

CANADA / JUDGMENT

Thorburn v. The King

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Docket: 2022-2928(IT)G

BETWEEN:

ROBERT THORBURN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent .

Appeal heard on November 20 and 28, 2025,

at Montréal, Québec

Before: The Honourable Justice Ryan P. Rabinovitch

Appearances :

Counsel for the Appellant:

Vincent Langlois

Counsel for the Respondent:

Julien Wohlhuter

AMENDED JUDGMENT

The appeal of the reassessment made under the Income Tax Act of the Appellant's 2014 taxation year is dismissed.

The Respondent shall have 30 days from the date hereof to file any written representations regarding costs, and the Appellant shall then have 30 days to file a response. In the absence of any such representations, costs will be awarded to the Respondent in the amount set out in Schedule II, Tariff B of the Tax Court of Canada Rules (General Procedure).

This Amended Judgment is issued in substitution of the Judgment issued on June 16, 2026.

Signed this 22 nd day of June 2026.

“Ryan Rabinovitch”

Rabinovitch J.

Citation: 2026 TCC 108

Date: 202606 22

Docket: 2022-2928(IT)G

BETWEEN:

ROBERT THORBURN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

FURTHER AMENDED REASONS FOR JUDGMENT

Rabinovitch J.

I. INTRODUCTION: [1] The only issue in dispute in the present appeal is whether the Appellant was entitled to deduct \$86,231.25 in computing his income for his 2014 taxation year. The Appellant claims that he paid this amount to 169335 Canada Inc. (“ 169 ”), a corporation he controlled, for a business plan (the “ Business Plan ”) he says his employer required him to prepare, and that it was deductible pursuant to paragraph 8(1)(f) of the Income Tax Act (“ ITA ”). The Respondent disagrees.

[2] I note that three witnesses testified during the hearing: the Appellant, the Appellant’s accountant, Stephen Schecter, and the Appellant’s son, Jonathan Valin-Thorburn (“ Jonathan ”), who the Appellant maintains did most of the work on the Business Plan on 169’s behalf.

[3] The Appellant was not fully credible. While I found him to be a generally truthful person, I also found his answers deliberately vague on certain points. It was also clear to me that he was willing to distort the facts when he felt it would help his case. The best examples of this were his statements, during discovery, that 169 had paid Mr. Schecter to do work on the Business Plan, including the “financial portion” , and during the hearing, that Mr. Schecter spent approximately 30 hours on the document. This was contradicted by Mr. Schecter’s testimony that he did not work on the Business Plan itself, and the fact that the document contains very little financial data. When asked about this discrepancy, the Appellant said that by “financial portion,” he had been referring to Mr. Schecter’s advice regarding the price that must be charged for the Business Plan in order for a deduction to be available under paragraph 8(1)(f).

[4] Mr. Schechter was a credible witness. As a third party and a professional, he had no meaningful incentive to be anything other than honest. While I found some of his answers a bit lacking in detail, I believe that this was mainly attributable to the considerable amount of time that has elapsed since the events in issue occurred, rather than any intention to hide information from the Court.

[5] Jonathan struck me as quite an intelligent young man. That being said, I also did not find him to be very credible. It was clear to me that he loves and is very devoted to his father. This, coupled with a comparison of the amount of work he said he did and actual product he helped produce (i.e. the Business Plan), left me with the impression that he was fundamentally willing to say whatever he needed to in order to support his father's position.

II. FACTS : Formation of TEI [6] The parties agree that throughout 2014, the Appellant worked for a corporation called "Thorburn Flex Inc." (" TFI ").

[7] The Appellant explained that TFI was the successor of a corporation called "Thorburn Equipment Inc." (" TEI "), which had been founded by his father, and which was engaged in the manufacture of custom flexible piping products for clients in the power generation industry. According to the Appellant, he began working for TEI in 1985, and eventually became its controlling shareholder.

[8] During the financial crisis of 2007-2009, the Appellant said that TEI began to experience serious financial difficulties, and incurred a large amount of debt towards HSBC. This led to a reorganization which resulted in the formation of TFI, and its acquisition of all of TEI's assets. All of the shares of TFI were held indirectly by a group of third party investors (the " Investors ") that had essentially bailed TEI out. [1] The Appellant did not own any interest in the corporation. He remained President of TFI, but says that he answered to the Investors and their representatives. He recalls it being a difficult time, and not having a great degree of bargaining or other power vis-à-vis the individuals in question. I found his testimony on these points to be believable.

Negotiation of Appellant's 2014 Remuneration with TFI [9] Following the takeover of TFI, the Appellant said that he began to be paid all or substantially all of his remuneration in the form of commissions equal to a percentage of company sales. In 2013, the Investors proposed to decrease the percentage from 6% to 5%. A series of e-mail exchanges ensued, which involved the Appellant attempting unsuccessfully to negotiate a better package for himself. The last of these emails is dated December 13, 2013, and is said to represent the final agreement reached by the parties. It is from a man named Howard Solomon, who was the V.P. Finance and Controller of TFI, and seems to have reported directly to the Investors, at least on this particular matter. It states:

The new compensation plan will go into effect on January 1, 2014 and the rate will not be changed to 6%.

[...]

A 5% payment on \$9,000,000 of sales would be \$450,000 which would net \$256,000 at a 43% tax rate. Your expenses will be whatever you feel is necessary to properly do your job and all legitimate expenses will be deductible on both your federal and provincial taxes. This would lower your taxable income and save you any income taxes paid on those expenses. You will also have the opportunity to recover all of your sales taxes if you choose to get a sales tax number and file regular sales tax reports. It is expected that your expenses will be in the area of \$80,000 to \$100,000 per year and this would net you in the range of \$200,000 to \$220,000 per year which is equivalent to your current compensation but with an unlimited upper range opportunity. At \$10,000,000 of sales your net compensation would be about \$230,000 to \$240,000.

As previously explained, all of your expenses will be at your own choice and at your own expense. Your compensation will be on the regular payroll and will be listed as commission income. At the end of each year the company will provide you with an official certification for the government attesting to the fact that you have not been repaid any of your expenses and that will allow you to submit whatever receipts you have for an income tax deduction [emphasis added].

[10] Interestingly, a prior email from Mr. Solomon forming part of the same chain and dated November 20, 2013, contains the following passage:

You are free to get any tax advice you consider helpful. I am available if you wish to discuss expense deduction planning. You may ask for help either internally or externally in organizing or analyzing your expenses to avoid income tax problems since any such problems will be your responsibility. Marie will make any adjustment you request to the level of tax payments deducted at source on your behalf. You must understand that you are still responsible for your own income tax payments and the governments will impose fines on you if your deductions at source are not sufficient to cover your income tax liability [emphasis added].

[11] During his examination, the Appellant admitted that Mr. Solomon and another employee of the Investors named Charles Zuckerman “may have” advised him regarding the possibility of using of a business plan to implement the above type of planning.

The Request for a Business Plan [12] According to the Appellant, around the same time as the above discussions, the Investors asked him to prepare the Business Plan so they could have a clear picture of the way in which he planned to increase TFI’s revenues and to assist him in doing so. He indicated emphatically that if he did not comply with this request, he would have been fired. On balance, I believe him.

Decision to hire 169 [13] At some point, the Appellant says that he decided to hire 169 to prepare the Business Plan. According to the Appellant, 169 in turn hired the Appellant’s other son, Anthony Valin-Thorburn (“ Anthony ”), to do so in exchange for the sum of \$20,000, and Anthony hired Jonathan to do the necessary work on his behalf without receiving any compensation. No explanation was provided for this last aspect of the arrangement other than that Anthony needed the money.

[14] It should be noted that all of the shares of 169 were owned by a company called “Thorburn International Inc.” [2] The Appellant owned 85% of its shares, and his brother Peter Thorburn held the remaining 15%. [3] According to the Appellant, 169 was a holding company with no employees. I assume that part of the reason it was chosen to be the entity that would earn the fees payable for the Business Plan was because it had approximately \$500,000 of non-capital losses, [4] meaning that there would be no tax payable on them at the end of the day.

[15] No written agreement between the Appellant and 169, between 169 and Anthony, or between Anthony and Jonathan was entered into evidence. The only documentation of those relationships consisted of an invoice issued by 169 on December 31, 2014. When asked when it was prepared, Mr. Schecter said he had no recollection. The Appellant initially said the same thing, but later conceded that it could have been prepared after December 31, 2014. In light of these statements, and some of the evidence discussed further below, I find, on a balance of probabilities, that it was in fact prepared at some point in 2015.

[16] I also note that I am not convinced, on a balance of probabilities, that the Investors required the Appellant to engage 169 or any other person to prepare the Business Plan on his behalf. Rather, I believe that all they are likely to have done is made a suggestion.

[17] It would have made sense to suggest hiring a person subject to a lower tax rate than the Appellant (e.g. a corporation), because it was a way of reducing the Appellant’s after-tax income, which appears to have been a sore subject at this time. But to say, “you must hire someone to do this” seems implausible. I simply cannot see any reason why they would have done that. My conclusion on this point is supported by the statement in the above e-mail exchange that it was expected that the Appellant’s expenses would be in the area of \$80,000 to \$100,000 a year. According to his testimony, the expenses ended up being \$208,823, or \$122,592 plus the \$86,231.25 spent on the Business Plan. \$122,592 is in the same neighbourhood as the \$80,000 to \$100,000 referred to in the e-mail, and appears to be around what the Appellant expended before 2014. [5] This makes me think that the Appellant and Mr. Solomon spoke about the Business Plan and the tax planning opportunity it afforded, and that the matter was left in the air. The Appellant would incur the usual \$80,000 to \$100,000. If he so desired, he could spend more on the Business Plan, and if he did not, he would not.

[18] I observe that the Appellant submitted Form T2200 TFI completed for his 2014 taxation year. [6] The Box next to the question “ [d]id you require the employee to pay other expenses for which he or she did not receive any allowance or reimbursement?” was checked “yes” , and next to the field with the words “[i]f yes, indicate the type(s) of expenses:” the words “travel, market/business plan/home office, car” had been inserted . The Respondent noted that the form was signed by Marie Valin, V-P Admin., and that she was the Appellant’s ex-wife. Nevertheless, I do not believe this had any bearing on things. My understanding is that little was done at TFI without the direct or indirect input of the Investors. I do not think Ms. Valin completed the form as a favor to an ex-family member, but rather, because she was told to do so. The reason I have concluded that the form is not quite correct (in the sense that it says that the Appellant was required to pay for a Business Plan when I have found that he was not actually required to do this) is simply that I do

not believe it would have made sense for TFI to impose such a requirement. I believe TFI filled in the form the way it did to honor its commitment set out in the above excerpt from Exhibit A-15 to provide the Appellant with the official certification necessary for him to claim an income tax deduction for the amounts he expended.

Determination of the appropriate price for the Business Plan [19] The Appellant testified that Mr. Schecter had explained to him that it was important that the fee paid to 169 for its services not exceed the fair market value of such services, as otherwise it would not be deductible. He suggested that Mr. Schecter had helped him come to an appropriate price in this regard, though Mr. Schecter made it seem like his input related primarily to the methodology that should be used. Both witnesses confirmed that the Appellant was aware that at least part of the exercise consisted of looking at comparables in the market. The Appellant did not provide any clear explanation of what comparables he looked at that would justify a price of \$75,000, however. I find, on a balance of probabilities, that he did not engage in any study of the market.

[20] It should also be pointed out that when Mr. Schecter was asked when the above discussions regarding the fee payable for the Business Plan occurred, he answered that he could not say whether it was before or after December 31, 2014.

The Business Plan and its value [21] The most meaningful testimony regarding the work done on the Business Plan came from Jonathan. He said that he worked, on average, 15-20 hours per week on the plan for a year. He explained that he was able to do this, despite having a full-time job, because he was travelling around Canada, did not have a family of his own and was “not one to go to bars.” He maintained that he was suited to the task of preparing the Business Plan, as he had worked at TEI and/or TFI while growing up. He also said he had done something similar for his then employer, Camfil Air Pollution Control (“ Camfil ”), and that he had grown its sales from zero to “north of ten million dollars” in a short period of time. He noted that Camfil’s work was somewhat related to the work he was required to do for TFI. Although it specialized in air filtration, its target clientele included businesses in the industries that the Business Plan proposed for TFI to focus on. Both Jonathan and the Appellant pointed to the rise in sales between 2014 (\$7.6M) and 2015 (\$10.2M) as evidence of the value he had created for TFI. [7]

[22] As mentioned above, I found Jonathan to be an impressive individual. I do not believe, however, on a balance of probabilities, that he spent 840 hours (17.5 hours * 48 weeks = 840 hours) on the project or that his work was worth anywhere near \$86,231.25, which appears to me to be a very large amount of money to have paid for the services of someone just three years out of university. I have come to this conclusion for several reasons:

I am skeptical that a young person such as Jonathan, who had a full-time job of his own, would agree to put 840 hours of work into a project without receiving any compensation. He might agree to help him out, of course, but this went way beyond that.

I find it unlikely that Jonathan provided the main ideas behind the Business Plan (i.e. did the intellectual heavy lifting). He himself admitted to having consulted his father from time to time and that he could not possibly replace his years of experience. In my view, he likely acted more as an assistant/doer/executor of the Appellant's instructions.

The main body of the Business Plan is only 11 pages long and the annexes to the document occupy only 5 additional pages, making for 16 pages in total.

Some of the pages of the main body of the Business Plan (e.g. pages 9 and the final page) read in a manner which leads me to believe that they could have easily been taken from promotional materials.

One of the pages of the Business Plan deals with financing and is essentially just a place holder with several tables containing the acronym "TBA."

Jonathan said that one of the main aspects of the Business Plan that made it valuable was the fact that it proposed that TFI focus on specific areas, namely, nuclear power generation, gas power generation, petroleum processing and material processing. The table on page 3 of the Business Plan makes clear, however, that these were the same areas it focused on before it was drafted.

The Business Plan does recommend several sub-areas for focus (e.g. moving from providing parts for CANDU reactors to the global nuclear market). These do not appear to be revolutionary changes, however, or ideas that would have required a great amount of thought or time to come up with.

The annexes to the Business Plan provide a large number of useful targets for TFI to pursue. [8] Nevertheless, Jonathan explained that this was information that was available on the internet, and it does not appear to me to be information that would have taken an enormous amount of time to compile. Moreover, there is not a great deal of information provided regarding the projects listed, suggesting that relatively little research time was spent on each individual entry. [9]

[23] There was a fair amount of debate regarding the time at which the Business Plan was completed. According to Jonathan, he completed a first draft in November 2014, and a final draft in the second and third week of December 2014. This was contradicted by the fact that the document indicates at one point the amount paid to the Investors "as of December 31, 2014" , provides sales for the 2014 fiscal period, and refers to the fact that the Investors had "agreed on February 9th 2015 to part with their interest with Thorburn Flex for \$3,875,000." [10] It also has the footer "© 2105 Thornburn Flex Inc." at the bottom of every page. Jonathan said somewhat glibly that these might be typos. I do not consider this to be plausible, and find, on a balance of probabilities, that the document was not completed in 2014.

[24] Finally, I note that page 2 of the Business Plan specifies that "Thorburn presently has three market development managers in Canada covering North America" and that it "utilizes local commissioned sales agents to coordinate and develop business in China, Japan, India, Europe and South East Asia." When asked about these statements by the Respondent, the Appellant

confirmed that the individuals in question assisted with sales and that they were true as of the end of 2014. He also explained earlier on in his testimony that he was “the main engine” associated with sales, and that although he could not say that there would be no sales if he was not there, his absence would have resulted in the figure being severely diminished . I believe him on these points, and therefore conclude, on a balance of probabilities, that the Appellant was directly responsible for the vast majority of TFI’s sales even if he was assisted in this regard by other TFI employees.

Payment for the work done on the Business Plan [25] The Appellant’s position regarding payment for the Business Plan was based largely on the accounting entries in 169’s shareholder loan account between December 31, 2014 and October 31, 2015. In summary, those entries read as follows:

Loan payable to Robert Thorburn – Balance on December 31, 2014 = \$77,727.55

Date of transaction

Description

Decrease in loan balance

Increase in loan balance

Resulting loan balance

12/31/2014

Invoice 017 RT

\$86,231.25

N.A.

-\$8,503.75

06/30/2015

Interco Charges

\$14,000.00

N.A.

-\$22,503.70

06/30/2015

Scotia Bank Transactions

\$17,000.00

N.A.

-\$39,503.70

09/30/2015

Advance paid to RT

\$1,000.00

N.A.

-\$40,503.70

10/31/2015

Financing fees paid by RT

N.A.

\$54,140.76

\$13,637.06

10/31/2015

Loan to RT

\$75,000.00

N.A.

-\$61,362.94 [11]

[26] The Appellant testified that the reason the balance owing to him by 169 on December 31, 2014 was \$77,727.55 was that this represented the aggregate amount of a series of expenses he had incurred on the company's behalf. In support of this position, the Appellant submitted cheques to various service providers making up \$34,779.94 of the \$77,728, [12] a working paper used by the accountant who had compiled the \$77,728 figure, [13] and 169's financial statements for its fiscal period ending October 31, 2014. [14] In light of this evidence, I accept, on a balance of probabilities, that \$77,728 was in fact owing to the Appellant by 169 on December 31, 2014.

[27] A similar explanation was provided for the \$54,140.76 booked on October 31, 2015, except that in this case, there were cheques evidencing all but \$1,724.62 of the total claimed. [15] Once again, I accept, on a balance of probabilities, that these expenses were in fact incurred by the Appellant on 169's behalf.

[28] The Appellant submits that the above entries show that \$77,727.55 of the \$86,231.25 charged for the Business Plan was paid by compensation on December 31, 2014, and that the remaining \$8,503.75 was paid on October 31, 2015, when the \$40,503.70 owing by him to 169 (which included the \$8,503.75) was paid by being compensated with the \$54,140.76 owing to him in respect of the second set of expenses incurred on 169's behalf. [16]

[29] I do not believe it is as simple as that. I begin by noting that each date in the above table is a quarter end, suggesting that it represents only the approximate time the underlying transaction was entered into. This is not problematic, but the date given for two of the entries in particular is implausible. The first is the one for the cost of the Business Plan which the table shows as having been paid by compensation on December 31, 2014. My impression is that the Appellant did not have a clear idea in 2014 of how and when the Business Plan was to be completed, invoiced and/or paid for in order for a deduction to be available under paragraph 8(1)(f). I also note that 169 did not report the payment for the Business Plan in its GST return for its reporting period between November 1, 2014 and January 31, 2015, [17] and that the working paper used by the accountant to compile the \$77,728 owing to the Appellant on December 31, 2014 was dated April 2015. In light of these factors, my finding that the Business Plan was not completed in 2014, my finding that no invoice was issued to the Appellant in 2014, and the lack of clarity concerning the time the fee payable for the Business Plan was determined, I do not accept that any agreement was reached between the parties in 2014 for compensation to occur on December 31, 2014. I doubt the Appellant gave the matter any real thought until the time his 2014 tax return was prepared in the spring of 2015. I expect it was at that time that it was decided that an invoice would be issued by 169, the relevant accounting entries made and a \$86,231.25 deduction claimed.

[30] Compensation can also not have occurred as a matter of law on December 31, 2015, as article 1673 of the CCQ provides that only debts that are exigible can be extinguished in this manner. I accept that the transactions reflected in the above table gave rise to obligations which were exigible at the time they occurred. The parties' likely intention in a related party context would have been that they be either due immediately or payable on demand, [18] and the invoice for the Business Plan says explicitly that it was payable on receipt of the invoice. Nevertheless, in light of the above conclusions, I find it more likely than not that the first time the parties intended anything to be due in respect of the Business Plan was when the invoice was actually prepared and the relevant accounting entries made. [19]

[31] The other issue I have with the above table concerns the \$54,140.76 booked on October 31, 2015. The obligation to pay that amount clearly did not arise on that date, but rather, in instalments as each relevant expense was incurred on 169's behalf. Given that the cheques made out by the Appellant are in evidence, it is possible to determine what amount was payable at what time. All of them are dated between February 2, 2015 and May 8, 2015.

[32] Removing the \$86,231.25 and moving the \$54,140.76 to the top of the table results in: a loan balance of \$131,868.31 (i.e. \$77,727.55 + \$54,140.76) on May 8, 2015, a loan balance of \$117,868.31 after the recording of the \$14,000.00 "Interco Charge" on June 30, 2015, a loan balance of \$100,868.31 after the recording of the \$17,000.00 "Scotia Bank Transactions" on June 30, 2015, a loan balance of \$99,868.31 after the recording of the \$1,000.00 advance paid to the Appellant on September 30, 2015 and a loan balance of \$24,868.31 after the recording of the \$75,000.00 loan made to the Appellant on October 31, 2015. These figures make clear that if the invoice for the Business Plan was issued and accompanying accounting entries made on any date other than one

falling after October 31, 2015, there was or would eventually be a sufficiently high loan balance to enable the full \$86,231.25 to be compensated. [20] As mentioned above, however, I find it most likely that this occurred around the time the Appellant's 2014 tax return was being prepared, and so, before October 31, 2015.

[33] In summary, therefore, I find that while no part of the price payable for the Business Plan was paid before December 31, 2014, the \$86,231.25 was paid in full at some point in 2015.

III. ANALYSIS :

1. Paragraph 8(1)(f):
 - a. Subparagraph 8(1)(f)(i) : [34] The Respondent argues that the Appellant must be required under his contract of employment to incur an expense before the requirement set out in subparagraph 8(1)(f)(i) may be met. The Appellant disagrees, basing himself on a textual, contextual and purposive interpretation. He notes that the text of the provision does not contain the requirement that the Respondent says it does. In addition, he points out that subparagraph 8(1)(f)(i) is different from the equivalent rules in paragraphs 8(1)(h), 8(1)(h.1) and 8(1)(i), all of which state specifically that the taxpayer must be required to incur the expense in question under his or her contract of employment. He argues that the purpose of paragraph 8(1)(f) is to treat commissioned salespeople in the same way as individuals carrying on business, who are free to deduct any expense that they wish provided that it is for the purpose of earning income (and subject to the other requirements set out in section 18).

[35] I must say that I found the Appellant's argument persuasive. That said, it is inconsistent with the bulk of the case law concerning paragraph 8(1)(f), [21] including the relatively recent decision handed down by the Federal Court of Appeal in *Urquhart v. R.* ("Urquhart"). [22] The taxpayer in that case was a car salesman who received both a salary and commission under an unwritten contract of employment. He deducted a series of expenses under paragraph 8(1)(f) (e.g. mobile phone charges, the costs of supporting local sports teams, transfer costs to bring new cars to the dealership for delivery to customers and providing mechanical assistance in case of breakdown). It was held in this Court that none of the expenses were required to be incurred under the terms of the taxpayer's employment contract. The Federal Court of Appeal disagreed, stating:

The judge erred in two respects. In construing the contract, he relied on the personal perspective of the employer as to what was "required under the contract" without consideration of whether, regarding the contract objectively, it was an implicit or implied term that the employee would be required to incur certain costs in order to earn the commissions contemplated by the contract ; see *Sattva* at para 49.

Secondly, the judge erred in failing to address the possibility that some of the expenses might be "required under the contract" and others might not . He did not identify and segregate those expenses that were related to development and marketing of the appellant's sales (which he was not required to incur under the contract) and those expenses which, when the employment

contract was viewed objectively, were directly needed for the appellant to fulfill his responsibilities and obtain his entitlements under the contract (to sell cars and earn commissions) and were expressly agreed with the dealership (charge back) .

[...]

Indeed, the appellant's evidence (including the invoices and pink slips for charges back) demonstrate a mutual understanding that these expenses were required . Without them, the appellant could not earn the higher percentage commission that the dealership had agreed to pay him if a vehicle was present in Miramichi, or could not deliver the merchandise that the dealership had agreed to deliver to a client. As such, these expenses should be distinguished from prudent or innovative expenditures merely aimed at helping produce income by building positive client relations [emphasis added]. [23]

[36] The language used in the above passages and important role played in the Court's analysis by the fact that some of the expenses in issue in the case had been paid for by the employer and charged back to the taxpayer make clear that it believed that it was necessary to find that the taxpayer was either explicitly or implicitly required to incur such expenses under his or her contract of employment in order for them to be deductible under paragraph 8(1)(f).

[37] There are only two decisions I am aware of where the view taken by the Appellant was adopted (i.e. *Goldhar v. Minister of National Revenue* (“ Goldhar ”) [24] and *Longtin v. R.* (“ Longtin ”) [25]). The Appellant argued that the Federal Court of Appeal decision in *Verrier v. Minister of National Revenue* (“ Verrier ”) [26] was also helpful on this point, but I do not agree. The case concerned a car salesman with no written contract of employment who attempted to deduct costs relating to demonstrator and courtesy cars used in the course of his employment, advertising expenses, entertainment expenses and finders' fees. Although the Court found in his favor, substantially all of its analysis concerned whether or not he was “ordinarily required to carry on the duties of the employment away from the employer's place of business” (i.e. satisfied the test set out in subparagraph 8(1)(f)(ii)). The Court dealt with paragraph 8(1)(f)(i) in just two short sentences, stating only that the “undisputed evidence” pointed to the view that the test set out therein had been satisfied. [27]

[38] In my view, *Goldhar* , *Longtin* and *Verrier* are insufficient to allow me to overlook all of the above caselaw supporting the Respondent's position and particularly *Urquhart* , which is one of the most recent decisions on point and which was handed down by the Federal Court of Appeal.

[39] The next question which must therefore be answered is whether the Appellant was required by his contract of employment, either explicitly or implicitly, to incur the expense in issue. As mentioned above, I have concluded that the Investors, and through them, TFI, did require the Appellant to prepare the Business Plan, but that they did not specifically require that he pay 169 or any other person to do so. Accordingly, I find that the Appellant has not satisfied the requirements of subparagraph 8(1)(f)(i). I note in this regard that the language used in the case-law suggests it is not enough for a taxpayer to merely be required, under a contract of employment, to perform a particular task, for the expenses relating thereto to be deductible.

Rather, the taxpayer must be required to pay for the task to be performed without any reimbursement on the part of the employer. Often the two requirements go hand in hand, since there is no way for the taxpayer to perform the task by him or herself. They may diverge, however, in cases involving the hiring of an assistant or subcontractor, because the person hired does work the taxpayer could and would otherwise be expected to do. A good example is *Blott v. R.*, [28] in which the Court held that a taxpayer could not deduct the salary paid to his wife, who he hired to act as his assistant, because his contract of employment did not require him to do this. It presumably did require the taxpayer to do some or all of the work that she did on his behalf, however.

[40] Before turning to the next issue in this appeal, I note the significant reliance placed in certain cases on Form T2200 in determining whether an expense was required to be incurred by a taxpayer's employer. In one of these cases in particular, *About Schofield v. R.*, [29] *St-Hillaire J.* (as she then was) held that the inclusion in the required expenses of the words "business development, training, advertising, entertainment, promotion, supplies" was sufficient to conclude that a financial advisor could deduct amounts paid to a headhunter for the purposes of identifying a potential partner/assistant. I do not consider this to mean that a statement on Form T2200 that an expense was required will be conclusive in every case. I also note that *St-Hillaire J.* found that it was not unusual for financial advisors with large portfolios to hire partners/assistants and that an internal recruitment service offered by her employer rarely produced suitable candidates. In addition, there was no reason to believe that the employer's statement on the form was unreliable. Ultimately, whether or not an expense was required is a question of fact like any other which depends on an assessment of all of the evidence before the Court. [30]

- b. Subparagraph 8(1)(f)(iii) : [41] The Respondent's next argument is that the Appellant does not meet the condition set out in subparagraph 8(1)(f)(iii) because his commissions were based on the TFI's sales, rather than sales made by him personally.

[42] I note as a preliminary matter that the Appellant believes the Respondent should be precluded from raising the above argument because it is not listed in the "Statutory Provisions, Grounds Relied on and Relief Sought" section of the Reply. The Appellant feels taken by surprise in this regard, as that section enumerates six specific arguments that the Respondent intends to make, and the absence of a valid commission for the purpose of subparagraph 8(1)(f)(iii) is not one of them. [31]

[43] I was initially sympathetic with the Appellant on this point, but a careful reading of the pleadings has led me to reject his argument. The Appellant himself raised the application of subparagraph 8(1)(f)(iii). In the "Reasons the Appellant intends to Rely on" section of the Notice of Appeal, he states "[t]he Appellant was remunerated solely by commissions fixed by reference to the volume of sales he made and contracts he negotiated, specifically 5% of said sales." [32] Moreover, in paragraph 21 of the "Facts" section of the Notice of Appeal, he states that "[i]n 2014, the Appellant was an employee of Thorburn Flex and its only salesman. His remuneration was entirely commission-based, representing 5% of the sales he generated for the business." In the Reply, by contrast, the Respondent writes that he admits that the appellant was employed by TFI

in 2014, “has no knowledge of the allegation of fact that the appellant was Thornburn Flex Inc.’s only salesman and puts the appellant to the strict proof thereof,” and that he “denies the remainder of the facts alleged” in paragraph 21.” [33] In my estimation, these statements gave the Appellant sufficient notice that the applicability of paragraph 8(1)(f)(iii) might be debated during the hearing. I also note that paragraph 49(1)(c) of the Tax Court of Canada Rules (General Procedure) the (“ Rules ”) instructs the Respondent to indicate in the Reply, “the facts of which the respondent has no knowledge and puts in issue [emphasis added].” [34]

[44] That having been said, I note that in *Griesbach v. Minister of National Revenue* , [35] Christie A.C.J. held that a taxpayer who worked as an assistant manager and salesman and who was entitled to both salary and an amount equal to 20% of his employer’s pre-tax gross profit did not meet the test set out in paragraph 8(1)(f). One of the reasons for this was that the taxpayer did not appear to be the only salesperson working for his employer. He wrote:

To my mind [...] in order for expenses to be deductible under that paragraph the remuneration pertaining thereto must be fixed by reference to the volume of the sales made or the contracts negotiated by the taxpayer claiming those deductions . Twenty per cent of the pre-tax gross profits of an employer with a number of employees is not synonymous with remuneration so fixed [emphasis in original]. [36]

[45] Some of the other decisions involving subparagraph 8(1)(f)(iii) have adopted an open-textured approach which I find appealing, examining the “nexus” between the amounts received by the taxpayer and the volume of the sales made or contracts negotiated by him or her. [37] Although these cases involved taxpayers who received amounts computed by reference to a variety of factors, as opposed to sales alone, they appear to me to demonstrate that the provision must be applied in a flexible and business-like manner. In my opinion, where a taxpayer who receives an amount computed by reference to company sales is responsible for the bulk of those sales, there is a sufficient nexus between his remuneration and those sales to satisfy the requirement set out in paragraph 8(1)(f)(iii). Accordingly, and given my conclusion that the Appellant was such a taxpayer, I find that this requirement was satisfied in the present case.

c. Mid-amble to paragraph 8(1)(f) :

i. Amounts expended in the year : A. Expended : [46] The third argument raised by the Respondent is that no amount was ever incurred by the Appellant in respect of the Business Plan. I note that the term employed by the mid-amble to paragraph 8(1)(f) is actually “expended” , rather than “incurred” . As discussed in a recent decision by this Court, this is a somewhat different concept, requiring an actual payment. [38] In light of my finding that the Appellant did eventually pay \$86,231.25 to 169 for its services, it is clear that this amount was expended.

B. In the year: [47] The Respondent claims that the “in the year” test was not met by the Appellant because he paid 169 after the end of 2014.

[48] Once again, the Appellant argues that the Respondent should be prevented from taking this position, since it was not one of the six specific arguments set out in the “Statutory Provisions, Grounds Relied on and Relief Sought” section of the Reply. For similar reasons to those set out in the section of these reasons regarding subparagraph 8(1)(f)(iii), however, I disagree.

[49] In the “Assessment under Appeal” section of the Notice of Appeal, the Appellant writes: “[t]he Appellant, a commission-based salesman, incurred this expense in 2014 to obtain market research and a comprehensive business plan [...]” [39] Later on, in the “Facts” section, he states: “[t]he Appellant paid \$75,000, plus applicable GST and QST, to 169335 Canada Inc. (a total of \$86,231.25) for the market research and resulting business plan, in the 2014 taxation year,” [40] and then that “the Appellant paid for the business plan’s creation personally in 2014, as mandated by the terms of his employment, in order to earn commission income in the course of his employment.” [41] In the Reply, on the other hand, the Respondent writes specifically that he denies these facts, [42] and then alleges in his “Statement of Facts” section that the Business Plan was not completed in 2014. [43] In my view, these factors were sufficient to make it reasonable to expect the Appellant to address the timing issue during the hearing.

[50] Because it is the Appellant who has alleged that the Business Plan was paid for in 2014, it was the Appellant that had the burden of proving this, under the “he who alleges must prove” principle. [44] In light of the factual findings set out above, I have concluded that he did not meet this burden. While I am satisfied that the Appellant paid \$86,231.25 for the Business Plan, I do not believe that he did so before the end of 2014.

ii. Purpose test: [51] During the hearing, the Respondent argued that the Business Plan was a document prepared for the Investors and designed to please them, rather than assist the Appellant in increasing his commission, and that as such, the amount paid for the document did not satisfy the purpose test set out in the mid-amble to paragraph 8(1)(f).

[52] I think that it did. As indicated above, I accept the Appellant’s testimony that the Investors required the Appellant to produce the Business Plan and that if he failed to comply, he would be fired. It follows that at least one of his reasons for expending the amount in issue was to preserve his job, and thus, his employment income. Even if this were not the case, as already mentioned, the document contained a useful list of targets for the Appellant to pursue in the years following its preparation (albeit one the Appellant paid too much to obtain). This suggests to me that another of the purposes for its creation was to enhance TFI’s sales, and thus, the Appellant’s commission income.

[53] The second argument raised by the Respondent is that even if the Business Plan was incurred for the purpose of increasing the Appellant’s employment income, it would only have done so in 2015 and 2016, as even he admitted that it was not intended to be implemented before then. I believe that the premise of this argument is that the word “the” in the mid-amble to paragraph 8(1)(f) (“for the purpose of earning the income from the employment”), is a reference to the opening words of section 8, namely, “[i]n computing a taxpayer’s income for a taxation year from an office or employment, there may be deducted such of the following amounts as are

wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto [emphasis added].” Read together, these portions of the provision imply that in order for an expense to be deductible for a taxation year, it must relate to the employment income earned in that taxation year.

[54] I do think the above may be the most natural interpretation of the text of paragraph 8(1)(f). In addition, it is consistent with the history of the legislation. When paragraph 8(1)(f) was first introduced in 1948, the predecessor to paragraph 18(1)(a), paragraph 6(1)(a) read similarly. It prohibited the deduction of “disbursements or expenses not wholly, exclusively and necessarily laid out or expended for the purpose of earning the income [emphasis added].” Several judges have indicated that the word “the” in this formulation prevented the deduction of expenses relating to a future taxation year. [45] Moreover, as is well known in the tax community, both the words “wholly, exclusively and necessarily” and “the” (in “the income”) were eventually dropped from the provision. It is interesting that the word “the” was not removed from paragraph 8(1)(f) at the same time.

[55] The above having been said, nothing turns on this question in the present case. If accepted, the Respondent’s argument would make it irrelevant that one of the purposes of preparing the Business Plan was to increase the Appellant’s commission income (since that income would only be earned in 2015 and 2016). It would not, however, prevent the amount paid for the document to be sufficiently tied to his 2014 employment income to satisfy the purpose test. The Investors intended for the bulk of the work on the Business Plan to be done in 2014. If they checked in regarding the Appellant’s progress in that year (which must have been a very real possibility) and he said he had not gotten started and intended to put the project off to 2015, he would clearly have risked being fired, and therefore losing part of his 2014 employment income. Put another way, the \$86,231.25 was paid for services that helped the Appellant preserve his employment in 2014. That is sufficient to meet the standard imposed by paragraph 8(1)(f).

2. Section 67 : [56] Section 67 of the ITA states that:

In computing income, no deduction shall be made in respect of an outlay or expense in respect of which any amount is otherwise deductible under this Act, except to the extent that the outlay or expense was reasonable in the circumstances.

[57] The Respondent conceded that because there was no assumption on this point in the Reply, he had the burden of proving that the amount deducted by the Appellant exceeded the fair market value of the services rendered by 169. In addition, both parties agree that the appropriate test to apply in this regard was the one set out in *Gabco Ltd. v. Minister of National Revenue* (“ *Gabco* ”). [46] In that case, Cattanach J. of the Exchequer Court of Canada held that judges should not substitute their judgment for that of the taxpayer in applying section 67, and that the provision should only be applied where no reasonable businessperson having only the business consideration of the taxpayer in mind, would have contracted to pay the amount in issue. [47] The Appellant also noted that in *Petro-Canada v. Canada* (“ *Petro-Canada* ”), [48] the Federal Court of Appeal held that while it may be true that paying fair market value for something is

prima facie reasonable, it did not necessarily follow that paying more than fair market value is unreasonable, as there may be circumstances in which a decision to pay more than fair market value for something is a reasonable decision. [49] I would add to these statements, the comments made by Roberston J.A. in *Mohammad v. R.* : [50]

When evaluating the reasonableness of an expense, one is measuring its reasonableness in terms of its magnitude or quantum. Although such a determination may involve an element of subjective appreciation on the part of the trier of fact, there should always be a search for an objective component. When dealing with interest expenses, the task can be objectified readily. For example, it would have been open to the Minister to challenge the amount of interest being paid on the \$25,000 loan had the taxpayer agreed to pay interest in excess of market rates. The reasonableness of an interest expense can thus be measured objectively, namely, by reference to market rates.

[...]

I concede that there will be instances where the objective component will be difficult to isolate and, therefore, practical experience informed by commonsense will have to prevail [...]. [51]

[58] In light of the above authorities, the first question which must be answered is whether the Respondent has shown that no reasonable businessperson would have agreed to pay this amount for 169's (i.e. Jonathan's) services. I have concluded that he has. As mentioned above, I do not believe that the fair market value of Jonathan's work was worth anywhere near \$86,231.25. Nor do I see any considerations of the kind alluded to in *Gabco* and *Petro-Canada* which would have made it reasonable for the Appellant to agree to pay considerably more than fair market value for such services.

[59] Accordingly, and in light of the wording used in section 67, the next question is what portion, if any, of the amount paid to 169 should be allowed as a deduction. The evidence put forward by the Appellant and his son are the most revealing in this regard. It indicates that they believe that \$75,000 plus tax would be a reasonable amount to pay for 840 hours of work from a high-value consultant to produce a highly professional product, or \$89.29 per hour. I am satisfied, on a balance of probabilities, that an arm's length third party would have discounted this figure by at least 50% to reflect the fact that the Appellant was not as high a value a consultant as the Appellant would have the Court believe, and that the Business Plan was not as professional a product as he would have the Court believe. I also think such a third party would only be willing to pay for the actual number of hours worked on the project, which I find, on a balance of probabilities, to have been at least 50% less than the amount indicated by Jonathan (i.e. 15-20 hours per week). The result is a maximum fair market value of \$18,750.90 ($50\% * \$89.29 * 50\% * 17.5 \text{ hours per week} * 48 \text{ weeks}$), plus \$2,807.95, or \$21,558.85 in total. Had I not come to the conclusions described above, this is consequently the amount I would have considered reasonable. [52]

IV. CONCLUSION: [60] Given that the Appellant has failed to show that he was required to incur the expense in issue or that it was expended before the end of his 2014 taxation year, the appeal will be dismissed. Had this not been the case, I would have allowed him a deduction of only \$21,558.85.

[61] The Respondent shall have 30 days from the date hereof to file any written representations regarding costs, and the Appellant shall then have 30 days to file a response. In the absence of any such representations, costs will be awarded to the Respondent in the amount set out in Schedule II, Tariff B of the Rules.

These Further Amended Reasons for Judgment are issued in substitution of the Amended Reasons for Judgment issued on June 16, 2026.

Signed this 22 nd day of June 2026.

“Ryan Rabinovitch”

Rabinovitch J.

CITATION:

2026 TCC 108

COURT FILE NO.:

2022-2928(IT)G

STYLE OF CAUSE:

ROBERT THORBURN V.

HIS MAJESTY THE KING

PLACE OF HEARING:

Montréal, Québec

DATES OF HEARING:

November 20 and 28, 2025

FURTHER AMENDED REASONS FOR JUDGMENT BY:

The Honourable Justice Ryan P. Rabinovitch

DATE OF JUDGMENT:

DATE OF AMENDED JUDGMENT:

June 16 , 2026

June 22, 2026

APPEARANCES:

Counsel for the Appellant:

Vincent Langlois

Counsel for the Respondent:

Julien Wohlhuter

COUNSEL OF RECORD:

For the Appellant:

Name:

Vincent Langlois

Firm:

KPMG Law LLP

600 de Maisonneuve Blvd. W

Suite 1500

Montréal, Québec H3A 0A3

For the Respondent:

Marie-Josée Hogue

Deputy Attorney General of Canada

Ottawa, Canada

[1] Exhibits A-18 and A-19.

[2] Exhibit A-A.

[3] Exhibit A-B.

[4] Exhibit 13.5 at p. 214.

[5] Exhibit 15 at p. 230.

[6] Exhibit A-14.

[7] Exhibit A-17.

- [8] The annexes to the Business Plan provide lists of what I presume to be the top (or among the top) 40 global nuclear projects (Annex 1), 22 global gas fired power generation projects (Annex 2), 40 global petroleum processing projects (Annex 3), 12 global nickel processing projects (Annex 4), 26 global copper processing projects (Annex 5) and 12 global aluminum processing projects (Annex 6).
- [9] Exhibit A-9.
- [10] Ibid . at p. 136.
- [11] Exhibit A-13.1 at p. 180 and Exhibit A-13.2 at p. 184.
- [12] Exhibit A-11.
- [13] Exhibit A-13.
- [14] Exhibit A-12.1.
- [15] Exhibit A-11.
- [16] Counsel for the Appellant also attempted to argue at the hearing that there had been an agreement for 169 to lend \$86,231.25 to the Appellant on December 31, 2014, for the Appellant to use this amount to pay the full price of the Business Plan, and for the \$77,727.55 owing to him to be set off against the amount of this loan (so that the \$8,503.75 allegedly paid by setoff in 2015 was in fact the amount of a “fresh” debt, and not a part of the cost of the document). There was no physical movement of funds or other evidence supporting this theory, however.
- [17] Exhibit R-18.
- [18] In Québec Civil law, a debt that is payable on demand is generally considered to be exigible for the purposes of article 1673 CCQ (see e.g. Syndicat d'épargne des épiciers du Québec (In re) , (1975) C.A. 599, Re Hil-A-Don Ltd.: Bank of Montreal c. Kwiat , [1975] C.A. 157 and Caisse Populaire Desjardins de Québec c. R. , 2014 FCA 279).
- [19] I do not intend the above analysis to imply that it is necessarily problematic to account for or document a transaction after it occurs. This happens frequently, particularly in a related party context. Nonetheless, a transaction must be valid as a matter of private law in order to have an impact on a person's tax situation, and this requires there be real intention and agreement at the right moment in time. Parties can record a transaction after the fact, but they cannot create one.

- [20] The compensation in question could have been conventional, as the issuance of the invoice and making of the accounting entries arguably evidenced an agreement to effect a set-off (albeit on a date in the past). Although I do not accept that this agreement could achieve compensation retroactively, it may have done so as of the date it was formed. If not, compensation would in any event have occurred as a matter of law on the date the invoice was issued, as the \$86,231.25 would have become exigible at that time.
- [21] See e.g. *Tozer v. Minister of National Revenue* , [1982] C.T.C. 2835, *Slawson v. Minister of National Revenue* , [1985] 1 C.T.C. 2075, *Bowman v. Minister of National Revenue* , [1985] 1 C.T.C. 2380, *Canetti v. Minister of National Revenue*, [1985] 1 C.T.C. 2426, *Gilling v. Minister of National Revenue* , 1990 1 C.T.C. 392, *Pitzel v. R.* , 2002 CanLII 921, *Karda v. R.* , 2005 TCC 564, *Tulman v. R.* , 2014 TCC 140.
- [22] 2016 FCA 76.
- [23] *Ibid.* at paras. 6-8.
- [24] [1985] 1 C.T.C. 2187.
- [25] 2006 TCC 335.
- [26] [1990] 1 C.T.C. 313.
- [27] *Ibid.* at para. 4.
- [28] 2018 TCC 1.
- [29] 2022 TCC 142.
- [30] Similar statements were made recently by Sorensen J. in *Samotus v. The King* 2025 TCC 104.
- [31] Paras. 33-35 of the Reply.
- [32] Notice of Appeal at para. 46.
- [33] Reply at para. 5.
- [34] The Courts have held that both parties' pleadings must be considered (see e.g. *Bakorp Management Ltd. v. Canada* , 2019 FCA 195), and that the full pleadings, including the fact and assumption sections, have to be examined in determining which matters have properly been raised (see e.g. *Canada v. Ngai* , 2019 FCA 181, and *Paletta International Corporation v. Canada* , 2021 FCA 182).
- [35] [1990] 2 C.T.C. 2593.
- [36] *Ibid.* at paras. 5 and 6. Similar language was used by Angers J. in *Pitzel v. R.* [2002] 2 C.T.C. 2949 at para. 21.
- [37] See e.g. *Hay v. R.* , [2001] 4 C.T.C. 2742 at para. 18 and *Tulman v. R.* , 2014 TCC 140 at para. 40.
- [38] *Rosen v. R.* , 2025 TCC 6.

- [39] Notice of Appeal at para. 3.
- [40] Ibid . at para. 30.
- [41] Ibid . at para. 40.
- [42] Reply at paras. 8 and 15.
- [43] Ibid . at para. 29(h).
- [44] Eisbrenner v. Canada , 2020 FCA 93.
- [45] See e.g. Montreal Light, Heat & Power Consolidated v. Minister of National Revenue , [1942] S.C.R. 89 at para. 67, William F. Koch Laboratories of Canada Ltd. v. Minister of National Revenue, 16 Tax A.B.C. 39 at para. 22, Consumers' Gas Co. of Toronto v. Minister of National Revenue , 13 Tax A.B.C. 429 at para. 37 and Wilson v. Minister of National Revenue , [1960] C.T.C. 1 at para. 27.
- [46] [1968] C.T.C. 313.
- [47] Ibid . at para. 52.
- [48] 2004 FCA 158.
- [49] Ibid . at p ara. 64.
- [50] [1998] 1 F.C. 165.
- [51] Ibid . at paras. 28-29.
- [52] It should be noted that the Respondent conceded during the hearing that if I concluded that section 67 applied and that Anthony had in fact been paid \$20,000 by 169, a deduction of \$20,000 would be reasonable. I note for the record that I do believe, on a balance of probabilities, Anthony was paid this amount by the corporation.

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