operation, controlling the mixing and mingling of the related companies as necessary to accomplish the end goal. But Young was not alone in her efforts. I accept the evidence offered by the Crown that all of the individual defendants knew that the

claims filed were false and understood that they would benefit by their participation to the detriment of Government of Canada and, ultimately, the public.

[246] The fact that the claims filed by the defendants were fabricated was easily established on the evidence. There is absolutely no doubt on this point. The live issue was always the intent of the individual accused. In my view, the first observation that can be made is that the magnitude of the fabrication clearly supports a fraudulent intent. While I recognize that various pieces of evidence exist suggesting that the claims were made in error, or inadvertence, this is a suggestion that is impossible to accept on the totality of the evidence. If the only evidence I had to consider was the massive scale of the false statements made, I would have no doubt as to the intent. But there is other evidence to consider – the motivation to obtain the tax refunds, the distribution of the refunds, and the participation in a concerted efforts to cover up the false claims when under audit. I do not accept that all of this resulted from bookkeeping errors.

[247] I have considered the various points raised by the defendants – that there could be other bank accounts in existence that verify the business activity claimed in the returns or that the false invoices were created by CRA staff. I find however, that when considered against the weight of the evidence I do accept, these are not

reasonable inferences available. I reject these suggestions completely. They do not in any way raise any doubt.

[248] I find that the only possible inference available on the evidence I accept is that the individual defendants intended to act in concert with their companies to perpetrate a fraud on tax system and ultimately the public.

[249] As reviewed at the outset, the Indictment frames each fraud count to reflect the amount refunded to the defendant companies. The amounts paid are proven. They establish the deprivation. For each count, I find that the amounts paid were obtained by way of dishonesty in the form of both deceit and falsehood resulting in actual loss to the public, all of which was the result of a concerted intent. There is no doubt that the defendants knew that the information they provided in their claims was false and that the result of their efforts would be to obtain the GST refunds based upon the false information.

The Excise Tax Act Charges

[250] The ***Excise Tax Act ("ETA")*** is a statutory scheme that codifies a system for the collection of tax on goods and services. A person who purchases a good or service in Canada must pay GST or HST on top of the value of the good or service.

There are very few exceptions. The supplier of the good or service must collect the tax from the purchaser and remit it to the government.

[251] The hallmark of the remittance process is the filing of returns. These returns can be filed monthly, quarterly, or yearly. In a typical case, a profitable business would file its return indicating an amount owed and remit that amount as required. If a business has expended a significant amount on services or supplies in a period their ITCs may exceed their tax liability. In such a case, the registrant would file an return seeking a refund. As with the income tax scheme, the operation of the ***ETA*** relies, in large measure, on accurate self-assessment and timely reporting. As this case demonstrates, there are vulnerabilities in the system that can be exploited.

[252] Non-compliance with the ***ETA*** can attract criminal liability. The present Indictment contains twenty counts alleging such non-compliance by individuals and companies. These charges are all pursuant to s. 327 (1) of the ***ETA*** but are evenly divided between counts alleging the filing of false statements in a return (ss. 327(1)(a)), and obtaining or attempting to obtain a refund to which one is not entitled (ss 327(1)(d)). These allegations are found in counts eleven to thirty of the Indictment.

[253] The language of the relevant sections of the ***ETA*** follow:

Offences

327(1) Every person who has

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

…

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

is guilty of an offence …

[254] Corporate liability for these offences is tied to the fault of "senior officers" and "representatives". This results from the operation of s. 22.2 of the ***Criminal Code*** which provides:

22.2 In respect of an offence that requires the prosecution to prove fault – other than negligence – an organization is a party to the offence if, with the intent at least in part to benefit the organization, one of its senior officers

(a) acting within the scope of their authority, is a party to the offence;

(b) having the mental state required to be a party to the offence and acting within the scope of their authority, directs the work of other representatives of the organization so that they do the act or make the omission specified in the offence; or

(c) knowing that a representative of the organization is or is about to be a party to the offence, does not take all reasonable measures to stop them from being a party to the offence.

[255] Section 2 of the ***Criminal Code*** says that an organization includes a "body corporate" and defines representative and senior officer as follows:

> "***representative***", in respect of an organization, means a director, partner, employee, member, agent or contractor of the organization;
>
> "***senior officer***" means a representative who plays an important role in the establishment of an organization's policies or is responsible for managing an important aspect of the organization's activities and, in the case of a body corporate, includes a director, its chief executive officer and its chief financial officer.

[256] The ***ETA*** charges are organized by corporation. The evidence established that each company was a registrant for GST purposes. CRA would deal with the registrant or an authorized representative for each company. By the time of the interviews with Power in October of 2015, Young was the an authorized representative for all of the corporate defendants. She was also the bookkeeper for all of the companies. She was the sole director and operating mind for Latatia, 2002, 2004, Kishk, and Maddie & Bella. It comes as no surprise to me that Young is named as a defendant in each and every one of the ***ETA*** charges. I find that she is a senior officer and a representative for all of the defendant companies.

[257] Aside from Young who is named in all counts, counts 21 and 22 name Lydia Saker, counts 23 and 24 name Nadia Saker, and counts 25, 26, 27 and 28 name MacDonald. The final counts, 29 and 30, involve Spaghetti Benders, a company

owned equally by Young, Nadia Saker and MacDonald and for which Lydia Saker was as a director. In each instance, I find the evidence supports a finding that the individual defendants are senior officers and representatives of the named companies acting within the scope of their authority.

[258] In terms of the elements of these offences, there has been much consideration of the elements of the s. 327(1)(a) offence. There is less consideration of the s. 327(1)(d) offence. There are analogies to similar provisions of the ***Income Tax Act*** to consider. For guidance, I have considered ***R. v. Knox Contracting Ltd. v. Canada***, [1990] 2 S.C.R. 338, ***R. v. Klundert*** (2004), 242 D.L.R. (4th) 644, ***R. v. Tri-Tex Sales & Service Ltd.***, [2006] NJ No. 230, ***R. v. Atlantic Technologist Limited***, [2009] 2 C.T.C 20, [2008] NJ No. 197 (Nfld Prov Ct), ***R. v. Cromwell***, 2015 NSPC 64, ***R. v. Ingram***, 2016 NSPC 38, and ***R. v. Isaak***, 2019 BCPC 329 (aff'd on appeal at 2020 BCSC 686).

[259] In ***Ingram***, Tax, JPC highlighted the distinctive elements of these offences with reference to similar language in the ***Income Tax Act***:

> [223] In my opinion, the *Klundert*, *supra* case provides authoritative statements with respect to the conduct and fault components of the "wilful" offences which the Crown has alleged to have been committed by Mr. Ingram contrary to section 239(1)(d) of the ITA and section 327(1)(c) and (d) of the ETA. The large majority of the reported cases mentioned by counsel specifically referred to and, only dealt with, the "wilful" tax evasion offence under section 239(1)(d) of the ITA or the corresponding sections under the ETA.

[224] However, it is also important to bear in mind that the balance of the offences, which the Crown has alleged that Mr. Ingram committed contrary to sections 239((1) (a) of the ITA and section 327(1)(a) of the ETA, do not bring into question the "wilful" nature of the conduct. With respect to those alleged offences, which involve either the making, participating in, assenting to or acquiescing in the making of false or deceptive statements in a return, those offences, are in my opinion, general intent offences, which do not require the Crown to prove that the accused person had the specific intention to evade the payment of tax or to attempt to evade the payment of tax that he knows or believes to be payable under the ITA or the ETA. The issue with respect to *mens rea* is the knowledge of the making or assenting to false or deceptive statements in the return, which, in my view, clearly brings the question of wilful blindness and an objective assessment of the taxpayer's acts in the making or assenting to false or deceptive statements in the ITA or ETA returns.

[225] The distinction between these specific intent and general intent offences under the ITA and the ETA was examined in the often cited Nova Scotia case of *R. v. Hefler*, [1980] N.S.J. No. 111; 42 NSR (2nd) 276 (NS Co. Ct). In that case, O'Hearn J. concluded, at para. 32, that *mens rea* is an element of the charge under section 239(1)(d) of the ITA and that in evading or attempting to evade the payment of taxes imposed by the *Act,* the Crown must prove beyond reasonable doubt that defendant did so "wilfully", that is, the conduct of the defendant must be the product of an intent to evade tax that the defendant knows or believes to be payable (knowledge here, including "wilful blindness" which imports the concept of the defendant/taxpayer recklessly closing his or her eyes or refraining from making reasonable inquiries) with the intent to defraud the CRA.

[226] As Judge O'Hearn noted in *Hefler, supra,* at para. 28, the mental element or *mens rea* differs somewhat between the two types of offence that were in question in that case. Referring to cases from the Saskatchewan Court of Appeal and the Alberta Court of Appeal, the Court held that under section 239(1)(a) of the ITA, "the prosecution must prove that the defendant made the statement knowing it to be false or deceptive, with the intent that it be acted on as true."

[227] With respect to the mental element under section 239(1)(d) of the ITA, Judge O'Hearn noted that the issue was "more debatable and debated" at that time. As I mentioned previously, the debate was whether the mental element of "wilful evasion" under section 239(1)(d) of the ITA also included some "element of artifice, craft or strategy." After reviewing some of the conflicting authorities on the point, in *Hefler, supra*, at para. 31, O'Hearn J agreed with the approach adopted by Bayda JA in *Paveley* (1976) 1976 CanLII 969 (SKCA), 30 CCC (2nd) 483; 1976 CanLII 969 (SKCA), that the word "wilfully" meant that proof was required of a specific intent, that is, proof that the prohibited act which constituted the "manner" in which the *actus reus* was committed with a particular purpose - the purpose of evading the payment of tax.

[260] Relying on the authorities I find that the following elements must be proven beyond a reasonable doubt. In the case of s. 327(1)(a) counts, a general intent offence, the Crown must establish: (1) a return was filed, (2) it contained false statements, (3), the accused participated or acquiesced in the filing of the return, and (4) the accused knew the statements were false. If the Crown proves these elements against the individuals named in each count, those findings will bind the corporate defendants by virtue of s. 22.2 of the ***Criminal Code*** and my findings in relation to the party status.

[261] In the case of s. 327(1)(d), a specific intent offence, by extension from the authorities, I find that the Crown must prove: (1) a return was filed, (2) the return claimed a refund (whether it was obtained or not is immaterial), (3) the corporation was not entitled to receive the refund, and (4) the accused filed the return knowing that the corporation was not entitled to the refund claimed. As is the case with the s. 327(1)(a) offence, if the elements are proven against the individual defendants, then by operation of s. 22.2 of the ***Criminal Code***, those findings bind the defendant company.

[262] The Crown theory has been reviewed at various points in this decision. On the basis of the evidence, there is no question that the returns were filed and that they

contained false information. Boudreau's analysis of the various sources of documentation completely disposes of this issue. The evidence on this point has been reviewed in detail. The claims submitted bear absolutely no relationship to the actual business activity of the various companies. In each and every case, the statements made in these claims are clearly and unequivocally false.

[263] It follows that the refunds claimed in those returns were refunds to which the claimant was not entitled. These conduct elements of the offences are proven beyond a reasonable doubt. Once again, it is not the *actus reus* that is in question. It is the knowledge element in each offence that bears more examination.

[264] The GST returns in question were filed quarterly or monthly. In my view, there is absolutely no reasonable basis on which to conclude that anyone other than the defendants filed the subject returns. It was Young's argument that some unknown person accessed the mail, obtained the registrant account access information, and filed the returns without the authorized person's knowledge or consent.

[265] Considering the entirety of the record on this point, it is an argument entirely without merit. It is simply not a reasonable inference. To the contrary, it entirely reasonable to conclude that the returns were consistently filed by the registrant or an

authorized representative. On this point, I place considerable weight on the evidence of auditor Power and her records of the various defendant's response to the civil audit process. Never was there any claim made to Power that the GST returns under audit were not filed with the knowledge of the registrant. Instead, in each case, the conduct focused on falsifying support for those returns or amending the returns with claims of errors or inadvertence.

[266] Before making any findings on the issue of intent, I consider the following observation that comes from ***R. v. Ingram***, at paras. 235-236:

> 235 In *R. v. Paveley*, *supra*, at paa. 40 (at para. 48 CanLII), Mr. Justice Bayda's opinion is often cited as the authoritative reference for the fact that, in establishing the *mens rea* of the offence of "wilful evasion" of the payment of taxes contrary to section 239(1)(d) of the ITA, the Crown does have to prove a specific intention to evade the payment of taxes, but he added that "it cannot be said that the existence of an artifice or scheme is a necessary element of the offence created by this subsection."
>
> 236 However, Bayda J.A. added in Paveley, *supra*, at para. 40 (at para. 48 CanLII), that the presence of an artifice or scheme would tend to make it easier to draw the necessary inference of intent to evade payment of taxes, but it is not necessary for the commission of the offence. The plain words of the subsection 239(1)(d) of the ITA specify that evasion may be done "in any manner" and therefore, the ITA does not contemplate an artifice or scheme to be the only manner in which an "evasion" may be accomplished.
>
> (Emphasis added)

[267] In my view, this approach applies equally to the analysis of intent, both general and specific, under s. 327(1) of the ***ETA***. The existence of a pattern of

behaviour gives more weight to the circumstantial evidence of intent. As I have said already, I also find the magnitude of the false claims in this case to be strong evidence of intent, both general and specific.

[268] Before concluding, I once again consider the evidence that the statements were made in error or inadvertence. I find that the totality of the evidence does not accord with possibility. I do not believe it and this evidence does not leave me with any reasonable doubt. I am satisfied beyond any doubt that the ***ETA*** charges are proven in each and every count in the Indictment.

[269] With respect to the offences contrary to s. 327(1)(a), I find that the returns were filed and that they contained false and deceptive statements. I further find it established beyond a doubt that in each count, the named defendants, made, or acquiesced in the making of these statements knowing that they would be acted upon as true. The evidence bears this out in every instance unequivocally.

[270] In my view, the evidence establishes beyond a doubt that in every count charged contrary to s. 327(1)(a),(Counts 11, 13, 15, 17, 19, 21, 23, 25, 27, and 29), Young, as the bookkeeper and authorized CRA representative, was the accused who made the false statements. In the case of Artisan (count 21), I find that Lydia Saker had knowledge and acquiesced to the making of false statements. In the case of

Housewives in Heels (count 23), I find that Nadia Saker had knowledge and acquiesced in the making of false statements. In the case of Juliette & John and New & Chic (counts 25 and 27), I find that MacDonald had knowledge and acquiesced in the making of the false statements. Finally, I find that in the case of Spaghetti Benders (count 29), that Lydia Saker, Nadia Saker, and MacDonald had knowledge and acquiesced in the making of false statements. In all of these counts, I find that the defendants either made or acquiesced in the making of these statements knowing that they were false and would be acted upon as true. These findings bind the companies charged in each of these counts.

[271] With respect to the offences contrary to s. 327(1)(d),(counts 12, 14, 16, 18, 20, 22, 24, 26, 28, and 30), I find that the elements of these offences have been proven beyond a reasonable doubt In each count, I am satisfied that the named defendants filed GST returns with the intent of obtaining refunds they knew they were not entitled to receive.

Conclusion

[272] In conclusion, I begin by making a general observation. In this case, the Crown offered clear, cogent and overwhelming evidence of a fraudulent scheme. The scheme was designed to obtain GST refunds that the defendants knew they were

not entitled to receive. The method used to obtain these refunds was the filing of GST returns with false information. In order for this scheme to be fully effective and maximize its benefit, it required the group of related companies to exist and act in concert. Young was the conductor of the orchestra but her mother and siblings played along.

[273] The magnitude of the fiction in this case is breathtaking. The hubris of it is shocking. When CRA began to review, and later audit the credit returns, the defendants doubled down on their fraud by supplying fictitious invoices and amending claims in an attempt to hide the massive scale of their fraud. In the early days of this conduct, the vulnerability of our tax system was exposed. When fraudulent claims were reviewed, the defendants made up records and invoices and provided these to CRA. Upon review of this information, CRA cleared the returns and the refunds were paid. This was early days of what later became a fraud on the Canadian public of staggering proportions. It was only the consistent work of diligent public servants that brought all of this to an end.

[274] In the defence closing submission, Young claimed that she, her sisters and mother were the victims of a CRA conspiracy – she urged me to conclude that they were not gangsters or criminals, but housewives that make cupcakes. After presiding over this lengthy trial, I would reject this plea entirely. There were absolutely no

cupcakes being made. What was being baked here was a scam of epic portions, made with equal measure of deceit, arrogance, gall, and massively misguided creativity. It is my hope that the Canadian public will never be subjected to this kind of recipe ever again.

[275] On the basis of the foregoing reasons, I enter guilty verdicts, for all defendants on all fraud charges, counts 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10. I also enter guilty verdicts for all charges contrary to s. 327(1)(d), counts 12, 14, 16, 18, 20, 22, 24, 26, 28, and 30.

[276] In light of the foregoing convictions, pursuant to ***Keinapple*** and ***Lempen***, I find that it appropriate to enter conditional stays in relation to all defendants charged in the Indictment under s. 327(1)(a) of the ***Excise Tax Act*** (counts 11, 13, 15, 17, 19, 21, 23, 25, 27, and 29).

[277] This matter shall be set over for sentencing at the earliest opportunity.

Gogan, J.

SCHEDULE "A"

GEORGETTE YOUNG, of Sydney, LYDIA SAKER, of Sydney Mines, NADIA SAKER, of Leitches Creek, and ANGELA MACDONALD, of Kentville, and Latatia Advertising Incorporated, The Spaghetti Benders Limited, 25132004 Incorporated, 25132002 Incorporated, Kishk Incorporated, Maddie and Bella's Children's Clothing Incorporated, Artisan Hair Loss Therapy Incorporated, Maddie and Bella's Children Clothing Incorporated, Artisan Hair Loss Therapy Incorporated, Housewives in Heels Incorporated Juliette and John Incorporated, New and Chic Incorporated, all of the Province of Nova Scotia, stand charged:

1. GEORGETTE YOUNG, LYDIA SAKER, NADIA SAKER, and ANGELA MACDONALD did between January 1, 2011 and July 31, 2015, by deceit, falsehood or other fraudulent means, defraud Her Majesty in Right of Canada of money in the amount of $315,324 thereby committing an offence contrary to section 380(1)(a) of the Criminal Code, 1985 Chapter C-46, as amended;

2. GEORGETTE YOUNG, LYDIA SAKER, NADIA SAKER, and ANGELA MACDONALD did between January 1, 2011 and July 31, 2015, by deceit, falsehood or other fraudulent means, defraud Her Majesty in Right of Canada of money in the amount of $125,467 thereby committing an offence contrary to section 380(1)(a) of the Criminal Code, 1985 Chapter C-46, as amended;

3. GEORGETTE YOUNG, LYDIA SAKER, NADIA SAKER, and ANGELA MACDONALD did between January 1, 2011 and July 31, 2015, by deceit, falsehood or other fraudulent means, defraud Her Majesty in Right of Canada of money in the amount of $282,199 thereby committing an offence contrary to section 380(1)(a) of the Criminal Code, 1985 Chapter C-46, as amended;

4. GEORGETTE YOUNG, LYDIA SAKER, NADIA SAKER, and ANGELA MACDONALD did between January 1, 2011 and July 31, 2015, by deceit, falsehood or other fraudulent means, defraud Her Majesty in Right of Canada of money in the amount of $440,720 thereby committing an offence contrary to section 380(1)(a) of the Criminal Code, 1985 Chapter C-46, as amended;

5. GEORGETTE YOUNG, LYDIA SAKER, NADIA SAKER, and ANGELA MACDONALD did between January 1, 2011 and July 31, 2015, by deceit, falsehood or other fraudulent means, defraud Her Majesty in Right of Canada of money in the amount of $585,345 thereby committing an offence contrary to section 380(1)(a) of the Criminal Code, 1985 Chapter C-46, as amended;

6. GEORGETTE YOUNG, LYDIA SAKER, NADIA SAKER, and ANGELA MACDONALD did between January 1, 2011 and July 31, 2015, by deceit, falsehood or other fraudulent means, defraud Her Majesty in Right of Canada of money in the amount of $1220,133 thereby committing an offence contrary to section 380(1)(a) of the Criminal Code, 1985 Chapter C-46, as amended;

7. GEORGETTE YOUNG, LYDIA SAKER, NADIA SAKER, and ANGELA MACDONALD did between January 1, 2011 and July 31, 2015, by deceit, falsehood or other fraudulent means, defraud Her Majesty in Right of Canada of money in the amount of $40,638 thereby committing an offence contrary to section 380(1)(a) of the Criminal Code, 1985 Chapter C-46, as amended;

8. GEORGETTE YOUNG, LYDIA SAKER, NADIA SAKER, and ANGELA MACDONALD did between January 1, 2011 and July 31, 2015, by deceit, falsehood or other fraudulent means, defraud Her Majesty in Right of Canada of money in the amount of $243,139 thereby committing an offence contrary to section 380(1)(a) of the Criminal Code, 1985 Chapter C-46, as amended;

9. GEORGETTE YOUNG, LYDIA SAKER, NADIA SAKER, and ANGELA MACDONALD did between January 1, 2011 and July 31, 2015, by deceit, falsehood or other fraudulent means, defraud Her Majesty in Right of Canada of money in the amount of $322,941 thereby committing an offence contrary to section 380(1)(a) of the Criminal Code, 1985 Chapter C-46, as amended;

10. GEORGETTE YOUNG, LYDIA SAKER, NADIA SAKER, and ANGELA MACDONALD did between January 1, 2011 and July 31, 2015, by deceit, falsehood or other fraudulent means, defraud Her Majesty in Right of Canada of money in the amount of $52,900 thereby committing an offence contrary to section 380(1)(a) of the Criminal Code, 1985 Chapter C-46, as amended;

11. LATATIA ADVERTISING INCORPORATED and GEORGETTE YOUNG being an officer, director, or agent of LATATIA ADVERTISING INCORPORATED did between January 1, 2011 and July 31, 2015, commit an offence contrary to subparagraph 327(1)(a) of the *Excise Tax Act* R.S.C. 1985, by making, participating in, assenting to or acquiescing in the making of false or deceptive statements in the Goods and Service Tax Returns of LATATIA ADVERTISING INCORPORATED by claiming refunds in the amount of $40,638;

12. LATATIA ADVERTISING INCORPORATED and GEORGETTE YOUNG being an officer, director, or agent of LATATIA ADVERTISING INCORPORATED did between January 1, 2011 and July 31, 2015, commit an offence contrary to subparagraph 327(1)(d) of the *Excise Tax Act* R.S.C. 1985, by wilfully obtaining or attempting to obtain a refund

to which they were not entitled in the Goods and service Tax Returns of LATATIA ADVERTISING INCORPORATED by claiming refunds in the amount of $40,638;

13. 25132004 INCORPORATED and GEORGETTE YOUNG being an officer, director, or agent of 25132004 INCORPORATED did between January 1, 2011 and July 31, 2015, commit an offence contrary to subparagraph 327(1)(a) of the *Excise Tax Act* R.S.C. 1985, by making, participating in, assenting to or acquiescing in the making of false or deceptive statements in the Goods and Service Tax Returns of 25132004 INCORPORATED by claiming refunds in the amount of $125,467;

14. 25132004 INCORPORATED and GEORGETTE YOUNG being an officer, director, or agent of 25132004 INCORPORATED did between January 1, 2011 and July 31, 2015, commit an offence contrary to subparagraph 327(1)(d) of the *Excise Tax Act* R.S.C. 1985, by wilfully obtaining or attempting to obtain a refund to which they were not entitled in the Goods and service Tax Returns of 25132004 INCORPORATED by claiming refunds in the amount of $125,467;

15. 25132002 INCORPORATED and GEORGETTE YOUNG being an officer, director, or agent of 25132002 INCORPORATED did between January 1, 2011 and July 31, 2015, commit an offence contrary to subparagraph 327(1)(a) of the *Excise Tax Act* R.S.C. 1985, by making, participating in, assenting to or acquiescing in the making of false or deceptive statements in the Goods and Service Tax Returns of 25132002 INCORPORATED by claiming refunds in the amount of $315,324;

16. 25132002 INCORPORATED and GEORGETTE YOUNG being an officer, director, or agent of 25132002 INCORPORATED did between January 1, 2011 and July 31, 2015, commit an offence contrary to subparagraph 327(1)(d) of the *Excise Tax Act* R.S.C. 1985, by wilfully obtaining or attempting to obtain a refund to which they were not entitled in the Goods and service Tax Returns of 25132002 INCORPORATED by claiming refunds in the amount of $315,324;

17. KISHK INCORPORATED and GEORGETTE YOUNG being an officer, director, or agent of KISHK INCORPORATED did between January 1, 2011 and July 31, 2015, commit an offence contrary to subparagraph 327(1)(a) of the *Excise Tax Act* R.S.C. 1985, by making, participating in, assenting to or acquiescing in the making of false or deceptive statements in the Goods and Service Tax Returns of KISHK INCORPORATED by claiming refunds in the amount of $1,220,133;

18. KISHK INCORPORATED and GEORGETTE YOUNG being an officer, director, or agent of KISHK INCORPORATED did between January 1, 2011 and July 31, 2015, commit an offence contrary to subparagraph 327(1)(d) of the *Excise Tax Act* R.S.C. 1985, by wilfully obtaining or attempting to obtain a refund to which they were not entitled in

the Goods and service Tax Returns of KISHK INCORPORATED by claiming refunds in the amount of $1,220,133;

19. MADDIE AND BELLA'S CHILDREN CLOTHING INCORPORATED and GEORGETTE YOUNG being an officer, director, or agent of MADDIE AND BELLA'S CHILDREN CLOTHING INCORPORATED did between January 1, 2011 and July 31, 2015, commit an offence contrary to subparagraph 327(1)(a) of the *Excise Tax Act* R.S.C. 1985, by making, participating in, assenting to or acquiescing in the making of false or deceptive statements in the Goods and Service Tax Returns of MADDIE AND BELLA'S CHILDREN CLOTHING INCORPORATED by claiming refunds in the amount of $243,139;

20. MADDIE AND BELLA'S CHILDREN CLOTHING INCORPORATED and GEORGETTE YOUNG being an officer, director, or agent of MADDIE AND BELLA'S CHILDREN CLOTHING INCORPORATED did between January 1, 2011 and July 31, 2015, commit an offence contrary to subparagraph 327(1)(d) of the *Excise Tax Act* R.S.C. 1985, by wilfully obtaining or attempting to obtain a refund to which they were not entitled in the Goods and service Tax Returns of MADDIE AND BELLA'S CHILDREN CLOTHING INCORPORATED by claiming refunds in the amount of $243,139;

21. ARTISAN HAIR LOSS THERAPY INCORPORATED and LYDIA SAKER being an officer, director, or agent of ARTISAN HAIR LOSS THERAPY INCORPORATED did between January 1, 2011 and July 31, 2015, commit an offence contrary to subparagraph 327(1)(a) of the *Excise Tax Act* R.S.C. 1985, by making, participating in, assenting to or acquiescing in the making of false or deceptive statements in the Goods and Service Tax Returns of ARTISAN HAIR LOSS THERAPY INCORPORATED by claiming refunds in the amount of $282,199;

22. ARTISAN HAIR LOSS THERAPY INCORPORATED and LYDIA SAKER being an officer, director, or agent of ARTISAN HAIR LOSS THERAPY INCORPORATED did between January 1, 2011 and July 31, 2015, commit an offence contrary to subparagraph 327(1)(d) of the *Excise Tax Act* R.S.C. 1985, by wilfully obtaining or attempting to obtain a refund to which they were not entitled in the Goods and service Tax Returns of ARTISAN HAIR LOSS THERAPY INCORPORATED by claiming refunds in the amount of $282,199;

23. HOUSEWIVES IN HEELS INCORPORATED and NADIA SAKER being an officer, director, or agent of HOUSEWIVES IN HEELS INCORPORATED did between January 1, 2011 and July 31, 2015, commit an offence contrary to subparagraph 327(1)(a) of the *Excise Tax Act* R.S.C. 1985, by making, participating in, assenting to or acquiescing in the making of false or deceptive statements in the Goods and Service Tax Returns of

HOUSEWIVES IN HEELS INCORPORATED by claiming refunds in the amount of $440,720;

24. HOUSEWIVES IN HEELS INCORPORATED and NADIA SAKER being an officer, director, or agent of HOUSEWIVES IN HEELS INCORPORATED did between January 1, 2011 and July 31, 2015, commit an offence contrary to subparagraph 327(1)(d) of the *Excise Tax Act* R.S.C. 1985, by wilfully obtaining or attempting to obtain a refund to which they were not entitled in the Goods and service Tax Returns of HOUSEWIVES IN HEELS INCORPORATED by claiming refunds in the amount of $440,720;

25. JULIETTE AND JOHN INCORPORATED and ANGELA MACDONALD being an officer, director, or agent of JULIETTE AND JOHN INCORPORATED did between January 1, 2011 and July 31, 2015, commit an offence contrary to subparagraph 327(1)(a) of the *Excise Tax Act* R.S.C. 1985, by making, participating in, assenting to or acquiescing in the making of false or deceptive statements in the Goods and Service Tax Returns of JULIETTE AND JOHN INCORPORATED by claiming refunds in the amount of $585,345;

26. JULIETTE AND JOHN INCORPORATED and ANGELA MACDONALD being an officer, director, or agent of JULIETTE AND JOHN INCORPORATED did between January 1, 2011 and July 31, 2015, commit an offence contrary to subparagraph 327(1)(d) of the *Excise Tax Act* R.S.C. 1985, by wilfully obtaining or attempting to obtain a refund to which they were not entitled in the Goods and service Tax Returns of JULIETTE AND JOHN INCORPORATED by claiming refunds in the amount of $585,345;

27. NEW AND CHIC INCORPORATED and ANGELA MACDONALD being an officer, director, or agent of NEW AND CHIC INCORPORATED did between January 1, 2011 and July 31, 2015, commit an offence contrary to subparagraph 327(1)(a) of the *Excise Tax Act* R.S.C. 1985, by making, participating in, assenting to or acquiescing in the making of false or deceptive statements in the Goods and Service Tax Returns of NEW AND CHIC INCORPORATED by claiming refunds in the amount of $322,941;

28. NEW AND CHIC INCORPORATED and ANGELA MACDONALD being an officer, director, or agent of NEW AND CHIC INCORPORATED did between January 1, 2011 and July 31, 2015, commit an offence contrary to subparagraph 327(1)(d) of the *Excise Tax Act* R.S.C. 1985, by wilfully obtaining or attempting to obtain a refund to which they were not entitled in the Goods and service Tax Returns of NEW AND CHIC INCORPORATED by claiming refunds in the amount of $322,941;

29. THE SPAGHETTI BENDERS LIMITED, GEORGETTE YOUNG, LYDIA SAKER, NADIA SAKER and ANGELA MACDONALD being an officer, director, or agent of THE SPAGHETTI BENDERS LIMITED did between January 1, 2011 and July 31, 2015,

commit an offence contrary to subparagraph 327(1)(a) of the *Excise Tax Act* R.S.C. 1985, by making, participating in, assenting to or acquiescing in the making of false or deceptive statements in the Goods and Service Tax Returns of THE SPAGHETTI BENDERS LIMITED by claiming refunds in the amount of $52,900;

30. THE SPAGHETTI BENDERS LIMITED, GEORGETTE YOUNG, LYDIA SAKER, NADIA SAKER and ANGELA MACDONALD being an officer, director, or agent of THE SPAGHETTI BENDERS LIMITED did between January 1, 2011 and July 31, 2015, commit an offence contrary to subparagraph 327(1)(d) of the *Excise Tax Act* R.S.C. 1985, by wilfully obtaining or attempting to obtain a refund to which they were not entitled in the Goods and service Tax Returns of THE SPAGHETTI BENDERS LIMITED by claiming refunds in the amount of $52,900;