

Docket: 2006-1098(IT)G

BETWEEN:

DENISE VACHON, EXECUTOR OF THE
ESTATE OF ROGER VACHON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Pierre Morel* (2006-1101(IT)G), *Jeannine Girard* (2006-1102(IT)G), *Guy Gingras* (2006-1103(IT)G), *Liliane Dufour* (2006-1104(IT)G), *Maryse Boudreault* (2006-1107(IT)G), *Pierre Bherer* (2006-1108(TI)G), *Gilles Belzile* (2006-1807(IT)G), *Chantal Côté* (2006-1809(IT)G), *Réjeanne Gravel* (2006-1810(IT)G), *Valois Pelletier* (2006-1811(IT)G), *Alain Therrien* (2006-1812(IT)G), *Dany Vigneault* (2006-1813(IT)G), *Yves Tremblay* (2006-1100(IT)G), *Conseil Central Côte-Nord Inc.* (2006-1966(EI)) and *Conseil Central des Syndicats Nationaux du Saguenay/Lac St-Jean* (2006-1142(EI))
on March 25 and 26, 2008, at Montréal, Quebec
Before: The Honourable Justice Pierre Archambault

Appearances:

Counsel for the Appellant: Marc Cantin

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2002, 2003 and 2004 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 29th day of August 2008.

"Pierre Archambault"

Archambault J.

Translation certified true,
this 16th day of December, 2009

François Brunet, reviser

Docket: 2006-1101(IT)G

BETWEEN:

PIERRE MOREL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Denise Vachon, executor of the estate of Roger Vachon (2006-1098(IT)G)*, *Jeannine Girard (2006-1102(IT)G)*, *Guy Gingras (2006-1103(IT)G)*, *Liliane Dufour (2006-1104(IT)G)*, *Maryse Boudreault (2006-1107(IT)G)*, *Pierre Bherer (2006-1108(TI)G)*, *Gilles Belzile (2006-1807(IT)G)*, *Chantal Côté (2006-1809(IT)G)*, *Réjeanne Gravel (2006-1810(IT)G)*, *Valois Pelletier (2006-1811(IT)G)*, *Alain Therrien (2006-1812(IT)G)*, *Dany Vigneault (2006-1813(IT)G)*, *Yves Tremblay (2006-1100(IT)G)*, *Conseil Central Côte-Nord Inc. (2006-1966(EI))* and *Conseil Central des Syndicats Nationaux du Saguenay/Lac St-Jean (2006-1142(EI))* on March 25 and 26, 2008, at Montréal, Quebec
Before: The Honourable Justice Pierre Archambault

Appearances:

Counsel for the Appellant: Marc Cantin

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2002, 2003 and 2004 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 29th day of August 2008.

"Pierre Archambault"

Archambault J.

Translation certified true,
this 16th day of December, 2009

François Brunet, reviser

Docket: 2006-1102(IT)G

BETWEEN:

JEANNINE GIRARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Denise Vachon, executor of the estate of Roger Vachon (2006-1098(IT)G)*, *Pierre Morel (2006-1101(IT)G)*, *Guy Gingras (2006-1103(IT)G)*, *Liliane Dufour (2006-1104(IT)G)*, *Maryse Boudreault (2006-1107(IT)G)*, *Pierre Bherer (2006-1108(IT)G)*, *Gilles Belzile (2006-1807(IT)G)*, *Chantal Côté (2006-1809(IT)G)*, *Réjeanne Gravel (2006-1810(IT)G)*, *Valois Pelletier (2006-1811(IT)G)*, *Alain Therrien (2006-1812(IT)G)*, *Dany Vigneault (2006-1813(IT)G)*, *Yves Tremblay (2006-1100(IT)G)*, *Conseil Central Côte-Nord Inc. (2006-1966(EI))* and *Conseil Central des Syndicats Nationaux du Saguenay/Lac St-Jean (2006-1142(EI))* on March 25 and 26, 2008, at Montréal, Quebec
Before: The Honourable Justice Pierre Archambault

Appearances:

Counsel for the Appellant: Marc Cantin

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2002, 2003 and 2004 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 29th day of August 2008.

"Pierre Archambault"

Archambault J.

Translation certified true,
this 16th day of December, 2009

François Brunet, reviser

Docket: 2006-1103(IT)G

BETWEEN:

GUY GINGRAS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Denise Vachon, executor of the estate of Roger Vachon* (2006-1098(IT)G), *Pierre Morel* (2006-1101(IT)G), *Jeannine Girard* (2006-1102(IT)G), *Liliane Dufour* (2006-1104(IT)G), *Maryse Boudreault* (2006-1107(IT)G), *Pierre Bherer* (2006-1108(TI)G), *Gilles Belzile* (2006-1807(IT)G), *Chantal Côté* (2006-1809(IT)G), *Réjeanne Gravel* (2006-1810(IT)G), *Valois Pelletier* (2006-1811(IT)G), *Alain Therrien* (2006-1812(IT)G), *Dany Vigneault* (2006-1813(IT)G), *Yves Tremblay* (2006-1100(IT)G), *Conseil Central Côte-Nord Inc.* (2006-1966(EI)) and *Conseil Central des Syndicats Nationaux du Saguenay/Lac St-Jean* (2006-1142(EI)) on March 25 and 26, 2008, at Montréal, Quebec
Before: The Honourable Justice Pierre Archambault

Appearances:

Counsel for the Appellant: Marc Cantin

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2002, 2003 and 2004 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 29th day of August 2008.

"Pierre Archambault"

Archambault J.

Translation certified true,
this 16th day of December, 2009

François Brunet, reviser

Docket: 2006-1104(IT)G

BETWEEN:

LILIANE DUFOUR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Denise Vachon, executor of the estate of Roger Vachon (2006-1098(IT)G)*, *Pierre Morel (2006-1101(IT)G)*, *Guy Gingras (2006-1103(IT)G)*, *Jeannine Girard (2006-1102(IT)G)*, *Maryse Boudreault (2006-1107(IT)G)*, *Pierre Bherer (2006-1108(TI)G)*, *Gilles Belzile (2006-1807(IT)G)*, *Chantal Côté (2006-1809(IT)G)*, *Réjeanne Gravel (2006-1810(IT)G)*, *Valois Pelletier (2006-1811(IT)G)*, *Alain Therrien (2006-1812(IT)G)*, *Dany Vigneault (2006-1813(IT)G)*, *Yves Tremblay (2006-1100(IT)G)*, *Conseil Central Côte-Nord Inc. (2006-1966(EI))* and *Conseil Central des Syndicats Nationaux du Saguenay/Lac St-Jean (2006-1142(EI))* on March 25 and 26, 2008, at Montréal, Quebec
Before: The Honourable Justice Pierre Archambault

Appearances:

Counsel for the Appellant: Marc Cantin

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2002, 2003 and 2004 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 29th day of August 2008.

"Pierre Archambault"

Archambault J.

Translation certified true,
this 16th day of December, 2009

François Brunet, reviser

Docket: 2006-1107(IT)G

BETWEEN:

MARYSE BOUDREAULT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Denise Vachon, executor of the estate of Roger Vachon (2006-1098(IT)G)*, *Pierre Morel (2006-1101(IT)G)*, *Guy Gingras (2006-1103(IT)G)*, *Jeannine Girard (2006-1102(IT)G)*, *Liliane Dufour (2006-1104(IT)G)*, *Pierre Bherer (2006-1108(TI)G)*, *Gilles Belzile (2006-1807(IT)G)*, *Chantal Côté (2006-1809(IT)G)*, *Réjeanne Gravel (2006-1810(IT)G)*, *Valois Pelletier (2006-1811(IT)G)*, *Alain Therrien (2006-1812(IT)G)*, *Dany Vigneault (2006-1813(IT)G)*, *Yves Tremblay (2006-1100(IT)G)*, *Conseil Central Côte-Nord Inc. (2006-1966(EI))* and *Conseil Central des Syndicats Nationaux du Saguenay/Lac St-Jean (2006-1142(EI))*

on March 25 and 26, 2008, at Montréal, Quebec
Before: The Honourable Justice Pierre Archambault

Appearances:

Counsel for the Appellant: Marc Cantin

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2002, 2003 and 2004 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 29th day of August 2008.

"Pierre Archambault"

Archambault J.

Translation certified true,
this 16th day of December, 2009

François Brunet, reviser

Docket: 2006-1108(IT)G

BETWEEN:

PIERRE BHERER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Denise Vachon, executor of the estate of Roger Vachon (2006-1098(IT)G)*, *Pierre Morel (2006-1101(IT)G)*, *Guy Gingras (2006-1103(IT)G)*, *Liliane Dufour (2006-1104(IT)G)*, *Maryse Boudreault (2006-1107(IT)G)*, *Jeannine Girard (2006-1102(TI)G)*, *Gilles Belzile (2006-1807(IT)G)*, *Chantal Côté (2006-1809(IT)G)*, *Réjeanne Gravel (2006-1810(IT)G)*, *Valois Pelletier (2006-1811(IT)G)*, *Alain Therrien (2006-1812(IT)G)*, *Dany Vigneault (2006-1813(IT)G)*, *Yves Tremblay (2006-1100(IT)G)*, *Conseil Central Côte-Nord Inc. (2006-1966(EI))* and *Conseil Central des Syndicats Nationaux du Saguenay/Lac St-Jean (2006-1142(EI))* on March 25 and 26, 2008, at Montréal, Quebec
Before: The Honourable Justice Pierre Archambault

Appearances:

Counsel for the Appellant: Marc Cantin

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2002, 2003 and 2004 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 29th day of August 2008.

"Pierre Archambault"

Archambault J.

Translation certified true,
this 16th day of December, 2009

François Brunet, reviser

Docket: 2006-1807(IT)G

BETWEEN:

GILLES BELZILE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Denise Vachon, executor of the estate of Roger Vachon (2006-1098(IT)G)*, *Pierre Morel (2006-1101(IT)G)*, *Guy Gingras (2006-1103(IT)G)*, *Liliane Dufour (2006-1104(IT)G)*, *Maryse Boudreault (2006-1107(IT)G)*, *Pierre Bherer (2006-1108(IT)G)*, *Jeannine Girard (2006-1102(IT)G)*, *Chantal Côté (2006-1809(IT)G)*, *Réjeanne Gravel (2006-1810(IT)G)*, *Valois Pelletier (2006-1811(IT)G)*, *Alain Therrien (2006-1812(IT)G)*, *Dany Vigneault (2006-1813(IT)G)*, *Yves Tremblay (2006-1100(IT)G)*, *Conseil Central Côte-Nord Inc. (2006-1966(EI))* and *Conseil Central des Syndicats Nationaux du Saguenay/Lac St-Jean (2006-1142(EI))* on March 25 and March 26, 2008, at Montréal, Quebec
Before: The Honourable Justice Pierre Archambault

Appearances:

Counsel for the Appellant: Marc Cantin

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2002, 2003 and 2004 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 29th day of August 2008.

"Pierre Archambault"

Archambault J.

Translation certified true,
this 16th day of December, 2009

François Brunet, reviser

Docket: 2006-1809(IT)G

BETWEEN:

CHANTAL CÔTÉ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Denise Vachon, executor of the estate of Roger Vachon (2006-1098(IT)G)*, *Pierre Morel (2006-1101(IT)G)*, *Guy Gingras (2006-1103(IT)G)*, *Liliane Dufour (2006-1104(IT)G)*, *Maryse Boudreault (2006-1107(IT)G)*, *Pierre Bherer (2006-1108(IT)G)*, *Jeannine Girard (2006-1102(IT)G)*, *Gilles Belzile (2006-1807(IT)G)*, *Réjeanne Gravel (2006-1810(IT)G)*, *Valois Pelletier (2006-1811(IT)G)*, *Alain Therrien (2006-1812(IT)G)*, *Dany Vigneault (2006-1813(IT)G)*, *Yves Tremblay (2006-1100(IT)G)*, *Conseil Central Côte-Nord Inc. (2006-1966(EI))* and *Conseil Central des Syndicats Nationaux du Saguenay/Lac St-Jean (2006-1142(EI))* on March 25 and 26, 2008, at Montréal, Quebec
Before: The Honourable Justice Pierre Archambault

Appearances:

Counsel for the Appellant: Marc Cantin

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2002, 2003 and 2004 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 29th day of August 2008.

"Pierre Archambault"

Archambault J.

Translation certified true,
this 16th day of December, 2009

François Brunet, reviser

Docket: 2006-1810(IT)G

BETWEEN:

RÉJEANNE GRAVEL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Denise Vachon, executor of the estate of Roger Vachon* (2006-1098(IT)G), *Pierre Morel* (2006-1101(IT)G), *Guy Gingras* (2006-1103(IT)G), *Liliane Dufour* (2006-1104(IT)G), *Maryse Boudreault* (2006-1107(IT)G), *Pierre Bherer* (2006-1108(TI)G), *Gilles Belzile* (2006-1807(IT)G), *Chantal Côté* (2006-1809(IT)G), *Jeannine Girard* (2006-1102(IT)G), *Valois Pelletier* (2006-1811(IT)G), *Alain Therrien* (2006-1812(IT)G), *Dany Vigneault* (2006-1813(IT)G), *Yves Tremblay* (2006-1100(IT)G), *Conseil Central Côte-Nord Inc.* (2006-1966(EI)) and *Conseil Central des Syndicats Nationaux du Saguenay/Lac St-Jean* (2006-1142(EI)) on March 25 and 26, 2008, at Montréal, Quebec
Before: The Honourable Justice Pierre Archambault

Appearances:

Counsel for the Appellant: Marc Cantin

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2002 taxation year is allowed, without costs, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 29th day of August 2008.

"Pierre Archambault"

Archambault J.

Translation certified true,
this 16th day of December, 2009

François Brunet, reviser

Docket: 2006-1811(IT)G

BETWEEN:

VALOIS PELLETIER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Denise Vachon, executor of the estate of Roger Vachon (2006-1098(IT)G)*, *Pierre Morel (2006-1101(IT)G)*, *Guy Gingras (2006-1103(IT)G)*, *Liliane Dufour (2006-1104(IT)G)*, *Maryse Boudreault (2006-1107(IT)G)*, *Pierre Bherer (2006-1108(TI)G)*, *Gilles Belzile (2006-1807(IT)G)*, *Chantal Côté (2006-1809(IT)G)*, *Réjeanne Gravel (2006-1810(IT)G)*, *Jeannine Girard (2006-1102(IT)G)*, *Alain Therrien (2006-1812(IT)G)*, *Dany Vigneault (2006-1813(IT)G)*, *Yves Tremblay (2006-1100(IT)G)*, *Conseil Central Côte-Nord Inc. (2006-1966(EI))* and *Conseil Central des Syndicats Nationaux du Saguenay/Lac St-Jean (2006-1142(EI))* on March 25 and 26, 2008, at Montréal, Quebec
Before: The Honourable Justice Pierre Archambault

Appearances:

Counsel for the Appellant: Marc Cantin

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2002 and 2003 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 29th day of August 2008.

"Pierre Archambault"

Archambault J.

Translation certified true,
this 16th day of December, 2009

François Brunet, reviser

Docket: 2006-1812(IT)G

BETWEEN:

ALAIN THERRIEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Denise Vachon, executor of the estate of Roger Vachon (2006-1098(IT)G)*, *Pierre Morel (2006-1101(IT)G)*, *Guy Gingras (2006-1103(IT)G)*, *Liliane Dufour (2006-1104(IT)G)*, *Maryse Boudreault (2006-1107(IT)G)*, *Pierre Bherer (2006-1108(TI)G)*, *Gilles Belzile (2006-1807(IT)G)*, *Chantal Côté (2006-1809(IT)G)*, *Réjeanne Gravel (2006-1810(IT)G)*, *Jeannine Girard (2006-1102(IT)G)*, *Valois Pelletier (2006-1811(IT)G)*, *Dany Vigneault (2006-1813(IT)G)*, *Yves Tremblay (2006-1100(IT)G)*, *Conseil Central Côte-Nord Inc. (2006-1966(EI))* and *Conseil Central des Syndicats Nationaux du Saguenay/Lac St-Jean (2006-1142(EI))* on March 25 and 26, 2008, at Montréal, Quebec
Before: The Honourable Justice Pierre Archambault

Appearances:

Counsel for the Appellant: Marc Cantin

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2002 and 2003 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 29th day of August 2008.

"Pierre Archambault"

Archambault J.

Translation certified true,
this 16th day of December, 2009

François Brunet, reviser

Docket: 2006-1813(IT)G

BETWEEN:

DANY VIGNEAULT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Denise Vachon, executor of the estate of Roger Vachon (2006-1098(IT)G)*, *Pierre Morel (2006-1101(IT)G)*, *Guy Gingras (2006-1103(IT)G)*, *Liliane Dufour (2006-1104(IT)G)*, *Maryse Boudreault (2006-1107(IT)G)*, *Pierre Bherer (2006-1108(TI)G)*, *Gilles Belzile (2006-1807(IT)G)*, *Chantal Côté (2006-1809(IT)G)*, *Réjeanne Gravel (2006-1810(IT)G)*, *Jeannine Girard (2006-1102(IT)G)*, *Valois Pelletier (2006-1811(IT)G)*, *Alain Therrien (2006-1812(IT)G)*, *Yves Tremblay (2006-1100(IT)G)*, *Conseil Central Côte-Nord Inc. (2006-1966(EI))* and *Conseil Central des Syndicats Nationaux du Saguenay/Lac St-Jean (2006-1142(EI))* on March 25 and March 26, 2008, at Montréal, Quebec
Before: The Honourable Justice Pierre Archambault

Appearances:

Counsel for the Appellant: Marc Cantin

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2002, 2003 and 2004 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 29th day of August 2008.

"Pierre Archambault"

Archambault J.

Translation certified true,
this 16th day of December, 2009

François Brunet, reviser

Docket: 2006-1100(IT)G

BETWEEN:

YVES TREMBLAY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Denise Vachon, executor of the estate of Roger Vachon (2006-1098(IT)G)*, *Pierre Morel (2006-1101(IT)G)*, *Guy Gingras (2006-1103(IT)G)*, *Liliane Dufour (2006-1104(IT)G)*, *Maryse Boudreault (2006-1107(IT)G)*, *Pierre Bherer (2006-1108(IT)G)*, *Gilles Belzile (2006-1807(IT)G)*, *Chantal Côté (2006-1809(IT)G)*, *Réjeanne Gravel (2006-1810(IT)G)*, *Jeannine Girard (2006-1102(IT)G)*, *Valois Pelletier (2006-1811(IT)G)*, *Alain Therrien (2006-1812(IT)G)*, *Dany Vigneault (2006-1813(IT)G)*, *Conseil Central Côte-Nord Inc. (2006-1966(EI))* and *Conseil Central des Syndicats Nationaux du Saguenay/Lac St-Jean (2006-1142(EI))* on March 25 and 26, 2008, at Montréal, Quebec
Before: The Honourable Justice Pierre Archambault

Appearances:

Counsel for the Appellant: Marc Cantin

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2002, 2003 and 2004 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 29th day of August 2008.

"Pierre Archambault"

Archambault J.

Translation certified true,
this 16th day of December, 2009

François Brunet, reviser

Docket: 2006-1966(EI)

BETWEEN:

CONSEIL CENTRAL CÔTE-NORD INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Denise Vachon, executor of the estate of Roger Vachon (2006-1098(IT)G)*, *Pierre Morel (2006-1101(IT)G)*, *Guy Gingras (2006-1103(IT)G)*, *Liliane Dufour (2006-1104(IT)G)*, *Maryse Boudreault (2006-1107(IT)G)*, *Pierre Bherer (2006-1108(TI)G)*, *Gilles Belzile (2006-1807(IT)G)*, *Chantal Côté (2006-1809(IT)G)*, *Réjeanne Gravel (2006-1810(IT)G)*, *Jeannine Girard (2006-1102(IT)G)*, *Valois Pelletier (2006-1811(IT)G)*, *Alain Therrien (2006-1812(IT)G)*, *Yves Tremblay (2006-1100(IT)G)*, *Dany Vigneault (2006-1813(IT)G)* and *Conseil Central des Syndicats Nationaux du Saguenay/Lac St-Jean (2006-1142(EI))* on March 25 and 26, 2008, at Montréal, Quebec
Before: The Honourable Justice Pierre Archambault

Appearances:

Counsel for the Appellant: Marc Cantin

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeal from the assessment made under the *Employment Insurance Act*, notice of which is dated July 21, 2005, in respect of the years 2002, 2003 and 2004, is allowed, and the assessment is vacated.

Signed at Montréal, Quebec, this 29th day of August 2008.

"Pierre Archambault"

Archambault J.

Translation certified true,
this 16th day of December, 2009

François Brunet, reviser

Docket: 2006-1142(EI)

BETWEEN:

CONSEIL CENTRAL DES SYNDICATS
NATIONAUX DU SAGUENAY/LAC ST-JEAN (CSN),

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Denise Vachon, executor of the estate of Roger Vachon (2006-1098(IT)G)*, *Pierre Morel (2006-1101(IT)G)*, *Guy Gingras (2006-1103(IT)G)*, *Liliane Dufour (2006-1104(IT)G)*, *Maryse Boudreault (2006-1107(IT)G)*, *Pierre Bherer (2006-1108(TD)G)*, *Gilles Belzile (2006-1807(IT)G)*, *Chantal Côté (2006-1809(IT)G)*, *Réjeanne Gravel (2006-1810(IT)G)*, *Jeannine Girard (2006-1102(IT)G)*, *Valois Pelletier (2006-1811(IT)G)*, *Alain Therrien (2006-1812(IT)G)*, *Yves Tremblay (2006-1100(IT)G)*, *Dany Vigneault (2006-1813(IT)G)* and *Conseil Central Côte-Nord Inc. (2006-1966(EI))*
on March 25 and 26, 2008, at Montréal, Quebec
Before: The Honourable Justice Pierre Archambault

Appearances:

Counsel for the Appellant: Marc Cantin

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeal from the assessment made under the *Employment Insurance Act*, notice of which is dated May 19, 2005, in respect of the years 2002, 2003 and 2004, is allowed, and the assessment is vacated.

Signed at Montréal, Quebec, this 29th day of August 2008.

"Pierre Archambault"

Archambault J.

Translation certified true,
this 16th day of December, 2009

François Brunet, reviser

Citation: 2008 TCC 480

Date: 20080829

Dockets: 2006-1098(IT)G, 2006-1101(IT)G, 2006-1102(IT)G,
2006-1103(IT)G, 2006-1104(IT)G, 2006-1107(IT)G,
2006-1108(IT)G, 2006-1807(IT)G, 2006-1809(IT)G,
2006-1810(IT)G, 2006-1811(IT)G, 2006-1812(IT)G,
2006-1813(IT)G, 2006-1100(IT)G,

BETWEEN:

DENISE VACHON, EXECUTOR OF THE
ESTATE OF ROGER VACHON,
PIERRE MOREL, JEANNINE GIRARD,
GUY GINGRAS, LILIANE DUFOUR,
MARYSE BOUDREAULT, PIERRE BHERER,
GILLES BELZILE, CHANTAL CÔTÉ,
RÉJEANNE GRAVEL, VALOIS PELLETIER,
ALAIN THERRIEN, DANY VIGNEAULT,
YVES TREMBLAY,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent,

and

Dockets: 2006-1966(EI),
2006-1142(EI)

CONSEIL CENTRAL CÔTE-NORD INC.,
CONSEIL CENTRAL DES SYNDICATS NATIONAUX
DU SAGUENAY/LAC ST-JEAN,

Appellants,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Archambault J.

[1] Conseil central Côte-Nord Inc. ("CC Côte-Nord") and six of its officials,¹ and Conseil central des syndicats nationaux du Saguenay/Lac St-Jean ("CC Saguenay") and eight of its officials,² are appealing from assessments made by the Minister of National Revenue ("the Minister") in respect of the 2002, 2003, and 2004 taxation years or one or more of those years ("the relevant period").³

[2] In the assessments involving CC Côte-Nord and CC Saguenay, the Minister determined the amounts owed by these central councils under the *Employment Insurance Act* (EIA) in respect of the 14 aforementioned union officials (hereinafter "the 14 officials", "the union officials", "the elected officials" or "the elected union officials"). Those assessments result from the Minister's decision to consider as "insurable earnings" the benefits that the 14 officials received from their central councils in the form of allowances or indemnities for the meal, travel and child care expenses that they incurred in the performance of their duties for their central councils. The 14 officials contest the assessments made by the Minister, who included the value of these benefits in their income from an office or employment. The officials were elected to the positions of president, treasurer, executive secretary or representative on one of the central councils. All of them obtained union leave from their employers — which include, among others, a hospital, a youth centre, and Provigo Distribution Inc. ("Provigo") — so that they could devote one or more days per week to union business while continuing to draw their salary. However, the unions were required to reimburse the employers of these elected officials for the salaries and fringe benefit costs for the periods when the officials were on union leave. The unions were reimbursed by the central councils.

¹ Gilles Belzile, Chantal Côté, Réjeanne Gravel, Valois Pelletier, Alain Therrien and Dany Vigneault.

² Guy Gingras, Pierre Bherer, Maryse Boudreault, Liliane Dufour, Jeannine Girard, Pierre Morel, Yves Tremblay and Roger Vachon.

³ Ms. Gravel's appeal pertains solely to 2002, and Mr. Pelletier and Mr. Therrien's appeals pertain to 2002 and 2003.

[3] Whether the Minister's assessments are well-founded depends to a great extent on the answer to the following question: Did the 14 officials hold, for the purposes of sections 5 and 6 of the *Income Tax Act* (ITA), an "office" as defined in subsection 248(1) of the ITA, and, for the purposes of the definition of "insurable employment" in the EIA and the purposes of section 6 of the *Employment Insurance Regulations* (EIR), within the meaning of subsection 2(1) of the *Canada Pension Plan* (CPP)? To put it more precisely, the question is whether the elected officials' positions on the central councils entitled them to "a fixed or ascertainable stipend or remuneration" under subsection 248(1) of the ITA or subsection 2(1) of the CPP.

Facts

[4] All of the Appellants' appeals were heard on common evidence. Only three of the 14 officials testified at the hearing, namely Guy Gingras, an administrative officer for the Hôpital de Roberval and the treasurer of CC Saguenay; Pierre Morel, a receiver with Proviso and representative of CC Saguenay; and Chantal Côté, an employee of the Centre de protection et de réadaptation de la Côte-Nord ("the Youth Centre") and the treasurer of CC Côte-Nord.

[5] During the relevant period, Hôpital de Roberval remunerated Mr. Gingras for 35 hours of work (8 a.m. to 4 p.m. Monday to Friday) at the applicable rate under his collective agreement. He lives in Roberval, less than a kilometre from the hospital. He usually walks to work and returns home to eat his lunches. He said that he has been an active union member for 20 years, initially with his hospital's local and then as treasurer of CC Saguenay.

[6] Mr. Gingras explained that CSN locals are grouped together in a federation based on the employers' area of activity, and are also grouped together under a regional central council such as CC Saguenay and CC Côte-Nord. At the very top of the pyramid is the Confédération nationale ("the Confederation") which offers services, such as legal services and union membership drive support services, to all members and to locals and federations. The federations provide the locals with services associated with collective agreement renewals and grievance management. The central councils (abbreviated "CC") train union officials and other active union members.

[7] In order to be elected to a central council, a person must first be sent as a delegate by his or her local to the convention, where the members in attendance elect the executive council as well as the various representatives, such as the occupational health and safety representative. People elected to a central council serve three-year terms; they are eligible for re-election to additional three-year terms.

[8] There are 159 locals under CC Saguenay.

[9] CC Saguenay's offices are in Chicoutimi, roughly 107 km from Roberval. The territory it serves extends from Saint-Ludger-de-Milot to La Baie. There are times when, in the performance of his duties as treasurer for CC Saguenay, Mr. Gingras may leave his home in Roberval at 7 a.m. and not return until 8 or 9 p.m. Seventy to seventy-five percent of the time that he spends on union-related work is at the CC Saguenay office in Chicoutimi. His union activities are not limited to weekdays: he is sometimes involved in demonstrations elsewhere in Quebec, including Montréal. Mr. Gingras says that he is not remunerated by CC Saguenay for his duties as its treasurer; he says that the work is simply an expression of his dedication to union activism. However, the hospital continues to pay Mr. Gingras an amount equal to the salary that he would have received if he had been working during the time that he devoted to his union duties.

[10] The treasurer's duties include signing bank instruments, preparing budgets and activity reports, giving treasury training, and sitting on various boards such as the alternative dispute resolution committee and the Commission des lésions professionnelles [Quebec employment injuries board]. Mr. Gingras estimated that, on average, Hôpital de Roberval grants him three days of union leave per week. He said that this was just an average, because he sometimes devoted as many as four or five days a week to CC Saguenay, but sometimes had less to do, notably during the summer. However, an analysis of the activity reports shows that, throughout the three relevant taxation years, he was at CC Saguenay far more often than not.⁴

⁴ In his report, references to absences may be related to illness, vacation, or cases where Mr. Gingras was working at the hospital.

[11] On the other hand, Mr. Gingras said that he had to ask Hôpital de Roberval for its permission ten days in advance under clause 9.03 of the collective agreement between his union and the Comité patronal de négociation du secteur de la santé et des services sociaux [health and social services sector employer-side bargaining committee], the Sous-comité patronal de négociation des centres hospitaliers publics [public hospitals employer-side bargaining subcommittee] and the Fédération de la santé et des services sociaux — CSN [health and social services federation (CSN)] ("the hospitals collective agreement"). The clause provides as follows:⁵

[TRANSLATION]

9.03 An employee who is a steward designated by the union may, upon written notice given by the union ten (10) calendar days in advance, take leave without pay for union business.

However, the employer shall continue to provide the employee with remuneration equal to the remuneration that the employee would receive if the employee were at work, provided the union reimburses the salary, the additional remuneration contemplated in section 6 of Appendix D, the applicable premiums, the fringe benefits, and the employer's share of the benefit plan. Such reimbursement shall be made within thirty (30) days after the employer claims it.

[Emphasis added.]

[12] Mr. Gingras confirmed that requests for union leave are rarely denied. However, he said that they can be denied if his presence at the hospital is essential. According to Mr. Gingras, the remuneration paid by the hospital enables him to preserve his rights to a pension under his pension plan.

⁵ Exhibit I-1, tab 36. That section can be compared to the preceding section:

[TRANSLATION]

9.02 Official union stewards may, upon written notice given by the union ten (10) days in advance, take leave from their employment, without loss of salary, to attend conferences of the Confédération des Syndicats Nationaux (CSN), the Fédération de la santé et des services sociaux – CSN (FSSS-CSN), and the Central Councils or federal councils (FSSN-CSN).

[13] At the end of the month, Hôpital de Roberval bills CC Saguenay, not only for the remuneration that it paid Mr. Gingras for the periods he worked for CC Saguenay, but also for his benefits, which are worth 19.91% of his regular pay. The amounts paid by CC Saguenay are allocated to various accounts, including account #3500 for duties as treasurer, account #3720 for duties as delegate and account #6320 for training duties.

[14] Mr. Gingras also explained CC Saguenay's expense reimbursement scales (Exhibit I-1, tab 34) which I reproduce below:

POLICY ON SCALES

Amended August 30, 2004

| |
|--------|
| Scales |
|--------|

| | |
|----------------|---------|
| Breakfast | \$7.20 |
| Lunch | \$14.85 |
| Supper | \$20.40 |
| Snack | \$3.10 |
| Overnight stay | \$99.20 |

Total: \$144.75 / day

| |
|--------------------|
| Distance travelled |
|--------------------|

\$0.416 per kilometre

| |
|-------|
| Meals |
|-------|

a) Breakfast

- 1- Breakfast will be reimbursed if a meeting is held before 8:30 a.m.
- 2- Out-of-town overnight stays are reimbursed.
- 3- Meeting places requiring more than 100 km of outbound travel, if the meeting begins at 9 a.m.

b) Lunch

- 1- Lunch will be reimbursed if a full day's union leave is required (morning and afternoon) or an activity is required at a mealtime.
- 2- The meeting ends later than 12 noon.
- 3- The meeting ends later than 11:30 a.m. and more than 100 km of outbound travel is required.

c) Supper

- 1- Supper will be reimbursed where a day's leave is required and an activity is scheduled for the evening.
- 2- The afternoon meeting ends later than 5:30 p.m.
- 3- A meeting takes place during an evening and more than 100 km of outbound travel is required.
- 4- The meeting begins the next morning and more than 200 km of outbound travel is required.

d) Snack

- 1- A snack will be reimbursed if an activity ends later than 9 p.m.
- 2- When an overnight stay is reimbursed.

e) Overnight stay

- 1- We will reimburse an overnight stay when the circumstances require us to do so (i.e. when an act of nature paralyzes the location where the activity is being held, or the union official is unable to return home, notably by reason of a storm, flooding, etc.). Reference: school closures, Transports Québec warnings, or other warnings.
- 1-[sic] The meeting continues on the following day and more than 100 km of outbound travel is required. In addition, an officer, in the course of his or her duties, is entitled to claim an overnight stay expense once per week on average, but, if so, no supper, snack or breakfast expenses shall be reimbursed and the person in question must work the next day.
- 2- The meeting begins the following morning and more than 200 km of outbound travel from home is required.
- 3- Overnight stay expenses on the last day of a meeting will be reimbursed if the meeting ends after 5 p.m. and more than 200 km of inbound travel is required.
- 4- Overnight stay expenses on the last day of a meeting will be reimbursed if the meeting ends after 4 p.m. and more than 300 km of travel is required.

However, from October 1 through April 30:

- a) Overnight stay expenses on the last day of a meeting will be reimbursed after 3:30 p.m. if more than 200 km of inbound travel is required.
- b) Overnight stay expenses on the last day of a meeting will be reimbursed after 1:30 p.m. if more than 300 km of inbound travel is required.

Child care expenses

A person who attends meetings or training courses or who participates in union activities outside the person's regular hours of work may claim child care expenses.

These allowances will only be granted if the expenses have been incurred, and they are available to persons with children age 16 or younger, or under 18 if they are disabled or emotionally/socially maladjusted and require someone to be with them.

Where both parents or spouses are engaged in union activities at the same time, only one of them will be reimbursed. These allowances must not be used for the purpose of remunerating the other parent or spouse.

After midnight, daycare expenses will be covered only if payment for overnight stay has been made.

In addition, for the supper period, claims of \$10 for one child and \$5 for each additional child may be made in respect of expenses incurred for child care or for late pick-up from the daycare centre.

| Number of children | 1 | 2 | 3 | 4+ |
|-------------------------------|------|------|------|-----|
| Morning | \$10 | \$15 | \$20 | \$5 |
| Afternoon | \$10 | \$15 | \$20 | \$5 |
| Evening work, after 6 p.m. | \$15 | \$20 | \$25 | \$5 |
| Night work, after midnight | \$20 | \$30 | \$40 | \$5 |

...

| |
|------------------|
| Activity reports |
|------------------|

The Central Council will only reimburse pay and benefits actually lost.

In order to be reimbursed for a claim, the person **must** adequately fill out an activity report and submit it no more than 15 days after the week in which the activity took place.

Any claim for salary in connection with meetings away, other than the Confederation office or council **must** include a pay stub from the week in which the actual loss of salary occurred.

| |
|-------------------------|
| Union members' salaries |
|-------------------------|

The Central Council will reimburse pay actually lost by a union member who was granted leave from employment in order to perform a duty for the Central Council.

If the union has the benefit of salary maintenance by the employer, the Central Council will reimburse the union or the employer for 100% of the gross salary, and, if applicable, the related expenses, upon submission of vouchers.

If the union does not have the benefit of salary maintenance, the Council shall pay the member 50% of the salary,⁶ in accordance with the CSN form entitled [TRANSLATION] "Salary payment claim for persons on leave".

If the member is from the hotel or restaurant industry, the Central Council will reimburse tips in accordance with the union's policy. The union must provide the Central Council with the said policy.

If the member is not a member of the local council, and is called upon to be a member of a Confederation council, the Central Council's reimbursement policy can be applied, provided the executive committee so authorizes.

...

Making up for time

Days worked during a vacation period or on weekday programmed leave for regional or national activities or for national bodies and committees, including time allotted to transportation, will be made up for, in the course of the fiscal year to which they apply.

In order to eliminate any over-remuneration, the union member must file a report with the Central Council treasurer, setting out the hours worked on those days.

Expenses incurred in connection with activities held during a vacation period or on weekday programmed leave shall be reimbursed to the union member even if time is made up for.

Sick leave

Any person on extended sick leave or in receipt of CSST and RAAQ benefits [workers' compensation or statutory auto insurance benefits] is considered to be on absence with justification, and is therefore ineligible for salary reimbursement and must abstain from any union activity.

In the event of sporadic absence due to illness, the union activist's collective agreement shall apply.

⁶ The remaining 50% is reimbursed by another organ of the CSN.

Absences due to an act of nature

A union activist on the Central Council is entitled to be absent from work, with his or her pay maintained, where the absence results from an act of nature that paralyzes the activist's locality (storm, flood, etc.) and prevents the activist from reporting for work. (Reference: School closure, Transport Québec warnings or other warnings).

[Emphasis added.]

[15] Mr. Gingras confirmed that all allowances for expenses incurred on union business are paid without proof from the union members that the expense was incurred: their word is considered good enough. Hotel allowances were one such allowance that he referred to. However, meal allowances are not granted where the meeting attended by the member is catered by its organizers. Mr. Gingras also stated that an elected union official living in Chicoutimi would not be entitled to a lunch or supper allowance unless the meal were related to work.

[16] Mr. Gingras is one of the elected union officials who was granted a child care allowance. He explained that he has three children: one of them was born in 1993 and the others were born in 1990. Generally, when he works at Hôpital de Roberval, he gets home at about 4 or 4:30 p.m. However, when he is working in Chicoutimi for CC Saguenay, he cannot get back before 6 p.m. Consequently, he is given a \$10 allowance to cover child care expenses from 4:30 to 6 p.m. He also stated that his wife works outside the home and sometimes has to leave town and go to an Aboriginal reserve far from her usual workplace. Given these circumstances, the Minister's auditor determined that the child care allowances that were granted where both Mr. Gingras and his spouse were away from home should not be considered taxable benefits.

[17] Mr. Gingras confirmed that Jeannine Girard, the president of CC Saguenay, was on union leave for an average of four days per week, and that vice-president Liliane Dufour and executive secretary Roger Vachon took an average of three days of union leave per week. As for Pierre Morel, the representative responsible for occupational health and safety training, his leave varied from one to two days per week. The amount of leave taken by the other elected union officials varied depending on the need.

[18] Mr. Gingras also confirmed that Messrs. Bherer, Morel and Tremblay lived in Alma, 64 km from Chicoutimi. Ms. Dufour lived in St-Félix-d'Otis, and in La Baie, 21 km from Chicoutimi. Ms. Boudreault also lived in La Baie. Ms. Girard lived in Roberval, 107 km from Chicoutimi, and Mr. Vachon lived in Jonquière, 23 km from Chicoutimi.

[19] In his testimony, Mr. Morel confirmed that he worked at Provigo in Alma, Monday to Friday from 5 a.m. to 3 p.m. He lived four or five kilometres from work and it took four minutes to get there by car. Paragraph 3.07 of the Provigo collective agreement provides as follows:⁷

⁷ Exhibit I-1, tab 38. An excerpt from the collective agreement of the Abitibi Consolidated, Alma Division employees, was also adduced in evidence (Exhibit I-1, tab 37). Paragraphs 55.06 and 55.07 of that agreement provide as follows:

[TRANSLATION]

55.06

- (a) After leave has been obtained from the Company for any union activity outside the Paper Mill (other than activities contemplated in section 55.05) the Company shall preserve the wages of the employee who is temporarily absent, at the rate of the occupation that the employee would have held if the employee had been at work.
- (b) Upon written request by the Union, which shall be submitted fifteen (15) days in advance whenever such notice period is possible, the Company shall grant the Union-designated employee unpaid leave to attend meetings or conferences of the CSN, FTPF or Central Council, or any other recognized union activity.

55.07

- (a) The Company shall maintain the salary of the employee who is temporarily absent, at the rate of the occupation that the employee would have held if the employee had been at work.
- (b) The Union shall reimburse the Company for the salary thereby maintained by the Company for the employee who is temporarily absent.
- (c) At the end of each month, a statement of account, with no administration fees, shall be submitted to the Union.
- (d) The Company shall maintain the employee's fringe benefit enrolments.
- (e) An employee's continued service is not interrupted by authorized union leave. [Emphasis added.]

ARTICLE 3 UNION DUTIES

...

- 3.07 (A) The union representatives referred to in article 3, or such persons as the Union delegate, after obtaining leave from their manager or from the person acting in lieu of their manager, which leave shall not be denied except with major justification, may be absent from their work in order to take part in an official union activity, including but not limited to
- (a) conventions,
 - (b) educational meetings, and
 - (c) courses organized by the Union or any body with which the Union is affiliated.
- B) The employee must provide one week's notice. It is understood that a maximum of four (4) employees can be absent at the same time for the purposes of this paragraph. It is further agreed that the Employer shall pay the absent representatives their full salary and benefits.
- C) The Employer shall bill the Union for all amounts incurred to maintain salaries and benefits, and the Union shall reimburse these amounts.

[Emphasis added.]

[20] Ms. Côté was the only elected CC Côte-Nord official who testified. She explained that its territory extends from Tadoussac to Blanc-Sablon and that it has two offices: one in Baie-Comeau and the other in Sept-Îles. The distance between those towns is 250 km. Ms. Côté lives in Sept-Îles and is the treasurer of CC Côte-Nord. She works 35 hours per week at the Youth Centre, Monday to Friday from 8:30 a.m. to 4:30 p.m. She estimates that she is on union leave two days a week, on average.

[21] Ms. Côté confirmed that she has a child born in 1996, and that she lived alone during the relevant period. She confirmed that she was entitled to the child care allowance when she had to incur child care expenses in order to attend evening assemblies, but not for periods during which she normally had to bear such expenses herself, that is to say, during regular office hours. The only amounts that the auditor taxed in her hands are expenses, totalling \$60, which were incurred when she was in Sept-Îles. She confirmed that these expenses were related to evening meetings.

[22] The other CC Côte-Nord officials are Gilles Belzile, its president, who lived in Baie-Comeau during the relevant period and was an employee of the Commission scolaire de l'Estuaire; Alain Therrien, the executive secretary, who lived in Baie-Comeau and was an employee of Centre hospitalier régional de Baie-Comeau; Valois Pelletier, vice-president, Western Sector, who lived in Baie-Comeau as well and was an employee of the Alcoa aluminum smelter; Dany Vigneault, vice-president, Eastern Sector, who lived in Port Cartier and was an employee of that municipality; and Réjeanne Gravel, a CC Côte-Nord representative employed by Centre hospitalier régional de Sept-Îles.⁸

[23] The CC Côte-Nord expense reimbursement policy is essentially the same as the CC Saguenay's. The main differences are as follows. Breakfasts are reimbursed if the meeting begins at 8:00 as opposed to 8:30 a.m. For lunches, the meeting does not need to last all day; it is sufficient that it begin in the morning and extend into the afternoon, or, if it ends in the morning, that the distance travelled exceed 100 km. The travel and expense reimbursement policy and the salary reimbursement policy, set out at pages 4 to 7 of Exhibit I-2, tab 22, is reproduced below:

[TRANSLATION]

TRAVEL REIMBURSEMENT POLICY

THE REIMBURSEMENT OF PUBLIC TRANSIT COSTS REMAINS THE GUIDING PRINCIPLE. THE UNAVAILABILITY OR INEFFICIENCY OF PUBLIC TRANSIT MAY WARRANT A CLAIM BASED ON DISTANCE DRIVEN.

HOWEVER, THE USE OF AN AUTOMOBILE MUST NOT HAVE THE EFFECT OF ALLOWING A PERSON TO CLAIM MORE EXPENSES OR WAGES THAN THE PERSON WOULD HAVE BEEN ENTITLED TO RECEIVE IF THE PERSON HAD USED PUBLIC TRANSIT.

1. The cost of public transit, reserved seven days in advance, may be claimed as a travel expense where it has actually been incurred. The bus, train, ferry or plane ticket and boarding pass must be provided.
2. A person who actually uses his or her vehicle is entitled to a travel expense reimbursement of \$0.416 per kilometre.
3. The number of kilometres for the trip is calculated based on the distance between the person's home and the meeting place.

⁸ The document at tab 21 of Exhibit I-2 states that Ms. Gravel resides in St-Hubert. I presume that she left the Sept-Îles area at some point after the relevant period.

4. Taxi expenses from the airport or station to the location of the overnight accommodations or the meeting, upon submission of receipts.
5. Travel expenses based on the distance between the person's home and the airport or station, as the case may be, are reimbursed.

...

EXPENSE REIMBURSEMENT POLICY

OVERNIGHT ACCOMMODATIONS

Overnight accommodation expenses that have been incurred are eligible for reimbursement in accordance with the Confederation's scale if

1. the meeting continues the following day and more than 100 KM must be travelled to return home from the meeting place;
2. the meeting begins the following morning and more than 200 KM must be travelled to reach the meeting place;
3. the overnight accommodation expenses for the last day of a meeting are eligible for reimbursement if the meeting ends after 9 p.m. and more than 200 KM must be travelled to return home from the meeting place;
4. the overnight accommodation expenses for the last day of a meeting are eligible for reimbursement if more than 300 KM must be travelled to return home from the meeting place and the meeting ends after 5:30 p.m.

EXPENSE REIMBURSEMENT POLICY

CHILD CARE EXPENSES

| | 1 CHILD | 2 CHILDREN | 3 CHILDREN |
|----------------------|---------|------------|------------|
| MORNING | 10.00 | 15.00 | 20.00 |
| AFTERNOON | 10.00 | 15.00 | 20.00 |
| EVENING – 7 PM | 15.00 | 20.00 | 25.00 |
| NIGHT– PAST MIDNIGHT | 20.00 | 30.00 | 40.00 |

1. Child care expenses are eligible for reimbursement if they were incurred and paid for by a person who has children 16 years of age or younger, or children under 18 who are physically or mentally disabled and require child care service.

2. A person is entitled to claim child care expenses only for additional costs incurred outside his or her normal hours of work, and only where no salary is being claimed.
3. Child care expenses are reimbursed to only one of the parents or spouses where both are attending meetings during the same periods. The reimbursement must not be used as remuneration for the parent or spouse.

SALARY REIMBURSEMENT POLICY

1. Confederation office and committee members are reimbursed as follows for wages actually lost:
 - (a) Where the organization bills the CSN, the organization must, upon CSN's request, provide all supporting documents with respect to its claim (Confederation office and council).
 - (b) A Confederation committee member claiming the reimbursement must attach, to the claim, a confirmation of the genuinely incurred loss of income or job recall, a copy of the application for union leave, a copy of the pay stub for the period in question, and a confirmation of place of residence.
2. Wages actually lost are wages that the person required to be at work would receive if at work, including any benefits and bonuses and any tips that are ordinarily declared.
3. Any person who is retired, or on sick leave, worker's compensation, wage-loss insurance, unemployment insurance, paid leave or a private or public compensation plan, is considered to be on authorized leave and is consequently ineligible for wage reimbursement.
4. Overtime shall not be reimbursed under any circumstances, except where it is mandatory overtime under the collective agreement and is part of the regular schedule. A copy of the provision of the collective agreement must be provided in support of the claim.
5. Wage reimbursements for transportation time shall not exceed the amounts contemplated in the travel expense reimbursement policy.
6. The CSN shall reimburse the wages of one delegate from the Confederation office per organization, and the wages of the organization's *ex officio* delegate to the Confederation board.

[Emphasis added.]

[24] The collective agreement between the Comité patronal de négociation pour les commissions scolaires francophones [French-language school board employer-side negotiation committee] and the Fédération des employées et employés de services publics Inc. [federation of public utilities employees], acting on behalf of the syndicats d'employés et d'employées de soutien des commissions scolaires francophones du Québec [unions of Quebec French-language school board support workers] provides as follows (Exhibit I-2, tab 30, at page 15):

[TRANSLATION]

3-3.01 At the union's written request, submitted at least fifteen (15) days in advance, the Board shall grant an employee leave for full-time union activities for an uninterrupted period of one (1) to twelve (12) months, which shall be renewable under the same procedure.

At the written request of a union, submitted at least fifteen (15) days in advance, the Board shall grant an employee full-time leave without pay for union activities for an uninterrupted period of one (1) to twelve (12) months, which shall be renewable under the same procedure. In such cases, section 5-10.00 will apply, except with respect to seniority.

With the consent of the Board, and in accordance with the same terms and conditions, union leave or leave without pay under this clause may be part-time.

...

3-3.03 An employee to whom leave shall have been granted under clause 3-3.01 keeps his or her salary (including any applicable bonuses) and fringe benefits, and his or her rights and privileges under the collective agreement.

3-3.04 For union leave granted under the first paragraph of clause 3-3.01, the union, will reimburse the Board on a quarterly basis for any amount paid to the person, and any amount paid by the Board for and on behalf of the employee concerned. This shall be done within thirty (30) days after the Board submits a statement of account in that regard.

In the case of part-time union leave contemplated in clause 3-3.01, the Board and the union shall agree on the amount to be reimbursed.

[Emphasis added.]

[25] The collective agreement between, on the employer side, the Comité patronal de négociation du secteur de la santé et des services sociaux and Sous-comité patronal de négociation des centres de protection de l'enfance et de la jeunesse [the health and social services sector bargaining committee and the child and youth protection centres bargaining committee] and, on the union side, the Fédération de la santé et des services sociaux (CSN) [health and social services federation (CSN)] contains a clause similar to the one in the hospitals' collective agreement.⁹

[26] Paragraph 4.07(b) of the collective agreement between the town of Port-Cartier and the Syndicat national des employés municipaux de la Ville de Port-Cartier provides (see Exhibit I-2, tab 34, at page 5):

[TRANSLATION]

4.07 Other union activities

...

(b) Upon written request submitted by the Union or its representative ten (10) days in advance, the executive secretary or the executive

⁹ Exhibit I-2, tab 31, clause 9.03, page 1.9.1. Paragraphs 17.05 and 17.08 of the collective agreement with Canadian Reynolds Metals Co. Ltd. (Exhibit I-2, tab 33) provides as follows:

[TRANSLATION]

17.05 Union stewards and officials must obtain the permission of the Labour Relations Section before taking leave without pay from the plant in order to take part in Union activities directly related to the plant, or meetings of organizations affiliated with the Union. If possible, the request must be submitted during regular office hours of the Labour Relations Section, forty-eight (48) hours in advance, but in no event less than sixteen (16) hours in advance. Such permission shall not be denied, except for urgent cause.

17.08 The Employer shall maintain the salary of any Union official who is on leave from the plant, as though the official were at work. At the end of each month, the Employer shall claim from the Union the salary paid to each union official who was absent from work, plus 30% to cover fringe benefits.

[Emphasis added.]

secretary's representative shall authorize no more than two stewards to take leave not exceeding thirty (30) days in duration for any union activities. Such leave is contingent on the employer finding a replacement.

The Town shall maintain the employee's regular salary during these days of absence. The Union shall reimburse the said salary to the Town with thirty (30) days after the Town submits a statement of account to that effect.

[Emphasis added.]

[27] In her testimony, Ms. Côté confirmed that CC Côte-Nord covers lunches with a meal allowance when the executives from its two offices meet on the noon hour at either of those offices. The same policy applies to evening meetings.

[28] The financial statements for the 36-month fiscal period from January 1, 2001, to December 31, 2003, report \$54,436 in expenses related to the position of the president of CC Côte-Nord, and breaks this down into \$37,986 in union-leave salary for the president and \$14,468 in union-leave expenses for the president. Similar amounts are stated for the positions of treasurer and secretary and those of the various vice-presidents (see Exhibit I-2, tab 25).

[29] In the course of her audit, the Minister's auditor suggested to Mr. Gingras that he could have moved to Chicoutimi in order to prevent the allowances for travel from his residence to the Chicoutimi office, and for meals in Chicoutimi, from being included in his income as taxable benefits. Mr. Gingras dismissed this suggestion, reminding the auditor that he had a wife and children who lived in Roberval and that his three-year term as treasurer was not renewable.

[30] According to Mr. Gingras, the Minister's assessment had a chilling effect on union member activism. He said that the assessment not only caused significant allowances, received by elected union officials for expenses incurred during travel between their homes and the main central councils, to become taxable, but that it also caused certain active union members to become ineligible for GST and QST credits, and that, in his own case, it caused his wife to lose her entitlement to family allowances. When I asked Mr. Gingras whether the central councils had considered increasing the remuneration of elected executives, he responded that this was an issue of affordability.

[31] During her testimony, the auditor said that she had determined that the elected union officials were entitled to meal, travel and child care allowances and that they

received remuneration. She did not base her decision on the fact that CC Côte-Nord and CC Saguenay reimbursed the employers for the elected officials' salaries. She confirmed that she excluded from the taxable benefits the amounts reimbursed upon submission of invoices or bills for expenses like office supplies, which she considered to be central council expenses. In her determination, the taxable allowances were limited to those intended to cover the elected officials' travel between their homes and the offices to which they were supposed to report, i.e., the Chicoutimi office for CC Saguenay elected officials, and the Baie-Comeau or Sept-Îles office for CC Côte-Nord elected officials. Thus, she determined that the allowances for Ms. Côté's travel from her Sept-Îles home to Baie-Comeau were not taxable benefits. The only meal allowances included in the incomes were the meals eaten when the elected officials were at the various central council offices. The auditor also confirmed that she did not ask to see Mr. Gingras' restaurant bills.

Analysis

The relevant statutory provisions

[32] The relevant statutory provisions are as follows:

ITA

Income from office or employment

5(1) Subject to this Part, a taxpayer's income for a taxation year from an office or employment is the salary, wages and other remuneration, including gratuities, received by the taxpayer in the year.

Amounts to be included as income from office or employment

6. (1) There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable

- (a) the value of board, lodging and other benefits of any kind whatever received or enjoyed by the taxpayer in the year in respect of, in the course of, or by virtue of an office or employment, except any benefit

...

Personal or living expenses

(b) all amounts received by the taxpayer in the year as an allowance for personal or living expenses or as an allowance for any other purpose, except

...

Director's or other fees

(c) director's or other fees received by the taxpayer in the year in respect of, in the course of, or by virtue of an office or employment;

Definitions

248. (1) In this Act,

"office" means the position of an individual entitling the individual to a fixed or ascertainable stipend or remuneration and includes a judicial office, the office of a minister of the Crown, the office of a member of the Senate or House of Commons of Canada, a member of a legislative assembly or a member of a legislative or executive council and any other office, the incumbent of which is elected by popular vote or is elected or appointed in a representative capacity and also includes the position of a corporation director, and "officer" means a person holding such an office;

EIA

Types of insurable employment

5. (1) Subject to subsection (2), insurable employment includes

(a) employment in Canada by one or more employers, under any express or implied contract of service or apprenticeship, written or oral, whether the earnings of the employed person are received from the employer or some other person and whether the earnings are calculated by time or by the piece, or partly by time and partly by the piece, or otherwise;

...

(d) employment included by regulations made under subsection (4) or (5); and

Employee's premium

67. Subject to section 70, a person employed in insurable employment shall pay, by deduction as provided in subsection 82(1), a premium equal to their insurable earnings multiplied by the premium rate set under section 66 or 66.3, as the case may be.

Employer's premium

68. Subject to sections 69 and 70, an employer shall pay a premium equal to 1.4 times the employees' premiums that the employer is required to deduct under subsection 82(1).

Deduction and payment of premiums

82. (1) Every employer paying remuneration to a person they employ in insurable employment shall

(a) deduct the prescribed amount from the remuneration as or on account of the employee's premium payable by that insured person under section 67 for any period for which the remuneration is paid; and

(b) remit the amount, together with the employer's premium payable by the employer under section 68 for that period, to the Receiver General at the prescribed time and in the prescribed manner.

Assessment

85. (1) The Minister may assess an employer for an amount payable by the employer under this Act, or may reassess the employer or make such additional assessments as the circumstances require, and the expression "assessment" when used in this Act with reference to any action so taken by the Minister under this section includes a reassessment or an additional assessment.

Notice of assessment and liability of employer

(2) After assessing an employer for an amount payable under this Act, the Minister shall send the employer a notice of assessment, and when the notice is sent the assessment is valid and binding subject to being vacated or varied on appeal under this Act, and the employer is liable to pay the amount to Her Majesty without delay.

...

EIR

6. Employment in any of the following employments, unless it is excluded from insurable employment by any provision of these Regulations, is included in insurable employment:

...

(f) employment of a person who holds an office, as defined in subsection 2(1) of the *Canada Pension Plan*,

...

(iv) where the person holds the office in a union or an association of unions to which the person was elected by popular vote, or was elected or appointed to that office in the union or association in a representative capacity, and that employment is not included in insurable employment by paragraph (a);

Insurable Earnings and Collection of Premiums Regulations (IER)

2. (1) For the purposes of the definition "insurable earnings" in subsection 2(1) of the Act and for the purposes of these Regulations, the total amount of earnings that an insured person has from insurable employment is

(a) the total of all amounts, whether wholly or partly pecuniary, received or enjoyed by the insured person that are paid to the person by the person's employer in respect of that employment, and

(b) the amount of any gratuities that the insured person is required to declare to the person's employer under provincial legislation.

10. (1) Where, in any case not coming within any other provision of these Regulations, an insured person works

(a) under the general control or direct supervision of, or is paid by, a person other than the insured person's actual employer,

(b) with the concurrence of a person other than the insured person's actual employer, on premises or property with respect to which that other person has any rights or privileges under a licence, permit or agreement,

that other person shall, for the purposes of maintaining records, calculating the insurable earnings of the insured person and paying, deducting and remitting the premiums payable on those insurable earnings under the Act and these Regulations, be deemed to be the employer of the insured person in addition to the actual employer.

(2) The amount of any employer's premium paid by the person who is deemed to be the employer under subsection (1) is recoverable by that person from the actual employer.

(3) Where a person who is deemed under these Regulations to be an employer of an insured person fails to pay, deduct or remit the premiums that an employer is required to pay, deduct or remit under the Act or these Regulations, the provisions of Parts IV and VI of the Act shall apply to the person as if the person were the actual employer.

CPP

2. (1) In this Act,

"office" means the position of an individual entitling him to a fixed or ascertainable stipend or remuneration and includes a judicial office, the office of a minister of the Crown, the office of a lieutenant governor, the office of a member of the Senate or House of Commons, a member of a legislative assembly or a member of a legislative or executive council and any other office the incumbent of which is elected by popular vote or is elected or appointed in a representative capacity, and also includes the position of a corporation director . . .

[Emphasis added.]

The Respondent's Position

[33] In her oral submissions, counsel for the Respondent acknowledged that the elected officials did not hold any employment with the various central councils: there was no employment contract between those officials and the central councils because there was no relationship of subordination. However, in her opinion, the elected officials held an office within the meaning of subsection 248(1) of the ITA and subsection 2(1) of the CPP. The amounts reimbursed by the central committees were a "fixed or ascertainable stipend or remuneration" within the meaning of subsection 248(1) and subsection 2(1) of the CPP. In addition, in her opinion, these offices entitled their holders to such remuneration because there were collective agreements which stipulated that the officials would continue to receive their remuneration from their respective employers and that the central committees had to reimburse the local unions, and the local unions had to reimburse the employers. It was the CSN unions that negotiated such collective agreements. In support of her arguments, she cited the opinion of Justice Louise Lamerre Proulx in

Duguay v. Canada, [2000] T.C.J. No. 381 (QL). In particular, she quoted paragraph 37:

There is, however, no doubt that, as president and treasurer, the appellants performed the duties of an office. The only unusual aspect of this case lies in the method of paying the stipend or remuneration for the office held. The appellants were reimbursed for their lost working days. The effect of the compensatory payments was thus that the treasurer was reimbursed for a greater amount than the president. Should these compensatory payments be considered as a fixed or ascertainable stipend or remuneration? There does not seem to be any case law on all fours with the circumstances of this case. However, the case law is clear in establishing that the meaning to be given to the terms "stipend" and "remuneration" is very broad, and any payment received by reason of an office or employment must be included within that meaning. I refer in particular to the decisions of the Supreme Court of Canada in *Goldman v. M.N.R.*, [1953] C.T.C. 95 and *The Queen v. Savage*, [1983] 2 S.C.R. 428. The appropriate test for whether a payment is remuneration or a stipend is to determine whether the person received the payment for his activities in the performance of his office or whether he received it simply as an individual. The answer in this case is obvious. What is involved here is not reimbursement for expenses incurred by the appellants. Reimbursement of those expenses did not confer an economic benefit on the appellants and was not to be included in computing their income. Nor did the Minister include it, as appears from the Reply. See, in this regard, *Ransom v. M.N.R.*, [1968] 1 Ex. C.R. 293, *Canada v. Huffman*, [1990] F.C.J. No. 529 and *Canada v. Hoefele*, [1995] F.C.J. No. 1340. In conclusion, the fact that the stipend was paid on the basis of the remuneration lost for a day of work does not preclude that stipend from being a fixed or ascertainable stipend paid by reason of the office and accordingly taxable under subsection 5(1) of the *Act*.

[Emphasis added.]

[34] Counsel for the Respondent also cited the Federal Court of Appeal's decision in *Daniels v. Canada (Attorney General)*, [2004] F.C.J. No. 573 (QL), 2004 FCA 125, which affirmed the decision of Justice Paris of this Court. The taxpayer in *Daniels* was a municipal councillor whose county gave him mileage allowances for travel from his home office to council meetings. Justice Paris confirmed the Minister's assessment, which included these amounts in the councillor's income as allowances under paragraph 6(1)(b) of the ITA. The Minister had excluded all the allowances received in respect of expenses incurred in the performance of the taxpayer's other responsibilities as municipal councillor. The Federal Court of Appeal dismissed the taxpayer's appeal. The Court ruled that the amounts that the auditor included in the taxpayer's income as taxable benefits should be confirmed because the expenses were personal.

[35] Furthermore, in the case at bar, counsel for the Respondent submits that the amounts paid by the central councils come within the definition of "insurable earnings" in subsection 2(1) of the IER in particular.

The Appellants' Position

[36] According to counsel for the Appellants, the issue for determination in the case at bar is whether, for the purposes of the ITA, the officials held an office within the meaning of subsection 248(1) of the ITA, and whether, for the purposes of the EIA, they held an office within the meaning of subsection 2(1) of the CPP. Given the large number of elected union officials (14) who instituted appeals, counsel for the Appellants and counsel for the Respondent decided not to argue the issue of the amount to be included in each official's income as a taxable benefit. Consequently, the question of whether the 14 officials received a taxable benefit within the meaning of paragraphs 6(1)(a) and 6(1)(b) of the ITA was not disputed because its resolution would have involved the analysis of the individual circumstances of each official. Thus, if the elected officials held an office for the purpose of the relevant statutes, all the Appellants' appeals should be dismissed. However, if I determine that the elected officials held no office for the purpose of those statutes, all their appeals must be allowed because an element essential to the application of all the relevant provisions, that is to say, the existence of an office, would be lacking.

[37] In his arguments, counsel for the Appellants pointed out that each of the elected union officials was employed under a contract of employment with an employer; for example, Mr. Gingras had a contract with Hôpital de Roberval, Ms. Côté with the Youth Centre, and Mr. Morel with Provigo. In addition to the employment contract, there are terms and conditions of the collective agreements negotiated between the employers and the unions representing the officials. In those collective agreements, the employers made a commitment to pay remuneration equal to the salaries, or simply to maintain the salaries, of the elected officials who obtained union leave for the purpose of holding a position on a central council.

[38] The parties agree that all 14 officials were elected to a post at their central council's convention, and provided services to a central council while they received their remuneration or salary under the terms of collective agreements. However, in these same collective agreements, the local unions agreed to reimburse the employers

for the salaries the officials were paid in respect of the periods when they were rendering services to the central councils.¹⁰

[39] Counsel for the Appellants submits as follows. There is no contract between the central councils and the elected union officials under which the officials are entitled to remuneration for holding an office on a central council. Moreover, none of the provisions of the CC Saguenay constitution and by-laws (Exhibit I-1, tab 34) or the CC Côte-Nord constitution and by-laws (Exhibit I-2, tab 23) grants a right to remuneration in exchange for the elected officials carrying out their duties on a central council. The obligation to repay the salaries is solely between the central councils and the locals, and it is the locals which, under the collective agreements, must repay the salaries of officials who are on leave for union business. Consequently, the elected officials are not entitled to any salary reimbursements, because they receive their salaries from their respective employers. The only amounts that the officials are entitled to receive from their central councils are the allowances which are intended to compensate them for travel in the course of their union duties, and which cover meal, transportation and child care expenses. Counsel for the Appellants submits that these allowances cannot possibly be characterized as hidden remuneration. He submits that the only correct approach is the one described by Madam Justice McLachlin of the Supreme Court of Canada in *Shell Canada Ltd. v. Canada*, [1999] 3 S.C.R. 622, 1999 CarswellNet 1809, [1999] 4 C.T.C. 313, 99 DTC 5669 (Eng.). In particular, he quotes the following remarks by Madam Justice McLachlin, at paragraph 39:

39 This Court has repeatedly held that courts must be sensitive to the economic realities of a particular transaction, rather than being bound to what first appears to be its legal form: *Bronfman Trust, supra*, at pp. 52-53, *per* Dickson C.J.; *Tennant, supra*, at para. 26, *per* Iacobucci J. But there are at least two caveats to this rule. First, this Court has never held that the economic realities of a situation can be used to recharacterize a taxpayer's *bona fide* legal relationships. To the contrary, we have held that, absent a specific provision of the Act to the contrary or a finding that they are a sham, the taxpayer's legal relationships must be respected in tax cases. Recharacterization is only permissible if the label attached by the taxpayer to the particular transaction does not properly reflect its actual legal effect: *Continental Bank Leasing Corp. v. Canada*, [1998] 2 S.C.R. 298, at para. 21, *per* Bastarache J.

¹⁰ This can be seen from the scales, notably the CC Saguenay scale (Exhibit I-1, tab 34, page 4) and the CC Côte-Nord scale (Exhibit I-2, tab 22).

[Emphasis added.]

[40] In the submission of counsel, it would be inappropriate to recharacterize a genuine legal relationship by saying that the central councils support the salaries that the officials are paid and that the officials' remuneration is therefore an entitlement stemming from their acceptance of a position on a central council. Counsel also cited *Ransom v. Minister of National Revenue*, 1967 CarswellNet 296, [1967] C.T.C. 346, 67 DTC 5235, where Justice Noël of the Exchequer Court of Canada made the following comments, at paragraph 42:

. . . Secondly, the question whether a payment arises from an office or employment depends on its causative relationship to an office or employment, in other words, whether the services in the employment are the effective cause of the payment. I should add here that the question of what was the effective cause of the payment is to be found in the legal source of the payment, and here this source was the agreement which resulted from the open offer of the employer to compensate its employee for his loss and the acceptance by him of such offer. The cause of the payment is not the services rendered, although such services are the occasion of the payment, but the fact that because of the manner in which the services must be rendered or will be rendered, he will incur or have to incur a loss which other employees paying taxes do not have to suffer.

[Emphasis added.]

[41] Counsel for the Appellants submits that, in the case at bar, the cause of the payment is the employment contracts and collective agreements under which the employer, not the local unions or central councils, must pay the salary. Some say that in order for there to be a sham, taxpayers must have done something to mislead the tax authorities as to the taxpayers' true legal relationships; they must have created an appearance that is inconsistent with reality. In the case at bar, none of the evidence points to a sham, and counsel for the Respondent did not claim that there was one either.

[42] Consequently, counsel for the Appellants emphasizes that the only source of the remuneration that the union officials are paid is their respective employers, not the central councils. He referred, among other things, to the central council policy, set out at tab 22 of Exhibit I-2, which expressly stipulates that the union officials are not entitled to any salary reimbursement if they are retired, on sick leave, etc. In his submission, the services that the officials provide to the central councils are a type of volunteer work. In addition, as counsel for the Respondent stated, even though clause 9.03 of the collective agreement with the Fédération de la santé et des services sociaux stipulates that stewards can be on leave without pay for union activities while receiving remuneration equal to what they would receive if they were at work, they are considered, under clause 1.01, to be employees (see Exhibit I-1, tab 36, page 1.1.1). Indeed, the word [TRANSLATION] "employee" is defined as follows:

1.01 Employee

"Employee" means any person who is a member of the bargaining unit and works for the employer in exchange for remuneration. This term also includes union officers on union leave as contemplated in section 9 of this Agreement.

[Emphasis added.]

[43] In addition, there is every reason to believe that the elected officials' employers produced T4s that reflected the fact that they paid remuneration to each official on union leave. The amounts that the officials received from these employers were declared; in fact, this is shown by tabs 1, 2 and 3 of Exhibit I-1, which pertain to Mr. Gingras' 2002, 2003 and 2004 taxation years.

[44] Since counsel for the Respondent emphasized *Duguay*, counsel for the Appellants submitted that the judge in *Duguay* was motivated by tax fairness considerations because the CSN union paid Mr. Duguay [TRANSLATION] "compensation for the loss of the salary that his regular employer had not paid him." He cited, *inter alia*, paragraph 27 of the decision:

27 Marcel Martin was one of the appellants in the judgment of this Court in *Denis Comptois et al. v. Her Majesty the Queen*, [1998] T.C.J. No. 232. He explained that union members wanted to have union leave regularized because employees who did not receive it considered it unfair that those who did get it received their gross wages untaxed. Moreover, in their opinion, those amounts should be subject to tax just as their income from employment was. This is the reason for the repeated calls to regularize the payment of union leave.

[Emphasis added.]

[45] In counsel's submission, the ruling made by the judge at paragraph 37¹¹ took this fiscal unfairness into account. However, a distinction should be drawn with respect to the reasons in *Duguay* because, first of all, the judge could have held that the amounts should have been taxed under the principles of *Tsiaprailis v. Canada*, [2005] 1 S.C.R. 113, 2005 DTC 5119 (Eng.), at paragraph 7, where Madam Justice Charron wrote:

In my view, this conclusion runs counter to the principle that awards of damages and settlement payments are inherently neutral for tax purposes. My colleague takes no issue with this principle. As she explains, in assessing whether the monies will be taxable, we must look to the nature and purpose of the payment to determine what it is intended to replace. The inquiry is a factual one. The tax consequences of the damage or settlement payment is then determined according to this characterization. In other words, the tax treatment of the item will depend on what the amount is intended to replace. This approach is known as the *surrogatum* principle. As noted by Abella J., it was defined in *London and Thames Haven Oil Wharves, Ltd. v. Attwooll*, [1967] 2 All E.R. 124 (C.A.), and subsequently adopted in a number of Canadian cases: see P. W. Hogg, J. E. Magee and J. Li, *Principles of Canadian Income Tax Law* (4th ed. 2002), at pp. 91-93; and V. Krishna, *The Fundamentals of Canadian Income Tax* (8th ed. 2004), at pp. 413-15.

[Emphasis added.]

¹¹ Reproduced *supra*.

[46] Counsel for the Appellants submits that the allowance that Mr. Duguay was paid sought to compensate him for the loss of salary that he incurred because his employer granted him leave without pay for union activities, and the amount paid by his union under those circumstances sought to replace the income that he would have earned if he had not been granted leave for union activities. In the alternative, counsel notes that the decision of Justice Lamarre Proulx was rendered before the decision of the Supreme Court of Canada in *Canada v. Fries*, [1990] 2 S.C.R. 1322, [1990] 2 C.T.C. 439. There, the Supreme Court held that strike pay does not constitute income within the meaning of section 3 of the ITA. In its very brief decision to that effect, the Court reversed the decision of the Federal Court of Appeal, which had confirmed the Tax Review Board's decision that such an allowance constituted income within the meaning of section 3 (see *Canada v. Fries*, [1989] 3 F.C. 362, [1989] 1 C.T.C. 471, 89 DTC 5240). According to counsel for the Appellants, the approach adopted by the Supreme Court of Canada applies to the reimbursement of salary by Mr. Gingras' union. Consequently, he submits that *Duguay* is not to be followed in the case at bar.

[47] Lastly, counsel for the Appellants cited the decision in *Payette v. Minister of National Revenue*, 2002 CarswellNat 1983, where Judge Dussault compared the wording of the definition of "office" (*charge*) in subsection 2(1) of the CPP with the definition of "office" (*charge*) in subsection 248(1) of the ITA, and concluded that even though there is a slight difference between the terms that each of the French versions uses to characterize the remuneration, the English versions are identical in that regard because they both provide for "a fixed or ascertainable stipend or remuneration". I will reproduce the definitions again, but in both languages:

Subsection 248(1) ITA

"office" means the position of an individual entitling the individual to a fixed or ascertainable stipend or remuneration and includes a judicial office, the office of a minister of the Crown, the office of a member of the Senate or House of Commons of Canada, a member of a legislative assembly or a member of a legislative or executive council and any other office, the incumbent of which is elected by popular vote or is elected or appointed in a representative capacity and also includes the position of a corporation director, and "officer" means a person holding such an office;

French version

« **charge** » Poste qu'occupe un particulier et qui lui donne droit à un traitement ou à une rémunération fixes ou vérifiables, y compris une **charge** judiciaire, la **charge** de ministre de la Couronne, la **charge** de membre du Sénat ou de la Chambre des communes du Canada, de membre d'une assemblée législative ou de membre d'un conseil législatif ou exécutif et toute autre **charge** dont le titulaire est élu au suffrage universel ou bien choisi ou nommé à titre représentatif, et comprend aussi le poste d'administrateur de société; « fonctionnaire » ou « cadre » s'entend de la personne qui détient une **charge** de ce genre, y compris un conseiller municipal et un commissaire d'école;

[Emphasis added.]

Subsection 2(1) CPP

"office" means the position of an individual entitling him to a fixed or ascertainable stipend or remuneration and includes a judicial office, the office of a minister of the Crown, the office of a lieutenant governor, the office of a member of the Senate or House of Commons, a member of a legislative assembly or a member of a legislative or executive council and any other office the incumbent of which is elected by popular vote or is elected or appointed in a representative capacity, and also includes the position of a corporation director, and "officer" means a person holding such an office;

French version

« **fonction** » ou « **charge** » Le poste qu'occupe un particulier, lui donnant droit à un traitement ou à une rémunération déterminée ou constatable. Sont visés par la présente définition une charge judiciaire, la charge de ministre, de lieutenant-gouverneur, de membre du Sénat ou de la Chambre des communes, de membre d'une assemblée législative ou d'un conseil législatif ou exécutif et toute autre charge dont le titulaire est élu par vote populaire ou est élu ou nommé à titre de représentant, y compris le poste d'administrateur de personne morale; « fonctionnaire » s'entend d'une personne détenant une telle fonction ou charge.

[Emphasis added.]

[48] Another aspect of *Payette* that counsel for the Appellants stressed is found in the following excerpt:

24 However, in commenting on the decision in *Guérin (supra)*, Reed J. appears to assume that in that case the remuneration was not ascertainable mainly because of the expenses the appellant was obliged to incur. The Court does not agree with that position. The words "stipend" and "remuneration" mean gross income, not income net of expenses. This is clear from the wording of subsection 5(1) of the *Income Tax Act*. As well, the Court considers that the descriptor "ascertainable" must refer to something that can be ascertained *a priori*; otherwise it would have no meaning since everything can be ascertained *a posteriori*. Thus if the "stipend" or "remuneration" is not fixed, it must still be ascertainable in advance with at least some degree of accuracy by using some formula or by referring to certain set factors. The Court considers that this is the meaning of the decisions in *Guérin* and *MacKeen (supra)*.

[Emphasis added.]

[49] Lastly, counsel for the Appellants argued that if the Court has the slightest doubt, the benefit of that doubt must go to the taxpayers, as Mr. Justice Sopinka stated in *Fries*:

We are not satisfied that the payments by way of strike pay in this case come within the definition of "income . . . from a source" within the meaning of s. 3 of the *Income Tax Act*, S.C. 1970-71-72, c. 63. In these circumstances the benefit of the doubt must go to the taxpayers. The appeal is therefore allowed and the decision of the Tax Review Board is restored. The appellant is to have his costs throughout.

[Emphasis added.]

Decision

[50] In my opinion, the Appellant's position with respect to the interpretation of the different definitions of "office" set out in subsection 248(1) of the ITA and subsection 2(1) of the CPP is the correct one. Indeed, in order for the officials to hold an office within the meaning of the two provisions, it is important that their position entitle them to a "fixed and ascertainable stipend or remuneration". Here, the evidence as a whole clearly shows that the CSN central council policy is not to remunerate union officials who agree to serve in various elective positions on central councils. Being committed union activists, the members agree to engage in the CSN's various activities as volunteers, notably in their capacity as elected union officials on central councils.

[51] On the other hand, the central councils' policy is to take all measures necessary to ensure that the activists incur no losses from their work with the various organs that make up the CSN's large family. If an official or representative is on leave without pay for the period during which he or she has participated in union activities, the central councils will reimburse his or her salary loss. This accounts for why a mere representative elected to the central council, who holds a paid position at a university and earns, say, \$100,000, could receive more money for his union activities than the central council's president, who might earn only a \$50,000 salary from his usual employment. Thus, the objective that the central councils are pursuing is not to remunerate their executives, but to compensate them for their loss of salary.

[52] Travel expenses associated with union activities are regarded the same way. For example, Mr. Gingras, who lives in Roberval and normally works at Hôpital de Roberval, must be compensated for his travel, not only when he goes to Montréal or Québec for union meetings or demonstrations, but also when he travels to the CC Saguenay office in Chicoutimi. If Mr. Gingras had not agreed to work as a treasurer at CC Saguenay, and to do so practically full-time during the relevant period, he would not have had to incur travel expenses. Indeed, he lives close enough to the hospital, his usual workplace, to get there on foot; in fact, he is able to return home to eat his lunches. By contrast, when he goes to the CC Saguenay office in Chicoutimi, he must use his own car and incur expenses that he would not have incurred if he had not agreed to volunteer for the union. Since he travels outside the municipality where Hôpital de Roberval, his employer's institution and his workplace is located, the fact that CC Saguenay reimburses his travel and meal expenses under such circumstances is to be expected.

[53] It should also be recalled that Mr. Gingras must obtain the hospital's authorization each week in order to be available for his union activities as CC Saguenay treasurer; consequently, there is a chance that such permission will be denied, as has happened in the past, albeit rarely. Moreover, it should be recalled that Mr. Gingras is elected for a three-year term and that it is therefore uncertain that the term will be renewed. Given these circumstances, it is normal for a volunteer union official to be compensated for expenses of the kinds in issue, including child care expenses. Such compensation is not a remuneration or stipend, but, rather, the reimbursement of a financial loss resulting from union volunteer work. The same finding must be made with respect to the other elected union officials.

[54] I agree with counsel for the Appellants that the legal source of the remuneration received by the various union officials is their respective employment contracts, combined with the terms and conditions of their collective agreements, even though their respective employers are reimbursed an amount equal to the applicable salary and fringe benefit costs for the periods of absence on union leave. Consequently, the union officials are not entitled, under any contractual relationship or any central council constitution or by-laws, to a fixed or ascertainable stipend or remuneration under subsection 248(1) of the ITA or subsection 2(1) of the CPP.

[55] Although it is unnecessary to decide the question here, I lean toward the position of counsel for the Appellants that if the elected officials had not received their salary from their employers under their employment contracts, the compensation for their loss of salary while on union leave might constitute income from employment in their hands because it would then be serving to replace the salary that they would ordinarily have earned under a contract of employment between themselves and their employers. This interpretation has this advantage that it makes taxable, as income from employment (not income from an office), the remuneration that replaces the remuneration that the union official would have earned if he or she had not been granted leave for union business, regardless of whether the employer paid the remuneration to the employee under the employment contract or whether the amount is compensation for a loss of salary paid directly to the union official by the unions in situations where the employer has granted the official leave without pay for union business.

[56] In my view, this interpretation is consistent with the economic reality, which is that the remuneration that each of the officials earns is based on the terms and conditions of their contractual relationship with their employer. And this accounts for the fact that a treasurer of a central council can receive more money for his union activities than its president. Indeed, the central council's objective is not to remunerate the officials, but, rather, to compensate them for a loss. Under these circumstances, the tax treatment reflects the true nature of the legal relationship between the official and the central council, a relationship in which the union official provides his or her services on a volunteer basis. Consequently, there can be no contract of employment, because two of the three elements essential to the existence of such a contract, that is to say, remuneration for services, provided under the direction and control of the employer (article 2085 of the *Civil Code of Québec*), are not present. Nor is there any "office" for the purposes of the ITA, ETA or CPP, since there is no position entitling the individual to a fixed or ascertainable stipend or remuneration.

[57] In my opinion, this result is entirely in keeping with the situation of numerous volunteers who work for various charitable organizations and who render their services without being remunerated but are compensated for the expenses incurred in connection with the activities of these organizations, whether they be for profit or not. Since none of the union officials in the case at bar held an office for the purposes of the relevant legislation, and there was no contract of employment between those officials and their unions, it would not be appropriate to conclude that the ITA, and section 6 in particular, applies, since there is no source of income, such as an office or employment, as required by the first part of section 6, which provides: "There shall be included in computing the income . . . as income from an office or employment such of the following amounts as are applicable." Since there is no office or employment, sections 5 *et seq.* of the ITA simply do not apply here. The provisions of the EIA do not apply either, specifically because the union officials were not employed in insurable employment within the meaning of section 5.

[58] For all these reasons, the Appellants' appeals are allowed. The assessments under the *Employment Insurance Act* are vacated, and the assessments under the *Income Tax Act* are referred back to the Minister for reconsideration and reassessment on the basis that none of the union officials held an employment or office with either of the central councils. The Appellants shall be entitled to only one set of costs.

Signed at Montréal, Quebec, this 29th day of August 2008.

"Pierre Archambault"

Archambault J.

Translation certified true
this 18th day of December 2008
François Brunet, reviser

CITATION: 2008 TCC 480

COURT FILE NOS.: 2006-1098(IT)G, 2006-1966(EI), 2006-1101(IT)G, 2006-1102(IT)G, 2006-1103(IT)G, 2006-1104(IT)G, 2006-1107(IT)G, 2006-1108(IT)G, 2006-1142(EI), 2006-1807(IT)G, 2006-1809(IT)G, 2006-1810(IT)G, 2006-1811(IT)G, 2006-1812(IT)G, 2006-1813(IT)G, 2006-1100(IT)G,

STYLES OF CAUSE: DENISE VACHON, EXECUTOR OF THE ESTATE OF ROGER VACHON, PIERRE MOREL, JEANNINE GIRARD, GUY GINGRAS, LILIANE DUFOUR, MARYSE BOUDREAULT, PIERRE BHERER, GILLES BELZILE, CHANTAL CÔTÉ, RÉJEANNE GRAVEL, VALOIS PELLETIER, ALAIN THERRIEN, DANY VIGNEAULT, YVES TREMBLAY v. HER MAJESTY THE QUEEN; CONSEIL CENTRAL CÔTE-NORD INC. v. THE MINISTER OF NATIONAL REVENUE; CONSEIL CENTRAL DES SYNDICATS NATIONAUX DU SAGUENAY/LAC ST-JEAN v. THE MINISTER OF NATIONAL REVENUE

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: March 25 and March 26, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Pierre Archambault

DATE OF JUDGMENT : August 29, 2008

APPEARANCES:

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