Docket: 2010-384(CPP)

BETWEEN:

REAL ESTATE COUNCIL OF ALBERTA,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on November 1, 2010 at Calgary, Alberta

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant: Thomas M. Ryder

Counsel for the Respondent: Jeff Watson

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeal is allowed and the assessments issued by the Minister of National Revenue for the 2004, 2005 and 2006 taxation years – as confirmed by letter dated November 13, 2009 – are hereby vacated on the basis:

– Beverly Andre-Kopp was not engaged under a tenure of office with RECA during the period from January 1, 2004 to December 31, 2006 and was not engaged in pensionable service within the meaning of section 2 of the *Canada Pension Plan.*

Signed at Sidney, British Columbia this 5th day of January 2011.

"D.W. Rowe"

Rowe D.J.

Citation: 2011 TCC 5
Date: 20110105
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BETWEEN:

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REASONS FOR JUDGMENT

Rowe D.J.

[1] The Appellant, Real Estate Council of Alberta, ("RECA or Council") appeals from confirmation – by letter dated November 13, 2009 – of assessments in certain amounts for *Canada Pension Plan* (the "*Plan")* contributions in respect of Beverly Andre-Kopp for the 2004, 2005 and 2006 taxation years because she was engaged under a tenure of office and – therefore – in pensionable employment with RECA. The decision was issued pursuant to subsection 27.2(3) of the *Plan*, based on paragraph 6(1)(*a*) and section 2 of the *Plan.*

[2] The Respondent, in paragraph 1(*a*) of the Reply to the Notice of Appeal, admitted the facts stated in paragraphs 2, 3, 4 and 7 of the Notice of Appeal and the second sentence of paragraph 5 as follows:

> 2. During the period under appeal, Ms. Andre-Kopp served as a member and, for part of that period, as chair of the Real Estate Council of Alberta (sometimes hereinafter referred to as the "Council"). The Council is a statutory body which fulfills a self-regulatory function for the Alberta real estate industry including real estate and mortgage brokers. The purposes of the Council are, *inter alia*, to set and enforce standards of conduct and to administer the Alberta Real Estate Act with a view to promoting the integrity of the real estate industry.

> 3. The members of the Council, including Ms. Andre-Kopp (collectively, including Ms. Andre-Kopp, sometimes referred to as the "Members") are not employees of the Appellant.
>
> 4. Members of the Council attend council meetings, committee meetings, hearings and other functions in carrying out the objectives of the Council and receive payments for their participation in those matters according to a schedule of rates established from time to time by the Council.
>
> 5. … Members are paid attendance fees only if they attend meetings, hearings and approved functions on a flat rate basis according to the schedule referred to in paragraph A.4. They are also paid scheduled rates for certain ancillary and administrative activities and are reimbursed for approved expenses.
>
> 7. Ms. Andre-Kopp received amounts of $10,275, $11,875 and $19,975 with respect to the years 2004, 2005 and 2006 respectively for her activities as a Member or chair of the Council.

[3] Bob Myroniuk ("Myroniuk") testified he is the Executive Director of RECA. It is a position established by the *Real Estate Act*, R.S.A. 2000, c. R-5. He is also the Chief Administrative Officer and reports to the 12-member Council of which the named worker in the appeal – Beverly Andre-Kopp ("Andre-Kopp") – is a member. She is mentioned in some documents as Beverly Andre (no é). Pursuant to that statute – based on the approach of self-regulation – RECA was created as a non-profit incorporation with a mandate to regulate certain sectors of the real estate industry including residential and commercial and leasing agents and mortgage brokers and appraisers. RECA is responsible for licensing. Council is composed of members appointed as follows in accordance with subsection 6(1) of the *Real Estate Act*, which reads:

> **6(1)** The Council shall consist of 12 members appointed as follows:
>
> (a) the Minister shall appoint one member, who must not be an industry member;
>
> (a.1) repealed 2007 c39 s4;
>
> (b) the Alberta Mortgage Brokers' Association shall appoint one member, who must be a mortgage broker;
>
> (c) the Alberta Real Estate Association shall appoint 6 members as follows:

(i) one member who must be a real estate broker trading in industrial, commercial and investment real estate and who may or may not be active in property management;

(ii) one member who must be a real estate broker trading in residential real estate;

(iii) from nominations received from the Calgary Real Estate Board, one member, who must be a real estate broker;

(iv) from nominations received from the Edmonton Real Estate Board, one member, who must be a real estate broker;

(v) from nominations received from other real estate boards in Alberta, 2 members, who must be real estate brokers;

(d) repealed 2007 c39 s4;

(e) the members appointed under clauses (b) and (c) shall jointly appoint 2 members as follows:

(i) from nominations from industry members who are not members of the Alberta Real Estate Association, one member, who must be an industry member;

(ii) from nominations from the public at large, one member, who must not be an industry member;

(f) the members appointed under clauses (a) to (e) shall jointly appoint 2 members as follows:

(i) from nominations received in accordance with the regulations, one member, who must be a real estate appraiser;

(ii) from nominations received in accordance with the regulations, one member, who must be a property manager.

[4] Myroniuk stated appointees to RECA are not representatives of their group and pursuant to a specific provision in the statute must be independent and act in the public interest. A member of RECA attends meetings of Council and committees if selected to serve by the Chair. If appointed by Chair or Vice-Chair, he or she may sit on a Hearing Panel, attend seminars, conferences, attend various events as representatives of RECA or take training in administrative law. Prior to Council meetings, they receive a package of information which they are expected to read. Briefing notes, reports and other material is delivered 7 days in advance of the

meeting. However, not all services rendered are eligible for payment and those enumerated on the honorarium schedule attract the specified payment. Members are reimbursed for specific expenses covered by RECA policy.

[5] The Main Office of RECA is in Calgary – with 40 to 50 staff – and its counsel resides in Red Deer. There is an Edmonton office with two staff. Meetings and hearings are held in a special facility in the Calgary office but Council, on occasion, will meet outside Calgary, usually in Edmonton. Under the *Real Estate Act* and pursuant to by-laws permitted to be passed pursuant thereto, RECA must hold a meeting every 3 months. During the period 2002-2006, inclusive, Council held meetings as follows:

2004 – 7
2005 – 6
2006 – 6

[6] A quorum of Council is 7. There is no requirement that a member attend a Council meeting but after 3 consecutive absences without valid reason and approval from the Chair or designate, Council as a whole would meet and decide whether that person should be removed. This has not occurred to date.

[7] There are 3 types of Standing Committees:

- Finance – only members of Council can sit.

- Audit – includes two members from AREA and the Council member is appointed by Council as a whole.

- Hearings – composed of members of Council except for one "external member" from the industry. This committee sets policy and does not hear disciplinary matters, as that is done by a Hearings Panel.

[8] In addition, there are various committees specific to these 5 categories:

- Commercial real estate
- Residential real estate
- Property management
- Mortgage brokers
- Real estate appraisers

[9] These committees are established to provide a link from those sectors of the overall industry which are governed by Council. The idea is for the Chair of any of the above committees to have expertise in that sector. The committee Chair is always a member of Council and reports to the Chair of Council. A committee of 7 may be composed entirely of members of a particular sector including two members of RECA who have expertise in that subject matter.

[10] There is no minimum number of committee meetings required except for Finance which must deal with a budget. The frequency of Audit and Hearing Committee meetings will depend on issues arising in a particular period. Due to recent mortgage broker fraud allegations in Calgary, many meetings were necessary. A member of Council, having been appointed by the Chair, is not required to attend any meeting of a committee of which he or she is a member. Some members sit on 2 to 4 committees but a newly-appointed member may not sit on any. The Chair and the Executive Director are ex-officio members of all committees and are entitled to participate. The worker in the within appeal – Andre-Kopp – served as Chair from November 2005 to the end of October 2006. Before that, during the relevant period she was an ordinary member.

[11] Myroniuk, as Executive Director must investigate a complaint and there are investigators on staff. He may dismiss a complaint or issue a reprimand. There is a right of appeal by either party – complainant or subject – to a Hearing Panel composed of 3 people, including Chair of the Hearing Committee who must be a member of Council, appointed by Chair of RECA. No council member is required to serve on any such panel. A panel is appointed for each hearing. This type of hearing is merely to decide whether the Executive Director was correct in either dismissing the complaint or taking action to issue a reprimand or a monetary penalty.

[12] Another type of hearing is where the matter has been referred to the Hearing Panel which hears evidence, receives submissions, issues a decision on culpability and decides on the appropriate sanction which can range from reprimand to revocation of licence. All panel decisions are written. Some hearings take one-half day while others take several days. One occupied a total of 20 days. The panel work is complaint-driven and in 2008-2009 – outside the relevant period but consistent with the volume during that time – there were 21 consent judgments approved by the Hearing Panel and 12 contested hearings. From January 1, 2009 – to the date of hearing of the within appeal – there were 22 consents approved and 8 contested hearings. A Hearing Panel may approve, modify or reject any proposed settlement.

[13] Generally, only one hearing per day is set and panel compositions usually change due to specificity of subject matter or due to conflicts, schedule of the member, specific expertise – or lack thereof – and other reasons. There is also an appeal from a decision of the Hearing Panel to an Appeal Panel which is composed of 3 members who were not on the original panel. The Appeal Panel is composed of 3 members of Council who are appointed by Chair. No member is required to serve. A member of the Law Society of Alberta may be appointed to one of these Appeal Panels, if deemed appropriate by Chair. Not many Appeal Panels are appointed in a year and the duration of an appeal hearing is not more than a few days, at most.

[14] No council member will be appointed to a Hearing Panel or Appeal Panel unless he or she has completed certain courses offered by the Foundation of Administrative Justice. Council members may choose to attend certain seminars or conferences or to enrol in professional development training. There is no requirement to attend any special events – such as an award ceremony – as a representative of RECA – but a member willing to attend will be paid a set amount plus actual expenses.

[15] Myroniuk stated that the "honorarium policy" is established by resolution of Council – and a schedule of payments – Exhibit A-1 (attached as Appendix A) – was prepared and those rates were in effect for all but the last 6 months of the relevant period. The bottom portion thereof shows the new specified fees and there are some additional payments for services not included from 2004 to mid-2006. The listed payments are the only ones that qualify a member to receive payment for service. If there is no attendance at a meeting of Council – regardless of the reason – there is no payment. In the past, one member could not attend for nearly a year and earned nothing. Because of the range of fees and the ability of a member to choose not to attend meetings or to decline to serve on a committee or a Hearing Panel or Appeal Panel, the extent of participation in qualifying activities and payment totals varied widely, as set forth in Exhibits A-2 and A-3. The top line of Exhibit A-3 (attached as Appendix B) shows the earnings of Andre-Kopp in 2004, 2005 and 2006. Exhibit A-4 lists her activities as a member of RECA. After July 1, 2006, there was a flat fee of $150 paid to a member and to Chair for an Appeal decision meeting. Other services were added to the schedule of payments including Hearing Panel or Appeal Panel appointment and scheduling, adjournment applications, procedural matters and general administration for which members received the sum of $100 – except for an adjournment application which was $150 – and Chair received an additional $50 for each of those services except for the general administration category which attracted the same payment as an ordinary member. The activities listed in the schedules/sheets were the only ones that qualified for payment. No payment is made

to any member if that person did not attend a meeting, hearing or other sanctioned event, regardless of the reason. Participation in certain meetings via telephone or other electronic device concerning procedural matters will entitle a member or Chair to earn the stated amount.

[16] In cross-examination by counsel for the Respondent, Myroniuk acknowledged that the information published on the RECA website was the same as the printout filed as Exhibit R-1. A Schedule of Honorarium – revised November 2009 – is found at page 30. The term of office of a member is 3 years. Members submit a claim for payment, and while some do so almost immediately others delay considerably. Payment is approved by him as Executive Director or by another Director in his absence. Payment is handled separately from the ordinary payroll for employees. A cheque payable to a member is signed by two people, the Director of Corporate Services and Myroniuk - as Executive Director - or another Director designated by him. The cheque is drawn on the same bank account as regular employees.

[17] The position of counsel for the Appellant is that while the worker occupied a "position" which is included in the wording of the section in the *Plan* that the issue is: to what is the member entitled upon appointment.

[18] Counsel for the Appellant submitted the *Income Tax Act* (the "*Act*") deals only with the end result after income has been earned and – obviously – is ascertainable at some point at or following the end of a taxation year. However, the appointment of someone to RECA, *per se*, entitles that person to nothing. Any remuneration received is not known until certain work has been performed, at which point the member becomes entitled to a payment based on those services rendered that are eligible for remuneration. Counsel submitted the words "fixed or ascertainable" must mean something and were intended to refer to the fact of the appointment. Otherwise, the fee earned thereafter will be known when it is time to file a return of income tax on the basis that income is income regardless of source. Counsel referred to the evidence which demonstrated there is uncertainty as to the number of meetings held in any given period and attendance by a member is not mandatory. A member may not be appointed to a committee or panel, or if appointed, may choose not to participate in the meeting or hearing. The amount paid may depend on the duration of a particular meeting, hearing or session and there is no payment for certain services. Counsel referred to a case where there was an hourly rate in effect and calculation should have been fairly easy to accomplish but it was held that the remuneration was not fixed or ascertainable.

[19] Counsel for the Respondent submitted that section 6 of the *Real Estate Act* established the term of office of a member at 3 years. Counsel argued that the appointment to RECA is an opportunity to earn remuneration in amounts that are ascertainable according to a schedule once a particular service or series of services has been performed. The formula for ascertaining entitlement to remuneration was well-established and is – or ought to be – known to a putative member prior to appointment since all amounts are published. All remuneration is capable of determination and the accounting department of RECA confirmed the accuracy of a submitted claim before a cheque was issued. In counsel's view of the evidence, the extensive schedule of fees for various services rendered – particularly as amended in July, 2006 – enables remuneration to be ascertained with a high degree of accuracy. Therefore, it satisfies the definition of "office" and "officer" in section 2 of the *Plan* and the Minister of National Revenue (the "Minister") was correct in issuing the assessments in respect of Andre-Kopp because she was engaged under a tenure of office for the period January 1, 2004 to December 31, 2006.

Relevant legislation:

[20] The provisions relevant to the within appeal are section 248(1) of the *Act* and section 2 of the *Plan*:

> **248(1)** "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;
>
> **2.(1)** In this Act,
> …
> *"office" and "officer"*
> "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;

[21] The definition of “office” found in the 1948 *Act* was nearly identical to the current one in the *Plan* except it includes “the office of a lieutenant-governor”. Despite the considerable debate in the House of Commons with regard to the 1948 amendments to the *Act*, none concerned the definition of office.

[22] In *Pro-Style Stucco & Plastering Ltd. v. Canada*, 2004 TCC 32, Rip J. (as he then was) found that a corporate director had income from an office and was therefore a pensionable employee for the purpose of the *Plan*. The main issue was whether the sole shareholder and director of the corporation was an employee despite having entered into a contract with his wholly-owned company as a director on the basis he would receive a director’s fee of “up to 80% more or less (eighty percent) of the net profit of the corporation.” At paragraph 19 of his judgment, Rip J. stated:

> **19** I find it difficult, but not necessarily impossible, to find that a corporation having one shareholder, who is also the sole director, can carry on business in the construction industry without any employees, even that sole director. The appellant's agent, Mr. Mason, reminded me that the intent of the parties in an agreement is important and the intention of the parties in the Agreement entered into between Pro-Style and Mr. Marocco is clear: the parties wanted to create a contractual relationship. Mr. Marocco wore several different hats but none was an employee of Pro-Style, Mr. Mason submitted.

[23] At paragraph 22, Rip J. continued:

> **22** The Agreement between Mr. Marocco and Pro-Style may purport to be a contract for Mr. Marocco to supply his services to Pro-Style but the parties also agreed that Mr. Marocco is to be a director of Pro-Style.[2] There are statutory provisions that designate Mr. Marocco as an employee of Pro-Style due to the fact he is, and acts as, a director of the corporation and is also its president. For example, the CPP defines an employee to include an officer. An officer means a person holding an office "entitling him to a fixed or ascertainable stipend or remuneration ... and also includes the position of a corporation director"[3]. Clause 1.1(a) of the Agreement entitles Mr. Marocco to an ascertainable stipend for his work as director. The CPP also defines "employment" to include "the tenure of an office". An "employer" is a person "liable to pay salary, wages or other remuneration for services performed in employment, and in relation to an officer includes the person from whom the officer receives his remuneration"[4]. The employer at bar is Pro-Style.

[24] This case is cited primarily for the proposition that it is difficult to make employee or contractor distinctions in single-shareholder/director corporations.

[25] In *Payette v. Canada (Minister of National Revenue – M.N.R.),* 2002 CarswellNat 4668, [2002] T.C.J. No. 386 (*Payette*), Dussault J. heard the appeals of members of a provincial legal aid committee and the issue was whether contributions were required under the *Employment Insurance Act* because they were engaged in insurable employment. They were paid on a fee basis at the rate of $50 per hour. Dussault J. reviewed the early cases at paragraphs 16 to 20, inclusive, as follows:

> **16** On a number of occasions, the courts have analysed the definition of "office" set out in the *Income Tax Act*. Three decisions are of interest in this regard: *Guérin v. M.N.R.*, 52 D.T.C. 118; *MacKeen v. M.N.R.*, 67 D.T.C. 281; and *Merchant v. The Queen*, 84 D.T.C. 6215.
>
> **17** In *Guérin*, the appellant, a judge of the Court of Sessions of the Peace, was a member in 1949 of a number of arbitration boards in labour disputes. The appellant included in his income the remuneration received but claimed expenses as if his services were rendered within a business and not, as the Minister claimed, within an office or employment. It should be noted that it was established that the appellant was himself obliged to pay for a part-time secretary, stationery, other office supplies, the use of a typewriter and had to incur other expenses, particularly for transportation. Although Chairman Monet of the Income Tax Appeal Board quickly determined that the appellant was not an employee, the issue as to whether the appellant held an office was raised.
>
> **18** In his decision, Chairman Monet first noted that the appellant was expressly authorized by the Attorney General of Quebec to sit on these arbitration boards. Since the appellant was then considered on leave without pay, he did not sit on these arbitration boards as a judge. Although the remuneration provided for was set at $12.50 per sitting of an arbitration board, the number of sittings the appellant was obliged to attend was not known in advance; as a result, Chairman Monet decided that this remuneration was neither fixed nor ascertainable from the outset. In this regard, Chairman Monet wrote as follows, at page 121:
>
> > ... According to the definition given above, a taxpayer should not be considered as holding an office merely because he occupies a position. The position must entitle him to a fixed or ascertainable stipend or remuneration. Failing this, the position is not an "office" within the meaning of *The Income Tax Act*. Does the position held by the appellant when acting as a member of an arbitration board entail a fixed or ascertainable remuneration? I do not believe so. Although it has been established that the appellant is entitled to a fee of $12.50 for each sitting of the board on which he is acting, this fact alone, in my opinion, is not sufficient. I do not believe that because a fixed remuneration is attached to a sitting it is possible to conclude that a fixed remuneration is also attached to the position itself. To reach such a conclusion we would have to say that a

> sitting in itself constituted the position which in my opinion is an absurdity. The remuneration of the appellant is determined by two different factors, firstly, a known factor, the remuneration of $12.50 the appellant received for each sitting, secondly, an unknown factor, the number of sittings required to bring to a successful conclusion the work to be accomplished by the arbitration board. As long as the second factor remains unknown, and it will be so until the last sitting has been held, it is impossible to establish the remuneration the appellant will receive. Nothing, it seems to me, could be more indeterminate.
>
> By "position entitling one to a fixed or ascertainable stipend or remuneration" parliament, in my opinion, meant a position carrying such a remuneration that when accepting it a person knows exactly how much he will receive for the services he is called upon to render. I feel that this is the true meaning that must be given to "office" as defined in Section 127(1)(*aa*) quoted above, having regard to the persons listed whose duties constitute an office. I also believe that "office" as defined, implies continuity and permanence; it can certainly not be said that there is continuity or permanence in the duties of a member of an arbitration board.
>
> ...
>
> (Emphasis added.)

19 In *MacKeen (supra)*, at issue was whether the appellant, appointed a member of a Royal Commission of Inquiry, held an office or employment or rather, had provided his services as part of a business, as he claimed. Here again, the claiming of certain expenses was central to the dispute since the rules that applied were not the same. The appellant's remuneration was set by Order in Council at $100 per day, plus $20 per day when the appellant was absent from his usual place of residence on Commission business. Provision was also made to reimburse the appellant's travel expenses on presentation of vouchers. Income Tax Appeal Board Member Boisvert decided that the appellant was not an employee and, furthermore, did not hold an office. On this last point, Board Member Boisvert wrote as follows, at page 284:

> ...
> G.S.A. Wheatcroft in The *Law of Income Tax, Surtax and Profits Tax*, (1962), at page 1057, 1-107, says that: "The word 'office' denotes a subsisting, permanent, substantive position which has an existence independent of the person who fills it, and which goes on and is filled in succession by successive holders." Acting as a commissioner on a special and limited commission, royal or other, limited as to terms and duration, has none of the characteristics of an office or an employment.
> ...

> **20** Then, referring in particular to the above-quoted passage from *Guérin*, Board member Boisvert concluded that the appellant did not hold an office and that his income came from a business instead.

[26] Justice Dussault then considered the effect of the judgment of Reed J. in *Merchant v. The* Queen, 84 DTC 6215 and at paragraphs 21 to 24, inclusive commented:

> **21** In *Merchant (supra),* Reed J. of the Federal Court, Trial Division, criticized the decisions in both *Guérin (supra)* and *MacKeen (supra).* In *Merchant*, at issue was whether the expenses incurred by a leadership candidate in a political party were deductible. In this regard, with respect to *MacKeen (supra),* Reed J. wrote the following at page 6217:
>
> > …
> >
> > This decision was reached for a number of reasons (e.g. the position of commissioner was not a permanent one and the taxpayer had agreed, at the time of his appointment, to the travel expense amounts provided for by the government). Accordingly, I do not place too much emphasis on that part of the judgment which held the taxpayer's income not to be ascertainable. Indeed, I think such income is ascertainable. I take that word to mean that the amount to be paid is capable of being made certain, or capable of being determined but not that a definite sum be known by the office holder at the commencement of holding office. The word has to have some meaning beyond "fixed" or else it is completely redundant.
>
> ...
>
> **22** Concerning *Guérin (supra),* Reed J. made the following comments at pages 6217 and 6218:
>
> > I am not convinced that at the time of taking office the taxpayer must know how much he will receive. It seems to me a *per diem* rate, or a specified amount per sitting renders the income sufficiently ascertainable to meet the definition in section 248(1). However, there are other factors in the *Guérin* case which make the income unascertainable and in my view should have served as the focus of that decision:
> >
> > > It has been established that the appellant must himself pay for the services of a part-time secretary and that he must also pay for the stationery he needs, for the use of a typewriter and all other

> supplies ... It has been further established that the appellant is often called upon to pay the transportation of his secretary and other persons acting as advisers and that often-times he has to pay for the meals of his assistants and advisers.
>
> These it seems to me are the crucial factors in making the remuneration received, as a result of holding the position of arbitrator, not ascertainable.

23 Given that the evidence adduced was insufficient, Reed J. decided that in the circumstances it was impossible to conclude that the remuneration of the position, as claimed by the appellant, was ascertainable.

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).*

[27] In the course of concluding that the position occupied by the appellants did not amount to insurable employment, Dussault J. – at paragraphs 25 and 26, stated:

25 In the present case, subsection 22(*k*) of Quebec's *Legal Aid Act* provides that the Commission des services juridiques shall form a review committee responsible for conducting the reviews provided for in sections 74 and 75 of that legislation. As well, section 74 of that legislation provides that an application for review shall be decided by a review committee made up of three members, at least one of whom shall be an advocate. According to paragraph 8 of the Notice of Appeal, the members of the review committee are all advocates, and the Commission appoints them for a one-year, renewable term of office. According to paragraph 12 of the Notice of Appeal, the members are paid on a fee basis, that is, only when they sit to hear applications for review or deliberate and write their decisions. According to paragraph 13 of the Notice of Appeal, their remuneration is set at $50 per hour. According to paragraph 15 of the Notice of Appeal, each year the review committee makes 1,000 decisions during 41 sittings. By agreement, the respondent has admitted the truth of all these facts.

> **26** It is not very difficult for the Court to find that the appellants, the members of the review committee, hold an office. The review committee is a permanent entity of the Commission des services juridiques. Being appointed as a member for a one-year term of office and having other professional occupations elsewhere in no way suggests that one cannot occupy a position for a set term on a part-time basis. One can at the same time practice law and be a director of one or more share corporations. The Court does not see any incompatibility in that situation. It cannot be said that a person does not occupy a position because that person's main professional activity is exercised elsewhere than with the Commission. That said, it is not enough to occupy a position: the position must entitle the person to a "*fixed or ascertainable stipend or remuneration*", according to the definition set out in subsection 2(1) of the *Canada Pension Plan*. In the present case, it is clear that the position does not entitle a person to a fixed remuneration or stipend. The Court also considers it impossible to conclude that the remuneration is ascertainable since in this regard the facts set out in the Notice of Appeal, the truth of which the respondent has admitted, are insufficient. It is not known how many times each member is called upon to sit on the review committee or how many days or hours are spent on this activity in a given year. The information about the number of review committee sittings held and the number of review applications heard each year does not provide a reliable factor for individual members. The Court has no idea of the "stipend" or the "remuneration" that the members of the review committee were likely to receive for rendering their services; nor has any such information been adduced, except that the members are paid on a fee basis at a rate of $50 per hour. The Court considers that merely indicating the hourly rate set by the Commission des services juridiques is insufficient to establish that the position itself makes a member eligible for a "fixed or ascertainable stipend or remuneration". The Court therefore considers that the respondent, who simply admitted the truth of the facts set out in the Notice of Appeal, has in no way discharged the burden on him of establishing that the appellants, the members of the review committee of the Commission des services juridiques, held an office as defined in subsection 2(1) of the *Canada Pension Plan*. Thus subparagraph 6(f)(*iii*) of the *Regulations* cannot be applied to this case to include the position occupied by the appellants in insurable employment.

[28] In *Guyard v. Canada*, 2007 TCC 231, [2007] T.C.J. No. 183, Angers J. decided the case on the basis that the position occupied by the appellant did not possess the necessary degree of permanence. At paragraphs 33 and 34 of his judgment, Angers J. stated:

> **33** In the case at bar, the appellant is a retired urban planner who offers his services as a consultant. His services are retained on a basis of eight hours per day at a *per diem* rate determined by the Committee. The appellant determines his own days of work for a maximum of 261 days per year. He may work at home or at the Committee office. He must submit a professional fees invoice in order to be paid and is registered for the Goods and Service Tax. He is a professor at

> Université Laval and does contract work for other municipalities while being a member of the Committee. He manages his time and plans his work accordingly. The Committee for which he rendered services was created for a short period of time, whereas members of a legislative assembly, members of the Senate or the Lieutenant- Governor, for example, hold offices that exist independently of their incumbents. In fact, in answer to the question as to whether the appellant would have been replaced if he had resigned, he answered that this might have been easy to do at the beginning of his mandate, but not once it was well under way. It must also be noted that the Committee's itself existed only temporarily. Therefore, in my opinion, Parliament's intention was to include only those persons holding an office with a certain degree of permanence, which is not the case here. Therefore, subparagraphs 6(*f*)(ii) and (*iii*) do not apply in this case.
>
> **34** The appellant did not hold insurable employment within the meaning of the Act. Therefore, the appeal is allowed.

[29] Earlier in his Reasons, Angers J. addressed the matter of “fixed or ascertainable remuneration”, stating at paragraphs 22 and 23:

> **22** Given my conclusion, it would not be necessary to analyze the last condition, but I do think it is important for the purposes of this case to analyze it anyway. Was the appellant entitled to "fixed or ascertainable" remuneration in the performance of his duties for the Committee within the meaning of the definition of "office" in subsection 2(1) of the Plan? I am of the opinion, like Dussault J. in *Payette, supra*, that the case law concerning the definition of "office" found in the *Income Tax Act* applies in the case at bar.
>
> **23** In answer to the question as to what was Parliament's intent when it used the words "fixed or ascertainable", counsel for the respondent submits that the intention was to include the situation where a person appears for the most part to be an employee, except insofar as this office holder is unsupervised. According to counsel for the respondent, a person who earns $10 per hour or $678 per day receives fixed remuneration. By determining the number of days he worked on the basis of the work to be performed, the appellant was able to determine the amount of his remuneration with a minimum degree of accuracy. According to counsel for the respondent, this situation can be distinguished from cases dealing with the same issue, especially *Payette*, *supra*, and *Guérin v. M.N.R.*, 52 DTC 118, *Mackeen v. M.N.R.*, 67 DTC 281 and *Merchant v. The Queen*, 84 DTC 6215.

[30] However, in the first sentence of paragraph 24, Angers J. relied on the judgment of Reed J. as having been decided by the Federal Court of Appeal. This may have been the basis for his comment “*Merchant, supra*, summarizes the current state of the law on this issue”.

[31] In *Churchman v. Canada*, 2004 TCC 191, Beaubier J. heard the appeal of a lawyer who provided services to Human Resources Development Canada ("HRDC") as Chairperson of the Board of Referees pursuant to two three-year contracts. The primary issue was whether the taxpayer was an employee or an independent contractor who was entitled to deduct certain expenses for the purpose of gaining or producing income from a business. The appellant was paid a per diem of $300 and at other times $350 provided she sat on a hearing. She was not paid for accepting scheduling for sitting days, receiving files at her home office and working on them there nor for pre-drafting elements of decisions to be prepared and issued after the hearing in final form. If a hearing was adjourned, the taxpayer was not paid. Beaubier J. decided the appeal on the first issue that she intended to make a profit from the practice of law and incurred certain expenses in the course of earning income. With regard to whether the income derived by the taxpayer from HRDC was income from an office, Beaubier J. referred to the definition in section 248(1) of the *Act* and – at paragraph 12 – stated:

> **12** Appellant's counsel focussed on the question of whether the Appellant's per diem was a "fixed or ascertainable stipend or remuneration". If it was not, then it was not an "office" within the meaning of the *Act*. It was not "fixed". Rather it was a per diem for hearing days only.

[32] In the next paragraph Beaubier J. adopted the reasoning of Dussault J. in *Payette, supra*, as expressed in paragraphs 24 and 26, quoted previously in the within Reasons.

[33] In *McMillan Properties Inc. v. Minister of National Revenue*, 2005 TCC 654, 2005 CarswellNat 3444, I heard the appeal of the corporation that had been assessed contributions pursuant to the *Plan* in respect of Kelebay, its sole shareholder, director and officer. At paragraph 31 of the judgment, I found that Kelebay received funds from the appellant as its employee and was engaged in pensionable employment. However, in the next two paragraphs, I dealt with another issue, as follows:

> **32** In the event I am wrong in concluding that Kelebay was an employee of MPI pursuant to a contract of service and - therefore - engaged in pensionable employment, I find that even if his income flowed to him in his capacity as director, it was ascertainable within the meaning of the definition of "office" and "officer" within section 2 of the *Plan*. The method chosen by MPI to remunerate Kelebay for his services as apartment block manager was dependent on one determinative factor that was capable of providing an unequivocal amount even though that sum might vary from year to year. Kelebay's annual remuneration was an amount equal to the net profit of MPI from its operation of the apartment block in any given year; no more, no less. In that sense, it does not fall into the same category as the members of

> the legal aid committee in the *Payette, supra*, case where Dussualt J. concluded it was impossible on the facts to find the remuneration was ascertainable even though an hourly stipend of $50 had been established because that factor alone was insufficient in view of the circumstances overall.
>
> **33** There may be many situations in which the mere fact of being a director does not entitle one to receive anything. Other times, there may be a set fee for serving in that position that is established at the outset or there may be a schedule of fees and a list of meetings that must be attended in order for the stipend to be earned by the holder of that office. For the purposes of deciding the within appeal, it is not necessary that I arrive at any conclusion with respect to the issue whether a director who receives no remuneration is automatically an employee of that corporation for the purposes of the *Plan*.

[34] The Federal Court of Appeal in *Rumford v. Canada (F.C.A.),* [1993] F.C.J. No. 1359 (*Rumford*) – heard an application for judicial review of a Tax Court of Canada decision. The facts are set out in paragraphs 2, 3 and 4 of the judgment of the Court delivered by Gray D.J.:

> **2** The applicant, during the 1988 taxation year, held the office of "commended worker" in the Plymouth Brethren Assembly or church. His work was not confined to meeting the spiritual needs of that assembly, however. He preached at other chapels as well, lectured at Bible School, spent 143 hours counselling members of other congregations, and gave 147 sermons to other congregations.
>
> **3** The $27,755 that he received from the Erindale Bible Chapel was made up of two components: (a) 14,640 allocated by the elders of Erindale Bible Chapel and (b) the balance being the total voluntary contributions made by members of the Erindale Bible Chapel congregation through envelopes on which the applicant's name was endorsed. The applicant claimed at trial that the balance of the revenues, approximately $54,500 came as reported in his return of income from self-employment, in effect as an itinerant preacher.
>
> **4** In his return of income for 1988, the applicant reported $27,755 received by him from Erindale Bible Chapel as income from office or employment. As well, he reported gross professional income of $54,494.83 and net professional income of $32,034.27. The amount of the deduction claimed under paragraph 8(1)(c) was $18,600.

[35] The issue was whether the taxpayer could deduct from his income the amount of rent paid by him – or equivalent – pursuant to paragraph 8(1)(*c*) of the *Act.* At paragraphs 7 to 10, inclusive, Gray D.J. stated:

> **7** The learned trial judge in his reasons for judgment said:

> I cannot accept that the total amount received by the Appellant as commended worker from such sources of support was ascertainable within the meaning of the section 248 definition.

He then went on the quote from his own reasons for judgment in Ralston v. Minister of National Revenue (May 12, 1989), Tax Court of Canada, unreported (page 3):

> Remuneration is not ascertainable within the meaning of the definition simply because the total receipts can be determined by addition at year end of the fees received during the year. In Merchant v. The Queen [1984] 2 Federal Court Reports 197, Madame Justice Reed, in the course of a review of the jurisprudence with regard to the meaning of the word 'ascertainable' said the following at pages 202 and 203:
>
> > I take that word to mean that the amount to be paid is capable of being made certain, or capable of being determined but not that a definite sum be known by the office holder at the commencement of holding office. The word has to have some meaning beyond "fixed" or else it is completely redundant.
>
> In this case, members of the congregation make contributions which form a very substantial part of the Appellant's remuneration and they render the total amount uncertain except by addition at year end.
>
> The position is therefore not, in my view, an office. ...

8 In my view the learned trial judge erred in his finding that the Applicant's position was not encompassed by the definition of "office" as set out supra. It is evident from the Erindale Bible Chapel letter of April 24, 1988, to the Applicant that the Applicant had fixed remuneration of $14,640.00 for 1988. The letter reads in part:

> This letter will confirm the financial commitment of the Chapel to your support for 1988.
>
> The elders have allocated $14,640 to your ministry during 1988 with payments of $3,660 for each quarter ...

9 The additional money which the Applicant received cannot be said to have been derived from an "office" because it was not "fixed or ascertainable" pursuant to subsection 248(1) supra. Hence the Applicant is entitled to make a deduction

> under paragraph 8(1)(c) which is not in excess of the amount of the ascertainable remuneration from his office, namely the sum of $14,640.
>
> **10** The appeal is therefore allowed in part and the assessment for the 1988 taxation year is remitted to the Minister of National Revenue for reassessment on the basis that the Applicant is entitled to deduct the sum of $14,640 from his income for the taxation year 1988, pursuant to the provisions of paragraph 8(1)(c) of the Income Tax Act.

[36] In the case of *Succession Vachon v. Canada*, 2009 FCA 375, [2009] F.C.J. No. 1630 (*Vachon)*, the Federal Court of Appeal heard the appeal of 16 appellants who were union officials working for a central council. The issue involved the tax treatment of certain allowances paid by their unions as the Minister determined these allowances were taxable under sections 5 and 6 of the *Act.* The decision by the Tax Court of Canada was that the allowances were neither taxable nor insurable because they were not paid in the course of an office or employment but were for the performance of union duties on a volunteer basis. At paragraph 38 of *Vachon,* Noël J.A. stated:

> **38** There are two requirements for meeting this second test. The office or position held must "entitle" the individual to remuneration, and this remuneration must be "fixed or ascertainable". The fixed or ascertainable aspect of the remuneration seems to have been met, since the union officials knew exactly what the monetary conditions associated with their union leave were when they applied for a union position (Testimony of Pierre Morel, appeal book, Vol. III, p. 707). [Emphasis Added.]

[37] Prior to concluding the appeals should be allowed, Noël J.A. – at paragraphs 39 to 42, inclusive:

> **39** However, in the TCC judge's opinion, the requirement that the position or office must "entitle" the individual to this remuneration was not met. The TCC judge drew this conclusion mainly because "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" (reasons, para. 54).
>
> **40** With respect, that the union officials are not entitled to this remuneration under any contractual relationship or any central council constitution or by-laws is immaterial. The only issue is whether the union officials were paid for their activities as union officers during their union leave (on this point, see Justice Lamarre Proulx's decision in *Duguay v. Canada*, [2000] T.C.J. No. 381 (QL) at paragraph 37, where she identifies this issue in the same way in a comparable context).

> **41** In my humble opinion, the answer is evident. The union officials received their full salaries and all of the fringe benefits set out in their collective agreement, despite the fact that they performed no services for their regular employers. The regular employers were reimbursed by the respective unions, and the cost of this remuneration was ultimately borne by the central councils. Only the services that the union officials rendered as in that capacity can explain why they received their usual remuneration during their union leave, and only the fact that the regular employers were reimbursed explains why they agreed to pay the remuneration even though they received no services.
>
> **42** That the remuneration was paid through the regular employer does not change the analysis. Contrary to the submissions of counsel for the respondents, this is not a case of recharacterization of the legal relationships between the parties (*Shell*, above, para. 39) but, rather, of recognizing these relationships for what they are. It is clear that the regular employers were acting on behalf of the respective unions and, ultimately, the central councils when they agreed to remunerate the union officials during their union leave.

[38] Counsel for the appellant submitted that the words "fixed or ascertainable" must have some meaning. I agree. As a rule of statutory interpretation, it is "assumed that each term, each sentence and each paragraph have been deliberately drafted with a specific result in mind. Parliament chooses its words carefully: it does not speak gratuitously."[1] One of the rules of statutory interpretation is the presumption of coherence. As noted earlier, the wording of "office" in the *Plan* and the *Act* is nearly identical. As the Federal Court of Appeal stated in *Soper v.* Canada, [1998] 1 FC 124, "[t]his presumption of coherence in enactments of the same legislature is even stronger when they relate to the same subject matter, *in pari materia*."

[39] Pensionable employment pursuant to the *Plan*, is made up of contracts of service, apprenticeship and the tenure of office if that office entitles its holder to a fixed or ascertainable stipend or remuneration. In each instance, the individual is paid by another party. The employer pays the employee, the master pays the apprentice and office holders are paid by someone other than themselves unless payment is made personally in accordance with rules of a trust. The provision of services under a contract of service cannot be a business and an apprentice is subservient to the master and – usually – is not able to carry on the trade or craft without the approval of said master and under supervision. An office is not something that exists for the office holder and must have some permanence to it.

---

[1] Pierre-André Côté, *The Interpretation of Legislation in Canada*, 3d ed (Scarborough, ON: Carswell, 2000) at 277. The work of Côté has been referenced by the SCC approximately 100 times; see e.g. *Schreiber v. Canada (AG)*, 2002 SCC 62 at paragraph 73, [2002] 3 SCR 269.

[40] The pay for employment and apprenticeships – traditionally, at least – has been set in advance. The modern workplace has modified that somewhat through a variety of pay incentives ranging from goals and assists scored, plus/minus ratings, home runs, stock options, bonuses and a bundle of perquisites, the value of which is not known until received. However, the common factor found in the overwhelming majority of employment is that the amount of remuneration is set by someone other than the employee. Office holders appointed pursuant to statute or regulation will have their terms of appointment – including remuneration – set therein. Corporate directors are accountable to their shareholders and elected office holders typically cannot set their own salary but must do so in agreement with other elected office holders.

[41] In the cases cited in these reasons - except for *Payette*, *Rumford* and *Vachon* – any discussion of the entitlement of an individual to a "fixed or ascertainable stipend or remuneration" was *obiter*. However, in the three cases referred to above, the decisions turned squarely on the meaning of that phrase since it constituted the primary issue of those appeals. It is clear from reading *Rumford* and *Vachon*, that the Federal Court of Appeal stressed that when the remuneration is not fixed, then the ascertainable aspect must be *a priori*, meaning formed or conceived beforehand, relating to or derived by reasoning from a self-evident proposition, and not *a posteriori*, meaning relating to or derived by reasoning from observed facts.

[42] Turning to the facts in the within appeal, a review of the honorarium schedule - Exhibit A-1 – discloses that during the years in question there was little information that would permit a member of RECA to know in advance the amount of his or her remuneration. The number of hearings would need to be known as well as their duration. The appointees would not know whether the Chair of Council would appoint them to any committee or send them to conferences, seminars or to ceremonies and other events as a representative of RECA. Until a certain level of expertise in administrative law was obtained from sources approved by Council, a member was not eligible to participate in disciplinary matters at any level. As set forth in Exhibit A-2 – titled "Range of Member Participation During Period January 1, 2007 to December 31, 2009" – participation at meeting of Council and special events ranged from 3 to 16 days. The range for committee meetings was from 1.5 to 15.5 and conferences from 0 to 17.5 days. The range for Hearing and Appeal panels was from 0 to 12.5 and attendance at training courses and seminars varied from 0 to 5 days. An examination of the Honorarium Analysis – Exhibit A-3 – for the years 2004, 2005 and 2006 shows the income of Andre-Kopp as $10,275, $11,875, and $19,975, respectively. In 2004, 3 members earned no remuneration from hearings

and one member earned only $75. During the entire relevant period one member did not participate in any hearings. In 2005 and 2006, one member earned zero during those years. In those years, two members did not attend any meetings of Council and earned zero under that category, although one of them did earn money for attending hearings. One member earned a total of $1500 in 2006 while the remuneration for other ordinary members ranged from $2700 to $16,000 with 8 members earning less than $6,000.

[43] If Council had been obliged to pay a minimum amount to a member, perhaps equal to a certain number of days or half-days or to pay a standby or cancellation fee if a hearing did not proceed, then at least those minimum amounts would be ascertainable in accordance with the decision in *Rumford*. According to the revised payment schedule – in effect from July 1, 2006 to December 31, 2006 – some of the new qualifying activities entitled the member to a flat fee of either $100 or $150. However, those services still had to be performed. In my view, upon appointment to Council, members – including Andre-Kopp – were not entitled to receive anything. The singular honour flowing from the appointment itself, provided it was supplemented by a "toonie", would enable the recipient to purchase a medium-sized coffee.

[44] I do not have any evidence to find that any of the remuneration paid to Andre-Kopp was based on a service for which there was a flat fee payable for services rendered, even subsequent to July 1, 2006. The current schedule of honoraria – pages 30 and 31 of Exhibit R-1 – effective as of November, 2009, includes services that qualify for payment of a flat fee.

[45] Having regard to the facts and following a review of the jurisprudence, I am satisfied Andre-Kopp was not engaged under a tenure of office with RECA during the period from January 1, 2004 to December 31, 2006 and was not engaged in pensionable service within the meaning of section 2 of the *Plan.*

[46] The appeal is allowed and the assessments issued by the Minister for the taxation years 2004, 2005 and 2006 – as confirmed by letter dated November 13, 2009 – are hereby vacated.

Signed at Sidney, British Columbia this 5th day of January 2011.

"D.W. Rowe"

APPENDIX A

REAL ESTATE COUNCIL OF ALBERTA:

SPECIFIED ACTIVITIES AND ACCOUNTS PAYABLE

2004, 2005, 2006

January 1, 2004 to June 30, 2006	
Qualifying Activity	**Specified Fee**
Attendance at Council and Committee Meetings	$150 for meetings lasting 4 hours or less ("half day") and $250 for meetings lasting more than 4 hours ("full day")
Hearing (attendance)	$150 (half day) $250 (full day)
Appeal (attendance)	$150 (half day) $250 (full day)
Chairman of Council, Committee, Hearing or Appeal Panel	$350 (full day)

TAX COURT OF CANADA
COUR CANADIENNE DE L'IMPÔT

NAME / NOM: REAL ESTATE COUNCIL OF ALBERTA

EXHIBIT PIÈCE: A-1

DATE: NOV 1/10

COURT REGISTRAR - GREFFIER DE LA COUR

N° 2010-384(CAP)

* Approved Conferences - Attendance rates

July 1, 2006 to December 31, 2006		
Qualifying Activity	**Specified Fee**	
Attendance at Council and Committee Meetings	$250 (half day) $350 (full day)	
Hearing (attendance)	$250 (half day) $350 (full day)	
Appeal (attendance)	$250 (half day) $350 (full day)	
Chairman of Council and Committee	$350 (half day) $500 (full day)	
	MEMBER	CHAIR
Appeal (preparation and review of materials)	$250 (half day) $350 (full day)	$300 (half day) $500 (full day)
Appeal decision meeting	$150 flat fee	$150 flat fee
Appeal decision (writing)	$150	$150
Hearing (Phase 1 & Phase 2)	$250 (half day) $350 (full day)	$300 (half day) $500 (full day)
Hearing or Appeal panel (appointment and scheduling)	$100	$150
Adjournment application	$150	$200
Procedural Matter	$100	$150
General administration (e-mail and fax – review and response)	$100	$100

APPENDIX B

REAL ESTATE COUNCIL OF ALBERTA
Honorarium Analysis
T4A Summary - 2004 to 2006

		2004			2005			2006		
Name		Council	Hearing	Total	Council	Hearing	Total	Council	Hearing	Total
Andre	Bev	8,475	1,800	10,275	9,675	2,200	11,875	16,925	3,050	19,975
Chopko	Andy	750		750	5,800		5,800	4,000	-	4,000
Downey	Graham	4,550	1,100	5,650	-	1,200	1,200		2,700	2,700
Hicks	David	6,525	6,950	13,475	-		-			-
Jensen	Norm	4,750	150	4,900	6,650	1,150	7,800	4,650	500	5,150
Ladner	Kevan	5,700	1,250	6,950	4,600	1,600	6,200	4,200	2,800	7,000
Parker	Richard	1,450		1,450	5,000	1,000	6,000	7,300	2,650	9,950
Patrick	Lynn	8,400	2,250	10,650	17,800	6,350	24,150	6,200	9,800	16,000
Peat	Jack	3,500	75	3,575	4,750	140	4,890	4,050	-	4,050
Rudiger	Pat	4,950	250	5,200	8,950	450	9,400	6,500	1,500	8,000
Stewart	Eric	4,800		4,800	8,600	900	9,500	14,450	600	15,050
Sutherland	Charlotte	3,750	500	4,250	5,500	1,150	6,650	1,500	-	1,500
Zaharko	Ted	13,700	500	14,200	4,900	350	5,250	4,250	1,100	5,350
Dredge	Allan				6,400	3,800	10,200	6,450	3,550	10,000
Salomans	Ralph						-	350	-	350
Higa	Les						-	350	-	350

TAX COURT OF CANADA
COUR CANADIENNE DE L'IMPÔT
NAME / NOM: REAL ESTATE COUNCIL OF ALBERTA
EXHIBIT / PIÈCE: A-3
DATE: NOV 1/10
COURT REGISTRAR - GREFFIER DE LA COUR
N° 2010-384(CAP)

CITATION:	2011 TCC 5
COURT FILE NO.:	2010-384(CPP)
STYLE OF CAUSE:	REAL ESTATE COUNCIL OF ALBERTA AND M.N.R.
PLACE OF HEARING:	Calgary, Alberta
DATE OF HEARING:	November 1, 2010
REASONS FOR JUDGMENT BY:	The Honourable D.W. Rowe, Deputy Judge
DATE OF JUDGMENT:	January 5, 2011

APPEARANCES:

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Counsel for the Respondent:	Jeff Watson

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